

WG

“Legal Profession Group Meeting”

**Abstracts /
List of participants**



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Monday 24th June 2024

11.30 - 13.15

Women and Gender in the Legal Profession

Chair: Ulrike Schultz

[Meeting room: Karl Renner & Achille Loria (1st floor)]

CHINGFANG HSU

Women judges in a masculine court: how judicial authority, legal area and the image of the ideal judge are gendered in the Taiwanese Judiciary.

The Taiwanese judiciary has reached gender parity in number in the 2020s, so that women judges now occupy more than 50% of positions at all three instances of the court. The internal gender dynamics, however, are complex. This paper uses two sets of conceptual tools, the gendered organization by Joan Acker and hegemonic masculinities by R.W. Connell, to analyze and identify the male-centered and masculine features of the Taiwanese judiciary. Specifically, this paper first identifies a mainstream power relationship, which I term authority-conforming, and shows how it is gendered to benefit a masculine authority. Second, the ways in which legal area is valued are also gendered. Legal areas involving domestic affairs are marginalized and looked down upon in the profession despite their complexity. The juvenile and family divisions lack resources and manpower, and judges serving in this area are deemed less capable. Third, women judges in Taiwan face another version of the double bind: if she fully commits to her career, she is restrained from a balanced life; but if she accentuates her family role as a supportive parent, spouse or caregiver, she reinforces the traditional stereotype in the Taiwanese legal sector that women shall choose judgeship, a stable desk job, to accommodate their domestic duties. Next, a separate section presents preliminary evidence on qualitative change brought about by female judges. Diversification of leadership style, the ideal image and normative qualities of a good judge, is a positive development. Data used in this paper include archival documents, field observation and in-depth interviews with fourteen judges (twelve female and two male judges) and one female prosecutor from six jurisdictions at all three levels of the Taiwanese court.

MARGARET THORNTON

The Unintended Consequences of Flexible Work.

In response to the feminisation of wage labour, flexible work began to be cautiously accepted by individual law firms around the millennial turn, a mode of working that became normalised with technological advances. ‘Working at home’ was legitimated by the impact of the pandemic and may now be preferred by those with caring responsibilities. However, the unexpected consequences of ‘working at home’, including being available 24/7, have meant that the home is no longer a sanctuary from the pressure of work. Furthermore, the private sphere is also in danger of being colonised by the economy.

This paper will explore the ramifications of the impact of flexible work on the home as a place of intimacy, both in terms of gender as well as what it means for subsuming it within the economic sphere. To illustrate the contradictions arising from working flexibly within a site of intimacy, the analysis will include insights from lawyers gathered through an on-line survey.



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Women and Gender in the Legal Profession

Chair: Ulrike Schultz

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MATTHIAS KILLIAN

Retaining Young Lawyers in the Profession – a gender issue.

The feminization of the lawyer’s profession has been a global trend worldwide and contributed significantly to a constant growth of the profession in many jurisdictions. While this is also true for Germany, the feminization of the Bar in the world’s third largest legal services market after the US and the UK has been much slower than the percentage of female law students and law clerks would suggest: While almost two thirds of law students are female these days, the percentage of female members of the Bar is still well below 40 per cent. While the profession has always struggled more to attract women than men, this problem has been exacerbated by an increasing number of young female members leaving the profession after a few years of practice. In times when there is no longer an oversupply of law graduates and the job market has turned from a buyer’s market to a seller’s market, young female lawyers as members of Generations Y and Z are unwilling to put up with traditional law firm models and increasingly voting with their feet by leaving the profession in their late 30s and early 40s. The paper will report on the findings of two empirical studies that will give an insight into the reasons for the challenges the profession is increasingly facing when attracting young female talent.

NANCY MARDER

Jury Duty and American Women’s Struggle for Full Citizenship.

In the United States, two indicia of full citizenship are the right to vote and the right to serve on a jury. Although American women secured the right to vote in 1920 through the Nineteenth Amendment to the U.S. Constitution, their right to serve as jurors did not immediately follow. Rather, American women’s path to jury service was circuitous. In the late 1880s, some states permitted women to serve as jurors, but they eventually lost that right in most of those states. In federal courts, women did not have the right to serve as jurors unless the state in which the federal court sat permitted them to serve. It was not until the passage of the Civil Rights Act of 1957 that women secured the right to serve as jurors in federal court regardless of whether the state permitted them to serve. This paper will explore American women’s struggle to secure the right to serve on juries in both state and federal courts. This paper is part of a larger project exploring women’s efforts to serve as jurors, the arguments they made to support their claim to full citizenship, the resistance to those arguments, how the arguments played out in public debate, and how remnants of this struggle can be found today.

Monday 24th June 2024

11.30 - 13.15

Legal Professional Values and Identities - First Session of 3

Chair: Hilary Sommerlad

[Meeting room: André-Jean Arnaud (ground floor)]

LUCY WELSH AND DAN NEWMAN

Challenges to the professional identity of publicly funded defence lawyers in England and Wales.

This paper examines the working culture of defence lawyers through the lens of autopoiesis. While this lens is criticised for being hyper circular, we suggest that applying autopoiesis to the messages that might influence working cultures can allow us to identify conflicts between cultural practices, or codes, which threaten the sustainability of the subsystem; publicly funded criminal defence lawyers. We suggest that application of autopoiesis to pre-existing observed characteristics of criminal defence practice allows us to better understand why the criminal defence profession might be in crisis, and to identify tensions in messaging that warrant further examination to assist sustainability in the profession.

LINDA MULCAHY AND MARIE BURTON

Revisiting the concept of the radical lawyer.

Despite a substantial literature on the sociology of the professions, relatively little work has been undertaken in a UK context on lawyers who work outside of private practice and are frequently labelled ‘radical’. This paper will consider the extent to which ‘radical’ lawyers can be distinguished from other types of ‘progressive’ lawyers such as cause lawyers, ‘resistance’ lawyers, or those undertaking pro bono work. Drawing on a four year, AHRC funded project, it will consider whether ‘radical lawyering’ is a meaningful concept. More particularly, it will draw on an analysis of archives, the annual reports of law centres and oral history interviews with law centre staff to identify the factors which differentiate lawyers who work outside of the private practice commercial model. These include the types of people, opponents, cases and causes they work with; the structure and organization of their practice; the strategies adopted to promote change; their relationship with client and community; and proximity to the state and the established profession. While recognizing that the concept of radical lawyering is frequently contingent on time and place, this paper seeks to add nuance to existing debate about these issues.

HILARY SOMMERLAD

Rise and fall of activist lawyers’ cultural capital: reflections on a linked process of de-professionalisation and the de-humanisation of a clientele.

The aim of this historically grounded presentation is to set out the prospectus for the proposed IJLP special issue on activist lawyering in the UK and outline its introductory article.

I will begin with some broadbrush, highly discursive reflections on the roots of the current conjuncture – such as the post war transition to a social democratic society, the emergence of New Social Movements including activist lawyers, and the subsequent transition to neo-liberalism and its assault on social democratic forms of citizenship including activist lawyering. It will seek to make an analogy between these latter processes and, drawing on EP Thompson, the Great Transformation (Polanyi) which entailed the enclosure of the commons and destruction of the mode of production, way of life and culture of such artisan producers as the handloom weaver, and the use of the state to crush popular resistance.

This section will be followed by an analysis of the New Social Movements of which activist lawyers formed a part, and which both reflected the counter-culture movements of the late 1960s/ 70s and served to move them further forward. I will draw on data to reflect on the ideas and forms of legal practice which informed this movement and the mechanisms such as the expansion of the legal aid



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scheme which made it possible. I relate this stage in the democratisation of the idea and practice of law to the expansion in the concept of citizenship, and will reflect on how this supported (and reflected) the cultural capital which this sector of the field already enjoyed - part of the wider prestige associated with democratic forms of art (think fashion – Quant; music – and the ‘working class’ novel (Stan Barstow), and other aspects of a broader current of democratisation).

The presentation will proceed to consider the deconstruction of this brief, social democratic period, and its progressive assault on the public sector, including the social justice sector of the legal field. It will draw on data to discuss how the deployment of managerialist and discursive techniques and intensification of the market orientation of Higher Education have re-made the legal field’s institutional logics and also, therefore, professionals’ subjectivities and their habitus, designed to transform interactions with clients, reinforced by savage financial cuts. I will argue that these mechanisms constituted a process of de-professionalisation paralleling their clients’ configuration as ‘surplus populations’, devoid of value, effectively expelled from full citizenship (Sassen), illustrating the nexus between the status of lawyer and her clientele (Johnson). The resulting positioning of these lawyers to a liminal status within the profession, are contextualised by reference to the broader re-configuration of the profession during this era – a process which has gone beyond the two ‘hemispheres’ (Heinz & Lauman) to constitute fragmentation or disaggregation.

JO WILDING

Justice Chauvinism and the Social Welfare Legal Professional.

I propose ‘justice chauvinism’ as a new evaluative lens for understanding both formal justice policy and the assumptions underpinning the current access to justice crisis, especially around social welfare law. It draws on the ideas around welfare chauvinism, which has its critics, but has proved fruitful for discussing and evaluating attitudes and policies around access to state welfare systems. Justice chauvinism is far broader than the familiar concept of ‘the undeserving poor’, as its targets encompass judges, lawyers, and ‘affluent parents’ of disabled children who win appeals to the Special Educational Needs Tribunal, as much as people convicted of criminal offences, migrants and welfare recipients.

I suggest its dimensions include 1) the idea that some people are undeserving of justice; 2) the idea that elements of the justice system itself are problematic (human rights, judicial review); 3) the idea that legal professionals, properly conducting their work, are problematic; 4) the systematic failure to collect meaningful evidence relating to access to justice; 5) the view that justice is less important than other services or principles, and that certain areas of justice are less important than others; and 6) the general failure, in public and political discourse, to frame the lack of access to various rights or services as an access to justice issue.

This presentation focuses on the third of these dimensions: the targeting of lawyers and judges through implied and express criticism not for misconduct but for doing their jobs competently and appropriately; legal aid cuts and the continuing narrative of legal aid lawyers as ‘fat cats’ despite those legal aid cuts; labelling social welfare and public lawyers as ‘lefty’ and ‘activist’; the compilation of a ‘dossier’ on a black woman lawyer undertaking human rights-related work (demonstrating the interaction of justice chauvinism with racialised and gendered chauvinism); and political failure to defend judges’ independence. It concludes by considering whether justice chauvinism is a useful framing for understanding these attacks on the legal profession in the context of the broader attitude to the clients and the overall system of justice.



Monday 24th June 2024

16.00 - 17.30

Family Policy and Law

Chair: Mavis Maclean

[Meeting room: Karl Renner & Achille Loria (1st floor)]

MAVIS MACLEAN

Justice, Welfare and Family Law.

Introduction to the work of the Family Law and Policy Group, and the Legal Capacity and Family Justice project.

THOMAS MEYSEN

Accountability and Transparency of Family Justice.

The family justice system intrudes in the life of children, parents and families. It is responsible for decisions that can affect the course of life significantly. The importance of the proceedings and its outcomes for the fundamental rights of individuals draws attention to the quality of the decision-making. The interest should be evident but little is known about the quality. Proceedings are usually confidential. In many countries the decisions are not publicly available. The justice system sometimes seems to have the notion that the stages of appeal are equivalent to accountability and transparency. But in most national family court system research has no or limited access or is dependent on the willingness and resources of the courts to participate. Media is kept out and only relies on reports on the views of individual family members. Reliable training and further education on the specific topics is not a cross-country standard. The presentation will give insight into a eight country comparison on accountability in child protection proceedings and reflect on perspectives for interdisciplinary research to validate the quality of family justice systems.

MALGORZATA FUSZARA AND JACEK KURCZEWSKI

Unaccompanied Ukrainian children and separated Ukrainian children in Poland.

Russia's aggression against Ukraine meant mass escapes from Ukraine abroad, primarily to Poland. Most of those escaping were women and children. The situation of children who escaped without their legal guardians was and is particularly difficult, also from a legal point of view. These are unaccompanied children, separated children and children from institutional care facilities. It is very difficult to determine how many such children came to Poland, because, especially in the first period, they were characterized by high mobility, for example in the category of “children separated from their parents” there were also those who traveled to reunite with their parents working in other European countries. The problems resulted primarily from different factual situations (e.g. running away with a grandmother or grandfather who did not have custody), but also from legal differences between countries. An example may be the treatment of different age categories - Resolution No. 264 of the Cabinet of Ministers of Ukraine of March 12, 2022 states that children who are over 16 years of age may leave the territory of Ukraine even without the appropriate consents of their parents/guardians, only younger children must have such consent. However, according to Polish law, children aged 16-18 should have a legal guardian. The rules governing the care of children staying in orphanages in Poland and Ukraine are also different.



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In this extraordinary situation, caused by the mass influx of children to Poland, the Act of March 12, 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country introduced the institution of a “temporary guardian”, appointed by a family court. People from the child’s family are preferred. The list of people and institutions authorized to submit such a request to the court is exceptionally long. These are: Border Guard; commune head, mayor, city president, starosta, voivodeship marshal; prosecutor; Police; heads of social welfare organizational units; representatives of international or non-governmental organizations providing assistance to foreigners; a person having actual custody of a minor; the person who took actual custody of the minor after the minor entered the territory of the Republic of Poland and exercises such custody on the day of submitting the application, and finally other persons or entities as part of their tasks.

Official data (of the Ministry of Justice) indicate that by May 22, 2022, the number of cases initiated with an application for the appointment of a temporary guardian amounted to 20,351 minors and concerned 23,783 minors. However, non-governmental organizations indicate that this number is much lower than the number of children who are in Poland without legally established care. Some actual guardians do not even know about this possibility, others - such as those aged 16-18 - already consider themselves adults since they can leave Ukraine without the consent of their guardians. Still others avoid contact with institutions because they are afraid of institutional interference, e.g. in the way care is provided.

BELINDA FEHLBERG, BRUCE M SMYTH, MONICA CAMPO AND KRISTIN NATALIER **The Meaning of Home for Children and Young People after Parental Separation: Key Insights for Practice.**

This paper draws on our recent study of the meaning of home for children and young people after parental separation to show how the concept of home may provide a way of shifting adult attention beyond focus on the amount of parenting time towards a greater attentiveness to children and young people’s views on how their living arrangements look and can work effectively for them. Face-to-face, semi-structured interviews were conducted in Australia with 68 children and young people aged 8–18 years, and 39 of their parents, living mostly in cities in Victoria, South Australia, and the Australian Capital Territory. Separated parents and their children were recruited mainly through social media, family and relationship support services, and professional networks. We found that children and young people were keen to talk about home and what it meant to them. Their descriptions of home revolved mainly around relationships, and everyday interactions, with family and especially with parents. Feeling safe was fundamental to children and young people’s sense of home. Whether children and young people said they had one home, two homes, or no home seemed to depend to a large extent on parents’ responsiveness to these needs. After outlining key project findings, the focus of this paper will be on how they can support the practice of family law system professionals, that is, how professionals can use the research findings in their work with families to facilitate a more meaningful discussion about post separation parenting.



Monday 24th June 2024

16.00 - 17.30

Legal Education and Lawyers

Chair: Avrom Sherr

[Meeting room: André-Jean Arnaud (ground floor)]

ANTHONY BRADNEY

Is the Language of UK Universities and their Law Schools Changing? And, if it is, Does This Matter?

Academic literature has investigated the way in which the language used in firms of solicitors, particularly in very large law firms, changed, presaging change in their nature from being professional entities to businesses. In this paper I will ask if the language used in UK universities and their law schools had changed in recent decades. If it has what is the nature of this change and does it suggest an alteration in the function of those universities and their law schools?

FIONA COWNIE

Professor Gower, Stirring Up Legal Education.

In 1950, the Modern Law Review published Professor LCB Gower’s inaugural lecture, which he had delivered on taking up a Chair at the London School of Economics. It was a blast of criticism aimed at every stage of academic and vocational legal education. The judges were not exempt either - they were outraged to be treated in this way ! this paper will look at Gower’s lecture and examine the extent to which his criticisms are still valid.

LIMOR ZER GUTMAN

Ethics Education in an Ethical Learning Environment.

This paper delineates a broader and more profound perspective on ethics education, surpassing the confines of conventional legal ethics typically imparted in today’s legal education institutions. It emphasizes the overarching importance of ethics in societal sustainability, acknowledging the inherent limitations of legal systems in addressing the entirety of ethical concerns and emphasizing the individual’s imperative to anchor themselves in these fundamental principles.

Our research posits that the optimal approach to ethics education involves the creation of an ethical learning environment. This framework encourages students to actively apply ethical principles and perpetuates a code of ethics upheld consistently by all members of the university community. This transformative pedagogical model not only extends the boundaries of ethics education but also fosters a culture of ethical awareness within the academic milieu, shaping future ethical leaders.

ROSEMARY AUCHMUTY

Equality, Diversity and Inclusion Agendas in University Law Schools - but where are the women?

All UK universities (and probably universities elsewhere) now have Equality, Diversity and Inclusion policies intended to challenge the historical marginalisation and exclusion of particular social groups. In the past women were recognised as one of the categories but this is no longer the case. Women are thought to be equal now, or are constantly being subsumed into larger categories eg queer, LGBTIQ+, in which every other group is somehow more important. Yet women are not equal and feminism remains (deliberately) marginal in the legal curriculum and research. Maybe we can use EDI policies to justify engendering (putting women and gendered power into) the law we teach.



Tuesday 25th June 2024

10.45 - 12.15

Ethics and Deontology

Chair: Tamara Butter

[Meeting room: Karl Renner & Achille Loria (1st floor)]

LISA WEBLEY

What is it to be an ethical lawyer in this technological age?

In this paper I shall explore the use of algorithms in the administration of justice. I shall begin by considering their current use as a sentencing aid, to assist in judgment writing, to prepare fact summaries from large quantities of documents, with the discovery and disclosure process and then more novel use cases including diagnosis of legal issues and the drafting of pleadings for self-represented litigants that are being explored in a range of jurisdictions. I shall consider the implications of their use from an access to justice and rule of law perspective. I shall then, with the aid of ethical theory, consider how lawyers may wish to respond to these developments given the risks and the opportunities associated with technological innovation.

DERK VENEMA

Judges and the Child Care Benefit Scandal.

In their judgments in cases concerning suspected fraud with Child Care Benefits (2011-2019), the Dutch Administrative Appeals Court did (at least) 4 things wrong, professionally and ethically: it invented a statutory obligation that did not exist, ignored the specific circumstances of individual cases, acted as executive of government policy, and has been unwilling to admit most of this up until the present day. What is more, the Court's governmental attitude dates from long before this particular scandal, and forms part of its DNA. I propose an ethics of statute application as a partial means to prevent a similar scandal in the future. It both respects the judge's position in the trias politica, and supports his duty to produce just and fair decisions.



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Chair: Tamara Butter

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TAMARA BUTTER

Do All Clients and Causes Merit Representation? Preliminary Findings on the Corporate Lawyers’ Perspective.

Do All Clients and Causes Merit Representation? This question is at the heart of current debates on lawyers’ ethics in the academic, the professional and the public domain. Amongst other developments, the Russian invasion in Ukraine and climate change brought this topic to a head. In his upcoming book *Cancelling Lawyers*, renowned legal ethics scholar Bradley Wendel states that lawyers are accountable to others for the clients they represent: ‘lawyers must give an account for themselves, that is, offer a justification in terms that others can accept’. But what are these accounts and how can these be understood?

The mapping of lawyers’ accounts on this topic can contribute to a well-founded discussion on the legal profession’s longstanding precept that ‘everyone deserves representation’ which is now under attack. Once we have identified – and better understand – these accounts, it can be assessed whether the justifications given are acceptable and to whom.

Based on the empirical work I conducted amongst corporate lawyers in the Netherlands, I will present some preliminary findings on corporate lawyers’ perspective on this question.

KENDALL GAIL

Using The Neo-Weberian Understanding Of Professional Monopolies To Analyze Case Studies Of American Plaintiffs’ Lawyers Who Stole Client Settlement Funds.

The American legal profession has a monopoly over its membership, including full control over the process of professional discipline for attorneys. State bar organizations are the ones who oversee the discipline process and have authority to design the structure as they see fit. This means attorneys who are accused of the same misconduct in different states might go through entirely different disciplinary procedure. I examine the three cases of plaintiffs’ lawyers from three different states who stole client settlement fund, a serious violation of professional misconduct, and faced their state’s professional discipline process as a result. Comparing these case reveals common structural similarities and goals across different discipline structures, as well as highlighting weaknesses and areas for improvement in the process overall.



Tuesday 25th June 2024

10.45 - 12.15

Access to Justice and Legal Aid

Chair: Avrom Sherr

[Meeting room: André-Jean Arnaud (ground floor)]

STEFANIE LEMKE

Albania and the EU: Reforms and their impact on access to justice.

This contribution explores how key developments in the justice sector have improved people’s access to justice in Albania. After being granted EU candidate status in 2014, the EU underlined the critical need for Albania to further consolidate progress in some areas, such as judicial reform and fight against corruption. This included to remove barriers to accessing justice, such as the inability of disadvantaged groups like Roma and victims of domestic violence to make use of legal aid and benefit from social inclusion policies. To gain a more accurate picture of the legal needs of the Albanian population, the author and her team collected data in a four-step process, consisting of a household survey, an online poll, interviews and focus groups. This contribution presents the key findings from the data collected, shedding light on people’s understanding of, confidence in and satisfaction with the Albanian justice system.

JON T. JOHNSEN

Bulgarian Roma Women and Legal Aid

(see also: <https://www.domstol.no/NCA/legalaidbulgaria>).

My paper draws upon a report I have written that has the need for and use of legal aid by Bulgarian Roma women as its main subject. It analyses the Bulgarian legal aid schemes that cover Roma women, and map their strengths and weaknesses with suggestions for improvements.

The analysis includes a selection of legal aid challenges that seems important for Bulgaria to solve. One part analyses criminal legal aid and has two major sections – one on defenders and one on victims’ lawyers. Another part evaluates innovative legal aid projects that might serve as development models for legal aid service to the Roma population, and especially to Roma women. It considers outreach legal aid services in Roma neighbourhoods and their use of Roma mediators. A last part evaluates access to legal aid in selected Roma discrimination cases like housing demolition cases and cases about the health services provided to pregnant Roma women by hospitals.

My presentation will focus on selected parts from the report:

- Roma women’s overall legal aid coverage.
- Access to a victim’s lawyer in criminal cases about trafficking for sexual exploitation.
- Two innovative legal aid projects.
- Discrimination of Roma women in maternity wards.

Bulgarian legal aid to Roma women
© 2024 Norwegian Courts Administration
ISBN 978-82-693471-1-1 (printed version)
ISBN 978-82-693471-0-4 (digital version)
Downloadable from: <https://www.domstol.no/NCA/legalaidbulgaria>

Българска версия:
© 2024 Norwegian Courts Administration
ISBN 978-82-693471-2-8 (печатна версия)
ISBN 978-82-693471-3-5 (електронен вариант)
Може да се изтегли от: <https://www.domstol.no/NCA/legalaidbulgaria>

RICHARD INGLEBY

Racist behaviour and legal professionals

Acceptance of the need for judicial diversity has led to discussion of incorporating “a high degree of cultural awareness” into the criteria for judicial appointment. But what does cultural awareness mean? This paper argues that the “culture” whose “awareness” requires examination is white supremacy, or more precisely, the “Nice Racism” of liberals who profess commitment to diversity, but respond to challenges as to the privilege of their own position by minimization and defensiveness.

Tuesday 25th June 2024

12.45 - 14.15

Lawyers and State Transformation

Chair: Terry Halliday

[Meeting room: Karl Renner & Achille Loria (1st floor)]

KIRANDEEP KAUR

The analysis of the public sector equality duty regulations in the UK in the local authorities.

From the wave of Equal Pay claims in local authorities to industrial strike action, the paper will look at how the public sector equality duty has impacted workforce views on issues of pay and the growing use of privatised contracts.

DERK VENEMA

Transitional Justice as Legal Exceptionalism: judges in transitions.

In this presentation, I put forward a general theory of transitional justice. This theory aims to provide a framework for comparative research into legal forms concerning state transitions. I characterize transitional justice's defining functional property as: normatively distinguishing the new regime from the old. This function has repercussions for the legal form of its several instruments. I call them 'legal exceptionalism', which has four aspects: its ultimate goal is establishing legal normalcy; its means is 'reverse unequal treatment'; its political form is 'a-legality' or state of exception, its cultural form is rite of passage, distinguishing the evil past from the just future, performing moral hygiene. The theory is applied to the five modes of transitional justice: constitution, prosecution, reparation, lustration, and information. Special attention is paid to judges.

TERRY HALLIDAY

Lawyers In the Streets: Public Assembly and Protest In Hong Kong, 1997-201.

This paper seeks to expand research and theory on the conditions under which legal complexes contribute to transitions to and from political liberalism. Based on extensive fieldwork in Hong Kong (interviews, participant observation, documentary sources), the paper argues that the struggles between 1997 and 2019 in HK over rule of law offer a maximal site for the display of mobilization by the legal complex, most particularly in public spaces outside the conventional sites of legal practice and institutions. The paper focuses on the legal concept and social practice of "public assembly." It offers a triangular model of lawyers and public assembly between the global and the local which holds in mutual tension the three enduring elements of lawyers' engagement with political liberalism across all continents of the world in the last three centuries. The paper provides a theoretical framing; sketches the methods and data; describes four events that triggered lawyer mobilization in the streets; catalogs the repertoires of action within and across segments of the Hong Kong legal complex and international legal complex (ILC); examines the dramaturgical and performative features which allowed the legal complex to wage a two-front campaign, both on lawyers' conventional venues where they can claim to be a distinctive professional authority, and in the streets, well outside their usual professional settings; and points to further directions in research and theory.



Tuesday 25th June 2024

12.45 - 14.15

Legal Professional Values and Identities - Second Session of 3

Chair: Hilary Sommerlad

[Meeting room: André-Jean Arnaud (ground floor)]

ALEX BATESMITH

‘Our “authentic” professional selves’: experiences of identity formation, power relations and EDI among aspiring and junior barristers.

This paper discusses themes arising from original qualitative research on issues of equality, diversity and inclusion (EDI) at the North-Eastern Circuit (NEC) of the Bar of England and Wales. A series of focus groups were held in 2024 with aspiring and junior barristers self-identifying as belonging to an under-represented group in the profession with a view to recording the perceptions, experiences and reflections on a broad range of issues relevant to EDI. Drawing upon the work of Sommerlad, Webley and others on access to the profession, professional identity formulation and power relations, this paper explores how aspiring and junior practitioners belonging to under-represented groups navigate their professional sense of self in the face of persistent structural challenges, ongoing and unspoken bias and prejudice, and other barriers to inclusive participation in the field. Applying the concept of authenticity in professional identity (Clarke et al drawing upon Heidegger’s writing on authenticity in Being and Time) and Ferdman’s construction of the paradoxes of inclusion in organisations, the paper reflects on how, despite increasing numbers of traditionally under-represented groups at the Bar, the extent to which ‘authentic’ professional identity continues to be sublimated by entrenched power remains very much a live issue.

RICHARD COLLIER

(Un)happy Lawyers? The Wellness Turn in the Legal Profession and University Law Schools and the Wicked Problem of Wellbeing.

Recent years have witnessed a growing concern internationally in the topic of wellbeing and mental health in the legal community, an interest reflected in the emergence of a multitude of research studies, policy initiatives, events, networks and reports (e.g. International Bar Association, 2021; LawCare, 2021). This paper presents a socio-legal critique of the law’s recent ‘wellbeing turn’ in relation to lawyers, law students as well as, more recently, legal academics.

The presentation is structured around two sections. The first section briefly set the scene for the discussion to follow by reviewing recent developments around wellbeing and mental health in legal professional practice and UK university law schools. The second explores the underlying conceptualisation and politics of wellbeing in these debates and how a distinctive kind of ‘wellbeing problem’ has emerged across different areas of the law. It interrogates the relationship between wellbeing, professional identity and commitment, the ‘resilience’ question and reframing of wellbeing as a moral project - the need to ask whose wellbeing we are talking about in this debate. Placing the law’s wellbeing turn in a wider social, economic and political context brings to light questions and concerns that, I shall suggest, have all too often been side-stepped in these debates including around the intersectional dimensions of wellbeing. The paper concludes by exploring how structural and cultural changes within the legal community and new ideas of legal professionalism are impacting in contradictory ways on lawyers, law students and legal academics alike; processes that are productive of the law’s wellbeing turn and why this may, ultimately, be a wicked problem for the legal profession to solve.



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Legal Professional Values and Identities - Second Session of 3

Chair: Hilary Sommerlad

[Meeting room: André-Jean Arnaud (ground floor)]

PETER ROBSON

The Scottish Legal Profession in Popular Culture.

This paper explores the way in which Scots law and the legal profession in Scotland are represented in popular culture. It examines the image in film, television and fiction. These representations include film produced both in Scotland and elsewhere. Part of the coverage looks at what kinds of images of Scotland and Scottishness we find over time. This study takes place within the context of the position of Scots law and the legal profession in Scottish social and political life. Scots law and its protagonists have been trumpeted as expressing a unique national character and described as a signifier of national characteristics. They have received further recent focus in the proposals to abolish the unique “not proven” verdict in criminal trials as well as abolishing the jury in rape trials. Within the examination of Scottish culture the focus is on those films which engage directly or indirectly with law, justice and the legal profession. What we encounter is the distance between the notion of law these phenomena encountered and any specific Scottish context. Law and the legal profession are almost invariably shown as a product of external oppression and there seems to be an absence of links between the notion of Scots lawyers as identifiers of Scottishness and this expression in film. Moving to television the situation is perhaps surprisingly very little different given the centrality of the traditional public prosecution system with the Procurator Fiscal (Sutherland’s Law, The Advocates and Taggart). Finally, the most longstanding of all representations of the legal world, fiction, has extensive contributions from lawyer authors Sir Walter Scott and Robert Louis Stevenson. This area has been given a recent fillip by the emergence of new writing on the professionals operating the justice system in the forensic tales of William McIntyre – 13 books so far in the last decade on the practice of a solicitor practicing in the central town of Linlithgow. It is possible to draw on these works to construct a version of the changing features of the Scottish legal profession and its relationship with its neighbour in an age of cross-border firms and simple transfer between Scots lawyers and English trained ones.



Tuesday 25th June 2024

16.00 - 17.30

Legal Professional Values and Identities - Third Session of 3

Chair: Hilary Sommerlad

[Meeting room: Karl Renner & Achille Loria (1st floor)]

JACQUI KINGHAN

The Challenge of Recruitment and Retention of Mid-Career Lawyers in Civil Society Organisations.

There is a strong professional legal identity for lawyers working in civil society organisations in the UK. As a result of cuts to legal aid funding and related wider pressures in the system, funding for not-for-profit legal practice now comes from increasingly diverse sources. Changes have necessitated new ways of working, informed by shared values and strong professional networks. These values underpin motivations for working in the sector; and also tend to explain why lawyers choose to stay. However, large numbers of lawyers at the ‘mid-career’ stage choose to leave, which has considerable knock-on impacts for civil society organisations working in certain areas (e.g. social welfare, community care and housing) in terms of meeting legal needs and training new early career lawyers. This paper draws upon research conducted as part of a learning partnership with a philanthropic funder in the space as well as relevant findings from a legal aid workforce survey (Denvir et al, 2023). Key issues and problems will be outlined and suggestion for strengthening the sector proposed.

JESS MANT AND EMMA COOKE

The Profession and the Pandemic: Legal Aid Lawyers in the Post-COVID Era of Access to Justice.

The legal aid sector in England and Wales has been subject to long-standing austerity measures and funding constraints. A wealth of studies conducted over the past 50 years have shown that this has not only facilitated a fragile working environment but also a growing sense of crisis among legal aid lawyers. The sector has been placed under even greater strain since the initial outbreak of the COVID-19 pandemic. On one hand, legal aid lawyers are now supporting a wider range of clients facing increased levels of legal need due to pandemic-induced precarity. On the other hand, these lawyers are also assisting vulnerable clients with amplified legal problems that went unaddressed during the pandemic. The profession is also grappling with the rapid acceleration of digitised legal services and courts that has taken place since the pandemic.

In this paper, we will present early findings from a British Academy project which seeks to understand the cumulative impact of austerity and COVID-19 for the legal aid sector by mapping and unravelling the intersection of these two crises, and the implications that they will have for the future of access to justice. The project has so far involved 130 in-depth qualitative interviews with legal aid lawyers working across criminal, family and social welfare law. Drawing on these interviews, the paper will critically assess how the cumulative impact of austerity and COVID-19 has impacted working-practices, social-relations and job satisfaction holistically, and will begin to propose ways of learning from the experiences of legal aid lawyers to inform future legal aid policy and practice.



Tuesday 25th June 2024

16.00 - 17.30

Legal Professional Values and Identities - Third Session of 3

Chair: Hilary Sommerlad

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LAURENE SOUBISE

Impact of managerialism on CPS lawyers’ sense of legitimacy.

This paper revisits empirical data collected through interviews and ethnographic observations at the Crown Prosecution Service in 2012, providing a snapshot of criminal prosecutions in a context of unprecedented financial pressures. It explores the impact of rising managerialism and the McDonaldization of the prosecution process on the subjective experience of Crown Prosecutors. The paper attempts to make sense of the finding that Crown Prosecutors appear to have largely adjusted to obvious challenges to their professional autonomy and accepted a definition of their role and function in line with performance-driven objectives, such as cost-effectiveness and customer satisfaction. Possible explanations for this broad acquiescence could be found, in part, in the historical context in which the Crown Prosecution Service was established, but also in the wider context of criminal justice in austerity, especially the even greater challenges faced by legally-aided defence lawyers.



Tuesday 25th June 2024

16.00 - 17.30

Joined sub-groups-Judiciary and Histories of the Legal Professions

Chair: Nina Holvast and Eyal Katvan

[Meeting room: André-Jean Arnaud (ground floor)]

NINA HOLVAST & PETER MASCINI

Does the legal domain affect the level of influence of judicial assistants: comparing administrative- and civil law cases.

In the academic discussion regarding the role and influence of judicial assistants in judicial decision-making it is often assumed that due to different types of cases, procedures and cultures the influence of judicial assistants would differ per legal domain. Contrary to this assumption, our study finds strong similarities in the influence of judicial assistants in administrative and civil law decision-making. Our experimental vignette study among Dutch administrative judges (n=80) and civil law judges (n=107) finds that influence plays out is a rather similar matter in both fields of law. Differences in the influence of judicial assistants can primarily be explained by personal views and characteristics, but the context of the decision-making hardly seems to play a role in this.

ULRIKE SCHULTZ

Judicial Education in Germany.

I will give an outline of the judicial system in Germany, the qualification judges and prosecutors acquire and the judicial career system. Based on this, I analyse deficits and problems for judicial careers on one side and decision making on the other side. I finally describe and evaluate the practice of judicial education.

AVNER LEVIN

The Impact of Covid-19 on the Profession in Ontario, Canada: A Comparative View.

This paper presents the results of the second stage of the project “More Lawyers, More Litigation? Exploring Trends in Litigation and the Legal Profession” funded by the Law Foundation of Ontario. We conducted a survey of the legal profession in Ontario in order to determine the impact of COVID-19 on access to justice and on the legal profession, and to shed more light on pre-existing barriers to access to justice. The results are discussed in detail in this paper, and compared with preliminary archival research into the impact of the Spanish Flu on the legal profession in Canada a century ago.

BOAZ SHNOOR AND EYAL KATVAN

The Foundation of the IBA: An Historical Lesson.

A recurring debate among scholars concerns the objectives of lawyers` associations and the prohibitions on the unauthorized practice of law. Some claim that these legal norms aim to defend the public – clients and future clients. This is the altruistic model. Others claim that these norms aim to protect the interests of the lawyers themselves.

The protocols of the Israeli Bar Association establishment ceremonies in 1962, give us a rare opportunity to discover how the lawyers themselves view this debate. In the public ceremony, the narrative was an altruistic one. The speakers emphasized that the powers that were vested in the IBA should be used only for the benefit of the public. However, in the private meeting, the narrative was different and concentrated on the interests of the lawyers. In our paper, we will present the different narratives and demonstrate how they merged into one law – The Israeli Bar Association Act.



WG “Legal Profession Group Meeting”

List of participants



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