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The Magazine of LSE Law

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On the cover: Dean Professor David Kershaw.

Photo by: Guy Jordan.

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EDITORIAL

Welcome to *Ratio* magazine!

It seems surprising, in hindsight, but it actually took us a little while to settle on a theme for this issue of *Ratio*. That surprise, my surprise, was initially the kind of surprise that is involved in not having seen something that is right in front of you. But another layer to it was added when the General Editor of *next year's* issue told me three months ago that they had already decided on the theme of their issue. Three months before I wrote the editorial for this one! Such organisation. It was different for our team. The first meeting passed, and perhaps also the second (and third?), and we were themeless and running free. We eventually decided on an approach that could at best be called a "'grounded" approach but that was basically this: *let's start reporting on what's going on in the Law School, let's start writing about what's happening, and then we'll see what themes come out of that*. As the writing got going and the pieces started coming, we met again, studied the pieces together, and thought them through with each other. And there the theme was, right before us: debate. It was so obvious! *LSE Law School as a place of debate*.

It is, of course, at the heart of what we do: at the heart of our teaching, at the heart of our research, at the heart of how we are with each other, at the heart of the contribution that we make as a law school together. We debate what is going on and we debate what is not going on. We debate what could be going on, what should be going on, what would be going on but for x, y, z. We debate the bigger things and we debate the smaller things. We debate ideas, meanings, events, happenings, structures, circumstances, climates, conditions… And the causes of things! Of course, the causes of things. I could go on. I am not personally sure that we have done any of this more this past year than in any other year, for debate has long been fundamental to the ethos of LSE Law School – as you, readers of *Ratio*, will know very well. But it certainly feels as if it has been more acutely present this past year than in years gone by, certainly feels as if it has been tested more sharply; and that is in part to do with the wider context of debate about debate, of debate about what we are doing when we are debating, of debate about what it means to debate. Our Dean Professor David Kershaw and our President and Vice Chancellor Professor Larry Kramer speak to these questions in the two pieces that follow, addressing as they do the fundamental roles of a university in general and a law school specifically in our current times, as well as LSE Law School's unique capacity to convene conversations and our commitment to doing just that.

It was the practical manifestation of that commitment that shone through to us, this year's editorial team, as we gathered around a table in a meeting room on the eighth floor of the CKK building on a (figuratively) sunny day last winter and saw the theme of debate emerge within and across our earliest 2024 issue pieces. What came of that meeting was a focus that we captured and pursued relentlessly until we had finished making the issue that you now have before you. In the pages that follow you will read, therefore, of (some of) the two-hundred-plus events that the Law School ran this past year, including the series of events that we held on the conflict in the Middle East, the conversations that we hosted with two visiting EU Commissioners, and the discussion that we had with the Lady Chief Justice of England and Wales, Baroness Carr. You will read too of the place of debate in relation to our research, whether that is in the sense of the process of our research – involving, for instance, the Research Hubs, which bring together colleagues working in similar

areas, and the Working Paper Series, which fosters debate between our authors and readers – or in the sense of the place and role of LSE Law research in contributing to debates, challenging the terms of debates, or rethinking fields entirely. There is then, and relatedly, the debating that goes on in our classrooms and lecture theatres, where so much of the focus is on students learning from each other and with each other – a focus that was taken further this year with the new moot court course for first-year LLB students (introduced in the context of a more far-ranging reform of the LLB programme) and a new lecture series on *Freedom and the Law in Britain* that Professor Conor Gearty opened up beyond the Law School to all members of the LSE community. There is finally the debating that goes on more generally, in the corridors, kitchens, and common rooms; and in the environment section of this issue we hear from Professor Nicola Lacey, who generously donated two paintings by Oliver Soskice to the Law School this year and who reflects, in these pages, on how art offers us space and time to think, offers us an opening *through which* to think. Taken together all these forms of debate, all these spaces of debate, are fundamental to the everyday going on of the life of our law school – fundamental, in that sense, to our way of being a law school. And it's that way of being a law school that *Ratio* is all about.

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As summer broke into autumn, and the new academic year began to be, this issue of *Ratio* went off on its way to the Design Unit. As we were preparing the pages for their departure, Alexandra Klegg, our Production Editor, asked me about the length of the community section. "It's so long", she said; "so long compared with the other sections". What did I want to do? she asked; did I want to restructure it, or take anything out? Absolutely not, said my heart; *I think we can keep it as it is*, I replied, thinking that it was unclear to me that the pieces that we had so carefully assigned to the community category would have better lives elsewhere in the issue. Only when the proofs came in did I understand more fully my initial response, seeing in the tens and tens of tiny pages that the size of the community section, and my refusal to let any of it go, reflected how I saw our law school, how I *see* our law school – community as totally and utterly at the heart of our life here and so community as totally and utterly at the heart of the issue. If I have one hope for this issue it is that what we have done here reflects that community, shares with you the contribution *made* by the LSE Law community. It is such a wonderful place to work, study, and live.

I would like to especially thank my fellow editors, Dr Eduardo Baistrocchi, Dr Szymon Osmola, Dr Mona Paulsen, and Dr Andrew Scott for their brilliant work and enthusiasm, Guy Jordan for the fabulous photography, Bryan Darragh and Jonathan Ing at the Design Unit for all their work in putting this issue together, and our Production Editor Alexandra Klegg for her unbounded dedication and talent. I cannot tell you how hard Alexandra has worked on this issue; that it is here at all is entirely down to her, her commitment to *Ratio*, the creativity of her vision, and her patience with me as the issue grew and grew into the one you have before you. There are different versions of the story of how it ended up growing in this way, and if you have the privilege of being at the launch event on 12 November you might even hear some of them. But the key point really is that eventually Alexandra said stop, thereby saving the editorial team, the remains of the production budget, and of course you the reader from an even weightier tome. So we all have much to thank Alexandra for. But how wonderful too that we could have gone on, and that what we have here is merely a glimpse into what went on in our law school this past year.

There are two final thanks. The first thanks are to our Dean, Professor David Kershaw, whose energy, enthusiasm, and dedication to LSE Law School is an inspiration to us all. The decision to put him on the cover was one that was taken unanimously by the editorial team in recognition of the immense contribution that David has made to the life of LSE Law School in the years of his deanship and in the years before then too. You will see in this issue some aspects of his most recent contributions, spanning the wonderful History on the Walls project, the complete reform of the LLB programme, the depth and breadth of the ever-growing events programme, the creation and introduction of a new MSc in Law and Finance, and the introduction and ongoing support of the LSE Law Research Hubs. But there is also so much more that runs more quietly throughout these pages, including above all David's commitment to and care of his colleagues and students. We are all so very lucky. Thank you, David.

The final thanks are to the LSE Law community – the strength and warmth of which would have emanated from these pages even if I hadn't first subconsciously and then later consciously given its special section so much space in this issue. To those of you who wrote articles for this issue, contributed ideas, participated in conversations, organised events, taught, learned, discussed, wrote, read, ran our law school, ran our building… To everyone, that is, who makes up the wonderful LSE Law community, thank you. And to those of you who are now joining in by reading this issue, thank you to you too. I gather that if you read just over half a page every day for a year that will keep you going until the next (already-themed!) issue.

Dr Sarah Trotter

History on our walls and the conversations of our time

By Professor David Kershaw, Dean of LSE Law School

EDITORIAL

Our intellectual history is at last on LSE Law School's walls. For over 100 years, LSE legal scholars have created legal fields, provided the legal language through which we talk about legal problems, and written the articles and textbooks used in law schools throughout the UK and beyond. Oppenheim wrote the first volume of his discipline-forming treatise on *International Law* at LSE in 1898. Jim Gower's *Principles of Modern Company* Law remains the leading company law text, now edited by other LSE giants of company law, Paul Davies and Sarah Worthington. Stanley de Smith's text on judicial review became synonymous with "judicial review". I could go on – for a long time!

With our *History On The Walls* project we remember the exceptional achievements of these scholars as well as some of our alumni. And in a few instances, I confess, we have borrowed colleagues from other disciplines whose impact on legal scholarship and teaching has been as profound as that of our former Law School colleagues. Colleagues and alumni who walk our floors (and you are all very welcome to), alongside Oppenheim, Lauterpacht, Cornish, Chinkin, Griffiths, and Harlow, will see superb pictures of Hayek, Laski, Strange, and Ambedkar.

For me, this project is not just about remembering these colleagues because of their scholarly achievements but also about celebrating them as the people who formed LSE's remarkable and distinctive community of students, scholars, and teachers committed to the study of social science. And, if I am honest, my pride in this project is connected to the deep impact that many of these scholars have had on me personally. I learned my corporate law from reading Jim Gower's classic text, dissecting Lord Wedderburn's articles, and teaching together with Paul Davies. Having them on our walls is for this reason alone very special for me. However, it is not at these company law photos and biographies that I typically pause when I am walking the floors. I pause at Glanville Williams' slightly blurry picture because hidden deep in my legal subconscious he represents what it means to study law. *Learning the Law* left its scars on me a long time ago. I pause at two adjacent pictures of our exceptional former PhD students – Professor Kate O'Regan, founder member of the South African Constitutional Court, and Dame Linda Dobbs, first woman of colour to become a High Court Judge and after whom we have named our LLB first-year moot competition. And I pause at Otto Kahn-Freund who surely qualifies as one of the legal world's true intellectual heroes. Professor Kahn-Freund was a Jewish émigré to London and LSE who escaped from Germany and the Nazis, where his judgments in the Berlin Labour Court, which tried to resist the march of fascism, led to his dismissal. More personally, his work on understanding the nature of the British state in his labour law scholarship has had a deep impact on my own work on self-regulation and the genesis of the Takeover Code and Panel. These days, however, I pause at his picture because of a recent walk around our *History On The Walls* project with Lord Grabiner KC, who joined our LLB programme in 1963. Professor Kahn-Freund, it turns out, was Lord Grabiner's personal tutor. In those days, Tony, not then Lord, Grabiner, was a young lad from a working-class background; a young lad who knew little about the study of law but whose potential Kahn-Freund saw quickly, supporting him at LSE and then into his exceptional career as a barrister after he graduated. Lord Grabiner, who later taught at LSE, is also on our walls. But what I remember above all from this tour – that Tony really gave me – was the decency, kindness, and concern that Professor Kahn-Freund showed him, not just in the first interview but throughout his career. Otto Kahn-Freund represented LSE at its best.

Another figure on our walls who has a strong gravitational pull for me when I walk our floors is Friedrich von Hayek. He was not a member of our faculty, but he was a colleague whose work populates our constitutional law and theory reading lists and is referred to on many others. I often pause at the wonderful photograph of him for two reasons, only partially related to the immense impact he has had on the fields of economics, political philosophy, and law. The first reason is a personal one, the second is an institutional one.

I first encountered Hayek as an over-confident SJD student at Harvard with my thesis in train purporting to critique the always protean idea of neo-liberalism and connected claims about the efficiency of market institutions. I generously deigned to read him and picked up the *Road to Serfdom*. A couple of days of careful reading later my confidence was much diminished; his demolition of the theory and practice of a planned economy was unanswerable. He demolished not only several of my ideas and my over-confidence, but also my faux certainty and the partial closure of my mind to writers who I needed to read but who I too readily dismissed, even when I had no idea what I was dismissing. From there I did not just read Rawls but also Nozick, preferring Nozick not for the political implications of his work but for the sheer brilliance of his writing and his honest commitment to argument. Hayek literally opened my academic mind. I feel grateful for that every time I walk past his picture on the way to my office.

There is a second reason for pausing next to Hayek's picture, which is connected to another picture adjacent to him, that of another LSE intellectual great, Harold Laski – Laski the brilliant political scientist; Laski whose commitment to Indian independence led Nehru to observe that "lovers of freedom all over the world pay tribute to the magnificent work that he did" and who, according to legend, left a chair empty for him in the Indian Cabinet of the 1950s; and Laski the Labour Party activist. Again, we have borrowed him from elsewhere in LSE, but we are LSE where disciplinary boundaries are not as rigid and

demarcated as elsewhere, and Professor Laski, who joined us from Harvard Law School, has found his way onto LSE Law reading lists for many generations. And his place next to Hayek on our walls provides a reminder for us all about what LSE represents today – a reminder of one of our foundational values, namely the openness to argument and debate from all sides of all political spectrums in our institutional pursuit of *rerum cognoscere causas* – to know the causes of things – for the betterment of society.

One of the stories our former President Minouche Shafik used to tell our graduands was about how Hayek and Laski did not get on. They really did not get on! But dislike never got in the way of conversation, and distaste for the other's viewpoint never stopped either of them from trying to explain to the other why they were wrong. Their relationship provides a story not just of tolerance and the willingness to engage with those whose views you do not share, but surely also a story of how disagreement and the desire to prove the other wrong influenced their scholarly choices and their seminal publications. In some way their brilliant work must be the product of these engagements – an imperceptible joint product. Whether they disagreed agreeably who knows; I hope they did but suspect that was often not the case. And doubtless at times they did not always take each other's arguments and ideas as seriously as they should have done. But positioned alongside each other on the LSE Law School's walls this is what they represent to me in my imagination of their relationship – scholars in open disagreement who are always open to being disagreed with; scholars who are always open to listening to positions and commitments that they oppose and committed to explaining why those positions are wrong; scholars who, inevitably, form and nuance their own position in the process of explaining why the other one is wrong – and who sometimes discover that they themselves are wrong. Transformational insights are born of such debates and disagreements. That was LSE then and it is LSE and LSE Law School today.

This is LSE's scholarly and pedagogical ideal, although it is of course not always easy to live up to it. In difficult times the commitment to open debate and conversation can be placed under strain, both within the university and outside it. It is an ideal that cannot be taken for granted and we must always be sure to nurture it. This year in our Law School, as in many others, this ideal has been placed under strain because of the terrible events and suffering of October 7 and the terrible and ongoing conflict and suffering in Gaza. During this time, we have remained attentive to our commitment to open debate and conversation, and we have, moreover, lived up to it. Throughout the academic year we hosted events from all sides and positions of this dreadful conflict, many of which you can listen to or watch if you go to our Law School events page. Some of these events generated

upset and discord in our community because of the speakers we hosted. Any Dean who presides over such upset and discord inevitably feels a sense of sadness and responsibility for that upset and discord. But, as I have tried to explain to our wonderful students in my letters and in many in-person conversations, universities cannot take sides but must neutrally convene all sides and positions on the issues of our times and enable open, civil, if sometimes robust, debate and conversation about them. This is central to the role of the university in a democracy, to knowing the causes of things, and to the education of our students.

This year LSE Law School has hosted over 200 different events on a multitude of contemporary issues where that open debate and conversation has taken place. Many of these events are celebrated in this brilliant issue of *Ratio*. There are few law schools in the world that can truly be said to convene conversations about the issues of our time. LSE Law School is one of those schools and there are few achievements in my lifetime that I am prouder of than being the Dean of this exceptional Law School and being able to lead my brilliant colleagues and students.

A conversation with our President and Vice Chancellor, Professor Larry Kramer

In the spring of 2024, we welcomed our new President and Vice Chancellor, Professor Larry Kramer. Professor Kramer is a renowned constitutional lawyer and historian with a long and distinguished history of research and teaching at the University of Chicago, the University of Michigan, New York University, and Stanford University. He was Dean of Stanford Law School from 2004-2012 and subsequently President of the William and Flora Hewlett Foundation from 2012-2024. We are delighted that, in addition to becoming LSE's eighteenth leader, Professor Kramer has also joined the Law School. In February 2024, and a few weeks before Professor Kramer began his new role, Dr Sarah Trotter met him to discuss his journey to LSE and his hopes for its future.

Sarah Trotter (ST): Larry Kramer, you've held a really interesting range of positions, and I wondered whether I could start by asking you about your journey through these positions to LSE. Could you tell us a bit about how you've come to be here?

Larry Kramer (LK): I think like everything else in my life, by a series of accidents and good luck. The last thing I wanted to be when I graduated college was a lawyer. But my mother was very concerned that if I didn't get right on a professional path I would end up in prison, and so she pestered me into going to law school, which I agreed to do, planning to go for about six to eight weeks and then drop out. I got into the University of Chicago, which also gave me a scholarship, so I went there and then discovered that I completely loved it. I was totally taken by law, did well, and wanted to stay in it. So I went into teaching. I started teaching at Chicago and then a series of personal decisions took me from one place to another. When the opportunity to become a dean arose, I moved to Stanford for that job. I still loved doing scholarship, but I was ready for something new. I thought the job of a dean is essentially helping use the resources of the school to enhance other people's work – students, faculty, staff, alumni. And I loved that. That was a fantastic career. Deans in the US have half-lives of about a decade. After about ten years, even if the faculty loves you, they are ready for a change. So around my eighth year I started thinking about what I might want to do next. I had learned about the Hewlett Foundation from Paul Brest, who was then the President and one of my predecessors at Stanford; and so when that position opened I put in for it thinking it was going to be very much the same as being a law school dean: you have resources and your job is to make them available to other people, to enhance their work. And that was a part of it, but philanthropy turned out to be much more complicated and a real trade in its own right. I did that for about twelve years, at which point I started to think about something new again. I think that after ten to fifteen years an organisation should have new leadership, no matter who you are or what you're doing. I was planning to go back to either Stanford or NYU [New York University] and rejoin the faculty, which would have been great. I missed the academy a lot. I missed the seriousness with which people take ideas. I missed teaching and students. I really wanted to be back in that environment. Then the call from LSE came out of the blue, and I thought well there's an opportunity! To work in an institution like this! It was just too good to pass up. There's so much that we can do here. It's a really exciting opportunity.

ST: What specifically about LSE interested you? You've spoken about the opportunity that it presented, and the potential that you feel here, but what about the institution itself interested you?

LK: It's the core things about LSE. So number one is the focus on social sciences. My academic scholarship had always been at the intersection of law, history, and political science. And I think social sciences are so important, and at this point weirdly underappreciated in society.

Second – one of the things I picked up at Hewlett – is you really have to think about how to tackle the major problems in the world today. How do we preserve the future of liberal democracy at a point when it's really challenged? How do we rethink the problem of political economy at a time when the way we have been thinking about the relationship of markets and government to society is no longer working for people? Then, how do we solve those first two problems within the constraints of climate change, biodiversity, problems of pandemics, and health? How do we do all of that while addressing social, political, and economic inequalities that exist everywhere in the world that have been allowed to fester for a long time? And how do we do *that* while getting the benefits of and avoiding the downsides of new technologies? Take that package of issues. They are all social science problems. We're not going to invent our way out of them with new technologies. We've got most of the technologies we need to address climate change, but we haven't figured out how to get them deployed. So we're talking about the problems that are exactly what this university is all about.

Then there's the location in London, which is essentially the global capital of the world. The university itself takes great advantage of that. Even I was surprised to learn that two-thirds of the faculty are from outside the UK. LSE is a genuinely global institution, situated exactly in the right place at the right time to work on these problems. And then of course it has a long history and an amazing faculty, and it attracts students of the calibre we need. All that being so, who wouldn't want to come and work at a place like this?!

ST: Absolutely. Going back to the question of the role of the social sciences – because in there you've also spoken about the need for interdisciplinarity in resolving or addressing these global problems – is there anything that is particularly challenging about interdisciplinary work in your view?

LK: The thing that can make interdisciplinary work challenging is the organisation of our universities, which have deeply grounded cultures, practices, and financial arrangements set up around disciplines. Over the course of my career, I've found that faculty love to work with people in other disciplines and love to learn from and about other disciplines, so we need to create conditions to enable that. We have to do it in ways that still respect the disciplines, because that is how people are educated and their discipline provides their terra firma for exploring and teaching. The idea is to create the space for people who want to work across disciplines to do so, and to make that as easy and seamless as possible. And then let people go where they want to go. My brother-in-law owns part of a talent agency, and he once said to me when I was Dean at Stanford Law School, "you know, your job is the same as mine". And I realised that's basically true: the faculty and the students are "the talent" and what you do, whether it's an agency or a university, is to create the conditions for them to do their best work.

ST: What about at the level of your own scholarship? I was reading your article about law and history ['When lawyers do history' (2003) *George Washington Law Review* 72(1-2), 387-423], and one of the interesting points that came across there was the challenge of bringing the disciplines together as an individual scholar. So you've got the School-wide question of how we bring people across different departments and disciplines together, but then also as a scholar working on these issues yourself, how do you do that?

LK: I wrote that paper in frustration, mostly because in law at that point in time originalism was taking root, and you had a whole bunch of people who thought they could do history without actually bothering to learn how to do it properly. In part, this was a product of newly available materials. As recently as the 1980s, if you wanted to do historical research you had to go into archives all over the country, you needed funding, you needed to take the time to go do that, you needed to slog through handwritten letters and diaries from the eighteenth century, and so on. It was really hard work. Then, in a relatively short period of time, historians collected the papers and put them into published volumes. For the first time, anybody could read the complete history of the ratification of the Constitution, or the full letters of name-your-person, and suddenly everybody thought they could be a historian. So you had people with no training, who were not doing the work. They'd read a bunch of letters written in the eighteenth century, and they were drawing all sorts of conclusions that if you knew something about the culture and history were just wrong. And so that's where that paper came from. Doing interdisciplinary work is really a question of the extent to which the institutions and the fields hold people to standards developed for good reasons within each discipline. If you want to do it, it's not hard, but you have to take the time. I wasn't trained in history or political science. The beauty of tenure was once I had it, I could actually take the time. I took time out from producing article after article after article to read and learn and sit in on seminars. I did a kind of PhD on my own in history, working with colleagues in the field to guide me; I taught and worked with a lot of people. So it's a question of whether you want to work across disciplines and what kind of standards you want to hold yourself to in doing it.

ST: How, if at all, did that move into history change the way you think, the way you work, and your writing in relation to law?

LK: Well, history is a particular discipline, as is political science, and both of those reshaped my thinking in ways of making me aware of lots of things that I had taken for granted. When I was just doing law from within law, I would take the society as I experienced it as a given, and then anything I read was read through that lens. History and political science sensitised me to the need to understand context and the relationship between law and society, which had been simplified by lawyers (as if law stood outside society) and by some of the law and society people (as if law was nothing but a kind of cultural reflection of social forces). Getting a sense of the way in which they contributed to each other and had independent meaning and force was what I got out of that. And it made it much more fun, because suddenly there were so many different ways you could think about things, so many different sources you'd want to look at, and so many different insights that would pop into mind that I hadn't thought about before.

ST: That must have then really shaped your view of the need for interdisciplinarity within an institutional context.

LK: I believe that. I think increasingly most scholars do. It comes from an appreciation that the problems that motivate our work can't be solved or even addressed very sensibly completely from within one discipline. That doesn't mean there are not lots and lots of important things to be said and done from within a single discipline, but ultimately any of our problems is either going to be addressed by people doing multidisciplinary work or by people from multiple disciplines doing the work that's necessary and still figuring out how to put it together synthetically.

ST: What about law in that context? What's the role of law in relation to these problems?

LK: My wife and I used to have this argument – she was an artist – and the question was which came first, art or law. Because they're really both fundamental. I actually still think it's law, if you think of law as a set of rules by which we're going to order our conduct so that we can exist together socially. I think law's an amazing thing. Even the doctrinal stuff. In my world, back in the US, there was a period of time when people – "real" scholars – looked down on that sort of work, whereas I never felt that way. It's such an interesting, challenging thing to do well, and it involves the same kind of creativity. That was the other argument my wife and I had, over the nature of creativity. I argued that what we do as lawyers is the same process, creatively, as hers in making a painting or sculpture; it's discovering something that you hadn't really understood was there before. The importance of law from that perspective is clear. And then the interesting challenges come from thinking about how to sensibly integrate it with all the other things that are happening in society and in the world. You can't solve problems by just passing laws. On the other hand, you often can't solve them without passing laws. Figuring out where and how regulation will intersect with all the other things that are happening is the challenge, as is understanding how new laws will affect what you're trying to do, especially in unintended ways. I will be honest, coming to the UK and seeing the intense amount of legal regulation around what universities do, and comparing that to my experience in the US, has been really eye-opening. It's a classic example where, sometimes for better and sometimes for worse, a set of regulations that were all well-meaning and meant to solve a problem through the device of law does harm as much or maybe even more than good.

ST: I think it would be interesting to hear a little bit more about your view of the function of the university more generally. And regulation – are you saying that there's too much regulation? Or…?

LK: As for regulation, it depends. It's new to me, because in the US universities are effectively unregulated. Here they're heavily regulated across the board. The biggest issue, if you ask me, is how UK regulation seems almost designed to starve the university of resources. It's very difficult for UK universities to realise their full excellence because everyone is pretty much forced to operate on a shoestring budget. I think that comes from lack of appreciation by government and in politics for how important and beneficial we can be. Some of the regulation is designed to ensure a certain amount of evenness across universities, which I think can be good, or bad – it depends. Some of it is designed to solve problems, and as with all regulation, it's the cost-benefit that goes with rules versus standards. If you have rules you get some benefits from having a rule and some disadvantages because there's no flexibility. I wouldn't across the board condemn the current regulatory regime or across the board praise it. I think it needs to be looked at. As I say, it's new to me and it's interesting to think about. It's a classic set of regulatory issues.

In terms of the role of the university, universities have several roles. The first, obviously, is our role as educators, which itself has two dimensions. In recent decades I think we have tended to over-emphasise one of these, namely, the role of the university in career preparation. But there are other dimensions of education that are equally important, such as training people for citizenship and how to understand their civic responsibilities, as well as how to think critically and how to grapple with disagreement and different views on issues. That's a whole set of training – leadership training – and it's a critical thing that we do in universities.

Alongside that, of course, is our role as researchers, as society's chief source of new ideas and inventions and ways of doing things. Think back over the last one hundred, two hundred years: where have most of the important ideas, inventions, and creations that have made society better come from? Overwhelmingly it's from universities. Without these institutions, and the resources that they have – that's why it's so important to have them well-resourced – you would not get the kinds of things that we have gotten. Not just inventions, either. But ideas from the social sciences about how to make society work better, and from the arts and humanities about how to make life richer and more fulfilling.

The last role, which seems obvious to me but seems to be getting lost in a lot of places, is that universities are economic engines. I was twenty years in the Bay Area. And most of the big companies that fuelled Silicon Valley and the Bay Area more broadly were generated out of Stanford and Berkeley. Universities are huge enhancements for the economy of the nation.

ST: Why do you think we've lost sight of these things as a society?

LK: Here I can only speak for the US, where I was while this happened. Much of the change was driven by larger cultural and political events that both generated a critique and made universities less willing to defend themselves and their value proposition. There's been a conservative attack on universities brewing and growing for a very long time, building without being answered. And so it took off, as critiques will when they're not answered. And that happened alongside a rise in costs, which is not unique to universities, but has certainly happened in them.

ST: And the reluctance of universities to defend their own value in that sense? What's behind that?

LK: Some of it was a product of Vietnam, in the US at least. Universities got hammered by students and others, and not inappropriately, for things they were doing to directly support the war. But the answer was to just back away from speaking publicly about anything, even education. Then there is a downside to the reliance on philanthropy. Universities no longer get much public or government support but need resources, so they turn to private philanthropy, which means you are now being supported by private individuals who have views across the political spectrum. And so again it's difficult to take a position, and the easiest thing is to not do so on anything – even your own value and purpose. And then there is the absence of public intellectuals – well-respected public figures who are part of higher education. If you go back to the 50s and 60s, public intellectuals coming out of universities were pretty common and were respected and well-listened to. And it's hard today to think of who they are.

ST: And hard also, I suppose, to think about the conditions in which they would come out?

LK: Yes; and by the way, the whole role of public intellectual has changed, since everything now is immediately sucked into the maw of hyper-partisan polarisation on one side or the other. So the notion of somebody who is just an intellectual figure asking us and forcing us to think sensibly without a partisan or ideological agenda has become really difficult to maintain.

ST: I also get the sense from what you've said about universities and the responsibilities of being in a university and the citizenship involved that your thought is that the role of the intellectual is by definition public and that there are certain responsibilities that come with that.

LK: Well education is a public good. I've always thought we have to think about it that way. The student bodies we construct need to be diverse because that's the right thing to do given that we're producing a public good. Our school demographics should reflect in some sense the public that we're educating people for. I think that is an overarching part of the role of the institution. We have a unique role, which is to be a place where people can come and learn and challenge and be challenged and think differently and be forced to think differently. To make that possible, the institution should not be taking positions on public issues. But its faculty and its students should – that's what they're there for. Of course, they need to do that while still keeping themselves open to being challenged and questioned. I believe that if you come to a university and you're never confronting ideas that you find offensive, then the university is failing. You should be encountering ideas that really rock you, and that you then have to think through and learn to deal with. That's what we do as an institution. And we would undermine our ability to do that if we were taking sides on the issues

ST: So we're encouraging students to think through but also to think about what it means to think through.

LK: The one exception of course is the role of the university itself. There the university can and really must take a position. Yet that's what we haven't publicly defended. And so the role and reputation and value of universities have been gradually undermined. So the one place where I think the university does need to speak out and defend and protect and project its values is when it comes to the role and importance of the institutions themselves.

ST: That reflection on the function of the university brings me to my final question, really: what are your hopes and ambitions for LSE?

LK: Every generation thinks it's living through the most important moment in time, with the most change happening and the most at risk. But even with that grain of salt, I think we today really are in one of those moments. I mean we could lose democracy. People need to take that in. And we're not talking about it getting a little less good. We could actually lose it as a system of government. It didn't always exist, and it doesn't always have to exist. It's really fragile. Even more broadly, our governments and economies are not delivering for people what they need and want. And then there is climate change and the overwhelming economic and political pressures it is bringing to bear on our systems. These are all problems we work on here, and I think the ideas and research that will be essential to solving them will come out of institutions like this. I can't think of a university in the world that is positioned in a more important and better place to do that.

ST: Wonderful. Thank you so much. It's been great talking with you this morning.

LK: Thank you.

The full conversation is available as a Ratio podcast on Spotify (**lse.ac.uk/ratio-podcast-spotify**) *and Apple Podcasts* (**lse.ac.uk/ratio-podcast-apple**).

EDITORIAL

Finding words: our law school's series of events on the conflict in the Middle East

By Dr Sarah Trotter

This was, *this is*, the last piece to be written, *the last piece to have been written*, for this issue of *Ratio*. It was, *it is*, hard to find the words. Hard to find the words in the context of the horror and destruction and devastation. Hard to find the words in the context of the unimaginable grief. Hard to find the words in the context of the profound distress among members of our community, many of whom have been, *and are being*, very personally and directly affected by what is going on. Hard to find the words in the context of the not knowing of what comes next. Hard to find the words when words enough don't seem to exist.

But sometimes it being hard to find the words is not good enough. Sometimes we have a responsibility to find them. And as General Editor of this issue of *Ratio* and with a responsibility to reflect what went on in our law school over the course of the 2023/24 academic year, I also feel that I have a responsibility to acknowledge the ways in which my colleagues and our students sought and found the words this past year. And a responsibility, too, to acknowledge the ways in which we didn't all always agree about the ways in which words were sought, and didn't all always agree about the words that were found. So that is what this piece is – an acknowledgement of the ways in which words were sought and found, and more than that an acknowledgement of the fact that words *were* sought and found. And you will notice that in that last sentence I moved from "the words" to "words", and that is because there is no one set of words that I am talking about here, only words.

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I could describe the events that took place – the series of events, I mean, that we, as a law school, hosted on the conflict during the 2023/24 academic year. I could tell you – and look, I am telling you – that the first event (co-hosted with LSE Human Rights), "Except Palestine: law, humanity, and politics", took place on 7 November 2023 with Dr Bashir Abu-Manneh, Dr Mahvish Ahmad, Professor Conor Gearty, Professor Neve Gordon, Professor Dina Matar, Dr Chana Morgenstern, Professor Gerry Simpson, and Dr Mai Taha speaking and Dr Ayça Çubukçu chairing; that on 19 January 2024 a conversation was then held between our Dean Professor David Kershaw and the then Prime Minister of Jordan, Dr Bisher Khasawneh; that on 30 January 2024 our international law colleagues Dr Oliver Hailes, Dr Devika Hovell, and Professor Gerry Simpson gave a seminar for us all on "Provisional justice? The ICJ Order in the *South Africa v Israel* genocide case"; that on 4 March 2024 Professor Benny Morris spoke on "Rethinking 1948 and the Israeli Palestinian conflict"; that on 7 March 2024 Professor Shani Orgad spoke about "Ambivalence in (un)certain times"; that on 19 March 2024 a conversation about the conflict in the Middle East and democracy in Israel was held between our Dean Professor David Kershaw and Dr Michal Agmon-Gonnen, presiding Judge in the Israeli Federal District Court and LSE Visiting Professor in Practice; and that on 16 May 2024 an event was held on "Academic freedom after the destruction of Gaza's universities" with Ms Reem Al-Botmeh speaking, Ms Safaa Sadi Jaber, Dr Nimer Sultany, and Dr Rafeef Ziadah discussing, and Professor Conor Gearty chairing. I could tell you about the forms that each of these events took, about what was said by each speaker and in discussion, about the feeling in the room and outside of the room, and about the context in which each of these events took place both locally at the LSE level and globally too. But you don't need me to do that. And how could I, anyway? Each of the events within the series, and the series itself, will have meant different things to each of us, and will mean different things for each of us. What went on will have been different for each of us, and will still be being different for each of us. How could it not be?

What I will say, instead, is two things; and these two things are things that I will say by way of reflection on our series of events.

The first is the extent to which language, and the role of language, was a theme throughout. Of course it was.

But it is nevertheless notable. It was there right from the start, right from the very first event that we held ("Except Palestine: law, humanity, and politics"), which was focused especially on this – on the use of language, on the construction of Palestine as an exception, on the political, legal, psychic, historical, discursive dynamics of this construction. That event was one that grappled, too, with questions of voice – of what it means to use language, of who can use language, of the conditions in which language is possible, of who is able to speak, of who is left able to speak. These questions were returned to in later events too, including in Professor Shani Orgad's talk about being with ambivalence – and about ambivalence as a way of being – and in the event co-organised by Dr Luke McDonagh and Dr Mazen Masri on "Academic freedom after the destruction of Gaza's universities", which raised questions of the meaning of academic freedom, of the meaning of being a student or academic, and of the meaning, too, of speaking of freedom.

Law, as our international law colleagues reminded us throughout the series, is another form of language, is language in another mode; and the series itself pushed those who engaged with its events to think about the role of law, the use of law, and the effects of law. The seminar on "Provisional justice? The ICJ Order in the *South Africa v Israel* genocide case" and the conversation that took place with Judge Dr Michal Agmon-Gonnen (presiding Judge in the Israeli Federal District Court and LSE Visiting Professor in Practice) emphasised these questions in particular, along with matters of institutional structure and the role of courts, both domestic and international. But they also opened a space for thinking about what is being believed in when law is being believed in, of what is being believed in when language is being believed in – of what is being believed in when we know what law can do, when we know what language can do.

The wider space for thinking here, of which the space opened up in relation to the questions of belief in language and law was but one manifestation, is the second place that I would like to pause over here; and I would like to pause, in particular, on the way in which it was a space that was underpinned by the orientation of this series of events towards conversation. Most of the events, in fact *all of the events*, took the form of conversations – conversations that were sometimes preceded by talks and reflections, but that always had an eye to the conversation that would follow. Even the most controversial event, the talk by Professor Benny Morris – which was accompanied by protest both inside and outside of the room, before, during, and after the event – centred in that way on the creation of a space in which members of the audience could ask him about his views, could challenge him on his views. There were then the events that were focused specifically on conversation, namely the event that took place with the then Prime Minister of Jordan, Dr Bisher Khasawneh, and that which was held with Judge Dr Michal Agmon-Gonnen.

In the panel events, the focus on conversation continued. And so, in the event that Professor Conor Gearty chaired, for instance, on "Academic freedom after the destruction of Gaza's universities", he invited those present in the room – including the students who were joining on a screen from the encampment in the same building – to respond to the speakers not necessarily with questions but also with reflections and views and wider points of discussion. *Think about the ways in which hope might be preserved*, he urged, *think about the role of the university and the role of human rights here*; and the conversation that followed was one that was then carried out of the lecture room and down the stairs into the encampment, where the students who had been attending online greeted and talked to the evening's panellists.

Conversation, then; that was what was emphasised throughout. Conversation in and out of the room, conversation that moved out of the room, conversation that had the capacity to move beyond the room. *Conversation as a way of being with complexity*, as our Dean Professor David Kershaw put it in the form of a question in discussion at the earliest event – conversation to think through, to work out. Conversation to think towards solutions; conversation to think towards the possibilities of – and pathways of – peace.

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And so I come back to our responsibility to find words. The series of events that we held as a law school reflected a sense of that responsibility: that we don't turn away and say that it is too difficult, but rather convene and talk and try to think through – try to think through what is going on and try to think through to the beyond of what is going on.

I will say, in ending, that as I was turning to write this piece, which was really being written by our law school all year, I had a few conversations of my own. *It's hard to find the words*, I said, *tricky to find the words*, I said. There were different responses. Don't do it. Do it. Let others do it. What qualifies you to do it. Get others to do it. Why are you doing it. You have to do it. Not doing it would be doing it. Doing it won't be enough. There is no way of doing it. And then the last response that came just before the words did, and that led to the words that made up this piece: *that's your first line*. The difficulty as the first line, the sense of impossibility as the first line. I don't think I could find a better way of describing what has gone on in our law school this past year when it has come to the many efforts that have been made to articulate and discuss what it is that has been going on in the world, what it is that *is* going on in the world. The series of events that we held as a law school was one in which we started from the difficulty and impossibility and then tried to find words. We didn't all agree with the ways or words that were found, and we don't all agree with the ways or words that were found. But finding words? It is what we tried to do; it *is* what we try to do.

Events on the conflict in the Middle East

7 November 2023

Except Palestine: law, humanity and politics.

lselaw.events/event/except-palestine-law-humanity-and-politics/

A recording of this event is available on YouTube: **youtube.com/watch?v=SNLXnlbcK_g**

19 January 2024

In conversation with Bisher Khasawneh, Prime Minister of Jordan.

lse.ac.uk/Events/2024/01/202401191800/jordan

This event is available as a podcast – listen here: **lse.ac.uk/lse-player?id=d66a1b2d-3ab2-44df-a744-508c669a28eb**

30 January 2024

Provisional Justice? The ICJ Order in the *South Africa v Israel* genocide case.

lselaw.events/event/provisional-justice-the-icj-order-in-the-south-africa-v-israel-genocide-case/

4 March 2024

Rethinking 1948 and the Israeli Palestinian Conflict.

lselaw.events/event/rethinking-1948-and-the-israeli-palestinian-conflict/

A recording of this event is available on YouTube: **youtube.com/watch?v=Ozc6T9FYJnk**

7 March 2024

Ambivalence in (un)certain times.

lselaw.events/event/ambivalence-in-uncertain-times/

19 March 2024

A conversation on the conflict in the Middle East and democracy in Israel.

lselaw.events/event/fireside-chat-on-war-and-democracy-in-israel-with-judge-dr-michal-agmon-gonnen/

A recording of this event is available on YouTube: **youtube.com/watch?v=Hlr0ls5-CbM**

16 May 2024

Academic freedom after the destruction of Gaza's Universities.

lselaw.events/event/academic-freedom-after-the-destruction-of-gazas-universities/

A recording of this event is available on YouTube: **youtube.com/watch?v=l32ztwq0A_M**

finding words

The New EU Competition Law: a conversation with Professor Pablo Ibáñez Colomo

In *The New EU Competition Law* (2023, Hart Publishing), Professor Pablo Ibáñez Colomo offers the first comprehensive account of the New EU Competition Law: an emerging understanding of the discipline that breaks from the consensus of the early 2000s and that ventures into uncharted territories. Dr Eduardo Baistrocchi spoke to Professor Ibáñez Colomo about his work.

Eduardo Baistrocchi (EB): The book states that there has been a fundamental shift in the role of the EU Commission when enforcing EU competition law over the last 60 years: from law-driven to market-shaping and policy-driven. I think this paradigm shift may imply a fundamental change in the role of the Commission in this area: from an agent to a principal in EU competition law. Can you explain the reasons behind this change?

Pablo Ibáñez Colomo (PIC): The reasons behind the shift of enforcement from being law-driven to policy-driven are due, first and foremost, to the new institutional landscape created by virtue of Regulation 1/2003. Under the old enforcement regime, the Commission was constrained by a very centralised system that required it to follow the behaviour of firms. In addition, the Commission felt that it had a duty to clarify the scope of what was, in the 1960s and 1970s, a new area of the law in Europe. With the adoption of Regulation 1/2003, and with the development of what may be called a "competition culture" in Europe, the Commission felt that it no longer had to use its power to clarify the scope of legal provisions. Because the new regime was decentralised and less bureaucratic, moreover, it could exercise its discretion to attain its policy objectives more effectively.

Research

The shift towards market-shaping enforcement, second, is explained by the features of the markets in which the Commission has intervened. There are some markets, in telecommunications, energy, and rail, but also in the digital arena, where so-called bottlenecks emerge. By bottleneck I mean a segment of the value chain where there may be room for one (or perhaps two) players. Think of the transmission grid in electricity or search (to Google has become a verb!). Whenever there is an economic activity revolving around a bottleneck, competition law enforcement becomes "market-shaping". In other words, competition authorities fulfil a function similar to that of utilities regulators. Thus, they may need to set access tariffs and impose other positive obligations on bottleneck operators dictating other terms and conditions of access. This is not what competition law traditionally did, and takes it somewhat out of its "comfort zone".

EB: Did the EU make an explicit decision to assign this new role to the Commission, following EU principles and procedures?

PIC: In line with what has been pointed out above, the EU, through the Council of the European Union, paved the way for this transformation with the adoption of Regulation 1/2003. Regulation 1/2003 was expressly designed with the aim of giving the Commission much greater freedom to decide how to make use of its limited resources. What is more, it favoured the decentralised enforcement of the law. Competition law is now enforced primarily at the national level. As a result, the Commission is able to devote its resources to the most complex and the most egregious violations of the law.

EB: In the US and Europe, there have been changes in the way competition law is enforced, moving from technocratic to populist approaches. Initially, the main goal of competition law in the US was to protect consumers' interests. What is the primary objective of the new EU competition law?

PIC: This is a really important question, and one that takes us back to the original aims of EU competition law. This policy exists in the EU legal order because it is deemed necessary to create the internal market. In other words, EU competition policy is an instrument to attain a broader political ambition, which is the integration of the economies of the EU Member States. Accordingly, it has never been exclusively about consumer welfare. It is essential to bear this point in mind when trying to make sense of EU competition law.

Second, EU competition law is in flux. There has been a reorientation of the Commission's priorities. Distributional and fairness issues, which until recently were not thought to be a priority for the Commission are now, with the rise of Big Tech, central to enforcement. For instance, a key question in many cases involving Big Tech relates to how much of the value generated by digital giants should go to business users relying on its ecosystem. For instance, should app developers be asked to pay a 30 per cent commission to Apple?

EB: Is the new EU competition law intended to limit the political power of digital giants?

PIC: Not directly. EU competition policy was designed to be, and derives its legitimacy from, the fact that it is a technocratic venture. Some areas of EU competition policy, such as State aid law, also apply to Big Tech (think of the case involving Apple and Ireland). In that area of the law, you see the link with political power more directly. After all, the Commission's theory in those cases is that large multinationals like Apple are able to extract selective advantages from decision-makers. To the extent that it is, one could reasonably argue that the aim of these cases is to curb political power. But State aid will be the subject of the second book of this "The New" trilogy!

EB: What is the role of commitment decisions by the EU Commission in the broader institutional setting of EU competition law? For example, is there any political or judicial control of commitment decisions?

PIC: Commitment decisions emerged as a central instrument in the Commission's toolkit following the adoption of Regulation 1/2003. A commitment decision is, in essence, one that makes some undertakings binding upon the firms. Once these undertakings are made binding, the Commission no longer treats the case as a priority matter. It is an instrument that allows the Commission to settle cases without the need to establish an infringement. Because they are an expression of the authority's ability to decide which cases to investigate, they are subject to limited judicial review. The ability to prioritise is an area where the Commission enjoys genuine discretion.

Commitment decisions have proved central in the rise of policy-driven and market-shaping enforcement. They afford a degree of flexibility that is in the interest of the Commission and of firms. The former can rely on this instrument when advancing new theories or approaches to enforcement. It has been pivotal when advancing a "market-shaping" understanding of the discipline. In the electricity sector, for instance, the Commission managed

to obtain an undertaking from incumbent operators to sell out their transmission activities to preserve competition in adjacent markets (such as the generation of electricity) or to redesign their activities (in Sweden, for instance, the transmission system operator agreed to overhaul the way its grid was operated).

EB: Can the economic theory of bureaucracy explain the Commission's expanding role in EU competition law?

PIC: The Commission's changing role over the years is in a sense predictable. Any authority will typically shift to craft law and institutions in a way that maximises its ability to attain its policy goals. As a result (and this is only natural), it may find itself testing the boundaries of what it can achieve. This is exactly what the book observes and describes.

EB: Is there a correlation between the evolution of EU competition law and geopolitics, such as the increasing tension between the US and China?

PIC: Not exactly. The EU, however, has expanded the range of instrument to tackle these challenges. The EU Foreign Subsidies Regulation is, in a way, a response to such challenges. But that one will have to wait for the second instalment of the saga!

EB: Is there a difference in regulatory patterns in competition law between the US, China, and the EU?

PIC: There is a difference. And the reason this question is so relevant it is because it highlights how much the law and its evolution depend on the institutional framework within which it is applied. I have long observed that the key differences between US antitrust and EU competition law relate, first and foremost, to the institutional differences between both systems. In the US, enforcement is decentralised and depends on private litigation, by and large. What is more, the law is interpreted by federal judges who have grown sceptical of US antitrust law and its role in a market economy. Against this background, it is not a surprise that the law evolves in a different manner. It is the same with China: since the institutional realities of that country are so different, one can expect the law to evolve in an essentially different direction.

RESEARCH

Values and Disorder in Mental Capacity Law: a conversation with Dr Cressida Auckland

In her new book, *Values and Disorder in Mental Capacity Law* (2024, Cambridge University Press), Dr Cressida Auckland examines the role that values play in assessments of capacity under the Mental Capacity Act 2005 – an Act that is, as Dr Auckland shows, ostensibly value-neutral. In spring 2024, and ahead of the publication of the book, Dr Sarah Trotter spoke to Dr Auckland about her work.

Sarah Trotter (ST): Could you tell us a bit about the idea behind the book?

Cressida Auckland (CA): The book examines whether the law which determines whether someone has the mental capacity to take treatment and care decisions for themselves applies adequately to people who suffer from mental disorder. This was an issue which I felt raised both interesting theoretical questions, and complex practical ones, and I wanted to explore both of these in the book. In a liberal democracy committed to the idea that people ought to be free to live their lives according to their own value and belief systems, decisions that appear to be motivated by mental disorder pose real problems. Intuitively, most people feel that there are *certain* beliefs or ways of valuing that people should not be free to act on: we do not think that a person who refuses life-saving surgery because of a delusional belief that the surgeon intends to microchip them should generally be left to die, for example, nor do we simply accept the anorexic young woman's decision to refuse food. But determining when this is the case (that is, when the law should intervene and override a person's decision) is challenging. On a practical level, it may be very difficult to determine whether certain behaviour is disordered or merely eccentric, and there will always be an important element of clinical judgement here. But there is also inevitably a social or cultural component to what we classify as a mental disorder in the first place. Until the 1980s, for example, homosexuality was classified as a mental illness! As a result, the law must chart a very difficult course between on the one hand, not wanting to too readily interfere with people's autonomous, if idiosyncratic, choices by deeming the person to 'lack capacity' to take specific decisions, merely because their motivating values appear unpalatable to others, and on the other, wishing to protect people from the harmful effects of a mental disorder from which they are suffering. The idea behind the book was to explore how the law ought to approach this question and strike this difficult balance.

ST: How does the law currently approach this question?

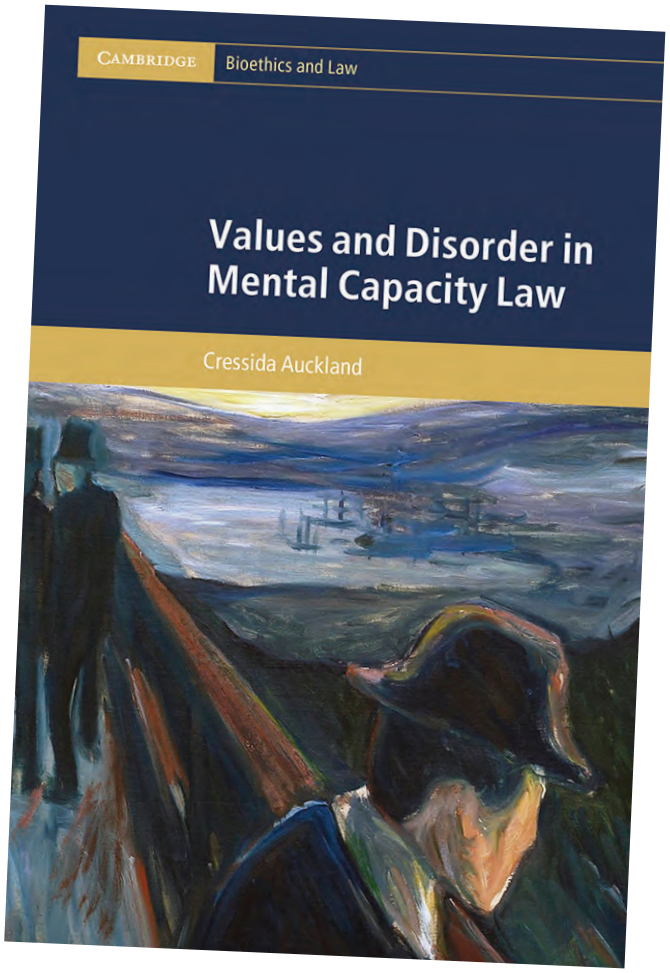
CA: On the face of it, the test which the law uses to determine whether a person has the capacity to take a given decision looks only at whether they have certain cognitive capacities (the capacity to understand information, to retain it, and to weigh it up as part of the process of making the decision). It does not look at the underlying values or beliefs that motivate the decision and their nature or origins. So, the fact that someone's choice is influenced by them not attaching any value to their continued existence, for example, or valuing thinness over everything else, ought not to be relevant. Of course, in practice, when doctors or judges apply this test, they *do* take into account whether they think the weight that the person ascribes to certain outcomes, or the beliefs that underpin their choices, are disordered in origin, as they don't want someone to cause unavoidable harm to themselves.

But they do this by "fudging" the law, usually by deciding that the person is "incapable" of weighing up information because of the effects of their disorder. While this produces more compassionate outcomes, the effect is to undermine the coherency of the law and to obscure the value judgements which inevitably underpin such determinations, so that they cannot be subject to scrutiny.

ST: Given, on your analysis, the inevitability and necessity of taking into account values and beliefs, why do you think the existing test was set up in such a way as to appear neutral to these considerations?

CA: At the time of drafting the Act, there was concern that it might be used as a tool to facilitate paternalistic interferences with people's choices: if a person wished to do something harmful or unwise, you could find them to "lack capacity" and then the law would empower you to override that choice. So, the Law Commission wanted to make clear that the test for capacity should not depend on the content of the person's decision, or on whether the assessor agreed with the values or beliefs that motivate it. This was thought to make the test more objective, and less prone to being applied oppressively or inconsistently, though I am not sure that is how it has turned out!

ST: What do you think should be done about this disjuncture between the appearance of the law (as value-neutral) and the reality of the application of the law (as one in which values and beliefs are taken into account)? Should the law be reformed? And if so, how?



CA: I think that given the reality that the person's values must inevitably be taken into account, the law should be reformed so that it is more transparent about the role that the person's values or beliefs are playing in the assessment of their capacity. This would allow for greater scrutiny of the decisions, and so would, I hope, do more to guard against unwarranted paternalism. There are various ways in which this might be achieved, but I think the best would be to introduce a new limb of the test for capacity which asks explicitly whether the person is unable to make a decision because the values or beliefs by which they are evaluating relevant information have been caused by or altered as a consequence of them suffering from a disorder, illness, or impairment. My hope is that being clearer about the basis on which a person is found to lack capacity will also make it easier to then make the best decisions on their behalf if necessary.

ST: What kind of challenges, if any, do you think this would present in practice? And how would you suggest overcoming these?

CA: In practice, unpicking how, if at all, mental illness is affecting a person's values and beliefs is likely to be extremely challenging. One reason for this is that it might be hard to establish what exactly the beliefs or values being applied to the information actually are. The change proposed here would require capacity assessors to interrogate the person's values, but within our current healthcare system, where there is often a paucity of time to engage with individual patients at length, this may present significant challenges in practice. Even where doctors do understand the values and beliefs which are motivating a decision, however, it will still sometimes be difficult to unpick how, if at all, mental illness is affecting those values or beliefs. The boundary between disordered values and unusual or eccentric ones can be a very fine one, and there can be a complex cultural and religious dimension to this question. This makes attempts to untangle the impact of disorder on decision-making far from straightforward. There is, unfortunately, no easy solution to this. But the fact that some cases will pose

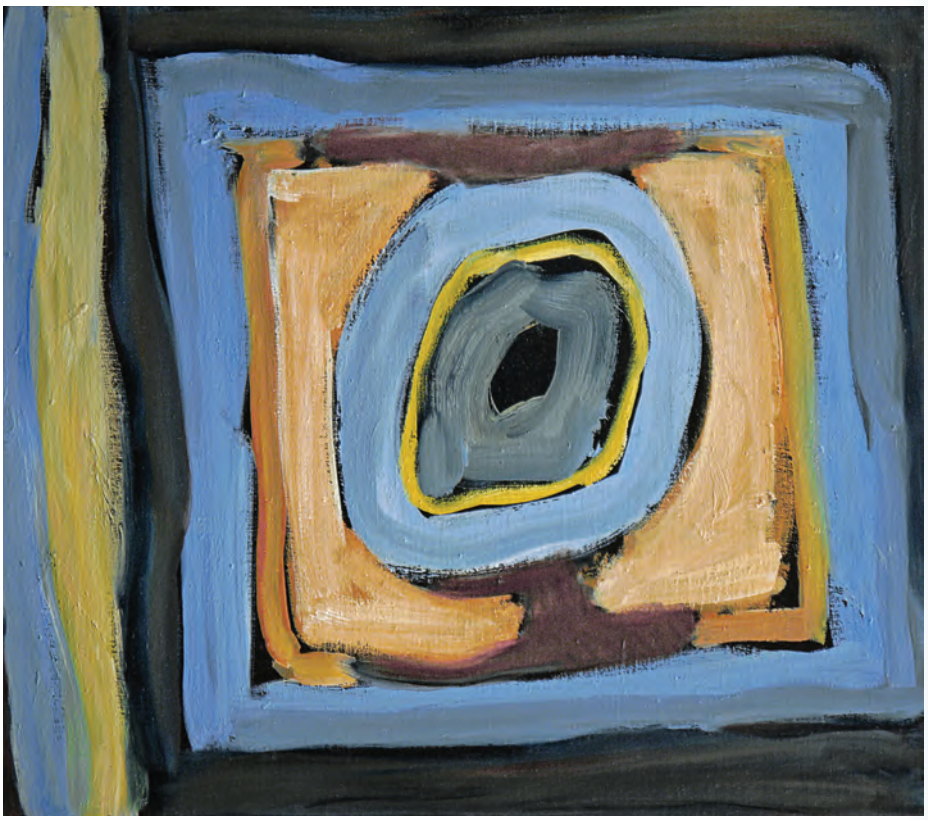
difficulties does not seem a good reason to abandon any attempt to interrogate the relationship between disorder and decision-making. After all, judgements of this nature form the bedrock of a psychiatrist's work, being an inherent part of diagnosis. They are a challenging, but not uncommon feature of clinical practice, which psychiatrists must grapple with all the time!

I want to emphasise though, that I am not holding this out as a perfect solution. There simply is no perfectly "tidy" solution to such a messy conceptual and practical problem! What I am proposing is, I think, the least worse option, which strikes the best balance between on the one hand, wishing to empower people to make decisions which reflect and promote their individual values and beliefs, and on the other, protecting them from making harmful decisions which they cannot understand and would not ultimately wish for themselves.

ST: Where are you planning on next taking your research in this context?

CA: I would really like to build on the ideas in this book and think about how they might apply beyond the realm of treatment and care decisions, to the law on capacity more generally. The concept of capacity is fundamental to the law, determining not only whether a person may make decisions about their treatment and care, but the control they have over their finances, their ability to enter into (or later void) contracts, and whether they are entitled to make or amend a will. A finding that a person lacks capacity therefore has serious implications not only for the individual involved – who is deprived of substantial control over their life – but also for others who interact with them: negating their consent to treatment, rendering a contract with them voidable, invalidating a bequest on which they depend, and even, perhaps, rendering sexual relations with them unlawful. It is imperative therefore, that a clear line in the sand can be drawn between those who have capacity and those who do not, and yet the analysis in the book suggests that this may not always be the case. I would therefore like to consider whether some of the problems identified in the book also have purchase in other contexts in which the concept is used, and what specific challenges these areas of law raise!

ST: That sounds fascinating. Thank you so much for taking the time to talk to us about your work.



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Standing in Private Law: a conversation with Dr Timothy Liau

In *Standing in Private Law: Powers of Enforcement in the Law of Obligations and Trusts* (2023, Oxford University Press), Dr Timothy Liau explains the importance of standing and its distinctive character. Drawing on extensive doctrinal analysis, he argues that standing, understood as a power to hold others accountable before a court, is a crucial concept in private law, and one that is largely overlooked by most scholars. Dr Szymon Osmola spoke to Dr Liau about his work.

Szymon Osmola (SO): What is standing and what got you interested in it?

Timothy Liau (TL): People use "standing" in many different senses. I thought it might be worth writing a book on the topic because I discovered, after some research, that the idea of standing itself wasn't straightforward. Private lawyers had only a loose grasp of the concept, and it wasn't all that clear what the term referred to in its legal use. In the book, I define the sense of "standing" I'm interested in as "[a] power against another to hold her accountable before an adjudicative body (eg, a court or tribunal), thereby subjecting her to its power (jurisdiction) to make an order against her".

It may surprise you, but when I first started working on the project, I didn't think in terms of standing at all. That came only later, about halfway through the second year of my doctoral research. The subtitle to the book – "Powers of Enforcement in the Law of Obligations and Trusts" – is closer to the initial working title of my thesis, which grew out of my interest in "rights-based" accounts of private law. It was only much later that my supervisor said: "aren't you just talking about 'standing'?". So, I took that suggestion on board, and "Standing in Private Law" became the subject and title. It's a much snappier title than "powers of enforcement…".

SO: The importance of standing, as you define it, seems to extend beyond private law. Is there anything distinctive about standing as a private law concept, as compared with standing in public law, or standing in general?

TL: I'm aware that there are some procedural differences with, say, judicial review in administrative law, where leave or permission to proceed is required, and the precise tests for standing for each order (eg, quashing, mandatory, declaratory) can differ, reflecting a public interest model aimed more at controlling the misuse of public power. Though I have to say upfront that I'm not a public lawyer at all!

That brings me to two points, I suppose. The first is that, methodologically, this isn't a book about drawing analogies from public law to private law: in fact, in writing the book I tried to refer exclusively to "private law" sources: ie, case-law and statutes conventionally considered part of contract law, tort law, unjust enrichment, and trusts law. I didn't want to be accused of relying on material "outside" private law to argue for reform within private law, and I had this in mind when formulating and executing the project.

The second point is about the scope of the book, or the central distinction with which it is concerned. I was most concerned with distinguishing between private law "rights"and standing. My concern was that in the past decades there had been too much of a focus in the literature on "rights" and "duties". In contract law scholarship for example, much ink had been spilt on whether contracting parties had rights to performance and rights to damages for their breach, or merely an option to pay or perform. Similarly, tort law scholars debated whether "duties of care" really existed, or were mere fig leaves. The aim of my book was to show that you needed this additional and distinct concept, standing, in order to better understand

and explain private law's remedial apparatus. In other words, understanding the rights and duties we have against one another is insufficient. We need also to better understand the enforceability (or unenforceability) of these duties and rights.

SO: Apart from the conceptual part, your book includes an in-depth analysis of various private law doctrines. How does standing play out there? Which areas of private law do you find particularly interesting in that regard?

TL: Great question. The book is split into three parts: (i) conceptualising standing; (ii) standing's doctrinal distinctiveness; and (iii) justifying standing. I deal first with conceptual puzzles about "standing", why any of this abstract stuff might matter for the doctrinally focused private lawyer second, leaving matters of justification to the last.

One of the biggest challenges I faced was that I wanted not just theorists to read it; I didn't want to limit the project to only that narrow set of theoretically inclined academics, the bulk of whom are based in the North American circuit. I also wanted uptake from doctrinal lawyers in England and in other common law jurisdictions, who tend to have little patience for grand theory or fine distinctions without a pragmatic reason to care. To successfully convince the hard-headed pragmatic lawyer used to doctrinal legal reasoning, you really have to show, ideally at a concrete level, why the result of a case might change in this or that way, if this or that interpretation of the law or rule was applied. It was really difficult writing the book, because I had to pitch it at a level that would address multiple audiences, with different inclinations, and with different levels of presumed background knowledge about different areas of law.

My goal in the doctrinal chapters was therefore just to demonstrate, through concrete case-law and statutory examples, why and how it might matter – for the contract lawyer, the unjust enrichment lawyer, the tort lawyer, and the trust lawyer – that standing be more clearly distinguished from "rights". To do this I tried to demonstrate how recognising "standing" as a separate concept from, eg, rights to performance, rights to damages, or rights to restitution, might help us to resolve or shed light on some long-standing doctrinal debates within the law of contract, unjust enrichment, torts, etc. I ended up discussing privity of contract and its reform, a landmark line of equitable authority that unjust enrichment lawyers have latched onto to explain and argue for a wider form of liability for recipients

of misdirected trust assets, wrongful death statutes (Lord Campbell's Act), the infamous case of White v Jones, and infants born disabled following a pre-birth tort.

SO: You have certainly succeeded in attracting practitioners' attention! Your book is recommended by The Hon James Edelman, Justice of the High Court of Australia, and you have been cited by the Australia's apex court (in *AZC20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 26). Does this motivate you to continue with this sort of research, combining highbrow conceptual analysis with fine-grained doctrinal considerations?

TL: It was very comforting to know that all that hard work hadn't gone to waste! When you've worked on the one same topic for so long, you tend to lose objectivity, and you often end up wondering if any of it matters to anyone else at all. So being cited was really reassuring, and I was very happy about it.

I'm not sure that I want to work on anything related to standing for a while. That's not to say that there's not more work to be done on it! I'm just a bit tired of the topic.

I've never really been wedded to this or that one particular "methodology". I think I started this topic because I was interested in private law and was reading up on the then-current debates (in the 2010s or so). My focus was first and foremost on the interesting questions that I thought might be worth answering, before thinking about how they should be answered. I just did it the way I thought could be best done by me, given my own limitations and constraints…. (of which I'm discovering more and more!). The funny thing is that when I was doing my doctorate, I was considered by my peers as "more of a theorist". Here, I think I'm considered more "doctrinal", which says something about us and about the kind of work that we do at LSE!

SO: Could you tell *Ratio* readers what's on your agenda at the moment? Is it yet another ambitious endeavour, similar to your work on standing, or are you focusing on smaller projects? Is your current work more conceptual or more doctrinal?

TL: It's been a busy term, and I have a number of projects that are currently on the backburner but that I might go back to after the term is over. I'm hoping to revisit one on "disentitlement as punishment in private law", and to start work on another project I've tentatively titled "declaratory judgments as a private law remedy'. Both are about private law remedies. There's a fair bit of doctrine, and also philosophy, in both. I did have a second co-written monograph planned a few years back, but I think I'm going to perhaps wait on that one for a bit, and just work on smaller pieces for now.

SO: That sounds very exciting! Thank you so much for the conversation and best of luck with your future projects.

TL: Thanks to you Szymon for doing this! It was fun to chat.

Note from the Editor

Some months after this interview, and shortly before *Ratio* went to press, Dr Timothy Liau won the 2024 Peter Birks Prize for Outstanding Early Career Legal Scholarship, awarded by the Society of Legal Scholars, for his book. We were absolutely delighted to hear this – many congratulations, Tim!

Regulating the making of life: Professor Emily Jackson's Major Research Fellowship

In 2023, the Leverhulme Trust awarded Professor Emily Jackson a Major Research Fellowship for her project, "Regulating the making of life". Her project aims to consider the implications for law and society of scientific research, which involves making the building blocks of human life in the laboratory. Suppose researchers can create sperm and eggs (collectively known as gametes), embryo-like models, and potentially sentient brain organoids. In that case, Professor Jackson argues there is a pressing need to decide how the law should respond to these novel human entities and what restrictions should be placed upon their creation and use. Dr Mona Paulsen spoke with Professor Jackson to find out more.

Professor Jackson's project is the next step for her longstanding research interests in regulating human fertilisation and embryology. Her past research has been instrumental in building bridges between law, medicine, and ethics on various questions concerning reproduction, end-of-life decision-making, and the regulation of the pharmaceutical industry. Scientific research into in vitro gametogenesis (the reprogramming of skin cells to become pluripotent) also connects to this earlier work, raising questions as to how far and on what grounds it is legitimate for the state to interfere in the reproductive choices of its citizens.

With this project, Professor Jackson is building on decades of experience developing highly impactful cross-cutting research to consider one of the most dramatic scientific developments: reprogramming stem cells to create 3-D models of organs and tissue. This can be done using induced pluripotent stem cells, often derived from skin cells, which have been reprogrammed into an embryonic-like pluripotent state, meaning that they can become all the different tissues and cells of the human body. Scientists can create organoids and in vitro-derived gametes (sperm and eggs), and stem cell-based embryo models, which are increasingly indistinguishable from embryos.

Such cutting-edge scientific innovation demands an evaluation of the currently strict UK regulatory regime for research on embryos and an examination of whether that regulation is appropriate for these new embryo models. Professor Jackson's project will ask and attempt to answer questions about embryo models, including, most fundamentally, what they are.

In recent work, Professor Jackson argues that UK regulation should approach embryo models with a greater historical appreciation of the social, ethical, and legal questions that arose in the early 1980s when the Committee of Enquiry into Human Fertilisation and Embryology, chaired by Mary Warnock, first grappled with the regulation of in vitro fertilisation. Professor

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Jackson believes that lawmakers must exercise extreme care when selecting the future governance model for the regulation of embryo model research. She argues that lawmakers must appreciate the unique features of embryo models and adopt a different approach from existing regulatory regimes. Recognising the importance of clear and coherent regulation for enabling the research community, and the difficulties in a time lag between scientific innovation and legal reform, Professor Jackson will try to shape regulation by fostering working principles grounded in lessons from her research.

Professor Jackson's research extends beyond the scope of reproduction. The ability to create 3-D models of organs and tissues from skin cells that have been reprogrammed to be pluripotent gives rise to a host of new ethical and legal dilemmas. Drawing from her ongoing work on embryo models, Professor Jackson extends her legal enquiry to questions concerning the creation of complex human brain organoids. While there is strict regulation of research on human embryos in the UK, there is comparatively little control over what scientists can do with other sorts of human tissue. What little regulation of human tissue research there is, it is mainly directed towards protecting the interests of the tissue donor. Yet, Professor Jackson cautions that the ability to develop human tissue in vitro raises the possibility of a brain organoid becoming capable of rudimentary consciousness or sentience. If this were to happen, then regulation must concern itself not only with donor interests but also with the interests of the tissue itself! Without precedent, scientific advancements raise complex questions that are cross-cutting into other legal fields of study, such as research on sentient animals and the capacities of artificial intelligence.

Professor Jackson will develop her research to engage with a broad body of historical, theological, legal, philosophical, sociological, and scientific work to address the moral status of gametes, embryo models, and brain tissue, and the ethical implications of scientists' emerging ability to manufacture them. Moreover, her research raises challenging questions about how scientists and the public perceive the roles of law in the UK – should the law draw absolute limits, or is there a case for understanding the law as a living document, one subject to incremental revision as science and technology changes?

Professor Jackson's research speaks to the complex questions of how to consider the potential of these new life forms and changing attitudes towards reproduction and what it means to be human. The primary output of her research will be a monograph, *Regulating the Making of Life*, about how to regulate all the extraordinary things scientists do. It will be a clear and readable account of the moral, ethical, social, and legal questions that arise from creating novel entities in the laboratory. Additionally, Professor Jackson will complete a series of articles addressing the regulation of in vitro gametogenesis, embryo models, and brain organoids.

As scientific research is crucial to social and economic welfare, Professor Jackson is incredibly focused on public perceptions of these new scientific developments and on creating opportunities for the public to learn about the ethical, legal, and social implications of scientists' emerging ability to manufacture gametes, embryo models, and brain tissue. She will continue to do public engagement work and work with public relations agencies as the research progresses.

Exploring "ownership" of Irish traditional dance music

In February 2024, Dr Luke McDonagh was awarded the 2023 Lalive & Merryman Fellowship for his article "Exploring "ownership" of Irish traditional dance music: Heritage or Property?" The Fellowship is awarded by The International Cultural Property Society and the Art-Law Centre of the University of Geneva to the author of the best article published in the International Journal of Cultural Property in the preceding calendar year; and it grants Dr McDonagh a residency hosted by the Art-Law Centre of the University of Geneva. Dr Sarah Trotter spoke with Dr McDonagh about his article and his plans for the residency.

Sarah Trotter (ST): Congratulations, Luke, on this tremendous award. It's a wonderful article and a brilliant achievement. Could we maybe start with the award itself – could you tell us about it?

Luke McDonagh (LM): Thanks, Sarah. It's a tremendous honour to receive this award. It was quite a surprise! Part of the honour is that the award is named after two great scholars of art law and cultural property: Professor Pierre Lalive, who was a scholar at the University of Geneva, and Professor John Henry Merryman, who was an esteemed scholar at Stanford Law School. The two of them helped to establish Art Law and Cultural Property Law as distinguished academic subjects. It's a tremendous honour to carry any fellowship in their names. They each passed away about ten years ago, and this award was set up by the Art-Law Centre at the University of Geneva to honour their work and to offer an emerging scholar in the field the opportunity to come to the University of Geneva to spend four weeks working on issues of cultural property. And the award is given to the writer of the best article in the *International Journal of Cultural Property* in that calendar year (2022-23), so technically I'm the 2023 fellow, even though it's just been awarded in early 2024. There's a little bit of a time lag – the award panel has to wait for all of the articles to be published, then a bit of time goes by, they read everything again, and then they make their decision. It came completely out of the blue, but it was a wonderful surprise.

ST: Your article is a really fascinating account of both Irish traditional dance music and the question of how we think about law in relation to that music. How did you come to the subject itself?

LM: It's a great question. It's a form of music that I appreciate, and that I perform – I play the mandolin, and I know that you're a keen violinist, so we're both amateur musicians and legal academics! One of the features of Irish traditional music is that probably 99 per cent of the great musicians out there – that you might hear in a pub or at a folk festival – are amateurs. This is not a commodified, professional form of music. It's traditional, not just in that it's old music; it's traditional in the sense that I discuss in the article – there's an understanding of inheritance with this music and there's a very intense sociality. In the context of transmission, authorship, and performance of Irish traditional music a concept like "ownership" means something different than ownership of intellectual property. At the same time, "heritage" has legal connotations and often involves legal responsibilities. So there's layers of complexity. I was drawn to this subject during my PhD studies at Queen Mary, which followed on very much from my LLM dissertation here at LSE on

International Protection of Cultural Property with Dr Tatiana Flessas. Philosophically, I was drawn to this subject as a way of thinking through the assumption, present in a lot of the discussions about cultural heritage and UNESCO, that there's a binary distinction between modernity and tradition, between the Global North and the Global South, between modern liberal orders and indigenous or community norms of sharing and responsibility. Coming to this particular subject of Irish traditional music, it struck me that here we have a process of art formation, of sociality, of ownership that doesn't fit the liberal Lockean view that we should commodify our labours, that we should be thinking of our outputs – whether they be musical or artistic or otherwise – as property. The musicians are people who in their daily lives – whether they be in Ireland or elsewhere around the world – may be attuned to the modern economy and a modern society, and yet in this artistic part of their lives they are quite resistant to allowing commodification of their cultural processes and performance practices. So, it is an example that defies a strict binary. Whereas the literature on this subject of intangible heritage tends to be quite binary – and often polarising – in its focus. There's a rich literature on the heritage of indigenous communities in, for example, South America, or Australia, or Canada, of groups who have suffered under colonialism and now are facing a modern nation state that may not take into account their views. It's put forward as an ontological battle between ways of seeing the world – on the one hand, a modern liberal-economic way of viewing cultural production, and on the other hand, there are societies that claim a kind of spiritual or sacred understanding of culture and who make claims about their traditional stories and songs that go beyond commodification. This debate has been going on for more than twenty years at the World Intellectual Property Organisation and at UNESCO. It's really this question of how do we deal with clashes between an understanding of culture as traditional process, artefact, and inheritance on one hand, and on the other hand, the commodification of culture: culture as product. How do we comprehend that divide?

ST: It's really interesting, because they're essentially different languages aren't they, on your analysis – they're completely different ways of seeing and ways of thinking. And I'm actually wondering: does the clash itself need to be dealt with?

LM: Well, I think that you've kind of hit on something very crucial here: is this debate resolvable? My short answer is: probably not. There are many schools of thought; there are many people who have written about it in relation to various indigenous communities in the Global South including important voices from those communities. I cannot speak to that. But one reason I was fascinated by the Irish traditional music example is that, even in this Global North context the modern-traditional binary hasn't been resolved, it remains in tension. Irish traditional music allows a certain amount of accommodation with the modern world: musicians being paid to play small gigs; doing recordings on film soundtracks; then, at the very commercial edges, things like *Riverdance* and The Chieftains that resemble market "products". But while all that has happened at the edges of this cultural world, it hasn't taken over. It's not dominant. So, to answer your question more thoroughly, I think that you're right: it's not a total binary, it's not a total dichotomy, and it is possible for layers of ambiguity to exist. There may even be a certain harmony between these different modes. And that might offer some hope for other debates that are happening in this subject area of heritage – the fact that we have here a Global North country like Ireland, oriented to the West, relatively comfortable with a kind of liberal model of property and markets, yet still valorising prominent aspects of its national and regional culture via acceptance that it is not commodified, and should not be, and there being quite a lot of resistance to that.

ST: So it enables there to be this space which basically resists that narrative… I think there's something quite interesting in the not taking over of it in itself, in the preservation of it as a space that's free of the narrative. That must surely be quite important also in its own right?

LM: Yes, I think so. I've often wondered whether "resistance" is the right word here, in the sense that – you know, you've raised the point that maybe there's something less oppositional going on. But on the other hand, I like the term, because it does cover something that is crucial to the music, which is that this is recognition of something beyond property. A sense that "this is genuinely a form of heritage that we all share". It's almost like a common resource. And so if someone were to come along and try to fully commodify it, there would be resistance to that, no doubt. And the commercial edges survive only because they don't impinge upon the main body of what's going on. Even the most commercially successful musicians such as Martin Hayes, remain wedded to the traditional process. Hayes plays huge festivals in the United States, he is often on television and radio and so on… but he will still go back to County Clare and play in tiny sessions, or he'll play at a small music festival that he's created in this very small village of Feakle in County Clare. So he can't give up that link back to this rural, social culture that is really the heart of the music. It is a music that has emerged from that informal social culture and cannot be entirely governed by formal rules, because if you were to do that it would become another form of music, such as popular music, driven by market concerns rather than by sociality and that sense of attribution and reciprocity.

ST: And maybe also sense of place – and I don't mean place in a geographic sense, but the mental place that's involved in playing these forms of music, the going to another place where these norms don't dominate…

LM: I think that's right, and the funny thing is that even though this is "Irish" traditional music, lots of people who play it aren't Irish. I was once at a session in my hometown in Galway where all the musicians were from outside of Ireland. There

was a fiddler from Japan, there was a piper from Belgium, there was an accordion player from Sweden. And they had all come to Ireland to embed themselves in this social world. They wanted to learn the music in the traditional way, which is person to person, learning from each other, sharing, learning different variations of tunes. Some of them might stay – I know at least one of them went back to his home country and has continued to play the music. So, although it might have started out as being defined very much by place and regions within Ireland – County Clare, County Donegal, County Kerry, which all have different styles, it has become globalised but without being fully commodified. Of course, the diaspora communities in Ireland, Australia, Canada, different places around the world, have kept it alive in their own ways. But now you really could be from anywhere and decide that Irish traditional music just happens to be the kind of music that you like; and if you take it seriously and want to play it, you will want to make the place, the geographic social place of the music, part of your learning. So you'll want to go there and make yourself part of it. And that's what musicians from different parts of Europe and other parts of the world have done in trying to learn this and trying to get into the sociality of it.

ST: So in going there then you can access this space of being together, this sociality that you've mentioned... Do you want to tell us something about the position that you reach in the article then in relation to law in this context? We've got these two ideas: the construction of the traditional dance music, on the one hand, and the legal framework which is at odds with this, on the other... Where do you go with this in the article?

LM: So it's very obviously not a doctrinal piece of legal analysis. It's almost anti-doctrinal in a way...

ST: It's so interesting...

LM: Well hopefully others think so too. It's great that it won this award, because it highlights, I think, another side of what law is, in that law is one type of order, and within law there's a lot of normativity, there's a lot of rules and content that must be abided by. But there are also social systems of normativity that have a governing or ordering function. One of the people I cite in the article is the late Elinor Ostrom, an economist, who wrote a book about forty years ago called *Governing the Commons: The Evolution of Institutions for Collective Action*, which was very much about the social ordering of common resources and how it can be just as efficient, if not more so, than legal-market ordering. And so I took up that as an inspiration, and when I was doing my PhD, and in writing this article. I wanted to convey the fact that there's a very profound set of social norms at work here. It is expected, for example, that if you learn a particular tune from a musician, you should attribute them when you pass on the tune yourself, and so you maintain the chain of transmission, which is also the chain of authorship. You are expected to share what you are creating. You know, I've met composers of reels and jigs who have had their music played by performers in different sessions or concerts around the world, and the most important thing for them is that their composition is being played and has become part of the tradition. The last thing that they would want would be for another musician to feel "oh that's a copyright composition; I can't play that without the direct permission". Yet, it's not quite a public domain situation... In law, the public domain is a space where copyright does not apply. Anybody can make use of anything that's in the public domain. So the works of Shakespeare, the works of Beethoven – they're so old they're in the public domain. A lot of older Irish traditional tunes are in the public domain. But the point I make in the article is that there are lots of compositions by living composers that are technically in copyright (because it arises automatically) but they are now accepted as part of the tradition. And in law, if you're arranging a public domain tune in an interesting way, and you're adding a couple of notes, or you're bending the notes in a certain way, you're probably creating a new arrangement under copyright; there's not a high standard of originality that's required. As long as you're doing something creative with the tune, it would probably meet the standard. All of these IP [intellectual property] rights are technically being created all the time in the way the music is being performed and recorded. But musicians are not going around and asserting their IP rights against each other. It would be seen as anti-traditional to do that. There's a profound sense of normative, social ownership, based on attribution and sharing and reciprocity. Those are the key norms. Whereas going to the formality of the law is a last resort. A musician might rely on the formality of the law if a big Hollywood film picked up one of their tunes, perhaps assuming that it is in the public domain, and they put it on a soundtrack. There, a composer may well try to assert their rights. They might take a claim against an external party: the film studio. But that's an extreme example; it's quite rare. In almost all other circumstances the music is regulated internally, in its own social world, and musicians just want to continue this process of sharing, to have their own arrangements and compositions become part of the shared tradition. And so the law is very much only at the edges and is far from being dominant in this

particular form of cultural creativity. And this brings us back to the challenge to the modern, Lockean model. Copyright law assumes that people want property. Copyright law assumes that creators want to make money and commodify their works. But actually, this example shows that it's not always true. You can have a vibrant culture without necessarily needing to rely on the law or on the concept of property.

ST: Would it be fair to say, then, that this is also about the normative order of Irish traditional dance music and the way in which that's a different form of order to the legal order?

LM: Yes. And as you said earlier, this doesn't have to be a binary. There can be layered overlaps. I mention in the article that some musicians do earn small royalties, who release albums. They don't make a massive amount of money because this is not like pop music. So there aren't millions to be made. But they make some money from it. A small number can even keep going as professional musicians. But, as I say, 99 per cent of the great Irish traditional musicians are amateurs. So there's overlap to some extent between the norms and the commercial world, but the social norms are the heart of this. The point that I come to at the end of the article is that the World Intellectual Property Organisation has been trying for twenty years to come up with a treaty, a definition of traditional knowledge and traditional cultural expressions that would allow, for example, an indigenous community in South America to obtain formal group rights, over its music and its stories and any other intangible cultural heritage that it possesses, in order to prevent misappropriation by others. That would mean that, for instance, no Western film composer could come and co-opt this Brazilian group's indigenous music, without prior informed consent. The idea would be that you would give a definition and a set of rights to that group, to allow them to prevent that. The difficulty is that legal formality is itself disruptive: as soon as you legally regulate some of these informal normative structures and social normative orders, the social normative order that created this cultural expression inevitably begins to fall away to be replaced by the new legal-regulative order. And so the argument that I come to at the end is that for Irish traditional music to continue to be a thriving social world of creativity, it will have to continue to rely on its own normative order, rather than trying to enforce some sort of legal framework. I'm sceptical that an organisation like WIPO, and even to some extent the more soft law of UNESCO, can do much to maintain a living tradition. The potential to do more harm than good is quite high. What keeps traditional culture going is the participants' belief in what they're doing, that they should continue these norms of attribution, sharing, and reciprocity. That's the crucial thing.

ST: Wonderful. Two final questions. You have this residency now in Geneva, which is incredibly exciting. What are your plans for it?

LM: I've only recently found out about the award, and I'm only beginning to think about when I'm going to go and what I'm going to do, but it's very encouraging. I'm certainly going to go to Geneva with the idea of deepening some of these issues that I've raised in the article. I have to take up the four-week residency at some point in the next twelve months. I am thinking about how to take this idea to the next level, whether to expand this specific case study into something larger, or whether to look at a different case study, look at something completely outside of Irish traditional music, maybe looking at other cultural examples that are out there. I'm still making up my mind, but I'm going to use the time to dedicate it to this particular subject matter of the relationship between cultural heritage and intellectual property, because, as we have discussed, while there's overlap, they're not entirely harmonious with one another, and I'm looking to see what interesting contradictions I can draw out.

ST: Interesting. My very final question is something I'm just curious about. What's your favourite form of Irish traditional dance music, and why?

LM: I think if I had to pick one, I would pick the jig. A jig is usually in 6/8 time, so it's in musical measures of six, but in reality it's like thinking (and dancing) in threes. By comparison a reel, and most pop music that you hear on the radio is in 4/4, so measures of four beats. There's something very special about the measure of three. It does exist in other forms of music – the waltz is also in three, for example – but there's something about the jig that I find quite special. The way that fiddlers play jigs is that they often add triplets in interesting places, so you've got almost a tripling of the three, which makes the music seem "faster". I think that the most beautiful part of Irish traditional music is that it is essentially sad and lonesome music played very fast – a whirlwind of ambiguity in its structure and in its effect, because when you slow down the tunes you can hear how sad many of them are. A lot of tunes are in the Dorian, Lydian and other minor modes, and if you play them they sound like very sad tunes that are enlivened by putting them in the dance music context. So you have that sense of being on a journey, where in one sense you're being lifted up by the speed and the dance rhythms of, let's say, a jig, but on the other hand the melody is often quite lonesome and poignant, and so that sense of being lifted up and being brought down in waves I think is what is enduring about the music.

ST: I really like the way you've put it – the "sad and lonesome music played very fast"...Do you think it's also to get away from sadness? Is that an element of the speed, do you think?

LM: I think so, I think there's catharsis in that...

ST: In the getting away from the sadness through the speed?

LM: Yes, exactly, in not simply mulling over the sadness and the melancholy of the music, but in letting it go. And through dance that is precisely what you can do: you get up and you express yourself, and there is a great catharsis, and you move on.

ST: Thank you so much. That was really interesting.

RESEARCH

Thinking with and against Arendt: freedom through politics and the role of ordinary citizens in constitutional democracies

Constitutional democracies across the world are witnessing an increasing frequency and intensity of mass movements and protests. PhD researcher Shree Agnihotri proposes that Hannah Arendt's writings contain important insights about the role played by ordinary politics in maintaining constitutional democracies.

It doesn't take much to get interested in the life and work of Hannah Arendt. Born in Germany in 1906, and forced out of her country in 1933, she spent her early years as a stateless person (an individual who is not considered to be a national by any state). Deprived of her citizenship when she was forced to leave her country for conducting research on antisemitism – a topic made illegal by the German government – she joined and worked for several organisations in Paris helping Jewish exiles escape and settle. She reached New York in 1941 after making a long and arduous escape from Camp Gurs, an internment camp set up in southwest France, and was granted American citizenship in 1950.

In New York, and after the publication of her first major work *The Origins of Totalitarianism*, Arendt soon gained recognition for her erudite deconstruction of the totalitarian form of government. She taught at major American universities such as the University of Notre Dame, Princeton University, Yale University, Bard College, the University of Chicago, the University of California (Berkeley), and the New School for Social Research but refused to formally step inside academia as a tenure-tracked professor. She famously resisted the title of a philosopher and preferred to be called a political theorist. This resistance to disciplinary boundaries, however, was more than just a quirk; it seemed to be true to her nature. For example, in 1961, she stepped into the shoes of a journalist. She attended the trial of a Nazi official, Adolf Eichmann, and wrote an award-winning but controversial series of reports for *The New Yorker*. She argued that many of the Nazi supporters joined the party not out of a strong belief in the ideology but out of sheer thoughtlessness and termed the shallow nature of this participation the "banality of evil". While her earlier work on totalitarianism had propelled her to think about political action, her encounter with Eichmann pulled her towards her academic roots: moral philosophy. She started to write about the importance of the human faculties of thinking and judging, connecting them with our ability to take responsibility for our actions. Unfortunately, she could not finish writing the last part of *The Life of the Mind*, her magnum opus about thinking, willing, and judging; five days after finishing the second part on willing and with the first page on judging still in her typewriter, Arendt passed away of a heart attack in 1975.

Declared often as one of the most influential political thinkers of the twentieth century, her writings – academic and otherwise – contain insights that continue to retain their significance for the modern world and its problems. I encountered Arendt in 2017, when Professor David Luban presented his research on Arendt at the Colloquium on Legal, Political and Social Philosophy at NYU (New York University). I was fascinated by her writings on judging and responsibility and soon found myself connecting her insights with what I knew best: constitutional law and theory. I realised that as academics, but also as citizens, we often use the constitution to make judgements about governmental actions. I wondered if the existence of a constitution – and our reliance upon it – also implies an inverse relationship of responsibility: between the constitution and the judgements we must make about our actions as citizens. My thesis explores these relationships and

argues that a constitutional democracy represents a form of government that not only empowers the citizens but also enjoins upon them a responsibility to constantly and consistently use their power to maintain the constitutional order.

As a public thinker, Arendt is often associated with her account of totalitarianism as a form of government. Academics have drawn and built on her conception of politics and freedom and more recently, law. Perhaps because she does not speak in a consistent voice – methodologically, conceptually, or disciplinarily – and perhaps because she claimed no such title for herself, she is not often seen as a constitutional theorist. It would, however, be remiss to discount her relevance to the field. In the past decades scholars have drawn attention to themes relevant for constitutional theory in Arendt's writing such as on constituent power, the role of the judiciary, and constitutional principles. My thesis joins this somewhat short list of contributions: drawing

from her constitutionalist and non-constitutionalist writings, I present an account of Arendtian constitutional theory by positioning the experience of active citizenship as the starting point for thinking about constitutional issues.

One of the first things that attracted me most to Arendt was her candour with acknowledging the value of experiences. The existence of contradictions in her work point to her ability to be open to perceiving, understanding, and theorising about the world by taking stock of the unpredictable experiences that we encounter as we act in the world. Her own personal history, shaped by escaping Nazi Germany, grappling with the moral decay that she witnessed there, experiencing statelessness, and immigrating to America, provided her with a rich tapestry of encounters with diverse political cultures, institutions, and traditions.

Arendt's experiences propelled her thinking in two main ways: the emergence of totalitarianism alerted her to the realisation that to be free implies being able to act politically with one's peers to initiate something new and something unpredictable. She saw that while totalitarian governments ruled by destroying all avenues for citizens to engage substantially with politics, the experience of freedom *through* politics could be endangered in other ways and thus, should not be taken for granted.

Second, Arendt understood the act of politics to be intertwined with the capacity of thinking and judging. Instead of looking towards a transcendental source of morality for the action-governing norms that guide the acts of an individual, she draws our attention to the capacity of politics to self-regulate. Critiquing as well as taking inspiration from a wide array of philosophers, she arrives at an insightful understanding of what it means to act politically: our ability to think – to engage in an internal conversation with ourselves – and to judge – to take responsibility by viewing our actions through the eyes of others – generates the standards for acting as a responsible citizen.

What do these insights imply for the modern-day form of government we associate with constitutional democracy? My thesis answers this question by thinking with and against Arendt about freedom, power, and authority. I argue that she views constitutional democracy as the

form of government that is established and maintained through political action. Such a constitutional order is predicated on a coming together of people on the strength of mutual promises; a democratic constitution implies the institution and preservation of a political realm through power generated out of the ordinary acts and judgements of the citizens. It implies the establishment of a constitutional order through the exercise of the individuals' freedom to join together through mutual compromises, negotiations, and agreements, to initiate a new political beginning, in the form of a constitution.

During my research, I have been struck by Arendt's discourse on promising. One thinks of promises as a part of contract law or, sometimes, as a metaphor or fiction that helps explain the establishment of a constitution by a people. In my reading, however, an emphasis on promising is relevant because it clarifies what Arendt implies by equality as a constitutional principle. She views equality not as an inherent feature we possess by virtue of being humans; instead, she claims, equality is politically generated and artificial in the sense that it is something we bestow on each other through human action. Much like the position of the parties to a promise, one's identity as a citizen implies being in a position to be heard and seen as an equal participant in a joint enterprise. In such a coming together, the individuals entering into an agreement do not completely shed their distinct political experiences and viewpoints. Arendt's conception of equality is pluralistic – that no two individuals are the same; they are equally worthy of being political actors and participators in their governance, but this equality cannot be used to homogenise their unique and distinct selves.

There is another insight that emerges from understanding constitutional democracies as a web of relationships: the role that citizens' ability to judge and take responsibility plays in maintaining the legal-political order. It is easy to mistake Arendt's emphasis on freedom as a romantic ideal that does not pay attention to the moral dilemmas of realpolitik. For instance, in presenting the experience of freedom in terms of unpredictable political action, she does not seem to be paying enough attention to the need for durability inherent in any successful form of government. Her discourse on freedom does not answer some important questions: do citizens of an established constitutional order have the same quality of freedom (to institute a new political-juridical order) as the founding generation? Can they have this same quality of freedom? *Should* they have this same quality of freedom? Put another way, does the establishment of a constitution necessarily imply the curtailment of the freedom of the succeeding generations to rethink and self-legislate the core aspects of the constitutional order?

In my thesis, I rely on Arendt's discourse on judging and responsibility to append a normative dimension to her conception of freedom through politics. I propose that the authority of the constitutional order is maintained through the voluntary obedience of the citizens and shaken when citizens engage in civil disobedience. Arendt sees civil disobedience as a phenomenon that is symptomatic of the loss of authority and power of institutions. Civil disobedience reflects not only the citizens' disagreements with governmental action but also reflects their attempt to change institutional settings motivated by a concern for the principles of the constitutional order. In other words, civil disobedience represents the citizens' attempt at creating a temporary, extra-institutional political realm to preserve or modify the existing institutional structures of freedom. I argue, in my work, that an Arendtian emphasis on theorising civil disobedience as an intrinsic part of the ordinary politics of a democratic constitutional order implies, on the part of the institutions, a duty to establish structures and platforms for citizens' right to action and dissent, and on the part of the citizens, a duty to preserve and maintain the constitutional order.

In my interpretation, Arendt directs her focus not towards defining the meaning of law or politics but rather to the conditions leading to their emergence. Consequently, through this thesis, I hope to contribute to constitutional theory by placing the experience of active citizenship at the core of democratic constitutionalism. In doing so, my aim is to highlight the necessary conditions and, crucially, the infrastructures essential for citizens to experience freedom within a constitutional democratic framework.

Arendtian constitutional theory recognizes that citizens can shape the political landscape not solely within formal institutions but also in various arenas of civil society. It acknowledges the value of movements, protests, and social initiatives as meaningful expressions of active citizenship. The emphasis here lies on the experience of citizenship, expanding beyond civil and political rights to evaluate the constitutional order itself based on the parameter of freedom. This involves considering institutional structures that prioritise participation not merely as a means to an end but as democratic ends in themselves. The role of the state in facilitating viable and accessible active citizenship, both within and outside institutions, becomes pivotal. At its essence, my thesis seeks to shift the emphasis on active citizenship, elevating its role from the periphery to the forefront in constitutional theory by positioning it not just as an important end which a constitutional democratic government must pursue but rather as the primary means through which a government retains its constitutional democratic credentials.

Note from the Editor

We are delighted to note that some months after the writing of this piece, Shree was awarded her doctorate. Many congratulations, Dr Shree Agnihotri!

LSE Law Working Papers

Since 2007, the Law School has published a Working Paper Series, featuring work by members of faculty, doctoral students, and visiting scholars. The editors are Dr Jacco Bomhoff, Professor Kai Möller, and Dr Astrid Sanders. On a sunny day in the Spring Term Dr Sarah Trotter met with them in the common room to find out more about what goes on behind the scenes.

If you go to the website of the LSE Law Working Papers and scroll down through the issues of years gone by, you will get a fantastic sense of the work that is carried out by members of the LSE Law community – and, in addition, of its development over time. Papers that are published in the series are often on their way to publication in journals or books, either in the form in which they appear in the series or in a reworked version following feedback from readers. What the series enables, for pieces that are in that somewhat liminal pre-publication space, is both an earlier presentation of the work itself and its location within the wider context of other work that is simultaneously emerging from LSE Law School. That makes it a particularly interesting space for the sharing of ideas, for the opening of dialogue between authors and readers, and for a wider keeping in touch across the LSE Law community.

That keeping in touch, Kai told me when I met with him and the other two editors, Astrid and Jacco, is at the heart of the exercise here; the series is, not least, "a great way for former students to keep in touch with what their former teachers are working on and publishing". But it also generates new connections and opens different conversations; and Astrid tells me, in this vein, of a story of a piece that she published in the series that led to an invitation to a conference in the US.

The editors, meanwhile, get a really good sense of the work that's going on across the Law School; and this seems to be what they like most of all about the role. They comment too on the range here, not only in terms of subject-matter, methodological approach, and style, but also in the sense of who is doing the writing: "sometimes it's a paper by one of our most experienced colleagues", Jacco says; "and the next thing it's literally the first thing that someone is writing in their career".

I wonder, at this point, whether the editors perceive any links in the work – whether there are connections within and across the pieces that come from the fact that these papers all come from the same one law school. Is there some LSE Law essence imprinted on the page? "An LSE style?", Jacco asks. "It's often theory-heavy", Kai comes in, "but not theory-heavy in the analytical philosophy style that you would perhaps find at Oxford. Applied sounds wrong…it's more…" It sounds like law in context, I suggest. "We're there again", Kai says. It is, we agree, a good place to be.

I ask finally, then, about the work involved in bringing the pieces together into three issues a year; and here the editors point towards their assistant editors, doctoral candidates Jakub Bokes and Shukri Shahizam. They are "fabulous", Astrid, Jacco, and Kai tell me, basically in unison; "so very impressive". Jacco goes on to describe how in addition to all the copy-editing work, Jakub and Shukri are also tasked with distilling each piece down to one or two lines for a summary section; "they always manage, somehow – I don't know how – to capture what these papers that are often 20 or 30 pages are about, literally in one sentence". That sentence becomes the key to the work for any reader browsing the latest issue of the series; and the work that goes into it captures in essence what the series here is all about: communication, clarity, and the sharing and development of ideas.

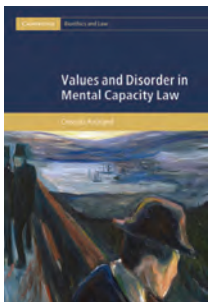
To read the current issue and access previous issues of the Working Paper Series see **lse.ac.uk/law/working-paper-series**. To subscribe, please email **law.working.papers@lse.ac.uk**

Top left: Dr Jacco Bomhoff, Associate Professor of Law, LSE Law School

Top right: Professor Kai Möller, LSE Law School

Bottom right: Dr Astrid Sanders, Associate Professor of Law, LSE Law School

New Books



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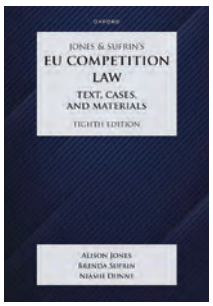

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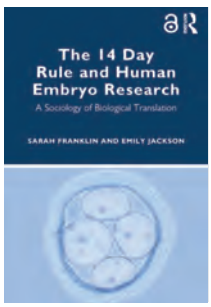

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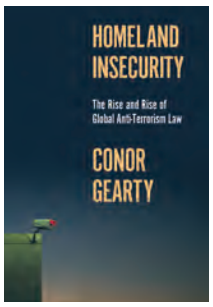

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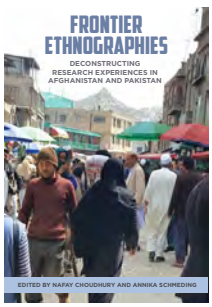

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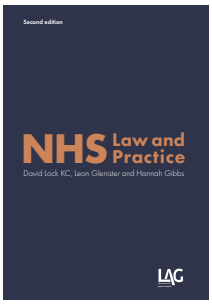

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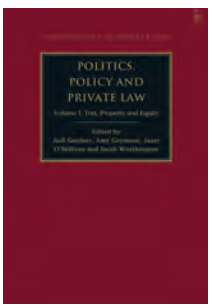

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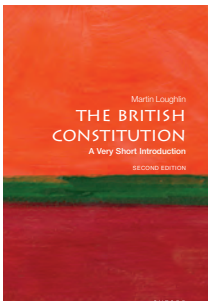

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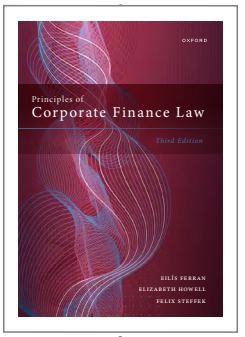

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RESEARCH

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RESEARCH

Dr Jacob Van de Beeten

Field of Study: Law

Title of Thesis: In the Name of the Law: A Critique of the Systemic Rationality in EU law

Supervisors: Professor Floris de Witte and Professor Michael Wilkinson

Dr Shree Agnihotri

Field of Study: Law

Title of Thesis: Arendtian constitutional theory: an examination of active citizenship in democratic constitutional orders

Supervisors: Professor Tom Poole and Professor Michael Wilkinson

Dr Katherine Nolan

Field of Study: Law

Title of Thesis: The individual in EU data protection law

Supervisors: Professor Andrew Murray and Dr Orla Lynskey

Dr Winluck Wahiu

Field of Study: Law

Title of Thesis: Constitution-building court actors in South Africa and Kenya

Supervisors: Professor Jo Murkens and Dr Jacco Bomhoff

Teaching and learning

The LLB reform

What are the foundations of a law degree? What are the core subjects? What does progression mean? And how might space be made within a curriculum to explore pressing legal issues? **As our LLB Programme Director Professor Sarah Paterson explains in the piece that follows, these questions were central to the thinking that underpinned the reform of the LLB programme, which was rolled out at the start of the 2023/24 academic year. The main features of the reform are a new structure, new courses, and a new skills programme, and in the spotlight on the LLB reform that follows, we look at all three.**

We begin with a conversation with Professor Sarah Paterson, who tells us why the reform was necessary and the nature of the changes that have been introduced. Then, in the following piece, we hear from the convenors of the LLB Legal Skills Programme, Ayse Gizem Yasar, Dr Sonya Onwu, and Hannah Gibbs, who tell us about the modules that students can take to develop the practical skills and knowledge needed for a career in law, as well as the success of the programme's first year. After that, we hear from Visiting Senior Fellow in Practice Sam McAlister who runs negotiation sessions with students. The following piece features the LLB Student Representatives for 2023/24, Mehar Suri and Min Rebecca Yoo (from the first year), Carolina Martini and Vsevolod Martsenuik (from the second year), and Fee Robinson and Miriam Lo (from the third year), who tell us what they think about the LLB reform. The final piece, introduced by Dr Joe Spooner, features the wonderful talk that Visiting Professor in Practice David Lock KC gave in the very first seminar of the new Law, Poverty, and Access to Justice course.

The LLB reform: a conversation with Professor Sarah Paterson

The 2023/24 academic year saw the reform of the LLB programme. A new structure was introduced, new courses were added to the options list, and a new skills programme was rolled out. Dr Sarah Trotter spoke with the LLB Programme Director, Professor Sarah Paterson, about the thinking behind the reform and the changes that have been introduced.

Sarah Trotter (ST): Bearing in mind that the readers of *Ratio* are mostly LSE alumni they might wonder why there was a need to reform the LLB programme at all?

Sarah Paterson (SP): The reform was driven by four dominant ideas. The first was making sure that we are confident that students have the foundations that they need for the things that came later when we look at the first year of the LLB progamme. The second was that following the introduction of the new SQE (Solicitors Qualifying Examination) we should pause to think about what it is that *we* regard as core to a law degree. This is because, although the Qualifying Law Degree remains relevant for barristers, the solicitors' regulator is no longer dictating what is core for a UK law degree. The third motivating idea was thinking about what we mean by progression, in a Law School context. In many degrees, progression means that students start with material that might be described as more straightforward and build to more difficult work as they move through the programme. We didn't feel that that idea of progression is right for law. In fact, many of the fields that are foundational are amongst the most challenging to teach and learn. And the final idea was that a modern curriculum should have space to explore the most pressing legal issues of the day.


Government
Publications
42 (R7)
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ST: That's really interesting. Two questions come to mind following up on that. Firstly, what do we think is core?

SP: We had a small working group that debated this quite extensively, and then we took it out to faculty more broadly. Some of the conclusions reflect components of the old Qualifying Law Degree. Contract, tort, public law, and criminal law all seemed to us to be foundational for many courses that come later. We decided that property law was core – for example, we have a fabulous new course on unjust enrichment, and it is clearly necessary to have a foundation in trust law before tackling unjust enrichment. And understanding more broadly the distinction between a property right and a contractual right seemed to us fundamental. We also decided that some sort of transnational law was core – that law is not just a domestic system, and that increasingly our students need to understand that. This led us to conclude that all students should have some exposure to cross-border law. Finally, we felt that legal theory was core – that a student should not walk out of a law school with a law degree without having had some exposure to legal theory. All of this emerged through multiple iterations. Some of it was, I think, obvious – there were courses that were clearly foundational for so many of our other courses. Other things were less obvious, and we spent a long time debating them.

ST: The second concept that you referred to, the concept of progression – how did you come to understand that in relation to the law degree?

SP: That really happened quite naturally through the process. We, and one colleague – who I won't name, to spare their modesty – came up with the idea that progression in the LSE Law School sense is about moving to a stage where students curate their own programme. After the curriculum reform, first year courses remain mandatory. Students have no course choice. We have already touched on some of the mandatory courses, but we should also discuss discuss Introduction to Legal Systems (ILS). This excellent course covers topics that are clearly foundational: what is precedent, what is statute, the courts, judicial decision-making, and so on. It used to run throughout the first term of year one, but students told us that this posed challenges – for example, they were coming to material late in the ILS term that would have helped considerably in understanding material early in the contract course. As a result, we have moved ILS to a foundational course that all first-year students study for the first two weeks before they move on to their other courses. This focused approach also brings all sorts of collateral benefits, as students settle in and build their community.

In the second year, the property course remains mandatory, and students are required to pick a cross-border law course and a legal theory course from a basket of options that colleagues have developed. Students are then free to choose their remaining two options. The idea is that this is the beginning of students identifying what it is that they find particularly interesting and engaging. We hope that the mandatory courses have laid the foundations and exposed students to enough methods and ways of legal thinking for them to begin to decide what they find especially fascinating in the rich field of law. In my Programme Director role, I consistently tell students that I do not think it is possible to go far wrong if they pick courses according to what they enjoy – that they should be looking for the courses that they find engaging and exciting. The second year provides a gentle introduction by offering students the freedom to select two units and by offering a basket of choices for cross-border law and legal theory. The third year then becomes entirely optional. Overall, our idea of progression is moving from a programme that is curated for students by the Law School to students curating their own programme of study. That is, I think, quite a different sense of progression from many other degrees. We hope that the curriculum reform now embeds that concept of progression.

We are also gradually unveiling a pretty unrivalled set of new options for students to support this concept of progression and choice. As I said earlier, many of these new options engage with some of the most pressing issues of our day.

ST: So it's also giving students a structured space in which to work out what they find interesting – a space in which they can think "I need to work out what I find interesting, and part of the reason I'm at university is to work out what I find interesting"… It's an interesting structure. They then come to the end of their third year, they've chosen their options, they've developed their sense of what they're interested in, they've developed their sense of self as someone who can choose and make choices in this context… What effect do you think this would then have for them going forward, this reformed programme?

SP: This is such a good question because it connects with something else that we're doing. In tandem with the curriculum reform, we have increasingly realised that in a highly competitive employment space – and here I'm not just talking about legal careers but all careers – there's more and more pressure on students to demonstrate other skills that don't naturally come from academic study. And I want to tackle this, I think, in two ways.

Firstly, as you've described, we hope that the process of moving to a self-curated programme is already preparing students for what comes next, part of the process of moving from the world of school, in which students are very directed, to university, where it's vital that students still have support but where students must also finish ready for a world in which there is going to be much less direction from the outside. We hope that our progression idea helps to prepare students for that.

Secondly, we are also focused on putting in place more structured co-curricular support to bridge from academic skills to the skills that students need afterwards. We've brought in a first-year mooting competition, which is not currently compulsory, but which students are encouraged to participate in. This builds many skills – teamwork, working in a group, working to a timetable, doing something because you're enjoying it. In the second year, we've brought in a new skills programme, which again is designed to bridge from the skills that students need in the academic world, to the skills that they need afterwards. A huge range of skills are covered: legal tech, legal ethics, a negotiation and awareness stream split between commercial and non-commercial, and an advocacy stream. We have listened to our students telling us that this skills development is vital, not only so that they succeed in whatever job they go on to do, but also candidly to succeed in the assessment centres and the interview processes that are necessary to get a job in the first place. The last piece of the puzzle will be putting something in place for the third-year students. This is coming, and so watch this space!

ST: Wonderful. Final question, then: where next with this programme?

SP: Our current focus is careers provision. There is a difficult balance for us here. Increasingly, particularly in the legal world, but not just in the legal world, the recruitment process is rearing its head earlier in a student's time at university. There are many employers who are actively hoping to recruit from our first-year cohort. This is a modern challenge that didn't exist when I was at university, for all sorts of reasons. And I think if I'm honest, we have pushed back against it for a long time: our message to our students has been "don't worry about careers in the first year". Our motivations were good – we want our students to make friends, we want them to settle in, we want them to get used to being at university. But the message that we have been getting consistently from our students is that the approach is unhelpful – many students do want to be engaged with the recruitment process early, and simply being told "don't worry about it" looks as if we're saying, "we're not on your side, we're not helping with this process".

And so, we have said to our first years that we understand that this message is not helpful, and we are thinking about how best to support those students who wish to engage in careers at an early stage. To an extent this ties in with the progression idea – that while students are thinking about what excites them academically, they're also thinking about what excites them for their prospects, for what comes next. We have an incredibly rich programme of events in the Law School: readers of *Ratio* will, I'm sure, already have read about our magnificent Convene programme. We are more actively showing our students that they can use that programme as a way of exploring opportunity, as a way of meeting and networking with people, as a way of preparing for interview processes. Part of the challenge is providing more guidance for students on how to use the resources that we have in place. We are also currently advertising a new Careers Consultant post for those with either previous experience in careers advice or prior professional experience to deliver tailored advice and insight to LSE Law School students and alumni. And we are in the early stages of developing an explicitly career-orientated set of sessions – once again, watch this space!

At the same time, we remain committed to ensuring that students who are not ready to engage in the careers question do not feel an obligation to do so. It is important for us that our students can tackle this at whatever pace is right for them.

ST: It might also be something that readers of *Ratio* might be interested in getting involved in themselves – our alumni are working in so many different and interesting fields, and they might be interested in reaching out to the Law School…

SP: We would love to hear from alumni. Many of our students are very directed – they know exactly what they want to do, and they never waver from that. But many students find the choice in the modern world and the amount of information overwhelming. Navigating the modern landscape is fantastically difficult. And there is no doubt that it is invaluable for our students to hear from alumni who have taken a law degree and used it in different ways. If alumni can spare the time to come to events and to chat to students, that is one of the richest experiences LSE Law School can offer.

ST: So, if you're reading this, and you think that's something that you could maybe do, please get in touch! (law.reception@lse.ac.uk). Thank you so much, Sarah.

The LLB Legal Skills Programme

Launched in 2023, the Legal Skills Programme provides LLB students with opportunities to develop the practical skills and knowledge needed for a career in law. There are four modules: LegalTech, Legal Ethics, Problem Awareness and Negotiation, and Advocacy. Dr Szymon Osmola spoke to the convenors of the programme – Ayse Gizem Yasar, Dr Sonya Onwu, and Hannah Gibbs – about the thinking behind it and the success of its first year.

Szymon Osmola (SzO): What is the purpose of the Legal Skills Programme?

Hannah Gibbs (HG): The purpose of the programme is to complement the core LLB curriculum with practical learning that will equip students for the very difficult task of getting a job in law, and to introduce them to skills that they will need as lawyers in the workplace.

Ayse Gizem Yasar (AGY): The programme teaches students how to effectively implement, in real life, what they learn on their LLB courses. What we had in mind

when designing the programme was that it could be helpful not only for those who pursue legal careers, but also those who do not necessarily wish to pursue a legal career. For example, in the LegalTech module, the speakers discussed not just the legal application of various technologies but the core technologies themselves and their broader societal implications.

Sonya Onwu (SO): Prior to the introduction of this programme, first-year students had an entire course focused on the skills that they need to study law, but there was no space for students to learn more practical legal skills. The idea behind the programme was to take a staged, more hands-on approach to developing such skills. For example, the Legal Ethics module gives students a space to engage with the type of ethical dilemmas that they might encounter in practice. The sessions encourage students to think about how to reconcile their personal morality and worldview with a strictly legal approach.

SzO: Could you tell us a bit about the modules that you each teach? What specific skills or knowledge can students gain from them?

SO: For the Legal Ethics module, I wrote three scenarios, each based on an ethical conflict and within a different area of law – Equality, Diversity and Inclusion (EDI), criminal law, and corporate ethics. I delivered the EDI sessions. The criminal ethics sessions were run by Jonathan Fisher, Abigail Bright, and Genevieve Woods, and the corporate law sessions were delivered by Mark Shaw, Steph Maguire, and Mary Stokes, all of whom are practitioners.

Students were given the scenarios in class, and they were asked to consider them in light of the codes of conduct of the Solicitors Regulation Authority and the Bar Standards Board. The idea was to get students to think about how those rules could be interpreted and applied in a particular scenario. Students worked in small groups to discuss and analyse the scenario and to think as if they were legal counsel in those cases. This allowed them to critically engage with a case, talk through relevant ethical matters with their peers, develop a strategy, and get feedback.

HG: I ran the Advocacy module, which included three sessions. The first one was an advocacy masterclass with Jasbir Dhillon KC (Brick Court Chambers) on the art

of persuasion. This was followed by another masterclass with Fiona Scolding KC (Landmark Chambers) and Sam Stein KC (39 Essex Chambers) on how to learn the skill of advocacy and develop a unique and authentic style. Finally, David Green (12 KBW) joined us for a conversation about how to get a pupillage. These sessions focused on gaining the skills needed to enter the bar and develop a successful legal career.

AGY: I designed the Legal Tech module, which also included three sessions. It started with a general introduction to LegalTech, taught by Bruce Braude, who is the CTO of Deloitte Legal. A technologist by background, he has worked in the legal sector for many years, and he shared his experiences in designing and implementing technological tools and invited the students to think about the legal and the societal implications of adopting novel technologies. The second lecture introduced students to some specific LegalTech tools. We were joined by Brenna Speiser from Allen & Overy's innovation hub Fuse, who explained how start-ups and LegalTech companies develop tools used in the legal sector. Brenna prepared a Q&A session with start-ups from the Fuse cohort in different legal sectors. The speakers from the start-ups explained the reasons why they founded or chose to work for their companies and also talked about careers in the LegalTech sector and how to enhance collaboration between lawyers and technologists. Finally, the third lecture, with Mark Lewis – LSE alumnus and Visiting Professor in Practice – provided an overview of the regulatory landscape of LegalTech.

The course was designed as an intensive and interactive introduction to LegalTech. Students had a chance to become familiar with specific new technologies (like generative AI) and to learn about their impact on the legal sector and lawyers' life and work, as well as their societal and legal implications. The module was accompanied by a Moodle page, which offered

students further information on the specific LegalTech applications that we discussed on the course and a legal tech glossary explaining the vocabulary of the speakers. The page was designed to enable students to dig deeper into the subjects they find interesting.

HG: Alongside these modules, this year we also launched the inaugural Dame Linda Dobbs Moot, which is open to all first-year students. During the moot, students were assigned the roles of barristers and solicitors and were asked to draft pleadings and skeleton arguments and to present their case before judges from LSE and the world of practice. This gave students a chance to hone their written and oral advocacy skills, and to learn how to work in a legal team.

SzO: Could you say more about how the programme prepares students for their future careers?

AGY: All the invited speakers for my module were keen to engage with students and were happy to take questions concerning future careers. While not a career event, the module introduced students to different career paths and allowed them to interact with experts in the field of LegalTech. It thus provided students with opportunities to interact with those experts, both during the programme and afterwards.

SO: The Legal Ethics module encourages critical thinking about law, which is so important for students in developing their capacities as well-rounded lawyers and thinkers. While ethical questions do not necessarily come up in assessment centres, these sessions prepare students for the different types of conversations that they might face in their future careers.

HG: Both the moot and the Advocacy module give students the chance to meet with – and obtain feedback from – pre-eminent legal practitioners. They equip students with crucial legal skills – such as arguing their case before the court – that are hard to obtain in lecture rooms and classes alone. In other words, the moot and Advocacy module teach students how to implement the theoretical knowledge they have in practice.

SzO: What do students think about the Legal Skills Programme? Have you had any feedback on your modules?

HG: So far, we have had really promising and positive feedback about the impact of the programme on the overall quality of the LLB curriculum. Moreover, students seemed to have had great fun along the way, meeting new people and making friends in the process.

AGY: Students seem to have appreciated the opportunity to interact with practitioners from the growing field of LegalTech and to think collectively about the implications of new technologies in the legal profession and beyond.

SO: On the whole, the sessions went well. Students who feel more comfortable in small group settings enjoyed it much more than others. The plan for the next year – in light of this year's feedback – is to have an introductory lecture to take students through the codes of conduct and outline some initial considerations. This would then be followed by a session focused on group work, with the idea being to bring in experts in group dynamics to assess and give them feedback.

SzO: Thank you so much for taking the time for this interview. It's been wonderful talking to you about the Legal Skills Programme and good luck with its future iterations!

Negotiating the future: Sam McAlister on her LSE classes

Interviews in *the Guardian*, and the *Tatler*, *GQ*, *Forbes*, and *Elle* magazines. Media appearances on *Good Morning Britain*, *This Morning*, and US TV. Podcasts with the *Daily Mail*, the *Spectator* and Matt Forde. Countless speaking engagements, a *TEDx* talk, a bestselling autobiography, and a Netflix film. Sam McAlister is in demand. Amidst all this, Dr Andrew Scott stole a moment to discuss the sessions on negotiation with LSE Law students that Sam is leading as a Visiting Senior Fellow in Practice.

Sam McAlister owes her prominence to the book she authored after leaving the journalism team on BBC *Newsnight* on which she worked for more than a decade. The work, *Scoops: Behind the Scenes of the BBC's Most Shocking Interviews* (2022, Oneworld Publications), narrates her experiences on the flagship programme and includes insight on the shifting contexts of her work at the BBC. It also relays the background to a range of interviews that she secured for the programme: interviews with Sheryl Sandberg, Justin Trudeau, Bill Clinton, Elon Musk, and Julian Assange among many others.

Of course, Sam's book centres on the lead up to and fallout from the notorious interview given to *Newsnight* by Prince Andrew. The interview was described as a "a plane crashing into an oil tanker, causing a tsunami, triggering a nuclear explosion". The book was subsequently optioned to become a Netflix film, in which Sam was played by Billie Piper alongside Gillian Anderson as Emily Maitlis, Rufus Sewell as Prince Andrew, and Keeley Hawes as the prince's private secretary, Amanda Thirsk. Sam executive-produced the film.

Sam's time on *Newsnight*, with its continual run of often fraught negotiations, and her prior experience elsewhere in the BBC and before that as a criminal barrister, leave her well-placed to guide students in her sessions on negotiation at LSE Law School…

Andrew Scott (AS): So, can you tell me about what it is that you are doing with the students here at LSE?

Sam McAlister (SMcA): I'm the co-curricular chair of a new module that has been introduced on Legal Skills, effectively filling that gap between the intellectual skills – which obviously so many LSE students have – and the more practical skills, formerly known as "soft skills" (although if they were in fact soft everyone would be good at them), which in a sense are so much harder than the intellectual skills. My co-chair does what we are calling "legal negotiation", while I focus on "non-legal" negotiation: the stuff that comes down to charisma, hard work, strategy, sweet spots, and human interaction – all the stuff that many students hate, dread, and fear. So, the stuff that can make the difference between getting into an interview and getting a "yes". I think that is the bit that we forget about when we just study the pure, intellectual law.

AS: Yes, well I wanted to ask, given your own background and professional engagement in negotiation, whether you have any background in psychology or whether these are just skills that you've picked up yourself over time?

SMcA: Well, it's a bit of a nature-nurture thing. It's difficult to tell how much of it is picked up and how much is instinctive, but my family background is market people, East End cockneys, so I was brought up around having to buy and sell and actually being on a market stall. If every law student spent a day trying to do that, I think they would learn very quickly how you have to literally make a hundred sales a day.

AS: Yes, so you have what we would describe as the "gift of the gab", I don't know if that translates…

SMcA: Absolutely. My family literally lived or died on that basis. You didn't have the capacity to be eyes down on a laptop. You have to do deals… you are basically dealmakers, relentlessly, and then of course I was lucky enough to have the formal legal education, and studied negotiation as part of the Bar Vocational Course, which was my favourite course by a country mile, and I was an absolute pain to all the other people on the course, because I didn't do things "the right way".

AS: Well, ultimately, you do what works…

SMcA: Yes, well I think there is a misunderstanding about the product, and the product is "you", and you have to start building from a very young age. I didn't know a lawyer until I became one; I didn't have a mum or dad who could make a phone call for me. Anything that I've done has been through graft and merit, and also tenacity, so I think it is really good for students to enliven those skills again, because, respectfully, they will get you a lot further if you have the intellectual skills already.

AS: Personally, I have long thought that we should be putting on a course that would deliver both the intellectual dimension but then also something like the Bar Vocational Course, something more akin to the Juris Doctor professional programmes that they have in the States where the students are coming out with qualifying law degrees but also precisely the array of skills development that you are now beginning to introduce into the curriculum for us.

SMcA: Yes, I think it is hugely helpful because you have such talented students, but ultimately if you get to the door of an interview with a major city firm, and you walk through the door and you have nothing to give except the intellectual skill set, you are going to be in trouble. I know someone who got hired on the back of a deep knowledge of Nick Cage films. Obviously he also had an incredible education, but that was what helped him make the connection. There can be hundreds of people and you need to not be just one of many.

I think my classes, the first class, may be semi-traumatic for some people. They have the comfort of not being assessed, which offers a bit of respite, because law studies can be relentless. But there is also a discomfort in not being assessed, because I want to get to know them. They are talking, getting to know each other, and the negotiations come in through these continuing interactions. It is old school, learning to interact again after so much formal education.

AS: Yes, well you can see it immediately – maybe in my classes more than others, I'm not sure – but sometimes the type of interaction you are having in the classroom is so different to the type of interaction you are seeing once the class is over and they are leaving the classroom talking to the same people. But you were taking me in the direction of the question I was going to ask, which is about what you are actually doing in the class. Do you have a particular "meat" that you have the students chew over?

SMcA: Well, it is a bit more informal. The first session is really just very casual. I've been lucky enough to have had a pretty interesting career, so we talk about the legal career, then we talk about the Prince Andrew interview and all the other interviews that I negotiated. I show them pictures from inside that context. And then since leaving the BBC, I've been negotiating book deals, and a Channel 4 documentary, and then the Netflix film, and so the whole way through my career, I have been involved in dealmaking…

AS: So, you're still in the East End marketplace then…

SMcA: Absolutely, always doing deals, and so it is really just going through the story and trying to get them to observe and appreciate things that they might not have considered to be negotiations, but which are really just that. Then in the later sessions, they are asked to identify three things that might work as negotiation points with me, and to try and effectively negotiate with me, but it stays informal, we don't pretend it's a multi-million-pound deal, although the skills set on the human element is the same with a multi-million-pound deal. And then we deal with twelve pointers on negotiation that are a little more formal for those of them who really need things to be formalised. But we try to avoid spoon-feeding and are more interested in having the students think about all the things that they are doing constantly that are really negotiations and have them identify their strengths and weaknesses and build on and address them. And hopefully all in a fun and informal way. A different vibe. And some of the students have told me that they have found it joyful, and that they have felt seen.

AS: Well, I think you are right. There are so many interesting stories behind what people are doing and who you know them as in class. And it is sometimes utterly chastening to find out quite how exceptional these students are in terms of putting themselves out there and doing really brilliant things.

SMcA: Yes, 100 per cent. And how hard they have worked to get where they are. I think what is really interesting is that it is almost taken for granted, the calibre of LSE students. What a phenomenal group of intellectually gifted young people, and they don't even get a second just to celebrate that. As a result, sometimes students' self-confidence can keep going down because the perception is that the people around you are so astonishing, particularly if you have come from a different background.

AS: Yes, well it is easy to trot out the idea that people suffer from "imposter syndrome", but not then do anything about it. Of course, it seems almost bizarre for these really very brilliant people to be feeling like that…

SMcA: Totally. I totally agree.

AS: Yes, and maybe we need to be doing more of what you are saying: recognising people, letting them know that they may sometimes feel like that, and just trying to set them at ease from the outset.

SMcA: Yes, sometimes they lose sight of themselves, but when you hear the stories of what they have achieved to be there, if they lose sight of that their confidence can drop.

AS: It is maybe a product of the fact that there are other brilliant people everywhere you look, and everything in life is relative. And the typical response is then to work so intensely hard, maybe driven a little by fear. Sometimes you just want to remind them how great they are. Help them maintain their sense of themselves.

SMcA: Yes, there can be a comfort in just having a bit of a chat, while hopefully teaching them some useful stuff, some of which can be really simple stuff like how to set up a positive LinkedIn profile. If there are just three or four students who come along to my classes, and whose lives I can in some way influence, that is something that just gives me huge pleasure and it's kind of what the course is intended to achieve.

AS: Well, on the strength of this conversation I can well imagine how you might achieve that. Many, many thanks for your time!

What do students think about the LLB reform?

As part of our profile of the LLB reform, we thought it would be good to hear from the students themselves about their views of the changes that have been introduced over the past year. And who better to ask than the LLB Student Representatives? Elected on an annual basis to represent their cohort, the six LLB representatives – two from each year – have a good sense of what the word is among students. In the 2023/24 academic year, the representatives were: Mehar Suri and Min Rebecca Yoo (from the first year), Carolina Martini and Vsevolod Martsenuik (from the second year), and Fee Robinson and Miriam Lo (from the third year). Dr Sarah Trotter met with them towards the end of the Winter Term to discuss their experience of and thoughts about the LLB reform.

Sarah Trotter (ST): How has the LLB reform affected you?

Fee Robinson (FR): I was very sceptical when I heard that ILS [Introduction to Legal Systems] was being rolled into a three-week course. I thought people wouldn't engage with it as much if it wasn't formally assessed at the end of the year. But everyone I've spoken to in the first year seems to have got more out of ILS, and that's also been reflected by the ILS teachers that I've spoken to as well. It seems like people really got a chance not just to engage with ILS as a topic but also with what the point of ILS is, which is that whole thing of gaining a deep understanding of how the legal system works, the contemporary issues, and how to approach the basic concepts. And actually when I talk to current first-year students they seem to have used that ILS knowledge in their other modules in a way that I don't think we did when we were learning it simultaneously.

Min Rebecca Yoo (MRY): I think it was good that it was a three-week intensive course in the beginning rather than being stretched across the term. I think it was less daunting to not have to go into the module content right as you come in – we didn't go straight into contract law, we got a good baseline. For instance with public law, we learned about diversity in the judiciary, and then when we learned about the institutions themselves we already had that context. It set the backdrop. And it also meant that there was less pressure for the first three weeks, which was good because we were also trying to settle in. I also talked to law students from other universities, and they have their equivalent course stretched out across the term, and towards the end of the year they feel like it's a bit redundant because they already know a lot of the content that's going to come up or a lot of the skills that are being introduced. So I really like that our course was intensive. We were able to ease into the course content more easily because we knew how to do the readings and how the class question system and Moodle worked.

ST: So it felt like an induction to all the other courses in a sense?

Mehar Suri (MS): I agree with that. The one thing we thought could have been added was more discussion of the actual history of this country. Of course you should do that research on your own as well, but a little bit more introduction in that area could also be great. But I really loved the circularity of this course, because everything that we were reviewing at the beginning is coming back now at the end of the course with our final revision lectures. We recently had a "criminal law in context" lecture, and everything that we had talked about at the very beginning linked with all the themes that we'd studied throughout the course, and it was just woven really beautifully into that final lecture.

Miriam Lo (ML): I think a massive change is the increase in the options that current first and second years will be able to take. Part of why this reform took place is to do with changes relating to qualification. With the SQE [Solicitors Qualifying Examination],

you don't technically need EU law to qualify, so that is reflected in the way in which you can just pick one option from the transnational basket. A lot of existing modules are also being broken down into half modules, and we've had the opportunity to read over all the course proposals. And I think that's something that's going to make LSE an even more attractive option to prospective students. I know that what made me choose LSE was the number of options available, and now that we have half options there are even more. It also allows people who really want to specialise in an area to delve even deeper, because they could do three, four, potentially even five modules relating to that area. So I think that's something that students are going to enjoy. They can really personalise their degrees.

FR: On the converse of that, I do also have some concerns. I've met a number of barristers who started out as solicitors and could never imagine going to the Bar, and I've had conversations with quite a few first years where I've had to really make them aware of the idea that you are potentially ruling out the Bar if you don't do EU next year and decide to take something else in the transnational basket instead. I'm worried about people not taking EU and stumbling into ruling out the Bar without giving it proper consideration.

ML: Can I add one more thing? I was Pro Bono Officer of the LSE Law Society last year and one of the things that David Kershaw and I talked about was the forthcoming legal clinic and integrating that into some of the new half-modules, which is a positive development.

Vsevolod Martsenuik (VM): I'm happy that ILS is now an introduction course. I'm from a civil law country, and our idea of the law, of the sources, and of how law is made, is totally different. So it is useful to have this course. Regarding the option courses, it's great that people have more options. The ability to make more choice and to tailor your own career path is great for competitiveness, because it allows you to show why you are interested in particular subjects. You can show something unique, your speciality.

Carolina Martini (CM): I'm excited about the range of options available. From a personal perspective, I've already done the courses that are needed for a qualifying law degree and I'm glad that it's given me a very firm understanding of the UK legal system. Honestly, if it hadn't been mandatory, I don't think I would have chosen something like Property II last year, whereas doing it this year I realised that knowing about land law and trusts is very useful. So I'm glad that it was forced upon me. But at the same time I'm very excited to be learning about niche and technical topics such as the new sports law half-unit module, especially because the professors we have are the very best in what they do. It's exciting to know that we will be taught on very narrow subjects by the best experts.

FR: There's a lot of excitement about being able to choose, about having more control over your degree. We've spoken about the half-modules in terms of specialisation, but one of the things that people are also excited about is that they allow for greater generalisation. People can take a broader range of courses. It allows people who previously would have taken all corporate modules to throw in a half-unit that's a bit more socio-legal, which I think is crucial. And I think that's what the real excitement is for with these new options: the flexibility of choice and to have a degree that is your own. And that does come with downsides: there is some stuff that I've ended up doing during a full unit because I took it for one half of the unit. I'll give the example of the civil liberties and human rights course. I took that for the civil liberties bit, but I actually ended up falling in love with the European human rights law bit. But I'd never have taken European human rights law. So I think it is give and take, but on the whole it is allowing people at undergraduate level to explore breadth, and still with some significant depth. When you talk to people from other departments, they all run off half units and they really appreciate getting that breadth at undergraduate level and then, if they want to specialise, they go and do a masters. And with more and more people taking law courses because they genuinely love law, not as a means to an end, I think it's a great opportunity to let people explore law.

ST: What about the new skills programme? What do you think about that?

VM: I believe it was done very well. I personally appreciated the introduction to legal technology. For law firms, if they can take someone who is already skilled with particular applications, it means saving money. We need theory, definitely, because high-level law involves talking about the political point of the law. But at the same time, people need to learn the skills. We need to keep a balance between flying high and being on the ground of how it's really happening. Another point about the skills programme is the exposure to practitioners. It gives an extra point of contact to talk, to discuss, to network, which may be potentially interesting.

FR: I've heard great things about the skills programme. I was really interested in the legal ethics module, but I wasn't so interested in the legal tech. If I could have done the module in legal ethics I would have, but I didn't want to sign on for the whole thing. Everything I've heard from second and third years about it has been universally positive and I think it's a great addition.

ST: How about the moot?

MRY: I found the moot really enriching. I especially liked that we had a coach. I had Fee as my coach! And I think it was lovely that people got to build a relationship with a second- or third-year student who is really experienced in what they do. For all my team members, it was their first-time mooting, so to have someone guide you through not only writing the bundles but also the advocacy involved was really helpful. As a first year it can be especially daunting to go into something like a moot that has specialised rules and terminology that you need to use, so to have that extra guidance and support was really a good gateway into mooting and I think it's great for both the Bar in terms of the advocacy but also the solicitor route in preparing the skeleton argument and bundles. I think it was a really good and enriching addition to the first year.

MS: I agree. It eased you into that judicial process that you're learning about but that you don't really understand until you're in it yourself. And the whole coaching system was really nice as well. The problem question was geared to what we were learning and that also enriched our understanding of the course work, so it was a really good addition.

ST: What kind of skills do you think the reformed LLB programme has enabled you to develop?

FR: I think one of the big ones is that it gets people thinking more about what they want from a law degree, and I think that's really important, because a lot of people come into a law degree seeing it as a means to an end. I know I did when I first started. I knew I wanted to be a barrister, and that I needed a law degree to do that, so I saw it as a means to an end. With the reform, you

have to make more choices, and you can specialise more, generalise more, and even within the legal skills programme pick the route you want to go down. I think it really cultivates that culture of people questioning why they are doing a law degree and what they want out of a law degree. And that doesn't just affect the options you take, but you take what you get from that internal analysis or internal reflection and you apply it to the extracurriculars that you want to do too. And I think even just the whole fact that the first years have had a more in-depth look at public, contract, tort, and criminal law has better equipped them to decide what they're interested in. I've heard more people be excited about tort this year than I think I ever have in the past, which is great, because it means that there are people who may previously have never discovered tort who are now finding it.

ML: I think the shift from closed-book exams to open-book exams also allows you to develop skills that don't involve focusing on memorising or regurgitating content, which everyone at LSE can do. Open-book exams require you to think through the material and, as you're reading, to understand, to synthesise. One of my first-year professors famously said that to do well in your law degree you have to struggle with the material. You're able to do that when you have an open-book exam, because you can bring in your notes, and if you've had any thoughts when you were reading you can note them down. And I think those skills are so much more important to us in the long term than the skills involved in a closed-book exam. And also I think a lot of the exams are a big longer as well, which means having more time to think and to process your thoughts instead of just sitting down for half an hour or forty minutes to write an essay.

CM: I took closed-book exams last year in the first year and now, in the second year, I'm in the open-book format. And I've realised having just started my revision that I'm engaging with the material on a whole other level because at least half of my time last year was focused on memorising the names of cases or quotes, whereas this year I can write the case name down and when I read it from my notes I immediately remember the points that I got from engaging with it more thoroughly. So it's more about not having a picture in my head but rather really understanding what's beneath the simple name of a case. So I'm enjoying this new open-book format a lot more.

VM: I believe the idea of open-book exams also cultivates a good culture of notetaking. If you know your notes could be helpful during the exam, you're more likely to do them properly. They play a crucial role after graduation too. For people going on to the SQE, you still need to revise the material, and if you already have notes, it makes life easier. You have a backbone for your studies. It's also closer to life, because there's a huge bundle of case law and legislation which we cannot keep in our head and which lawyers still check when they go into court.

ML: I currently, as a third year, do two modules that are assessed by dissertation and two by exam. And the skills that I've found that I've developed in doing both of those things are wildly different. There is a level of independence and research involved in a dissertation, and being able to develop what you're interested in in your own direction is something that is invaluable.

MRY: One thing that I really appreciate is the fact that we only have to answer three questions in three hours rather than four. It allows us to produce a better planned and more thought-out answer. It gives us more time to engage with the question and the material. Though one wish is that it could be open book as well, because first-year exams are still closed book, and knowing that second- and third-year exams will be open book…

FR: If I can very briefly respond, I think the best rationale for that is that your first-year learning is so core that there is more purpose to you having it committed to memory. In future years when you're in classes they'll be talking about concepts or even cases from criminal law, contract law, tort law, and public law, and you will to some extent be expected to just go with that. First-year material is the stuff that you need committed. But that doesn't mean it isn't tough for you guys…

CM: It's the building blocks that you need to have as a basis; the next few years build on it…

VM: Also, your first year doesn't go towards your grades. During the first year you need to understand how to study at LSE, how to study the law. You're creating a discipline for second and third year.

ST: Thank you all. One final question: if you had one word to describe the LLB reform, what would it be?

CM: Engaging.

FR: One word? How many hyphens are we allowed?

ST: You can have one hyphen.

MS: Worldly.

ML: Forward-looking.

FR: Potentially great, hyphenated.

MRY: Flexible.

VM: Would have liked to have experienced it earlier…

ST: That's more than one word…

VM: But it's not a rule, just guidance…


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TEACHING AND LEARNING

Law, Poverty, and Access to Justice: a talk by Visiting Professor in Practice David Lock KC

One of the new LLB courses is Law, Poverty, and Access to Justice, which is a half-unit option that focuses on the relationships between law, poverty, and inequality. In this piece, Dr Joe Spooner explains the thinking behind the course and introduces a talk that was given to the students by Visiting Professor in Practice David Lock KC at the start of the term. We are delighted to be able to publish it here.

In 2024, Dr Joe Spooner and Dr Sarah Trotter launched a new LLB course entitled *Law, Poverty, and Access to Justice*. A chief motivation underlying the development of the module was to increase the public interest law offering available to our LLB students, and so to act as an academic counterpart to the Law School's support of our cohort's laudable and expanding pro bono work. The course aims to explore key issues in the relationships between law, poverty, and inequality – including both the ways in which legal process and methods may disadvantage the poor, and the progressive potential of law as a tool for alleviating poverty and inequality. Seminars raise questions as to the role of law in relation to contemporary problems of poverty and inequality and consider the limits of legal change. The course asks what the role of lawyers should be in an age of inequality, and how access to justice can be achieved in the face of ever-increasing challenges of legal system funding. Often technicalities can disguise distributive issues and conceal the effects of the law in shaping conditions of poverty and inequality, and so we aim, for example, to uncover how legal "ground rules" (including private law and regulatory frameworks) can shape market conditions in which the poor pay more. Content also considers the relationship between citizen and State in the welfare and housing systems, and how these relations are influenced by courts and the broader legal system.

Given these aims and themes, the perfect guest lecturer to address our students in our opening session was Visiting Professor in Practice David Lock KC. David has had an illustrious career as a barrister specialising in public law, with particular expertise in relation to information governance, police law, and public sector pensions. Alongside this impressive body of work, David also contributed significantly to UK public life as a Member of Parliament and Legal Minister in the UK government between 1999 and 2001. This was all before subsequently serving as a Deputy High Court judge over recent years. David's unparalleled experience and insight means that he offered a fascinating and unique perspective when addressing our students on questions of law, poverty, and inequality. We are privileged to have the benefit of David's knowledge in the Law School, and our students were enthralled and inspired by his talk, which David has kindly allowed us to reproduce below.

A talk to students on the Law, Poverty, and Access to Justice course

By Visiting Professor in Practice David Lock KC

Far away from the gleaming offices of London law firms, lawyers are involved in providing legal advice and support to the poor and the vulnerable. This area of law has its own range of intellectual, emotional, and structural challenges which are, in many ways, a world away from those advising companies on corporate deals. Providing legal services to the poor and vulnerable, or acting for public bodies who face challenges from the poor and vulnerable is a world of its own, which is far, far away from corporate law but is a vitally area of legal practice.

I would like to start by warmly commending Sarah and Joe for putting on this course and each of you for signing up to it. The way in which the legal system interacts with the poorest and most vulnerable in our society is a much neglected but vitally important part of the operation of the legal system. I am confident that you will learn both facts and perspectives on this course that you will not get from anywhere else.

I come at this subject as a former policy maker – from my time in government – and latterly as a practitioner and Judge, but not as an academic. That means that I have had the benefit of conducting numerous cases over my career where poor people are trying to battle against "the system" (as they see it). I have been counsel in many cases on behalf of the individuals but also counsel for public bodies who are battling on behalf of the poor and marginalised to try to make the system work for the benefit of those in lower socio-economic groups. I have also acted for public bodies when they are defending challenges brought by marginalised groups.

That experience in individual cases is valuable but Joe and Sarah will give you a strategic overview of the operation of this area of the legal system which, as a practising lawyer, I do not have. Their views about what is happening at a system level, how courts or tribunals in fact interact with poor people with problems are perhaps more important that the views of individual practitioners. They ask the difficult and important questions as to whether the systems policymakers put in place and lawyers operate in fact deliver access to justice to the poor and vulnerable.

So, what is my perspective as someone at the legal coalface? There are public law and private law aspects of the way in which the poor interact with those providing them with goods and services. Some of the problems seem to show how the poor start off with an essential disadvantage. For example, Joe has done extensive work on why the poor pay more for their credit, demonstrating the truth of the biblical quote:[1]

> "For to everyone who has, more will be given, and he will have abundance; but from him who does not have, even what he has will be taken away."

However, as a public lawyer I am going to confine my remarks to the issues that confront poor people when trying to exercise their rights to receive public services.

First, and this is to state the obvious, the more that individuals rely on goods and services from state organisations, as opposed to using their own funds to purchase goods and services in the economic market, the more individuals migrate from a "customer" relationship with the person providing them with goods and services into a "service user" relationship. Suppliers live or die by the approval of their customers because the customers are exercising a choice to use one particular supplier over others. You make the decision to shop at Lidl, Aldi, Sainsbury's or Waitrose as a result of a mixture of factors such as price, quality, convenience and occasion. Amazon has been successful by focusing relentlessly on the "customer experience". But if you are a service user of public services, as opposed to a customer, the relationship between the public body providing you with services is wholly different. What are those differences?

First, the service user will rarely have any real "choice" about which public body provides them with services or, if there is a choice – as there is in, for example, school placements or as to which NHS GP practice you sign up to – the choice can be severely constrained. The NHS legislation refers to "patient choice", but there are a myriad of complex hurdles anyone has to cross before that choice can be exercised in practice and it is questionable if having these rights makes any real difference to NHS patients.

Secondly, the service user is not using his or her own money to buy the service. Public services are funded by the taxes we all pay but there is no direct economic customer/supplier relationship between the service provider and the service user. Hence, although welfare benefit recipients partially fund universal credit payments through the taxes they pay, the perception is that they are getting a "handout" from the state which is paid for by someone else. This perception that the poor are getting goods and services which are paid for by others can put the service user in a weak moral position and can be used by those providing the services not to see the service users as the persons who are paying their wages.

Thirdly, discretionary decision-making works in a very different way between public services and private purchases. A large part of the discretionary decision-making involved in the relationship between a customer and a supplier is on the side of the customer. If one shop cannot provide something you need, you go somewhere else. However, and in contrast, discretionary decision-making in any relationship between a service provider and the service user is largely on the side of the service provider. Usually, those in receipt of public services have little say over what they get and little control of how they get it. Decision-making is very largely out of their hands.

Fourthly, the legal framework in the relationship between a customer and a supplier is fairly

1 Matthew 25.19 in the Kings James Version.

straightforward – goods have to be fit for purpose and of merchantable quality. Services have to be of reasonable quality. The price is the price stipulated or negotiated in advance or, on the rare occasions where no price was agreed in advance of the transaction, the price is a reasonable price for the goods or services provided. In contrast, the legal relationship between a service provider and the service user is almost always hugely complicated because it is governed by a statutory scheme and complex guidance which neither the service provider nor the service user is likely to have fully mastered. For example, the official guidance on the provision of social care by local authorities extends to hundreds of pages and comes with the following warning:[2]

> "The Health and Care Act 2022 revoked Schedule 3 and amended Section 74 of the Care Act 2014 on 1 July 2022. This means that certain parts of this guidance are out of date and in the process of being updated to reflect the relevant statutory changes."

It is virtually impossible for an informal carer who is battling to get services for an elderly patient to get to grips with the legal framework and the guidance within which decisions are supposed to be made.

Fifthly, the relationship between a customer and a supplier is binary in that it only involves the interests of the customer and supplier. The restaurant decides what is on the menu and the customer decides what to order off the menu. In contrast, the relationship between a service provider and the service user is governed by wider considerations, namely system-based considerations. This factor was shown in the evidence produced by an NHS Chief Executive which is quoted in the *Condliff*[3] case as follows:

> "For the PCT, the decision to commission a particular type of treatment is not just a question of whether a medical treatment is clinically effective. If a treatment were not clinically effective, we would not commission it. However if a treatment is clinically effective, we would only commission the treatment if we could afford to do so. Our duty to break even means we need to judge whether clinically effective treatments are (a) a cost effective use of the limited resources available to the PCT and (b) affordable. As we have a fully committed and finite budget, the duty to break even means that if we commission additional services for any patient group where these are not funded at the moment, we need to pay for this by disinvestment in other services for other patient groups."

Sixthly, those in receipt of public services are disproportionately economically poor, elderly, from ethnic minorities, the disabled or have one or other protected characteristics[4] under the Equality Act 2010. I understand that the categories of "protected characteristics" were chosen because of two factors.

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2 See **gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance**

3 *R (Condliff) v North Staffordshire Primary Care Trust* [2011] EWCA Civ 910 [2012] PTSR 460.

4 The protected characteristics are:

- age
- gender reassignment
- being married or in a civil partnership
- being pregnant or on maternity leave
- disability
- race including colour, nationality, ethnic or national origin
- religion or belief
- sex
- sexual orientation

First, there was widespread evidence of systematic discrimination based on that characteristic and secondly, the discrimination was considered by the government of the day[5] to be sufficiently important to make discrimination based on that characteristic to be unlawful. It is an essential part of the background that the provision of public services to service users takes place against a background of historical discrimination.

Seventhly, and nearly lastly, public funding to support assistance to service users to help them navigate the complex challenges they face is diminishing with the retreat of legal aid and the reduction in publicly funded advice services. Further, if service users do manage successfully to challenge decisions by public sector providers, the decision will almost inevitably be taken in a forum in which the service user will have to bear the cost of proving that the public sector body acted wrongly. There are "no costs" regimes operating in most tribunals, which means that public funds are used by public bodies to support the defence of their decision-making and there are few, if any, funds available to the service user. Managing tribunals without assistance makes light of the fact that the reason that the service user is entitled to the service in the first place is also often indicative of features which make it more difficult for the service user to understand the way the decision was made or mount an effective challenge to a wrong decision.

And finally, in the highly unusual case where a service user is able to mount an effective challenge in the courts, whatever the moral rights and wrongs, the legislation and the principles of UK administrative law make it massively difficult for service users to succeed, whatever the underlying merits of the case that they are seeking to bring. The vast majority of judicial reviews fail – over 90 per cent are refused permission. And when permission is granted, the obstacles to a successful claim can appear daunting – often however outrageous the (often admitted) failings of the public body as the Court noted in *R (AA & Ors,) v NHS England* [2023] EWHC 43 (Admin), which I will consider below.

Nonetheless, the role of lawyers in holding public body decision makers to account through the court and tribunal system is essential because legal rights are as useless as a chocolate teapot unless people have the right to enforce those rights. Although 70 per cent of people bringing cases to an Employment Tribunal to complain they were not paid the National Minimum Wage were successful, it is not clear how many were finally able to secure the payment to which they were entitled. It is also likely to be a tiny proportion of those who were paid under the National Minimum Wage in the UK.[6]

R (AA & Ors,) v NHS England [2023] EWHC 43 (Admin) is an illustration of the challenges faced by those conducting public interest litigation. The Claimants were children and adults who needed gender identity disorder services because they presented as being transgender. The long waits for those services meant that, in practice, those services were not available to these patients or were only available after waiting many years. NHS England, who were the NHS commissioner for this service line, acknowledged the failures in delivery of these services and produced a mountain of evidence about the complexities of commissioning these types of services and about the unsuccessful efforts they had made over the years to seek to expand provision. But the simple fact remained that this group of patients desperately needed services and were being failed. The claim was unsuccessful because, in summary, all of the assurances in the NHS legal framework and in policy documents had sufficient caveats that trying and failing to provide services was not unlawful. However, the process of bringing the claim focused minds, generated policy commitments that might have otherwise remained vague plans and undoubtedly advanced the cause of equality of treatment for those in need of these services.

5 The Equality Act 2010 was, in some ways, a consolidating statute that brought together a series of previous Acts of Parliament which made provision against different types of discrimination such as the Sex Discrimination Act 1975 and the Race Relations Act 1976.

6 See **gov.uk/government/news/more-than-200-companies-named-for-not-paying-staff-minimum-wage**. The PR said "Since 2015, the budget for minimum wage enforcement has doubled with the government having ordered employers to repay over £100 million to 1 million workers".

The Supreme Court of the United Kingdom

In contrast, the recent decision of the Supreme Court in the Rwanda immigration litigation[7] shows that – perhaps only occasionally – the poor, the vulnerable and the politically unpopular can have their rights recognised and upheld by the courts. That case only succeeded due to the commitment and dedication of hugely talented public lawyers who used the law as the ultimate tool to protect the position of vulnerable asylum seekers. Acting for those who have little or nothing, who routinely expect society to do them down, and using the law to deliver outcomes they never believed possible has been perhaps the most professionally satisfying part of my professional career. The practical and legal challenges for acting for those who complain that they have had their rights violated and been let down by the system is rarely financially rewarding and is never easy, but you will find yourself in excellent company where grim humour is never far below the surface.

7 See *R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department* [2023] UKSC 42.

LSE in The Hague

In June 2023, ten LLM students were selected to join "LSE in The Hague", a three-day excursion to the international legal capital where they had the opportunity to meet judges, practitioners, and diplomats working at the forefront of international law. The programme included: meetings with Judge Peter Tomka and Judge Hilary Charlesworth at the International Court of Justice; meetings with Judge Kimberly Prost, defence counsel Melinda Taylor, prosecutor Laura Morris, prosecutor Matthew Cross, and victims' counsel Anand Shah; meetings with Judge Guénaël Mettraux and prosecutor Matthew Halling at the Kosovo Specialist Chambers, and the chance to watch proceedings; meetings with members of the Dutch International Crimes Team to discuss the exercise of universal jurisdiction in the Netherlands; lunch with Ambassador Mario Oyarzabal at the Argentinian Embassy; and a visit to the Organisation for the Prohibition of Chemical Weapons. Dr Devika Hovell, who organised the excursion, invited students to reflect on what they had learned in The Hague. These reflections follow.

"Before starting the LLM, I really felt that the International Criminal Court (ICC) model was the best option for the future of the international criminal law field. However, being able to directly compare the ICC and the Kosovo Specialist Chambers (KSC) in The Hague shifted my thoughts. Where the ICC seems to struggle with the almost impossible task of being universal, the KSC seemed to thrive on the specialist expertise and knowledge that has been accumulated by those involved during the International Criminal Tribunal for the former Yugoslavia and then the KSC. So now I am wondering if the ad hoc model may, in fact, be more advantageous."

Jenna Robinson

"I am from Colombia, a country that has one of the longest internal conflicts in history and despite the 2016 Peace Agreement the war keeps ongoing. … [A] few weeks before our visit to The Hague the ICC prosecutor went to Colombia to enhance accountability regarding the implementation of the Peace Agreement, and I wanted to have some insights from that visit. The time we had with Matthew Cross was very meaningful for me…At the moment, almost 7 years after the Peace Agreement, there is still no sentence for the most high-ranking former leaders of the FARC (the Revolutionary Armed Forces of Colombia), regarding hostage-taking and other severe deprivations of liberty, which is one of the most important cases for the country. Despite that, [Matthew Cross] recognised that the system we have created has a lot to offer, especially regarding the engagement of the victims in the process. He also recognized that there are things that the ICC could learn from the Colombian case."

Daniela Luque

International Court of Justice

"Ever since I enrolled in law school in 2010 at the age of 18, I dreamed of becoming an international lawyer. However, coming from a country far away from the centres of international lawmaking, I faced many challenges and limitations in pursuing this goal. For a long time, my only exposure to international law was through books, cases, and moot court competitions. That changed thanks to the LSE in The Hague programme, which I consider a turning point in my career."

Joaquin Caprarulo

"A stand-out learning moment during the LSE trip to The Hague was viewing a hearing at the Kosovo Specialist Chambers. The afternoon we attended, the parties were making submissions and responding to questions from the bench with respect to protective measures for witnesses, particularly closed court hearings. This was a valuable opportunity to see the themes we debated in the international criminal law course in 'action' in the courtroom, including: protecting the safety of witnesses and their vital role in bringing a matter to trial; whether a public hearing is linked to reconciliation and a perception by the affected community that the trial is fair; and the rights of the accused."

Elif Sekercioglu

Judge Hilary Charlesworth, International Court of Justice

"The LSE in The Hague programme gave me a unique insight into international law's complex practical manifestations. The programme was structured with such care, starting from understanding the very foundations of international law in witnessing the Grotius collection at the Peace Palace Library to attending the ongoing trials at the recently constituted Kosovo Specialist Chambers. No other programme in the world, except LSE in The Hague, allows a student of international law to experience a direct interaction with judges, lawyers, academics, and institutional functionaries of revered forums such as the International Court of Justice and the International Criminal Court – and that too on the same day."

Kushagra Gupta

"While I loved meeting everyone and seeing all the institutions, I think the real standout for me was the meeting at the Netherlands Court discussing universal jurisdiction. After learning and discussing universal jurisdiction in class it was so interesting to see how it can operate in practice and the advantages to a domestic prosecution making the national Court the "most efficient ICC"! I took a lot away from the meeting which made me think about some of the difficulties facing the likes of the ICC and how domestic courts may provide for a more efficient prosecution where jurisdiction permits. I even (nerdily) read some of the judgments on the train home!"

Joce Ormond

TEACHING AND LEARNING

"Undoubtedly, the LSE in The Hague trip has been the ultimate highlight of my LLM experience at LSE thus far. Among the many remarkable encounters, one that stands out was meeting International Court of Justice Judge Hilary Charlesworth. Her academic work has been a constant source of inspiration throughout my academic career, and having the chance to discuss with her the dynamics of international law, its present strengths and challenges, as well as her vision for the future, was an absolute highlight. Leaving The Hague, I found myself with more questions than answers, and I believe this is at the heart of the critical perspective fostered by the 'understanding the causes of things' philosophy that LSE embodies."

Ezequiel Steuermann-Waibsnaider

Code Orange weather warning at the Kosovo Specialist Chambers

Visiting the International Criminal Court

TEACHING AND LEARNING

LLB and LLM dissertations: reflections from the students who were awarded dissertation prizes in the 2022/23 academic year

The winners of the LLB and LLM dissertation prizes in the 2022/23 academic year were Finn Doyle and Raoul Devan, respectively.

Finn's dissertation received the Dean's Medal for the Best Undergraduate Dissertation. His work focused on legal geography, using the Franco-Italian border as a case study. Finn's framework sheds light on the enforcement patterns of this border as a symptom of deep legal ambiguity in the area. His supervisor was Dr Floris de Witte.

Raoul's dissertation received the Dean's Medal for the Best Postgraduate Dissertation. His piece focused on the process of creating a constitution, using India as a case study. Professor Tom Poole was his supervisor and Professor Jo Murkens also provided critical feedback.

Dr Eduardo Baistrocchi invited Finn and Raoul to reflect on their experiences writing dissertations. The pieces that they wrote in response follow.

TEACHING AND LEARNING

LLB dissertation on legal geography: Finn Doyle's reflections

I decided to conduct a "legal geography" case study of the French-Italian border for my undergraduate LLB dissertation. While studying at LSE, I had the wonderful opportunity to study abroad for a year at the Menton campus of Sciences Po Paris. Menton is a small seaside town located on the border between France and Italy. The experience of living in Menton sparked my interest in borders and inspired the topic of my dissertation.

Crossing the border was a regular aspect of life in Menton. Students would often visit the neighbouring town, Ventimiglia. Many even did their grocery shopping in Italy because prices were cheaper. However, after living in Menton for some time, I noticed something that puzzled me. In EU law, anyone within the Schengen zone should be able to travel freely without being subject to border controls. However, there was a large presence of border police in Menton. Trains were regularly stopped and searched, especially late at night. There were even instances where students at the university were questioned or hassled if they failed to produce documentation.

As I discovered, internal border controls have been reintroduced across the EU since the 2015 migration crisis. This is to prevent the onward "secondary movements" of asylum-seekers who arrive at Europe's external borders. There is, in fact, one of the largest build-ups of asylum-seekers in the EU in Ventimiglia. Many migrants find themselves stranded as they are refused entry to France. Whilst studying in Menton, I also volunteered with an organisation that assisted migrants living in Ventimiglia.

Upon returning to LSE, I chose to delve deeper into this topic for my undergraduate dissertation. What had struck me most about the border was the covert and often racially biased manner in which it was enforced. Instead of relying on physical fences, bordering practices were relatively imperceptible. Many tourists visiting Menton would likely be unaware of their existence. I was curious about the national-level measures that promoted these practices and how they aligned with EU law.

I had the opportunity to work with Dr Floris de Witte as my supervisor who introduced me to legal geography. This is an interdisciplinary approach that seeks to understand the relationship between law and space through applying the methods of both law and geography. EU law does allow member states to reintroduce internal border controls in exceptional circumstances in the interest of national security. However, border practices in Menton often overstepped what is condoned by EU law. By conducting a legal geography case study, I was able to conceptualise this situation as an instance of "interlegality". This theory posits that where multiple legal regimes overlap in a given space, this often gives rise to a state of legal ambiguity. In my dissertation, I proposed understanding the sporadic enforcement of the Franco-Italian border as a symptom of this deeper legal ambiguity.

I found the process of applying my legal education to a tangible instance of injustice in the real world highly fulfilling. I learned that the way law is instrumentalised in practice often differs greatly from "law in the books". In the summer after submitting my dissertation, a group of NGOs brought proceedings before the CJEU specifically regarding France's practices at the Franco-Italian border. It was highly rewarding to read that judgment and critically reflect upon how the court is dealing with this live and ongoing issue. Through writing my dissertation, I also discovered a love for the research process. I am currently pursuing further research into EU migration law as an LLM student at the European University Institute in Florence.

TEACHING AND LEARNING

LLM dissertation on constitution-making in India: Raoul Devan's reflections

In the post-colony, the constitution represents the culmination of collective self-actualisation after a period of struggle between forces within and without the new nation. The post-colonial constitution serves as a receptacle of the affective experiences of domination and subjugation, aspirations of nationhood and progress as well as conceptions of a glorious, pre-colonial past. Crucially, these paradigms of national affective elements form part of the background conditions through which constitution-writers envision the cornerstone document of the new nation. However, the process of creating the constitution cannot be seen as a purely internal process. The philosophical foundations of constitution-making have a specific historical context situated within Western liberal traditions. The experiences of authoritarian and monarchical domination in pre-revolutionary Europe – that is before the rise of the rights-based conception of documentary constitutions – as well as the specific philosophical traditions that had informed these revolutions conditioned the form and context of the documentary constitution. In other words, the post-colonial constitution did not have its starting point in a vacuum upon independence; rather, it has a rich and conflictual past in a vividly different geography and history.

By inverting the epistemology of post-colonial constitutionalism, it is possible to understand the history of ruptures and continuities that shape the contours of the post-colonial constitution. Hoffmann theorised that the "fullest sense" of the modern constitution can only be discerned in the Global South as it escapes the reification, and the corollary deletion of material context within Western consciousness. In this study, the linear comparison of two forms of constitutionalism that belonged to the same progeny revealed its distinct material contexts. In turn, it is possible to explain, justify, and criticise the form of the sovereign and the process of constituent power-formation in the post-colony. The materialist approach situates this narrative within the wider background conditions of constitutionalism and of the post-colony itself. As such, one escapes the fragmentary understanding of the documentary constitution, with the West as a Weberian ideal type and the post-colony as its exoticisation. Crucially, this dialectic of epistemic inversion reveals the lineations of power and authority within the post-colonial context. Specifically, it highlights the reimagining and remoulding of colonial forms of domination and control.

The foundational moment of constitution-making in India highlights the circular reality of the generation of political order. The Indian constitution built the Indian nation and its exercise of political power on the name of the people as its authorising force. However, in naming the Indian people as the receptacle of political power, the constitution also invents the Indian people. When situated within the historical, political, and economic paradigms surrounding this constitutional moment, a history of colonial patrimony is seen in the institutional form through which the generation of political power is constituted.

Contrary to the orthodoxy of Western constitutionalism as providing a liberated space for political self-actualisation of the native population, it is submitted that this political space does not exist as a vacuum. Instead, it is populated by the material reality of the Indian people and traces of the developmental history of the documentary constitution. It is within this pre-populated space that the ruling elite generated the Indian citizenry as the constituent power of the new nation. Constitutions are not the result of collective citizenry and the coalescence of a unitary political will; rather they are "constructed by constitutional elites and experts on the basis of transnational transfers".[1] Ultimately, power does not reside singularly in the people or in the state; it exists in the productive relation of tension between the post-colonial people, its state, and the material context of the constitution that maintains this relationship.

1 Günter Frankenberg, "Constitutional transfer: The IKEA theory revisited" (2010) *International Journal of Constitutional Law* 8(3), 563-579, p579.


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LAW

The purpose of the company: reflections on Dr Simon Witney's book group

In February 2024, Dr Simon Witney launched a new book group aimed at discussing two books relating to corporate purpose: *Prosperity: Better Business Makes the Greater Good*, by Colin Mayer, and *The Profit Motive: Defending Shareholder Value Maximization*, by Stephen Bainbridge. Towards the end of the term, Dr Mona Paulsen caught up with Dr Witney to find out how the sessions had gone.

Should directors balance the interests of all stakeholders when making decisions, or should they focus on shareholder value maximisation? LSE Senior Fellow Dr Simon Witney led a series of three discussions in Winter Term 2024 on two books that deal with this question of corporate purpose in very different ways. In *Prosperity: Better Business Makes the Greater Good*, Colin Mayer (University of Oxford) argues that companies should exist to "profitably solve the problems of people and planet". In contrast, Stephen Bainbridge (University of California, Los Angeles) argues in *The Profit Motive: Defending Shareholder Value Maximization* that the "purpose of the corporation is to sustainably maximise shareholder value over the long term".

By contrasting these different scholarly commentaries, Dr Witney exposed LSE staff, PhD students, and LLM students to modern questions about our notions of business and its roles and responsibilities. As LSE Law School remains in the world's financial capital, it becomes imperative that future practitioners grapple with criticisms concerning the aim of companies to maximise shareholder value in the face of modern environmental and social challenges.

TEACHING AND LEARNING

Upon reflecting on the reading group's discussions, Dr Witney observed how much he had learned from colleagues' differing reactions and the thoughtful perspectives of the two books, noting: "in each of the first two sessions, when we focused on one of the two texts, I think we all found it helpful to compare our own assessments of the content and style of the authors". Dr Witney explained that in the final session, the reading group contrasted the different academic lenses and approaches of the authors: Mayer's approach as a management scholar as compared with Bainbridge's approach as a lawyer. Reflecting on this, Dr Witney commented, "I think the two disciplines could do better in communicating effectively with each other".

Having developed a scholarly discourse through the comparative exercise, the reading group additionally considered the potential translation to policy. Specifically, the group focused on what the two approaches have to say about the current state of UK law and the potential reform avenues. Some in the group found that UK law strikes a good balance, though Dr Witney cited some disagreement on this topic, adding, "I am not sure anyone was entirely persuaded that company law changes were needed to further the Mayer approach".

Towards the end of our discussion, I asked Dr Witney: would you hold another session, and if so, what do you hope to tackle next? He answered: "I'd love to! For me, the huge attraction of a book group like this is that you have the time to think about some of the key issues raised in academic texts and to hear informed perspectives from others. Questions of corporate law and corporate behaviour are both important and topical, and I'd really like to continue that theme with other relevant texts. Suggestions welcome!"

Dr Simon Witney giving a talk on Corporate Law and Sustainability at Cumberland Lodge to LLM students

Generative AI and its use in law: a conversation with Professor Andrew Murray

Andrew Murray is a Professor of Law at LSE. His expertise lies in New Media and Technology Law, and he directs the LSE Law, Technology, and Society Group. Andrew authored the influential textbook "Information Technology Law" and is actively involved in shaping the legal landscape for emerging technologies like Artificial Intelligence ("AI") and Machine Learning. His work provides valuable insights into the intersection of law and technology in our digital world.

Given the rapid development in generative AI, particularly over the past year, Dr Alex Evans had a conversation with Andrew to understand more about the generative AI products that are currently available and how they may change or shape the legal profession in the future.

A word from Alex: before we move to the conversation, I need to make an admission. At Andrew's suggestion, I generated Andrew's biography above using Microsoft's generative AI chat tool, Copilot...

Alex Evans (AE): Andrew, I wanted to ask you, as the subject of the biography, what do you think about it as a summary of yourself, your areas of research interest, and your career? The first summary that Copilot produced was longer and more detailed, but it looked curiously similar to your profile on the LSE Law School website. So I asked it to produce something shorter. It did that, but, to me, it missed one very important piece of your work – your 2020 TMC Asser Lecture on the subject of "Law and Human Agency in the Time of Artificial Intelligence" – and also several of the external roles that you have held, such as your wide-ranging memberships and roles advising the Government of Saudi Arabia and your work as a reviewer for several very prestigious prizes (the 2024 Gottfried Wilhelm Liebniz Prize and the German Federal Government's "Clusters of Excellence" programme). What do you think? Did I justify human involvement?

Andrew Murray (AM): Firstly, I'm amazed at how the technology has improved. Twelve months ago, leading AI tools like GPT-3 and Google Bard made multiple mistakes when asked to write my biography. Now this is accurate, if a little unimaginative. It has clearly mostly pulled data from my LSE staff page, but it shows creativity saying things like "actively involved in shaping the legal landscape for emerging technologies" which my LSE page doesn't say. I think it's interesting, and perhaps a little ironic, that an AI misses probably my most important AI paper – the TMC Asser Lecture. You certainly justify the role of the human author, but it's interesting how much better this technology is getting in a short space of time.

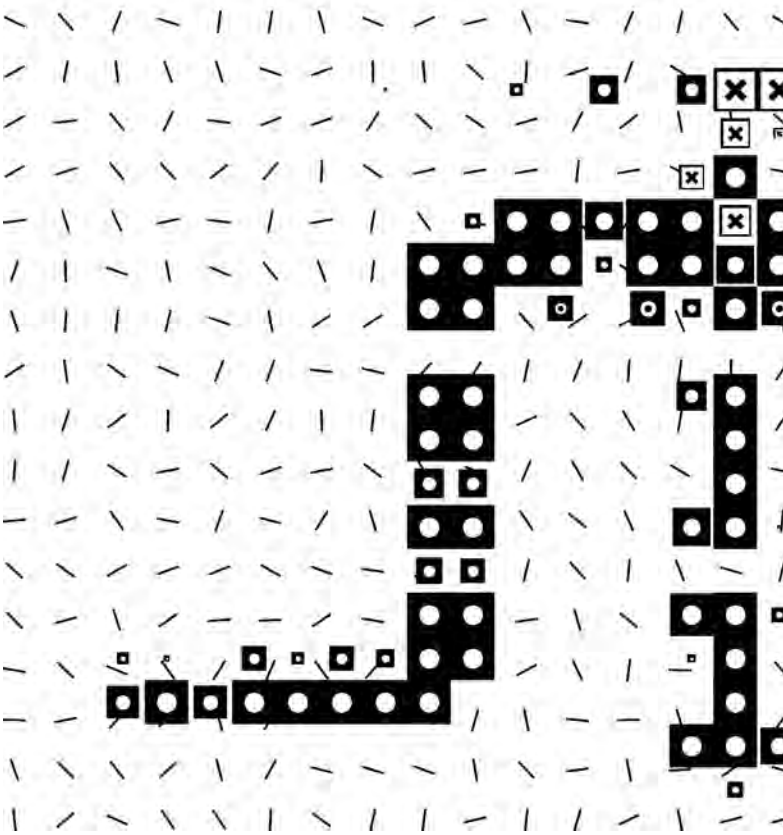
AE: What are the main generative AI tools that are available now?

AM: Well, first, there is a definitional issue around what generative AI tools are.

Generative AI is a software tool designed to produce human-like creative output. It has the ability to do this across a range of fields – it can create text, image, sound and music. Up until very recently, video has been a challenge, but now it can also create video. Large language models, called LLMs, are specific text-based generative AI tools designed to mimic human writing including creative writing and computer programming.

The most well-known LLM is ChatGPT, which was developed by OpenAI in partnership with Microsoft. The latest version is ChatGPT4.

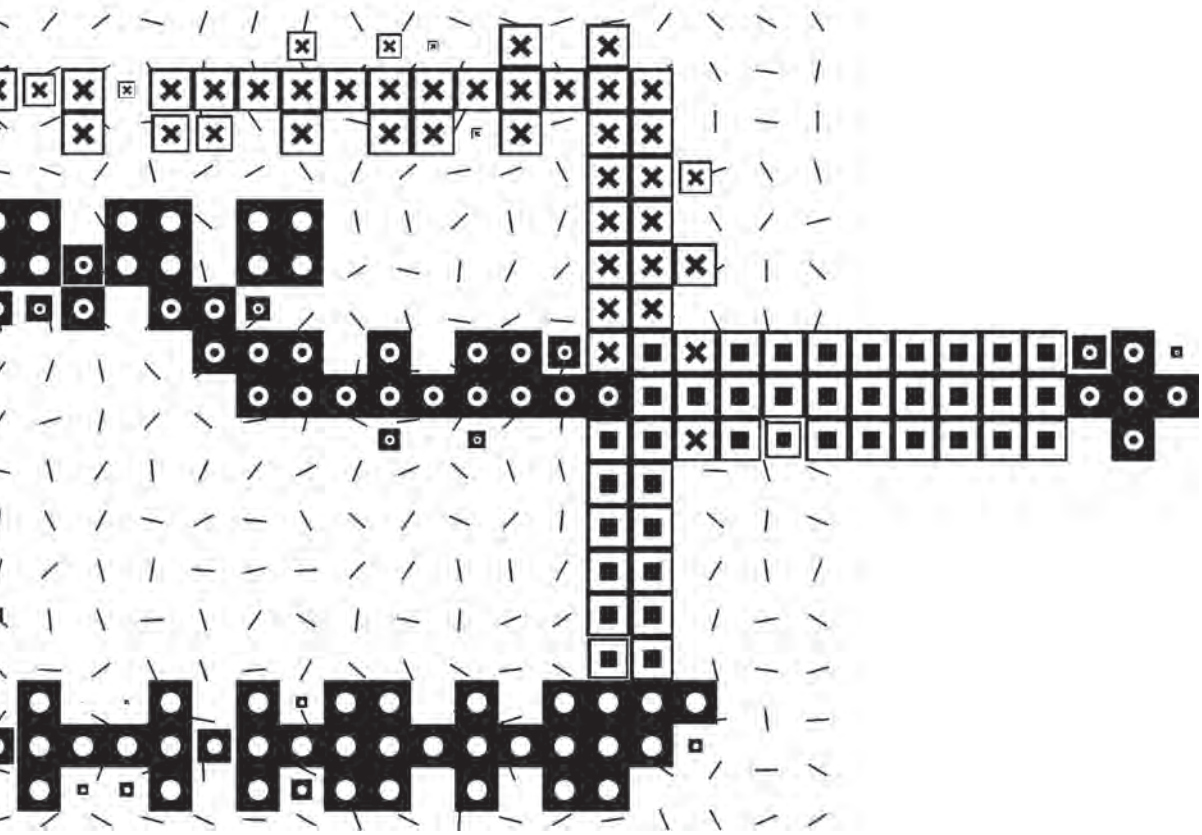
OpenAI and Microsoft have also worked together to create Copilot, which is the update of Cortana (this was Microsoft's cloud-based virtual assistant [not based on generative AI], which was widely available from 2015 to 2023, and was able to perform a range of tasks, such as to set reminders and recognise voice prompts as well as answer questions using



information from Microsoft's Bing search engine). Copilot is currently available as a tool on Microsoft's Bing search engine, allowing for AI-powered natural language internet searches as well as being accessible as a stand-alone service. Copilot is now available for Microsoft 365, allowing you to create draft documents or presentations through a simple prompt. Copilot is also interesting because it can collaborate with other forms of generative AI, such as other chatbots, and import information from your Microsoft files or email messages, allowing you, for instance, to instantly create a slide deck from a paper or presentation text.

Meta (formerly Facebook) has its own version, called LlaMA. It is an open-source model. This means that it was not developed using a traditional proprietary ownership structure. Rather, it was designed to be co-operative and collaborative, with source code made available to everyone, and people can then work on it to improve the product. People can access open-source datasets and open-source coding (plug-ins). So the idea is similar to the way entries are developed on Wikipedia.

Then Google has Gemini, which is designed to be more creative and literary. I'm not sure why this is the case, but it was designed to be this way. My guess is that Google identified that people who use generative AI want it to be more creative. It may also be a means of product differentiation.



Apple does not currently have a LLM publicly. Tim Cook, Apple's CEO, has said some interesting things about the next iteration of Apple's operating system (iOS18), such as that it will be powered by generative AI. So, it seems that Apple may build its LLM into a future product or release. This has been Apple's technique in the past – it uses the second-mover advantage and it integrates the new technology across its Apple ecoverse extremely well. A market-changing application would be one that does this integration.

AE: With each of the LLMs you mentioned, what are they capable of at this point in time?

AM: They are very capable, but in a limited space or within particular parameters. What I mean by that is that there is a big difference between generative AI and general AI. Generative AI can do some things in a narrow space extremely well. For example, generative AI is very good at writing a short sustained piece of between 200 and 1,500 words, even up to 2,000 words. So it is very good at producing academic essays and creative writing pieces of this length. For example, it can write a very good ghost story with identifiable themes from past ghost stories. However, and this is implicit from what I have said, it is currently not as good at more extended pieces of writing – that is, pieces beyond 2,000 words. This is because of the way that LLMs work as it is harder to keep the predictive algorithm strong across a sustained piece.

AE: Can we unpack what you just said for those who, like me, are unfamiliar with how LLMs work?

AM: So LLMs work by searching through whatever texts it has been trained on to predict the word or phrase that is most likely to come next in the sentence, the paragraph, and the overall piece. It is a little like a very developed version of the predictive text function on your phone, but the amount of text the LLMs have been trained on is huge. This is illustrated by the fact that, in December 2023, *The New York Times* ("NYT") instigated litigation against OpenAI, arguing that OpenAI has trained its LLMs by feeding it content from the NYT, without its prior knowledge and consent. Then in late February 2024, three other publishers of digital content, The Intercept, Raw Story and AlterNet, commenced separate copyright infringement suits against OpenAI. Their concern is that ChatGPT can generate "verbatim or nearly verbatim works of journalism 'at least some of the time' without providing the author, title, copyright, or terms of use information that are contained in those works".

And this segues nicely into a real limitation of the current tools. As we have discussed, while they are very good at writing, they are bad at referencing. Readers will have heard examples of situations where lawyers have relied on generative AI tools to research for relevant case law when preparing briefs for court, and the tool made up fictitious cases, and often not just one, but several cases. The tools are continually improving, but they are still not great at matching text with its source, which is the way that it would be able to attribute text to the underlying source material accurately.

AE: Why are generative AI tools so bad at referencing or attributing text to source?

AM: Because of the way the technology currently works. The tools read text, so body text and the footnotes, as two separate sources of text that are not matched, and currently the tools have no way of connecting those unmatched sources afterwards. So, to the tool, what it initially reads as two separate sources remain unconnected when the predictive algorithm functions it then draws on the bank of text it has been trained on. When I type in a prompt, that may cause the LLM to predict that the two separate pieces of text (the body text and the footnotes) are most likely to appear next, so it may produce them, but again they will be unconnected. Or it may just produce the body text, but again without attributing it to the underlying material.

AE: What else are the LLMs good at?

AM: They are excellent at editing. For example, they can offer brilliant suggestions when prompted to edit text in a particular way, such as "can you edit this text for conciseness?" or "can you edit this to pitch it towards [a particular audience]?"

They are also very good at producing a first draft, again of something that is within the 200 to 2,000-word range. From my own experience, the draft it generates will need to be developed, but it can provide a very useful starting point.

AE: What other types of generative AI tools are worth us knowing about?

AM: There are now some tools that are very good at generating imagery, but again, as we have discussed with text-generating tools, image-generating tools are not without their flaws.

Over time, most of the main image-generating tools won't let you create images of real people. For example, nowadays, if you ask a chatbot to create an image of particular people or a person doing something, such as "create an image of the President of the United States of America, Joe Biden, declaring his support of Russia's invasion of the Ukraine" (that is to say, something that would never happen in reality), most of the tools will say "I can't do that" or they will produce something that looks like a semblance of what you have asked for. The creators of the image-generating tools are concerned about images being used in a deceptive manner, and they are generally putting in guardrails to try to prevent such use. However, there are a number of tools that are less ethical and they will allow you to generate such images using their tools.

It is worth noting that there are other organisations that have an interest in restricting the generation of imagery for other reasons. For example, Disney takes a very strong position about protecting and enforcing its intellectual property rights, so you cannot produce Disney images, such as well-known Disney cartoon characters, without Disney's consent. Another example of the same issue is Getty Images, which currently has several cases before courts in both the UK and the US, arguing that generative AI tools were trained using Getty Images without permission. We know this because in some cases the tool was producing outputs with the image displaying the Getty watermark.

One thing that is obvious in relation to image-generating tools, but is equally true for text-generating tools, is that the capability of the tool is really the capability of the person using it. If you know how to use prompts to get a result, you can get the tool to do something that it wouldn't normally do, and you can do this in as little as 2 to 3 prompts.

This leads me to other functionalities of image-generating AI. Google's magic eraser now allows you to remove things, such as unwanted people, from photos. Image-generating AI tools, such as DALL-E, can be used to create images to accompany text. It can be prompted to create an image in a particular style, do something artistic or create a photo. It can be really creative.

AE: Are there any specific tools or LLMs for lawyers? What are they capable of at this point in time, and what are their limitations?

AM: There are a number of LegalTech applications of LLMs. Perhaps the best known is Luminance, which automates the generation, negotiation, and analysis of contracts and can automatically highlight differences between a document and the firm or client's playbook. Possibly the most advanced legal AI is Harvey, a generative AI startup which uses GPT-4 to help lawyers automate contract analysis, due diligence, conduct research, and generate insights, recommendations, and predictions across multiple practice areas. If it can deliver everything it promises, Harvey will create a junior lawyer on your desktop. For simpler tasks like legal research, LexisNexis now has a generative AI powered research tool, and there is also software that predicts the outcome of trials such as Pre/Dicta.

Also, firms are now using Chatbots to augment or possibly replace associates and trainees. This has created a new market as firms are now creating and training chatbots to have specific expertise and are then selling the chatbots or granting access to them for a subscription fee. These chatbots have been trained on extremely high-quality material.

From my understanding, there are nearly 2,000 types of legal specific AI now, and research by Goldman Sachs estimates that 44 per cent of current legal work tasks could be automated by AI. The Big Four advisory firm PWC suggests in a recent analysis that, of thirty professional skills valued by law firms, AI could replace humans in ten of those including drafting and written communication, research, review, and analysis.

But, as we discussed before, the main weaknesses are in relation to citation and referencing. The other key weakness that we haven't spoken about before and which is specific to the tools for lawyers is that the tools are not yet good at recognising or managing jurisdictional differences. But they are improving all the time.

AE: Do they have particular sophistication in relation to law and legal questions?

AM: Bruce Braude, Chief Technology Officer of Deloitte Legal UK, and frequent contributor to our student masterclasses, is of the view that much of what lawyers do will become augmented by technology. What is meant by this is that chatbots will do some of the tasks that lawyers currently do, such as compliance and research, and lawyers will work more collaboratively with the technology so that they can concentrate on the points that require more highly cognitive analysis. One example is the task of working through discovery bundles to find key terms, people, and/or dates. With generative AI, the tool can do the first sift of the information, and human lawyers can do the second sift. Another example is contract negotiation. Rather than the traditional approach of having two lawyers or teams of lawyers going back and forth until they reach an agreement, we have evolved to a point where two chatbots could do the negotiation over the bulk of the content, using positions in either a law firm or client's playbook, and then leaving the contentious points for the humans to resolve.

The other dimension of the development of generative AI for the practice of law is that it is leading to the rise of what we can call the legal technician. This is the person who trains the AI and writes the software, and who works on the datasets that are used to train the tool. These roles will become more important over the short and long term. I am sure that some of our graduates will move into these roles in the future.

So while I don't think there will be fewer people in the legal profession in the future, I do think that the shape of practice will change. There will be an increased role for legal technicians, and so there will be new and different pathways through law. I think these changes will be more evident more quickly in law firms, and that changes at the Bar may take longer, because the nature of work at the Bar tends to be more "bespoke" and less systemised. While elements of Bar work may be taken over by AI, more Bar work requires individual attention and personalised response, so it will take longer for AI to replace that type of work.

AE: Have there been any developments, such as in judicial practices, to allow greater use of large language models (LLMs) in the practice of law? And if there haven't been any such developments as of yet, do you think there will be in the future?

AM: The current Master of the Rolls and Head of Civil Justice in the UK, Sir Geoffrey Vos, is a huge proponent of the use of technology in the courts, both in relation to general generative AI tools and in relation to specific to the LegalTech tools. His interest is both practical and inquisitive. It is practical because he has inherited a large backlog of cases, and in December 2023 the Justice Select Committee published a report expressing concern about rising delays, noting that is now takes on average 353 days for county courts to hear a case. Sir Geoffrey is hopeful that technology may reduce these delays by expediting the management or possibly even the disposal of simple cases. He is also inquisitive about judicial use of technology. In a recent speech he warned that "judges will need to become just as familiar with the use of AI as any lawyer", and although he hesitated about whether AI could make judicial decisions, he strongly indicated his personal view that "when automated decision-making is being used in many other fields, it may not be long before parties will be asking why routine decisions cannot be made more quickly, and subject to a right of appeal to a human judge, by a machine".

As a result of interventions such as this, I anticipate that courts will start scaling up in their use of these legal-specific generative AI tools if for no other reason than to clear the backlog of cases before the courts. Technology – not necessarily LLMs, but forms of digital tools – may be able to assist with this challenge. Recently Lord Justice Birss indicated in a speech that he used Chat GPT to write part of a judgment. He said that he found it to be "jolly useful", although he took full responsibility for what he wrote in the (unnamed) judgment. This indicates to me that, over time, there may be scope for courts to write certain documents, such as directions, using LLMs.

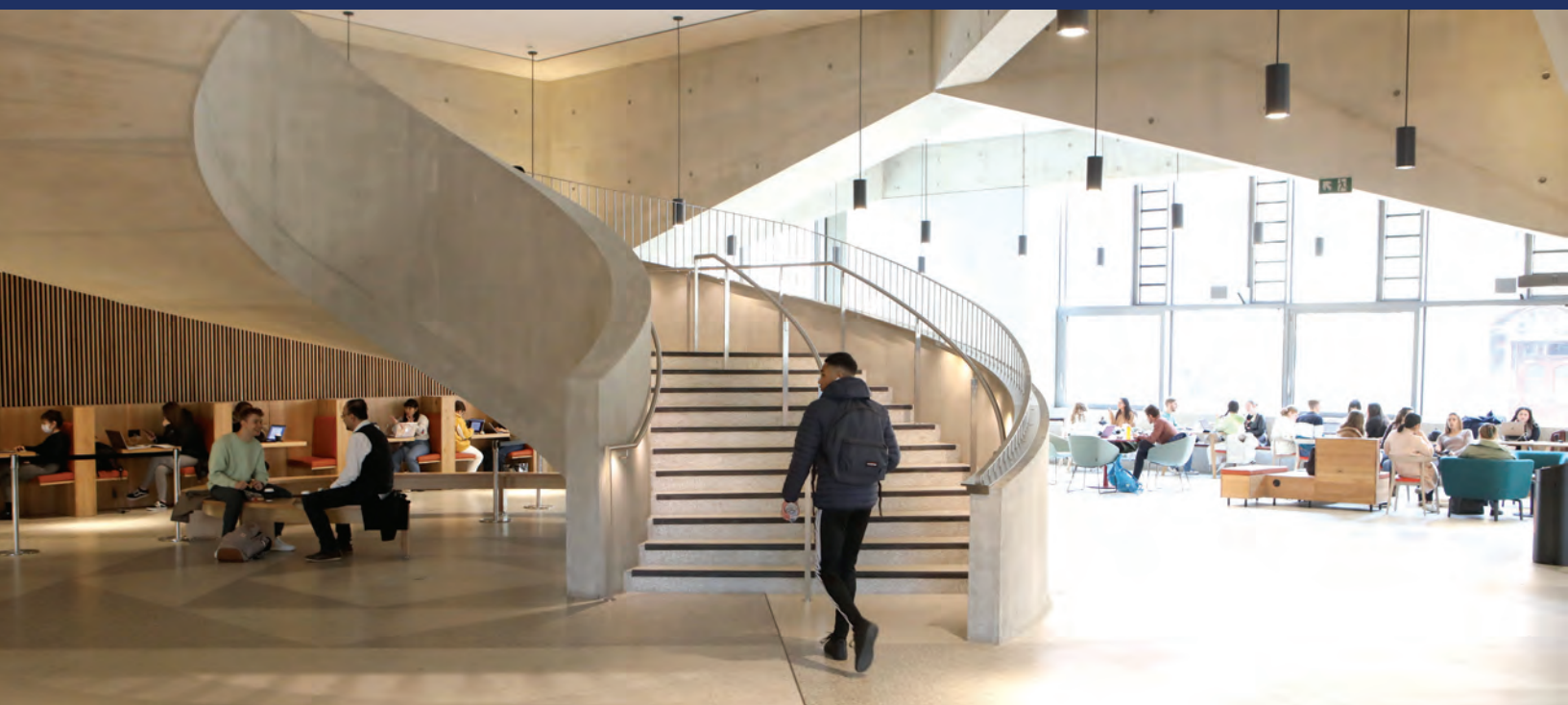
AE: Thank you for taking the time to speak with us, Andrew, it has been hugely informative and also fun.

Introducing the new MSc in Law and Finance

Over the past few years the Law School and Department of Finance have been working together on an exciting new project: a postgraduate degree in Law and Finance that will be launched in 2025. Dr Sarah Trotter met with Dean Professor David Kershaw and programme director Dr Edmund Schuster to find out more.

It's been a long time in the making, a course that brings together the Law School and the Department of Finance – it's "a marriage that we should have long had", as David put it when I caught up with him and Edmund to find out more about the new programme. The two departments have for decades been talking to each other, working with each other, publishing with each other, and thinking about each other… And now the stars have aligned, bolstered by the growth of the Law School and the recent appointments of Dr Suren Gomtsyan and Dr Alperen Gözlügöl, and the two departments are on the cusp of a stunning new course.

That course, an MSc in Law and Finance, will be one in which students get a truly interdisciplinary experience. And necessarily so, because so many of the most interesting legal and policy questions that occupy corporate and transactional lawyers demand insights from both disciplines. These questions – questions about the economic effects of mergers and acquisitions, the impact of takeover defences or corporate governance arrangements, and the efficiency of policy decisions in corporate law and regulation – are fundamentally empirical questions. And so it is not only that law and finance are in a natural dialogue with each other in this context – which would in itself be interesting enough – but that to even begin to understand the questions themselves, to even begin to understand the problems being grappled with here, a sense of that connection and of the way in which the two worlds work together, communicate with each other, and think about their shared problems is needed.



TEACHING AND LEARNING

For that reason, the programme will go beyond teaching students the key concepts in law and finance. Rather, the teaching across the two disciplines will be completely integrated. To ensure this, four new bespoke courses will be introduced: two from finance and two from law. Two deals courses will look at complex transactions from both legal and finance perspectives, and the corporate finance courses will similarly examine topics like the raising of capital through the lens of both disciplines. Students will also take a course in financial markets, adapted by the Department of Finance to fit within the overall programme. The thinking is, as Edmund described it, "to have these tightly integrated courses where the same problems, the same deals, the same topics are looked at from a finance and from a law perspective, roughly at the same time, so students can see the connections and how the same problems are approached by scholars in these different disciplines". It will be a problem-focused, connection-focused course in that sense: a course that starts from the empirical reality of the problems that preoccupy practitioners and scholars in the field and then proceeds to dissect them, to get to know them, to understand them. "What is important for us", Edmund said, "is that students will not only explore the high-level financial concepts driving corporate transactions, but that they get to actually learn to apply this knowledge – making them equally 'fluent' in law and finance of the corporate world".

This will all be preceded by a broad pre-sessional course, where students will be trained in the core concepts of finance, accounting, common law systems, and core corporate and contract law to ensure they can hit the ground running and that the programme can be pitched at a level that is challenging and rewarding for all students. The idea is that lawyers coming to the programme will not need to have had quantitative training as part of their undergraduate degrees; all the tools required to follow the courses will be introduced to students at the outset. Similarly, those joining the programme from a finance background will be trained in the necessary legal concepts before the courses themselves get going; and so, as David put it, "no matter whether you've got a legal training from elsewhere in the world or no legal training at all you will start with a full understanding of all the concepts that will be deployed throughout the course". The programme will be open to all those seeking a more holistic understanding of how and why corporations merge, restructure, raise capital, and navigate the financial and regulatory world; "we're imagining that it'll mostly be lawyers on the course", David told me, "but students from other backgrounds will equally be welcome". Edmund added: "we would expect the key audience to be lawyers, trained anywhere in the world; but for people with business or finance experience who have gained some experience in a regulatory role, in a compliance role, we will look at these applications very closely. We believe that our pre-sessional and the way we teach our bespoke courses will enable people without formal legal training to follow and benefit from the programme".

For those who are lawyers, the course will enable the development of a deeper understanding of their practice – and a deeper understanding, too, of what it is that their clients want and need. But in addition to supporting the career development of practising lawyers in that sense there is also the scope for this course to be an important stepping stone in a context in which, as David pointed out, there is "quite a big movement of people who are already lawyers into finance". For those corporate law practitioners who are looking to move into finance, or who are already in the process of making that move, this course could be that key "bridge" into fields like private equity or investment banking.

"And it is not just about practitioners", Edmund went on to say. "There may also be people whose first degree is in law but who decide that they want to move into a role that is not purely law, where they want to really leverage the knowledge they acquired during their law degrees but want to develop in a slightly different direction. For these people, the programme will be a great opportunity to shift their focus a little bit while still harvesting the value from their law degree and their knowledge of the law and corporate finance concepts from a law perspective". And one of the special features of the programme, of course, is that they will be able to do all of that while simultaneously developing and uncovering new legal interests entirely; for being enrolled in the programme – and therefore immersed in the LSE Law School community – will mean access to the huge number of events and masterclasses that we hold every year.

It sounded to me as if this new MSc would offer huge opportunity and depth both to students taking the course and to those teaching on it too. David agreed: "doing this with the Department of Finance enables us as teachers of corporate law and corporate finance to offer courses that go much more into depth, because we will have students working with us who have a really good understanding of the financial and economic concepts, which will allow us to teach bespoke courses at a high level, and for us as teachers it's going to be a fabulous experience". "There is also", Edmund added, "real synergy between law and finance, especially in empirical studies. We hope that this programme will act as an anchor for deepened interaction and collaboration with the Department of Finance".

For the sixty or so students who will have the opportunity to join the programme, a new world awaits, then: an unparalleled intellectual experience in which law and finance are brought together and taught together; the stimulating and supportive environments of both LSE Law School and the Department of Finance; the fellowship of the wider LSE community; and professors who are leaders in their field and simply cannot wait to embark on this journey and work with the 2025 cohort.

LLB and LLM Prizes

The Law School Dean's List and Dean's Medals were introduced in 2021/22 to recognise outstanding performance. LLB students obtain a place on the Dean's List for the year by achieving a mark of 73 or over in individual law courses, while the Dean's Medals are awarded to students for the best overall performance in the final year of study.

Dean's List for the LLB 2023/24

Muna Abdi Winner of 2023/24 Dean's List for Information Technology and the Law.

Tobechukwu Amamize Winner of 2023/24 Dean's List for LLB Dissertation.

Frances Bajaj Winner of 2023/24 Dean's List for Competition Law.

Daniel Beech Winner of 2023/24 Dean's List for Law and Institutions of the European Union.

Daniel Beech Winner of 2023/24 Dean's List for Law and State Power.

Yan Chen Winner of 2023/24 Dean's List for LLB Dissertation Half Unit.

Kai Cheung Winner of 2023/24 Dean's List for Intellectual Property Law.

Zai Cheng Winner of 2023/24 Dean's List for Intellectual Property Law.

Zai Cheng Winner of 2023/24 Dean's List for Law and the Environment.

Emma Chew Winner of 2023/24 Dean's List for Race, Class, and Law.

Harrison Cox Winner of 2023/24 Dean's List for International Protection of Human Rights.

Max Cubitt Winner of 2023/24 Dean's List for Jurisprudence.

Rasheed El Merheb Winner of 2023/24 Dean's List for Commercial Contracts.

Chloe Fung Winner of 2023/24 Dean's List for Jurisprudence.

Yan Goy Winner of 2023/24 Dean's List for Jurisprudence.

Soryoung Han Winner of 2023/24 Dean's List for Law and Institutions of the European Union.

Wing Hei Miriam Lo Winner of 2023/24 Dean's List for Media Law.

Oh Hitomi Winner of 2023/24 Dean's List for Jurisprudence.

Amadea Hofmann Winner of 2023/24 Dean's List for LLB Dissertation.

Shivleen Kaur-Gill Winner of 2023/24 Dean's List for Public Law.

Sin Kiu Chow Winner of 2023/24 Dean's List for Law and State Power.

Jo Kling Winner of 2023/24 Dean's List for Company Law.

Ka Ko Winner of 2023/24 Dean's List for Jurisprudence.

Jia Koh Winner of 2023/24 Dean's List for Public Law.

Natalie Koh Winner of 2023/24 Dean's List for Public Law.

Anna Kordellidou Winner of 2023/24 Dean's List for Law and Institutions of the European Union.

Keisi Krasniqi Winner of 2023/24 Dean's List for International Protection of Human Rights.

Kwong Lam Winner of 2023/24 Dean's List for LLB Dissertation.

Muk Law Winner of 2023/24 Dean's List for Company Law.

Muk Law Winner of 2023/24 Dean's List for Conflict of Laws.

Yena Lee Winner of 2023/24 Dean's List for Intellectual Property Law.

Man Lim Winner of 2023/24 Dean's List for Public International Law.

Nicholas Low Winner of 2023/24 Dean's List for Tort Law.

Nicole Luk Winner of 2023/24 Dean's List for The Law of Corporate Insolvency.

Fumi Nozaki Winner of 2023/24 Dean's List for Law and the Environment.

Amit Pandya Winner of 2023/24 Dean's List for Race, Class, and Law.

Gabrielle Parkinson Winner of 2023/24 Dean's List for Jurisprudence.

Erifili Philippides Winner of 2023/24 Dean's List for Intellectual Property Law.

Mehnaz Rashid Winner of 2023/24 Dean's List for Race, Class, and Law.

Emily Reed Winner of 2023/24 Dean's List for LLB Dissertation.

Fee Robinson Winner of 2023/24 Dean's List for Civil Liberties and Human Rights.

Fee Robinson Winner of 2023/24 Dean's List for Topics in Sentencing and Criminal Justice.

Charlotte Rushton Winner of 2023/24 Dean's List for Law and the Environment.

Dean's List for the LLB 2023/24 (continued)

Charlotte Rushton Winner of 2023/24 Dean's List for LLB Dissertation.

Dana Satoc Winner of 2023/24 Dean's List for Jurisprudence.

Priyansh Shah Winner of 2023/24 Dean's List for Medical Law.

Priyansh Shah Winner of 2023/24 Dean's List for Public International Law.

Eunsoo Shin Winner of 2023/24 Dean's List for Law and State Power.

Yashvardhan Singh Winner of 2023/24 Dean's List for LLB Dissertation.

Andra Sipos Winner of 2023/24 Dean's List for Cultural Heritage and Art Law.

Andra Sipos Winner of 2023/24 Dean's List for LLB Dissertation.

Ri Tan Winner of 2023/24 Dean's List for Race, Class, and Law.

Chun Tao Winner of 2023/24 Dean's List for Law and Institutions of the European Union.

Catrin Thomas Winner of 2023/24 Dean's List for Tort Law.

Elliot Tierney Winner of 2023/24 Dean's List for LLB Dissertation.

Megha Vinesh Winner of 2023/24 Dean's List for Jurisprudence.

Karim Von Daniken Winner of 2023/24 Dean's List for Media Law.

Tsz Yu Pang Winner of 2023/24 Dean's List for Company Law.

William Warren Winner of 2023/24 Dean's List for Property II.

Ranting Zhang Winner of 2023/24 Dean's List for LLB Dissertation.

Ranting Zhang Winner of 2023/24 Dean's List for Tax and Tax Avoidance.

Dean's Medals for the LLB 2023/24

Amadea Hofmann Winner of Dean's Medal for Best Overall Performance on the LLB.

Amadea Hofmann Winner of Dean's Medal for Best Undergraduate Dissertation.

Ibironke Kofo Boboye Winner of Dean's Medal for Second Best Overall Performance on the LLB.

Fee Robinson Winner of Dean's Medal for Third Best Overall Performance on the LLB.

Dean's Medals for the LLM 2022/23

Jennifer Boyd Winner of Dean's Medal for Best Overall Performance on the 2022/23 LLM Programme.

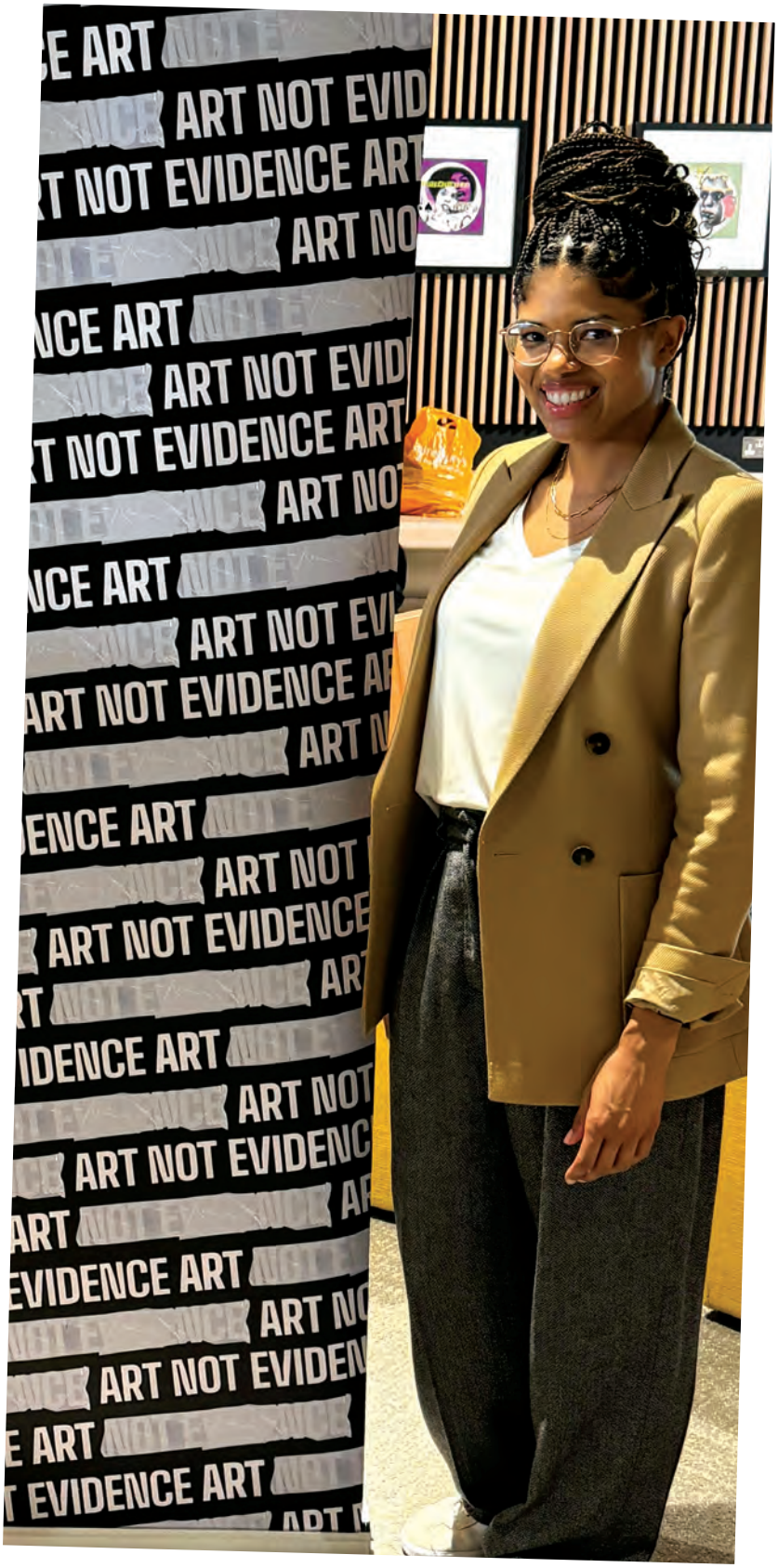
Raoul Devan Winner of Dean's Medal for Best Postgraduate Dissertation on the 2022/23 LLM Programme.

Benjamin Morgan Joint winner of Dean's Medal for Second Best Overall Performance on the 2022/23 LLM Programme.

Thomas Pierce Winner of Dean's Medal for Third Best Overall Performance on the 2022/23 LLM Programme.

Willem de Vries Joint winner of Dean's Medal for Second Best Overall Performance on the 2022/23 LLM Programme.

Impact



The *Art Not Evidence* campaign: a conversation with Dr Abenaa Owusu-Bempah

Dr Abenaa Owusu-Bempah is a key figure in the *Art Not Evidence* campaign, which was launched in 2023 and advocates for a restriction on the use of creative expression as evidence in criminal trials. In this piece, Dr Owusu-Bempah discusses her involvement in the campaign with Dr Sarah Trotter.

Sarah Trotter (ST): How did you come to be involved in Art Not Evidence?

Abenaa Owusu-Bempah (AO-B): Years ago, I came across a case in which rap lyrics had been used as evidence at a criminal trial. Being a scholar of evidence law and a fan of rap music, I wanted to know how this incredibly popular genre of music was getting through the rules of evidence and whether courts were taking sufficient account of the cultural context of the music. So, a few years ago, I took this on as a research project, primarily analysing Court of Appeal judgments in which rap had been used as evidence at trial or taken into account at sentencing. I found some very clear and concerning patterns in the case law, namely that writing or performing lyrics, or participation in music videos, is increasingly used as evidence against Black young men and boys to infer, among other things, gang association, motive, intention, and even propensity for certain behaviour. For example, lyrics about knives have been used to prove a propensity to carry knives. Many of the cases are "joint enterprise" cases, where the defendants are convicted of a crime on the basis of having intentionally assisted or encouraged it, rather than committing the criminal act themselves. In these cases, the music is often used as evidence of criminal association, or to show a common purpose or intention among defendants. But in most cases, the music is not about or connected to the crime alleged. Rather, prosecutors, with the help of police officers who call themselves "experts", invite the court and jury to take generic and formulaic lyrics literally. They completely decontextualise the music and disregard the conventions of the genre – that within some subgenres of rap, artists are expected to construct an authentic persona who is willing to engage in violence, and that hyperbole, braggadocio, figurative language, and dark humour are the norm. Using music as evidence in this way not only creates a huge risk of courts and jurors attaching too much weight to the evidence, but it also introduces to the courtroom, or amplifies, stereotypes about Black youth culture and Black male criminality.

ST: Could you tell us about the creation of the campaign itself? How did it come about?

AO-B: When I began researching this issue, there was some really important scholarship coming out of the US, but relatively little research in England and Wales. I connected with a few scholars from various disciplines who were researching the criminalisation of rap in the UK. One of them, Professor Eithne Quinn, started the Prosecuting Rap network, which includes not only academics, but also legal professionals, youth workers, journalists, and music industry professionals who act as expert witnesses in cases involving "rap evidence". Some members of the Prosecuting Rap network joined forces to start the Art Not Evidence campaign, spearheaded by Elli Brazzill, who works in the music industry, and inspired by successful campaigning in the US. Following over a year of behind-the-scenes work (meetings, plotting, planning, networking, drafting legislation), we launched the campaign in November 2023 with a website and open letter to the Secretary of State for Justice calling for law reform to restrict the use of creative expression as evidence in criminal trials. The campaign is being supported by Nadia Whittome MP, who hosted a launch event in the House of Commons in January 2024, and who plans to table our bill in the near future.

Dr Abenaa Owusu-Bempah discusses how rap music is used as evidence in US documentary, As We Speak

ST: What does the bill propose?

AO-B: I was part of a group of lawyers who drafted the Criminal Evidence (Creative and Artistic Expression) Bill. The bill is inspired by, and modelled on, some of the proposed legislation in the US, such as the federal Restoring Artistic Protection (RAP) Act, but adapted and expanded for the English and Welsh context. The drafting process took a few months of back and forth, to make sure we got the wording right, and we received much helpful feedback along the way.

The bill would create a presumption that creative expression is not admissible evidence in criminal trials. Importantly, it seeks to protect creative and artistic expression broadly, recognising that while the target of the prosecuting authorities is rap music, rap is an art form and other genres could be at risk. The presumption of inadmissibility could be rebutted if it were proven that the evidence is: literal; refers to the facts of the crime alleged; is relevant to an issue of fact in dispute; and is necessary in so far as the issue cannot be proven by other evidence. In deciding whether these conditions are met, the courts would be required to have regard to specific factors which relate to: the linguistic and artistic conventions of the expression; the social and cultural context of the expression; and the context in which the expression was created, including when it was created and how it was intended to be heard by the listener.

In other words, regard must be had for the perspective and knowledge of those engaged in the culture or creation of the specific form of expression. This is important because relevance is a relative concept, informed by our own experiences, perspectives, and worldviews. If the adjudicator in a case is not familiar with the culture or context of rap, or is influenced by negative stereotypes about rappers and rap music, they may view irrelevant music as relevant, or believe the music is far more reliable as evidence than it actually is. To help judges determine whether the presumption of inadmissibility has been rebutted, the bill would require them to consider the opinion of a suitably qualified independent expert. In the case of rap music, that would most likely be a scholar, musician, youth worker, or perhaps a linguist, but not a police officer.

Like other exclusionary rules (such as those that apply to hearsay evidence and sexual history evidence), the bill is intended to ensure that only relevant, reliable evidence is adduced in court, and not where it is unduly prejudicial. It would also promote fairness by ensuring that the artists' perspective is properly considered.

ST: It seems that quite a lot would potentially rest on the opinion of the court-appointed independent expert – an expert "who, in the opinion of the court, is suitably qualified to give evidence about the linguistic and artistic conventions and the social and cultural

context of the creative or artistic expression". How would the court determine who this person is? I see from the Bill that the term "independent experts" is defined as to "include academic scholars and persons with experience in an industry relevant to the form of expression" – the scholars, musicians, youth workers, or linguists that you mentioned above – but would any further guidance be issued in this context to help the court identify and select experts?

AO-B: This was one of the most difficult aspects of the legislation to draft. In fact, we debated whether to include a provision on experts at all. In the end, it was felt necessary because many judges need assistance to evaluate the relevance of creative expression in the light of its proper context. It is also intended to address the current use of police officers as rap "experts" for the prosecution. Important questions have been raised about whether police officers are qualified to provide an interpretation or opinion on rap music, and whether they are able to do so impartially (ie, whether they are "independent"). They may have knowledge of local groups and slang, and they may have attended police training courses on gangs and slang to credentialise themselves, but they tend not to be well versed in the culture or conventions of rap, viewing it solely through a crime control lens. This creates a huge risk of misinterpretation and confirmation bias. I have, for example, seen common and popular slang terms, such as "opps", being attributed to gang membership. Where multiple interpretations of a word or phrase are available (as is often the case), police tend to pick the most literal and damaging. In my experience, where police claim that lyrics can be directly connected to the crime at issue, this is speculative, and based on unsupported assertions. Also, in many cases, there is an inequality of arms, in so far as the prosecution has a police "expert" and the defence has no expert to counter the police officer.

We decided to keep the interpretation of "expert" quite open because the legislation would apply to creative and artistic expression generally. The question of who is an expert, and what constitutes expertise, will depend on the nature and form of the creative and artistic expression at issue. So, while we tried not to be too prescriptive, the provisions are intended to establish a more careful approach, and a more demanding standard of expertise, than is currently the case. But there may be a need for further guidance on experts in respect of particular forms of expression. In respect of rap music, the most effective experts have tended to be youth workers and researchers.

ST: How did you find the process of drafting the bill? You've mentioned that the provision about experts involved a lot of debate, but what was the process like more generally for you as an academic?

AO-B: The drafting process was really interesting! I have made recommendations for law reform in my research, but this was my first time formulating a bill. We had a good starting point, as legislation had already been proposed in some US jurisdictions, including a federal bill, which became the model for our bill. But still, it had to be adapted and expanded for the context of England and Wales, to be consistent with our procedural and evidential rules, and to address specific issues that have come up here. As well as debates on expert witnesses, we had debates on other aspects of the bill, such as the proposed standard of proof (and how to word it). We received useful feedback from lawyers, academics, and policy makers, which helped us tighten up phrasing and avoid misinterpretation, but also showed that, inevitably, there will be disagreement. One person could advise inclusion (or removal) of a particular word or requirement, and another then the opposite. Overall, it wasn't too dissimilar to the academic writing and peer-review process! But it was more collaborative, and with a very specific aim. I really enjoyed working with barristers who know more about how things play out in practice than I do, and I learnt a lot from them.

ST: What are the next steps for the campaign?

AO-B: We are awaiting the opportunity to present the bill in Parliament. In the meantime, we continue to raise awareness among the public, engage the legal profession, and build support for the campaign. We have plans for a series of events over the coming months to reach and collaborate with different stakeholders.

ST: Thank you so much for taking the time to talk about the campaign, Abenaa. And good luck with the bill!

For further information about the campaign see: **artnotevidence.org/**

Further reading:

Abenaa Owusu-Bempah, "The Irrelevance of Rap" (2022) *Criminal Law Review* 2, 130-151

Abenaa Owusu-Bempah, "Prosecuting Rap: What Does the Case Law Tell Us?" (2022) *Popular Music* 41(4) 427-445

Abenaa Owusu-Bempah, "Scrutinising Rap Evidence: *Heslop*" (2023) 2 *Archbold Review* 5-9

IMPACT

LSE Law Policy Proposals

LSE Law School academics have a longstanding tradition of producing policy proposals that have a significant impact at the local, regional, and global levels. A prime example is Professor Hersch Lauterpacht, who was born in the small town of Zhovka, Ukraine in 1897. He obtained his PhD from LSE Law School in 1925 and became a faculty member in September 1928. His thesis, which proposed using general principles of national law to strengthen international obligations, was published in May 1927 to great scholarly acclaim. Lauterpacht is credited with introducing and developing the idea of "Crimes Against Humanity," which was later incorporated into the Rome Statute of the International Criminal Court.

This edition of the LSE Law Policy Proposals outlines ideas from Associate Professors Eduardo Baistrocchi and Andrew Summers. Dr Baistrocchi suggests a new structure for the international tax system, based on competition law and economic concepts, with the aim of achieving institutional integration. The proposal aims to involve all stakeholders and ensure due process and a balance of interests through repeated games, clustering, and logrolling. It also provides a means to implement the framework convention on inclusive and effective international tax governance, as mandated by the UN General Assembly in 2023.

Dr Summers recounts the evolution of the UK's "non-dom" tax regime, and the evidence that finally led to its abolition in the March 2024 Budget. This regime had, for over a century, offered tax advantages to people who resided in the UK but claimed that their permanent home (or "domicile") was abroad. During this period, there were several occasions on which politicians came close to making radical reforms but each time stepped back from the brink, following fears that wealthy non-doms would leave the UK. Dr Summers discusses his team's research on this question, its impact on the government's recent Budget announcement, and further areas for reform.

International Criminal Court – The Hague, Netherlands

IMPACT

Restructuring the International Tax Regime: A Proposal

By Dr Eduardo Baistrocchi

The international tax regime (ITR) faces an existential challenge in the early twenty-first century. There are good reasons to argue that the world economy is dealing with a trilemma: liberal democracy, national determination, and economic globalisation cannot coexist because they are now incompatible.[1] So a central question is how the ITR global governance structure may be adapted to help solve the incompatibility problem and make the ITR more responsive to the needs and values of people worldwide.[2]

This piece outlines a proposal that aims to be the first step in solving the incompatibility problem by setting up a platform for standardisation agreements in international taxation under the United Nations' control (the platform). The platform aims to achieve institutional integration in the ITR between the global north and the global south.

1 Dani Rodrik, *The Globalization Paradox: Democracy and The Future of the World Economy* (2010, Oxford University Press), pxviii-xix.

2 Eduardo Baistrocchi, "*International Taxation, the G-7, and India: A Proposal*" (2023) Tax Notes International, 30 October 2023, p653-660. Available at: **ssrn.com/abstract=4630033**

The legal treatment of standardisation agreements in EU antitrust law inspires the proposal. It has been designed to be compatible with both the Framework Convention for the Promotion of Inclusive and Effective International Tax Cooperation approved by a UN General Assembly resolution in 2023 and the Inclusive Framework on Base Erosion and Profit Shifting established by the OECD and G-20 in 2016.

The platform for standardisation agreements in the ITR would consist of four building blocks: 1) The UN Global Committee on Proposals for Standardisation Agreements (UN Tax Committee); 2) The OECD Centre For Tax Policy and Administration (OECD CTPA); 3) the UN General Assembly; and 4) the UN Global Observatory.

The first three building blocks of the platform would serve the role of agreeing on the international tax standards on an ongoing basis (the Conference of the Parties). The fourth building block, the UN Global Observatory, would, in turn, monitor and offer feedback to the Conference of the Parties on the interpretation and application worldwide of the agreed standards to further improve their effectiveness. Figure 1 below offers a graphical representation of the platform.

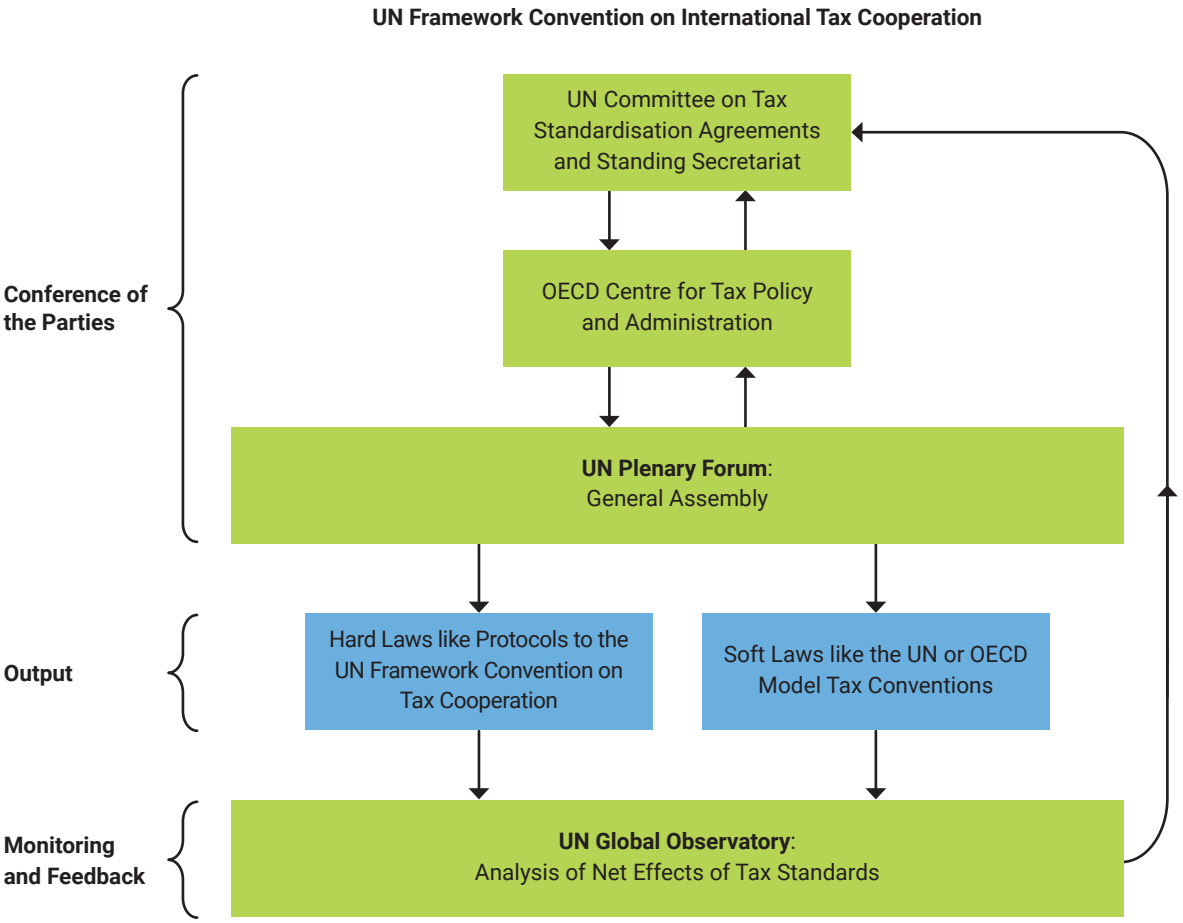


Figure 1: The UN Platform for Tax Standardisation Agreements

The platform has four building blocks, each with distinct roles. The UN Tax Standardisation Committee is tasked with creating the first draft of the material international tax standards. The committee is composed of sixteen members, eight representing developed countries (the global north) and the other eight representing developing and emerging countries (the global south). Committee members are selected based on their contribution to the global gross domestic product (global GDP).

The global north would be represented by G7 countries and the European Union (EU). The global south, in turn, would be represented by eight clusters of jurisdictions: the African Union, ASEAN, BRICS, G77, India, Indonesia, Mercosur, and the People's Republic of China.

The UN Tax Standardisation Committee would have one vote per member, and decisions would be made based on a simple majority. For instance, if a draft proposal for

tax standardisation receives nine votes, with eight votes from the global north and one from the global south (or vice versa), it would be presented to the OECD CTPA as the first draft.

The OECD CTPA would then be responsible for producing the second draft of the standardisation proposal, grounded on legal and technical work necessary to implement effective change in the ITR, within the wording of the 2023 UN Secretary General resolution. The second draft will be sent to the UN Tax Standardisation Committee for review. If the committee approves this draft, it will be submitted to the UN General Assembly for consideration. This means that international tax policy will be created by the UN General Assembly, with input from the UN Tax Standardisation Committee.

The proposal for a tax standardisation agreement will be subject to the approval or rejection of the United Nations General Assembly. The decision would be made by a majority vote of the present and voting members, in accordance with Article 18 of the United Nations Charter.

The proposal of the UN Tax Standardisation Committee, if approved by the UN General Assembly, can either become soft or hard law. In case of the former, the relevant standardisation agreement could be added, for example, to the UN and/or the OECD Model as soft laws. On the other hand, the standard could become hard law, like the protocol on the taxation of income derived from the provision of cross-border services in an increasingly digitalised and globalised economy, within the wording of the 2023 General Assembly resolution. If the UN General Assembly rejects the UN Tax Standardisation Committee's proposal, it will be sent back to the committee for reformulation and a fresh start to the reform proposal process.

Finally, the UN Global Observatory will offer feedback to the Conference of the Parties concerning the interpretation and global implementation of the material tax standard. This feedback will enable the UN Committee to assess the overall impact of the standardisation agreements on the functioning of the ITR and suggest further enhancements.

The platform is compatible with current reforms discussed by the Inclusive Framework on Base Erosion and Profit Shifting established by the OECD and G-20 in 2016. For example, the platform may help reach the critical mass of countries needed to successfully implement Pillar Two and its goal of setting a minimum effective corporate tax of 15 per cent. The platform may also decide to improve Pillar Two by, for example, increasing the minimum effective corporate tax rate.

To ground the proposal submitted here, we need to answer four questions. (1) Why should the G7 and the EU represent the Global North with eight votes in the UN Tax Standardisation Committee? (2) Why should the Global South be represented by the eight clusters of jurisdictions listed in the UN Tax Standardisation Committee? (3) Why the UN General Assembly? And (4) why should EU regulations on standardisation agreements be transplanted to the ITR?

The G-7 is an intergovernmental political forum established in 1976. It comprises Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The EU has been a non-enumerated member of the G-7 since 1977. The G-7 and the EU accounted for over 44 per cent of global GDP in 2023.

For almost a century, an increasing number of countries that are now part of the G7 and the EU have been controlling the development of the ITR. Indeed, from 1923 to 2021, the League of Nations and the OECD received 3,419 inputs from various stakeholders on international tax policy preferences. These inputs were submitted at nine significant points in the emergence and evolution of the ITR. Each input represents an observable ITR event that can be considered a proxy for soft power in this area of international law. Input is defined here as a statement made by an endpoint jurisdiction (such as the United Kingdom), an international investor (such as Apple Inc.), a tax hub (such as the Netherlands), or a developing country (such as Brazil) to a relevant supranational institution (such as the League of Nations or the OECD) concerning the discussion leading to a material ITR milestone.

An example of input is an opinion submitted by a country in a meeting led by the relevant supranational institution. When meeting minutes are unavailable, the attendance of each member in each session has been coded as input. Conversely, when the minutes detailing the discussions are available, only participants who state an opinion are coded as inputs (mere attendance is insufficient to be coded as input).

Figure 2 below shows, inter alia, the inputs submitted by G-7 countries, tax hubs, and developing countries in ITR history. The horizontal axis lists nine milestones of ITR history from the 1923 Four Economists' Report to the 2021 BEPS on Pillar One and Pillar Two. The vertical axis represents the percentage of inputs submitted by the relevant stakeholders to the relevant international institution in each of the nine milestones.

According to Figure 2, the G-7 countries have contributed the most inputs to the relevant institution across all nine milestones. This historical trend indicates that the G-7 nations have been the primary soft power in making the ITR by submitting the highest percentage of inputs to the League of Nations and later to the OECD. The G-7 jurisdictions have controlled the initial drafts for most of the nine reforms that make up the ITR milestones.

IMPACT

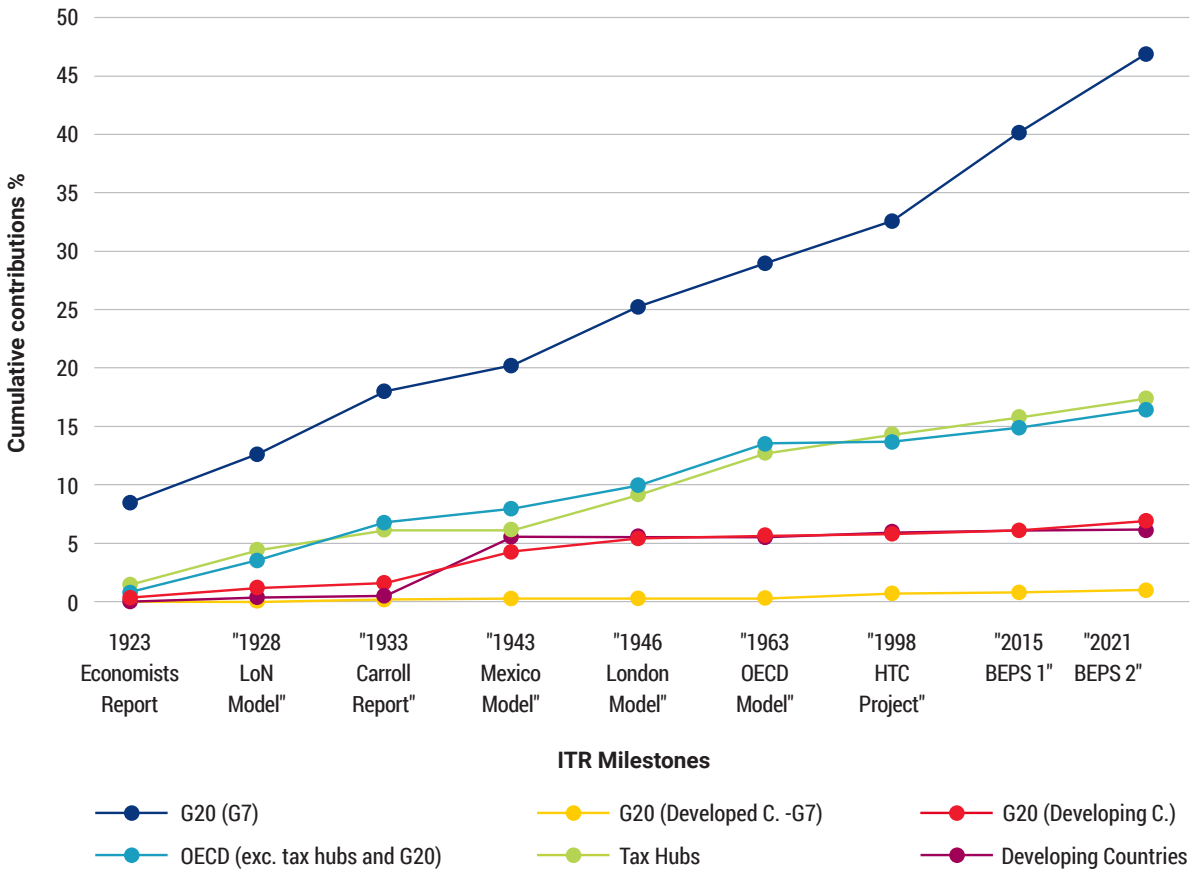


Figure 2: Inputs by G20, Tax Hubs and Developing Countries in the ITR History

This proposal suggests that the G-7 countries and the EU should have eight out of sixteen votes in the UN Tax Standardisation Committee. The allocation of these positions would be based on their contribution to the global GDP as well as their influence in the evolution of the ITR during its first century. The remaining eight spots would be given to eight groups of jurisdictions from the global south, as mentioned earlier, in recognition of their contribution to the global GDP, which was over 44 per cent in 2023.

The UN General Assembly plays a crucial role in evaluating the reform proposals produced by the UN Committee with the feedback from the OECD CTPA. This evaluation process grants all 193 UN jurisdictions a voice and offers moral legitimacy to the platform.

The strategic interaction between the UN Committee on Standardisation Agreements and the UN General Assembly is similar to the strategic interaction between the Senate and the House of Representatives in a liberal democracy like the US. The Senate aims to represent the interests of jurisdictions regardless of their population size, while the House of Representatives seeks to represent the people themselves.

It is suggested that the principles followed by the EU for standardisation agreements can be used as inspiration for the platform. This includes openness, transparency, and non-discrimination. This transplant is justified as the ITR is a decentralised competitive network market similar to those governed by EU antitrust regulations like two-sided platforms.[3] The EU antitrust regulations could apply to the platform if the platform decides to follow it, as interpreted by the Court of Justice of the EU.

In sum, this note proposes the creation of the UN Platform for Standardisation Agreements in the ITR in order to solve the problem of incompatibility and implement the framework convention recently mandated by the UN General Assembly. The platform's goal is to empower weaker actors, such as developing countries, by building cross-issue coalitions to increase their bargaining power and influence in international taxation. The concept of standardisation agreements could serve as a good starting point in the search for a new global social contract in this critical area of international law.

3 Eduardo Baistrocchi, "Global Tax Hubs" (2024) *Florida Tax Review (forthcoming)*. Available at: **ssrn.com/abstract=4544786**

Non-doms: the end of an era

By Dr Andrew Summers

The UK's so-called "non-dom" regime has been one of the UK tax system's most stubborn survivors. It allows those who live in the UK, but who can assert that their permanent home is abroad – "non-doms" – to claim an exemption from tax on their foreign income and gains that is not available to other UK residents. This tax advantage is traceable to the very first Income Tax in 1799. Originally it applied to everyone, but it became restricted to non-doms in 1915. More than one hundred years later, after many unsuccessful attempts at reform, in March 2024 it was finally abolished. This is the story of how the non-dom regime survived for so long, and the evidence that helped lay it to rest.

Back from the brink

There have been many moments in the history of the non-dom regime where its future seemed under threat. The Labour Party came close to ending it in 1974; the Conservative Chancellor Nigel Lawson also made plans for abolition in 1988. Under New Labour, the regime was tightened in 2008, but the basic structure survived. On each occasion, the pattern was the same: bold ambitions followed by a late wobble inside the Treasury, driven by fears that wealthy non-doms would flee the country, leading ministers to step back from the brink.

In the run-up to the 2015 General Election, the Labour Party pledged (if elected) to scrap the non-dom regime. But the threat of tax flight loomed large. Shadow Chancellor Ed Balls was taped admitting that "If you abolish the whole status, it probably ends up costing Britain money because some people will leave the country". Labour lost the election but won a partial reform. In the following Budget, Tory Chancellor George Osborne announced that he was "abolishing permanent non-dom tax status", which meant removing the tax advantages for the longest stayers but retaining them for the rest.

In the years that followed, hardly a Budget went by without speculation that the regime would be curtailed further, but each time nothing happened. As Phillip Hammond, Chancellor from 2016-2019 recently revealed: "I looked at non-doms … The Treasury's analysis when I was there suggested that we had gone about as far as we could without starting to have a negative effect". Just like every other time in the preceding half-century, worries about tax flight won the day. Public concerns about the unfairness of special rules for non-doms had little bite for so long as it seemed that there was no revenue to be gained from acting.

Did they leave?

Osborne's reforms were partial, but they provided an ideal natural experiment. Did affected non-doms actually leave en masse, as predicted? In 2018, my research team applied to HMRC, the UK tax authority, for access to the data that would allow us to find out. Via the "Datalab" – a secure research-facility based at HMRC's offices – we were able to analyse the de-identified tax records of everyone who had ever claimed non-dom status since 1997. As well as every detail of their annual tax return, this data allowed us to track migration in and out of the UK and to count the years that an individual had been tax resident.

First, we needed to know how much foreign income and gains non-doms held offshore. Since these sums are not required to be reported to HMRC, we developed our own estimates by comparing remittance basis users to similar "UK doms" who were obliged to declare their worldwide income in full. This approach provided us with the first window into the scale of the income and gains that were being exempted from tax under the current regime. We estimated that in aggregate, these totalled over £10bn per year. However, not all of this would translate into additional tax revenue: aside from tax planning, what about those who would leave?

We tackled this question that had led to so many Treasury wobbles in the past. Osborne's reform, which took effect in April 2017, only targeted non-doms who had lived in the UK for at least 15 out of the previous 20 years. We could therefore compare their likelihood of leaving the UK – both before and after the reform – with similar non-doms who had only lived in the UK for between 10 and 14 years. The affected group were indeed internationally mobile: even prior to the reform, almost 5 per cent left each year. As a result of losing access to the remittance basis, this emigration rate did go up – but not by much: we estimated that around an additional 6 per cent of affected non-doms ceased to be tax resident in the UK due to the reform.

And what about the non-doms who stayed in the UK? They paid a lot more tax: we can see from their tax records that the Income Tax paid by those affected by the reform increased by over 150 per cent on average, equating to an extra £100,000 each per year (even after accounting for the fixed charge that they no longer paid). And yet, the mass exodus that advisors had warned about and which politicians of all stripes had feared, did not materialise. The modest emigration response was nowhere near enough to result in the so-called "Laffer effect" of negative revenue that successive Chancellors and Shadow Chancellors had warned of.

Politics

In April 2022, the Independent newspaper revealed that the wife of then-Chancellor Rishi Sunak was claiming non-dom status and benefiting from the remittance basis. Ex-Chancellor Sajid Javid also admitted to previously having used the regime. Our recently published research provided a wider perspective on these revelations: those with incomes over £1m were almost one hundred times more likely to have claimed non-dom status than those with incomes less than £100k. Amongst the tiny elite with incomes over £5m, as many as four in ten (40 per cent) had claimed non-dom status at some point.

Later that month, the Labour Party – not for the first time in recent memory – pledged to abolish non-dom status. But this time, by relying directly on our research, they were able to say how much it would raise. Out of the £3.2bn that we estimated would be collected from abolishing non-dom status altogether, Labour allocated around £2bn to public spending pledges (training more nurses) and the remainder towards a new "modern regime" to attract migrants, lasting no more than five years after their arrival.

In public at least, the government was initially sceptical. When pressed in Parliament in November 2022, the Chancellor (by now Jeremy Hunt) reiterated his concern that "These are people who are highly mobile, and I want to make sure we do not do anything that inadvertently loses us more money than we raise". He did not, however, explicitly reject our findings. In reply to a Freedom of Information request filed by OpenDemocracy in July 2023, the Treasury stated that it did not have any figures of its own. Many commentators, including George Osborne, said that if they were Chancellor, they would now be looking to shoot Labour's fox.

End-game

And so the game of will-they-won't-they continued before each fiscal event, each time coming to nothing. Until March 2024, when without so much as a hint of irony, Chancellor Jeremy Hunt announced: "I have always believed that provided we protect the UK's attractiveness to international investors, those with the broadest shoulders should pay their fair share". He continued: "After looking at the issue over many months, I have concluded that we can indeed introduce a system which is both fairer and remains competitive with other countries".

With this, the regime that had stood for over a century largely intact, was abruptly swept away. The concept of domicile for tax purposes completely abolished, replaced with a residence test. The remittance basis – in UK tax law since 1799 – finally retired, albeit the dubious distinction between UK and foreign-source income and gains was retained in the new system. The duration of the tax advantage cut from fifteen years to four (coincidentally the period that had been mooted by Labour). This was not the incremental tinkering or brinkmanship that had characterised every non-dom reform for the past fifty years. It was actual structural change.

This is not to say that absolutely all was well. The "modern" system that will take effect from April 2025 still provides a rather counterintuitive – and economically counterproductive – incentive for new arrivals to keep their investments anywhere except the UK. The full year until implementation provides plenty of scope for current non-doms to arrange their affairs in a way that minimises the impact of losing their special status. Perks like "rebasing" of capital gains should have been resisted. And it seems that the Treasury could not help but give one final nod to that old chestnut, the risk of tax flight, in offering trust protections for Inheritance Tax. But in the context of the great history of Treasury wobbles on non-dom reform, this one would surely not trouble the scorers.

Show us the numbers

What had previously been regarded an act of economic self-harm, a measure that however fair would just end up "costing Britain money", suddenly became not only desirable but also capable of raising substantial revenue. Within two years, the non-dom regime was dead. To be sure, our research did not kill it on its own, but the history of the regime's survival suggests that we helped overcome a major stumbling block for reform: the lack of an evidence base to test the prevailing concerns. This shows, we hope, how rigorous independent research into the tax system can sometimes shift the political needle.

We did not set out to justify abolishing the non-dom regime: all the way along we were open to concluding that the anecdotes of tax flight were representative and that there was no money in reform. But that is not what the data told us. In the end, the revenue estimate approved by the Office for Budget Responsibility was remarkably close to our own. It could still turn out to be incorrect, but our view is that it is just as likely to be too low as too high. At least the speculation will not last much longer, and time will tell.

IMPACT

An unfamiliar liveliness in international law: The Oceans Treaty and what follows

In a piece in last year's issue of *Ratio*, Dr Siva Thambisetty wrote about her involvement in the negotiation and crafting of the UN Treaty on Biodiversity Beyond National Jurisdiction. Here, Dr Thambisetty further explores the binaries that emerged in the negotiation of the text relating to the management of marine genetic resources and examines their implications for thinking about the governance of biodiversity more broadly.

Roger Deakin, the fanatical swimmer, is quoted in Edmund Newell's book *The Sacramental Sea: A Spiritual Voyage through Christian History* (2019, Darton, Longman and Todd) as describing swimming as taking us back to our mother's womb: "[t]hese amniotic waters are both utterly safe and yet terrifying, for at birth anything could go wrong… [t]he swimmer experiences the terror and bliss of being born". Terror and bliss – this binary seems an apt metaphor for the liminal space we find ourselves in, as we await 60 ratifications before the newest UN Treaty on Biodiversity Beyond National Jurisdiction can begin its life as a treaty in force. The area covered by the Treaty – areas beyond national jurisdiction (ABNJ) – comprises 95 per cent of the volume of the oceans and 65 per cent of the surface.

The Treaty emerged from a babel of values in the negotiations. Overcoming apparently contradictory positions, the text is a testament to political goodwill where negotiators work on the basis that "nothing is agreed until everything is agreed". That's the bliss. The terror is that we might lose the opportunity to build on the gains we have made if we do not remain attuned to the processes that led us to the text. Contradictions and conflicting viewpoints in negotiations can bleed into the legitimacy of Treaty arrangements. However, it is also true that such conflicts can trigger legal creativity and imagination. Previously in the 2023 issue of *Ratio*, I wrote a short personal account of my role as Advisor to the G77 plus China Chair on marine genetic resources. Now with the benefit of a few months having passed I consider conflict the sublimation of differences in perspective it represents for us going forward.

The Treaty has four parts to it, all aimed at achieving the conservation and sustainable use of biodiversity. Area-Based Management Tools (including Marine Protected Areas) and Environmental Impact Assessments of activities undertaken in ABNJ cover core conservation-related governance issues. Capacity building and technology transfer is an important element of the quid pro quo of setting up governance over a global commons. Technology transfer is not a freebie in this set up – it is fundamental to mitigating persistent inequality.

The part of the Treaty relating to marine genetic resources was easily the most contentious. This was because it is here that the commons aspect clashes with extraction of value. It is also a part of the Treaty where unusually key elements were brought to the negotiating table, and from there to the text of the Treaty, by developing countries. Developing countries in highly technical negotiations usually tend to focus on principles, the bigger picture, rather than the technical weeds of the negotiations. This is largely a function of lack of expertise or lived commercial or technical experience. It may also be due to an inability to agree internally, because the large number of developing countries represent very different geopolitical interests. The fact that the G77 and China group of 134 developing countries were able to pull together a coordinated position on many deeply contested issues with the help of experts,

shows that it can be done. It also demonstrates, as the Cuban Chair of the Group in the final round of negotiations Richard Tur de la Concepción notes, that such technical "solutions are not the exclusive preserve of developed countries".[1] While this is cause for hope, it also requires us to study the conditions of that success so that it can be replicated. Here I describe four binaries around marine genetic resources that help draw out the resolution of contested viewpoints to show how the Treaty brings legal creativity to old problems in the governance of biodiversity.

1 What was said and left unsaid

In an influential essay in 1997, Lautenschlasger proclaimed "[b]iodiversity is dead"[2] to explain that the term "biodiversity" is meaningless because of the ambiguity and breadth of the subject matter that it refers to. For similar reasons, during the negotiations it seemed that it was time to proclaim the death of "genetic resources". These resources now exist in multiple synchronous forms of value that can be used, circulated, and exploited in different ways such that the term does not begin to cover them all. "Digital sequence information" has long developed as the term capturing new dematerialised forms of value in various public international law fora. But this term has at least eight different meanings! The Treaty does not define the term, yet Part II of the treaty on marine genetic resources is peppered with references to "Digital sequence information on marine genetic resources".

The BBNJ Treaty in using "digital sequence information on marine genetic resources" acknowledges that the exploitation of digital sequence information should also lead to equitable benefit sharing, and that if there are any benefits arising from the use of these resource (including monetary benefits) they ought to be shared to further the objectives of the Treaty. The lack of agreement on definition need not be an impediment to benefit sharing.

The BBNJ treaty does not have reference to intellectual property, despite a version of it being in the draft Treaty up until August 2022 and the subject matter dealing with innovative technologies from potentially novel genetic material. Simply opting for "no-text" does not however magic away the issues of control of resources raised by rights to confidential information, designations of commercial sensitivity, patent rights, and so on. The lack of reference to intellectual property rights in the context of technology transfer remains a puzzle. Although there is no restriction that technology transfer has to be "voluntary", several questions remain. For example, will valuable technologies also be shared? And how will private parties be made to comply with the provisions?

2 The new and the old

Often shifting the status quo requires legal imagination to resolve things in a different way. We have not so far been able to resolve politically and legally how the freedom of the high seas can coexist with the commons. Is a scientist in their enjoyment of the freedom of the high seas free to take, own, commercialise and even monopolise resources? Is a private company?

The commons usually does not mean absence of ownership, but can facilitate a surfeit of different shades of ownership, including intellectual property. In the Treaty we now have the juxtaposition, in Article 7, of Freedom of Marine Scientific Research and Common Heritage of Humankind.

I argue in a recent paper that we must see Freedom of Marine Scientific Research as an activity that is tethered to a resource – genetic resources – that can exist in many forms.[3] If we regard the commons as only extending to biodiversity that is physically present in areas beyond national jurisdiction and infinitely replenishable, we miss all the ways in which intellectual property monopolies curtail technological prospects for future scientists. And this is why the "commons" element must extend to all forms in which we use the genetic resources. A freedom without such principled tethering of the commons resource would make it free for all. Avoiding this is the strong normative basis for benefit sharing obligations in the Treaty.

It is for this reason that it is best not to refer to the Treaty as the High Seas Treaty, because in the use of frontier language that recalls adventure and prospecting we also imply a diminution of the common heritage of humankind. The areas beyond national jurisdiction are not simply the next frontier of extraction, so the name matters

1 Richard Tur de la Concepción, "Negotiating fair and equitable sharing of benefits in the BBNJ agreement: Role of the Group of 77 and China" (2024) *Marine Policy* 163.

2 R. A. Lautenschlasger, "Biodiversity is dead" (1997) *Wildlife Society Bulletin* 25(3) 679–685.

3 Siva Thambisetty, The Unfree Commons: Freedom of Marine Scientific Research and the Status of Genetic Resources Beyond National Jurisdiction (2024) *Modern Law Review* (forthcoming). Also available as part of the LSE Legal Studies Working Paper Series at: **dx.doi.org/10.2139/ssrn.4652550**

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3 The ocean genome and the cutting machinery of the law

In a 2020 report on the Ocean Genome for the High Level Ocean Panel, I and my co-authors defined the ocean genome as the ensemble of genetic material present in all marine biodiversity, including both the physical genes and the information they encode.[4] In contrast to this holistic definition, the law runs the ocean genome through a cutting machinery of jurisdiction and scope. Biodiversity under sovereign authority comes under the Convention on Biological Diversity, and there are different ownership structures for physical samples and sequence information. Regional agreements may further impact on how the law views and fragments the governance framework over the ocean genome.

In EU law, in order to protect the wolf which may stray across different countries, protected and non-protected territories, a concept of terrestriality rather than territoriality is developed, where the obligation to protect the wolf follows the wolf requiring cooperation of several states. The Oceans Treaty achieves something not dissimilar with respect to marine genetic resources. The Standardised Uniform Batch Identifier – unusual terminology for Treaty language – is a machine and human readable identifier that will be attach to genetic resources. It provides a techno-fix to the most long-standing problem in international biodiversity governance: identifying the origin and therefore the legal regime which a genetic resource falls under.

The batch identifier removes the need for separate treatment of physical samples and sequence information. Once established it will have a cascading effect over multiple operative provisions, making both monetary and non-monetary benefit sharing possible. Critically, it should make it possible for companies to know whether they are using samples from sovereign territories or from areas beyond national jurisdiction. If implemented well, the batch identifier will be an effective tool for governance, enabling data governance and analytics through which we can monitor and assess not just resource usage but also the achievement of Treaty objectives. In a way we could say the batch identifier conquers the cutting machinery of fragmented jurisdictions in the law.

4 The acoustics of who is heard and who is not

The BBNJ Treaty requires centralised coordination to encourage convergent implementation. Such compliance models in international law raise the possibility of non-traditional decision makers – individuals and groups that can influence governments to bring about coordinated action internationally. Such entities may include international scientists, advocates for open governance of data, NGOs working on conservation issues, and even influential legal scholars. The negotiating process and means of influence can translate to considerable epistemic and therefore political power that such groups hold in highly technical transnational contexts. The BBNJ treaty process amplified the influence of well-connected and funded non-traditional decision makers – decision makers who are often based in the global north.

"Science" is not always or entirely benign. Decisions about what kind of science gets funded, who benefits, who participates, and who does not are all decisions that, at each stage, are open to capture by elites – elites who already benefit from the current political structure of marine scientific research. In venues outside of negotiations where ideas were formed and tested there were never enough experts speaking on behalf of developing country interests. As we move towards ratification and entry into force, it will be important that the many new elements in the Treaty benefit from developing country perspectives to ensure that the implementation of provisions stays true to the purpose and intent with which they were agreed.

The Treaty is a remarkable achievement for multilateralism, and brings hope to those who, like me, cautiously believe in the possibility of addressing global systemic inequities through law. Our colleague Professor Gerry Simpson says in his book *The Sentimental Life of International Law* (2021, Oxford University Press) that international law has been killed off a thousand times, disinterred, and critiqued to an inch of its life. Instead of focusing on all the familiar ways in which public international law does not do what it says on the tin, and following Gerry's cue, I see the Treaty as uncovering an "unfamiliar liveliness" in international law and an emancipatory program of work that is worth amplifying and working on.

This piece is based on a public lecture that Dr Thambisetty delivered at LSE on 6 February 2024. A video of the lecture is available here: **lse.ac.uk/lse-player?id=fcf1dff0-9e74-413b-9f79-805e7d52c204**

4 Robert Blasiak, Rachel Wynberg, Kirsten Grorud-Colvert, and Siva Thambisetty, "The ocean genome: conservation and the fair, equitable, and sustainable use of marine genetic resources" (2020) High Level Panel for a Sustainable Ocean Economy, Washington DC, USA.

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Testifying to the UK Parliament's Joint Committee on the National Security Strategy

On 22 February 2024, Dr Mona Paulsen addressed the UK Parliament's Joint Committee on the National Security Strategy (JCNSS). The JCNSS sought to hear from energy, technology, economics, and international trade experts concerning their views on the security of critical resources needed for UK economic development. In addition, Dr Paulsen assessed how the UK Government should approach the ever-expanding complexity of supply chains, rapid technological development, and green trade policies in a Net-Zero global economy. Here, Dr Paulsen reflects on her testimony.

During my testimony, I identified the various international circumstances establishing the context for UK foreign economic policy-making. I explained how, in the past decade, the international economic order has faced stress due to ever-expanding, complex global supply chains, rising geopolitical tensions, rapid technological development, and health and environmental crises. I stressed that climate change increasingly reorients some governments' economic and security policies as many governments navigate extreme weather events, water and food insecurity, and migration flows. Moreover, I urged the JCNSS to contemplate the scope of economic security against the Gaza conflict and the invasion of Ukraine as recent examples of regional conflicts with far-reaching social, economic, and military consequences for local populations, neighbouring countries, and the rest of the world.

Thereafter, I outlined the potential goals of a UK economic security strategy before laying out the assorted legal strategies to meet them. I urged the JCNSS to scope UK economic security instruments via a relative evaluation of key UK allies' strategies, namely the US, the EU/MS, Japan, Canada, and other middle powers within the global economy. With complex crises, I explained, other governments have developed multi-faceted strategies with an array of trade measures, ranging from inbound investment screening (that restricts capital inflows), outbound investment screening (that restrict capital outflows), export controls (including but not limited to export bans), government procurement; economic sanctions, anti-coercion instruments (such as that developed by the EU or recommended by the G7), or supply chain resiliency and informal collaborations (such as US-led Indo-Pacific Economic Framework).

Based upon questions made in my testimony, I confirmed that the meaning of economic security has become caught up in long-standing debates concerning the capacity of the World Trade Organization members to coordinate and mediate across heterogeneous development approaches – most evident in debates concerning Chinese "state capitalism" and international rules. I clarified the debates to the JCNSS, noting that for the UK and other economies, the opaqueness and complex structure of the Chinese economic model make it difficult to map government support of Chinese firms, leading to other governments challenging the legality of Chinese practices at the World Trade Organization.

Overall, I urged the JCNSS to consider the value of multilateral coordination, drawing from my legal and historical work on economic security. By understanding the past, I argued that the JCNSS could design better questions about economic security without defeating the multilateral trade architecture that continues to matter to many economies'

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economic and sustainable progress. I maintained that the multilateral trading system remains vital to UK foreign economic policy. I described UK participation in the design of postwar economic institutions and how it stemmed from the UK's commitment to liberal ideas of international economic interdependence and cooperation, promoting non-discriminatory treatment for all traded goods and reducing government barriers to trade. I reasoned how international economic cooperation should help the UK government fortify UK military and economic powers. In particular, I argued how maintaining open, non-discriminatory trade with various trading partners would help the UK diversify its sources and build resilient economic and military capabilities. My central argument was that economic globalisation need not be a threat to UK economic security so long as the UK has a clear understanding of the risks involved with global economic integration, develops robust domestic mechanisms to address these risks, and maintains active international cooperation with other governments in various multilateral and bilateral forums.

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Fellow pilgrims on the endless road: "impact" in judicial decisions

In this piece, Dr Andrew Scott reflects on the interplay between scholarship and judicial decision-making and notes the range of recent instances, across many jurisdictions, in which colleagues from LSE Law School have influenced judicial reasoning.

The aphorism "better read when dead", while once reflective of a general attitude on the Bench towards the academy, is as outmoded as the "home" telephone. While doctrinal legal research has always been a mainstay of legal scholarship, some judgments are correspondingly replete with references to both conceptual and empirical scholarship alongside the traditional primary legal sources. Senior British judges speak regularly about the desirability of the interplay (**supremecourt.uk/docs/lionel-cohen-lecture-2021-lord-burrows.pdf**). The most immediate form of "impact" that a scholar might have on the development of the law comes now through such explicit judicial engagement – whether affirmative or repudiatory - with research. Jurists and academicians are "fellow pilgrims" on the road to coherence. This note offers a brief review of some recent contributions made by LSE Law colleagues to judicial consideration of matters coming before the courts across the common law world.

Dr Rachel Leow's 2022 monograph, *Corporate Attribution in Private Law*, is a case in point. In the short period since its publication by Hart, the work has been cited by both the Supreme Court of the UK and the High Court of Singapore. In *Trustees of the Barry Congregation of Jehovah's Witnesses v BXB* [2023] UKSC 15 (**www.bailii.org/uk/cases/UKSC/2023/15.html**), Lord Burrows acknowledged the great help he had gleaned from the text in understanding the conceptual basis of vicarious liability. In *Axis Megalink v Far East Mining Pte Ltd* [2023] SGHC 243 (**commonlii.org/sg/cases/SGHC/2023/243.pdf**), Justice Goh Yihan considered the attribution of knowledge as between a principal and agent. Given that the jurisprudence had not settled on a single test for such attribution, he drew upon Rachel's work to discern and apply a working rule.

Dr Timothy Liau's work has received a similarly pan-jurisdictional airing. His book, *Standing in Private Law* (published by Oxford University Press in 2023), was cited in the concurring judgment offered by Justice Edelman in *AZC20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 26 (**austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2023/26.html**). Having previously described it as "a ground-breaking work… a work of deep theory… and essential reading", the judge quoted Timothy's work while seeking to distinguish between the concept of standing and disputes over rights. He used it to identify a tendency for "standing to be unhelpfully lumped together, even misidentified, with these rights". Other elements of Timothy's work on standing have also been considered by courts in other jurisdictions. The paper "Privity: Rights, Standing, and the Road Not Taken" (2021) *Oxford Journal of Legal Studies* 41(3), 803-832, for instance, has been cited by both levels of the Supreme Court of Singapore. In *B High House International Pte Ltd v MCDP Phoenix Services Pte Ltd and another* [2023] SGHC 12 (**commonlii.org/sg/cases/SGHC/2023/12.pdf**), Justice Mavis Chionh cited the paper in the opening sentence of her High Court judgment which focused on the identities of the appropriate parties to a dispute and hence to litigation. This was noted subsequently in the judgment of the Court of Appeal in *UniCredit Bank AG v Glencore Singapore Pte Ltd* - [2023] SGCA 41 (**commonlii.org/sg/cases/SGCA/2023/41.pdf**) when dealing with the attempt of a plaintiff to "muscle in" on a contractual promise made between two other parties.

The global impact of LSE Law scholarship can also be seen in a further snapshot of recent citations. Dr Richard Martin's paper – "When Police Kill in the Line of Duty: Mistaken Belief, Professional Misconduct and Ethical Duties After R. (W80)" (2021) *Criminal Law Review 8*, 662-683 - was cited with approval on the appeal of the case discussed by the UK Supreme Court. Lord Lloyd-Jones and Lord Stephens noted that "in formulating our judgment… we have found great assistance from [Dr Martin's] article". Professor Tarun Khaitan's book, *A*

Dr Rachel Leow, LSE Law School

Theory of Discrimination Law (also published by Oxford University Press, in 2015), was cited in a dissenting judgment in the Indian Supreme Court in a recent case focused on marriage equality (*Chakraborty v Union of India* 2023 INSC 920). Professor David Kershaw's work on the *Foundations of Anglo-American Corporate Fiduciary Law* (published by Cambridge University Press in 2018) was also recently discussed at length by the Delaware Court of Chancery in the case of *IBEW Local Union DPCT v Godaddy, Inc*, with the court affirming the view that the "good faith is not simply an aspect of the business judgment rule, [rather] it was the whole of the rule".

The pattern of citations can sometimes be unusual. Indeed, they can sometimes seem instantaneous, happening even before a paper has gone through the peer review process. Professor Sarah Paterson's recent paper on corporate restructuring under the Corporate Insolvency and Governance Act 2020 offers an example (**papers.ssrn.com/sol3/papers.cfm?abstract_id=4016519**). The paper considered when a court might sanction a corporate restructuring plan over the objections of a dissenting class, and conversely when a court may decline to sanction on grounds that the restructuring was not just and equitable (even where statutory conditions were satisfied). Shortly following its publication on SSRN, the paper was picked up and considered by Mr Justice Zacaroli in *Houst Limited* [2022] EWHC 1941 (Ch) (**www.bailii.org/ew/cases/EWHC/Ch/2022/1941.htm**)]. Adopting a rationale outlined in Sarah's paper, the judge took the view that the government's omission of an "absolute priority rule" such as can be found in the US "Chapter 11" bankruptcy law when that option had been considered in the preparation of the 2020 Act must have been deliberate. This thinking was reprised by the Court of Appeal in *Re AGPS BondCo PLC* [2024] EWCA Civ 24 (**www.bailii.org/ew/cases/EWCA/Civ/2024/24.html**), when Lord Justice Snowden highlighted the "essential question for the court" set out in the paper: "whether any class of creditor is getting 'too good a deal (too much unfair value)'". In *Great Annual Savings Co Ltd* [2023] EWHC 1141 (Ch) Adam Johnson J also acknowledged the great assistance he had gleaned from Sarah's paper, quoting directly from it and noting the "resonance" with the instant case (**www.bailii.org/ew/cases/EWHC/Ch/2023/1141.html**).

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Some legal commentaries achieve a heightened status in the court, such that they come to be treated as a quasi-authority. This has been the trajectory over time of the text *Gatley on Libel and Slander*, now in its 13th edition and to which the current author contributes chapters on the three main defences, on privacy and on data protection. In recent years, these chapters have been cited variously by the English courts: for instance, by Lords Hamblen and Stephens in the Supreme Court in *Bloomberg LP v ZXC* [2022] UKSC 5 (**www.bailii.org/uk/cases/UKSC/2022/5.html**) on information that is normally considered "private"; by Lord Justice Warby in *Riley v Murray* [2022] EWCA Civ 1146 (**www.bailii.org/ew/cases/EWCA/Civ/2022/1146.html**) on the concept of the public interest in privacy law; by Mr Justice Jay in *Dyson v MGN Ltd* [2023] EWHC 3092 (KB) (**www.bailii.org/ew/cases/EWHC/KB/2023/3092.html**) on the presentation of underpinning facts in honest opinion defence; by Mr Justice Knowles in *Aaronson v Stones* [2023] EWHC 2399 (KB) (**www.bailii.org/ew/cases/EWHC/KB/2023/2399.html**) on general principles and elements of the public interest defence in defamation; by Mrs Justice Williams in *Hay v Cresswell* [2023] EWHC 882 (KB) (**www.bailii.org/ew/cases/EWHC/KB/2023/882.html**) on the inter-relationship between a defendant knowing that what they publish is untrue and the section 4 defence; and by Mr Justice Nicklin in *Blake v Fox* [2022] EWHC 3542 (KB) (**www.bailii.org/ew/cases/EWHC/KB/2022/3542.html**) on the role of context in distinguishing fact and opinion.

There can be a "sting in the tail" of such engagement however. In a most notable interplay between a judge in court and the "editors of *Gatley*", across a number of iterations on each part in judgments and revised editions, there was an ongoing debate as to the proper means of distinguishing fact from comment for the purposes of what is now the s.3 "honest opinion" defence in defamation. Mr Justice Eady had considered that inferences of fact should fall outside the defence should the facts inferred be verifiable. The competing view set out in *Gatley*, was that defence should cover all inferences of fact insofar as they were "recognisable as comment". With reference to Gatley, the matter was described as a "potentially important issue" by Mr Justice Warby in *Barron MP v Collins MEP* [2015] EWHC 1125 (QB) (**www.bailii.org/ew/cases/EWHC/QB/2015/1125.html**). In *Zarb-Cousin v Association of British Bookmakers* [2018] EWHC 2240 (QB) (**www.bailii.org/ew/cases/EWHC/QB/2018/2240.html**), Mr Justice Nicklin leaned towards the approach in Gatley, and in *Butt v Secretary of State for the Home Department* [2019] EWCA Civ 933 (**www.bailii.org/ew/cases/EWCA/Civ/2019/256.html**), Lady Justice Sharp did likewise and so brought the debate to a close. The problem: on reflection, Mr Justice Eady almost certainly offered the better view. Sometimes, perhaps, fellow pilgrims can fool each other into missteps and misdirection. We must be willing always to retrace our steps.

High Court of Singapore

Dr Marie Petersmann and Professor Gerry Simpson in conversation for the episode featuring Marie's work

The Ratio podcast

Over the course of the past year, Professor Gerry Simpson has been working on a new initiative for the Law School: a podcast, in which he interviews members of the Law School about their research. Dr Sarah Trotter caught up with him on 31 January 2024 to find out more.

Sarah Trotter (ST): Could you tell us a bit about the thinking behind the Ratio podcast?

Gerry Simpson (GS): I think the Law School wanted to make a public or semi-public intervention into a law/theory space, and we had some people who we felt would be good at that. So we hired the marvellous Mohid, who is doing sterling work – he's got a lot of history in this business running various podcasts around the place. That's one reason. The second prompt was the realisation that a lot of us are working on what might be called "policy in the broadest possible sense" issues. So, I've just interviewed Andy Summers on tax and tax policy, and he publishes a lot in tax policy and in policy papers, which are very readable, and backed up by a lot of learning, and deep research that we might think of as socio-legal research. So it seemed to us to be important to introduce or reintroduce that sort of research to the world, and, also, to place it under the umbrella of LSE Law School, to say this is the kind of work we do. It might be varied, but it's of a certain quality – maybe it has a certain LSE imprint – and it wants to make a contribution to understanding the causes of things and doing something about those causes.

ST: Do you see the audience in that sense as being primarily policymakers, people working in the policy space, or a broader public audience, who would potentially be interested in the connection between the two?

LAW RATIO

SCAN TO LISTEN TO
LSE LAW SCHOOL'S
NEW PODCAST, *RATIO*

GS: Well, we're having a conversation about that actually, around the name of the podcast. We really want to get quite a broad audience for this, and I've pitched it quite broad. But it's always hard to know as an academic when you're pitching something in a broad democratic way whether you actually are, or whether you're just introducing another 3 per cent of the population to it. So I imagine fellow academics, policymakers, intellectuals, and the general public in that order, but with a real desire to connect with people who listen to podcasts and want, I suppose, a more in-depth treatment of a particular policy area than they might get from other podcasts which are sort of skewed towards a particular media universe.

ST: It's a really broad aim, isn't it, if you have that broad an audience. Will there be any way for them to respond or engage?

GS: Not yet, we are not running a participatory democracy here, Sarah! But the idea – I mean we have to distinguish between "the" idea and my ideas here – my idea is to launch this series with a series of books, a kind of meet the author affair – and I think Niki Lacey is interviewing three or four people for another series after this – but if I was to do a second series, I could conceivably interview both people from within LSE Law School but also elsewhere. I feel for example that we could hear more from our visitors.

ST: Did you feel that this was a space that was open more generally? I mean if you take the landscape of podcasts, did you feel that there was a gap here for a law and policy intervention? Or was this something where you thought "actually LSE Law School is positioned to make this contribution"?

GS: At the moment, it's a bit like Melbourne's café scene. I once said to a friend: "everyone's got a café here". It has got to the point where almost everyone seems to have a podcast as well. So I'm not understating the difficulty of making an original contribution. But the fact is LSE is a unique, one-off place. There is nowhere quite like it. And it's true of the Law School: to have this much prestige, to have this many good people, and to not be a kind of Oxbridge-y outfit, to be part of a university, a scholarly institution that was built upon particular lines, Fabian lines – however distant they might seem now – is to be in a place which is different from every other place. Also, we're in the centre of London, so even our position is unique in a way – with apologies to King's College and UCL and so on. So I thought already LSE does that, and I think a podcast that builds on LSE expertise and values, especially Law School values and expertise, can be differentiated from the mass mob of podcasts out there jostling for attention.

ST: So it's another means, basically, of contributing to debate and also stimulating debate?... And debate is actually the theme of the issue…

GS: Good, good, good…

ST: It's very convenient…

GS: Well exactly; I couldn't emphasise enough how important debate is... But it's also got a Reithian aspect, it's meant to entertain *and* educate. So the idea is to draw people into what are otherwise quite technical esoteric areas of law by both contributing to debate, absolutely; and yes, promoting our research. But most of all, it's a kind of thing in itself. It's a one-hour conversation between a largely inexpert person who knows a dangerously small amount about the subject's subject, ie, me, and the expert on the other side of the table who knows a great deal. And the people we've interviewed so far have done such a stellar job, opening up their subject to wider public consumption, but without in any way simplifying it. In fact, that kind of opening up relies on a great deal of technical knowledge and communicative ability.

ST: The podcast as a means of disseminating information itself, the podcast as a space… – do you want to say anything about that?

GS: Yeah, I'd say I don't want to think about it as a way of communicating information exactly, because I do think of it as a thing in itself, a space for us to converse with each other within LSE and to hear each other within LSE. So yes, there's a very, very big public-facing aspect to this, but I'm also very committed to the idea of it having an inward attitude. And I have the distinct pleasure of interviewing my colleagues and reading their books. We have an hour together in which to talk about these ideas, I'll know this person's work much better as a result, and then I hope some of my enthusiasm for the work and their enthusiasm for their own work is communicated in a digestible form to our colleagues while they're out on a bike ride, doing the dishes, or at the opera.

ST: So it's a kind of space that hosts the conversation, then? You've created a space that hosts a conversation?

GS: In a way, yeah, without putting words into my mouth…

ST: Do you listen to any podcasts yourself? What have been the influences on you in thinking about how to chair this series and conduct these interviews?

GS: I am a great admirer of the interview. I've always been struck by how little we rely on that way of sharing a moment of intellectual endeavour. It doesn't happen often. We're very attached to the idea of writing our papers, presenting our papers on panels, giving lectures. And it surprises me that there's so little dialogue – and I mean formal dialogue, which after all promotes actual dialogue a lot of the time – in any field. I've spoken to Conor [Gearty] about this in the past, and we were talking about the famous conversations in law – the conversation between Peter Gabel and Duncan Kennedy… or, and I think Conor interviewed Ronald Dworkin… – but the idea of the interview is I think, as I say, underrated and underutilised in the academy. So I was very drawn to that. I was also quite influenced by *The Paris Review's The Art of Fiction and The Art of Nonfiction*… These are all models for this kind of encounter.

ST: I just have Didion's on my desk!

GS: Oh do you? Joan Didion's?

ST: Yeah, we're talking about it with the PhD students tomorrow!

GS: Oh great, great! I think that's such a rich way of finding out about a writer, not just about where they sit or how many words they produce, but how they translate the idea to the pen in a way, or how indeed the pen produces the idea. A lot of writers I've read talk about the way in which there's a kind of alchemy in the act of composition. Don DeLillo calls it "concentrated thinking". And I think that's right. You write – he said this – you write to find out what you think. And in a way, in a podcast, we talk in order to find out what we think, and what we might write.

I must confess though, unlike our Dean, I don't actually listen to them – I was about to say watch them – that often myself, if at all, because I listen to Radio 4 all the time. I find it more sort of ecumenical and democratic to listen to whatever happens to be put before me on Radio 4. And I know people become impatient because they end up listening to things that they didn't want to listen to or didn't think they wanted to listen to, and I worry that I would start listening to a bunch of podcasts on Benjamin Britten or Bob Dylan or Roberto Bolano for the rest of my life instead of hearing about the bird life of Shetland or the birth of the fish'n'chip shop.

ST: You just want to hear things and then you might find something interesting in that; you want to be exposed to stuff…

GS: Yeah, even boring stuff's interesting after all at some level…

ST: Well the idea of what you find boring is also interesting – what does it mean to find something boring and what does that say… The conversation point is interesting too, just thinking about writing, because you're always having a conversation when you're writing – it might be with yourself, but you're always having a conversation. But you're bringing it more to the fore, you're bringing it out more explicitly with the podcast, by structuring it with questions…

GS: Yeah, exactly, and just on a technical matter, it's rather important to bring it within 45 minutes, and I've managed to do that. The producer initially seemed very nervous about whether we academics could even speak freely into a microphone, whether we'd be able to organise our time, or be able to present ourselves, or be able to speak to the topic, sit up straight and so on but I think Mohid has been pleasantly surprised by how these interviews have gone.

ST: It's not quite like writing to think in that sense, is it? It's not free association, it's not talking to think… You've got questions that structure it…

GS: Definitely, it's not like… So Emmanuel Carrère gives an interview for *The Paris Review*, in which he says he's been asked by creative writing students how to start. And he says what you've got to do is go into a dark room for four days, for 24 hours, you know, eat and sleep as much as you want or as little as you should, and just write and write and write. Write everything that comes into your head. Don't censor anything. Just write and write and write. And then work out how you'll start your book. Or as Philip Roth says, I get to the end of the book, I realise it's all absolute rot, except for the final sentence which becomes the first sentence of the actual book…. That old story, it's probably not even true…

ST: Yeah, but clearing words that might need to be said out of the way – that's the idea with both of those cases, that there's a build-up of words that need to be shifted before you can start on the work…

GS: Exactly, clearing the dust off…

ST: Yeah. Great!

GS: There we go!

ST: That was super interesting. Thank you.

Updates: public appointments/ public engagement (2024)

Sir Ross Cranston

Began chairing the Cranston Inquiry to look into the events of 24 November 2021, when at least 27 people lost their lives crossing the Channel.

Dr Luke McDonagh

Awarded the Lalive & Merryman Fellowship.

Dr Mona Paulsen

Gave evidence to the Joint Committee on the National Security Strategy.

Professor Julia Black

The House of Lords Committee has adopted Prof Julia Black's proposal to create an Office for Regulatory Performance.

Was elected as an Honorary Bencher of Gray's Inn.

Dr Jan Zglinski

Submitted written evidence on the Football Governance Bill to the House of Commons Public Bill Committee.

Dr Giulia Leonelli

The House of Lords Committee has adopted Dr Giulia Leonelli's recommendations on CPTPP equivalence procedure.

Professor Tarun Khaitan

Professor Tarun Khaitan's "A Theory of Discrimination Law" was cited by the Indian Supreme Court in its judgement on marriage equality, in the case of *Supriyo v Union of India*.

Dr Jonathan Fisher KC

Appointed Chair of the Independent Review of Disclosure and Fraud Offences.

Dr Richard Martin

Qualified as a barrister and was called to the bar in October 2023 (Lincoln's Inn).

Dr Jacco Bomhoff

Appointed as Director of Studies at the Hague Academy of International Law for Summer Courses 2024.

Nominated to the Scientific Advisory Committee of the Max Planck Institute for Comparative and International Private Law.

Dr Oliver Hailes

Joined the legal team for the Republic of Vanuatu in the advisory proceeding before the International Court of Justice on the obligations of States concerning climate change.

Dr Roxana Wilis

Has been working with an international team to support submissions to the International Court of Justice related to gross human rights abuses committed in the Cameroon conflict.

Dr Abeena Owusu-Bempah

Spoke at the House of Commons for the launch event of the Criminal Evidence (Creative and Artistic Expression) Bill.

Dr Andy Summers

Gave evidence at the House of Lords Finance Bill Sub-Committee.

Non-Dom status will be scrapped in the UK, following analysis by Dr Andy Summers and Dr Arun Advani (Warwick).

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Radical continuity: EU legal study at LSE Law School

The study of EU law remains at the heart of LSE Law School's teaching, research, and events programmes. In this piece, Dr Andrew Scott reflects on the range of debates and events that have been held in this space over the past year.

While Brexit has wrought a schism between British and European law and politics, the global outlook of LSE Law has ensured that EU legal study has retained a central role in the mission of the School. This focus is manifest in both teaching (several undergraduate and postgraduate courses centre on Europe, while countless others include European dimensions on their syllabuses) and research (with several faculty pursuing work that mainstreams European matters). The most obvious manifestation of the continuing European aspect, however, comes in the LSE Law events programme.

A key purpose of the events offer, and in particular the Convene programme within the Law School, is to increase the exposure of our students to leading thinkers and policy actors and to present a broader range of legal and policy concerns and thus intellectual challenges than might otherwise be encountered in classes alone. This both diversifies and enriches the experience of studying at LSE. These goals have been delivered upon engagingly in the past year.

This engagement has been most noticeable in the visits of two EU Commissioners to the Law School in recent months. In September 2023, our guest was Mairead McGuinness, the Commissioner for Financial Stability, Financial Services, and Capital Markets Union. Ms McGuinness – who was previously the Vice President of the European Parliament and an award-winning journalist and broadcaster – discussed the priorities for the Commission's financial markets agenda with the Law School's Dean Professor David Kershaw and Professor Niamh Moloney. She emphasised the Commission's key aim of maintaining the strength and stability of the financial sector and the goal of seeing it "deliver" for people, society, and the environment.

Ms McGuinness also reflected on her time in the European Parliament, when she had overseen relations with national parliaments, led the Parliament's dialogue with religious and philosophical organisations, and had responsibility for the Parliament's communication policy. As an Irish MEP representing the border region, she had also been outspoken on Brexit and in particular on its consequences for the EU and Ireland.

Later that term, in October 2023, the Law School was honoured to host Stella Kyriakides, the EU Commissioner for Health and Food Safety for a relaxed, informal discussion with the Law School's Dr Floris de Witte and Ms Sherry Merkur, an LSE-based Research Fellow in Health Policy, at which students also posed a number of searching questions. Ms Kyriakides's role encompasses such diverse elements as securing affordable medicines, ensuring the

sustainability of European health systems, driving the EU's food policy, and ensuring animal wellbeing in agriculture across Europe. She was pivotal in the purchase and roll-out of the COVID vaccinations in the EU.

A further notable event on the Convene programme saw José Manuel Campa, Chairperson of the European Banking Authority (an agency of the EU that aims to ensure effective and consistent regulation and supervision of the banking and payments sectors), explore how societal values inform the EU approach to the regulation of FinTech. He sought to highlight how different, sometimes competing, elements inform decisions about where to draw the perimeter of regulation, and techniques to create effective frameworks that incentivise risk management, decision-making, and conduct of business within the financial sector. The session was chaired by Andrés Velasco, Professor and Dean of the School of Public Policy, LSE, with Dr Philipp Paech of LSE Law acting as a discussant.

A final event oriented generally towards enhancing the intellectual environment at LSE was the public lecture that the School hosted in October on the theme of "Eurowhiteness: culture, empire and race in the European project", which was also the title of the main speaker's most recent book. Hans Kundnani – an associate fellow and former Europe programme director at Chatham House, and prolific public intellectual – contended that despite its self-appreciation as a cosmopolitan rejection of violent nationalism, the normative underpinning of the European Union is infused with a commitment to Christianity and an associated "whiteness". He noted that the project has confronted the lessons of continental war and the Holocaust, but that it has not adequately foregrounded the fact and lessons of European colonial history. He warned that since the 2015 refugee crisis, whiteness has become more central to European identity, a development that can be seen as a troubling new turn in Europe's long civilisational project.

This fascinating event saw significant audience engagement, alongside contributions from Gurminder Bhambra, Professor of Postcolonial and Decolonial Studies at the University of Sussex, Helen Thompson, Professor of Political Economy at the University of Cambridge, and Mike Wilkinson, Professor of Law at LSE. It was chaired by Simon Glendinning, the Head of the European Institute and Professor in European Philosophy at LSE.

In terms of research, European law and affairs have also featured prominently over the past year in LSE Law events. In June 2023, the Law School hosted a major two-day conference, chaired by Dr Jan Zglinski, on "Empirical legal studies in EU law: foundations, methods, themes". The event drew together 30 leading legal and political science scholars to reflect on the empirical turn in scholarship on EU law that in recent times has seen the undertaking of important quantitative and qualitative studies and large-scale empirical projects, and the emergence of thematic networks. It considered the objectives, potential, and future of empirical legal research in the EU, and included both the main protagonists of the movement alongside some of its critics.

Then, in the autumn, the Law School co-hosted the 17th European Company and Financial Law Review Symposium. The event saw an array of contributions from leading scholars in the field, focusing on a diverse range of pressing themes. These included the role of institutional investors in decisions on corporate executive remuneration (Dr Suren Gomtsyan, LSE Law), the "oscillating domains" of public and private markets (Dr Alperen Gözlügöl, LSE Law and Professor Tobias Tröger, Goethe University Frankfurt, with Dr Edmund Schuster ([LSE Law] acting as a discussant), and a sceptical view on "Shareholder Voice and Corporate Purpose" (Emeritus Professor Paul Davies, University of Oxford). The symposium closed with an enlightening panel discussion on the "Sustainability Revolution in Corporate Law", chaired by Professor Eilís Ferran (University of Cambridge) and comprising Professor Vanessa Knapp (Queen Mary University), Professor Brenda Hannigan (University of Southampton), and Dr Simon Witney (London School of Economics and Political Science).

In June 2024, the Law School hosted the EU Lawyers Assembly, the network for UK-based scholars working on European Union law. The Assembly was chaired by Dr Jan Zglinski, with attendees at the conference reflecting on current research in EU Law, ways of "re-thinking" the teaching of EU law in a post-Brexit world, and the challenge of accessing funding for EU law research.

In addition, running through the year, the cross-faculty based GOLEM series of research seminars which concentrates on European law and policy saw a number of standout events, often with a constitutional leaning. In February, it hosted Dr Guillaume Gregoire of the University of Liege who spoke on the theme of the currents of neoliberal thought and their influence on economic constitutionalism in the EU. He noted how key tenets of neoliberal constitutionalism infuse the layers of the European economic constitution: the fundamental freedoms of movement pave the way to normative competition between national legislations; competition law guarantees the competitive structure of the market; EMU implements the rules of budgetary discipline and monetary stability. He rejected the idea that the EU is solely a neoliberal project, but raised questions nevertheless about the actual room for manoeuvre left to public institutions in dealing with various current crises.

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Latterly, our colleague Dr Floris de Witte developed the thesis that EU law acts as a constitutional balance mediating and stabilising the integration project, notwithstanding that it has become increasingly contested, fragmented, and displaced as the main form of governance. He argued that the interplay between Member States and the EU institutions involves a complex balancing on both sides between maintaining control over the given policy area while yet affording the capacity adequate to achieve good policy outcomes. Too much control risks bad policy outcomes, whereas too little control risks policy drift or perceived loss of sovereignty.

In Floris's view, this tension explains not only how the EU and its Member States interact, but also the sometimes anomalous evolution of EU law and integration. It helps identify sites and types of legal contestation between the EU and its Member States. It illuminates the unevenness of EU law, wherein its power is increasing in some domains and dissipating in others. Moreover, Floris considered that appreciating the tension might offer a framework through which to analyse and compare diverse areas of EU law, and to understand the limits of legal integration. As with each of the events discussed, Floris projected the continuing importance of deep consideration of and reflection on the development of the European project. He highlighted its continuing relevance for a place like LSE Law School, where EU legal study continues, radically, to live in interesting times.

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From the edge to the heart of Europe: reflections from Naomi Whyte, recipient of the first LSE Curia Grant

In 2023, LSE Law School launched the Curia Grant, to enable a postgraduate student or recent graduate of the Law School to undertake a study visit at the Court of Justice of the European Union (CJEU). The study visit programme itself was set up by the CJEU to offer citizens of EU and non-EU Member States an opportunity to develop their understanding of the CJEU and EU law; and recipients of the LSE Curia Grant are hosted by the chambers of an Advocate General, where they work for three months. Naomi Whyte, who was an LLM student at LSE from 2022-23, was the recipient of the first LSE Curia Grant in 2023, and in this piece she reflects on her experience at the CJEU.

When the opportunity to apply for the LSE Curia Grant arose in April 2023, I was, given the time of year, engrossed in summative essays and my upcoming exams. However, the opportunity of a study visit to the CJEU intrigued me; the Court of Justice, as the chief judicial authority of the European Union, has an exceptionally broad reach and is the sole multilingual judicial body in the world. Its jurisprudence touches all 448 million EU citizens, an unprecedented influence that I had been studying intensely at LSE. As for my own professional ambitions, I knew that I wanted to work in a multinational legal institution in which I felt I could make real contributions to results, which made the opportunity all the more appealing. Knowing that this was too good an opportunity to miss, I put my essays to the side and spent some time crafting my application. You can imagine my delight when I received an email from LSE Law School offering me the opportunity to undertake a 3-month study visit to the CJEU. And so it was that in December 2023, I made the journey from my hometown of Galway in the west of Ireland to Luxembourg: a journey from the edge to the heart of Europe.

As a study visitor at the court, I have had the pleasure of working in the cabinet of Advocate General Tamara Ćapeta, the first Croatian Advocate General to have served at the CJEU. As a *visiteur d'étude* (study visitor), my work has largely been similar to that of a "*stagiaire*" (trainee) of the court, consisting of legal research, drafting, and proofreading, although no two weeks are alike. Fortunately for me, AG Ćapeta has been keen for me to be as involved in the work of the cabinet as possible. While at the court, I have therefore truly felt as though I am at the forefront of EU law. For example, although I had studied and discussed the Superleague case at length during my studies at LSE, it was a different feeling entirely hearing the final judgment read in the courtroom. Despite facing an exponential learning curve, as I have been tasked with working on areas of law I had never studied in jurisdictions of which I had no previous knowledge, this has been all the more fulfilling upon completion of a final Opinion. Additionally, while AG Ćapeta publishes her Opinions through English (quite fortunate for me, as a native English speaker), French remains the working language of the court, and I have worked through the means of both languages. Even if you are not a fluent French speaker, all 24 official EU languages can be heard in the corridors of the court, and Advocate Generals in particular have shown an increasing appetite to publish their Opinions in languages other than French, so I have spoken as many as four languages in one working day! The court also offers language classes to all its employees, so everyone has the opportunity to improve their language skills. Although

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study visits are usually unpaid, the LSE Curia Grant is fully funded, something for which I am incredibly grateful and without which I would not have been able to undergo the study visit.

As for Luxembourg itself, you would be surprised to hear of its similarities to London. Although the pace of life certainly can't be compared, Luxembourg, like London, is a real melting pot; almost half of the country's population are immigrants, and there are always events going on celebrating different traditions and cultures. I recently celebrated St Patrick's Day here, and the city and court made a great effort to mark the occasion. Although I miss home, oddly, I've found myself feeling prouder of being Irish here than I have at home; such is the appreciation of other cultures here in Luxembourg.

Following my study visit, I was fortunate enough to be offered a position in AG Ćapeta's cabinet as a legal assistant. At the time of writing [in May 2024], I have been in this role for approximately one month. While my new role has brought with it a lot more responsibility, I am delighted to extend my time at the court and to continue learning as much as I can in the field of EU law. Of course, none of this would have been possible without the trust put in me by LSE to represent the university at the CJEU, and for that I am immensely grateful. I would encourage all LSE Law students to apply for the LSE Curia Grant; not only is it a once in a lifetime professional opportunity, but it is a fantastic opportunity to expand your personal horizons and push your limits.

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Celebrating the career of Professor Tim Newburn: an event run by LSE Law School and the Social Policy Department on 2 March 2024

In this piece, Professor Nicola Lacey reflects on the celebration that took place on 2 March 2024 to mark Professor Tim Newburn's immense contributions to the fields of criminology and social policy and to life at LSE.

For anyone interested in criminal justice, one of the great joys of working and studying at LSE is our Mannheim Centre of Criminology, which brings together scholars from across the School and beyond. Ever since its foundation, the Centre – which bears the name of one of the most distinguished social scientists of the Twentieth Century, lawyer, judge, and sociologist Hermann Mannheim, who worked at LSE from 1935, has been a leading centre for criminological study. Many of the most famous criminologists and criminal justice scholars have counted among its members and visitors: David Downes, Paul Rock, the late Stanley Cohen, and Law's own Robert Reiner, as well as our former colleagues Meredith Rossner and Insa Koch, along with current Social Policy colleagues Coretta Phillips, Leo Cheliotis, and Johann Koehler. But over the last twenty years, one person's contribution to the flourishing of the Centre has occupied a singular place, ensuring both continuity and that Mannheim has always been a place not only of lively intellectual development and exchange, but also a place of friendship, collegiality, mentoring and support. That person is Tim Newburn, Professor of Criminology in the Social Policy Department since 2002.

Tim is a key figure in British and European criminology and social policy. The author of over 40 books, and a former president of the British Society of Criminology, his influence spans the whole field, from comparative and historical scholarship through policy studies, policing, youth justice, drugs and alcohol, urban violence and restorative justice to criminological theory. As Robert Reiner put it in his moving tribute, "Isaiah Berlin famously suggested that thinkers fall into two categories: the fox who knows many things, and the hedgehog who knows one big thing. Tim Newburn knows many things but also much more than one big thing. Tim's vast corpus of scholarship… defies this and so many other antinomies of achievement".

Of particular relevance to lawyers, Tim was the LSE's lead on Reading the Riots, prize-winning research with the Guardian on the urban disorder which swept the UK in 2011. The study, based on hundreds of interviews, not only illuminated the motivations of the rioters and the underlying causes of the disorder, but also raised fundamental questions about the importance of legitimacy for the criminal justice system. It has long featured not only in our criminology course (taught in large part through his magisterial textbook) but also in our first-year Introduction to Legal Systems module. Most recently, Tim has been working with Professors David Downes and Paul Rock on the multi-volume, definitive *Official History of Criminal Justice in England and Wales*. As David Garland, Professor of Law and Professor of Sociology at NYU, put it, Tim is, quite simply, the best known British criminologist in the world.

On 2 March, over 250 colleagues from across the School, across the country, and across the world, gathered to celebrate Tim's unique professional and personal contribution to criminology, to LSE, and to the lives of his family, friends, students, and colleagues. Sixteen speakers from every part of Tim's career – from his early work in the Home Office Research Unit and the Policy Studies Institute through his academic career at Goldsmiths and at LSE – spoke with wit, insight, and affection about what has made Tim such an

especially significant figure. Tim's range and meticulousness; his balance in a sometime fractious field; his energy, commitment, and acuteness were widely noted. But what made the day so memorable was the universal recognition that these intellectual qualities were underpinned by equally important personal qualities: empathy, kindness, modesty, and – last but not least – a keen sense of humour. Tim's enthusiasms – walking, music, sports – not least his forbearing loyalty amid the rather mixed fortunes of his beloved Everton FC – were celebrated, and the event concluded with a flourish, with marvellous contributions from his wife Mary and their four sons and grandchildren, and from Tim himself.

We will sorely miss Tim as he steps back from his role at LSE: but his time here will continue to enrich our lives, and to represent all that is best in the academy.

For the recording of the event, as well as photographs from the day and the order of speakers, see: **lse.ac.uk/social-policy/news/celebrating-the-career-of-professor-tim-newburn**

Are we all environmental lawyers now?

In this piece, Dr Oliver Hailes reflects on the ways in which academics at LSE Law School are integrating questions of environmental protection into their teaching and research in a range of areas beyond international and EU environmental law, including in work on criminal law, corporate law, and tax law. How might we think about this move? And where does this leave how we think about law?

Making environmental law

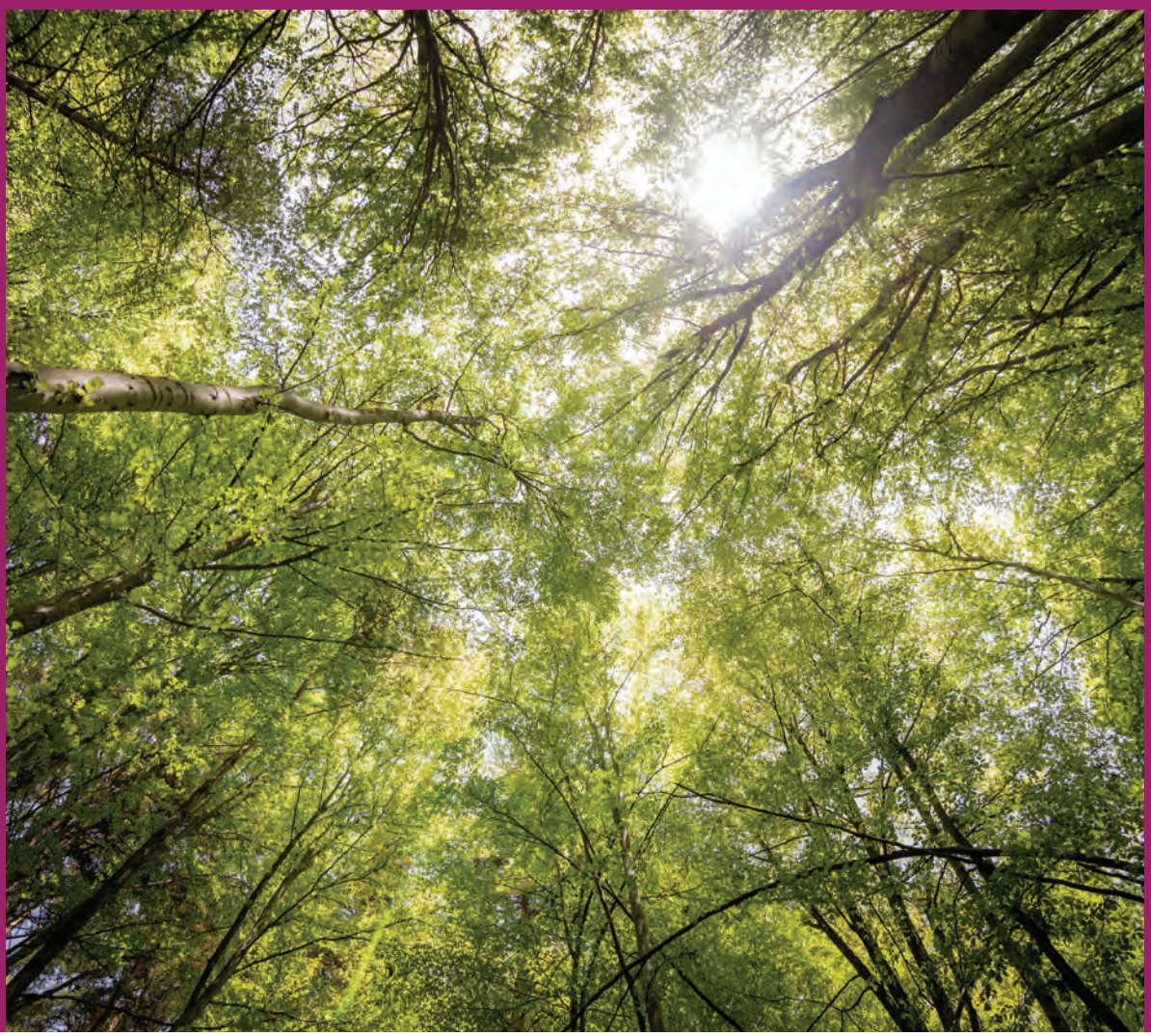
That "vague summation" called "nature" is the "sum of many things", recalled the *Dune* protagonist Paul Atreides in the opening pages of Frank Herbert's 1965 novel: "the people, the dirt, the growing things, the moons, the tides, the suns". In our own solar system, at that time, nature was little known to the law of nations, except as ornamental zones of conservation or raw materials for economic development. "The disposition of resources was assumed to follow the delimitation of sovereignty in spatial terms", observed LSE professor Ian Brownlie at The Hague Academy in 1979: "In classical international law natural resources had no place".

But a new place was being carved out in domestic systems for something called environmental law, typified by this country's Clean Air Act in response to London's Great Smog of 1952. Ironically, these responses to local pollution coincided with the Great Acceleration: a global surge in ecological damage such as tropical deforestation, ocean acidification, and greenhouse gas emissions harming the climate system. By 1972, the UN Conference on Human Environment clarified that the right of States "to exploit their own resources pursuant to their own environmental policies" was qualified by their "responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction". Still, environmental law at all scales has mostly served to regulate the negative externalities of economic transactions, rather than setting baselines for all human interactions. Until recently, perhaps.

Many of our colleagues have integrated elements of environmental protection in their research and teaching across areas that once landed on the far side of an imagined divide between nature and society. After mapping some longstanding but ever-tightening connections between legal research at LSE and environmental protection, as in international and EU law, I underscore the growing importance of environmental elements in more surprising areas: corporate, tax, and criminal law. Then I consider some intellectual, ethical, existential, and legal imperatives behind this rising tide of ecological concern, which has spilled over into a new specialism on our LLM programme and several modules in the pipeline.

A rising tide

The transnational character of ecological crises and their possible solutions is hardly news to LSE Law School. Professor Veerle Heyvaert was the founding editor-in-chief of *Transnational Environmental Law*, for example, and Professor Stephen Humphreys was a pioneer in connecting climate change to human rights law.



Meanwhile, our colleagues at the Grantham Research Institute have established a leading database on Climate Change Laws of the World, led by Dr Joana Setzer. But it is worth taking stock of how recent recruits to the Law School have brought the environment to bear on a wider range of areas, whilst other faculty have integrated environmental protection in their established research and teaching agendas.

My own research in international law has focused on reconciling investment arbitration with climate change by integrating rules from environmental law, ranging from fossil fuel phase-out disputes to the race for critical minerals. Dr Giulia Leonelli has branched out from her grounding in risk regulation towards the intersection of trade and climate change law, focusing on environmental leverage through trade-related measures such as the EU's Carbon Border Adjustment Mechanism. Dr Marie Petersmann works at the cutting edge of critical theory, exploring novel questions of ecological harm to more-than-human subjects in the Anthropocene. In a cognate vein, Dr Floris de Witte has examined how EU law could take seriously the autonomy of wild animals. Yet urban seagulls have long been regulated as an anti-social menace, observes Dr Sarah Trotter, serving to consolidate local authority over public space. At a global scale, Dr Siva Thambisetty had a front-row seat in UN negotiations towards the 2023 agreement on biodiversity beyond national jurisdiction, channelling her longstanding expertise in intellectual property law into the treaty text on management of marine genetic resources.

Some of these complementary agendas informed this year's Cumberland Lodge weekends: Marie and Siva hosted the LLB students under the theme of "Law in Social Transitions", then Giulia and I hosted the LLM and PhD students under the theme of "Lawyering Towards Net

Zero: Hot Topics in a Warming World". Both weekends emphasised connections between environmental protection and several areas of commercial practice, including a presentation on corporate supply chain due diligence by LSE Senior Fellow Dr Simon Witney and a stirring keynote from barrister and LSE alumna Monica Feria Tinta of Twenty Essex.

Commercial connections with environmental protection are further strengthened by LSE's research in corporate and tax law. Dr Alperen Gözlügöl considers how law and finance may contribute to sustainability goals whilst addressing the risks posed to financial markets and the real economy in a shifting planetary ecosystem. Similarly, Dr Suren Gomtsyan examines the relevance of environmental stakeholders in corporate purpose and the role of large investors in promoting climate goals through shareholder engagement on issues such as executive compensation. Professor Eva Micheler has explored the role of tax relief in encouraging investor capitalism to bring about sustainable business. By blending microeconomic and legal analysis, Dr Alex Evans is examining how tax laws can positively contribute to climate mitigation.

Similar headway is being made by LSE's criminal lawyers. In a recent article, Professor Jeremy Horder revisited the causal basis of criminal liability for environmental harms, highlighting a duty to prevent pollution where its source lies under corporate or public control. In their criminology module, Professor Nicola Lacey and Dr Richard Martin have introduced a seminar on green criminology, dealing with environmental justice and crimes against the environment.

These commercial and criminal developments coalesce in the doctoral research of Daniela Arantes Prata, who investigates how and why Latin American mining companies comply with environmental regulations, with a focus on preventing events like the 2015 Mariana Dam disaster. Other PhD candidates working on environmental topics include Kaia Turowski on fossil fuel lobbying in climate litigation, Mikolaj Szafrański on global waste governance, Jakub Bokes on a materialist history of environmental law, and Carly Krakow on human rights and environmental injustice.

Making law environmental

Environmental protection certainly seems to be gaining traction across more and more areas of law. In 2021, US special presidential envoy John Kerry went so far as to warn the American Bar Association that they are "all climate lawyers now, whether you want to be or not", given the climate crisis is bound to "engage and provoke actors, institutions, and legal mechanisms at all scales". While the multiscale character of environmental harms is nothing new, the climate crisis had indeed extended and accelerated the actors, institutions, and legal mechanisms – including law schools – that are motivated to prevent those harms.

Take, for instance, human rights law. The blogosphere is, at the time of writing, awash with hot takes on the 2024 judgment in *Verein KlimaSeniorinnen Schweiz and Others v Switzerland,* Application no. 53600/20, wherein the European Court of Human Rights (ECtHR) held that Switzerland's failure to implement its emissions reduction targets constituted an environmental nuisance in breach of Article 8 of the Convention (the right to respect for private and family life, home, and correspondence). Far from being a radical judgment, the ECtHR has interpreted Article 8 since 1994 to protect individuals from adverse effects on human health, well-being, and quality of life arising from pollution either caused by the State itself or by its failure to regulate private industry. This example illustrates how environmental protection had seeped into the most intimate sphere of human rights law, well before recent alarm at the climate crisis.

Yet the latter has accelerated the environmentality of all areas of law, including LSE's research and teaching. Our colleague Alperen suggested a twofold motivation for integrating environmental elements in his scholarship: intellectual and ethical. In his view, a range of "pressing environmental issues" allow us to "revisit fundamental debates, address cutting-edge regulatory issues, shape and mould academic discourse", whilst "it also feels part of a duty" to address these issues, particularly when positioned in a world-leading university. I wonder, however, whether these intellectual and ethical motivations are fast transforming into existential and legal imperatives.

As to the existential imperative, the criticality of our current juncture can hardly be overstated. Decisions made today by governmental and commercial actors may set a course of institutional development towards a sustainable economy powered by renewable energy or lock in a range of tipping points in biophysical subsystems, thus redefining the Earth system conditions that humanity has so far taken for granted. In an uncanny echo of Herbert's sci-fi classic, the International Court of Justice (ICJ) cautioned in 1996 that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn".

As to the legal imperative, on 29 March 2023, the UN General Assembly unanimously requested the ICJ to advise on the consequences of acts and omissions by States that have "caused significant harm to the climate system and

other parts of the environment", with respect to adversely affected States, including small islanding developing States, as well as peoples and individuals of the present and future generations. 91 UN members and international organisations have submitted written statements, by far the record in such proceedings. Similar advisory opinions were requested from the Inter-American Court of Human Rights (IACtHR) and the International Tribunal for the Law of the Sea (ITLOS). On 21 May 2024, the ITLOS delivered its unanimous opinion, finding that a range of obligations regulating "pollution to the marine environment" (defined in 1982 to include "the introduction by man, … indirectly, of … energy into the marine environment" resulting in "deleterious effects") applied to anthropogenic greenhouse gas emissions because they add excess heat to the world's oceans, causing acidification and sea level rise.

In a recent article, I suggested that these international advisory opinions "may serve to clarify the entitlements that can be lawfully derived from States by commercial actors in carrying out energy transactions and thus inform the development of domestic or EU legislation, global climate negotiations, and contentious cases before domestic, regional, and other international courts and tribunals" (Oliver Hailes and Jorge E. Viñuales, "The Energy Transition at a Critical Juncture" (2023) *Journal of International Economic Law* 26(4), 627–648, p647). A clear-sighted opinion from the ICJ, in particular, could elicit transformations at all scales, requiring lawyers and academics to chart how actors, institutions, and legal mechanisms may move from merely regulating negative externalities, which has proved inadequate, towards reorganising economic transactions and all human interactions to prevent catastrophic harm to our shared living space.

Busy as beavers

Climate change and similar ecological crises have been variously described as "hyperobjects", too big for human minds to handle, and "super wicked problems", too tricky for lawyers to solve. Instead of these buzzwords, let us recall an old epigram popularised by Isaiah Berlin: "The fox knows many things, but the hedgehog knows one big thing". Researchers at LSE Law School are proving how to keep in mind the big, scary thing, whilst trying to solve many fascinating things in their areas of expertise. Rerum cognoscere causas, and all that. In a show of reflexivity towards our changing world, the LLM programme is now poised to offer students a specialism on Energy and Environmental Law, with new modules on sustainable finance, global commodities, international energy law, and the trade and climate change nexus. If nature truly is the sum of many things, today's lawyers need to become both hedgehogs and foxes. Something like our mascot?

Indicative publications

- Suren Gomtsyan, "Debtholder Stewardship" (2023) *Modern Law Review* 86(2), 395-435
- Alperen Gözlügöl, "Climate Risk and Corporate Rescues" (2024) *European Business Organization Law Review* (forthcoming)
- Oliver Hailes, "Unjust Enrichment in Investor-State Arbitration: A Principled Limit on Compensation for Future Income from Fossil Fuels" (2023) *Review of European, Comparative & International Environmental Law* 32(2), 358-370
- Veerle Heyvaert, "Governing Intersystemic Systemic Risks: Lessons from Covid and Climate Change" (2022) *Modern Law Review* 85(4), 938-967
- Jeremy Horder, "Control Over Land and Criminal Pollution: Empress Car Reconsidered" (2024) Criminal Law Review 4, 230-246
- Stephen Humphreys, "Against Future Generations" (2022) *European Journal of International Law* 33(4), 1061-1092
- Giulia Claudia Leonelli, "Anti-Deforestation npr-PPMs and Carbon Border Measures: Thinking About the Chapeau of Article XX GATT in Times of Climate Crisis" (2023) *Journal of International Economic Law* 26, 416-434
- Eva Micheler (with Dionysia Katelouzou), "Investor Capitalism, Sustainable Investment and the Role of Tax Relief" (2022) *European Business Organization Law Review* 23, 217-239
- Marie Petersmann, "Entangled Harms: A Reparative Approach to Climate Justice" (2024) *Leiden Journal of International Law* (forthcoming)
- Siva Thambisetty, "The Unfree Commons: Freedom of Marine Scientific Research and the Status of Genetic Resources Beyond National Jurisdiction" (2024) *Modern Law Review* (forthcoming)
- Sarah Trotter, "Birds Behaving Badly: The Regulation of Seagulls and the Construction of Public Space" (2019) *Journal of Law and Society* 46(1), 1-28
- Floris de Witte, "Where the Wild Things Are: Animal Autonomy in EU Law" (2023) *Common Market Law Review* 60(2), 391-430

COMMUNITY

Underworlds – Sites and Struggles of Global Dis/Ordering

In October 2023, Dr Marie Petersmann, Assistant Professorial Research Fellow at LSE Law School, joined forces with Dr Dimitri Van Den Meerssche, Lecturer in Law at Queen Mary University of London, to co-convene a virtual lecture and workshop series, Underworlds.

Underworlds is a series that offers students and colleagues the opportunity to question and disrupt familiar perspectives on the sites, actors, conventional locations, and legacies of global governance – the sovereign state, the formal sources and standards of international law, the intricacies of global diplomacy, the historical juncture and its (anti-)heroes, the international palaces of hope in Geneva, New York, or The Hague. Moving outside this familiar terrain, the series explores new sites and struggles of global dis/ordering. This entails new ideas of where power resides and where it is to be unmasked or undone – ideas implicitly grounded in modernist geographies, temporalities, and subjectivities.

The series takes as a starting point that authority and order are not fixed properties of specific actors or institutions, but dynamic processes enacted and sustained through material and ideological infrastructures with world-making and world-ordering power. As such, the series traces unconventional forms and sites of global dis/ordering – from raw materials to projections of hope – as material, infrastructural, and discursive compositions that shape patterns of power. The series thereby traces alternative arteries, lineages, and languages of dis/ordering to inspire fresh thinking.

The encounter between old and new materialist, Marxist and decolonial methodologies and modes of critique is one of the critical objectives of this series. Its aim, however, is not only methodological: it aspires to inspire new ethical and political openings that attend to our inevitable complicity in participating in these processes and reveal new modes of resistance and refusal, of struggle and sociality.

The series' interventions do not target the old nemeses of critique – the state, the truth, the universal – but instead work from within both entrenched and emergent material sites and practices of dis/ordering: the oceans, oil/coal, breath, debt, commons, frontier(s), waste, hope, wild/feral, and the vessel.

The series brings together scholars from around the world by holding the event entirely virtually. To highlight just one session, below is a description of the discussion about debt that took place on 13 December 2023.

Debt

The session on debt examined debt as a site and struggle of global dis/ordering. Rather than concentrating only on how (sovereign) debt is formally recognised or regulated in international law, this event aimed to foreground the material patterns of global dis/ordering that debt generates. In doing so, it attended to the histories of violence that are enacted or amplified, and focused on practices of resistance and expressions of political subjectivity that emerge in relation to the construction and circulation of debt. The speakers discussed how this fabrication of debt is implicated in the profoundly unequal configurations of global ordering that emerged after the formal end of empire. Which legal forms and institutions shaped – and were shaped by – these formations of debt and the "uncommon wealth" (Koram) they sustained? Inversely, which practices of redistribution and reparation can be articulated in relation to the "unpayable debt" (Ferreira da Silva) thereby accrued?

The two guest speakers were Vasuki Nesiah, Professor of Practice in Human Rights and International Law at the Gallatin School, New York University, and Kojo Koram, Senior Lecturer in Law at Birkbeck School of Law, University of London.

The session included event resources highlighting the speakers' research on debt and the IMF and World Bank's structural adjustment policies. Both speakers evaluated the postwar economic order as constitutive of postcolonial sovereignty and the histories of trade and foreign direct investment that have engendered debt. Nesiah spoke to the concept of "odious debt" as an analytical framework for evaluating the Haitian and Caribbean community's demands for reparations and debt severance. Koram spoke about his recently published book *Uncommon Wealth: Britain and the Aftermath of Empire* (2022, John Murray) on the history of the British Empire and its profiting in colonial Africa, Asia and the Caribbean.

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A conversation with the co-convenors

To discuss this fresh series, Dr Mona Paulsen asked Dr Marie Petersmann and Dr Dimitri Van Den Meerssche, the co-convenors, to explain their motivations for the series and to reflect upon the programme.

Mona Paulsen (MP): Could you please tell us about the origins of the Underworlds series and how you developed the programme?

Marie Petersmann and Dimitri Van Den Meerssche (MCP/DVDM): The Underworlds series emerged from discussions we had about the constitution and distribution of power and agency in the global dis/ordering of social relations, political economy, geopolitics, and the (im)material infrastructures that create and channel these forces. We were puzzled by how many actors, entities, and processes – including emotional and affective predispositions that enact particular worlds and worldviews against others – tend to be overlooked in our discipline. We were also struck by how in traditional legal discourse, power and authority tend to be attached to specific sites and struggles situated over-ground, with less attention paid to under-ground processes and dynamics that underpin and enable the very existence and maintenance of those sites. In sum, we were interested in what lies beyond conventional lines of sight in our disciplines. The concept of the underworlds became a useful referent to think of such dislocations of power. These reflections were inspired by cutting-edge work colleagues were doing, opening up a shared sense that important sites of power and authority of global dis/ordering seemed to be situated outside the traditional coordinates of international law (as Fleur Johns points to with the concept of unruly law in her book *Non-Legality in International Law: Unruly Law* [2013, Cambridge University Press]). At the same time, the emergence of new methodological interests and entry points that enable the study of such processes – particularly the encounter between historical and new materialist methodologies, and between affirmative and negative critique – was capturing our attention. An engagement with these non-conventional sites and struggles of global dis/ordering – or *underworlds*, as we call them – would therefore meaningfully question established ideas of scholarly critique and complicity.

In terms of format, the series builds on an earlier online lecture and workshop series on "Method, Methodology and Critique in International Law", which was hosted by the Asser Institute and held throughout 2021. This series had, incidentally, been concluded with a keynote lecture by a colleague here at LSE, Professor Gerry Simpson. The series was initially planned to be held entirely in person, but due to the pandemic and multiple lockdowns, it was decided to switch everything online. The series triggered a lot of interest, which was surprising in an overall climate of generalised Zoom-fatigue. What was remarkable was how many people were able to Zoom-in from all over the globe, which made the discussions truly open and diverse. It is this that we wanted to reproduce with the current series, by keeping the format fully virtual, and ending with an in-person event to be held at LSE and QMUL [Queen Mary University of London] in May 2024 (more on this below). And because many considered it a pity that the sessions had not been recorded and there was no possibility to catch up with them, we decided this time to record each session and turn them into episodes of our *Underworlds* Podcast, of which the first episodes are available here: **open.spotify.com/show/7Ao1I3QfM-tUTv9mKDcE1sd?si=24ead074417d4b9b&nd=1&dlsi=d-f0b37dd41d34b1c**

Also, for the little anecdote, the first series was organised by Dimitri and Geoff Gordon. As a result of the online format hosted partially during lockdowns, I (Marie) became involved in it – or rather the series got involved in me: it got into my home and my working space. Indeed, besides being colleagues, Dimitri is also my partner. It was on the basis of discussions about the first series, the success it encountered, and the desire to replicate the format to explore different questions – methodological and otherwise – that we decided to join forces and co-organise this new series on Underworlds. This also enabled us to collaborate institutionally, joining LSE and QMUL.

MP: How does the series inform research at LSE Law School?

MCP/DVDM: The series informs many different areas of research at LSE. It is embedded in public international law and critical legal theory, but also speaks to socio-legal issues and to historical accounts of our discipline. The series brings together scholars from many different fields, well beyond the legal confines (such as philosophy, international relations, Black studies, queer theory, history, finance, geography, environmental humanities, media and communication, and the arts). As such, our hope is to attract the attention of a wide range of colleagues and students from the Law School and beyond, by also involving colleagues from other departments, notably Ayça Çubukçu (Co-Director of LSE Human Rights) who will speak at our conference in May.

MP: Do you have plans for the series going forward? What do you envisage as the next steps?

MCP/DVDM: Asides from the *Underworlds* Podcast series, we are holding a workshop and gathering in London on 15-17 May 2024. For this occasion, we invited all 20 speakers who participated in the online

series throughout the year to meet in person, but we also wanted to expand the sites and struggles of global dis/ordering into new terrains and horizons. We therefore issued a Call for Papers/Projects to take the theme of the *Underworlds* in new directions. We received an overwhelming number of submissions in response to this call. Staying close to the idea of rupture that underpins the whole series, we did not want to fall back onto traditional paper-based presentations. Speakers were invited to do an exercise in collective thinking, by tying together dis/continuities between their respective sites and struggles. The conference features a keynote lecture by Atossa Araxia Abrahamian, who is working on a book called *The Hidden Globe: How Wealth Hacks The World*, which covers topics as diverse as seasteading, space law, deep sea law, charter cities, the Arctic and Antarctic, corporate sovereignty, military and financial mercenaries, regulatory arbitrage, port operators, microstates, and other novel forms of commercialising sovereignty – in sum, a myriad of underworlds! The conference also includes a screening and discussion of the film *An Excavation* on the underground economy of looted art, with artist and filmmaker Maeve Brennan; a curator's tour of *Unravel: The Power and Politics of Textiles in Art* at the Barbican; and a guided walk through the East/West India Company docks in London with Dr Michelle Staggs Kelsall. An art exhibition on *Underworld Ecologies* is also currently being held at the LSE Atrium Gallery [from May-June 2024], featuring video, sound, photographic, and material installations by artists Imani Jacqueline Brown and Dominique Koch as well as deep seabed marine biologist Dr Adrian Glover. The exhibition reveals threshold ecologies at the boundary between the living and non-living, and critically explores different forms and frontiers of extractivism – of labour, fossils fuels, oceanic minerals, and scientific knowledge. Finally, we will co-edit a collective volume – not with extensive chapters, but a bundle of short essays and visual materials or artworks that figure in the sites and struggles of global dis/ordering we travelled to and through.

Celebrating the work of Emeritus Professor Trevor C. Hartley

On 27 October 2023, a symposium was held to celebrate the work of Emeritus Professor Trevor C. Hartley, one of the world's most distinguished scholars of Conflict of Laws (Private International Law), and a member of LSE Law School since he started teaching here in 1969. In this piece, Dr Jacco Bomhoff reflects on Professor Hartley's remarkable contributions to the study of the conflict of laws and to LSE life.

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Emeritus Professor Trevor C. Hartley retired from teaching at the start of the 2023-2024 academic year. Even though he took emeritus status in 2004, Trevor continued to teach his widely popular LLM courses on International Business Transactions for another nearly twenty years. To mark what was in effect a second retirement, and to celebrate his many contributions to scholarship and teaching, the Law School hosted a Symposium in his honour, on 27 October 2023. This full-day event was attended by nearly, if not all, conflict of laws scholars from the UK, along with distinguished overseas guests.

Trevor and Sandra Hartley first came to England, from South Africa, in 1962. Trevor studied for the LLM at LSE, while Sandy worked as a supply teacher to support them. After graduating from the LLM, with Distinction, Trevor taught for five years at the University of Western Ontario. Trevor and Sandy then came back to the UK, and to LSE, in 1969. Trevor would stay at the LSE Law Department, now the Law School, for the rest of his academic career. As Dean Professor David Kershaw noted in his welcome address at the symposium, this means that Trevor has taught at LSE for a record-breaking 54 years.

Trevor always speaks fondly of his time studying at LSE for his LLM degree, which at the time was a two-year course. Two of his modules were the Constitutional Law of Commonwealth Countries and African Customary Law (at SOAS). These choices perhaps already show something of Trevor's enduring interest in taking a comparative approach to legal studies. His favourite subject, however, was Private International Law, or the Conflict of Laws. And here, Trevor had the good fortune of being taught by the redoubtable Professor Otto Kahn-Freund – a teacher he speaks of in reverential terms still today. Kahn-Freund was well-known for advocating a "functional" view of law as a "social technique", to be deployed in furtherance of societal goals. This has also always been one of Trevor's guiding principles, as was noted by many of his friends and colleagues speaking at the symposium in his honour.

Trevor's functional and pragmatic outlook is on clear display, for example, in the epigraph he chose for the first edition of his casebook *International Commercial Litigation*, where he writes "[l]aw is made for man, not man for the law". Even more strikingly, though, it was already visible in his very first article in the Modern Law Review, published in 1967. In "Polygamy and Social Policy" Trevor set out to do something which he would do again and again, across so many areas of law, in LSE classrooms, scholarly writing, and international negotiations: "to examine the extent to which the solutions adopted by the courts accord with sound social policy". It is difficult to find a phrase to better sum up Trevor Hartley's remarkable work and its intimate connection to LSE.

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The LSE Law Review

The LSE Law Review is a leading student-run law journal. It provides a platform for debate about important and timely legal subjects. Dr Szymon Osmola spoke to Andra Sipos, the Review's Editor-in-Chief, about her role and responsibilities, the day-to-day work of the editorial team, and the advantages of publishing and editing with the Review.

Szymon Osmola (SO): It's an impressive position that you hold, the position of Editor-in-Chief of the LSE Law Review! Could you tell us a bit about your journey to this position and about what the role involves?

Andra Sipos (AS): That's very kind of you to say. I started working on the Law Review in my first year. I worked as the Design Editor where I helped develop branding and graphics for the Review. The following year I moved to work in the Publications Department, managing editor-author communications, before being elected to the position of Editor-in-Chief. These days, I am responsible for managing our team of 50 undergraduate and postgraduate students across our four departments (Liaisons, Publications, Articles, and Notes). We work together to publish three issues per year, alongside our blog, on a broad range of legal topics. Day-to-day, my work involves guiding the teams through the editing and publishing process, working with the Liaisons Department to develop events, and jumping in whenever there is an issue.

SO: It sounds like a great responsibility! Could you say more about the team you manage? How do you select students to ensure the Law Review's overall success?

AS: We recruit for the Editorial Board twice a year, once in the summer and once in the autumn. Applicants submit a written application, including a writing sample and details of relevant experience. Shortlisted candidates are then invited to complete an editing test and, following that, to interview. At the interview stage, we are primarily looking for attention to detail, how candidates take us through their thought process, and most importantly, how they communicate both positive and negative feedback. We are very conscious of the different levels of experience that applicants might have in this context; and while previous experience working on newspapers or journals may be beneficial, it is absolutely not a requirement. Instead, we always take the approach that if an applicant is going to work well with the team, we can fine-tune the more technical editing skills. This system allows us to recruit students with diverse skills and backgrounds, enabling us to deeply engage with the pieces submitted to the Review. For example, whilst some editors are particularly skilled in structuring arguments, others have a wide knowledge base around certain topics and can recommend gaps in the cited literature.

SO: Could you explain the process of selecting articles for publication?

AS: When we receive a submission, either for our blog or for our main journal, the piece is assigned to three editors. The editors evaluate the piece according to our six criteria — language, accuracy, argumentation, structure, novelty, and relevance — and share their views during weekly meetings. Based on their discussion, the editors may choose to accept the piece, request revisions, or reject the piece. As an undergraduate law journal, we pride ourselves on working together with our authors to develop not only their pieces but also how they think about their writing. As such, during the first reading of the pieces we are particularly focused on the issues and arguments in the piece, and we work on developing the writing in successive rounds of review.

SO: In your experience, what are some of the current legal issues or trends that authors are especially interested in exploring? Does the LSE Law Review particularly encourage submissions covering some of them?

AS: As much as possible, we try to foster conversation across a wide array of legal issues. However, we definitely see trends and fluctuations in the pieces that come in, reflecting changes in geopolitics and the economic market. For example, in the past year we have received several pieces exploring how developments in blockchain are impacting regulatory structures. We also receive pieces from a broad range of jurisdictions including continental Europe, India, and the United States. A major benefit of this wide geographical reach is that we get to see the diversity of viewpoints on the same legal issue.

SO: Are there any other events that you run as the LSE Law Review team?

AS: This year we were very intentional in thinking about how we could better connect with the LSE community and give back by creating a space for unique conversations. Alongside continuing with our annual "How to Write a Good Legal Essay" seminar and events with London chambers, we also developed a speaker series about careers after academia. As part of the series, we worked with the Law School to host Professor Curtis Doebbler, the then Prime Minister of Jordan, Dr Khasawneh, and Lord David Gold. We are very grateful for the support from the Law School and our sponsors which has allowed us to run these events, and we look forward to wrapping up the year with the launch night for the Review's ninth volume.

SO: What kind of skills do editors of the LSE Law Review acquire? How will these skills be useful in their future careers, in your view?

AS: I think that one of the greatest benefits of being on the editorial board of the Law Review is the diversity of skills that you develop. Having had experience with all departments, I think there are two groups of skillsets that are developed. Working in the liaisons and publications teams, you develop a really great sense of how to communicate positive and negative feedback professionally and concisely. Additionally, you learn how to foster lasting professional relationships with sponsors and authors. This is definitely something that I can see being useful in the future, because whenever you are working in a team, you massively add value where you can navigate relationships with people who have very diverse experiences and viewpoints.

If you are working in the notes and articles teams, you are of course still developing skills in how to clearly and kindly communicate feedback, but you are also learning how to break apart and reshape arguments, how to distinguish great ideas from great writing, and how to present your views in an oral and written format. We always encourage joining these departments for anyone who is interested in becoming a barrister, pursuing academia, or even just looking to build on their analytical and writing skills.

SO: What can authors gain by publishing their articles in the Review?

AS: This is a really great question. What is unique about the Law Review, and what has allowed us to grow in the way we have, is our promise of consistently providing thorough, constructive feedback. We are never expecting perfection when we first evaluate a piece; rather, we seek to work with the author to develop their writing and their argument, hopefully in a way that they can transfer to other pieces that they produce. I really believe that we are an incredible journal to consider publishing with, whether it's your first time publishing or whether you're just looking for a team dedicated to making your work shine.

SO: Are there any opportunities for members of the alumni community to get involved in the Review's activities?

AS: We welcome involvement in the Review at all levels. Aside from submitting blog or journal pieces to the Review, those in the alumni community are invited to apply to join the Board as Alumni Editors, where they can participate in reviewing articles that fall within their area (or areas) of specialism. Additionally, this year we created an alumni mentorship program, where we pair Law Review board members with LSE Law Alumni. We invite anyone interested in taking on mentees to get in touch with us so that they can be matched in the next round. For more details on any of these opportunities please consult our website (**lawreview.lse.ac.uk/**) or contact us at **editorialteam@lselawreview.com**

SO: Thank you very much, Andra, for taking the time to talk to us about the LSE Law Review.

AS: Thank you. It has been such a pleasure to support the LSE Law Review Editorial Board this year and none of that would have been possible without continuous support from everyone in the Law School.

The Legal Biography Project

The Legal Biography Project, which is convened by LSE Law School, focuses on biographical research in law. In the following piece, Professor Sir Ross Cranston, who manages the Project, reflects on the thinking behind it and the way in which it pursues its aim of creating a foundation for scholarship on legal history, legal biography, and the history of the legal profession.

Last November, shortly after she was sworn in, the first female Chief Justice for England and Wales, Lady [Sue] Carr, visited the Law School and spoke about her life and answered questions from students. In the course of the interview she explained that when she began as a law student she found it really tough but with the backing of one of her law teachers she came through a trough to enjoy her law studies and successfully complete her degree. She also described the range and pressures in her early years of practice as a barrister. The interview is available at **lse.ac.uk/law/legal-biography-project**. Lady Carr's visit was part of the outward-facing events which the Legal Biography Project at LSE has organised since it was launched in 2007.

Over the years there have been similar interviews with other leading judges from the UK including Lord Bingham (our founding patron), then the senior law lord;

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Lord Mackay, the former Lord Chancellor; Lady Hale, later President of the Supreme Court; Lord Hoffmann; Lady Arden; Lady Hallett, now conducting the Covid Inquiry; Sir Stephen Sedley, still a regular contributor to the London Review of Books; Lord Thomas, then the Lord Chief Justice; and in 2022, Lady Rose, currently a member of the Supreme Court. There have also been public interviews with foreign judges including Justice Edwin Cameron of the Constitutional Court of South Africa and Judge Susanne Baer, then one of the sixteen judges of the Federal Constitutional Court of Germany and presently a Centennial Professor at the Law School.

The project is founded on the belief that legal biographies and autobiographies are a rich and important source of information about the legal system, the evolution of case law and statute, and legal cultures more generally. Despite a growing interest over the last fifty years in such studies, however, they have not been in the mainstream in the study of law. The Legal Biography Project has sought to remedy this omission by providing a focus in Britain for biographical research in law. Its aim has been to create a foundation for scholarship on legal history, legal biography, and the history of the legal profession, drawing on published works, official records, personal letters, oral histories, artwork, and film.

The project's focus has not been confined to leading lawyers. In collaboration with the British Library the project obtained an AHRC (Arts and Humanities Research Council) scholarship for Dr Dvora Liberman to undertake her PhD about the changing nature of the criminal justice system from the 1970s through the perspective of Crown Court clerks. These play an important role in the trials of the most serious criminal offences such as murder, rape, and burglary. For her thesis Dr Liberman was able to conduct in-depth life story interviews with former clerks to gain insight into, and deepen our understanding of, the lived world of the legal system, shifts in local legal cultures, and changes in the way that regional justice has been conceived of and experienced. Her collection of life story interviews is part of the publicly accessible British Library Sound Archive.

From the outset the Legal Biography Project has organised many panel discussions, workshops, and lectures. An early lecture was entitled "Are solicitors' lives necessarily boring", by Dr Stephen Cretney, and an early panel discussion, chaired by the law lord, Lord Rodger, involved the notable Renaissance scholar Professor Lisa Jardine, together with two long term supporters of the project from the Law School, Professors Nicola Lacey and Neil Duxbury. To celebrate International Women's Day in March 2014, the project hosted a public lecture in which Professors Linda Mulcahy (who was director of the project before moving to Oxford) and Fiona Cownie interviewed Professors Brenda Barrett, Carol Harlow, and Dawn Oliver, who were amongst the first women law professors ever to be appointed in the UK. Later that year Professor Annette Gordon-Reed from Harvard spoke as part of Black History Month on "Slavery and Biographies at Jefferson's Monticello".

Other events have included one co-hosted with the Women's Library in February 2018, where Professor June Purvis introduced her biography of Christabel Pankhurst, who revitalised the women's suffrage campaign by rousing thousands of women to become "militant" suffragettes. In late 2019 Mrs Justice Cockerill spoke about her biographies of Eleanor of Castile and Eleanor of Aquitaine. In March 2022 there was a round table discussion of an important book by Professor Michael Lobban – a director of the Legal Biography Project – entitled Imperial Incarceration: Detention without Trial in the Making of British Colonial Africa. And also in 2023 there were two panel discussions by six biographers about their subjects. A fascinating panel on advocates comprised Sally Smith KC on Marshall Hall KC, whose eloquence before juries saved many from the hangman's noose in the early twentieth century when legal aid was unavailable; Professor Catharine MacMillan on Judah Benjamin, a member of the US Senate, a Secretary of State in the Confederate States, and a slave owner, who after escaping to England became a leading KC and textbook writer; and Tom Grant KC, a visiting professor at the Law School, on Sydney Kentridge, one of South Africa's most prominent anti-apartheid advocates, who acted for Nelson Mandela and Archbishop Desmond Tutu, and after moving to London became a leader of the bar.

These are just a few of the events where over the years the Legal Biography Project has sought to support scholarship in the field, to further a network of scholars at LSE and beyond, and generally to facilitate a broader discussion about ideas of lawyering, judgecraft, judicial identity, judicial diversity and the changes which have occurred to these notions over time.

When the Law School moved into its new premises in 2022, the Legal Biography Project was able to assist with the photographs displayed around the walls of former teachers and alumni. The project has a collection of legal biographies which it received through the generous bequest of an anonymous donor in 2011. The project is supported by an advisory board with external experts and those within the Law School.

Further information is available at: **lse.ac.uk/law/legal-biography-project**

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Freedom and the Law in Britain

The Winter Term of 2024 saw the launch of a new lecture series by Professor Conor Gearty: *Freedom and the Law in Britain*. Every Monday morning, for a term, members of the LSE community came together to discuss the history – and state – of freedom and the law in Britain. Dr Sarah Trotter caught up with Professor Gearty after one of his lectures in March to find out more about the thinking behind the series and the connection to his latest book, *Homeland Insecurity: The Rise and Rise of Global Anti-Terrorism Law* (2024, Polity).

Sarah Trotter (ST): Conor, we've just come from your lecture, "Freedom and the Law in Britain", and it's a lecture series that's open to everyone across the School – an openness which seems to me to be fundamental to the idea here. Could tell us something about why you decided to open up your lectures in this way?

Conor Gearty (CG): The first thing was that I noticed that while there is a theoretical availability of lectures for everybody here at LSE, and we have a kind of observer opportunity in theory, it's very difficult to access lectures. It takes a very courageous person to arrive in a lecture or seminar where they don't belong and to ask for permission to audit. And very few people do it. So that was the first point. The second point was that my course is so relevant to the wider LSE community, because it's about protest, and in particular the law on protest in the United Kingdom. And that is a subject that affects many, many people, not by any means exclusively students. So to take the example that was on my mind, Palestine, and of course in particular Gaza, and we have a large Muslim group in the School, and many of them – and I know this from personal conversations – will have been very exercised by governmental support for the actions of Israel in Gaza. So I thought we would try and reach them as well. So those were the two main factors behind my decision to push ahead. It was quite hard, to create a framework for this. So I got it onto timetables, and my great colleagues at the senior level in the School very strongly promoted it. So I was lucky in my friends.

ST: What has the response across the School been?

CG: The response has been really positive. Firstly, enough people have shown support by turning up. And that's quite important. And the people who have turned up have been a really attractive mix of people from LSE, from very senior people – Joanne Hay, who is in our top management, was one of the first people to come in in the first week, and the Director of LSE Library, Niamh Tumelty, came too. There were others too. And by doing that and attending others they've been able to signal an engagement with it, which is making clear to colleagues that this is not a no-go area, exclusive for students and academics. Then a wonderful professor from IR [International Relations], Dr Peter Wilson, came along and got into the habit of asking killer questions towards the end. And we have had, of course, a range of students, but we have other staff as well, and so that's been really nice. Then there's been the wider appreciation, because they're all recorded and put on the web. Lots of people have been watching them. And then, interestingly, there's a kind of group of people who may not be able to come, but who like the idea that it's happening. And so they are people who feel better about LSE because there is an open discussion of freedom at LSE on a weekly basis in which everybody can participate – even if for various reasons to do with work or pressures of time they can't themselves.

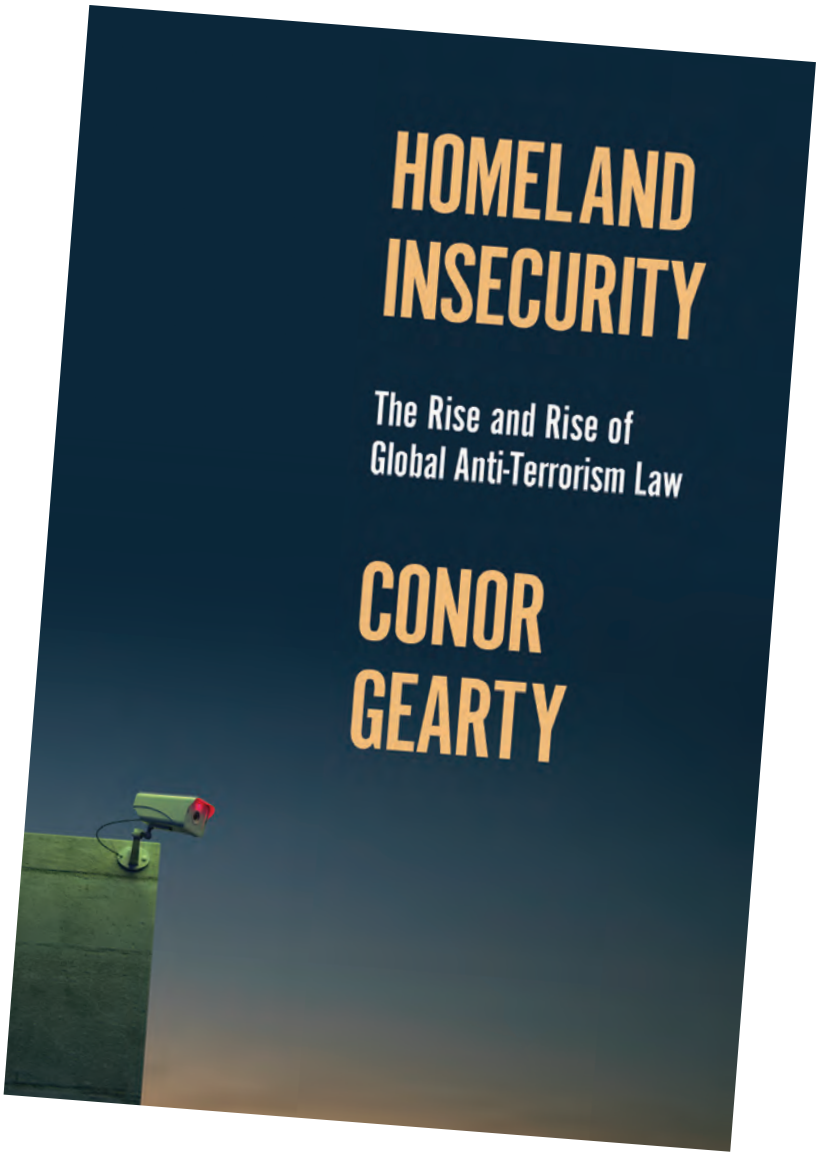
ST: It seems to say something about how you conceive of your role as an academic and an intellectual more broadly that you've gone to this effort to make these lectures so accessible. Would you be able to speak a bit to that as well – to how you conceive of your role, to how you're thinking well beyond the Law School, well beyond the law students, to this wider population?

CG: I think it's just a built-in propensity that I have, which appears to be ineradicable. And the propensity is to reach beyond the immediate. And this may be just an impatience with the immediate. It may be – let's face it – somewhat of a desire to be known and seen and noticed, but it's driven by a strong desire to reimagine the communications that are available to us, the tools of communication, rather, that are available to us as academics. And so I've always been interested in innovation. I ran an institute here some years ago where we had a lot of money from the ESRC [Economic and Social Research Council] to do new unexpected things. So I had a "People's Constitution", I had these grillings

of academic staff on the website. I've this long record of off-the-wall engagement, the purpose of which is to communicate in a different way. So this is part of that. I did a whole book on the web once, publishing weekly episodes, called *The Rights' Future*, and that engaged lots of people as well. So I'm always looking for new ways of doing "academic" stuff. And this is the latest way of doing it – "it" being outreach.

ST: It seems to be present in your writing too. You've alluded in that last comment to the book you published on the web, but I'm also thinking about your pieces for the *London Review of Books* and other spaces in which you've written in that way. And perhaps we could then come to your book, *Homeland Insecurity: The Rise and Rise of Global Anti-Terrorism Law*, which seems to me to link very closely to the course. Do you want to tell us a bit about that?

CG: The book is not as closely linked to the course as I expected. Part of me thought that this would be a good way of selling my book, and to produce as a rabbit out of the hat a little form that they could fill in to get the book at a cut-price at the end. But it's actually slightly different. This course – which I'll mention again before getting to the book – is a distillation of a lot of books I've already written, some with my friend Keith Ewing and others by myself, which I was amazed to notice I had never taught. And these were about the law and practice of civil liberties in British culture. A large part of that is terrorism without



question. And the new book is building on a book I wrote – my goodness, 33 years ago – which was – I didn't know at the time – an IR book. I thought it was just a book, but it wasn't a law book at all. And it was called *Terror* and it was published by *Faber & Faber* and it was a history and politics of terrorism. And my views in 35 years have not changed at all, but the new book, *Homeland Insecurity* – and then the subtitle tells you what it's about, *The Rise and Rise of Global Anti-Terrorism Law* – so it's about how the language of terrorism infiltrated itself into our culture, and then how from being within our culture it got infiltrated further into our legal framework and how we've now reached the point where anti-terrorism law is a crucial part of liberal governance, not to mention authoritarian states, which are delighted with it. So it's an exploration of how we normalised anti-terrorism law within our culture.

ST: There's a statement in particular that I would like to come to from the book, and this is from Chapter 1. You say that the claim of the book "is that anti-terrorism laws have changed our common sense understanding of what living in a free society is all about, that they have brought about nothing less than a substantial reworking of what (we think) freedom means". And I wanted to ask you – and this, I think, probably does go back to the course in a way – what did we think freedom meant before, and who is the "we" here?

CG: You are right to ask this: it takes me to the central claim in the book, which is that the war on terror – using the Americanism, but it applies here – just add "-ism", the war on terrorism – was much easier than anybody could have expected, and took hold and took root much more quickly. Now, obviously, people like me opposed it from the start

etc., but the reality is that the culture received it, normalised it. So, why? And that takes us to the "we". My answer to the "why" question – why was it so easy? – is because our system of democratic government under the law has always accommodated massive double standards, and, in particular, two sets of double standards. One was the "we" was the home, the homeland. The "we" was never the colonies. I know the colonies has become very fashionable – my goodness it's a source of interesting academic work. No terrorism books discuss anti-colonial anti-terrorism. But we as liberal democracies – Britain, late Germany, throughout France, Belgium, the Dutch, Italy – we became familiar with the idea that we could kill Johnny Foreigner in any way we wanted while maintaining our commitment to freedom at home. So I say, firstly, colonialism familiarised us with the double standard, and that liberalism could be utterly illiberal away from home. And secondly, the Cold War familiarised us with the idea that there could be an enemy within. So we got very used to the idea that there were destructive agents within the culture who would be socialistic and Soviet and who needed to be destroyed if necessary by strong action which was inimical to freedom. So, I say that the reason that the war on terror, that terrorism laws, that anti-terrorism laws are so easy is they're not foreign at all, they're not new. Their deployment is drawing on old tropes – civilisational resistance to foreign infiltration and old tropes about the need to civilise the natives, to control the savages, and to engage in violence as a spectacular indication of power with which the British, the French etc., were very used. So that's where the "we" is: the "we" is home, but the "we" is not abroad. And so that's the structure of the book.

ST: And so the reworking of how freedom is understood in that context is essentially about revealing something inherent in the concept of freedom itself, on your analysis…

CG: Correct.

ST: Something that's been there but we just haven't quite seen?

CG: Correct. You could say, for example, that the liberal democratic self has always taken freedom extremely seriously and boasted of it as a major part of its identity while hiding the bits of it that were mocking this supposed commitment to freedom. And that hiding has on the whole been very successful. It's maintained the idea that we can preserve our liberal democratic ideals of freedom while not being free in lots of hidden spheres. And so I'm trying to unpick those spheres as a way of explaining how it has been so successful now that it is much more out in the open. But even in the open, the people that are mainly affected by anti-terrorism laws are the former colonials or the extreme left – but even the extreme left not so much now, in other words the communists are over really. It's the colonials, including first and second generation British, it's the people who are not white. And so there is a residual colonial tone to its contemporary application.

ST: What do you expect the response to the book to be? It's going to present a very fundamental claim about the structure of the law, about the concept of freedom itself… How do you think the book will be received?

CG: I'm really interested. I'm a bit excited. The reviewers for the publisher, who are Polity, were from – I don't know who they were, they were anonymous – but they were from international relations and history, and they were extremely complimentary. So I think in one way, it fills a gap in a non-evaluative, non-judgemental way – the gap being that historians and political people and IR scholars are a bit afraid of law, but lawyers rarely do history, politics, or IR. So I am in a space marked "a law prof who's trying to write a bit about the development of the law (history), about its role in international affairs (IR), and then about its role domestically (politics)". Then there's the wider question of controversy. I think the greatest controversy will be a chapter which links Israel to the growth of counterterrorism as a global requirement. So the various colonial and Cold War battles were often local, and it's only between, say, 1968 and 1976 that we see the merging of all these various conflicts as a global terrorist crisis – the IRA, ETA, Palestine – and we see the development of a discourse which sees all these as a civilisational struggle, requiring extreme action by the Global North, by the West. And I think my explicit connection of that with Israel will be controversial.

ST: But still with the book you're trying to pull different audiences together, aren't you; it's essentially the same as with the lecture series, the reaching, the wider audience…

CG: Yes, yes exactly…

ST: And so the final question then, where next for both? The book will come out, you've got this lecture series… Where next?

CG: What I've been thinking about is… and I have to say I've got quite addicted to writing a few words for a book every day… So I've thought about the lecture course – the one I'm doing now, the one we started chatting about – as the core of another book, and the book would be about how our democratic system wasn't as embedded when it arrived as we thought. And so it was a struggle to get, and the "it" we got isn't fully democratic, because underlying power structures were never addressed. And this then plays out in a faulty protection of civil liberties, and so what appears to me is a little bit of what this lecture course has been doing, which has been saying it's always been difficult to secure freedom within Britain, the idea that we have some perfect democracy now or even in the past is a false one, and that we need to rethink what we mean by the rule of law in the British context. So I was thinking about that.

ST: Wonderful. Thank you so much.

LLM Class of 2013

10-year reunion

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Revisiting post-2008 financial regulation: LSE Law School Future of Financial Market Infrastructure Project's summer conference

In May 2024, practitioners, academics, regulators, industry participants, and students came together for the summer conference of the LSE Law School Future of Financial Market Infrastructure Project, which was established in 2020 to provide a forum for discussion of this part of the global financial system. In this piece, Professor Jo Braithwaite – who co-founded the Project and co-organised the conference with Visiting Professor in Practice, Dr David Murphy – reflects on the Project itself and the discussion that took place in May.

The Law School's Future of Financial Market Infrastructure (FMI) Project annual summer conference took place in May 2024, with the aim of discussing new perspectives on post-2008 regulatory reforms. This was the latest successful event to be organised by the FMI Project, which was set up in 2020 by LSE Law School Visiting Professor in Practice Dr David Murphy and Professor Jo Braithwaite.

The FMI Project was established to provide a forum for interdisciplinary discussion of this systemically important part of the global financial system, and it has gone from strength to strength. The network now extends globally to over 150 academics, legal practitioners, trade association leaders, national and international regulators, and industry participants. Over the last four years, seminars on diverse

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Left: Professor Jo Braithwaite, LSE Law School
Above: Professor Niamh Moloney, LSE Law School

FMI-related topics have been delivered by academic and practitioner experts. Most events take place in hybrid form or on Zoom, given the global reach of the network (with special appreciation due to our New Zealand attendees!). This year, for example, the FMI Project was very fortunate to host Roberta Romano, Sterling Professor of Law at Yale Law School, who presented her paper which asks "Are There Empirical Foundations for the Iron Law of Financial Regulation?" (this paper can be found on the SSRN website at **papers.ssrn.com/sol3/papers.cfm?abstract_id=4340042**).

The FMI Project also organises a major "in-person" conference each year. In 2023 we were delighted to welcome to LSE US Commodity Futures Trading Commission (CFTC) Commissioner Kristin N. Johnson to deliver the conference's keynote address. This year, the theme of the conference was "New Perspectives on post-2008 Financial Regulation". Over an opening presentation by David Murphy, a panel discussion, and keynote address, the aim was to develop new perspectives on post-2008 regulatory reforms by sharing interdisciplinary, market, and regulatory insights. The expert panellists at this event were Harry Begg, Max Weber Fellow from the European University Institute; Edwin Schooling Latter, Senior International Policy Advisor, UBS; Bill Stenning, Head of Public Affairs- UK, Société Générale; and Bas Zebregs, Head of financial markets team within the legal department, APG Asset Management, and the panel was chaired by Nandini Sukumar, CEO of the World Federation of Exchanges. This year's keynote speaker was Niamh Moloney, Professor of Law at LSE Law School and an independent, non-executive director of the Central Bank of Ireland, whose topic was "Consolidation, capacity and crisis: How have financial-crisis-era reforms fared?" and whose talk drew on insights from her latest book, the fourth edition of *EU Securities and Financial Markets Regulation* (2023, Oxford University Press). As we had hoped, these expert contributions kick-started fascinating discussions with attendees about the effectiveness, evolution, and outcomes of the rules implanted after the crisis, lessons from recent stresses in the markets, and where global financial regulation should go from here. We were very grateful for all the contributions from the distinguished speakers and chair, and for the input of diverse attendees from across our network, which all went to make this such a valuable and thought-provoking day. We greatly look forward to developing this important discussion further in our future events.

If you would like to receive information about events that the FMI project is organising, please email the LSE Law Events team at **law.events@lse.ac.uk**

A list of some of our LSE Law School events 2023/24:

Convene

Financial Law and Regulation Conference
12 September 2023

European chronotopes
20 September 2023

Law School Convene Launch: EU Commissioner McGuinness in Conversation
28 September 2023

Sustainable Finance: Policy and Regulation extracurricular course 2023 Masterclass – 4 Sessions
October – November 2023

EU Commissioner Kyriakides in Conversation
12 October 2023

Can litigation solve the climate crisis?
23 October 2023

The European War and International Law
24 October 2023

Ratio Launch 2023/24
24 October 2023

Regulating FinTech: An expression of the EU's societal values
1 November 2023

The purposes and governance of multilateral development banks: Assessing the impact of events, crises and controversies
7 November 2023

Except Palestine: law, humanity and politics
7 November 2023

FinTech and Digital Finance Masterclass – 4 Sessions
November – 8 January 2023

Corporate Governance Masterclass – 2 Sessions
21 November 2023

Dissenters' Rights Evolution Across European and US Company Regulations: Lawmakers' Choices and Investors' Expectations
28 November 2023

Generations in Law – A Family's Legal Journey from the Ground Up
28 November 2023

Legal Technology Masterclass
16 January 2024

Masterclass – Getting the inside scoop on "Inside Information"
23 January 2024

The 2008 Global Financial Crisis: What it was and why it still matters
30 January 2024

Freedom and the Law in Britain (lecture series)
5 February 2024

Regulating AI: Law and Policy
13 February 2024

Ambivalence in (un)certain times
7 March 2024

Conversation on war and democracy in Israel with Judge, Dr Michal Agmon-Gonnen
19 March 2024

COMMUNITY

Seminars

CIVICA Workshop
29 September 2023

Revolutionary International Law in Revolutionary Times
20 September 2023

Justice Denied: Exploring the US Criminal Legal System's Response to Sexual Assault
2 October 2023

EU's Corporate Sustainability Due Diligence Directive
4 October 2023

Contract law in the age of the green transition
5 October 2023

Careers in human rights litigation
9 October 2023

PIL Hub Seminar: Informed Publics, Media and International Law
10 October 2023

Global Minimum Taxation: A Strategic Approach For Developing Countries
11 October 2023

Book Launch: *Dickensland: The Curious History of Dickens's London*
10 October 2023

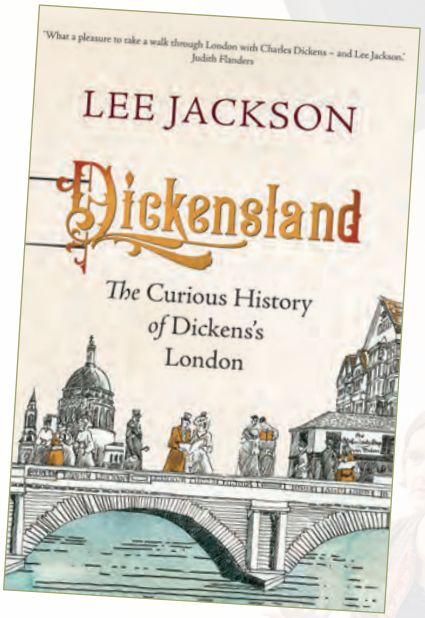
Underworlds – Oceans as Sites of Global Dis/Ordering
11 October 2023

PIL Hub Seminar: Digital Empires: The Global Battle to Regulate Technology
17 October 2023

Tax Treaty Disputes: The Global Four-Element Pattern (1960-2015)
25 October 2023

LSE Law School Financial Market Infrastructure Project
26 October 2023

PIL Hub Seminar: War and Law
7 November 2023



Disclosure of Tax Avoidance Schemes (DOTAS) 20 years on: Inside and out
8 November 2023

Breakfast Panel: Exploring Corporate Legal Optionality After Listing Rule Reform
10 November 2023

Corporate Law Roundtable
10 November 2023

Patrick Mears on the UK's General Anti-Abuse Rule
13 November 2023

A public seminar to mark the publication of *Standing in Private Law* by Timothy Liau
13 November 2023

PIL Hub Seminar: Weaponizing Extraterritoriality? Thoughts on the Recent Development of Secondary Sanctions
14 November 2023

ESG, Social Enterprises and Corporate Purpose
15 November 2023

Legitimating Corporate Power
15 November 2023

Jessica Simor KC on Human Rights in Tax Law
20 November 2023

PIL Hub Seminar: Sovereign Debt in International Law
21 November 2023

Book Launch: *A Precarious Life*, Dr Roxana Willis
23 November 2023

Hui Ling McCarthy KC advocacy in tax cases
27 November 2023

Collective Knowledge and the Limits of the Expanded Identification Doctrine
5 December 2023

"Privacy's Revival", by Dr Gauri Pillai
25 January 2024

Provisional Justice? The ICJ Order in the *South Africa v Israel* genocide case
30 January 2024

Professor Roberta Romano, Sterling Professor of Law, Yale Law School: "Are there Empirical Foundations for the Iron Law of Financial Regulation?"
6 February 2024

Book group: The purpose of the company (Session 1)
12 February 2024

EU Law: Balance or Bind? (GOLEM and Transnational Hub Seminar)
27 February 2024

Tackling Corporate Crime: Will the UK's new Act work?
5 March 2024

Behavioural Ethics, Corporations and Trust
7 March 2024

The Speculator of Financial Markets
21 March 2024

Book Launch "*The New EU Competition Law*" at LSE
21 March 2024

Book Launch: *How China Governs Big Tech and Regulates Artificial Intelligence* – Angela Zhang
29 April 2024

Art Not Evidence: Issues and Implications of Prosecuting Rap
30 April 2024

LSE Curia Grant – Study Visit at the Court of Justice of the European Union (CJEU)
30 April 2024

Trade and subsidies: Towards economic security and strategic autonomy
9 May 2024

The Football Transfer System on Trial: The Diarra Opinion
14 May 2024

Underworlds – Sites and Struggles of Global Dis/Ordering
15 May 2024

Academic freedom after the destruction of Gaza's Universities
16 May 2024

EU Lawyers Assembly
6 June 2024

DAO Events at the London School of Economics
26 June 2024

Public Lectures

Ten Years of Twin Peaks: Successes, Failures and Future Challenges
12 September 2023

European Company and Financial Law Review
29 September 2023

Eurowhiteness: culture, empire and race in the European project
3 October 2023

Professor Michael Zander KC, "Promoting Change in the Legal System – a Memoir"
19 October 2023

London Review of International Law Annual Lecture 2023
26 October 2023

Film Screening: Duty of Care Directed by Nic Balthazar
16 November 2023

Fireside Chat with Robert Pickering, former CEO of Cazenove
20 November 2023

Lecture on transnational marriage abandonment
21 November 2023

Academic Freedom and Freedom from Harassment in Universities
20 November 2023

Integrity in climate action: a global challenge – Roundtable
29 November 2023

The Impossible Role of Non-executive Directors?
18 January 2024

In conversation with HE Dr Bisher Khasawneh, Prime Minister of The Hashemite Kingdom of Jordan
19 January 2024

The Oceans Treaty As a Win for Multilateralism: What Lies Ahead
6 February 2024

Celebrating the Career of Professor Tim Newburn
2 March 2024

Rethinking 1948 and the Israeli Palestinian conflict
4 March 2024

"The Future of International Trade" featuring Crawford Falconer KCMG
12 March 2024

(Re-)discovering the copyright basics – Originality after *THJ v Sheridan*
14 March 2024

In Conversation with the Registrar of the International Criminal Court
25 March 2024

The British nation: What's its future? Does it have one?
2 May 2024

The Professor Bill Cornish Memorial Lecture 2024 – "Intellectual Property norms in the Polycrisis – (Still) Omnipresent, Distracting, Irrelevant?"
7 May 2024

The Future of Financial Market Infrastructure: "New Perspectives on post-2008 Reforms"
9 May 2024

Careers

LSELR "How to Write a Good Legal Essay"
11 October 2023

Masterclass in UK Refugee and Migration Law
14 November 2023

"Faultless Grammar" English Writing Session
November 22, 2023

BPP's "Routes to Qualification"
30 November 2023

Power Skill Sessions with Dr Thomas Curran
6 February 2024

Masterclass Session 1: "Critical Contemporary Issues in Sanctions"
8 February 2024

Environmental law and ESG: Experiences and Career Pathways
14 February 2024

In Conversation with Lord Gold: A Journey Through Law and Leadership
15 February 2024

Family Law in Practice Panel Session
5 March 2024

LLB and LLM, Human Rights and Law and Anthropology: Conversations with Alumni
20 March 2024

Law, Poverty, and Access to Justice: Perspectives from Practice
26 March 2024

Building a Career in International Arbitration – Masterclass 5 sessions
14 May 2024

COMMUNITY

PSS Profile: Alexandra Klegg, Head of Events, Communications, and Creative Projects

The magazine that you have here before you is but one of Alexandra Klegg's many achievements in any given year. Her work spans the running of the Law School's events programme (which, as you will shortly read, involves around 200 events a year), communications ranging from the new Ratio podcast to the Law School's social media channels, and creative projects including the artwork in the new student common room and an exhibition ("Underworld Ecologies") at the LSE's Atrium Gallery. Dr Sarah Trotter spoke with her to find out more about what a day in her life as Head of Events, Communications, and Creative Projects looks like.

Sarah Trotter (ST): Alexandra, there are many different parts to your work as Head of Events, Communications, and Creative Projects here at LSE Law School. What's a typical day like?

Alexandra Klegg (AK): It can be really varied. I try to dedicate my calendar to very important meetings, because outside of those meetings a lot of practical work is needed to make things happen, and as we live in the real world, there are everyday emergencies and unexpected things that mean I need to rearrange my calendar. Often I set up tasks for the day and then have to delay them because more important things come up, or priorities change, or something needs to be resolved. And if it's not resolved, it's not going to happen – the event or the deadline or the launching of something new. So normally there will be a lot of interesting meetings and I will also be dealing with the events for the day. During term time we usually have three or four events per day, and the core days are Tuesday, Wednesday, and Thursday. At the moment the events programme takes up most of my time, because there are so many of them – we have about 200 events per academic year, maybe more – and they all require different skills, different approaches, different knowledge, and different levels of involvement… But the title that I have for my role is events, communications, and creative projects, and I try to equally work on all three of those parts. Luckily, I have an amazing events team now, so I can delegate more and feel really confident that our events are going to be delivered at the best possible level, while I can focus on other tasks.

ST: Could you tell us about your journey to the position?

AK: There's an interesting story behind it. I didn't use to work in the higher education sector and I didn't consider doing so either, but when you're open to new opportunities, things come in. And I never knew before that it would be possible to implement so many creative ambitions here in a university environment. I used to think that working from the professional services side it would be more about administrative work, more about support work, and those kinds of things. But actually that was narrow-minded thinking, as I realised; and, as I say, when we are open to new opportunities, when we work hard, when we know what we want, then everything works out the way it should.

At the beginning of my journey at LSE Law School, I was not involved in events, and was mainly working on communications – building more engagement around that, generating new ideas and strategies, and designing and producing our beautiful *Ratio* magazine. Then we started to design and expand our events programme, and I took part in that. The academic events programme involves various categories, namely: Convene (masterclasses, showcases, and career talks for our students and the wider LSE community); public lectures with high-profile speakers; and seminars (book launches, series of events, workshops, and large conferences). Through our Convene programme, we also bring in practical sessions to help students think about how they would apply what they know in practice. We of course also organise social events for the students, using the impressive venues we have here in legal London – so, dinners, Dean's lunches, board game evenings, networking events… We try to implement everything that we can offer! The environment is a really collaborative one and that allows me to come up with so many interesting things, plans, scenarios, and steps on how to achieve all this. It drives me to do more and contribute where I can. This is probably why my role continues to grow!

ST: What do you enjoy most about the role?

AK: I would definitely say that it's being among these inspiring people, our amazing academics from whom I'm learning a lot. I love learning new things. It's very inspiring. It expands my horizons. It makes me a better person. And of course I really enjoy working with my colleagues from the PSS [Professional Services Staff] team who are very supportive and make it enjoyable. So it's generally the people here. And also – I keep saying this to myself and to the others – I truly believe that everything is possible, and nothing is impossible. This place reflects my values as well, because I know that when you work at big institutions it's often quite difficult to deliver things in practice – you can talk a lot and then either it doesn't happen or it only partially happens or it's delayed for a long time. But at the Law School I'm really enjoying implementing things and making things tangible – and, at the end of the day, the outcome of everything. What makes me happy is that our people are happy and that we did the job at the highest standard. So when we achieve the goal together and they're really happy about this, this is what makes me happy.

ST: That's so lovely. What kinds of projects do you have in the pipeline?

AK: So, of course, the first one is our amazing – I use the word "amazing" a lot! – our wonderful! – *Ratio* magazine. And I think we're getting bigger and thicker every year – so from, I don't know, 40 pages, we shifted to 100 pages, and we're probably going to produce even more this year. But I'm very proud of this because I genuinely believe that *Ratio* is not only our alumni magazine but also an expression and a valued asset that we have at the Law School. It reflects all the values and all the sides and aspects of the Law School. We cover everything – the LLB, the LLM, our PhD students, our academics, our alumni, our PSS. And so it brings the holistic view of the whole vision of the Law School. I think it's a very deep and profound asset that we are creating here.

Then we have a couple of big new launches coming up. We're extending the *Ratio* law magazine brand and we're about [at the time of this conversation] to launch a Ratio law podcast. Again, it makes complete sense, as I just explained how much it means to us, the magazine… Also, the word "ratio" has the law meaning behind it, and people who work in this area would understand that. We're going to go big and it's going to be presented on large platforms like Spotify and Apple Podcasts. The goal is really to increase awareness about our top-notch academics and their research. The podcast is going to be a lot of fun and will feature insightful conversations, bringing together academic voices and experts to consider the legal questions of today.

Then we're also working on the law and finance programme, the MSc. It's an exceptional programme, because it's a collaboration between two strong departments – the Department of Finance and the Law School. In the area of law and finance, even if people learn it somewhere else, they're still referring to the books and articles written by our academics, which I find very cool. Overall, it's a big project and we're already doing a lot of activities to deliver it in the best possible way. It's quite exciting, and I'm especially looking forward to the collaboration with the Department of Finance – again, for me it's about learning new things and contributing and being useful.

At the same time, of course, we're constantly planning events. Once the academic year is finished we start planning the next academic year – contacting all the speakers, making sure that we have suitable dates available for specific occasions, making sure that we don't have too many overlaps (although there are inevitably some, because with the number of events that we have it's just impossible to avoid that) and making the programme really professional. We're already offering movie nights and film screenings for the students, but we want to have screenings where we have the movie director or documentary director and stars from the movie for Q&A afterwards.

Then in the Spring Term we have the exhibition at the Atrium Gallery, called "Underworld Ecologies", travelling through the soundscapes and imaginaries of oceans and lands. My inspiration was the research that two of our academics are currently doing and that they have grants

for – Dr Siva Thambisetty and Dr Marie Petersmann – and again the purpose of the exhibition is to raise awareness and have impact. Of course it's not that easy to do this on the scale we envisage, but since it's really meaningful, I want to organise it and make it happen. So, there will be that, and it will hopefully be a beautiful exhibition, involving a collaboration with the Natural History Museum, contributions from the International Art Exhibition, Biennale Arte, and some takeaways from the research that our academics have already achieved, all expressed through the art. And we also want to organise different workshops there, and drinks receptions, because we have quite a few conferences running at the same time as the exhibition, and it would be nice to hold receptions in such a creative space.

I'm also looking forward to being involved in the new Legal Clinic project. I think it's just something else that's going to happen here, and I'm really excited to be part of it. I believe we've achieved a lot here at LSE in general and at the Law School in particular, but we can still express to the world how much we can do in terms of impact, and that's still the goal, and I'm really proud that we are doing such things.

ST: That all sounds great. You're a really creative person and behind so many different projects at the Law School! What about outside of the Law School – what do you like doing?

AK: I am a very active person and I have a lot of hobbies! Everyone is different, and I hadn't realised this until recently when I went on holiday with a friend, and for me it was just a normal pace, and then my friend said "can we slow down a bit", because we were doing so much and I stopped and started thinking "actually I am doing quite a lot"! I am always busy outside of work. For instance, I really enjoy going to concerts – either classical music, or I like jazz shows and jam sessions. I used to be a musician – I don't know if you can say "used to be", probably you're there forever.

ST: Oh cool! What do you play?

AK: Accordion as my major and piano as my additional instrument, for more than fifteen years…

ST: That's amazing!

AK: It was my professional career as well, and so yeah, you can't take it away… I've always been into music, and I have a good eye and ear on it. And then, like I said, I'm inspired by people a lot, but also by nature. I spend a lot of time outdoors and for me the UK is such a great place to explore nature. I feel humbled and lucky, because it's so easy to get to anywhere from London – it is kind of a central hub for travel. I've discovered hiking here. And now I do this quite often and go to quite a few places, which is nice, especially when you talk to locals and they say, "I've never been there", and I've been! Nature, hiking… I have a wish list of places I would like to go to, and Scotland, the Highlands is at the top of the list. I really, really want to do a proper long hiking weekend there. And then I enjoy pilates as well – this is what I do in terms of sports activities. Seeing my friends and sharing experiences is an integral part of my spare time too.

ST: It sounds like nature is really inspiring for you. Is there a place that you especially like walking?

AK: Yes, very much so. I think that in any mood you can be anywhere amidst nature – in the mountains, on the hills, in the fields, and on the coast, and it always accepts you in any form, and you can always find that balance. And I especially appreciate this because before I used to drive a lot and was never really walking, but here, with all these opportunities in front of you, you just have to take them, so I walk and travel a lot. These are some of my passions.

ST: Lovely. Thank you so much for taking the time to talk to us!

COMMUNITY

A year at the International Court of Justice: Victoria Gregory looks back on her time as a Judicial Fellow

Victoria Gregory studied at LSE from 2018-19 on the LLM Programme. She graduated in 2019 with an LLM (Public International Law Specialism), receiving the Lauterpacht-Higgins Prize for Public International Law. She then went on to become a Judicial Fellow at the International Court of Justice. In this piece she looks back on her year at the Court.

From September 2022 to July 2023, I was fortunate enough to be nominated by LSE for the Judicial Fellowship Programme at the International Court of Justice (ICJ). I was accepted onto the Programme and spent the Fellowship working closely with HE Judge Tomka, the Court's longest serving Judge and former ICJ President (2012-15).

The Fellowship Programme is somewhat similar to a judicial clerkship and often felt like a middle ground between the academic world I experienced as a student and my time working in private practice. Judicial Fellows have the opportunity to engage with pending cases on the Court's docket by preparing research memoranda, attending public hearings, and participating in discussions on issues arising in the cases with their team.

The 2022-23 year proved to be an exceptionally busy one for the ICJ, meaning that the cohort of Judicial Fellows had the opportunity to engage with a broad spectrum of public international law issues. This included contentious cases concerning maritime delimitation, the application of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, and bilateral treaties appearing before the Court on the basis of a compromissory clause. These cases provided an opportunity to deepen my understanding of certain areas of international law studied during my LLM, as well as to delve into new areas, broadening my overall understanding of the field.

These cases also spanned a range of procedural stages, from applications for provisional measures dealt with on a priority basis, to preliminary objections, hearings on the merits and declarations of intervention for the preliminary objections stage (which while not strictly a procedural stage, on this occasion were dealt with by means of a written procedure, on a freestanding basis). Taken together, these cases provided the opportunity to observe the Court dealing with cases practically from their inception to their conclusion.

A personal highlight of the Fellowship was attending hearings in the Great Hall of Justice. The Peace Palace is a magnificent building. The decadent chandeliers, symbolic "*La Paix par la Justice*" oil painting (gifted from France in 1926), and enormous stained-glass windows (gifted from Great Britain in 1913) mean that the Great Hall of Justice, in which the ICJ's hearings are held, has a particular sense of gravitas. I was struck by the contrast between the

conduct of hearings in the ICJ's Great Hall of Justice and the domestic courts of England and Wales, to which I was more accustomed. Whereas in the courts of England and Wales, judges often adopt an interventionist role during hearings, engaging in dialogue with advocates and expecting them to respond on their feet, at the ICJ advocates typically make their submissions without interruption from the Bench. These submissions are translated in the courtroom in real time so that the Bench, advocates, and hearing attendees can following the proceedings in either English or French (the Court's two working languages). If any questions are raised by members of the Court, the Court's typical approach in my experience is to read these aloud to the parties at a time which does not interrupt the flow of submissions, with the President providing the parties with time to respond after the hearing, often in writing. It has since been interesting to reflect on the benefits and drawbacks of these two contrasting approaches to conducting hearings, as well as the purpose served by each.

A further highlight was gaining an appreciation of how the Court's judges work collaboratively as a panel. Despite various academic proposals for reform, during my time at the Court it continued to operate on the basis of all 15 judges hearing all cases brought before it, sometimes with two additional judges *ad hoc* (selected in cases where parties do not have a judge of their nationality on the Bench and choose to appoint a judge *ad hoc*). While the judges' deliberation process remains highly confidential, it was interesting to see the relevant procedural rules contained in the ICJ Statute and Rules of the Court play out in action. I leave the Fellowship with a renewed appreciation of the value in the Court's judges each bringing to their role different professional experiences and different international law perspectives, which will allow them to bring fresh considerations to the cases they preside over.

My time at the Peace Palace also provided the opportunity to engage with international law beyond the Court's docket. The Peace Palace site is also home to the Permanent Court of Arbitration and the Hague Academy of International Law, the latter of which celebrated its centenary during my time at the Court. Fellows were able to attend the Academy's Colloquium event associated with this celebration, comprising a variety of panel discussions between prominent international lawyers and academics on a range of international law issues. The Court also concluded an election process during my Fellowship, which takes place just once every three years. This resulted in the re-election of one judge to the Bench and the election of 4 new judges. While the change in composition did not take place until after my Fellowship, it was exciting to follow the outcome of the Security Council and General Assembly votes from the Court and the process reminded me of the important role the ICJ plays within the broader UN structure. A visit from LSE towards the end my Fellowship, which included meetings with HE Judge Tomka and HE Judge Charlesworth along with a tour of the Peace Palace, was a further wonderful opportunity to engage in discussions about the ICJ and evolving topics of international law with those within the LSE community.

Beyond the gates of the Peace Palace, the Hague itself is a truly wonderful city and also a bustling hub of international law, hosting a range of international law and international relations events throughout the year. My cohort of Fellows spent time attending events at the Hague Humanity Hub and exploring certain of the other numerous international institutions based in the Hague, including the International Criminal Court and Organisation for the Prohibition of Chemical Weapons. It was particularly interesting to see common threads emerge across these visits. For example, at a time when the ICJ had (and still has) a pending request for an advisory opinion on the Obligations of States in Respect of Climate Change, the rest of the Hague was also engaging with the broader question of international law and the environment. I was able to attend events discussing the potential introduction of an international crime of ecocide and also engage in discussions concerning pollution and environmental damage caused by private actors (as distinct from state-focused offences).

Since leaving the Hague, I have returned to London and currently work in private practice focusing on disputes relating to international environmental disasters involving large corporations. I take from the Fellowship an insight into judicial thinking which I hope will enable me to remain thoughtful and pragmatic in my legal practice. I also take a renewed appreciation of the efficiency of the Court, the meticulous work it carries out and the critical role it plays within the UN system. Finally, I leave the Fellowship with a network of truly exceptional young international lawyers in the form of Court's Associate Legal Officers and my Fellowship cohort: talented, kind, and collaborative colleagues now spread across the world, who extended friendship in addition their knowledge and insights, and who were integral to making my time in The Hague a memorable and formative experience.

I am immensely grateful to HE Judge Tomka and his team, as well as to Dr Devika Hovell, for their exceptional mentorship throughout the Fellowship Programme. I am also extremely grateful to LSE for nominating me for and sponsoring this fantastic opportunity. Should LSE continue to invite nominations for the Fellowship Programme in the future, I would highly encourage all students and alumni to apply who have an interest in pursuing a unique opportunity to work at the forefront of international law and engage with what continues to be a growing, yet increasingly interesting Court docket!

COMMUNITY

Alumni profile: Dr Bisher Khasawneh, Prime Minister of the Hashemite Kingdom of Jordan and Minister of Defence from 2020-24

On 22 January 2024, and after attending Davos, the then Prime Minister of The Hashemite Kingdom of Jordan and Minister of Defence, Dr Bisher Khasawneh, visited LSE Law School and generously spoke with the Dean, Professor David Kershaw, regarding his time studying at LSE Law School, his career path in diplomacy and politics, and his insights and experience on how to strengthen the Jordanian economy. Dr Alex Evans reports on the conversation that took place.

On Dr Khasawneh's path into law, LSE, and his career in diplomacy and politics

Dr Khasawneh described the way in which he was influenced to study law by his parents, who met while studying law at the University of Cairo in the early 1960s. Dr Khasawneh followed his parents' footsteps by studying law at the University of Jordan, and then followed his father's path into diplomacy.

While working at the Jordanian Embassy in London, Dr Khasawneh studied for his LLM at LSE Law School, with "a lineup that was a dream come true for a reader in international law": Dame Rosalyn Higgins (with whom he studied The Law of International Organisations, International Law of Natural Resources, and United Nations Law), Sir Daniel Bethlehem QC (with whom he studied United Nations Law), Professor Sir Eli Lauterpacht (with whom he studied International Law of Natural Resources), and Professor Rein Müllerson (with whom he studied International Law of Armed Conflicts and the Use of Force). Dr Khasawneh spoke fondly of his time at LSE, and of the way in which he combined his diplomatic work at the embassy with study, "making the rounds from the high street of Kensington on the Central Line" and "stopping by at Temple" in the afternoons to attend class. Dr Khasawneh said that the then-Ambassador of the Jordanian Embassy was very encouraging and supportive of his studies.

Dr Khasawneh recounted that his ability to undertake the LLM was only made possible by the "selflessness" of a kind colleague at the Jordanian Embassy who negotiated with the ministry to "switch" start dates with Dr Khasawneh, functionally bringing forward Dr Khasawneh's start date and delaying the colleague's own, so that Dr Khasawneh could begin his LLM in September, at the start of LSE Law School's academic year.

Dr Khasawneh also described his experience writing his PhD thesis at LSE. The thesis was entitled "An appraisal of the right of return and compensation of Jordanian nationals of Palestinian refugee origin and Jordan's right, under international law, to bring claims relating thereto, on their behalf to and against Israel and to seek compensation as a host state in light of the conclusion of the Jordan-Israel peace treaty of 1994", and was supervised by Sir Daniel Bethlehem QC, followed by Christopher Greenwood (now Master of Magdalene College, University of Cambridge). Dr Khasawneh explained that, after spending 2 years in London researching and writing, he was posted to Cairo. He then worked remotely on his doctoral thesis, while working full-time. When Dr Khasawneh submitted what he believed to be a first draft of his thesis, following an intense summer's work, Chistopher Greenwood said that the thesis was ready to be submitted for examination. Dr Khasawneh defended his thesis the following January, and he was awarded his PhD without amendments in 2007. Dr Khasawneh described calling his father from the phone box on Aldwych to tell his father the good news. His father was surprised as Dr Khasawneh had travelled to London without telling his father that he was taking the viva as he did not want to cause his father any worry.

Over the subsequent years, Dr Khasawneh's path unfolded to include roles as Jordan's Ambassador to Egypt (June 2012 to September 2016), Minister of State for Foreign

Affairs (28 September 2016 to 15 January 2017), Minister of State for Legal Affairs (15 January 2017 to 31 August 2018), Jordan's Ambassador to France (concurrently accredited to UNESCO), adviser to King Abdullah II for Communication and Coordination at The Royal Hashemite Court (April 2019 to August 2020), and adviser to King Abdullah II for Policies (August 2020 to 12 October 2020). He was appointed to the role of Prime Minister of the Hashemite Kingdom of Jordan on 12 October 2020. In recounting his journey through these roles, Dr Khasawneh described the way in which he had at times considered working in academia or at the Bar. He had thought, in particular, that his career would end after his posting as Jordan's Ambassador to France (concurrently accredited to UNESCO), and thought it "inconceivable" at that point that he would become Prime Minister. But that did indeed then happen. Dr Khasawneh admitted that he "planned up to the ministerial level". He said, "I worked for it, but I didn't plan for it necessarily".

On becoming Prime Minister and his vision for growing the Jordanian economy into the future

Dr Khasawneh stated that upon assuming office as Prime Minister, his primary goal was to overhaul and address key weaknesses in the Jordanian economy. His appointment occurred during the Covid-19 pandemic. At that time, Jordan had a negative growth rate of 1.6 per cent. This was unfortunate as the pandemic came towards the end of what had been a relatively difficult decade for Jordan – the growth rate had been hovering around 2 per cent between 2010 to 2019-20, compared with a growth rate of, at its highest point, 6 per cent to 7 per cent between 2003 and 2007. Between 2003 and 2007, the Jordanian economy had been performing well.

The negative growth rate during the pandemic increased the challenge of unemployment. Unemployment had been around 19.5 per cent before the pandemic, and this rose to 24 per cent during the pandemic. 31 per cent of the unemployed were women, and 46 per cent were young people. This was problematic, Dr Khasawneh stated, in the context of a well-educated population who had an expectation of employment. However, the Covid-19 restrictions contributed to the problem as those restrictions lasted for around two years and included school and university interruptions for 195 days. As part of the strategy for re-opening the Jordanian economy, the government enacted a law to allow for emergency social welfare support for sectors of the economy, including tourism, which is one of the key sectors of the Jordanian economy.

Jordan's recovery from the Covid-19 pandemic coincided with the country entering its second centenary. In 2021, His Majesty, King Abdullah II, spearheaded a comprehensive reform agenda comprising three tiers, called the "Political, Public Sector and Economic Modernization Agenda".

The first tier is political. His Majesty advocated the mobilisation of people around political parties with a national agenda, with the objective of an all-political party Parliament rather than an individual representation Parliament. The first stage of this process is elections in the summer of 2024. Political parties are now providing information and manifestos. The vision is for there to be a staged increase in the number of seats held by political parties: they currently hold 41 seats of 137 seats; in 4 years, it will be 66 of 137 seats, and after that it is envisaged that the Parliament will wholly comprised those representing political parties.

New laws were introduced, and existing laws tailored, to augment the presence and participation of women

and youth in Parliament. Now, there is a requirement to have one woman in the first three candidates and also one young person (under the age of 30). One third of the constitution of Jordan was also amended to support greater involvement and mobilisation by grass roots movements in decision-making processes.

His Majesty also announced another (and parallel) track providing an economic modernisation vision. This is designed to double the growth rate within the next ten years. Until the third quarter of 2023, Jordan was hitting all the targets – reaching a positive growth rate of 2.8 per cent, the tourism sector had a record year and Jordan had commenced an extended fund facility program with the IMF and had had six successful reviews with the IMF. The trajectory then changed with the commencement of the conflict following the events of 7 October 2023.

Dr Khasawneh stated that the public sector cannot be the sole source and driver of employment in Jordan. Rather, it will require the involvement of the private sector. Accordingly, during his time in office, Dr Khasawneh has overseen increased private investment into Jordan (foreign direct investment has increased by around GBP340m) coupled with increased investment in high-value industries, such as mining, oil, and gas.

On leadership through adversity

Dr Khasawneh stated that he is inspired by King Abdullah II, whose approach is fundamentally to bequeath positives out of challenges. For example, Jordan experienced significant food security during the Covid-19 pandemic. In response, Jordan generated strategic reserves of barley and wheat to meet its internal demand for around 13 months.

A second strand of Dr Khasawneh's leadership approach is not to buckle under pressure, and to stay the course in realising a vision. For example, to achieve the long-term vision for economic growth that Dr Khasawneh shares with King Abdullah II, Dr Khasawneh has phased out subsidies (based on the view that they were reducing competition), improved tax collection, and curbed tax avoidance and evasion. This has helped to provide revenue to allow for targeted welfare support to those in need. The credit ratings agencies (Standard & Poors and Moody's) have taken a positive view of these decisions as those agencies have maintained Jordan's ratings, while reducing the ratings of its neighbours. Another example is that, during the period of Dr Khasawneh's office, Jordan has embarked on ambitious projects, such as a USD 5.5.billion investment by the United Arab Emirates to develop Jordanian infrastructure.

The third strand of leadership, to Dr Khasawneh's mind, is to adhere to sound policies and principled positions that aim for the betterment of Jordan, the region, and the globe.

For the 400-strong audience of LSE community members, including current LSE Law students, Dean Professor Kershaw's conversation with Dr Khasawneh was an interesting, inspiring, and hopeful event and one that offered a rare opportunity to hear career insights from an experienced diplomat and politician.

LSE Law Research Hubs

The Law School has nine Research Hubs: Corporate and Financial Law; Criminal Law and Criminal Justice; European, Comparative and Transnational Law; Law, Technology and Society; Private Law; Public International Law; Public Law and Human Rights; Socio-Legal Research; and Tax. The hubs draw together colleagues working in similar areas and provide a space in which to think through and discuss common research interests and work in progress. Colleagues also run a range of events through their hubs, including seminars, workshops, and conferences. In what follows, each hub convener offers a snapshot of the activity in their hub over the past year.

Corporate and Financial Law, convened by Dr Elizabeth Howell

It has been an academic year rich in research activities for the Corporate and Financial Law Hub. Prior to the start of the year, Dr Elizabeth Howell, Professor Eva Micheler, and Dr Philipp Paech co-organised (with colleagues from Durham and Birmingham) a Financial Law and Regulation conference, which contained lively discussion of topics ranging from firm culture, regulatory competition, and digital assets, through to systemic risk, and AI. Connected to the launch of Convene, Professor David Kershaw and Professor Niamh Moloney hosted a fireside chat with the EU Commissioner for Financial Services (Mairead McGuinness) on areas including the key priorities for the Commission's financial markets agenda. Professor Kershaw co-organised a one-day Corporate Law roundtable with talks ranging from corporate legal optionality after listing reforms to a keynote address from Vice Chancellor Lori Will from the Delaware Court of Chancery. Professor Sarah Paterson delivered a lecture (which, one hub participant described as "a masterclass on presenting") as part of UCL's Current Legal Problems series, chaired by the Right Honourable Lord Richards of Camberwell (Justice of the Supreme Court) on the new incentives of senior lenders in financial distress.

The year was peppered with informal hub workshops, including research presentations from Professor Micheler, Dr Paech, Professor Julia Black, Dr Ciara Hurley, Dr Alperen Gözlügöl, and Dr Astrid Sanders. Topics and debates included: the legal nature of the corporate constitution; protecting consumers and SMEs in the contemporary financial services market; and the optimal nature of capital markets regulation. The hub was also delighted to host external speakers, including Assistant Professor, Christina Skinner (The Wharton School, University of Pennsylvania) and Dr Trevor Clark (University of Leeds). During the Spring Term, the hub supported the Financial Markets Infrastructure ('FMI') Project's end of year conference: "FMI in Context: Interconnections Old and New"", where Professor Moloney was the keynote speaker.

The hub's enthusiasm for workshops, seminars and events this year has been infectious. Workshops have inspired further gatherings and the hub members' support, guidance, and enthusiasm for each other's projects has known no bounds.

Criminal Law and Criminal Justice, convened by Dr Abenaa Owusu-Bempah

The Criminal Law and Criminal Justice Hub met in the spring for their annual Away Day, at which hub members presented and received feedback on their work in progress. The Criminal Law and Criminal Justice Theory Forum hosted six external speakers during the 2023/24 academic year, chaired by Dr Federico Picinali. The hub also supported an event on "Art Not Evidence: Issues and Implications of Prosecuting Rap" in April 2024, at which six external speakers discussed the practice and consequences of criminalising rap music, and the current efforts for law reform. The event was chaired by Dr Abenaa Owusu-Bempah. Hub members have written and published widely on a range of topics over the past year. In November 2023, Dr Roxana Wilis launched her new book, *A Precarious Life: Community and Conflict in a Deindustrialized Town* (2023, Oxford University Press). Professor Niki Lacey has published a paper on "Institutionalising Forgiveness in Criminal Justice" in the LSE Law Working Paper Series and

a paper on "Criminal Justice and Social (In)justice" in the LSE International Inequalities Institute Working Paper Series, as well as an LSE blog post arguing that "Horizon, Windrush and Grenfell tell us clearly – Criminal Justice requires Epistemic Justice". Professor Jeremy Horder published a paper on "Control Over Land and Criminal Pollution: Empress Car Reconsidered" in the *Criminal Law Review* and a paper on "Reforming Corporate Criminal Liability: Is the 2023 Act too much, or not enough?" in the LSE Law Working Paper Series. Professor Peter Ramsay is working on a paper on "English Criminal Law: Public Law by Definition"'. Dr Picinali has worked on three distinct papers: a paper formulating replies to the readers of his book *Justice In-Between* (2022, Oxford University Press), a paper on the commitment to the truth in the criminal process, and a paper (together with Dr Lewis Ross) on the evidential basis for rational belief. Meanwhile, Dr Richard Martin is returning to the field to conduct the second phase of his empirical project examining how and why statutory reforms to police bail are having such a significant impact on the use of this police power. Based on eight years of police administrative data and over a hundred research interviews, the project is a rare longitudinal study of how law did change policing – and did so in exaggerated and unexpected ways.

European, Comparative and Transnational Law, convened by Dr Jacco Bomhoff

The European, Comparative, and Transnational Law Hub brings together researchers working on the many ways in which law constitutes, crosses, and transforms boundaries of many different kinds and in a wide range of areas. This broad theme, of spatial transformation in, of, and through, law, was central both to discussions within the Hub as well as the published work of several colleagues during the 2023/24 academic year. One example of this was the roundtable we held to discuss Dr Marie Petersmann's work on "Anthropocene legalities" and the boundaries of climate justice. Another example was an international workshop on "Chronotopes of Law", organized by Dr Floris de Witte and Dr Jacco Bomhoff. But this theme was also central to the written work of several hub colleagues, including on different kinds of "dislocation" in transnational environmental-liability litigation against multinational corporations (Professor Veerle Heyvaert) and on the changing landscape of international sports governance (Dr Jan Zglinski). Further hub-sponsored activities this year included the "EU Lawyers' Assembly", which brought EU lawyers from across the UK to LSE Law School in June 2024 (organised by Dr Zglinski); and a symposium to celebrate the distinguished career of LSE Law School's Emeritus Professor Trevor Hartley in November 2023.

Law, Technology and Society, convened by Professor Andrew Murray

It has been a usually busy year for the Law, Technology and Society Hub. We hosted two visiting research students in the Autumn Term: Manolis Bougiakiotis (from the European University Institute) and Wanjiku Karanja (from Stanford). We have held a number of events including a Digital Accountability Workshop in January 2024 at which regulators from the UK, EU, France, Germany, the Netherlands, and Ireland attended to discuss the new Digital Services Act; a public event on The Oceans Treaty hosted by Dr Siva Thambisetty which included the Head of the UK Maritime Policy Unit and the Sierra Leone Ambassador to the United Nations; an event co-hosted with the IP Kat blog on the Court of Appeal decision in *THJ v Sheridan* at which Lord Justice Arnold (one of the judges in the case) spoke; and a panel on the WHO Pandemic Accord at which Dr Luke McDonagh and Dr Thambisetty spoke. In the summer we hope to host a book launch for Angela Zhang's book *High Wire: How China Regulates Big Tech and Governs Its Economy* (2024, Oxford University Press) as well as a book launch for Professor Pablo Ibáñez Colomo's book *The New EU Competition Law* (2023, Hart Publishing). We also operated a number of student events including a Masterclass on AI in practice with Bruce Braude from Deloitte Legal, a café-style event on the EI AI Act with Professor Alexander Evans (ex-Director Cyber in the Foreign Office), and a joint roundtable discussion on Big Data Law and Society with Professor Nick Couldry of the Department of Media and Communications.

Private Law, convened by Dr Timothy Liau

It has been a busy but exciting and rewarding year for the Private Law Hub!

This year marked the introduction of several new courses on the LLB programme, including full-year courses on LL143 Tort Law (convened by Professor Emmanuel Voyiakis), and LL142 Contract Law (convened by Dr Nick Sage). Led by Dr Sage, the contract team has co-written the first edition our very own bespoke LSE contract law casebook, which has been well-received by the first-year students. A new course on advanced private law for third-year undergraduates, LL302 Restitution for Unjust Enrichment (co-convened by Dr Timothy Liau and Dr Rachel Leow), has also been set up. Students were treated to a guest seminar by a leading barrister, Steven Elliott KC (One Essex Court), who had acted as counsel in many of the leading cases on overpaid taxes in the past two decades.

COMMUNITY

One of the hub's key roles is to coordinate colleagues to consider whether we need to reduce overlaps, eliminate courses, or introduce new courses on our teaching programme. The private law hub had a series of meetings in the Autumn Term to discuss how we could better offer an exciting package of complementary courses both on the LLB and the LLM – I won't spoil things except just to say, watch this space in the coming years!

We have had an eventful programme of external speakers coming to talk to us about their research at the cutting edge of the field, and with colleagues sharing and commenting on each other's work in progress.

In the Autumn Term, we welcomed Professor Paul Miller (Notre Dame Law School), who spoke to us about "The Concept of Personality in Private Law". The paper will be published as a chapter in *Interstitial Private Law* (2024, Oxford University Press). We also had the privilege of hosting Dr Christopher Essert (University of Toronto), who presented to us a chapter of his forthcoming monograph, *Property Law in the Society of Equals* (2024, Oxford University Press), and Professor Robert Stevens (University of Oxford), who spoke to us about his recently published book, *The Laws of Restitution* (2023, Oxford University Press). We also had a book launch of Dr Liau's *Standing in Private Law* (2023, Oxford University Press), organised by Professor Hugh Collins, with Lord Leggatt (Justice of the Supreme Court) as invited chair. Professor Lionel Smith (University of Cambridge) together with two members of the hub, Dr Sage, and Professor Sarah Worthington, acted as commentators and panellists.

In the Winter Term we had two presentations of work in progress by our very own Dr Grigoris Bacharis and Dr Szymon Osmola, on "Bridging the Gap(s): The Importance of Private Law Theory in the EU Context", and Professor Sarah Paterson, on "Corporate Restructuring and Contract Law Theory".

In the Spring Term, we hosted research talks by Professor Andrew Gold (Brookyn Law School), Alexander Georgiou (University of Oxford, All Souls College), Professor Smith (University of Cambridge), Professor Worthington (LSE), and Dr Liau (LSE).

Professor Sarah Paterson, LSE Law School

Hub members were also polled earlier on in the year to have their say on the appointment of a visiting fellow, and we are very much looking forward to welcoming them to our newly refurbished offices in the Winter Term of 2025!

Public International Law, convened by Dr Devika Hovell

There are years in which decades happen. This is how it must feel for many of us watching events around the world this year. In the Public International Law Hub, we have tried to act as a forum for discussion and debate of some of these events and complex issues. We started the academic year in revolutionary fervour. Dr Margot Salomon and Professor Gerry Simpson hosted a conference on "Revolutionary International Law in Revolutionary Times" featuring a cast of international, British-based and, in particular, London-based scholars to present revolutionary (or experimental, maybe even utopian) ideas. Our hub seminar series has been a feast of weekly insights from visiting scholars into a range of issues including digital empires, dollar hegemony, left internationalism, post-hegemonic international law, and climate action by small island developing states. Members of the hub have been busy in their own right. To name but a few activities, Professor Stephen Humphreys wrote in the journal *Nature* on the proposal for eight "safe and just Earth system boundaries"; Dr Chaloka Beyani was nominated to stand for election to the International Court of Justice; Dr Oliver Hailes presented his research on valuation of compensation to the World Bank's International Centre for Settlement of Investment Disputes; and Dr Mona Paulsen gave evidence to the UK Parliament's Joint Committee on the National Security Strategy, relating to the UK's economic security. We bookended the year with another extraordinary conference co-organized by Dr Marie Petersmann on "Underworlds: Sites and Struggles of Global Dis/Ordering".

Public Law and Human Rights, convened by Professor Conor Gearty

The Public Law Hub had a fascinating discussion on Professor Martin Loughlin's latest book *Against Constitutionalism* (2022, Harvard University Press) and followed that with a seminar on Professor Conor Gearty's book *Homeland Insecurity: The Rise and Rise of Global Anti-Terrorism Law* (2024, Polity Press). The hub shared occasional seminars with the Legal and Political Theory Forum, run by Professor Tom Poole. Members of the hub are very much looking forward to their Away Day workshop in June, during which they will discuss work in progress.

Socio-Legal Research, convened by Professor Nicola Lacey

The Socio-Legal Research Hub met on several occasions to discuss research issues of mutual interest. In particular, we had, in the Autumn Term, a very stimulating discussion of the place of concepts such as hope, forgiveness, respect, dignity, and mutuality in law and legal scholarship. We also met to discuss the possibility of collaborative research grant proposals, and the best way to guide our students through socio-legal options in the curriculum. The hub convened, and Dr Sarah Trotter chaired, a very successful seminar by Dr Gauri Pillai (the European University Institute) on her recent work about how best to understand reproductive rights. We also celebrated the publication of Dr Roxana Willis's monograph, *A Precarious Life: Community and Conflict in a Deindustrialised Town* (2023, Oxford University Press) in a panel event. Several hub members also convened LSE and Law School events on a wide range of issues. Throughout the year Dr Marie Petersmann co-convened (with Dr Dimitri Van Den Meerssche [Queen Mary University of London]) a series of seminars on the theme of "Underworlds – Sites and Struggles of Global Dis/Ordering", which concluded with a fabulous workshop held in May. In March, Dr Sarah Trotter co-convened (with Dr Fatima Ahdash [Hamad Bin Khalifa University]) a workshop on "Regulating Parenting". And in April, Dr Abenaa Owusu-Bempah convened an event on "Art Not Evidence: Issues and Implications of Prosecuting Rap", which drew together speakers to discuss the criminalisation of rap music.

Tax, convened by Dr Andy Summers

The Tax Hub welcomed a new member this year, Dr Alex Evans, who joined us as an LSE Fellow, having previously taught and practiced tax law in Australia. Alex's research interests focus on the intersection between tax and environmental economics, and we were delighted that she presented on this topic at one of our Tax Seminars in the Winter Term. The hub has hosted around ten seminars this year, on a wide range of topics spanning from the technical details of measures to curb international corporate tax avoidance, to the fundamental question of what is a "tax"? The seminars continue to attract a strong following from our students on the LLM tax specialism, as well as a lively audience of tax professionals, and academics from across LSE and often beyond. As part of the hub's activities, Dr Eduardo Baistrocchi also led a trip for our LLM students to the OECD, to learn more about their work on tax policy. At the end of the year, we said farewell (but hopefully not goodbye) to our longstanding member Dr Michael Blackwell, who has taken up a full-time role as a judge in the First Tier Tax Tribunal. Our students' fieldtrip next year may be to one of his hearings!

Further information about the hubs is available at: **lse.ac.uk/law/research/research-hubs**

COMMUNITY

Staff Updates

2023/24 New starters

Saiful Siddeky – Events Officer

Giuseppe Capillo – Events Co-ordinator (our former Receptionist and Team Administrator)

Karla Barca Marrero – Events and Student Communications Officer

Jeffrey Franklin – Programme and Teaching Planning Officer

Niamh Sheehan – Finance and Reporting Officer

Paul Sullivan – Law School Manager

Sophia Freckmann – Student Experience and Programme Delivery Officer, LLB

Mike Twyman – Assessment and Regulations Officer

Ayana Brimacombe-Sakey – Exams and Assessment Administrator

Incoming New starters

Nafay Choudhury (our former British Academy Postdoctoral Fellow) starts as Assistant Professor

Liam Davis – LSE Fellow

Anna Lukina – LSE Fellow

Lorna Strong – Associate Programme Director MSc Law and Finance

Diana Kirsch – Legal Clinic Director

Elizabeth Holden – Law School Careers Consultant

Molly Craddock – Law School Co-ordinator

Bethany Glover – Events Co-ordinator

Lucy Rickman – Receptionist and Team Administrator

Leavers

Julia Black – Warden of Nuffield College

Michael Blackwell – Appointed as Judge of the First-tier Tribunal (Tax Chamber)

Orla Lynskey – Professor at UCL

Grigoris Bacharis – Lecturer at Edinburgh

Ciara Hurley – Finished fellowship at LSE

Matthew Rowley – Faculty Manager at Durham University

Laura Carseldine – Returning to New Zealand

Promotions

Floris de Witte – promoted to Professor

Niamh Dunne – promoted to Professor

Cressida Auckland – promoted to Associate Professor

Elizabeth Howell – promoted to Associate Professor

Rachel Leow – promoted to Associate Professor

Luke McDonagh – promoted to Associate Professor

Jan Zglinski – promoted to Associate Professor

Megan Bennett will be taking up the role of Head of Programmes

"Freedom for the thought we hate"? Academic freedom at LSE

In this piece, Dr Andrew Scott considers the concept of academic freedom, what it entails, and wherein lie its limits. He notes the array of recent events, contributions, and other developments across LSE, LSE Law, and beyond that have implicated and invoked thinking on academic freedom.

As Noam Chomsky has often quipped, there has rarely been a time over the past 70 years when a talk entitled "Academic Freedom Under Threat" or "The University in a Time of Crisis" would not have chimed well with the zeitgeist. Legislative intervention and the recent establishment of a number of organisations oriented towards defending academic freedom, however, suggest that we are experiencing a moment of particularly poignant concern. Academics at both the University of London and LSE have been moved to organise, in the former case creating the London Universities' Council for Academic Freedom (LUCAF), while LSE colleagues have established a staff network (LSE Academic Freedom - LSEAF) and proposed a Code of Practice on Academic Freedom to sit alongside the existing Code of Practice on Free Speech.

Academic freedom has multiple dimensions. At its core, the concept – like the privilege afforded to members in Parliament – denotes that the university should be a space in which the norms and practices of open, rational discourse will hold sway to facilitate the pursuit of knowledge and truth. It is central in every aspect of what happens at a university: in teaching, in the conduct and dissemination of research, in contribution to policy development, and in the organisation of public debates with outside speakers. The university is a place where viewpoints borne of prior commitments are exposed and can be contested, and in which very little is "unsayable", but almost everything can be challenged and must be defended. It is not a place where rhetoric is absent, but a site where grandiloquent and beguiling semantics can be identified, unpacked, and belittled. Argument is key. Ideas must survive the furnace, but also then remain subject to further fire-testing anon.

Threats to academic freedom are diffuse. They can be motivated by the desire to defend national security, to safeguard identity-based sensibilities, or to insulate private economic and/or reputational interests. The modalities of constraint are many and varied. They might involve the imposition of imperative and enforceable limitations on speech by external providers of research funding, or the setting of parameters for the "legitimate" expression of ideas – and its counterpoint, the definition and identification of "extremism" – by


MEGAPHONE

Government (for example, through the imposition of the "Prevent duty" on academic institutions and staff). They may coalesce in internal disciplinary action or even coercive legal threats against individuals brought by or in response to relatively powerful outside interests focused on identity politics or reputational integrity. Prominently, it may also comprise public denunciation, the imposition of moral pressure, and calls for "no-platforming" and "uninviting" speakers, or attempts to exercise the "heckler's veto".

A number of events and other forms of engagement have either focused on or raised questions of academic freedom over the past eighteen months. In a powerful valorisation of academic freedom, published on the LSE Higher Education Blog and written in the context of the onset of the Israeli action in Gaza following the outrages on 7 October, Peter Ramsay – law professor and Co-Chair of the LSE Academic Freedom network – insisted that academic freedom is a lodestar and that LSE is nothing if not a "community of argument". He echoed the former President and Vice-Chancellor Minouche Shafik in describing LSE as "a community of people and ideas founded to know the causes of things for the betterment of society", and emphasised that "academic freedom is never more important than when traumatic events arouse strong passions". For Peter, as for many others, argument and the processes by which argument is conducted are the key to critical understanding and the function of the university. He argued that this is a *sine qua non* precisely because "the causes of social things – of the structures, processes, and ideas through which human society is organised and through which it changes and develops – are not necessarily obvious [but are]… complex and multifaceted". Moreover, orthodox theories and explanations will often mask unstated social, economic, or political interests and commitments.

In an event co-hosted with the Department of Social Policy to mark the launch of the LUCAF, LSE Law welcomed Akua Reindorf KC of Cloisters Chambers to speak on academic freedom and the protection from harassment in British universities. Ms Reindorf had previously conducted a review and published a report into the "no-platforming" of two external speakers at the University of Essex on account of their alleged transphobia, her report being widely understood as a "turning point" in debates on sex and gender and "cancel culture" in universities. She had also previously advised the Universities of Oxford, Cambridge, and Warwick on similar matters.

During the session, Ms Reindorf offered a review of the legal framework that underpins academic freedom in the UK: the Equality Act 2010, the Protection from Harassment Act 1997, and the Higher Education (Freedom of Speech) Act 2023 among other legislation. She highlighted that the 2023 Act requires university governing bodies and students' unions to take reasonable steps to protect academic freedom and freedom of speech. Further, while highly critical of "wokeism" and the tendency of contemporary activists to push identity-based concerns in an uncompromising manner, she explained that freedom of speech should be seen as an equalities issue rather than as an enemy and something that threatens the equality, diversity, and inclusion agenda. She noted that freedom of speech and academic freedom are in fact part and parcel of the duties and responsibilities that arise under the Equality Act that universities have a duty to promote and observe. She explained that under the law, "the reality is that it is not a battle between freedom of speech on the one hand and equality, diversity, and inclusion on the other – which is how it is very often characterised – rather, these things are all part of the same ecosystem". She considered that the real "battle" was that "between freedom of speech… and the version of equality, diversity, and inclusion that is promoted by contemporary activists, which is not the law".

There are, of necessity, limits to academic freedom and inquiry, as there are to freedom of speech. There will also be a range of views as to quite where those limits lie on any given matter. Nevertheless, the practice of merely shouting down speakers at events – crudely exercising the "heckler's veto" – is difficult to square with any notion of academic freedom and might be expected to warrant a robust response from event organisers. Short of such interruptions, however, lies a range of more or less legitimate forms of expressive conduct that themselves are worthy of respect and recognition. Speech is not a cloistered virtue. Peaceful protests outside venues, silent walk-outs – such as occurred at an LSE event in May of last year when the journalist Hannah Barnes spoke on themes related to her acclaimed book *Time to Think: The Inside Story of the Collapse of the Tavistock's Gender Service for Children* – and salient and probing questioning, respect and valorise the spirit of inquiry even while "volubly" rejecting the premises of speakers' arguments.

Other practices, however, seek to "wear the clothes" of legitimacy, while being in fact oriented towards the frustration of the freedom of others. Tactics such as taking up limited space at popular events so that those who might attend with an ear for learning are excluded, or reiterating statements in the form of "questions" with the intent of stalling proceedings and filibustering available time are performative, but hardly discursive practices. Their proponents merely lack the courage of the up-front heckler's conviction.

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So, at what point do we find the limits of the acceptable? The law can offer a passable guide in this respect. It will rarely, if ever, be objectively reasonable, let alone proportionate, for a bona fide contribution, however distasteful or provocative, to be obviated by governing authorities or attendees at events. Speech is not violence, although speech can cause harm. Metaphorical "safety" is not a goal: "we don't coddle emotions, we wrestle with ideas". As Professor Arif Ahmed, the Government's recently appointed "free speech tsar", has explained:

> "it is essential that we learn to tolerate views, and the expression of views, that we might find wrong-headed and even appalling… the freedom to offend is a fundamental right, and… any disagreement over political or social questions that actually matters to people is likely to cause some of them to feel offence. Shutting down debate on that basis is not going to improve things for anyone."

This requires a recognition and acceptance that "words are not a kind of violence… they are the alternative to violence; and if we as a society forget this then we as a society are finished".

The "unsayable" (that speech that must be seen as standing outside the norms of academic discourse and met with sanction) is limited to the unlawful: false and defamatory imputations, incitement to violence, harassment. These things we have no difficulty in describing as "beyond the pale" (although in parliamentary discourse even defamation is permissible, while in academia it can sometimes be protected by a good faith privilege). Most controversy, upset and anger arise in the area of "offensive" speech. Ultimately though, as Justice Holmes of the US Supreme Court once put it, we must even afford "freedom for the thought we hate". Just sometimes we might learn something from it; more often we are afforded the opportunity to affirm for ourselves and for others quite how wrong our opponents might be.

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Designing the mural and inspiring students: a conversation with Sally Kelly

The student common room, which Dr Andrew Scott wrote about in last year's issue of *Ratio*, is a light and bright room at the heart of which is a beautiful botanical mural painted by Sally Kelly. Alexandra Klegg spoke with Sally to find out more about her creative process and the inspiration behind the mural.

Alexandra Klegg (AK): Can you tell us about your background and how you first became interested in art?

Sally Kelly (SK): I grew up on the Isle of Wight and remember childhood as a very happy time of being outdoors, on boats, and never being more than a walk away from a beach. My father worked as a Trinity House Pilot, having retired as a Captain in the Merchant Navy, and my mother was a landscape painter. As a young child I was always encouraged to be creative and there were lots of inspiring books and art materials waiting to be taken advantage of! My mother was also very interested in textiles and created some beautiful quilts which encouraged my passion for fabric. It was a very happy time.

AK: How has your style evolved over time, and what factors have influenced this evolution?

SK: I studied an art foundation course at my local art college to decide what I wanted to specialise in. With my passion for colour, floral paintings, and love of fabric it became obvious that printed textile design was the right choice. I moved to London and studied a degree at Central Saint Martins where I spent three joyful years developing my love of painting, use of colour, and printing skills.

After graduating I set my sights on Liberty London, the destination for all aspiring textile designers. Liberty was always a company that I loved, and its flagship store on Regent Street was full of inspiration – an emporium of beauty and a warren of wood-panelled rooms housing treasures from the arts and crafts movement, William Morris, Archibald Knox, the oriental department, and a rich collection of products from artists and craftsmen. It was a destination point for the unique. Joining Liberty was like my further education and a constant visual inspiration.

After the freedom of art school, Liberty taught me to understand a commercial environment, learn to design to a brief and appeal to a diverse audience. I worked my way up to being a creative buyer for the store, a product designer, and then into the wonderful textile design studio where I created collections of fabrics for the brand. We had access to an incredible archive of designs and historical materials about the store which became a great inspiration for my work whilst at Liberty and beyond. Over time I would say that I am still very much influenced by my years with Liberty, my appreciation of the work of the arts and crafts movement, and the discipline of design paired with the vibrancy and beauty of the natural world. As an artist I strive to keep refining my drawing skills and improve with daily practice.

AK: Could you walk us through your creative process from idea to completion of a piece?

SK: My creative practice always begins with an idea or a brief from a client. Firstly, I like to gather inspiration and create a mood board – one for colour and one for themes. I am obsessive about photographing plants, leaves, trees, flowers, and little creatures. I also love to look at high fashion for inspiration on colour. These all get stored on my computer and drawn upon when starting a new project. I also like to fill my home with fresh flowers to paint and be inspired by. I collect colours in the form of yarns, fabrics, wrappers, paint cards etc. Colour is such a crucial part of the

joy of my work and really sets the tone of the piece. From here I will start sketching on paper and form ideas. Sometimes with a painting I will miss this step and just go straight to canvas, sketching out the idea and then adding paint. The end result is always a surprise in this case, as you just go with the moment – it's like a joyful meditative practice. With a fabric collection there is more discipline involved. Once I have created the sketches/motifs I am happy with, I will scan them into my Mac and then work digitally to colour and compose the pieces. I love combining analogue and digital for my textile collections as I have to put designs into repeat and try lots of different colourways.

AK: Do you have any rituals or routines that help you get into a creative mindset? How do you know when a piece is finished?

SK: I find it really hard to paint/be creative if I am feeling stressed or have too many distractions. So I like to work alone, but do find that listening to music or podcasts helps me to focus and keeps me still for long periods. I am usually flitting between many different things but am able to concentrate for long periods of time on a piece if the environment is calm. I find that my best botanical work is created when I'm away from London, on the Isle of Wight in a quieter and more natural environment. Knowing when to put the brushes down is sometimes difficult to judge with a painting which is created in oils or acrylics, as you can just keep layering. When I'm unsure, I will stop working on a piece, wait a few days and then look at it with fresh eyes. Sometimes I think that if time wasn't a constraint, you could just keep going, refining, perfecting indefinitely. I also like to get other people's opinion on my work and have a small group of other artists whose opinion I value, and we often critique each other's work.

AK: What themes or motifs do you often explore in your artwork, and why are they significant to you? What types of art do you express them through?

SK: The motifs I love to use on my paintings and designs are very decorative leaves, abstract flowers, insects, dragonflies, turbulent seas, astral skies, and setting suns. I love the interaction between the different elements. I like my paintings to read like a story and for the viewer to keep discovering new hidden elements like beetles climbing a leaf or a bee enjoying the nectar of a beautiful flower. Having worked for Liberty, I also love the paisley motif and its beautiful decorative organic flow. I was enormously inspired by the incredibly intricate hand-painted paisleys from the eighteenth century housed in the Liberty archive. Some of these took the artist a year to paint with incredibly small and detailed brush strokes. I just love the idea of having the time and patience to work on one really incredible piece over such a long period of time.

AK: Can you share a particularly rewarding or memorable experience that you've had as an artist?

SK: Some of my most precious memories of past projects include painting on a 15-foot canvas with seven other artists on a beach in Ibiza, painting a design for Liberty in the lush Abbey gardens of *Tresco*, painting a life-sized lion cub for a charity street parade in Windsor, and lastly creating a painted textile design for HRH Prince Charles's (at the time) Highgrove Estate. I had a private tour of the gardens and was commissioned to paint the wildflower meadow. The design was called *Miriam* and they created a collection of products which were sold in the shop in the grounds.

AK: How do you engage with your audience, and what role does the audience play in your creative process?

SK: I like to engage with my audience by exhibiting my work in exhibitions – some solo and some as part of a collective. It is always interesting to get feedback and hear why people engage with my work, what they like, and what it is that draws them into my world. I also love the contrasting side of my practice when I am working on a design brief with a client. This is more disciplined and often makes you work in fresh new ways, so you keep moving forward. I like to have my work critiqued as it helps me to look with fresh eyes and learn. I love it when you develop an inspiring relationship with a client and feel that you have both contributed to the creative process through the sharing of ideas. It is great to make a new connection and to be able to share a memory of an enjoyable creative project of which you are both proud.

AK: Could you tell us about your project for LSE Law School? And especially about the process of creating the mural?

SK: I would have to say that my experience working with LSE Law School has been really rewarding and memorable. Initially, when you approached me and showed me the pictures of the space, I was really unsure that I was the right artist for the job. I thought something more architectural and abstract would be more fitting in the environment. Reflecting on the purpose of the room and knowing it was a space for students to relax and enjoy spending time in I decided that the introduction of more organic elements and an added cosiness was exactly what the space was crying out for. Working with such a prestigious institution and having the responsibility of filling a wall with a hand-painted mural really pushed me out of my comfort zone. As I like to work quietly without interruption the idea of having to create something in a room full of people filled me with dread. Once I established that I was able to do it during the summer break I relaxed into the idea and enjoyed the process. It was a pleasure to see the transformation of the space from a modern,

rather stark academic environment to a more nurturing space with colourful paintings, the botanical mural, lots of plants and the addition of cushions in my designs. I hope it brings some of the warmth of home and helps to create a space for the students where they want to enjoy spending time. I love to think that I have left my mark and that it will be there (hopefully) for years to come to be enjoyed and remembered by the students passing through.

AK: What upcoming projects or exhibitions are you excited about?

SK: My next exciting endeavour for this year is creating a collection of wallpapers. Having been asked consistently whether my artworks and designs are available as such, I finally have the time to develop this.

AK: Looking back on your artistic journey, what advice would you give to aspiring artists?

SK: My advice to aspiring artists would be to practise your art on a daily basis – your skills will never stop improving like any art form. Don't try to copy someone else's style. Your own will always be your best. Create time and space for a clear head. Be disciplined with your time. Always push ideas forward and don't keep reproducing the same work. Use lots of different mediums and tools for the job. Constantly inspire yourself – never stop being observant, feed your soul, visit exhibitions, and be where you feel inspired. Eat delicious food, drink lovely wine (if you like to), and surround yourself with inspiring, supportive, and lovely people.

AK: Amazing Sally! Thank you so much!

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Underworld Ecologies

In this piece, Dr Marie Petersmann offers readers a glimpse into the fabulous exhibition on *Underworld Ecologies* that she curated with Dr Siva Thambisetty, Alexandra Klegg, and María Montero Sierra and that was held at the LSE Atrium Gallery during the Spring Term of 2024.

> “The function of art is to do more than tell it like it is – it’s to imagine what is possible.”
>
> bell hooks, *Outlaw Culture: Resisting Representations* (2012)

Artistic interventions bear transformative power by enacting embodied and affective responses to issues that cannot always be represented or framed with the linguistic and conceptual tools used to resist and refuse long lineages and legacies of socio-ecological injustice. This creative potential can achieve something generative that history, theory, and law cannot. Art moves and mobilises people differently.

From 7 May to 21 June 2024, the LSE Atrium Gallery hosted an exhibition on Underworld Ecologies curated by Dr Marie Petersmann, Dr Siva Thambisetty, Alexandra Klegg, and María Montero Sierra. Three artistic and scientific projects were brought into conversation to explore how different modes of extraction underpin activities that are taking place in remote spaces across oceans and lands. The remoteness of these places implies that these activities remain mostly unmapped, ungoverned, and unseen. The exhibition – which formed part of the broader *Underworlds: Sites and Struggles of Global Dis/Ordering* series of events (see pages … to …) – served as a portal to delve into and account for the socio-ecological impacts of extractivist modes of capture and control, in relation both to material

elements such as critical raw minerals, fossil fuels, soundwaves, and organisms living in the abyssal plain of the deep seabed, as well as immaterial elements such as the knowledge produced from such processes, itself susceptible to commodification.

The exhibition showcased an audio-video installation by Imani Jacqueline Brown, an artist, activist, and writer originally from the US and now based in London. Brown's work delves into was she calls the "*continuum of extractivism*", a concept that links settler-colonial genocide and slavery to fossil fuel production and climate change, thereby exposing different layers of segregation and extractivism of Black bodies and lands. Her film, *The Remote Sensation of Disintegration*, was featured in the exhibition and offers a counter-mapping of the colonial and ecological violence inflicted by the fossil fuel industry in Louisiana's "Cancer Alley", where she grew up. The installation included an experimental film accompanied by a photographic essay, presenting fragments from Brown's research trips and visits to Louisiana and Minnesota. It blends remote sensing technology with ecological, personal, and ancestral narratives.

The exhibition featured another video installation titled Into the Abyss, based on films and photographs taken during a 2-month exploratory research trip in the Clarion-Clipperton Zone in the Pacific by Dr Adrian Glover (who leads the Deep-Sea Systematics and Ecology Group at the Natural History Museum in London) and Dr Daniel Jones (head of the Ocean Biogeosciences Research Group at the National Oceanography Centre). The exhibition showcased – for the first time to the public – newly discovered species and seafloor samples brought back from their expedition which they sampled from the "abyssal plain" that lies between 4,000 to 6,000 meters deep in the sea. The "SMARTEX" exhibition was funded by the UK Government through the Natural Environment Research Council. This unique collaboration between expedition leaders from UK institutions at the forefront of deep sea marine research

and LSE Law School celebrates the achievement of a new Treaty on Biodiversity Beyond National Jurisdiction at the UN. You can read more about Dr Thambisetty's work on the Treaty on page 106.

Metal-rich nodules are common in some areas of these abyssal plains, with varying concentrations of metals, including manganese, iron, nickel, cobalt, and copper. But abyssal plains are also believed to be major reservoirs of biodiversity, though little is known about the species and organisms that survive at this depth.

As the deep ocean is the world's largest "new resource frontier" and is currently being actively explored for marine mineral extraction, new hydrocarbon industries, and deep-water fisheries, Glover and Jones' work aims to studying the potential impact of such activities and increase the scientific understanding of marine biology.

Finally, in two large display cases, these multi-million-years old nodules and specimens were placed next to more recent Sound Fossils – or fossils of sound created by Dominique Koch, an artist based in Basel (Switzerland) whose work explores the materiality of sound. Koch developed an experimental glass-blowing method that literally fossilises the movement of soundwaves into physical glass objects. The air pressure generated by the physical force of soundwaves is channelled and used to blow molten glass, creating translucid materialised "sound fossils".

But the connections between Glover and Koch's work goes one step further: many of the abyssal animal species that are contained in the jars displayed throughout the exhibition are literally made of glass. They are, more specifically, "hexactinellid glass sponges" whose tissues contain glass-like particles made of silica, thereby offering unexpected connections to the glass "sound fossils" they shared the space with.

Last but not least, the exhibition also featured an audio installation titled terratones.fm, created by artists Dominique Koch (visual arts) and Tobias Koch (musician and composer). It consisted in a recording of the "sonic ecologies" of La Becque (Switzerland). The sound composition assembles bioacoustics collected from microphones – including hydrophones, soil microphones, geophones, infra- and ultra-sound microphones – to sense the polyphonic environments they lived in. The composition also includes interviews with Eduardo Kohn, Salomé Voegelin, and Jeremy Narby on practices and philosophies of "deep listening".

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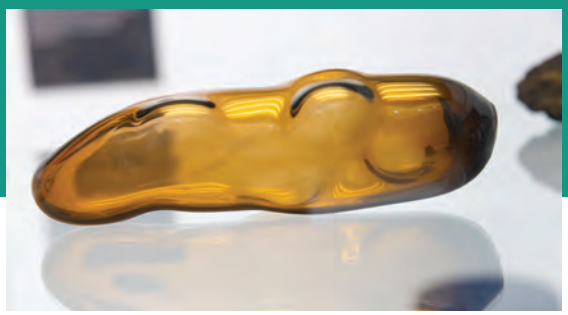

[Larger painting]: "Evening painting" Oil on canvas 2017
[Smaller painting]: "Abstract painting with nickel yellow" Oil on Canvas 2015

Art in the workplace

In 2024, Professor Nicola Lacey very generously donated two paintings by Oliver Soskice to the Law School. Here, Professor Lacey reflects on the paintings that she chose and the inspiration behind Soskice's work.

When I left LSE in 2010 to embark on a three-year sojourn at the other end of the M40 (!), as a token of my gratitude to the department, I established an annual prize in criminal law. When individual prizes were replaced by the Dean's List, I started to think about how else I could contribute. Inspired by the wonderful renovation of the Law School's floors of the Cheng Kin Ku building, and in particular by Sally Kelly's designs for the new student common room, I spoke to David Kershaw and to Alexandra Klegg, who was leading the project of adding photographs and works of art to our new space, about whether they would be interested in a gift of some paintings. My brother-in-law, Oliver Soskice, had been working on some large abstract oil paintings which I thought might work well in the building. To my delight, David and Alexandra were enthusiastic: we selected two paintings, and they will hang outside the 6th floor common room.

Oliver Soskice was born in 1947. He comes from a family of painters, the best known of whom was the pre-Raphaelite Ford Madox Brown, whose daughters Catherine and Lucy were also significant painters. An early influence was the painter and critic Adrian Stokes, who lived next door (and Oliver's still life paintings often feature ceramics made by Stokes' wife, potter Ann Stokes). He read English literature at Trinity Hall, Cambridge and after several years in publishing has painted full time since 1972. He lived in Oxford from 1974 to 1988, and was a founder member of the Oxford Artists' Group. Since 1988 he has lived and worked in Cambridge.

There are both personal and legal links which make it particularly nice to have Oliver's work in the School. Oliver's brother, David Soskice, is School Professor Emeritus of Politics and Economics (and, incidentally, my husband!). Oliver's father, Frank Soskice, was an international lawyer who *inter alia* represented the UK in the *Corfu Channel Case* (1949). He served as Solicitor-General and then Attorney-General in the Attlee government, and as Home Secretary in the Wilson government. In that role, he presided over the suspension of capital punishment, as well as the enactment of early legislation on race discrimination. His importance in securing the former is explored in David Downes', Tim

Oliver Soskice

Newburn's, and Paul Rock's recent *Official History of Criminal Justice in England and Wales*; while his views on the latter are examined in alumna Iyiola Solanke, Jacques Delors Professor of European Union Law at Oxford's, monograph *Making Anti-Racial Discrimination Law: A Comparative History of Social Action and Anti-Racial Discrimination Law* (2009, Routledge).

Oliver's work includes still life paintings, landscapes and, most recently, abstracts like the ones hanging in the Law School. As Oliver describes their evolution and inspiration,

> The landscape paintings are derived from time spent painting and drawing in the flat countryside around Cambridge where I live and the abstract paintings follow on from the landscapes; they are not directly descriptive of the elements of landscape but should recall and suggest such things as the ground, the hedgerows, distant lines of trees, clouds and their shadows.
>
> Indeed rather than 'things', they are more bound up with the light of different times of day and the stages of the year; the passage of daylight through foliage, across walls and the muted reflection of the sky in the fields. As a rough generalisation the outer and lower parts of the paintings tend to belong to what is near – sometimes through a cat's-cradle of forms rising and falling at the edges. The central and upper parts discover more of aerial depth, realised through simpler, un-emphatic shapes: silvery translucent shapes where dry, pale cobalt greens, greys and dulled blue areas trace echoes of the sky.
>
> These works are 'abstract' in the sense of being drawn from the visible word, even built around the depth of landscape…They try to encourage slow and gradual looking, with images that harbour a luminosity.

A further quotation, particularly relating to still life paintings, but of more general application, encapsulates the best rationale for including beautiful works of art in the workplace:

> There is a long tradition of finding a rare beauty in things to be found in the ordinary run of life. I think of still life in terms of the depth of transparent air that envelops objects. They are typically within bodily reach, but already in an 'estuary' between the shifting perspectives arising from our own movements and the still depth around the things themselves. The painterly way of looking favours aerial spatiality as much as the solid things, and slows down seeing from its usual hurried glancing at the world to a more stable attention.

My hope is that, as we rush between classes, meetings and writing deadlines, these paintings will provide a reason to pause and reflect on the beauty of the world around us.

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