

# SPECTACULAR LAW

LAW, LITERATURE AND THE HUMANITIES ASSOCIATION OF AUSTRALASIA CONFERENCE 2016

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8-10 DECEMBER 2016

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# 1. Conference Programme

Venue: Cheng Yu Tung Tower, HKU

Dec 8 (Thu)			Dec 9 (Fri)					Dec 10 (Sat)				
9:30-12:30pm	Half-day Postgraduate Workshop Venue: Alumni Room (A901)		9:30-11:00am	Parallel Session 2				10:00-11:30 am	Parallel Session 5			
				2A A310	2B A311	2C A320	2D A321		5A A310	5B A311	5C A320	5D A321
			11:00-11:30am	Coffee Break Venue: 11/F ACR				11:30-12:00nn	Coffee Break Venue: 1/F Podium			
Commencement of Conference Programme			11:30-1:00pm	Plenary 2 (Law and Film Roundtable) Venue: 11/F ACR				12:00-1:30pm	Parallel Session 6			
									6A A310	6B A311	6C A320	6D A321
12:00-2:00pm 1:45pm	Registration and Coffee Venue: 1/F Podium Welcoming Address		1:00-2:30pm	Lunch & AGM Venue: 1/F Podium & 2/F Moot Court				1:30-2:30pm	Lunch Venue: 1/F Podium			
2:00-4:00pm	Parallel Session 1		2:30-4:00pm	Parallel Session 3				2:30-4:00pm	Plenary 3 (Christine Black) Venue: 11/F ACR			
	1A A310	1B A311		1C A320	1D A321	3A A310	3B A311					
4:00-4:30pm	Coffee Break Venue: 11/F ACR		4:00-4:30pm	Coffee Break Venue: 1/F Podium				4:00-4:30pm	Closing Venue: 11/F ACR			
4:30-6:00pm	Plenary 1 (Laurent de Sutter) Venue: 11/F ACR		4:30-6:00pm	Parallel Session 4								
				4A A310	4B A311	4C A320	4D A321					
6:00pm	Drinks Reception Venue: 1/F Podium		6:30pm	Shuttle bus leaves HKU for Conference Dinner								
Evening free			7:00pm	Conference Dinner Venue: Club Lusitano								

## 2. Panel List for Parallel Sessions and Plenaries

### Key for Venues:

A310, A311, A320, A321: Room 310, 311, 320, 321 (3/F, Cheng Yu Tung Tower)

ACR: Academic Conference Room (11/F, Cheng Yu Tung Tower)

Time (Venue)	Session	Theme	Name, Affiliation & Title
Dec 8 2:00-4:00pm (A310)	1A	The Judge, the Bench, and the Wardrobe: The Performance of Legal Power Chair: Tracey Coleman	Ms. Alice Richardson, Australian National University <b>A Brush with the Law: Artworks of Sir Redmond Barry and the Murder Trial of Bushranger Ned Kelly</b>
			Ms. Tracey Coleman, University of South Australia <b>The Judicial Bench, Focal Point of the Court Room Spectacle</b>
			Ms. Clare Sandford-Couch, Northumbria University <b>Fashioning Legal and Professional Identity in Late-Medieval Northern Italy</b>
Dec 8 2:00-4:00pm (A311)	1B	Law, Language and Semiotics Chair: Janny Leung	Prof. Edward Finegan, University of Southern California <b>Adverbial Persuasion in the U.S. Supreme Court Opinions of Antonin Scalia</b>
			Prof. David Tan, Faculty of Law, National University of Singapore <b>Semiotics and the Spectacle of Transformation in Copyright Law</b>
			Dr. Eva Ng, Faculty of Arts, University of Hong Kong <b>Language and Disadvantage Before the Law: Expert Witnesses as Second Language Speakers in the Hong Kong Courtroom</b>
			Ms. Lindsay Head, Louisiana State University <b>Entangled Evolutions of Language and Law: A Spectacle of Singular They</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
Dec 8 2:00-4:00pm (A320)	1C	Law and Governance Chair: Olivia Barr	Dr. Gavin Keeney, CEPT University <b>Chris Marker's Archive</b>
			Dr. Ida Koivisto, University of Helsinki / European University Institute <b>Six Paradoxes of Transparency</b>
			Mr. Edward Epstein, Troutman Sanders LLP <b>"Chuangkou (In)Justice": OTC Justice in China's Myriad Bureaucracies</b>
			Prof. Jeffrey Thomas, University of Missouri - Kansas City School of Law <b>Occupy Central and the Rule of Law: what does this spectacular event tell us about rule of law with Chinese characteristics?</b>
Dec 8 2:00-4:00pm (A321)	1D	Law, Literature and Race Chair: Marett Leiboff	Ms. Senjuti Chakraborti, School of Arts/School of Law, Birkbeck College, University of London <b>On the Normality of Race and Racism: Observations on the Conjunction of 'Law and Literature'</b>
			Ms. Venus Chiu Ying Tsang, University of Oxford <b>Literary Justice: Toni Morrison's Fictional Narratives of Law</b>
			Mr. Sunishth Goyal, NALSAR University of Law <b>Are "Law and Literature" as Close to an 'Ouroboros' as Any "Law ands.." Can Ever Hope to Be?</b>
			Dr. James McBride, New York University <b>Go Set a Watchman: Atticus, Technology, and the Spectacle of Racism</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
Dec 8 4:30-6:00pm (11/F ACR)		Plenary 1	Prof. Laurent de Sutter, Professor of Legal Theory, Vrije Universiteit Brussels <b>The Poetics of Police: Legal Life Lessons from Inspecteur Jacques Clouseau</b>
Dec 9 9:30-11:00am (A310)	2A	Law and Humanities in Dissent Chair: Daniel Matthews	Dr. Daniel Matthews, University of Hong Kong <b>After Sovereignty in the City: Towards a Jurisprudence of the Street</b>
			Dr. Illan Wall, University of Warwick <b>Clearance</b>
			Dr. Julen Etxabe, University of Helsinki <b>The Politics of Language</b>
Dec 9 9:30-11:00am (A311)	2B	Law and Literature Chair: Cassandra Sharp	Mr. James Gray, Northumbria University <b>J G Ballard: Law and the Built Environment</b>
			Dr. Marett Leiboff, University of Wollongong <b>'Stir Up the Australian Youth to Merriment': A Midsummer Night's Dream, Summer 1989-1990 (Sydney, Australia) and the Theatrical Transmutability of Law's Texts</b>
			Mr. Henry Kha, University of Queensland <b>Fall of the Matrimonial Causes Act 1857: Divorce Law in Interwar British Literature</b>
Dec 9 9:30-11:00am (A320)	2C	Psychoanalysis and Visuality Chair: Maria Elander	Ms. Ashley Pearson, Griffith University <b>Games Playing Players : The Legal Subject of Persona 4</b>
			Dr. Thomas Giddens, St Mary's University, Twickenham, London <b>Text, Image and the Unconscious: How to Interpret Forever</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
			Prof. Desmond Manderson, Australian National University <b>Colonialism's Primal Scene</b>
Dec 9 9:30-11:00am (A321)	2D	Popular Culture and Social Change Chair: Trish Luker	Prof. Karen Petroski, Saint Louis University School of Law <b>Self-Fashioning as Spectacle: Reading the Reactions to Obergefell</b>
			Dr. Kieran Tranter, Griffith Law School, Griffith University <b>To Care for the Becoming of a Technologicalized World - the Posthuman Legal Subject of Xenogenesis</b>
			Dr. Harriet Samuels, University of Westminster <b>Tum Ti Tum Ti Tum Tum: The Archers, the Radio, Violence Against Women and Changing the World at Tea-Time</b>
Dec 9 11:30-1:00pm (11/F ACR)		Plenary 2 Chair: William MacNeil	Prof. William MacNeil, Dean and Head of the School of Law and Justice, Southern Cross University Ms. Ann Hui, Film Director Prof. Gina Marchetti, University of Hong Kong Dr. Marco Wan, University of Hong Kong <b>Law and Film Roundtable</b>
Dec 9 2:30-4:00pm (A310)	3A	Visualizing Trials and Punishments Chair: Desmond Manderson	Dr. Maria Elander, La Trobe Law School, La Trobe University <b>Viewing Law, Experiencing Justice?</b>
			Prof. Yvonne Jewkes, University of Brighton <b>The Modern Architecture of Incarceration: From Spectacular Statement of Sovereign Power to (An)aesthetic Symbol of Public Indifference</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
			Mr. Rafael Van Damme, University of Leuven, Belgium <b>The Ban on Spectacular Punishment and the Demise of the Ban as Principle of Legal Invisibility in the History of European Criminal Law</b>
Dec 9 2:30-4:00pm (A311)	3B	The Presence of the Past Chair: Scott Veitch	Prof. Christopher Tomlins, Jurisprudence and Social Policy Program, University of California Berkeley <b>Why Law's Objects Do Not Disappear: On History as Remainder</b>
			Prof. Rostam J. Neuwirth, University of Macau <b>Toward a Global Mnemonic Law</b>
			Dr. Richard Mohr, Social Research, Policy & Planning <b>Law's Own Devices: Images and the Force of Time</b>
Dec 9 2:30-4:00pm (A320)	3C	Law and the Body Chair: Marco Wan	Dr. Ioannis Ziogas, Durham University, UK <b>Phryne Exposed: Divine Beauty and Sovereign Desire</b>
			Prof. Jill Marshall, Leicester Law School, University of Leicester <b>Call The Midwife: Law, Love and Care in Secret Births</b>
			Dr. Kimberly Wei Yi Tao, The Hong Kong Polytechnic University, Hong Kong Community College <b>Constructing and Contemplating the "Ordinariness" of the Word "Woman" in Hong Kong Transgender Marriage Case W v Registrar of Marriages</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
Dec 9 2:30-4:00pm (A321)	3D	Law's Dramatic Spaces – (Anti-)spectacular Modes of Jurisdiction: The Raft, the Island, the Restaurant and the Garden Chair: Frans-Willem Korsten	Ms. Tessa de Zeeuw, Leiden University Centre for the Arts in Society <b>In The Garden of International Criminal Law</b>
			Prof. Frans-Willem Korsten, Leiden University Centre for the Arts in Society <b>Rituals of Consumption and Consummation: The Restaurant as a Spectacular, Intimate or Collective Legal Space</b>
			Mr. Gerlov van Engelenhoven, University of Giessen <b>Adat, Silence and the Idea of an Island</b>
Dec 9 4:30-6:00pm (A310)	4A	Author Meets Readers: C. F. Black – A Mosaic of Indigenous Legal Thought: Legendary Tales and Other Writings (Abingdon: Routledge, 2017) Chair: Shaun McVeigh	Prof. Shaun McVeigh, Melbourne Law School, University of Melbourne Dr. Olivia Barr, Melbourne Law School, University of Melbourne Dr. Christine Black, Adjunct Senior Research Fellow, Griffith Center for Coastal Management, Griffith University
Dec 9 4:30-6:00pm (A311)	4B	The Visible and the Invisible Chair: Timothy Peters	Dr. Christopher Dent, School of Law, Murdoch University <b>Road Safety and the Invisibility of its Regulation</b>
			Dr. Benjamin Authers, University of Canberra <b>Rights and the (Un)Observable Body in H.G. Wells's The Invisible Man</b>
			Dr. Edwin Bikundo, Griffith Law School, Griffith University <b>Artificial Islands and Artificial Highways: The Warship as a Visible Instrument of Customary International Law</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
Dec 9 4:30-6:00pm (A320)	4C	Traumatic Pasts Chair: Penny Crofts	Ms. Karen Crawley, Griffith Law School, Griffith University <b>Censorship and the Necessity of Repressing Childhood Trauma in Martin McDonagh's The Pillowman</b>
			Dr. Dave McDonald, School of Social and Political Sciences, University of Melbourne <b>Reckoning with the Celluloid Paedophile: Transitions in the Representation of Child Sex Offenders</b>
			Prof. Aeyal Gross, Tel-Aviv University, & SOAS <b>Spectacular Transitional Justice on Film: Telling a Story with a Good Ending?</b>
Dec 9 4:30-6:00pm (A321)	4D	New Technologies Chair: Kieran Tranter	Ms. Hea Sue Kim, Goldsmiths, University of London <b>Hana-Won, National Security Law, and Cosmetic Surgery: Beyond Biopolitics in South Korea</b>
			Dr. Trish Luker, University of Technology Sydney <b>What is a Document? Evidentiary Challenges in the Digital Age</b>
			Ms. Jiangfan Wang, University of Macau <b>Justice and New Technology: A New Era of Re-Examination? – An Example of the Access and Benefit-Sharing System for Genetic Resources</b>
Dec 10 10:00-11:30am (A310)	5A	Representations of Judges Chair: Janny Leung	Mr. Lung-Lung Hu, Dalarna University <b>Legal Aspects in Judge Dee – Challenging the Divine Justice</b>
			Prof. Margaret Thornton, Australian National University <b>Women Judges reflected in Ian McEwan's The Children Act</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
			Prof. Liping Zhang, Nanjing University of Science and Technology <b>Impartial Judges as “Blue Sky”: Linguistic Study of the Public Perception of Traditional Chinese Law</b>
Dec 10 10:00-11:30am (A311)	5B	Citizens and Others Chair: Timothy Peters	Ms. Priya Mathur, Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi, India <b>Citizenship, Rights and Invisible Power of Indian Law: A Case Study of Section 377 of Indian Penal Code and Restitution of Conjugal Rights</b>
			Ms. Justine Poon, Australian National University <b>Surface and the Unseen in Judgements on Sovereign Power in Australian Refugee Law</b>
			Dr. Anthea Vogl, University of Technology Sydney <b>Performing Sovereignty in the Pacific: Australia’s Offshoring of ‘Irregular’ Migration on Nauru</b>
Dec 10 10:00-11:30am (A320)	5C	Images, Law and Place Chair: Daniel Matthews	Dr. Olivia Barr, Melbourne Law School <b>40,000 Years is a Long Long Time'</b>
			Prof. Shaun McVeigh, Melbourne Law School, University of Melbourne <b>Minor Jurisprudents: Sightseeing</b>
			Ms. Agnes Tam, Westfaelische Wilhelms-Universitaet Muenster <b>Does the City-Never-Sleeps Dream? A Study of Visual Representation of Post-'97 Hong Kong</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
Dec 10 10:00-11:30am (A321)	5D	Analysis, Witness, and Judgement: A Melbourne People's Tribunal Chair: Philip Morrissey	Mr. Philip Morrissey, Aboriginal Humanities Project
			Dr. Marion Campbell, Aboriginal Humanities Project
Dec 10 12:00-1:30pm (A310)	6A	Political Dissent and Revolution Chair: Scott Veitch	Mr. Denis De Castro Halis, Faculty of Law, University of Macau <b>"Dissent" and its Relation with the Notions of Innovation and Diversity</b>
			Dr. Timothy Peters, Griffith Law School, Griffith University <b>A Tale of Two Gothams: Revolution, Sacrifice and the Rule of Law in The Dark Knight Rises</b>
			Prof. Wayne Morrison, School of Law, Queen Mary University of London <b>Bangladesh, war crimes trials, street protests and Laws' Spectacular: Note on the Presences and Non-Presences of Law and Justice</b>
Dec 10 12:00-1:30pm (A311)	6B	Crime and Criminal Justice Chair: Karen Crawley	Ms. Felicity Gerry QC, Charles Darwin University <b>R v Jogee; R v Ruddock 2016: The Last Gasp of Colonialism?</b>
			Dr. Penny Crofts, University of Technology Sydney <b>Idyllic Murder Mysteries</b>
			Prof. Elisabeth McDonald, University of Canterbury <b>Law Behind Closed Doors: Rape Mythology and Rules of Evidence in Rape Trials</b>

Time (Venue)	Session	Theme	Name, Affiliation & Title
Dec 10 12:00-1:30pm (A320)	6C	Law and Film Chair: Marco Wan	Prof. William MacNeil, Dean and Head of the School of Law and Justice, Southern Cross University <b>The Litigating Dead: Zombie Jurisprudence in The Walking Dead, World War Z and The Rising.</b>
			Dr. Anita Lam, York University <b>Invisible Identities and Aural Revelations: The Undercover Force of Law in Gangster Films</b>
			Dr. Monica Lopez Lerma, Reed College <b>The Gaze of the Law: Immigration and Terrorism</b>
Dec 10 12:00-1:30pm (A321)	6D	The Digital Spectacle of Law: The Discourses of Law and Justice in Social Media Chair: Cassandra Sharp	Dr. Cassandra Sharp, University of Wollongong <b>Emotion and Law in the Spectacle of Social Media</b>
			Dr. Kieran Tranter, Griffith Law School, Griffith University <b>Carl Schmitt's Die Buribunken as the Jurisprudence of the Social Media Subject</b>
			Dr. Susanna Lindroos-Hovinheimo, University of Helsinki <b>Biographic Law – Privacy as a Legal Instrument for Spectacular Individuality</b>
Dec 10 2:30-4:00pm (11/F ACR)		Plenary 3	Dr. Christine Black, Adjunct Senior Research Fellow, Griffith Center for Coastal Management, Griffith University <b>Pocket Sized Jurisprudence in Aboriginal Comics and A Mosaic of Writings</b>

### 3. List of Abstracts

#### - Session 1A (Room 310, Dec 8 2:00-4:00pm)

#### **The Judge, the Bench, and the Wardrobe: The Performance of Legal Power**

The Call for Papers states that “the theme of ‘spectacular law’ invites reflection on the performance ... of ... legal power”. Taking as a focus Peter Goodrich’s observation that ‘the courtroom is the site of law’s performativity’, the papers in this panel aim to explore the performance and performativity of legal power by looking at representations of the judge in his courtroom, the bench on which he sits, and the clothing that he wears.

If performativity “presupposes the existence of a symbolic order in which the social and political context is represented” (Henning Grunwald), the papers suggest that this manifests in the figure of the judge in his courtroom. As such, the 3 papers examine the judge as a physical embodiment of legal power, and in particular address the notion that “within the popular perception and public imaginary of legality, a judge is supposed to hand down the law and so evidently needs to be placed above those to who the rules are addressed” (Peter Goodrich).

Alice Richardson’s paper explores representations of a judge, as she considers whether and how artworks portray the judge Sir Redmond Barry as being ‘metaphorically’ above the others involved in the trial and conviction of Ned Kelly.

Tracey Coleman’s paper explores art and literature to question how and why the judicial seat or bench became and remains the focal point of the court room spectacle, placing the judge physically above those in the courtroom. It also addresses how the importance of “the bench” was transported to and used in the English colonies of Australia and America to exert the position of the judiciary.

Clare Sandford-Couch’s paper looks at how judicial clothing acts to set a judge apart from others in the courtroom, and examines how legal dress can not only represent the office of the judge but also constitutes a visual representation of judicial authority and so can act to both construct and perform legal professional identity.

#### **A Brush with the Law: Artworks of Sir Redmond Barry and the Murder Trial of Bushranger Ned Kelly**

*Ms. Alice Richardson, Australian National University*

Judge Sir Redmond Barry presided over the spectacular trial of bushranger Ned Kelly, Australia's most famous 19th century criminal. In this presentation, Alice will discuss conflicting understandings of what constitutes good judgment found in the various artworks of Sir Redmond Barry.

Barry's judicial portrait represents good judgment through the visual portrayal of judicial virtues. Artworks picturing Kelly's trial, however, portray Barry as a villain, not a hero. The artworks contain themes of judicial violence, particularly Sidney Nolan's *The Trial*, showing Barry sentencing Kelly to death by hanging. The contrasting of the last judgment with worldly judgment is also found in Nolan's artwork, as Kelly foretells Barry's untimely death and that the two would meet 'at a greater court in the sky'. Australian Folklore calls this "Sir Redmond's Curse", and the mythology surrounding Australia's most famous anti-hero is strengthened by the coincidence of Barry's unexpected death 12 days after Kelly was hung.

Another area discussed in this presentation is that the jury is portrayed very differently to Judge Barry, even though each played a key role in the judgement of Kelly's murder case. The absence of the jury behind police in one artwork marginalises their role, but their portrayal in Kelly's armour in a separate artwork is significant. Kelly's trial was moved to a different location for fear that a jury from the Beechworth area would let Kelly off. In showing the jurors in Kelly's armour, is the artist making a statement about all people: Who is above whom? Are we judging a person who is just like us? Are we all Ned Kelly?

### **The Judicial Bench, Focal Point of the Court Room Spectacle**

*Ms. Tracey Coleman, University of South Australia*

In the courtroom the judicial bench has been used as a way to instil importance in a position exerting authority. Looking at historical depictions of "the bench" in art and literature this paper will trace why the bench took on and continues to be the focal point of the court room spectacle. In the same way that portraiture positions power, the bench also follows in the historical footsteps of the physical embodiment of this power. As such, the paper will explore why the judge presides from above.

By tracing the history of "the bench" from early depictions in art and literature to modern depictions that continue to promote the central significance of the bench, the paper will explore why the judiciary places such importance on "the bench" when it is no longer necessary for an effective court process.

The paper will also explore how the importance of "the bench" was transported to and used in the English colonies of Australia and America to exert the position of the judiciary.

The paper's overall aim is to show that the spectacle of the bench in modern judicial depictions and architecture is no different to that in renaissance art and early literature and the goals of the bench are still the same: "to put the judiciary above the community in the court".

### **Fashioning Legal and Professional Identity in Late-Medieval Northern Italy**

*Ms. Clare Sandford-Couch, Northumbria University*

Gary Watt has noted the importance of dress in the ritual performance of law (Dress, Law and Naked Truth (2013), p. 92). Taking an interdisciplinary approach – drawing on evidence from literature, and other aspects of visual and material culture, including art – the paper examines the importance of clothing and appearance to public perceptions of the status of those in charge of administering justice in the towns and cities of northern Italy in the late medieval period.

The thirteenth and fourteenth centuries saw significant change in the role of legal professionals in northern Italy. It was following these changes that, during the fourteenth century, specific costumes of office developed for those exercising legal authority. The paper suggests that the evolution of distinct legal dress codes at this time of change can be seen as part of the construction and development of a professional legal identity.

In exploring legal dress as a manifestation of authority and status, the paper puts forward an argument that where courtrooms were located in the towns and cities of northern Italy at this time, may have encouraged the development and use of legal dress as 'visual shorthand', as 'signs' through which the status and values of the profession could be communicated. As such, legal dress is seen not only to represent the office of the judge but also to constitute a visual representation of his authority and so acts to both construct and perform his legal professional identity.

### **- Session 1B (Room 311, Dec 8 2:00-4:00pm)**

#### **Law, Language and Semiotics**

### **Adverbial Persuasion in the U.S. Supreme Court Opinions of Antonin Scalia**

*Prof. Edward Finegan, University of Southern California*

Because English adverbs are syntactically and semantically so versatile, they can be colorfully deployed in service of a wide range of rhetorical ends. Probably no U.S. Supreme Court justice in history has shown greater fondness for attitudinal adverbs than the late Associate Justice Antonin Scalia, whose seat on the Court remains vacant and whose jurisprudential contribution is now undergoing reassessment. We illustrate certain of his characteristic adverbial uses in the extract below from his majority opinion in the landmark *District of Columbia v. Heller* (2008) case concerning the right to “keep and bear arms.” Unfortunately for JUSTICE STEVENS’ argument, that later portion deals with the Fourteenth Amendment [...]. Thus, JUSTICE STEVENS’ statement that Presser “suggested that . . . nothing in the Constitution protected the use of arms outside the context of a militia,” post, at 40, is simply wrong. [...] Nothing so clearly demonstrates the weakness of JUSTICE STEVENS’ case. Miller did not hold that and cannot possibly be read to have held that. [...] It is entirely clear that the Court’s basis for saying that the Second Amendment did not apply was not that the defendants were “bear[ing] arms” not “for . . . military purposes” but for “nonmilitary use.” [underscore added] While the extract illustrates Scalia’s use of adverbs in characteristic syntactic patterns (modifying verbs, adverbs, adjectives, and prepositional phrases), the focus of this paper is his semantic and rhetorical deployment of them. Among his favorite rhetorical functions for adverbs, the extract illustrates several: attitudinal stance markers (unfortunately); epistemic stance markers (possibly); and intensifiers or emphatics (simply, so, entirely). This paper analyzes adverbial use in Justice Antonin Scalia’s opinions and addresses the degree to which and the ways in which, beyond the colorful flare for which his opinions are well known, his deployment of adverbs may be judged rhetorically effective and persuasive.

### **Semiotics and the Spectacle of Transformation in Copyright Law**

*Prof. David Tan, Faculty of Law, National University of Singapore*

Copyright law is often premised on the identification of an author of a literary, dramatic, musical, or artistic work, and then giving this author monopoly rights for a limited period to control the commercial exploitation of his or her intellectual creation. However, the hegemonic position of the authorial text has been challenged by scholars like Roland Barthes, who argues that a text’s unity lies not in its origin but in its destination and that the birth of the reader must be at the cost of the death of the Author. Barthes’ work, controversial at the time of publication with its assault on modernity and the primacy of authorial control, has nonetheless laid the groundwork for an important body of scholarship on interpretive communities. Interdisciplinary legal writings, especially in the area of intellectual property and personality rights, have also actively engaged such themes in recent years.

A well-known literary or artistic work does much more than simply educate, inform, or entertain, but it also functions as a signifier of a set of signified meanings. The representative fictional characters — for example, Mickey Mouse, Snow White, Superman and Captain America from the canonical universe of Disney's, DC Comics' and Marvel's works — may function as signifiers of both individualized and a shared set of meanings. A “myth” is thereby created when meaning within a semiological system is transformed into form as represented by a sign; each sign becomes naturally associated with a set of meanings or “historical intention” which is ultimately consumed. Like famous trademarks, the copyrighted character signifier/signified relationship would have become universally codified for the audience; the audience will automatically and consistently think of the coded meanings and values (the signified) when they are exposed to the character signifiers. In other words, the fictional character becomes a sign for a predetermined set of cultural codes and audience experiences associated with the work or the author of the work.

This paper explores the notion of semiotic recoding that is arguably applicable to the transformation doctrine in the fair use defense of copyright law. In copyright fair use, the pertinent inquiry for transformativeness is whether the secondary work “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” Many recoding practices, especially in appropriation art, can be said to be creating a “transformative” spectacle in this way. It is these studies of semiotic disruptions that one may find the relevant tools for establishing a conceptual framework within the transformative use doctrine that addresses the political agenda of the active audience.

### **Language and Disadvantage Before the Law: Expert Witnesses as Second Language Speakers in the Hong Kong Courtroom**

*Dr. Eva Ng, Faculty of Arts, University of Hong Kong*

English remains to this day one of two official languages in which trials are conducted in the courts of Hong Kong. As the local population is predominantly Cantonese-speaking, in a trial heard in English, litigants appearing in court as witnesses and defendants mostly testify in Cantonese, assisted by an interpreter. However, expert witnesses, when asked in court about their language choice, usually elect to testify in English, which they speak only as a second language. They might find it more prestigious to testify in English or otherwise suffer a loss of face if, in their position as expert witnesses, they have to rely on the interpreter for interaction with the English-speaking legal professionals. This paper aims to illustrate the problems with expert witnesses testifying in English in the Hong Kong courtroom. It focuses on a murder case heard in the High Court of Hong Kong involving four expert witnesses including three medical doctors

and one forensic pathologist. Except for a junior medical officer, who chooses to testify in Cantonese through an interpreter, the other three expert witnesses all testify in English. It is found that these expert witnesses, especially the two medical doctors, have a problem with both their comprehension of counsel's questions and making themselves understood in English, and at times feign comprehension in an obvious attempt to avoid embarrassment. It is observed that these linguistically disadvantaged second language speakers in court are more suggestible and less assertive, which may arguably prove detrimental to the prosecution's case. This paper also discusses another problem arising, i.e. the predominantly Cantonese-speaking jurors' comprehension of the highly technical medical evidence, often made more confusing by the witnesses' communication problems.

### **Entangled Evolutions of Language and Law: A Spectacle of Singular They**

*Ms. Lindsay Head, Louisiana State University*

For decades, humanities scholars have disputed the singular use of the they. Sharon Zuber and Ann Reed (1993) examined the politics of the generic he and the singular they. Robert Hollander (2011) maintained that 'nothing in the fetid grammatical atmosphere we are all breathing is more disturbing' than the singular they. And Tom Fordy (2016) argued that 'the English language is sexist,' but this can be remedied by the singular they. Legal scholars such as Paul Salembier and Joyce Rosenberg have more recently brought discourse surrounding the singular they to the legal community'our Listservs suddenly flooded with opinions surrounding the debate'and like its counterparts within the humanities, the legal field appears equally divided.The singular use of they in legal practice uniquely impacts the way we see, and are seen by, law, power, and politics. The way in which law identifies and classifies people imbues it with power over individuals, communities, and policies alike. The singular use of they and the refusal of that use are practices which make the operative power of law remarkably visible. The singular they (and its absence) simultaneously reveals and conceals individual and political temperaments. When applying (or failing to apply) its use in legal practice, the questions become: Is the law working to reveal or conceal these temperaments? And, why should we'researchers and scholars in law and the humanities'illuminate and participate in the singular they debate?This paper explores multiple arguments across the spectrum of this debate both singular they which are particularly germane to the legal field where motley interpretations can significantly impact the rule of law and establish precedents. With these complications in mind, this paper then discusses the general failure of the law to evolve at the pace of discourse within the humanities and the implications that arise from this failure. The paper concludes by suggesting an informed and purposed

approach to the singular they within the legal community, maintaining that the evolution of language within the law is perhaps the most significant concern for scholars bridging the not-so-far divide between law and the humanities.

- **Session 1C (Room 320, Dec 8 2:00-4:00pm)**

**Law and Governance**

**Chris Marker's Archive**

*Dr. Gavin Keeney, CEPT University*

CHRIS MARKER'S ARCHIVE A presentation of contemporary, late-modern means for the production of forms of knowledge (artwork as form of scholarship and vice versa) that have no explicit role to play in the conversion of cultural production to exploitable and marketable products by neo-liberal capitalism in concert with mass digitalization and mediatic spectacle. The essay features a close discussion of past and present practices in the Arts and Letters via the French multimedia artist, Chris Marker, yet suggests a methodology for research, composition, and dissemination beyond any recognizable boundaries or borders (intellectual, geographical, or ideological), including archival projects ' posthumous and otherwise. An examination of the creative estate of Chris Marker, the essay analyzes how Marker's singular works were produced across the figure of an emergent life-work (recognizable as such only in retrospect), plus the 'fate' (disposition) of his archive following upon his death in July 2012, inclusive of how lesser-known works have been assimilated into recent retrospective exhibitions. A critique of forms of patrimonial assimilation, the essay, in part, examines posthumous official or authorized archives in relation to how they serve to 'capitalize' life-works. Part of Knowledge, Spirit, Law: Book II, The Anti-capitalist Sublime (forthcoming from Punctum Books in late 2016), an ongoing critique of neo-liberal academia, this examination of the Moral Rights of Authors via Marker's archive is a necessary corrective to processes underway today toward the further marginalization of radical critique through mechanisms of capture and exploitation associated with spectacular Capital.

**Six Paradoxes of Transparency**

*Dr. Ida Koivisto, University of Helsinki / European University Institute*

The quest for transparency in global governance and beyond seems to be in uninterrupted rise. Its desirability relies on the promise of making power visible and as such, controllable. However, this 'rise and rise of transparency' has so far happened without sufficient conceptual analysis or critique. Although transparency's metaphorical authority has become almost self-justifying, many puzzling questions linger. Is transparency really as uncontroversial an ideal as it is typically portrayed? Does it function according to the promise attributed to it? In my presentation, I will argue that six inherent paradoxes label transparency. I will elaborate and motivate each of these paradoxes. First, transparency as a metaphor oscillates between 'window' and 'flashlight' interpretations. Second, transparency oscillates between visual and verbal representation. Third, transparency is not neutral. Fourth, transparency oscillates between constructive and revelatory functions. Five, transparency is not always desirable. Six, transparency is never full. On current debates on transparency, some of the mentioned paradoxes go so far under-theorized and some altogether unnoticed. This, in turn, has allowed naïve optimism to emerge on the potency of transparency to legitimize power. However, in my view these paradoxes need to be taken seriously in order to test the soundness of the rapidly universalizing governance ideology of transparency, which, I argue, is ultimately a matter of institutional self-presentation.

### **"Chuangkou (In)Justice": OTC Justice in China's Myriad Bureaucracies**

*Mr. Edward Epstein, Troutman Sanders LLP*

While the police, courts and legislatures may now be the 'modern' legal ISAs in post-Mao China, for the ordinary people the counter window, or chuankou now dispenses the most 'justice' in China's bureaucratic legal system. Every Chinese bureaucracy has a chuankou, even the courts. The chuankou not only determines what documents to file (and the list changes from bureaucrat to bureaucrat, time to time and place to place), but it also decides, usually within broad discretionary bands, which submissions comply and which do not. In this manner, the faceless bureaucracy has approval power in law or in fact. The chuankou is a reality, but is also a metaphor of China's highly regulated society. The chuankou is the tail that wags the dog, apparently only implementing and enforcing the writ of the law, but silently dictating substantive requirements that are known only to the bureaucrats themselves and social agents that deal with them on a daily basis. Compliance is mandatory, but only in a relative sense where relationships and corruption are still the oil of Chinese society. The power wielded by Chinese myriad bureaucracies through their chuankou and its effect on social efficiency is well understood by party and government alike. Bureaucratic reforms, particularly in business enterprise, have attempted to temper these powers and expedite economic reform. As ever, there must always be

a compromise between efficiency and the social control required to manage China's complex political economy. The result is that justice and injustice in China will always be politically relative concepts. Edward Epstein is a practicing lawyer and Managing Partner of Troutman Sanders LLP Shanghai Office. He has lived and worked in China for 30 years.

**Occupy Central and the Rule of Law: what does this spectacular event tell us about rule of law with Chinese characteristics?**

*Prof. Jeffrey Thomas, University of Missouri - Kansas City School of Law*

One of the most spectacular events in recent history in Hong Kong was the Occupy Central movement. I want to use accounts of that movement if it supports my hypothesis for Rule of Law with Chinese Characteristics developed in a 2014 article in the Asia Pacific Law Review (22 Asia Pac. L. Rev. 115). That article used data from the World Justice Project and Geert Hofstede's cultural dimensions to suggest that a pattern of limited protection of individual rights in China, Hong Kong and Singapore could be explained by common Chinese culture characteristics. My expectation based on that work is that the Occupy Central movement will evidence some limitations (self-imposed or the result of government action or threats) on the exercise of individual rights for freedom of speech and association.

I have not yet reviewed the literature to determine what accounts will be of most use, but at this point I intend to use the reports in the New York Times as one set of accounts, and to use reports in the Hong Kong edition of the South China Morning Post for a second set of accounts. Depending on how the research goes, I may look at accounts of the Occupy Wall Street movement to provide some points of comparison between the movement in Hong Kong and the movement in New York.

**- Session 1D (Room 321, Dec 8 2:00-4:00pm)**

**Law, Literature and Race**

**On the Normality of Race and Racism: Observations on the Conjunction of 'Law and Literature'**

*Ms. Senjuti Chakraborti, School of Arts/School of Law, Birkbeck College, University of London*

This paper will be focussed upon understanding the interconnection between the two disciplines of law and literature through the concept of 'race'. Two clarifications in terms of the focal orientation of the paper must be mentioned at the outset'I am considering the interdiscipline of law and literature in the American context (US) where it was first institutionalised in the 1970s, and that I am advancing a specific notion of 'race', one that is largely Foucauldian in nature. In the framework of the latter, since the nineteenth century onwards 'race' runs through the social fabric not as a deviation but as a norm. That is, race as a norm will be central in understanding the politics of the interconnection between these two disciplines in the US. Towards this end, I shall problematize both sides of the law and literature nexus by bringing into conversation two very different undertakings of the race question'the philosophical works of Michel Foucault especially his *Discipline and Punish* and *Society Must be Defended*, and the critical writings of Toni Morrison, especially her essay 'Unspeakable Things Unspoken: The Afro-American presence in the American Literary Tradition', and her book *Playing in the Dark: Whiteness and the Literary Imagination*. The aim of this dialogue is to bring forth a theoretical paradigm that shows the institutions' complicity with racism'that whether it is the law and the norm, or the literature and the norm, both operate in a relation of constitutive reciprocity and can be jointly deployed in modernity in a manner that is largely compatible with racism. That is to say, both the institutions of law and literature are complicit with racism as they act as generators of the norm. At this point, the theme of 'justice' awaits, for what is at stake in this regime of 'normalised' racism is the representation of racial subjects in both literary and juridical narratives. This means that the modern technologies of power'discipline and biopower'must change the register through which to cognize 'justice' in terms of representation of racial subjects in the narratives of modernity. It is through such 'evidence' of racism's normality within the discourses of law and literature that I want to re-imagine the interconnection of the two disciplines by posing the following question'how does the relation between law and literature configure itself in the light of a 'normalised' view of racism as conceptualised, in this case, by both Foucault and Morrison?

### **Literary Justice: Toni Morrison's Fictional Narratives of Law**

*Ms. Venus Chiu Ying Tsang, University of Oxford*

This paper considers the connection between law and literature with reference to Toni Morrison's literary works. I will discuss Morrison's ethical-aesthetic approach to justice by examining her use of legal stories to invoke history of injustice. On the basis of Martha Nussbaum's discussion of the reading of novels as an ethical process that helps cultivate altruistic understanding, I attempt to further nuance this ethical reading process by drawing attention to the literary history

of African American literature. As Jon-Christian Suggs argues, American legal history is a form of literary history. On one hand, Morrison claims her literary inheritance from slave narratives which write former slaves into humanity. On the other hand, she attempts to break away from that literary tradition by speaking the unspeakable. I will examine this tension in her narratives and explore her use of fiction to intervene the grand narrative of law. Specifically, I will discuss Morrison's creation of affective moments in her narratives and how these moments transcend time, encourage an embodied engagement from readers, and raise questions about the limits of the grand narrative of law.

### **Are "Law and Literature" as Close to an 'Ouroboros' as Any "Law ands.." Can Ever Hope to Be?**

*Mr. Sunishth Goyal, NALSAR University of Law*

The paper seeks to analyze whether law and literature have any connection. The paper analyzes the infamous 'Scottsboro Boys Trials' which have also been labelled as a blot on American Legal System. This paper seeks to question the infallible image of glory and self-importance which the American Legal system attaches to itself. How USA fell prey to one of the most deplorable human atrocities - racial segregation. How did literature play a role in that legal fiasco? So the main focus of the paper is to analyze this law and literature's intertextuality and to depict that it was literature only which had led to these acts of horror in 1930's and how has this been portrayed subsequently in the media. The paper has been divided into literary analysis's of three sections namely: Catalysts leading up to the trial, The Trial and Literature written subsequent to the Trial.

### **Go Set a Watchman: Atticus, Technology, and the Spectacle of Racism**

*Dr. James McBride, New York University*

In 2015, Harper Lee published the much-anticipated *Go Set a Watchman*, rumored to be an earlier version of her acclaimed novel, *To Kill a Mockingbird*. In the latter, set in pre-World War II Alabama, her white protagonist Atticus Finch, a humble, small-town lawyer, assumes heroic proportions by defending a black man unjustly accused of raping a white woman. He risks his life, facing down a white mob intent on lynching the defendant. Looking back on the South through the lens of the Civil Rights Movement, America could be proud that courageous whites, like Atticus, had stood up to racism, a memory of a seemingly by-gone era now that the country had become a so-called post-racial society. *Watchman*, set in the post-World War II era, shattered

that image. Here Lee portrayed that same Atticus as a segregationist, albeit a subdued, 'rational' one, who had joined the Ku Klux Klan, served on a white 'Citizen's Council,' and only defended blacks, lest NAACP lawyers intervene to hasten equal rights and integration. Critics were aghast and scrambled to attack Watchman and preserve the memory of Mockingbird's Atticus, the self-regarding image of white America. Yet, Atticus' daughter Jean Louise, who in Mockingbird worshipped her father for his decency and courage, suffers a crisis in Watchman, realizing that she had become 'color-blind,' unaware of the racism of 'benevolent' whites. Introducing her to the realities of racism, her Uncle Jack alludes to a Biblical passage (Is. 21:6). 'Every man's island, Jean Louise, every man's watchman is his conscience.' Of course, the watchman in the American South was the white man's conscience which gazed upon, and did little about, the spectacle of racism. Like Jean Louise, contemporary white America has become 'color-blind,' as has the Supreme Court, which in Shelby gutted the Voting Rights Act that hitherto had compelled Southern states to seek approval of the DOJ or the DC District Court before implementing changes to voting laws. Lee's Watchman suggests that white conscience exists merely as a cover for the ugly legacy of racism. Had it not been for the technology of the smartphone, America would have been oblivious to the recent killings of black men at the hands of police across the country. Freddie Gray, Michael Brown, Eric Garner, Tamir Rice, Walter Scott—these names merely scratch the surface of police brutality to which the African-American community has been subjected on a shockingly routine basis. In the hands of people of color, smartphones recorded videos of these incidents and transmitted these images via social media, palpable testimony that America is far from a post-racial society. As the Black Lives Matter movement suggests, white liberalism cannot be trusted. Nevertheless, the DOJ has instituted a program of body cameras for police departments across the country, an allegedly objective 'color-blind' solution to the spectacle of racism. But, as BLM suspects and this paper concludes, the body camera is just as subject to manipulation in the hands of the police as is the white conscience in Harper Lee's Watchman.

## - Plenary 1 (11/F ACR, Dec 8 4:30-6:00pm)

### **The Poetics of Police: Legal Life Lessons from Inspecteur Jacques Clouseau**

*Prof. Laurent de Sutter, Professor of Legal Theory, Vrije Universiteit Brussels*

When Inspecteur Jacques Clouseau, of the French Sûreté, entered the property of Monsieur Ballon, a French businessman whose manoir had been the scene of a murder, it was with all the righteousness and self-importance of the one who knows that he incarnates order. But even before he had the time to enter the manoir, he fell in the fountain besides the entrance door, so inaugurating an endless series of catastrophes, leading to the death of almost every character in

the movie – and the madness to one specific survivor. Yet, despite his unorthodox inquiring techniques, he somehow managed to solve the case at hand – although it is not certain that he understood it himself. What can such a trajectory teach about order? What can it teach us about the role played by law in the very concept of order? What can it teach us about the methods lawyers use in order to reach to what they see being the truth of this order? Watching the adventures of Inspecteur Clouseau might very well prove to be an exercise in legal methodology, forcing us to throw away all our certainties about what law, order, and the seriousness that both require. At least, this is what I will argue.

- **Session 2A (Room 310, Dec 9 9:30-11:00am)**

**Law and Humanities in Dissent**

Part of an on-going conversation, started at the University of Warwick last year, this panel examines the extent to which Law and Humanities scholars can, and indeed should, bring their methodological strategies to bear on quintessentially political, exigencies. From the established discourse of “law and literature,” to more recent developments in “law and popular culture”, Law and Humanities scholarship has pioneered new ways of understanding the relation between law, culture and society. Are these scholarly resources capable of shedding new light on the intersection between law and the political? Which methodologies – hermeneutic or historical, semantic or semiotic – are appropriate to the task? And what specific intervention do the various ‘Law and...’ strategies allow politically engaged legal scholars to make? At a time in which liberal constitutional settlements worldwide have come under unprecedented pressure from popular resistances and insurgent new political actors, these questions are particularly apposite.

**After Sovereignty in the City: Towards a Jurisprudence of the Street**

*Dr. Daniel Matthews, University of Hong Kong*

Efforts to deconstruct, supersede or otherwise do away with sovereignty have gripped critical theory since Foucault’s injunction, of 1978, to finally ‘cut off the king’s head’ and construct a political theory that was no longer mediated by sovereignty. One of the recent trends in this regard, emerges from the intersection between political theory and urban studies. In foregrounding the ‘immanent’ politics of urban life rather than the ‘transcendent’ realm of the

state and its associated institutions, it is argued that we might re-orientate our understanding of politics away from sovereignty. This paper takes some of this literature as its point of departure and examines the role that legal studies might play within these efforts to think beyond or without the sovereign form in a specifically urban context. Drawing on Deleuze, Latour, Philippopoulos-Mihalopoulos and others I explore how a 'jurisprudence of the street' might serve as a supplement to existing efforts to retrieve latent, non-sovereign political forms lurking within the particularities and peculiarities of urban life.

### **Clearance**

*Dr. Illan Wall, University of Warwick*

There are few more spectacular or apparently visible moments than when the gathered forces of the state descend upon a protest occupation to clear and cleanse the street. In this moment everything seems visible, from the protestors who stand out in the public space to the police who stand before the amassed multitude. The moment of clearance seems like a stripping back of the state and the populace so a base antagonism becomes apparent for all to see. However, this exposure is facilitated by a more mundane (yet essential) masking. Indeed, it is only in practices of anonymity that the spectacular conflict can take place. Anonymity and identification play a crucial role in understanding violence and disorder. The paper explores the question of clearance through the frame of visibility.

### **The Politics of Language**

*Dr. Julen Etxabe, University of Helsinki*

In *Violence and the Word*, Robert Cover famously criticized law and literature scholars for failing to grapple with law's constitutive violence. This charge has proven sticky and hard to counteract. Scholars focusing on the literary, sensorial, and aesthetic realm must defend themselves from the charge that such a focus fails to take seriously the political aspect of law, and thus from the charge of escapism, irrelevance, or naïve romanticism. In this talk I want to combine some of Mikhail Bakhtin's and Jacques Rancière's views on language, which enables us to address the politics of language, by which I mean not the politics that comes before language (expressed in the political views of those who hold them), or in that which comes after it (translated into concrete policies or action), but the one that comes together with language, inherently with it. A political analysis

of law must begin with this aspect of language, which political science and legal realism ignore to their peril.

- **Session 2B (Room 311, Dec 9 9:30-11:00am)**

**Law and Literature**

**J G Ballard: Law and the Built Environment**

*Mr. James Gray, Northumbria University*

In an interview in 2003, J G Ballard spoke of the social geography of 'real England', the England that Ballard was able to observe from his suburban home in Shepperton and that gave rise to one meaning of the adjective 'ballardian'. 'That's the real England - the M25, the world of business parks and industrial estates and executive housing, sports clubs and marinas, cineplexes, CCTV, car rental forecourts.' Ballard's fascination with these uncelebrated landscapes 'where it was impossible to borrow a book, attend a concert, say a prayer, consult a parish record or give to charity', the 'edgelands' and commercial hinterlands of urban expansion, points of transition such as airports, the 'motion sculptures' of urban road networks, retail developments, shopping malls, multi-storey car parks and (famously) abandoned swimming pools features particularly in his novels of the 1970s. *Crash*, his notorious 1973 novel reflecting on mediatisation of violence and death, *Concrete Island* (1974) a re-imagined *Crusoe* cast adrift in a triangular pocket of forgotten shrubland at the intersection of a complex of motorways, and the recently filmed *High Rise* (1975) which charts the decent into chaos and warfare of the inhabitants of a chic apartment block. The theme of human isolation in these and later novels was related to Ballard's conviction that art must embrace science, technology, advertising and communications. Ballard anticipated that under late capitalism these four features of modern life would increase our isolation, that our homes would become TV studios from which to broadcast our lives to strangers in the outside world and that there would be a stronger conjunction between politics, entertainment and celebrity. Ballard's work ' particularly that of the 1970s has affinities with the situationist Guy Debord's concept of the spectacle, the idea of a permanent present and of the 'unrealism of the real society', a world in which the meaning of connections with others is merely a representation mediated by images. This paper explores the relevance of Ballard's fiction to law and literature, in particular what it might tell us about how our perception of law and social order is mediated by the psychology of urban living and the built environment.

**'Stir Up the Australian Youth to Merriment': A Midsummer Night's Dream, Summer 1989-1990 (Sydney, Australia) and the Theatrical Transmutability of Law's Texts**

*Dr. Marett Leiboff, University of Wollongong*

It is mid-summer in Sydney in 1989, and a hugely controversial production of A Midsummer Night's Dream opens. 20 years earlier, the Dream had been fundamentally and profoundly reorientated by Peter Brook's 1970 theatrical reimagining that shifted the play from its imagined exterior world of fairies and revel to one grounded in the interior, the sub-conscious, and in doing so profoundly changed the play's grammar and coding. Theseus and Hippolyta and Oberon and Titania were one and the same, the woods and forest the locale of the sub-conscious, the text no longer read literally but through its time and place and encounter between actor and spectator. Richard Wherrett's 1989 Dream sat against the conventional shift in the reading of the text and its relationship with the audience. But Wherrett, then a supreme figure in Sydney and Australian theatre, takes another radical step. With dramaturg and 'translator' (as her role was described) May-Brit Akerholt, Wherrett's Dream not only reimagined the place, locale and shape of the production of the Dream, but rewrote it, to 'Stir up the Australian Youth to Merriment', as the advertising of the production points to a signal change, the original text - Stir up the Athenian youth to merriments ' now rewritten. Wherrett remarked at the time: 'So what we've done amounts, in fact, to a major change in the text. But I don't think the audience will even realise. The language just rolls off the tongue more easily than the original ' if I'm right in this decision, I think it will be a pointer to where Shakespeare may go in the future'. But the audience ' and critics ' did notice, and though the production was wildly successful, it went down in Australian theatre history as a fundamentally controversial and not entirely successful production. In this paper, I return to this particular moment in Australian theatre history to consider the theatrical transmutability of law's texts through the Dream and its theatrical manifestation. For though the Dream is seemingly one of the least legal of Shakespeare's plays, it speaks to a profound shift in the reading of legal texts at the same time that legal texts were reinterpreted - in substance if not in form ' at a particular moment of legal thinking in Australia in 1989-1990, marking the instantiation of critical legal textuality against the literalism of black letter legalism. The tensions between realism and the imaginary, and law as form as opposed to law as justice, can be read in the text of the Dream itself. Through Wherrett's production, I want to return to Brook's theatricalisation to rethink the transmutability of law's texts, challenging the notion that 'reason and love keep little company together nowadays'.

## **Fall of the Matrimonial Causes Act 1857: Divorce Law in Interwar British Literature**

*Mr. Henry Kha, University of Queensland*

The paper explores the relationship between the legal history of divorce law and British literature in the Interwar period of the 1920s and 1930s. The advent of civil divorce in English law is relatively modern that only emerged since the enactment of the Matrimonial Causes Act 1857. The Act provided limited grounds for divorce where the petitioner claiming divorce could only succeed if the adultery of the respondent could be proven. By the early twentieth century, the Act was increasingly seen as an archaic piece of law promoting the values and morality of the bygone Victorian era. There was a strong clamour for divorce law reform in the Edwardian period that became even more acute during the Interwar period of Britain. The existing law was often seen as harsh, out of step with the values of the times, and restrictive trapping many couples in unwanted bonds of matrimony. During the 1920s, British writers, such as A.P. Herbert and Evelyn Waugh, produced novels satirising and highlighting some of the absurdities of the practical operation of divorce law. Evelyn Waugh authored 'A Handful of Dust' and A.P. Herbert wrote 'Uncommon Law' and 'Holy Deadlock.' In these novels, both authors present a critique of divorce law, particularly satirising the harshness of the law and the ubiquity of couples conspiring for either one of them to appear to commit adultery in order to obtain a divorce. The paper will approach the topic using the historiographical methodologies of 'internal legal history' and 'external legal history' in order to promote a deeper understanding of law, history and literature. Internal legal history considers the history of law as an autonomous mode of discourse through an analysis of legal doctrines, documents and processes. External legal history approaches the history of law by examining legal developments in its wider context, usually in its economic, cultural or social context. For my paper, I shall explore how an understanding of fiction produced in the Interwar period can help us understand the progression of law in the popular mindset that ultimately contributed to the rejection of Victorian English divorce law and the introduction of the Matrimonial Causes Act 1937 that significantly expanded the grounds of divorce. The insights synthesise the 'internal' and 'external' elements of legal historiography. Popular literature and culture of the Interwar period of Britain provides a valuable source of understanding the mindset of lawmakers and people in society in shaping the law of divorce and also provides insights on the influence of literature on the law. Notably, A.P. Herbert, who not only was a novelist was but also a British MP and a strong advocate of divorce law reform in the 1930s playing a leading role in the fall of the Matrimonial Causes Act 1857.

- **Session 2C (Room 320, Dec 9 9:30-11:00am)**

**Psychoanalysis and Visuality**

**Games Playing Players : The Legal Subject of Persona 4**

*Ms. Ashley Pearson, Griffith University*

Video games are no longer a past time for a geeky minority, but rather, a hobby of choice for an overwhelming majority. While other forms of media are no less relevant in contemporary culture, the time spent interacting with these texts is rapidly diminishing given that this time is now spent controller-in-hand. With a growing history of gorgeous graphics, immersive narratives, and a cultivated culture of gamers, legal inquiry into the medium of video game is more pertinent than ever. It is in this spirit that this paper begins to unpack the jurisprudential meaning of the Japanese video game, Persona 4 and its relation to the legal subject. The game, a hybrid visual novel and RPG (role-playing game), appears on its surface to be a popularisation of Jungian psychology with its animation of shadows, the collective unconscious, and valorisation of the psychical exploration of the self. Persona 4 establishes the subject, the self, as a unified Jungian whole. This is the subject as monad; a being that has overcome and mastered itself. However, the game repeatedly undermines this asocial account of the subject. Notwithstanding the Jungian tropes and themes of Persona 4, the game's emphasis on social links and the importance of community envisions a Lacanian subject, one that is fragmented and lacking. The exploits of the protagonist and his friends to uphold the law within an otherwise lawless otherworld cements their dedication to preserving the Symbolic order in the face of the forever threatening Real that oozes through and penetrates the safety of the 'real' world. The critical cypher is that of law: law in the normative of the code; law as the mundane normality of high-school life; and ultimately, in the primal law-breaking of the detective, and murderer, Tohru Adachi. The positive law of the social allows the ephemeral everyday of school-life, replete with high-school crushes, part-time jobs, and life dreams, to occur and is made real by the ever-present Real.

**Text, Image and the Unconscious: How to Interpret Forever**

*Dr. Thomas Giddens, St Mary's University, Twickenham, London*

Neil Gaiman's 'The Sandman' is a series predicated upon the existence of 'the dreaming' and the Lord Shaper/Morpheus, the master of dreams who rules it. Morpheus's kingdom is a shared

realm that we enter upon sleeping, and therein experience and explore night-time visions: it is where we dream, it is the stuff from which dreams are shaped. To read such a work, we must turn to that other master of dreams, Sigmund Freud. In his 'The Interpretation of Dreams' we are given a method of interpretation that goes beyond the surface, that seeks beneath and beyond to latent meanings and traces that, if we follow them, take us down into the infinite, tumbling associations of the unconscious. More recent critical and cultural theory building on Freud further embeds this capacity for infinite meaning and uncertainty into images, such that encountering an image also involves experiencing a limit and a challenge to rational and conceptual understanding. The comics form pushes this further, highlighting the visual dimensions of text. Written words, including the written words of law, are always encountered first as images, which must be decoded (or encoded) into the abstract symbols of language. Embedded in the text of law, then, in its repressed visual dimensions, is the endless interpretation that leads beyond the horizon of the unconscious and into the mass of infinite associations and possibilities.

### **Colonialism's Primal Scene**

*Prof. Desmond Manderson, Australian National University*

Colonialism's Primal Scene  
The first contact between colonial authorities and indigenous people in Australia is the primal scene of the mystical foundation of colonial law. In previous work, I focused on one of its iconic representations, Governor Arthur's Proclamation. In this presentation I look more broadly at the representation of the logic of encounter at work in several colonial and contemporary art-works. The focus is on the encounter as a constitutive moment routinely deferred in representation, and the implications of that deferral. Arguing for the continuance of the colonial gaze and its current manifestations in law and ideology, brings me in particular to the work and imagery of the great contemporary artist Gordon Bennett, Australia's psychoanalyst of the image of colonial law. Possession Island and The Coming of the Light, amongst many other works, reveal a complex diagnosis of the relationship between Australian law and the image.

### **- Session 2D (Room 321, Dec 9 9:30-11:00am)**

### **Popular Culture and Social Change**

### **Self-Fashioning as Spectacle: Reading the Reactions to Obergefell**

*Prof. Karen Petroski, Saint Louis University School of Law*

Many accounts of legal spectacle focus on the ritual drama of trial proceedings. How are pivotal legal events that do not emerge from a trial process made susceptible to visible circulation? And what are the implications of changes in the technologies available for such circulation? This paper considers these questions, focusing on the events surrounding release of the U.S. Supreme Court's decision in *Obergefell v. Hodges* on June 26, 2015. The paper proceeds in two parts, the first descriptive and the second analytical. The descriptive background addresses multiple contexts, both contemporary and historical, for understanding the response to *Obergefell*. It considers the U.S. Supreme Court's practices regarding the visibility of the Court's proceedings. It then discusses the *Obergefell* litigation, focusing on the justices' presentation of their opinions and on the justices' anticipation, in those opinions, of popular responses to the decision. Next, the paper turns to public responses to *Obergefell*, particularly on social media, examining the use of text from the opinions and the selection of images to comment on the case, as well as the spin-off spectacle generated by county clerk Kim Davis's resistance to the decision's implementation. The paper also considers the alignment between the justices' anticipated responses to the decision and cultural reactions to it. Finally, turning to historical context, the paper compares responses to *Obergefell* to reactions to analogous decisions of prior eras, such as *Brown v. Board of Education* (1954) and *Roe v. Wade* (1973). The second section of the paper considers the implications of the forms taken by the reactions to *Obergefell*. It focuses especially on the strategies used by supporters in their self-presentation on social media; many took the decision as an opportunity to groom their online identities. Their responses, and especially their use of memes including text from the opinions, might suggest that the *Obergefell* decision both encouraged and reflected an understanding of the legal process as popularly responsive and as inviting public participation. Opponents of the decision likewise seemed to manifest a belief that *Obergefell* affected their personal relationships with the political-legal order. Despite appearances, however, the responses do not seem indicative of a legal system open to effective participation by outsiders. Rather, most responses treat the legal system's outputs as commodities to be endorsed, or not, by individuals, and not as crafted elements of a coherent, ongoing society-wide discourse. In this way, the reactions suggest that the participatory legal order evoked by some of the responses to *Obergefell* is an illusion; that the contemporary public sphere, especially as inflected by social media in their current form, may encourage users to prioritize self-presentation over engagement with others; and that continued ideological polarization, as well as feelings of alienation from the legal order, are likely to result from this environment. If we find this scenario legally and politically troubling, then it might be important for us to find more effective ways of mimicking the dynamics of older, offline public spheres within online forums.

## **To Care for the Becoming of a Technologicalized World - the Posthuman Legal Subject of Xenogenesis**

*Dr. Kieran Tranter, Griffith Law School, Griffith University*

This paper concerns the rethinking of the legal subject as an purposeful 'ethical' actor within a technologicalized world. In it the legal subject is revealed as a node within networks that constrain and empower. The primary text through which this revealing occurs is Octavia E. Butler's celebrated Xenogenesis trilogy, also known as Lilith's Brood. These novels, *Dawn* (1987), *Adulthood Rites* (1988) and *Imago* (1989) present a thoroughly technicalized world of natureculture where both the individual, and its doing in the world, are curtailed yet liberated by multiple networks. Butler's protagonists emphasize 'embodiment' and 'location' in the 'navigation' of the networks of the present. In this an ethics can be discerned. To be freely responsible to becoming involves a commitment to affect. In this Butler can be seen as giving monstrous human-alien flesh to nomadic account of posthumans. Butler shows not nihilism, but the possibility to be truly, responsible for becoming. This argument is pursued in three stages. The first stage overviews Butler's Xenogenesis trilogy, noting the absence of orthodox law signifiers throughout, while emphasizing a 'post-juridical' world of natureculture where biopower reigns. The second stage draws upon this reality to manufacture an account of the legal subject of technical legality; a non-essential subject that is a node in flux within multiple networks. This subject occupies an embodied location that is at once predetermined but also navigable. This opens to the third stage which charts how this possible creating of the world, and the identified need for myths of creation, discloses an ethics of affect, a responsibility to nurture zoe as the becoming of the world.

## **Tum Ti Tum Ti Tum Tum: The Archers, the Radio, Violence Against Women and Changing the World at Tea-Time**

*Dr. Harriet Samuels, University of Westminster*

This paper reflects on the means by which women's human rights norms can be transmitted through social movements from the margins to the mainstream. Feminism has shown itself to have the capacity to name as legal wrongs behaviours such as sexual harassment that have previously been accepted as the norm (MacKinnon 1979). Human rights activists have also been able to use international law structures to develop norms and principles that have been conveyed from the global to the local. Social movements on the ground have used and adapted international

norms to press for changes to law and the means by which it is administered and applied (Benhabib 2011). This has been done through political and legal processes but has also been achieved through the use of storytelling and the arts (Schaffer and Smith 2004). An example of this interweaving between law and the arts is demonstrated by a storyline based on the new domestic violence offence of coercive control in *The Archers*. *The Archers* is a soap opera broadcast on BBC Radio 4. It is one of the longest running soap operas in the United Kingdom, and was first broadcast in the 1950s. It has had over five million listeners in peak listening times. It takes place in a rural setting in real time in the fictional village of Ambridge in the Midlands. In 2013 *The Archers* introduced a new character to the village Rob Titchner who marries Helen Archer, a member of the Archer family. Over a period of two years listeners are chilled as they hear Rob psychologically abuse and isolate Helen. The storyline has led to record listening figures, and a national conversation on domestic violence. A Justgiving site set up in response to the drama has raised over '100,000 for victims of domestic violence and there has been an increase in the number of calls to domestic violence hotlines. There has been a long campaign, by feminists, to include psychological harm in the definition of domestic violence. This has taken place through international and regional human rights forums and has led to an expanded definition being adopted in human rights laws and declarations. In the United Kingdom the offence of coercive control was included in section 76 of the Serious Crime Act 2015 after a campaign by a coalition of women's groups. Women's Aid has also collaborated with the producers of *The Archers* to ensure the accuracy of the portrayal of domestic violence and coercive control. *The Archers* storyline on coercive control illustrates the 'jurisgenerative' nature of women's human rights (Benhabib 2011). It can be seen as an example of the power of social movements to use human rights to obtain progressive aims. Human rights can name wrongs and Parliaments' can pass laws but the synergy between the arts and law has the capacity to shift public consciousness.

Benhabib S, *Dignity in adversity: human rights in troubled times* (Polity 2011)

MacKinnon C, *Sexual harassment of working women*, (Yale University Press 1979).

Schaffer, K. and Smith, S., *Human Rights and the Narrated Lives: The Ethics of Recognition* (Palgrave Macmillan 2004).

## **- Plenary 2 (11/F ACR, Dec 9 11:30-1:00pm)**

### **Law and Film Roundtable**

This roundtable investigates the relationship between law and film from a variety of perspectives. We will explore the ways in which cinema engages with fundamental questions of legal philosophy, legal procedure, and social justice. We are especially excited to have with us the award-winning Hong Kong Director and Producer Ann On-Wah Hui.

**Ann Hui** is a Hong Kong producer, director, actress and occasional screen writer. She has worked in both television and film, and her work ranges widely across different genres. She has been named Best Director at the Hong Kong Film Awards, and her work has received Best Picture at both the HKFA and the Asia Pacific Film Awards. She has received the Lifetime Achievement Award at both the Asian Film Awards and the Hong Kong International Film Festival.

**William MacNeil** is Dean of Law, Head of School of Law and Justice, and Honourable John Dowd Chair in Law at Southern Cross University in Australia. A scholar of jurisprudence and cultural legal studies, MacNeil is the author of *Lex Populi: The Jurisprudence of Popular Culture* (Stanford, 2007) and *Novel Judgements: Legal Theory as Fiction* (Routledge, 2012). The latter of which won, in 2013, the Penny Pether Prize for Scholarship in Law, Literature and the Humanities. MacNeil is also the founding Series Editor of Edinburgh Critical Studies in Law, Literature and the Humanities.

**Gina Marchetti** is Professor of Comparative Literature at the University of Hong Kong. Her books include *Romance and the "Yellow Peril": Race, Sex and Discursive Strategies in Hollywood Fiction* (University of California, 1993), *Andrew Lau and Alan Mak's INFERNAL AFFAIRS—The Trilogy* (Hong Kong: Hong Kong University Press, 2007), *From Tian'anmen to Times Square: Transnational China and the Chinese Diaspora on Global Screens* (Philadelphia: Temple University Press, 2006), *The Chinese Diaspora on American Screens: Race, Sex, and Cinema* (Philadelphia: Temple University Press, 2012), as well as a number of edited collections on East Asian cinema.

**Marco Wan** is Associate Professor of Law and Honorary Associate Professor of English at the University of Hong Kong. He is Managing Editor of *Law and Literature*. He is the author of *Masculinity and the Trials of Modern Fiction* (Routledge, 2016). He is currently working on a monograph on law and Hong Kong cinema.

## - Session 3A (Room 310, Dec 9 2:30-4:00pm)

### Visualizing Trials and Punishments

#### Viewing Law, Experiencing Justice?

*Dr. Maria Elander, La Trobe Law School, La Trobe University*

Before the break of dawn, buses chartered by the Public Affairs Section (PAS) of the Extraordinary Chambers in the Courts of Cambodia (ECCC) leave the rural village and head towards Phnom Penh and the ECCC compound. Those on board – Cambodian villagers, a few Buddhist monks and nuns, perhaps some students – are on their way to the Court where they are to attend the trial hearings for a day. The long journey, exhausting and a challenge in itself, gives a solemn importance of the trip. As the passengers arrive at the compound, lining up at the security check point where they are screened and registered, they become visitors to the Court. As they sit down inside the Chamber to observe the trial hearing, in its slanting auditorium, differences between them are subdued and they become a collective of spectators. As they bear witness to the event of law, they embody the judicial-legal process; embody the event of trial. Over 300,000 people, mostly Cambodians, have by 2016 visited the ECCC. But while far exceeding any other international(ised) criminal court, commentators often dismiss the significance, noting for example that ‘the depth of understanding that many Cambodians have of the process is shallow’ (Ciorciari and Heindel). This assumes that spectatorship is an issue of quantity versus quality and reflects a conviction that if visiting a court is to be meaningful, if the presence by an audience is to somehow make a difference, the details in the proceedings, including any legal arguments on any particular day, must also be comprehended by each individual present and who has been affected by the alleged crimes. I believe this misplaces the significance of the presence of visitors at the ECCC. In this presentation, I discuss the possibilities of trial spectatorship, taking the ECCC as my focus. Yet, in doing so, I cannot help but ask what law it is exactly that those partaking in the trial from the auditorium are viewing, which event they are embodying.

### **The Modern Architecture of Incarceration: From Spectacular Statement of Sovereign Power to (An)aesthetic Symbol of Public Indifference**

*Prof. Yvonne Jewkes, University of Brighton*

As early as 1789, prison reformer John Howard described the ‘pompous fronts’ and palatial appearance of the prisons being conceived and constructed in that era. More than simply impressive feats of engineering, the spectacular, but frankly unnecessary, embellishments that adorned 18th and 19th century gaolhouses can be viewed as an aesthetic coding, a ‘technology of enchantment’ subtly transforming the prison into something other than mere human containment. In more recent times, however, the (an)aesthetics of imprisonment have reformed and rationalized the delivery of punishment. With the closure of many Victorian prisons on the grounds that they are no longer deemed fit for purpose and are expensive to operate, a new

dystopian vernacular has emerged in prison design; one of similitude, blandness and indifference. Drawing on visual data from a three-year ESRC-funded research study, this paper will argue that the prison is a mimesis of its specific social, political and economic context. The affective dimensions of spectatorship in relation to the prisons built two centuries ago are frequently rousing, sensate experiences, but in the twenty-first century, prisons are a physical manifestation of the bureaucratic preoccupation with 'efficiency' (i.e. cost efficiency) and 'effectiveness' (effective, that is, at keeping prisoners securely locked up and the public safe), as well as society's antipathy to those who transgress the law. The buildings that administer contemporary criminal justice are 'neither forbidding nor overly welcoming'[but are] simply there, like everything else in the neighbourhood (Davis, 1990: 168). So, while the magnificent invincibility of the prison edifice once posed urgent questions about the physical and symbolic nature of incarceration and about the role of the state and capital in structuring the future of communities, now prisons simply blend into the archi-texture of the city suburbs. The modern prison barely raises any questions at all ' except this: do we turn a blind eye to the plight of the confined and to the historical structures of power that support the carceral complex when we diminish the visibility of the buildings that contain them?

### **The Ban on Spectacular Punishment and the Demise of the Ban as Principle of Legal Invisibility in the History of European Criminal Law**

*Mr. Rafael Van Damme, University of Leuven, Belgium*

Something is visible if it reflects light that catches our eyes. Let us compare violence with light. A perpetrator's violence will 'reflect' on his victim and will catch 'the eye of the law' (Stolleis). The law will 'reflect' it in turn back on the violator as a legal sanction. However, the eye of the law has blind spots. As there are black objects absorbing rather than reflecting light, there are black sheep absorbing rather than reflecting violence. People without proper legal status, like antiquity's slaves, remain out of the law's sight and can be slain without legal repercussions, because they stand in an ex-ceptional relationship to legal order. A-ban-doned by law, their relation of exception is structured by the ban (Agamben). Radbruch claims that legal punishment was born from extra-legal slave punishment. Since punishment, one of the law's most eye-catching features, was treating a convict as a slave, the law's blind spot has become the paradigm of the penal system. Punishment was once, in the ancient regime, a 'spectacle of suffering' (Spierenburg). Those most invisible to the law (slaves, infamous people, foreigners and other categories with diminished legal status) are the most visible obstacles of social order. As such they are most likely to suffer public punishment. This being exposed to the eye of the public was a ritual degradation,

whose effect was -in case of non-lethal punishment- an increased diminishment of social and legal status and therefore a diminished legal visibility. Legal invisibility therefore appears as alpha and omega of a criminal system whose punishments were quintessentially visible. Those most visible to the law (the nobility), however, were often spared degrading public punishment. Their punishment was to some extent invisible. In the history of European punishment, the eye of the public has been gradually closed, as even spectacular capital sentences were, after the enlightenment, executed behind prison walls. And as public punishment was in the end exclusively replaced by prison sentences, spectacular punishment was banned. If prison is a kind of ban (ex-ceptio from society and suspension of rights), those under the ban, the law's blind spot, became banned from the public's eye. As the eye of the public was closing, the eye of the law started to open up: equal dignity and rights were gradually granted to all people of all backgrounds; the law got everyone in sight (human rights). The course of European history was therefore about making the invisible (the outlawed) visible for the eye of the law. This is tangible in prison, whose ban became to some extent transparent, as also European inmates got more and more unalienable rights. What is being progressively banned might therefore be the ban as principle of legal invisibility.

- **Session 3B (Room 311, Dec 9 2:30-4:00pm)**

**The Presence of the Past**

**Why Law's Objects Do Not Disappear: On History as Remainder**

*Prof. Christopher Tomlins, Jurisprudence and Social Policy Program, University of California Berkeley*

One of law's more supple conceits is its ontology of equivalence. The equivalent stands for, it purports to take the place of, all that exists in life's discordant realm in a state of spatial, temporal, material, corporeal, sensorial difference. Equivalence commensurates the inhabitants of that realm (people, things, relations) as completely as may be necessary for the induction of each into another immanent reality ' the transactional universe of legal recognitions and nonrecognitions ' where they are contained within an imaginary dimension of perfect exchange. The containment is temporal, predicated on the proposition that at the moment of its apprehension, which is necessarily the present, that which differentiates the particular object of attention from law's equivalent has simply ceased to be. The object is created anew, in law, 'like a number without any awkward fraction left over.' But the transubstantiation can never quite be complete. There is always an uncontained remnant, the agio or excess, the 'awkward fraction left over,' the obstinate

remainder that defies the symmetry of its exchange. We know it is there because it expresses itself to us as the object's past ' its revenant once-was. This paper calls this surviving remnant the object's soul; not just its once-was, but also its living-on. It considers that history is the means by which the soul communicates its living-on. The paper explores three propositions, or ways of thinking, that elaborate on these propositions: of law as a dimension of not-quite-perfect exchange; of objects' surviving traces as souls; and of history as the means by which those surviving traces live on either with or against (but always separate from) law's transactional transubstantiations. In a fourth part, the paper offers a gloss on what may happen when the three propositions combine by focusing on Goethe's depiction of utter economic transformation in "Faust," and Patricia Williams' depiction of rights in her "Alchemy of Race and Rights."

### **Toward a Global Mnemonic Law**

*Prof. Rostam J. Neuwirth, University of Macau*

Memory is a function of the human mind and central to 'self-consciousness' operating through the mind served by the known and possibly also the unknown senses. A loss of memory, however, is said to directly lead to the loss of identity. By analogy, the law can be seen as the memory of the community in its pursuit of justice or just decisions. Law as the memory of justice also functions through several 'sense organs', including visible and invisible ones, corresponding to the distinction between known and unknown senses in humans. The legal sensors are various legal instruments (from case law to international agreements) or legal institutions (from courts to governments) usually combined that collect and process experiences. Like memory constitutes a personality, law also creates identity in the form of 'legal personality', be it in the form of a constitution, a company or an international organization. By the same token, the loss of law's senses leads to a loss of collective memory, which ' manifest in a loss of the rule of law ' leads to chaos and disintegration of the legal entity concerned. For memory to function efficiently, the mind has adopted various useful methods. For instance, it uses abstraction as a method to reduce the volume of data. Or else, to be able to recall data, it applies mnemonics. Mnemonics is a set of tools used to enhance memory. The tools used by 'mnemonics', a concept coined in allusion to the Greek goddess of memory 'Mnemosyne', are also valuable for dealing with planning and decision-making in light of uncertainty that comes with our three dimensional perception of the past, present and future. It is with regard to uncertainty that mnemonics and law serve a similar function, which justifies the notion of 'mnemonic law'. This is because both aim to aid our decision making in light of an uncertain or unknown future. In mnemonics, the memory palace or mind palace technique applies spatial features in the form of visualization to organize and

recall information. In law, we can say that the generic concepts of jurisdiction, codification or legal regimes fulfil a similar function. In a wider sense, other legal tools like law libraries, case collections, or law books and journals also fulfil such purpose, which have been carried even further in the digital world, where various electronic databases that store vast amounts of legal data reinforce the present metaphor of law as mnemonics or mnemonic law. The most important common element between law and memory or justice and mind, however, is found in language. The reason is that language is at the origin of both memory and law as tools to efficiently store and recall information that was collected through their respective senses. In memory and law, all information collected by the senses, including aural, visual, haptic and other senses is transformed and stored in linguistic concepts. Law too, collects not only textual information (eg legal codes) but carries legal content via visual (eg traffic signs), aural (eg police sirene), haptic (eg handcuffs) and olfactory (eg olfactory trademarks) means. This has earned law the description as 'sensational jurisprudence' (Bently & Flynn, 1996). Based on the analogies between justice and mind or law and memory reinforced by their common reliance on language, the present paper enquires into the recent changes in language. These more recent linguistic changes are being captured by the evolution from Walter B. Gallie's 'essentially contested concepts' to so-called 'essentially oxymoronic concepts', which are various rhetorical devices known as oxymora, paradoxes and enantiosis. The paper will first outline this linguistic evolution by various examples across the fields of art, science and law and then attempt to extract some findings from the changes in language for the functioning of the mind and for the future of law, as a collective mind of the community it serves.

### **Law's Own Devices: Images and the Force of Time**

*Dr. Richard Mohr, Social Research, Policy & Planning*

A device can be a piece of technology made for a specific purpose. It can also be an artistic motif intended to have a particular effect, or even a pattern or symbol on a heraldic shield. All are devised with a purpose in mind. Law's own devices include images, symbols and tools. Many of them have, or once had, specific purposes. Yet their effect is not always predictable. This paper explores the ways legal devices take on a life of their own, and their impacts on law. The intended 'particular purpose' of a legal device may be clear: visual or technological objects may have literal and unambiguous impacts. But this is not always so. As time goes by, those meanings and effects can mutate: there may be unanticipated and ambiguous effects. Indeed, the very ambiguity or mystery of law's images and devices can play a role in the impact and development of law itself. Law's devices carry ideas from the past, provide a framework of uncertainty in the present,

and they project power into the future. In considering the impact of devices on law, this presentation focuses on visual objects or images, highlighting the drag of the past. In the *longue durée* of the force of law, images of non-human forces and the separation of powers come from Western Christianity to be expressed as constitutional principles of the rule of law and the separation of powers.

- **Session 3C (Room 320, Dec 9 2:30-4:00pm)**

**Law and the Body**

**Phryne Exposed: Divine Beauty and Sovereign Desire**

*Dr. Ioannis Ziogas, Durham University, UK*

The Attic orator Hyperides (390-322 BCE) famously defended the courtesan Phryne in a trial of impiety. The story goes that when Hyperides felt that his rhetorical skills were failing him and his client was about to be convicted, he made a move that saved Phryne's life: he disrobed her, exposing her lovely breasts to the eyes of the stunned jurors who subsequently acquitted her. While Hyperides' speech 'In Defense of Phryne' was considered by Greek and Roman thinkers a masterpiece, it is the display of Phryne's breasts that decides the case, not the orator's eloquence. My presentation will thus focus on the spectacle of the disrobed courtesan rather than the words of the orator and examine the relationship between Hyperides' gesture and the law's desire for carnal knowledge. Even though the trial of Phryne is one of the most influential stories in Greco-Roman antiquity, classical scholarship has mostly focused on the rather fruitless issue of the story's historicity. Moving beyond this problem, I shall approach the tale from the perspective of current trends in legal theory. The trial of Phryne needs to be read against the background of Greek mythology. One of the story's main intertexts is the myth of Helen. Menelaus, Helen's jilted husband, was about to kill his wife but dropped his sword and forgave her upon seeing her breasts. In 'Iliad' 3, the Trojan elders, stunned by Helen's beauty, say that there should be no blame for the Trojans and the Achaeans if they suffer for such a woman. The divine nature of Helen's beauty renders any incriminating evidence void and Hyperides relies precisely on this mythological precedent. The orator stages a version of Helen's exoneration at the sight of her divine beauty. Phryne's goddesslike body is strong evidence against the accusation of impiety; a divinely beautiful woman cannot be convicted of 'ungodliness' (*asebeia*). Her nudity sets her apart from human law and puts her on a heavenly level, yet it also suggests her absolute exposure before the court's jurisdiction. The genius of Hyperides' gesture consists in simultaneously

empowering and debilitating the representatives of the law. By exposing Phryne before the jurors, the orator exploits law's desire to possess a body. The eyes of the jurors fixed on Phryne's naked breasts represent the surveillance of the law, whose powerful eye can penetrate the bodies subjected to its command. But the exposure of a body before the court is an ambiguous power play. As Agamben (1998: 125) notes, 'corpus is a two-faced being, the bearer both of subjection to sovereign power and of individual liberties.' Phryne's naked figure gives an interesting twist to Agamben's confluence of bare life and sovereign power. As a defendant and a courtesan, Phryne is both subjected to legal procedures and excluded from the juridical order. Her nudity highlights both her defenselessness before the court and exemption from it. The courtesan occupies an extralegal position at the very moment of her body's submission to the force of law.

### **Call The Midwife: Law, Love and Care in Secret Births**

*Prof. Jill Marshall, Leicester Law School, University of Leicester*

In the 2012 Christmas episode of *Call The Midwife*, a surprise BBC hit which has recently completed its sixth series, an impoverished girl conceals her pregnancy and secretly gives birth. She leaves the baby on the doorstep of the convent and maternity hospital, featured in each week's show, in socially deprived East End of London in the 1950s. Through critical analysis: by reference to the show, both generally and this episode in particular; feminist legal scholarship on women's freedom and care; and legal provisions, internationally and nationally, this paper probes the connections between law, life, love, humanity and care in the legal regulation of secret and concealed births. It argues for a framework and approach that is caring, compassionate and respectful of girl's and women's choices in these circumstances, guarding against, as one of the British judges describes it, law 'seeking to open windows into people's souls'. (Mr Justice Munby, as he then was, in *Re L* (2007) EWHC 1771 at paragraph 38.) In that sense, the paper questions law's power and ability to constrain or empower individual freedom through enabling, or not, social conditions of care. Many think that giving birth in secret no longer exists and is a historical phenomenon, and, certainly, historical examples form part of this paper, especially given the period drama element of the show. However, concealing births and relinquishing new born babies still exists in the twenty-first century. In many countries, such as the U.K., giving birth in secret or in concealed circumstances demands identification of the birth giver who is automatically the mother, otherwise a crime has been committed. In continental Europe, the legal position varies. In France, anonymous birthing is legally permitted; in Italy, discreet birthing occurs. Even in countries where the position is legally ambivalent, the use of baby boxes may be on the rise. Such boxes or hatches can form part of a hospital wall where babies can be

anonymously deposited in a modern day version of the medieval foundling wheel. The UN Committee on the Rights of the Child commented recently on the 'alarming spread' of baby boxes in Europe. Every US state now has some form of provision of safe havens for new borns since the first provision

Related Publications by the author: 'Human Rights Law and Personal Identity (Routledge 2014)' 'Concealed Births, Adoption and Human Rights Law: Being wary of seeking to open windows into people's souls' (2012) 71 Cambridge Law Journal 325-354' 'Giving Birth but refusing motherhood: inauthentic choice or self-determining identity'? (2008) 4 International Journal of Law in Context 169-185' 'After Birth: Decisions about Becoming a Mother' (jointly authored with Professor Katherine O'Donovan) in A Diduck and K O'Donovan (eds) Feminist Perspectives on Family Law (Cavendish Publishing 2006) 101-122

### **Constructing and Contemplating the "Ordinariness" of the Word "Woman" in Hong Kong Transgender Marriage Case W v Registrar of Marriages**

*Dr. Kimberly Wei Yi Tao, The Hong Kong Polytechnic University, Hong Kong Community College*

This paper looks at transgender identities and the law in the context of marriage. It particularly focuses on the Hong Kong Court of First Instance judgment *W v Registrar of Marriages* (2013) that concerns the right of Ms W, a post-operative male-to-female transgender person, to marry in her affirmed sex. This case raised the basic question regarding whose definition in fact or in law can or should determine a person's sex. It also had to categorize Ms W as either male or female in the context of marriage law. This case has sparked off intense debate on the legal reasoning and consequences of the judgment in the Hong Kong society. When we are trying to understand transgender people in law, our understanding of them is to a certain extent limited to the framework that is set by the law. The *W* case foregrounded how the judges construed the terms "man", "woman", "male" and "female" and found the "ordinary" meanings of those terms in marriage law. The High Court and Court of Appeal judges adopted the biological sex approach in order to define a person's identity while judges in Court of Final Appeal looked further by interpreting those terms in a broader sense, taking societal, medical and psychological factors into consideration. However, no matter which approach judges have adopted, judges were still interpreting those terms for the purpose of law and aiming at reaching a determined and justifiable answer as to a person's sex. Judges on the one hand stressed the importance of finding the ordinary meaning of the terms "within a commonsense world where words 'mean what they say' and refer to familiar concepts or things" while on the other hand showed their persistence in treating legal interpretation as "an autonomous activity in which word meanings are created and maintained as a matter of law" (Hutton, 2014, p. 43). In order to better understand the problematic

nature of the ordinary meanings of the terms "man" and "woman" in marriage law, this paper brings in the voices of Ms. W, the appellant of the W case who has remained anonymous throughout the entire court case. Through analyzing an interview that was conducted with her, one can find that even she was categorized as a post-operative transgender woman in law, she in fact insisted on defining herself as an "ordinary woman". This paper shows us that what is deemed as the "ordinary meaning" of the word "woman" in law could be different from what Ms. W understood as being an "ordinary woman". It further adds the elements of self perception in relation to the construction of the ordinary meaning of the word "woman". Ms W's experiences and legal struggles can give us insights into the tension between legal classification and self classification through the exploration of what constitutes the "ordinary meaning" of woman and an "ordinary woman".

- **Session 3D (Room 321, Dec 9 2:30-4:00pm)**

**Law's Dramatic Spaces – (Anti-)spectacular Modes of Jurisdiction: The Raft, the Island, the Restaurant and the Garden**

We take as one point of departure a video that was made by the Danish architects Schmidt-Hammer-Lassen to sell the building plans for the International Criminal Court in The Hague. The Court was officially opened by the Dutch King on April 19th, and is now fully operative in its new environment – although one can question the “fully”, since many countries have not signed or ratified the treaty of Rome that underpins the Court (42 states are missing) and the Court will not be recognized, as a matter of explicit intent, by Sudan and Israel, nor by a pivotal player: the United States. We want to take the architects seriously in their considering the direct environment of the new building and the form they gave to it. In a distinct sense they did not want to give the building – because they could not, on legal grounds – an authoritarian shape. Whereas Sidney Lumet's iconic movie *Twelve Angry Men*, in its representing a case that is safely established within the US legal context, can start with showing the audience the House of Justice that incorporates a stable, Roman inspired, neo-classical facade with massive pillars, the Court in The Hague misses any iconic representation, so far, in the cultural domain. And even if there were to be such a form of representation, it would have to deal with a building that has not only “transparency” as its main theme but that, legally speaking, has characteristics that connote a certain instability – or flexibility. It may be safe to say that the Court misses a political fundament or sovereign underpinning, and this will lead us to explore the force of law in unstable, flexible, temporary spaces that as such have some sort of spectacular force, if we understand this force in the sense of their making a public impression, but may also be distinctly anti-spectacular. We will

gather these spaces under the headings of the garden, the restaurant, the island and the raft. The first will entail an extensive reading of the building of the International Criminal Court in The Hague. The second will focus on a movie that represents an impromptu judicial case and space: Peter Greenaway's *The Cook, the Thief, his Wife and her Lover* in which a restaurant becomes a legal space. The third will deal with the case of Dutch-Moluccans in the Netherlands, where the Moluccans became *de facto* stateless while living within the Netherlands, which iconically invoked the form of the islands from which their communities stemmed and which then transformed into dramatic spaces of silence. The fourth reads the factual and juridical situatedness of contemporary refugees, who do not seem to have a legal space unless one takes seriously that they occupy a raft, as a stage that carries the potential of becoming a legal space - a space for the claim of the right to have rights.

### **In The Garden of International Criminal Law**

*Ms. Tessa de Zeeuw, Leiden University Centre for the Arts in Society*

A defining architectonic element of the permanent premises of the International Criminal Court, recently opened in The Hague, is a public garden, featuring a pond, that stretches along the full length of the site and that rises up along the walls of the Court Tower, the main building that houses the ICC's courtrooms, to clad it in plants. In order to access the court, one passes through the garden surrounding the building, and once inside, a view of the climbing plants frames the seat of the judges, as glass panes span the entire length and breadth of the back wall of the courtrooms, opening the courtroom up to a view of the climbing garden. The website for the architectural plans of the premises refers to this element in the design as a "façade of plants."

The paper starts from the idea that through architecture, the law constructs an image of itself that frames it as an institution and that reflects the law's force. It draws on Piyel Haldar's suggestion that courthouse architecture presents "a sign [...] of the very meaning of law itself," to say that the courthouse façade figures as a primary site of identification for the legal institution and its subjects. The construction of a garden as a defining architectonic element seems to be a conscious decision on the part of the ICC to present itself as part of a natural order. The architects explain that the garden symbolizes "unity" and relates "a human scale," invoking the natural rights discourse that underpins the notion of 'human dignity', which the court states it wants to protect, and the 'crimes against humanity,' which it prosecutes. But, in fact, International Criminal Law is a much-contested jurisdiction established through the positive law-device of the treaty. In that sense, its legal force is artificially constructed – something the garden can be said to both embody and to hide, behind a façade of naturalness.

As it brings together plants, trees, flowers, a pond, and a group of buildings made of reflecting glass, the design of the ICC premises should be read intertextually with a famous instance of the classical literary figure of the 'locus amoenus,' a pleasant natural place that presents the setting for romantic encounters. In Ovid's well-known account of the legend of Narcissus in the *Metamorphoses*, a 'locus amoenus,' an open place in the forest with plants, trees, flowers, and a pond, becomes the site of an encounter of a subject with the image of himself, and the founding myth of psychoanalysis' account of the artificiality of the construction of subjectivity. As the site of intermediation between naturalness and artificiality, the site of a fantasy of unified force, this paper asks how the garden presents a crucial element in international criminal law's theatrical scene.

### **Rituals of Consumption and Consummation: The Restaurant as a Spectacular, Intimate or Collective Legal Space**

*Prof. Frans-Willem Korsten, Leiden University Centre for the Arts in Society*

The Olympic Games are one of the most spectacular phenomenon in contemporary culture, which have often been at the centre of debate either because of the inevitable conflation of politics and sports or because of the compulsive desire to keep them apart. Yet in a study by the German Theatre Studies scholar, Erika Fischer-Lichte, attention is being paid to what nowadays is often forgotten: that the founder of the modern games, Pierre de Frédy – baron de Coubertin, called the Games into life because of what he perceived as a spiritual or religious crisis. In *Theatre, Sacrifice, Ritual: Exploring Forms of Political Theatre* (2005) Fischer-Lichte mentions Courbin's 'religion of muscles' as a solution to a crisis that was to be solved through a fusion of ritual and theatre that aimed to establish 'a new kind of cultural performance'. In my reading of a film by Peter Greenaway, *The Cook, The Thief, his Wife and her Lover* (1989), I will be focusing on the scene of another theatre and ritual – a restaurant – in relation to quite another 'religion of muscles,' one that is known under the heading of organized crime. In the movie this 'religion' gets a spectacular baroque performance in a restaurant run by a French chef. This is the Thief's favourite place (in fact, he bought it), and also a space that he uses to show his force and to subject others. The very same space also becomes, however, an intimate meeting place for his wife to enter into a sexual relation with one of the guests (not surprisingly: the Lover). Moreover, at the very end of the movie, the restaurant becomes a judicial space. Then, in it, the leader of the criminal gang is accused, judged – and executed. I will take the fact that this all happens in a restaurant seriously, relating my argument to Peter Goodrich's 'Eating law: commons, common land, common law' (1996). In it Goodrich states that the 'common law does not escape the genealogical principle of

institutional reproduction, namely that only through the sacrificial rites of food, through communal ceremonies of consumption, can the human group create and affirm a space of Law.' (93). It is especially this element of creation that I will be focusing on. In terms of creating, the question is how new rituals can be invented in spaces that are not determined beforehand by a spectacular frame. With respect to this I will come to determine the spectacular in terms of totalitarianism, ultimate subjection and historical closure; the intimate in terms of ultimate resistance; and the collective in terms of the dramatic space of creation. The restaurant forms the pivot to the three. Although it starts out as the scene of the Thief's spectacular power, the restaurant in Greenaway's film becomes a theatre of resistance and consequently a legal theatre, because generically, restaurants allow for display, intimacy and the gathering of communities.

### **Adat, Silence and the Idea of an Island**

*Mr. Gerlov van Engelenhoven, University of Giessen*

Adat is the name used to refer to collections of laws, traditions and social norms originating from Maluku (and the broader geographical context around Maluku). Seeing that this 'system' of law originates from an oral culture, it has been theorized (most famously by Dutch legal scholar Cornelis van Vollenhoven at the beginning of the twentieth century) that as a legal system it works in a way radically other than any Western system of law. In fact the difference between oral and written culture in this case is so crucial that one could wonder to what extent this system could or should be called a system at all, seeing that it differs fundamentally from island to island and therefore, because of its basis outside of the written, finds manifestations in other expressive forms, such as song, dance, clothing and architecture. Most importantly, in Moluccan practices of adat, an undeniable significance lies with the almost sacred phenomenon of silence.

In a diasporic community that still carries remnants of a previous societal structure that is based on oral traditions, and in a legal structure where nothing is documented, facts may become fluid to the extent that their specifics are completely dependent on those who express them into the public space, on the constitution of the public space itself, and on the constitution of the audience. Adat as a deviating version of law, being practiced within the Dutch national context, therefore poses the problem that as a legal 'system' it is more or less completely inversed as compared to codified State law: adat necessarily only exists in practice, and is therefore unfixable, especially because of the fact that the most important interpretations of historical situations that this 'system' bases the justification of certain actions on (like Moluccan alliances to the Dutch in the 1940s, and their subsequent semi-forced migration), might be hidden in silence. It is difficult to call this 'system' a system at all, because it exists only in its manifestations, in its dramatization.

Justice, in the case of adat, is not practiced as a representation of a written, fixed set of rules. Justice, instead, is done, dramatized, in song or dance for example, or, more extreme, through actions like the 1977 train hijacking, which according to State law, however, represented what is defined by law as terrorism. The suggestion that adat is not a system, because it only exists in its dramatization, poses a problem for approaching this history of terrorism from a legal pluralist perspective, to the extent that legal pluralism would incorporate this other practice as a parallel system, thereby, indeed, systematizing it into a representation, stripping it of its dramatization, to such an extent that it would fit Scott Veitch's idea of legal irresponsibility: the system of law being used as a way to avoid rather than solve conflict. My argument, in contrast, will be that this form of jurisdiction fits better in the model of a multiplicity of islands.

- **Session 4A (Room 310, Dec 9 4:30-6:00pm)**

**Author Meets Readers**

**C. F. Black – A Mosaic of Indigenous Legal Thought: Legendary Tales and Other Writings (Abingdon: Routledge, 2017)**

*Prof. Shaun McVeigh, Melbourne Law School, University of Melbourne*

*Dr. Olivia Barr, Melbourne Law School, University of Melbourne*

*Dr. Christine Black, Adjunct Senior Research Fellow, Griffith Center for Coastal Management, Griffith University*

- **Session 4B (Room 311, Dec 9 4:30-6:00pm)**

**The Visible and the Invisible**

**Road Safety and the Invisibility of its Regulation**

*Dr. Christopher Dent, School of Law, Murdoch University*

Being on the road is one of the riskiest behaviours people undertake daily ' 1209 people died on Australian roads in 2015. The regulation of that behaviour is, in many ways, invisible. There are three regulatory processes, each directly contributing to road safety, that cannot be seen as having

a high profile. A key process here is the enforcement of the road rules. There are three aspects of this process that are low visibility. The first is the fact that the rules operate as (Foucaultian) norms. Most road behaviour is guided by other road users and not by repeated dictates of the government (even the road safety advertisements promote appropriate behaviour and not the sanctions). Second, these days, a significant amount of the policing of the road rules is automated. There is a significant deployment of speed and red-light camera and a lower presence of police on the roads. Third, even the processing of infringement is a matter of forms. In most cases, the theatre of the court is removed and fines are sent out via and the post and paid by a transfer of funds. An additional point may be made with respect to the 'regulation by norms' idea. If popular culture is considered, it is clear that it does contain examples of extreme breaches of the road rules. Two things can be said about that. First, in most cases, the normative nature of the rules is implicitly emphasized through the communicated reasons for the breach of the rules. Second, there may, in fact, be more instances of protagonists in movies and TV shows complying with the road rules ' it is just that such compliance is not the focus of the scene (i.e. the may be a conversation held in a car as it is being driven). The second, barely visible, process around road safety relates to the regulation of standards in vehicle production. Drivers take for granted the requirements around seatbelt attachment points and hydraulic hoses ' though they do pay for raised standards in increased costs of new vehicles. The point here, however, is that these standards have an invisible, yet important, impact on the survivability of crashes, and even their incidence. Finally, even disputes over the compensation for accidents are out of sight. Apportionment of liability, now, is a matter of compulsory third party insurance (for injury) and a battle between insurance companies (for property damage). Importantly, too, even the legal tests liability focus on the invisible ' it is the decision-making of the defendants that is probed (were they negligent or reckless), with decision-making being an internal process. The purpose of this overview is to highlight that such invisible regulation can be understood as effective. Over a thousand people do die on the roads in Australia each year, but to the 12 months to October 2014, road-users travelled a distance of 245 billion kilometres. A success due, in part, to the interplay of the sets of regulation and due, in part, to its invisibility.

### **Rights and the (Un)Observable Body in H.G. Wells's The Invisible Man**

*Dr. Benjamin Authers, University of Canberra*

The language of rights justifies a limit on the seemingly unqualified power of the state to surveil individuals. Particularly in criminal law, rights are described as redressing the power imbalance between state and accused, attempting to ensure fairness by constraining how evidence can be

gathered and through the protection of concepts like the presumption of innocence. This assumes, however, that individuals are first seen by the law in order to then be unseen. The undetectable individual generates quite a different anxiety, a concern about the untrustworthiness of those that the law cannot see. Rather than something to be protected, the invisible body constitutes a potential threat because it is hidden from law's sight through means not of law's choosing. This paper reads H.G. Wells's 1897 *The Invisible Man* alongside his campaign, in the early years of World War II, to develop a declaration of rights, as commentary on the alternately observed and unobservable body before the law. In his writing on rights, Wells sees transparent and free access to information as central, fostering a right to education and speech and ensuring fair and knowable legal and administrative processes. *The Invisible Man* extrapolates this idea into an invisibility, a lack of transparency, that is cause for alarm: 'the things he might do! Suppose he wants to rob' who can prevent him? He can trespass, he can burgle, he can walk through a cordon of policemen' (105). Being unobservable creates an unregulatable subject who panics the public and (as Wells tells us) ultimately becomes criminal because he is seduced by his capacity to go unseen. The novel plays on a slippage between intelligible observableness and invisibility to suggest that not being seen is cause for alarm by the state and the social order' just as, Wells argues, unknown information held by the state should be. At the same time, the novel speaks to rights concerns about the extent to which the observable body can incriminate itself. When he eats, the *Invisible Man*'s digestion is visible in a grotesque parallel to the drug smuggler whose ingestion (and ultimate expulsion) of narcotics becomes legal evidence through its observation by the state. In its conspicuousness, the *Invisible Man*'s body itself is evidence, betraying him as surely as the smuggler's body. At such moments, these bodies also become subject to the purview of rights discourse, as in legal prohibitions against 'unreasonable search and seizure' by the state (to use the language of Section 8 of the Canadian Charter of Rights and Freedoms). This paper will engage with these often contradictory conceptions of what it means to be observed and unobservable, and ask how *The Invisible Man*'s jurisprudential reading articulates the complex legal relationship between rights, surveillance, state, and individual.

### **Artificial Islands and Artificial Highways: The Warship as a Visible Instrument of Customary International Law**

*Dr. Edwin Bikundo, Griffith Law School, Griffith University*

'World history', at least according to Carl Schmitt, 'is a history of land powers against sea powers'. These words in their own way echo lines in Goethe's *Faust*: And tempests in contention roar From land to sea, from sea to land; And, raging, weave a chain of power, This struggle between land

and sea is more than just a striking metaphor. Public international law is a rarity in that the sight of a warship peaceably going about its business is seen 'without irony - as a legitimate means for making and unmaking law or asserting and resisting legal rights. While the United States is intent upon upholding freedom of navigation in the South China Sea, China constructs artificial islands in the area and asserts territorial sovereignty. Both countries engage the conspicuous spectacle of sailing warships in a similar manner but for opposed reasons each based on different legal principles. This difference of approach with identical state practice argued as having diametrically opposed legal consequences is a miniaturisation of a broader strategic environment with the United States being a global champion of keeping the sea open to global navigation and commerce while China is intent upon building a primarily land based so-called 'New Silk Road' to link China to critical markets and natural resources. The recent translation of Carl Schmitt's *Land and Sea*, one of his more literary works, provides a unique opportunity to evaluate whether it may clarify issues at stake that Schmitt himself did not have the opportunity to consider.

- **Session 4C (Room 320, Dec 9 4:30-6:00pm)**

**Traumatic Pasts**

**Censorship and the Necessity of Repressing Childhood Trauma in Martin McDonagh's *The Pillowman***

*Ms. Karen Crawley, Griffith Law School, Griffith University*

Irish playwright Martin McDonagh's play *The Pillowman* is a darkly funny play about the police interrogation of a writer called Katurian whose macabre short stories about horrific child abuse and murder echo actual killings. The interrogation takes place within a totalitarian state and engages the writer and police in a dispute over the relations between fantasy, action, and harm: reference points familiar to a liberal framework of censorship. Against the overdetermined reading of his stories presented by his interrogators, for whom Katurian is clearly a sadist writing instructions for himself or others, Katurian refuses to offer a reading of his stories, maintaining that they are 'about' nothing, 'no social anything whatsoever', and any 'actual' children or politics in them is incidental. Indeed, they appear to consist merely of random violence involving traumatised children being tortured or killed in horrible ways. In their conjunction of gruesome macabre and humour, Katurian's stories raise the same discomfort as the play itself, and McDonagh, like Katurian, denies the viewer any clues as to his preferred reading; hence there is a resistance to interpretation at the centre of the play that threatens to paralyse us as witnesses

(hence the critics' concern that the play's gratuitous violence was 'pointless'). My reading of the play seeks to reanimate the question of censorship and even to suggest its necessity: a necessity that finds its justification not in a liberal mode of freedom, harm and tolerance, nor the totalitarian promise of suppressing or obliterating an unwelcome past, but rather in a different logic bound up in the necessity of an unconscious forged through repression ' a process of displacement that enables us to cope with traumatic pasts. The fact that Katurian's stories end up neither destroyed nor published, but locked away in a vault - suspended ' enables a censorial law to emerge that allows us as legal subjects to continue, neither hostage to a traumatic past nor overcoming it, but working with and through it. Katurian's stories ' and particularly the story about the eponymous Pillowman himself ' are about the promise of escaping the past as well as the impossibility of doing so, the impossibility of escaping the traumas that define us and bind us to law.

### **Reckoning with the Celluloid Paedophile: Transitions in the Representation of Child Sex Offenders**

*Dr. Dave McDonald, School of Social and Political Sciences, University of Melbourne*

The spectacle of the paedophile has gained increased traction since the 1970s, during which time child sex abuse was declared to have been 'discovered', and elevated to the level of a 'national emergency'. This has been accompanied by a progressive growth and relative diversity in representations of paedophilia in popular culture. In this paper I argue that these representations have functioned as important mechanisms through which the 'reality' of child sexual abuse has been mediated. During the 1970s, second wave feminists emphasised the role of normative masculinity as a key criterion in understanding this phenomenon of harm. In spite of this, throughout the 1980s and 1990s, this significance of the heteronormative child sex abuser has been obscured through an increased emphasis on the paedophile as other, monstrous and abject. In this paper I explore the function, politics and affect of cinematic representations of the paedophile. I argue that these representations are indicative of broader cultural understandings that have enabled or reiterated a performance of consolation in how child abusers culturally figure. In doing so, I propose a typology of representation, charting shifting transitions that underpin this, in order to engage with the political dimensions that can be witnessed of the celluloid paedophile.

### **Spectacular Transitional Justice on Film: Telling a Story with a Good Ending?**

*Prof. Aeyal Gross, Tel-Aviv University, & SOAS*

Our presentation will consider the role of film and narrative in transitional justice as means offering a spectacular of (transitional) justice performed on the screen. In particular it will look at the interaction of restorative justice with retributive/criminal justice and how the performance of transitional justice in the films we consider upsets, through the spectacular taking place on screen, the traditional narrative of transitional justice. As films are distributed and viewed globally, we consider that films reflect and refract the images of crises of society globally. Looking at narratives of transitional justice preformed films, we will address the limitations of the legalistic and therapeutic narratives that truth commissions have employed to frame official memories of atrocity; the discussion of a criminal or quasi criminal justice; the existence of a distinctive liberal narrative of transition which follows a particular genre; and the gendered nature of 'justice' in the transitional context. We then turn to consider the distinctive role of films in creating narratives of transitional justice ' a significant role given the wide distribution of films and the fact that much of the transitional justice project is about creating and viewing a narrative about what happened. Through a reading of films which bring up stories of attempted reconciliation and transitional justice, our presentation considers the way different processes are being represented on camera: the difficulty if not impossibility of such a privatized process during an ongoing conflict without any institutional support, vis-a-vis the nationalized institutionalized processes. We will also consider the gendered nature of the stories. For example *My Terrorist* tells the story of the protagonist's attempt to bring a different voice to the 'peace process' narrative: while the show in Camp-David, Jerusalem and Ramallah is run by men, the protagonist's quest cannot be read outside the gendered context of her role as woman and especially mother, as well as her embodied position as someone whose body still bears the trauma. We will thus consider Yulie's quest in *My Terrorist* alongside the quest of other women whose bodies bear the conflict and who 'disrupt' nationalized transitional justice narratives, such as Lucie in J.M. Coetzee's *Disgrace* (a novel which was turned into a film) and Paulina in Ariel Dorfman's *Death and the Maiden* (a play turned into a film). The paper thus considers the potential and limits of personalized attempts in reconciliation; the tension between the private 'madness' of forgiveness and institutionalized political mechanisms; the tensions between non-criminal and criminal models of justice, and more generally the politics, poetics and gender of transitional justice ' as represented on the big screen. It tells stories of women who perform a different quest of transitional justice than that of the official narrative, and suggest the films offers a spectacular of how law works/ does not work and how the films offer a plurality of setting beyond that of the courts of law and the rooms of truth commissions: be it Paulina's living room, Lucie's farm, or Yulie's trip to the prison in the UK.

- Session 4D (Room 321, Dec 9 4:30-6:00pm)

## New Technologies

### Hana-Won, National Security Law, and Cosmetic Surgery: Beyond Biopolitics in South Korea

*Ms. Hea Sue Kim, Goldsmiths, University of London*

In this paper, I examine the interplay of law, disciplinary mechanisms, and security in South Korea (ROK) in order to expose the violence of neoliberal biopolitics by tracing some of the processes of subjectivation, and end with the possibility for de-subjectivation. I first focus on the North Korean re-settlement facilitation center (Hana-won) run by the ROK government. All North Koreans who migrate to the ROK are mandated to stay at Hana-won for three months and to be 'educated' into becoming South Korean citizens. They learn how to use the bank and the credit card, and how to shop at a mall, etc. Job training and psychological counselling are also provided. Controversies on the efficacy of the programs aside, the legal status of these people is uncertain, abuse common, and regulation or oversight difficult since the ROK government claims secrecy in the maintenance of the center for 'national security reasons.' During the course of the three months, its residents are denied access outside of the facilities or free access to mobile phones and internet. The facilities are gender segregated. Stories of guards who threaten the residents abound. It is an extra-judicial and disciplinary space sustained by the security logic. On the constitutive outside of this institution is the National Security Law which also sustains a state of exception that severely restricts civil liberties in ROK. 'To preserve the safety of the nation and the survival of freedom of the people by regulating anti-state activity that threatens the security of the state (Guk-ka Boanbop, Art. 1-1),' it was passed in 1948 in order to suppress socialist dissent and to stabilize the capitalist South Korean state that had just been installed under the aegis of the U.S. Since its inception, the law has enabled the persecution of countless activists and artists who had been critical of the capitalist statist imagery. This law disables effective dissent. Criticism of state activities get lumped together as being pro-North Korea. A telling example of the biopolitical mechanism can be found in the "pro-bono" cosmetic surgery program for North Korean migrants. First suggested by the police and sustained by volunteering cosmetic surgeons, it aims "to help heal the physical and psychological wounds inflicted by the experience of escaping North Korea." At this moment, law and disciplinary apparatuses recede and an insidious biopolitics rears its head. Instead of stopping at exposing the 'risks of the (neo)liberal idea of security that operates by producing social segregation and anxiety (Thomas Lemke),' I want to pose the possibility for inventing another notion of community and security that critically engages with the limitations of nation-state and the market ideology. I do this by looking at a transnational migrant women's organization in the ROK called Jogakbo, and also an alternative

art and performance school for North Korean migrant teenagers. Through a close examination of the workings of these organizations, I will argue that a potential for de-subjectivation and a creative re-imagination of subjectivities lie in a deconstructive play of language.

### **What is a Document? Evidentiary Challenges in the Digital Age**

*Dr. Trish Luker, University of Technology Sydney*

The rapid transition from a knowledge economy based on the documentary form to the contemporary digital information society has presented real challenges to law and legal processes. Digital documents are voluminous, ubiquitous, intangible, difficult to authenticate, easy to duplicate and modify, and they generate new questions about what they mean and what they can prove. However, in law, definitions of documentary evidence derive from traditional, even archaic, distinctions between media forms which are more characteristic of the analogue age, leading to challenges for evidence law in the transformation to a digital information society. One particular area of challenge lies in the traditional distinction in law between documentary evidence and real evidence. Under the Australian Uniform Evidence Acts, a 'document' can be any object that includes writing, marks, figures, symbols and perforations; it can include maps, plans, drawings and photographs; and can contain sounds and images. A document is, in law, a multimedia artefact. On the other hand, something is 'real' evidence if the tribunal of fact can perceive that thing for itself; the object need not be self-evident authenticity, relevance and admissibility must still be determined and an inspection, demonstration or experiment may need to be conducted. In other fields of the humanities, understandings of documentation are not restricted to the textual medium, but rather are recognised as forms of material culture. In information science, for example, documents are investigated in the context of practices of record-keeping, archivisation, media technology and bureaucratisation. Cultural anthropologists argue that the form, placement and organisation of records produces meaning and value. In this way, a document becomes an 'artefact', to be subjected to ethnographic analysis and description, bringing a distinctive epistemology, ethics, and aesthetics. Notably, historians and cultural scholars are exploring the effects of digitisation on the materiality of documents and there is a burgeoning interest in the field of digital humanities, where new technologies are transforming research methodologies and communication of ideas. Furthermore, within these fields, documents are increasingly regarded not only as sources, but also subjects, with aesthetic or sensory potential. In this way, cultural researchers have begun to focus on the affective potential of documents. However, there has been limited scholarly analysis of legal documentation drawing upon these frameworks. In a key contribution, Vismann (2008) demonstrates that the history of

the law is written in the acts of documentary processes. Latour (2009) also uses an ethnographic approach to argue that legality is a material practice which occurs retroactively as a result of the relationship between documents and other entities. Nevertheless, this work does not address the evidentiary challenges in courtrooms. In this paper, we will report on a new project which investigates the use of cultural theory in the context of evidence law, drawing on contemporary developments in the humanities and information science to challenge out-dated evidentiary frameworks and propose more nuanced and flexible paradigms which can accommodate diverse forms of material culture.

### **Justice and New Technology: A New Era of Re-Examination? – An Example of the Access and Benefit-Sharing System for Genetic Resources**

*Ms. Jiangfan Wang, University of Macau*

There is no doubt that the whole humanity will pay attention to health and health-related areas. In the big data era, research institutions and biotechnology companies have been analysis both human genetic resources and non-human genetic resources to provide tailored and alternative medical care options for people. However, the traditional values of justice and law have been changing through the development of technologies. In the field of non-human genetic resources, the Nagoya Protocol has been entered into force on 12 October 2014 under the framework of the Convention on Biological Diversity. Thus, benefits arising from the utilization of genetic resources shall be shared with providers who are usually indigenous and local communities. In other words, the Nagoya Protocol can be seen as the first successful international law that was promoted by the low-to-middle income countries to achieving justice and reduce biopiracy and also the disadvantages from the TRIPS agreement. In contrast, there are also assertions that establishing a fair and equitable access and benefit-sharing system for human genetic resources is urgent since the Convention on Biological Diversity had explicitly excluded human genetic resources within its framework. In fact, with the improvement of gene sequencing technology and other biotechnologies, the primary goals to establish the Access and Benefit-sharing system for human genetic resources is to achieve justice. Hence, whether the values and concepts of justice based on the changing high-end technologies should be re-examined. To this end, the present paper will examine the concepts of justice within the access and benefit-sharing context and also re-evaluate it along with the advancement of new technologies. Therefore, various international documents and cases of domestic legislations will be examined in order to provide a clear view of the evolving concept of justice in the future.

- **Session 5A (Room 310, Dec 10 10:00-11:30am)**

**Representations of Judges**

**Legal Aspects in Judge Dee – Challenging the Divine Justice**

*Mr. Lung-Lung Hu, Dalarna University*

Robert van Gulik only translated the first thirty chapters of Judge Dee (Dee Gong An). The reason is that the second half of Judge Dee is regarding politics, and van Gulik only wanted to introduce the detective part in Judge Dee to western readers. However, in the first thirty chapters in translation, van Gulik did not translate everything in the original text. He, even if not that much, adapted, adjusted, and, most important, omitted some parts and rewrote them for fitting the appetites of western readers. This present paper is not a study of translation, therefore, I do not intend to criticize van Gulik's translation. Instead, I will examine the translation, in which those parts that are omitted and rewritten by van Gulik, to reach the ideas hidden both in the translation and in the original text. Missing and rewritten parts reveal important messages regarding translator's evaluation of the original text, such as what should be or should not be presented in the translation and what is lacking or unnecessary in the original text. The stories in the first 30 chapters in Judge Dee are similar to the detective stories in the West, however, since Dee Ren-jie is not only a detective, but also a judge who is supposed to convict the criminals according to the law, Judge Dee is also a collection of legal stories. Hence, the missing and rewritten parts in the translation illustrate that some legal ideas in the original text, from the perspective of law in the West, that are absent or redundant in van Gulik's mind. Therefore, this present paper is to examine, from the deconstructive point of view, that whether the original text really needs to be revised by the translator or, in fact, some legal ideas in traditional Chinese law questioned by the translator have already been presented in the original text.

**Women Judges reflected in Ian McEwan's The Children Act**

*Prof. Margaret Thornton, Australian National University*

Dr Heather Roberts & Prof Margaret Thornton: While the proportion of women judges in the common law world falls well below that of men, their numbers have increased markedly over the last 20 years but this reality has generally not percolated through to the world of fiction, where

'the judge' is invariably male, as are other legal actors. In Ian McEwan's *The Children Act*, however, the main character, Fiona, is a High Court judge in London. McEwan presents an insightful study of Fiona that takes account of the way the public and private facets of her life are closely intertwined rather than strictly separated, according to the judicial norm. We draw on McEwan's portrait to illuminate a study of swearing-in ceremonies of women judges of Australian federal courts. Whereas the subjective persona of the judge is normally suppressed in order to emphasise the neutrality and rationality of law, the swearing-in ceremony can be strikingly different. These ceremonies are spectacular events, in which ritualised speeches of welcome and reply mark the entry of the neonate judge into the world of adjudication. During these ceremonial sittings of courts, formal constraints can be sloughed off in order to reveal (and celebrate) the judge's affective side. [She] is depicted as a normal human being with a past, a family, a range of interests outside law and even a few idiosyncrasies. However, McEwan's portrait of Fiona brings into sharp relief the often times jaundiced images of women in the law that have historically populated Australia's ceremonial archive. In part, the limitations of these ceremonial portraits can be explained by the ritual's purpose. Designed to reinforce the authority and integrity of the bench, an element of hagiography is to be expected as, traditionally, it is a judicial virtue to sacrifice the 'private' on the alter of 'the public'. However, in the ceremonial portraits of the woman judge, it has been the emphasis on the 'private' that has traditionally been so striking. The rituals have been frequented by stereotypes of the 'mother judge', the 'superwoman', and the 'long-suffering husband' in ways that undermine, rather than reinforce, the new judge's authority. In *The Children Act*, McEwan normalises Fiona's authority as a woman and a judge, while continuing to raise questions about the vexed question of work-life balance in the law. While recent ceremonies (contemporaneous with McEwan's work) may suggest a reduction in the feminised depiction of the women judge, members of the Australian legal profession may still be searching for the nuanced vocabulary of McEwan with which to address these issues.

### **Impartial Judges as "Blue Sky": Linguistic Study of the Public Perception of Traditional Chinese Law**

*Prof. Liping Zhang, Nanjing University of Science and Technology*

Regarding the colors of law in traditional China, there are at least two related yet different versions, the official version and the public one, which provides complementary views to the understanding of what law means to people. Since the legal system in Song Dynasty has been acclaimed as well-developed in both theory and practice, demonstrating by far the best official

strive for judicial fairness even to the critical legal theorists in modern age today, this paper is attempted to explore how law was perceived at grass-root level in that period. Specifically, this paper takes as its object of study the public perception of impartial judges in Song Dynasty. It starts with a small-scale corpus analysis of the metaphor 'impartial judges as blue sky', a metaphor motivated by the phrase 'a bright mirror hung high' in the flat plaque of the Chinese court, in the collected data of the biographies of ancient judges, and then studies how the perception is discursively visualized in legal dramas of an impartial judge 'Bao Gong'. The paper concludes with discussions of the muddy image of 'blue sky' in relation to the judges. Methodologically, this paper draws on critical discourse analysis, trying to integrate qualitative analysis and quantitative analysis.

- **Session 5B (Room 311, Dec 10 10:00-11:30am)**

**Citizens and Others**

**Citizenship, Rights and Invisible Power of Indian Law: A Case Study of Section 377 of Indian Penal Code and Restitution of Conjugal Rights**

*Ms. Priya Mathur, Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi, India*

The concept of citizenship has been a subject of intense debate in political theory. However the core criterion that is consistent in all writings on citizenship is the legal notion which entails being a formal member of a state defined by a territorial border. This legal status of citizenship provides the promise of equality of rights, access to resources and benefits of the state. Indian constitution provides for fundamental rights like right to freedom of speech and expression (Article 19), right to life and liberty (Article 21), right to equality of opportunity in public employment (Article 15). Most important of all, it provides for equal protection of laws and equal access of rights as it lays down a strong anti-discrimination principle which clearly states that 'state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them' (Article 14 and Article 15). Therefore theorists like Hannah Arendt (1951) have pointed out that when a state acts purely as a legal instrument not moved by narrow national consciousness, then it can protect all its citizens. However what if the legal instrument itself plays dominant role in conceptualizing narrow national consciousness in the state? History of Indian legal system shows that Indian state through laws like Section 377 of Indian Penal Code and Restitution of Conjugal Rights (hereafter RoCR), normalizes ideas of 'normal' and 'abnormal' sexuality as well as

promotes prescribed gender roles in society. Section 377 does this by criminalizing homosexual relations and RoCR does this by perpetuating male privilege by promoting heterosexual marriage in society. Further sanction of such laws by the state leads to a situation where general public, taking a cue from the government, as to whom is to be honored as well as who is to be discriminated against, not only self govern themselves according to prescribed heterosexual standards but also other citizens through the means of violence. Queer and Transgender individuals particularly face this invisible power of law given that Section 377, even when rarely enforced, by merely existing in the legal text book supplies the message of injustice against non heterosexual behavior. Similarly if we analyze the judicial interpretation of RoCR we will find that Indian state overemphasizes on centrality of heterosexual marriage and doing so charts expected norms and behaviors that women are ought to follow. This leads to the attitude of self governance in women who while claiming their rights in the court often emphasize on how they completely fulfilled their prescribed marital duties. Most women even internalize the idea that they must make their marriage work; even in situations where there is adultery and violence involved from the side of the husband. This shows how judicial system through heterosexual marriage shapes the ways and meanings of 'good' and 'ideal' citizen and women internalize such ideas. 'Ideal' citizen being the one who is married, willing to work on his relationship and stay in the marital institution no matter what. Therefore the paper, through the example of Restitution of Conjugal Rights and Section 377 of Indian Penal Code, seeks to inquire into the invisible power of law. To understand this, the paper will be divided into three sections. The first section will analyze the concept of invisible power of law to understand how some laws by merely existing in statute books regulate the behavior of citizens. The paper will argue that existence of these laws is not only about 'controlling behaviour directly' by enforcing punishment but also about 'making statements' about what is normal and abnormal sexuality and who is a ideal citizen in the state. The second section will focus on Section 377 to understand how the mere existence of this law in the Indian Penal Code sanctions violence against queer individuals. The third section will discuss the law of RoCR to prove how women self govern themselves into the prescribed gender roles by judicial sanctions of the same in the courtroom. The aim of this paper is to understand how legal regulation intersects with non legal forms of governance to produce self governing citizens.

### **Surface and the Unseen in Judgements on Sovereign Power in Australian Refugee Law**

*Ms. Justine Poon, Australian National University*

When you light up one path in the dark, it can be easy to become blinded to all the other paths that have remained unilluminated by chance or by design. Australian refugee law of the past 25

years is an example of how, through successive reinforcement of particular narratives about asylum seekers, borders and sovereignty, the legal and political discourse can streamline the many ways of looking at the issue into one, such that the only relevant question to ask about law is whether it is effective at maintaining control of the border by keeping asylum seekers out. The ideas, injunctions and provocations of the varied law and humanities field gives us the means to challenge this ossification of the law and its attendant assumptions about the world, through analysing the means of legal production and deconstructing and unsettling what is presented to us as unchangeable and settled. This presentation analyses a recent Australian High Court case in which the legal analysis denied the reality of the Commonwealth's exercise of detention in order to effectively grant the power to detain asylum seekers beyond the national territory. Plaintiff M68/2015, challenged the validity of Australia's offshore detention of asylum seekers in the Pacific island nation of Nauru, which Australia procured, funded, staffed and had significant control over. The government argued that it was not legally responsible for the detention as this was a matter for the government of Nauru. The majority of this Court accepted this argument and six out of seven judges limited themselves to looking only at the question of whether Australia's participation in the arrangement was legally valid, whilst also restricting the application of precedent on the limits of administrative detention. The exercise of this muscular form of sovereignty beyond the border is simultaneously denied as existing in order to give it the legal authority to effectively exist. The border and the bodies that traverse it are the contested sites of legal meaning that are presented as though they were undeniable facts. Related to questions raised in Plaintiff M68/2015 are questions of how the selective spectacular inquiries of law in what it sees and what it makes invisible are linked with political imagery that reifies the abstractions of sovereignty into ambiguously symbolic and real figures.

### **Performing Sovereignty in the Pacific: Australia's Offshoring of 'Irregular' Migration on Nauru**

*Dr. Anthea Vogl, University of Technology Sydney*

The policy of territorial excision is a foundational and extraordinary aspect of Australian refugee and immigration policy. First introduced over 14 years ago in 2001, it designates certain parts of Australian territory as 'excised' from Australia's migration zone. This policy, of territorial excision, redefines traditional understandings of territorial sovereignty and reconstructs the consequences presence on sovereign territory ' but only for a specific class of persons: unauthorised migrants arriving in Australian territory by sea. The policy has ' in two distinct phases ' been accompanied by a regime of 'offshore processing' of onshore asylum seekers. Under the disturbingly named 'Pacific Solution' (2001-2008) and then the 'Pacific Strategy' (2012-ongoing), unauthorised maritime arrivals to Australia may be sent to neighbouring Pacific states, who have agreed to host

and process Australia's onshore refugee applicants. To date the two states involved in this program have been Nauru and Papua New Guinea. Using a postcolonial framework, this paper will analyse Australia's engagements with these states, and in particular with Nauru, as part of the Australian state's performance of sovereignty and as an extension of Australia's colonial role in the region. By examining Australia's historical, colonial relationship with Nauru and the current 'offshore' processing regime, I argue that Australia's performances of sovereignty simultaneously rely upon and abuse traditional conceptions of sovereignty. Norms of sovereignty are undermined in Australia's use of Nauruan territory to process and resettle refugee applicants. As well, the notion of excision of Australian territory highlights the extent to which the rights that attach to territorial presence have only ever applied differentially to particular subjects. Both acts, however, seek to demonstrate and affirm Australia as sovereign. This chapter will demonstrate how Australia exploits classical conceptions of sovereignty to perform its own sovereign status and to limit and redistribute its responsibility for asylum seekers who reach its territory.

- **Session 5C (Room 320, Dec 10 10:00-11:30am)**

**Images, Law and Place**

**40,000 Years is a Long Long Time'**

*Dr. Olivia Barr, Melbourne Law School, University of Melbourne*

'40, 000 years is a long, long time' Photo: Carol Ruff, 'Detail of the original mural on Lawson Street', South Sydney Herald, 11 November 2013 Abstract: Redfern is an inner-city suburb of Sydney, Australia that hosts many stories of migration, political contest and ongoing relations between Aboriginal and Anglo-Australian laws. A collection of these are captured in the '40,000 years is a long, long time' mural (above). Painted in 1983, and designed by artist Carol Ruff, a series of panels stretch across a long bridge wall, above the Redfern train station, with the Sydney skyline as backdrop. While undoubtedly iconic, the mural deteriorates. After decades of bureaucratic dead-ends, a 2016 pilot project is funding Carol Ruff to undertake a feasibility study as a precursor, perhaps, to its restoration. Amongst many involved in the restoration is an artist-based research group called 'Space, Place, Country' from Sydney College of the Arts, University of Sydney, led by artist Bianca Hester and writer Saskia Beudel. Reflecting on my involvement with this group, and this project, I seek to place the question of time in circulation with concepts of space, place and country by telling stories: law stories. For me, the mural is a law story that holds time in at least two ways. The first is the visual and material telling of a narrative history

of Aboriginal peoples in Redfern: selecting events, ignoring others, and celebrating what is important to this place. While lightly linear, this is not the progress narrative of the State, and arguably reshapes a certain form of colonial legal time. The second is the way the mural holds other, less visible, law stories and other, less visible, permutations of time. Looking beyond the shades of paint, even as they peel, this is the mural as a story-gathering device that shares, hosts, holds and refracts stories of how we live together, with law, and in place. Through acts of story-telling and story-gathering, the mural is, I suspect, a lawful place. But is it also, perhaps, a lawful time?

**Biography:** Dr. Olivia Barr is a Senior Lecturer at Melbourne Law School, University of Melbourne, Managing Editor of the Australian Feminist Law Journal and a member of the Steering Committee of the 'Space, Place, Country' research group at Sydney College of the Arts, University of Sydney. She has previously worked in law reform, as a government solicitor, and for the United Nations Permanent Forum on Indigenous Issues. Olivia writes in jurisprudence specifically, and law and the humanities scholarship more broadly, and is currently curious about questions of movement, lawful place and the relationship between law and walking. She recently published, *A Jurisprudence of Movement: Common Law, Walking, Unsettling Place* (Routledge, 2016) in their 'Space, Materiality and the Normative' series.

### **Minor Jurisprudents: Sightseeing**

*Prof. Shaun McVeigh, Melbourne Law School, University of Melbourne*

This paper will present a part of a jurisographical investigation titled 'Jurisprudents of London'. Its motivating conceit follows the rarely tested understanding that London bears or carries a jurisprudence. The project investigates the ways in which contemporary jurisprudents – minor jurisprudents – might be thought of as engaging in the arts of association and place-making. My particular concerns in this paper relate to forms of place-making and engagement with places such as universities, cemeteries, museums, police stations and other neglected or dilapidated public institutions. One feature of the writing of minor jurisprudences has been to provide a training in 'being minor' in the conduct of lawful relations. So one question that might be asked is what kind of character or ethos is entertained in a training in the spectacle of laws. At the moment my starting point for this investigation lies with the reasonable man on the Clapham omnibus. While this figure of law has been addressed in relation to gender and reason, less attention has been paid to their modes of transport and sense of movement and place. In following the Transport for London bus route 345 from South Kensington to Peckham via Clapham, this paper examines the unofficial training offered by a number of jurisprudents in drawing out the visual ordering of lawful relations (in south London and elsewhere).

## **Does the City-Never-Sleeps Dream? A Study of Visual Representation of Post-'97 Hong Kong**

*Ms. Agnes Tam, Westfaelische Wilhelms-Universitaet Muenster*

Paragraph 3, sub-paragraph 12 of the Sino-British Joint Declaration stipulates that the basic policies of China on administration of Hong Kong would remain unchanged for 50 years. The instrument was consolidated into Article 5 of Hong Kong's Basic Law to read that 'previous capitalist system and way of life shall remain unchanged for 50 years.'

In that way, the transition of colonial Hong Kong is not into post-coloniality but a perpetual return to the past. I follow Walter Benjamin that history parallels to Medusa's gaze, to examine the problematic of promise of unchanged-ness. To carve the promise of status quo into statu(t)e is like looking into Medusa's eyes, the 1997-handover is taken to be the rigor mortis catalyzing a perpetual presence. In the case of Hong Kong, the visual statement for the unchanged-ness is one that fetishizes the pre-handover cityscape as the outlook on continued prosperity and stability.

In this paper, I look into post-colonial filmic images of Hong Kong in overseas productions such as *Johnny English Return* (2012) and *Already Tomorrow in Hong Kong* (2015), to illustrate how external gaze is internalized to conjure up a self-representation. According to Laikwan Pang, the population consciously performs to enliven the same representation to attract/ retain media attention. It was a lesson learned in the June 4th massacre in 1989 when international media attention played a monitoring role on the Chinese authority. While the external gaze essentially eyes on the volatile diplomatic relationship between China and the West, in the hope that the international mass media could help stabilizing the necessary (political) conditions for unchanged way of life, the population actively engage themselves to sustain the global city illusio. The change of scene came in 2014 when the Central Government announced its design for universal suffrage for Hong Kong. When the official interpretation of universal suffrage precludes democratic elements, the population awoke to the risk of being defaulted on the 50-year status quo promise. Hence the fascination that was once the driving force to sustain prosperity was debased. What followed was the Umbrella Movement. During the short-lived suspensive moment, the site that is symbolic to the city's prosperity was hollowed out to become an uncanny space. Vehement impacts on the city were visual instead of economic, and least on official politics. Though the movement failed in the end, it succeeded however to visually disempower the official discourse. When many anticipate hard-handed law enforcement to ensue after the Umbrella Movement, pro-democratic civilians and artists maneuver their battles from

physical site to ephemeral sights. The tactic conjoins the legalistic and the utopic, which paints another hue of the common wish as inscribed in the Basic Law.

- **Session 5D (Room 321, Dec 10 10:00-11:30am)**

**Analysis, Witness, and Judgement: A Melbourne People's Tribunal**

On 5 December 2013 University of Melbourne Vice Chancellor Glyn Davis informed staff at a 'Town Hall Meeting' that an 'innovative program to revamp service and support activities and strengthen its position in an increasingly competitive tertiary environment' would be introduced over an 18-month period. This was known as the Business Improvement Program (BIP).

Professor Davis also informed staff that 'international management consultants' Booz & Co would design and implement the program in coordination with teams of University of Melbourne staff. The official University of Melbourne press release reporting Professor Davis' announcement contained no indications that there would be job losses, or sustained insecurity of tenure for professional staff. Instead the emphasis was on the improvement of systems and processes with the resulting savings of \$70m per annum reinvested in teaching, research and engagement. Nevertheless, BIP ultimately abolished 540 jobs, with almost all remaining professional staff positions declared vacant and all staff required to apply for a diminished pool of jobs.

The planning and implementation of the Business Improvement Program was presented as a work in process – the details of which were being developed and ironed out as it proceeded. In reality the apparently improvised nature of the process concealed a ruthless strategy that effectively anticipated the range of possible responses available to individual staff or organised labour.

A People's Tribunal was convened in April 2015 to elucidate the effects of this process on the people who were targeted by it, and to investigate the broader employment and political context the strategy was designed to serve.

*Mr. Philip Morrissey, Aboriginal Humanities Project*

This presentation will discuss the genesis of the Melbourne People's Tribunal. The Tribunal had its origins in the observed effects of the Business Improvement Program on University of Melbourne professional staff. A Tribunal process had to be developed which took into account the humanities background of most of the participants and the apparent impossibility of speaking the truth to power.

*Dr. Marion Campbell, Aboriginal Humanities Project*

This presentation discusses the interdisciplinary makeup of expert witnesses to the Melbourne People's Tribunal and the Tribunal members and the multi-perspectival approach this provided.

Following this both panel members will discuss the outcomes of the People's Tribunal. Copies of the Tribunal report will be available for purchase.

- **Session 6A (Room 310, Dec 10 12:00-1:30pm)**

**Political Dissent and Revolution**

**"Dissent" and its Relation with the Notions of Innovation and Diversity**

*Mr. Denis De Castro Halis, Faculty of Law, University of Macau*

If the possibility of political dissent, which is closely connected to the freedom of expression and that of demonstration, could have thought to be already assured in countries with arguable democratic institutional architectures, this assumption greatly changed after the 9/11 attack in the USA, and it continues to change. Extensively viewed and reviewed throughout the media and social platforms, that attack was politically exploited as a spectacle that increased fear and government control over people. Indeed, dissenting voices are being silenced throughout the world and this raises the scholarly interest on the theme, which connects events as different as several terrorist attacks, the freedom of the publishers of the French magazine *Charles Hebdo* and public protests such as those of Hong Kong (during the so-called "Umbrella Movement") and those in Brazil against the realization of the World Cup in 2015. This paper examines a few relevant examples of the ways that important forms of individual and collective dissent have been repressed. It defines 'dissent' and sustains that there is a strong, if not inevitable, link with those ideas of innovation and diversity. It also argues in favor of the overall importance of political dissent for societies that wish to be, or to be seen, as democratic and respectful of fundamental rights. This theoretical interdisciplinary exploration deploys arguments from classic and contemporary authors of law and social theory and underscores the social value of those who dare to dissent even when that means their self-sacrifice.

**A Tale of Two Gothams: Revolution, Sacrifice and the Rule of Law in The Dark Knight Rises***Dr. Timothy Peters, Griffith Law School, Griffith University*

The Batman mythos—as part of the broader filmic, televisual and comic book obsessions with superheroes—seems to be undergoing multiple visual depictions, whether it is in Fox’s television series *Gotham*, Zack Snyder’s recent *Batman v Superman: Dawn of Justice*, or the forthcoming spinoff *The LEGO Batman Movie* (set for release next year). This paper focuses in a particular instantiation of that mythos and continues previous work done on Christopher Nolan’s *The Dark Knight Trilogy* (2005-2012). It seeks to pick up a particular narrative of sacrifice deployed by the trilogy, particularly in the final film, *The Dark Knight Rises*, by re-reading the film specifically by reference to Nolan’s non-comic book source material: Charles Dickens’ *A Tale of Two Cities* (which is quoted from explicitly in the final scenes of the film). Reading Nolan through Dickens focuses the film quite specifically on the relation between law and revolution—for Bane, the villain, presents himself as a revolutionary bringer of truth, laying bare the lies of society and calling for the people of Gotham to violently throw off their decadent oppressors—in scenes that were automatically understood in relation to the Occupy movement. This depiction of the villain-as-revolutionary, however, enacts an aspect of Nolan’s complexification of the superhero myth and the superhero’s critique of the law: it represents the revolution as embodying the vigilante-ethos en masse, the people fulfilling Bane’s call to take the law into their own hands. How does the rule of law relate to or recover from its disruption via revolution? The perspective presented in the film returns to the mode of sacrifice—not, however, in the Christian sense, but in terms of a secular myth where the focus on sacrifice seeks to reinstate a fundamentally violent legality, which asks for a continual and ongoing human sacrifice in order to sustain a world free from criminality. The problem with this secular myth, however, is that it demands a perfection which can never be achieved and thus holds all guilty before the law, which is now stripped of its protections against fallibility and rendered open to a divine or revolutionary violence. That is, the supposed secularity of revolution embodies a very particular religious, divine and spectacular mode of justice.

**Bangladesh, war crimes trials, street protests and Laws’ Spectacular: Note on the Presences and Non-Presences of Law and Justice***Prof. Wayne Morrison, School of Law, Queen Mary University of London*

In Law's spectacle the presence of a binding or separating force is made apparent. For Hobbes the ultimate force lies in theatre, in a sight that will hold us in awe. For Kelsen force is required for effectivity but the real presence of law – its normativity – is invisible, a presupposed epistemological postulate that reveals itself in the empirical, positive acts of Constitution creation and enforcement. Ideally with a good spectacle the social and just being of the social body presents itself to view and celebration; Laws alienation occurs when the spectacle misleads, when representations ensure that claim to display force in accordance with its constitution, a heritage from its founding movements and the fulfilment of its destiny.

Bangladesh was born in the presence of force and the absence of Law, a puppet in the plays of the Cold War. Forty years after the devastating events of the 'War of Liberation' of 1971 Bangladesh began controversial War Crimes trials that primarily focused on members of Islamic political groups that opposed the creation of Bangladesh. These trials attempt to legally inscribe a particular meta-narrative of Bangladeshi identity, one in which moderate Muslims resisted 'genocide' and fought for and pledged their allegiance to a secular constitution. Against this image are pitted an imaginary of groups that have since never accepted Bangladesh, who were in 1971 'collaborators' and para-military agents of Pakistani terrorism and who then sought to defend Pakistan as an Islamic state. The trial and punishment of such individuals is championed to do 'justice' and restore the (social) constitution. Verdicts began to be given in early 2013 and evoked immediate massive demonstrations either for (demanding the death penalty for those convicted) or against the trials.

In the wake of considerable political violence and the Government changing the constitution to abolish the temporary Caretaker Government system during elections, the opposition boycotted the January 2014 elections believing the international community would not accept the elections as legitimate without their participation; however the Government was returned with little effective opposition and protests were ineffective. Since then political violence by the opposition has played off against disappearances, mass arrests and contempt of court charges suppressing political comment and human rights groups as well as suppressing Facebook and other social media. At the same time radical Islamic groups have killed secular bloggers and demanded death to atheists and in July 2016 an ISIL inspired group killed 20 guests at the Holey Artisan Bakery with the Government response of numerous 'counter-terrorism measures' which killed or disappeared numerous individuals, mostly linked to opposition political parties. While commentators argue the cost in terms of human rights abuses, and abuse of rule of law and due process mainstream urban opinion appears supportive. This paper conceptualises this in terms of claims over presences and non-presences of law and justice in these unfolding spectacles.

- **Session 6B (Room 311, Dec 10 12:00-1:30pm)**

**Crime and Criminal Justice**

**R v Jogee; R v Ruddock 2016: The Last Gasp of Colonialism?**

*Ms. Felicity Gerry QC, Charles Darwin University*

On the 18th of February 2016 at seven minutes into the handing down of the judgment in *R v Jogee; R v Ruddock* [2016] UKSC 8; [2016] UKPC 7 by the UK Supreme Court (sitting for the first time at the same time as the Judicial Committee of the Privy Council) there was an audible gasp from the public gallery as the court admitted that the law had taken a wrong turn at least 32 years earlier. The gasp caused the President to stumble on his words. The gasp was audible to the world through live online broadcast and is recorded for posterity. The gasp came because the public gallery was full of mums whose sons had been wrongly convicted under the law known as 'joint enterprise'. They had campaigned for years without success, until that day. The BBC called the judgment 'A genuine moment of legal history'. I was in court that day. I am a mum but not of an offender. I was leading Queen's Counsel for the Appellant Mr Jogee. This paper tells the story of how we spectacularly changed the law on accessorial liability over 5 years and over 500 years of law with no resources, some significant and incredible personal hurdles and a team of talented individuals. Little did Mr Pridmore know the effect of his poaching case in wintertime in Titchmarsh Wood in 1913 would have. This was one of many cases dredged up in a feat of forensic archaeology to prove why Sir Robin Cooke had started an erroneous legal tangent on no legal foundation in *Chan Wing- Siu* [1985] A.C. 168 in a Hong Kong case which has been followed around the world. The 2016 decision (in *R v Jogee; R v Ruddock*) reversing that tangent ricocheted around the Commonwealth. Rhetoric around gangs and toughening criminal justice systems had led to legal imbalance and high incarceration rates, particularly in relation to black and ethnic minority people. Innocent bystanders were at risk of conviction of serious criminal offences (including murder) on the basis that joint enterprise could be inferred if they foresaw that someone might do something. Public concern at the injustice this created was succinctly reflected in a work of fiction which referred to joint enterprise as an 'easy sweep'. In recommending a legislative response, the UK Justice Committee who heard evidence about the unjust effect of the law of joint enterprise used the phrase 'dagnet'. The focus was on association. In the context of protest for example, this gave huge power to the state to regulate activities which might otherwise be socially beneficial 'think how climate change protests have become labelled G20 riots and the consequent knock on effect to policing otherwise acceptable demonstrations. Ultimately, joint enterprise was born from colonialism. It had no foundation in law and no safe policy justification and was removed thanks to a fearless team, some wonderful interveners, a brave move by English

judges and some mums. The battle continues as the same Court sent Mr Jogee for retrial and attempted to block further appeals.

### **Idyllic Murder Mysteries**

*Dr. Penny Crofts, University of Technology Sydney*

Midsomer Murders is one of a myriad of ongoing series that represent homicide on television. The series is based in contemporary idyllic and unexpectedly lethal villages in the United Kingdom and is now in its 18th season. This paper explores how the criminal justice system is represented and performed in these murder mysteries. Frequently depicted as provoking their own demise by innovative means, the (usually plural) victims are relegated to the background. The primary focus and emotional investment is on the process of detection and the central detectives (who are almost always white males). At a time of increasingly critical documentaries about the criminal justice system (most recently *Making a Murderer*), the murderer is always caught and episodes usually end with his or her arrest. Although presenting an ostensibly picturesque society and highly effective police investigation, the series presents a darker side of village life and policing, and raises questions about our expectations of the criminal justice system. With the police unearthing secrets and disrupting relations, how satisfying are the resolutions of each episode? And why is there such a fascination with this kind of idyllic portrayal of homicide?

### **Law Behind Closed Doors: Rape Mythology and Rules of Evidence in Rape Trials**

*Prof. Elisabeth McDonald, University of Canterbury*

Since 1986 in New Zealand, the court has been closed to the public when a complainant in a sexual violence case (including rape) gives evidence. Although there were, and are, compelling reasons for this reform, it means that there is little public scrutiny of what happens behind those closed doors. With the consent of trial judges, the researchers in this study have been given access to the evidence of adult female complainants in over 50 rape cases, which went to trial between 2012 and 2015 across 10 registries in New Zealand Aotearoa. This has allowed the researchers to examine the extent to which rape mythology is reinforced through the questioning of complainants - and how effective the rules of evidence are in preventing such reinforcement. In this paper, drawing on both the application of the rules of evidence and the arguments made in closings and summings up, Elisabeth will make some preliminary observations about the

ongoing need for researcher access, and therefore independent evaluation of the trial process in rape cases.

- **Session 6C (Room 320, Dec 10 12:00-1:30pm)**

**Law and Film**

**The Litigating Dead: Zombie Jurisprudence in The Walking Dead, World War Z and The Rising.**

*Prof. William MacNeil, Dean and Head of the School of Law and Justice, Southern Cross University*

Some critics have argued that the recent popular proliferation of zombie narratives suggests a collective failure of imagination: that what the trope of the zombie signifies is the very impossibility of thinking outside of the prevailing logics of consumption—or Capital. According to this reading, zombie fictions present us with a stark choice indeed: either we accept the current system of globalized Capital as it stands, or we risk descending into some anarchic ‘war of all against all’, of which zombie apocalypse is emblematic. While I have considerable respect for this position—and certainly see the point these critics are making here, I would like to take issue with their reading of the prevailing hegemony of the zombie in popular culture by examining the ways in which fictions such as *The Walking Dead*, *World War Z* and *The Rising* provide us with alternatives, even suggest solutions to the current impasses of the political economic predicament in which we find ourselves. Contra critique, each of these texts, I will argue in this paper, give us some Kris-like ‘fresh brains’ by which to reimagine the social contract and, through it, an(O)ther Law: one which is squarely situated within the ‘ethics of the Real’ and, in its challenge to zombie jurisdictional dominion, interpellates all of us as the ‘litigating dead’.

**Invisible Identities and Aural Revelations: The Undercover Force of Law in Gangster Films**

*Dr. Anita Lam, York University*

For the force of law to be effective, its performance must be visually seen, and its technologies must be able to render visible both citizens and criminals. Yet law also hides itself in society through the figure of the undercover police officer. Hidden in plain sight and operating in what

Robert Cover (1986) has called 'a field of pain and death,' the undercover cop troubles and disrupts the ocularcentric character of law and surveillance technologies, highlighting instead the aural dimensions of law-in-action. While sound tends to be highly regulated in courtrooms, where potential aural distractions (e.g. cellular phones) are routinely silenced or banned altogether, it has been creatively deployed to great effect in the medium of film as part of the sonic accompaniment to a genre's iconography. As one of the first film genres to not only explore the murkily intertwined relationship between cops and criminals but also benefit from synchronized sound, (Hollywood) gangster films have long offered a system of representation that allows viewers to associate gangsters with 'ethnic' speech inflections and the noise of machine gun-fire. In contrast to the established genre of gangster films, the American film 'The Departed' (2006) and its Hong Kong predecessor 'Infernal Affairs I' (2002) innovatively present the cell phone, an everyday 'talking and listening machine,' as an important addition to the arsenal of technologies deployed by both undercover officers and gangsters. Through an analysis of these specific films, this paper examines the ways in which contemporary audio technologies enable the performance of covert surveillance as well as the revelation of undercover identities. Here, the social mobility of the gangster is premised not only on the use of the gun, but also on the mobile phone. While gangsters employ the gun to 'blow away' competitors and adversaries, by threatening and ending their lives, they, like citizens and police officers, live their lives through the cell phone. Consequently, the cell phone becomes a weapon for 'blowing covers' and the only technological means by which invisible 'rats' and 'moles' can be 'made.' Unlike visual surveillance technologies, such as CCTV cameras, that aim to capture and fix in time and space a single, stable identity, the cell phone 'because of its reliance on aural characteristics' promotes the instability, fluidity and multiplicity of identity. Further, it also serves as a metaphoric tool for thinking about the force of law as resonance: to both the undercover cop and gangster, the vibrating or ringing cell phone is a constant reminder of moral obligations and professional duties as well as a potential signal for the possibility of shifting allegiances and changing contacts.

### **The Gaze of the Law: Immigration and Terrorism**

*Dr. Monica Lopez Lerma, Reed College*

Drawing on the work of Jacques Rancière and Michael Shapiro, this paper uses Urbizu's *No Habrá Paz Para los Malvados* (2011) to explore the 'violent cartography' of national security in the context of the terrorist attack of March 2004 and its aftermath in Madrid. The film shows how Santos Trinidad, a once respected but now drunk cop, kills without any apparent motive three people in a nightclub while the city of Madrid is implementing strong security and control

measures in preparation for the G20 summit. From then on, the film leads the viewer on a double chase: Trinidad's hunt for the only witness who managed to escape, which leads him to uncover a Colombian mafia network linked to an Islamist cell planning a terrorist attack; and the police's search for the triple murderer, which ironically becomes a hunt for one of their own. I argue that, against the state's rhetoric of safety, protection, and prevention, the film makes visible both the failure of the law to respond to violence and the inability of the police to effectively intervene in it. By leaving the viewer with a disquieting feeling of uncertainty and danger, the film raises the question of whether there is a place for justice between terror and the law.

- **Session 6D (Room 321, Dec 10 12:00-1:30pm)**

**The Digital Spectacle of Law: The Discourses of Law and Justice in Social Media**

There is little doubt that new digital technologies have performed a dynamic function in metamorphosing culture, both positively and negatively. In an increasingly networked world, social media platforms have not just transformed the way we communicate, but they have also changed the way we interpret, critique and legitimise the achievement of law and justice within our communities. In the context of exploring the contemporary spectacle of law, this panel seeks to invite specific reflection on the performance of social media in its role of societal transmutation. In particular, the panel will focus on the affective and cognitive impact of social media on perceptions of law and justice. Public engagement within social media of issues surrounding legality, political discourse, identity and trustworthiness serves to shape, (re)interpret and transform cultural expectations of law. The papers within this panel will address this activity within social media that amplifies and intensifies a critique of law, and contemplate the diverse ways in which law can be politicised, democratised and (de)legitimised within the digital spectacular.

**Emotion and Law in the Spectacle of Social Media**

*Dr. Cassandra Sharp, University of Wollongong*

This paper seeks to qualitatively analyse 'terror and fear' conventions utilized within social media, that contribute to emotive public responses to 'justice'. These narrative conventions are made manifest through stories (told and retold) of political tension, surveillance, racial stereotyping,

and threats to national security, and they become a very real part of the mediated experience of fear for the public. An increased public involvement with social media platforms in response to significant public crises and events, have recently provoked a number of questions surrounding complex issues of crime, terrorism, power relations and identity. Can the law truly protect us against terrorism? Can we trust in the authority of the state to adequately protect us without infringing our rights? Is it just to abandon our rights in the name of national security? The paper explores affective public understandings generated by such questions in response to 2 recent terrorist events (Paris and Brussels terrorist attacks) and to compare the legal meanings that are (re)imagined, (re)constructed, and (re)circulated about justice and law, within the context of social media engagement. In particular, it will explore the role of emotion in public responses to terrorism events as a method of not only critiquing the efficacy of law and politics; but also as a mechanism for diminishing, eroding or transforming notions of 'justice' in the public imaginary.

### **Carl Schmitt's Die Buribunken as the Jurisprudence of the Social Media Subject**

*Dr. Kieran Tranter, Griffith Law School, Griffith University*

'In the cloud no-one questions your existential status' – Siri, Apple OS App, 26 April 2016

In his little studied, earliest piece of published writing, *Die Buribunken* (1918), Carl Schmitt, does what can only be called sci fi. He writes the future history of the 'Buribunk'; beings who have merged with the typewriter to keep a continuous diary of their lives. There is a sense of mock celebration to Schmitt's brief text; a declaration by an epoch of history that has truly become its 'own master'

Neglected by Schmitt scholars focused more on his later work as the Weimer theorist of friends and enemies or as the crown jurist of the Third Reich, *Die Buribunken* has also not been considered a text of significance by sci fi studies. The exception to this neglect has been the media theorists Friedrich Kittler who included a substantial extract of it in his *Gramophone, Film, Typewriter*. Kittler's use of *Die Buribunken* is insightful. For Kittler it articulates a fundamental transformation of being from modes of analogue existence to the informational of the digital.

In this light, *Die Buribunken*, describing beings whose mantra is 'I write, therefore I am' within a continual process of self-archiving seems surprising prophetic. Whether it is the compulsive narcissism of social media platforms or the dictates of a risk adverse audit culture, the production and husbandry of an individual's digital existence has become an obsession. The Buribunk notwithstanding their emergences from Schmitt's text as a strange steampunk cyborg of Don Juan, typewriters and an archive, are remarkably familiar. This uncanniness of the Buribunk – a

strangeness that is familiar – is the strength of the text. And it is significant that this text is from the pen – dare I say typewriter – of Carl Schmitt. What Schmitt glimpses in *Die Buribunken* is the illiberal subject of the digital age; a dissolved essence whose being is pieced together by pure will to be. A being whose injunction to care for the self, involves informational sovereignty, a policing of the boundaries and the making of exceptions within the information flow. For ultimately the mundane practice of ‘liking’ in social media is about friends and enemies.

Kittler, Friedrich A (1999) *Gramophone, Film, Typewriter*, Stanford University Press.

Schmitt, Carl (1918) 'Die Buribunken' *Summa: Eine Vierteljahresschrift* Viertes Viertel 89.

### **Biographic Law – Privacy as a Legal Instrument for Spectacular Individuality**

*Dr. Susanna Lindroos-Hovineimo, University of Helsinki*

This paper studies ways in which the law takes part in individualising processes. It considers privacy and personal data protection as legal instruments that provide significant means for shaping and controlling life stories. The focus of the paper is on social media as the platform for spectacular individuality. The protection that privacy and personal data regulation provide facilitate development of socially mediated selves, who are nevertheless increasingly individualised. The movement where the law forms the individualised society and the individualised society forms the law is in itself not new. However, social media and the corresponding protection of privacy and personal data include several features in need of critical legal analysis. The paper takes Jean-Luc Nancy's understanding of singular plurality as the theoretical framework in which individualising tendencies of the law are studied.

- **Plenary 3 (11/F ACR, Dec 10 2:30-4:00pm)**

### **Pocket Sized Jurisprudence in Aboriginal Comics and A Mosaic of Writings**

*Dr. Christine Black, Adjunct Senior Research Fellow, Griffith Center for Coastal Management, Griffith University*

Graphic Justice as Giddens argues – ‘broadens our understanding of law and justice as part of our human world—a world that is inhabited not simply by legal concepts and institutions alone,

but also by narratives, stories, fantasies, images, and other cultural articulations of human meaning.'

This paper builds on that understanding and explores through an Australian Aboriginal lens the ways in which lawful behaviour is represented in Aboriginal pocket sized comics for use amongst Aborigines living in remote and deprived areas of central Australia. I will discuss the research I am carrying out with my colleagues at CDU and Senior Law Woman Kathleen Wallace of Santa Teresa Community outside Alice Springs, to understand the process of inventing a unique comic genre that draws upon ancient symbolism and jurisprudence.

This exploration will be further examined within a discussion of my new book *A Mosaic of Indigenous Legal Thought: Legendary Tales and Other Writings* (Routledge 2016). This book is a transitional text which takes the reader out of the abstraction of reading the written word and instead calls the reader to feel the lawful behavior as they engage with the *Legendary Tales* and other writings in the book. The intention is to aid in the shift from an abstracted academic writing to a writing style which fosters visual stimulation and therefore points to a new epistemology which appreciates the potency of the visual as the dominant form of communication in the 21st Century. Furthermore, a visual medium which hails a return to the Indigenous jurisprudential medium of narrative, symbolism and the performative.