

Annual Report of the Centre of Law and Society 2016-17



The Centre of Law and Society (CLS) was launched in June 2016 with an opening conference Main Currents in Contemporary Sociology of Law. Since then it has organised and co-organised a number of events during 2016 and 2017. The CLS committee members believe that the Centre has achieved an important momentum in the last twelve months and is already contributing to the diverse research activities within the school and university and reaching out to both national and international communities of socio-legal scholars.

The Centre's wide profile covers areas of global justice, gender and law, security, crime and justice, EU legal studies in context as well as general and theoretical issues of socio-legal studies. Papers from the Main Currents in Contemporary Sociology of Law conference will be published in a special issue of the Journal of Law and Society and thus further contribute to the dissemination of knowledge generated and critically discussed at the CLS's events. The growing range of research and knowledge being produced is being publicised through the CLS's use of social media and its website (which also features a number of interviews with distinguished scholars whose work has profoundly influenced socio-legal studies in the UK.

CLS activities consist of public lectures for academic and non-academic communities, international academic conferences and seminars as well as PhD conferences and workshops. The possibility of publication of other conference papers is being considered by leaders of individual research themes. Research materials and outputs are regularly shared on CLS social media and the Socio-Legal Conversations series has reached the public audience by being accessible on Youtube. Early career scholars have used the CLS fellowship scheme and joined the Centre in the last twelve months to conduct and share their research.

While presenting this general report which summarises essential activities and highlights the main achievements of the Centre in the past year, the CLS committee would also like to point out that the programme for the next academic year is expected to further expand the existing research themes and introduce new projects, especially in the field of law, politics and language and social and moral theories of cosmopolitanism.

The CLS committee is extremely grateful to its former member Roseanne Russell for all her work and invaluable contribution to the Centre's activities and wants to wish her even more success in her future academic career. Without the most generous help and assistance and hard work of Barbara Hughes-Moore, the Centre's administrative support and PhD candidate, and Sarah Kennedy and Antoinette Samuel, the School's events team, the Centre could never have succeeded in the way it has over the last year. Finally, the Centre wants to thank the Journal of Law and Society and Cardiff University's College of Arts, Humanities and Social Sciences for their most generous financial support hoping that this mutual collaboration will enrich the multi-disciplinary and interdisciplinary research environment at Cardiff University and further enhance its national and international reputation as leading academic institution in socio-legal studies.

The following report summarises all the major activities of the Centre in the past twelve months:

1. General law and society research stream

A. Public lecture

8 November 2016: David Nelken (King's College, London] - **Legitimacy of Social Indicators**

B. Symposia

14 June 2016: **Transnational Constitutional Law and New Patterns of Democracy**

Main speaker: Christopher Thornhill, University of Manchester

Thornhill's work is based on extensive comparative study in European, Latin American and African jurisdictions. It poses significant questions for the nature and scope of national democracy as traditionally understood by constitutional scholars. He argues that a sociological understanding of constitutionalism suggests that a new, but still genuine model of democracy is emerging.

The symposium opened by Thornhill's lecture was followed by these responses:

Re-Thinking Sociology of Political Constitutionalism: Perspectives from Nepal

Mara Malagodi (City University)

Constitution-Making in Post-Colonial Zimbabwe: Reflections on an Outlier

George Karekwaivanane (University of Edinburgh)

The Judiciary, Constitutionalism and the Modern Politics of Land in Kenya

Ambreena Manji (Cardiff University)

Judicial Constitutionalism and Legal Form: The Right to Health in Kenya John Harrington (Cardiff University)

Global Society and Global Constitutionalism

Jiri Priban (Cardiff University)

29 November 2016: **Devaluation of European Values After Brexit**

Claus Offe (Hertie), Jacques Rupnik (SciencesPo) and Jan Zielonka (Oxford)

Focusing on the following topics:

- tension between economic governance/expertise and political legitimation/democracy;
- re-emergence of the centre-periphery tension in the economic system of the EU and its impact on the crisis of political legitimacy at Member State and EU level
- the rise of populism as response to the crisis of EU governance
- Brexit - local resistance, or global promises?
- Inside EU, outside EU - the politics of EU borders and external relations policy-making
- from politics of European values to the devaluation of Europe
- current fragmentations as new forms of the EU's constitutionalisation

[this event was funded by CLS and co-organised by the Centre of European Law and Governance]

6 June 2017: **Toward a Rhetoric of Medical Law book launch symposium**

Symposium about a monograph written by John Harrington which was shortlisted for the SLSA Legal Theory and History Book Prize in 2017

Guest speakers:

Professor Marie-Andrée Jacob (Keele); Professor Gary Watt (Warwick); Professor Martin Kayman (Cardiff)

C. Conference

30 June - 1 July 2017: **Societal Constitutions in Transnational Regimes**

This conference focused on transnational regimes and their societal constitutionalisation from the different perspectives of legal, social and political science. It allowed lawyers to discuss specific normative legal issues of specific transnational regimes beyond the conceptual constraints of traditional constitutional law theories. At the same time, it allowed social scientists to present general theoretical insights as well as empirical inquiries into specific transnational regimes and political scientists to critically reflect on global and transnational changes and their impact on political institutions. While the controversies on societal constitutionalism in the last few years have focussed mainly on the development of the theory in general there is now a need for detailed studies of specific constitutional problems in particular regimes to which the conference sought to respond. The participants therefore discussed their more general ideas on constitutionalisation while at the same time analysing in detail a concrete transnational regime.

Augsberg, Ino (University of Kiel) – canon law as a transnational regime

Blokker, Paul (Charles University, Prague) – political movements

Duval, Antoine (ASSER Institute, The Hague) – sport

Kastner, Fatima (Bielefeld University) – transitional justice

Kjaer, Poul – (University of Copenhagen) – global economic governance

Klabbers, Jan (University of Helsinki) – international public law

Krajewska, Atina (Sheffield University) – global health law

Perez, Oren (Bar Ilan University, Israel) – transnational governance

Pinelli, Cesare ('La Sapienza' University of Rome) – constitutionalisation of financial markets

Priban, Jiri (Cardiff University) – political constitutionalism

Teubner, Gunther (Goethe University, Frankfurt) – societal constitutions in transnational regimes

Thornhill, Chris (University of Manchester) – judicial constitutionalism

Verschraegen, Gert (University of Antwerp) – constitutionalisation

Publication of conference papers:

The conference's aim is to produce a special issue of the Journal of Law and Society to be published in 2018.

D. PhD Masterclass

19-21 June 2017: **Exploring the Consequences of Research, Second Socio- Legal Residential Masterclass, Gregynog Hall, Tregynon, Wales**

Speakers:

Joanne Conaghan, Lydia Hayes, Rosemary Hunter, Linda Mulcahy, Jiří Přibáň, Bill Rolston, Meredith Rossner, Joe Sim, Phil Thomas

Event details

This two day retreat examined the responsibilities of scholars to produce something other than outputs that will allow personal progression. In a series of sessions with leading socio-legal scholars, the responsibilities owed to our wider communities were discussed as well as the political choices that scholars make in their choice of project, methodology and theoretical frame and how they deal with the many consequences of their research. Highly

interactive in nature, students were invited to explore the good and bad choices that the workshop leaders have made and their own stories of success, failure and surprise.

E. Junior visiting scholarships and seminars

July 2016: research scholarship of Heather Roberts, Australian National University; collaborating with Rachel Cahill-O'Callaghan on a joint study exploring the intersections between personal values and decision-making in Australian courts

November-December 2016: research scholarship of Filip Cyunczyk, PhD candidate from University of Bialystok; concluded by a staff seminar talk **Dealing With the Past and Collective Memory**

2. Law and Gender research stream

A. Public lecture and workshops

14 July 2016: Martha A. Fineman of Emory University, Atlanta; topic: **Austerity, Vulnerability and Justice**

The lecture provided an overview of Fineman's vulnerability theory and its application to the notion of austerity, which pits the universal vulnerability of individual human beings against the apparent vulnerability of institutions of the state. Institutions of justice are a key site of contest and deleterious impacts on human wellbeing and the quality of life may be observed. By taking a vulnerability approach, the functions of the state, as a critical actor in enabling individuals and communities to exercise resilience, moves into view as a basic tenet of justice

On 15 July, 2016, this event was followed by a **workshop for post-graduate students** from across the Arts, Humanities and Social Sciences College entitled '**Beyond Gender**' in which Fineman conversed with students in order explore two of her key texts.

Two workshop sessions organised by the research stream leaders for academics at School of Law and Politics, Cardiff University, to reflect on themes of gender in their research and to consider the distinctive nature of Law and Gender scholarship at Cardiff University.

B. Conference

20 June 2016: **Gender Rules: Research methods in law**

Speakers:

Dr. Lydia Hayes, Cardiff University; Dr. Sharon Thompson, Cardiff University; Dr. Ania Zbyszewska, Warwick School of Law; Professor Lizzie Barmes, Queen Mary School of Law and Professor Joanne Conaghan, Bristol Law School

This research methods conference examined the importance of gendered approaches to legal research and the role of law in variously reaffirming, underpinning, or re-envisioning gendered social relations. The conference highlighted the fact that legal research almost always has a gendered dimension to it, and whether issues of gender are a core component of our research or not, an awareness of the role of gender within our work provides an invaluable perspective on our own disciplines. Put simply, it was argued that law can be explored as a body of gender rules.

3. Law and Global Justice research stream

A. Public lectures and research seminars

21 November 2016: **5th Annual International Law Lecture Welsh Centre for International Affairs**, delivered by Professor James T Gathii (Loyola-Chicago) on Trade and **Deindustrialization in Africa**. Discussant Dr. Celine Tan, Warwick Law School.

This event was followed by a Law and Global Justice **Reading Group** meeting with Professor Gathii, Post-graduates and Colleagues in School of Law and Politics, based on his theoretical work on Third World Approaches to International Law.

5 December 2016: **Doris Buss** (Carleton) **Human Rights and Extractive Industries in Africa**

This event was followed by Law and Global Justice **Reading Group** with Professor Buss, post-graduates and colleagues in School of Law and Politics, based on her theoretical work on Queering International Law.

Professor Buss was a Centre for Law and Society Visiting Fellow and worked as an advisor to staff and students on the Global Justice Pro-Bono programme which is working on extractive industries in Tanzania this year.

27th February 2017: Dr Aman Hingorani (Delhi) Co-hosted with Welsh Centre for International Affairs and Centre for Law and Society **India, Pakistan and the Kashmir Conflict: Making Progress Through International Law**

This lecture examined the role that international law can play in helping to resolve the conflict between India and Pakistan over Kashmir. In a review of court rulings, UN papers and international law scholarship, as well as a review of British archives, Dr Hingorani argued that legal analysis can depoliticize the issue and contribute to its resolution.

The lecture is based on Dr Hingorani's book *Unravelling the Kashmir Knot*, published by Sage in 2016. Dr Hingorani is an Advocate of the Supreme Court of India, and Mediator in the Supreme Court and High Court, Delhi

24 May 2017: Dr Rina Ramdev (University of Delhi) **The 'Mobile Republic' and the Politics of Dissent in Arundhati Roy**

Co-hosted with Cardiff Centre for Critical and Cultural Theory and School of Modern Languages Seminar

B. Seminars and colloquia

23 May 2017: **Globalization and Post-Coloniality in the Work of Simon Gikandi**

Dr Grace Musila (Stellenbosch), Dr Elisa Wynne Hughes (Cardiff IR). Co-hosted with Cardiff Centre for Critical and Cultural Theory and School of Modern Languages

5 June 2017: **Portrait of an Assassin State: Truth, Rumour and Law in Kenya**

Dr Grace Musila (Stellenbosch), Professor Stephen Morton (Southampton), Ambreena Manji (Cardiff). Co-hosted with Cardiff Centre for Critical and Cultural Theory and School of Modern Languages.

7th-10th June 2017 **European International Studies Association: EWIS Workshop Series, Cardiff**

Law and Global Justice hosted two streams on 1) **International Development Aid and Justice**; and 2) **Critical Global Health**. Participants were drawn from around the world and the streams were co-hosted with the Centre for Law, Regulation and Governance of the Global Economy, Warwick University and the Development Studies Network, University of Sheffield.

C. Visiting fellowships and workshops

15th May – 3rd July 2017

Grace Musila (English Department, Stellenbosch) is working with Law and Global Justice as a CLS Visiting Fellow on establishing a network on Law and African Literature and developing **Law and World Literature** teaching module, as well as a substantive collaborative research project.

Law and Global Justice **reading group** on modernity, law and fiction lead by Professor Musila.



4. Security and Justice research stream

Workshops:

15-16 May 2017: Best practice in security and justice: from cross-cultural description to transnational prescription?

Aims of Workshop

To seek to further our understanding of the challenges of learning cross-culturally in relation to security and justice by examining whether - and if so how - one can usefully and validly define transnational 'good practice.' The workshop sought to draw on the experiences of eminent cross-cultural researchers in a range of areas such as youth justice, defence rights and lawyering, urban security, policing and crime prevention more broadly. Debate was broad ranging but the kind of questions that emerged were the following. Can we arrive at cross-national standards and how can we determine what they are? What kinds of research might be appropriate to the process? Do we have good examples of studies or initiatives that do this? Can we propose models of how it might be done well? Have we counter examples where good practice has been defined invalidly and/or unhelpfully? What made those exercises invalid or unhelpful?

Conference papers

Stewart Field (Cardiff University) and David Nelken (King's College London):

Interpreting, evaluating and prescribing: some tensions and dilemmas in the comparative analysis of youth justice cultures

Adam Edwards & Gordon Hughes (Cardiff University): Comparing Urban Security in Europe: collaborative and deliberative methods

Nick Tilley (University College, London): Units of comparison and units of prescription: the case of situational crime prevention

Trevor Jones (Cardiff University): Follow the Policy? Studying cross national mobility in security and justice

David Nelken (King's College London): Transnational social prescriptions and 'junk comparisons'

Ali Wardak (South Wales University): Land Disputes, Justice and Dispute Resolution in Jalalabad City, Afghanistan

Jackie Hodgson (Warwick University): People or Procedures? Securing effective defence rights across legal cultures

Renaud Colson (Nantes University): Fixing transnational best practices in drug policy

Abstracts

Renaud Colson (Nantes University): Reforming drug prohibition laws: the rise and possible fall of a century old global regime

The drug prohibition regime offers a good example of how a well-intentioned western policy was exported transnationally even while failing massively. The paper will consider

1. how the prohibitionist credo gathered enough momentum to become a desirable transnational standard in the course of the 20th century,
2. why it cannot be dismissed and stands as international good practice in spite of evidence of its perverse consequences in many jurisdictions,
3. how alternative models are currently being defined and promoted and what obstacle stand in their ways.

The paper will try to identify the various forces, both political and cultural, which contribute to define transnational good practices in the field of drug policy, and how these transnational standards are reworked over time and adapted in various jurisdictions.

Adam Edwards & Gordon Hughes (Cardiff University): Comparing Urban Security in Europe: collaborative and deliberative methods

This paper considers a familiar dilemma in comparative criminology between extensive research enabling generalisation and intensive research into the context-dependent qualities of crime and control. It considers the potential of collaborative and deliberative methods for better reconciling these aims and facilitating empirical research into problems of transnational security. It is argued that empirical investigations of transnational problems are enhanced by collaboration and deliberation amongst investigators working within and between different national contexts of control. Such collective methods of inquiry are also better placed to address the significant challenges of conceptual, as well as linguistic, translation encountered by cross-national comparative research. These arguments are

illustrated through reference to a policy Delphi on urban security futures in Europe and to a multiple-embedded case study of metropolitan policing agendas in Europe.

Stewart Field (Cardiff) and David Nelken (King's College London): Interpreting, evaluating and prescribing: some tensions and dilemmas in the comparative analysis of youth justice cultures

The authors draw on their own comparative empirical research on youth justice in Italy and Wales to reflect on its implications for the defining of transnational good practice. How far does comparative analysis aimed at the interpretation of legal cultures lend itself to the drawing of clear policy lessons valid across those legal cultures? If we must seek to understand local practice in a culturally situated way, how far does that render problematic the validity of cross-cultural judgements (for example about the punitiveness, tolerance or leniency of different youth justice regimes) and their related policy prescriptions (for example for or against early intervention)?

These arguments are linked to more general questions about the relationship between purposes and methodologies in comparative research. One attraction of the explanatory strategies of traditional positivist social science is that the manipulation of key variables may seem to offer a way of predicting the policy outcomes of particular reforms. Our study can be seen as a case-study of the difficulties of finding valid cross-cultural anchoring points which enable the construction of such positivist studies of dependent and independent variables in a comparative context.

Jackie Hodgson (Warwick): People or Procedures? Securing effective defence rights across legal cultures

This paper builds on research conducted on defence lawyers and the challenges of moving towards universal standards in relation to the scope, nature and quality of custodial legal assistance. These developments are examined in the light of the ECtHR decision in *Salduz* and EU Directives within the Roadmap. The paper draws on two recent comparative empirical research studies, one on training to promote good practice in custodial legal assistance and the other on establishing good practice for the treatment of young suspects during police interrogation. Both raise similar challenges in how to devise standards that can shape practice in a way that is meaningful across cultures. Both studies were carried out in the knowledge that EU Directives were in train and so sought to inform these

John Jackson (Nottingham): 'In a World of Their Own: Security Cleared Counsel, Best Practice and Procedural Tradition'

This paper examines issues emerging from recent cross-cultural and transnational research on the role of security-cleared counsel in the light of the tension between justice/fairness and security. Much attention has been devoted to the role of transnational courts in promoting minimum human rights standards with the need for states to be given a margin of appreciation when it comes to their application. There is also a vein of academic literature that argues for states to aspire to best standards which in the context of security-cleared counsel can mean maximising fairness even when this rubs up against established practices. But how realistic is to advocate for changes which undermine deeply entrenched cultural practices? How can researchers test what may or not be acceptable across different national traditions? How possible is it indeed for researchers to get into the cultural mind-set of different traditions? Even it is possible to reach some answers on what may be

acceptable, how do we know whether this would be desirable? How do we know whether advocating 'best practice' and undermining traditional practices may end up legitimating deeply flawed regimes? These are the kind of questions that will be posed by this paper.

Trevor Jones (Cardiff): Follow the Policy? Studying cross national mobility in security and justice

The notion of 'policy transfer' has arguably been rather marginal to criminological analyses of cross-national comparative justice and security policies. In addition, policy transfer studies by political scientists have been subjected to rigorous conceptual and methodological criticism by 'critical policy studies' scholars such as Jamie Peck. They argue that political science approaches are underpinned by positivist rational choice assumptions, and deploy a simplistic (and sometimes prescriptive) notion of 'policy'. Critical policy studies scholars propose interpretivist research strategies (including narrative analysis, discursive deconstruction and multi-site ethnographies) in order to access the complex and shifting mix of elements that make up 'policy assemblages'. This paper has two main aims. First, to propose that studies of cross national policy flows – alongside grand sociological narratives and comparative political economy approaches - can provide an important additional contribution to our understanding of the local, national and global influences over justice and security policy. Second, to reflect on methodological debates regarding the most appropriate ways of operationalizing notions of 'policy' for empirical study, and the kinds of methods that are appropriate for exploring the nature, causes and consequences of cross national policy flows.

Lesley McAra: Responding to youth offending: politics, culture and institutional performance

There is a growing body of research which claims that youth crime is 'dropping' across most western jurisdictions. My paper makes the counterclaim that youthful law breaking has diminished neither in volume nor seriousness but rather its situational context has changed, with illegal online behaviour displacing street-based rule breaking for many young people. In making this counterclaim, the paper interrogates the cultural construction of cross-national data on youth crime and what it does (and does not) tell us about institutional performance and the politics of youth justice. It also explores the implications of the displacement effect for understanding 'what works' in reducing youth offending.

David Nelken (King's College London): Transnational social prescriptions and 'junk comparisons'

Increasingly, transnational or 'global' social indicators form part of ranking schemes that set out to compare and contrast the performance of different countries (or other units) in respect for the rule of law, levels of corruption, the handling of human trafficking and many other matters relevant to good practice in criminal justice.

In this paper I will reflect on the role of comparison in making and using such indicators. I shall first explain the functions and common criticisms of such indicators and the way they link comparison and evaluation. I will then go on to explain how they rely on what I call 'junk comparison' and why these are not the same as rubbish comparisons.

Nick Tilley, UCL: Units of comparison and units of prescription: the case of situational crime prevention

This contribution relates to the 'is' and the 'ought' of situational crime prevention and the connection between them. The 'is' here refers to the consequences of situational crime prevention. The 'ought' refers to principles in applying situational crime prevention measures. The connection refers to the nature of any contribution the 'is' can make to the 'ought'. The methodological issue relates to the selection of units of comparative analysis for both the 'is' and the 'ought'. The (expected) arguments will be a) that middle range theory tested through comparative analysis focused on distinct signatures that speak to mechanism and relevant contextual variation is the way to crack the 'is' questions, b) that the consensus within a theoretically specified 'ideal speech situation' or under a 'veil of ignorance' would coalesce around a preference for what has come to be termed 'elegant' security, and c) that tested middle range theory can contribute findings relevant to some elements of 'elegance' in security, but not all.

Ali Wardak (University of South Wales)

Land Disputes, Justice and Dispute Resolution in Jalalabad City, Afghanistan

This paper, which is based on field data collected between 2012 and 14, focuses on land disputes and dispute resolution in Jalalabad city – an important commercial and political centre in eastern Afghanistan. After providing a descriptive account of the nature, complexity and levels of land disputes, and their resolution within various state and non-state justice systems in Jalalabad, the paper examines the failure of these justice providers to deal with land disputes effectively. In the light of the field data, this paper proposes a 'Jalalabad Community Conversation Forum' comprising of key state and non-state stakeholders that is capable to address and resolve large-scale land disputes in the city in effective and participatory ways. Furthermore for the resolution of small land/property disputes, the paper proposes 'Hybrid Model for the Resolution of Local Land Disputes in Jalalabad' that is inclusive of women and in line with current Afghan laws, human rights and Islamic principle. It is argued, in the paper, that land disputes in war-torn Afghanistan are too complex to be dealt with by the state's justice system alone; they need complex and multi-dimensional solutions, which may provide lessons to other post-conflict countries that emerge from the ashes of war.

12 June 2017: Workshop on Transnational Criminal Justice and International Institutions: The Law and Politics of Building and Dismantling Transnational Cooperation

_Panel 1 - Building Transnational Criminal Justice: The Theoretical and Practical Basis for Institutional Design

EU Criminal Justice – Solid Foundations? (tentative title/panel, tbc)

- Prof Estella Baker (Leicester de Montford University)

EU enforcement agencies, human trafficking and illegal migration (tentative title, tbc)

- Prof Ryszard Piotrowicz (Aberystwyth University)

Building an effective control of 'financial crime'? The role of criminal law, public-private cooperation, and transnational cooperation

- Prof Mike Levi (Cardiff University)

From Cooperation to Coordination: Challenges Facing the EU and national enforcement agencies in combatting transnational environmental crime (tentative title, tbc)

- Mr Roel Willekens (EnviCrimeNet (EU) and Dutch Police)

Panel 2 - From Fragmentation to the Dismantling of Transnational Criminal Justice?

EU Criminal Law after Brexit (tentative title, tbc)

- Prof Valsamis Mitsilegas (Queen Mary, University of London)

Opting in or opting out? The EU's variable geometry in matters of criminal law cooperation

- Dr Annegret Engel (Cardiff University)

National legal traditions and EU Criminal Justice

- Prof Renaud Colson (University of Nantes) and Prof Stewart Field (Cardiff University)

5. European Law and Governance research collaboration

Public lecture:

8 March 2017: Carl Baudenbacher, President of the EFTA Court,

"Through the looking glass: bespoke(?) Brexit solutions"

6. Socio-Legal Video Conversation Series

CLS has been working to establish a video archive of conversations with leading UK and international scholars. In the last year, the following conversations were conducted by members and associates of the Centre:

Phil Thomas (with J. Priban); Mavis Maclean (with G. Douglas); Roger Cotterrell (with J. Priban); Upendra Baxi (with J. Harrington); David Sugarman (with C. Boukalas)