LSE RATIO

The Magazine of LSE Law

Professor Julia Black appointed LSE Pro-Director of Research

The New Executive LLM Programme

Retirement of Professor Christine Chinkin

Launch of London Review of International Law

Professor Conor Gearty appointed Director of Institute of Public Affairs

Students in Uganda with African Prisons Project

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Faculty Insights

Editors' welcome

The volume you are reading, in hard or in electronic copy, is the maiden issue of LSE Law's new magazine. Ratio takes its name from an older series of termly Department newsletters, which this magazine succeeds and attempts to improve upon. Our guiding idea was to make Ratio worthy of the multiple meanings of its name and of the rich life and traditions of the LSE and LSE Law. Ratio means "reason", so we have placed emphasis on pieces that showcase the strength and variety of academic research and practical legal work taking place in and around the School. Ratio also means "proportion", so we have attempted to highlight and celebrate all aspects of the Department's life with pieces by our present students, our alumni and our staff. Not least, ratio means "relation", so we hope that the new magazine will do its part in strengthening the ties between members of the great and vibrant LSE community.

September 2014

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Bradley Barlow

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David Kershaw

Jo Murkens

Chris Thomas

Emmanuel Voyiakis

Head of Department's Welcome

Welcome to this new edition of Ratio. It's been a very busy year in the Department. We submitted our Research Excellence Framework (the REF) return in November 2013, breathed a huge sigh of relief and then started worrying about the results, which will be out in December 2014. The REF is the mechanism through which every university department's research is judged, and upon which funding decisions are made, every six years or so.

It's also been a very busy year recruiting new academic staff, with six new Assistant Professors starting in September 2014 along with two new LSE Fellows. They are a very impressive group of young academics and we are thrilled to welcome them to the Department.

Our students continue to achieve amazing things, both in the classroom and outside of it. I've been hugely impressed with the number of them who, in addition to managing a very demanding study load, are engaged in charitable and philanthropic initiatives. As well as studying hard, and enjoying themselves, many of them also find time to contribute to the wider social good. One of our undergraduates runs a charity in Africa. Another has made a very well-received film about homelessness in London. In this edition of Ratio we report on a number of these activities.

Amongst many new initiatives this year, we launched our alumni mentoring scheme, through which some of our alums who work in the legal profession in London have agreed to provide mentoring support to some of our more disadvantaged students, in order to give them career advice and guidance. The scheme – which generally involves one meeting per term – has been such a success that we are hoping to broaden it out and make this sort of support available to more students in the future. Our students are so energetic and bright that we hope that alumni will enjoy getting to know them. Please get in touch with me if you are interested in being part of this scheme.

Finally, alongside all the news about how the Department prospers, I am afraid I have to inform you about the loss of two hugely valued members of our Department. In June of this year we were very sad to learn of the death of Simon Roberts. Simon was teaching for us until weeks before his death, and was greatly loved and admired by the generations of students and colleagues who were fortunate enough to benefit from his intellect, wisdom and mischievous sense of humour. And last year we lost Deborah Cass, one of the leading lights of International Law over the past two decades. Deborah taught at the LSE between 2000 and 2006. She was an inspiring teacher and a wonderful colleague. Deborah and Simon will be greatly missed.

Without further ado, I invite you all to enjoy this new edition of Ratio. We think it shows what an exciting and dynamic place LSE Law is in which to learn and research. I hope you enjoy it.

All best wishes,

Emily Jackson

"One of our undergraduates runs a charity in Africa; another has made a very well-received film about homelessness in London."

Making a difference:

An interview with Professor Julia Black

EMMANUEL VOYIAKIS*

You know the one about the legal theorist who gets a call from a local authority building manager? When Julia Black mentions that she did, in fact, get such a call, we have been chatting about the Great Recession, about what good financial regulation looks like and similar themes from her world-leading research in the theory of regulation. But none of those "big" debates makes her eyes light up as they do when she talks about the time a building control manager for a local authority in Cumbria called to say that he had come across her theoretical work and found it very helpful for his own project. One thing that strikes you within a few minutes of talking to Julia Black is that she is keen for her work to make a practical difference.

By any standard, her record on that front is impressive. Julia has advised nearly everyone involved in regulation, from the OECD, the Law Commission and the National Audit Office to the environment agencies of the UK and Ireland, the Human Fertilisation and Embryology Authority and the Canadian Investment Dealers' Association. She was a member the Steering Group for the Better Regulation Executive's Penalties Review and a member of the Department of Health's Working Party developing a Common Framework of Principles for the direct-to-consumer sale of genetic testing services. She is a lay member of the Board of the Solicitors Regulation Authority (SRA) and a member of the SRA's Regulatory Risk Committee. Since September 2013, Julia has been the General Editor of the *Modern Law Review* – the first woman to occupy that position, and since January 2014 Julia has been LSE's new Pro-Director for Research, a job that puts her in charge of the School's overall research strategy.

Our interview took place on a late November afternoon, the day's financial headlines busy with comment on JP Morgan's $13-billion settlement and admission of wrong-doing in the sale of US mortgage-backed securities in the years before the global financial crisis.

You begin a recent paper with an anecdote about the Queen, on her visit to the School in November 2008, asking our economists "why did no one notice this was coming?" From your vantage point, what do you think went wrong? Was this a failure of economic thought, a failure of regulatory policy, or perhaps both?

I would say that it is a little bit of both. Regulatory bodies, especially central banks, are mainly staffed by economists. One problem is that by the time economics get translated into concrete policy, it has lost a lot of its nuance. So the reason nobody seems to have seen the recession coming was not so much that nobody looked, but that the object of their attention was what was happening now, and they did not focus on risks that hadn't begun to crystallise until it was too late to stop them from materialising. The dominant viewpoint was "why put money aside for a rainy day when it hasn't even started drizzling?" That would have involved making difficult choices such as raising interest rates, cutting down on mortgage lending, taking money out of the economy and so on. Moreover, from the perspective of individual banks, there were people who would admit that the situation was getting out of hand, but there was always the feeling that "we are smart enough to know when to quit".

> "Since 2014 Julia Black has been LSE's new Pro-Director for Research"

Let's talk about your suggested way forward. You say that how we regulate something depends on the way we look at it and that we need to take a more complex, "social" conception of markets. That sounds nice, but what does it mean in practice?

The point I'm making is that regulators are regulating concrete actors, not abstract markets. Those actors are often organisations, comprising lots of individuals, each with their own behavioural quirks and patterns. The growing literature on behavioural economics has enhanced our understanding of how these actors are hard-wired to behave in certain situations, but knowing how to regulate requires us to look at more than that. We also need to look at organisational incentives for individual behaviour, ie at how individuals behave in an organisation, not because of how their brains are hard-wired, but because of the way the organisation is structured. For example, if your remuneration package is linked to the volume of trades you do, or to the value of the transactions you've brought in that year, then you are going to be aiming to do more and bigger trades.

How do you put all that into a recipe for regulation?

You can help by giving regulators some concrete guidance on what parameters they should be attending to. Regulators are already looking at very many of those parameters, but they do so on an ad hoc and largely reactive basis. What I argue is that we can save regulators from constantly chasing events and provide them with a more cohesive analytical framework for future policy. This involves looking at what goes on within organisations, which of those organisations are interlinked in the market, the types of transactions and risk-transfers that constitute those links and so on. In short, we need to look at what I would

call the "contractual constitution" of financial networks and this is something that has tended to escape the attention of economists. Lots of people have clever ideas about any one of these things, but nobody seems to have put it together in a way that would allow the regulator to say "OK, I need to look across a range of considerations that include this and that, in a relatively holistic way". Of course, doing this sometimes requires knowledge that you cannot acquire unless you're on the ground, but what academics bring is distance, an element of coherence and analytical rigour into the exercise. I find that the best conversations occur when you give your analytical framework and the person you're talking to can fill that in with their own examples and their instances of where this or that parameter has been significant. That's when you know you have got something right. The other day I was talking to a building control manager from a local authority in Cumbria, who got in touch to say that he wanted to talk more about how to get inter-disciplinary teams into building control so as to ensure sustainable development. Have I written on that particular theme? Not a word! Does this stop my general approach to regulation from applying there? Not at all! So you never know who will pick up your work or what will interest them in it.

I wonder whether this approach might be too deferential to what is happening "on the ground". For example, in financial regulation, why not take more drastic direct measures and, say, ban certain complex financial derivatives? Or why not ban certain institutions from having anything to do with them, eg, by ring-fencing retail banking?

People in financial regulation sometimes say that there's no such thing as a bad financial product, there are just bad matches between investor and product. I think that this concern with suitability is legitimate, so the first thing we need to look at when we consider whether to allow the creation of some financial product is: who is this product going to serve? However, there may come a point when (a) the potential group of people who think that this product is very good will be very small; (b) there is a much larger group of people for whom this product is really potentially very harmful; (c) there is a significant risk that the product in question will actually be sold to those people and; (d) the people who would benefit by that product could satisfy their financial interests in another way. When those conditions are present, you do have to ask whether that financial product is necessary or even useful at all.

Let me turn to some more specific areas of your work. With David Kershaw, you have recently given expert evidence before the Parliamentary Committee on Banking Standards about the

introduction of criminal liability for bank managers. You argued in favour of criminal liability in cases of recklessness, and your proposals have had a direct influence on draft legislation currently before the House of Lords. At the same time you were not very sanguine about the practical impact of criminalisation in this area. How did you come to that conclusion?

I don't know if David and I are the reason that criminal recklessness has been taken forward as the applicable criminal standard, but it's certainly the case that the Committee were very interested in the idea and it ultimately emerged in legislation. The issue is obviously politically sensitive and it was clear that the Parliamentary Committee felt a need to send a clear message. The Law Commission has come up with some very interesting proposals of its own. For our part, we began by looking at the work of our colleague [and LSE Law Professor] Jeremy Horder and we argued that the threshold for criminal liability for financial misconduct should not be any lower than recklessness.

Why not?

Because we are talking about criminal sanctions. In criminal law, there is a big debate about the relationship between "proper" criminal sanctions and "regulatory" sanctions. The former type of sanction suggests a strong degree of moral culpability, while the latter is based simply on the violation of some standard that the regulator has laid down. The problem is that treating both situations in the same way may end up devaluing the idea of criminal liability altogether, or missing its special connection to moral culpability. That is also the source of our doubts about the prospects of actually pinning criminal liability on individuals. Our view was that the best approach is to work on several fronts at the same time. For example, together with a criminal standard of recklessness, there must be a range of other, lower-level reforms that could make it easier to pinpoint criminal liability. One is to require managers to do a very detailed specification of their job description and their activities, eg when you change your role you have to do a long "handover" note to say "this is what I've done, this is what I'm doing at the moment" etc. Another, which regulators are moving towards, is to require personal attestations from certain individuals in banking organisations, saying effectively something like "I am happy to say that things are fine in my neck of the woods". These changes are small, but cumulatively they may make it easier to apply and enforce criminal sanctions.

Does any of this matter if banks keep turning big profits? Are we having this debate just to satisfy ourselves?

The way I would put it is that there is an open question about the role of reputation in the market. It seems to take an awful lot to shame a company in a way that would act as significant social pressure and source of constraint in the decisions the company makes in the marketplace. Given that those social restraints seem to be either non-existent or failing, the issue is whether we need more regulatory constraints to make up for the resulting gap. One interesting line of thought, which seems to have gained some traction in the UK, says that we ought to have some kind of special professional qualification for bankers. The idea is that professionalisation can help introduce some social restraints on banking activities, eg, a shared sense of being a professional committed to certain ethical standards even when those standards do not have the force of law. Then there's another interesting debate about whether we should have different types of corporation for different purposes. Organisations like "Tomorrow's Company" have argued that we need to be more imaginative about the corporate structure that we apply to different kinds of business. Obviously we can't turn the clock back to the time of partnerships, but the relationship between the rights that shareholders have and the risks shareholders require company managers to undertake is a very current and serious problem, which several of our LSE colleagues are working on.

Let's step back a little from the recent financial crisis. Your main field is the theory of regulation. In your view, how do we tell good regulation from bad regulation?

The hard way to answer that question is to ask whether regulation delivers certain social benefits and, if so, over what time period. For example, the regulatory system may be functioning, but does it give us a cleaner environment, a more stable banking system, lower salmonella rates and so on? Some of those questions too can be answered relatively easily, eg, regulators can monitor environment quality, salmonella instances etc. What's much more difficult to measure is whether there is any causal connection between what the regulator does and that happy or unhappy state of affairs. Do we have less salmonella poisoning because food standards agencies have been doing all those amazing things, or in spite of the fact that the regulation happens to be chaotic? That problem makes me rather sceptical about methods of ranking regulatory techniques as good or bad, or best and worst, because (a) such rankings are not completely honest insofar as regulatory techniques are very difficult to tie to outcomes and (b) the game is not zero-sum: there are always trade-offs and what usually happens is that the costs of "bad" regulation appear in its effects in some other activity, not obviously related to the one the regulator is looking at.

I understand that as a way for assessing the outcomes of regulation. But what about the regulatory process itself? In a recent paper you emphasise the importance of legitimacy in regulation and you propose that we see legitimacy not simply as a "resource" that the regulator has but as an "endowment". What do you mean by that?

Consider global financial regulators, like the Basel Committee on Banking Supervision. It has a very narrow membership, participation is very restricted and unrepresentative, it has no democratic mandate, no civil society participation, private interests have a lot of say in its decisions etc. At the same time, it's just there. It's using principles, it has methods of implementation, people are complying with it etc. So academics or NGOs who say that this organisation is not legitimate are making a valid point, but are also missing one. They miss that for actors in the field, this body means something. That's the sense of legitimacy I have in mind. The idea is that legitimacy lies in the acceptance of power, eg, "I'm not doing this just because you tell me to do it – it's not just raw, naked power – but because I accept your authority". It seems to me that we need to look at what legitimacy means "in the field" and think about the reasons that different "legitimacy communities" might have for attaching a certain meaning to what the regulator does.

Sure, but most regulators have legal authority. Isn't that enough of a reason for actors to accept that those regulators have a right to govern their conduct?

Not necessarily. As a regulator, you need acceptance by others as having the right to govern even when you have legal authority, because you can't be there all the time. There's where the idea of describing legitimacy as an "endowment" comes in. I am using that idea to register two things. First, that

> "If I had to choose one thing I love about LSE it would be the diversity"

regulators can do their very best in attracting legitimacy and getting different communities to accept them for different reasons and in a different way, but they cannot guarantee such acceptance. Second, that the regulator cannot earn legitimacy by simply being passive in the face of developments, but by responding to developments in ways that attract legitimacy, eg, by setting up consultative groups, more transparent processes, ways to appeal to the demands of different legitimacy communities etc. But nothing guarantees that legitimacy will, in fact, be earned.

Here is one point that puzzles me. It's fine to say that the regulator should listen to everybody and that everyone has to come to an understanding, but the practical question will always be: which understanding, on whose terms, whose voice counts more?

I think there are two levels to this. One is the level of interpretation of rules. Here what people do is bound by the reasonable interpretation of normal interpretative conventions about what a rule means. Then there's the level of the broader regulatory conversation, outside the interpretative context, which is actually more about participation. This is a lot more complicated and I share your irritation with anyone who says that the answer is simply more participation. For me that's just the start: the significant question is who participates and under which conditions. You can't say to the wolves and the sheep, come to the negotiating table and talk it out. There are two further difficulties. One has to do with the identity of the participants, eg, in deciding who speaks for consumers. Another has to do with technical expertise, ie also what you are and are not allowed to say given the technical or non-technical nature of the debate and so on.

You've now opened a new and exciting chapter in your career, LSE's new Research Director. What's the job about?

The challenge, as I see it, is to give creative people the conditions for doing what they do best. It is a fact of life that public funding is dwindling and that our students pay for a lot of what we do, so we need to attract more external research income. At the moment, academics do almost everything. We have to teach, research, do administration, advise students, apply for grants etc. That means that we don't usually have huge amounts of time to go out and hunt more esoteric or bigger research grants. So what we need to do is have a way of bringing opportunities to academics, making sure that we give them as much support as we

can in bidding, writing applications etc. Then, once a grant comes in, we need to make sure that there is enough administrative support so that academics do what they do best, namely the substantive research.

How should we judge whether you've done a good job?

Actually, that was the exact question I had at my interview! I asked "what does success look like in this job" It's not easy to say, although there are some easy metrics such as the amount of money coming in from research grants and various media metrics about our public presence. I think that the Impact Case Study exercise has been really interesting and useful in that respect. We have submitted over sixty such studies to the Research Excellence Framework (REF) and the process of pulling those out has been instructive and gratifying, first of all for many academics who were surprised to see that their research has had a big impact, or a bigger impact than they may have known it had. Then there are those who didn't previously do much Knowledge Exchange and Impact and who are encouraged to do more, or those who want to do it and didn't know how, are able to do more about it. How you devise metrics for that is something we're developing, but impact can be quite serendipitous, we shouldn't forget that.

Final question: what is it that you like about LSE?

If I had to choose one thing, it would be its diversity. I love its international diversity, its inter-disciplinary diversity, even though it's all within the social sciences and we're missing the doctors, physicists, historians, linguists and all the rest of it. On the flipside, there is so much untapped coherence in people's research interests and it's really exciting to know that you can be having lunch in the Senior Dining Room and the people next to you are discussing an issue you know something about from a completely different angle. But it's perhaps the international dimension that stands out most.

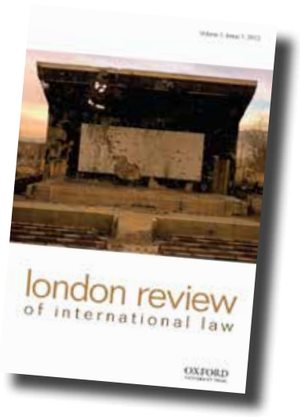
To learn more about Professor Julia Black, visit lse.ac.uk/collections/law/staff/julia-black.htm

To access the papers mentioned in this interview and many more papers by LSE Law's experts, visit the LSE – Law, Society and Economy Working Paper Series page at lse.ac.uk/collections/law/wps where you can also sign-up for regular email updates.

***Emmanuel Voyiakis is an Associate Professor of Law at The London School of Economics and Political Science.**

The launch of the London Review reflects the vibrancy, creativity and richness of research on international law today.

the london review of international law begins



In November last year, LSE Law celebrated the launch of a new academic journal, the *London Review of International Law*, published by Oxford University Press. While its home is the London-based international law community more broadly, the journal enjoys a close connection to LSE: three of its editors (Susan Marks, Stephen Humphreys and Andrew Lang) are based in the Law Department, as well as the assistant editor, Tor Krever. The other two editors (Matt Craven and Catriona Drew) are based close by, at SOAS.

> "An international law that keeps an eye on its own emotional life and one that adopts a form of life that resists tears but stays close to them."

The launch of the *London Review of International Law* reflects the vibrancy, creativity and richness of research on international law today. A particular focus of the journal is scholarship that has a theoretical, historical and/or socio-legal dimension. The opening editorial expresses a wish to "publish work that aligns the study of international law with the wider effort to understand current conditions – their creation and reproduction, realities and possibilities, pasts and alternative futures – for the sake of emancipatory change". Importantly too the journal aims at work that is not only stimulating and illuminating but also enjoyable to read – scholarship that communicates what it has to say with a bold, distinctive voice.

The launch featured a celebratory lecture by Gerry Simpson, former Professor at LSE Law and now Kenneth Bailey Professor of Law at Melbourne Law School. Entitled "The Sentimental Life of International Law", Professor Simpson's lecture drew attention to the affective dilemma confronted by international law scholarship: on the one hand, the dryness of the law in its technical garb, and on the other, what Simpson called the "lure of sentimental indulgence". There is no easy escape from this dilemma, he suggested, but there is promise in "an international law that keeps an eye on its own emotional life and one that adopts a form of life that resists tears but stays close to them".

The first issue appeared in September 2013, showcasing precisely that kind of creative and engaging writing. Fleur Johns ("The Deluge") probes the international legal dimensions of "big data". If a digital flood is now upon us, Johns argues that there is a lot more for international lawyers to reckon with than the well rehearsed issues of privacy, property and "interoperability". Ralf Michaels ("Dreaming Law Without a State") takes up the idea in international commercial arbitration of law outside the state, created by and for markets. For Michaels, this idea is best understood as a dream, fantasy or utopian vision, and he urges the elaboration of alternative utopias that could challenge its imaginative grip.

Sundhya Pahuja ("The Laws of Encounter") shows how international law may be redescribed as a site of meetings between rival jurisdictions. Her "jurisdictional" account shifts the focus away from issues of rightful authority and onto material practices of authorisation and encounter. And Umut Özsu ("A Thoroughly Bad and Vicious Solution") revisits a crucial episode in the history of international law's engagement with population transfer. In Özsu's assessment, the 1925 Advisory Opinion of the Permanent Court of International Justice on the Exchange of Greek and Turkish Populations cannot be understood without reference to the wider context in which population transfer emerged as a modern technology of "conflict resolution".

The first issue also presents a symposium on Anne Orford's recent book, International Authority and the Responsibility to Protect. Charlotte Peevers considers the significance for the book of Dag Hammarskjöld's response to the Suez Crisis, while Daniel McLoughlin, Jacqueline Mowbray and Ben Golder bring to bear on it the political theory of Carl Schmitt, the historical philosophy of Michel Foucault and the conceptual framework developed by Pierre Bourdieu respectively. Orford herself then responds, using the interventions as an occasion to clarify her methodology and to comment on the wider demands of writing the history and sociology of international law.

In its final pages, the first issue marks the 20-year anniversary of the Oslo Accords with a work by Sandi Hilal, Alessandro Petti, Eyal Weizman and Nicola Perugini ("The Lawless Line"). In contrast to international legal analyses of "Oslo Peace Process" map-making, which have concentrated on the jurisdictional competence of Israel and the Palestinian Authority on either side of the lines that were drawn, these architects focus on the "new spatial condition" that has arisen from "within" the lines themselves. Following the 5.5 metre wide path in real space, Hilal and colleagues bring vividly to life the fractured geography of the West Bank, together with some unexpected consequences of the Oslo peace negotiations for those who have been caught in its cartographic shadow.

For further information about the journal, please visit lril.oxfordjournals.org/

The Sentimental Life of International Law

Professor Gerry Simpson at the launch of *London Review of International Law*, 28 November 2013

Professor Gerry Simpson launched the *London Review of International Law* with a lecture on "The Sentimental Life of International Law". The full lecture is available at iril.oxfordjournals.org

> *Our sense of what a piece of international legal scholarship or teaching has achieved is bound up with a sense of its literary style or, in a stronger version, that it is its literary style. Virginia Woolf was once asked what her books were about. She responded by saying that they weren't about anything, they were the thing. Her style was, in a way, her content. We respond to style as a matter of aesthetic judgement of course but also as a matter of feeling and sentiment. Words in the right order make us feel differently about the world.*

> *What is to be done? I have tried to show this evening that international law possesses a sentimental life (but that this is not a commonly discussed aspect of our work) and that this sentimental life carries with it certain dangers (I discussed four of these: excess, simplicity, solipsism and depoliticisation). Adopting a specific genre of sentimental international law – with its desire to achieve affect and sentimentalise the encounter with otherness – risks trumping the experience of sympathy, the potency of political action and considerations of taste. The debate around the 18th century novel might be a way of clarifying what is at stake in avoiding these dangers. By avoiding them, it might be possible to imagine a non-fraudulent and less obviously solipsistic affective life for international law.*

Conor Gearty

APPOINTED DIRECTOR OF INSTITUTE OF PUBLIC AFFAIRS

LSE's Institute of Public Affairs (IPA) is a gamble on the future direction of university activity. In the old days we had teaching and research occupying opposite ends of the ring that was the academic's professional life. They engaged like two boxers, each trying to knock the other flat-out. When teaching won convincingly the academic was adored by the students but missed out on the REF (and therefore promotion). Where research got its knock-out, the academic had usually been hunkered down in isolation, reading the books, writing the words, while resolutely ignoring the grumbles from staff ("freeloader") and students ("lousy teacher") while research grant after research grant turned sabbatical leave into a fact of life, not a sporadic entitlement.

These are of course extremes. More often the two just fought to a standstill, neither side winning but each doing enough to exhaust the other. The result: a tired academic feeling unhappy about both parts of the job. And more recently a nasty element of the market has crept into what used to be a vocation. Students have become customers, demanding learning as though it were just another item in a supermarket. And the referee has waded in on the research side, insisting on more attention being paid to the audience, more flamboyant displays of research virtuosity which "engage" the crowd, are easily understood by them, "make a difference" to their lives.

The IPA reckons these pressures are here to stay, and that the only route to sanity is to embrace them, making them work for the scholar rather than the other way round. The big idea driving its approach sounds like a piece of jargon – knowledge exchange and impact (KEI) – but on closer examination it is anything but. On a KEI approach there are no separate competing parts of our working lives. Teaching, research and public engagement are - as St Patrick said to the Irish about the Holy Trinity (remember the shamrock) – three parts of the same plant. Knowledge exchange is a fancy way of describing good teaching: engaging with the students, drawing out their own understanding of the subject to hand and bringing it to a higher level through an iterative process involving reading, writing, and talking. The impact is on their lives, a memory lodged in the mind not of the names of cases and rules necessarily but mainly of an attitude, a way of thinking, a kind of spirited engagement with data and law which gives its bearer a sense of critical distance even when he or she seems otherwise trapped by their professional excellence in a purgatory of prosperous drudgery. With research it is almost as simple. No longer does the scholar swot up something obscure, fine tune his or her views and then – job done – emerge from the ivory tower to deliver such findings to the world outside. Never a good model (the occasional Newton or Einstein apart, the world rarely gives tuppence for what the scholar had to say), it has now collapsed completely.

These days we mainly grow academic truth either in teams or through interaction with

> "Teaching, research and public engagement are – remember the shamrock – three parts of the same plant

those well placed (albeit from different perspectives) to understand what we do. Such "exchange" is the route to "impact": if those who are interested in what we do are part of its creation they will be more likely to engage after the event with the advice our expertise has driven us to offer. In KEI terms, public engagement is part of research, and vice-versa.

So how is the IPA realising all this? These are early days, but here are a few examples – many naturally drawn from law (my disciplinary home). One of our research strands has been "climate justice" and this has involved a partnership with both the Grantham Research Institute (headed by Nick Stern) and Mary Robinson's Dublin-based Foundation for Climate Justice. We have had a series of meetings in Dublin, Berlin and London, and a special edition of the ***Journal of Human Rights and the Environment*** will be launched as a book in July, with not just standard academic contributions but also interviews, not least with the EU's Commissioner for Climate Change, Connie Hedegaard. The point here is to develop good research out of engagement and interaction. My colleague and IPA's deputy director Purna Sen is leading a research programme on women in public life, ***Above the Parapet***, which has already drawn a great deal of attention and generous funding from multiple sources. At the more public end of the spectrum there is the IPA/law partnership in "crowd-sourcing a UK constitution" which has been running all this year and which we plan to end with a draft written constitution to be "launched" just before the 800th anniversary of Magna Carta in the middle of next year. And the IPA guerrilla lectures, where students, staff and members of the general public willing to risk adventure find themselves whisked away for discussion in unexpected places about unexpected matters, the meaning of Hell in the crypt of Westminster Cathedral was the last one. Using money we have secured from the Higher Education Innovation Fund, we are putting much of this on the web, and also experimenting with new forms of academic engagement, like the five-minute "Gearty grillings" of academic colleagues that we will be launching on the web in the summer term. Further initiatives are in the pipeline. Learning need not be dull – and the lessons of primary school should be remembered by us all – you learn best when you are also having fun.

Professor Christine Chinkin:

Recasting the Third Party as International Law's Protagonist

DEVIKA HOVELL*

Christine Chinkin will retire as Professor of International Law in December 2014 after 18 years with the Department of Law at the London School of Economics and Political Science. This marks the end of a chapter in a groundbreaking career that has re-imagined the field of international law through a feminist lens and made a number of pivotal contributions to international legal practice through her work on UN fact-finding missions on the Gaza conflict, the Tokyo Women's Tribunal and more recently the Kosovo Human Rights Advisory Panel. She has juggled a career and unenviable travel schedule with family life and her unswerving devotion to the Southampton Football Club.

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Early Career

Christine came to LSE after periods as a lecturer and senior lecturer at Lincoln College Oxford (1972-1975), Queen Mary College, University of London (1975-1978), the National University of Singapore (1981-1984), the University of Sydney (1984-1992) and the University of Southampton (1992-1996). The diversity of cultures (both legal and social) at these institutions undoubtedly shaped Christine's capacity to identify blind spots in traditional approaches to international law. Her doctoral thesis, under the supervision of James Crawford at the University of Sydney, was on "Third Parties in International Law" (the forerunner *American Journal of International Law* (AJIL) article won the prestigious Francis Deák prize) and set the frame for a career oriented around bringing the neglected "third party" into the picture. Her time as a Masters student at Yale University under the guidance of Myres McDougal and Michael Reisman proved formative and modelled an approach to international law that eschewed traditional positivism and identified contemporary international law as the product of a subtle and evolving interplay of a variety of processes, participants and instruments.

Feminist Approaches to International Law

As women everywhere will identify, the ladies' loos are the modern day equivalent of the gentlemen's club. For Christine, a chance meeting with Hilary Charlesworth in such a setting during a break between conference sessions led to a collaboration that was to span a career. After a particularly frustrating conference where the female voice was notably absent, Christine, Hilary and fellow Sydney University academic Shelley Wright retired to a pub and scribbled thoughts on a napkin that ultimately became a conference paper on "Feminist Approaches to International Law". Its first presentation led to a longer event as part of a conference on "The Role of Consent in International Law" held at the Australian National University in August 1990. A number of the most venerable figures in international law spoke at the "main" event, including Professor Oscar Schachter. The feminist papers were delivered and controversially received, and

> "Christine's most recent role has been as a member of a three person Kosovo Human Rights Advisory Panel"

the women were roundly told off for attacking the discipline in such an ungentlemanly fashion. As Hilary Charlesworth recalls in a 1993 article, "the worst aspect of the proceedings was that [we] had managed to estrange and upset our eminent guests: in particular, we had 'alienated Oscar'".

Of course, alienation was the spur for the paper and the reaction confirmed that it had hit a nerve. The paper was submitted to the AJIL (and was reportedly sent out to more referees than any article had been previously). The year before, the Journal had published an article on "Has International Law Failed the Elephant?". In 1991, the AJIL agreed to publish Chinkin, Charlesworth and Wright's groundbreaking article on why international law had failed women, entitled "Feminist Approaches to International Law". The article has been cited almost one thousand times and has paved the way for identification of a gender bias in many spheres of international law.

The Accidental Advocate

Unsurprisingly, the article was not merely picked up by academics. It was quickly picked up by NGOs and international institutions. For instance, Elizabeth Evatt, then Chair of the Committee on the Elimination of Discrimination Against Women and a role model for Christine throughout her career, was instrumental in drafting the CEDAW Recommendation No. 19 on Violence against Women in 1992 which was followed in 1993 by the General Assembly's Declaration on the Elimination of Violence Against Women. Though Christine had not previously seen herself as either a human rights lawyer or an activist, she was unable to refuse a number of invitations throughout her career to engage in important initiatives bringing third parties in international law to the forefront.

In 2000, she joined a panel of four judges on the Tokyo Women's Tribunal. This was a people's tribunal set up by Asian women and international NGOs to adjudicate crimes of military sexual violence committed against the "comfort women" during the Second World War. This controversial term refers to the thousands of women (between 50,000 and 200,000) across Asia who were forced into servitude where they faced rape, torture and extreme violence at military camps known as "comfort stations" during the war. This "forgotten crime" was not prosecuted in the Tokyo War Crimes Tribunal established in 1946. Instead, after the war, the surviving women (by some estimates, only 25-30 per cent survived) were

in many cases cast out of their communities and treated as social pariahs. The Tribunal was a belated attempt to mitigate the failings of the Tokyo Tribunal by recognising that the violence done to these women was not a source of personal shame, but an international crime. Christine's greatest concern was that the Tribunal, which was not after all a state-sponsored tribunal with enforcement powers but a symbolic people's tribunal, would raise expectations that could not be fulfilled. In the event, over 1,000 Japanese people turned out to hear the summary judgment handed down. In conversations after the conclusion of the trial, Christine recalls above all the utter relief of the 64 women involved that they had been believed. To have a judgment stating that what had been done to them was a crime under international law was not just a legal development, but reinterpreted the personal and social narrative that had been allowed to overshadow the women's lives. The focus of Christine's work on violence against women has continued throughout her career, most recently through her role as scientific adviser to the drafting of the Council of Europe's Convention on preventing and combating violence against women and domestic violence, which came into force on 1 August 2014.

A more difficult episode in her career was her involvement in UN fact-finding missions arising out of the Gaza conflict. She was involved in two such missions, one with Desmond Tutu and the other chaired by Justice Richard Goldstone. The latter mission was established following a three-week conflict in the Gaza Strip in 2008-9 known as Operation Cast Lead. The fact-finding team insisted on an express mandate to investigate both Israeli and Palestinian violations of international humanitarian and human rights law committed before, during and after the conflict. The task of fact-finding in this context was incredibly difficult, both in terms of deciding what incidents to investigate and in terms of gathering evidence. As Israel denied access to Gaza on both occasions, the missions involved several treks across the desert to gain access through Egypt. The team worked painstakingly to ensure every piece of relevant evidence was corroborated. The report was released on 15 September 2009, accusing both the Israel Defence Forces and Palestinian militants of war crimes and crimes against humanity. Christine's email collapsed under the weight of the correspondence she received in the wake of the report, and she was the subject of several personal attacks and threats. It therefore came as a something of a bombshell when Justice Goldstone, who Christine praises as an incredibly inclusive mission chair, ultimately retracted his claim that it was Israeli government policy to deliberately target civilians. Though they risked further personal attacks in doing so, Christine and her co-authors released a joint statement expressing their strong disagreement with Justice Goldstone's recantation of this aspect of the report.

Christine's most recent UN role has been as a member of a three-person Kosovo Human Rights Advisory Panel. Following the NATO bombing campaign in Serbia and Kosovo, the UN Interim Administration in Kosovo (UNMIK) was installed essentially as a surrogate government. Yet, until the establishment of the Panel, there was no mechanism by which to hold UNMIK accountable. The main complaints relate to UNMIK's failure to provide adequate procedures and structures for the adequate investigation of killings and disappearances, and cases involving property. Christine is quick to acknowledge that the establishment of the Panel is a case of "too little, too late". The under-resourced Panel has received over 500 individual complaints, many of which are still to be heard. Christine continues to travel to Kosovo for at least a week each month. For many victims of human rights violations within Kosovo, the Panel's consideration of their situation is the first instance that any authority has shown interest in the abduction or disappearance of their relatives since it was originally reported.

Mentor, friend and Southampton fan

Christine is a cherished colleague and teacher who has influenced the career of many international lawyers, both directly and indirectly. She is undoubtedly one of the reasons why students (and indeed academic colleagues) are attracted to LSE. She is unimaginably humble about her career contributions and it is only by chance conversations over lunch, in the lift between floors or indeed in the ladies' loos (for those of us lucky enough to be members) that one can get a hint of the wide and diverse impact that Christine Chinkin has had in her career so far. This short tribute has barely touched the surface. She is a leader in the field of international law. Her hard work, warmth and generosity will continue to inspire her many colleagues, friends and (dare I say) her fellow supporters of the Southampton Football Club to persist in championing the cause of those unjustifiably denied a place at the top of the ladder.

The New Executive LLM Programme

DAVID KERSHAW*

In December 2013 we offered our first modules in LSE Law's new Executive LLM programme. The programme is designed to make advanced legal education available to people who are not able to take a year out from work in order to study for an LLM. However, we have also been very pleased to discover that there is a body of students who may already have an LLM, and see the Executive LLM as an opportunity to learn about areas of law that they never previously had time to study. Students can apply and enter the programme at any point during the academic year.

The innovative structure of the Executive LLM programme combines a substantial body of pre-class reading with intensive week long interactive teaching sessions at the LSE. After the intensive session students have two months either to revise for a take-home examination, or to complete an 8,000-word assessed essay. To obtain an LLM students must complete 8 modules, which we expect most students will complete over a three to four year period. Teaching sessions are offered four times a year, with one week before Christmas, two weeks during the Easter break and one in September. In each of the teaching sessions the programme offers between three and five different modules. In the four sessions we have held so far we have taught modules in arbitration, corporate law and finance, human rights, environmental law, mediation and takeovers.

With 25 hours of teaching contact time during the intensive teaching week there is no question that this is a demanding learning experience. So we have been thrilled to find that both teachers and students have found the modules extremely rewarding. Vincent Johnson, LLM 2017 told us that he felt that the "Executive LLM programme offers a powerful combination of information and inspiration. The teaching has been superb."

One of the academic goals of the programme was to bring together not only the best teachers but also top flight students with experience of practising law. We hoped that this would enrich the teaching and student experience. It is clear that for both students and teachers we are achieving this goal. One student observed that "the calibre of the student body is excellent. My classmates are drawn from across the globe and their comments reflect a wealth of experience in business, law practice, and government. This is exactly the type of rich educational experience I expected from LSE." Veerle Heyvaert, Associate Professor of Environmental Law, taught her Environmental Law module this Easter break and is similarly enthusiastic: "The Executive LLM offers an intensely rewarding experience to students and teachers alike. The concentrated format allows students to build up knowledge quickly and effectively, which creates more scope for in-depth discussion and interactive learning. The format is highly conducive to developing a strong rapport between students and teacher, which is another key asset of the programme."

We have been pleasantly surprised about how far students are willing to travel to join the Executive LLM student community. While we expected students from the UK and Europe, we were delighted to discover that students are willing to travel from as far afield as Vancouver, Texas and Sydney.

We think the Executive LLM programme is a pioneering programme in the delivery of legal education and are looking forward to expanding and building the programme. We have got off to a wonderful start and we will keep you updated about how it progresses.

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In Memoriam: Deborah Cass

SUSAN MARKS*

Deborah Cass, who died on 4 June 2013, was an admired and much loved colleague in the Law Department at LSE. Her time with us, starting in 2000, was all too short, and belies the intensity of the affection she inspired. For my own part, I met Deborah in a different context and counted her as one of my dearest friends.

Deborah was a graduate of the University of Melbourne and Harvard Law School. Before coming to LSE, she lectured at the Australian National University. While still an undergraduate, she was engaged as a research assistant on the independent Commission of Inquiry into the Rehabilitation of Worked-out Phosphate Lands in Nauru. Against a backdrop of massive environmental damage caused by phosphate mining on the island, the Commission found that the states responsible for Nauru had failed in their international legal duties to make proper provision for the long-term needs of the Nauruan people. The experience was to be formative for Deborah.

An important part of her subsequent work was concerned with the rights of peoples in a post-colonial world, and in particular, with the right of self-determination as a principle of international law. At a time when other scholars of international law were turning away from the language of self-determination and replacing it with thematics such as "the emerging right to democratic governance" and "separatism", Deborah showed how self-determination remained crucial if analysis and policy were to steer a course between the opposed tendencies of co-option or assimilation on the one hand, and secession or "ethnic cleansing" on the other.[1]

Or rather, she showed how self-determination had *become* crucial owing to a process which she termed "constitutionalization". By this, she meant that the centre of gravity for development of the concept and its implications had moved, or was moving, from international to national settings, and from political to legal institutions; self-determination was increasingly embedded in initiatives for national constitutional change. In her words, "'[constitutionalization]' ... refers [here] to the internal legal integration of particular attributes of self-determination such that the concept begins to form a part of the constitutional fabric of the state".[2]

The constitutional fabric of states was itself Deborah's focus in another important body of work. She wrote on the representation of women in the Australian constitutional system, elucidating the gap between participatory theory and exclusionary practice.[3] She took up the issue of political campaign financing and the role in controlling it of public funding schemes, disclosure requirements and expenditure caps.[4] And, turning to the interrelation of international law and constitutional law, she challenged the received wisdom that tells us that international law is either "incorporated" into municipal law or it is not, and highlighted instead a far more subtle and complex relationship involving the interplay of "acceptance, rejection and discussion".[5]

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Deborah's imaginative way with the interlocking of international law and constitutional law culminated in her celebrated work on international trade law. The constitutionalization of self-determination was one thing but, again working against the main trend of scholarly opinion, Deborah demonstrated that the constitutionalization of the WTO was quite another. Her book *The Constitutionalization of the World Trade Organization* launched a compelling attack on trade constitutionalization, both as a description of prevailing practice and as a normative ideal. Instead, she argued for substantive, redistributive "trade democracy".[6] The book's significance was recognised by the prestigious American Society of International Law with the award of a prize in 2006.

Firmly grounded in global realities, Deborah's scholarship was characterised not only by worldliness, but also by timeliness. She co-edited the first major assessment of China's accession to the WTO in 2001.[7] Bringing together 22 essays by leading specialists in the field, the collection highlighted the dramatic legal and economic changes that would follow in China, and reflected on the implications for the international trading system itself. Deborah's own contribution probed the significance of China's accession for the constitutionalization of the WTO. Her analysis revealed how different models of constitutionalization would yield different accounts of the impact of accession on constitutionalization, and of constitutionalization on accession.

A penetrating analyst of doctrinal and conceptual developments, Deborah was also an illuminating theorist. One text which has been particularly influential for my own thinking is an article entitled "Navigating the Newstream".[8] The title was an allusion to an article by David Kennedy (who had taught her at Harvard), in which Kennedy announced a "new stream" of (critical) international legal scholarship.[9] In 45 pages, Deborah managed to synthesise, capture, sum up, and get the measure of an emergent, unruly and in parts distinctly elusive body of writing which, she saw, was to change the study of international law irrevocably. Her article remains the most perceptive and, to my mind, most devastating critique of its limitations and unrealised possibilities.

I have tried to convey something of the scope and range of Deborah's work, and of its main preoccupations. But I have not yet touched on the way she wrote – her exceptional generosity, humility and lucidity. Deborah was very clear in acknowledging the others on whose shoulders she stood. Impatient with obfuscation, she strove to communicate and never patronised her readers. Her writing was fresh and forthright and full of luminous, funny phrases – the "legal woodpecking" of the Australian common law, the "fairy tale of *terra nullius*" that long denied native title to indigenous Australians, the "newstream" that challenged the mainstream of international legal thought, the "worn" modernity of the "modern law" of self-determination.

Re-reading Deborah's work in order to write this, I was struck very forcibly by the extraordinary richness of her contribution, which will long outlive her, but also by a crushing sense of all that has been lost with her passing. Of course, it is a terrible, personal loss for her husband, also one of our beloved and admired colleagues Gerry Simpson, for their children Hannah and Rosa, for Deborah's parents, sister, brother and extended family, and for her many friends. But it is also a huge and tragic loss for the world, including our small corner of it in the legal academy. These magnificent texts that she has left us bear witness to a scholar with a rare and precious humanity, who used her very considerable intellectual powers to expose the legal dimensions of contemporary problems and energise progressive change.

[1] "The Constitutionalization of Self-Determination" *Proceedings of the American Society of International Law* (1998) 122. See also "Re-Thinking Self-Determination: A Critical Analysis of Current International Law Theories" (1992) 18 *Syracuse Journal of International Law and Commerce* 21; and "The Modern Law of Self-Determination" (1995) 8 *Harvard Human Rights Journal 293.*

[2] "The Constitutionalization of Self-Determination" *ibid,* 123.

[3] (with Kim Rubenstein) "Representation/s of Women in the Australian Constitutional System" (1995) 17 *Adelaide Law Review* 3

[4] *(with Sonia Burrows)* "Commonwealth Regulation of Campaign Finance: Public Funding, Disclosure and Expenditure Limits" (2000) 22 *Sydney Law Review* 477.

[5] "Traversing the Divide: International Law and Australian Constitutional Law" (1998) 20 *Adelaide Law Review* 73.

[6] *The Constitutionalization of the World Trade Organization: Legitimacy, Democracy, and Community in the International Trading System* (Oxford: OUP, 2005). See also "The "Constitutionalization" of International Trade Law: Judicial Norm-Generation as the Engine of Constitutional Development in International Trade" (2001) 12 *European Journal of International Law* 39; and "The Sutherland Report: the WTO and its Critics" (2005) 2 *International Organizations Law Review* 153.

[7] (with Brett Williams and George Barker (eds)), *China and the World Trading System: Entering the New Millennium* (Cambridge: CUP, 2003).

[8] Navigating the Newstream: "Recent Critical Scholarship in International Law" (1996) 65 *Nordic Journal of International Law* 341.

[9] David Kennedy, "A New Stream of International Law Scholarship" (1988) 7 *Wisconsin International Law Journal* 1.

Simon Roberts: A Life at LSE

TIM MURPHY*

Simon Arthur Roberts, legal anthropologist, born 13 April 1941; died 30 April 2014.

Simon Roberts, Professor of Law Emeritus, has died aged 73. Born in Micheldever in Hampshire, Simon was brought up on a farm on Dartmoor and then on a smallholding in the New Forest. He was educated at Tonbridge School and LSE, where he read law. He met his wife Marian Bernadt, who later trained for the Bar, in London and they married in 1965. Marian is also active in the alternative dispute resolution (ADR) field.

After graduating in 1962, Simon taught for two years at the Law School in Malawi (when it was still Nyasaland, playing cricket for Nyasaland during that time). He also served as an advisor on customary law to the Botswana government, while carrying out his own research among the Kgatla, which was later published as *Tswana Family Law* (1972). It was this African experience which triggered his lifelong interest in legal anthropology. Simon started teaching at LSE in 1965 and obtained his PhD in 1968, becoming a professor in 1986. He was a dedicated teacher and much-loved supervisor of research students and continued teaching a graduate course in ADR long after retirement until a few months before his death.

He also was strongly committed to building bridges between law and the "interpretive" social sciences, at a time when they were somewhat unfashionable, at least at LSE. He led the creation of a joint BA in Law and Anthropology, not without resistance from some of the law professors of the time, just as earlier he had championed the creation of an LLM course in Law and Social Theory.

Simon published two classics: *Order and Dispute: An Introduction to Legal Anthropology* (Penguin, 1979) and *Rules and Processes: The Cultural Logic of Dispute in an African Context* (with the anthropologist John Comaroff, 1981), and co-authored *Understanding Property Law*, with me, and Tatiana Flessas. In more recent years, he turned his attention to the "lessons" of his African experience: that many disputes, especially within families, could be better brought to a conclusion without resort to or the intervention of courts, and became a world expert on ADR. He served on the Lord Chancellor's Family Law Advisory Board which advised on the Family Law Act 1996. His ADR work culminated in *Dispute Processes: ADR and the Primary Forms of Decision-Making* (with Michael Palmer, 2004), and he continued writing and teaching in this field long after retirement; he was lecturing on ADR in Shanghai as late as 2013, and his most recent book was *A Court in the City: Civil and Commercial Litigation in London at the Beginning of the 21st Century* (2013), based on his research at the Mayor's and City of London Court, which examined the contemporary work of the court in sponsoring dispute settlement.

Simon held a number of key editorial roles. He was co-editor of the *Journal of African Law*, a member of the editorial boards of the *Journal of Legal Pluralism* and the *International Journal of the Sociology of Law* and of the book series, Law in Context. Perhaps most important to him was his General Editorship of *The Modern Law Review* from Bill Wedderburn's retirement until 1995. In this role he led the negotiations which took the MLR to new publishers, vastly improved its revenues, and created the conditions which made it possible for the MLR to fund scholarships, prizes, and seminars as well as greatly modernise its layout and design, matters of detail which always attracted his craftsman's eye. Characteristically, he created a new Articles Editorship, run by a small team, and separated this from the General Editorship.

In later years, he took on a number of senior non-academic roles in the School. He chaired a Working Party on the Organisation of the School (1991-92), served as Vice-Chairman of the Academic Board from 1993-96, and was Convenor, as it was then called, of the Law Department from 1997 to 2000. In all these positions, in contrast to many of his predecessors, he rejected a top-down authoritarian style and put mechanisms in place to encourage more inclusive decision-making. As Vice-Chairman of the Academic Board, for example, he established an independent Agenda Committee, which he chaired; the idea was to prevent the senior management from arranging the Board's agenda without any independent scrutiny. The School made him an Honorary Fellow in the summer of 2013; this is an honour very rarely conferred upon its own staff!

Outside LSE, Simon played a key role in the establishment of Birkbeck Law School and the appointment of its first staff, and later was part of the search commission for the position of the Director of the Department of Law and Anthropology of the Halle/Saale Max Planck Institute for Social Anthropology, where he is fondly remembered.

He is survived by Marian, their children, Adam and Sara, and grandchildren, Jacob, Beatrice and Grace.

The Department has organised a book of condolences. This is available at: lse.ac.uk/collections/law/simon-roberts.htm

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The Master and his Apprentices

LINDA MULCAHY*

Simon Roberts was a valued colleague, teacher, mentor and friend to many of us in the Law Department and LSE more generally. He was the leading dispute resolution scholar of his generation who knew, and was friends with, scholars from across the globe. His outlook was truly global long before globalisation became a buzz word in the academy. He was a great collector of dispute resolution stories from across cultures and time and he attached great value to the contribution that students from overseas could make to his education.

Simon was an intellectual who was interested in both the great and the small. He was fascinated by the everyday things of life – the nuance of a civil procedure rule, the rituals adopted by judges when in chambers, a linguistic turn in political rhetoric about access to justice. In time this attention to what often appeared to be the small things in life would find its way into a much more abstract and challenging argument that would allow others to gain a clearer perspective on the everyday worlds of adjudication, mediation or negotiation. He continued to produce high quality work until this year and in my view he has produced some of his best work since "retiring".

Simon was a wonderful teacher and continued to take classes at LSE in both the Law and Anthropology Departments until shortly before his death. He did not need technology to teach; he did not use PowerPoint or Moodle. Instead he listened to students, encouraged them to talk about their own experiences, entertained outrageous views and, in an endearingly humble way, always offered his own opinion as though it had no greater authority than the views suggested by his apprentices, of which I still consider myself to be one.

Simon set up the first alternative dispute resolution course in the UK, when ADR was a genuine alternative rather than a mere handmaiden of the civil justice system. I was one of the first students on the LSE course and very quickly realised that this slightly unconventional professor was worth paying close attention to. Simon had a way of meandering around a subject until he was sure everyone was following him. Content that we were all going in the same direction he would then offer insights that would totally alter our perspective.

Years later when I came to the LSE to co-teach that same course with Simon and his wife Marian I was amused to discover that his lectures were as seductive as ever. Students who believed that Simon was more interested in talking to them about architecture, the latest art exhibition, concert or play underestimated him at their peril. They would soon learn that his motivation was to challenge them as budding intellectuals as well as lawyers. Simon did not teach because it was what was expected of him and had no need to do so in his latter years. He taught because of his love of the subject, a joy in debating and his skill in always being most interested in counter-narratives.

Principled, generous, compassionate, loyal, decent, funny and quirky, Simon could still be a formidable advocate and opponent. He was not frightened to stand his ground about something he thought was important nor to goad others into action when he thought we were being misguided or weak. Despite this, I have never met anyone who was not genuinely fond of Simon or who did not feel enriched by his friendship and wisdom. The world was always a much more intriguing place with Simon as your guide.

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Martin Loughlin is LSE Professor of Public Law and a leading authority on public law and legal theory. During his sabbatical year he held a Law and Public Affairs Fellowship at Princeton University.

Martin Loughlin

Innocents Abroad – What I did during my hol…, umm, sabbatical

In my busier moments as Head of Department, I consoled myself with the thought that the greatest reward of the job – a year's sabbatical leave at the end of my term – was really not so far away.

It seemed to me that the main priority with a post-Head of Department sabbatical is that I should take myself as far away from the department as possible. In my case that proved not to be difficult since I had the great good fortune to be invited to spend the year at Princeton.

Why Princeton? After all, it occupies an unusual position among the leading American universities in not having a law school. There is even a – no doubt apocryphal – story in circulation that when Andrew Carnegie pledged a donation to the university at the beginning of the 20th century and asked whether they would like to found a law school, they opted instead for a lake. And a beautiful lake it is too.

Yet, the answer to the question is straightforward. Despite lacking a law school, many scholars and students at Princeton have an interest in legal affairs, and especially in matters of public law. Princeton has in fact founded a highly influential school of constitutional scholarship, counting such luminaries as Woodrow Wilson and Edward Corwin among its numbers, and this continues to thrive today in the work of Christopher Eisgruber, Stephen Macedo, Jan-Werner Mueller, Kim Scheppele, and Keith Whittington. Building on this tradition and for the purpose of providing a focus for continuing interest in the subject, each year the University invites six scholars to spend a year as Law and Public Affairs Fellows. I was delighted to be selected to join this group.

The responsibilities are not onerous. First, there was a weekly lunch meeting of the fellows with an invited guest from the University, in which we enjoyed informal discussions with such scholars as Peter Brooks, Anthony Grafton, Dirk Hartog, Paul Krugman, Andrew Moravcsik, Anne-Marie Slaughter and many others. Secondly, a series of more formal work-in-progress seminars was held fortnightly, and these were presented either by the LAPA fellows or by academics invited from across the country. Thereafter, we were given well-appointed offices in the Woodrow Wilson School (which sits adjacent to Corwin Hall, housing the Politics Department) and left to get on with our own work.

In my case, this mainly meant making progress with a book on constitutional theory I had been mulling over during the Head of Department years. In one sense, this was not an unqualified success. The remarkably rich resources of Princeton's Firestone Library undoubtedly complicated the task. But the main problem was that the "evil genius" (otherwise known as Carl Schmitt) kept getting in the way. Eventually, I realised that I had first to write Schmitt out of my system and at a certain point during the year that became a priority.

On my return in June, I presented papers on Schmitt in London and Helsinki and I've also written a paper for the *Oxford Handbook on Carl Schmitt* which will be published in 2014. I'm still grappling with Schmitt and consequently the constitutional theory book remains lurking in the background.

That complication notwithstanding, it has been a very productive year. The book remains a work-in-progress, but I've been able more precisely to fix its focus. Thanks to the remarkably conducive research environment at Princeton I've also managed to complete five or six papers which have been accepted for publication. And I've topped off the year with contributions to two very interesting workshops held in August and September in Sydney and Beijing. I'll no doubt be pleased to see students and colleagues in the new session, but there's small portion of my brain that's already planning the next sabbatical.

What paper or project are you working on at the moment?

My most recent article is on austerity, socio-economic rights, and the human rights duties of international actors, such as the European Union, the European Central Bank and the International Monetary Fund. I am also starting work on what I will call "market primacy" and the implications for governance and justice of an ethos that is so entrenched as to operate beyond the need for justification.

…and that's part of which broader research project?

This work on market primacy will explore whether there exists today such a thing as the "non-market": non-market economic governance and social justice as distinct from the manoeuvrings of the market. In particular, it will evaluate whether international human rights law and policy has, perhaps unknowingly, reconciled itself to the role merely of making palatable the flourishing of commerce. The hypothesis is that international human rights law today might advance a programme of justice, but a de-radicalised form of justice suitable to globalisation.

What's the next conference in your calendar?

Le Cosmopolitisme Juridique (Université Paris II (Panthéon-Assas)). A colloquium that crosses disciplines and legal traditions (and will be convened in French and English). Nice idea. And a keynote address at the Åbo Akademi Institute for Human Rights in Finland to bring to a close a four year research project that colleagues across Europe have undertaken on transnational human rights obligations and globalisation.

What do you teach at LSE?

LLM, MSc Human Rights, PhD supervision; Executive LLM. International Human Rights; World Poverty and Human Rights; International Law.

What's your daily commute?

Usually bus #1 on the way in, varied on the way back. I just bought a bike as part of the cycle scheme so let's see…

Next arts event in your calendar

A dreamy concert at Florence's Teatro della Pergola as recommended by my husband, perhaps the Frida Kahlo exhibition at the Scuderie del Quirinale in Rome, and certainly the annual wild boar festival in Monteloro. I may look out for something in London too!

Do you share in the joys of departmental administration?

Plenty! From the online student registers to donor reporting, to School committees…

Dr Margot Salomon is an Associate Professor of Law and Director (acting) of the Centre for the Study of Human Rights and the Director of the Centre's new cross-disciplinary Laboratory for Advanced Research on the Global Economy. She is also a Vice-Chair of the Association of Human Rights Institutes.

Read more about Margot at: **lse.ac.uk/collections/law/staff/margot-salomon.htm**

One minute in the mind of…
Margot Salomon

Non-law book you're reading

Thinking Fast and Slow by Daniel Kahneman

The New Few by Ferdinand Mount on oligarchy and inequality in Britain;

Fortunes of Feminism by Nancy Fraser on feminism and capitalism, and;

Capital in the 21st Century by Thomas Piketty on the return on "patrimonial capitalism"

News story on your mind

The people, including children, dying in boats around Lampedusa trying to get to Europe. We are told by politicians that we should not feel badly since "they are not refugees they are economic migrants". The long list of issues to which these tragedies give rise must include the role of contemporary international law and policy in sanctioning disadvantage and deprivation. There is also a wider thesis about what gets formally registered as harm and is thus considered worthy of challenge.

Name one daily chore you can't avoid

Emails.

Appointments and Awards

In June 2013, Dr Chaloka Beyani, Senior Lecturer in Law, was elected Chairperson of the Coordinating Committee of the UN Special Procedures and Mandate Holders, and chaired the annual meeting of the UN Special Procedures and Mandate holders held in Vienna 24-28 June 2013.

Professor Emily Jackson was appointed to the Judicial Appointments Commission in February 2014. The JAC is the independent commission that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction extends to Scotland or Northern Ireland.

Professor Michael Bridge and Professor Jeremy Horder have both been elected Fellows of the British Academy. The British Academy is the UK's national body which champions and supports the humanities and social sciences. The award of a Fellowship recognises outstanding academic achievement and research.

Professor Julia Black was appointed as LSE's Pro-Director for Research with effect from January 2014. Professor Black is part of the Director's Management Team, and provides academic leadership for the School's strategic research ambitions.

Dr Jan Kleinheisterkamp was appointed in August 2014 to serve as the academic member of the Governing Body of the Dispute Resolution Services of the International Chamber of Commerce (ICC), which includes the ICC International Court of Arbitration, the leading international arbitral institution. Dr Kleinheisterkamp was also appointed to the UK Government's Expert Group on Arbitration in November 2013.

Professor Niamh Moloney was appointed Specialist Adviser to the Inquiry on Review of the EU Financial Regulatory Framework by the House of Lords EU Select Committee (Sub-Committee on Economic and Financial Affairs), launched on 15 July 2014. **Professor Niamh Moloney was also appointed in April 2014 to the Consumer Advisory Group of the Central Bank of Ireland, and reappointed by the Board of the European Securities and Markets Authority (ESMA) to serve a second term on its advisory Securities and Markets Stakeholder Group.** Professor Moloney served on the Group in its inaugural term, during which she was Chair of the Group's Prospectus Working Group and a member of a number of Working Groups addressing issues related to ESMA's regulatory and supervisory activities with respect to EU capital markets.

Edmund Schuster was awarded the Wedderburn Prize in June 2014, by the *Modern Law Review.*

Professor Conor Gearty, Department of Law and Institute of Public Affairs, was awarded an honorary doctorate by University College Dublin on Monday 16 June 2014. Conor said that he was very proud of the award as he took his first degree at University College Dublin.

In September 2013, Anthea Roberts was elected to the Board of Editors of the *American Journal of International Law* (AJIL). Anthea joins Professor Christine Chinkin on the Board, making LSE the only non-American university to have two members of its faculty on the Editorial Board. Anthea is also a Member of the Scientific Advisory Board of the European Journal of International Law and the Board of Editors for the Journal of World Investment and Trade.

Professor Linda Mulcahy became an Academician of the Academy of Social Sciences in September 2013. The Academy of Social Sciences is the national Academy of academics, learned societies and practitioners in the social sciences. The award recognises leaders in the field of social sciences, including law, social policy, politics, criminology and education.

Student News

Student Internships with the African Prisons Project

This year, two groups of LSE students travelled to Kampala, Uganda, to work on the African Prisons Project. Alexander Shattock (LLM 2013) and Stephanie David (LLM 2014) won the LSE Human Rights Moot and received a fully sponsored internship with the African Prisons Project. Seven other undergraduate students, including law students Jade Jackman, Dakyung Kwon and Martha Averley, went to Kampala as volunteers with LSE Student Advocates International. Below they describe their experiences.

Teaching the inmates the basics of mitigation

STEPHANIE DAVID (LLM 2014)

As one of the winners of a fully sponsored internship with the African Prisons Project (APP) in Kampala, Uganda, I was given the unique opportunity to work with the inmates on the Condemned Section (death row) of Luzira Prison in Kampala. The aim was to develop the prisoners' understanding of the law and court process in preparation for their impending mitigation hearings.

I was initially tasked to work with the other interns to design a communication, advocacy and mitigation curriculum that could be delivered to various prisoners. The curriculum we designed comprised twelve lessons and aimed to develop basic communication skills, knowledge of the court process and etiquette, and an understanding of mitigation. We intended to leave APP with a comprehensive set of documents that could be used by future interns or APP staff to teach inmates, thus providing a sustainable intervention.

Teaching the inmates was an eye-opening and harrowing experience. It was eye-opening because the inmates were so determined to learn the law and court processes in order to effectively present their own cases before the judge, or at least be able to intervene if they felt their lawyer was not adequately representing them. One inmate in particular, Pascal, had recently received his Diploma in Common Law and was hoping to extend his qualification to a law degree. Yet the experience was also harrowing, because many of the inmates maintain their innocence. For example one elderly gentleman explained that he had been convicted and sentenced to death solely on the basis that his bicycle was found at the scene of the crime.

There were also difficulties trying to deliver the curriculum to the Kigula beneficiaries. Most of the lessons were translated into Luganda or Swahili, however some inmates spoke neither of these languages nor English, which made lesson delivery challenging to say the least.

I emphasised the importance of peer support, for example when working in groups it was the duty of the more literate students to try and support those that did not speak English, Swahili or Luganda. There was also understandable confusion about the difference between appeal and mitigation hearings. For instance, some inmates were understandably worried that by proceeding with the mitigation hearings they would be admitting guilt.

Following the internship, I believe that there is an essential role to be played in drawing national and international attention to the hearings, in order both to support the inmates and to draw attention to the progressive development of capital punishment jurisprudence in Uganda. There is a further need for positive publicity to counter the negative headlines, which brands the inmates as 'murderers' and 'rapists,' denying them the chance to present the reasons why the court should be lenient with them, and disallowing the possibility of their rehabilitation

and acceptance back into Ugandan society. Instead, the hearings should also be framed as a chance for these individuals to demonstrate how they have reformed, and to prove why they are no longer a threat to their communities.

Volunteering with LSE Student Advocates International

JADE JACKMAN
(BA IN ANTHROPOLOGY AND LAW 2015)
DAKYUNG KWON (LLB 2015)
MARTHA AVERLEY (LLB 2015)

Our decision to travel to Uganda in order to support the African Prisons Project (APP) was met with considerable scepticism. The reasons for the scepticism were twofold; firstly, why prisoners; and secondly, why Uganda? It is undeniable that more often than not prison inmates do deserve to be there. However, deprivation of liberty should not be synonymous with poor healthcare and abuse, which leads on to an answer to the question of why Uganda in particular. As one might imagine, the general living standards of the average Ugandan are significantly lower than their Western counterparts. Needless to say, the lives of prisoners are not an exception. Indeed, does it seem reasonable for us to lambast the government in recent debates about the implementation of a smoking ban in UK prisons while many Ugandan jails lack basic sanitation? Such a disparity between what are commonly conceived of as 'fundamental rights' serves to demonstrate why we felt compelled to volunteer for the APP in Uganda.

Despite being a young charity, APP's continued presence in Kampala has helped the organisation develop strength and credibility. Its focus on three aspects of prison life – health, education and access to justice – has enabled the charity to produce visible outcomes which have had a transformative impact on the lives of prisoners and prison staff. The organisation offers literacy and legal education classes to those in prison and recognises the particular importance of educating prisoners on their legal rights, as it is common for many to spend years in remand prisons under false charges and without legal representation. At APP, we also had an opportunity to learn about departmental works, some of which included creating libraries and building/refurbishing clinics.

The highlight of our experience was undoubtedly the visit to Luzira prison (Uganda's largest male prison) at the end of our stay. The prospect of visiting the Condemned Section, the death row of Luzira, was daunting although we had had prisoners at the forefront of our minds for the entire trip. However, we were eager to see in practice the work that APP tirelessly carries out. It was also a rare opportunity to gain access to Luzira prison, made possible by an ex-prisoner, Frank, who was only three years clear of a 23-year period spent condemned to death. The fact that Frank is now free, following a sentencing guidelines overhaul, but still works closely with the APP and returns every week to various prisons across Uganda to help in the Sunday church service, was a testimony to his generosity and to the family ethos of the APP.

Nothing could have prepared us to witness the squalid conditions in which many prisoners in Luzira prison live. As we entered the dilapidated 1929 prison block it was apparent that it was incredibly overcrowded. Hundreds of remand prisoners in canary yellow clothing marched around the perimeter of a courtyard along a narrow corridor, whilst the condemned prisoners dressed in white filled black concrete courtyards. We were struck by the excited and friendly welcome the prisoners gave to all APP representatives throughout the church service, all the more heart-warming given the importance they afford to religion since their community has turned their backs on them.

Trying to fathom a death sentence in Luzira was overwhelmingly emotional, but APP's impact was tangible. It was incredible to meet the head of the "Post-Test Club", a group made up of HIV positive men to whom the charity has been providing extra nutrition. Meeting a prisoner studying for a diploma in law as part of the APP education programme was even more surreal, as we discussed contract law in the most unlikely surroundings.

Student Advocates International has pledged continued support for the organisation by means of fundraising and supplying legal volunteers next year. Hopefully, this valuable relationship will only grow stronger and effect a positive long-term change in Ugandan prisons.

If you are interested in supporting Student Advocates International, please contact the Society's President Jade Jackman (j.jackman@lse.ac.uk).

Working as an Intern at the International Criminal Tribunal for the Former Yugoslavia

PAYVAND AGAHI (LLB 2014)

In the summer of 2013, I began an internship at the International Criminal Tribunal for the Former Yugoslavia (ICTY), seated in The Hague, and was placed on the defence team of Mr Goran Hadžić, in the case to be known formally as *Prosecutor v Goran Hadžić*.

Mr Hadžić, former President of the Serbian Krajina, was indicted by the ICTY in July 2004 on 14 counts of war crimes and crimes against humanity allegedly committed during the Croatian War of Independence; charges which include the persecution, extermination and torture of non-Serb civilians during that period. Mr Hadžić was the last defendant to be arrested (of the 161 individuals indicted by the tribunal), following the arrests of Radovan Karadžić and Ratko Mladić, and had been the tribunal's last remaining fugitive.

This was not the first time I had worked in an environment dealing with the very real effects of international human rights violations, having interned the previous year at the Iran Human Rights Documentation Centre. However, I quickly learned that conducting legal research and interning for a tribunal applying international law on such matters would entail very different, yet equally rewarding, experiences.

As well as requiring me, in a very short space of time, to gain a thorough and in-depth factual understanding of the historic events which occurred at the time, my role as defence legal intern involved preparing legal memoranda, analysing evidence and case management for the Defence Counsel of Mr Hadžić, namely Zoran Zivanovic and Christopher Gosnell, who has represented several high profile individuals including Charles Taylor (former President of Liberia) and Justin Mugenzi (a former Rwandan Minister).

Working specifically on a defence team for a war crimes trial, the primary purpose of which is to ensure and guarantee a fair trial, not only developed my understanding of the defendant's perspective, which is often given less emphasis in the media and public arena, but I also became more critical of the process as a whole. I was able to observe the impact of the limited resources (financial and otherwise) afforded to defence teams in the ICTY in comparison to those of the Office of the Prosecution (OTP). The effects of this disparity in the allocation of resources was something that I could only appreciate through my day-to-day presence and first hand observations while working at the tribunal – leaving me reflective on the processes of this system and encouraging me to recognise that the tasks and responsibilities given to interns at the ICTY were of even greater importance.

Second We Take Manhattan: LSE/Columbia Double Degree Programme

SHAWN LIM AND NATHANIEL LAI (DOUBLE DEGREE PROGRAMME 2010-2014)

The LLB/JD double degree programme is a four-year programme that LSE (along with UCL and KCL) runs in conjunction with Columbia Law School. Students on the double degree programme spend their first two years at LSE before joining Columbia Law as second-year students on the Juris Doctor (JD) programme. We were LLB students from the Class of 2013 and are presently in our final year at Columbia Law School.

The JD programme at Columbia Law School is very different from what we were used to at LSE. Even the academic timetable took a little adjusting to. At Columbia, the academic year is split into semesters – students take different classes each semester and are examined at the end of each semester. In our first two semesters at Columbia, we had to take basic courses in American law: constitutional law, civil procedure and criminal law. These classes are taken with the 1Ls (the first year students), and are typically conducted in a large-lecture format with a final exam at the end of the semester. Apart from these classes, we were allowed to choose from a huge range of courses. Some of the classes were tremendously interesting, particularly theory of restitution, political philosophy, law and development, and foreign direct investment and public policy.

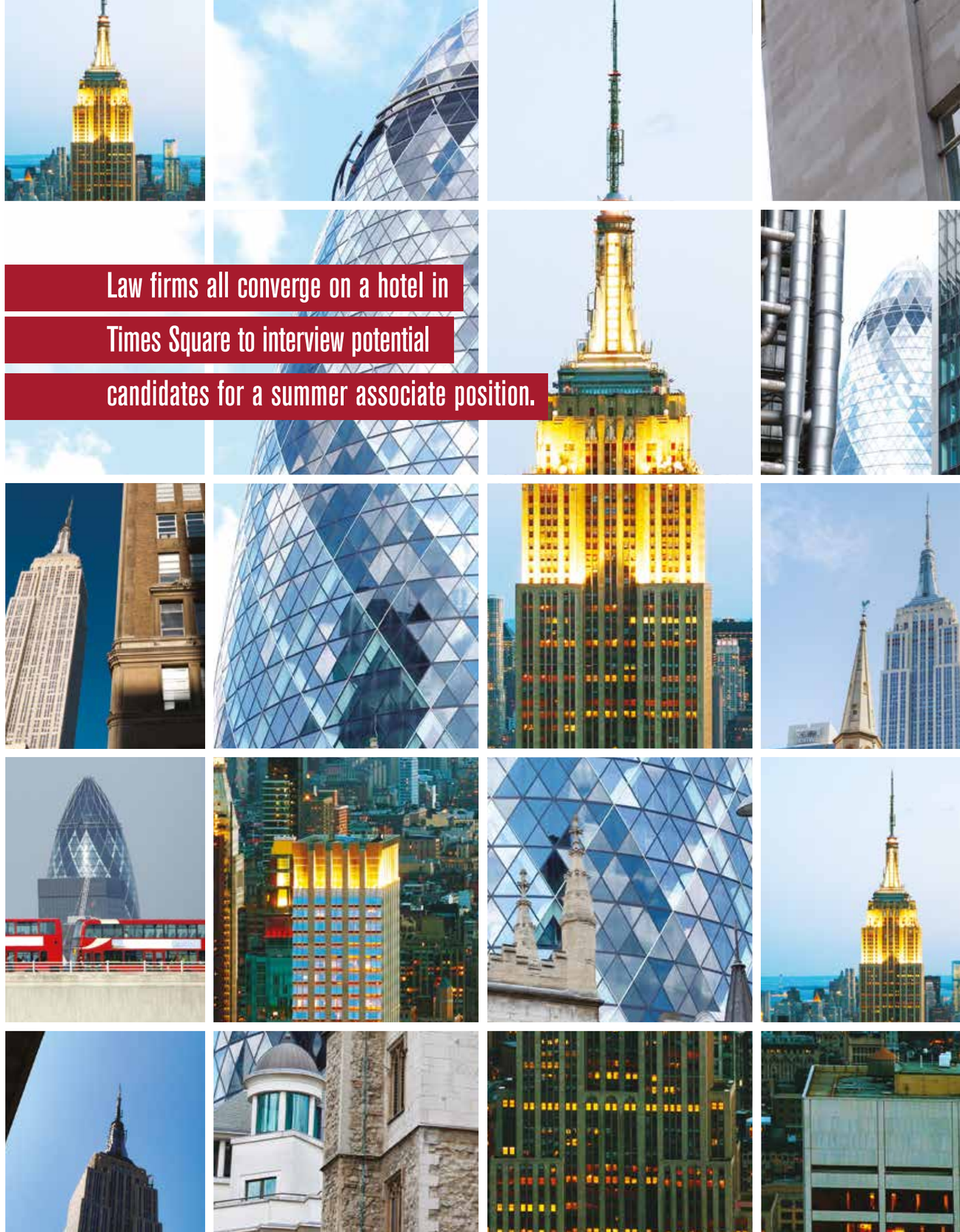
The JD is a postgraduate degree and is more practice oriented than the LLB. There are a number of deals workshops taught by partners at prestigious corporate law firms in New York, as well as a variety of clinics and externships on offer, where students get some practical working experience by doing legal work under the guidance of a professor. Clinics, in particular, provide extremely valuable practical experience while allowing students to actually make a difference to the community. In recent years, Columbia Law School's clinics have submitted briefs before both US and international courts and tribunals (eg, Windsor before the 2nd Circuit), and clinics such as the Child Advocacy or the Prisoners and Families clinics have made real differences to underprivileged individuals in the community.

The hiring schedule for US law schools is also very different. For double degree candidates interested in working as US-qualified corporate attorneys, the hiring process starts at the Early Interview Program (EIP), a month before law school classes begin. Law firms all converge on a hotel in Times Square to interview potential candidates for a summer associate position. After bidding on a long list of law firms, EIP participants spend four days running around the hotel, engaging in a maniacal spree of 20-minute "screener" interviews with partners and associates from law firms. After these screener interviews, firms call successful students back to the firm for a second round of interviews ("callbacks"), which typically involve a half-day of further interviews with partners and associates. Successful candidates will then hear back from law firms with offers for employment as a summer associate at the end of their second year.

Where to spend the summer is a huge decision for candidates since summer associate programmes are typically ten weeks long (leaving students little time to get a feel for another firm), and getting hired by a different firm in the third year is usually difficult (since firms will have filled up their associate classes with ex-summer associates). This means that most students will end up working full-time at the firm where they spent their summer.

We both had an amazing experience on the programme. It has been an intellectually enriching experience, while also broadening the professional opportunities available to us. LSE and Columbia Law School are running a fantastic programme and we would certainly encourage potential candidates to apply.

Law firms all converge on a hotel in Times Square to interview potential candidates for a summer associate position.



Jessup Moot Success

ANNE SAAB*

In the last academic year, motivated LLB and LLM students represented the LSE in the Philip C Jessup International Law Moot Court competition. Preparation and practice for this prestigious mooting competition take place outside of students' mandatory coursework and requires a great deal of commitment and hard work. For the first few months of the competition, teams study and research the cases they are presented with and in January they submit two written memorials, one for the applicant and one for the respondent. After these written submissions, the teams spend a couple of months practicing their oral submissions. Having been involved in coaching the 2013 and 2014 LSE Jessup teams, I am proud to write about their hard work and achievements.

The 2014 Jessup team consisted of LLM students Andrea Bowdren, Stephanie David, Juliane Guderian, and Austin Mahler. After submitting their written memorials they spent many evenings and nights practicing their oral pleadings. Members of staff and fellow and former students from LSE Law kindly donated their time to act as guest judges during those practices. In addition, the 2014 team was coached by two fellow LLM students who also happened to be expert Jessupers: thank you Pietro Grassi and George Kiladze! The team performed superbly in the UK national rounds and progressed to the semi-finals, after coming up against teams from universities including Leeds, King's College London, Durham, and Cambridge. Many congratulations to Andrea, Stephanie, Juliane, and Austin, and special congratulations to Andrea, who received the award for "Best Oralist in the Preliminary Rounds".

*PhD Candidate, The London School of Economics and Political Science.

LLB and LLM Prizes

LLB PRIZE LIST 2014

INTERMEDIATE

Charltons Prize
Best overall performance
Miss Kitty Verboom

Routledge Law Prize
Best overall performance
Miss Kitty Verboom

John Griffith Prize
Public Law
Miss Yixian Zhao

Hughes Parry Prize
Contract Law / Law of Obligations
Miss Kitty Verboom

Hogan Lovells Prize
Obligations and Property I
Miss Kitty Verboom and
Mr Natahan Adler

Dechert Prize
Property I
Miss Alice Moserova

Dechert Prize
Introduction to the Legal System
Miss Kelly Li and
Miss Genevieve Vaughan

Nicola Lacey Prize
Criminal Law
Mr Alexandar Vukadinovic

INTERMEDIATE AND PART II

Sweet & Maxwell
Miss Yixian Zhao and Miss Deborah Tang

PART I

Herbert Smith Freehills
Best performance Part I
Miss Malvika Jaganmohan

Slaughter & May
Best performance in Part I
Mr Marco Wong

Morris Finer Memorial Prize
Family Law
Miss Megan Barker

PART II

Slaughter & May
Best performance in Part II
Mr Thomas Hickey

Lecturer's Prize
Jurisprudence
Miss Pakwai Wu

PART I AND PART II

Hogan Lovells Prize in Business Associations
To be divided between a Part I and II student or two Part II students
Miss Dana Abdulkarim

Blackstone Chambers
Law and Institutions of EU
Miss Anca Bunda

Clifford Chance
Property II
Mr Thomas Hickey and
Mr Jerald Khoo

Linklaters LLP
Commercial Contracts
Miss Zann Tay

Lauterpacht/Higgins
Public International Law
Ms Lillie Ashworth

Old Square Chambers
Labour Law
Mr Hin Kwun Lo

Blackstone Chambers
Human Rights
Miss Seraphina Chew and **Mr Dhevine Chandrapala**

Slaughter & May
Best overall degree performance (Part I and II combined)
Mr Thomas Hickey

Pump Court Tax Chambers
Taxation
Miss Eunjee Chae

LLM PRIZE LIST 2013

Blackstone Chambers Prize
Commercial Law
Rachel Barry

Blackstone Chambers Prize
Public International Law
Alexander Shattock

Goldstone Prize for Criminology
Zhuoren Li

Lauterpacht/Higgins
Public International Law
Caitlin Conyers

Law Department Prize
Human Rights
Ya Lan Chang

Lawyers Alumni
Best overall mark
Alexander Shattock

Otto Kahn Freund Prize
European Law
Melina Oswald

Pump Court Prize
Taxation
Pierre-Marie Hourdin

Stanley De Smith Prize
Public Law
Cal Viney

PHD PROFILES

LSE Law continues to foster and support leading young scholars through our Doctoral programme. In the following "PhD Profiles" we provide a space for some of our PhD students to provide a short outline of their work.

Spectacles of Justice: Gender Crimes in Law and Film

KEINA YOSHIDA

In 2011 the International Criminal Tribunal for the Former Yugoslavia (ICTY) produced a documentary film entitled "Sexual Violence and the Triumph of Justice" (available to watch in full online at icty.org/sid/10949). The triumphant tone of the documentary charts the many substantive and procedural developments which have resulted in the prosecution of sexual violence and other gender crimes in the ICTY. However, the mere notion that there has been a "triumph of justice" sits uneasily with critiques which have emerged from various perspectives, including a feminist perspective. Numerous feminist legal scholars have drawn attention to the on-going marginalisation and silencing of women's narratives and accounts in the ICTY and elsewhere in the field of international criminal law. The rhetoric of the documentary film is the starting point for my research as the Tribunal nears the end of its mandate and scholars and practitioners around the globe begin to consider the Tribunal's on-going legacy.

The documentary is also a starting point for my exploration of the relationship between war crimes trials and the visual. In my thesis I look at a number of documentary and fictionalised films as a form of "cinematic jurisprudence". The term was first defined by Antony Chase as "a way of looking at law through the lens of cinema that projects an alternative view of legality, one every bit as likely to undermine ruling ideas about fairness and formal legal equality as to reinforce them". Films therefore not only reinforce the dominant discourse of the law, but also provide forms of "popular jurisprudence", allowing audiences to judge fictional or real legal cases and systems.

In the context of international criminal justice, scholars have argued that representations of war crimes trials and the events giving rise to them have shaped the way a society evaluates the legacy and successes of legal responses to atrocity. There have been numerous depictions of trials relating to the Holocaust and Japanese war crimes. In Japan, these representations, which in some cases draw heavily on the transcripts of the trials, have resulted in a negative legacy of the Tokyo Tribunal.

In addition to undermining war crimes trials through negative or erroneous depictions, films may serve to call the law to account for its failures to indict certain crimes. Today, certain crimes, including gender crimes, seem to be more readily represented on screen than in legal judgments. For example the Hollywood film, Whistleblower (2010), directed by Canadian filmmaker, Larysa Kondracki, deals with the human trafficking for sexual exploitation of women in the Balkans for and by UN peacekeepers and demonstrates the lacunae that remain in the international legal system. The privileges and immunities extended to members, permanent or affiliated to the United Nations and the jurisdictional limitations of courts and Tribunals, including the ICTY, mean that there has been a wholly inadequate legal response to the graphic gender crimes depicted in the film. Whistleblower is a powerful indictment of the role international actors play post atrocity and provides a damning picture of the UN and its lack of actual commitment to gender equality.

Drawing on legal literature, film studies and feminist theory, my thesis looks at film as a source of enquiry and explores how the Tribunal's jurisprudence is reflected in a number of films. I also explore emerging alternative narratives that have been silenced in the legal proceedings. Through this exploration I argue that film provides a rich medium of critique and popular jurisprudence highlighting the shortcomings of current efforts to prosecute sexual violence in international war crimes trials.

Cityscape – a New Perspective

JARLETH M BURKE

I am a final year PhD researcher working in the area of EU competition law. Starting a PhD at LSE was a big change for me, having previously worked in the City in a major international law firm.

My research is about the space between monopoly and fully competitive markets and how that this is regulated under EU law. The extremes are relatively easy to identify, with EU law having required the liberalisation of certain activities while tacitly or expressly accepting monopolies, often state run, in others. The area between these extremes, comprises what are termed services of general economic interest (SGEI) under EU law. These have proven to be problematic and so offer fertile ground for PhD research, even if the volume of relevant material is a little daunting. My goal is to take the concept of market failure from mainstream economics and to use it to investigate whether it might provide a better way of understanding the law on SGEIs. The meaning of 'better' is my own decision, underscoring an essential facet of PhD research, namely that you set your own research question.

Coming from private practice, the freedom to define a research agenda is a great liberation. Given that you are no longer required to push a client or institutional position, the intellectual freedom is a huge bonus. A PhD is also a great way to first understand and then confront some of your own biases and preconceptions before turning attention to those of others. The prerequisite for all this freedom is mastery of the subject matter, with a view to achieving originality, the nirvana of all PhD researchers.

One of the biggest changes for me has been time – more time to read, think and write is a both a luxury and a tyranny for a PhD student, although the LSE PhD programme in law is structured. Participating in the general life and activities of the Law Department also provides essential context and a social way of catching up with what is more generally current in law. Crucially, it is also a barometer of relative progress. Almost without exception people are instinctively helpful even if occasionally bemused by the subject matter of my research.

Go Tigers! A Princeton Experience

YANIV ROZNAI

It all started in February 2012, when I presented a chapter of my PhD thesis at a work-in-progress workshop at Princeton University, organised by the American Society of Comparative Law. After my presentation, the Director of the Law and Public Affairs (LAPA) Program at Princeton University, Professor Kim Lane Scheppele, suggested that I might benefit from a period at Princeton as a visiting researcher. The following year, I happily accepted the proposal and arrived at Princeton as a visiting student research collaborator for a period of two months. This was a unique opportunity for me, since apart from being supervised by Professor Scheppele, a constitutional law expert, I was also privileged to continue working with Professor Martin Loughlin, one of my supervisors, who was on sabbatical leave from the LSE and took the position of the Crane Fellow at LAPA for 2012/13.

Princeton, famously, does not have a law school. Nevertheless, LAPA is a unique centre for exploring the role of law in constituting politics, society and culture (not only in the US but worldwide). The most interesting thing about LAPA is that each year a selected group of residential fellows and occasional visitors from academia, legal practice and governmental institutions, come to Princeton in order to conduct their research. I therefore benefited from fruitful discussions regarding my research with many distinguished scholars from around the world. Naturally, I took the opportunity to participate in the extensive range of seminars taking place, such as LAPA's seminars in which LAPA fellows present their research, and the "Law-Engaged Graduate Students" seminars in which graduate students present a work-in-progress, and a course on interdisciplinary legal studies. I also attended fascinating presentations by distinguished guest speakers, such as Alex Salmond, First Minister of Scotland, and Joaquim Barbosa, the President of the Brazilian Supreme Federal Court, who was kind enough to answer questions concerning my thesis. My time in Princeton was magnificent and constructive. The city is beautiful and the university is a picturesque place with gardens and magical locations where one can sit, work and feel inspired. The surrounding area with little shops, restaurants and coffeehouses is truly quaint and lovely. It is a relatively small place yet, as a "college town", it is full of young people from around the world with whom one can interact and network.

Of course living in Princeton is pricey. In addition to an enrolment fee of nearly $500/month (which includes a student health plan), the estimated living expenses for an individual including accommodation are around $2,000/month. I am therefore indebted to Princeton for allocating me inexpensive accommodation in the gorgeous graduate college (situated by a golf course!) and, above all, to the *Modern Law Review* which awarded me a generous scholarship thanks to which I was able to spend such a wonderful time at Princeton. I also owe many thanks to the LSE Law which gave me the opportunity for this delightful experience.

PhD Completions 2012/13

LSE Law students awarded with their PhD in the academic session 2012/13

Perveen Ali
"States in crisis: sovereignty, humanitarianism and refugee protection in the aftermath of the 2003 Iraq war"
Supervisors: **Dr Chaloka Beyani** and **Dr Margot Salomon**

Kirsten Campbell
"The justice of humans: humanitarian crimes and the laws of war"
Supervisors: **Dr Stephen Humphreys** and **Professor Nicola Lacey**

Zelia Gallo
"The penalty of politics: punishment in contemporary Italy 1970-2000"
Supervisors: **Professor Nicola Lacey** and **Dr Peter Ramsay**

Ugljesa Grusic
"The international employment contract: ideal, reality and regulatory function of European private international law of employment"
Supervisors: **Professor Hugh Collins** and **Dr Jan Kleinheisterkamp**

Chi Hsing Ho
"Socio-legal perspectives on biobanking: the case of Taiwan"
Supervisor: **Professor Tim Murphy**

Mary Catherine Lucey
"The interface between competition law and the restraint of trade doctrine for professionals: understanding its evolution and proposing its solution"
Supervisor: **Professor Hugh Collins**

Sabina Manea
"Instrumentalising Property: An Analysis of Rights in the EU Emissions Trading System"
Supervisors: **Professor Julia Black** and **Dr Veerle Heyvaert**

Udoka Nwosu
"Head of state immunity in international law"
Supervisor: **Dr Chaloka Beyani**

Daniel Wang
"Can litigation promote fairness in Healthcare? The judicial review of rationing decisions in Brazil and England."
Supervisors: **Professor Conor Gearty** and **Dr Thomas Poole**

PhD Completions 2013/14

LSE Law students awarded with their PhD in the academic session 2013/14

Helen Coverdale
"Punishing with care: treating offenders as equal persons in criminal punishment"
Supervisors: **Professor Nicola Lacey**, **Dr Peter Ramsay** and **Professor Anne Phillips**

Johanna Jacques
"From Nomus to Hegung: war captivity and international order"
Supervisors: **Professor Tim Murphy** and **Professor Alain Pottage**

Nicolas Lamp
"Lawmaking in the Multilateral Trading System"
Supervisors: **Dr Andrew Lang** and **Professor Alain Pottage**

Charles Majinge
"The United Nations, The African Union and the rule of law in Southern Sudan"
Supervisors: **Dr Chaloka Beyani** and **Professor Christine Chinkin**

Vladimir Meerovitch
"Investor Protection and equity markets: an evaluation of private enforcement of related party transactions in Russia"
Supervisors: **Professor David Kershaw** and **Dr Carsten Gerner-Beuerle**

Karla O'Regan
"Beyond Illusion: A juridical genealogy of consent in criminal and medical law"
Supervisor: **Professor Susan Marks**

Nicolas Perrone
"The International Investment Regime and Foreign Investors' Rights: Another View of a Popular Story"
Supervisors: **Dr Andrew Lang** and **Dr Ken Shadlen**

Yaniv Roznai
"Unconstitutional constitutional amendments: a study of the nature and limits of constitutional amendment powers"
Supervisors: **Professor Martin Loughlin** and **Dr Thomas Poole**

Amarjit Singh
"Compliance requirements under International Law: the illustration of human rights compliance in international projects"
Supervisor: **Professor Christine Chinkin**

Alumni News

Eyes Wide Open at Privacy International

ERIC KING

Eric King is Deputy Director at Privacy International. Recently, he helped launch Eyes Wide Open, a campaign to bring the intelligence agencies of the Five Eyes under the rule of law. This year, he was included in the "Top Young 30 Under 30" by Forbes Magazine. He obtained his LLB from the London School of Economics and Political Science.

Over the past three years, I have attended fourteen arms fairs and surveillance technology trade shows around the world. At these events, which are usually held at anonymous corporate hotels and are strictly invitation only, government, police and military representatives from countries like Egypt, Syria, Sudan and Ethiopia mingle with technology vendors and developers flogging the world's most advanced spying tools. This surveillance marketplace is where the world's most repressive regimes get their tools for political control and oppression.

Before I stumbled upon this world, as a student at LSE I was not particularly politically active – I was not a member of Amnesty and didn't attend student protests. Like most students, I began my studies at LSE without much of a plan. However, due to an eye-opening internship that introduced me to the world of human rights advocacy and litigation, I somehow found my calling – unpicking how the surveillance state operates, and challenging its excesses in the courts.

As a student I volunteered, and later worked for Reprieve – a legal action charity campaigning against human rights abuses at Guantanamo Bay and in secret prisons around the world. Reprieve have some exceptional advocates and I owe much of my professional success to the people I worked with there, who kicked me into shape and brought out the fight in me. Watching a small team of smart, committed people challenging some of the most egregious acts undertaken in the name of counter-terrorism – and watching the team win – was intoxicating, and I wanted in.

> "we quickly had to come up with new methods and I began going undercover to attend arms fairs"

But the rendition puzzle was close to being solved, and there were other issues that were drawing my attention. How had the US authorities identified all these people in the first place? The activities undertaken by CIA, MI5 and MI6 have been the subject of much discussion – and even some films – and yet almost nothing was understood about the eavesdroppers at GCHQ and NSA who listen in on the world's communications. With revolutions underway across the Arab world, questions began to emerge about their sister agencies in Egypt, Libya, Iran and other repressive states which were using the same technologies to crush dissent, and to target pro-democracy voices. How intrusive is their technology? How effectively do they operate it? What capabilities do they truly have?

I joined an under-resourced but gutsy NGO – Privacy International – which had been fighting against unlawful spying for almost twenty years. With no credible information available to us about the surveillance capability of states other than those in the West, we quickly had to come up with new methods of obtaining the facts and I began going undercover to attend arms fairs and surveillance trade

shows to answer some of those questions.

Working with WikiLeaks we were able to get much of the material we collected made public, and by collaborating with Bloomberg, The Wall Street Journal and others we got the issue into the press and helped kickstart a discussion on the complicity of Western nations like Britain, Germany and France in facilitating the establishment of surveillance states abroad. The project we started, Big Brother Incorporated, has now grown and our London-based team are taking on litigation in the UK, South Africa, Switzerland and Italy, and are leading an international campaign to get the same kind of export controls used to limit the flow of conventional weapons applied to surveillance technology.

All the while, surveillance was slowly creeping up the agenda, allowing us to grow the organisation from two to fourteen staff within two and half years. A good job too, as no sooner had we begun to make some gains with our export control campaign, that Edward Snowden took the extraordinary step of blowing the whistle on the mass surveillance being undertaken by NSA and GCHQ. Our intelligence agencies are there to protect citizens, but in placing those same citizens under suspicion-less surveillance and inserting back doors in the very security standards we rely on to communicate with confidence, our intelligence agencies have lost the trust of those they are meant to serve.

Working with lawyers at Bhatt Murphy Solicitors, Blackstone and Matrix Chambers we were able to file our legal challenge against GCHQ in record time, and others swiftly followed including a challenge by Reprieve over GCHQ's monitoring of their legally privileged communications. It is extraordinarily concerning that anyone making serious allegations of wrongdoing and relying on redress in the courts could have their communications monitored. Such unchecked surveillance is a fundamental threat to the rule of law.

But with revelations continuing to emerge almost weekly – our security services, not content with destroying *Guardian* journalists' laptops, or detaining David Miranda under the auspices of the Terrorism Act, have now accused the *Guardian* of aiding the terrorists – there is a lot at stake, and it seems our work is a long way from being done.

The Financial Side of Human Rights Advocacy

RUCHI PAREKH

Ruchi Parekh obtained her LLB from the London School of Economics in 2009. The recent closure of INTERIGHTS after 32 years due to lack of funding has encouraged her to take steps to go to the bar.

In the summer of 2009, I graduated from LSE without a "Life plan". My interests in constitutional law and human rights ruled out training contracts at leading city law firms, the natural choice for most LSE law graduates. Instead, I followed my instincts.

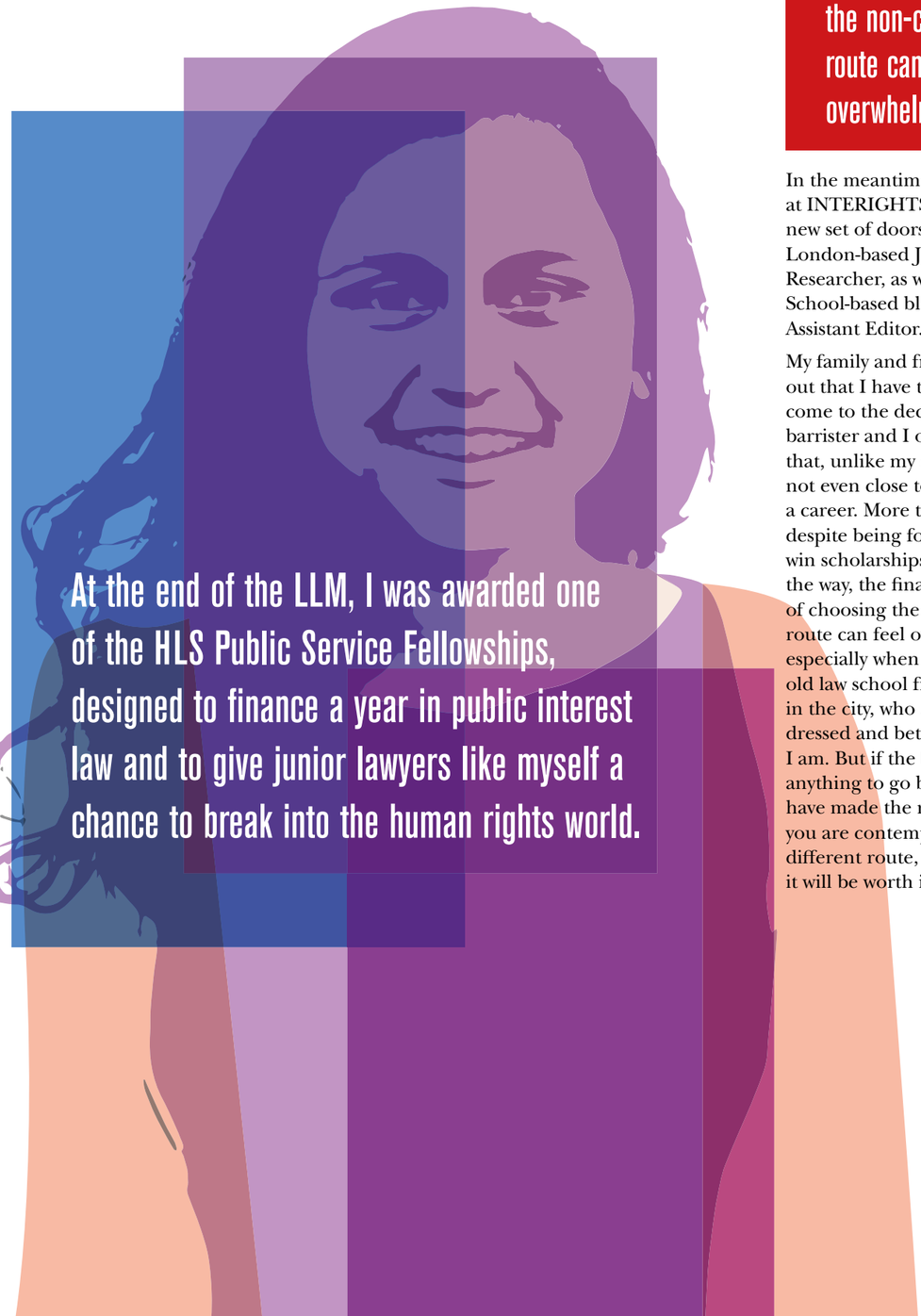
I took the Bar Vocational Course, which, at the time, completely put me off ever pursuing a career at the Bar. The following year, I started an internship at the Constitution Unit, an independent think-tank for constitutional reform. While evaluating timely constitutional issues (the Coalition government had just come into power that summer) and proposing suitable recommendations for change, I quickly realised I was not quite finished with academia. Thus, in the fall of 2011 (as my American friends refer to it) I started an LLM at Harvard Law School (HLS) to study international human rights and comparative constitutional law.

Professionally, HLS offered a world of opportunities. I took a course with a founder of the Critical Legal Studies movement, Duncan Kennedy on how legal thought has globalised since the mid-19th century, met with and learned from the first lawyer to visit a Guantanamo Bay detainee, and travelled to South Africa for three weeks to investigate the effects of gold mining on local communities in Johannesburg.

In contrast to most UK universities operate, every piece of work was assessed at HLS and counted towards the final grade. Exams were held at the end of each semester, not just at the end of the ten-month course. But what I loved, and eventually adopted, was the "work hard, play hard" culture; it was common practice to spend eight hours in the library and then head straight to one of the local bars for drinks.

At the end of the LLM, I was awarded one of the HLS Public Service Fellowships, designed to finance a year in public interest law and to give junior lawyers like myself a chance to break into the human rights world. I chose to work with the economic and social rights team at INTERIGHTS, a leading London-based NGO with a focus on strategic litigation. My exciting journey in human rights continued as I drafted a third party intervention before the European Court of Human Rights on a denial of education issue and helped train local lawyers in Ukraine and Georgia in the field of patient care. (Sadly, INTERIGHTS has recently shut down after 32 years of incredible work due to lack of funding.)

Along the way, I have realised that I do want to practice as a barrister after all – for, among other reasons, the intellectual excitement and diversity of litigation. My applications for pupillage last year were not successful, but I will be trying again this year.



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"The financial implications of choosing the non-conventional route can feel overwhelming"

In the meantime, twelve months at INTERIGHTS opened a whole new set of doors. I have joined London-based JUSTICE as a Legal Researcher, as well as NYU Law School-based blog, Just Security as Assistant Editor.

My family and friends often point out that I have taken a long time to come to the decision to practise as a barrister and I often feel frustrated that, unlike my contemporaries, I am not even close to being settled into a career. More than anything else, despite being fortunate enough to win scholarships and bursaries along the way, the financial implications of choosing the non-conventional route can feel overwhelming, especially when meeting up with old law school friends who work in the city, who are always better dressed and better travelled than I am. But if the last four years are anything to go by, I am confident I have made the right choices. And if you are contemplating going down a different route, I can guarantee that it will be worth it.

Sarika Arya: Learning How to Be a Human Rights Advocate

SARIKA ARYA

Sarika Arya did several law subjects as part of her MSc in Human Rights at the London School of Economics and Political Science in 2012/13. She has done a number of internships, most recently with the International Crisis Group.

Since graduating last autumn with a Masters degree, many of my classmates and I have struggled to find work. There is no straightforward path to becoming a human rights advocate, a job which may be as varied as the subject itself. At LSE and after graduation, I was lucky to find a few opportunities. Each has influenced my view on how to best implement human rights law.

London offers unique access to leading human rights activists. During my second term at LSE, I read a news article about the launch of a United Nations' investigation into the legality of drones based in London, under the leadership of the Special Rapporteur for Counterterrorism and Human Rights, Ben Emmerson. I emailed Mr Emmerson and, after a short interview, joined the inquiry team to eventually become the Gaza Researcher. We did not have official permission to visit Gaza, so instead I liaised with NGOs who had conducted independent investigations into drone attacks, as well as experts in international humanitarian law. Based on these consultations I selected instances of drone strikes in Gaza for analysis in the report, which was published in March.

By participating in the investigation from start to finish, I gained insight into the detailed planning it required, including creating a standard of proof, corroborating evidence, establishing criteria for selecting strike case studies and ensuring objective legal analysis. I used practical skills learned in the classroom, applying my LSE coursework in the Laws of War and International Armed Conflict, and Terrorism and the Rule of Law. This hands-on involvement was exciting, which luckily mitigated its more frustrating moments. It was unpaid and time-consuming- sadly a recurring theme in the human rights field. Also, because we worked pro-bono, it was difficult to schedule important team meetings around jobs and classes. Furthermore, some NGO leaders resisted collaboration. As a result of their personal experiences living and working in Gaza, they had become (understandably) sceptical of UN processes. These uncomfortable interactions underscored the importance of advocacy that is culturally sensitive and politically aware.

After leaving LSE, I interned in the Middle East and North Africa division at Human Rights Watch (HRW) in New York City. HRW is committed to "naming and shaming" human rights abusers, raising awareness and instigating change through detailed reports that include targeted recommendations. At HRW, I assisted with researching issues such as migrant workers in Kuwait, labour rights in Egypt, drones in Yemen, children's rights in Bahrain, rebels in Syria and counterterrorism in Iraq. Through its meticulous on-site investigations, HRW has become one of the most credible human rights organisations in the world. Its findings are often cited by major media outlets as established facts and breaking news. Crucially, behind the scenes, its researchers also lobby politicians to reform policies and change laws. I listened in on many internal debates emphasising that when it comes to ending violations, raising awareness is never enough.

In January, I began my current internship with International Crisis Group (ICG), monitoring political developments for a portfolio of 12 countries across the Middle East and Africa. ICG advises non-governmental and quasi-governmental organisations, including the UN Security Council. My responsibilities include analysing UN Security Council action on conflict resolution. While remedying human rights violations inevitably takes priority in conflict zones, ICG analysis, which is based on observations made by regional staff, accounts for a reality where political stakeholders are compelled to act according to their own incentives. As a result, ICG sometimes finds itself at odds with traditional human rights organisations like HRW. HRW might call for the referral of former dictators like Syrian President Bashar al-Assad or Sudanese President Omar Al-Bashir to the International Criminal Court. ICG, however, might suggest abrogating this decision in favour of moving forward with inclusive political transition or reform. In ICG's view, a more calculated strategy may ultimately end human rights abuse faster than simply going after the bad guy.

After my internship, I plan on either attending law school or finding, the seemingly elusive, full-time human rights job. Through these experiences, I have decided the advocacy I am most interested in derives from an in-depth awareness of situational context, including the motives of relevant political actors. It is also clear that knowledge of the law imbues any activist with legitimacy. Without this understanding, it is easy to become the stereotypical human rights crusader: morally righteous and full of conviction but incapable of following through with concrete action, barely interested in compromising, let alone cooperating, in the name of progress.

> "It is clear that knowledge of the law imbues any activist with legitimacy"

From conversations with my classmates and co-workers, it seems we are facing an advocate identity crisis. Raising awareness campaigns seem outdated with the advent of grassroots journalism and social media. At this point is it more impactful to be in the field or in an office? Can we even afford to pursue this career? How do we avoid getting stuck with a barely survivable wage? And are we okay with nothing happening for a really, really long time? After all, when all is said and done, progress is very, very slow. How do we make the biggest impact possible very quickly? In a profession where failure is inevitable, passion is paramount. However, perhaps even more importantly, we need to start thinking more creatively about human rights advocacy. At LSE, my peers and I engaged in honest conversation about these issues. I just hope we can continue the debate while we turn our studies into careers.

LSE Lawyers' Alumni Group Update

BY DAVID BASS

Included in the Lawyers' Alumni Group (LAG) mission statement is the objective of enriching ties among LSE legal alumni around the world. Our events, including quarterly drinks and an annual dinner, are held with this goal in mind. Last summer we jointly organised a reception with the Banking and Finance Alumni Group. We were lucky enough to have Professor Craig Calhoun regale us with tales of his life as LSE's Director. We wish to express our sincerest thanks to Pinsent Masons for hosting this event at their beautiful City headquarters.

Another highlight of the year was our annual Gala Dinner event, held in March at the illustrious Law Society building on Chancery Lane. The speech delivered by Shadow Attorney General Emily Thornberry MP was a rare glimpse inside Parliamentary life. She even included a "Wednesbury unreasonableness" joke tailored for a legal crowd. The Committee also wishes to convey its gratitude for Hogan Lovells' generous support of the gala.

In an effort to further strengthen ties among the LSE legal alumni community, we are planning a new regular drinks evening in London for law alumni. The inaugural drinks will be held in mid-October, possibly in conjunction with other alumni groups, including Banking and Finance, and Media. Please see our website at alumni.lse.ac.uk/lawyersalumnigroup for full details.

The Committee wishes to extend its hearty congratulations to the new LLB and LLM graduates. Each of us vividly remembers our LSE graduations filled with a heady mix of jubilation and wonder at what would come next. While the transition from student to working world, especially when coming from an amazing institution like LSE, can be daunting the alumni community plays a key role in your journey. Wherever you are in the world you will be sure to meet fellow LSE alumni and the Lawyers' Alumni Group is just the beginning of your lifelong connection to the School

We look forward to welcoming you to the group and hope to meet you at one of our events soon.

To find out more about the group and to join visit our website at alumni.lse.ac.uk/lawyersalumnigroup

Send us your news

We would like to report on the activities of LSE Law Alumni in future editions of Ratio. Please send us your brief updates (100 words max) including your name and year of graduation by email headed "Ratio Alumni Update" to law.ratio@lse.ac.uk

Research, Publications and Events

The Financial Crisis in the Courts

JO BRAITHWAITE*

Did the global financial crisis cause a surge of litigation in the courts? As someone who teaches and researches financial law, I was thinking a lot about this question in the aftermath of the crisis, but I could only find fairly anecdotal evidence. Some commentators claimed the courts were swamped with litigation arising from the crisis; others said that the courts were eerily quiet. I thought it would be interesting to look into the question empirically, which I started to do over the summer of 2011. This research eventually led to my *Modern Law Review* article, "Standard Form Contracts as Transnational Law: Evidence from the Derivatives Markets".

The research project focused on a particular sector of the financial markets, the "over-the-counter" (OTC) derivatives markets (these are the off-exchange markets in derivatives, and together, the different OTC derivatives markets have a gross notional value of $638 trillion). At the outset of the research, I used three databases to collect all the English court decisions involving the standard contract used in 90 per cent of OTC derivatives transactions, which is published by a trade association called ISDA. Having reviewed this set of decisions, I found that there had been a dramatic spike in litigation in the wake of the crisis. In this respect, the most telling finding was that the English courts had handed down more decisions involving the ISDA terms between January 2009 and August 2011 than the entire period before 2009, while 70 per cent of all trials involving the ISDA terms had taken place in this two and a half year period.

Looking at the set of cases in more detail, three other main findings emerged. The first was about the range of questions the court was asked to consider by derivatives counterparties, which was broader than I expected. Demonstrating considerable flexibility, the courts ruled on opportunistic jurisdiction disputes, highly technical questions about the interpretation of complex documentation, tax matters, ultra vires claims brought under Norwegian and Greek law, and evidence-heavy mis-selling actions, some involving dozens of witnesses. This finding spoke to the capacity and the role of the courts in the financial markets.

Secondly, the set of cases revealed a lot about the methods used to address the technical nature of this subject matter. In some cases, the trade association appeared in its own right, in order to provide the court with its view on the dispute. Other judgments discussed practitioner and academic works in detail. Furthermore, the same judges appeared time and time again hearing these matters, leading to detailed cross-references with first instance decisions, as well as appellate level judgments. In short, it was possible to see the crisis as having catalysed the emergence of specialist case law around particularly important ISDA terms. This finding has implications for the debates about how the national courts tackle technical subject matter, about the effects of precedent on the markets, and about how the courts compare to private dispute resolution options.

Thirdly, my research shed light on the types of parties involved in these cases. This was the biggest surprise of the project. It is well-known that, while derivatives have very diverse users and uses, the markets are dominated by large financial institutions. However, the spike of litigation since the crisis involved very few cases between financial entities. Some decisions, of course, arose from the Lehmans collapse, but the principal source was found to be a tiny market in shipping derivatives, which are products linked to the prices for shipping freight around the world. Freight rates fluctuated wildly in 2008 and many shipping companies became insolvent. The derivatives they used were generally agreed on the standard terms offered by their trade association, which incorporated the ISDA terms by reference. Thus, when disputes arose about insolvent shipping companies' derivatives, the courts had to consider the ISDA contract. In the wake of the crisis, therefore, a tiny, fragile and volatile market populated by relatively inexpert users of derivatives generated more litigation about these globally important terms than any other sector. This finding showed how systemically significant markets can be vulnerable to precedent from unexpected and unlikely sources.

The MLR article elaborates on these findings and how they fit into some of the academic debates about the nature of widely-used standardised terms. It also offers some data about the numbers and types of cases considered in the research. I should add that the research project and the article both benefited enormously from my discussions with LSE colleagues and with visiting academics, from feedback during a LSE staff seminar I gave, and from the MLR referees, for which I am very grateful. If I can discuss any aspect of the article in more detail with Ratio readers, or if readers have any comments on the article, please do get in touch.

*Jo is an Associate Professor of International Commercial and Financial Law at The London School of Economics and Political Science.

Jo is an Associate Professor of International Commercial and Financial Law. You can read her Wedderburn Prize-winning article "Standard Form Contracts as Transnational Law: Evidence from the Derivatives Markets" in the Modern Law Review, Volume 72 Issue 5, September 2012, pages 779-805.

Learn more about Jo Braithwaite at: lse.ac.uk/collections/law/staff/jo-braithwaite.htm

Launch of LSE/Matrix Seminar Series on Current Cases in International Law

One of the virtues of LSE Law is its location on the doorstep of leading barristers' chambers and Inns of Court. Together with Matrix Chambers, we have developed a new seminar series with the aim of bringing together academics and practitioners to discuss areas of convergence and conflict between practice and theory, with a focus on current cases in international law. We have chosen this focus for the LSE/Matrix seminar series given the status of international law as a traditionally academic subject that is increasingly the focus of litigation before domestic, regional and a growing body of international courts. It is accordingly an area of legal practice in which cooperation between practice and academia is particularly pressing and could be most productive. Recent cases such as the *Gul* case, in which the UK Supreme Court was asked to define terrorism in the context of international armed conflict, and the Mau Mau litigation, in which the High Court was charged with determining the responsibility of the UK government for abuse against members of the Kikuyu tribe in colonial Kenya in the 1950s and 1960s, are examples of cases that involve complex questions of international law and merit continuing debate by academics and practitioners alike.

The LSE/Matrix Seminar Series kicked off with a fantastic event featuring the UN Ombudsperson Judge Kimberly Prost, the UN Special Rapporteur on Counter-terrorism and Human Rights Ben Emmerson QC and LSE's Professor Carol Harlow. The debate was a response to the decision by the Court of Justice of the European Union (CJEU) in *Kadi II*. Mr Kadi is a Saudi Arabian national who was placed on a Security Council sanctions list on grounds he was suspected of being "associated with" Al Qaeda. As a consequence, his assets were frozen around the globe and he was subject to a form of "civic death", entailing bans on travel, educational and employment opportunities. Cases such as the *Kadi* decision arose in the context of continuing debate about whether the Security Council has failed to provide satisfactory due process for individuals such as Mr Kadi who argued they had been placed on the sanctions list mistakenly or unjustifiably. In 2009, the Security Council established the Office of the Ombudsperson, which provides individuals with an avenue of appeal, though it is not a court. In *Kadi II*, the CJEU held that, "despite the improvements added … they do not provide to the person whose name is listed on the Sanctions Committee Consolidated List … the guarantee of effective judicial protection". The CJEU decision raised the question whether 'judicial' review is necessary in the Security Council sanctions context or whether the Ombudsperson procedure is adequate.

The LSE/Matrix Seminar Series debate took place at LSE on 13 February 2014. We were fortunate to be joined by the first and current Ombudsperson, Judge Prost, who described her role as a "lonely job" (she is assisted by only one full-time

staff member) in which she has to find the balance between two imperatives: on the one hand, due process for listed individuals and on the other, important considerations of international and national security. Her key point about the design of review procedures was that 'if we strive for what is perfect in principle, one of these [imperatives] will lose out'. She described the advantages of the Ombudsperson process as: (1) its accessibility (by letter to the Ombudsperson); (2) its expeditiousness (Mr Kadi's (unsuccessful) progress through the courts took 12 years while he was ultimately de-listed by the Ombudsperson in a matter of months); (3) the Ombudsperson can employ standards that cut across legal systems; and (4) decision-making is not frozen in time, so the Ombudsperson considers the fairness of the listing at the present time rather than at the time the decision was first made. On the downside, she acknowledged that the individual does not necessarily have the benefit of legal representation and that she has no power of subpoena to compel witnesses to attend or information to be provided to her.

Ben Emmerson QC began his contribution by recognising that most people agree Judge Prost is one of the "nicest people they've ever met", but worried about looking at the Office of the Ombudsperson through the prism of the only person who had ever occupied the post. He also asked us to look at the system as a whole and reflect on the fact that the sanctions regime had become a permanent tool of global justice. In this context, it is fundamental that the regime complies with international standards of due process. He was concerned in particular that the Ombudsperson could only make recommendations and stressed the importance of a reviewing body being able to make binding decisions. He acknowledged that the first 51 cases heard by the Ombudsperson had been hugely impressive in terms of delisting, but emphasised that this was the low-hanging fruit and that there were "200+ decisions" meriting attention. Mr Emmerson referred to his report to the General Assembly in which he had made a number of recommendations to enhance due process in the Security Council sanctions context, including the need for binding decisions; public reasons; a different standard of proof and improvements to the rules of evidence.

LSE Professor Carol Harlow, a leading expert in administrative law, picked up on the idea that the current sanctions regime was "unfit for purpose and an affront to the rule of law", but noted it was important to qualify the idea that courts were necessarily a panacea. She raised the problems of cost and delay and queried whether courts themselves could actually provide "binding" decisions in this context. She emphasised the importance of "accountability networks" in the Security Council sanctions context including the Ombudsperson and courts. The event concluded with a number of interesting questions from the floor, including questions about whether states had interfered with the Ombudsperson's work, what the Ombudsperson would do with evidence obtained using torture and whether the Ombudsperson could initiate her own inquiries.

An event was also held on 15 April 2014 to discuss the Gul case. In this case, the UK Supreme Court upheld the conviction and five-year imprisonment of a Queen Mary law student on terrorism charges for posting clips on You Tube of assaults on Coalition forces by the Taliban and Al Qaeda. David Anderson QC, the Independent Reviewer of Terrorism Legislation, Professor Ben Saul (University of Sydney) and Yasmine Ahmed (Director, RightsWatch UK) provided highly interesting contributions on a controversial case.

> "We have developed a new seminar series with the aim of bringing together academics and practitioners to discuss areas of convergence and conflict between practice and theory"

If you wish to be added to our mailing list to be notified of future events in the LSE/Matrix seminar series, please contact Devika Hovell at D.C.Hovell@lse.ac.uk

Legal and Political Theory Forum: Conference on Law, Liberty, and State

TOM POOLE*

The LSE Legal and Political Theory Forum has been established for a number of years, holding seminars on topics of common interest to scholars and graduate students working in various disciplinary areas, but particularly in the fields of politics and law.

In addition to our regular term-time seminars, our practice has been to hold a major event each Spring. Our conference in 2013 discussed the theme of Law, Liberty, and State in the 20th and early 21st centuries. Our focus was the work of three seminal 20th-century thinkers, two with strong LSE connections: FA Hayek, Michael Oakeshott, and Carl Schmitt. All three lived lives that almost spanned the last century and all three are associated with a conservative reaction to the "progressive" forces of their time, although these reactions took very different forms. In addition, each was an acute analyst of the juristic form of the modern state and the relationship of that form to the idea of liberty under a system of public, general law. However, the three are rarely discussed together.

At a time when there is a revival in political and legal theory on the theme of the relation between conceptions of liberty and legal government, brought about in large part by the contributions of neo-republican theorists, as well as a deep anxiety about the role of the state in securing liberty, indeed, an anxiety about the waning strength of the nation state, we wanted to create an opportunity to consider such issues through the lens of the work of these three major scholars on our theme of law, liberty, and state.

The conference was jointly organized by Thomas Poole (LSE Law) and David Dyzenhaus (Toronto), both of whom presented papers. As well as two homegrown talents, Chandran Kukathas (LSE Government) and Martin Loughlin (LSE Law), the conference featured a wealth of British, European and North American international stars, including David Boucher (Cardiff), Nehal Bhuta (EUI), Duncan Kelly (Cambridge), Erica Kiss (Princeton), Hans Lindahl (Tilburg), Jan-Werner Möller (Princeton), Adrian Vermeule (Harvard) and Lars Vinx (Bilkent).

The conference was a great success, spurring much argument and debate – sometimes quite heated! – on what these three, often rather controversial, thinkers were really trying to tell us and what resonance their thoughts might have for our own, 21st-century concerns. The papers presented at the conference have been worked up to form an edited collection, to be published later this year: David Dyzenhaus and Thomas Poole, *Law, Liberty and State: Hayek, Oakeshott and Schmitt on the Rule of Law* (Cambridge University Press, 2014).

*Associate Professor of Law, The London School of Economics and Political Science.

Dirty Old London

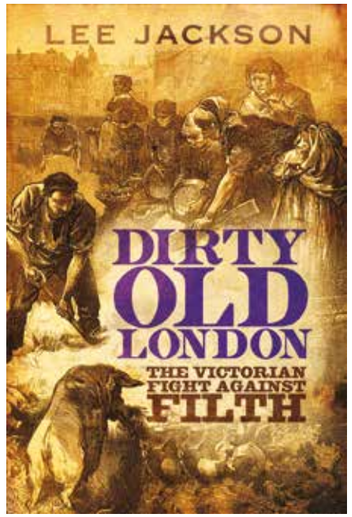
LEE JACKSON

Lee Jackson has worked as Web Development Officer for LSE Law part-time since 2006, but has another career as a novelist and historian. He is the author of seven Victorian crime novels, including "A Metropolitan Murder". On 19 November 2014, LSE law will host a book launch for his latest book, *Dirty Old London: The Victorian Fight Against Filth* (Yale University Press 2014), where he will discuss his work with Sarah Wise, journalist and historian, expert on the nineteenth century urban poor.

In 1899, the Chinese ambassador was asked his opinion of Victorian London at the zenith of its imperial grandeur. He replied, laconically, "too dirty". He was only stating the obvious. Thoroughfares were swamped with mud, composed principally of horse dung, forming a tenacious, glutinous paste; the air was peppered with soot, flakes of filth tumbling to the ground in black showers. The distinctive smell of the city was equally unappealing. Winter fogs brought mephitic sulphurous stinks. The summer months, on the other hand, created their own obnoxious cocktail, "that combined odour of stale fruit and vegetables, rotten eggs, foul tobacco, spilt beer, rank cart-grease, dried soot, smoke, triturated road-dust and damp straw." London was the heart of the greatest empire ever known; a financial and mercantile hub for the world; but it was also infamously filthy.

This has always struck me as a curious state of affairs. The Victorians were obsessed with "sanitary" matters, and famously built a vast sewer network in the mid-century to cleanse their great city of its human waste. Yet they neglected much else, leaving the urban poor in particular – to quote Jack London in 1903 – "helpless, hopeless ... and dirty". Visitors to the capital, like the American journalist Mary H. Krout, reporting on the Diamond Jubilee in 1897, were astonished at Londoners' apathetic attitude to their grim environment. She felt sure that, if the same conditions were visited upon Washington or New York, something would be done.

Dirty Old London is essentially my attempt to explain this disjunction between the Victorians much-vaunted enthusiasm for cleanliness and the actual state of their capital. The book covers a variety of previously neglected topics: the "dust trade" – the vast profit-making enterprise of selling household cinders to brick-makers in the countryside – which collapsed in mid-century, with dire consequences for the public; the history of the "street orderly" (the teenage dung-sweepers who briefly seemed an answer to the capital's problems); the public health anxieties that produced the archetypal Victorian cemetery; the peculiar story of the public toilet (a source of great social unease); and much more besides, including the inevitable sewers. Ultimately, I argue that, thanks to a mixture of greed, parochialism and fatalism, the damning verdict of the Chinese ambassador was all too accurate.



I am particularly glad to launch my book at LSE, since I made extensive use of LSE Library during my research, not only their books and pamphlets but numerous databases, made available in the last ten years with the rise of "digital humanities", containing invaluable and previously obscure sources. I am also thrilled to be talking with Sarah Wise, whose latest book, Inconvenient People (Vintage 2013) debunks the "madwoman in the attic" cliché to provide a rounded and comprehensive examination of lunacy and asylums in the nineteenth century. Her previous books, The Italian Boy and The Blackest Streets dealt extensively with the social conditions of the East End poor, not least the topic of slum reform, which I also address in Dirty Old London – it should be a great evening, all are welcome.

When Sexual Infidelity Leads to Murder

A Gender Perspective on Sentencing under the Criminal Justice Act 2003

JEREMY HORDER*

*Professor of Law at The London School of Economics and Political Science.

When sentencing a convicted murderer, under guidelines set down by Parliament in 2003, the trial judge sets a minimum term that the killer must serve in prison before he or she can be considered for parole. This is normally no less than 15 years. The minimum term may be lower than this, but it may also be much higher, depending on the nature of aggravating and mitigating features in the case.

A controversial issue in the law of murder has always been whether the fact that the murder by a spouse or partner (typically a man) was committed in response to unfaithful behaviour by the other spouse or partner (typically a woman) should be a mitigating feature, or an aggravating feature, and if so to what extent. How should such a feature of a murder case – commonly encountered in practice – affect the length of sentences?

Historically, it was possible for the offence of murder to be reduced to the lesser crime of manslaughter, when the killer was provoked to lose his temper and killed in response to infidelity. This was an aspect of the "provocation" defence in English law.

A conviction for manslaughter only, on the grounds of provocation, would mean that the death penalty, or – later – a life sentence for murder, was avoided. A manslaughter conviction would mean the judge could pass such a sentence as seemed appropriate: typically around a seven year maximum (not minimum) sentence, depending on the circumstances. That would mean the killer of an (allegedly) unfaithful partner would ordinarily be released from custody after about three-four years.

This possibility has always been controversial. At the beginning of the 18th century, leniency in such cases was defended by the Lord Chief Justice on the grounds that, "jealous is the rage of the man, and adultery the highest invasion of property". This kind of attitude in the justification for leniency towards men lingered well into the 21st century, even though a change of attitudes made judges less sympathetic to it from the late 19th century onwards.

In 2009, Parliament changed the law to make it clear that, in future, when the sole basis of a provoked loss of self-control that led to a killing was the victim's infidelity, this evidence was to be disregarded by the jury. In introducing the new law, Claire Ward MP said:

"The provision reflects the Government's determination to ensure that the law in this matter keeps pace with the times. In this day and age, it should not be possible for any person, regardless of gender or sexuality, to stand up in court and blame their partner – let us not forget that it is the partner that they themselves have killed – for having brought on their own death by having an affair" (HC Debates, 9 November 2009).

The change in the law means that those, typically men, who lose control and kill their partner solely because their partner has been, or indicates that she will or may be unfaithful should now be convicted of murder. They should therefore receive, a minimum 15-year custodial sentence for their offence.

However, research indicates that in cases of offenders who have killed and been convicted of murder in these circumstances, when the case reaches the sentencing stage for murder, judges are still treating provocation constituted by infidelity as a grave or serious provocation, worthy of substantial mitigation in sentence. That appears to be inconsistent with Parliament's view that, "it should not be possible for any person, regardless of gender or sexuality, to stand up in court and blame their partner".

Having said that, the substantially increased sentencing levels for the worst murders, under the 2003 reforms, might be considered to justify considerable leniency, if the killing was a "spur of the moment" attack.

The position of those who kill in response to infidelity can be contrasted with those (typically women), who kill their partners as a response to prolonged abuse at the hands of a violent partner. The 2009 reforms introduced a new defence for circumstances such as these, reducing murder to manslaughter, intended to ensure that such defendants were not automatically convicted of murder if they intended to kill.

This defence to murder would arise if the defendant's intentional killing following a loss of self-control was attributable to a "fear of serious violence". However, as the Law Commission had pointed out prior to the 2009 legislation, a requirement that the defendant have "lost self-control" at the time of the killing would actually work to the disadvantage of women in abusive relationships. In many such cases, the defendant does not lose self-control, in the normal sense of temporarily losing her temper. Certainly, she may not be in an ordinary or normal state of mind when killing; but that is not the same thing as the loss of temper or self-control required for the defence to be established under the 2009 Act.

Indeed, in such cases, an abused woman may have given some prior thought as to how the killing could be carried out without an angry or direct confrontation, because history will have taught her how such confrontations with a violent abuser are likely to end.

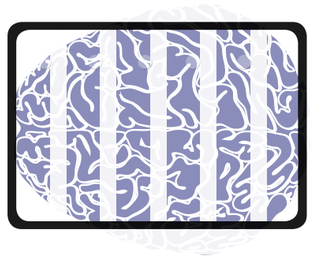
The significance of this is that, under the 2003 guidelines for sentencing on murder, premeditation or planning is regarded as an aggravating feature of a murder, justifying an increase in the normal starting point of 15 years' imprisonment.

This all means that, an abused woman who kills her abusive partner without losing self-control is, in theory, liable to be sentenced to spend much longer in prison than a man who loses his temper and kills his allegedly unfaithful partner. Should the law tolerate that situation?

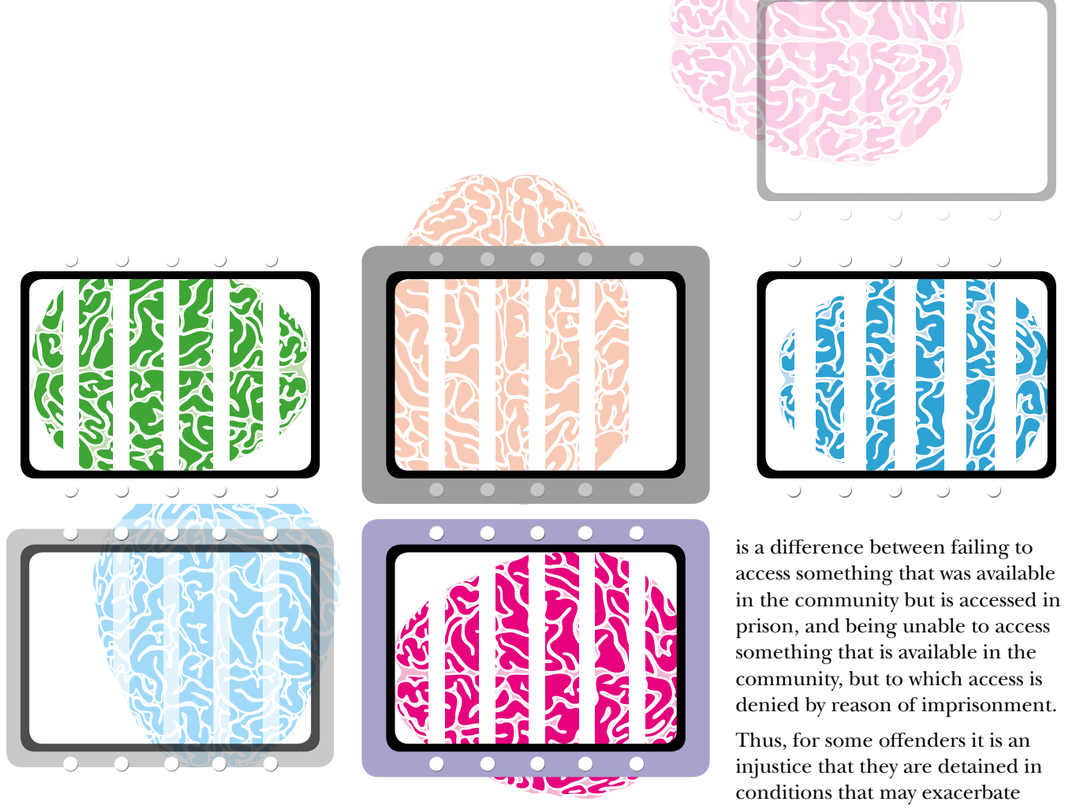
On 15 October 2014, "Law Matters" will debate these issues. Professor Jeremy Horder (LSE), John Cooper QC (25 Bedford Row), and Professor Nicola Lacey (LSE) will be presenting the arguments, and leaving you to judge.

Imprisoning the Mentally Disordered: A Manifest Injustice?

In October 2013, as part of Professor Conor Gearty's *Law Matters* series, Professor Jill Peay delivered a public lecture on "Imprisoning the Mentally Disordered: A Manifest Injustice?". This was followed by expert commentary from Anita Dockley, the Howard League's Research Director and Dr Tim Exworthy, a Consultant Forensic Psychiatrist and a Visiting Senior Lecturer at the Institute of Psychiatry, King's College, London. Ironically, the question mark in the title, central to the lecture's thrust, appeared to have gone missing from the publicity materials and it may be that some of the audience arrived expecting to be engaged in a rather different enterprise to the one that transpired; question marks being integral to much that the LSE undertakes. But in the event the audience was lively and seemed appreciative, perhaps because there was very little dissent from the core message the lecture delivered and much concern about the state of those subject to imprisonment.



This lecture considered the nature (everything from psychosis to intellectual disability) and extent (worryingly widespread) of mental disorder amongst those who had been justly convicted, within prisons in England and Wales. And it noted that these levels of disorder, and of serious disorder, are broadly consistent with the international literature and have been remarkably stable within confined populations. The implications of the presence of so many mentally disordered offenders for the most basic of objectives – keeping prisoners safe and in humane conditions – were touched on. But the body of the lecture concerned how the central established purposes of imprisonment – namely punishment, incapacitation, deterrence, denunciation, and rehabilitation – might be jeopardised by the very make-up of the prison population. Indeed, the problems of treating mentally disordered offenders in a prison environment were legion. For, as Dr Exworthy pointed out, it was highly likely that the very conditions of imprisonment – lack of privacy, uncertainty about one's future circumstances and the difficulties of maintaining



supportive social networks – would impede successful treatment. Even accessing non-coerced treatment could be problematic.

A number of remedies were discussed, including those of interventions which would significantly reduce the prison population *per se*. Identifying and diverting mentally disordered offenders into healthcare settings, as has long been the official policy of successive governments, has not, to date, solved the difficulties, perhaps because diversion works better in theory than it does in practice. However, it is possible that the latest pilot initiative, of placing mental health nurses into police stations, may assist; as might enhancement of mental condition defences, partially currently under review by the Law Commission.

> "it is an injustice that some offenders are detained in conditions that exacerbate their disorders"

The lecture concluded by acknowledging that for many mentally disordered offenders imprisonment is the right and proper disposal. And for some offenders a sentence of imprisonment may provide an opportunity to access mental and physical health services that were not accessed in the community. But as the lecture observed, there is a difference between failing to access something that was available in the community but is accessed in prison, and being unable to access something that is available in the community, but to which access is denied by reason of imprisonment.

Thus, for some offenders it is an injustice that they are detained in conditions that may exacerbate their disorders, and for some others their presence in the prison population would satisfy the charge of "a manifest injustice". The lecture ended by calling for a fundamental review of the purposes of imprisonment for all offenders, in the light of these observations about mentally disordered offenders, and particularly given that mentally disordered offenders make up such a large proportion of the imprisoned population. Notably, the exact size of this population cannot be given with any certainty, since we do not collect the requisite data on a routine basis: which, in itself, seems a worrying omission.

Jill Peay is Professor of Law at the London School of Economics and Political Science. The lecture has subsequently been published as part of the LSE Law, Society and Economy Working Paper Series and is available to download at

lse.ac.uk/collections/law/wps/wps1.htm

Marginalised Legal Lives

LINDA MULCAHY*

The Legal Biography project is one of the research projects funded by LSE Law and aims to bring together a network of scholars from across the world who are interested in life histories of a variety of actors in the legal system. The project is co-directed by Professors Michael Lobban and Linda Mulcahy and currently has two PhD students attached to it. This year has seen the continuation of a successful programme of public lectures which has included interviews with The Rt Hon Lady Heather Hallet and three of the first women law professors. In parallel with these lectures we have run a series of smaller academic seminars in which we have hosted talks by Professor John Baker from Cambridge University and Dr Maksymillian Del Mar from Queen Mary London. In addition to these events the project has been involved in the digitalisation of the papers of public lawyer Sir Ivor Jennings.

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A highlight of the last year has been the ongoing collaboration with the British Library. In addition to the joint supervision of one of our PhD students, Dvora Liberman, this involved the co-hosting of a special one-day event with the British Library, the Institute of Advanced Legal Studies and the Socio-Legal Studies Association. The focus of this workshop was on bringing together academic researchers with archivists and curators of specialist collections. A key theme to emerge from the workshop was the ongoing popularity of legal biography or "life writing" in which the approaches adopted range from in-depth scholarly accounts to hagiography. However, it is also noticeable that the bulk of legal biographies produced to date have focused on charting the lives of the elite; most often white male judges and barristers. There have been notable exceptions to this such as Patrick Polden's account of early female barristers, but these remain in the minority. Most scholarship in this field has also been limited in its inter-disciplinary scope. In ongoing work conducted in the wake of the workshop the contributors will explore both these gaps in existing literature by focussing on the lives of those usually marginalised or otherwise treated as outsiders and by expanding the range of sources used to research legal lives.

A special issue of *The Journal of Law and Society* is now planned for 2015 which will take up these concerns and aims to ignite debate about the nature of existing scholarship through the exploration of three key themes. The first of these relates to the nature of the relationship between socio-legal studies and legal history. It is argued that socio-legal scholarship has tended to give legal history short-shrift because of legal history's tendency to privilege continuity over change, the old over the new, and elite legal thought and legal institutions over the law in practice. A key question posed is whether this intra-disciplinary tension can be resolved by the emergence of a revisionist legal history or whether the adoption of a socio-legal perspective requires a fundamental rethinking of what constitute authoritative subjects, methods and sources.

The second major theme is the problem of silences in the existing literature. The stories of those placed at the boundaries of law and the legal system tend to produce radically different accounts of legal phenomena. The collection will interrogate the ways in which the experiences of female, working class, black or gay judges, lawyers and academics disrupt existing orthodoxies. A key goal will be to re-focus scholarship on the experiences of the "foot soldiers" of the legal system such as court clerks, barristers' clerks, ushers and other actors whose stories have remained largely untold or partially told.

The final theme being explored is the methodologies employed in legal life writing. Biography is generally acknowledged to be something of an epistemological minefield. The serendipity of discovery, the limitations of having to work with what has been preserved and the difficulty of working with resources not necessarily produced with biography in mind make this a time consuming and problematic form of legal scholarship. To this can be added the particular problems involved in researching the marginalised. By definition, those who have been barred from entry to, or effective participation in, the legal world rarely occupy a prominent position in the official reports of cases or commentaries which form the basis of much legal scholarship. This raises important questions about the alternative sources to which it is legitimate to turn in the course of research. These various issues have encouraged the contributors to raise important questions about the academic skills required for this work and to think about the extent to which socio-legal scholars have to become legal historians, sociologists, linguists, political theorists or art historians to fully recognise and understand these disciplinary insights. This work promises to broaden the character and sources of legal life writing so as to free it from the traditional confines of accepted scholarly questions and methods. It is argued that that legal life writing can and should be "flipped" and reconstituted so that rather than being a handmaiden of the elite it becomes a challenging supplement to traditional scholarship.

"The stories of those placed at the boundaries of law and the legal system tend to produce radically different accounts of legal phenomena"

For further details of the Legal Biography Project see: lse.ac.uk/collections/law/projects/legalbiog/lbp.htm

LSE Law Public Events

For the Michaelmas Term 2014

When Sexual Infidelity leads to Murder: A Gender Perspective on Sentencing under the Criminal Justice Act 2003

Speaker: Professor Jeremy Horder
Chair: Professor Emily Jackson
Respondents: John Cooper QC and Professor Nicola Lacey
Date: Wednesday 15 October 2014, 6.30-8pm, Hong Kong Theatre, Clement House.

Rituals and Ritualism in the International Human Rights System

Speaker: Hilary Charlesworth
Chair: Professor Susan Marks
Date: Tuesday 21 October 2014, 6.30-8pm, Wolfson Theatre, New Academic Building (TBC).

On Fantasy Island: British Politics, English Judges and the European Convention on Human Rights

Speakers: Professor Conor Gearty
Chair: Keith Best, Heythrop College
Date: Thursday 6 November 2014, 6.30-8pm, Old Theatre, Old Building.

What is the Welfare State? A Sociological Restatement

Speakers: Professor David Garland
Chair: Craig Calhoun
Date: Monday 10 November 2014, 6.30-8pm, Sheikh Zayed Theatre, New Academic Building (TBC)

Dirty Old London

Speakers: Lee Jackson
Chair: Professor Nicola Lacey
Respondent: Sarah Wise
Date: Wednesday 19 November 2014, 6.30-8pm, Wolfson Theatre (TBC).

In Conversation with the Lord Chief Justice, Lord Thomas of Cwmgiedd

Speakers: Lord Chief Justice
Chair: Mr Justice Ross Cranston
Date: Tuesday 25 November 2014, 6.30-8pm, (TBC).

Whales in the ICJ: Assessing the Magnitude of the International Judicial Function

Speakers: Professor Hilary Charlesworth, Professor James Crawford, Dr Gleider Hernández

Date: Wednesday 22 October 2014, 6.30-8pm, Wolfson Theatre, New Academic Building (TBC).

Baby Boomers on Trial

Policy Briefing Series

In 2014 LSE Law commenced its Policy Briefing Series designed to make LSE Law research more readily accessible to a broader policy and political audience. All Policy Briefing papers are available here:

lse.ac.uk/collections/law/policy/index.htm

National Parliaments and EU Economic Governance: Countering the Debt Crisis

DAVOR JANCIC*

While the sovereign debt crisis was ravaging the Eurozone and while the European Council was dominating the decision-making scene, even the most informed onlookers harboured little expectation that this would have a positive impact on the democratisation of the European Union. Although frequently viewed as losers of European integration, national parliaments have reacted promptly and gained as much from the crisis as they have lost. Not only have they compensated for the constraints suffered due to greater fiscal integration, they have acquired new prerogatives in EU affairs, created new avenues for the political contestation of EU policies, and brought the EU closer to the European citizens. National parliaments have become more Europeanised. They are effectively the beneficiaries of the euro crisis and there very good reasons for this.

The economic component of the Economic and Monetary Union is premised on the EU's close coordination of domestic economic policies in order to ensure price stability, sound public finances and a sustainable balance of payments in the Member States. These principles are upheld through broad economic policy guidelines (BEPGs), which are set out by the Council of Ministers on a recommendation of the Commission and after receiving conclusions of the European Council, while the European Parliament is merely informed of the outcome. Based on Commission reports, the Council monitors the Member States' adherence to these guidelines and checks whether they respect the fiscal limits of 3 per cent of GDP for the annual budget deficit and 60 per cent of GDP for public debt. The so-called excessive deficit procedure is envisaged in order to sanction deviations from these targets, which can result in the imposition of fines or non-interest-bearing deposits. These are the key aspects of what is known as the EU's Stability and Growth Pact (SGP), whose legal basis is laid down in the Treaty on the Functioning of the European Union and the relevant Protocol annexed thereto. While the SGP was honed by means of secondary EU legislation in 1997 and 2005, in response to the debt crisis the EU adopted a further set of measures to reform the governance of economic and financial affairs.

In November 2011, the so-called "Six Pack" (five regulations and a directive) established a new form of economic policy coordination called the European Semester, which is a six-month period lasting from January to June each year, during which BEPGs are adopted and implemented. The European Council defines economic priorities and gives general policy orientations to the Member States on the basis of the Commission's Annual Growth Survey. Taking these into account, the euro area Member States submit their fiscal plans to the Commission in the form of stability programmes, whereas non-euro area Member States submit convergence programmes. All Member States are also required to submit national reform programmes on the intended structural reforms aimed at boosting growth and jobs. The Commission then drafts country-specific recommendations (CSRs), which are endorsed by the European Council and adopted by the Council. The second half of the year is called the National Semester and it culminates with the national parliaments' adoption of annual budgets on the basis of the CSRs and within a very short timeframe.

In March 2012, all Member States except the UK and the Czech Republic acted outside the EU framework to conclude the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, known as the Fiscal Compact. This Treaty

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mandates the domestic enactment of the balanced budget rule in the form of binding and permanent provisions, preferably of a constitutional nature. This rule requires that the annual budget deficit be at its country-specific medium-term objective but no more than 0.5 per cent of GDP or 1 per cent of GDP where the public debt is significantly below 60 per cent of GDP.

All of this was complemented in May 2013 by the "Two Pack" of regulations, which further improved EU policing of the economic and budgetary planning in the euro area. It does so by enacting a comprehensive regime for the surveillance of euro area Member States experiencing or threatened with serious difficulties with respect to their financial stability as well as by streamlining the correction of excessive deficits.

The role of parliaments under the provisions of these legal instruments is minor. Apart from declarations of respect for parliamentary competences and certain rights to receive and exchange information, notably in the form of an "economic dialogue", both the European Parliament and national parliaments are de jure sidelined in EU economic coordination processes. The underlying assumption that the national budget will be decided between the government and the European Commission in isolation from parliamentary influence is palpable. Centre stage is instead occupied by the EU executive actors, spearheaded by the European Council, the Council of Ministers and the Commission. This raises questions of accountability for decisions that cut deeply into public money expenditure and thus into citizen welfare. Mechanisms for holding members of these EU institutions to account are either non-existent or ill-suited given the confidential, intransparent and speedy nature of decision making, which was further aggravated by the crisis. Especially the Prime Ministers and ministers, who sit on the European Council and the Council respectively, are bound to render account domestically to national parliaments. EU law explicitly requires this, too.

As the EU made inroads into the "most sacred" of their constitutional prerogatives – the budgetary sovereignty – national parliaments felt the threat of their power of the purse being invaded. Yet they did not sit idly by. Whether in the Eurozone or not, they have swiftly adapted their scrutiny to the new EU economic governance scheme. The examples of Portugal, France and the UK furnish a powerful illustration thereof.

As a bailout state that has undergone severe austerity and experienced significant external influence on its social policies, Portugal has completely overhauled its parliamentary scrutiny of EU affairs. The 2012 amendment of the European Scrutiny Act and several informal reforms have resulted in MPs henceforth concentrating on the scrutiny of strategic European Council matters rather than on the nitty-gritty technical matters of EU legislation. There has been a shift from ex post to ex ante policing of European Council activities, insofar as a plenary debate is now mandatory before each European Council meeting rather than after the last European Council meeting of each EU Presidency. The organisation of plenary debates on the European Semester, EU economic governance instruments and the Portuguese stability programme, called the Fiscal Strategy Document, have become a statutory obligation. Additionally, the Commission's Annual Growth Survey topped the list of the Assembly's scrutiny priorities in the past several years. Governmental ouster, the "nuclear weapon" in the arsenal of parliamentary powers, which is widely considered too radical to resort to in EU affairs, was employed in Portugal in March 2011, when the refusal of the Socrates Government's stability programme led to its resignation.

France, a country with a constitutional tradition of constrained parliament with a system where the budgetary process is under the tight grip of the government and with few possibilities for parliamentary intervention, has passed legislation to provide for obligatory plenary debates on the stability programme which end with a vote. This is a significant parliamentary empowerment as it allows MPs and senators to reject the government's plans. In legal terms, this counterbalances the government's constitutional right to make the adoption of the budget a matter of confidence and thus have it approved without the parliament's vote. In political practice, however, the holding of a vote on the stability programme is not a watertight guarantee because this statutory provision, despite a clear instruction to this effect, is implemented in accordance with a constitutional provision that enables the government to decide whether there will be a vote on declarations it makes in Parliament. This is a suboptimal solution and, since there is no compelling reason why the government should be allowed to monopolise the debate, parliamentarians should stand up for their right to pass a vote on each stability programme. The statute on the programming of public finances for 2011-2014 entitles them to it. Yet when the vote is indeed held and the programme rejected, the government is precluded from submitting it to the Commission. In any event, there are important deliberative benefits to holding debates, which are to politicise the public sphere and enable the citizens to reach an informed decision on the policies and behaviour of the executive. Furthermore, thanks to the initiative of several committee chairmen, it has become customary practice in the Lower House of Parliament, the Assemblée nationale, to adopt a resolution on the Commission's observations on France's stability and national reform programmes.

In the United Kingdom, every step towards greater EU integration poses a particular concern due to the legislative supremacy of the Westminster Parliament. Despite Britain's permanent EMU derogation, the European Semester does apply to the UK. Both the House of Commons and the House of Lords have not only thoroughly scrutinised the EU economic governance reform but often commented on matters that do not apply to the UK, which speaks of their wish to contribute to the wider EU policy-making debate. Their Lordships were particularly vocal in arguing that the European Semester is highly beneficial for the Member States and that it strengthens rather than downgrades the role of national parliaments. Furthermore, the 1993 European Communities (Amendment) Act is used as a legal basis to hold plenary debates on the UK convergence programmes. The House of Lords also holds six-monthly series of evidence sessions on the euro crisis to keep abreast of the fast-moving developments.

> "In the United Kingdom, every step towards greater EU integration poses a particular concern due to the legislative supremacy of the Westminster Parliament"

In all the three Member States, the actual parliamentary scrutiny of the annual growth surveys, stability or convergence programmes, national reform programmes and country-specific recommendations exhibits the trend of increased parliamentary activity both in the plenary and in committee, especially in the European affairs and finance committees.

To further bolster their input in EU decision making, national parliaments and the European Parliament established in April 2013 an Interparliamentary Conference on Economic and Financial Governance of the EU. Its aim is to exchange information and best practice with a view to enhancing the legitimacy of EU decisions in the fiscal area. This is the third interparliamentary conference in the EU, besides COSAC and the one for CFSP/CSDP. Its political significance lies not in enforcing the political responsibility for EU economic coordination but in facilitating interparliamentary deliberation so as to discuss discrepancies, increase mutual understanding of the respective fiscal plans and thus upgrade the overall coherence between the national budgetary processes.

Furthermore, under the collective pressure of national parliaments, the Commission agreed to incorporate the European Semester into the political dialogue that it has conducted with national parliaments since 2006 in the form of the so-called "Barroso Initiative". This dialogue enables parliaments to express their opinions on any aspect of EU initiatives, including not only their subsidiarity and proportionality compliance, but also their legal basis, political opportuneness and the implications they may have for the domestic legal system. The Commission will therefore engage in an 'intensified dialogue' after it publishes the Annual Growth Survey and after the European Council endorses the Council's country-specific recommendations. Moreover, upon request by a national parliament, the Commission undertook to organise meetings either personally with its Vice-President for Economic and Monetary Affairs or another senior official or by videoconference.

The diverse and multilevel parliamentary reaction to the euro crisis and the reformed EU economic governance apparatus mitigates the forecasts of parliamentary erosion. To the contrary, national parliaments have seized the opportunity presented by the euro crisis, gained important juridico-political means of pronouncement and debate in EU affairs, and created new avenues of participation and cooperation in EU policy making. To conclude, the euro crisis certainly brought Brussels closer to the national purse, but domestic law and politics have proved resilient enough to counteract the deepening of the notorious democratic deficit, which has stymied the European integration process virtually since its inception. National parliaments have successfully weathered the storm, but in order to make full use of their scrutiny rights, they must continue to put pressure on the government and EU institutions to overcome the obstacles they encounter in his regard in the everyday political process.

Is There a Need for Investor-State Arbitration in the Transatlantic Trade and Investment Partnership?

JAN KLEINHEISTERKAMP*

The Transatlantic Trade and Investment Partnership (TTIP), an international treaty current under negotiation between the US and the EU, has the potential to fundamentally restructure the legal rules governing economic relations between the world's two largest economies. Over the last few months, an important public debate has arisen over the inclusion of investor-state dispute settlement (ISDS) chapter within the treaty. ISDS refers to a system of international dispute settlement by which foreign investors are empowered to bring claims directly against states in which they are doing business. Such claims are typically claims for compensation arising from the activities of the governments of host states which impede the business activities of these foreign investors, or undermine their profitability.

While it has been customary to include ISDS in investment treaties for over two decades, this practice has recently come under serious scrutiny. The traditional purpose of BITs has been to secure outgoing investments into countries with administrative and judicial systems perceived as less reliable and thus presenting political risk of undue regulatory intervention in private economic activities. But it is far from clear whether this rationale applies equally in respect of treaties between advanced industrialised countries. In their free-trade agreement of 2004, for example, Australia and the US have abstained from including ISDS in the chapter on investment protection explicitly because of "the fact that both countries have robust, developed legal systems for resolving disputes between foreign investors and government". In part for the same reason, there has been mounting to the inclusion of investor protection and especially ISDS in the TTIP. Indeed, in May 2013 the European Parliament voted unanimously (excepting only the MEPs who reject ISDS altogether) in favour of the position that future EU investment agreements should include ISDS only "[i]n the cases where it is justifiable". The question arises, then, is ISDS justifiable in the context of the TTIP? This paper assesses the most common arguments made in support of ISDS, and concludes that no strong case exists for including it in the TTIP.

Are there systemic flaws in US and European judicial systems?

One argument which is commonly made in favour of ISDS is that it remedies shortcomings in the protections given to foreign investors by the domestic legal systems of host states. In its answer to an inquiry by Members of the European Parliament, for example, the European Commission stated:

In the US there have been occasions where investors found reasons to complain. The Commission can cite two well known examples of denial of justice, which were eventually defeated in investment arbitration for jurisdictional grounds, *Loewen v United States* (an investor involved in a contractual

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dispute worth $5m was ordered to pay damages of $500m before he could appeal) and *Mondev v United States* (an investor could not sue the Boston Redevelopment Authority because of an immunity clause). An example of expropriation without compensation is the Havana Club case: Pernod Ricard, a French investor, has been prevented from using one of its trademarks for over ten years.

Do these cases provide adequate support for the inclusion of ISDS in TTIP? *Loewen* and *Mondev* are, admittedly, examples of unfortunate cases suggesting failure in US local judiciaries. They do not, however, provide evidence of any broader or systemic problem that would require some remediation through international law rather than internal judicial reform. It is crucial to remember that the real question is whether any flaws in the US judicial system are serious enough, and fixing them important enough, to justify exposing the EU and its member states to the prospect of additional claims from litigious US investors under the TTIP.

In fact, a closer look shows that these cases undermine the strength of the Commission's argument rather than supporting it. In *Mondev*, the question was whether a grant of statutory immunity against tort claims could infringe foreign investors' rights under NAFTA Chapter 11. It was found in that case that they did not, and that no judicial impropriety was involved in the application of the immunity. The case seems therefore to show that investment arbitration does not help the investor against the immunity rules that the host state established. It is not clear how ISDS in the TTIP could achieve a different result, let alone because the TTIP investment chapter will likely not provide for higher standards of investment protection than NAFTA Chapter 11.

As for the *Havana Club* case, it is worth mentioning that the trademark itself could only be acquired by Pernod Ricard as a consequence of the uncompensated expropriation of the previous Cuban owners, the Arechabala family, by the Castro regime in 1960 – a circumstance that sheds a somewhat different light on the Commission's claim of expropriation and protectionism. Furthermore, while the WTO Appellate Body has indeed found that the US legislation in question to be incompatible with the TRIPS Agreement, the US Government has still not complied with the WTO ruling, over a decade later. Again, then, this case seems to provide an example of the *in*effectiveness international dispute settlement mechanisms, rather than the opposite.

In *Loewen*, a Canadian investor in funeral services was struck with extraordinary punitive damages (£400 million) by a jury verdict in a Mississippi state court based apparently on discriminatory and xenophobic considerations. His inability to post 125 per cent of the judgement's sum as security, as required then by Mississippi law, caused his appeal to be struck out and ultimately his company's insolvency. But the circumstances of this case cast just as much doubt on the propriety of investor-state arbitration as on the US judicial system. One member of the

Loewen tribunal publicly conceded having met with officials of the US Department of Justice prior to accepting his appointment, who told him: "You know, judge, if we lose this case we could lose NAFTA"; to which he replied: 'Well, if you want to put pressure on me, then that does it." It is important to remember that international judicial processes are not necessarily less prone to error than their domestic counterparts.

Domestic enforcement of treaty-based investor protections

The Commission's second claim is that there are certain technical barriers to the enforcement of treaty-based investor rights in US courts. Thus, it recently argued that:

"[t]he reason ISDS is needed in TTIP is that the US system does not allow companies to use international agreements like TTIP as a legal basis in national courts. So European companies – and especially SMEs – will only be able to enforce the agreement through an international arbitration system like ISDS".

In fact, it is only lately that an issue with the application of so-called self-executing treaty provisions has arisen. The US has a long history of entering into trade agreements that explicitly confer rights of actions to foreign individuals, and there have been numerous cases brought against US public entities on the basis of these. It was only in 2008 that the Medellín decision of the US Supreme Court initiated a tendency to restrict the possibilities of foreigners directly to invoke rights conferred on them in international treaties. In Medellín, the Supreme Court reasoned that certain treaty provisions, even if they clearly granted specific rights to individuals, were not self-executing and thus not enforceable unless implemented into law by Congress. This was a move away from the previous strong presumption in US law that "if a treaty dealt with right of private parties, it was generally treated as self-executing and the source of a private right of action."

The US case law based on Medellín could, at first glance, give rise to worries also regarding the investor protection provisions in the TTIP. Such protections do risk being meaningless if US courts refuse to understand them as self-executing and thus to apply them. A second look, however, reveals that such a conclusion misses a decisive point. US courts are clearly obliged to apply international treaty provisions to the extent that they have been implemented through legislation by Congress. The situation is thus not relevantly different from that in Germany or France or any country following the dualist conception of international law, which requires the transformation of international law into national law by the legislature.

Moreover, numerous treaties are currently enforced in the US through implementing legislation that includes private rights of action, including the UN Convention Against Torture, the Hague Convention on International Child Abduction and the Chemical Weapons Convention. Indeed, specifically in relation to investment treaties, the Senate's Committee on International Relations explicitly noted, when considering the US-Rwanda BIT that "all treaties– whether self-executing or not–are the supreme law of the land, and the President shall take care that they be faithfully executed". And even though the Committee in that case recommended the Senate to condition the BIT's ratification on a clarification that "[n]one of the provisions in this Treaty confers a private right of action", the Senate ultimately omitted this sentence and merely declared that "Articles 3 through 10 and other provisions that qualify or create exceptions to these Articles [ie, the substantive investor protection provisions] are self-executing."

Conclusion

Two conclusions follow. First, there is no evidence for any broader problem with the US judicial system which would warrant the use of ISDS. Whereas some few cases may have been unfortunate, they do not reveal any systemic deficiency capable of proper remediation. On the contrary, those cases cited by the Commission, if anything, suggest some systemic weaknesses of investor-state arbitration as well as a lack of efficiency of ISDS mechanisms to overcome the foreign investors' problem. Second, international commitments by the US to European investors can perfectly easily be made applicable in US courts and even confer right of action to individuals.

It is uncontroversial that the implementation of the TTIP obligations relating to investment in the US will be politically difficult. But this circumstance cannot, in itself, provide a justification for a rather fundamental policy choice, namely, to accept the creation of a new jurisdiction that would allow US investors in the EU to take regulatory disputes out of European courts – with the reverse discrimination that this entails for EU investors in the EU. The question to be asked is ultimately whether there is something fundamentally wrong with the judicial systems on both sides of the Atlantic, which could be remedied by the creation of a parallel international jurisdiction. The answer is clearly no.

The New Constitutional Role of the Judiciary

JO MURKENS[1] AND ROGER MASTERMAN[2]

Over the last few decades, the UK has experienced a profound – if quiet – constitutional transformation. The judicial reception of EU law, for instance, has been described as "one of the most fundamental realignments of the constitutional order since the end of the 17th century". But these developments have hardly been appreciated within broader public debates, which remain anchored to notions of parliamentary sovereignty.

In this paper, we describe the broad contours of constitutional change in the UK over the last decades. We also ask the question, what can and should courts do when faced with "unconstitutional" legislation? We present the case for the development of a modest range of new constitutional review powers for the courts in the coming years.

The traditional role of the courts: subordination to Parliament

In the UK, there is no codified constitution setting out the role and powers of the judiciary. As a consequence, such powers have traditionally had to be inferred or induced from particular judicial decisions.

Historically, Britain's mixed model of government firmly subordinated the judiciary to the elected branches of government. The constitutional hierarchy, which stems from the doctrine of parliamentary sovereignty, conceived of the courts as subordinate to Parliament. Courts were to interpret the text and to declare the law, and they enjoyed only limited review powers over delegated authority by Parliament to subordinate bodies.

The impact of this subordination on the constitutional status of the courts has been enormous. Between 1842 and the UK's accession to the European Community in January 1973, not a single case reached the House of Lords on the question of the absence of limitations of Parliament's ultimate law-making authority. The period from World War II until the 1960s highlights the insignificance of the courts in developing the constitution.

The Development of Powers of "Quasi-Constitutional" Review

Judicial expansion in the latter decades of the 20th century has prompted a re-evaluation of the constitutional position of the judiciary. Over this period, the apex court gradually developed a public law profile, such that the United Kingdom Supreme Court (Supreme Court) can now be seen to discharge functions equivalent to those of a constitutional court.

Some of these new, "quasi-constitutional" powers of the Supreme Court have been given to the court explicitly by Parliament. For example, the Supreme Court has been allocated powers of quasi-constitutional review under the European Communities Act 1972 (ECA), the Human Rights Act 1998 (HRA), and the UK's devolution legislation.

As regards the European Communities Act, Parliament's competence has been substantively limited in two ways: first, it may not legislate contrary to EU law; and second, courts enjoy power to "disapply" national law to the extent that it is inconsistent with directly effective provisions of EU law. It is acting in this capacity that the Supreme Court most clearly discharges functions akin to the strong form judicial review exercised by constitutional courts elsewhere.

When courts review legislation under the HRA, the consequences are slightly different. That legislation permits courts to

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interpret primary legislation in order to achieve compliance with the Convention Rights, while providing for the issue of a declaration of incompatibility as an alternative. Though neither option permits the court to mount a direct challenge to the legality of an Act of Parliament, the HRA nonetheless empowers the courts to test legislation for compliance with human rights standards.

Under the Constitutional Reform Act 2005, the courts also have the power to determine legal disputes relating to "devolution issues" arising out of the transfer of legal powers to devolved bodies, such as the Scottish Parliament, the Welsh National Assembly, or the Northern Ireland Assembly.

In addition to those powers of quasi-constitutional review allocated by statute, the expansion of the constitutional powers of the courts has occurred as a result of the decisions of judges themselves. At the most straightforward level, a judicial belief in the "sanctity" of statutory language has yielded ground to more generous and purposive techniques of construction. Rather more fundamentally, the development of ideas associated with the "common law constitution" – including the incremental development by the courts of a body of "constitutional rights", and the creation of a distinction between constitutional and non-constitutional statutes – have rendered our traditional understandings of the subordinate role of courts in relation to Parliament obsolete.

Indeed, in one significant case, Lord Hoffman went so far as to assert that the Supreme Court is now empowered to "apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document." Even if this is something of an overstatement, it is certainly true that unquestioning acceptance by the courts of legislative direction – however Draconian – may no longer be taken for granted under this new constitutional equilibrium.

What powers of review should courts have?

Any future determination of the respective constitutional role and function of the judiciary must then seek to address the tension between the sovereignty of Parliament and the rule of law by approaching them as equals, and should seek to make good the constitutional commitment to both democratic government and the rule of law.

In our view, it would be a step too far for the Supreme Court to assert the ability to strike down legislation. This would be a clear usurpation of the powers of the legislature. Instead, we see three legitimate judicial responses to Parliament doing the "unthinkable" – for instance, passing legislation that disenfranchised a substantial proportion of the population on arbitrary grounds or insulated vast tranches of governmental activity from the scrutiny of the courts.

The most robust course available to the court is *disobedience*. In the exceptional case of a clash between constitutional fundamentals, the court may, for example, reinstate a jurisdiction apparently ousted by statute, or prevent the attempted insulation by statute of otherwise *ultra vires* activity from judicial review. This approach draws inspiration from the seminal decision in *Anisminic v. Foreign Compensation Commission*, as long ago as 1969. While falling short of US-style constitutional review, the possibility of this form of judicial disobedience to primary legislation remains the most potent weapon available to the Supreme Court in the event of a fundamental constitutional clash.

Sitting below outright disobedience, in legal terms at least, would be a judicial "declaration of unconstitutionality." Drawing inspiration from declarations of incompatibility under the HRA, David Jenkins has argued that the courts possess the inherent power to declare Acts of Parliament to be unconstitutional when Parliament legislates contrary to fundamental that are deemed by courts to be fundamental to the UK's unwritten constitution. Such declarations, Jenkins argues, would be respectful of sovereignty, because they would be not affect the formal legal validity of the statute in respect of which they were made.

The consequences of the issue of a "declaration of unconstitutionality" would not be as severe as those of judicial disobedience. Such a declaration would in many cases be politically damaging, and could therefore provoke a legislative response. But there would be no requirement for Parliament to respond, the impugned statute would remain operable. The declaration of unconstitutionality would, therefore, better straddle the principle of judicial control and the principle of legislative supremacy, and offer greater respect to the political underpinnings of the UK constitution.

> "it would be a step too far for the Supreme Court to assert the ability to strike down legislation"

Finally, the courts may in certain constitutional cases need to soften the letter of the law through careful interpretation in order to achieve fairness in individual cases and to vindicate the judicial presumption that Parliament legislates "for a European liberal democracy" in compliance with fundamental principles. Like equity, which mitigates the rigour of the common law, the rule of law ensures that the formal legal doctrine of Parliamentary sovereignty does not lose sight of constitutional principles that are of fundamental importance in individual circumstances.

In our view, a combination of these three options, used cautiously and in the appropriate context, would represent a legitimate and desirable development of the courts' constitutional powers. The courts share in the task of policing the boundaries of a rights-based democracy with the legislature and executive; their role is complementary to that of Parliament, and of the executive. To decry the quasi-constitutional functions of the courts as a step towards judicial supremacism is to deny the distinctive functions of the legislative and judicial branches. It also denies the crucial constitutional role of the courts in their habitual recognition of Parliament as sovereign. The constitutional functions and authority of the courts, therefore, form the embodiment of the balanced constitution in its modern incarnation.

Establishment of Traineeship Scheme at the International Court of Justice

We are delighted to announce that LSE Law has been nominated as a sponsoring institution for the University Traineeship Programme at the International Court of Justice.

This gives LSE law students the opportunity to apply along with students from a select group of universities to undertake a nine-month funded traineeship at the ICJ in the Hague. The traineeship programme is similar to a judicial clerkship and provides the opportunity for an LSE student or recent graduate to work closely with the members of the Court on tasks such as drafting court documents, preparing case files and research on a variety of legal issues.

Application forms will be available from the commencement of the 2014/15 academic year and the deadline is likely to be January 2015. Applications will be open to current students and recent graduates. Interested students may contact Dr Devika Hovell at D.C.Hovell@lse.ac.uk

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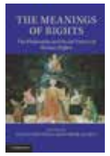

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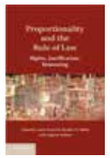

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The Revised Brussels I Regulation, the Lugano Convention, and the Hague Convention Oxford Private International Law Series.

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