



TRINITY COLLEGE DUBLIN LAW STUDENT COLLOQUIUM

School of Law, Trinity College Dublin
Graduate's Memorial Building

TRINITY
Long
Room
HUB Arts & Humanities
Research Institute

Saturday, 3rd February 2018
Trinity College Dublin, The University of Dublin

Kindly sponsored by:

ARTHUR COX

trinitycollegelawreview.org/colloquium

A Note of Welcome from the Head of the Law School

Welcome to the tenth annual Trinity College Dublin Law Student Colloquium. The word ‘colloquium’ suggests talking together. Today’s event recognises the important work we do simply through talking together, discussing our ideas, challenging the perspectives of others and – more importantly – our own. It is our privilege to welcome Mr Justice Collins to Trinity and to learn from him today. The School is hugely grateful to Arthur Cox for supporting the event: without their generosity, none of this could happen. Likewise, the organisers of the Colloquium and the Board of the Trinity College Law Review: they have selflessly been working all year to ensure the success of these ventures. Above all though, I want to thank those who will be presenting papers. It is their willingness to test their ideas in public that enriches our understanding of the law.

Dr Oran Doyle
Head of the Law School
Trinity College Dublin



A Note of Welcome from the Convenor

Welcome to Trinity College Dublin and to the tenth annual Trinity College Dublin Law Student Colloquium. We are proud of our conference, which gives undergraduate and postgraduate law students, young practitioners and early-career researchers an opportunity to present their research to their peers. This year's Colloquium brings together speakers from Ireland, The Netherlands, Sweden and the UK. We hope that you will find the exchange of ideas inspiring, and that everyone will benefit from the great variety of legal topics presented today.

Speakers will present papers on Civil Procedure and Civil Justice, EU Law, Human Rights, International Law, Legal Theory, Private Law and Technology and the Law. Experts in the relevant fields will chair these panels, and we are hugely grateful to them for volunteering their time today. Most chairs are members of our own Law School, and, on behalf of the Committee, I would like to thank them for their wholehearted support.

For the third time, the Organising Committee of the Colloquium has cooperated with the Editorial Board of the *Trinity College Law Review* in the hope that papers presented will be published therein. Moreover, the winner of the Best Paper Prize—as selected by myself and Editor-in-Chief of the *Law Review*, will be published in the Volume XXI thereof.

The keynote event of this year's Colloquium is the Seventh Annual Brian Lenihan Memorial Address. We are delighted that the Judge Anthony M Collins of the General Court of the CJEU has agreed to deliver this address. He will speak on the most timely topic of "EU Law in Ireland Post-Brexit." This event is in honour of Brian Lenihan SC TD, one of our Law School's most distinguished graduates, who sadly passed away in 2011. We have organised this event in cooperation with the Law School and the Trinity Development & Alumni Office. We warmly invite all those who are participating in the Colloquium to join numerous alumni in attending this very special event, which will be chaired by Noel Whelan, a prominent barrister, author, political analyst and friend of Brian Lenihan.

Without the support of the Law School and the generosity of our sponsors and Friends this conference would not be possible. In particular, we are immensely grateful to our new sponros, Arthur Cox, for their support at a time of financial need. We would also like to thank Dr Doyle for presiding over the Colloquium. Last but not least, I extend a very special thanks to the Organising Committee for all of their hard work, their dedication to this conference, and their generosity of spirit.

We hope that you will enjoy the Colloquium.

Dáire McCormack George
Convenor
TCD Law Student Colloquium
Trinity College Dublin, The University of Dublin



Outline Programme

9:30 - 10:00	Registration in the Trinity Long Room Hub
10:00 - 10:15	Welcome Announcement of the Winner of the Best Colloquium Paper Prize Neill Lecture Theatre, 2nd Floor, Trinity Long Room Hub
10:15 - 12:00	Session 1
	<p>Private Law Galbraith Seminar Room, 2nd Floor, Trinity Long Room Hub Chairperson: Dr Desmond Ryan, Trinity College Dublin, The University of Dublin</p> <ul style="list-style-type: none"> – Christopher McMahon, Trinity College Dublin, The University of Dublin – “Statutory Reform, Judicial Interpretation and Libel Tourism – A Ticket from London to Dublin?” – Rebecca Ross, Trinity College Dublin, The University of Dublin - “Amazon Go: Contract Gone Digital or A New Frontier?” – Federica Giordano, University of Oxford – “Uber Service; A New Liability Challenge for European Contract Law” – Gregory Stockton, University College London - "Enrichment 'At The Expense of' The Claimant in 'The Supreme Court: Redefining the Rules of Unjust Enrichment'"
	<p>EU Law Neill Lecture Theatre, 2nd Floor, Trinity Long Room Hub Chairperson: Professor Mark Bell, Trinity College Dublin, The University of Dublin</p> <ul style="list-style-type: none"> – Georg Gutfleisch, Trinity College Dublin, The University of Dublin – “Crowdfunding and Virtual Currencies as Innovative Business Financing Models Under the European Legal Framework (Opportunities and Challenges for Businesses)” – Claudia Pellegrino, University of Southampton – “The Balancing of Anti-Competitive and Pro-Competitive Effects Is Conducted Exclusively Within the Framework Laid Down by Article 101(3): To What Extent Does and Should The CJEU Depart From This Rule?” – Christine Yurechko, Vrije Universiteit Amsterdam- "Outsourced: The European Union's Reliance on External Actors in The Fight Against Jihadi Terrorism" – Chen Chen, University of Oxford – “Constitutional Pluralism: A Dangerous State of Affairs” – Malin Nettetstad, Uppsala University - "The McTax Deal – The Relationship Between Fiscal State Aid and Tax Treaties"
	<p>Human Rights Room 02A, Ground Floor, School of Law, House 39 Chairperson: To be announced</p> <ul style="list-style-type: none"> – Stevie Martin, University of Cambridge – “Assisted Suicide and the European Convention on Human Rights: A Critical Analysis of the English Case Law" – Alexander Maine, Northumbria University – “Same Sex Marriage and the Homonormative and Homoradical Legal Identities: Final Empirical Findings” – Tara Casey, University College Dublin - "An International Solution for an International Problem? Framing Domestic Violence as an International Human Rights Violation" – Seán Finan, Trinity College Dublin, The University of Dublin - "A Good, Round Number: Ireland,

	<p>Embryos and the 14-Day Rule"</p> <ul style="list-style-type: none"> – Sahar Ahmed, Trinity College Dublin, The University of Dublin - "The Right to Freedom of Religion in Europe: Contemporary Understanding and Challenges" – Dr Tanya Herring, Bangor University – “The Responsibility to Prevent Statelessness, Forced Migration and Human Trafficking" – Noemi Magugliani, National University of Ireland, Galway - "Human Trafficking for the Purpose of Labour Exploitation in the Context of Large Movements of People: Applicable Human Rights Standards and the Primacy of Human Rights”
12:00 - 13:00	Lunch in the Hoey Ideas Space, Trinity Long Room Hub
13:00 - 14:45	<p>Session 2</p> <p>Legal Theory Galbraith Seminar Room, 2nd Floor, Trinity Long Room Hub</p> <p>Chairperson: Dr Brian Flanagan, Maynooth University</p> <ul style="list-style-type: none"> – Michael Foran, University of Cambridge – “Civilising The Savage: Human Rights, Multiculturalism, and Law" – Philip Gavin, Trinity College Dublin, The University of Dublin – “Linguistic Relativity and the Comparative Formulation of Criminal Sanction” – Marat Shardingaliev, University of Reading – “Implicatures in Judicial Opinion” – Alastair Richardson, Trinity College Dublin, The University of Dublin, "Justifying the Horizontal Application of Constitutional Rights"
	<p>Technology and the Law Neill Lecture Theatre, 2nd Floor, Trinity Long Room Hub</p> <p>Chairperson: Dr Anelka Philips, Trinity College Dublin, The University of Dublin</p> <ul style="list-style-type: none"> – Ciara Hurley, University of Oxford - “Sharing Isn't Caring: Legal Issues Surrounding Children's Images on Social Media” – Jelena Gligorijevic, University of Cambridge – “Children's Privacy: The Role of Parental Control and Consent"
14:45 - 15:15	Coffee Break in the Hoey Ideas Space, Trinity Long Room Hub
15:15 – 17:00	<p>Session 3</p> <p>Civil Procedure and Civil Justice Galbraith Seminar Room, 2nd Floor, Trinity Long Room Hub</p> <p>Chairperson: Mr Declan McGrath SC</p> <ul style="list-style-type: none"> – Roisin A Costello, Trinity College Dublin, The University of Dublin – “Third Party Funding and the First Amendment” – Romy Higgins, Trinity College Dublin, The University of Dublin – “Mediation: the Established Practice, the New Legislation and the Potential for Enhancing Legal Services” – Liam Evans, University of Cambridge – “Access to Justice or Inaccessible Justice? The Impact of Austerity Reforms on the Economically and Regionally Disadvantaged” – Juilana Sirotsky Soria, Trinity College Dublin, The University of Dublin "Third Party Arbitration Funding

	in England and Ireland; An Overview"
	<p>International Law Neill Lecture Theatre, 2nd Floor, Trinity Long Room Hub Chairperson: To be announced</p> <ul style="list-style-type: none"> – Anamika Misra, University of Kent – “International Humanitarian Law and The Environmental Impact of War and Militarisation” – Rolandon Seijas Bolinaga, University of Cambridge "Fundamental Rights and Referendums" – Eirini Kikarea, University of Cambridge - "The Implications of a Member State's Withdrawal from the European Union for International Trade Agreements"
17:30 – 18:30	<p>Brian Lenihan Memorial Address in Debating Chamber, Graduates' Memorial Building Chairperson: Noel Whelan Keynote Speaker: Judge Anthony M Collins SC, Chamber President of the General Court of the CJEU</p>
18:30	Reception in the Philosophical Society Conversation Room, Graduates' Memorial Building

Private Law

CHAIRPERSON: DR DESMOND RYAN

Christopher McMahon, Trinity College Dublin, The University of Dublin

"Statutory Reform, Judicial Interpretation and Libel Tourism - A Ticket from London to Dublin?"

Traditionally, very little differentiated the tort law of defamation in UK and Irish common law. However, the statutorification of defamation law is pushing the law in these jurisdictions in markedly different directions. This comparative analysis of the newly statutorified regimes seeks to examine the extent of the emerging differences between these jurisdictions. The paper will examine the possibility that this divergence may have an impact on a purported 'European consensus' on the law in this area, how provisions in the English legislation aimed to limit 'libel tourism' may lead to Ireland taking up the mantle of the UK as an international centre for defamation actions, and the potential implications in Ireland regarding the Irish Constitution and the ECHR.

Rebecca Ross, Trinity College Dublin, The University of Dublin

"Amazon Go: Contract Gone Digital or A New Frontier"

This paper presents an examination of the contractual consequences relating to the purchase and sale of goods under the prototype, grocery retailer known as Amazon Go; specifically referring to Amazon Go's 'beta' location in Seattle. Despite the radical change proposed by Amazon in the form of its first ever convenience store, this paper illustrates how this method of purchasing will, and does, confirm to major, contractual principles already established. A hypothetical Irish equivalent to the beta store demonstrates how such a system would conform to Irish contract law and comparisons between the 'online shopping' facilities already provided by Amazon will also be examined to establish any parity between this new system and the already established rules of electronic contracts.

Federica Giordano, Oxford University

"Uber service: a new liability challenge for European contract law"

Uber, as a digital platform for the provision of transportation services, is unique in its intrusive approach to the transactions it facilitates, matching supply and demand and determining the nature of the good or service provided by its users. Nevertheless, Uber defines itself as a mere facilitator, maintaining that it does not provide transportation services and denies any liability for risks arising out of the rider's use of the platform or of any service or goods requested in connection therewith. This paper examines whether a claim for the existence of a contract between Uber and the rider is valid under traditional doctrines of contract law focusing on the English and Italian legal systems and explores the accuracy of the assumption that Italian law appears to enforce a much wider range of promises (either expressed or implied).

Gregory Stockton, University College London

"Enrichment 'at the expense of' the Claimant in the Supreme Court: Redefining the Rules of Unjust Enrichment"

To establish a prima facie claim in unjust enrichment, a claimant must prove that the defendant's enrichment is 'at the expense of' the claimant. Following the single judgment of the Supreme Court in the recent case of *Investment Trust Companies v Revenue and Customs Commissioners*, the meaning of this term has seemingly been clarified. Commentators have warmly welcomed the Supreme Court's decision. However, this paper submits that, rather than clarifying the test to determine if a defendant's enrichment is at a claimant's expense, the Supreme Court has simply replaced one vague test with another. It submits that it is unclear to what extent there will be any scope for departing from the general rule laid down by the Supreme Court and endorses the alternative approach of Morritt LJ in *Kleinwort Benson Ltd v Birmingham City Council*.

EU Law

CHAIRPERSON: PROFESSOR MARK BELL

Georg Gutfleisch, Trinity College Dublin, The University of Dublin

“Crowdfunding and Virtual Currencies as Innovative Business Financing Models under the European Legal Framework (Opportunities and Challenges for Businesses)”

Alternative and innovative forms of business financing are gaining rapidly increasing popularity among SMEs, especially start-ups. Access to alternative forms of financing is essential to secure SMEs’ continued growth and success. Such concepts are also vital for the promotion of entrepreneurship and innovation in a global economy. The importance of crowdfunding and virtual currencies for the economic growth in Europe has been duly acknowledged by the European legislator. However, despite regulations applicable to crowdfunding and Initial Coin Offerings, European policy actions have not yet been implemented. This paper focuses on the legal concepts of crowdfunding and virtual currencies as alternative business financing tools on a European level.

Christine Yurechko, Vrije Universiteit Amsterdam

“Outsourced: The European Union’s Reliance on External Actors in the Fight Against Jihadi Terrorism”

Faced with the pressure to stop terrorism in Europe, the EU created the European Counter Terrorism Center in 2016, and passed a new Directive on combatting terrorism in 2017. This paper argues that individual Member States have gone beyond the EU measures into uncharted legal territory, skirting European due process protections without any measurable increase in security. It argues that new measures being implemented by Member States which place the burden of countering the Jihadi terrorist threat on other actors should be replaced by measures that adequately enable the member states to address these new threats themselves, by measures designed with respect for the principles of social cohesion, effectively reducing jihadi terrorism in an efficient and politically feasible way.

Chen Chen, University of Oxford

“Constitutional Pluralism: A Dangerous State of Affairs”

Constitutional pluralism is an increasingly popular answer to EU law’s supremacy debate. This paper argues that this is not only a flawed depiction EU law’s nature and its relationship with Member States’ national law, but that it can lead to the perpetuation of a dangerous state of affairs where the Member States’ national courts can unilaterally decide to risk European integration. Constitutional pluralism masks the range of incentives governing the CJEU and national courts, in particular the incentives to ignore the supremacy debate in order to further objectives unconnected to assertions of sovereignty. This paper argues that competing supremacy claims cannot coexist within the European legal order in the ways envisaged by constitutional pluralism. But that, given their importance in protecting the range of values brought forward in case-law, efforts should be made to secure their entrenchment in treaties and Member State constitutions.

Malin Nettestad, Uppsala University

“The McTax Deal - The Relationship between Fiscal State Aid and Tax Treaties”

In recent years, tax competition and the question of how much tax should be paid in which country has gained much debate in Europe. The question of fair competition between multinational and domestic companies was recently highlighted by European Commission decisions. These decisions also emphasize the distinction between fiscal sovereignty and Union competition law. This paper outlines the relationship between state aid and double tax treaties and evaluates whether OECD tax norms can influence EU law. By using a European legal method, it evaluates the applicability of state aid and double tax treaties against case law from the CJEU and state aid investigations. In order to illustrate the current direction of fiscal state aid and international tax law, the Commission’s investigation of McDonald’s tax rulings and recent transfer pricing decisions are examined.



Claudia Pellegrino, University of Southampton

“The balancing of anticompetitive and pro-competitive effects is conducted exclusively within the framework laid down by Article 101(3). To what extent does and should the CJEU depart from this rule?”

Prompted by the recent case of *API*, which brought the *Wouters* case law back to life, this dissertation addresses the extent to which the CJEU has and should depart from paragraph 11 of the Commission Guidelines 2004, which compels the Court to balance pro-competitive effects of regulations only within Article 101(3) and not within Article 101(1). This examination is located

within the modern framework of competition law where economic theory plays an increasingly important role. An economic analysis is used to show how the pro-competitive effects of the regulations at stake have an economic value and cannot be considered public benefits, which are generally considered under 101(1). The consequences of extending the *Wouters* test to a wider range of regulations is then addressed, including a discussion on whether there should be a balancing exercise under 101(1) and a re-drafting of paragraphs 11, 17 and 18 of the 2004 Guidelines.



Legal Theory

CHAIRPERSON: DR BRIAN FLANAGAN

Michael Foran, University of Cambridge

“Civilising the Savage: Human Rights, Multiculturalism, and Law”

International law can never be seen as purely a political enterprise. This paper aims to supplement this simplistic view of international law by analysing the adoption of normativity and discourse in the spreading of cultural values. It examines how these social phenomena interrelate to produce a global system of ontology and epistemology that shapes western culture. It will explore the relationship between law and culture and focuses on the human rights and multiculturalism movements. These global movements will be viewed through the conceptual lens of the civilization/kultur debate in order to present a clear analysis of the question of cultural rights.

Philip Gavin, Trinity College Dublin, The University of Dublin

“Linguistic Relativity and the Comparative Formulation of Criminal Sanction”

The principle of linguistic relativity states that our perception of the world is influenced by the language we speak. Through the unique linguistic structures of each language, a speaker may have innate preconceptions towards various abstract concepts, including law. Law is ultimately founded on communicability and where these disparate linguistic preconceptions exist, the laws in these jurisdictions may equally deviate. This paper compares and contrasts the linguistic structure of criminal law found in English-speaking and German-speaking jurisdictions respectively. It focusses on academic commentary and demonstrates how language influences not only the substantive formulation of crime, but also judicial response to crime.

Marat Shardimgaliev, University of Reading

“Implicatures in judicial opinions”

Legal philosophy has turned increasingly to philosophy of language to develop methods of legal interpretation. This paper focuses on the application of Grice’s pragmatic ‘implicature’ theory to judicial decisions. It examines and ultimately discredits Marmor and Hunt’s arguments against the presence of implicatures in judicial opinions. It provides empirical evidence of implicatures in judicial opinions by giving examples of their presence in different opinions, from different legal systems, written at different times, by different judges. Thus, this paper demonstrates that implicatures are a ubiquitous phenomenon in judicial opinions. Consequently, it provides strong evidence for the claim that the communication of judicial opinions is cooperative, contrary to the theories of Marmor and Hunt.

Alastair Richardson, Trinity College Dublin, The University of Dublin

“Justifying the Horizontal Application of Constitutional Rights”

This paper explores the horizontal application of constitutional rights in Ireland and the US. It discusses the reasons for the state action doctrine in the US, where constitutional rights only bind the state and then considers why constitutional rights are applied horizontally in Ireland. It argues that *Byrne v Ireland* does not establish a sound theoretical basis for horizontality in Ireland. Raz’s theory that rights are justified, not solely by protecting the interest of the individual right-holder, but by the interests of the common good, is presented as a sounder basis for justifying the horizontal application of rights. The paper concludes by presenting reasons for the divergence of approaches in Ireland and the US.



Human Rights

CHAIRPERSON: TO BE ANNOUNCED

Stevie Martin, University of Cambridge

“Assisted Suicide and the European Convention on Human Rights: A Critical Analysis of the English Case-Law”

The Divisional High Court’s recent dismissal of Noel Conway’s challenge to the compatibility of the blanket ban on assisted suicide in England and Wales with the right to private life enshrined in Article 8 of the ECHR, together with the stirrings of legislative change in Australia and New Zealand, render it a propitious time to re-examine the human rights implications of s.2(1) of the Suicide Act 1961. This paper critically examines the *Conway* decision, drawing on Canadian case law in the process. It analyses the consequences of the decision beyond the human rights context and explores the court’s approach to S4 of the Human Rights Act 1998, suggesting such an approach was erroneous and should be avoided in future cases.

Alexander Maine, Northumbria University

“Same-Sex Marriage and the Homonormative and Homoradical Legal Identities: Final Empirical Findings”

This paper delves into the impact of the Marriage (Same-Sex Couples) Act 2013 on sexual identity and practices, utilising socio-legal empirical data analysed from a queer theoretical standpoint. It compares England, Wales and Ireland’s legislative journey to marriage equality and, using qualitative data from interviews with LGBTQ people, it examines the impact of the same-sex marriage legislation on the construction of the sexual hierarchy. The homonormative and homoradical identities will be constructed within this research, with the homonormative existing as an extension of heteronormativity validated by the extension of same-sex marriage, while the homoradical exists as a newly constructed identity. This investigation allows for discussion of the future of relationship recognition and the ways in which the law reacts to, regulates, and interacts with sexuality.

Tara Casey, University College Dublin

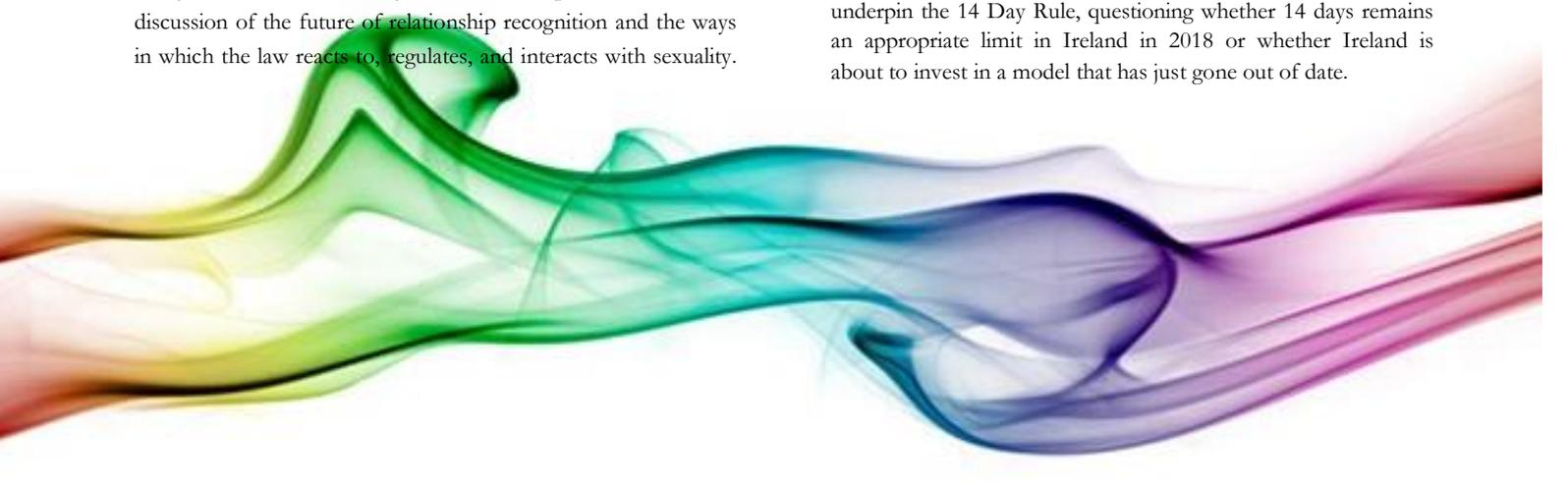
“An International Solution for an International Problem? Framing Domestic Violence as an International Human Rights Violation”

Domestic violence crosses all borders, races, cultures and religions. This paper discusses its recognition as an international human rights violation. It explores the unique nature of international human rights law and litigation and the importance of international advocacy in empowering victims to take action, legal or otherwise, against their abusers. The main focus is the Inter-American and European systems of human rights protection, examining case law before tribunals in both systems, regional treaties developed and the influence of the regional systems’ laws on domestic legislation and policy. A long-term international goal for domestic violence advocates is proposed and it is argued that, despite the issues and imperfections surrounding international human rights litigation, these advocates should not underestimate its potential for bringing about change in national law and attitudes towards the problem of domestic violence.

Seán Finan, Trinity College Dublin, The University of Dublin

“A Good, Round Number: Ireland, Embryos and the 14-Day Rule”

The General Scheme of the Assisted Human Reproduction Bill 2017 prohibits an embryo being maintained in vitro beyond the fourteenth day after fertilisation. By instituting this rule, Ireland would be investing in a popular model. Since the “14 Day Rule” first appeared in the 1984 Warnock Report, it has been enshrined in hard law and soft regulation across the world. However, two recent scientific developments have provoked calls for the rule to be revisited and reconsidered. It is into these recently muddied waters that the new Bill is being launched. This paper will examine the ethical, scientific and policy considerations that underpin the 14 Day Rule, questioning whether 14 days remains an appropriate limit in Ireland in 2018 or whether Ireland is about to invest in a model that has just gone out of date.



Sahar Ahmed, Trinity College Dublin, The University of Dublin

"The Right to Freedom of Religion in Europe: Contemporary Understanding and Challenges"

Whilst there are many international instruments that cover the right to freedom of thought, conscience and religion, the most substantive regional instruments have arguably come from Europe. This paper focuses specifically on the ECHR, Article 9 of which has led to the European Court of Human Rights' extensively secular jurisprudence on the right to freedom of religion. It argues that the difficulty in developing this jurisprudence was partly caused by a lack of comprehension of modern conceptions of religion. The court's assumption being, that to truly uphold this "freedom" the law itself must be "free" from religion. Focusing on cases brought by Muslim women, the paper hypothesizes that it is this secular disconnect that causes a rift between the freedom that courts believe they are upholding and the freedom individuals demand.

Noemi Magugliani, National University of Ireland, Galway

"Human trafficking for the purpose of labour exploitation in the context of large movements of people: Applicable international human rights standards and the primacy of human rights"

Interpreting human trafficking not only as a crime *sui generis*, but also and primarily as a human rights violation, this paper looks at the human rights framework - particularly the International Labour Organisation's protection instruments and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families - and analyses the applicable standards of selected rights. The UNHCR has recognised and stressed the concept of primacy of human rights, according to which human rights 'must be at the centre of all efforts to prevent and combat trafficking' (UNHCR), as well as to assist victims. However, it is argued that current anti-trafficking policies are increasingly being implemented on the basis of an approach which is in clear contrast with the concept of primacy of human rights.

Dr. Tanya Herring, Bangor University Law School

"The Responsibility to Prevent: Statelessness, Forced-Migration and Human Trafficking"

This paper responds to the UN High Commissioner for Refugees and the UN Convention on the Rights of the Child Executive Committee's call to civil society and academia to research the large and troubling holes in the collective knowledge of the global forced migration and related statelessness phenomena. It investigates the nexus between forced migration, statelessness and human trafficking, and examines the obligations of state actions under the preventive pillar of the responsibility to prevent the aforementioned phenomena, and the legal effects of sources of international law. It focuses on stateless Rohingya children as a single, critical case study. It further examines if the UN concept of "legal empowerment" can serve as an intervention mechanism when one group has multiple protection needs, which the state fails to protect.



Technology and the Law

CHAIRPERSON: DR ANDELKA PHILIPS

Ciara Hurley, University of Oxford

“Sharing Isn't Caring: Legal Issues Surrounding Children's Images on Social Media”

Facebook is the most successful social networking site, boasting over a billion users and claiming to have hosted over 250 billion photographs in 2015, with a daily upload rate of 350 million. Today's children are the first to grow up in this environment, an experience which may begin before they are born. The effects of parents continuously photographing and sharing images of children on social media are presently unknown. This paper explores the ways in which this practice engages the child's rights and how it could lead to future harms. It examines how existing law could be used to tackle the issue and the proposed effects of The General Data Protection Regulation 2016 which comes into effect this year.

Jelena Gligorijevic, University of Cambridge

“Children's Privacy: the role of parental control and consent”

Protecting children's informational privacy has never been more difficult. To what extent does it depend upon parental control and consent, and how is this factor incorporated into the law seeking to protect children's informational privacy? This paper addresses these questions, considering the relevant jurisprudence of English courts under the tort of misuse of private information, and the relevant jurisprudence of the European Court of Human Rights under Article 8 of the European Convention on Human Rights. This paper argues that, despite normative arguments to the contrary, the jurisprudence of both courts' informational privacy cases reveals a doctrine that prioritises parental control and consent, above the harm of intrusion to the child. This risks laying a legal terrain that does not accommodate the protection and vindication of children's informational privacy rights when they conflict with the wishes of, or are not actively protected by, that child's parents.

Keri Grieman, Queen Mary University of London

“Hard Drive Crash: An Examination of Liability for Self-Driving Vehicles”

This paper argues the insufficiency of current models of liability for addressing the potential of fully automated self-driving vehicles. While attempting to regulate technologies before their saturation in the market is typically either impossible or barrier-creating, self-driving vehicles represent a unique field of potential whose prospective advantages diminish with an ex-post approach to legislation. This paper argues that by addressing self-driving vehicles through public policy and legislation, governments may not only reap the potential benefits of such vehicles early, but may even foster substantial side benefits: reduction of cars on the road, an increase in sustainable practices, and greater co-operation between vehicle manufacturers.

Edoardo Celeste, University College Dublin

“The Irish Constitution and the Challenges of the Digital Age. Is It Time for a Bunreacht na hÉireann 2.0?”

The last twenty years have witnessed the advent of an era of ceaseless technological progress. The eightieth anniversary of the Irish Constitution represents a good opportunity to operate a 'health check' to test the resilience of the Irish fundamental law vis-à-vis the challenges of the digital age. This paper identifies principles that currently play a critical role in facing the challenges of the digital age and discusses their absence from the text of the Bunreacht. As a therapy against potential degeneration of the Constitution, the paper proposes normative arguments supporting the incorporation of these new constitutional principles in a Bunreacht na hÉireann 2.0.



Civil Procedure and Civil Justice

CHAIRPERSON: MR DECLAN MCGRATH SC

Roisin A Costello, Trinity College Dublin, The University of Dublin

“Third Party Funding and the First Amendment”

This paper will briefly sketch the interactions of privacy and freedom of speech presented in the 2016 case of *Bollea v Gawker Media* before continuing to examine the impacts of third party involvement in funding cases and the justifications historically proffered for the doctrines of champerty and maintenance. After discussing the principles of US case law, the paper proposes that these doctrines, which seek to prevent a third party from providing maintenance or support for a litigation without “just cause”, offer a means by which to assert an appropriate balance between the public interest in a free and diverse press against the potential for private or corporate third party intervention.

Romy Higgins, Trinity College Dublin, The University of Dublin

“Mediation: the Established Practice, the New Legislation and the Potential for Enhancing Legal Services”

This paper looks to analyse some of the provisions of Ireland’s yet to be enacted Mediation Act, comparing and contrasting the reach of the act to that of similar models of mediation seen abroad, focusing on the examples of Australia and the US. It seeks to highlight how mediation can be beneficial to legal practice, referring to similar academic analysis suggesting the act will produce a demand for solicitors who are also qualified mediators. It also examines areas where mediation can find substantial ground to combat cases which add to the backlog in the courts, such as workplace disputes, family law cases and nuisance disputes. The paper engages with leading figures in Irish mediation practice to observe how it works in practice and whether the industry foresees close linkage between mediators and solicitors following from the forthcoming enactment.

Liam Evans, University of Cambridge

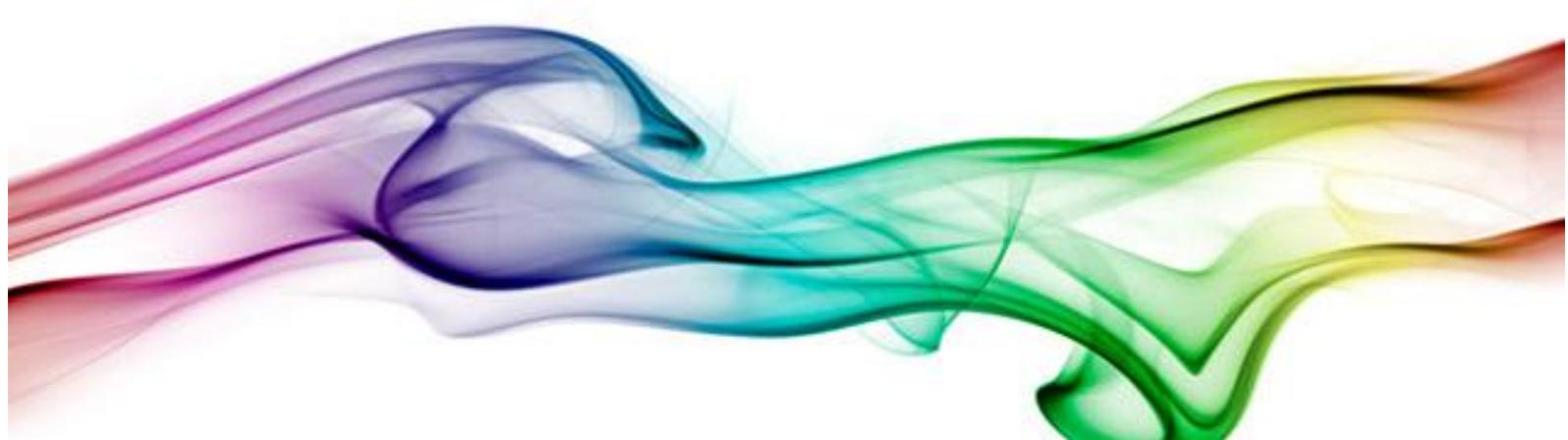
“Access to Justice or Inaccessible Justice? The Impact of Austerity Reforms on the Economically and Regionally Disadvantaged”

The focus of this paper is the restriction of legal aid funding as a UK austerity measure and the impact it has had on access to justice. Instead of the unsustainable, orthodox definition of “access to justice” as “access to the courts”, the paper will introduce and advocate the “holistic approach”. The “holistic approach” embraces the whole panoply of legal services available in the United Kingdom. This includes the not-for-profit sector, Citizens Advice Bureaus and Law Centres. To test the “holistic approach” the paper provides a case study of claimants in immigration cases and claimants in social welfare claims. The argument advanced is that access to justice would be improved if reforms understood and accommodated the needs of individual claimants. With this in mind the paper identifies inefficiencies, and areas where money may be saved and redirected in the current regime.

Juliana Sirotsky Soria, Trinity College Dublin, The University of Dublin

“Third party arbitration funding in England and Ireland: an overview”

Third party funding is where a third party with no prior connection to the arbitration agrees to finance all or part of the legal costs that one party will incur, in return for a fee payable from the proceeds recovered by the funded party. Such practice is increasingly prevalent globally. However, Ireland falls behind on that prominent issue due to a few particularities in its legal framework concerning litigation. This paper addresses the approaches to third party funding that have recently emerged, focusing on those of England and Ireland. It aims to shed light on the recent developments in the practice, especially the differences between England and Ireland and the main difficulties for its successful implementation.



International Law

CHAIRPERSON: TO BE ANNOUNCED

Anamika Misra, University of Kent

“International Humanitarian Law and the Environmental Impact of War and Militarisation.”

International humanitarian law aims to protect the environment during times of war, seen as an extension of civilian life itself. Yet, due to the changing nature of armed conflicts, application of international humanitarian law is becoming unfeasible, leaving large legislative gaps and rendering populations, states, and the biosphere endangered. Despite a consensus that human warfare has a detrimental impact on the environment, research in this area is lacking, and fragmented when present. This paper considers the impact of warfare and militarisation on the environment in Bosnia and Herzegovina, Syria, Iraq and the Marshall Islands in order to advocate for better research and policy making in this area and outline some regional and international measures that can be taken.

Rolando Seijas Bolinaga, University of Cambridge

“Fundamental Rights and Referendums”

Uruguay’s 1989 referendum vote not to prosecute members of the military responsible for Human Rights violations infringed the American Convention on Human Rights and restricted access to justice for many victims of the military dictatorship. However, referendums have also been used by consolidated democracies to answer questions of individual rights, such as whether there is a right for same-sex couples to get married. These votes are used both to define rights and to regulate and restrict them. Should we be rolling the dice with individual rights in electoral contests? Are there features we could avoid or incorporate in referendums to guarantee better protection for minorities and individual rights? These are pending questions, within democratic theory and constitutional law, which this paper seeks to address.

Eirini Kikarea, University of Cambridge

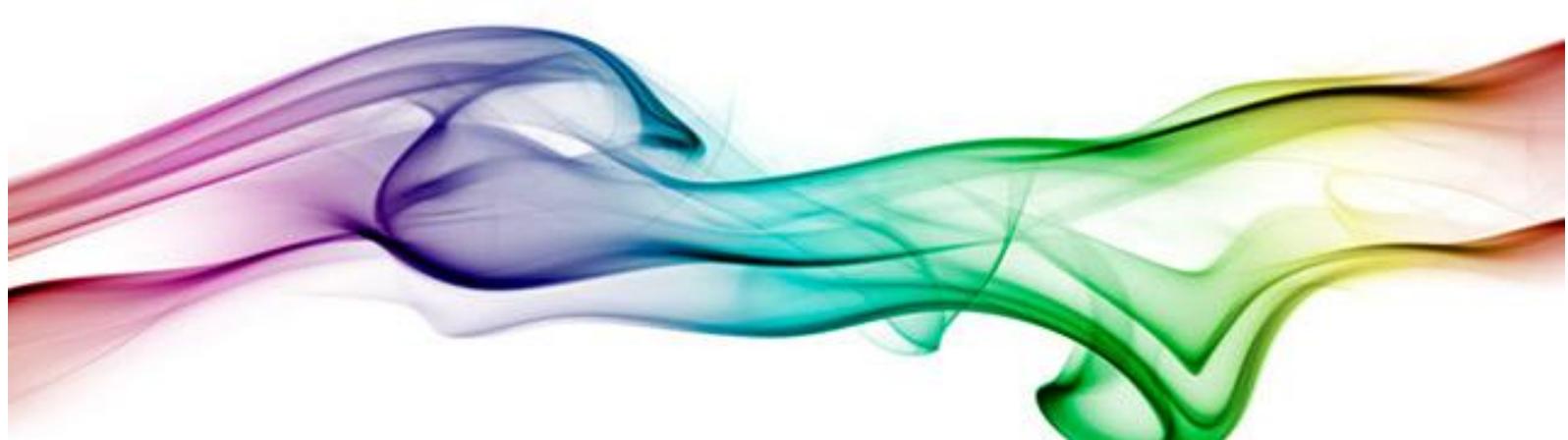
“The Implications of a Member State’s Withdrawal from the European Union for International Trade Agreements”

To date, academic research on the United Kingdom’s position in a post-Brexit world has been primarily focused on the relationship between the UK and the EU, pursuant to European rather than international law. However, as Crawford observed in 2016, international law is “all that remains” when Brexit happens. Prompted by Brexit, this paper explores one of the major debates currently in the centre of academic attention: the implications of an EU Member State’s withdrawal from the EU for international trade agreements. This paper seeks to offer guidance on the exiting Member State’s rights and obligations pursuant to these agreements, which in turn will shed light on its relationship with third states and international organisations. The paper explores these issues through the prism of public international law and, specifically, law of treaties and state succession rules.

Kateryna Gayevska and Micael Canavan, Trinity College Dublin, The University of Dublin

“The Law and Politics of Self-Determination”

Issues of self-determination, particularly secession, have been launched to the top of the European political agenda with the Catalan Crisis. Few can claim to know how the issue will be resolved - there is no clear legal process or political remedy. Hitherto, there has been limited interdisciplinary academic analysis of self-determination, secession and state formation, despite these issues being a mixture of both politics and law. In traditional academic literature, self-determination is treated as an almost singularly political issue while the law just sets the boundaries for political negotiation. However, there are now calls for a clearer legal component and a deliberative process in terms of constitutional arguments and instructional arrangements to be held alongside the political process. This paper presents an interdisciplinary, multistep approach for resolving the complex issues of self-determination.



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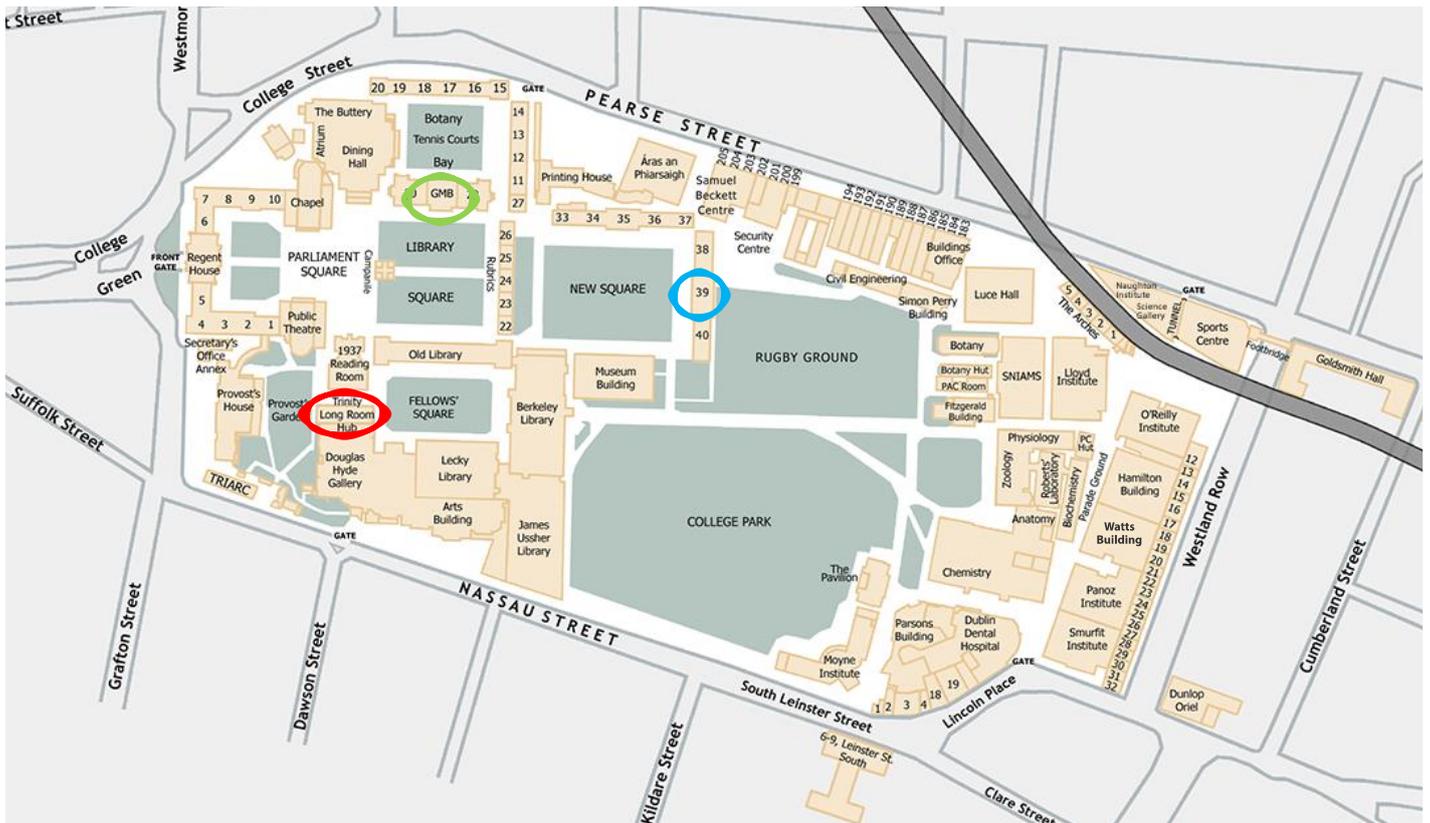
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