

law's pluralities

cultures | narratives | images | genders
conference & exhibition

06.-09. May 2015

Justus Liebig University Giessen
Main Building & Neuer Kunstverein Giessen

JUSTUS-LIEBIG-
 UNIVERSITÄT
GIESSEN


International Graduate Centre
for the Study of Culture



 NEUER
KUNSTVEREIN
GIESSEN

www.lawspluralities.wordpress.com

CONFERENCE SCHEDULE

Wednesday, 6 May (Biologischer Hörsaal, Main Building)

4:00 p.m. Registration

6:00 Opening: Katharina Naumann and Silke Schmidt (GCSC)

President of the Justus Liebig University Giessen,
Prof. Dr. Dr. h. c. Joybrato Mukherjee

Representative of the Executive Board of the Giessen Graduate
Centre for the Study of Culture

6:30 Greta Olson (Giessen): Mapping the Pluralist Character of
Cultural Approaches to Law

7:00 Franz Reimer (Giessen): Der kulturelle Zugang zum Recht
aus der Perspektive der Rechtstheorie und
Methodenlehre [English abstract to be found at the head
of the abstracts section]

8:00 Reception and Visit to the Exhibition “Law’s Pluralities”

*The artistic exhibition “Law’s Pluralities” will be held parallel to
the academic discussions in the Neuer Kunstverein Giessen.*

Thursday, 7 May

Session 1 Law's Pluralities

9:00 a.m. **Keynote 1: Rosemary Coombe: Neoliberalism and the 'Proprietary' Imagination: A Proliferation of Cultures 'Before the Law'** (Greta Olson)

10:00 Parallel German and Anglophone paper session I

a) Law's Narratives I (Daniel Hartley), Seminarraum 316

Katrin Becker (Luxemburg, Paris): The Literary Voice of Law – A Perspective on Literature's Entanglement with Normativity

Susanne Groß (Erlangen-Nuremberg): "The detective: that is the role I am to play" – The Sensational Narratives of Law in Eleanor Catton's *The Luminaries* (2013)

Helena Whalen-Bridge (Singapore): Party Narratives in Adversarial Systems: Partiality or Objectivity?

b) Law's Pluralities: Citizenship and Sovereignty (Greta Olson), Senatssaal

Frans-Willem Korsten (Leiden): Beyond Apostasy: Dramatically Doing Justice to Struggle(s) between Dutch-Moluccans and the Dutch State

Marie Beauchamps (Amsterdam): Denaturalization's Narratives and the Plurality of Nationality Law in France

Martin Ramstedt (Halle-Wittenberg): The Deontic Power of Origin Stories in Bali's New Village Jurisdictions

c) Pluralitäten des Rechts (Steffen Augsberg), Gustav-Krüger-Saal 118

Ralf Seinecke (Frankfurt): Was heißt und zu welchem Ende studiert man Rechtspluralismus?

Sarah Leyli Rödiger und Dana-Sophia Valentiner (Hamburg): „Living together“ – Rechtspluralistische Konflikte im Kontext religiöser und moralischer Normativität in der Rechtsprechung des EGMR

Nicole Schreier (Giessen): Verfassungsrichterbilder – Der Einfluss von juristischer Mentalität und Rechtskultur auf die Stellung der Verfassungsgerichtsbarkeit zwischen Recht und Politik

11:30 Coffee break, Rektorenzimmer 123

12:00 **Keynote 2: Anna-Bettina Kaiser:**
Verfassungsvergleichung als Verfassungsinterpretation?
(Franz Reimer)

1:00 Lunch

Session 2 Law's Narratives

2:00 **Keynote 3: Jeanne Gaakeer: The Perplexity of Judges Becomes the Scholar's Opportunity** (Greta Olson)

3:00 Coffee, Rektorenzimmer 123

3:30 **Keynote 4: Andreas von Arnould: Norms and Narrative**
(Franz Reimer)

4:30 Parallel German and Anglophone paper session II

a) Law's Narratives (Silke Braselmann), Seminarraum 316

Angela Condello and Tiziano Toracca (Rome/Perugia and Ghent): Exemplarity as a Normative Form: Remarks Made between Law and Literature

Iben Engelhardt Andersen (Odense): Romeo and Juliet Are Sexting - Tragic Teens in Law and Literature

Stephanie Law (Montréal): Law as a Cultural Construct and the Narrative of Judicial Dialogue in the Europeanisation of Law: The CJEU's Interpretation of the Consumer

b) Law's Practices (Katharina Naumann), Senatssaal

Katja Stoppenbrink (Cologne, Paris): Respect for Children's Well-being as an Evaluative Cultural Practice: Reconstructing German Jurisprudence and Legal Practice at the Interface of Descriptive Ethics and 'Law as Culture'

Tara Mulqueen (London): Co-operation and the Laws of Ordering

Samuel Kirwan (Bristol): On Good Advice: The 'Taking Place' of Legal Consciousness within Citizens Advice

c) Narrative des Rechts (Sonja Teupen), Gustav-Krüger-Saal 118

Susanne Krasmann (Hamburg): Imagining Insecurity: Über Gefühltes im Recht

Frederik von Harbou (Berlin): Von Rousseaus „Julie“ zum CNN-Effekt. Mediale erzeugte Identifikation und ihre Bedeutung für die Menschenrechtsachtung

Sonja Arnold (Cologne): „Eu acredito, talvez até ingenuamente, no papel transformador da literatura.“ Die Diskrepanz zwischen geschriebenem Recht und Rechtspraxis und ihre mediale Repräsentation in Brasilien

6:00 Quick break, Rektorenzimmer 123

6:30 Plenary: Susanne Baer: Speaking about Law: Current Challenges to the Protection of Fundamental Rights
(Greta Olson)

8:00 Conference Dinner at Kleines Häusers, Leihgesterner Weg 25, Giessen

Friday, 8 May

Session 3 Law's Cultures

9:00 a.m. Parallel German and Anglophone paper session III

a) Law's Cultures (Frans-Willem Korsten), Seminarraum 316

Ann Goldberg (Riverside): Culture and Politics in the Making of German Hate Speech Law

Ozan Kamiloglu (London): The Ethical Turn and New Aesthetics of Justice

Suncica Klaas: (W)Ri(gh)ting Wrongs: Human Rights and the Contemporary American Autobiography

b) Law's Materiality and Plurality (Andrea Rummel), Senatssaal

Thomas Streeter (Burlington): Digitalization, Discourse Networks, and the Law: The Move to Online Legal Databases, 1980—2000

Neloufer de Mel (Colombo): The Life of the Death Certificate: The Law, Documental Regimes, and Gendering Justice in Post-War Sri Lanka

Lando Kirchmair (Budapest): Descriptive vs. Prescriptive (Global) Legal Pluralism: A Gentle Reminder of David Hume's Is—Ought Divide

c) Kulturen des Rechts (Sonja Schillings), Gustav-Krüger-Saal 118

Jan-Christoph Marschelke (Regensburg):
Kulturtheoretische Analyse gerichtlicher Kulturtheorie

Jan Suntrup, (Bonn: Käte Hamburger Center for Advanced Study in the Humanities "Law as Culture"): Personen, Dinge, Tiere, Unpersonen. Kulturspezifische Differenzierungen in rechtlichen Prozessen der Personifizierung

Fabian Steinhauer (Frankfurt): Kulturtechniken. Über die „technologische Bedingung“ von Recht und Gesetz

10:30 Coffee, Rektorenzimmer 123

11:00 **Keynote 5: Ruth Herz: Judicial Images as Narratives**
(Horst Carl)

12:00 Lunch

12:45 Optional digestive walk, meet in front of the main entrance

1:30 Parallel Anglophone paper session IV

a) Law's Narratives: The US American Case (Silke Schmidt), Seminarraum 316

Sonja Schillings (Giessen): Rape, Murder and the Narrative Interpretation of Judicial Discretion in Richard Wright's *Native Son*

Silke Braselmann (Giessen): "The verdict is the reader's job" – The JCSO Columbine Documents in Multimodal School Shooting-Novels

Sabine N. Meyer (Bonn, Käte Hamburger Center for Advanced Study in the Humanities "Law as Culture"): From Domestic Dependency to Cultural Sovereignty: Representations of the Law in Postmodern Native American Literature

b) Law's Genders and Sexualities (Marcel Wrzesinski), Senatssaal

Barbara Kraml (Vienna): De/Legitimizing Juvenile Sexual Autonomy: Narratives of Love and Abuse

Katharina Zilles (Giessen): Beholding the Child

c) Law's Images (Daniel Hartley), Gustav-Krüger-Saal 118

Martin A. Kayman (Cardiff): Believing, Seeing, and Presence in Law

Giorgia Baldi (London): 'Un-veil' and 'Re-veil': The Symbolology of the 'Other'

Laura Sweeney (Canberra): Drawing Judgment: Law, Gender and Aboriginality in Political Cartoons of the High Court of Australia

3:00 Coffee, Rektorenzimmer 123

Session 4 Law's Sexualities/Genders

3:30 Parallel paper session V

a) Law's Performances (Greta Olson), Senatssaal

Marett Leiboff (Wollongong): Theatrical Jurisprudence and the Imaginary Lives of Law in Pre-1945 Australia

Mi You (Cologne): Angels and Prophets on Trial: On Jelinek's *Das schweigende Mädchen*

Scott Veitch (Hong Kong): Contesting Images of the Rule of Law in Hong Kong

b) Law's Sexualities (Marcel Wrzesinski), Gustav-Krüger-Saal 118

Jen Higgins (London): Categories of Otherness: The Inclusion of LGBT Groups under Hate Speech Protections

Mikki Stelder (Amsterdam): Politics without Rights: Human Rights Discourse as Alibi and as Violence

Hsiao-tan Wang (Taipei): Law's Gendering Practice in the Society of Law's Pluralities in Chinese Culture

5:00 Break, Rektorenzimmer 123

5:30 **Keynote 6: Konstanze Plett: Stories about Genus, Sex and Gender: Legal Exclusion through Linguistics** (Marcel Wrzesinski)

6:30 **Keynote 7: Leslie Moran: What's Mr Kipling's Bakewell tarts got to do with it? Performing Gender as a Judicial Virtue in the Theatre of Justice** (Marett Leiboff)

Saturday, 9 May

Session 5 Law's Images

9:00 a.m. **Parallel Independent Panels** (Danae Gallo González)

Panel I Leiden: Monsters and Icons: Objectification in Law and Justice

Gerlov van Engelenhoven: Legal Closure and Cultural Re-opening: Exploring Bobby Sands' Iconic Status

Tessa de Zeeuw: Frightening Creatures and Pieces of Proof: Invoking the Theatricality of the Laboratory in Criminal Procedures – A Cross-Reading of *Frankenstein* and the Case of Lucia de B.

Thomas Bragdon: The Monstrous and the Human in Hannah Arendt's Paradox: Reactivating Refugees' Rights in Europe Today

Panel II Centre for Humanistic Legal Studies at the University of Bergen (Sonja Teupen)

Frode Helmich Pedersen: The Power of Narrative

Line Hjorth Buchholzer: The Significance of Archetypes in Courtroom Proceedings

Arild Linneberg: The Prosecutor as Judge: The Role of the Media in Miscarriages of Justice

Erling Aadland: Law and Outlaw in Some Bob Dylan Songs

10:30 Coffee, Rektorenzimmer 123

11:00 **Keynote 8: Werner Gephart: Image-ing the Law: How
'Deontic Power' Enters the Canvas** (Greta Olson)

12:00 **Keynote 9: Peter Goodrich: Lucifugous Laws: Excavations
of Visiocracy** (Tessa de Zeeuw)

1:00 Wrap-up session during closing luncheon

Joint hike to the Schiffenberg cloister if the weather is willing.

PLENARY

SUSANNE BAER (BERLIN)



Professor Baer serves as Justice of the Federal Constitutional Court in Germany, elected by the Bundestag in 2011 to the First Senate, for a 12 -year term, and is the Professor of Public Law and Gender Studies at Humboldt-University of Berlin. She became a James W. Cook Global Law Professor at the University of Michigan Law School 2010, where she received an honorary doctorate in 2014, and has taught at CEU Budapest, in Austria, Switzerland and Canada. Justice Baer studied law and political science and was active in movements against discrimination in pornography and to combat domestic violence; from 2003 until 2010, she was the director of the Gender Competence Centre to advise the German federal government on gender mainstreaming. At Humboldt University, she has served as Vice-President and founded the Law and Society Institute Berlin and the Humboldt Law Clinic in Human Rights.

Publications in English include:

- *Comparative Constitutionalism. Cases and Materials*, 2nd edition, St. Paul: Thomson/West 2010 (with Norman Dorsen, Michel Rosenfeld, András Sajó).
- “Privatizing Religion. Legal Groupism, No-Go-Areas, and the Public-Private-Ideology in Human Rights Politics,” *Constellations* 1 (2013), 68-84.

- “Equality,” in *The Oxford Handbook of Comparative Constitutional Law*, eds. Michel Rosenfeld and Andrés Sajó, Oxford: OUP 2012, 982-1001.
- “Dignity, Liberty, Equality: A Fundamental Rights Triangle of Constitutionalism,” *University of Toronto Law Journal* 4 (2009), 417-468.
- “The Difference a Justice May Make: Remarks at the Symposium for Justice Ruth Bader Ginsburg, Columbia J of *Gender & Law* 25 (1/2013),” at <http://repository.law.umich.edu>
- Bernstein Lecture 2013-2014: Adjudicating Inequalities, https://www.youtube.com/watch?v=yISo3hD_EXM

KEYNOTE SPEAKERS

ANDREAS VON ARNAULD (KIEL)



Andreas von Arnould is currently Professor of Public, International and European Law and Co-Director of the Walther Schücking Institute for International Law at Kiel University. Before joining the staff of the Kiel Law Faculty in 2013, he held posts at the University of Münster (2012-13), Helmut Schmidt University of the Federal Armed Forces in Hamburg (2006-12), and Free University Berlin (Assistant Professor, 1999-2006). A graduate of Hamburg University, he earned his J.D. (Hamburg) in 1998 and his *Habilitation* in 2005 (Berlin). His research (un)focues on Public International and European Law, German and comparative Constitutional Law, History of Law and Legal Theory. Recently, he has authored a textbook on Public International Law (2012, 2nd edition 2014), edited a volume on the external relations of the European Union (2014) and co-edited a *Festschrift* in honour of the Walther Schücking Institute's centenary (2014). He is co-editor of the *German Yearbook of International Law* and of *Die Friedens-Warte: Journal for Peace and International Organization*. Andreas von Arnould has a keen interest in interdisciplinary work, especially in the field of law and literature. Apart from taking part in workshops and conferences and teaching classes in law and literature and in law and film, he has published papers on law and narratology, law and biography, and co-authored a re-edition of Heinrich Triepel's book on the aesthetics of law (1947, re-edited in 2007). He is a member of the Scientific Board of *Diegesis: Interdisciplinary E-Journal for Narrative Research*.

ROSEMARY J. COOMBE (TORONTO)



Rosemary J. Coombe holds the Tier One Canada Research Chair in Law, Communication and Culture at York University in Toronto, where she teaches in Anthropology, the Communications and Culture Joint PhD/MA Programme, and Sociolegal Studies. Her award-winning book *The Cultural Life of Intellectual Properties* was reprinted in 2008 by Duke University Press. Drawing on anthropological, social and legal theories, Coombe's scholarship has illustrated how intellectual property debates illuminate the complex relationships between law and culture. Her current work addresses the implications of globalising intellectual property law and the politics of cultural property and heritage management at the intersection of neoliberalism, informational capital and human rights. A range of her published work may be found on her website and on academia.edu.

Coombe was an inaugural faculty workshop leader at the Osnabrück Summer Institute on the Cultural Study of the Law (2009-14). In addition to her work as a co-investigator in the international project 'Intellectual Property Issues in Intangible Cultural Heritage' (2007-2015) she was a Visiting Scientist and collaborating partner in the 2009-2012 Swiss Foundation for Research funded project, 'International Trade in Indigenous Cultural Heritage,' designed to provide legal recommendations for the development of new means of protection for indigenous peoples with respect to trade in cultural heritage goods.

Prior to being awarded one of the country's first federally endowed Canada Research Chairs Coombe was Full Professor at the University of Toronto Faculty of Law. She has served as an Adjunct Professor in the Norwegian University of Science & Technology's Department of Social Anthropology and held visiting professorships and fellowships at Georg August University, Göttingen, the University of Utrecht, the University of Chicago, De Paul University, M.I.T., Harvard University, Stanford University and the Stellenbosch Institute for Advanced Study.

Her recent publications include:

Dynamic Fair Dealing: Creating Canadian Culture Online, co-edited with Darren Wershler and Martin Zeilinger (University of Toronto Press, 2014);

"Neoliberalism, Heritage Regimes, and Cultural Rights: Politics in Assemblage" (with Lindsay M. Weiss), in *Global Heritage: A Reader*, ed. Lynn Meskell, Wiley-Blackwell: 2015;

"Marks Indicating Conditions of Origin in Rights-Based Sustainable Development" (with Nicole Aylwin), University of California, *Davis Law Review* 2014;

"The Expanding Purview of Cultural Properties and their Politics," *Annual Review of Law and Social Sciences*, 2009;

and, "What's Feminist about Open Access? A Relational Approach to Copyright in the Academy" (with Carys Craig and Joseph F. Turcotte), *feminists@law: an open access journal of feminist legal scholarship*, 2011.

Visit www.yorku.ca/rcoombe for more detail.

JEANNE GAAKEER (THE HAGUE AND ROTTERDAM)



Jeanne Gaakeer holds degrees in English Literature (1980), Dutch Law (1990) and Philosophy (1992, cum laude). She wrote her dissertation (1995) on the history and development of *Law and Literature*, and the works of James Boyd White.

She is currently (endowed) professor of legal theory at Erasmus School of Law, the Netherlands, where she has taught a variety of courses on Dutch law, legal methodology, legal epistemology and legal philosophy since 1990. Her research focus is on interdisciplinary movements in legal theory (specifically *Law and Literature* and *Law and the Humanities*) and their relevance to legal practice.

With Greta Olson (Giessen University) she is co-founder of the European Network for Law and Literature (www.eurnll.org) and the 2013 recipient of the J.B. White Award (bestowed by the Association for the Study of Law, Culture and Humanities). She is a member of the Advisory Board of the Law and Literature series by De Gruyter, Berlin, a member of the Advisory Board of the series *Edinburgh Critical Studies in Law, Literature and the Humanities* by Edinburgh University Press, a member of the International Advisory Board of *No Foundations: an interdisciplinary journal of law and justice*, and a member of the Scientific Board of Advisors of the journal *Polémos*.

She is a member of the Dutch judiciary and currently serves as a justice in the criminal law section of the Appellate Court of The Hague after having been a judge and examining magistrate in the Regional Court of Middelburg.

Her recent publications in English include:

“Dignity and Disgrace in Law and Literature,” in: *Law, Literature and Human Rights, the Law, the Language and the Limitations of Human Rights Discourse*, ed. Ian Ward, Berlin: De Gruyter 2015, pp. 309-328;

“‘It’s my culture, stupid!’ A Reflection on Law, Popular Culture and Interdisciplinarity,” in: *Law and Popular Culture, International Perspectives*, eds. Asimow, M. , K. Brown, and D.R. Papke (eds.), Newcastle on Tyne: Cambridge Scholars Publishing 2014, pp. 285-304;

“Law and Literature Redux: Some Remarks on the Importance of the Legal Imagination,” in: *Living in a Law Transformed, Encounters with the Works of James Boyd White*, Ann Arbor, Maize Publishing, Michigan University Press, 2014, eds. J. Etxabe and G. Watt, pp. 13-36, available at <http://quod.lib.umich.edu/m/maize/> ;

“The Literary Judge: A Dutch Experience,” in: *The Italian Society for Law and Literature Online Collection 6* (2013), available at <http://www.lawandliterature.org/>;

“Control, Alt, and/or Delete? Some Observations on New Technologies and the Human,” in: *Human Law and Computer Law*, eds. Mireille Hildebrandt and Jeanne Gaakeerm, Heidelberg, New York and London: Springer 2013, pp. 135-157.

WERNER GEPHART (BONN)



Prof. Dr. jur. Dr. h.c. Werner Gephart ist Soziologe, Jurist und Maler. Er ist Professor für Soziologie an der Rheinischen Friedrich-Wilhelms-Universität Bonn. Zahlreiche Gastprofessuren führten ihn u.a. nach Moskau, Paris, Tunis, St. Louis und Herzliya. Die Universität Turin verlieh ihm 2014 die Ehrendoktorwürde für seine Syntheseleistungen auf dem Feld der Ethik und Normativität, der Theorie und der Ästhetik.

Werner Gephart ist Mit-Herausgeber des Rechtsbandes im Rahmen der Max-Weber-Gesamtausgabe, Mitherausgeber der Zeitschrift „Droit et société“ und Autor zahlreicher Bücher u.a. zur Soziologie des Rechts und der Kunst- und Kulturinhalte. 2010 gründete er das Käte Hamburger Kolleg „Recht als Kultur“ in Bonn, dessen Direktor er ist.

Publikationen

Monographien und Sammelwerke

- Werner Gephart, *Law, Culture, and Society. Max Weber's Comparative Cultural Sociology of Law*, [Schriftenreihe des Käte Hamburger Kollegs „Recht als Kultur“, hrsg. von Werner Gephart, Bd. 7], Frankfurt am Main: Vittorio Klostermann 2015 (Übersetzung: Johannes Nanz).

- Werner Gephart, Siegfried Hermes (Hrsg.), *Max Weber, Wirtschaft und Gesellschaft. Recht* [Max Weber-Studienausgabe, Bd. 1/22-3], Tübingen: Mohr Siebeck 2014.
- Katharina Boele-Woelki, Nina Dethloff, Werner Gephart (eds), *Family Law and Culture in Europe. Developments, Challenges and Opportunities* [European Family Law series, Vol. 35], Cambridge: Intersentia 2014.
- Werner Gephart (Hrsg.), *Rechtsanalyse als Kulturforschung* [Schriftenreihe des Käte Hamburger Kollegs „Recht als Kultur“, hrsg. von Werner Gephart, Bd. 1], Frankfurt am Main: Vittorio Klostermann 2012.
- Werner Gephart (Hrsg.), Schriftenreihe des Käte Hamburger Kollegs „Recht als Kultur“, Frankfurt am Main: Vittorio Klostermann 2012ff.

PETER GOODRICH (NEW YORK)



Professor Peter Goodrich embarked upon his ontological journey as a foetus in India and then a childhood in Singapore. His epistemological trajectory was triggered by encountering the work of the philologist jurist turned Lacanian legal theorist, Pierre Legendre. While this could well have led to the demise of his career, he picked up the pieces, kept quiet, and published his thesis, *Legal Discourse*, and then a later day enchiridion, *Reading the Law*, in quick succession. Working to expand his conusances and the amplitude of theoretical jurisdictions, later works combined semiotics, history and psychoanalysis, and *Languages of Law* and *Oedipus Lex* vied (largely unsuccessfully) for shelf space beside the bibliomysteries and existential noir that you were reading back then. The inevitable emotional crises engendered by being English resulted in works on *Law in the Courts of Love* and *Laws of Love*, and departure to the United States in the hope of irritating a larger cohort of complacent academic lawyers than are available targets in the shrinking United Kingdom. Things are different in the United States. You teach cases and publish exclusively in law reviews. Despite these distractions, Goodrich, *bonus dives*, has adapted and refused in equal measure. He publishes regularly, which is to say not very often, in *Critical Inquiry*, and *Legal Emblems and the Art of Law* appeared in stylish print, much to the surprise of his colleagues, in 2014.

RUTH HERZ (LONDON)



Ruth Herz studied law in Geneva, Munich and Cologne where she earned her doctorate in law. From 1974 until 2006 she was a judge at the court of Cologne, Germany. She introduced the 'victim offender mediation and reparation' scheme as an alternative sanction for juvenile offenders to the German legal system for which she received the Medal of Merit (Bundesverdienstkreuz) from the Federal Republic of Germany in 1998. From 2001 – 2005, while on leave from her judicial position, she played the part of the judge in a daily fictional court series on German television. She has taught criminology at the University of Toronto and at the Hebrew University of Jerusalem. From 2006 – 2010 she was Associate Researcher at the Centre for Criminology of the University of Oxford and was a visiting fellow at Princeton University in 2010 – 2011. Since 2012 she has been a visiting professor at the School of Law, Birkbeck College, University of London.

She is interested in law and popular culture, and especially in law and images. She is currently working on the role and everyday practice of judges through drawings produced by a judge while sitting on the bench as well as on the portrayal of justice on television. She has published extensively. Her latest book *The Art of Justice: The Judge's Perspective* was published by Hart Publishing, Oxford in 2012.

ANNA-BETTINA KAISER (BERLIN)



Anna-Bettina Kaiser,
geboren 1976; Studium
der Rechtswissenschaft
an der Albert-Ludwigs-
Universität in Freiburg
i. Br.; 2000 Erstes
Juristisches
Staatsexamen; 2001

Master of Laws an der Universität Cambridge; 2003 Zweites
Juristisches Staatsexamen; 2004–2010 wissenschaftliche
Assistentin am Institut für Staatswissenschaft und
Rechtsphilosophie an der Rechtswissenschaftlichen Fakultät der
Universität Freiburg i. Br.; 2007 Promotion; 2010
Juniorprofessorin für Öffentliches Recht an der Juristischen
Fakultät der Humboldt-Universität zu Berlin; seit 2011 Mitglied
der wissenschaftlichen Leitung des Law & Society-Instituts der
Humboldt-Universität; seit 2014 Professorin für Öffentliches
Recht und Grundlagen des Rechts an der Humboldt-Universität;
verschiedene Preise, u. a. Auszeichnung der Dissertation (Die
Kommunikation der Verwaltung. Diskurse zu den
Kommunikationsbeziehungen zwischen staatlicher Verwaltung
und Privaten in der Verwaltungsrechtswissenschaft der
Bundesrepublik Deutschland, Baden-Baden 2009) als
„Juristisches Buch des Jahres“. Zuletzt erschienen: „Archiv und
Recht“, in: Marcel Lepper/Ulrich Raulff (Hrsg.), Metzler
Handbuch Archiv, Stuttgart und Weimar (Metzler), 2015.

LESLIE J. MORAN (LONDON)



Leslie J Moran is not a member of the judiciary. The picture of Professor Moran shown here was taken during the first of a series of workshops on judicial images. The workshop opened with a presentation about judicial costume. Professor Moran is Principle investigator of an Arts and Humanities Research Council Network initiative, the *Judicial Images Network*, the purpose of which is to build an international network of scholars and practitioners working on or interested in judicial images. More information about the project can be found on the Judicial Images website: <http://judicialimages.org>. Professor Moran has an established reputation for his multidisciplinary scholarship on sexuality and law, hate crime and law and culture. His research uses a variety of methods. His research on the judiciary includes making visual images of the judiciary. His research on the judiciary arises out of a pioneering empirical study of judicial diversity in a variety of common law jurisdictions. He is a Professor in the Law School at Birkbeck College, University of London where he teaches courses on business organisations, criminal justice, crime and media, legal visual culture and the judiciary.

Recent selected publications:

Books:

Sexuality Identity and Law (2006) Published as part of an international series of Law and Society Scholarship (series editor Austin Sarat), Ashgate UK.

Law's Moving Image, (Ed) with Prof. Ian Christie, E. Sandon, and E. Loizidou (2004, Cavendish).

Articles in refereed journals:

"Judicial Pictures as Legal Life Writing Data and a Research Method" (2015) *Journal of Law and Society* 41(1), 74-101.

"Managing the News Image of the Judiciary: the Role of Judicial Press Officers" (2014) *Oñati Socio-legal Series* [online], 4 (4), 799-818. Available from: <http://ssrn.com/abstract=2506601>

"Mass mediated 'open justice': Court and Judicial Reports in the Press in England and Wales" (2014) *Legal Studies*, 34 (1), 143-166.

"Sexual Diversity in the Judiciary in England and Wales; Research on Barriers to Judicial Careers" (2013) *Laws* 2, 512-538.

KONSTANZE PLETT (BREMEN)



Konstanze Plett is a Professor of Law at the University of Bremen. She took both law examinations in Hamburg, where she also earned her Dr. iur. Before joining the law faculty, she was a full-time researcher at the Max Planck Institute for Comparative Public Law and International Law in Hamburg for two years, and then at the Center for European Law and Politics in Bremen for more than twenty years. Her approach to law has been a socio-legal one since the early 1980s, studying dispute processing until she could convince the Center's directors that gender issues also deserved closer inspection in the field of law. Her research on the contribution of law to the social construction of gender ultimately made her aware of the injustices and wrongs experienced by inter* persons. Since approximately the year 2000, the human rights of inter*s have been her main research interest. She has given many talks and lectures on the subject, and was heard as a legal expert by parliamentary bodies and the German Ethics Council. Her many article publications on this issue exist (unfortunately) only in German.

Selected Publications:

„Das unterschätzte Familienrecht: Zur Konstruktion von Recht durch Geschlecht“, in: Koreuber, Mechthild / Mager, Ute (Hrsg.), *Recht und Geschlecht: Zwischen Gleichberechtigung*,

Gleichstellung und Differenz, Baden-Baden: Nomos Verlagsgesellschaft, 2004, 109-119.

„Intersexualität als Prüfstein: Zur rechtlichen Konstruktion des zweigeschlechtlichen Körpers“, in: Heinz, Kathrin / Thiessen, Barbara (Hrsg.), *Feministische Forschung - Nachhaltige Einsprüche*, Opladen: Leske + Budrich, 2003 (Studien interdisziplinäre Geschlechterforschung, 3), 323-336.

„Intersexuelle - gefangen zwischen Recht und Medizin“, in: Frauke Koher / Katharina Pühl (Hrsg.), *Gewalt und Geschlecht. Konstruktionen, Positionen, Praxen*, Opladen: Leske + Budrich, 2003, 21-41

“Gender and the Law,” in: Neil J. Smelser and Paul B. Baltes (eds.), *International Encyclopedia of the Social and Behavioral Sciences*, Oxford: Pergamon, 2001, pp. 5980-5984.

SPEAKERS AND ABSTRACTS

PROF. DR. FRANZ REIMER, Professur für Öffentliches Recht und Rechtstheorie, Justus-Liebig-Universität Giessen

Der kulturelle Zugang zum Recht aus der Perspektive der Rechtstheorie und Methodenlehre

This paper highlights the misleading effects of talking about “the Law” (as well as about “Literature” in the singular), as there are not only numerous legal systems – each with its own distinct legal culture(s) – but also, within each legal system, a multitude of types of norms, regulating styles, and normative approaches. The complex cultural geography of almost any legal order entails quite different methods of construing and applying norms within the respective legal system. Considering the German legal system, applying written norms is normally regarded as a matter of text, context, history, and *telos* (rationale), i.e., as a profoundly culture-dependent process. What is more, applying “the law” means in the first case finding, construing, and interpreting the facts: for instance, determining the “meaning” and/or the effect of a headscarf worn by a Muslim teacher in a German state school. This challenge, which far exceeds the challenge of interpreting the law, cannot be met without the help of cultural studies.

IBEN ENGELHARDT ANDERSEN, PhD Fellow, Department for the Study of Culture, University of Southern Denmark

Romeo and Juliet are Sexting: Tragic Teens in Law and Literature

While there is a general consensus that young children are vulnerable and in need of our protection in the form of both welfare politics and international human rights law, the legal status of the adolescent is much more ambivalent. Society's reaction towards the teenager is both one of admiration and ridicule, and perhaps even fear. While adolescence is characterized by an emotional, legal and political liminality with varying cultural and historical significance, adolescents – their love, righteousness, enthusiasm and gloom – form master narratives in both capitalist society and literary art. The teenager figure epitomizes our discussions about when we can give our sexual consent, be held accountable for our criminal actions, gain the right to vote and sign binding contracts, discussions whose affective operations cannot be adequately comprehended within legal discourse. My paper addresses the teenager as a tragic figure in literature and contemporary legal culture, i.e. as a site of conflict, vehement passions, excessive speech, bold anachronism and gender trouble, with the suggestion that the teenager confronts us with specific forms of incompetent speech in the spheres of law, popular culture and art. Specifically I will consider contemporary American youth 'sexting' cases and the Romeo & Juliet clauses, and juxtapose these with Shakespeare's *Romeo and Juliet* in order to reveal relations between consent, tone and imagery in law's framings of the teenager's speech. I argue that current legal representations of the teenager stage paradoxically conflicts between emotions and rights and suggest that a re-thinking – through literary tragedy – of the place of incompetent speech in society constitutes a necessary critical approach to our cultural

condemnations, which are currently too often executed at the cost of the rights of the adolescent.

DR. SONJA ARNOLD, Universität zu Köln

„Eu acredito, talvez até ingenuamente, no papel transformador da literatura.“: Die Diskrepanz zwischen geschriebenem Recht und Rechtspraxis und ihre mediale Repräsentation in Brasilien

Die Frankfurter Buchmesse 2013 mit Brasilien als Gastland wurde vom brasilianischen Schriftsteller Luiz Ruffato mit deutlichen Worten eröffnet: er spricht von Genozid, Gewalt, Armut, Drogenhandel, Prostitution und Korruption in seinem Heimatland, das doch mit der Verfassung von 1988 nach Jahren der Militärdiktatur zu einem demokratischen Rechtsstaat geworden ist. Diese Diskrepanz zwischen gesetzlich festgelegten Normen und rechtlicher Praxis charakterisiert bis heute die brasilianische Gesellschaft und findet in den Künsten, die als Komplement einer als defizitär empfundenen Rechtsordnung fungieren, ihren Ausdruck. Ausgehend von literarischen Werken (Graciliano Ramos' *Vidas Secas*, Luiz Ruffatos *Mamma, son tanto felice* und Daniel Galeras *Barba ensopada de sangue*), in denen – dem Modell Gabriel García Márquez' aus *Chronik eines angekündigten Todes* folgend – das geschriebene Recht mit einem über Jahrhunderte praktizierten Gewohnheitsrecht in Konflikt gerät, wird der Gegensatz von Logos und Mythos in der Ausübung der Rechtspraxis erarbeitet, der die brasilianische Gesellschaft bis heute kennzeichnet. Basierend auf den aus der literarischen Analyse gewonnenen Erkenntnissen werden mediale Repräsentationen des Rechts, welche die in den letzten Jahrzehnten populär gewordenen Verknüpfungen des Rechts mit den Künsten berücksichtigen, in den Blick genommen: Die TV-Serie *Agosto* (auf der Grundlage des gleichnamigen Romans von Rubem Fonseca), die den Selbstmord des ehemaligen Präsidenten und Diktators Getúlio Vargas schildert, die TV-Show

Direito e Literatura, in der wöchentlich literarische Werke von Juristen und Literaturwissenschaftlern diskutiert werden, sowie die Radiosendung *Direito é musica*. Ausgehend von der These, dass die Verbindung von Recht und Kunst im Performativen (Balkin/Levinson) und in der Repräsentation (Radul/Paasche) liegen, werden mediale Repräsentationen einer als virulent empfundenen Diskrepanz untersucht und ihre Funktionen eruiert. Eine genaue Untersuchung der in diesem Ausmaß in der westlichen Welt unbekanntem Dualität kann zudem zu einer exakteren Bestimmung des Funktionspotentials einer Verbindung von Recht und den Künsten beitragen.

GIORGIA BALDI, PhD candidate, Birkbeck, University of London

'Un-veil' and 'Re-veil': The Symbology of the 'Other'

The image of a covered (Muslim) woman has become the negative portrait of what is called a 'clash of civilizations' in which Islamic values emerge as 'incompatible with democracy'. The idea that Islam is the 'enemy' from which all of us have to be protected, and that (veiled) Muslim women are the carrier of a chauvinist culture and thus the symbol of this 'incompatibility', emerges in the analysis of the so called 'hijab cases' at the European Court of Human Rights as well as in other European countries.

This paper will argue that the juridical regulation of (Muslim) women's clothes is an act of sovereign power to regulate the public sphere through the elimination of the 'visible symbol' of the 'other' in order to maintain the unity and homogeneity of the people. In fact, clothes operate a visible differentiation between 'citizen' and 'foreigner', 'insider' and 'outsider', 'friend' and 'enemy'.

The case studies reveal that public law has established a singular mode of thought which limits the definition of subjectivity to a singular, gendered and fixed mask that the law

requires the subject to wear. By regulating clothing, the law also regulates subjectivities; by unveiling Muslim women, law has re-veiled them. If, as Goodrich reminds us, metaphors produce the necessary emotional attachment to legal obedience and political love, then the visible has to mirror a specific order of power and imagination, the subject of law should mirror a legitimate order of thought. Thus, law emerges as a protector of this order and its political homogeneity at the expense of plurality and heterogeneity, and the law's subject emerges as strictly bound to the power of law because law itself defines the private being of the individual through the juridical regulation of what is 'visible': the body and its clothes.

MARIE BEAUCHAMPS, PhD candidate, Amsterdam School for Cultural Analysis, University of Amsterdam

Denaturalization's Narratives and the Plurality of Nationality Law in France

This paper investigates denaturalization (i.e. the deprivation of citizenship). The context is the politics of citizenship and nationality in France. Based on a Foucauldian genealogical approach (i.e., aiming to shed light on those discursive points that disrupt and contest dominant narratives), the paper demonstrates that the language of denaturalization shapes national identity as a form of formal legal attachment but also, and more counter-intuitively, as a mode of emotional belonging.

What is striking about denaturalization law is that instead of applying equally to all French citizens, it constructs a very specific target group defined in terms of "a person of foreign origin." It thereby creates a special category of citizens: Those who became French citizens after a process of naturalization. At odds with the French Republican principle, denaturalization thus disrupts and disturbs the conventional account of nationality and its narrative of recognition. It represents a system of

thought that influences seminal cultural political values, such as community, nationality, citizenship, selfhood and otherness.

While close reading archival documents pertaining to denaturalization (such as parliamentary documents, debates and reports, bills, decrees, and ministerial responses) the analysis shows that such plurality in French nationality law is linked to the structural invocation of the metaphor of the family, according to which native-born nationals are systematically privileged above new nationals. Unraveling those moments when nationality's political boundaries were drawn, undone, and revised, the analysis of denaturalization law raises important questions about the meaning of Frenchness, of “political community” and of the law’s authoritative forces.

KATRIN BECKER, PhD candidate, Universität Luxemburg & Paris-Sorbonne (Paris IV)

The Literary Voice of Law: A Perspective on Literature’s Entanglement with Normativity

In his *dogmatic anthropology*, Pierre Legendre claims that the uncircumventable condition of alterity, i.e., the mirror-paradigmatic conception of the image of the self as image of the Other, and the void resulting from this relation is not only valid for the constitution of the individual subject, but also for the entire culture and all of its normative structures (language, scripture, institutions, the legal system itself). Every culture needs to create a ‘hyper-mirror’, i.e., a seeable and speakable metaphysical entity of *Reference*, which disguises the fundamental abyss at the core of normativity by being staged as its origin, as which it then authenticates and legitimizes individual and cultural subjectivity. According to Legendre, the *mirror-like order of the world* is especially a matter of both aesthetics and law – and is mainly implemented through the subject’s encounter with the text: by embracing its own

reflection in the “mounted image” of a text, the reading subject enters the cultural text; it becomes a “nomogram”, i.e., a living scripture of law.

Literature, as “poetic celebration of *Reference*”, takes part in establishing the absolute source of this specular structure, in writing the cultural Text. As “ecstasy of image and word”, it illustrates the dogmatically set truth in its own fictional way. While opening the aesthetic “window on the chaos” that prevails within the fundament of human existence, it serves, at the same time – by putting it into suitable words – as “protective barrier”, enabling the specular “confrontation with the world”. My paper will examine in how far literature, in the sense of a mounted image, confronts the reading subject as normative entity – and, as such, not only reaffirms the subject’s institutionally set identity, but is equally indispensable for the validity of law.

SILKE BRASELMANN, PhD candidate, International Graduate Centre for the Study of Culture, Giessen

“The verdict is the reader’s job”: The JCSO Columbine Documents in Multimodal School Shooting-Novels

Ever since a series of school shootings confronted America with a new dimension of youth violence in the late 1990s, both the media and academia have been struggling to find a rationale behind these acts of unrestrained violence. School shootings, as the last two decades have shown, defy easy explanations or classifications. Instead, the manifold speculations about the motives only seem to underline the inexplicability of the events. As a reaction to these contemporary and complex crimes, literary and filmic representations of school shootings have been exploring new ways to approach this topic. Therefore, unreliable narration, multiperspectivity and multimodality have

become dominant modes of representing the challenges that school shootings bear for the Western world.

In this paper I aim to show the role and relevance of law in the literary representations of school shootings, using the examples of Walter Dean Myers's *Shooter* and Joachim Gaertner's *Ich bin voller Hass – und das liebe ich*. Both works directly use or draw upon the Jefferson County Sheriff Office's Columbine documents that had to be released one year after the shooting, following a lawsuit against the police that had been filed by victim's families. While Myers's *Shooter* is a fictional case file that is clearly reminiscent of the JCSO documents, Gaertner's work translated and rearranged the original Columbine documents. After a brief overview about how the legal implications of school shootings have been represented in school shooting-literature thus far, I will use the above-mentioned works to explore the potential functions that these forms of representation can fulfill within the discourse. Does the attempted impression of authenticity suggest insight into the perpetrator's psyche and the events that led to the assault and may thereby lead to empathetic understanding? Or does the structure of the texts underline the inexplicability of school shootings and prompt the readers to pronounce their own sentence? I want to argue that both novels (Gaertner's book is referred to as 'documental novel') are emblematic for the discursively constructed desire to make sense of the events by the production of coherent narratives as well as for the medial difficulties with finding modes of representation that are suitable for the crime's dynamics.

ANGELA CONDELLO, Postdoctoral Teaching Fellow, University of Roma Tre, Law Department and Arcadia University, Rome

TIZIANO TORACCA, PhD candidate in Contemporary Literature, University of Perugia and University of Ghent

Exemplarity as a Normative Form: Remarks Made between Law and Literature

The main task of this paper is to discuss exemplarity as a specific form of normativity: the permanent flux of life converges in forms and examples that can have a peculiar normative force (a force pragmatically and culturally connoted). Exemplarity often originates in extraordinary circumstances, such as in the recent Supreme Court case *Jones v. US* (132 S. Ct. 945, 565, 2012). We claim that the juridical metamorphosis that makes of the single case an exemplary case is in many ways similar to the dynamic through which literature attributes exemplary force to individual narratives. In particular, both in law and in literature reception is fundamental to the process of “becoming” exemplary. In general, the force of examples is intrinsically shaped by narratives (not all narratives are exemplary, but all exemplary cases are based on narratives): exemplarity is the mediation between single aspects of a single story (names, places, dates) and the possibility of extending their pertinence beyond the limits of a single case.

Any instance of exemplarity balances different dimensions. Legal reasoning must balance the particularity of the present case, the relevance of past decisions and the possible ways in which the case might be used by future courts (in different ways if we compare Civil Law and Common Law systems). Analogously, the stories narrated in literature balance their individuality with a plurality of possible and/or imaginary worlds. We argue that narrative is a useful device for balancing these dimensions: it is a temporally organized matrix of happenings that resonates socially and emotionally with an audience – but it also has the capacity to reach the unconscious

and its diverse temporal and spatial dimensions. More than other *savoirs*, law systematically foresees and pre-defines conflicts in reality. Legal discourse is thus political because it links Sein and Sollen and is oriented towards a decision. Legal normativity is ambivalent because it is impossible to include in a *Tatbestand* (juridical type) all the possible circumstances of life. Starting from particular case studies both in law (in particular US Supreme Court cases) and in literature (in particular through character analysis in contemporary literature) we try to show how the logics of exemplarity can provide for a specific normative force through which the myriad of cultural practices can be governed.

PROF. NELOUFER DE MEL, Senior Professor, Dept. of English, University of Colombo, Sri Lanka

The Life of the Death Certificate: The Law, Documental Regimes, and Gendering Justice in Post-War Sri Lanka

My paper looks at the political economy of the death certificate in the context of the Sri Lankan armed conflict – a war waged on exceptionalities in which thousands were forcibly disappeared. The death certificate stands alongside other documents (land deeds, birth and marriage certificates) that shape how war survivors encounter displacement, resettlement and reintegration to their communities. Yet its exceptionality lies in how it eludes: because it requires a body, a place, and a cause of death which are unverifiable; and how and what the commensurate search for each of these by war survivors (mostly women) tells us about state-citizen relations in the war zone, memory, loss and psychic damage, the law, reparation and postwar justice.

In discussing the above, the paper accounts for the centrality of documents (such as the death certificate) in how the state distinguishes itself and law comes into being, while noting the

working of bureaucratic power, proceduralism and flexibilities in the former war zones. Drawing on testimonies and interviews with women in the northern and eastern provinces – some of whom went before the Lessons Learnt and Reconciliation Commission (LLRC) - as well as literature and aesthetic work on post-war justice in Sri Lanka, it pays attention to women survivors of war as they strive to access divisional secretariats and military camps for information on the disappeared and struggle to access justice - as acknowledgement and responsibility, reparation, and at times accountability. The paper therefore asks pivotal questions about the documental regimes we live under, the law and ‘its conscience’, the viscerality of postwar survival, gender justice in conflict zones, and the aesthetic representation of each of these conditions.

PROF. ANN GOLDBERG, Professor of History, University of California, Riverside

Culture and Politics in the Making of German Hate Speech Law

My talk engages and rethinks culturalist theories that underpin a broad comparative scholarship on European “dignitarian” versus U.S. “libertarian” law. In the area of hate speech regulation, scholars of comparative constitutionalism posit a set of European legal traditions, rooted in the values of honor, dignity, and community, to account for the seeming willingness of European courts to privilege the protection of a hate-speech victim's dignity in the face of hateful, degrading speech over the free speech rights of the haters. By contrast, U.S. courts, rooted supposedly in a more libertarian and individualistic culture, have rejected hate speech regulations as violations of First Amendment rights.

My talk seeks to refine our understanding of how legal cultures in general, and hate speech law in particular, develop by shifting the discussion away from static, abstract categories

of (“dignitarian” vs. “libertarian”) “culture” and toward a more dynamic, historical approach that considers activist interest groups, class relations, and minority identity politics. Using the example of Germany, it examines the historical dynamics surrounding the evolution of hate speech law from its origins as a counterrevolutionary tool of political repression during the 1848 revolutions to its current, post-1945 association with human rights law and the protection of minority rights. Empirically, it emphasizes the 1890s as a key turning point in the paradigm shift to human rights, a decade when a grassroots Jewish advocacy and lobbying organization (Centralverein deutscher Staatsbürger jüdischen Glaubens) began forging a new model of hate speech jurisprudence, agitating in the courts to apply existing laws to silence the vitriol of antisemitic politicians and publicists. In terms of the literature on the history of law, its approach departs from the traditional focus on formal, institutional law, emphasizing instead the way law has been shaped by competing political and social interests, and actively appropriated by citizens from below.

DR. SUSANNE GRUB, Lecturer / wissenschaftliche Mitarbeiterin, English Literature and Cultural Studies, Friedrich-Alexander-University Erlangen-Nürnberg

“The detective: that is the role I am to play”: The Sensational Narratives of Law in Eleanor Catton’s *The Luminaries* (2013)

Crime, detection and the law are characteristic features of sensation fiction, which has consequently become one of the favourite genres of critics interested in the intersections between law and literature (see, for example, Murphy 2008 or Radford 2009). Eleanor Catton’s recent Booker Prize-winning *The Luminaries* (2013) is a neo-Victorian re-invention of the genre and its obsession with the legal world. Catton’s novel has all the ingredients of a sensation novel – a fallen woman; a mysterious woman with a past; a number of rival narrators and

points of view that would make Wilkie Collins proud; and a seeming excess supply of legal elements. The novel circles around a murder and its ensuing trial, opium trafficking and gold theft, a revenge plot and a protagonist with a legal background, young Scotsman Walter Moody, who is forced to take on the role of detective in trying to untangle the convoluted narrative(s). Set in mid-nineteenth-century New Zealand, in the gold-rush town of Hokitiki, the novel also contrasts the extralegal sphere of the 'digger's law' and British attempts to establish civil law – an effort that is read as an act of colonial violence. At the same time, the law(s) and the court proceedings are part of a discourse on the subversion of the (patriarchal) authority of the gold digging society via the two female figures. Importantly, however, the novel is also a self-conscious meditation on the laws of narration and the narrativity of the law as two 'pluralities' of law. Set in 1866 (the heyday of sensation fiction in the UK), *The Luminaries* explores the laws of genre, and, more importantly for the interest of this conference, the proximity of narrative and the law. In this paper, I would like to suggest this recent popular novel as a case study in order to explore the implications of the interdependency of the 'rules of the law' and the 'rules of genre' in literary texts and point out how the inconclusive status of law and literature (both of which emerge as instable constructions) influences and endangers the status of subjectivity and gender.

ASS. DR. DES. FREDERIK VON HARBOU (Berlin)

Von Rousseaus „Julie“ zum CNN--Effekt: Medial erzeugte Identifikation und ihre Bedeutung für die Menschenrechtsachtung

In jüngeren Werken zur Menschenrechtsgenese wird auf den zeitlichen Zusammenhang des Aufstiegs des „realistischen“ Romans im 18. Jahrhundert und die Verabschiedung der Menschenrechtserklärungen im Zuge der Französischen

Revolution und der amerikanischen Unabhängigkeit hingewiesen. Autorinnen wie Lynn Hunt oder Martha Nussbaum leiten hieraus die These ab, dass die empathische Identifikation des Lesers mit den in diesen Romanen dargestellten „gewöhnlichen“ Menschen den Weg für die Positivierung der Menschenrechte geebnet habe.

Der Beitrag wird zunächst der Frage nachgehen, ob diese hier sog. These des sozialrevolutionären Potentials der Literatur plausibel ist oder nicht. Dabei wird die allgemeine Frage aufgeworfen, inwiefern eine empathische Identifikation des Rezipienten von Literatur, Film und anderer Medien das Bewusstsein auf bestimmte fundamentale Probleme lenken kann und auch motivational für die Menschenrechtsachtung relevant wird. Neben dem Aufstieg des realistischen Romans wird daraufhin insbesondere die Kriegs- und Katastrophenberichterstattung des 20. und 21. Jahrhunderts bis hin zum sog. CNN-Effekt exemplarisch untersucht.

Welche Bedeutung haben also Narrative für die Genese und Achtung von Menschenrechten? Wie ist das Verhältnis von Sensibilisierung durch Darstellung und Abstumpfung („compassion fatigue“), wie es z.B. schon früh von Susan Sontag mit Blick auf die Allgegenwart von Kriegsfotografie beschrieben wurde?

Trifft die These von Richard Rorty zu, dass die Menschenrechtsachtung am besten durch das Erzählen einer „long, sad and sentimental story“ befördert wird oder werden kann statt etwa durch rationale Argumente? Ist eine solche Herangehensweise nicht im Kern manipulativ und verkennt somit einen Wesensgehalt der Menschenrechte, nämlich den Respekt vor der Autonomie und Würde des Einzelnen? Die Ergebnisse dieser Überlegungen sind sowohl in theoretisch-rekonstruktiver Hinsicht für unser Verständnis der Menschenrechte und ihrer Genese von Interesse als auch, insbesondere durch die zuletzt genannte normative Implikation,

von praktischem Interesse, z.B. was die Ausgestaltung einer sog. Menschenrechtsbildung angeht.

JEN HIGGINS, PhD candidate, Birkbeck, University of London

Categories of Otherness: The Inclusion of LGBT Groups Under Hate Speech Protections

In a context of increasing moves to extend formal legal recognition to LGBT communities across the Western World, this paper responds to two dilemmas within the extension of hate speech laws to include sexual orientation and gender identity as grounds for protection. The first dilemma is presented by Eric Heinze, who states that hate speech laws are discriminatory because they only protect a few groups of people, but that to extend them to cover all victims of hateful speech would bring about a “ridiculously censorious regime.” I explore the possibility that hate speech may be defined across a variety of factors, so that as one element is expanded another may be restricted. This could make it possible to extend the protection of hate speech legislation without compromising freedom of speech or legal certainty.

The second dilemma considers the extent to which labeling an expression as hate speech reinforces societal divisions. Drawing on the work of Wendy Brown, I argue that the representation of a group of people as potential victims of hate speech labels them as a subject of tolerance and, correspondingly, a subject of security. The link between tolerance and security is explored through the observation that protection under hate speech legislation is only afforded to inter-communal ‘Others’ (racial, ethnic and religious groups), who may be perceived as capable of threatening the peace, but not intra-communal victims of hateful speech, such as women and persons with disabilities. This raises the question as to how the inclusion of LGBT groups under hate speech legislation may

be influencing perception of them as a subject of tolerance, or whether it signals a shift in such legislation away from security issues.

SAMUEL KIRWAN, Research Associate, School of Law, University of Bristol

On Good Advice: The ‘taking place’ of Legal Consciousness within Citizens Advice

The New Sites of Legal Consciousness (NSLC) research programme, based at the University of Bristol in the United Kingdom, has for over two years been examining the legal dimensions of the work of UK advice agencies. The programme began from a concern for the impact upon advice agencies of stringent cuts to the Civil Legal Aid budget. While their broad impact upon ‘access to justice’ has been widely discussed elsewhere (see Hynes, 2013), the paper will begin by presenting – with an attention to the variations between areas and Bureaux – how these cuts, in conjunction with a wide-ranging welfare reform process, have contributed to an increased complexity of advice cases, increased pressure upon advisers, and new constellations of legal advice provision.

Within such constellations, advisers often describe the difference of their interventions (in comparison to solicitors) as lying in their ‘holistic’ approach – their capacity to address the ‘whole person’. This difference is as such located in being able to draw together the plurality of legal spheres into a coherent journey for the client to follow. The paper addresses how this tension between the plural and the singular, as located in the ‘affective capture’ of a problem-bearing-subject, composes the work of advisers.

While valuable work, within the ‘legal consciousness’ tradition particularly, has been done on the experience of the law as a plural field, the paper argues finally that such

understandings can be greatly enriched by a focus upon the legal event of the advice interview itself; the enactments of authority, the management of emotions, in sum the complex labour that goes into allowing a client to engage with and invest in a variety of ongoing legal processes. It concludes by describing how this focus upon the taking place of legality can allow for a better understanding of how individuals experience and engage with legal processes.

PROF. DR. FRANS-WILLEM KORSTEN, Leiden University Centre for the Arts in Society (LUCAS) / Erasmus School of History, Culture and Communication

Beyond Apostasy: Dramatically Doing Justice to Struggle(s) Between Dutch-Moluccans and the Dutch State

In the Netherlands an inability persists to deal effectively with a set of collective traumas concerning the Dutch Moluccan populace. My contention is that this inability is related to institutionalized and frozen forms of stability (stasis), as a result of which apostasy is not the way out of a deadlock but a treacherous act. The very construction of the sovereign state made it impossible for the Dutch state to convert, in swapping sides. The Dutch-Moluccans refused to become fully Dutch citizens in clinging to a fictive independent state that would secure citizenship on the Moluccas. After Indonesia's independence in 1945 (acknowledged officially in 1949), parts of the colonial Dutch army were still intact, of which the indigenous contingents were retrieved mainly from the Moluccas. In 1951, after an uprising and declaration of independence in the Moluccas, the Indonesian government ordered the Dutch-Moluccan military out. With their families they were received in the Netherlands in camps, also former concentration camps, with the (hollow) promise of a return to an independent state of the Moluccas. In these isolated camps, forms of Moluccan customary law (addat) often prevailed over

Dutch law. In the seventies this resulted in unique military actions by Moluccan youngsters: the occupation of an embassy, of a primary school, and the hijacking of trains in 1975 and 1977. So far, existing representations have failed to effectively address the desire for justice of the parties concerned. This may be the result of a plurality that is, perhaps, irresolvably disparate as long as we cling to static, or what I will call, judicially speaking, ‘theatrical’ ways of addressing them. Yet what if we succeed in addressing them in what I will define as a more fluid, dramatic way of dealing with the issues?

BARBARA KRAML, PhD candidate, University of Vienna

De|Legitimizing Juvenile Sexual Autonomy: Narratives of Love and Abuse

§ 209 of the Austrian penal code prohibited male adults from maintaining sexual relationships with male juveniles, although the latter were legally able to consent to heterosexual relationships with adults. Established in 1971, this legal protection of male youth against sexual contact with male adults in order to prevent them from becoming homosexual (via so called “homosexual imprinting”) lasted until 2002. But in the course of the 1990s, as a consequence of an onward normalization of homosexuality, the aim of protecting male youth against homosexuality became increasingly illegitimate. Demands for full respect of sexual autonomy of male juveniles and, therefore, for decriminalization of their love relationships with male adults became hegemonic in political discourses. Responding to these hegemonic political claims, conservative members of the Austrian Parliament changed their line of reasoning to argue in favour of §209: They gradually stopped talking of the necessity to protect (by now mostly implicit: male) youth against homosexuality. Instead, they narrated sexual relationships between a male adult and a male juvenile as per se abusive and in close vicinity to paedophilia. In 2002, the

Austrian constitutional court declared § 209 unconstitutional, but at the same time, this court decision suggested the assumption that § 209 aimed in fact at youth protection against sexual abuse and not at protection against homosexuality. The paper argues that the rhetorical shift towards youth protection against abuse – and therefore against a form of sexual violence – is crucial in order to legitimize the maintenance of § 209 in the context of an increasing normalization of homosexuality. This shift seemingly takes into account the idea of young men's right to sexual self-determination, yet the actual legal restriction of this individual right with regard to homosexual relationships with adults remains.

PROF. DR. SUSANNE KRASMANN, Institut für Kriminologische Sozialforschung, Universität Hamburg, Fachbereich Sozialwissenschaften

Imagining Insecurity: Über Gefühltes im Recht

„Das Recht möchte formal sein“, so brachte Stanley Fish seine Kritik am Rationalitätsanspruch des Rechts einst treffend auf den Begriff. Dabei ist nicht der Rationalitätsanspruch selbst das Problem, sondern die Ausblendung einer Praxis des Rechts, die dessen gleichermaßen über- wie unterschätzte „Selbstbestimmtheit“ in Frage stellt. An diese Beobachtung knüpft der Beitrag an und nimmt dabei einen Moment in den Blick, der in der Rechtstheorie bislang vergleichsweise wenig Beachtung gefunden hat. Gefühle, Emotionen, Leidenschaften, Affekte oder Imaginationen lassen sich als a-rationale Momente begreifen, die ihrerseits Rechtsprechung, Gesetzgebung und noch die „Kraft im Recht“ (Andreas Fischer-Lescano) mit bestimmen. Das A-Rationale markiert nicht das Irrationale, wohl aber das, was sich der sprachlichen Artikulation und der Ebene der Repräsentation tendenziell entzieht. Wie ein so verstandenes, nicht fassbares Moment der Rechtsanalyse zugänglich gemacht werden kann, erörtert der Beitrag am

Beispiel der gesellschaftlichen Verhandlung von Problemen der Sicherheit. Ansatzpunkt der Analyse sind die verschiedenen Realitätsebenen, die hier wirksam werden. Dabei erlaubt der Rekurs auf einen literaturwissenschaftlichen Begriff des Fiktiven zunächst, die Verklammerung von einer gedachten symbolischen Welt der Bedeutungen und Repräsentationen mit einer materiellen Welt der Praktiken, Objekte und Anordnungen einzuholen. Das prekäre Verhältnis von Recht und Sicherheit erschließt sich, so das Argument, wenn man gleichsam die Materialität des Fiktiven und auf diese Weise beispielsweise die gesetzgebende Kraft der Imagination von Unsicherheit begreift.

OZAN KAMILOGLU, PhD candidate, Birkbeck, University of London

The Ethical Turn and New Aesthetics of Justice

This paper examines some cases from Italy in order to discuss the ethical and aesthetic dimension of justice after the fall of the Soviets. The paper aims to focus on the term 'ethical turn', which has been used by Jacques Rancière and others in order to define the sharp distinction between the evil inhuman and the moral human or loss of the distinction between what is and what ought to be particularly after the fall of the Soviets. The ethical turn becomes cosmopolitanism in the works of Costas Douzinas, and the new human rights discourse for Robert Meister. The aim of the paper is to read the loss of the political and the rise of the ethical parallel to the changes in the field of human rights in relation to neo-liberalism. The rise of human rights discourse after the fall of the Soviets is one of the dimensions of the ethical turn; it creates a certain enemy, the abuser of rights, and the victim who is the one to listen to, the one to see. Thus, the paper will consider cases from Italy (Red Brigades members) in which the judges have asked for a "pardon" (written or verbal) from the convict as a condition of release. These cases occurred after the 9/11 attacks, which is

also the period of the rise of victims associations in many countries. Therefore this paper claims that after the ethical turn, in the age of human rights, justice is an ethical and aesthetical issue more than ever; if the ethical condition of justice is the consensus between the parts and the beneficiaries, its aesthetical dimension consists of new ceremonies of redemption. The ethical turn therefore, is not only a moral issue but a political and aesthetical one.

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Believing, Seeing, and Presence in Law

Law-and-literature was begotten by the 'textual turn' of the late 20th century. Its engagement with a variety of critical, hermeneutic and narratological approaches promoted the claims of alternative readings, voices and narratives to those protected by law, including its own account of itself. Western law has sought to accommodate diverse narratives of gender, race, sexuality and disability, largely through a globalising doctrine of human rights. On the other hand, demands derived from *nomoi* grounded in religious doctrine have tested the integrity of secular law. In these conflicts, with literary or visual texts and objects frequently at their centre, the distinct modes of commitment demanded by the texts of law, religion, and literature – consent, faith, fiction, if one likes – have been challenged by the presence of each other. Since the turn of the century, two further demands have emerged in the name of a justice beyond the alleged formalism of the textual. The discourse of human rights has been accompanied by an 'ethical turn' towards a justice beyond the letter, motivated by a commitment to alterity, singularity and the demand of the Other. At the same time, a 'pictorial turn' has asserted the specific demands of the visual ('what pictures want') against the empire of the linguistic. The two come together in a recent turn

to 'law and the visual' that stretches from a call for mastery of a potentially misleading technology, to the claim of a new aesthetic grounding for an ethical jurisprudence. Against the background of this return to a post-religious iconoclastic polemics about presence and interpretation, the paper will analyse recent examples to examine how the law is now aligning itself with the visual image as a way of affirming its presence while disavowing the persistence of its literary contingencies – at its most bare, the fact that, as Douzinas puts it, with its increasing instrumentalisation, 'law is increasingly law [only] because it calls itself law'.

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Descriptive vs. Prescriptive (Global) Legal Pluralism: A Gentle Reminder of David Hume's Is–Ought Divide

"In [almost all of the analyses of (global) legal pluralism], which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary ways of reasoning, and establishes [the existence of 'global legal pluralism'], or makes observations concerning [the 'global Bukowina' regarding international] human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is however, of the last consequence."

Setting out from David Hume's powerful insight, this paper aims to remind people of the necessity of sharply distinguishing between, on the one hand, (global) normative/legal pluralism as the description of recent factual developments (pointing, e.g.,

towards the massive increase of international actors, norms and tribunals as well as adjudicators) and, on the other, the question of how we ought to handle or even solve those normative/legal conflicts (based on a (common) normative legal framework) resulting from this plural, overlapping normative/legal claims. I argue that we need to disclose the presuppositions underlying the claims which want to address possible normative/legal solutions of these conflicts in the realm of 'ought' (which also includes a clear differentiation between legal and normative pluralism). Claims which rest solely on the description of pluralistic orders do not suffice as a basis. Finally, this paper concludes that the 'is – ought' divide is best respected if prescriptive proposals to solve normative/legal conflicts are not coined 'pluralistic'. Instead, I shall suggest, it would be more precise to refer to a necessarily common framework which addresses the question as to how those conflicts should be resolved together or at least in a way acceptable for all parties.

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(W)Ri(gh)ting Wrongs: Human Rights and the Contemporary American Autobiography

“When is life grievable?” asks Judith Butler while addressing the circumstances, or “frames,” within which the loss of certain lives appears more regrettable than the loss of others (Butler, 2010). In this paper, I will discuss the genre of autobiography as one of the framing devices that provide certain victims of human rights abuses with visibility while rendering others invisible. Whereas some victims are therefore provided access to publishers and reading audiences, others are completely and conspicuously absent from the publishing market.

Addressing the recent prominence of the life-stories of Iranian American female refugees and of the Lost Boys of Sudan,

I will therefore claim that the right to express one's vulnerabilities autobiographically is not only unequally allocated but its allocation depends on the trajectories of gender, class, race and age. Autobiography, in this sense, sets the criteria for discriminating between various victims while also justifying the protection of some and the abandonment of others within "zones of indistinction" (Mbembe, 2002). Regardless therefore of its ability to indict, plea for redress, and provide healing, this genre participates in acts of epistemic and testimonial injustice by reproducing normative conceptions of victimhood and of humanity. In the world divided by Huntington between the "West and the Rest," between modernity and development, on the one hand, and traditionalism and stagnation, on the other, autobiography plays moreover an important part in distributing the moral capital of the "self" as prerogative to individual and social growth. Within this discursive and ideological bundle this genre acts, I will claim, as vehicle for channelling various rights claims into preformatted petitions for inclusion into the world community.

DR. STEPHANIE LAW, Postdoctoral Research Fellow, Department of Law, McGill University, Montréal, Canada

Law as a Cultural Construct and the Narrative of Judicial Dialogue in the Europeanisation of Law: The CJEU's Interpretation of the Consumer

This paper engages the Europeanisation of (national private) laws as a set of processes within the broader European integration project. The interactions of legal orders are deemed to be shaped by descriptive and normative tendencies of heterogeneity and conflict; these characterisations stem from the plurality of national (and increasingly, non-state) legal orders embedded in their own cultures and traditions, on the one hand, and the promotion, of harmonisation and ultimately, unification, whether legislative or judicial, on the other. They

are especially identifiable where these legal orders meet, an example being the CJEU's interpretation of Union law. The paper aims to ascertain whether, in its interpretative role, the CJEU entertains the notion of law as a cultural construct, concretising the discourse with reference to the concept of the consumer, key to EU law. It firstly identifies the normative sources deemed relevant to the interpretation, recognising that these might differ depending on the substantive area of law under consideration; by virtue of this, the significance that the CJEU attaches to the (social, political, legal, cultural, state and non-state) backgrounds, in which these sources have emerged and developed, can be clarified. On this basis, the scope for interaction between the CJEU and the institutions that interpret and apply these norms in these contexts, including national and international courts, is examined. Employing a working definition of judicial dialogue, the paper aims to determine whether these interactions can be so conceived and if not, why not; moreover, it aims to uncover whether narratives of judicial dialogue might facilitate a better appreciation of law as a cultural product. Ultimately, it draws conclusions as to the relevance of the construct of the consumer as legal and cultural – whether identified by the CJEU as an autonomous interpretation of Union law or as a “hybrid”, “middle line” solution - potentially shaping the interactions of legal orders in European legal development.

ASSOC. PROF. MARETT LEIBOFF, School of Law and Legal Intersections Research Centre, University of Wollongong, Australia

Theatrical Jurisprudence and the Imaginary Lives of Law in Pre-1945 Australia

The Australian legal entity is one that is largely imagined as unidimensionally English in origin and spirit. But its legal face is far more plural than this imagined narrative supposes. This

mythical Australian legal identity, grounded in an English common law ascendancy, extends to its conception of those who are subject to and of law's protection and purpose. The originating story of law in Australia is English, British at a push, its sense of self and its image of law's subjects confined to those whose origins are found in the nations of the British Isles. In its imagined sense of self, the image of law in Australia was absent other Europeans – practically, figuratively – until after the close of the Second World War. This is law's imagined European – the alien, the displaced person, the person who came after, who came to a law already formed by an ascendant English legality.

But this is an imaginary past in so many ways. Non-British/Irish Europeans had come to Australia long before the end of World War Two, long before Australia became a nation. These earlier Europeans were marked by differences of voice and face, but were eager British subjects, as likely to actively take advantage of law as they were to be subjected to its strictures. Their assimilation was so successful that for law at least they merged into its shadows, recast as British, in a literal, not just a figurative sense. The discursive twist that led to this imagined legal sense was shaped by a series of manoeuvres both strategic and accidental in turn, that hinge around the creation of a new sense of what constituted Australianness as a legal form in post-World War Two Australia. Bringing them out of the shadows and reimagining a law that remembers its non-British Europeans is a deeply theatrical process, as a task of theatrical jurisprudence.

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„Kulturtheoretische Analyse gerichtlicher Kulturtheorie“

Gerichtliche Streitigkeiten um kulturelle Symbole oder Rituale werden vor allem juristisch aufgearbeitet. Hingegen fehlt eine

Auseinandersetzung mit den expliziten wie impliziten „Kultur“-Konzeptionen der Urteilstexte, mithilfe derer regelmäßig Eigenes und Fremdes in Abgrenzung zueinander konstruiert wird. In meinem Beitrag möchte ich solche nichtdogmatischen Aspekte dieser Rechtsstreitigkeiten beispielhaft analysieren und sie zu Hypothesen über das Verhältnis von Recht und Kultur in Bezug setzen. Schlagwortartig ließe sich das Vorgehen als „Kulturtheoretische Analyse gerichtlicher Kulturtheorie“ bezeichnen. Die Aufgabe ist eine zweifache: Erstens die jeweilige „Kultur“-Konzeption zu rekonstruieren, die sich im Urteil findet; zweitens diese mit Begriffen und Modellen aus dem kulturtheoretischen (inkl. post-kolonialen) Diskurs kritisch abzugleichen. Die kritischen Punkte aufzuspüren, fällt bisweilen nicht schwer – etwa im Urteil des Europäischen Gerichtshofs für Menschenrechte (EGMR) zum französischen Burkaverbot. Explizit werfen dort die Klägerin und zwei third-party interveners dem französischen Gesetzgeber vor, Hetero-Stereotype von burkatragenden Frauen im Speziellen und dem Islam im Allgemeinen zu schaffen. Ebenfalls eindeutig erkennbar ist die argumentative Stoßrichtung in der erstinstanzlichen Entscheidung des Verwaltungsgerichts Veneto zur Zulässigkeit von 1 Dieser Ansatz ergänzt bereits vorhandene Arbeiten aus diesem Bereich. Die Dissertation von Maria Naucke („Der Kulturbegriff in der Rechtsprechung des Bundesverfassungsgerichts“, Hamburg 2000) wendet sich streng dem wörtlichen Gebrauch des Terminus „Kultur“ in der Rechtsprechung des Bundesverfassungsgerichts zu und untersucht, inwieweit die Entwicklung einer dogmatischen Bedeutung nachgewiesen werden kann. Die Habilitation von Brian Valerius („Kultur und Strafrecht“, Berlin 2011) diskutiert die Möglichkeiten, kulturelle Zugehörigkeit und kulturspezifische Verhaltensmuster strafrechtsdogmatisch zu verarbeiten. Die dem hier vorgeschlagenen Ansatz am stärksten ähnelnde und kulturtheoretisch am besten informierte Arbeit ist die Habilitationsschrift von Gabriele Britz („Kulturelle Rechte

und Verfassung“, Tübingen 2000), die rechtsgebietsübergreifend die gerichtlichen Berücksichtigungen kultureller Zugehörigkeit/Identität und kulturspezifische Verhaltensmuster untersucht. Es konstruiert eine positiv besetzte, christliche, nationale Wirkidentität, die im Zeitalter kollidierender Kulturen der symbolischen Unterstützung bedürfe. In anderen Fällen bedarf es eines genaueren Blicks. Mithilfe etwa des Toulmin-Schemas lassen sich im Bereich der Schlussregeln und ihrer Stützung implizite Grundannahmen von Argumenten verorten, die im Entscheidungstext verwendet werden. Derart kann man z.B. zeigen, dass im „Kopftuchstreit“ bestimmte Akteure die Integrationsbedürftigkeit aller muslimischen SchülerInnen voraussetzen. Solche Darstellungen – und Nicht-Darstellungen – unterstützen Hypothesen über die „kulturelle Eingebettetheit“ von Recht. Verstehen wir es nicht als anonyme Struktur sondern als Netz verschiedener normativer Praxen, können wir nachvollziehen, wie juristische Akteure ihr (deutendes) Normalitätsverständnis zur Geltung bringen und dabei womöglich juristische Leitnormen (Gleichbehandlungsgrundsatz, Neutralitätsgebot) unterlaufen. Neben der deskriptiven Illustration solcher Mechanismen, ermöglicht der gewählte Ansatz normativ – schon auf der Ebene interner Kritik, Unzulänglichkeiten der Rechtspraxis aufzudecken.

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From Domestic Dependency to Cultural Sovereignty: Representations of the Law in Postmodern Native American Literature

In his 1982 Handbook of Federal Indian Law, Felix S. Cohen emphasized that “law dominates Indian life in a way not duplicated in other segments of American society.” Eric Cheyfitz has recently highlighted the “imbrication of U.S. Indian literatures and federal Indian law.” “[...] [F]ederal Indian law,”

he argues, "has been the indispensable but obscured text and context to an understanding of U.S. Native American oral and written expression." Based on such premises, my talk aims at exploring representations of the law in postmodern Native American literature. More specifically, I would like to unravel some of the legal dimensions of Gerald Vizenor's 2012 campus novel *Chair of Tears*. Its critical engagement with the legal contours of tribal reservation lands and its postmodern play with the politics of removal lay bare the novel's deeply political agenda and force us to understand it as a literary reflection on Native sovereignty. *Chair of Tears* tackles the precariousness of the legal spaces Native Americans occupy in the United States and exposes the ongoing colonial domination of these supposedly Native spaces. Native American political sovereignty as conceptualized by federal Indian law, the novel seems to argue, is a tainted concept as it has found its origin in an American political and legal system that places Native Americans in a state of dependency and stagnation. Through the use of satire, *Chair of Tears* advocates a different form of sovereignty, something akin to what Rebecca Tsosie has called "cultural sovereignty," that is, "the internal construction of sovereignty through Native peoples themselves." Native artistic expression, storytelling, mimicry, irony, and humor are presented by Vizenor as being at the heart of such cultural sovereignty and thus as practices of Native survival and resistance to U.S. overriding sovereignty.

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Co-operation and the Laws of Ordering

When co-operatives in the United Kingdom received legal recognition in the mid-nineteenth century through the Industrial and Provident Societies Acts, James Ludlow and Lloyd Jones, two prominent Christian Socialists, called it a "bringing within." The working class practice of cooperation had been recognised,

they claimed, in its entirety and transposed into a supportive legal form. In contrast to this view of legal recognition, I argue that the form given to co-operatives had a depoliticizing effect, containing them within a limited frame while also solidifying a particular understanding of co-operation which reflected the normative and discursive constructions of co-operation which were prevalent amongst middle class reformers. However, it is also clear that legal recognition was not completely determinative of co-operative practice, even though it had a strong and legible impact on the movement. All of which begs a question, one asked over a century ago by Otto von Gierke: what is it that our associations take from law? I approach this question by reading Eugen Ehrlich together with poststructuralist thought, particularly Michel Foucault and Jean-Luc Nancy. The legal recognition of co-operation presented a tension and conflict of laws: between the deterministic law of the state (modern law) and the open, less deterministic law which accompanied working class co-operation and its project of creating a co-operative commonwealth. This conflict can be framed with reference to a division between a determinative law and an ontological 'law of the law', understood as an 'originary sociality'. I argue that a relation between these two—jointly called the laws of ordering—is the basis for any legal pluralism, as it is the condition for determination as such. Such a view enables a thinking, in response to Gierke, of what it is that associations take from state law in particular. In this paper, I will elaborate the interaction of these two laws and offer an interpretation of the effect of legal recognition on the co-operative movement in the United Kingdom.

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The Deontic Power of Origin Stories in Bali's New Village Jurisdictions

Between 1999 and 2004, new laws on regional autonomy and a number of constitutional amendments ushered in a far-reaching governance reform in Indonesia that transformed the hitherto centralist state into a highly decentralized polity. While said legal innovations were obviously predicated upon the three core narratives of international donor agencies: (1) "development", (2) "rule of law", and (3) human rights, local actors used them as argumentative building blocks in their lobbying for the legal accommodation of local norms, i.e., religious norms (Islamic, Christian, and Hindu) and customary law. In Bali, for instance, a nativist movement successfully lobbied for the juridification, at the village level, of local customary law under the heading of "Hindu law". The resultant highly diversified new village law derives its validity first of all from local origin stories that are constantly dramatized in traditional as well as modern media. They are then discursively blended with narratives on "cultural heritage", Elinor Ostrom's "governing of the commons", and "indigenous rights". This narrative blend has deontic power inasmuch as it informs the legal definition of local citizenship that is actualized in Bali's new village jurisdictions. This legal definition of local citizenships denies a range of local residents (Muslim and Christian migrants from other parts of the country, non-Hindu Balinese, modernist Hindus, and Balinese women at large) central rights granted in Indonesian national law, as it firmly positions each person in relation to the founding ancestors of the respective village. Although patrilineal descent from a village ancestor does entitle a local resident to local

citizenship rights, local citizenship needs to be constantly reaffirmed through participation in a plethora of “Hindu” rituals. However, full participation in local decision-making processes concerning local administration and the governance of the commons is reserved for married male descendants of the village ancestors only.

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„Living together“ – Rechtspluralistische Konflikte im Kontext religiöser und moralischer Normativität in der Rechtsprechung des EGMR

Jüngst entschied der EGMR (S.A.S v. France 01.07.2014 – 43835/11), dass das französische Burka-Verbot nicht gegen die EMRK (insb. Achtung des Privatlebens und Religionsfreiheit) verstoße. Dabei räumte der Gerichtshof ein, dass in dem Verbot eine gewisse Einschränkung des Pluralismus liege, aber der französische Staat „is seeking to protect a principle interaction between individuals, which [...] is essential [...] not only of pluralism, but also of tolerance and broadmindedness without which there is no democratic society“. Der Pluralismus werde durch das Verbot also einerseits eingeschränkt, andererseits gefördert. Damit bildet Pluralismus Fundament und gleichzeitig Begrenzung der menschenrechtlichen Garantien.

Ausgehend davon untersucht der Beitrag die Legitimation von Eingriffen unter Berufung auf die Sicherstellung des Pluralismus sowie das Pluralismusverständnis des EGMR (S.A.S v. France; Leyla Sahin v. Turkey 10.11.2005 – 44774/98; Chapman v. UK 18.01.2001 – 27238/95; Otto-Preminger Institut

v. Austria 20.09.1994 – 13470/87). Dabei steht die Anwendung und Auslegung der Art. 8-11 EMRK im Fokus: Diese enthalten in Abs. 2 Rechtfertigungsgründe, u.a. „Schutz der Moral“ und „Schutz der Rechte und Freiheiten anderer“. Im Burka-Urteil bezieht sich der EGMR auf den Rechtfertigungsgrund der Sicherstellung der Mindestanforderungen des Zusammenlebens der Gesellschaft („living together“) als Bestandteil des „Schutzes der Rechte und Freiheiten anderer“. Zuvörderst drängen sich zwei Fragen hinsichtlich des Aspekts „living together“ auf – wie die grundlegenden Anforderungen des Zusammenlebens der Gesellschaft zu bestimmen sind und inwiefern universale Menschenrechte Raum für kulturelle Vielfalt lassen. Dafür bedarf es der Ermittlung, ob die Mehrheit die Voraussetzungen des „living together“ bestimmen und im öffentlichen Raum dadurch Diversität unterbinden kann. Der EGMR betont die Aufgabe jeden Staates, die Voraussetzungen für das Zusammenleben der Menschenrechte in ihrer Unterschiedlichkeit zu garantieren (S.A.S v. France), weshalb eine minderheitsgeprägte Perspektive auf den Pluralismus unerlässlich für das „living together“ sein könnte. Der Beitrag wird anhand des „living together“ die Bedeutung religiöser und moralischer Normativität in der neueren EGMR-Rechtsprechung analysieren.

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Rape, Murder and the Narrative Interpretation of Judicial Discretion in Richard Wright's *Native Son*

Richard Wright's protest novel *Native Son* (1940) made its author famous and a spokesperson for African-American issues almost overnight. Though controversially debated, it is still considered one of the most important protest novels in the United States. The novel's plot is divided into a fast-paced story of murder and rape, and a lengthy renegotiation of this story in a courtroom as the protagonist stands trial for his crimes.

This paper focuses on the double charge of the rape and murder of a white woman brought forward against the African-American protagonist. I argue that Wright uses prevailing legal traditions of double charges to render rape a crime that negotiates abstract values rather than concrete assaults.

In *Native Son*, rape is not primarily an act of violence against a person, but is understood as an occasion to negotiate the committer's own oppressed position within the larger national-institutional context of which the court is a part. Paradoxically, this extremely problematic treatment of rape is also extremely effective in terms of the protest novel's main objective: namely, to create a (male) African-American protagonist who forces white characters as well as readers to meet him at eye level.

This paper will explore how claims to (male) agency in the novel make use of existing legal traditions of double charges against African-American defendants, how traditional constructions of judicial discretion directly influence the success of this complex narrative construction of crime-based agency, and how the immediate influence of legal traditions on the novel helps explain the novel's otherwise puzzling separation into two parts that essentially narrate the same story twice: once as a social, and once as a legal portrait of a murderer-rapist whose potential for free and equal agency cannot even be denied by overwhelming systemic racism.

NICOLE SCHREIER, Doktorandin, Rechtswissenschaft Justus-Liebig-Universität Gießen

„Verfassungsrichterbilder – Der Einfluss von juristischer Mentalität und Rechtskultur auf die Stellung der Verfassungsgerichtsbarkeit zwischen Recht und Politik“

Die einer Rechtsordnung inhärente spezifische juristische Mentalität, ihre Rechtskultur, hat maßgeblichen Einfluss auf das Verfassungsrichterbild sowie die Wahrnehmung des Verfassungsgerichts in der jeweiligen Rechtsordnung und damit auf die ihm zugewiesene Stellung zwischen Recht und Politik. Zur Veranschaulichung erfolgt hier ein Vergleich des Bundesverfassungsgerichts und des U.S. Supreme Court.

Drei Aspekte sollen die Auswirkungen der Rechtskultur auf das Verfassungsrichterbild und damit auf die Rolle der Verfassungsgerichtsbarkeit veranschaulichen: 1) Rechtsanwendung in common law- bzw. civil law- Tradition, 2) Ausgestaltung und Ansehen des Richterberufs in Deutschland und den USA, 3) Entscheidungskultur im Bundesverfassungsgericht und dem U.S. Supreme Court.

Es wird deutlich, dass die common law-Rechtsanwendung, die Richterrolle in den USA und die Entscheidungskultur im Supreme Court die politische Wahrnehmung der Entscheidungstätigkeit fördern. Denn je größer die Bedeutung der einzelnen Richterpersönlichkeit, desto einflussreicher werden seine individuellen subjektiven Vorverständnisse und desto mehr wird die verfassungsgerichtliche Entscheidung als eine Entscheidung nach sozialen, politischen oder sonstigen Erwägungen wahrgenommen. Dagegen führen civil law-Rechtsanwendung, ein „beamtenähnliches“ Richterbild und deliberative Entscheidungskultur im Bundesverfassungsgericht zu einer Wahrnehmung der Verfassungsgerichtsbarkeit als gerichtliche, rechtsgebundene, Funktion.

DR. RALF SEINECKE, Rechtswissenschaft, Goethe-Universität Frankfurt am Main

Was heißt und zu welchem Ende studiert man Rechtspluralismus?

Rechtspluralismus ist ein modischer Begriff. Doch was heißt eigentlich „Rechtspluralismus“? Der Begriff wird zuerst in den 1970er und 80er Jahren in anthropologischen Diskussionen um das Recht von indigenen Gruppen geprägt und wandert von dort aus durch die Disziplinen. Die wichtigsten heutigen Dimensionen des Rechtspluralismus aber sind epistemisch bzw. erkenntnisstrukturierend. Denn Rechtspluralismus stellt das Recht und seinen Begriff in ein neues Licht und reißt neue Perspektiven im Recht und auf das Recht auf. Diese Epistemologien des Rechtspluralismus betreffen aber nicht nur die ferne Rechtsanthropologie oder die nahe Rechtssoziologie. Sie kehren – zuerst nur theoretisch – in einem „Rechtspluralismus 2.0“ seit den 1990er Jahren zurück in die Theorien des Staates, des Rechts und der Politik. Heute in einem „Rechtspluralismus 4.0“ suchen diese Theorien nicht nur die inter- oder transnationalen Gerichte, sondern auch die staatlichen Gerichte heim. Dies zeigt z.B. der am 15. Januar 2015 vom Oberlandesgericht München entschiedene Dopingfall der Eisschnellläuferin Claudia Pechstein. Aber wozu soll „Rechtspluralismus“ gut sein? Gefährdet „Rechtspluralismus“ nicht die Einheit und Identität von Staat und Gesellschaft? Setzt sie nicht viel mehr eine neue post- oder transnationale Ungleichheit an die Stelle der mühsam errungenen Rechtsprinzipien der Moderne? Diesen Fragen geht das Referat genauso wie den Fragen nach der Bedeutung, der Geschichte und der Erkenntnisstruktur des Rechtspluralismus nach.

MIKKI STELDER, PhD Candidate, Amsterdam School for Cultural Analysis

Politics without Rights: Human Rights Discourse as Alibi and as Violence

According to Israeli media scholar and leading lesbian/gay activist Amit Kama, the majority of Israel's lesbian/gay movement has always been keen on "parading proudly into the mainstream" (Kama 2011). The movement's first legal victories were the decriminalization of sodomy in 1988; the Equal Employment Opportunities Act in 1992; and the legal inclusion of "out" lesbian/gays into the statutes of the Israel Defense Force in 1993. These legal changes were celebrated as a transformation of Israel's body politic and as a turn towards a more equal society. Although one might argue that these are important steps towards ending legal discrimination of gay people, these demands for legal inclusion appealed to exactly those institutions responsible for the continuing juridical, economic, and social dispossession of Palestinians. I suggest that this inclusion of lesbian/gays must be situated within the larger socio-political context of Israel/Palestine and argue that dominant gay rights discourse, although liberating for some lesbian/gays, depends on perpetuating Palestinian dispossession.

This paper examines the way in which the movement's use of a human/gay rights discourse mires in Israel's state violence. It does so by looking at the way in which this movement articulated itself legally, culturally and visually. By engaging with contemporary queer-feminist decolonial critiques of the Palestinian queer movement, I query how a gay and human rights discourse comes to function both, as approved violence, and as alibi for the oppression of other "others." Gayatri Chakravorty Spivak famously argued that human rights are something "we cannot, not want," but I wonder if, in our (pre-fabricated) wanting, we do not bypass an opportunity to start from elsewhere. In order to situate the appeal to rights and to

the law, I propose a more critical investment in understanding both its violence and its potentialities in the context of sexual liberation and Israel/Palestine.

DR. PHIL. KATJA STOPPENBRINK, LL.M. (Köln/Paris 1)

Respect for Children's Well-being as an Evaluative Cultural Practice: Reconstructing German Jurisprudence and Legal Practice at the Interface of Descriptive Ethics and 'Law as Culture'

The concept of a child's well-being (Kindeswohl) is deeply entrenched in the German legal order and has received an enormous amount of scholarly attention (to name but a few: Coester 1983, 2009; Schumann 2008). Whereas much of the pertinent literature is still dogmatic 'law in the books' analysis (cf. Parr 2006), the legislative reforms introduced over the past decades as well as the rapidly changing public perceptions and pre-theoretic intuitions of what it means to care for a child can best be grasped by a wider concern for the 'law in action' as changing cultural practices. By proposing an in-depth analysis of both German jurisprudence and public discourse relating to children's well-being, I will demonstrate how reconstructing legal practice means unlocking and exploring multifold dimensions of cultural meaning. Thus, I will carry out a descriptive ethics by displaying factual change in moral attitudes vis-à-vis children. Recent legal history of respect for children's well-being is replete with examples of societal change through the law and in spite of the law (see, e.g., Limbach in her seminal paper 1988, or – more recently – Scheiwe). Legal change (of positive norms and living practices) marks or reiterates profound societal change, moral attitudes and intuitions and – even more fundamentally – changing conceptual boundaries and anthropological presuppositions of generational order, the semantics and performative meanings of parenthood, of what it means to be a 'family', a 'father', etc. Methodologically, I will

combine plain old societal diagnosis with jurisprudential analysis and an interpretive 'hermeneutic' approach that displays the interdisciplinary connectivity and efficacy of approaching 'law as culture' in unlocking our multidimensional conceptual, normative and descriptive practices – not merely in our relationship to and conception of children (Haltem 2008; 2012; for the methodological integration Stoppenbrink 2014). The practical upshot is a clear – normative – positioning in the contemporary debate on children's rights (Schickhardt 2012).

PROF. THOMAS STREETER, Chair, Sociology, The University of Vermont

Digitalization, Discourse Networks, and the Law: The Move to Online Legal Databases, 1980–2000

This ongoing study looks at the discursive evolution of practices of legal documentation and citation from 1980 to 2000 in the U.S. It hypothesizes that this shift amounts to a significant transformation of the "discourse networks" (in the sense used by Kittler) that constitute the body of the law. Using a mix of institutional analyses and critical readings of trade publications, it explores the interplay of embodied experience, social structure, and power in shaping legal texts and the contexts of their interpretation. It is a case study of textuality, language, and power. As word processing and the Lexis and Westlaw databases started to spread through the legal profession in the early 1980s in the U.S., legal practices like citation, quotation, and indexing began taking on new forms, new economies, and new relations to legal argumentation in general. Following the model of, among others, Vismann, who explored the changes in legal practice associated with the changes in communication technologies like writing, print filing, and copying, this study extends and refines the discussion by looking closely at how Westlaw and Lexis struggled with various means to manage, market, and make viable digitalized versions of legal

documentation. The struggles over the years have taken various forms. Some of it involved political economic questions about corporate competition between producers of print journals and casebooks and those seeking to move into the digital arena, all in relation to public and private legal libraries. Some of it involved matters like interface design and search capabilities: these were not only matters of practicality but also involved questions of conceptual structure and organization, questions about what really mattered in legal discourse. And some of it involved problems of the authority of texts and their interpretation, problems of determining meaning in the face of differing forms of textualization. Together, these practices have changed the underlying conditions of the practice mystification of the law.

PD DR. DR. FABIAN STEINHAEUER, Goethe-Universität Frankfurt am Main

Kulturtechniken: Über die „technologische Bedingung“ von Recht und Gesetz

Ausgehend von der Kategorien der Autonomie, des Willens, des Bewusstseins, des Sinns und des Menschen haben weite Teile der Rechtswissenschaft die „niederen Techniken“ juristischer Reproduktion und die „praktische Vernunft“ des impliziten, juristischen Wissens entweder ignoriert oder aus dem Programm der Rechtswissenschaft ausgeschlossen. Die Rechtssoziologie hat gemeint, Recht und Gesetz jenseits der Dogmatik auf den Boden der Tatsachen holen zu können. Die weitgehende Verdrängung der historischen Hilfswissenschaften, der Forensik und der Verwaltungswissenschaften aus den Ausbildungen der Juristen sowie die Fokussierung des Methodenproblems auf den Kanon von Interpretationslehren sind nur weitere Symptome dafür. Erst im Zuge der Digitalisierung und Vernetzung ist es zu einer Renaissance des Technischen in der Rechtswissenschaft gekommen.

Bezugnehmend auf Bruno Latours Studie vom Conseil d'Etat (La fabrique du droit, Paris 2000) beschäftigt sich der Beitrag mit Veränderungen im Verhältnis zwischen Technik und Rechtswissenschaft. Das Ziel dieses Beitrages ist es, die Dogmatik des Rechts anhand ihres Verhältnisses zur Technik neu zu bestimmen. Sie ist Teil einer Epistemologie, die eine Archäologie und Ästhetik des Rechts einschließt.

DR. PHIL. JAN CHRISTOPH SUNTRUP, wissenschaftlicher Mitarbeiter des Käte Hamburger Kollegs "Recht als Kultur"

Personen, Dinge, Tiere, Unpersonen: Kulturspezifische Differenzierungen in rechtlichen Prozessen der Personifizierung

Der kulturkomparative Blick auf Konzepte der Rechtsperson bietet sich nicht nur an, weil er einen normativen Fundamentbereich verschiedener Rechtskulturen ausleuchten kann, sondern weil er Aufschlüsse über essentielle Eigenarten der Rechtsorganisation verspricht, so wie Subjektivität, Zurechnung, Autorschaft. Zumindest das moderne Recht kommt ohne ein spezifisches Personenverständnis nicht aus, da es rechtliche Operationen auf Akteure zurechnen muss. Aber gerade in der Entscheidung, was eine Rechtsperson oder ein Rechtssubjekt (mit bestimmten Pflichten und Ansprüchen) ausmacht, kommen sensible kulturelle Vorstellungen zum Ausdruck.

Das Recht unterscheidet zwischen natürlichen und rechtlichen Personen, wobei es sich in beiden Fällen um juristische Konstruktionen handelt. Nicht die traditionelle Debatte über den Status von als Rechtsperson anerkannten Kollektivsubjekten wie Unternehmen/Gesellschaften soll hier wieder aufgegriffen werden, sondern die oftmalige Prämisse, dass „hinter der physischen Person der Mensch“ stehe, wie es bei Radbruch heißt. Weder die Rechtsgeschichte legt jedoch

eine simple Identifizierung von Person und Mensch nahe, noch tun dies aktuelle Debatten über Tierrechte, in denen angeregt wird, Tieren als Personen bestimmte subjektive Rechte zuzusprechen. Abgesehen von diesen Ambitionen, die Gruppe der als Person anerkannten Rechtssubjekte auszuweiten (bis hin zu einer Ausstattung der Natur mit subjektiven Rechten), zeigen Geschichte und Gegenwart aber vor allem das Ringen darum, welche Menschen als Personen anzuerkennen wären. Nicht nur ist hier die bekannte Verlustliste mit Frauen, Sklaven, Juden etc. sehr lang, sondern das Recht basiert systematisch auf der Kreation von abnormen Unpersonen des Rechts (Bestien, Monster etc.), um der Figur rational-individueller Zurechnung Sinn zu verleihen. Diese Zurechnungsfigur erweist sich dabei im Kulturvergleich keineswegs als universell.

Die Bestimmung der Rechtsperson basiert aber nicht nur auf einer Differenzierung von Person und Unperson, sondern, vor allem im okzidentalischen Kontext, auf der Unterscheidung von Personen und Dingen (Alain Supiot). Neuere Studien zeigen zum einen, wie anders diese Kategorie etwa in bestimmten indigenen Gemeinschaften verstanden wird, und zum anderen, wie biopolitische Kontroversen diese Unterscheidung auch in der westlichen Rechtskultur problematisieren.

LAURA SWEENEY, BA / LLB (Hons I) (The Australian National University), Research Associate, Casual Sessional Academic, College of Law, the Australian National University

Drawing Judgment: Law, Gender and Aboriginality in Political Cartoons of the High Court of Australia

Over the past few decades, scholars interested in legal culture and legal discourse have demonstrated an increasing willingness to move beyond the written word to explore how understandings of the law can be transported through visual and material texts. Building on the work of these scholars, and,

in particular, of Professor Leslie Moran, this paper investigates what understandings of the High Court of Australia are transported by political cartoons, with a particular focus on understandings of gender and indigeneity.

Informed by a sample of 80 political cartoons prepared for publication in Australian media from 1903 to 2014, the paper engages in a content analysis of the images and written texts representing the High Court, and of which topics are most frequently addressed in this medium. It then considers how gender and indigeneity are represented in these cartoons, and the extent to which this reinforces or subverts existing understandings of the Court, derived from what Moran terms 'privileged objects of legal research'. This paper argues that important insights into the gendered nature of law, and the processes by which it is gendered through cultural practices, are revealed by the disproportionately masculine representations of the Court, relative to the actual number of women who have sat on the bench. The findings relating to the Court's engagement with indigenous issues suggest that the Court is often, although not always, perceived to act in a manner contrary to both the interests of Aboriginal and Torres Strait Islander people and of the Government. This adds a degree of complexity to existing understandings of the role of the Court in mediating the interests of Australian indigenous people. These findings offer a new lens through which to consider existing understandings of the High Court of Australia and the Australian legal system; and, more broadly, invite a reassessment of the role and value of non-traditional sources of legal knowledge.

PROF. SCOTT VEITCH, Paul K C Chung Professor in Jurisprudence,
Faculty of Law, University of Hong Kong

Contesting Images of the Rule of Law in Hong Kong

The mass civil disobedience protests on the streets of Hong Kong over recent months, directed at gaining the right to elect democratically the Chief Executive of the Hong Kong Special Administrative Region, have become front-page news around the world. The debates around the meaning of law-breaking and the implications for the doctrine of the rule of law have intensified remarkably throughout Hong Kong society. From one perspective, the ‘umbrella’ movement has highlighted the dignity and commonality of the goals of those who break the law, while from another many lawyers as well as the judiciary have emphasized that the protesters’ actions in disobeying injunctions are a direct threat to ‘the respect for the dignity and authority of the court [which] are fundamental tenets of the rule of law’. This paper analyses the deployment of imagery in the protests, the competing narratives through which they are being interpreted, and the ways in which the symbolic dimensions of the debates are key to their presentation, if not their resolution.

PROF. HSIAO-TAN WANG, Cheng-chi University, Taiwan

Law’s Gendering Practice in the Society of Law’s Pluralities in Chinese Culture

Legal narratives on courts may contain a particular type of gendering practices that constitute a subject different from Fei Hsiao-Tung's famous theories of self-other relationships (Chaxu geju) in Chinese society. It is worth researching how legal narratives and legal subjects may have effects on the resolution of social conflicts and the process of cultural transformation. In this paper, we study the legal cases of divorce, rape and domestic violence by analyzing self-other relationships in legal

narratives as well as their comparison to women's stories in and out of the court. Our analysis demonstrates law's power of enabling women to struggle against gendered structures as well as law's constraining women into a more complicated society of law's pluralities. We argue that law's subject presumes a particular self-other relationship different from that conceived by Chinese culture in which the self is defined by relationships with others, just as the existence of a stone is defined by the ripples it causes. This profound difference may constitute a new law's plurality as a reality for women. Our argument suggests a new understanding of women's situations before the law in the context of law as an arena for women to open up a political space for a new subject while facing difficulties of integrating this new subject into their daily lives.

HELENA WHALEN-BRIDGE, Associate Professor Singapore, Faculty of Law National University of Singapore

Party Narratives in Adversarial Systems: Partiality or Objectivity?

The common understanding of party narratives in adversarial systems is that they are partial, biased accounts that portray that party in the best light (Foley & Robbins, 2001). This paper argues that in order to achieve a more persuasive presentation, actual practice in adversarial systems is not purely adversarial, and occasionally borders on the objective. The paper reviews a case study from a criminal case in Singapore which suggests that narrative portrayals of clients in adversarial systems can occasionally be quite critical of the client. The paper queries the relationship between party narrative and larger systemic procedural orientations.

Mi You, artist and researcher from China, based in Germany.
Wissenschaftliche Mitarbeiterin at Kunsthochschule für Medien
Köln

Angels and Prophets on Trial: On Jelinek's *Das schweigende Mädchen*

I propose a case study of the recent staging of Elfriede Jelinek's *Das schweigende Mädchen* at Münchner Kammerspiele to illustrate a connection of law and narrative mediated by artistic treatment. The play, taking its name from the defendant Beate Zschäpe who remains silent through trials on the NSU murders, takes the visual form of a trial room with the present parties being, intriguingly, a judge, angels, and prophets. The text draws heavily on media reports and biblical as well as mythical resources, and employs an operatic performance of speech. The critical analysis of this theater piece draws on scholarship at the junction of art and law. Instead of a simple dismissal of the legal apparatus involved in the framing of the case, even though at times the characters express utter disillusion with truth and justice, the piece draws attention to the social, political, historical and religious aspects that may have given rise to contemporary phenomena such as the NSU. Compared to other theater pieces (there are at least three in Germany) that assume a more documentary theater format, creating a piece that takes the rigid form of the court trial seems to have reasons beyond mere affirmation of solemn rituality. The piece transverses the undecidable and non-deconstructable justice-to-come (Derrida) and utilizes the "undecidable immanence within law" which facilitates and perpetuates a certain continuous operation of "critical translatability between the legal, the ethical, the political" (Oren Ben-Dor). And as such, the piece depicts, albeit in darkly satirical ways, exactly this undecidable immanence, which "transcends any 'truth' of legal decision" (Ben-Dor).

KATHARINA ZILLES, PhD candidate, International Graduate Centre for the Study of Culture, Giessen

Beholding the Child

How do we look at those who cannot control their visibility? The following paper discusses and critiques the ways in which the non-pornographic exposure of children is practiced, normalized, and legitimized. The legal frameworks of Germany and Sweden serve as reference. In both of these, the law itself does not ascribe privacy rights to children which supersede parental will.

Young children are popular objects of the gaze. The gaze has been conceptualized at length to describe power relations expressed through visual relations: it is here understood as both the awareness of one's own visibility (and potentially the unease or vulnerability that comes with it) and a practice of seeing which exercises power through exposing, revealing, and appropriating. For many children growing up in a media society today, being-looked-at is continuously staged through photographing and filming. Accordingly, the vast majority of parents or guardians have published images of their infants and young children, especially on social networking sites. Personality rights in Western countries generally grant legal persons the right to their own image, its production and dissemination, and protect a person's private sphere from violations through image recording. For prepubescent children, this right to one's own image is entirely entrusted to parental stewardship: parents or guardians regulate the gaze which their children are subjected to at their own discretion. Exposures of children which are not depictions of sexual abuse can be legally produced and disseminated without limitations until the child is old enough to give or withdraw consent.

The concluding discussion turns to a recent work by Swedish visual artist Joanna Rytel. Her 2014 short film 'Once Upon a Time There Was an Unfaithful Mummy' self-consciously exploits the image of familial intimacy. This example serves to critique

the concept of parental stewardship as well as strategies of legitimizing the transgression of children's privacy.

Parallel Independent Panels

Panel I: Leiden University Centre for the Arts in Society (LUCAS)

Monsters and Icons: Objectification in Law and Justice

This panel was prompted by the idea that law is intimately related to the figure of the monster and the logic of objectivity of which this figure is an exponent. As Zakiya Hanafi proposes, the monster is defined as the ultimate limit of human subjectivity. The human being dwells in an ontological, hierarchical space that is framed by divine creatures at the top, and by animals at the bottom; the monster defines its outside. As perpetrators are often conceptualized or conceived of in monstrous terms, the figure of the monster should be explored in terms of its relation to the law, to our sense of justice, and to forensic science. As the limit to subjectivity, the figure of the monster is also closely related to the epistemology of objectivity that underlies the system of criminal law. Within this logic of objectification it is relevant to explore the way certain historical political figures outside the limits of the law are culturally immortalized as icons (e.g. monster, martyr, public hero or enemy) (Marion).

GERLOV VAN ENGELENHOVEN, International Studies, University of Leiden

Legal Closure and Cultural Re-opening: Exploring Bobby Sands' Iconic Status

According to Hannah Arendt the trial has a double function. One is to make a decision as to the official truth of a certain case, the other is to heal the juridico-political community, which was hurt by the crime. By closing a case officially, with the verdict, the law attempts to enclose the case as an event in the past. The

case of the Provisional Irish Republican Army, and the figure of Bobby Sands in particular, poses a challenge to this second, psychological form of closure, because of the fact that it was and is controversial to such an extent that it still inspires public fascination. This fascination becomes visible in the myriad films, literature, music, media and art, that have appeared before, during and since its legal closure, with the 2008 film *Hunger* being a recent example. These reenactments could be seen as re-openings of the case in the second sense of the term, with the cultural domain thereby challenging the legal system's ability to come to a satisfactory closure of this politically and socio-culturally charged case. Directly related to this, the research question is: how and why does Bobby Sands become iconic (i.e. approached as monster, martyr, public hero or enemy) to the extent that he serves as symbol for (the struggle for) justice outside of the reach of the law? Jean Luc Marion defines the icon by opposing it to the idol, with both terms relating in opposite ways to Jacques Lacan's concept of the gaze. In this presentation, Bobby Sands will be approached, in turns, as an icon and an idol, with methodological concepts taken from literary theory (trope, topos), to explore how mass cultural reception and impact of political public figures challenges the law's wish for closure.

TESSA DE ZEEUW, PhD candidate, 'Arts in Society' program, Leiden University Centre for the Arts in Society (LUCAS)

Frightening Creatures and Pieces of Proof: Invoking the Theatricality of the Laboratory in Criminal Procedures – A Cross-Reading of Frankenstein and the Case of Lucia de B.

My paper offers a reflection on the established idea that the law is fundamentally theatrical. I will focus on criminal law, which especially needs theatricality in order to veil or compensate for its violence (See Cover, Benjamin, Derrida). I argue that this veil typically consists in the theatrical substantiation of criminal

procedures with the ‘scientific’ logic of the laboratory. The ‘epistemology of facts’ characteristic of the late 19th century scientific paradigm is effectively invoked through the use of forensic proof and expert testimony. This ultimately results in an objectification of both the evidence and the suspect.

I will reflect on the implications of this use of the ‘laboratory logic’ in a discussion of a recent and crucial miscarriage of justice in Dutch law, the case of Lucia de B, a nurse who happened to be around several instances of unexpected death and who was sentenced to life imprisonment for murder. She was convicted on the basis of an erroneous toxicology report, based on a sample (in Dutch ‘monster’) of blood, and a so-called perpetrator profile – a prosecution to which both experts and the media contributed confidently. She was popularly called ‘The Angel of Death’, and the courtroom drawings are telling. My argument is that this is a consequence of the scientific objectification central to criminal procedures.

I will read this juridical case in light of Mary Shelley’s novel *Frankenstein*, in which Dr. Frankenstein creates a monster in his laboratory, and in which an innocent girl, Justine, is convicted on the basis of faulty evidence for the murder this monster commits. The dual meaning of the word ‘monster’, as both a frightening creature and, closer to its etymological origins, as a piece of proof, is crucial in both the novel and the case. Cross-reading these will allow for a critical investigation of the spectacle of objectivity invoked in criminal procedures.

THOMAS BRAGDON, Leiden University Centre for the Arts in Society (LUCAS)

The Monstrous and the Human in Hannah Arendt’s Paradox: Reactivating Refugees’ Rights in Europe Today

This paper is about the monstrous aspect of human rights, relating to the issue of refugees seeking asylum in Europe today.

My critique of human rights is based on Hannah Arendt's thought. Beyond doubt, Arendt was the most experienced thinker of her time writing about refugees and immigration. She herself had been a refugee during World War Two. Her critique of human rights found its first expression in her essay *Es gibt nur ein einziges Menschenrecht*, published in the German magazine *Die Wandlung* in 1949 (Heidelberg, Dolf Sternberger). In this essay, Arendt confronts us with a paradox: national rights are based on human rights, but nation-states guarantee human rights only if these are appealed to as national rights. Human rights in themselves do *not* empower us as such, Arendt concludes. Many present-day scholars reject Arendt's critique. Her paradox, they assert, is predicated on national and international law. They point out that nowadays we have new legal dimensions that transgress this distinction. However, I will reactivate Arendt's paradox in the face of law's current plurality. The paradox, I contend, does not depend on the distinction between 'national' and 'international.' Rather it is predicated on two possibilities of enacting legal personhood. One can act, firstly, as a person who *has* the rights she needs; secondly, as a person in need who, therefore, completely subjects herself to the law as it is defined by those holding governmental positions. If a person appeals to human rights, she enacts her personhood in the latter sense, by showing herself to be in need of charity. The monstrous aspect of human rights is this: an appeal to these rights amounts to the complete subjection to the law defined by those in power. Following Arendt, there is only one human right that can or would lead to empowerment instead. What right is this? What human right transgresses the paradox of human rights?

Panel II: Centre for Humanistic Legal Studies at the University of Bergen

FRODE HELMICH PEDERSEN, Postdoctoral Researcher, Department of Linguistic, Literary and Aesthetic Studies, University of Bergen

The Power of Narrative

This presentation will discuss criminal law cases where the court's decision to convict rested overwhelmingly on narratives as proof. Among the cases discussed will be the Norwegian «Baneheia» case, where two young men were found guilty of raping and murdering two young girls. Whereas there was forensic evidence to establish the guilt of one of the defendants, the conviction of the other, who received the longer sentence, rested almost entirely on the testimony of the former defendant. The paper will also discuss the infamous Thomas Quick case in Sweden, where the defendant pleaded guilty to, and was convicted of, numerous cases of murder, both in Norway and in Sweden. The convictions were later found to be of no merit, and by 2013 Quick was acquitted of all the murder convictions. The paper will address the question of which narrative traits must be present in order for the narrative to appear so convincing to the court that no other decisive proof was deemed necessary.

LINE HJORTH BUCHHOLZER, PhD candidate, Department of Linguistic, Literary and Aesthetic Studies, University of Bergen

The Significance of Archetypes in Courtroom Proceedings

This paper analyses how archetypes play a central part when creating narratives in courtroom proceedings, and seeks to uncover how efficient particular archetypes about gender are in this regard. How important are archetypes in producing a credible narrative and with which means do we distinguish

between truth and fiction, reality and the archetypes required for a specific story? The rhetoric used by the media when covering certain spectacular trials is often dependent on the dichotomies and exaggerations of archetypes. Is it possible to imagine that the stories told in the media reinforce those narrated in court?

The paper investigates examples from a huge criminal case in Norway, in which three people were found dead on a farm. Two pensioners and their middle-aged daughter were victims of a murder that in the coming three years filled the Norwegian news media. Four people, two women and two men, were charged and convicted of the crime. The perpetrators were the son of the murdered pensioners, his wife, her sister and her sister's boyfriend. The two sisters in particular were portrayed as complete opposites and as two essentially different femme fatales. The archetypes expose our notions of gender and contribute with decisive power and drive to the narrative. In works of fiction, this has often meant that characters are presented as less complex, highly simplified and therefore not credible as real human beings, yet their characteristics nonetheless enable the swift progress of the story. Producing stories in court or in the media are not that different, but they are in fact compelled to establish the truth. But why is it that these dramatically effective archetypes are so present in the media's representations of trials – do they actually exist inside the courtroom's storytelling or only in the media's account thereof?

PROF. ARILD LINNEBERG, Department of Linguistic, Literary and Aesthetic Studies, University of Bergen

The Prosecutor as Judge: The Role of the Media in Miscarriages of Justice

In the research project “The Dramaturgy of Miscarriages of Justice: On the Construction of False or Fictitious Narratives in Court”, the “Bergen School” of Humanistic Legal Studies focused on the significance of storytelling in court and in the legal system. Every verdict presupposes a narrative based on the five elementary questions of classical rhetoric: Who (did) What, When, Where, How and Why? When one or more of the answers to these questions are wrong, the result will be a “false”, or fictitious narrative. The common feature of miscarriages of justice is a fictitious narrative. How are these narratives constructed? In legal proceedings there are not one, but many storytellers. Law’s stories are multiple stories, almost polyphonic in the Bakhtinian sense with a high degree of heteroglossia. All the same the narratives told are constructed almost as mainstream crime novels following the common patterns: crime – investigation – clarification and solution. The crucial point is that the storytellers who construct the narrative constitute a collective of writers, consisting of the police, the prosecution and the media working together. The police and the prosecution not only give information to the media, but they also often leak secret information to the media – so they can “give the people what they want”; reveal the crime and the criminal. This revealing of the crime and the criminal is too often a prejudgment, and here the media has a problematic double role: as both prosecutor and judge, helping both the prosecution and the judge, very seldom to the benefit of the defence of the prosecuted. Such prejudgments are main causes for miscarriages of justice. Following Cornelia Visman’s concept of “das Gerichtsdrama”, I will analyse the role of the media as

prosecutor and judge through examples from Norwegian legal history, concentrating on “the Baneheia case”.

PROF. ERLING AADLAND, Department of Linguistic, Literary and Aesthetic Studies, University of Bergen

Law and Outlaw in Some Bob Dylan Songs

Following a brief presentation of several songs by the singer-songwriter Bob Dylan, especially from his early years (including well-known pieces like “The Lonesome Death of Hattie Carroll” and “Hurricane”), dealing with topics like crime and punishment, trials and courts, judges and verdicts, justice and injustice, in different ways and with quite different lyrical devices, this paper will center on the contradictory opposition between two very famous Dylan-lines: “But to live outside the law, you must be honest” (1966) and: “There ought to be a law/ Against you comin’ around” (1965). In the context of Bob Dylan the first one voices the very frequent figure of the outlaw; while the second might seem to be more undylan-like and appear to be both puzzling and perhaps offensive to listeners and interpreters. This paper will address the contradiction and suggest ways of mending the uneasiness of this paradox by giving a reading of the song the second quote is taken from, i.e. “Ballad of a Thin Man”. The reading will suggest the possibility of understanding the song (at least partly) as an off-key depiction of a courtroom-scene, as well as an ominous depiction of the final judgement. Art has of course no trouble with contradictions and paradoxes, indeed it rather seems to feed on them. Neither should literary scholarship have trouble with them, but given the common and in some cases very fanciful readings of “Ballad of a Thin Man”, frequently referring the song to either actual and factual or rebellious subcultural frameworks, it does seem appropriate to try to give the song a reading which is more akin to the legal semantics it invokes and applies.

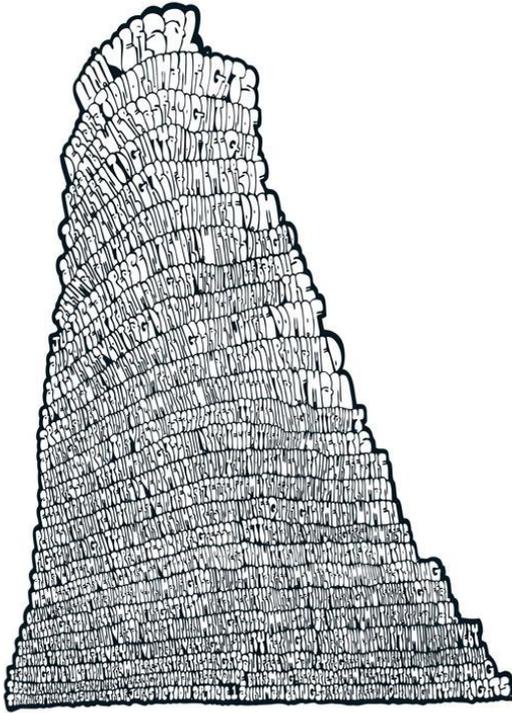
LAW'S PLURALITIES EXHIBITION

06.05. – 24.05.2015 at “Neuer Kunstverein Giessen” & during the conference at the Main Building of Liebig University (06.05. – 09.05.2015)

Il-Jin Choi | Raul Gschrey | Mi You | Manu Luksch

The interrogation of the cultural construction and negotiation of legal practices in the conference “Law’s Pluralities” offers an apposite occasion for the presentation of an exhibition of artistic works dealing with the topic. These international artistic positions reflect on social and legal frameworks and find means of visualizing phenomena which too often remain abstract. Furthermore the artistic interventions themselves contribute to the differentiation and development of “legal writing”. Through their explorations, contestations and subversions, they participate in an alternative production of knowledge and function as mediators and shapers of legal practices. The exhibition will be located at the conference venue and at the close-by “Neuer Kunstverein Giessen”. This will expand the exhibition’s and conference’s reception towards a non-academic public and open up this politically and socially relevant topic to a larger public.

Il-Jin Choi works in the fields of street art, drawing and painting and is currently based in Frankfurt/Main. His often graphic and reduced works nevertheless address social and political issues. In his drawing of the “Preamble of the Universal Declaration of Human Rights,” the artist engages in a challenging visualization of this legal document. www.atemmeta.de



Manu Luksch, founder of the London-based arts studio “Ambient Information Systems,” is currently working as a filmmaker in London. Through her films, performances and interdisciplinary works, the artist explores the effects of emerging technologies on social relations and urban and political structures as well as legal frameworks. Her works focus on the structure of the urban fabric, the borders of public space, surveillance and the gaze and security and identity systems. Her film “Faceless” received widespread attention in the arts and academia. It is entirely compiled from material recorded by surveillance cameras that the artist collected in a painstaking legal process through the Data Protection Act (DPA), which

allows individuals who have been recorded by a CCTV camera access to this material. In relation to the DPA, she has formulated a “Manifesto for CCTV Filmmakers”.
www.ambientTV.NET & www.function-creep.com



As artist, curator and academic, **Raul Gschrey** explores socially and politically relevant topics in a multifaceted manner. He also works in the educational field, among others at universities in Frankfurt/Main and the youth-media-centre “Gallus Zentrum”. He is a doctoral candidate at the GCSC Giessen. In recent years, he has been examining the phenomenon of visual surveillance and exploring artistic subversion. In his performances and interventions in public urban space he challenges the authorities’ monopoly over perception and power by negotiating and expanding rules and regulations. His works reach out beyond the gallery or the museum into public spaces and the artist is understood as a social agent who is challenged to use his special means to contribute to political and social debate. His interdisciplinary exhibition and publication project “grenzlinien/borderlines” expands this focus on border-crossing and irregular migration in a European context. www.gschrey.org



Mi You is a media artist, curator and researcher from Beijing, China. She has a background in media art and theory. Her own film and art works have been included or shown in Siggraph, Berlinale, Lisbon Triennale, Athens Biennale and on British Channel 4. She has curated in the context of art and architecture, including urban art projects in the historical neighborhood of Dashilar in Beijing, artistic and research projects in Shenzhen/Hong Kong Architecture and Urbanism Biennale and in Istanbul Design Biennale. She curated and carried out research on the platform of Transnational Dialogues, which promotes exchanges between Chinese and European artists and scholars. Since 2014, Mi You has researched and lectured on global art at the theory department of the Academy of Media Arts Cologne. She is an Alexander von Humboldt German Chancellor Fellow and alumna of the Independent Curators International.

The Architect (2013) is a conceptual work encompassing a set of two photographic works and a fictional reportage on the architect behind the photographed building – a courthouse in Shanghai which resembles in appearance the Palais de Justice in Brussels. The fictional reportage traces the architect behind the building who copies Western classical architecture and builds them in China, while unpacking architecture theory and aesthetics of the copy, with a touch of humor and irony.



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