

ASSOCIATION FOR THE STUDY OF LAW, CULTURE AND THE HUMANITIES



Image of 'Beings' by clay sculptor, Mark Chatterley

BIRKBECK, UNIVERSITY OF LONDON

March 22 & 23, 2013

CONFERENCE PROGRAMME

Sculpting the Human: Law, Culture and Biopolitics

In recent times, diverse thinkers and artists including Foucault, Derrida, Esposito, Malabou, Braidotti, Coetzee, Agamben, Latour, Kentridge, Nancy, Butler and Brown have raised, or attempted to rearticulate, the question of the 'human'. The ASLCH meeting at Birkbeck, London, invites you to (re-)consider transformations in contemporary legal arrangements in light of emerging theoretical, cultural, economic, aesthetic, philosophical, and socio-political understandings or interrogations of the 'human'. Tapping diverse conceptualizations of the indeterminacy frequently associated with the human, conference participants are invited to engage contemporary analyses of humans, others and legal forms.

The question of the human is, in many ways, an age-old one. In other ways, however, it is peculiarly ours as we face current debates on what it is to qualify as human, in-human or animal life. These might include, but need not be limited to, discussions on: changing political cultures of disqualified lives; re-negotiating the subjects of postcolonial governance; understanding new forms of life politics and the associated determinations of life sciences; literary and artistic chronicles of intersecting orders and disorders; science fiction's utopian or dystopian futures; the use of warbot and drone technologies; geographies of beastly spaces; histories and ethnographies that highlight the ordering required to exact popular hierarchies; the reframed spirit of bodies; visions of who may be tortured, or locked away as inhuman; critical images of human and animal rights; deployed governmental homologies between beasts and sovereigns; biopolitical frames that prefigure subjects through statistics, demography, neuroscience but also via 'immunization', 'plasticity', and so on.

Law is a place where these orders, distinctions and divisions are frequently navigated, constituted, articulated, shared and enforced. The narratives, rights, justifications, punishments and neglect represented or contested through law intimate the legal codes by which humans and others are drawn into orders of the governed.

**Association for the Study of Law, Culture and the Humanities 16th Annual Conference,
March 22 and 23, 2013, Birkbeck Law School, University of London.**

**This conference was made possible by the generous support of the School of Law, Birkbeck,
University of London.**

**Special thanks are owed to the Executive Dean of the Law School, Professor Patricia Tuitt for her
unwavering support.**

**We would like to thank GlassHouse Books, Routledge for their generous support with the production
of the conference program packs.**

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PLENARY

CATHERINE MALABOU

From the Overman to the Posthuman: How Many Ends?

In this presentation, I will read and discuss Derrida's text *The Ends of Man (Margins Of Philosophy)*, and ask what remains of the notions of The Human, Humanity, and Humanism after deconstruction. To what extent are we still allowed to elaborate a notion of the "proper" of man? This will also be a reflection on Nietzsche and current biology.

Biography

Catherine Malabou studied in Paris at the renowned Sorbonne University. Professor Malabou wrote her dissertation on Georg Wilhelm Friedrich Hegel (1770-1831) under the direction of the critical French philosopher Jacques Derrida (1930-2004). She has taught at Nanterre University in Paris, in the United States at the University of California at Berkeley, in Buffalo as well as at the New School for Social Research in New York City. Today Dr. Malabou is a full-time professor at the Centre for Modern European Philosophy at Kingston University in the United Kingdom and is also a Professor at the European Graduate School (EGS) where she teaches an intensive summer seminar. Her work spans continental philosophy and neuroscience/neuro-psychoanalysis. She is a specialist of contemporary French and German philosophy. Her work has focused on the critical thought of Hegel and Martin Heidegger (1889-1976), and has developed novel concepts through her critical engagement with contemporary philosophers like Jacques Derrida.

SESSIONS AT A GLANCE

Conference Venue Details

Please note that all sessions will take place in the Main Building of Birkbeck College, which is located on Torrington Square, Malet Street London WC1E 7HX.

Registration will take place in the Main Lobby area of the Main Building from 8 am on Friday 22 March.

For directions to the Birkbeck Main Building please go to this link:

<http://www.bbk.ac.uk/maps>

Plenary Venue and Time

The plenary will commence at 6pm in the Jeffrey Hall of the Institute of Education 20 Bedford Way, London WC1H 0AL which is located adjacent to the Birkbeck Main Building.

For directions to the Institute of Education please go to this link:

<http://www.ioe.ac.uk/sitehelp/1072.html>

The plenary will be followed at 7.30 pm by the conference reception and prizes and awards ceremony which will also take place in the Institute of Education.

*Room number in brackets

FRIDAY MARCH 22ND, 2013

8AM – COFFEE AND WELCOME RECEPTION

SESSION 1: FRIDAY 9:00 AM-10:30 AM

- 1.1 Has Sovereignty Ever Been Deconstructed? (354 MS)
 - 1.2 Un-Hinged/Not Adrift: Toward a New Thinking of Blackness in/to The Global Present (Part 1) (251 MS)
 - 1.3 An Existential Crisis for Secular Liberalism (Part I) (355 MS)
 - 1.4 Misrecognized Bodies: Biopolitics and Legal Scenes (253 MS)
 - 1.5 ROUNDTABLE: Samera Esmeir's 'Juridical Humanity. A Colonial History' (book discussion) (624 MS)
 - 1.6 A View from Outside: Canadian Perspectives on Attempts to Sculpt the Human in Popular Culture (255 MS)
 - 1.7 Arts and Legal Reasoning (351 MS)
 - 1.8 Queer Legal Ideas (352 MS)
 - 1.9 Scientific and legal knowledges: contexts, motifs, terrains (353 MS)
 - 1.10 'The Stranger' in Legal History (538 MS)
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COFFEE BREAK: 10:30 AM -11:00 AM

SESSION 2: FRIDAY 11:00 AM-12:30 PM

- 2.1 Transgressive Figures: Crossing Legal and Spatial Boundaries/Criminal figures (354 MS)
 - 2.2 Un-Hinged/Not Adrift: Toward a New Thinking of Blackness in/to The Global Present (Part II) (251 MS)
 - 2.3 An Existential Crisis for Secular Liberalism (Part II) (355 MS)
 - 2.4 "Making Justice:" Assessing "Humanly Comprehensible" Meanings of Law in Fiction, Truth Commissions, and Feminist Theory (253 MS)
 - 2.5 Race, Rights and The Human (624 MS)
 - 2.6 Colonialism and Law (255 MS)
 - 2.7 Law and Loss: Judgment, Hearing, Silence (351 MS)
 - 2.8 Object Relations and Law (352 MS)
 - 2.9 Early Modern Legalities: Water Consciousness, the Law of Play, and the Liminal Shore (353 MS)
 - 2.10 ROUNDTABLE: Book Discussion: Book: Giorgio Agamben – Power, Law and The Uses of Criticism (Routledge, Paperback 2011/12) Author: Thanos Zartaloudis (538 MS)
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LUNCH 12:30 PM – 1:30 PM (Lunch is provided)

SESSION 3 1:30 PM – 3:00 PM

- 3.1 Politics and Politicking in Age of Suspicion (354 MS)
 - 3.2 The Roles of Rhetoric in Creating Legal Cultures (251 MS)
 - 3.3 Sovereignty and Political Theory (355 MS)
 - 3.4 Racial Re/Constructions, Narrative, and Democracy (351 MS)
 - 3.5 Ethical Life and Affective Law (254 MS) **CANCELLED**
 - 3.6 Legal History, Public Policy, and Popular Discourses of Sexual Identity (255 MS) **CANCELLED**
 - 3.7 ROUNDTABLE: Critical Approaches to International Criminal Law (255 MS)
 - 3.8 Bare Life in Action: Human Rights and Other No So Human Languages (352 MS)
 - 3.9 Human, Nonhuman, Superhuman (353 MS)
 - 3.10 The Legal Imagination of James Boyd White (I): The World in the Text (538 MS)
-

COFFEE BREAK 3PM – 3:30 PM

SESSION 4 3:30 PM – 5:00 PM

- 4.1 Sculpting the Affective Spaces of the Human in Law (354 MS)
- 4.2 The Nation-State, Sovereignty, and Citizenship in the Era of Transnationalism (251 MS)
- 4.3 Producing Nature's Subjects (355 MS)
- 4.4 Performance, Improvisation and Revolution: The Spontaneous 'Human' (353 MS)

- 4.5 Law's Others: Figuring Anxiety, Immunity and Prudence in Contemporary Biopolitics (624 MS)
 - 4.6 Scientific Knowledge & the Cultures of Evidence (255 MS)
 - 4.7 ROUNDTABLE: Jodi Dean's Communist Horizon (351 MS)
 - 4.8 Bodies of Law: real, virtual, & mythic (352 MS)
 - 4.9 ROUNDTABLE: Author-Meets-Readers: Tamara Piety "Brandishing the First Amendment" (U Michigan Press, 2012) (355 MS) **CANCELLED**
 - 4.10 The Legal Imagination of James Boyd White (II): The World Beyond the Text (538 MS)
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PLENARY 6:00 PM, Jeffrey Hall, 20 Bedford Way

CATHERINE MALABOU

From the Overman to the Posthuman: How Many Ends?

Reception and Award Ceremony 7:30

SATURDAY MARCH 23RD, 2013

SESSION 1 9:00 AM-10:30 AM

- 5.1 Imperially Empirical: Cartesianism as Political Strategy (151 MS)
- 5.2 Cultural Legalities of Science Fiction (Part I) (152 MS)
- 5.3 Law Happens: Speech Acts, Embodiment, and Aurality (153 MS)
- 5.4 ROUNDTABLE: Author Meets Reader—Desmond Manderson, "Kangaroo Courts and the Rule of Law – The Legacy of Modernism" (251 MS) **CANCELLED**
- 5.5 Economics and Bodies of Law (252 MS) **CANCELLED**
- 5.6 ROUNDTABLE: Common Precedents: The Presentness of the Past in Victorian Fiction and Law/ Ayelet Ben-Yishai (253 MS)
- 5.7 ROUNDTABLE: The Challenges of Interdisciplinary Scholarship in Law and Culture Between the Humanities and Social Sciences (255 MS)
- 5.8 Law's Bioengagements: Life and Death Between Politics and Culture (251 MS)
- 5.9 Fear and Uncertain Agency (252 MS)
- 5.10 Species Trouble: Law and the Animal-Human Boundary (353 MS)
- 5.11 Discourses of Individual and Human Rights in Law, Theory, and Culture (355 MS)
- 5.12 Migration, Territory and the Law (538 MS)

5.13 Loss and vulnerability (539 MS)

COFFEE BREAK 10:30 AM – 11:00 AM

SESSION 2 11:00 AM- 12:30 PM

- 6.1 Human, Race, Rights (151 MS)
 - 6.2 Cultural legalities of science fiction (Part II) (152 MS)
 - 6.3 Intellectual Property and Geography (153 MS)
 - 6.4 Constituting Bodies Through Art and Music (251 MS)
 - 6.5 Family Relations in Legal Theory and Practice (252 MS)
 - 6.6 Protest and Political Formations (253 MS)
 - 6.7 The Discontents of the Postcolonial: the colonial subject and the dissolution of western order (255 MS)
 - 6.8 Law without Humans (B30 MS)
 - 6.9 ROUNDTABLE: “You must pay for everything in this world, one way and another”: True Grit’s Juridical Landscape (632 MS)
 - 6.10 ROUNDTABLE: Author Meets Readers: Denise Ferreira da Silva Toward a Global Idea of Race (2007) (353 MS)
 - 6.11 Community and the Commons, and the Lives and Deaths of Law (355 MS)
 - 6.12 Are Women Human? Reflections on law, history and sexual difference (538 MS)
 - 6.13 Science, Law and the Human (539 MS)
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LUNCH 12:30 PM- 1:30 PM (On your own)

SESSION 3 1:30 PM- 3:00 PM

- 7.1 The Human (151 MS)
 - 7.2 ROUNDTABLE: Improper Life: Technology and Politics from Heidegger to Agamben. Timothy Campbell (152 MS)
 - 7.3 Literary Jurisprudence (153 MS)
 - 7.4 Trials (251 MS)
 - 7.5 Sex, Status and Subjectivity (252 MS)
 - 7.6 Racial Law, Racial Politics (253 MS)
 - 7.7 ROUNDTABLE: The Legal Imagination- Roundtable Discussion (255 MS)
 - 7.8 Posthumanism and the Limits of Law (B30 MS)
 - 7.9 Forming the Human: Aesthetic Interventions (632 MS)
 - 7.10 Law, Spectacle, Humanity (353 MS)
 - 7.11 Portraying the Human (355 MS)
 - 7.12 Sculpting the Sexual (538 MS)
 - 7.13 Constituting the political (539 MS)
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COFFEE BREAK 3:00 PM- 3:30 PM

SESSION 4 3:30 PM- 5:00 PM

- 8.1 Extreme Punishment (Part I) (151 MS)
 - 8.2 ROUNDTABLE: Author Meets Readers – The Law is A White Dog by Colin Dayan (152 MS)
 - 8.3 Humans, Animals, Sovereigns (153 MS)
 - 8.4 The Altered Self: Rethinking the Liberal Subject through Discourses of Authenticity, Secularism, and Feminism (251 MS)
 - 8.5 The Metaphysics of Presence (252 MS)
 - 8.6 Crafting Knowledges of What We Are Not: Law and Regulated Relationships with Animals, Plants, and Things (253 MS)
 - 8.7 Legal Fictions of Life and Mattering: Examinations of the Space Between Personhood and Death (255 MS)
 - 8.8 Society, Narrative, Affect (B30 MS)
 - 8.9 Law, Race, Biopolitics (352 MS)
 - 8.10 From art to activism: performance, photography and documentary (353 MS)
 - 8.11 ROUNDTABLE: Matching Organs with Donors Legality and Kinship in Transplants. Marie-Andrée (355 MS)
 - 8.12 Memory and Ownership (538 MS)
 - 8.13 Legal Aesthetics, Aesthetic's Archives (539 MS)
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COFFEE BREAK 5:00 PM- 5:30 PM

SESSION 5 5:30 PM- 7:00 PM

- 9.1 Extreme Punishment (Part II) (151 MS)
 - 9.2 Madness, Paradox and Human Rights in Law and Literature (152 MS)
 - 9.3 Bearing Witness, Emotions and the Law (153 MS)
 - 9.4 Biopolitics: Messianic Justice, Survival, or Humanity's End? (251 MS)
 - 9.5 ROUNDTABLE: Anthropogenesis and Movement Controls in the Time of Perpetual Crisis-Management (252 MS)
 - 9.6 The Ephemeral Legal Subject: Image, Silence, and Identity (253 MS)
 - 9.7 Nature and Rights Reconfigured (255 MS)
 - 9.8 Juries, Justice, and the Law (539 MS)
 - 9.9 Violence and the Vulnerable: Law and the Qualified Life (632 MS)
 - 9.10 Affect, Art, and the Legal Subject (353 MS)
 - 9.11 ROUNDTABLE: Václav Havel on Modernity, Humanity, and Post-Democracy (355 MS)
 - 9.12 ROUNDTABLE: Blackstone's Commentaries on the Laws of England (538 MS)
 - 9.13 ROUNDTABLE: "The Law in These Parts" (B04 MS) **CANCELLED**
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ROUNDUP: 7:00PM-7:15PM

SESSIONS

SESSION 1: FRIDAY 9:00 AM-10:30 AM

1.1 Has Sovereignty Ever Been Deconstructed?

CHAIR Stewart Motha
 Birkbeck, University of London

DISCUSSANT Stewart Motha
 Birkbeck, University of London

PANELIST 1 Roberto Vilchez Yamato
 Birkbeck, University of London

Rereading the Sovereignty of Sovereignty

Generally influenced by the works of Jacques Derrida, Jean-Luc Nancy and Catherine Malabou, this paper explores the conditions of (im)possibility of sovereignty, as it is traditionally imagined and conceived with-in Schmitt and Agamben (among others). It questions the sovereign (and colonial), international grounding of the ground on which sovereignty auto-affirms and auto-constitutes its own identity and ipseity. And thus, through a reading of the plasticity with-in the “inter” of the “international”, it suggests the relational (that is, the “entre” and “and”) always already grounding and un-grounding the (supposedly) sovereign grounding of law, politics, and subjectivity. Hence, plasticity (in Malabou’s terms), the “and” (in Derrida’s), and the “inter” (of the international) are reread together as a strategy for rereading and questioning the sovereignty of sovereignty, and of sovereign subjects – such as the human.

PANELIST 2 Daniel Matthews
Birkbeck, University of London

Uncanny Sovereignty

This paper explores the structure of sovereignty through the lens of Freud’s essay “The Uncanny”. Focusing on Agamben and Derrida’s approach to sovereignty, I explore how Freud’s essay provides a logic through which we can assess the structure of sovereignty. Following Malabou’s suggestion that neither Agamben nor Derrida manage to transcend the distinction between the material/biological and the symbolic/representational, this paper suggests that “The Uncanny” develops a logic in which this very distinction collapses. Freud poses the uncanny as the commingling of the familiar and unfamiliar, the most homely with the radically alien. I argue that the uncanny, so conceived, names a space in which the symbolic and the material become indistinct and as such offers a glimpse of sovereignty deconstructed, in Malabou’s terms. This reading will be developed through an assessment of Malabou’s work on plasticity, exploring why a resistance to the biological remains in much deconstructive thought.

PANELIST 3 Tara Mulqueen
Birkbeck, University of London

Impossible Sovereignty

In reflection on Jean-Luc Nancy and Maurice Blanchot’s interpretations of Georges Bataille’s Acéphale experiment and their work on community more generally, this paper explores the question of whether sovereignty is ever possible and the implications of the impossibility of sovereignty for the relationship between the symbolic and the biological. Drawing on the work of Anne Fausto-Sterling and Judith Butler, I will argue that while the biological can be a resource for contesting re-appropriating power, a pure biology or a view of the material as independent of the symbolic is never possible. This reading leads to a reaffirmation of Foucault’s notion of the biopolitical. However, this reaffirmation comes with an assertion of the material or biological possibilities of self-transformation and resistance through a return to Bataille’s notion of excess, and the attendant concept of unworking or inoperativity and a re-framing of the potential of plasticity.

PANELIST 4 Mayur Suresh
Birkbeck, University of London

Life at the Thresholds of Force and Contract: 'Terrorist' Lives in Delhi's Courts.

How we imagine life is often a function of the way we imagine sovereign power. In the post-9/11 world, a world dominated by Agamben and his reanimation of Schmitt, the state of exception is the norm and humans only exist as bare life. In this world, sovereign power has grown in genocidal proportions, and life exists only in its relation to death. How else might we imagine sovereign power, human life and the relationship between the two? In looking for answers to this question, I began my search in terrorism trials in Delhi. It is amidst the course of grinding terror trials, replete with stories of kidnapping, torture and illegal detentions, that I found letters written to judges praying for justice, an intimate knowledge of legal procedure and a cautious faith in the fairness expected of the law.

In my ethnography of terror trials in Delhi, I wish to draw upon a different, more life affirming, conception of sovereignty and its relation to life. In *Mitra-Varuna: An Essay on Two Indo-European Representations of Sovereignty* (1988), Georges Dumézil outlines a theory of sovereignty drawn from comparisons between Vedic and Indo-European mythologies and ancient Roman history. According to these mythologies, sovereign power was not only terrible and violent, but also caring and fair. It is both force and contract. Sovereign power in its forceful and contractual avatars exists in a conjugal opposition, at once, rather than in a dialectical relationship.

In my paper I hope to offer a conception of life that hovers between these twin forms of sovereignty. In providing a glimpse of 'terrorist' lives in the milieu of courtrooms, jails and police stations, I hope to provide an account of life that acknowledges sovereignty's forceful and contractual forms

1.2 Un-Hinged/Not Adrift: Toward a New Thinking of Blackness in/to The Global Present (Part 1)

CHAIR Nahum Dimitri Chandler
University of California, Irvine

DISCUSSANT Anthony Farley
Albany Law School

PANELIST 1 Alexander Weheliye
Northwestern University

Racializing Assemblages, Bare Life, and the Human

This essay contends that Agamben's concept of bare life in the homo sacer project severely limits how we understand global power structures and forecloses the possibility of their abolition. Agamben's work not only misconstrues the deep anchoring of race and racism in the modern idea of the human, it also perfunctorily dismisses theorizations of race, subjection, and

humanity found in black and ethnic studies. I juxtapose Agamben's notion of bare life with ideas taken from black and ethnic studies (Hortense Spillers, Sylvia Wynter, Jasbir Puar, etc.) in order to establish the concept of racializing assemblages, which, in contrast to bare life, construes race not as classification but as sociopolitical processes that discipline humanity into full humans, not-quite-humans, and non-humans. This notion foregrounds the centrality of race to the many ways hierarchical differentiation and exclusion define the modern human.

PANELIST 2 Jared Sexton
University of California, Irvine

Unbearable Blackness

The heading of this talk addresses itself broadly to the psychic life of black freedom struggle in the political culture and cultural politics of the post-emancipation United States. The myriad figures of racial blackness at work across the spectrum of practical-theoretical activity raise questions about the material-symbolic persistence of modern slavery in and as the discourse of terror in the contemporary milieu. This persistence is obscure in a profound sense and its obscurity is inflected but not accounted for by the recent ascendance of neoliberalism and its attendant pieties of racial justice under capital. It involves, rather, a more fundamental misrecognition of the political ontology enabling modern slavery, requiring of us at once a more thorough analysis of structural conditions and a deeper historical sense commensurate with the *longue durée*. It is from within the strange attractor of this meditation that the capacity for the inhuman might best be approached.

PANELIST 3 Barnor Hesse
Northwestern University

Human All Too White Human

Drawing from and extending an ongoing theoretical intervention in how we engage a thinking of modernity and coloniality, race and performativity, this paper proposes to unfold a discussion of the colonization and cloning of the human by the technologies of whiteness and the global dissemination of race governance.

PANELIST 4 Nahum Dimitri Chandler
University of California, Irvine

Thinking Beyond Teleology and the Law

Staging a critical engagement of Immanuel Kant on teleology by way of the work of W. E. B. Du Bois, this essay proposes a conception of historicity and futurity -- what is explored here as an originary alogical logic of the second-time in the eventualities of existence -- to address the making and remaking of social norms, values, ideals, legality and complex horizons of moral imagination. It takes its incipit and its stakes from the more than half-millennium unfolding of a global level "problem of the color line." Yet, it gestures toward and seeks a register for the solicitation of forms of existence that might announce themselves beyond the limits of the

horizons given -- of Man, telos, and law -- opening within the risk and possibility of another sense of limit, beyond world, as we have come to know it in our own time(s).

1.3 An Existential Crisis for Secular Liberalism (Part I)

CHAIR Mark C. Modak-Truran
 Mississippi College School of Law

DISCUSSANT N/A

PANELIST 1 Zachary Calo
 Valparaiso University School of Law

Religion, Human Rights and Reconciliation

This paper considers the constructive interaction of law, religion and human rights in the area of post-conflict reconciliation, with particular focus given to the gacaca courts in Rwanda. The question taken up concerns whether reconciliation might provide a framework for thinking about the moral aims of human rights in a manner that moves beyond the liberal framework of justice. While by no means a narrowly religious issue, religious traditions provide important theoretical and practical resources for assessing the prospects of reconciliation through law. The topic also provides an occasion for engaging elemental issues concerning the relationship between religion and human rights norms.

PANELIST 2 Peter Danchin
 University of Maryland School of Law

Antinomies of Religious Freedom: The Egyptian Bahai Cases

Contemporary religious freedom discourse is shaped by two main features: first a conception of political authority in terms of secular neutrality; and second, a conception of the right in terms of individual freedom. Taking current controversies over Article 2 of the Egyptian Constitution and a series of cases involving claims to religious freedom of Bahais in Egypt as its point of departure, this paper critically analyzes an account of religious freedom and its complex relationship to the rise of the “secular” nation-state. The paper considers the meaning of and relationship between notions of neutrality and freedom in a constitutional order which expressly recognizes Islam and proclaims the principles of the Islamic shari’a as “the main source” of legislation. What is the meaning and scope of the right to religious freedom once we move beyond a framework of liberal neutrality and towards broader normative accounts of value pluralism?

PANELIST 3 John D. Haskell
 Mississippi College

The Scandal of Disenchantment within International Law

This presentation critically analyzes some of the dynamics behind three functions of secular disenchantment within international law. First, I provide a counter-narrative to the mainstream account concerning the 'secularization' of international law in the 19th century, specifically drawing upon the writings of international jurists from the period. Second, I offer an alternative reading to the value of 'liberal humanism/cosmopolitanism' (drawing upon the work of L. Althusser and A. Badiou), which questions the claims that international law has escaped its imperialist heritage and that it is somehow a more anthropomorphic, concrete response to any 'real' world. In doing so, my hypothesis is that the secular disenchantment within international law and governance constitutes a scandal to those who struggle against inequality and those who look for a more accurate framework for analyzing contemporary challenges in global legal regulation.

PANELIST 4 Meghan Helsel
Johns Hopkins University

The Silent Woman: Faulkner, Despair, and the European Court of Human Rights

In a concurring opinion appended to the European Court of Human Rights judgment in the case of Lautsi and Others vs. Italy (2011) Judge Giovanni Bonello cites Faulkner: "The past is never dead. In fact it is not even past." This paper proposes to read the European Court of Human Rights' current, contradictory case law regarding religious symbols in schools using Faulkner's fictional meditations on religion, history and the final impossibility of testimony. This reading will help us make sense of the the silent, feminized, religious subject that seems to organize the European Court of Human Rights decisions on proselytizing, the Islamic headscarf, and the crucifix, as well as help us understand the elusive "balance" called for by the judgments in these cases, a balance that both secularism and tradition are supposed to provide. Such an exploration will reveal the importance a particularly powerful political emotion, that of despair.

1.4 Misrecognized Bodies: Biopolitics and Legal Scenes

CHAIR Sarah Burgess
University of San Francisco

DISCUSSANT Keally McBride
University of San Francisco

PANELIST 1 James Martel
San Francisco State University

Another Abraham: Misinterpellated Subjects and the Law

In my paper, I look at Franz Kafka's parable "Abraham" as offering a model for subjectivity that diverges from--or perhaps, more accurately, expands the radical potential in--Althusser's theory of how the law interpellates subjects. In Kafka's story, there is "another Abraham," besides the famous one we all know. This Abraham is described as "an ugly old man" along with "the dirty youngster that was his child." Kafka writes that when God called Abraham (the famous one) to sacrifice his son, this other Abraham also answered the call even though it wasn't meant for him. This act of misinterpellation models a kind of accidental, but potentially radical, form of subjectivity wherein the fact of being unexpected, even unwanted, subverts the dominant organizations, and phantasms, of power and authority. This other Abraham, in the very fact of his unanticipated arrival to the legal scene, suggests a model for how authority and law can be resisted from within, how the accidental subjectivities it produces show up the artifice of the normative subjectivities that law produces. The fact of this unwelcomed guest in the house of the law is a sign, a reminder that interpellation is not always under the control of established power and that subjectivity itself is more of a wild card than usual readings of interpellation might suggest.

PANELIST 2 Sarah Burgess
University of San Francisco

The Voice of this Body (of Law)

In a telling moment of the parliamentary debates over the proposed UK Gender Recognition Act—an act that legally recognized transgender individuals in their “acquired” gender—MP Lynne Jones analogized law to trans bodies as a way to show how law too was in a state of transition. This curious figurative move, while helpful in legitimizing the demands of trans people, operates in a way that at once de-politicizes the demands issued from the appearance of trans bodies on legal scenes and authorizes a voice to speak for the body of law. Investigating this scene of legal recognition, this paper focuses on this double move of de-politicization and authorization in order to make sense of the place from which the voice of (a body of) law responds to demands for recognition. In other words, this paper examines the (ontological and material conditions) conditions in and through which the voice of a body of law speaks to and in the economy of recognition scenes. Such a study, working between Foucault and Merleau-Ponty, demonstrates how the voice of this body of law betrays its dependence on the recognition of the mis-recognition of the trans body. To speak, law takes place in an address that cannot but help re-politicize the body that occasions its speech. This paper then draws out the significance of understanding the forms and operations of speaking bodies in recognition practices.

PANELIST 3 Sara Kendall
Leiden University

Recognition Deferred: Victimhood and its Limits in International Criminal Law

Kafka's famous parable 'Before the Law' gives an account of an impossible effort to seek legal recognition. As a scene in which a legal subject confronts the seeming paradox of a universal law

that fails to grant recognition to him in his singularity, Kafka's story of endless deferral prompts us to reflect upon the other seeming paradoxes produced through claims to legal universality. Law at the international register is one site for exploring scenes of mis-recognition of bodies and of claims. In particular, the project of international criminal justice that has captured much attention in the last two decades offers a rich object for critical reflection on the biopolitics of law.

This paper takes up the language through which law addresses itself to victims of mass atrocity at the institutional pinnacle of international forms of criminal accountability: the permanent International Criminal Court (ICC), located in an unassuming suburb of The Hague, the Netherlands. Harboring the promise of speaking law with greater jurisdictional breadth and a more progressive orientation to conflict-affected populations than its institutional predecessors, the ICC – like Kafka's gatekeeper – is tasked with bestowing (and withholding) recognition. Through a narrative of mis-recognition and refusal to gain admittance to the ICC's 'regime of care,' I contrast this claim with the institutional response offered by the ICC through its representatives to illustrate the limits of the international criminal law frame in redressing (embodied) suffering.

PANELIST 4 Stuart Murray
Carleton University

Bodily Cognition and Recognition: Biopolitics and the Ambiguity of the Flesh

By virtue of my bodily nature, I am both a subject in the world and an object for the world, a body that is the means both of my cognition and my recognition. The French phenomenologist Merleau-Ponty describes this as an essential ambiguity, the reversibility or chiasmus expressed by the metaphor of the touchant-touché, the hands that touch and are touched at the same time, where touching and touched commingle. He describes this ambiguous intertwining by the word "flesh [chair]," and sometimes as "the flesh of the world." Curiously, Eric Santner turns to the figure of the "flesh" in his recent book, *The Royal Remains*. There he claims that biopolitics cannot be understood without the "flesh" that "underwrites" modern (post-sovereign) biopolitical strategies. Today, he argues, in losing the transcendence of the Sovereign, an immanent "flesh" is the new bearer of the sovereignty of the People, its "'sublime' life-substance." Santner effectively shifts the bios from its concern with biology toward a political theology of bodily recognition. This paper examines Santner's alliance of flesh and biopolitics by turning back to Merleau-Ponty, for whom the flesh is the basis of cognition, through the rhetorical ambiguity of language [la prose du monde] as much as through the body itself. In this light, the consequences of Santner's thesis are devastating: if modern biopolitics is indeed underwritten by the flesh—and the flesh is neither a mode nor a site of resistance—then biopolitics is a constitutive discourse, constitutive for the immediacy of cognition as much as for re-cognition. But I suspect that Santner misreads the phenomenology of the "flesh." While for Santner the liturgical speech of the sovereign is displaced by the juridical speech of the body politic, for Merleau-Ponty language has not lost its liturgical performativity. "Recognition" must be more than a juridical-biopolitical performance.

1.5 ROUNDTABLE: Samera Esmeir's 'Juridicial Humanity. A Colonial History' (book discussion)

SUBJECT AREA Legal and political thought, colonialism

CHAIR Sinja Graf
Cornell University

PANELIST 1 Samera Esmeir
University of California, Berkeley

PANELIST 2 Peter Fitzpatrick
University of London-Birbeck

PANELIST 3 Amr A. Shalakany
The American University in Cairo

PANELIST 4 Ayca Cubukcu
London School of Economics

PANELIST 5 Marinos Diamantides
University of London-Birbeck

1.6 A View from Outside: Canadian Perspectives on Attempts to Sculpt the Human in Popular Culture

CHAIR Rebecca Johnson
University of Victoria

DISCUSSANT Jennifer L. Schulz
University of Manitoba

PANELIST 1 Ruth Buchanan & Rebecca Johnson.
Osgoode Hall Law School

Humanizing the Colonial Encounter in the North: Memory and Affect in "The Journals of Knud Rasmussen"

This paper will retrace a series of encounters relating to Canada's colonial history in the far North. This narrative, which includes both the Inuit communities in the North as well as those Canadians who have never set foot in the North, will consider a sequence of historical events as they are remembered, represented and experienced through the lens of a contemporary film, *The Journals of Knud Rasmussen*. *The Journals of Knud Rasmussen* is the second film made by the Inuit filmmaking collective which produced *Atanarjurt* (*The Fast Runner*). Instead of Inuit

legend, however, this film draws its storyline from the notebooks of Knud Rasmussen, a celebrated Danish explorer, who lived with the Inuit for approximately a dozen years in the early part of the twentieth century. It depicts a traditional way of living on the land that is well beyond the realm of direct experience for most southern peoples, although it may well recall for many viewers prior cinematic depictions of Northern peoples such as *Nanook of the North*. We will argue that in its visionary re-enactment of a critical moment in Inuit and Canadian history, the film opens a space in which we, as embodied and engaged spectators, might collectively re-sculpt our post-colonial humanity.

PANELIST 2 Brenda Cossman
University of Toronto

Monogamy's Outliers: Law, Popular Culture and Sexual Addiction

My paper is part of a larger project on sexual and intimate practices that reject traditional monogamous marriage, ranging from polygamy to swinging. I explore the extent to which the role of law – although historically central in channeling sexuality in monogamous marriage – has been decentred and at least partially replaced by cultural norms that seek to promote a more self-governing monogamy. In this paper, I focus in particular on the representation in popular culture of sexual addiction. Through an analysis of recent films, including most notably *Shame* and *Thanks for Sharing*, I consider some of the ways in which non-monogamous sexuality has been pathologized through the discourses of addiction and epidemiology.

PANELIST 3 Jennifer L. Schulz
University of Manitoba

Fairly Legal: A Canadian Perspective on the Creation of a Primetime Mediator

Fairly Legal is the first American television series focussed on mediation. This one hour dramedy is filmed in Canada but is set in the USA, and it centres upon Kate Reed, a former lawyer now practising as a mediator. As the first show about mediation and mediators, *Fairly Legal* is important; it tells us about (American understandings of) mediation. I will examine how *Fairly Legal* depicts the mediator and the process of mediation, and whether those depictions comport with or deviate from mediation literature and theory. In Robson & Silbey, eds., *Law and Justice on the Small Screen*, I suggested that Canadian legal television delivers messages about dispute resolution that are different from American legal television's messages. At this conference, I will provide my outsider, Canadian view on *Fairly Legal* in an attempt to elucidate the sculpting of 'the mediator' in (American) popular culture.

PANELIST 4 Cheryl Suzack
University of Toronto

Indigenous Women's Writing and Transitional Justice Practices

Beth Brant's classic short story, "A Long Story," depicts the devastating effects of residential school practices on two generations of Indigenous women. Published in 1984, the story predates the wider disclosure about the residential school tragedy associated with former Grand Chief Phil Fontaine's public acknowledgement in 1991. Documenting the residential school experience, it departs from the current focus on residential school survivors by showing the connections between lesbian identity, domestic relations, and colonial policies as these issues intersect to engender the contemporary exploitation of Indigenous women. In this paper, I analyze Brant's writing as a form of "memory-justice" (Booth 2001) that widens the cultural terrain within which the legal personality of Indigenous subjects is determined by truth and reconciliation commissions in order to draw attention to the importance of gender analysis to the politics of Indigenous-settler reconciliation practices. Brant's contribution exceeds the "masculinist politics" of "official inquiries [and] truth commissions" by showing how politics are implicated in narratives that "frame the nature of the truth to be produced" (861). I suggest that Brant's story not only critiques these recovery practices but also contests transitional justice's key representational form, that is, its capacity to inscribe "the authentic face of public Aboriginality that the nation-state will accommodate" (Nagy 2008; Orford 2006).

1.7 Arts and Legal Reasoning

CHAIR Randy Gordon
Gardere Wynne Sewell LLP & Southern Methodist University

DISCUSSANT Dr. Maksymilian Del Mar
Queen Mary, University of London

PANELIST 1 Randy Gordon
Gardere Wynne Sewell LLP & Southern Methodist University

Law-as-Performance

John Dewey once argued that drama (or acts that approximate drama) is the catalyst for transforming a mere act into representative knowledge. His point was that playacting offers an important mode of learning. In my paper, I will argue that this logic can easily be extended to include the observation of playacting and that this exercise helps us understand that the performative aspects of the law are perhaps more important than the textual ones. Along the way, I'll give examples of how drama can be used in the law-school classroom to illuminate the historical context and even deeper background of well-known cases and thereby free those cases from their textual self-isolation. This practice is designed to help students throw off text-based habits and thereby experience familiar, isolated legal rules floating in a sea of otherwise unacknowledged moral complexity.

PANELIST 2 Dr. Maksymilian Del Mar
Queen Mary, University of London

Art, Drama and the Legal Imagination

This paper offers an interim report on the research project currently in progress at the Department of Law, Queen Mary, University of London. The project's aim is to research and run four pilot workshops to develop legal reasoning skills drawing on activities and resources from the visual and dramatic arts. The four reasoning skills envisaged are: 1) counterfactual (or 'as if' reasoning); 2) hypothetical (or 'what if' reasoning); 3) analogical (or 'as in' reasoning); and 4) perspectival (or 'according to', e.g. the reasonable person) reasoning. The project is funded by the Westfield Fund for Enhancing the Student Experience and is a collaboration with Ms. Alicja Rogalska, a visual artist and an educator at the Tate Gallery, and Ms Jacqueline Defferary, an experienced theatre and television actress and drama teacher.

PANELIST 3 Clare Sandford-Couch
University of Northumbria

Legal reasoning: the early years

My paper will explore whether and how images may be of use in helping students at the start of an undergraduate law degree to begin to understand the concept and practices of legal reasoning.

It could be argued that law schools frequently see legal reasoning as a skill that students should be able to pick up, from reading cases and statutes. However, it is a concept with which many students struggle. Often students start their law degree expecting to be taught and to learn 'the law', assuming that cases are decided by judges selecting from a system of an unchanging, constant set of known legal 'rules'; by applying the relevant rule to the case before them, they will be led inexorably to the 'right' decision. The dawning realisation that the study of law is not a question of learning to memorise a body of legal rules can prove disheartening to many students, at a critical point in the start of their degree.

The paper will suggest that there may be a role for visual images in helping students to appreciate the practices of legal reasoning, in particular reasoning by example. The finding of similarity or difference is a key step in this process, and a number of examples from the visual arts will be considered to explore whether engaging in visual analysis may encourage students towards an understanding of legal reasoning.

PANELIST 4 Zenon Bankowski
Edinburgh University

Legal Reasoning and the Kaleidoscope

One way of understanding legal reasoning is through the idea of narrativity. In common law jurisdictions the careful recounting of the cases in legal judgements makes this an attractive option. Narrative can be seen as an image and thus resonates with the aims of this workshop. What I want to do is to explore further narrativity as an image. I shall argue that this can become too static a way of looking at it. It can see legal reasoning as a form of 'pattern matching' and loses the dynamism and movement that the idea of narrativity also implies. It moves 'Beyond Text' but does not get at the ever-changing diachronic matrix that is the story of

the case. I want to look beyond the plastic arts to movement to further explore the dynamism in this kaleidoscopic view of legal reasoning. In doing this, I draw upon on a project, 'Beyond Text in Legal Education' held at Edinburgh University which was part of the AHRC's 'Beyond Text, programme.

1.8 Queer Legal Ideas

CHAIR	Michael Boucai SUNY Buffalo Law School
DISCUSSANT	Leslie Moran Birkbeck, University of London
PANELIST 1	Clifford Rosky University of Utah

Fear of the Queer Child

This paper is about the fear of the queer child—the fear that exposing children to homosexuality and gender variance makes them more likely to develop homosexual desires, engage in homosexual acts, deviate from traditional gender norms, or identify as lesbian, gay, bisexual, or transgender. This fear is thousands of years old, but it has undergone a remarkable transformation in the last half-century, in response to the rise of the LGBT movement. For centuries, the fear had been articulated specifically in sexual terms, as a belief that children would be seduced into queerness by adults. Since the 1970s, it has been reformulated in the more palatable and plausible terms of indoctrination, role modeling, and public approval.

Since the earliest days of the LGBT movement, advocates have responded to this fear by insisting that it is empirically false—that sodomy laws have “nothing to do” with children, that marriage laws have “nothing to do” with schools, that children raised by lesbian and gay parents are “no different” than children raised by heterosexual parents—and above all, that children’s sexual orientation and gender identity are fixed early in life and cannot be learned or taught, chosen or changed. In recent years, this empirical strategy has begun to falter, as advocates run up against the inherent vagueness, incompleteness, and unpredictability of empirical data. To break through this strategic impasse, this paper highlights a growing vanguard of scholars, lawyers, and judges who are developing a normative challenge to the fear of the queer child. It argues that the state has no legitimate interest in encouraging children to be straight or discouraging them from being queer, because it may not presume that queerness is immoral, harmful, or inferior—in children or in anyone else. The state must adopt a neutral stance toward children’s straightness or queerness, without attempting to promote one set of desires, behaviors, or identities over the other.

PANELIST 2	Andrew Gilden Stanford Law School
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Cyberbullying and the Innocence Narrative

This Article critically examines recent debates about the bullying and harassment of gay teens. A spate of suicides in the fall of 2010 yielded a wide range of legal reforms at both the state and federal levels. The accompanying debates, however, have largely employed one-dimensional accounts of the difficulties faced by gay teens, excluding more nuanced, complex and empowered accounts of teenage sexuality. Although many gay teens are certainly vulnerable to bullying and harassment, these entrenched narratives of innocence and vulnerability have been used to justify both strong protectionism—e.g., through questionable hate crimes prosecutions—and ubiquitous paternalism—e.g., through “anti-bullying” monitoring and reporting—at the expense of the sexual agency of gay teens. This Article will (1) track the persistent use of a gay teen innocence narrative in several legal and cultural contexts; (2) explore how recent anti-bullying efforts reify such innocence at the potential expense of gay teens’ social and sexual agency; and (3) situate this filtering of gay teen experiences within the broader context of the LGBT rights movement.

PANELIST 3 Elizabeth Emens
Columbia University

Asexual Identity and Sexual Law

Asexuality is an emerging identity category that challenges the common assumption that everyone is defined by some type of sexual desires. Asexuals—those who feel no sexual attraction to others—constitute one percent of the population, according to a prominent study. In recent years, some individuals have begun to identify as asexual and to connect around their experiences interacting with a sexual society. Asexuality has also become a protected classification under one state’s antidiscrimination law, but legal scholarship has thus far neglected the subject. This project considers asexuality as a category of analysis, an object of empirical study, and a phenomenon of medical science. It then offers a close examination of the growing community of self-identified asexuals. Asexual identity has revealing intersections with the more familiar categories of gender, sexual orientation, and disability, and inspires new ways of understanding both sexuality and our sexual law.

1.9 Scientific and legal knowledges: contexts, motifs, terrains

CHAIR Jose Bellido
Birkbeck, University of London

Marie-Andree Jacob **WITHDRAWN**
Keele University

DISCUSSANT Brenna Bhandar

Queen Mary University

Hyo Yoon Kang
University of Lucerne

PANELIST 1 Hyo Yoon Kang
University of Lucerne

The legal bureaucracy of scientific inventions: the making of a new patent class in the International Patent Classification

Recent studies of patents have argued that the very materiality and techniques of legal media, such as the written patent document, are vital for the legal construction of an invention. Developing the centrality placed on patent documents further, it becomes important to understand how they are ordered and mobilised. In this paper, I argue that the patent classification is the answer to the necessity to make the virtual nature of textual claims practicable, by linking written inscription to bureaucracy. Here, the epistemological organisation of documents overlaps with the grid of patent administration. How are scientific inventions represented in such a process? Examining the process of creating a new patent category within the International Patent Classification (IPC), I show how disagreements about the substance of the novel inventive subject matter were resolved through computer simulations of patent documents in draft classifications. The practical needs of patent examiners were the most important concerns in the making of a new category. Such a lack of epistemological mediation between the scientific and legal identities of an invention depicts a legal understanding that science is already inside patent law. From an internal legal perspective, the self-referential making of the new patent class may make practical sense, however starts to become problematic from a technological and scientific standpoint as the remit of the patent classification also affects other social contexts and practices.

PANELIST 2 Brenna Bhandar
Queen Mary, University of London

“The Very Nature of Things”: property, race and abstraction

The 19th century witnessed massive transformations in the way in which land ownership was conceptualised and organised juridically. The introduction of the Torrens system of title by registration in the colony of South Australia provides the focal point for an analysis of how abstraction was deployed as the conceptual motor in materialising new forms of ownership and property during this time. Torrens - experimenter, politician, legal reformer, coloniser – who worked for years in the Customs Department in London before shipping off to Australia, provides a link, and many clues, as to how the commodification of people (as slaves) and things that constituted the substance of the shipping and insurance industries influenced the commoditisation of land, embodied in the legal artefact of the title document. Viewing the land as both terra nullius and a commodity prior to arrival in Australia, indigenous communities were subject to the racial violence of abstraction at the hands of English property owners.

PANELIST 3 Marie-Andrée Jacob **WITHDRAWN**
Keele University

Taking science professionally: Negotiating 'probity in research' in medical disciplinary law, 1990-2012

In 1990, historian of science Jan Sapp asked rhetorically "Who really cares if Mendell fudged his data? After all, he was right" (1990: 104). The issue, for Sapp, was the scientific outcome. Twenty years later, the UK General Medical Council in its decision about MMR-autism trials, declared that this case was not about whether Andrew Wakefield's findings were right or wrong. The issue was his honesty. This contrast shows the need to unpack how integrity and truthfulness in science have come to be understood by medical disciplinary and regulatory law in the last two decades. A major point of contention in these debates relates to how scientists define themselves and others as authors. What makes a person an author? is often being asked

I use the area of the professional discipline of medics as my point of entry to interrogate the definition of persons as authors and as professionals. To do this, I draw on an analysis of the General Medical Council (Fitness to Practice Panel) casework related to research probity between 1990 and 2012, and of related commentaries, judicial reviews and appeals. The definitions of 'serious professional misconduct' (previously termed 'infamous conduct') and 'probity in research' will be traced through their linkage with medical self-regulation and more recent considerations on research regulation. Attention will be paid to how legal documents themselves craft a narrative (Davis 1987: 3) of pardon or admonishment, and sentencing of the medical professional.

PANELIST 4 Jose Bellido
Birkbeck College, University of London

Impacts on the Ear: Forensic musicology in British copyright (1960-1987)

"Quick," "clever" and "witty" were the words unanimously used by peers, friends and colleagues to describe British composer Geoffrey Bush (1920–1998). A passionate reader of detective fiction novels, Bush was not only a musician, a lecturer, a broadcaster, and by all accounts, a charming companion. He also became an expert witness who participated in a range of cases during three formative decades of British music copyright, a period in which popular music records emerged as the main source of copyright conflict. If music copyright sensually differentiated itself from literary copyright as being a "matter for the ear", Bush engaged with a series of techniques to deal with that difference. He tried to teach the irredeemably ignorant but always pretentious "untrained ear". In so doing, he drew from a repertoire of personal and professional experiences. Not only did his unusual sensitivity and humour pepper his reports and cross-examination responses in trial; his broadcasting experience enabled him to bolster his authority in the witness box. He also took advantage of his role as a teacher, testing out musical themes on university pupils in order to know more about the way the untrained ear worked. Above all, he succeeded in a major paradoxical exercise: the production of musical content to be played in a hearing. His pioneering achievement was the creation of a variety of musical examples, experiments and rehearsals, which gave judges aural evidence to help them decide on the possibility of infringement. And it was because of the peculiar nature of the craft and

expertise he developed that a colleague called him the “éminence grise” of music copyright, the first forensic musicologist in British copyright.

1.10 'The Stranger' in Legal History

CHAIR Lisa Silverman
University of Wisconsin-Milwaukee

DISCUSSANT N/A

PANELIST 1 Chaya T. Halberstam
King's University College at the University of Western Ontario

Impartiality and Care for the Stranger in Biblical Law

This paper argues that the figure of 'the stranger' challenges the notion of impartial and indifferent justice in biblical law. In the history of ancient Israel, the 'stranger' (ger) most likely represented a member of a neighbouring, non-Israelite ethnic group; in a society built from the ground-up on kinship ties and in which the extended clan comprised the social structure, a 'stranger' was effectively an orphan, unprotected by close family / allies. Indeed, in biblical law, the 'stranger' is grouped with the widow and the orphan who together represent unprotected classes of people--vulnerable people with no (male) family members to turn to in dispute resolution. In order to mitigate the exposure of this highly vulnerable group of people, biblical law mandates two judicial stances: impartiality, in general, and empathy, specifically for the stranger. In Exodus 23, empathy is called for in order to balance the perceived bias toward the stranger, and it is somewhat curiously paired with the notion of judicial impartiality. In Deuteronomy 10, we again encounter the odd juxtaposition of judicial impartiality, on the one hand, and fellow-feeling toward the stranger, on the other. This time in Deuteronomy, however, the Judge spoken of is the supreme, divine Judge, who is said to be "great, mighty and fearsome" and to "show no partiality and take no bribe." Immediately, the image of the fearsome and mighty God is tempered, however, with a gesture of care toward the stranger. The image of the stranger, then, demands more of justice than cold judicial indifference --it demands a kind of impartiality that admits empathy, care and generosity.

PANELIST 2 Patricio Boyer
Davidson College

Strangers to the Law

This paper examines medieval and early modern Spanish legal theorizations of the stranger. Starting with the *Siete partidas*, the foundational legal codex that compiled the various and sundry legal traditions established in the Castilian court and that would become the foundation for the Spanish state, I trace the way medieval Castilians defined the legal limits of the kingdom and the rights and responsibilities of its subjects. Defining the stranger as the subject that lies outside those legal parameters, I then explore how the categories established in the *Siete

partidas* provide the basis for how early modern Spaniards negotiated the legal status of Indigenous Americans in the first few decades of the conquest. Focusing on the *Leyes de Burgos,* I will show how the category of the stranger is ultimately incorporated into the legal fold, and how the Spanish crown institutionalized the category of the national other as one that could at once lie within the Crown's purview and still be defined by a distinct, and in my cases legal, national otherness.

PANELIST 3 Lisa Silverman
University of Wisconsin-Milwaukee

Strangers on Familiar Ground: Art, Loss, and the Restitution of Jewish property in Austria after the Holocaust

Born to a Jewish family in Vienna in 1881, photographer Madame d'Ora [Dora Kallmus] – best known for her vibrant portraits of twentieth-century artists and intellectuals – remained in danger after the Nazi invasion of France and spent much of World War II in hiding in southern France. Members of her close family, including her sister Anna, were murdered in concentration camps during Holocaust. In 1945, d'Ora returned both Austria and to photography by documenting the plight of refugees at DP camps. She also completed a series vividly depicting the brutality of Paris slaughterhouses. While undertaking these projects, she travelled to Austria to attempt to reclaim her and her sister's Aryanized family home in Austria, her half of which had been taken from her in 1940 when the city declared her a "foreigner." My talk explores the ways in which d'Ora's art addresses issues of loss that cannot be satisfied by the legal processes of property restitution alone. At the same time, I plan to show how the return of property points to a "re-possession" of personhood inaccessible through means other than restitution. This idea of a 'propertied' (and dispossessed) self-understanding, I believe, can best be understood both as a part —and as a recasting—of a wider preoccupation with the restitution of the property of Jewish Nazi victims.

PANELIST 4 Robert Smith
University of Wisconsin-Milwaukee

Strangers To The Courts, But Not Strangers To The Law: Transnational Legal Efforts In The Fight Against Apartheid

In the 1980s black lawyers in South Africa, with help from civil rights attorneys from the United States, created a trial advocacy programme that went on to impact courtroom culture in South Africa as the nation made the slow march toward abolishing apartheid. Upon apartheid's demise, the Rainbow Nation was faced with crafting a new Constitution to guide it into the new legal order. This paper charts the relationships forged between human and civil rights attorneys and considers the role of trial advocacy on shaping courtroom culture in South Africa's emerging federal judiciary. This paper will also consider the impact this transnational union had on the formation of the Constitution of the Republic of South Africa and the legal ideologies guiding the federal judiciary.

SESSION 2: FRIDAY 11:00 AM-12:30 PM

2.1 Transgressive Figures: Crossing Legal and Spatial Boundaries/Criminal figures

CHAIR Megan Wachspress
Yale Law School/UC Berkeley

DISCUSSANT Keramet Reiter
UC Irvine

PANELIST 1 Elisabeth Ford
Yale Law School

“Turn the Record Over and Play the Other Side”: Incarceration and Liberation in the African American Prison Memoir

In *The Practice of Everyday Life* (1974), Michel De Certeau proposes an analogy between reading and renting: both, he says, “transform[] another person’s property into a space borrowed for a moment by a transient.” When a reader “insinuates into another person’s text the ruses of pleasure and appropriation,” she changes that text much as renters change “an apartment they furnish with their acts and memories.” But when the space at issue is not “borrowed” but imposed, how does the ability of the “transient” to “transform” it change? This paper examines how African American prison memoirs of the 20th century (particularly those of Eldridge Cleaver, George Jackson, and John Edgar Wideman) attempt to “transform” the textual and spatial constraints that define their stories. I argue that the power of these narratives derives not from their accounts of everyday spatial practices but from their recognition of the abstract discourses of power underlying the design of prison life; when the prison memoirist sends letters across space (to a lover) or across time (to a literary antecedent), he challenges the very terms of his imprisonment, not in spite of but because of his inability to confront his jailers in the “everyday” material realm.

PANELIST 2 Allison Gorsuch
Yale Law School

Troubling the Legal Construction of Race: Métis in the Michigan Territory

In the 1820s, métis men and women of Michigan Territory actively shaped developing frontier law of race and rights. Both their mixed-race identities and their roles as cultural and economic brokers clashed with territorial officials’ conceptions of the legal boundaries between white and Indian, citizen and alien, and U.S. territory, British Canada, and Indian Country. Using court records, government correspondence, and private manuscripts, this paper explores how métis men and women transgressed national borders and cultural boundaries of race to establish useful legal identities for themselves as Americans. Some métis people acquired rights reserved for white citizens – like trading licenses or jury service – but still legally crossed into Indian Country. For others, métis racial identity meant U.S. officials denied them legal

personhood and citizenship. Métis legal identity in the 1820s shows an important moment in American legal thought in which alternatives to a legal racial binary existed and flourished.

PANELIST 3 Megan Wachspress
Yale Law School/UC Berkeley

Pirates, Highwaymen, and the Origins of the Criminal in Early Modern England

Much has been made in recent scholarship of the figure of the Roman and early modern pirate as *hostis humanis generis* - the enemy of all - and as a legal analogue of the contemporary terrorist. This paper draws a link between how early modern English legal theorists saw the pirate and the highwayman, the latter a figure crucial to both criminal law administration of the seventeenth century England and to Locke's account of the state. Like the pirate, the highwayman threatened travel by disrupting passage from legally ordered site (city or metropole) to site (town or colony). Both figures troubled the contemporaneous and mutually constitutive production of a global imperial legal order and the territorial state. Drawing upon the understanding and uses of pirates, highwaymen, and brigands (*latrones* of Roman law) in early seventeenth century legal treatises, popular pamphlets, and political theoretical texts, this paper argues that we can find the origins of the Anglo-American "criminal" in international law, among those who transgress not just laws but legal orders. Rather than - as Daniel Heller-Roazen has argued - "collapsing the distinction between criminal and enemy," the figure of the early modern pirate was constitutive of justifications of state punitive violence and of the concept of the criminal who merits that violence.

PANELIST 4 Rionnagh Sheridan
Queen's University Belfast

'I killed her because I could kill her, and because for me she was not alive': Literary redress as alternative justice in The Book of Evidence.

This paper examines intersecting modalities of justice in John Banville's literary treatment of the 1982 MacArthur murder case in *The Book of Evidence*. Banville reconceives the criminal (Freddie Montgomery) as a postmodern doubling, a monstrously split and masked self whose crime is founded on an aesthetic lapse of imagination. Such a lapse necessitates redress on an aesthetic and judicial level. This 'failure of imagination' invokes a tradition of legal alterity in Ireland that plays with the 'official fictions' of the justice system and betrays a belief in alternatives to state-authorised punishment. In the novel, this alterity is ineluctably bound up with the 'human moment' in which Freddie atones for the murder by bringing his victim back to life. This fictional redress is built upon assimilating socio-legal structures, before restoring them as equivalent abstractions in the imagination, a framework that imbricates the Law of the land with the Law of the page.

2.2 Un-Hinged/Not Adrift: Toward a New Thinking of Blackness in/to The Global Present (Part II)

CHAIR Nahum Dimitri Chandler

University of California, Irvine

DISCUSSANT Patricia Tuitt
University of London, Birkbeck

PANELIST 1 Ronald A.T. Judy
University of Pittsburgh

On the Forms of Poetic Sociality: Or, Considerations on the Techniques of Human Dignity

The Tunisian ‘Revolution of Dignity and Democracy’ currently underway, may be understood as an efflorescence of a certain radical humanism. Adequately understanding, then, the reasons for the survival and eventual victory of the humanist project in Tunisia – it is important to underscore the fact the revolution was an entirely secular event with no Islamist component – requires that we look past the current media and academic investment in what Mohamed-Salah Omri calls “terrorology” and pay closer attention to the forms of humanistic knowledge and thinking that persevered beyond the authoritative institutions of power, both state and economic. This raises three fundamental questions. First, what is the concept of the human at play here? Second who can speak for the human? Third, what are the conditions, on the ground, for the sustenance and ongoing projection of the Tunisian revolutionaries’ call for human dignity (*karamat-ul-insan*). To address this ensemble of questions, this essay tracks the eruption of what the post-liberation Tunisian thinker, Mahmud al-Mas’adi has called “restlessness” (*ala qalqin*) as a way to take notice of an exemplary example of the socialities of a contemporary and radical humanism.

PANELIST 2 Denise Ferreira da Silva
University of London, Queen Mary

Lapis Philosophorum Found! Raciality and the Epoch of Man

Sylvia Wynter invites the reader into an account of the trajectory of Man which shows that the European colonial experiment in the Americas coincided with two onto-ethical transformations which had the result of enabling the white European *Man* to be over-represented figuring of the Human. Following on Wynter, I deploy blackness as a frame of intervention that exposes how *Man*’s successful adventure – its elevation to the top of the Ethical chain – results from a representational device, which I am calling transmutation to mark its capacity to effect qualitative change. I show how – raciality, of which blackness is a signifier and a tool for such qualitative change – has enabled *Man* (the secular creature) to live off divine attributes (Ethical supremacy) precisely by how it has been identified with the Transcendental Human. This elucidation is sustained by a discussion of the cases brought before the Rwanda International Criminal Tribunal, The *Akayesu* Trial.

PANELIST 3 Lewis Ricardo Gordon
Temple University

When Justice Is Not Enough: Lessons from the Challenges of uBuntu

Developing in part by way of an extension of the narrative construction and epistemological purview opened in my *Introduction to Africana Philosophy*, this paper engages the concept of uBuntu as it has taken shape in South African discourses and law, proposing lines for its critical elaboration on a plane that pertains to political, moral, and philosophical thought in general. Its thesis ultimately is about the normative particularity of justice and the problematic of the human being posed by different normative possibilities, such as uBuntu, from the undersides of modernity.

2.3 An Existential Crisis for Secular Liberalism (Part II)

CHAIR Mark C. Modak-Truran
 Mississippi College

DISCUSSANT Kathryn Heard
 University of California, Berkeley

PANELIST 1 Robin W. Lovin
 Southern Methodist University

Moral Aspiration and Secular Reason: Rethinking the Relationship

One role of religion in liberal society is to set moral aspirations for society at large. The aim of secular reason, by contrast, is to ensure that these aspirations do not become sources of social conflict. The problem is that as moral aspirations disappear from public discourse, the scope of secular reason narrows, to the point that it is now largely confined to matters of national security and economic efficiency. The result, paradoxically, has been the political polarization that the constraints of secular reason were supposed to prevent. This is in sharp contrast to other historical periods as recent as the Civil Rights movement, in which moral aspiration led beyond social conflict. The question for investigation, then, is whether we can describe a contemporary idea of secular reason that can better accommodate moral aspiration.

PANELIST 2 Kevin Lee
 Campbell University

Law and Religion as Aesthetic Practices

Religion has long been explored through beauty and aesthetic theory. Recently, the aesthetic dimensions to law have been recognized. This paper investigates the relationship between law and religion through the aesthetics of recent critical studies theories (e.g., Duncan Kennedy) and the aesthetic thought of early Christian Neoplatonism (e.g., Pseudo-Dionysius and Augustine). Particular regard is given to the role that beauty plays in authority.

PANELIST 3 Mark Modak-Truran

Mississippi College

A Post-Secular Interpretation of Religious Liberty

The return of religion has generated considerable academic discussion of the secular, secularism, and state neutrality among religions. Religionists argue that religion is part of our history and tradition and that the Religion Clauses support the state generously accommodating religion. Secularists point to the religious diversity at the beginning of the republic and the Establishment Clause as evidence of a secular state. Religionists and Secularists, however, fail to give a sophisticated account of religion and continue to view religion primarily from the perspective of law. By contrast, a post-secular approach aims to take religion seriously (like religionists) based on the increased breadth and depth of religious pluralism—the new religious pluralism. However, Post-secularists recognize that religious pluralism rather than a theory of neutrality (like Secularists) requires limits on religious accommodation. The post-secular approach will be demonstrated by analyzing several well-known religion clause cases like the recent *Hosanna-Tabor* case.

PANELIST 4 Esra Demir Gürsel
Marmara University

The Human and the State in the Judgements of the ECHR concerning Religious Piety and Homosexuality

In this paper, I will elaborate on the question of the 'human' in relation to the question of the 'state.' In order to do this, I will focus on the jurisprudence of the European Court of Human Rights concerning religious piety and homosexuality. An overall examination of the relevant cases indicates that the state that is imagined, promoted, and enforced by the Court is a secular, liberal and national one. I will argue that this conception of the state also informs the qualities of the 'human' as conceived by the Court. Preserving and sustaining this certain form of the state is not possible, unless the 'human' is conceived as having some certain qualities. I will therefore look into the discursive presuppositions made with regard to the 'human' in line with the Court's conception of a secular, liberal and national state in the cases concerning pious and homosexual individuals.

2.4 “Making Justice:” Assessing “Humanly Comprehensible” Meanings of Law in Fiction, Truth Commissions, and Feminist Theory

CHAIR Cheryl Suzack
University of Toronto

DISCUSSANT N/A

PANELIST 1 Catherine Fleming
University of Toronto

Rewarding Vigilantism

In the 1742 novel *Joseph Andrews* a group of young men make a citizen's arrest, capturing a wanted highwayman. In Toronto, Canada, in 2009, David Chen, a Chinese shopkeeper, captured a thief who had already pillaged his store and was returning for more. But while the young men in *Joseph Andrews* were encouraged by the law, which promised them a reward, Chen was put on trial for kidnapping and assault. Between 1742 and today, many things have changed, most importantly the availability of a large police force. But one thing has not changed: sometimes the police will not or cannot act, and citizens must take the law into their own hands.

In *Joseph Andrews*, the capture of a highwayman becomes a village affair. He is caught by "Some young Fellows in the Neighborhood," (Fielding 1987, 51) imprisoned in the local inn, guarded by a constable and a village youth, and informally condemned by his wounded victim and the village gossips. By comparing *Joseph Andrews* to both modern citizen's arrest laws and Chen's testimony we can see how these different documents encourage or discourage a personal investment in the law.

PANELIST 2 Katherine Shwetz
University of Toronto

Resisting Reconciliation: Fiction and Canada's Truth & Reconciliation Commission

Canada's Truth and Reconciliation Commission (TRC) seeks to address the violence done by Canada's residential schools to Aboriginal communities, partly through the accumulation and dissemination of survivor stories. As Kim Stanton (2011) points out, Canada's TRC emerged out of a legal settlement as an attempt to "make justice" for indigenous communities, but fictional texts that predate and emerge alongside the TRC complicate the process of justice for residential school survivors. I argue that texts such as Tomson Highway's *Kiss of the Fur Queen* (1998) and Richard Wagamese's *Indian Horse* (2012) set a textual precedent for the storytelling component of the TRC, complicating the reconciliatory goals by providing a textual challenge to the possibility of resolution. The TRC promises "reconciliation," the subtext being that sharing stories is an important part of the incorporation of previously discordant narratives into the dominant discourse. These stories can be read vis-a-vis fictional narratives of residential school experiences as documented in texts such as Highway's and Wagamese's. The public TRC echoes Shoshana Felman's comments on the dramatic nature of justice, yet the performative judicial aspect of publicly telling stories about residential schools is filtered through the equally performative function of fictional texts.

PANELIST 3 Elise Couture-Grondin
University of Toronto

Intercultural Feminisms in Settler Contexts: A Study of Reconciliation in Law and Literature

In this paper, I relate the current official discourse of the Truth and Reconciliation Commission of Canada (TRC) and the literary discourse in *Aimititau! Parlons-nous!*, a book edited by Laure Morali, which gathers the correspondences between Aboriginal and Quebecois writers communicated during nine months, to argue that Morali's text enacts a different process toward reconciliation.

The contradiction in the actions and attitudes of the Canadian government regarding the TRC leads to a questioning of the practice of reconciliation in a legal framework. Still, the TRC is necessary and legal dispositions contribute to significant changes in the relationship between the government and First Nations. To explore these ambiguities, I focus on Aimititau!'s project of reconciliation, which results in a "cacophony" of voices, that is, in a multiplicity of identity and political positions that are in the midst of power relationships of oppression and liberation (Jody Byrd).

I propose to build an intersection between the processes of reconciliation and theories of intercultural feminisms through my analysis of these parallel social processes. Intercultural feminisms are similarly inscribed in a complex, theoretical and material, process of reconciliation, which takes into account sexual difference (Rosi Braidotti), as well as the decolonizing of anti-racism (Bonita Lawrence). The objective of my paper is to destabilize notions of reconciliation between the dominant culture and Aboriginal people from the legal, literary, and theoretical comprehension of its practices.

PANELIST 4 Trinyan Mariano
Rutgers University

Privacy and Proprietary Interests: Edith Wharton's Anxieties of Ownership

In "Privacy and Proprietary Interests: Edith Wharton's Anxieties of Ownership," I mine Wharton's fiction as sites for exiled legal discourses related to the then emerging right to privacy. While late nineteenth-century common law grounded the new right to privacy in age-old legal doctrines protecting the inviolate person and inviolate home, I argue that Wharton creates a counter-discourse through the way she treats ownership interests in letters. This focus is cannily chosen, as letters and mail have a legal prehistory of their own, one seemingly related to privacy but largely ignored as the right was codified. Letters are excised from formal legal discourse, I argue, because property rights associated with them are invariably social in nature, and so undercut the formal legal foundations of privacy, revealing privacy rights as a tool for consolidating ownership of personal information in the upper-classes.

2.5 Race, Rights and The Human

CHAIR Andrea Stone
Smith College

DISCUSSANT N/A

PANELIST 1 Andrea Stone
Smith College

Before Personhood: Nineteenth-Century Black Political Thought and the Human

Critiquing Roberto Esposito, Timothy Campbell asserts, "In the move towards an impersonal perspective, justice is reached when one no longer erects borders but grows 'feelers' instead for

all kinds of life. Foregoing the distinction between animal and man one feels and hence knows different perspectives.” I see nineteenth-century Black American authors striving for such perspectives in their contemplations beyond the limits of person. As black personhood became the focus of legal scrutiny and debate, black intellectuals understood themselves through other registers, not all in opposition to or inflected by white-imposed definitions of personhood. Campbell’s assessment of Esposito’s work offers an ethical and just approach, plausible in nineteenth-century Black American political thought. A broader consideration of human and other subjectivities that unseat the preeminence of the person opens space not only for critique of white oppression but for different approaches to the creation of self and of black political philosophy as well.

PANELIST 2 Steven Winter
Wayne State University

Isonomia and Education

What is “freedom” for humans necessarily bound by history and institutions? We identify freedom with the absence of constraint but cannot overcome what makes us who we are. Absolute freedom is not for us as mortals.

Freedom for the ancients requires “the capacity to do,” which means that it requires the right institutions. The original conceptions of democracy and freedom were premised not on autonomia but isonomia—i.e., the ideal of equal participation. An earlier generation of Americans—Jefferson, Pierce, Mann, Lincoln—saw a common public education as a democratic essential. Today, that vision is under attack in the name of a “freedom” understood in the abstract terms of non-racial meritocracy and markets. This paper uses Charles Sumner’s argument in *Roberts v. Boston* (1849) as a vehicle for exploring the meaning of isonomia, its relation to democracy, and the fundamental importance of an egalitarian conception of public education.

PANELIST 3 Paul Finkelman
Duke University

Can People be Property Under a Constitution to Protect the Rights of Mankind?

By examining the way the US Constitution and the Supreme Court treated slaves, my paper focuses on a very basic issue of personhood: can someone be a “homo sapiens” and not have the rights of a person? The legal and constitutional framework focused on how to treat slaves – as people or property. The Constitution of 1787 never uses the word “slave” and instead describes slaves as “persons” – such as “persons owing service or labour” (the fugitive slave clause); “three fifths of all other persons” (three fifths clause used for determining representation in Congress), or “such persons as the states now existing shall think property to admit” (slave trade clause). Implications from this history affected the Civil War and post-war treatment of former slaves and the later 19th and early 20th century treatment of blacks in the American South.

PANELIST 4 Ariela Gross
USC

Invisible Race

We often think of the U.S. South as the epicenter of visible race, the stark line between black and white creating a binary racial order immediately apparent to all observers. This black/white binary is explained by the “one drop” rule, in which any trace of African ancestry made a person black. Yet, over the course of U.S. history, the one-drop rule did not dominate the legal regime of race. In the courtroom, racial identity was determined less often by documentation of ancestry, or even by outward appearance, than by reading invisible signs of blood in a person’s demeanor, character or performance of identity. This paper will discuss examples of “invisible race” from the nineteenth-century as well as contemporary cases involving DNA profiling of race, the new “invisible race.” The performance of invisible race suggests some of the commonalities between racial systems as disparate as that of the United States and of Asian “untouchable” races who are phenotypically indistinguishable from the rest of society.

2.6 Colonialism and Law

CHAIR George Pavlich
University of Alberta

DISCUSSANT N/A

PANELIST 1 George Pavlich
University of Alberta

Colonial Biopolitics: Crime, Punishment and Persons

Concepts of criminal subjects in colonial contexts were often mapped against social hierarchies, with various ‘distinctions of persons’ deemed integral to crime and punishment. Thus, purportedly ‘uncultivated’ human persons who were found guilty of offending against ‘civilized’ persons were often treated more harshly than those whose ‘victims’ were deemed closer to ‘nature’. By returning to selected criminal cases at the Cape of Good Hope at the turn of the 19th Century, this paper maps key judicial rationales and technologies through which hierarchical distinctions of persons provided a basis for determining the ‘atrocities’ of particular crimes and appropriate punishments. In the process, I will explore how multifaceted notions of the ‘human’ braced a colonial biopolitics, permeated crime-focused law and sustained a particular kind of sovereignty politics.

PANELIST 2 Keally D. McBride
University of San Francisco

Colonialism and the Rule of Law

The rule of law is an ideology, and closely studying how ideals about legality were deployed through British colonialism reveals much about Britain's own tenuous application of the concept as well as the history of its international deployment. Revealing the rule of law as an ideology is not enough; we need to understand how it impacted colonial rule and realities, and also how that history continues to influence postcolonial legal institutions and reception of international legal norms today.

In this paper I will engage the specific history of British colonial legal administration. I have been quite surprised by my findings, and am in the midst of developing an institutional history of the law as it emanated from the center of the empire in London to finding the particular legacies of that law in specific locales. The end result of this historical study will be a theoretical exploration of the relationship between law and colonialism that links to current debates about international law and current programs, also directed from Anglo-European power centers, that are intended to bolster the rule of law in countries around the world. The most well funded example is USAID's "Rule of Law" project, providing lucrative contracts to law schools and other consulting firms to travel around the world, providing workshops to students at law schools on the importance of respecting property rights. Indeed, historicizing the proselytizing that has occurred on behalf of the rule of law from Anglo-American and European entities provides a new perspective on the sometimes vehement rejection of international legal norms that may appear unjustified if not simply atavistic.

PANELIST 3 James R. Martel
San Francisco State University

The Haitian Revolution and Resistance by Misinterpellation

In the talk, I would like to apply the idea of misinterpellation to an analysis of the Haitian revolution in the early 1800s where the Haitian slaves thought they were called to freedom by the French Revolution (and especially the Declaration of the Rights of Man and Citizen) even though this call was not meant for them. Called nonetheless (misinterpellated) they rose up and ended their slavery and the French were unable to reenslave them. Their radical resistance to reenslavement in turn (as CLR James tells us) set an example for and radicalized the French workers so that a fake, liberal revolution became a truly radical one via the mistaken inclusion of Haitian slaves (and, in turn, by becoming the model of revolution more generally, the French Revolution spread this radicalism--at least potentially--to the rest of the world). This is an example of turning a false concept (in this case the "freedom" promised by the Declaration) into a weapon against itself (so that the slaves own experience of freedom was something radically different then the bourgeois concept that inspired them). The radical freedom these slaves experienced has an anarchist dimension insofar as the slaves were far more radical than their leadership: Toussaint Louverture and even Dessalines, his main general (and often considered more radical than Toussaint) both attempted to impose a plantation, wage slave system in Haiti instead of classical slavery. The Haitian ex-slaves resisted both this imposition and Toussaint's more general accommodations with white planters. Left to themselves, they organized into small holding farmer communities that resisted the various levels of slavery that others sought to impose on them; that is, they resisted both state and market. The position of the former slaves--stark as it was--proved itself almost immune to the blandishments of liberal capitalism and in doing so offers a model of resistance that goes well beyond what is generally attributed to that revolution. For this reason, I would propose that we think of this revolution not only as

an event (in the Badiouan sense) but perhaps even the event--the event whose own coming into possibility made future events less impossible. The overall idea is that only as misinterpellated (as mishearing and misperceiving a call) can the subject subvert phantasm. The misinterpellated subject is not supposed to be called but they show up anyway; once there, the phantasmic script according to which they are dominated becomes unsettled and subverted; anything could (and sometimes does) happen. Although the power the Haitians wielded can be considered what Benjamin calls a "weak messianic force" the case of Haiti shows that it can actually be a very strong "weakness" (wherein a group of former slaves defeated Napoleon's armies when all of Europe could not).

PANELIST 4 Stewart Motha
Birkbeck Law School

Nomos of the Sea: Colonialism, Diaspora and People in Little Boats

The Indian Ocean has for centuries been a site of trade, colonial expansion, the movement of slaves, indentured labour and people fleeing persecution. India, Africa, South East Asia, and Australia share centuries of co-emerging peoples, languages, and techniques of governance. The Indian Ocean is the space of this nomos. Drawing inspiration from Paul Gilroy's 'Black Atlantic', this paper suggests that the Indian Ocean could be an analytic lens through which the sovereign and governmental formations of the 21st century and the forms of life that is their residue can be observed. It is also a site from which European colonial sovereignty eternally returns.

2.7 Law and Loss: Judgment, Hearing, Silence

CHAIR Jill Stauffer
Haverford College

DISCUSSANT N/A

PANELIST 1 Shai Lavi
Tel Aviv University

Animal Suffering, Humane Killing and the Ethics of the Secular

Since the early nineteenth century and the rise of animal protection societies, laws prohibiting cruelty to animals have become part of our moral and legal landscape. The protection of animals from wanton cruelty and unnecessary suffering became a hallmark of an emerging humane ethics of a secular age. Central to this moral and legal development was the reform of animal slaughter laws and slaughterhouses. The ethical challenge was how to slaughter animals humanely and new laws introduced a variety of measures to meet this challenge, including the pre-stunning of animals. Alongside this development, traditional practices of slaughter, including Jewish and Muslim practices, were deemed inhumane, and were either banned or required a religious exemption. The alternative ways in which these traditions understood animal slaughter and the pain of slaughter could no longer be heard. The paper examines the history of animal slaughter in Germany in the nineteenth century and asks: How did it become possible for the

law to hear the suffering of the animal? What precisely did law hear in the suffering of animals? And what alternative voices—of animals, humans and their gods—were silenced in the course of making this new attunement possible?

PANELIST 2 Linda Ross Meyer
Quinnipiac University

Suffering the Loss of Suffering: How Law Shapes and Occludes Pain.

Law understands and describes suffering through tort doctrines of "pain and suffering" and through doctrines of punishment. This paper examines the ways in which law sees suffering—often as pain that is either "not justified" or "abnormal." In this way, law seems to seek to compensate primarily for a lack of law—a lack of justification or normality. The paper then asks what is importantly captured in law's understanding of suffering, and also what is "missing" in law's understanding. One important element that is missing in law's understanding of suffering is the suffering that is the loss of suffering itself.

PANELIST 3 Jill Stauffer
Haverford College

Loss, Legality, and a Procedure for Telling Stories.

This paper, using evidence from recent proceedings at ICC and ICTY, sheds light on a predicament created when institutions aiming to adjudicate loss impose loss of a different kind. What happens when a speaker speaks in an institution designed for hearing, and an audience empowered to listen hears something other than what she says? What stories can—and what stories cannot—emerge from a legal trial, or even a truth commission? What forms of silence or deafness revictimize survivors or undermine reconciliative efforts, and what forms of hearing truly do justice? This paper explores such questions—balancing theory and practice—in order to think carefully about what legal responses to atrocity can and cannot accomplish for survivors, perpetrators, bystanders, beneficiaries and the larger world community. Such increased understanding of law's proficiencies and failings may help us rethink institutional design and procedure, or subject received truths about justice after mass violence to renewed scrutiny.

PANELIST 4 Sara Murphy
NYU/Gallatin

Animals and Englishmen: Victorian anti-vivisection debates and the human

Victorian anti-vivisection debates inscribed a contradictory conception of the human. Anti-vivisectionist discourse insisted that experimentation on animals reduced the humanity of the experimenter, while marking the similarities between animal and human capacity for pain and suffering. At the same time, some activists interrogated the blurring of the animal/human boundary embodied in the assumption that research on animals could advance knowledge of human physiology. In several key moments of the debate, the categorical confusion is complicated by questions of national identity. Lord Chief Justice Coleridge suggests that certain kinds of abuses may have happened abroad, but not among English scientists; while Collins' *Heart and Science* opposes his hero to a vaguely foreign vivisectionist. Examining works by

Collins, Frances Power Cobbe, and Coleridge in the context of the 1881 trial of David Ferrier, this paper interrogates the conception of the human in vivisection debates as emerging in relation to law, national identity, and an internationalized scientific community.

2.8 Object Relations and Law

CHAIR Jeremy Elkins
 Bryn Mawr College

DISCUSSANT Susan Schmeiser
 University of Connecticut

PANELIST 1 Anne Dailey
 University of Connecticut

An Object Relations Perspective on Liberal Justice

This paper reflects upon the contribution that object relations theory can make to our understanding of the place of children in a liberal legal system. It begins with the uncontroversial point that our liberal system of justice confers substantial negative rights on adult citizens but leaves children subject to the shared authority of parents and the state with few rights of their own. The fact that children traditionally are not treated as liberal rights-bearing citizens in the United States is easily justified since developmentally most children lack the physical, emotional and cognitive capacities to live lives of their own choosing. The law thus places children under the authority of parents and the state; the legal system steps in only to protect children from extreme abuses of that power. Yet object relations theory reveals the decisively adult-centered bias of liberalism's traditional approach to children; children are viewed as lacking adult capacities rather than as possessing distinct capacities and attributes of their own. This traditional liberal view of children's incapacities goes hand-in-hand with a conception of rights as restraints on governmental interference rather than as affirmative claims to the governmental goods and services that might foster children's unique capacities and attributes.

Object relations theory reorients law's perspective from adult incapacities to children's evolving developmental experience. It views law as a potentially constitutive, loving, affirmative presence in children's lives, one that precedes the later (oedipal) role of law as discipline and prohibition. This developmental, pre-oedipal perspective on law's relationship to children gives rise to a theory of children's affirmative rights to caregiving goods and services in the spheres of home, school, and juvenile justice. In its recognition of children's affirmative, caregiving rights, an object relations perspective privileges play and imagination over rules and discipline, loving households over cognitive learning in school, and rehabilitation over punishment in the criminal law. And in revealing children's rightful place as rights-bearing liberal subjects, object relations theory illuminates the inescapably romantic core to liberalism's enlightenment project of justice.

PANELIST 2 Jeremy Elkins

Beyond Natural Law and Positivism: Transcendence, Immanence, and the Body of Law

The “natural law-positivist” taxonomy has dominated discussions of the “concept” of law. The project from which this paper is taken is in part an attempt to go beyond that standard taxonomy in thinking about law, and to examine the idea (or ideas) of law not from the perspective of the question how to identify law, but from the perspective of the question of why the very idea of law has held such an extraordinary place in human imagination. In approaching this question, the project begins by trying to show that both natural law and positivist ideas are currents within our understanding of law, and then tries to understand the attraction that each has for us. In doing so, I suggest that running through both of these is a set of deeper currents, which I refer to as the “transcendent” and the “immanent.” After showing how these deeper currents appear differently in natural law and positivist ideas, I turn directly to try to understand their significance for us. This is the piece of the project that I shall be focusing on in this paper and it is at this stage that the analysis becomes most heavily psychoanalytic. For I understand the ideas of transcendence and immanence as a relationship between the collective body—the “body politic” and the “body of law”—and external and internal objects; and this naturally involves complex dynamics of introjection, identification, and projection. In the larger project, I further explore the idea of transcendence as immanence as two primary modes of being in relation to the world—connected psychoanalytically, I believe, to “making” and “holding”—and although I will not have time to develop this idea in the limited space and time of this paper and its presentation, I hope at least to be able to touch on it.

PANELIST 3 Nomi Stolzenberg
University of Southern California

The Law of the Father and the Law of the Mother: The Varying Implications of Freud's and Winnicott's Psychoanalytic Models for Understanding Law

Most studies of law and psychoanalysis model law on the basis of Freud's conception of the father and his prohibitions, calling attention to the conflicting impulses toward patricide and longing for authority/ obedience that are unleashed in the oedipal conflict. A very different aspect of law comes into focus through the lens of Winnicott's theories, which push the focus back to the pre-oedipal relationship embodied in the infant-mother dyad. This paper seeks to develop the implications for law of Winnicott's conception of the mother-infant body (as Winnicott famously said, “there is no such thing as a baby, there is a baby-and-someone,” mother and child constituting, as it were, a single body). It argues that Winnicott's theory sheds light on a function of law neglected by the Freudian model, namely, the role of law in constituting facts (perceptions of reality) as opposed to the more familiar (Freudian) function of articulating and enforcing normative behavioral injunctions. Embedded in Winnicott's theory of the “good enough mother” is a pragmatic theory of “good enough” knowledge which echoes the knowledge-making practices of law. Shedding light on how law functions not only as a set of injunctions (prohibitions, obligations and permissions) but also as a matrix of language, knowledge and belief, Winnicott's ideas help us to understand the role of “legal fictions” in constituting facts (make believe). At the same time, they help us to understand the relationship of legal knowledge (the law of the mother) to legal norms (the law of the father), and the embeddedness of both in the body (the body of the law and the law of human embodiment).

The law of maternity and paternity is used to illustrate the "maternal" function of law made perspicuous by Winnicott's theories, which exists alongside the more familiar paternal function of laying down and enforcing moral injunctions, made perspicuous by Freud.

PANELIST 4 Tom Johnson
Birkbeck College

For "how long" is a human? The passage of time in medieval coroners' rolls

Post mortem inquests are terse, formulaic documents, but an analysis of their language reveals some assumptions about the periodic nature of human bodies in medieval England. The legal process necessitated a logical sequence of events that led to death: a tight distinction is drawn between the previously alive person, who is referred to by name throughout, until they die and become a corpus, an 'it' to be examined for physical marks. Also key to these records is the concept of 'deodand', an appraisal of the value of the object deemed to have caused the death of the individual; this was then paid to the Crown as a fine. The continued existence of the object is thus drawn in stark contrast to the 'past' person and present deteriorating corpse. I will proceed from the inquests to more general considerations: the insights of Object-Oriented Ontology and Legal Geography provide a springboard throughout.

2.9 Early Modern Legalities: Water Consciousness, the Law of Play, and the Liminal Shore

CHAIR Carolyn Sale
University of Alberta

DISCUSSANT N/A

PANELIST 1 Lehua Yim
San Francisco State

Of Diversion and Reversion: Fluid Propriety and Water Conflicts in Elizabethan England

This paper presents several case studies of fresh water legal conflicts in England of the 1580s and '90s in order to reconsider our assumptions that proprietary rights in fresh water under English common law were either wholly "public" (held by a nation-state) or "private" (held by individuals). Instead, this paper recovers notions of community and property which did not eschew meum et tuum and which also insisted on something else besides possessive individualism as the premise of human-in-social-life. Thus this essay reveals a particular water consciousness, legal and social, statutory and customary, of moment in the history of property. This water consciousness might allow us in our current moment to rethink modern, universalist constructions of rights to water (such as the United Nations' recent declaration of fresh water as a "human right"), and attend more to indigenous and local dynamics of just and proper uses of essential resources.

PANELIST 2 Carolyn Sale

University of Alberta

Sporting It in Arden: The Charter of the Forest, As You Like It, and the Law of Play

Dealing with aspects of the Charter of the Forest (1217) that both sixteenth-century readings at the Inns of Court and recent idealized representations (Linebaugh, Chomsky) ignore, the paper makes a strategic materialist turn back to Shakespeare's engagement with the legal fiction and space of the Forest to argue for the legal character of the play's action as dramatic form. Arising from a culture manifesting what Marx has called the "classic form" of emergent capitalism, the play offers, in relation to both legal and economic forms that endure, the experience of an incipient legality, one that turns on the cultivation of a general human creative capacity, not just in play-time but through specific experiences of play. Taking back in theatrical "sport" what a legal fiction authorizing the preservation of resources for the sovereign's exclusive recreational use would render as "waste," the play manifests as form an as yet unrealized law of play.

PANELIST 3 Meredith Evans
Concordia University

Shakespeare's Liminal Shore

Schmitt's critique of the "spaceless universalism" of international law highlights the arbitrary distinction between human and inhuman, the merely spatial distinction between occupied land and ostensibly uncivilized places or "common wastes". This paper engages Schmitt's challenge by analyzing Shakespearean tropes that show the law of the land running up against the sea – or, rather, the border between land and sea. The latter is "free" insofar as it is not under state jurisdiction, but is ambivalently situated between *res nullius* and *res communis omnium*. Examining aspects of Shakespeare such as King Lear's so-called "Dover Cliff scene," which suggests the power and the limitations of subjectivity (Montaigne) and the unstable difference between labor (the sapphire gatherers) and leisure (the spectator), the paper shows the Shakespearean drama trying the difference between the human and the inhuman, testing the reaches of sovereign subjective power, and facilitating an otherwise unattainable degree of intellectual leisure.

PANELIST 4 Sinja Graf
Cornell University

'An Offense against the Whole Human Species' - John Locke's concept of universal crime in colonial context

I argue that the earliest articulation of 'crimes against humanity' appears in John Locke's Second Treatise of Government. The essay lays out Locke's theory of crime and punishment in the state of nature in conjunction with the tensions within Locke's theory of humanity. The latter align along the difference between a metaphysical conception of humanness as a universally egalitarian potential and a political concept of humanity encasing a hierarchically ordered spectrum of natural law abiders and trespassers. Substantively, I identify violations of the natural law's stipulations on the protection of private property in land as the content of 'offenses against the whole human species'. Drawing on literature on Locke's interest in colonial land appropriation, I argue that once we read his theory of crime and punishment in its global

key, the intellectual roots of the concept of ‘crimes against humanity’ appear to be rooted in the early modern colonial project.

2.10 ROUNDTABLE: Book Discussion: Book: Giorgio Agamben – Power, Law and The Uses of Criticism (Routledge, Paperback 2011/12) Author: Thanos Zartaloudis

CHAIR	Stacy Douglas Carleton University
PANELIST 1	Jennifer Culbert John Hopkins University
PANELIST 2	William Watkin Brunel University
PANELIST 3	Oren Ben Dor Southampton University
PANELIST 4	Costas Douzinas Birkbeck, University of London

SESSION 3 1:30 PM – 3:00 PM

3.1 Politics and Politicking in Age of Suspicion

CHAIR	Kalyani Ramnath Princeton University
DISCUSSANT	N/A
PANELIST 1	Kalyani Ramnath Princeton University

The Other Criminal Codes: Politics and Politicking under the Goondas Acts in India

This paper looks at the figure of the goonda in penal legislation in colonial and postcolonial India, which uses 'public order' as its justification for its existence. Neither a thug nor a rowdy sheeter, the goonda appears in law and language as yet another criminal legal category designed to protect society from being overrun with petty disorderly elements. The schema of detention orders under the Acts as a means of policing 'suspicious persons', including the goonda provides an interesting lens through which to examine the production of everyday emergencies and terror tremors, and the mimicry of anti-terror legislations that have both preventive detention and press censorship as their mainstay. Over the years, as these Acts have grown to encompass both slumdweller and video pirates within their ambit, policing for security and policing for livelihood are invoked simultaneously. The sites of these invocations include communal riots and political rallies, but also sidestreets and shanty towns. The Goondas Acts are a means of examining many of the fundamental questions surrounding biopolitics, and this paper demonstrates this using legislation, case law and news reports. Do the state and its agents, at any given historic moment including the contemporary, work differently with legislation such as the Goondas Acts beyond their justifications of 'public order'? If so, what can these moves tell us about politics and politicking?

PANELIST 2 Itamar Mann
Yale Law School

The Politics of the Face: Asylum Seekers on the Borders of the European Union

In Emmanuel Levinas's philosophy, the face is famously positioned at the center of the ethical encounter with the other. As Giorgio Agamben pointed out, however, with the development of photography and the systematic proliferation of criminal and prisoner mugshots, the face became an instrument of policing. Agamben traces the historical from the mugshot to the modern ID card. He does not however grant any attention to the connection between this history, and recent rules imposing the exposure of the face, such as the headscarf ban. This paper will interrogate the relationships between these seemingly incongruent conceptualizations of the face, through a study of regulations relating to asylum seekers in the European Union.

My point of departure will be a short encounter I had with asylum seekers in November 2010, as a researcher for Human Rights Watch in Northeast Greece. This group of two men and one woman said they were coming from Somalia, and were dressed in "Muslim garb". The woman wore a headscarf, though her face was not covered. Later that day, during a visit to a detention center, we saw them again. After it became clear that they were Spanish speakers who did not know the Somali language, they admitted to being Dominican nationals. Like others, by pretending to be Somalis they had hoped to be granted easier access to asylum, due to the ongoing and well-publicized crisis in Somalia.

After a brief survey of the EURODAC system, demanding European border control agencies to distribute headshots of asylum seekers among the different EU member states, I will return to this strange encounter. Asylum seekers are particularly indicative of the dual role of the face, as they are at one and the same time the subjects of human rights, and the objects of surveillance. But what is the relationship between these two logics? Are they indeed contradictory, or perhaps complementary? As I will argue, both options may be over-simplifications. From the encounter with the three Dominican-Somali asylum seekers, I will try to conceptualize how the

world's most underprivileged inhabitants intervene in this double bind, asserting within its network of powers a certain modicum of freedom.

PANELIST 3 Yael Berda
Princeton University

From Subjects to Suspects – colonial legacies and population management practices in the first decade of two former British colonies India and Israel

Few activities reveal the power of the modern state more than monitoring borders, control of population movement, classification of subjects and segregation of groups, and issuing identity cards. Constructing maps, monitoring entry of foreigners, processing passports, visas and travel documents are all central to political regimes as they are constructed and experienced by both civil servants and the public. In colonial regimes, direct violence proved ineffective when subjects fled from the control of the state, so more sophisticated forms of control through documentation and surveillance were developed, in order to make populations “legible”. As the postcolonies underwent regime change, from partition and independence to the period when formal citizenship laws were enacted, were characterized by a legal and political limbo in which administrations ruled through colonial categorizations, internal regulations, emergency decrees and permit regimes. During this period there was an acute disparity between the outward political declarations regarding citizenship and political membership in the new democratic states, on the one hand, and the colonial administrative structures and practices that governed the lives of the populations as subjects, on the other. As millions turned into refugees and intruders by the demarcation of new border, the categorization of population was no longer managed by the rule of colonial difference, people were categorized according to their relationship to the state – citizen, resident, refugee, intruder and suspect. Two permit regimes were established to control suspect populations and intruders– the military government in the north and south of Israel erected to control and survey the movement of the Palestinian population within Israel (1949 – 1966) and the permit regime between India and Pakistan. The categories of “suspect” and “security threat” developed in these permit regimes affected the construction of political membership for decades.

PANELIST 4 Jinee Lokaneeta & Sangay Mishra
Drew University & Lehigh University.

"Suspicion" and "Trust" in Community/ Policing: A study of Muslims, South Asians, and Arabs in the Post-9/11 U.S.

This paper analyzes the interface between Muslim communities and the law enforcement agencies in Los Angeles after the 9/11 attacks. Muslim communities have both cooperated with law enforcement as well as challenged them for profiling and targeting the group. On the side of the law enforcement, they switch between the language of multicultural inclusion and trust on the one hand, and suspicion and targeting on the other. This paper is an attempt to analyze the emerging police practices vis a vis Muslim communities and situate them in the larger debate on racial and religious profiling and community policing. Using interviews, legal cases and documents, we argue that the trust and cooperation approach tends to fail because it is premised on a relationship constituted by suspicion and distrust of the community historically, institutionally and socially.

3.2 The Roles of Rhetoric in Creating Legal Cultures

CHAIR Anne Sappington
Trinity College Dublin

DISCUSSANT N/A

PANELIST 1 Anne Sappington
Trinity College Dublin

“My Penne Abhorreth to Put them in Writing”: The Rhetoric of Pain and Comparative Legal Scholarship in Renaissance Editions of the De Laudibus Legum Anglie

Sir John Fortescue’s *De Laudibus Legum Anglie* (“On the Praises of English Law”) was written in the 1390s, but it remained unpublished until the sixteenth century. Yet John Selden’s 1616 edition and the *De Laudibus*’s importance in seventeenth century parliamentary dissent speak to its popularity after its publication. In this paper, I consider an aspect of Fortescue’s language often ignored by scholars: its physicality. In his comparisons of civil and common law, Fortescue’s rhetoric continually emphasizes the law’s power to mediate between the state and subjects’ bodies. I argue that Fortescue’s focus on bodies lent it an unusual urgency that explains his text’s appeal to its more radical students in parliament.

PANELIST 2 Aoife Fennelly
King’s Inns, Dublin

‘Putting a Narrative’ to the Irish Bench

Legal stories in the courtroom aim to make the world seem self-evident by grounding themselves in the inherited legitimated past of preceding decisions. Procedural limits are imposed to contain the danger inherent in permitting the rhetoric used too eminent a position in the decision-making process but that rhetoric nevertheless influences the final judgment. Within the legal system both judges and advocates use narrative and story-telling as a tool of persuasion to justify their conclusions as to the appropriate means of applying the law to a set of facts. Advocates are expected to use such devices to make the case for their client; however a judgment of the court is delivered as a truth-claim that is founded on the established authority of preceding cases and a reasoned interpretation of statute. The acknowledgment of the use of narrative devices and hence acceptance of multiple interpretations of, firstly a given set of facts and, more importantly, a given legal text could be said to mitigate the authority of a judicial pronouncement. This paper will explore the types of narrative devices used within the legal system, primarily from the Bench but also from the Court floor. It will identify some of the different narrative styles used by judges today and will go on to examine the rhetorical devices used by advocates in Court to ‘put a narrative’ on the facts they have been given in order to persuade either judge or jury to accept the argument they are advancing. In particular it will explore how such narrative tools differ depending on the type of issue under discussion.

PANELIST 3 Steven Kapica
Northeastern University

What if God was a Virtual Girl? Posthuman Rhetoric, Law, and Caprica

Failed science-fiction television series, and Battlestar Galactica spin-off, Caprica presented its viewers with an engaging and soundly reasoned exploration of the posthuman. While the show struggled to follow through on its promise, witnessed in its cancellation after only one season, it presented viewers with an extended rumination on the difficulties of mediating virtual existence(s). Zoe Graystone (Alessandra Torresani), as teenage genius and virtual messiah, offers law and culture scholars a robust conceptualization around which the jurisprudential problems inherent in theorizing the posthuman come to the fore. This paper draws on rhetorical scholarship and the rhetoric of law to explore how Zoe Graystone's virtual existence presents us with a revealing and informative perspective commensurate with what rhetorician Collin Gifford Brooke notes regarding posthuman rhetoric's ability to "allow us to turn our backs on omniscience and the humanist values of mastery and control that derive from the will to knowledge."

PANELIST 4 Cheryl Dudgeon
University of Western Ontario

"This sweet touch from the world": International Human Rights Law and the Senses in Michael Ondaatje's Anil's Ghost and Chris Cleave's Little Bee

This paper explores the relationship between international human rights law and the senses--primarily, the sense of touch--via a reading of two novels that foreground the mobilization of sensory perception in relation to the international legal realm in complex ways. The term "soft law" is often applied to international human rights law because of its perceived lack of enforcement mechanisms. As touching narratives, Anil's Ghost and Little Bee harness the power of touch in ways that challenge the term's critical implications for the law. Drawing on the work of Erin Manning on the theorization of a politics of touch and Deleuze and Guattari's evocation of the Body without Organs (BwO), this paper demonstrates how literary narratives challenge notions of bodily stability under the law. In Anil's Ghost, the narrative focus on efforts to reconstruct the humanity of a skeleton ("Sailor") for evidentiary purposes incorporates touch as a trope to suggest that bodies often exceed the law's grasp. In Little Bee, Cleave creates a portrait of a Nigerian asylum-seeker that explores the sensing body in movement. Here, touch and the absence of touch figure as a means by which to critique the impact of the "inhuman" touch of biometrics on bodies of refugees poised on the boundaries of states.

3.3 Sovereignty and Political Theory

CHAIR Joshua Dienstag
UCLA

DISCUSSANT Joshua Dienstag
UCLA

PANELIST 1 Jennifer L Culbert
 Johns Hopkins University

The Mystery of Mercy: Lawful Lawless and the Right to Have Rights

In this paper I stage an awkward conversation between Austin Sarat and Hannah Arendt. I do so because I believe Arendt's discussion of the predicament of stateless people in *The Origins of Totalitarianism* offers us a different way to tell a story about what Sarat, in *Mercy on Trial: What It Means to Stop an Execution*, calls "lawful lawlessness" or the inscription in law of a power above the law, a power that can never be fully predicted or ever governed by codes. In the context of Sarat's book, this power is made manifest in the power to pardon, which is understood as an expression of sovereign prerogative. In Arendt's text, this power manifests itself in what she calls "the right to have rights," a right for which she fails to provide an account or any explicit theoretical justification. In this paper, I propose to consider how mercy might fare differently in a trial in which the power that reveals itself in clemency decisions is conceived not in terms of a more or less divine sovereign being but rather in terms of an obviously unentitled "right."

PANELIST 2 Jennifer Hardes
 University of Alberta

Sovereignty, Biopolitics and Fear

This paper addresses the concept of political fear in the work of Hobbes (1996) and Foucault (2003, 2007, 2008). I posit that Foucault's reflections on biopolitics rely on a similar understanding of fear underlying Hobbes' articulations of sovereignty. I frame this discussion around two interrelated aspects of Foucault's genealogy of biopolitics. First, regarding his (2007) genealogy of the 17th century state and the development of European equilibrium. Second, regarding his (2008) account of 17th century liberalism and the development of 'homo economicus'. I posit that the 'anthropological essence of political theory' (Schmitt 1985), which enunciates 'man as wolf to man', frames both sovereignty and biopolitics (see Derrida, 2009). This paper attempts to do two further things. First, it challenges an essential view of fear and, second, deconstructs the distinction between sovereignty and biopolitics.

PANELIST 3 Leif Dahlberg
 Kungliga Tekniska högskolan

"The Enemy Within" – Factoring out Justice from Politics in Machiavelli and Schmitt

The first part of the paper presents a reading of Ambrogio Lorenzetti's allegorical frescoes in the Palazzo Pubblico in Siena (1338-1340), representing the notion that in a well-governed city, not only must the ruler be just, but the citizen-body must be united and free from internal strife. The second part discusses some passages in Machiavelli's *Discorsi* (c. 1571), where it is maintained that it is the open space of regulated and institutionalized internal conflict among citizens that constitutes the domain of politics. Implicit in Machiavelli's argument is that "justice" is not an inherent quality of the ruler, but has been "factored out" from the institution of politics. The argument in the paper is that the transition from pre-modern politics to truly

modern politics consists in a double shift: first in opening up an empty – but institutionalised – political space (Lefort); second in the factoring out of justice from the political space.

PANELIST 4 Mark E. Herlihy
Georgetown University

Gods, Heroes, and Sovereigns: An assessment of Schmitt's political "theology"

Schmitt's POLITICAL THEOLOGY famously (or infamously) begins with the definition: "Sovereign is he who decides on the exception." The notion that in a moment of existential crisis a self-constituting sovereign's command can establish a new constitutional order is a central one in Schmitt. I propose to examine this notion through the lens of a phenomenology of religion (largely informed by the work of Mircea Eliade). I will argue that the "state of exception" cannot be understood as a moment in real (historical) time, but is a "theological" concept precisely because it is the recollection or reenactment of a moment in mythic time. This analysis has implications both on a theoretical plane, in terms of the continued relevance of Schmitt's thought, and on the plane of practical politics, in terms of contemporary claims regarding the existence of states of emergency or states of exception, and their juridical status.

3.4 Racial Re/Constructions, Narrative, and Democracy

CHAIR Claire Rasmussen
University of Delaware

DISCUSSANT Claire Rasmussen
University of Delaware

PANELIST 1 Andrew Dilts
Loyola Marymount University

The Impossibility of Free Black Labor: Convict Leasing and "On the Meaning of Progress"

This paper focuses on the rise of the convict-leasing following the US civil war. This system, which effectively substituted a prison economy for a slave economy and a penal system for a slave system, was permitted by exceptions written into 13th, 14th, and 15th Amendments, ensuring that any re-founding of the polity could be limited through punitive techniques and the figuration of free black labor as larceny. Through close readings of Wells, Douglass, and Du Bois, I argue that the political system of white supremacy and the diminished political standing of non-whites in the United States are supported by the discursive impossibility of "free black labor." I further argue for a re-reading of Du Bois' theory of history and its relation to the concept of freedom, linking his more sociological analyses of "Negro crime" to his account of "progress" in "Souls."

PANELIST 2 Heather Pool and Brian Parkinson
University of Washington and University of Baltimore

Reviewing Reconstruction: Birth of a Nation, Blazing Saddles, and the Contested Meaning of Emancipation

How should Americans celebrate the sesquicentennial anniversary of the Emancipation Proclamation and the advent of Reconstruction? Here, we use popular depictions of Reconstruction to consider how media reflects and shapes American understandings of race, law and politics. Reconstruction has secured a place in American memory through blockbuster movies, including *Birth of a Nation* (1915), *Gone With the Wind* (1939), and *Blazing Saddles* (1974). We analyze *Birth of a Nation* and *Gone With the Wind* as melodramas depicting white anxiety during and after the Civil War, contributing to the development of united whiteness. Against this, we posit *Blazing Saddles* as a satire of *Birth of a Nation*. Its story comes closest to the spirit of Reconstruction we would do well to remember today, highlighting a form of political participation that, “pardons as it corrects.” We conclude by considering whether the satire of *Blazing Saddles* is effective as memorial.

PANELIST 3 Nicole Gates
 USC

Too Important to Fail: The Business Case for Law Firm Diversity in the Wake of the Great Recession

The widely adopted “business case for diversity” appears to have failed when the global financial markets failed. The business case relies upon an economic rationale, namely, that effectively managing employee diversity by recruiting, training, and promoting diverse candidates is necessary to succeed in increasingly diversified markets. The Great Recession changed the economic landscape upon which the business case for diversity was founded and thereby pushed diversity statistics back to pre-recession levels. I aim to illustrate through the examination of employment demographics in law firms why the business case needs to be supplanted in light of the changing economic conditions. Without a reevaluation of the successes and failures of the business case for diversity, diversity gains in law firms will stagnate as they have for many years, and we will continue to see very few minorities reaching the highest levels of prestige in the legal profession.

3.7 ROUNDTABLE: Global Humanity and International Criminal Law

CHAIR Peter Fitzpatrick
 Birkbeck

PANELIST 1 Peter Fitzpatrick

	Birkbeck
PANELIST 2	Marieke de Hoon Vrije Universiteit
PANELIST 3	Christine Schwöbel University of Liverpool
PANELIST 4	Immi Tallgren University of Helsinki
PANELIST 5	Sara Kendall Leiden University

3.8 Bare Life in Action: Human Rights and Other No So Human Languages

CHAIR	Jonna Pettersson University of Lund
DISCUSSANT	Jonna Pettersson University of Lund
PANELIST 1	Andrew Schaap University of Exeter

Abjection and Agonism: Hannah Arendt, Giorgio Agamben and the Politics of Human Rights

It is often observed that Giorgio Agamben radicalizes Hannah Arendt's critique of human rights. In fact, Agamben's account of human rights as irremediably implicated in biopolitics closely follows the structure of Arendt's critique, while eschewing the dichotomy between necessity and freedom that she presupposes. Consequently, Agamben avoids the pitfalls of Arendtian humanism, according to which abject human beings appear to be 'worldless'. This is most apparent in Arendt's dire analogy between the anthropological state of nature in which she thinks 'primitive' peoples lived and the peculiar state of nature in which stateless persons are thrown. Despite this, while Arendt's 'agonistic' conception of politics is often invoked to conceptualise how the 'right to have rights' might be enacted, it is difficult to account for how human rights might be appropriated to 'resist' abjection within Agamben's thought. I will consider the strengths and limitations of each position.

PANELIST 2	Diego Rossello Pontificia Universidad Católica de Chile
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The Condition, Human: On the animal in Arendt's "animal laborans"

In her book *The Human Condition*, Hannah Arendt introduced the notion of animal laborans to characterize a type of activity that was barely human. Laboring, Arendt suggested in that book, remained tied to the cyclical needs of life and was therefore the quintessential non-political activity. According to Arendt, whereas labor was an activity that humans shared with other animals, political action signaled the exclusively human possibility of political freedom. Many critics, working mostly from a Marxist perspective, took issue with Arendt's exclusion of labor from the realm of politics. This paper shifts the focus of the critique from labor to the question of the animal in Arendt's political theory. Drawing on recent literature in the field of animal studies, this paper suggests that the animal marks, at the same time, the limit and the condition of possibility of the political in Arendt's work.

PANELIST 3 Dana Mills
Oxford University

Moving the human: dance, human rights and a universal community of sense

Influential Human Rights lawyer Helena Kennedy writes: "Human Rights provide us with a new language for discussing our relationships with each other and with the rest of the world". Further, she argues: "too often we speak of human rights only in terms of how they are violated and not in terms of how they can affirm and legitimize the aspirations of a society". In this paper I offer a reading of an alternative human rights discourse as an affirmation of a universal community through dance. I draw upon different references to the Israeli- Palestinian conflict and its effect on the perception of Human Rights. I seek to define a community of sense that contests the concept of the Human and thus enables an alternative Human Rights discourse as an embodied humanist practice.

PANELIST 4 Lars Toender
Northwestern University

Becoming Hilarious: Spinoza, Bare Life, and the Politics of Black Comedy

Does comedy offer an alternative politics of resistance relevant to the liminal state between the human and the nonhuman? The aim of this paper is to address this question through a comparative reading of Spinoza's concept of hilaritas and Dave Chappelle's parody of race relations in the United States, developed in his now defunct Chappelle's Show. The first part examines Spinoza's idea that laughter can augment bodily power as well as moving bodies in directions they didn't anticipate or considered impossible. The second part turns to Chappelle's critique of race discrimination, which Chappelle develops through a parodic staging of the past that either repeats or exhausts racist epithets, using the power identified by Spinoza to mobilize against the notion that Africa-Americans are less than human. The paper concludes with a discussion of how this approach offers a promising alternative to existing engagements with bare life and human rights.

3.9 Human, Nonhuman, Superhuman

CHAIR TBC

DISCUSSANT TBC

PANELIST 1 Caroline Holmqvist
London School of Economics

Automated War: Re-thinking the Human-Material Assemblage

This paper departs from two recent initiatives regarding the critical study of war: first, the call for inquiry into the ontology of war as a condition of ‘unmaking and remaking’ of social and political order, casting the human subject ‘into motion’ (Barkawi/Brighton, 2011); and second, for the study of war as lived, human experience (Sylvester, 2012). It is argued that these two initiatives combine to generate new impetus for exploring the relationship between the material, the virtual and the human in contemporary war. To this end, this paper invokes the topic of automation in contemporary war (specifically the reliance on UAVs/drones) – technologies that allow for killing at a distance. Questioning the oft-repeated claim that technologies of automation and robotics ‘take the human experience out of war’, I argue that automation instead ushers in unexpected combinations of human and non-human experiences of war. To make sense of this human-material assemblage, I draw on the critical phenomenology of Maurice Merleau-Ponty (specifically, his ontology of the ‘flesh’ and the ‘chiasmus’) and Judith Butler’s recent exploration of the ontology of the human centred on the notion of being ‘undone’ through mutual precariousness and vulnerability (Butler, 2004, 2009).

PANELIST 2 Heather A Harrison Dinniss
Swedish National Defence College

Soldier 2.0: Human enhancement technologies and the laws for modern battlespaces

As advanced militaries continue to invest in programmes designed to enhance the performance of soldiers in the field, the implications these emerging technologies for the laws of armed conflict, the humanity of the soldiers involved and for the wider society are only beginning to be explored. This paper examines the implications of neurological, biochemical and technological advancement technologies on the legal frameworks governing armed conflicts. Conceptions of what it means to be both human and ‘super’-human in the execution and experience of warfare will impact interpretations of the laws governing the conduct of hostilities and the human rights framework of individual soldiers and societies at large. As militaries use enhancement technologies to shape the soldier of the future, our deeper understanding of society, culture and identity, and even the human condition itself are also being challenged and reshaped.

PANELIST 3 Michelle Ty
UC-Berkeley

Unverantwortlichkeit, or the Unaccountability of the Nonhuman

The discourse of animal rights persistently poses the question of the human's responsibility to the nonhuman—particularly by asking us to reconsider alimentary practices, habits of consumption, and the use and abuse of natural resources to fulfill human wants. This investigation takes some distance from the question of how best to fulfill our ethical obligation to the nonhuman other, in order to ask instead, how it is that in the process of establishing the human as a morally and juridically responsible subject, the animal is at the same time made unaccountable—where unaccountability at times designates a vice—other times an attribute, and even occasionally is the name given to a strange kind of negative capacity that is perhaps akin to Agamben's insight that impotentiality consists of both what one cannot do and what one can not to do. This paper offers a critique of the notion of juridical responsibility that emerges from social contract theory (Hobbes, Rousseau, Locke) and turns to Hegel's account of animal life and Nietzsche's critique of the sovereign subject of morality, as well as the latter's emphasis on the animal's unverantwortlichkeit [unaccountability], as alternatives to neoliberalism's revival of the liberalist discourse of responsibility in the technique of governmentality now known as "responsibilization."

3.10 The Legal Imagination of James Boyd White (I): The World in the Text

CHAIR Julen Etxabe
University of Helsinki

DISCUSSANT N/A

PANELIST 1 Jeanne Gaakeer
Appellate Court

Law and Literature Redux? Some Remarks on the Importance of the Legal Imagination

Having been invited by the organisers to provide an overview of literary-legal studies during the past few decades and, as part of that, an appreciation of the importance of James Boyd White's contributions to "the legal imagination," I aim to do so from at least three perspectives:

- The methodological perspective: to include topics such as the language views behind interdisciplinary legal studies and their respective consequences for our views on law (e.g. as a positivist 'science' or an hermeneutic 'art') and the 'law is hard' - 'literature is soft' dichotomy;
- The educational perspective: to include a discussion of the value of literary-legal studies for legal education and legal practice;
- The historical perspective: from the roots of the bond of law and literature in twelfth-century Europe to contemporary discussions of the very idea of interdisciplinarity and the future of Law and Literature a.k.a. Law and the Humanities/Law and Culture.

PANELIST 2 Richard Dawson
Independent Researcher

Following the Questions: Connecting to The Legal Imagination

The Legal Imagination offers a course in writing that takes up some of the concerns of the literary critic. This essay offers a brief guide to the many extraordinary questions in the course. The first section locates the course in a tradition of inquiry. The second section turns to White's engagement with Huckleberry Finn, an engagement that can serve as a resource for imagining the course as a whole. The third section turns to White's critic Robin West and questions the justice of her claim that 'Huck personifies White's conception of the social critic'. The fourth and final section places White's questions in the larger conversation of humankind, especially to questions of justice.

PANELIST 3 H. Jefferson Powell
Duke University

Reading, Writing, Teaching and Studying Opinions: James Boyd White on what a judicial opinion is for.

One of the many remarkable contributions James Boyd White has made to scholarship is his presentation, both on a theoretical level and by repeated example, of an approach to reading significant texts that reorients how we think about the cross-currents that they commonly embody. Of course there are (many) texts that are simply incoherent or illogical; they are examples of what Professor White calls "dead speech." But what makes a poem or novel or judicial opinion great is not the absence of tension or conflict within the text. Instead, in such a text these tensions and conflicts are central to the text's meaning. I will illustrate this through a brief consideration of Professor White's great book on learning to read George Herbert and then turn to his essays entitled "Doctrine in a Vacuum" and "What's an Opinion for?" The approach to reading that Professor White presents has far-ranging implications for how we teach and think about the law.

PANELIST 4 Julen Etxabe
University of Helsinki

It's not All about "Pretty": Human Rights Adjudication in a Life and Death Situation

Justice as Translation is, at bottom, a book about how to read and criticize judicial opinions. White rebels against the typical ways of reading judicial opinions in terms of either policy or result, and, instead, proposes a standard of excellence that focuses on what is generically distinctive about them and does not replace the court's opinion with the critic's own. But how can one assess the quality of a judicial opinion without falling into a form of subjectivism? Is it even possible to do so in a context of deep normative conflict? Drawing inspiration from John Dewey, White views judicial opinions as establishing conversations in which democracy may (or may not) begin. Contrary to what has sometimes been said, this way of reading does not wish to dilute political concerns into a matter of style, but rather the opposite, to reveal the profundity of, and the ethical and political judgments entailed by, what is often dismissed as mere style. I would like to illustrate the possibilities of this method with the European Court of Human Rights case of *Pretty v. UK*, a decision involving a case of euthanasia, and argue for the continued relevance of this kind of analysis in human rights adjudication.

SESSION 4: 3:30 PM – 5:00 PM

4.1 Sculpting the Affective Spaces of the Human in Law

CHAIR Alison Young
 The University of Melbourne

DISCUSSANT N/A

PANELIST 1 Andreas Philippopoulos-Mihalopoulos
 University of Westminster

Atmospheres of Law: Body, Space, Senses

Welcome to the lawscape, the ontological tautology of law and the city. The focus in this paper is what populates the lawscape: bodies, airs, sounds and sweet scents. My field of enquiry is the area of sensory and affective occurrences and specifically how posthuman corporeal affects transmitted in space are both emotional and sensorial. In order to show this, I employ the architectural concept of atmosphere. Atmospheric research has recently gained in popularity because of its ability to explain intersubjective understandings of spatiality. I depart, however, from these received definitions in order to attempt an understanding of affective occurrences as excessive, collective, spatial and elemental. In this way, it quickly becomes apparent that an atmosphere is legally determined and often orchestrated in order to extend spatially its affect. The law controls affective occurrences by regulating the property of sensory stimulation. At the same time, the law guides bodies into corridors of sensory capitalist compulsion. The law achieves this by allowing certain sensory options to come forth while suppressing others, something that becomes particularly obvious in cases of intellectual property protection that capture the sensorial. I deal with the law in its material, spatial manifestation through a broadly Deleuzian methodology with insights from radical geography, affective studies, urban and critical legal theory.

PANELIST 2 Alison Young
 University of Melbourne

The Laws of Enchantment: Image, City, Space

Cities are sites of cultural and aesthetic production, engaged in a continual process through which human subjects refine the images of the spaces in which everyday life takes place. One urban intervention that seems to challenge such processes is the production of illicit urban images in the form of graffiti writing and street art. The encounter with such illicit images can be read as productive in that the appearance of an illicit word or image can point to alternative conceptualisations of property, authority and ownership. Such encounters also bespeak a contest between competing aesthetic paradigms, through which texture, composition and placement are subjected to the litigation of spatialising practices. The paper's aim is to suggest that the illicit artwork in public space shows us how legal frameworks relating to property, crime

and public order in city spaces can be re-read, drawing on the work of Jane Bennett, as produced by the laws of ‘enchantment’.

PANELIST 3 Gilbert Leung
Independent Researcher

Jean-Luc Nancy: The Being of “Human” Being

There are many ways that Jean-Luc Nancy has addressed the being of “human” being. Perhaps the most well known have been his ontological analyses involving the concepts of being-with (mitsein) or being-singular-plural, which are affirmations of the essentially communal nature of the in/dividual. In addition, Nancy has broached the issue in contexts in which law has been central. These contexts can be categorised under at least three headings: 1) abandonment, 2) the aporia of law and freedom, and 3) human rights. In respect of abandonment — a word that contains the morpheme bandon, meaning “an order, a prescription, a decree, a permission, and the power that holds these freely at its disposal” — being is abandoned to a law that prescribes nothing but its own abandonment. This, according to Nancy, is the sole predicament of being and is one that is intimately linked to freedom. This brings us to the aporia of law and freedom, where law calls out to freedom, demands that it be restricted or bounded, while freedom knows itself precisely in its transgression of those boundaries. Law and freedom therefore lie together as well as in excess of each other and hence in excess of every “man”. Finally, with regard to human rights, Nancy’s most recent essay on the topic (my translation of which will be published in 2013) notes the ambivalence of the concept of the “human” in both vernacular and legal discourses of “human” rights. Crucially, he explicitly affirms, in a manner that recalls Pascal and Heidegger, the necessity to think higher the humanitas of “man”. It is here, I would contend, that we can most clearly see in Nancy the call against “sculpting the human” in favour of the elaboration, creation or strengthening of epistemic devices or vocabularies that deal precisely with what in “humanity” is infinitely beyond it.

4.2 The Nation-State, Sovereignty, and Citizenship in the Era of Transnationalism

CHAIR Sherally Munshi
Columbia University

DISCUSSANT Joseph Slaughter
Columbia University

PANELIST 1 Sherally Munshi
Columbia University

The Indian Question: Imperialism and Immigration in Early 20th Century America

Scholars working across a range of disciplines have identified United States v. Bhagat Singh Thind (1921) to be a critical case in the designation of the racial status of South Asians in the

United States, but very few have made mention of Thind's association with the revolutionary Ghadar Party, an organization founded by Punjabi immigrants to the United States and Canada for the purpose of bringing an end to British imperial rule in India. This paper begins by asking why even the most sympathetic accounts of Thind's case, in histories of immigration and racialization in the United States, fail to account for Thind's anti-imperial politics, and attempts to situate his case within the broader transnational context of "raced migration," third world decolonization, and U.S. imperialism in the early twentieth century.

PANELIST 2 Hawa Allan
Columbia Law School

Paradoxes of Sovereignty and Citizenship: Humanitarian Intervention at Home

This paper reconsiders the federal response to Hurricane Katrina in light of the history of federal military intervention in the United States and 'just war' theory relevant to humanitarian intervention abroad. The point of departure for this analysis is the hesitancy expressed in President George W. Bush's memoir to "declar[e] insurrection in a largely African American city" -- wavering which delayed the requested deployment of additional troops to New Orleans for five days. This paper illustrates how such tentativeness reflects a historical tension over the legitimacy of federal intervention in state affairs where black citizens are concerned. Moreover, in analyzing federal military intervention in terms of legality, necessity and purpose, this paper illustrates, similar to the international analogy, how domestic concerns over sovereignty may inhibit humanitarian intervention at home and, further, may result in disparate responses to 'crisis' among different subsets of citizens.

PANELIST 3 Moria Paz
Stanford Law School

Language, Diversity, and the State

Major international legal instruments protect language rights absolutely, notwithstanding pressures towards linguistic uniformity. In this paper, I contrast the formal commitment to language rights with the actual record of enforcement, showing that international judicial bodies adjudicating language rights have consistently promoted linguistic assimilation over protection of linguistic diversity. Instead of strong language guarantees, only transitional accommodations are offered in the public realm for those as-yet unable to speak the majority language. This jurisprudence treats minority language not as a valuable cultural asset worthy of perpetual legal protection, but as a temporary obstacle that individuals must overcome in order to participate in society. The legal decisions take a narrowly utilitarian approach to language, forcing the state to accept the use of minority languages only insofar as they facilitate communication with the majority and with the official bodies of the state.

PANELIST 4 Patrick B. McLane
University of Alberta

Sovereignty Politics and Canadian Multiculturalism

Drawing on Thomas Hobbes' *Leviathan*, this presentation considers Canadian multiculturalism as an extension of classic sovereignty politics. Hobbes based his conception of sovereignty upon his negative theology. For him, God is to be treated as an "irresistible power" that cannot be known or defined. Likewise, the body politic or commonwealth, which he calls a "mortal god," is to be treated as a limitless and indefinable power able to include all subjects. I suggest that Canadian multiculturalism continues this negative theological heritage insofar as it posits citizenship as a sovereign identity which transcends all definition and is therefore able to include any ethnic, cultural, or religious identity. The paper concludes by suggesting that Canadian politics is Hobbesian (in a bad sense) when it problematizes identity positions that call the 'universal' appeal and norms of Canadian citizenship into question.

4.3 Producing Nature's Subjects

CHAIR Kathleen Sullivan
California State University

DISCUSSANT Subir Sinha
University of London

PANELIST 1 Rosemary Coombe
York University

Working the Potato: Repatriating and Respatialising Resources

Biocultural heritage resources are hybrid living creatures that have emerged to facilitate management schemes that restructure relations between the social and the natural. They do so through spatialisations of the cultural work of creating biological diversity. Exploring the articulations of legal conjunctures at multiple scales in the Andean Potato Park, I will illustrate how an indigenous subject-position was deployed as a human nature in the making.

PANELIST 2 Kathleen Sullivan
California State University

Cultivating Oceanic Subjectivities

Over the last 30 years or so, the legal and bureaucratic management of oceanic spaces, resources, and habitats in many countries has taken a decisive turn toward large-scale integrated models. Remolding managers, actual users, and potential users of ocean resources into participating stakeholders fluent in a particular vision of oceans as complex systems of resources, habitats, and biophysical relationships, and encouraging these subjects to become invested in the larger science-driven modeling projects, have been crucial elements in building and deploying the large scale technocratic models. Using the recent case of the State of California's efforts to create and implement an integrated chain of Marine Protect Areas the length of the California coast, this paper examines the twofold process aimed at reconfiguring human nature and the laws governing nature on an oceanic scale.

PANELIST 3 Richard Perry
University of California Berkeley

Fighting the Global War on Terroir: Legal Indexicality and the Biopolitics of Specificity

This presentation considers the metaphysics and metabiology of the spatio-temporal particular in a globalizing economy that imagines itself as continuous networks of flows in space and time. Indexicality is that aspect of pragmatics that anchors praxis in space-time. Terroir is a term that has entered the English lexicon from French governmental product certification, denoting the radical locality of specific terrain that reproduces in certain commodities -- especially wines, teas, waters, and food crops -- the value-added by localism and "heritage" species status in commodity sourcing. I draw upon examples of bottled water source-branding and the disputes between advocates of transgenic maize and those seeking to protect the maize landraces of highland Mexico. I suggest that a characteristic contemporary form of bio-economic value extraction takes place precisely at this transductive moment where the unique, locally indexed terroirism of Nature is made to perform within the fungible-token calculability of commodity form in supply chains.

PANELIST 4 Joana Aguiar
Escola de Direito da Universidade do Minho

Nurturing human nature: criminal guilt and the (inner) freedom of the self

To what extent can the concept of personal freedom, while ethical foundation of our conduct and existential matrix of our self-determination, justify the difference between human and inhuman? In other words, and more specifically, to what extent and in what measure can such a sense of freedom support actual judgments of accountability or inaccountability regarding punishable criminal conducts? Like children and animals, certain subjects of Law are also considered blameless for their behaviors. Holding no intention to invade psychiatry or biopolitics exclusive domains, still we aim to reflect upon a theory drawn some decades ago by one of Portugal's most remarkable criminalists, J. Figueiredo Dias, on the concept of guilt / culpability in the formation of personality. In what measure does the potential of freedom with which nature endows each human being allows judgments of guilt / culpability in the formation of each one's personality? And by the way, in what ways can Literature be somehow responsible for shaping or determining (the nature of) criminal personality?

Speaking of the impenetrability of the mystery of crime and the criminal impulse, and of the insidious ambiguity of both the conditions of guilt and innocence, affecting their very external evidence, Albert Borowitz invoked, back in 1977, the fiction of Almqvist, the XIXth century Swedish writer, for whom innocence was as white as arsenic. Maybe what we have come to know as human nature happens to suffer from this same ambiguity. Giorgio Agamben's reference to a XIIIth century biblical text containing a portrait of last day's messianic banquet of the righteous, invites even deeper reflections. The fact that these righteous, vivid image of consummated mankind, are depicted with unmistakable animal heads, perhaps suggesting mankind's final reconciliation with its animal nature, once again raises the question as to the existence of a "specific difference".

4.4 Performance, Improvisation and Revolution: The Spontaneous 'Human'

CHAIR Yvette Russell
Queen's University Belfast

DISCUSSANT N/A

PANELIST 1 Bal Sokhi-Bulley
Queen's University Belfast

Creating Spaces of 'Justice'? Riots and Resistance in London 2011

In the Security, Territory, Population lectures, Foucault expounds the idea of 'revolts of conduct' or 'counter-conduct'. The objective of a 'counter-counter' is, he goes on to describe, 'a different form of conduct ... wanting to be conducted differently, by other leaders (conducteurs) and other shepherds, towards other objectives and forms of salvation and through other procedures and methods'. It manifests itself through 'struggle'. The objective of this paper is to examine the 'struggle' that took place in the 'London Riots' on August 2011 and to question whether it was a form of resistance or counter-conduct. I examine the use of urban space during the riots as a means of 'resisting' and how this constructed the rioter as 'thug'. Furthermore, in the wake of the riots, Cameron's 'Big Society' is employing techniques for managing the conduct of individuals and communities such that the mentality of government, far from being removed or reduced, is bettered and made more efficient. The National Citizen Service, through its somewhat different use of urban space, provides teenagers with a regulated 'space' (gardens, parks, community centres, for instance) in which to interact both produce agents and normalise certain values, resulting in the population being better known and controlled – and the 'human' being constructed as an ideal, young, productive volunteer. Within this 'Big Governmentality' relation, what room is there to resist the leaders and the shepherds? What 'space' is there in which to recognise the resisting, young, spontaneous 'human'?

PANELIST 2 Sara Ramshaw
Queen's University Belfast

The Improvisationary Human: judges, judgment, justice

'Improvisation' is a term coined by critical improvisation theorist Daniel Fischlin, which signifies the unification of diverse improvisatory practices with that which those practices express, namely the 'calling forth of the unexpected', or the making present of more creative visions of justice and social change. This conference paper introduces a four-phase research project, provisionally entitled Justice, Improvisation and Child Protection Law, aimed at exploring the application of improvisationary practices to tackle key deficiencies in child protection law, both in the UK and Canada. Here, Derrida's texts on law, improvisation and invention are read alongside the work of critical improvisational scholars to imagine justice as a species of improvisation. Focusing on the formal structure of the most basic of legal mechanisms, namely judicial decision-making, the intent is to offer law and legal theory a richer, more concrete (or more 'human', one might say), understanding of justice. Not further mystery or mystique, but a

negotiation between abstract notions of justice and the everyday practice of judging. Improvisation in judgment calls for ongoing, practical decision-making as the constant negotiation between the freedom of the judge to take account of the otherness or singularity of the case and the existing laws or rules that both allow for and constrain that freedom. Yes, it is necessary to judge, yes, it is necessary to decide, but to judge well, to decide justly, that is a music lesson perhaps best taught by critical improvisation scholars. This conference paper (and the research project it introduces) seeks to apply this improvisatory vision to the adjudication of child protection matters, asking whether it is possible to teach judges not only an awareness of the improvisatory practices invoked during the act of judgment, but also to make them better, more just and effective, improvisers.

PANELIST 3 Kathryn McNeilly
Queen's University Belfast

Framing Human Wrongs, Performing Human Rights: Butlerian Reflections on Abortion Strategy in Northern Ireland

Abortion is an issue that steadily abides just below the surface of law, politics and everyday social life in contemporary Northern Ireland. Women who seek abortion provision are often unheard, unseen and widely unintelligible as culturally constituted “humans” within the space of Northern Irish society. This paper will seek to investigate recognition of the lives and experiences of abortion seeking women in the legal and political strategies which have been applied by pro-choice and anti-choice advocates in the abortion debate within this context. Firstly, Judith Butler’s theoretical tool of the frame will be employed in order to analyse the discursive shaping of what can and cannot be seen, heard, or known in the three predominant strategic approaches to framing the wrongs pertaining to the issue of abortion – the morality frame, the health frame and the rights frame. This analysis will seek to draw attention to the possibility contained in each frame for ethical recognition and valuing of the lives of women who may seek abortion. Secondly, following from this, the latest shift in pro-choice strategy towards rights claiming via a submission of evidence to the UN Convention on the Elimination of All Forms of Discrimination Against Women will be considered utilising a Butlerian conception of claiming rights as a performative practice. Drawing upon this performative theory, it will be asserted that rights claiming offers enhanced potential for the recognition of life through performatively intervening in the social processes by which “human” gender identity is articulated.

PANELIST 4 Tarik Kochi
University of Sussex

Revolution and Sculpting the Body-Politic: Machiavelli, Žižek and the ‘Modern Prince’

In the Discourses on Livy Nicolò Machiavelli develops the theory of political innovation set out in The Prince and engages with the problem of creating a virtuous, democratic body-politic via ‘good laws and good arms’. The aim is to outline a constitutional form which is able to withstand a decline in ‘fortune’ – understood as a temporal corruption of morals, rise in economic inequality, and domination by rival states. Machiavelli’s account circulates around but does not resolve a tension or paradox residing at heart of the notion of constituent power. On the one hand, humans are moulded, shaped and sculpted into virtuous citizens through good laws,

customs and political institutions. On the other, it is the spontaneous innovation of the democratic populace as a creative and antagonistic force which continually re-moulds the plastic, or even viscous, legal-political order in accordance with the ideals of republican liberty and material equality.

This dual process of sculpting and moulding involves also what Antonio Negri refers to as the 'tragedy of constituent power' – Machiavelli's counsel in *The Prince* that to maintain virtue and good laws it may be necessary to turn to force, violence and the use of wicked means. Taking up these questions of law, human agency and structure, this paper considers whether Slavoj Žižek's reading of the philosophy of Hegel, and his political advice to the 'global Left' that it adopt a new 'Leninism', may potentially offer a way out of the paradox and tragedy of the theory of constituent power.

4.5 Law's Others: Figuring Anxiety, Immunity and Prudence in Contemporary Biopolitics

CHAIR Sheryl Hamilton
School of Journalism and Communication, Carleton University

DISCUSSANT N/A

PANELIST 1 Chantal Nadeau
University of Illinois

Toxic Queers and Cultures of Immunity

While immunity has historical relevance in the construction of the queer body in contemporary politics, its legal contours have gained a critical renaissance after 9/11. From Derrida, to Haraway, to Esposito and Agamben, to Luhman and Cohen, the notions of immunity and immunization provide a rich terrain to revisit the techniques of governance and the regimes of biopolitics through which states screen bodies deemed toxic.

This paper investigates the ways that 'queer' can help us to rethink the culture of immunity that informs a certain legal rights discourse for LGBTs. More specifically, I explore how recent pro-LGBT discourses on civil rights and legal inclusion both contribute to and disrupt the still dominant racialized and sexualized constructions of 'the' citizen and 'the' patriot. Through the example of The Courage Campaign in the US, I will discuss how the cultures of immunity make dirty the relationship between queer and the law.

PANELIST 2 Neil Gerlach
Carleton University

Zombie Anxiety: 'Social Flesh' and the End of the Legal-Rational Subject

Using the figure of the zombie as an entry point, this paper explores the relationship between biopolitics, fears about the dissolution of social forms, and the loss of legal-rational subjectivity.

Recent films portray zombies as fast, diseased, enraged predators in scenes that eerily reflect riots and protests on the nightly news. This paper argues that zombie films are telling us stories about the emergence of what Hardt and Negri (2005) refer to as social “flesh” made up of the growing masses who have fallen outside of the circuits of inclusion within the society of control. At the same time, zombies represent the loss of the conscious, humanist, legal-rational subject – the individual normalized, through biopower, into someone without complex distinctions or desires. Ironically, at this endpoint of biopolitics, the horde of flesh escapes regulation and threatens to topple an increasingly fragile social order.

PANELIST 3 Sheryl Hamilton
Carleton University

Dirty Hands: Law, Contagion and Prudence in Pandemic Culture

The opening sequence of Steven Soderburgh’s 2011 film, *Contagion*, follows a series of sweaty, coughing people as they move through public space, touching. A bowl of peanuts in a bar, the handrail in a bus, a glass passed from a flight attendant to traveller – each quotidian encounter with the built environment and other social subjects is fetishized and pathologized. Like other cultural texts, the film recognizes that we live in complex apparatus of touching structured by social norms, medical knowledge, and legal strictures. Yet we also live within a pandemic culture that marks human hands as a specific medium of contagion. This paper will analyze the ways in which imagery of “dirty hands” circulates within cultural sites from popular film to children’s books to public health posters in bathrooms. Handwashing thus becomes a vital lesson in prudence as we are invited to self-regulate, to surveil, and to judge.

4.6 Scientific Knowledge & the Cultures of Evidence

CHAIR Jennifer Mnookin
UCLA

DISCUSSANT Martha Umphrey
Amherst College

PANELIST 1 Tal Golan
UCSD

Epidemiology, Tort, and the Relations between Science and Law in the Twentieth Century American Courtroom

The paper follows the intertwined careers of epidemiology and toxic tort litigation and examines their affects on the relations between science and law in the late-20th century American courtroom. Epidemiology’s career in the American courtroom has been short but brilliant. Until the 1970s, epidemiological evidence could hardly be found in the legal system. By the start of

1990s, judges were dismissing cases for not supporting themselves with solid epidemiological evidence. Epidemiology owed much of this prosperity to the equally meteoric career of mass tort litigation – a late-modern American species of litigation involving crowds of plaintiffs, all claiming to be harmed by the same exposure or mass-marketed product. Questions about risk and causation have been central to a great majority of these cases, and when a direct proof of cause and effect has proven illusive, the courts turned to statistical evidence to resolve them. This was an uneasy change for tort and it presented the legal mind with a host of difficult problems regarding the differences between statistical correlation and legal causation; the circumstances in which we could pass from one to the other; and how and by whom should these be decided. By the end of the 20th century, this set of problems had reshaped the relations between law and science.

PANELIST 2 Jennifer Tucker
Wesleyan University

What's Wrong with this Picture? Visual Evidence, the Law and the Media in the Tichborne Affair

My talk will examine the visual representations (photographs, engravings, cartoons, and graphic satires) that circulated across the wide social spectrum of Victorian society during the longest British courtroom trial of the nineteenth century: that of Arthur Orton, a butcher from Australia who claimed to be Sir Roger Charles Tichborne, the missing heir to an aristocratic estate. The Tichborne affair is best known today as a case of imposture, identity, and disputed inheritance that attracted strong working class support and led to the dissolution of the Court of Chancery in 1875. My talk will explore how the illustrated and non-illustrated popular press played a crucial role in shaping late nineteenth-century public perceptions of photography in the law. It will illuminate how visual representations served new functions as legal and social facts in the years immediately before the introduction of Bertillon methods, the widespread introduction of fingerprinting techniques. Through a series of illustrations, it will, finally, consider the ways in which the conventions of the different Tichborne image types (photographs, cartoons, prints, drawings, medical illustrations, for example) were used and altered by different participants in the trial and its public discussion.

PANELIST 3 Jennifer Mnookin
UCLA

Push-Button Justice: DUI and the Legal Production of Certainty

This paper uses the recent history of drunk driving prosecutions, to explore ideas about discretion, technology, and objectivity in legal process. The history of drunk driving prosecutions can be seen as an effort, to make the criminal process as "mechanical" as possible, both in terms of the law and in relation to the technologies by which the law's violation is established.

On the legal side, I examine the transformation of laws targeting intoxicated drivers twentieth century from flexible standards to bright-line rules, with the rise of "per se" laws that defined particular blood or breath levels for alcohol as an offense in itself. These laws were designed to reduce the discretion of both police and jury, to substitute for police officers' subjective evidence of impairment the seemingly objective and neutral recordings of a machine.

Meanwhile, the manufacturers of breath test detection technology focused as much on eliminating operator discretion as on improving reliability. Over a 50-year period, these machines were transformed from scientific instruments requiring craft knowledge and training into "cop-proof" black boxes providing push-button results to officers with virtually no training whatever.

And yet this ever-increasing automaticity has not checked adversarial process. Many DUI prosecutions remain extraordinary hard-fought, and acquittal rates remain strikingly high and defense challenges robust. This paper aims to explore both the lure and the limitations of this use of technology to 'mechanize' justice.

PANELIST 4 Orna Alyagon Darr
Carmel Academic Center

Proving Rape in Mandate Palestine: Two Cases of Legal and Cultural Struggle

The British administration in Mandate-Palestine, deemed the previous Ottoman criminal law outdated and unsatisfactory, and promulgated a new criminal law. The treatment of sexual offences was completely modified by the new penal code. Whereas honor was the key concept in the Ottoman Code, the British Code regarded the sexual offences as "offences against morality". Not only does the regulation of human sexuality impinge on moral and religious beliefs, but it also raises dilemmas of proof. Sexual offences are typically witnessless, and unless physical evidence is available, they are also very hard to prove. Such cases tend to invoke heated social debate, in which many participants express their views regarding the best or most appropriate way to prove them. The colonial authorities in Mandate-Palestine dictated the criminal code, yet its significance was shaped in the process of proof, in which the locals participated, voiced their opinions and tried to influence the criminal norms

4.7 ROUNDTABLE: Jodi Dean's Communist Horizon

SUBJECT Theory
AREA

CHAIR Paul Passavant
Hobart and William Smith Colleges

PANELIST 1 Jodi Dean
Hobart and William Smith Colleges

PANELIST 2 Maria Aristodemou
Birkbeck College, University of London

PANELIST 3 James Martel
San Francisco State University

- PANELIST 4 Mark Fisher
Independent Scholar
- PANELIST 5 Alberto Toscano
Goldsmiths, University of London
-

4.8 Bodies of Law: real, virtual, & mythic

- CHAIR Richard K Sherwin
New York Law School
- DISCUSSANT Steven Macias
Southern Illinois University
- PANELIST 1 Paul Raffield
University of Warwick

‘Representing the Body of Law in Early Modern England’

In this paper, I consider the representation of the body in early modern jurisprudence. The theory of the king’s two bodies in constitutional terms is the representation of the body politic as an anatomical artefact, with the king as its head and its subjects as organs, members, and tendons. The metaphysical concept of the king’s two bodies was translated by judges in the sixteenth century into juridical process, notably as reported by Edmund Plowden in *The Commentaries or Reports*. I consider especially the anatomical metaphor incorporated by St. Paul in *Corinthians 1*. I attempt to highlight the conflict between Plato’s hierarchical principle of the correct ordering of parts and the performance by each part of its allotted function, and Saint Paul’s communitarian explanation that ‘those members of the body which we think to be less honourable, upon these we bestow more abundant honour’.

- PANELIST 2 Ruth Herz
Birkbeck College, University of London

Doing Justice to Pictures

Throughout his career from 1930 to 1970, the French Judge Cavellat sketched the courtroom scenes unfolding before him. I explore these images which show not only the judge’s thoughts, strongly shaped by his education and training, but also the way these intimate impressions reveal the troubled relationship between the judge’s legal education and habitus and the

personal feelings and fantasies that he experienced while going about his daily work in court. The latter, I argue, lay bare his personality, background, class, and gender.

PANELIST 3 Les Moran
Birkbeck College, University of London

Pedestrian crossings; some reflections on the occasion of a contemporary judicial spectacle

The occasion was the first day in the life of the UK's Supreme Court which coincided with the annual Judges Service and Lord Chancellor's Breakfast for members of the judiciary on the 1st of October 2009. The judges of the UK Supreme Court in their gold decorated ceremonial robes of office were on the pedestrian crossing, sandwiched between the ordinary paraphernalia of road works, then brushing up against a mother and babe in a buggy pressed against the railings of Westminster Abbey. I was there to witness and record the event for my research on the visualisation of judicial authority (which ranges from judicial swearing in ceremonies to judicial portraiture). Using a series of photographs I have taken, and drawing upon a range of literatures, from art history, anthropology, post structural theory, post dramatic theatre studies and law, I explore a particular example of a 'live' performance of judicial authority.

PANELIST 4 Richard K Sherwin
New York Law School

Virtual bodies in court

We are living in the era of the neo-baroque. As in the baroque period of 17th century Europe, we too are inundated with forms ("hyper-ornamentation") and haunted by the accompanying anxiety that, in the digital matrix, it's copies "all the way down" (constructed realities endlessly cycling within constructed realities). Inside the courtroom, rather than a search for truth through "live" (testimonial) reconstruction of past events, decision makers today increasingly witness screen-based testimony ('telepresencing') and screen-based representations of the event itself (the crime or accident caught on video, or digitally re-enacted). Should visual "delight" (the subjective aesthetic pleasure of the sensate image) warrant the force of law? How do images disturb subjectivity with a jarring sense of otherness? As new forms of visual delight and visual eloquence compete for belief inside the courtroom, the need grows for a new visual rhetoric suited to the exegetic toolkit of the visual digital age.

4.10 The Legal Imagination of James Boyd White (II): The World Beyond the Text

CHAIR Gary Watt
University of Warwick

DISCUSSANT N/A

PANELIST 1 Gary Watt

University of Warwick

Reading Materials: The Stuff that Legal Dreams are Made On

James Boyd White distinguishes the 'material' from the 'meaningful' (Justice as Translation; Heracles' Bow). A bow, for example, is just a stick and a string. Only a community of human interest in the thing can make it meaningful. What makes materials meaningful is the way that they are read. The Legal Imagination is a large collection of textual materials engaged to an even larger endeavour to read them well. The question that I will pose in this paper is whether there is potential for a Whitean approach to assist us towards meaningful appreciation of material culture beyond text and speech. I want to challenge the legal imagination to engage imaginatively with the material culture of what White calls the 'world beyond words' (The Edge of Meaning). At page 937 of the 947 pages of The Legal Imagination, Professor White asks 'Suppose someone said: 'The law is all in there,' and pointed to the library. Is there a sense in which that statement is true?' I want ask the same question while pointing, not to books, but to clothes, curtains, wood and walls.

PANELIST 2 Rebecca Johnson
University of Victoria

Jurisprudences of the North – Intercultural Cinematic Encounter and the Legal Imagination in Before Tomorrow

This project emerges out of my earlier work focusing on the place of law in "the Western" (Unforgiven, Deadman, Deadwood, etc), and that genre's place in stabilizing a particular set of colonial/capitalist structures of feeling. In this project, I engage more directly with the Canadian context in which I am embedded, and turn my gaze from 'the West' to 'the North'. The North has played an incredibly powerful part in the Canadian national and legal imaginary (as our anthem states, we are "the true North strong and free"). But this 'north' is every bit as marked by histories of colonization (histories in which the law is deeply implicated) as is the US in its relationship to the West. The dominant imagery of the North (and of its people) has been largely shaped by southerners (consider, for example, the portrayal of the Inuit in Robert Flaherty's Nanook of the North). However, the last 20 years has seen a veritable explosion of cultural production by the Inuit themselves: there is an Inuit Broadcasting Corporation, and independent Inuit film production companies, and a growing corpus of films produced for an Inuit audience, written in Inuktitut, and embedding Inuit experiences of the world. In this paper, taking up the tools offered by J.B. White in both The Legal Imagination and Justice as Translation, I turn to one of these films, Before Tomorrow, to see what the space of intercultural cinematic encounter can offer to those engaged in the project of attempting to imagine (and build) relations across (legal) orders that have quite different epistemological and jurisprudential experiences of time and place.

PANELIST 3 Joe Vining
University of Michigan

Beauty and Meaning in the Natural World

James Boyd White devoted much of his work to the rescue of meaning in language, art, and the human world. A turn to the natural world in this chapter may underscore his confidence that an individual's statement of law can be more than a disguised expression of individual will and desire. This chapter may also suggest one more way toward hope that a realistic sense of the natural world need not threaten confidence in the reality of beauty and meaning in our human world.

PANELIST 4 Jack Sammons
Mercer University School of Law

The Impossible Prayers of James Boyd White

Starting with an analysis of one (or more) of Jim's most recent sermons, offered here as representative, this paper will suggest that much of Jim's lifetime of work, thought of in light of these sermons, can be read as his attempt to address through performances the very personal issue of how to speak in a religious voice. This is an issue quite similar to the one Jim reads George Herbert as addressing, but this time it regards a religion, we might say, several steps removed from Herbert's, one for which the issue of speaking is not so much how to gesture towards the divine in words, but what sense to make of doing so. Along the way, I will ask what it is about art, about texts, and about ways of reading that make these so central to the project. For, with Jim, Herbert's question in "Windows:" How is it possible to preach? -- a question "answered" poetically in what might be described as a beginning turn to negative theology -- seems to become: How is it possible to be an artist? Circling back around to the sermons, the concluding question will be what difference sacred texts as art, and an audience formed by these texts, make, and what does this difference tell us about Jim's other works, especially those concerning justice. These are obviously deep waters in which, as Jim puts it, we must "learn to sail," and I will only wade out from the shore, hoping to encourage others with more courage to go farther.

SATURDAY MARCH 23RD, 2013

SESSION 1 9:00 AM-10:30 AM

5.1 Imperially Empirical: Cartesianism as Political Strategy

CHAIR Brenna Bhandar
Queen Mary, University of London

DISCUSSANT N/A

PANELIST 1 E. Heinze
Queen Mary, University of London

The Empirically Imperial in Shakespeare's Cymbeline

Empiricism and imperialism are both familiar in Shakespeare. Few critics, however, ponder relationships between them. Imperialism now provides the dominant lens for reading *The Tempest*. It also informs approaches to *Titus Andronicus*, *Henry V* or *Antony and Cleopatra*. Empiricism, too, offers a well-recognised Shakespearean interest (e.g., hybridisation in *The Winter's Tale*'s as metaphor for class subversion).

Scholarship has certainly drawn attention to *Cymbeline*'s references to empirical science, e.g., Galileo's recent observations, but also anticipates an incipient Baconian method. More importantly, empiricism and imperialism closely interact in the play. Shakespeare's representations of natural science are far from apolitical.

Knowledge as a technique of domination, Wissenschaft als Herrschaft, is certainly familiar in Shakespeare. Performances of *Hamlet*, *Measure for Measure*, *A Winter's Tale* or *The Tempest* featuring sites of surveillance are now routine. But *Cymbeline* integrates empirical science into technologies of political supremacy.

PANELIST 2 Richard Ashcroft
Queen Mary, University of London

Making better people, making people better: The emergence of moral enhancement and the biomedicalisation of virtue

Debates about biomedical technologies for "enhancement" of human capabilities have persisted for many years. They mostly focus on physiological functions such as sleep, endurance, athletic abilities, and sexual performance, and cognitive functions such as alertness and intelligence. Their regulation sits at the intersection of medicines regulation and drugs regulation. Narratives of remedying disorder, prevention of cheating, competition and fair access interact in complex ways. A recent development is the emergence of the concept of "moral enhancement": it is claimed, on (somewhat flimsy) evidence, that pharmacological and genetic technologies may promote moral capacities such as empathy, fidelity in relationships, responsibility, and self-control. In parallel with current proposals inspired by the behavioural sciences to use "nudges" to shape behaviour in pro-social and long-term goal-orientated directions, we see the emergence of personal virtue as an object of governmentality through biology. Law shapes the logic of moral enhancement as an object of biomedical technology.

PANELIST 3 Crofton Black
Reprieve, London

Extremis malis extrema remedia

The authorities face a crisis, which undermines the body politic. The established order experiences collapse; the enemy contrives forms of assault. A solution is required that is both new and old, based on past experience, but adapted to the moment. Society is permanently afflicted by lawlessness, criminality, the humdrum quotidien of murder, theft, violence and destruction, carried out by individuals upon each other. In certain instances, however, these ills surpass individual wrongdoing; they are seen as the fruit of a conspiracy extending to uncertain depths.

This paper examines two groups of responses to such perceptions of crisis: the Malleus maleficarum (1487), and discourses around the CIA's post-911 interrogation programme. It looks at how authors categorise crimes and perpetrators, and how (and why) they alter judicial and evidential procedure for dealing with such crimes or threats. It asks what broader findings derive from the juxtaposition of these two sets of documents.

PANELIST 4 Kaja Marczewska
Durham University

Poetics of data mining: (un)creativity of the non-human

Placing the idea of creativity in the age of the Internet at the core of its practice, Flarf is a movement propagating poetics of data mining. Flarf poetry is composed by collating language gathered from Google searches, inherently improvisatory and governed by chance. This paper resorts to Flarf's creative practice to address questions of non-human agency in the context of categories of creativity and originality, in literary, philosophical and legal sense. In Intellectual Property law the concept of creativity is inexorably linked to the human mind- originality as formulated by copyright law assumes human agency. What happens, however, if a work of literature is a product of a search engine? Can a non-human agent acquire a status of legal person? Or can the work of Flarf poets be recognised as contributing skill and labour significant enough for the practice to be considered in the light of traditional categories of authorship?

5.2 Cultural Legalities of Science Fiction (Part I)

CHAIR Kieran Tranter
Griffith University

DISCUSSANT N/A

PANELIST 1 Mitchell Travis
University of Exeter

White Aliens and Space Vaginas; Perceptions of Law and Embodiment in Prometheus

This paper explores the themes of law, personhood and embodiment in Ridley Scott's 2012 film *Prometheus*. In particular, the paper considers the deployment of the white male body within the film as the originator of the human species (the 'engineers') contending that it is the last in a long line of legal, political and cultural narratives to do so. A material feminist perspective is drawn upon to highlight the similarities between *Prometheus*, social contract theory and legal personhood. The paper then discusses the privileged place of the white masculine body. The engineers create other aliens that serve as biological weapons. These are compared with the examples of 'non-normative' bodies in order to highlight their legal and cultural unintelligibility. The paper concludes by suggesting alternative narratives to the masculine mythos of the social contract and reaffirms a need for a legal personhood that considers the diversity and multiplicity of embodied experience.

PANELIST 2 Timothy D Peters
Griffith University

Escaping the Bureaucratization of Destiny: Law, Theology and Freedom in The Adjustment Bureau

This paper explores the connection between the alignment of the human to law or *nomos* (theological, political or economic) with freedom. The basis of morality following Kant, can only arise from freedom. Given the law's assumption of the rational free agent, any contrasting determinism raises a number of questions. Is it possible for a law to punish those whom have no freedom to act otherwise? Does the law restrict or enable freedom? Such questions will be explored through a jurisprudential reading of George Nolfi's *The Adjustment Bureau* (2011), which engages in a form of theological science-fiction examining the connection between freedom and responsibility. It does so in relation to law by following the Pauline positing of custodianship needed until we (humans) can take responsibility for our exercise of freedom. It unpacks an exploration of freedom as necessary for law but also law as an obstacle to freedom.

PANELIST 3 Craig John Newbery-Jones
University of Exeter

The History of 'Justice Department': The Rule of Law, the 'Origins' of 'The Justice Department' and the ' Fargo Deity'

Judge Dredd 'Origins' (2007) is a graphic novel on the origins, development and irrevocable intertwining of law and the character Judge Joseph Dredd. The novel juxtaposes Dredd with his clone father Chief Judge Eustace Fargo. I contend that although both characters are genetically identical they embody radically differing conceptions of law. Entombed Fargo serves as a symbol of the enduring power of law. In reality, he has survived and is regretful of the system that he created. Dredd, does not share the reticence of his ancestor. This paper will analysis how the human Fargo and the posthuman Dredd embody the legal process and the Rule of Law in Mega-City One; both protagonists physically and metaphorically embody the rule of law and arbitrary concepts of justice. It will be suggested that these are reflected in the UK legal

system; its own 'origin' story and begin to consider what the category of the post-human might mean to contemporary theories of law and justice.

PANELIST 4 Christopher J. Newman
University of Sunderland

Science Fiction and Space Law: Predictive Texts or Legal Black Holes

It has been asserted that science fiction is not intended to be predictive with regards to the future). This discussion will assess whether that predictive paradigm stretches through to the field of law by focusing on one of the key genre themes, engagement with environmental issues. These are found in classic literary science fiction such as *Dune* and English television depictions from the early 1970s (*Doomwatch* and *Doctor Who*) through to episodes of *Star Trek: The Next Generation* and films such as *Moon*. Otto has postulated that these position science fiction as reflective of contemporary attitudes to ecological degradation as well as driving cultural transformation towards an ecologically conscious way of living. This environmentalist aspect to science fiction will be considered within the nascent area of Space Law. The discussion will focus upon the emerging legal regime surrounding the exploration and exploitation of space and the extent to which the predictive paradigm within the genre has either anticipated or overlooked the current drive to deal with the threat posed by space debris.

5.3 Law's Happenings

CHAIR Basak Ertur
Birkbeck College

DISCUSSANT Elena Loizidou
Birkbeck College

PANELIST 1 Peter Fitzpatrick
Birkbeck, University of London

Other Gods: the negative theology of modern law

'...to [law] alone, pure transcendence'

(Blanchot)

How there is an insistent theologic in and as occidental modernity.
How that modernity absorbs the theologic as a quasi-immanence.
How that quasi-immanence depends intrinsically on modern law.
How that law imperatively assumes the qualities of the rule of law.

PANELIST 2 Marianne Constable
UC Berkeley

Beyond Legal Speech Acts: The Hearing of Law

Understanding law as a matter of language requires attending to the ways that law hears and is heard. Exploring the hearing of law leads into issues of experience and temporality to which speech act "theory" gives short shrift. Such a turn reorients both current models of legal positivism and contemporary representations of impartial justice which overemphasize issues of blindness and sight. As conflicts law shows, the turn to hearing also allows one to negotiate the materiality of the human condition while taking history seriously.

PANELIST 3 Lawrence Abu Hamdan
Goldsmiths College

The Sound Evidence of Sonic Warfare: Notes from the Aural Contract Audio Archive

I will present a new audio essay which uses a selection of tracks from my 'Aural Contract' audio archive to provide an audio analysis of the vocal manipulations and distortions that occur in the two political-judicial forums that buttressed the war in Iraq. These are Colin Powell's 2003 Speech at the UN, and the trial of Saddam Hussein, both exemplifying the contemporary role of audio as a weapon of war and complicating the conventions of sonic warfare: from sound canons and Metallica songs to that of complex audio manipulation and vocal destruction in sites where speech acts. Who dictates the right to speech and who controls the capacity to hear in such forums? What political intentions can be discerned through aurally zooming into the use of voice manipulation? This composition testifies to the role of listening and voice in both the destruction of nations and the reconstruction of political realities.

PANELIST 4 Basak Ertur
Birkbeck College

Staging Sovereign Performatives

One often encounters the term 'performative' severed from its origins in analytical philosophy, used merely as the adjective form of 'performance', to refer to something like 'theatrical'. That performative, of all terms, is afflicted with such forgetting of origins is something of a philosophical irony. And yet, exploring this area of intersection between performativity and performance is particularly fruitful for studying political trials, which not only serve as privileged sites of 'sovereign performatives' but also risk theatricality by definition, as on the verge of becoming 'show trials'. What is the role of performance in how political trials function or fail performatively? How are unconscious processes brought into and played out in courtrooms? How does the differential exposure of bodies (commonplace in ordinary trials, highly contested in politicised proceedings) make or break sovereign performatives? In this paper I explore these questions with reference to various historical and contemporary trials.

5.6 ROUNDTABLE: Common Precedents: The Presentness of the Past in Victorian Fiction and Law/ Ayelet Ben-Yishai

CHAIR	Anat Rosenberg Interdisciplinary Center Herzliya
PANELIST 1	Anat Rosenberg Interdisciplinary Center Herzliya
PANELIST 2	Clare Pettitt King's College London
PANELIST 3	Bernadette Meyler Cornell Law School
PANELIST 4	Ayelet Ben-Yishai University of Haifa

5.7 ROUNDTABLE: The Challenges of Interdisciplinary Scholarship in Law and Culture Between the Humanities and Social Sciences

SUBJECT AREA	Interdisciplinarity Research, Law, Culture and Humanities, Social Sciences
CHAIR	Martin Zeilinger York University
PANELIST 1	Martin J. Zeilinger York University
PANELIST 2	Rosemary Coombe York University
PANELIST 3	Theresa Miedema Ryerson University

5.8 Law's Bioengagements: Life and Death Between Politics and Culture

CHAIR	Alisa Sanchez
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UC Berkeley

DISCUSSANT Michael Thomson
Keele University

PANELIST 1 Jack Jackson
San Francisco State and the University of San Francisco

Life at/of Law

On Sunday March 20, 2005 both chambers of the United States Congress voted to pass “An Act for the Relief of the Parents of Theresa Marie Schiavo.” Almost all observers agreed, then and now, that “Terri’s Law,” as it came to be known, was an extraordinary piece of legislation.

Yet, one facet of the genuinely extraordinary nature of this statute surely rests in how achingly ordinary the facts generative of the case were. The end-of-life decision in the Schiavo case is commonplace as familial-medical practice, thoroughly regulated at the level of State law, and hardly *sui generis* in the realm of Federal Constitutional jurisprudence. No body of U.S. law has ever held that a generalized “culture of life” may trump the right of the individual to refuse unwanted medical treatment.

The “culture of life” perhaps signals some rival constitutional value. But a constitutional value, almost by definition, must yearn for futurity and generalized applicability. A one-time law for a single individual is conceptually the antithesis. And such an anticonstitutional move as this clearly transgresses the guarantee of Equal Protection under the law. It consigned Terri Schiavo singularly to a bizarre legal universe where Cruzan governed the Republic, but the “culture of life” governed her.

In some sense, the case and the legislation are reduced to pure religious iconography, an expression of religious devotion. But more than that, the singularity of the case (in both time and object) oddly turns that constitutional vice into an anticonstitutional virtue: the one-time only, the specific, the unrepeatable, and unpredictable: we’ve abandoned the logic of the law for the structure of the miracle. And this move fits within a larger pattern of anticonstitutional thought and practice on the American Right today.

PANELIST 2 Satyel Larson
University of Chicago

Feminist Biopolitics From the Margins

To what extent are women’s reproductive experiences culturally and legally—as opposed to—simply biologically produced? This paper answers this question by exploring the “biopolitics of abstraction” in women’s rights discourse from the unusual perspective of a thirteen-century old Moroccan discourse and phenomena known as the “sleeping baby in the mother’s womb (raqid).” By examining several historical manifestations of the sleeping baby in the mother’s womb in Moroccan law, art and popular healing practices, the paper questions how modern law and rights discourses have become tools of abstraction that compound the repetition of historical hegemonies in contexts of uneven capitalist development. While the legal discourse of

the sleeping baby is marked by women's embodied experience of gendered Time, and psycho-biological and socio-legal contingencies, modern legal and biomedical discourses are marked by a standardized "female body" abstracted from the particularities of gendered corporeality. Through engagements with the sleeping baby discourse, the paper offers a critique of the "biopolitics of abstraction" and discusses the regulative and oppressive role of modern law and its attendant social-scientific and biomedical discourses in the domain of human reproduction.

PANELIST 3 Alisa Sanchez
UC Berkeley

Colombia's 2006 abortion decision: human rights as response to anxieties about the value of human life

In a 2006 decision, the Colombian Constitutional Court legalized abortion in cases of rape or incest, a grave threat to the woman's health, or when the fetus would be unviable at birth. The decision is remarkable for decriminalizing abortion in Colombia, and also for the decisive role that a human rights framework plays in the decision. After thoroughly studying various human rights legal resources, the Court ultimately draws a distinction between a right to dignified life and an absolute right to life. The Court determines that the pregnant woman claims a human life in a way that the fetus cannot, which in some circumstances, entails that her life is worth greater constitutional protection than the fetus.

As Colombian scholars of abortion have noted, the value of life, and hence abortion, is a delicate topic in Colombia. A decades-long, ongoing internal conflict has generated a discourse within and outside the country that Colombians are comfortable with violence, and do not take human life as seriously as other, "civilized" and "modern," countries. Sentiments of shame and grief about violence in Colombia pervade the country's public discourse. This paper examines how the Colombian Constitutional Court turns to a human rights framework in the 2006 abortion decision, to a) reason through and legitimate its decision to decriminalize abortion in select circumstances, and b) affirm that the Colombian Constitution and the state sincerely care about human life, simultaneously aligning the country with the "modern" countries who also embrace a human rights framework, and distancing the country from discourses that it does not value human life. Existing discourses and sentiments about violence and the value of human life in Colombia haunt discussions of abortion, and eventual abortion laws.

PANELIST 4 Ukri Ilmari Soirila
University of Helsinki

Making Life Live or Letting it Die: The European Court of Human Rights as an Administrator of Human Life

We are living in times where the proliferation of individual freedoms, on the one hand, and the novel possibilities of controlling and managing individuals and the population, on the other, are bound to generate conflicts, translated increasingly into human rights language. This causes pressure for courts responsible for solving human rights disputes. As they are, in spite of the indeterminacy of rights, supposed to make decisions regarding topics linked to the most fundamental questions of human life, the courts necessarily adopt the position of administrators of human life and become entangled with biopower. This paper studies how the

ECtHR has operated in this position. It is concluded that the Court puts bare life at the center of its case law and leaves the possibility to decide on this bare life to the nation state through the margin of appreciation doctrine, reinforcing the Agambenian link between bare life and the sovereign.

5.9 Fear and Uncertain Agency

CHAIR N/A

DISCUSSANT N/A

PANELIST 1 Julia Vaingurt
University of Illinois

From the age of robots to the age of clones: unwholesome copies in Karel Capek's RUR and Kazuo Ishiguro's Never Let Me Go

My paper compares the depiction of clones in the novel by Kazuo Ishiguro, *Never Let Me Go* (2005), with the depiction of robots, made of protoplasmic material in Karel Capek's *RUR* (1921), and treats these works as symptomatic of larger cultural trends. Both works portray dangers of technological reproduction and can be regarded as philosophical cautionary tales against scientific/technological positivism, but their set of anxieties are significantly at odds. In Capek humanity is placed in the position of a victim, while in Ishiguro it is clones who suffer at the hands of threatening humanity. This reorientation of the direction of victimization reveals the radical shift in the object of our fears associated with technology, from the worry that freedom we get from instrumental control is illusory, to the disquieting certitude in humans' absolute freedom and the concern that our desire for freedom that technological progress exemplifies is unethical.

PANELIST 2 Diana Meyers
Tietjens Loyola University

Two Victim Paradigms and the Problem of Humanity

Philosophers have had surprisingly little to say about the concept of a victim although it is presupposed by the extensive literature on human rights. I seek to remedy this omission and to offer an alternative to prevalent unsatisfactory conceptions of victims. First, I analyze two victim paradigms that Amnesty International promulgated in the late 20th century – the pathetic victim paradigm exemplified by victims of the holocaust and the heroic victim paradigm exemplified by Aung San Suu Kyi. Second, I problematize the asymmetrical conceptions of innocence that underwrite the paradigms. Whereas the pathetic victim paradigm identifies innocence with passivity, the heroic victim paradigm countenances agentic victims and links innocence to acting within your rights in the service of a just cause. Because the passivity conception of innocence is out of keeping with well established social and legal practices in regard to acknowledging victims and dehumanizes people targeted for abuse, I conclude that

we should reject the pathetic victim paradigm. Because the heroic victim paradigm represents prisoners of conscience as defenders of righteous causes in the face of harshly repressive forces thereby idealizing and super-humanizing them, I reject this paradigm too. Finally, I propose revisions in our conception of victimhood that eliminate the conceptual incoherencies of the paradigms and the real-world exclusions they sponsor.

PANELIST 3 Benjamin Authers
Australian National University

Wrongful Convictions, Counter Narratives, and the Sanctity of the Trial in Re Truscott and Ann-Marie MacDonald's The Way the Crow Flies

The trial's claim to determine truth from competing narratives persists legally and culturally notwithstanding arguments, such as those made by theorists of narrative jurisprudence, about the marginalized position of many speakers before the law. The Ontario Court of Appeal's review of the wrongful conviction of Steven Truscott and Ann-Marie MacDonald's fictionalization of the case in *The Way the Crow Flies*, for example, seek to remedy injustices against those who have been incarcerated because of the failings of the court process. Yet, despite challenging how trials have functioned in these instances, both texts ultimately return to and reaffirm the validity of the trial as a means for ascertaining truth. My paper will examine how this apparent tension functions in both texts in order to consider whether such deference to the trial limits the capacity of stories, including stories of wrongful conviction, to effectively speak for the legally marginalized.

PANELIST 4 Mara Marin
Frankfurt University

Oppression and the Language of Choice

Recent discussions of "choice feminism" have raised the issue whether any choice women make is feminist. For instance, can the choice to leave a successful career in the remunerated job market in order to take the traditional role of wife and mother be described as feminist? More generally, is the fact that highly educated women with successful careers become full-time mothers and wives a sign of feminism's success, or one of backlash? In this paper I argue that this question is too narrow. Framing the question of freedom primarily in terms of choice presupposes and perpetuates what I call "a fragmented view" of human life. Not only is this view of human life incorrect, it is also oppressive. It encourages us to choose between spheres of human activity that one should not have to choose between. It is also perpetuates the institutions that make conflicts between different goods particularly stringent

5.10 Species Trouble: Law and the Animal-Human Boundary

CHAIR Tucker Culbertson
Syracuse University

DISCUSSANT Renisa Mawani

University of British Columbia

PANELIST 1 Marie Fox
University of Birmingham

Legislating Species Boundaries

Legislatures globally have faced regulatory problems generated by creation of interspecies embryos. For scientists these embryos are touted as solving the shortage of human gametes for research purposes. Analysing approaches to regulating 'trans-embryos', I suggest that while regulation vary temporally and geographically, law is consistently deployed as a technology to control/limit the creation/use of 'trans-embryos' and to define them as research material which fall within species categories. In so doing legislators strive to normalise and disembody trans-species embryos, containing their disruptive potential and erasing fundamental ethical questions. Yet, such legal ethical questions persistently resurface in legal fora, such as public consultations, media coverage and Parliamentary debates. In this article I attempt to situate 'trans-embryos' as embodied and as relational products of human and animal reproductive labour, suggesting that so understood they have the potential to facilitate a re-thinking of human/animal boundaries and our kinship with other species.

PANELIST 2 Maneesha Deckha
University of Victoria

Anti-Cruelty Legislation and the "Civilised Human"

Contemporary anti-cruelty statutes have their genesis in contested colonial ideas about humanness, difference, and natural hierarchies. Various civilizing missions steeped in power relations of class, gender, religion and race mobilized these statutes into being in the United Kingdom and settler societies. Legislation about "cruelty to animals" served to delineate and justify civilizing species-based discourses of who counted as human. In this paper, I discuss how legislated standards about how humans should treat animals still shape ideals of civilization and the idealized human today. I explore how the power of cultural elites to identify what is cruel and what is not persists, enabling violent yet culturally dominant practices toward animals to escape scrutiny and the practices of marginalized communities to appear as subhuman violations to the cultural/legal order. I also discuss how contested civilizational discourse continues to inform leading anti-cruelty cases in Canada even in otherwise promising legal developments for animals.

PANELIST 3 Claire Rasmussen
University of Delaware

Dogs Before the Law: the legal regulation of pets and biopolitical power

This paper considers animals within a biopolitical framework, specifically struggles over the meaning of human subjectivity in the context of liberalism. Exploring legal regulation of the human/animal relationship in the familiar context of domesticated dogs I look at three areas of the law in which we see regulation of the human/animal relationship in ways that both

challenge and affirm human domination. Actual contestation over the meaning of the dog as a family member, property, litigant, victim, threat, and subject can illuminate the ways in which systems of governing animals are a means by which a biopolitical struggle over the nature of “human” is engaged. Looking at the law in action in “dangerous dog” laws, state funded spay/neuter and vaccination programs and “animal torts” illuminates how the regulation of dogs is the regulation of human community, with strong racial, class, and gendered dynamics in the consequences of these regulations.

5.11 Discourses of Individual and Human Rights in Law, Theory, and Culture

CHAIR Sabine N. Meyer
University of Osnabrück

DISCUSSANT N/A

PANELIST 1 Emily Hainze
Columbia University

Race, Motherhood, and the U.S. Penal System

In 2003, Shawanna Nelson, a black woman living in Arkansas, was incarcerated while pregnant. When Nelson gave birth, a white, female correctional officer brought her to a local hospital and shackled both of Nelson’s ankles to her bed during labor. In a subsequent lawsuit, Nelson alleged that this shackling constituted cruel and unusual punishment. A jury substantiated Nelson’s claim that Turnesky displayed deliberate indifference to her medical needs and caused unnecessary pain, rewarding Nelson \$1.00 for her injuries. While scholars such as Colin Dayan have explored connections between the 8th Amendment, incarceration and legal personhood, the gendered dimensions of cruel and unusual punishment and its historical entwinement with race receive less attention. This paper explores the simultaneous affirmation and devaluation of Nelson’s injuries, examining legal and cultural representations of Nelson’s capacity for both pain and motherhood, which I will suggest are interrelated, and reproduce racialized citizenship in the United States.

PANELIST 2 Sabine N. Meyer
University of Osnabrück

Environmental Justice, Human Rights, and Independent Cinema

This paper will explore the tensions, synergies, and convergences between the framework of environmental justice and the field of human rights by looking at two independent, award winning films, Powwow Highway (1989), directed by the white, South African-born Jonathan Wacks, and Crude: The Real Price of Oil (2009), a documentary directed by the American Joe Berlinger. Both films tap into and negotiate discourses on environmental racism/justice, linking them to concepts of human rights. I will in particular compare the visual strategies and “spectacular rhetorics” (Hesford) that the two filmmakers employ to alert their viewers to Native/indigenous rights to physical integrity, land title, and cultural survival. Such an analysis

will then allow me to reflect on the entanglement of environmental justice, human rights, and concepts of indigenism over the past twenty years.

PANELIST 3 Pavithra Tantrigoda
Carnegie Mellon University

The Rhetorics of Affect, Third World Feminism(s), and the Discourses on Human Rights

This paper examines the centrality of the rhetoric of affect and sentiment in the deployment of transnational discourse(s) for women's rights by third world feminists. In the discourses that claim rights for third world women, their collective suffering under patriarchy, (neo)colonialism and capitalism is foregrounded as a means to advance rights claims and it is through the rhetoric of suffering that third world feminists claim the space of legitimate subjects of the universal human rights discourse. This paper analyzes recent feminist scholarship that employs an affective mode to draw attention to the spaces of inequality and injustice. It explores the potentialities and limits of such a discourse of affect, examining, in particular, the feminist work and literary representations on the affective experiences of third world women in transnational sites of labor and capital.

PANELIST 4 Frederick Cowell
Birkbeck College

An Arendtian Turn: Constructing the Human of Human Right Abuses

Hannah Arendt's description of the formation of rightsless individuals, in the *Origins of Totalitarianism*, is widely regarded as the seminal account of the creation of human rights victims in the mid-twentieth century. Arendt's account of victimhood is largely a description of the limits of human rights in international law and is largely focused within the historical context of Europe in 1942. This paper explores both Arendt's account of human rights victims in the *Origins* and her other works to construct a wider, critical account of the Arendtian victim of human rights abuses. This account will then be used to analyse the victims created by the limitations of contemporary international human rights law, in particular the reservations filed by states to international human rights treaties, and assess the differing conceptions of the human presented in these accounts of human rights victims.

5.12 Migration, Territory and the Law

CHAIR Nicholas Daniel Natividad
University of Texas at El Paso

DISCUSSANT Nicholas Daniel Natividad
University of Texas at El Paso

PANELIST 1 Faith Marchal
Birkbeck, University of London

Uncovering the human in human rights: the Underground Railroad and its legacy

This paper seeks to uncover the human dimension of human rights activism through an examination of a specific response to the ‘peculiar institution’ of slavery in the United States as legitimised by the Constitution and the Fugitive Slave Acts. In response to this emerged a secretive network of black and white anti-slavery activists, collectively known as the Underground Railroad. Operators of the Underground Railroad knowingly broke the rule of law to help slaves into freedom, and through deliberate acts of civil disobedience defended what is now regarded as a fundamental human right. Thus, the Underground Railroad can be seen as a collective act of rebellion. This paper also asserts that, without the efforts of those prepared to defend them, our human rights would remain consigned to the abstract and the theoretical.

PANELIST 2 Simon Behrman
 Birkbeck, University of London

Resisting the Irresistible? Sanctuary Movements and the Law

This paper addresses the problematic relationship to law of the Sanctuary Movement in the US (1981-1991) and the Sans-Papiers in France (1996-present). Not only did they oppose this or that piece of legislation, but they also challenged the authority of the state on one of the primary grounds of sovereign power: control over who does and does not enter its territory. Yet the Sanctuary Movement and the Sans-Papiers evidence both reliance on law as a legitimating basis for welcoming the refugee, and also a debilitating attachment to the legal construction of the refugee subject. Moreover, in their own practices of reception they often found themselves adopting a juridical paradigm. Does this point to the necessary and universal validity of law as such, or does it instead reveal the overwhelming and malignant power of the ideology of the rule of law? Is a politics completely decoupled from law desirable or even possible?

PANELIST 3 Mina Barahimi
 University of California, Berkeley

Parallels in Racial Construction: A Comparative Analysis of Moroccans in Spain and Mexicans in the United States

This paper examines the ways in which the citizenship identities of Moroccans in Spain and Mexicans in the US are racially constructed. These regions—Morocco-Spain and Mexico-US—share interesting parallels which make them ripe for comparison—namely, Morocco and Mexico have in common histories characterized by asymmetrical power relations with geographically proximate Spain and the US, respectively. The argument is made that historically, both Moroccans in Spain and Mexicans in the US have been reduced to their labor function, and the resultant racializing effect has been reified in a contemporary sense through legal and policy mechanisms governing immigration. In taking an integrated approach to research in the field of citizenship with this transatlantic comparison, this paper shows that despite differences in the culture, history, and economy of Spain and the United States, Moroccans in Spain and Mexicans

in the US have been similarly racially constructed, often regardless of their citizenship status.

5.13 Loss and vulnerability

CHAIR Juliet Rogers
University of Melbourne

DISCUSSANT Andrew Schaape
University of Exeter

PANELIST 1 Juliet Rogers
University of Melbourne

Circumcised Life: The necessary cut to the new (political) human

In a world of land, love and law that often inflames conflict over resources, sovereign jurisdiction and the moral dominance of values, humans must increasingly embrace the loss of identities, ideals and objects that have served to consolidate political and legal positions. These losses can be thought of as cuts in the flesh of the whole political body, as individual and as nation, and they can be born through a ceremony of loss that returns the pieces of flesh back to the body.

This paper considers the loss of the substances of the human – as that which we love, own and labor over – as necessary to a constitution of self that survives trauma, terror and law. The paper discusses the narratives of survivors of Nazi death marches and the psychological processes engaged to return them back to a life in community. Building on the work of trauma theorists, such as Dori Laub, Shoshana Felman and Cathy Caruth, and the work of political theologians, such as Eric Santner and Giorgio Agamben, this work considers the importance of both a loss of flesh – as a covenant with the juridico-political – and the limits of ownership of land, lovers and products as the necessary constitution of the relationships of the human to the political. My contention is that the new human in a climate change world must embrace the experience of a circumcised life in order to live in community and perhaps in order to live at all.

PANELIST 2 Nayeli Urquiza
University of Kent

Women drug mules: Rethinking the image of vulnerability of monstrous drug offenders

Foreign women drug mules occupy an ambiguous location in socio-legal discourses. Judged through the lens of the hyper-masculine drug offender but also considered as embodied vulnerable feminized subject, the criminal legal system has been unable to provide just responses to these offenders. By looking to the figure of the monstrous vulnerable self, I aim to explain why the representation of women drug mules as embodied vulnerable subjects has been unable work in their favour in the courts because it an affront to the liberal ideal of the sovereign self. This paper does not wish to abandon the concept of vulnerability as a way to

reconceptualise criminal responsibility, but urges a critical engagement with this concept and its implications for dealing with sexual difference in criminal legal discourses.

PANELIST 3 Lim Yee Fen
Nanyang Technological University, Singapore

The Australian Way: of lung cancer and the law

In Australia, new laws were introduced in 2011 requiring cigarettes to be sold in olive green packaging without trade marks and with health warnings that are explicit and graphic. These new laws were challenged by a number of large tobacco companies on several legal grounds, including intellectual property grounds. In a historic decision handed down in late 2012, the Full Court of the High Court of Australia found in favour of the government. This paper will explore the decision from a cultural, contextual and legal perspective. It will examine the intersection between trade, law, health, marketing and public morality in modern Australia.

SESSION 2 11:00 AM- 12:30 PM

6.1 Human, Race, Rights

CHAIR Brenna Bhandar
Queen Mary, University of London

DISCUSSANT N/A

PANELIST 1 Mark Harris
La Trobe University

The myth of the "Great Writ of Liberty" and the juridical erasure of the body of the Racial "Other".

The writ of habeas corpus is routinely presented as "the Great Writ of Liberty" which operates as a guarantee as to the rights of the individual against unlawful detention. Drawing from the work of Hussain, Agamben and Ferreira da Silva the paper seeks to explore the juridical ambiguity that attaches to Indigenous and 'native' populations during the colonial period and into the early twentieth century, where the guarantee of the Great Writ is promised while the rights of the Indigenous or native other are comprehensively erased by legal interventions. Even in affirming the scope and application of the writ, the bodies of the racial 'Other' can only ever be written as existing before modernity and incapable of being the possessor of rights. It is this double-movement of habeas corpus – confirming the right of the law to claim the body ("you

shall have the body”) while the bodies of the racial Other can never have the law. Following from Wolfe they can only ever be corpus nullius – that is, be presented before the law whilst not present in/to the law.

PANELIST 2 Pierre de Vos
University of Capetown

The past is unpredictable: race redress and remembrance in South African constitutional jurisprudence

In this paper, the author takes issue with this view, contending that the effects of past and on-going racism and racial discrimination cannot be addressed merely by assuming that the consequences of race — including racism — can be addressed by attending to the material conditions of inequality in society and by ignoring the power that the concept of race still exert on society. What is required is to question the positions and discourses of privilege and dominance that stem from an ideology of white superiority and hegemony and to engage more critically and in a nuanced manner with the power of race and the effects of ongoing racism and racial discrimination. To this end, there is a need for South African law to engage critically and in a nuanced manner with the personal narratives of litigants in an attempt to capture both the powerful effects of past and on-going racism on individuals while moving away from a fixed, essentialised, all-encompassing view of racial identity still embedded within the post-colonial imposed racial hierarchy.

PANELIST 3 Adil Khan
Graduate Institute of International and Development Studies

How is the subject of international Indigenous Peoples’ rights made? Or, when the openness of law becomes its Other

This paper seeks to problematize the more fluid and flexible techniques of legal subjection that are now mobilized by the international human rights apparatus. It focuses on the specific case of international indigenous peoples’ rights, revealing that in the guise of a system that ostensibly accepts the ‘self-definition’ of the rights claimants what we have instead is a system wherein case-by-case determinations of ‘indigeneity’ are made by ‘experts’ attached to international institutions.

The paper maps what it argues is the imperializing effect of a flexible form of law that while exhibiting a greater openness to ‘affect’ ultimately functions to transform it with ever greater violence so as to have it perform the role of the grounds supporting the law’s persistent claim to groundlessness.

6.2 Cultural legalities of science fiction (Part II)

CHAIR Mitchell Travis

DISCUSSANT N/A

PANELIST 1 Kieran Tranter
Griffith University

Jurisprudence of the Posthuman: Monsters, Cyborgs, Zombies and Gods in Doctor Who

This paper argues that *Doctor Who* (DW) presents four forms of posthuman (monster, cyborg, zombie and god) as constituted by differing relations to law. This argument is in three stages. The first stage considers the jurisprudence of DW and challenges an obvious retort that it beams English legal thought from its broadcast-present. This opens to the second stage which identifies the four posthuman possibilities from DW. Each is shown as uniquely located by two legality continuums; the uncanny-mundane and the positivist-‘natural.’ In DW episodes the monster goes from the uncanny to the mundane and moves from the posited to the ‘natural.’ The cyborg does the inverse; while the zombie and the god are fixed in their relations. The third stage materialises these insights back to the posthuman literature, to show that law, and not just technology or the decline of the liberal metanarrative, is transforming the ‘human.’

PANELIST 2 Sarit Larry
Boston College

Arendt, Science Fiction and Legal Critique

In her ‘Human Condition’ Arendt suggests that science fiction is not merely vivid representation of extra-terrestrial escapist sentiments, but a normative critique of the new capabilities that fulfil them and the legal considerations that could or should limit lawless trust in progress. Vonnegut’s ‘Cat’s Cradle’ (1963) and the ‘Matrix Trilogy’ (1999-2003) discuss the destruction of the earth by means of scientific invention and technological development. The status of the law in ‘Cat’s Cradle’, impotent in the face of scientific invention, offers an insight into realms naturally placed outside legal considerations: scientific inventiveness and curiosity. It exposes the arbitrariness of legal limits and the necessity of exploring new legal frontiers. ‘The Matrix Trilogy’ is a conjunction of two interdependent law systems: the purely logical and the morally human. Both man-created systems fail to create worlds in which humans happily exist depicting a negotiation between formal and substantive aspects of the law, cautioning the reader of either extreme

PANELIST 3 Grant Dempsey
The University of Western Ontario

Zero and the Subject in Metal Gear Solid 4: Guns of the Patriots

This paper will examine the figure of Zero in the video game *Metal Gear Solid 4: Guns of the Patriots* (2008) as a figure in which the tensions of the game’s thematic interest in subjectivity and critique of the possibilities of posthumanism are maximized. Zero complicates notions of technological extension and liberation of subjectivity in his recounted effort to externalize his ideology in the form of an artificial intelligence network meant in turn to operate as a secret, complete, and active law itself, insofar as it ensures autonomously and directly by physiological

manipulation the adherence of its subjects to its norms. This paper will therefore characterize Zero's "System" by drawing on Nina Power's treatment of "subject" as a multivalent philosophical term, a term especially self-split according to interest in issues of "subjectivity" and interest in issues of "subjugation." One is simultaneously a *subject of* and *subject to* Zero's System, on the one hand phenomenologically enlarged by and included in it as intersubjective enhancement and on the other hand behaviorally bound to and controlled by it as law. The situation is further complicated by the narrative's ultimate suggestion that the System consumes, as much as it extends, Zero's own subjectivity, by its incapacity to distinguish in codification the letter and the spirit of the law he means to implement; nevertheless, Zero is held inseparable from his System and accountable for it, so much so that his punishment according to another law is asserted as an absolute necessity for the full deconstruction of, and liberation of the world from, his System as a law. This paper will, in effect, consider, through *Metal Gear Solid 4: Guns of the Patriots*, the relationship between the human, the technological, and law itself in the cultural event that the three categories are collapsed into each other.

6.3 Intellectual Property and Geography

CHAIR	Peter K. Yu Drake University
DISCUSSANT	N/A
PANELIST 1	Llewellyn Joseph Gibbons University of Toledo

Geographical Indication, Bill or Fare for the Developing World?

Trademarks and quasi-neighboring rights such as geographical indications of origin ("GI") are instrumental to the advancement of less developed nations' economies. Many lesser developed nations produce agricultural products that if sold on the world market as fungible products have little value, but when associated with the allure of the exotic, unknown, mysterious, or the merely "other" as mediated into the developed nations' consumer consciousness carry a huge premium of good will. Products such as Darjeeling tea, Columbia coffee, Halloumi cheese, and Thai Hom Mali rice, obtain their extraordinary economic value because of an association with an exotic geographic location, the perception of consumers that these products are of superior quality, and that the geographical indication serves as a warranty of quality. These same goods when sold in an undifferentiated or unbranded market, e.g., tea as opposed to Darjeeling tea, coffee as opposed to Columbian coffee, are worth only pennies on the dollar in the mind of the consumers. In the case of undifferentiated or unbranded agricultural products from developing countries, resellers in developed nations, purchase the unbranded generic commodity, brand it with their trademarks, such as Starbucks® or Maxwell House® for coffee, Lipton® or Earl Grey®

for tea, so that a fungible commodity is transformed into a distinct product with an indication of quality and thus capture, this hitherto unrealized consumer surplus without necessarily returning any of the surplus to suppliers in the developing country of origin. This process although purporting to be one of recognizing existing high quality indigenous goods adds value only when mediated by Western cultural understandings of value as informed by popular culture or mass market advertising so this paper will analyze the role of the global media in recognizing and valuing local cultural as defined by geographic indications.

PANELIST 2 Doris Estelle Long
 John Marshall Law School

Redrawing the Geographies of Empire in a post-ACTA (Plurilateral) World

This paper will explore how the concepts of "geography as destiny" and the geographic hegemonies of the old Empires have altered in the face of global trade and technology to create new hegemonies in which developing countries are rewriting earlier Empire based standards for intellectual property protection to reflect their needs. The paper will focus primarily on the geographic alterations of earlier Empire based standards involving domestic working obligations for patents, fair trade, well-known marks and enforcement.

PANELIST 3 Peter K. Yu
 Drake University

Intellectual Property Geographies

From public health to climate change, and from biological diversity to food security, the protection and enforcement of intellectual property rights require international cooperation and have serious global implications. Yet, despite our increased focus on globalization, intellectual property literature, surprisingly, has paid very little attention to geography. While the lack of geographical discussions in U.S. intellectual property literature is understandable, given the rather limited study of geography in American higher educational institutions, it is harder to explain the lack of such discussions in literature published in other parts of the world. To help generate greater interest in injecting geographical perspectives into the intellectual property debate, this paper shows how a deeper understanding of the different branches of geography can illuminate our understanding of the intellectual property system.

PANELIST 4 Lucero Ibarra Rojas
 Università degli Studi di Milano

The politics of marketable difference: collective trademarks in Mexico

Through the cultural policy of collective trademarks (CTs) in Michoacán, México, I propose to look at the aims and possibilities of political and social actors in approaching intellectual property (IP). The contemporary challenge is not only to understand different kinds of creations, but also different persons and peoples, and even meanings in it. The use of IP by subaltern groups, such as indigenous, reformulates its role; but it also opens up questions regarding human creation and how law structures might be determining it, furthermore, about the

political contexts in which it is used. CTs have been sponsored by the Mexican government because of being able to overcome other IP tools' defects. By looking at the way they have been conceived and the identity they have gathered beyond the letter of the law, their use can be paradigmatic to further understand the possibilities in IP as well as its dangers.

6.4 Constituting Bodies Through Art and Music

CHAIR Jaco Barnard-Naudé
University of Cape Town

DISCUSSANT N/A

PANELIST 1 Jaco Barnard-Naudé
University of Cape Town

Sculpting the (in)human

This paper returns to earlier work on the sculptures of South African artist, Jane Alexander. Alexander's emblematic work, *Butcher Boys*, is well known as a condemnation of the horrors of Apartheid. However, this paper proposes that Alexander's work does not simply constitute political commentary. Rather, sculptures such as *Bom Boy*, *Racework* and *Self Defence & Stability Unit* forces us to confront anew what it means to be human in an inhuman world. As the work constantly traverses the porous boundary between the human and the animal, we are faced, ultimately with the ethical crisis of existence. In an attempt to come to terms with these questions and dilemmas, Alexander's work will form the context for a reading of Derrida's *The Beast and the Sovereign Vols I & II*.

PANELIST 2 Flavia Marisi
Universitatea "G. Enescu", Iasi

National identity v. European identity: a parallel between Constitutional Courts' decisions and music

As law and music are expressions of a society's culture, legal norms and musical products reveal its core values. Hence, culture has a strong identity function, and each social group usually considers its values as indefeasible. However, a certain social group, characterized by a specific culture, may be part of a larger group, characterized by a slightly different culture: this may give rise to sharing, but also to conflict of values. This is likely to occur in supranational organizations as the European Union: evidence thereof may be found in cultural products as legal judgments and music pieces. The present study focuses on the decisions taken by some Constitutional Courts and by the ECJ, and on specific music forms and pieces, striving to highlight the analogies and differences in their core values and strategies of conflict resolution. This parallel aims to facilitate the development of a shared view among all concerned.

PANELIST 3 Yann Tostain
Université Aix-Marseille

Owning the Body. From Contemporary Art to Biopolitics.

In 2006, Belgian artist Wim Delvoye tattooed the back of Tim Steiner with a Madonna, called this work ""Tim, 2006"", sold it to a German collector and caused worldwide controversy, especially because of the nationality of the buyer : some remembered the Ilse Koch's collection. Yet it is another question posed by this work of art : the biopolitics and its watermark, biopower. Moreover, it arises under the face of contemporary art, and the way contemporary art uses the artist's body, the body of the other, and elect them as the last creative ""pure"" space (from Viola to Abramovic). What are the legal and psychopathological issues of such a fantasmatic appropriation? Is Steiner's exhibition coercion or voluntary servitude ? What bodyart inherits Foucault's? Could bodyart be considered as the paradigm of this specific society Deleuze, after Foucault, called « society of control » ?

PANELIST 4 Nancy Marder
Chicago-Kent College of Law

The Court and the Visual: Images and Artifacts in U.S. Supreme Court Opinions

This paper contributes to the literature on the visual and the law by providing one of the few studies of the use of images in U.S. Supreme Court opinions. In the trial courtroom, the concern about using images is well known and well studied. In the highest court of the land, however, images of all kinds, from maps to photos to artifacts, have been used as part of opinions, especially dissenting opinions, for a long time, and yet, there have been few studies. In fact, with the advent of online opinions, it became increasingly difficult to study these images because the online opinions tend to omit them and the Justices rarely comment in their own opinions on other Justices' use of images. This paper brings these images to light and explores the role they play from the mundane--using a map in a redistricting case--to the potentially volatile--using photos to show inhumane prison conditions. After all, the Justices recognize that "a picture is worth a thousand words".

6.5 Family Relations in Legal Theory and Practice

CHAIR Samantha Godwin
Cambridge University

DISCUSSANT N/A

PANELIST 1 Ethan Zadoff
CUNY Graduate Center

"One may not give his daughter in betrothal when she is a minor?" Medieval Jewish Marriage Law in Northern France and Germany in Comparative Perspective

Developments in the regnant historiographical consciousness of the last generation have made clear that Jews and Jewish communities in 12th and 13th century Northern France and Germany

(Ashkenaz) interacted with and within their surrounding cultural milieus through various conscious and unconscious frameworks. And yet, in setting out to describe these complex connections- and at times prescribing methods to formulate these contacts- scholars have been reticent to identify or posit exchanges between Jewish law (Halakha) in Ashkenaz and its broader legal and non-legal contexts. My paper seeks to problematize the formalistic construction of medieval Jewish law by adopting a comparative and phenomenological approach to the study of medieval Jewish legal culture. Specifically, my paper examines 12th and 13th century laws and prescribed practices related to familial involvement in creating marriages, child marriages, and matchmaking in a comparative perspective with developments in the regnant ecclesiastical law and practice. Both Jewish and Christian marriage law underwent a series of reflective and reasoned shifts during the 'long twelfth century', formulating new systematic structures while transforming and mediating forms of conventional practice. In examining marriage laws through the prism of comparative law and Law and Culture, I argue that the development of these shifts in the Ashkenazik Halakhic system did not rise simply from internal growth on the one hand or duplication of proximate rituals and norms on the other; Halakhists modified and adapted the laws and practices of marriage through a subtle and restrained negotiation between their complex inherited tradition and their perception and internalization of neighboring legal, cultural, and normative practices.

PANELIST 2 Edward Van Daalen **PAPER WITHDRAWN**
University of Amsterdam

From Razia to Protection: Negotiating Children's Living Rights on the Streets of Yogyakarta

The aim of the paper is to explore the tension between international children's rights standards and value-based perceptions of rights that may exist in a society, in order to assess what the different understandings of children's rights are, where they meet, and how they are negotiated into practice.

I challenge the general assumption that children's rights are those laid down in the UN Convention of the Rights of the Child (CRC). This assumption generally led to scholarship and policy-making being mainly concerned with issues of implementation. I argue that the articles of the CRC cannot simply be implemented, but that they are confronted with existing understandings of children's rights including rights based on lived experiences (living rights), and need to be negotiated into local regulations within a plural legal context.

My argument is based on three months of fieldwork in Yogyakarta study of the drafting process of the new 'Regulation of the Province of Yogyakarta (...) on Protection of Children Living on the Street' in Yogyakarta, Indonesia. The study evinced the existence of a wide scope for confusion over the application of the relevant laws that could not be solved without taking the living rights of the target group and the community into account. It also became clear how complex these 'living rights' can be: besides customary and religious norms, there are rights that people derive from the challenges to organize their livelihood under constantly changing conditions. A process of negotiation and translation, during which all actors had to compromise on their ideas and demands determined the final outcome: a new local regulation that is aimed to protect street children instead of repressing them.

PANELIST 3 Samantha Godwin
Cambridge University

Casual Objectification and Dehumanization of Children in Law and Society

This paper explores and expands the fascinating but underdeveloped notion introduced by education theorist John Holt that children are treated as “love objects.” Just as men frequently view women not as persons, but as instruments to fulfill male sexual desire, or “sex objects”, Holt suggested that when parents, relatives and other adults feel entitled to effuse unreciprocated love to children, demand it returned, and justify this as natural and necessary, they similarly reduce children to “love objects.” Though this fulfills a vital human need for connection it is nonetheless dehumanizing and impedes more mutually respectful relationships.

This paper shall employ this concept of “love objects” to critique the belief that joint-parental custody and family unity should be presumed to be in the best interests of a child absent negligence, without regard to the child’s wishes. More generally, parents are given great discretion to treat their children as instruments for their own purposes as children's agency is routinely denied (except when holding them at fault). I suggest directions for a family law regime more respectful of children’s subjectivity and personhood. "

6.6 Protest and Political Formations

CHAIR James Martel
San Francisco State University

DISCUSSANT Andrew Dilts
Loyola Marymount University

PANELIST 1 Keally McBride & David Gutterman
University of San Francisco & Willamette University

Kafka and Protest

The past three years have yielded examples of different forms of protest around the globe. Consider anarchists in Athens appearing with chains around their ankles, encampments in Madrid and Oakland that have produced ironic media, and punk performances and public sex in Russia. These are deviations of the more orthodox methods of public gatherings that assert alternative public opinion or oppositional solidarity. In this paper, we ponder the distinctions between different forms of protest and political consciousness. While leftist readings of protest emphasize the role of public presentation of alternative truths or revealing “reality” in a new way, we believe another form of protest may be even more effective. In short, we examine what Kafka may tell us about revolutionary organizing. Can we understand protest as creating a form of estrangement from one’s situation, rather than revealing “the truth” of it? Perhaps we need to see our world as strange before we become inspired to change it.

PANELIST 2 Paul Passavant
Hobart and William Smith College

Neoliberal Attachments

Our affective attachments have become increasingly post-democratic and post-liberal over the last thirty years. We have become affectively attached to neoliberalism. This development means that a spectrum of actions to contain, marginalize, control, displace, or attack anti-neoliberal demonstrations fail to arouse a dominant sensibility that a wrong has been committed. Indeed, even instances of excessive or unprovoked police violence fail to arouse a sense of indignation. This paper explores the aesthetic domain of neoliberalism. The emergent neoliberal imaginary can be explored through movies such as *Dirty Harry* or *Taxi, Driver*, while *Robocop* not only represents its firm entrenchment, but it teaches us that with neoliberalism's persistence, we cannot remain unaffected as subjects as we become deeply, affectively transformed. The constellated node of anti-liberalism, preoccupation with race, crime, and dirt, aggression, and hostility to democracy that emerges aesthetically in the 1970s and 1980s provides not only the background sensibility into which protest cases, the deployment of police, police actions, and torturous extra-judicial punishments occur. It facilitates the way that these actions are sources of collective enjoyment. We survive under neoliberalism, as Officers Alex Murphy and Anne Lewis do, but not as who we once were.

PANELIST 3 Elena Loizidou
Birkbeck

Laughter and anarchism: coalition and the non-common

Theories of comedy, laughter, humour and wit (most of the times these terms are discussed interchangeable) have been part of philosophical discussions, since Aristotle's *Poetics*. Irrespective of what philosophical trajectory we pick and follow ((a) superiority (Aristotle, Hobbes) (b) of relief (Freud)(c) of incongruity (Kant, Schopenhauer and Kierkegaard)) we will notice that these philosophies of humour, comedy and witticism present the production of laughter as the commons of values, beliefs and comradeship. Laughter produces in this respect a 'truth', the 'truth' of the commons. In this paper, I will try to understand what happens, when a witticism fails to produce laughter. What does this non-commonality of value, belief and non-alliance can tell us about life, subjectivity and the political. In this journey I take as my companion the work and actions of the early 20th Century anarchist Emma Goldman, renown of her wit, endurance and love for the world. I argue that her particular strand of anarchism, takes us into an interesting journey, where we can see the production of non-laughter, as the production of the non-common, and the parallel way of life that emerges out of it. Judith Butler, has reminded more recently that political reactions based on common values or beliefs may indeed not create the conditions of a better life (*Precarious Life*), but rather endanger life itself. When wit or humour produces non-laughter, and if Goldman's way of life, showed that life is build also around the non-commons and if Judith Butler warns us of the closure of reactions based on commonality, by taking laughter as our point of departure we may begin seeing how a coalition based on the non-commons may begin to breath a different life in the world.

6.7 The Discontents of the Postcolonial: the colonial subject and the dissolution of western order

CHAIR John Strawson
 University of East London

DISCUSSANT Michael Phillips
 University of East London

PANELIST 1 Roshan de Silva Wijeyerantne
 Griffith University

Postcolonial Governmentality Resurrected: The Immunitary Logic of the Post-War Sri Lankan State

In 19th century Ceylon (Sri Lanka) the administrative reforms that created the modern colonial State were motivated by a utilitarian logic – they were fashioned by the principle of inducing what David Scott has described as “desired effects on conduct by a careful and economic weighting of rewards and punishments”. The result in the 19th century was a bio-political intervention at the level of political economy whose logic was essentially immunitary, a desire for self-preservation, which Roberto Esposito identifies as characterising modernity’s very essence or being. The post-war Sri Lankan State has since 2009 instituted what appears to be a new mediation of political life (citizenship) in relation to the originary exclusion that founded the post-colonial Sri Lanka State, the collective corpus of the Tamil other. That which remains outside, however is integral to the constitution of political life. Tamils, as is their potential conceived through the mythologies of Sinhalese nationalism, are that externality within the political order of the Sri Lankan State that sustains that very same political order of the state of exception that has become exemplary of post-war civil society in Sri Lanka. In order that political life (and here I have in mind a definition of political life as *ethnos*) in Sri Lanka can be preserved and developed it is increasingly been ordered by processes designed to immunise itself from sites of exteriority, associated with the Tamil as other.

PANELIST 2 Barry Collins
 University of East London

The Politics of Reconciliation and the Law of Historical Memory

The role played by law in dealing with historical atrocities is multi-faceted. In the example of Spain, the law of historical memory has enabled a process of truth-telling as a means of understanding the horrors of the Franco period, while attempts to obtain redress for victims have been dramatically thwarted. On the other hand, in the Ireland, the absence of a truth-telling procedure has enabled legal redress to operate in ways that ignore the needs of reconciliation. What do these experiences tell us about the role of law in the politics of reconciliation? What does they tell us about the possibility of justice without redress? What do they tell us about the role of human rights in confronting the past? These are the questions that this paper will seek to explore.

PANELIST 3 John Strawson
University of East London

The Egyptian 25 January Revolution - the end of Postcolonialism?

This paper sets out to interrogate Dabashi's premise that the Arab Spring signifies the end of the Postcolonial through reflections on the Egyptian revolution of 2011. The mass demonstrations that initiated the Egyptian Revolution took place on National Police Day, which memorializes the death of 50 police officers at the hands of the British in 1952. It was a new "holiday" designed by Hosni Mubarak to attempt to boost his hated police force by linking it to a historic anti-colonial moment. The regime's attempt to draw on the resonance of the anti-colonial past was to prove futile in the face of hundreds of thousands – and eventually millions – of demonstrators who demanded "bread, freedom and justice." The mass movement was neither in the thrall of Mubarak's regime nor Egypt's past. The colonial and postcolonial seemed by past by a revolution in which the West was so marginal. This marginality, it will be argued has important implications, for postcolonial theory although it will suggest that Dabashi might be premature in announcing its death.

PANELIST 4 Kriti Kapila
King's India Institute

Unpopular Justice: Law and the Inexpediency of Culture in India

This paper is prompted by the recent spate of violence in north India instigated by khap panchayats, or caste councils, and the judicial and public outrage over the resurgence of an older form of popular justice. Though the current challenge to state's juridical authority bears an uncanny resemblance to a similar deadlock between caste-councils and state law witnessed in the same region nearly a hundred years ago, there are vital differences in the way distance from culture in law is accounted for by the colonial state and in postcolonial jurisprudence. In excavating the genealogy of the present impasse, the paper argues that at the heart of this deadlock is the unresolved nature of the culture question in postcolonial India, and its unanticipated and unrecognised effects. A counterfactual reading of two landmark pieces of legislation, the Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 goes beyond discovering the possibilities scripted by the new laws. The two Acts entail a comprehensive rewriting of the grammar of relationality in north India, and in doing so place new constraints on culture – particularly in the domain of kinship. The conflicts they give rise to, such as the recent khap violence, cannot simply be understood by transposing insights from analogous conflicts in Euro-American jurisprudence because of the unique nature of the public aspirations of law in India. The paper strongly argues for a shift in the language within which the relationship between law and culture is cast in order to gain any new purchase on one of the oldest debates in anthropology.

6.8 Law without Humans

CHAIR Leif Dahlberg
 Kungliga Tekniska högskolan

DISCUSSANT Leif Dahlberg
 Kungliga Tekniska högskolan

PANELIST 1 Susan Lucas
 Church of England

The Disappearing Subject: Empiricist Epistemology and Homo Oeconomicus

This paper develops one strand of Wendy Brown's thinking – how contemporary neo-liberalism leads to the liminalization of the subject as a denuded form of homo oeconomicus – from the perspective of epistemology, in particular, the representation of the self in 17th and 18th century empiricist epistemology as isolated, alienated and reified, and so apt for proletarianization. In contemporary neo-liberalism, this already isolated subject shrinks further, into an evanescent point of unsatisfied desire conformed to commodifiable options. Since this 'disappearing subject' develops out of empiricist epistemology, resistance to the latter can also make visible more substantial and robust conceptions of subjectivity. Such resistance can be found, in strikingly similar ways, in both the Marx of Capital, and the Wittgenstein of Philosophical Investigations. The anti-empiricist epistemology that can be discerned in both thus represents a point of resistance to the liminalization of the subject in neo-liberalism.

PANELIST 2 David Thomas
 Birkbeck College

The Double Subject of Human Rights

The division between Man and Citizen in the Declaration of the Rights of Man is the focus of Hannah Arendt's and Giorgio Agamben's criticisms. They conclude that it portends dire consequences for the future of humanity. Perhaps more interestingly, following in Aristotle's footsteps, they and to some extent Alain Badiou are led to make further essentialising divisions between two or three classes of human subject in the course of their criticisms, to profoundly inegalitarian effect. This paper focuses on these essentializing divisions of the human subject and asks whether all such divisions of the subject of rights serve only to perpetuate injustice, rather than to elucidate and shame it. The paper finishes with Jacques Rancière, who picks up the original division and shows how Arendt's problematic can be resolved by describing the subject of human rights not as a human, but as a surplus subject.

PANELIST 3 Gary Minda
 Brooklyn Law School

The Human Argument Missing in Constitutional Law: Hiding Humanity in National Federation of Independent Business v. Sebelius

My paper reveals how the missing human argument worked to justify and legitimate the Supreme Court's highly publicized decision upholding President Obama's Affordable health Care Act --National Federation of Independent Business v. Sebelius. While the majority authored by Chief Justice John Roberts handed liberals a victory in upholding the Act, and surprised many in that Roberts joined the liberals on the Court, the argument of the majority, along with the dissent of the four conservatives, hides from us the lack of humanity that the Roberts Court. The decision can be read as giving a boost to constitutional argument that resorted to forms of legalism in constitutional argument that retools the lofty Law Day Speeches that celebrate constitutional law as a "government of law, not men," or simply fidelity to the "rule of law"—as if law existed apart from what makes us human. It is not that emotion or pathos, is missing; no it more than that. What is missing is an understanding of the human condition; what Martha Nussbaum identified as the inability of law to acknowledge its "own humanity" let alone the humanity of citizens who are needy and vulnerable and necessitate law's protection. My paper argues that the missing human element in National Federation of Independent Business v. Sebelius allows a deeply conservative judiciary to legitimate inequality and injustice much in the same way that the Supreme Court once legitimated laissez-faire thinking during the substantive due process era that for a time put up a barrier to the New Deal. My paper argues that Chief Justice Robert's majority opinion on the Affordable Health Care Act, along with the joint dissents, offers an example of the missing humanity in conservative constitutional argument. We should understand what exactly is at stake—a constitutional law that hides its own lack of humanity to justify and legitimate human misery, inequality and human need. One cannot have a constitutional democracy or a republican form of government amid gross human inequality and suffering. My paper will make this argument by making explicit the implicit human dimension missing in Chief Justice Robert's majority opinion upholding the Affordable Health Care Act.

PANELIST 4 Tripp Rebrovick
 Johns Hopkins University

Law without Origin or Force: Luhmann's Theory of Non-Human Legal Systems

This paper will explore Niklas Luhmann's contributions to theorizing the legal system without prioritizing the experience of human subjects. Luhmann, I argue, effectively describes legal systems without running into the aporias that have haunted earlier investigations of law's origin, force, and relationship to other domains of life. He does so by departing from both a political tradition that conceives of the founding of society, the drafting of a legal code, and the establishment of political authority as commensurate and from a sociological tradition that links law with norms and morals. He emphasizes, instead, law's differentiation from other social systems, not its origin or foundation; law's effect on expectations, not behavior or morals; and law's operative, but not causal, independence from political and economic systems. These three moves, I argue, reveal the significance and priority of non-human processes in the functioning of legal systems and supplement Foucault's analysis of governmentality.

6.9 ROUNDTABLE: “You must pay for everything in this world, one way and another”: True Grit’s Juridical Landscape

SUBJECT AREA Film, legal theory, popular culture, legal consciousness

CHAIR Martha Umphrey
Amherst College

PANELIST 1 Martha Umphrey
Amherst College

PANELIST 2 Austin Sarat
Amherst College

PANELIST 3 Naomi Mezey
Georgetown University Law Center

6.10 ROUNDTABLE: Author Meets Readers: Denise Ferreira da Silva Toward a Global Idea of Race (2007)

SUBJECT AREA Law, Critical Race Theory, Philosophy

CHAIR Nahum Chandler
University of California, Irvine

PANELIST 1 Nahum Chandler
University of California, Irvine

PANELIST 2 Patricia Tuitt
University of London, Birkbeck

PANELIST 3 Anthony Farley
Albany Law School

PANELIST 4 Barnor Hesse
Northwestern University

PANELIST 5 Alexander Weheliye
Northwestern University

6.11 Community and the Commons, and the Lives and Deaths of Law

CHAIR Leonard C Feldman

DISCUSSANT N/A

PANELIST 1 Leonard C Feldman
Hunter College, CUNY

Drone Warfare, Human Rights, and the Sensus Communis

Rather than explore drone warfare and targeted killing from the perspective of human rights, this paper explores human rights from the perspective of drone warfare. I trace the commentaries and controversies within the official human rights community in the United States concerning the Obama Administration's escalation of drone warfare, evaluating them through the lens of critical political theories of human rights (Ranciere, Agamben). I argue that human rights discourse evinced a marked hesitation and ambivalence when confronted with drone attacks, focused on the question of the legal geography of war and whether particular targeted killings fall under Human Rights Law (HRL) or International Humanitarian Law (IHL). I argue that the human rights community's engagement with the issue of drone attacks reflects the subject-centered nature of human rights discourse. By subject-centered I mean a discourse that frames ethical life in terms of the discreet harms done to persons and not in terms of the relations between subjects. While there are many good reasons for such an approach, an unfortunate result is that human rights frames neglect the specific ethical-political issues of drone technology and become detached from the *sensus communis*.

PANELIST 2 Afshin Akhtarkhvari
Griffith University

The Walking Dead as Critique of Natural Law and the Foundation of Science in Global Environmental Politics

This paper is a critical reading of the comic book and now film series called the 'Walking Dead' using the work of Michael Serres and Merleau-Ponty. I use this reading to critique global politics and law for adopting the same cultural biases towards nature as the comic book series. I then ask questions about our approaches to the global politics around biodiversity loss as a way to imagine an alternative natural law foundation in the Anthropocene Epoch.

PANELIST 3 Elena Cirkovic
University of British Columbia

Community, Categories of Citizenship, and Possibilities for Universal Human Rights in Bosnia and Herzegovina

More than a half a century after the adoption of the Universal Declaration of Human Rights (UDHR), the qualifications of the bearer of 'universal' rights, still remain unacknowledged.

There are many ways in which one can lose one's community and corresponding rights. Is an individual recognized as a) universal and right-bearing citizen independent of any communal membership; b) only as a member of a community (based on nationhood, ethnicity, race, gender, etc.); or c) someone whose existence or affiliation is found to be in violation of existing laws (criminal, terrorist, illegal alien)? In addressing the relationship between citizenship and human right protection, this research focuses on the case of institutionalized ethnic discrimination in Bosnia and Herzegovina (BiH).

6.12 Are Women Human? Reflections on law, history and sexual difference

CHAIR Nayeli Urquiza Haas
University of Kent

DISCUSSANT N/A

PANELIST 1 Yvette Russell
Queen's University Belfast

Virgin Woman: A Case for Humanity in the Law of Rape.

One of Irigaray's most insistent criticisms of the operation of patriarchal law is its overwhelming focus on the protection of property at the expense of law that regulates relations between and amongst persons. This paper argues, with reference to Luce Irigaray's work, that the conceptual change involved in such a reorientation of law's focus has important implications for the legal perception of the harm of rape and woman's sexuality. The possessive paradigm operates in the law of rape by disassociating the harm of rape from its psychic and subjective impact and encouraging the 'simple'rape/ 'real' rape dichotomy. In returning subjectivity to woman herself we can begin to see perhaps how the crime of rape involves a harm to woman that affects the whole of her being, and to be. Such a reading allows the law to perhaps move away from understanding rape as a violation of undifferentiated bodies to a violation of the innate 'virginity' of woman.

PANELIST 2 Helen Carr and Karin Von Marle
University of Kent and University of Pretoria

Using Arendt to explore the human in the legal: a reading of R (on the application of McDonald) v Royal Borough of Kensington and Chelsea [2011] UKSC 33

This paper draws on Arendt to explore the claims made in R (on the application of McDonald) v Royal Borough of Kensington and Chelsea [2011] UKSC 33. The case decided that substituting incontinence pads for a night time carer was a lawful means of meeting McDonald's needs

despite the fact that McDonald was not incontinent. We suggest that Arendt's notions of plurality, politics and action enable the case to be read in a way that facilitates resistance to dominant understandings that welfare produces dependency and passivity. In particular it enables us to understand Ms McDonald's claim to dignity as a political rather than a social claim. More controversially it causes us to question Baroness Hale's dissent in McDonald, arguing that her compassion actively undermines McDonald's humanity. Finally we reflect upon Arendt's insight, that technological progress is likely to have unforeseen consequences for humanity.

PANELIST 3 Maria Drakopoulou
University of Kent

Reflections upon Law, Time, Space and the Feminist Condition

This paper interrogates feminist calls for justice that manifest a desire to expand law's interiority so as to embrace those 'unbuilt' places marked by a lack of law's touch. In so doing, it also interrogates the justice of 'law's right' to respond to its own absence. I argue that the seemingly oppositional nature of law's being and absence, the distance apparently separating the two, in nurturing a wish to absorb singularities of events, things and persons into the universality of law, conceals the constant and silent communication between the two; a communication which, reveals not only law's own, immovable identity but also its inability to respond. It is my contention that in linking existence to non-existence, and thus praising the perfections of law, feminist politics allows for no response of self-reflection, only for one of envelopment. This response becomes indivisible from specific modes of feminist resistance and critique and shapes the manner in which the feminist condition of our present is constituted, conducted and experienced.

PANELIST 4 Karin van Marle
University of Pretoria

The present and future of feminism, alternative modernities and difference

In my paper I aim to engage critically with the present (and future) of feminism against the background of a broader reflection on alternative (or Southern) modernities. Gaonkar observed more than a decade ago that a contemplation of alternative modernities requires a rethinking of the distinction between 'societal modernization' and 'cultural modernity'. (1999:1) I want to reflect on the meaning of this distinction for feminist theory. A contemplation of alternative modernities requires a thorough engagement with the 'Western discourse on modernity'. The work of Appadurai and Gillroy for example has shown the need 'to think through and to think against' the tradition meaning, 'to think with a difference – a difference that would destabilize the universalist idioms, historicize the contexts, and pluralize the experiences of modernity'. (1999: 14) Following Irigaray I shall argue for a thinking of sexual difference as significant for the present and future of feminism as well as a new humanity. (1994)

6.13 Science, Law and the Human

CHAIR Jennifer A. Hamilton

Hampshire College

DISCUSSANT Jennifer A. Hamilton
Hampshire College

PANELIST 1 David Caudill
Villanova University School of Law

The Representation of Science, Law, and the Human in The Island of Dr. Moreau

With reference to H.G. Wells' *The Island of Dr. Moreau*, and Lodge's recent biography of Wells, I will explore the notion that science always involves ethics, that is, that ethics is not merely a "downstream add-on" to the scientific enterprise, but always already in the laboratory. Wells echoes the critique of science and scientists as potentially alienated from human/social concerns (Dr. Moreau "was unmarried, and had nothing but his own [research] interest to consider"). I will also inquire as to why law is so central to the novel (the ship's captain declares, "Law be damned! I'm king here" at the outset of the novel, and the island's Beast Folk (animalized men who later revert to animal instincts) recite the Law as proof of their humanity-- "Are we not men?").

PANELIST 2 Isolde De Villiers & Jenny Scott
University of Pretoria & University of Glasgow

Re-forming the Form with the Joker: Reflections on the relationship between the human form and the law

In his 'Aesthetics of the Oppressed' Boal challenged the person to consider his form as more than just the muscular mask as a way to facilitate sensory dialogues. In viewing the human as that through which laws are made and broken and by which law and power are questioned, we cast a fresh perspective on the way in which the human can disrupt, or persuade when masquerading as the clown, or empower when witnessed as the neutral Boalean Joker. We draw from Boal's image of the Joker and from his practical experience of re-forming and in-forming the body of law as we assess the role of space in the performance of clowns and by extension the human's capacity for performance and performativity. We use the arts of clowning and Jokering to explore how law and power can be questioned and subverted. The paper refers to contemporary literature, film and theatre.

PANELIST 3 Aurora Voiculescu
University of Westminster

Biopolitics and the Human Rights Failed Escape from State and Law

This paper explores the biopolitics core of evolving legal concepts that are central to human rights, investigating the extent to which *homo sacer* (Agamben, 1998) is expelled from its own sacrality, its bare life becoming a simple instrument of corporate hegemony.

It is generally acknowledged that – for the purpose of the broader framework of law – human agency is fundamentally constructed and constituted within pre-existing social relations. Within the human rights discourse, this social constructedness has never ceased to be debated. The ‘human’ essence and its distinctiveness from the animal and, lately, artificial intelligence forms have been explored by (legal) philosophers as well as through artistic works (from Steven Spielberg’s AI movie to the choreographic work of Sidi Larbi Cherkaoui) focusing on the body and its ‘humanity’ dimension. The ‘so-called sacred and inalienable human rights’ (Agamben, 2008), already challenged from within, have always been part of a double movement of construction and erosion at the same time. However, the concept has been recently shaken to its core by the hijacking of some of its central tenets, through the manipulation of the human rights discourse for directly supporting corporate neo-liberal institutional interests. This move appears to place the ‘human’ on a platform of legal promiscuity. With corporations acquiring lately through courts a *human* rights standing on issues such as ‘privacy’ or ‘freedom of speech’, there is uncertainty as to what is left of the already shaken ‘humanity’ of human rights. To what frontiers is the sacrality of the ‘bare life’ being pushed? Will ‘humanity’ still be able to be opposed to power, if yet another one of its (imperfect yet perfectible) metaphysical expressions – human rights - gets translated in a language that has very little to do with the ‘human’? This paper will offer some reflections on the above questions but, alas, no answers.

SESSION 3 1:30 PM- 3:00 PM

7.1 The Human

CHAIR Joseph Slaughter
Columbia University

DISCUSSANT N/A

PANELIST 1 Joseph Slaughter
Columbia University

However Incompletely, Human: Colonial Corporations and Other Partial Creatures of International Human Rights Law

Historians have begun to document the importance of nineteenth-century colonialism in the formation of international human rights law at the same time as scholars warn of the law’s “colonization” by corporations. This talk argues that early modern corporate colonialism was not only a founding condition of contemporary international human rights law, but that corporations, especially colonial charter companies, were recognized as international persons in advance of the human beings they ostensibly serve. Charter companies were charged with carrying some of what we now call human rights to the “unenlightened” ends of the earth, and they were themselves bearers of some international rights that we now regard as the human rights of individuals. Examining the entanglements of international, corporate, and human rights

law, I consider how the early international law of high imperialism set the stage for the emergence, as international persons in their own right, of human beings, however incompletely.

PANELIST 2 Nan Goodman
University of Colorado

Cosmopolitics, International Law, and the Human

This paper investigates changing notions of the human in theories of cosmopolitanism from ancient times to today. I am particularly interested in many of the as yet neglected ideas about what made the human “human” over time; for the ancients it was the soul, for the early moderns, it was reason and sympathy, but for contemporary thinkers the jury is still out. Contemporary thinkers diverge wildly on this issue, reaching back to older solutions that accompanied the law of nations as well as forward to a variety of possible answers including genetics, theories about speech acts, and species oriented approaches to the human like that of Bruno Latour in *The War of the Worlds*. Taking up Latour’s theory, his indebtedness to Kant, and arguments by Martha Nussbaum, Richard Rorty, Bruce Robbins, and Pheng Cheah, I hope to sort through what kind of human would live in a cosmopolitan world.

PANELIST 3 Carla Spivack
Oklahoma City University

The Seventeenth Century Novel: A Forgotten Chapter in the Construction of the Human

This paper examines a particular chapter in the process by which the “human” was constructed by the novel, a chapter which took place in seventeenth century London. Specifically, I discuss how the courts in Restoration London were called upon, in the aftermath of civil war and amidst the flood of royal exiles returning to claim lands and titles, to determine the truth about a person’s identity and social position, and the influence this process had on the development of the novel and the novel’s definition of the human. The novel presents a contest between, on the one hand, the readers’ attempts to gather “evidence” to establish the “truth” of the characters before them, as did the juries and the philosophers, and, on the other, the characters’ self serialization, which again and again, like that of the shape-shifting defendant, resisted these attempts.

PANELIST 4 Caroline Joan S. Picart
University of Florida

Monstrosity, Serial Killing, the criminal blackman and the Lesbian Female Serial Killer: Fact and Fiction in Depictions of Wayne Williams and Aileen Wuornos

Crucial to the distinction between the “human” and “not-human” is the characterization of the “Monstrous.” And when monstrous rhetoric hyperbolizes itself, compounding the already-monstrous notion of the serial killer with the criminal blackman and a lesbian Female Serialkiller, as in the case of Wayne Williams and Aileen Wuornos, the complexity of the “monster-talk” (the rhetoric generating the “other-than-human”) generated cries out for analysis. I focus on media and legal constructions of blackness and whiteness, and “monstrosity,” in relation to serial killing, as found in the case of Wayne Williams and Aileen Wuornos. The “Monsters” of the

narrative were a fair-skinned black man who identified so much with whites that he hated his own race and remorselessly killed off those whom he deemed unworthy of life (i.e., not-human enough to live), and a white lesbian woman depicted like a Frankensteinian Monster hopelessly seeking love.

7.2 ROUNDTABLE: Improper Life: Technology and Politics from Heidegger to Agamben. Timothy Campbell

SUBJECT AREA	Biopolitics
CHAIR	Patrick Hanafin Birkbeck
PANELIST 1	Patrick Hanafin Birkbeck
PANELIST 2	Timothy Campbell Cornell University
PANELIST 3	Julia Chryssostalis University of Westminster

7.3 Literary Jurisprudence

CHAIR	Susan Ayres Texas Wesleyan
DISCUSSANT	N/A
PANELIST 1	Faith Barter Vanderbilt University

Following the Line: Melville's Ethics for a New Body of Law

This paper argues that Melville constructs a precedential framework in *Moby-Dick* through citations to what I call “the line.” Throughout the novel, Melville describes physical lines that connect animals to each other: harpoon lines, tow lines, and even umbilical cords. Melville uses these physical connections to trouble the boundaries of rights and law, making visible lines stand in for the un-seeable threads connecting one animal to another. I argue that the line between two animals—man and man, man and whale, or whale and whale—makes legible the relative positions of power or weakness in the various pairings, as well as the ambiguous

tendency of the line to unify its pairs even while it cleaves them. Melville deploys cumulative citations to the line, ultimately building a precedential structure that urges a theory of ethical interdependence among legal persons (a category which, within the world of the novel, includes whales). Given Melville's unorthodox taxonomies of personhood and his admonishment of unchecked power, I argue further that this theory of interdependence may be read as well as a caution against the looming specters of colonialism, imperialism, and legal slavery in the nineteenth-century Americas

PANELIST 2 Susan Ayres
Texas Wesleyan

Giving an Account of Oneself in "A Lesson Before Dying"

The novel, *A Lesson Before Dying*, by Ernest Gaines provides an example of Judith Butler's theories in *Giving an Account of Oneself* and other writings. In Gaines' novel set in the 1940s, Jefferson, a young black man, is sentenced to death for a crime he didn't commit. The local teacher, Grant, is chosen to teach Jefferson how to die with dignity. In my paper, I focus on two examples from the novel that illustrate Butler's theories. First, I explore the violence of the law in judging and condemning Jefferson. This illustrates how the legal system judges Jefferson as a nonrecognizable Other (especially when his own defense attorney names him a "hog"), and how we are all vulnerable to violence in being addressed. Second, I consider the ethical responsibility Grant faces when he is called to give an account of himself in relation to Jefferson.

PANELIST 3 Soo Tian Lee
Birkbeck, University of London **WITHDRAWN**

Scalping the Humanities: After and Beyond the End(s) of the Mythical Paradisiacal University

At (yet) a(nother) moment in time where the sand around us appears to be shifting at a rapid pace, this paper will attempt to think through the constantly-reanimated question about the role that the humanities has to play in the contemporary university. This question, so often-discussed to the point of being (at the very least) somewhat tiresome, can perhaps be cautiously retrieved and amended to avoid re-enacting the same orchestrated battle between – to name just two of the various belligerents – those who wish to jettison anything that does not comply with the logic of the 21st century market and those who wish to defend and/or affirm and/or justify the humanities. If, following the early Foucault, man is "neither the oldest nor the most constant problem that has been posed for human knowledge", as well as "one perhaps nearing its end" (*The Order of Things*), the image one might wish to confront is that of a Janus-faced university looking both backwards and forwards even as the face of the humanities drawn in mud at the edge of a river appears increasingly threatened by swelling waters.

7.4 Trials

CHAIR Sara Murphy
NYU/Gallatin

DISCUSSANT Sara Murphy
NYU/Gallatin

PANELIST 1 Marco Wan
University of Hong Kong

Charlot s'amuse, Onanism, and the Question of Literature

This paper examines the obscenity trial sparked by the publication of Paul Bonnetain's *Charlot s'amuse* (*Charlot plays with himself*), a late nineteenth-century French novel about the life of an onanist, or compulsive masturbator. Bonnetain's lawyer argued that the novel should not be considered as an obscene text because it was a work of scientific merit contributing to the medical discussion of onanism. This paper examines the interpretative assumptions behind this argument, and posits an alternative reading which suggests that the novel in fact interrogates some of the fundamental ideas in the scientific discourse on onanism in the late nineteenth century. It concludes that this interrogation can be said to form the foundation of the novel's 'literary' status, and that Bonnetain's text emerges from the trial as a site in which the possibility of judging another human being becomes problematised.

PANELIST 2 Kate Sutherland
York University

Law, Literature, and Film: Adaptation and Interpretation in Theodore Dreiser's 1931 Suit Against Paramount Pictures

In 1931, Theodore Dreiser sought an injunction to prevent Paramount from releasing its film adaptation of his novel, *An American Tragedy*. Dreiser had sold the film rights to Paramount, but argued that the film it produced departed so far from the spirit of his novel that it violated the terms of their contract. It was the early days of the film industry, and Dreiser was making a bid for some power for authors within it. The case raises in microcosm many issues related to adaptation and interpretation that have long preoccupied law and literature scholars. Dreiser and Paramount put forward competing visions of adaptation, of law into fiction, and fiction into film. Literary critics aired competing views in the form of legal affidavits. Judge interpreted novel, and novelist interpreted contract. In my paper, I tell the story of the case, and consider what it reveals about adaptation and interpretation.

PANELIST 3 Alexandra Havrylyshyn
UC Berkeley

"We Contest Her Status for Her": Resisting the Legality of Slavery in the French Atlantic World

In 1740, an enslaved Aboriginal woman by the name of Marie-Marguerite authorized a legal proxy to contest her personal status of slavery in a French courtroom in Québec. A reconstruction of the trial raises many questions. In this colonial world, were slaves to be seen as members of the patriarchal household-- mere surrogates of their masters--or as individual human beings with a capacity to feel pain and bring their complaints to the notice of the court

for redress? The Code Noir seems to have been unsettled on this question. How did the Mainean status type, although “despised and contested,” ultimately serve to constrain the kinds of legal arguments that could be made, leading to the devastating result that Marie-Marguerite was denied her freedom? How may this microhistory contribute to an understanding of the legally pluralistic space that was the French Atlantic world?

7.5 Sex, Status and Subjectivity

CHAIR Catherine Kellogg
 University of Alberta

DISCUSSANT N/A

PANELIST 1 Susan R. Schmeiser
 University of Connecticut

The Anxiety of Intimacy

Recent U.S. cases on sexual liberty and marriage celebrate a right to intimacy as a unique locus of personhood and liberal subjectivity, and intimacy finds a similarly exalted place in therapeutic culture generally. Intimacy has become central to conceptions of the human, capable of both self-possession and self-sacrifice in the service of mutuality. The peculiarly amphibious nature of this category derives from its etymological ambivalence: at once deeply personal to the individual self and thoroughly relational. In law and popular culture, intimacy enlarges the self through deep connections with others. Yet over the past decade, theorists have challenged this sentimental narrative of intimacy, proposing a far more politically disruptive one in its stead that elevates depersonalization over the tyranny of the self. This project considers intimacy and its attendant anxieties as they play out in the regulation of public sex, where what Leo Bersani has called “impersonal intimacy” finds expression but no legal protection.

PANELIST 2 Catherine Kellogg
 University of Alberta

Being My Body For Me: New Feminist Contentions.

In their new piece 'Be My Body for Me' Judith Butler and Catherine Malabou return to Hegel's great set-piece on the Lord and Bondsman from the *Phenomenology of Spirit*. At stake in their disagreement is the question of the form of the body itself.

PANELIST 3 Anat Rosenberg
 Interdisciplinary Center Herzliya

Reconstructing Ideology's Force: Liberalism in the Promise of Marriage

This paper is a study of nineteenth-century liberal ideology, as played out in the English promise of marriage. It examines private law and realist novels – sites of liberal discourse and practice

engaged with the promise – to reconstruct the history of liberalism as a living phenomenon. The analysis emerges in two conceptual transformations. The first is in current understandings of the relations among liberal ideals and statuses in liberal thought. The paper shows that they were entangled together through identifiable conceptual patterns: containment and withdrawal. These patterns clarify that liberalism was never an attempted elimination of status, much as it was not its unqualified acceptance. Liberalism was a new interpretation of status's legitimate roles in the social order, which at once kept status hierarchies alive, and altered their power. The second transformation is in approaches to ideology; the study's account of liberalism opens up new conversations in ideology critique. In particular, it contributes to ongoing attempts to make sense of the reality of ideology as a complex conceptual structure, a reality challenging the assumption, informing so much social theory, that ideology be functional in relation to some social interest or power.

7.6 Racial Law, Racial Politics

CHAIR Roshan de Silva Wijeyerantne
Griffith University

DISCUSSANT Ariela Gross
USC

PANELIST 1 Hannah Wells
Drew University

A People, A Law, A Race: Holmes, Pragmatism, and The Common Law

This paper turns to Oliver Wendell Holmes's *The Common Law* to consider the stakes of contemporary legal pragmatism. Here Holmes wrote famously, "the life of the law has not been logic; it has been experience." In *The Common Law*, Holmes also narrates the law's evolution from an ancient system rooted in kinship and blood sacrifice to our contemporary system of common law jurisprudence. He turns to this history to explain what he means by "the life" of the law. This essay argues that a theory of race lies at the center of this unique model of jurisprudence. In so doing, it also exposes the extent to which the elements of Holmesian jurisprudence that have long vexed legal scholars, producing contradictory conclusions about his relationship to positivism, liberalism, and (more recently) pragmatism, are a product of a carefully reconstructed humanism that in the post-Reconstruction era worked to reinforce the racial status quo.

PANELIST 2 Eileen Scallen
William Mitchell College of Law

Impeaching (and Rehabilitating?) Wellman's "The Art of Cross Examination"

Francis Wellman's book, *The Art of Cross-Examination* (1904) is probably the oldest law school text still in print. In his book, Wellman, a former New York City Assistant District Attorney, uses examples from famous English and American trials to illustrate principles of effective cross-examination of witnesses. Wellman's text is still regularly assigned to students of trial advocacy. But the book also contains some unbecoming, if not anti-Semitic, characterizations. This paper examines this problem by using the controversy over removing the "N" word from a new edition of Mark Twain's novel, *Huckleberry Finn* as a contemporary analogue for approaching a "classic" text that has negative as well as positive messages.

PANELIST 3 Mai-Linh Hong
University of Virginia

Revolutionary Autobiography, Black Power, and the Second Amendment

In just half a century, the right to bear arms in American culture has evolved from a revolutionary tool of radical minority activists to a rallying cry for white supremacists and the far right. This paper examines the Second Amendment's volatile racial politics by analyzing the autobiographies of several former Black Panther Party members. Although the Party theorized its strategy of "picking up the gun" within the bounds of the US Constitution, the reality of openly armed, black men and women marching in military formation inspired drastic legislative and executive efforts to disarm the Panthers, including new gun laws. Soon hampered by serial arrests, incarceration, and violence, the Party turned to book publishing as a way to burnish its image and pay its growing legal bills. The strategically crafted autobiographies of Huey P. Newton, Bobby Seale, Angela Davis, and others served as works of literary self-fashioning and, in the absence of an impartial criminal justice system, public testimony. The writers all drew from and recast familiar American revolutionary narratives, playing on ideas of tyranny and self-defense and exposing tensions inherent in the right to bear arms. These works record a tumultuous national history from the perspective of the black revolutionary, whose story reveals the fundamentally racial terms in which Americans understand their violent national origin.

PANELIST 4 Ajay Sandhu
University of Alberta

Acting White: the non-white student and the white standard

The question of the human is unavoidably linked to questions of race; according to white normative definitions of the human, non-white classes are considered sub-human and, correspondingly, dealt disadvantage and hostility. Though this white normative definition of the human remains widespread, post-racial discourses have been popularized in many Western societies that claim to have ended racial discrimination and redefined the human according to a color-blind standard. My essay argues that the post-racial discourse both conceals and preserves white normative definitions of the human. This essay will be based on an analysis of research conducted on American College campuses which highlight the subtle but potent disadvantages and hostilities faced by non-white students and, perhaps most important for questions of the human, the pressures placed upon non-white shoulders to reconstruct their self according to a white-human ideal.

7.7 ROUNDTABLE: The Legal Imagination- Roundtable Discussion

CHAIR	Julen Etxabe University of Helsinki
PANELIST 1	James Boyd White University of Michigan
PANELIST 2	Howard Lesnick University of Pennsylvania
PANELIST 3	Matthew Anderson University of New England
PANELIST 4	Julen Etxabe University of Helsinki

7.8 Posthumanism and the Limits of Law

CHAIR	Kieran Tranter Griffith University
DISCUSSANT	Kieran Tranter Griffith University
PANELIST 1	Randall Craig University at Albany/SUNY

Frankenstein's Progeny: Law and the Human in Contemporary Fiction

Through the lens of its progeny, Frankenstein's representation of the law appears less ambiguous than critical debate suggests. The re-imaginings of Alasdair Gray (*Poor Things*), R. M. Berry (*Frank*), Shelley Jackson (*Patchwork Girl*), and Laurie R. King (*A Monster's Notes*) imply that Shelley's novel is a trenchant critique of the limits of the law. This paper takes up these offspring concerning two issues emerging from Frankenstein. The first is a critique of the repressive political function of the law found, for example, in the history of the De Lacey family. The second is the more complicated issue of the challenge to the very concept of the law posed by the Creature itself. As ontologically Other, can the Creature be situated in any relation to law whatsoever? Taken together these texts articulate a post-humanist challenge to the theory and practices of a legal system that depend upon a centuries long humanist tradition.

PANELIST 2 Angus McDonald
 Birkbeck College

Sade, Rousseau: Commodity, Citizen

The conjunction of the Marquis de Sade and Jean Jacques Rousseau signals a conflict between life becoming a thing, a commodity with no life of its own, bare life, and life as a citizen, engaged reciprocally with other citizens. At stake is a definition of "nature" and the natural right of the powerful to fulfil their desires upon the weaker in de Sade, contrasted with Rousseau's transcendence of the state of nature, making of life not only a private life but a public activity. Philosophy in (and of) the Boudoir contrasted with a Sentimental Education. The contemporary relevance of this tension is explored in an analysis of the lives of things and of human beings, opening onto a discussion of how human life is variously commodified and/or valorised.

PANELIST 3 Francesca Vitali
 University of Verona

Legal and un-legal cultures: law as a limen for (non)humanity in Iain M. Banks's The Player of Games.

Iain M. Banks' *The Player of Games* highlights how the presence or absence of the law in a culture affects the definition of legal persona. In the novel he compares the utopian Culture society with the Empire of Azad; on one hand, "the Culture" proposes a culture in which the term "human" loses all its meaning because the difference between human and artificial intelligences is nullified by the absence of the law; on the other hand the Empire of Azad shows a strong reliance on the law, advocated by its extensive use of the media, which is the perfect tool for the circulation and manipulation of the culture, thus creating a strong and self-delimitating division between "humans" and "non-humans" at the same time.

PANELIST 4 Eren Paidaş
 Marmara University

Biopolitics through Law: Legal Forms of Life

An Agambenian view on biopolitics shows that the distinction point between the bare form of life and subjective life forms and capacities is a generation ground for sovereignty. Therefore, the connection between the law and the concept of biopolitics can be traced through the subjectivisation process that law uses to define its own subjects and takes them apart from their bare life form. Modern law, through the institutions (either defining an entity or a relationship) and statuses it includes, creates a ground for its subjects to realize themselves. But as we can conclude from Kelsen's analyses, both these playgrounds and the players are defined on the fictitious ground of legal truth. When this regime of truth is connected with the wholistic truth regimes and epistemes of sovereignty, it will be possible to analyse the law as an apparatus of subjectivisation within the context of biopower distinction between sovereignty and biopolitics.

7.9 Forming the Human: Aesthetic Interventions

CHAIR Mark Antaki
 McGill University

DISCUSSANT N/A

PANELIST 1 Kelly Rich
 University of Pennsylvania

The Reparative Work of Human Rights in Ondaatje's Anil's Ghost

My paper reads Michael Ondaatje's *Anil's Ghost* (2000) as an exploration of what it means to reconstitute a human being during a human rights commission, as well as an index of the different, often competing forms this can take. Driven by the need to identify a possible victim of the Sri Lankan Civil War, the novel's wished-for reconstitution seems to hinge on forensically determining a skeleton's age, a type of evidence privileged by the commission and the novel's protagonist. Yet what *Anil's Ghost* treats of most generously, and what constitutes its literary jurisprudence, is the potential of repair it attaches to, but also beyond, the aegis of human rights. Through disciplines of anthropology, medicine, archaeology, and artistic reconstruction, Ondaatje's novel challenges us to consider other possible worlds of human rights, and the different forms of authority, evidence, and expression they might follow. The paper thus reads *Anil's Ghost* through its attachments to mechanisms, professions, and rituals of reparation — all of which inhabit a different configuration of the "human" of human rights.

PANELIST 2 Michelle Farrell
 University of Liverpool

Delusions of Inalienability: Why the Prohibition on Torture can tell us little about the Human

Whilst freedom from torture may be called an 'inalienable' right, the prohibition of torture under international human rights law cannot secure an inalienable right/ The prohibition should be understood rather as prohibiting the process by which the "civilised" state descends into barbarianism by repudiating the civilising process of human rights. The prohibition on torture exists not so much to protect the natural rights of the human but to prevent the state from undergoing the process by which it excludes the human from the protection of human rights. This paper employs the prohibition on torture to untangle the contradiction of inalienability of human rights considered in the light of exclusion from human rights protection. J M Coetzee's novel, *Waiting for the Barbarians*, is engaged as an illuminating contradiction to another piece of fiction – the so-called 'ticking bomb' scenario. The juxtaposition of Coetzee's representation of torture with various justifications for torture allows us to fathom, firstly, where the gaze of the

prohibition of torture is actually directed and, subsequently, the delusions of inalienability inherent in the prohibition on torture.

PANELIST 3 Mark Antaki
 McGill University

Genres of Critique, Human Rights, and Reconciliation

By exploring some of the burgeoning literature on human rights and the novel, this paper inquires into the relation between genre and critique. It focuses in particular on the genre of reconciliation and the following two texts: Lynn Hunt's *Inventing Human Rights* and Robert Meister's *After Evil*. I attempt to see how critiques of human rights involve undertaking critiques of genres, sometimes by way of genres of critique.

PANELIST 4 Elizabeth Duquette
 Gettysburg College

A Certain Play in the Joints: Holmes, Legal Interpretation, and the Form of the Human

According to Oliver Wendell Holmes, Jr., reference to the average person—"the normal speaker of English," "the prudent man"—presents a problem for legal interpretation. Such argumentative moves might be appealing, but they fail to provide the basis for accurate interpretation because they are a "literary form," installing in the place of the discernment of intent. Drawing on the writings of Giorgio Agamben, particularly those that consider the status of the example and the exception, this paper will consider the role of "form"—as literary style and as human figure—in Holmes's theory of legal interpretation. For Holmes reading "form" may not be merely "a question of tact in drawing a line" but, as the paper will argue, understanding how his writings construct examples and exemplars is critical for understanding what Du Bois calls the most important "line" of the twentieth century: the color line.

7.10 Law, Spectacle, Humanity

CHAIR Jennifer Culbert
 John Hopkins University

DISCUSSANT N/A

PANELIST 1 Jessie Allen
 University of Pittsburgh

Theater of Human Rights

This essay responds to the critique of international human rights tribunals as not “real” courts (with sovereign force behind them) by looking at these courts as a kind of theater. At first focusing on the theatricality of international tribunals may seem to validate the view that these courts produce only a “show” of justice with no power to actually assert and protect the humanity of individuals against government force. But the theatrical nature of international human rights adjudication has two different aspects, both of which are always present. There is certainly the problem of show trials in which governments act out submission to international norms and mask continued rights violations. At the same time, however, adjudication’s theatrical nature is part of what gives it the capacity to shape the way we think and feel and ultimately behave – and thus potentially to construct the rights that in turn construct humanity.

PANELIST 2 Kanika Sharma
Birkbeck College, University of London

The Spectacle of Law: Power and Legitimacy in Indian Political Trials

This paper aims to analyse the reconfiguration of the Red Fort in Delhi from a medieval palace to the chosen site of political trials. The Red Fort built by Shah Jahan in 1648, and has been the site of three spectacular political trials in Indian history. I argue that these political trials occur at instances when the social contract between the people and the state is undergoing tremendous upheaval. In such instances the state seeks to underscore its legitimacy by holding spectacular political trials, which allow it to retain its claim to fidelity to the rule of law and yet display its power. We begin with the trials of the last Mughal Emperor by the British in 1858, which marked the beginning of British rule in India. The second trial was of the leaders of the Indian National Army, an armed rebellion that echoes the larger move for decolonisation and a bid for independence. And the last trial was held by the Indian state – immediately after independence – of the assassins of the Father of the Nation, Mohandas Gandhi. This paper seeks to highlight the symbolic order of the spectacular that is a part of the law, and how the state seeks to utilise it in order to highlight its power and legitimacy. Using the theories of Lawrence Bryant I argue that in each instance, the spectacle of the trial is twice constructed: first as a series of performances and secondly as a historical event. The Red Fort is used as a site of these trials because its iconicity in Indian politics and history immediately lends itself to a performance that signifies power; but more importantly the historic event created by each trial speaks directly to the historic event of the others, highlighting the links of the state to the past and thus seeking to underscore its legitimacy. The Fort, itself, becomes a symbol of power and legitimacy in the Indian sub-continent, and it is precisely when the existing social contract is challenged, that the state resorts to this symbol. I seek to unpack the iconic image of the Fort and analyse its relations to the spectacle of law.

PANELIST 3 Tobias Smith
University of California, Berkeley

The Other Death: The History and Practice of Suspended Executions in China

China executes more people than the rest of the world combined. But the tower of bodies piled up by the Chinese state has overshadowed another exceptional fact of China's death penalty regime—the number of people that China does not kill. Suspended execution is a unique Chinese punishment under which a person is given a nominal death sentence that is

presumptively commuted after two years. This paper examines the ways that this penalty has been flexibly adapted through eras of imperial rule, republican governance, communist revolution and into the uneasy mix of party authority and rule of law that characterizes the current regime. What does a genealogy of suspended execution tell us of about the manifold ways that a single punishment can be deployed over time? What does it mean to condemn a human life without taking it?

PANELIST 4 George Wright
University of Wisconsin-Superior

Human Sexuality: A Little Higher than the Animals?

In the first years of his tenure as music director of the Chicago Symphony Orchestra, the late Jean Martinon sought to reprimatinate the concertgoer's hearing. He reasoned that, in the aural ambience of Symphony Hall and given the factors of sound production of each instrument, the sound of the piccolo must arrive at the intricate twists and folds in the cochlea of the auditor's ears very slightly sooner than that of the double bass. Calculating such differences and precisely adjusting for them across the choirs of the orchestra would produce the true and exact coincidence of sound that had always been lacking. It had only been habituation and faulty acoustic science that had led to current practice and expectation. Martinon drilled the brilliant virtuosi of his orchestra relentlessly but produced what audiences heard only as very ragged entrances. And, of course, the intricate coordination effects which Martinon produced were immediately lost in the texture of ensemble playing, as each player followed the conductor's beat in coordination with the tactus, his or her own dynamic inner rhythmic pulse. Humans have rhythm, and that is why we can dance. Dogs can't dance. We laugh when dogs' movements are choreographed by splicing actions together so as to produce the coordination of rhythm and body of which we are capable but they are not. The animals show a very highly developed sense of themselves as moving in space as they hunt, but they show little or no ability to position themselves in space in such a way as would allow them to move in culturally modulated patterns, such as the dance, and not given by nature. As Heidegger said, they are world-poor, though not wholly world-less. We learn from the animals what we are not, as Thomas Aquinas said, echoed by Agamben. These considerations bear on the question of human sexuality. The effort to reprimatinate the senses through an analysis of perception grounded in sentient flesh, the common possession of both animals and humans, assumes corporeal know-how in both, and to an extent this is true. One area in which it is less true is the phenomenon of sexual arousal. Roger Scruton has argued that here one encounters the other in a manner which is inevitably and unavoidably personal, such that what is offered and received implicates each as a person in the other's life. It is a moment in the struggle for recognition, and, though expressed in and through bodily movement and form, the body is not the origin and impetus of the sexual tactus. For Scruton, one key characteristic of such encounters is the equality of persons. Though desirable, this is surely an anachronistic aspiration; recognition has been sought for the most varied aspects of personality in relationships that were anything but equal. The essential point is that sex and its various attributes like arousal are different for us and the animals, and the common possession of bodily functions and parts does not and cannot efface this difference. The paper I propose will examine Roger Scruton's arguments as a means of specifying and testing Heidegger's claims as to an essential difference between human and animal life.

7.11 Portraying the Human

CHAIR Valentina Adami
 University of Verona

DISCUSSANT N/A

PANELIST 1 Janny Leung
 The University of Hong Kong

Law against humanity in Peter Chan Ho-sun's Wu Xia

This paper explores the cinematic treatment of law, justice, morality and human relationships in *Wu Xia* (2011). *Wu Xia* is not just another Hong Kong martial arts film; in fact, it has only three fight scenes and is dialogue heavy. From its stunningly detailed visual recreation of a Chinese rural village in 1917, its incorporation of medicine and physics in its action elements, to a refusal to infuse black and white morality in its character development, the film stands out in its realism. The paper argues that the film ridicules a legalistic approach to justice and places the practice of law at opposite extremes with humanity. I will analyse its jurisprudential musings about free will, punishment and blame attribution for human behaviour. Since the film is a mainland Chinese-Hong Kong co-production, I will also compare the language used in the two different versions released in Hong Kong and mainland China and interpret the contrasts in their respective social, political and historical contexts.

PANELIST 2 Bill MacNeil
 Griffith University

From Rites to Realities, and Back Again: The Televised Spectacle of Human Rights in The Hunger Games

In her 2012 Griffith University Fitzgerald Lecture, prominent Australian critical legal feminist and international lawyer, Prof Hilary Charlesworth, characterised the current condition of human rights as one of empty 'ritualism' oblivious to any sort of tangible objective or outcome. Calling for a strategy that would turn this ritualism of human rights rhetoric into the *reality* of respectful and efficacious human rights protection, Charlesworth examined at some length a new 'rite of passage' for the discourse and practice of international human rights: the travelling spectacle of the Universal Periodic Review. The 'reality', however, that this spectacular review process realises is one of a particularly staged and crafted televisual type; indeed, according to this paper, the Universal Periodic Review is a kind of assize version of *Survivor*, *The Biggest Loser*, *The Eurovision Song Contest*--or better yet, the most recent pop culture depiction of the 'reality' TV programming phenomenon, Suzanne Collins's bestselling novel, *The Hunger Games*. For

there, at the story-line's very narrative centre, is a nationally broadcast 'battle royal' between contestants of the various vassal states of Panem, a dystopian North American hegemon of the future, over that most basic of rights: to live or die. This paper will canvass *The Hunger Games*'s representation of rights, as well as its critique of that discourse, arguing that, in its climactic scene—with protagonists Katniss and Peeta, both forfeiting the ultimate prize, survival, by threatening to kill themselves—Collins's novel may not only combust Panem (and our) legality but construct an alternative to it, suggesting a way out of the current impasse that, in the rite of the Universal Periodic Review, thwarts the *real*-isation of human rights. That way may lie in the hearty embrace, indeed exuberant celebration of a 'high ritualism' which, by saying 'No' to outcomes and objectives, rearranges the legal, political and economic coordinates of international relations, thereby enabling the reimagination of an(O)ther law: a right to and of difference.

PANELIST 3 Irina Chkhaidze
University College London

Posthumanist Metamorphosis in Matthew Barney's Cremaster Cycle and Drawing Restraint Series: Autopoiesis, Narrative and Hermetic State

This paper conceptualises instances of posthumanism as a critical discourse in works of contemporary artist Matthew Barney that engage with critique of anthropocentrism and interrogate human-animal distinctions. Barney's Cremaster cycle and Drawing Restraint series combine film, sculpture, drawing and photography to generate complex hermetic universes inhabited by various animal-human hybrids, and amalgams of plant and inorganic matter. I consider Barney's multifaceted visual narratives from the perspective of second-order systems theory (Niklas Luhmann). This transdisciplinary theoretical paradigm reconceptualises functioning of the processes of cognition, communication and observation as not only or primarily human. Systems theoretical perspective helps to shed light on the implication of themes of hermetic state and metamorphosis in Barney's works. Set against humanist ethico-philosophical postulates reproducing normative human subject, the posthumanist problematic will be traced in these works on the literal level of the narrative with its boundary breakdowns of species, as well as on the structural level.

7.12 Sculpting the Sexual

CHAIR Alex Dymock
University of Reading

DISCUSSANT N/A

PANELIST 1 Isabelle Letellier
Aix-Marseille

Clothing as sculpting sexuality in the social tie

Clothing, according to Freud, takes place at the crossroad between the subject and the social, it shows the repression of sexuality required by culture and embodied in the law. In the paper, I investigate the tie (lien) between the subject and the social, considering clothing as a metaphor of the way the subject dresses to enter the social. Based on a reading of Freud and Lacan, I show that the entrance in the social implies the institution of the subject as an image to which it cannot be reduced. Does it mean that the subject can sculpt its image the way it wants? Does considering gender – for instance – as an image of the self make it contingent? Addressing these questions, I suggest to read the imaginary as the setting where the subject and the social are co-instituted and co-instituting, referring to Merleau-Ponty's concept of institution.

PANELIST 2 Laura Ricciardi
SUNY - Purchase College

Mean Girls: Femininity, Anonymity, and the Regulation of Cyberbullying

This paper will examine gender performance through the lens of teenage self-presentation and re-presentation. It will focus on how teenage girls define, appropriate and contest notions of femininity online. Part I will lay the theoretical groundwork for examining gender performance, as articulated by Erving Goffman and Judith Butler. Part II will explore self-presentation online, in blogs and social networking sites. Part III will analyze the findings of the ethnography, with a particular focus on the role of anonymity in online speech and its implications on the regulation of cyberbullying.

PANELIST 3 Alex Dymock
University of Reading

Shutting the floodgates: regulating female ejaculation in England and Wales

In 2010 a pornographic film depicting female ejaculation, Anna Span's 'Women Love Porn', was certificated by the British Board of Film Classification. Previously, the Board's guidelines stipulated that representations of female ejaculation were in fact images of urination, which the Obscene Publications Act prohibits. However, the Board continues to state that its position "remains fundamentally unchanged for future releases"; it does not accept that female ejaculation exists despite medical evidence to the contrary. This paper asks whether this refusal positions the BBFC as a regulatory body whose function is not limited to classifying films, but shaping and limiting female sexuality. Furthermore, if sexual practices can be verified only on the basis of medical evidence by regulatory bodies implementing the law, does this inadvertently valorise other discourses that frame female ejaculation as a form of 'female sexual dysfunction'? What wider implications might this have for the pathologisation and regulation of female sexuality?

PANELIST 4 Jennifer Denbow
University of New England

Ultrasound Laws and Reproductive Autonomy

In the past year, there has been a sharp increase in state laws that mandate ultrasounds before an abortion. The Texas version of the ultrasound law, which is one of the most restrictive, was

upheld by the Fifth Circuit in 2012. This paper examines the rhetoric of autonomy, choice, and women's rights that is used in defense of the law. The paper shows that weak and depoliticized understandings of autonomy are employed in defending the ultrasound law, and that the law reinforces an ideological understanding of sonograms. The paper also investigates the negative effects for women's autonomy of the ultrasound laws and their accompanying legal discourse by using Foucaultian notions of governmentality and counter-conduct. Using these theoretical concepts, the paper argues that the negative effects of the ultrasound laws are more insidious than commonly thought.

7.13 Constituting the political

CHAIR Maria Koblanck
 UVIC

DISCUSSANT N/A

PANELIST 1 Panu Minkkinen
 University of Helsinki

Gouging the human: biopower, the organic analogy, and vitalism

"When power becomes bio-power, resistance becomes the power of life, a vital power that cannot be confined within species, environment or the paths of a particular diagram. Is not the force that comes from outside a certain idea of Life, a certain vitalism, in which Foucault's thought culminates?" Gilles Deleuze, *Foucault*, p. 77

The more general intellectual kinship between Foucault and Deleuze is well documented and studied. The paper, however, proposes a more focused investigation of one potential aspect of that kinship, namely vitalism. Vitalism and its socio-political extensions such as organic state theory have with good reason long since fallen into disrepute. And yet even the conceptual affinities linking *bios* (and *zoē*) with *vita* suggest some relationship. The paper will attempt to trace Deleuze's 'antihumanistic' and non-organistic vitalism from both the organic analogy as defined in classical sociology (Comte, Spencer, Durkheim) as well as Henri Bergson's *élan vital* as a critique of classical vitalism. The resulting discussion will be anchored in an attempt to formulate a political constitutional theory where the political is understood as will to power, i.e. as life.

PANELIST 2 Maria Koblanck
 UVIC

Ideally Universal / Universally Unrealizable – Human Rights as Immanent Critique of International Law

The discipline of International Law rests on an understanding of law and politics conceived through a state system, which means that there will always only be one "proper" way of thinking and practicing law. It is not surprising that understanding international law in this way

has been heavily criticized for constituting an imperial and culturally insensitive force. However, this critique continuously re-affirms the same hierarchical power relations by continuously victimizing those who have been historically conceived of as falling outside of international law (peoples often described as belonging to the “Developing World”, the “Pre-Modern” or “Indigenous World”). In this context legal and political claims framed in terms of human rights reveal and force us to deal with foundational paradoxes (the constant negotiation between particularity and universality; domination and submission; liberation and enslavement) that are otherwise effaced within the discourse of international law. Having made the claim that we should turn from viewing international law as a legal practice with some political elements to viewing it as a political practice with some legal element, it is important to think about it as a political practice of both achievement and promise and one that at the same time can never become an accomplished ideal.

PANELIST 3 Thomas P. Crocker
University of South Carolina

Sources of the We

“We the People”—the first three words of the United States’ Constitution—initiates a notorious national beginning. Abolitionist William Lloyd Garrison saw this constituted order as a crime against humanity, “a covenant with death and an agreement with hell.” Frederick Douglass saw the possibility that “justice, liberty, and humanity were ‘final,’ not slavery and oppression,” believing that self-reconstitution could make possible new conceptions of common humanity. “We” was, and is, always contested. But a “we” is also indispensable. If to be outside the polity is to be of the animal, then the struggle within the polity is a continual interpellation of a constituted “we.” If following Wittgenstein we seek “to bring words back from their metaphysical to their everyday use,” or if following Cavell responding to Emerson we seek a finding of ourselves to replace a one time founding by being “born again into this new yet unapproachable America,” what special meaning are we to give to this “we” that is at once about humanity as it was thought to be, and humanity as it might yet become? The “we” of “We the People,” is both unexceptionable—it speaks of the ordinary way that words have life in the social and political practices that they constitute—and shot through with exceptions. The exceptions speak not only about matters of inclusion and exclusion, but of the content of that inclusion. What conceptions of privacy, or equality, or democratic participation, for example, will construct the relations between persons who share a social and political world made vulnerable to the order officials might construct? The paradox is that while normative orders are unavoidable, the question of who and what constitutes a “we” is never fixed and final. Moreover, while a self-constituting “we” grounds itself in a prior act of founding, the re-constitution of “we” depends on future findings that seek to realize and redeem a commitment to constitutional governance. This essay explores these paradoxes of the constitutional “we.”

PANELIST 4 Victoria Diana Baranetsky
Oxford

Power: Abortion and Guns

All power is domination. As Bertrand Russell stated, power is domination over another such that one can alter the other’s will or actions. Upon first glance, this definition immediately

evokes notions of tyranny and totalitarianism. However, like Berlin's bifurcation of liberty, power also has two faces. The first is that already mentioned, the predominant negative conception of oppression. For example both Marx and Weber used power to describe the state's subjugation of its citizens. Their depiction of power as a central, top-down, state tyranny has now become the canonical notion of power. However, a second, positive face of power exists where domination becomes liberating; when the oppressed, such as a slave, asserts control over their ruler to gain independence. For example, a student questioning a teacher's unjustified control of its pupils, a battered wife injuring her abusive husband in self-defense, or a minority group protesting for their rights. Most frequently it is discussed in terms of a voter's ability to affect change: political power. In all of these situations the oppressed dominates to express their own freedom to create parity with the formerly oppressing party: the intersection of liberty and equality. This heralded definition of positive power is central to the human - however it is rarely discussed within legal and political theory. This paper, hopes to delve into the acts of abortion and gun use to understand the very basic notion of power and how it should be incorporated into the broader theories of power.

SESSION 4 3:30 PM- 5:00 PM

8.1 Extreme Punishment (Part I)

CHAIR	Keramet Reiter UC Irvine
DISCUSSANT	Sandra Resodihardjo Radboud Universiteit
PANELIST 1	Deborah Drake Open University

Long-Term, Maximum-Security Punishment: Bearing Witness to Men's Experiences of Confinement

Drawing on over 200 in-depth interviews conducted in all five men's maximum-security prisons in England, this paper 'bears witness' to experiences of imprisonment in order to throw open the gates of the prison for closer public scrutiny. The paper considers some of the different forms that punishment takes during a long-term prison sentence and questions the extent to which such experiences can serve any of the assumed purposes of the prison. It is argued that there is a disjuncture between the symbolic delivery of punishment through a long prison sentence, the experience of serving such a sentence and the question of its utility in making amends for harm caused or preparing individuals for their return to society. Drawing on arguments from moral philosophy, the paper suggests that there may be considerable merit in finding ways to think beyond punishment, even in the face of the most serious crimes.

PANELIST 2	Yvonne Jewkes
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University of Leicester

Prison 'hell-holes' and the social production of immorality

This paper explores the extent to which, in the treatment of prisoners, personal morality may be manipulated by broader social processes. It argues that many prison systems have become places where prisoners are dehumanized and where extreme punishments are inflicted without moral restraint. Using Bauman's (1989) schema it will argue that moral inhibitions against acts of harm/violence are eroded once three conditions are met: when the violence is authorized (by official orders); routinized (by rule-governed practices); and/or the victims are dehumanized (by ideological definitions). The paper will focus on four techniques that erode proximity within penal environments:

- (i) the physical location of prisons in remote areas;
- (ii) penal architecture and spatial design which depress or disengage the senses;
- (iii) advanced technology which reduces the need for prison officers' to interact with inmates;
- (iv) mediatised public and political discourse which renders serious offenders 'evil' and reinforces cultural tolerance of penal 'Hell'

PANELIST 3 Nadya Pittendrigh
University of Illinois

Dispensing With Language

This paper examines an impulse towards ultimateness, or to do away with language, both within the extreme rhetoric of punishment of the paradigm of the supermax prison, and in the rhetoric produced by supermax prisoners themselves. If the terminology of "the worst of the worst" criminals functions as a trump argument for advocates of the supermax paradigm, prisoners themselves produce a corresponding ultimate rhetoric in response. With the situation of the Tamms supermax prison in Illinois as an object case, this paper argues that because what prisoners say is generally regarded as suspect, and because the psychological harm that supermax prisoners claim is invisible, they wind up having to translate their suffering into physical affects of the body. This paper examines the bodily rhetoric of prisoners, in order to theorize an affective or material rhetoric of the body, and examines both the limits and potential political force of such a rhetoric.

PANELIST 4 Nicole Solomon Lindahl
Department of Jurisprudence & Social Policy

Initiation to Prison: Violence, Dehumanization, and Intimacy in the Punitive Era

Drawing on in-depth interviews with men formerly incarcerated in California prisons, this presentation explores the nature of prison "initiation" as these individuals interpret and understand the concept. I focus on individuals involved in the lifestyle surrounding drug sales in inner-city communities during the height of the war on drugs (1985-1995), exploring the distinctions between street life and prison culture the initiation processes reveal. Spanning prison buses, reception centers, and mainlines across maximum- to medium-security facilities, these experiences illuminate a tension between the violence, dehumanization, and sadism endemic in prison initiation and the intimate relationships which develop under these

conditions. I explore the specific nature of intimacy as it manifests in this environment, and think through the extent to which intimate bonds form a condition of possibility for resistance to and healing from the effects of institutional and informal violence.

8.2 Author Meets Reader: The Law is A White Dog by Colin Dayan

CHAIR Brenna Bhandar
Queen Mary University of London

PANELIST 1 Brenna Bhandar
Queen Mary University of London

PANELIST 2 Colin Dayan
Vanderbilt University

PANELIST 3 Jonathan Goldberg-Hiller
University of Hawai'i at Manoa

PANELIST 4 Elena Loizidou
Birkbeck

PANELIST 5 Nasser Hussain
Amherst College

PANELIST 6 Chris Lloyd

8.3 Humans, Animals, Sovereigns

CHAIR Maneesha Deckha
University of Victoria

DISCUSSANT Maneesha Deckha
University of Victoria

PANELIST 1 Alejandro Lorite escorihuela
Helsinki Collegium for Advanced Studies

Global Dominions: The Shadow of Animality in Liberal International Law

International law, a project of global rule despite the division of Earth's governance among sovereigns, is held together by animals. The imperial genealogy of the international legal system shows global rule by contract or empire, from its early modern natural law to liberal versions, to be rooted in the political rhetoric of human relations to animals. Classical international law thinkers played with animals' proximity to, and distance from, humans to fashion images of sovereignty, property and war that constitute the horizon of international law today. This paper argues that the current international legal system, sustained by the political rhetoric of classical liberalism, yields an ambiguously fragmented legal and political status for animals, which is the reverse of the projected coherent core human being of human rights. That specific mirroring relationship, as highlighted in historical legal arguments and constructions, lies at the root of liberal international law's inherent relationship to imperialism.

PANELIST 2 Teresa K-Sue Park
UC Berkeley/Harvard

A History of Removal for a National of Immigrants

This paper revisits how exclusions from “humanity” inform our understanding of political paradigms such as the social contract, and legal doctrines like the law of private contracts. It explores their relationship by imagining the “state of nature” in social contract theory as identical to that elaborated contemporaneously in terra nullius discourse and doctrine to justify conquest. By considering the state of nature as populated, both social contract and private contract principles gain a context that frames them as cooperation against social others upon whom the contracting group’s violence and bad faith are externalized. The differentiation of humans is thus crucial to the formation of social contracts and the development of contract doctrine. Further, this material example allows us to move beyond limited understandings of the social contract as political allegory, and suggests a narrative of institutional development to bridge the original contract and modern multi-level centralized and complex government.

PANELIST 3 Rajini Srikanth
University of Massachusetts

Law’s Betrayal of the All Too Human Undocumented Border Crosser

The militarization of the U.S-Mexico border and the criminalization of undocumented border crossers and undocumented workers have thrown the category of “human” into crisis. Given the increasingly legalized discourse of the human – wherein the one who breaks the law is seen as unworthy of rights – this paper asks, “What is the prognosis for the emergence of a non-judicial construct of the human” of the kind demanded by Giorgio Agamben, Judith Butler, Thomas Pogge and Samera Esmeir? Through the writings of lawyers like Daniel Kanstroom and Steven Bender and journalistic texts that foreground the human dimension of the border crossers, who risk dehydration and death in the desert and rape by human smugglers, as well as the fallout from Arizona’s SB 1070 immigration bill on detention and deportation, this paper explores whether immigration policy and law can be based on a full understanding of the truly human.

PANELIST 4 Chandni Basu

Childhood-Sexuality, an Oxymoron: Legal Myths of Sexual Offences Involving Children

Sexual involvement of children is a complex social phenomenon. The involvement of children both as victim and perpetrator enhances the problematic of the situation. The absence of legal sanction of sexual consent among children remains detrimental. Discourse regarding the legality of such acts is founded on the perception of 'harm' and 'consent' and the presence or absence of both. Frequently, the sheer violence related to such acts exemplifies them as illegal/unlawful. 'Violence' in this regard is understood in terms of the 'harm' caused whereas 'violation' presides on the notion of 'consent'. Indulgence in such acts thus represents deviant-delinquent behaviour in legal terms. Legal subjectivity emerges as significant points of analysis. This paper looks into issues of child sexuality, social and familial status of children, structure and functions of the family, right of parents as against right of the state over children, child protection, violence, consent, child rights, pedagogy and justice.

8.4 The Altered Self: Rethinking the Liberal Subject through Discourses of Authenticity, Secularism, and Feminism

CHAIR Mark Antaki
 McGill University

DISCUSSANT Mark Antaki
 McGill University

PANELIST 1 Nina Hagel
 University of California, Berkeley

Becoming Alien to Oneself: Human Malleability and Inauthenticity in Rousseau

This paper examines Rousseau's analysis of how social and political arrangements construct inauthentic subjects, and the possible ways of reversing such a production. In doing so, it constructs Rousseau's depiction of an ideal state of selfhood—a self that cultivates attributes that enable it to withstand inauthenticating social forces, a self that exists for itself, that is congruent with itself. However, Rousseau's theorization of this ideal is relatively opaque, as it invokes several disparate, competing metaphors—from nature, to freedom, to self-congruency, to self-maximization. This paper shows how such attributes are deeply in tension with one another, how their realization seems unlikely even within the confines of Rousseau's own thought, and how "authentic" selfhood can only be attained if others are rendered dominated and inauthentic. The paper concludes by considering what can still be salvaged from Rousseau's theorization of authentic selfhood in order to think through the problem of inauthenticity.

PANELIST 2 Kathryn Heard
 University of California, Berkeley

The Post-Secular Subject? Faith and the Constitutive Power of Reason in Late Liberalism

The project of this paper is twofold: first, to interrogate how the circumscription of religion from public life in secular liberal thought has been construed as reasoned and rational, and second, to examine if – and how – this move imparts a particular subjectivity to the religious members of late modern polities. It begins by engaging with Jürgen Habermas’s determination that contemporary civil society has, as a result of global migration, entered into an era of post-secularism. Under such conditions of civic pluralism, he argues, the liberal state can remain a viable form of governance only if it cultivates a reasoned and rational core that can be accessed by persons of many (or no) faiths. This paper suggests Habermas pays insufficient attention to the powerful history of “reason” in secularist thought and, as a result, performatively reproduces a governable subject predicated on the bifurcation of its newly public piety from political life.

PANELIST 3 Sara Ludin
University of California, Berkeley

The “Two Sovereigns” Doctrine: A Biography

It is a commonplace of Western political philosophy and legal historiography that the division between the spiritual and the temporal in Christian theology enables secularism’s emergence, constitutes the headwaters of religious liberty, and presages another set of binaries crucial to our modern condition: private/public, belief/practice. Scholars of all disciplinary stripes have challenged this linkage, some directly, and others indirectly by offering alternative histories of the very phenomena listed above. This paper explores the ‘life’ of this “two sovereigns” or “two kingdoms” doctrine. It investigates the multiple ways in which the trope finds itself mobilized: as explanatory concept in historiography, as founding heritage, as Christianity’s greatest error, as Luther’s wisdom, as heuristic, as mask—in both high theory and in legal archives. This inquiry marks one step of a larger project that interrogates the shifting historical relationship between sovereignty, subjectivity, and the right to religious freedom in secular liberal states.

PANELIST 4 Genevieve Painter
University of California, Berkeley

Activist Subjectivities in Neoliberal Judicialized Politics: Struggles against Sex Discrimination in Canada’s Indian Act

This paper investigates the political and legal struggles to end sex discrimination in Canada’s rules for the determination of Indian status. It traces historical shifts in the construction of indigenous woman’s rights activists over a 30-year period of neo-liberalization and how they spurred the formation and ascription of new female subjectivities. More specifically, it takes as its point of departure the woman-led mobilization against sex discrimination in the Indian Act on a reserve in Tobique, New Brunswick. As campaigns traveled from local political settings to the Canadian Parliament, the United Nations, and the courts, a new public discourse on women emerged: indigenous activists became “white women’s libbers”, “minorities”, “cultured”, “attached to their homes”, and “worthy of recognition and dignity.” The campaign against sex discrimination in the Indian Act thus offers a site for exploring how political subjectivity changes as the engagement terrain shifts from localized politics to constitutional rights.

8.5 The Metaphysics of Presence

CHAIR Leti Volpp
 UC Berkeley

DISCUSSANT Oscar Guardiola-Rivera
 Birkbeck

PANELIST 1 Renisa Mawani
 University of British Columbia

The (Un)Timely Futures of British Justice

This paper offers a reading of the autobiography of Gurdit Singh, who in the early twentieth-century campaigned against restrictive Canadian immigration law by chartering a Japanese steamship, the Komagata Maru, to transport 376 Punjabi laborers from Hong Kong to Vancouver in an unsuccessful attempt to force their entry into Canada. Singh's autobiography was his personal narration of the ship's journey. Reading Singh's memoirs through the interpretive frame of Henri Bergson's "duration," which privileges experiential, lived, and discontinuous time, I argue that a disjointed unfolding of past, present, and future, profoundly shapes Singh's account, augmenting his critique of British imperial rule with continued commitment to an ineffable British justice. In Singh's rendition, the racial violence of the colonial past witnessed in his travels across the British Empire is refracted by thoughts of an (un)timely future when India would be liberated from British rule through a reimagined, not yet conceivable, British justice.

PANELIST 2 Michelle McKinley
 University of Oregon

Bringing in Outsiders

This paper examines inclusion, hospitality and citizenship over time and space. It draws on a longer project that explores three means of incorporation based on normative claims to belonging: sanctuary, free soil, and ecclesiastical immunity. Each was a means of granting protection to people in harm's way in the ancient world. Canon lawyers revived the concept of sanctuary during the medieval period, infused it with jurisdictional authority, and extended immunity to criminal defendants within Church property. In the colonial period, many slaves also sought freedom through the "free soil" principle—notably Somerset in England, and, less successfully, Dred Scott. The paper concludes in the present, surveying the sanctuary movement of the 1980s that granted temporary protection to undocumented people seeking asylum. In all these case studies, "outsiders" make normative claims for protection, inclusion, freedom, belonging, all of which urges us to rethink the cosmopolitan project of global citizenship and hospitality.

PANELIST 3 Leti Volpp
University of California, Berkeley

The Indigenous as Alien

Immigration law, as it is conventionally taught and researched in the United States, imagines away the presence of preexisting indigenous populations. This is obvious in how the story of the field is told, which typically begins with the consolidation of national sovereign power in the late 1880s in cases excluding and deporting Asian bodies cementing a plenary power over immigration in the political branches of government. It is apparent as well as in the critique scholars issue of the prevalent national narrative (promising lawful immigrants a purportedly equal opportunity of arrival and the subsequent full incorporation into a presumptively universal citizenship). This critique points to race based exclusion laws, racial restrictions on naturalization, de jure and de facto violations of the rights one might correlate with full citizenship, and the inadequacy of the liberal vision of full citizenship in attending to various inequalities. Yet this critique of exclusion contains its own occlusion, namely the recognition of how immigration and citizenship law have both grappled with indigeneity and relied on its disappearance in order to maintain legitimacy. This paper argues that this failure is in part produced by and reflected in how the field narrates space, time, and membership, and also stems from a particular relationship between We the People, the “settler contract” (Carole Pateman) and the “nation of immigrants.”

PANELIST 4 Christopher Tomlins
UC Irvine

Styron's Confessions

The modern American mainstream became acquainted with the Southampton slave revolt of 1831 through William Styron’s “realist” fictionalized autobiography of the rebellion’s leader, *The Confessions of Nat Turner* (1967). Rejecting the Turner of record – a “dangerous religious lunatic” – Styron stressed his interest in “subtler motives, springing from social and behavioral roots” that would allow the man to be “better understood.” But Styron’s attempts to “humanize” Turner – make him understandable – avoid Turner’s own statement of his reality, which is entirely spiritual. Socio-legality practices exactly the same avoidance, elaborately deploying claims about the real (human) to displace metaphysics (justice, God, and so on). The result in each case is a depiction of reality haunted by that which the depiction avoids. I ask what calls these fictive realities into being, and what it will take to rescue Nat Turner (and law) from our attempts to “understand” them.

8.6 Crafting Knowledges of What We Are Not: Law and Regulated Relationships with Animals, Plants, and Things

CHAIR Jane Dickson-Gilmore
Carleton University

DISCUSSANT N/A

PANELIST 1 Dianne George
Carleton University

Why the Law Cannot Decide if You Really Love Cats

In 2009, the Ontario SPCA and the Toronto Police raided the Toronto Humane Society, closed its shelter and laid charges against the director and some employees. All charges were eventually dropped, but the legal proceedings publicized a hotly contested conflict between the two organizations. The THS condemned the OSPCA's practice of killing animals in its shelter, while the OSPCA condemned the THS's refusal to kill animals who were suffering. Underlying this is another debate: who loves cats more? Implied in the law and the authoritarian regulation imposed by the experts regarding the treatment of pets is the term "if you really love"... This paper will draw on the work of Gonzalez Echevarria to consider the complexity of our relationship with cats, and explore the dissonance created by notions of love.

PANELIST 2 Holly Schmidt
Emily Carr University of Art and Design

Of Vegetal Matters

In the summer of 2012 Josee Landry and Michael Duchamp became entangled in a fight to grow vegetables in their front yard. According to neighbourhood bylaws required that front yards be covered by at least 30% grass. The municipality of Drummondville, Quebec ordered them to tear out their vast and productive vegetable garden or face fines of \$100 - \$300 per day. The municipality eventually backed off due to negative public reaction. Under the guise of aesthetics, these kinds of laws actually enforce class distinctions formed during the postwar period. They enforce a set of binary relations - aesthetic/utilitarian - between humans and plants that do not take into account the complexity of these relations. Contemporary artists who work with plants as a medium draw viewers into relational compositions with plants. I examine two recent projects: 1) Fritz Haeg's Edible Estates multi-site project turning suburban lawns into vegetable gardens contrary to local bylaws 2) Pierre Huyghe's garden for Documenta 13 situated in a compost pile where illegal psychotropic plants are grown. Relying on the work of political theorist Jane Bennett I will examine how these works create conditions to think and be otherwise in relation to plants.

PANELIST 3 Diana Young
Carleton University

Breaking Bad - Identity and Knowledges About Chemistry, Myths and Meth

In law the way in which we think about criminal identity reflects an essentially Kantian conception of an abstract moral subject capable of transcending the environment. However, for many post-modern theorists, identity emerges through engagements with the social and cultural environment. This implies that the regulation of objects is in fact the regulation of subjects. This paper will draw on the work of Foucault, Butler and Rose to consider issues of identity in the AMC television series "Breaking Bad". Walter White is a high school chemistry

teacher who responds to adversity by bringing scientific expertise to the business of cooking crystal meth. Chemistry as the study of the constituent parts of all matter might be seen as a kind of origin myth - pure, and unadulterated by contingencies of history and culture. But in "Breaking Bad", the search for purity fails, as chemistry never ceases to derive meaning from social context. As White moves through these contexts, they influence the way he shapes his own identity.

PANELIST 4 Jennifer A. Hamilton
Hampshire College

Sensoria Animalis? Tracing the Sensory Capacities of Non-Human Animals in the Law

The central question of this paper is how the law encounters and makes sense of claims about the sensoria animalis, the sensory worlds and capacities of non-human animals. In particular, I investigate the legal mobilization of scientific research on the senses of non-human animals, especially in the areas of genomics and neuroscience, as a way to explore how animal rights claims are made or challenged. In a recent U.S. case, *Cetacean Community v. Bush*, legal actors use vocabularies of sensory perception to represent cetaceans as embodied creatures subject to harm and deserving of the law's protection. *Cetacean Community v. Bush* is but one example of a range of cases and statutes that appeal to the sensoria animalis, and this paper explores these cases as a way to trace how the sensory capacities of non-human animals have come to matter in the law.

8.7 Legal Fictions of Life and Mattering: Examinations of the Space Between Personhood and Death

CHAIR Julietta Hua
San Francisco State University

DISCUSSANT Denise Ferriera da Silva
Queen Mary, University of London

PANELIST 1 Rashne Limki
Queen Mary, University of London

Towards a Theory of Mattering: Post-/colonial Excess(es) in the Case of Nandigram, India

In March 2007, a contingent of 4,000 police was set upon Nandigram, a region in north-east India, to suppress the peasant revolt against the attempted (dis)possession of land by the state. Most accounts of Nandigram tend to approach it as an instance of state violence, engaging in retrospective debates on the juridico-political "justness" of violence. Yet, to recognize it specifically as a moment of post-/colonial violence necessitates an engagement with how the ethical functions to produce differential distributions of violence. In this paper, I propose to do so developing an account of 'value' in globality. Specifically, I demonstrate how 'value' traffics between the economic and the ethical. My argument thus begins with an intervention into Georges Bataille's formulation of the 'erotic' to describe how the space of Nandigram – the land

and the bodies attached to it – becomes instituted ontologically as a space of ethico-political excess. Thereafter, following the provocations of Hortense Spillers, Fred Moten and Denise Ferreira da Silva, I attend to the techniques of violence deployed in Nandigram to demonstrate how the cutting up/on bodies is a materialization of capital/ism's negotiation of value through the double(d) gesture of recuperation and obliteration of this excess.

PANELIST 2 Neda Anatansoski
University of California, Santa Cruz

The Feminist Politics of Secular Redemption at the International Criminal Tribunal for the Former Yugoslavia

This paper addresses the connection between the progress narrative of Euro-American feminism concerned with human rights and the discursive production of faith in the international institutions of law necessitated the secularization of Bosnian Muslim women. Tracing the relationship between the gendered discourses of ethno-religious violence and juridical redemption, I map the co-articulation of the Tribunal and the camp. The international reaction to the war in Bosnia, and the understanding that post-Cold War notions of humanity and morality would take shape through a stance against Balkan violence, fused in Euro-American feminist responses to the war, particularly in the outcry against what came to be known as the "rape/death camps." The exhumation of dead, injured, and violated bodies by order of the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the stories these bodies continue to tell, has become part of a global project of creating an authoritative historical accounting of humanitarian and human rights violations that affirm the need for an international rule of law.

PANELIST 3 Julietta Hua
San Francisco State University

Awaiting Death: Chimpanzee Sanctuary and the Reframing of Justice

In 2000 the US Congress passed two key pieces of legislation that dealt in different ways with the captive and non-captive futures of great apes. The CHIMP Act (HR 3154) identified the need for a sanctuary system that would provide long-term care for captive chimpanzees used in U.S. biomedical and military research. The Great Ape Conservation Act (HR 4320) provided funds toward conservation projects, mainly in Africa. paper is interested in the terms upon which demands for transspecies justice are institutionalized in the emerging institutions of chimpanzee sanctuary. Chimpanzee sanctuary arises out of the failures of animal rights and conservation models to resolve questions of difference that have been central to neoliberal framings of rights. This paper explores how interviews with chimpanzee sanctuary workers articulate conceptions of difference (non-human-ness) that work with and against neoliberal multicultural discourses. The paper considers, "What might it mean that late-liberal conceptions of justice, when it comes to chimpanzees, do not need to be (and are often actively disengaged) from rights?"

8.8 Society, Narrative, Affect

CHAIR Jaco Barnard-Naudé
University of Cape Town

DISCUSSANT Jaco Barnard-Naudé
University of Cape Town

PANELIST 1 Diane L. Atherton
University of Keele

An Exploration into the role of structural constraints in a post professional era, through a case study of Muslim women lawyers

The structure-agency dichotomy in literature has attempted to explore ability of a human to act against social structures and pressures. For Bourdieu (1992) the reconciliation came through the notions of 'habitus'. Giddens (1987), heavily influenced by Goffman's conception of humans as 'role-playing' actors, gave greater emphasis to the intelligent agency of the individual through 'practical consciousness'.

In this paper, I will explore the power and influence of the human in the legal profession in particular, and the human's potential capacity to exercise individual agency. The paper will ask whether the profession continues to bind traditionally marginalised actors such as women and ethnic minorities, or conversely allow them to act with conscious intention to advance within the profession. Using a qualitative case study of Muslim women lawyers, I will focus on the human potential for individual social mobility within the profession, and the capacity for institutional 'entrepreneurship' (Battilana 2006)."

PANELIST 2 Nora Gilbert
University of North Texas

"Writing, Acting, Owning, Voting: The Role of Artistic Employment in the Transatlantic Women's Rights Movement"

This paper is drawn from my current book project, "Unwomaned: Lady Novelists, Hollywood Starlets, and the Threat of Female Independence." In it, I draw a transnational, cross-disciplinary comparison between the cultural responses to two emerging forms of female employment: novel writing in 18th- and 19th-century England and film acting in 20th-century America. To what extent, this project asks, were the nascent occupations of "lady novelist" and "Hollywood starlet" perceived to be a threat to the norms and expectations of female domesticity, and what steps were taken to quell this threat? I will focus my conference presentation on two seminal moments in particular—England's Married Women's Property Act of 1870 and the ratification of the Nineteenth Amendment to the United States Constitution in 1920—and will outline the role that women's writing and women's acting played in the struggle to make female lives feel more "human" via property law reform and the acquisition of the right to vote.

PANELIST 3 Honni Van Rijswijk
UTS

Narrative Interventions into National Responsibility? Stolen Generations' Testimonies in 2012

The historical narratives of the Stolen Generations that have been developed in recent case law (*Trevorrow v South Australia* 2010) and the Federal Government Apology in 2008 are valuable in that they recognise state policies of removal, and the suffering these policies caused to Indigenous survivors. However, these narratives also tend to emphasise Indigenous suffering rather than state responsibility for this suffering. Despite recognising that the child removal policies were directed specifically to Indigenous children, legal and political responses have failed to make material amends for these historical wrongs. These responses have also put in place problematic narratives concerning actions of the past, (for example, the role of parental consent in relation to child removals), and the relationship of this past to the present. A real problem arises as to how to intervene in these narratives. One form that has been used in a number of counter-national/historical projects is the testimony, which was utilized previously in this context in the *Bringing Them Home Report* in 1997. This paper examines recent web-based testimonies that have been produced with a similar approach, through The Stolen Generations' Testimonies project, an initiative of the Stolen Generations' Testimonies Foundation, which filmed the personal testimonies of members of Australia's Stolen Generations Survivors in 2009 and published them online this year. This paper asks whether these testimonies might be read as texts that animate a present-time responsibility rather than tell a story of past suffering. At the same time that they recount the harm caused to Indigenous Australians, they also recount the actions of the state and other entities, and these accounts can be developed toward a conceptualization of deep responsibility. But this reading in some ways means reading against the grain of the testimonies, whose form invites a particular kind of engagement and affect from the reader/viewer. The paper considers the potential and limits of the testimonial form in relation social justice projects regarding the Stolen Generations, and suggests critical reading practices that can make the most of the form in this context.

PANELIST 4 Margaret Ann Denike
 Dalhousie University

The Politics of Affect and the Limits of Rights

This paper addresses the role of affect studies within contemporary political theory and activism, to consider their implications our strategies of advancing social change and legal reform. Several cultural and political theorists have pointed to various ways in which affects and their resonances are fostered and manipulated, and how such non-conscious dimensions and processes of thought inform political beliefs and decision-making. As Nigel Thrift has argued, this work requires us to reconsider what even counts as 'the political'. So too does it demand reconsideration of our strategies of intervention in the work of redressing systemic social inequality, which the machinations and manipulation of affect are instrumental in creating. My aim is to foster a critical discussion on the challenges that the politics of affect pose specifically for our work in addressing race- and sex- based discrimination and violence that drives a growing anti-immigrant sentiment.

8.9 Law, Race, Biopolitics

CHAIR Nicholas Daniel Natividad
University of Texas at El Paso

DISCUSSANT N/A

PANELIST 1 Nicholas Daniel Natividad
University of Texas at El Paso

Justice for the Living Dead: Necropolitics along the U.S.-Mexico Border

It is estimated between 150 and 200 migrants die each year attempting to cross into the United States along the U.S.-Mexico border. Over the last ten years alone, human rights groups estimate over 2,000 migrants have died trying to enter the U.S. These deaths are due to numerous factors including harsh desert conditions, vigilante killings, and killings from drug trafficking. In September 2012 the Southern Poverty Law Center released a report indicating a significant rise in the number of migrants killed along the U.S.-Mexico border. The report suggests that groups of American vigilantes are responsible for growing violence against legal and unauthorized migrants in the state of Arizona. This presentation examines the ways U.S. immigration laws and policies contribute to a new form of biopolitics that does not solely relegate the state to control who has the authority to kill, but instead, embeds a complex web of racialized and class knowledge about populations that confer upon them the status of invisibility and disposability. It seeks to uncover the ways the authority to kill is dispersed throughout society and examines how migrants in the U.S. comprise of a new and unique form of social existence in which, according to Achille Mbembe in his notion of necropolitics and necropower, they “are subjected to conditions of life conferring upon them the status of living dead.”

PANELIST 2 Penelope Pether
Villanova University

Grutter, with Zombies: Why the Contemporary Use of Standardized testing by Public Law Schools and Universities Is Unconstitutional, and Why Private Law Schools and the LSAC Better Watch Out.

This paper forms the second part of a critical constitutional analysis of the Supreme Court’s Affirmative Action doctrine in higher education. It offers an alternative analytical framework for reconsidering higher education affirmative action jurisprudence since Bakke, and explores the racialized biopolitics of legal subject formation still haunting U.S. legal education. It does so, first, by picking up the historical research on the adoption of standardized testing in university admissions processes both to undergraduate programs and to law schools.

It argues first, for a reconsideration of both the narrow operative definition of empiricism presently circulating in legal scholarly discourse nationally; and second, that by returning to history and placing current largely test-driven admissions policies in the racial and political contexts in which they were developed, reliance on standardized testing of the kind in general use today in the U.S. in University Admissions is itself constitutionally impermissible.

PANELIST 3 Constance Gard

Biopolitics and modalities of segregation today: a psychoanalytical and anthropological reading.

Biopolitics is the name of the takeover on the individual body to the advantage of the preoccupation of the control of a population, to know the «way they tried, since XVIII^e century to rationalize problems put down in governmental practice by specific phenomena to group of living beings constituted in population: health, hygiene, natality, longevity, breeds ... », as Foucault had underlined. It is then a matter less to discipline the body of the individuals that to control them, reassure them, regulate them. According to Freud in *Civilization and Its Discontents*, *Jouissance* is an evil because it contains in itself evil neighbour. The notion of "narcissism of minor differences" is an expression of discomfort with this neighbour, its language, its territory, its ideals. We will attempt to define the specifics of contemporary "segregation" and to clarify emerging issues at the individual level but also as collective fact. We will propose a psychoanalytical and anthropological reading.

PANELIST 4 Christophe Ringer
Vanderbilt University

Mythology, Biopolitics and the War on Drugs

This paper dissertation argues that the over incarceration of African Americans is the apprehension of blacks through animalizing and criminalizing mythologies. These mythologies serve to equivocate blackness with criminality, individual acts with enduring cultural traits, racial fantasy with scientific objectivity effectively encoding the dangerousness of black bodies as being self-evident when they appear. This, mythology operates as a form of bad faith is contributes to Michel Foucault's understanding of biopower and governmentality. This paper argues that such mythologies constitute an enduring repetition in the U.S. legal system that forecloses possibilities of human flourishing and democratic possibilities for African Americans.

8.10 From art to activism: performance, photography and documentary

CHAIR Leslie J Moran
Birkbeck College

DISCUSSANT Leslie J Moran
Birkbeck College

PANELIST 1 Richard Ross
Photographer from the USA.

Juvenile-in-justice

The paper will explore the role of photography in advocacy around the reform of juvenile justice in the USA.

PANELIST 2 Sue Clayton
UK based documentary film maker

Hamedullah: the Road Home

The paper will explore the role of documentary in human rights advocacy from a film makers perspective.

PANELIST 3 Barbara Villez
Plaidoirie pour une jurisprudence

The paper offers an analysis of a French contemporary art performance 'Plaidoirie pour une jurisprudence' by artists Bernier et Martin.

PANELIST 4 John Thomas
Quinnipiac University School of Law

Kalamazoo Gals: the Story of the Extraordinary Women (and a Few Men) Who Built Gibson's WWII "Banner" Guitars

I propose to talk about my book (currently in press with Michigan State University Press) and its companion CD. This NPR story summarizes the project:
<http://www.yourpublicmedia.org/node/19973>

My book tells the story of the women who built the guitars of the Gibson Guitar Company during WWII. Previous to my discovery of these women, Gibson had denied making any instruments during the War, asserting that regulations promulgated by the War Production Board and its workforce joining "boys at the front" prevented production.

Two discoveries catalyzed my journey. First, I obtained access to Gibson's shipping ledgers that disclosed that the company had produced nearly 25,000 instruments during the War. Second, I unearthed a 1944 photograph of Gibson's workforce that revealed that nearly all Wartime employees were women.

I located twelve of the women in that photograph, interviewed them in person (and recorded the interviews to DVD), and constructed a book around their tales.

8.11 ROUNDTABLE: Matching Organs with Donors Legality and Kinship in Transplants. Marie-Andrée Jacob. Penn University Press.

SUBJECT Anthropology of Law, STS, Bioethics
AREA

CHAIR	Marie Fox University of Birmingham
PANELIST 1	Shai Lavi Tel Aviv University
PANELIST 2	Alain Pottage LSE
PANELIST 3	Jennifer Mnookin UCLA

8.12 Memory and Ownership

CHAIR	Stacy Douglas Carleton University
DISCUSSANT	Tatiana Flessas London School of Economics
PANELIST 1	Sarah Keenan School of Oriental and African Studies

Taking Space With You: Inheritance And Belonging Across Space And Time

This paper explores the connection between space and the subject by asking whether subjects 'take space with them' when they move. In so doing it troubles liberal and legal models of the subject as a bounded entity easily separable from the world around her. Drawing on work by Avtar Brah, Sara Ahmed and Pnina Werbner, I argue that diasporas appear to 'take space with them' because they reproduce a distinct space of belonging which is oriented towards a homeland far away, but which is also shaped by various journeys already taken and by the ongoing relation between the diaspora and the 'native' space around it. Asking whether diasporic understandings can be applied to those displaced in time rather than space - such as indigenous communities in settler states - and whether individual subjects also 'take space with them', I argue that property is a key means by which relations of belonging are maintained across space and time. Drawing on Avery Gordon's work on ghosts and haunting, I argue that inheritance - the property of ghosts - maintains connections and spaces of belonging that long out-live any human subject.

PANELIST 2	Stacy Douglas Carleton University
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The Time That Binds: Time As An Anamorphic Orientation

In this paper I explore the deployment of time and temporality in imaginations of political community. Specifically, I consider the use of time in constructing a clear, transparent, and

knowable history, as well as the construction of time itself as a smooth teleological narrative from which political projects, communities, and subjects are imagined through and from. These orientations render the “messiness” of political community into a coherent and ordered whole. Ultimately, I argue that time functions as an ‘anamorphic orientation’ that lends legitimacy to the project of pursuing the destined figure of community (Preziosi 1989). This concept refers to a technique that smoothes and coheres what is messy and distorted; these orientations assist in closing down the world rather than opening it up (Nancy 2007). Drawing on empirical research from the British Museum, as well as the theory of Carl Schmitt, and Walter Benjamin, I explore chronological time as one instance of an anamorphic orientation for both constitutionalism and the museum.

PANELIST 3 Shaira Vadasaria
York University

Commemorating the Living and Purging the Dead: The Racial Logic of Memorialization in Jerusalem

This paper will explore the construction of Israel’s Museum of Tolerance over the sacred Muslim burial ground in Jerusalem as a practice of necronationalism. Tracing the politics of death and commemoration through the simultaneous production and denial of collective memory, I develop an account of necronationalism whereby ‘memory making practices’ are formed in the very erasure of dead colonized subjects, paying close attention to the purging of Indigenous corporeality. Bringing Achille Mbembe’s account of necropower into conversation with Wendy Brown’s critique of depoliticized deployments of tolerance, I examine Israel’s Museum of Tolerance as a project that displaces traces of Palestinian existence under the trope of liberal tolerance. Through excavating spaces of indigenous commemoration, necronationalism makes room to consolidate old settler-colonial narratives, and in the context of Israel’s Museum of Tolerance, writes anew the racial logic of early Zionist thought.

PANELIST 4 Carmela Murdocca
York University

The Time of Suicide: Persistence and Memorialization in Settler Colonialism

This paper explores a set of interrelated questions pertaining to biopolitical governance and temporality concerning suicide among Indigenous people in liberal settler states. Part of a larger project that examines the relationship between everyday violence in Indigenous communities and the global trend of addressing historical injustices in liberal states, I trace state and Indigenous response to suicide through histories of colonial and racial governance in the Canadian context, and examine suicide as a dense transfer point between legal considerations of the present and the past. In particular, I address the temporalities of suicide, an act that marks the present, the “past of the present,” and a memorialized future (Grosz 2005, 3). This paper addresses the following questions: How does racial and colonial violence coordinate and attenuate legal and political attention to suicide? How do racial logics serve as a pivot point for the reparative impulse of the liberal state in response to mass suicide?

8.13 Legal Aesthetics, Aesthetic's Archives

CHAIR Anastasia Tataryn
 Birkbeck

DISCUSSANT N/A

PANELIST 1 Ummni Khan
 Carleton University

The Standpoint of a Sex Trade Client: The Socio-Legal Significance of the Sexually Graphic Novel

My presentation will analyze Chester Brown's 2011 graphic novel, *Paying For It: A Comic-strip Memoir About Being a John*, as a queer intervention into the legal debate on prostitution both in content and in form. While some might object to my configuring a heterosexual, economically privileged white male as "queer", I will argue that Brown queers heteronormativity through his unapologetic pursuit of pleasure and monetization of sexuality, while challenging hegemonic renditions of the client through exhibitionist storytelling and graphic representation. I will highlight how Brown's use of, what I want to label, "masculinist standpoint epistemology" is ironic and audacious; Brown appropriates a tool of meaning making which has generally been associated with feminist and other critical theories, and demonstrates its power in refusing the shame, stigma and monstrosity assigned to "johns", who are often castigated in the legal debate by both radical feminists and conservative moralists.

PANELIST 2 Elaine Yee Lin Ho
 University of Hong Kong

Searching the Academy: A Chinese opera and the rule of law (co-author Johannes M.M. Chan)

This paper contributes to the emergence of chinese-language material in law and literature scholarship by exploring the legal issues in a canonical cantonese opera, *Searching the Academy*. At the center of the opera is the confrontation between a Confucian scholar-official, and a military officer in imperial china over who has the right of possession over a young bondswoman and hence, the right to decide whether she has committed an offence in law. The legal narrative deals with a fundamental "rule of law" issue: the foundation of a system of rules from which it derives legitimate force that, in turn, has impact upon its everyday administration and enforcement. To elaborate the opera as historical discourse on the rule of law in a chinese context, I will discuss the opera's beginnings in imperial China, its canonization in the early years of the People's Republic, and recent restaging in post-1997 Hong Kong.

SESSION 5 5:30 PM- 7:00 PM

9.1 Extreme Punishment (Part II)

CHAIR Keramet A Reiter
 UC Irvine

DISCUSSANT Alison Liebling
 University of Cambridge

PANELIST 1 Anil Kalhan
 Drexel University

Immcarceration

This paper analyzes the convergence of criminal enforcement and immigration control in the context of immigration detention in the United States. With the number of detainees skyrocketing since the 1990s, detention-related concerns have proliferated, to the point where commentators resist the very term “detention” as masking quasi-punitive circumstances approximating criminal “incarceration” or “imprisonment.” With convergence of immigration control and criminal enforcement more generally giving rise to a system of crimmigration law, as observers maintain, the evolution of excessive immigration detention practices has given rise to a quasi-punitive system of immcarceration. Although the Obama administration has endeavored to reconstruct this quasi-punitive regime as a “truly civil detention system,” its broader enforcement practices have constrained this endeavor. Excessive detention conditions may well be tempered for many individuals, but absent a more fundamental reconsideration of immigration enforcement policies more generally, quasi-punitive, mass immcarceration seems here to stay for the foreseeable future.

PANELIST 2 Emma Kaufman
 Yale Law School

Passing as Resistance: Imprisoning Foreign Nationals in the UK

In 2009, the British government introduced a new policy on incarcerated foreign nationals. Dubbed ‘hubs and spokes,’ that policy situated the British prison as a key part of the effort to police migration. This paper examines the lived effects of the hubs and spokes approach. Drawing on 200 interviews in and around five men’s prisons, I argue that the government’s attempt to integrate immigration and imprisonment has both opened and demanded new modes of resistance to penal power. I focus in particular on foreign national prisoners’ efforts to ‘pass’ as British in order to avoid detention and deportation. This account suggests that shifts in migration policy have had serious and harsh consequences for those living behind bars in the

UK. It also suggests that scholars should be looking to ‘traditional’ sites of inquiry like the prison to ask new questions about the collusion of criminal and administrative law.

PANELIST 3 Alexa Koenig
University of California, Berkeley

Resistance, Identity and Military Detainment

Drawing on in-depth interviews with 78 former Guantanamo detainees, this paper reveals former detainees’ experiences of institutional practices and the ways in which they resisted physically and psychologically abusive treatment. Utilizing the story-based models embraced by diverse sociologists, this paper describes how former detainees recognized and made evident the relative power of the state, using it against itself and “attempting to unsettle, if only momentarily, [those] same relationships of power” (Ewick and Silbey 2003), often as a means to assert an identity separate from that imposed by the institution. To elucidate the various roles that resistance can play in the context of supermaximum confinement, this paper analyzes who resisted, the forms resistance took, when resistance occurred, when resistance failed to occur, when resistance was “successful,” and the various meanings with which such resistance was endowed.

PANELIST 4 Keramet Reiter
UC Irvine

The Pelican Bay Hunger Strike: International Resistance Tactics Take Root in a California Prison

In 2011, approximately 400 prisoners in California’s Pelican Bay Prison went on hunger strike. They had been in solitary confinement, under conditions of extreme sensory deprivation, for five or more years. The prisoners vowed to refuse food until a few straightforward demands were met, including permission to make one phone call per week and provision of an adequate food supply. Drawing on previously confidential videos of negotiations between the strike leaders and California correctional officials and contemporary news reports of the events, this paper examines the history, tactics, and implications of this hunger strike. Although the hunger strikers referenced an international dialogue about appropriate tactics of resistance to human rights violations, their actual power negotiations with prison officials concerned fundamentally mundane questions of daily life. The very banality of the negotiations suggests that the American prison context of extreme isolation institutions severely mitigates the power of international tools of resistance.

9.2 Madness, Paradox and Human Rights in Law and Literature

CHAIR Maria Aristodemou
Birkbeck College

DISCUSSANT Maria Aristodemou
Birkbeck College

PANELIST 1 Daniela Carpi
University of Verona

Violation of Human Rights in Holocaust/Post-Holocaust era": The Rights of Children.

My paper will examine how the concept of "human rights" has evolved across time by comparing some diachronical declarations of man's rights such as Tom Paine's Rights of Man, the French Déclaration des Droits de l'Homme et du Citoyen (1789) and, much later and after world war II, the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948). The triumph of human rights is rooted in paradox and in their principles' patent violations during the age of the Holocaust. In particular I will take into consideration the situation of children through four narrative works: John Boyne's The Boy in the Striped Pyjamas, Benjamin Wilkomirski's Fragments, Martin Amis' Times Arrow and William Styron's Sophie's Choice.

PANELIST 2 Chiara Battisti
University of Verona

Madness and Human Rights in Patrick McGrath's novels

Patrick McGrath's novels-Spider, Dr Haggard's Disease and Asylum- focus on the transgression of social norms and the destabilization of the boundaries of the self through the language of madness. The narratives link the concept of madness not only to those who are defined insane by the mastering discourse of psychiatry, but also those who "belong" officially to the world of the sane, introducing, in this sense, the disturbing boundary between health and madness. The readers are thus invited to a reflection about the commonly acknowledged spectrum of mental soundness and the varieties of discrimination against people diagnosed (even with benign intentions) with mental illnesses. The strong pattern of inequality in the treatment of people with mental disorders which emerges in the novels violates one of the fundamental principles of the international human rights discourse: the freedom from discrimination.

PANELIST 3 Sidia Fiorato
University of Verona

Human Rights and Forensic Fiction in Kathy Reichs's novels

In contemporary forensic detective fiction the analysis of the body of the victims comes to the forefront in multiple ways. On the one hand, it is instrumental to proving the abilities of the scientist/investigator and to attaining a restoration of the social order interrupted by the crime. On the other hand, the bodies of the often anonymous victims cry out their rights to be identified and have their stories reconstructed and drawn to a close: they have a right to be recognized as once-living-persons. In Kathy Reichs' novels, the strong impact of invasive forensic analysis in the morgue finally sublimates itself in the recognition of the sacrality of the body as the locus of the person and its human dignity, and attains a biojuridical dimension of defense of human rights which extends itself beyond the limits of life.

PANELIST 4 Cynthia Merrill

Policing Madness and Narratives of Agency: The Adjudication of Excessive Force Claims by the Mentally Ill.

Madness, Austin Sarat and others have argued, is both that which is excluded from law's rationality and that which is, by virtue of that exclusion, deeply constitutive of law and legal subjects. In this vein, Peter Brooks has identified narrative as the legally repressed: The law simultaneously relies upon and elides narrative in a positivist flight from temporality and the timebound human. As one example of how the law conflates human temporality and the irrational, this paper considers the adjudication by U.S. courts of excessive force claims arising from police use of deadly force against the mentally ill. Five federal circuits refuse to consider events prior to the use of force, especially the police's own provocation, when considering whether it was "reasonable" under the Fourth Amendment. By erasing the narrative of police encounters with the mentally ill, the doctrine positions the police and the mentally ill outside the law. The mentally ill lack constitutional protection, yet are accountable as agents. The police, by contrast, are unaccountable for their agency or their unreason. Rendering the mentally ill as the inhuman, the law enforces and represses its implication in the violence it seeks to punish and control.

9.3 Bearing Witness, Emotions and the Law

CHAIR Mara Marin
 Frankfurt University

DISCUSSANT Mara Marin
 Frankfurt University

PANELIST 1 Mihaela Mihai
 Centre for Social Studies

Democratic Denunciations

Denunciations refer to statements condemning unjust acts, practices, institutions, or persons. Typically, they are addressed to state institutions, or to the wider public. Due to their prominence as weapons of political control within non-democratic regimes, denunciations have a bad reputation. This paper argues that there is nothing intrinsically problematic with denunciations: when oriented by a commitment to the guiding principles of constitutional democracies, denunciations can play a critical role within imperfectly just societies. The paper has three parts. I begin by sketching a normative account of democratic denunciations. I look into the validity conditions and the standing requirements. I then consider the elements that influence the "success" of a denunciation, i.e. their capacity to reveal injustice and provoke a critical debate. Last but not least, an analysis of real cases of denunciations will highlight the contribution that such practices can make to the health of democratic politics.

PANELIST 2 Monica Lopez Lerma
University of Helsinki

Sensing Violence in Guillermo del Toro's Pan's Labyrinth

Guillermo del Toro's *El Laberinto del Fauno* (*Pan's Labyrinth*, 2006) combines the imagery of children fairy tales with images of graphic violence (torture, murder) to look back to the Spanish post-war years, in particular, to Franco's repressive dictatorship (1939-1975) and the resistance of the Maquis, the anti-Francoist guerrilla fighters. Drawing on Alison Young's approach to the cinematic crime-image, this paper explores how the film's aesthetics of violence (the ways violence is depicted) and its affective dimension (the experience of watching suffering and pain, and the ways the viewer is implicated in the scene of violence) invite viewers to question the authority, legitimacy and judgment of past crimes.

PANELIST 3 Steven Wilf
University of Connecticut

Towards a Constitutional History of Emotions

Conflicts among rights bearing groups underscores how establishing an absolute set of rights means the disestablishment of other rights, the use of rights-granting as a political mechanism to achieve the goals of interest groups, and, indeed, a growing recognition that rights granting is a zero sum game. The Constitution as a document is founded upon fear as much as hope, upon trepidation and apprehension as well as upon aspiration. Both its 18th century origins, anxiety about governmental powers animated many constitutional clauses, and later excavation as a source of rights reflects the question of how affective meaning, the history of emotions, can inform the reading of its text. Although Lucien Febvre famously declared in 1941 "la Sensibilité et l'Histoire: sujet neuf, law's rational and instrumental discourse, purposely drained of emotional speech acts, with its focus upon quasi-neutral normative rules has proved unfriendly territory to identifying emotional underpinnings of legal texts.

PANELIST 4 Peter Robson
University of Strathclyde

Vigilantes and the politics of resistance

The same word - vigilante - has been used to describe two quite distinct types of social activity. The more common recent use has emphasised the trope of the individual driven by the inadequacies of the legal system to take revenge on perpetrators of injustice whom the machinery of justice allow to go free. This is shown as an individual response with limited intended impact on society. This paper examines the development of this narrative in recent popular culture focusing on film and TV. It also looks at the alternative kind of portrayal which stresses the social in forms of resistance to oppression on behalf of the community. This concern with "social bandits" and its coverage in film and TV is examined and the reasons for its relative decline is discussed.

9.4 Biopolitics: Messianic Justice, Survival, or Humanity's End?

CHAIR Leonard C Feldman
 Hunter College, CUNY

DISCUSSANT Leonard C Feldman
 Hunter College, CUNY

PANELIST 1 Penelope Lawrence
 Birkbeck College, University of London

Chancing the Life of Your Species: Kurzweil's 'The Singularity' meets Foucault's 'Threshold of Modernity'

Humans extend their being through invention. What is it to live a human life in the contemporary world when that life is symbiotic with digital technology? Unprecedented advances pose risks and possibilities. Kurzweil bets that Artificial Intelligence is evolving exponentially and will soon outstrip Homo sapiens: a juncture he calls 'the Singularity'. Foucault recognized that a society reaches its "threshold of modernity'.....when the life of the species is wagered on its own political strategies." Is 'the Singularity' the 'threshold' of a new 'modernity'? What are the odds that humanity stops dicing with its own destruction and wins the bet for survival? The conundrums arising from the transformative power of technology demand a fresh scrutiny of biopolitics and law. Such contemplation should hurdle beyond the corral of its archaic origins – the obsolete, toxic and exclusionary vocabulary of 'mankind'. Humanity needs different conceptions to survive the 'threshold of the Singularity'.

PANELIST 2 Bethania Assy
 Birkbeck

The Extraordinary Politics of the Anti-representational Subject of Justice: Biopolitics Facing Meta-Judicial Realities

The current vocabulary of biopolitics already permits us to confront the well-known Kantian normative accomplishment of justice. Agamben's approach to the defeated subject denounces the historical mechanisms of the production of bare life and its juridical-political apparatus. This paper, however, aims to match this topic with another debate on biopolitics, mainly related to the subject's imaginative capacity to resist and to recreate political-juridical hybrids spaces of engendering justice. I will explore some theoretical potentialities from the factual "law in-between" experiences of "creating rights" able to dismantle the regular biopolitical apparatus of State legitimation thought legality. Theoretically, it will focus notably on the idea of the political event in terms of the empowerment of the political subject rather than victimization. I will follow two theoretical branches. Firstly, it will be approached the perspective of a certain Jewish messianic tradition of the 1920's, which focuses on three features of the connection between history, politics, and subjectivity: Rupture as the antinomy of the means-end process as the subject matter of history; singular events rather than universal progress as the raw material of politics; and the testimonial self-revealing narrative as empowering subjectivity. Secondly, it will

deal with Agamben's recent recovering of some Paul's terminologies, such as, normative law versus promissive law; nomos versus Euaggelion (annoument)/Pitis (faith)/Epaggelia (promise); and legal obligation versus personal fidelity. Empirically, this paper will consider as an illustration of those political-juridical hybrids spaces of engendering rights, the Movement of Homeless Workers (MTST - Movimento dos Trabalhadores Sem-Teto) from Brazil, an urban social movement founded in 1997.

PANELIST 3 Luke Isaac Haqq
UC-Berkeley

The End of Humanity

First, I defend a position known as "antinatalism," according to which it is neither ethically nor legally permissible to reproduce. Thus we should seek to make abortive and contraceptive services readily available, especially, I argue, in sub-Saharan Africa. The antinatalist view has defended, among others, by Aristotle, Schopenhauer, the writers of Ecclesiastes and Job, and, more recently, by David Benatar and Seana Shiffrin. Second, I call into question the assumption that a voluntary extinction brought about by antinatalism would be bad by considering whether it would be bad if the planet were instantly destroyed. For whom would this be bad? I consider how policies would be different if we rejected the belief that extinction is bad. Finally, I call into question the belief that we value an afterlife, defending Bernard Williams's claim that existence would become "tedious" if we were given immortality. I discuss the implications of this claim in relation to physician-assisted suicide and the value of having a long life.

9.5 ROUNDTABLE: Anthropogenesis and Movement Controls in the Time of Perpetual Crisis-Management

CHAIR Thanos Zartaloudis & Nanda Oudejans
Birkbeck Law School/Exeter Law School and VU University of Amsterdam

PANELIST 1 Thanos Zartaloudis
Birkbeck Law School/Exeter Law School

PANELIST 2 Juan Amaya Castro
VU University of Amsterdam

PANELIST 3 Nadine El-Enany
Brunel

PANELIST 4 Samuli Hurri
University of Helsinki

9.6 The Ephemeral Legal Subject: Image, Silence, and Identity

CHAIR Monica Huerta
University of California, Berkeley

DISCUSSANT Piyel Haldar
Birkbeck College

PANELIST 1 Monica Huerta
University of California, Berkeley

Intangible As Well As Tangible: The Question of Privacy and Images as Property in Roberson v. Rochester

This paper uses court opinions and the lithograph at stake in the cluster of cases known as the "Folding box case" to suggest how central theories of the image are for understanding not just the full implications of the case, but also of the development of the right to privacy in a moment of the "mechanical reproduction" and distribution of images. First, I show how closely courts struggle with images as property, and how these same struggles orient their decisions. Next, a close reading of the lithograph uncovers the challenge courts face in protecting "property in self" in the context of changing photographic technology.

PANELIST 2 Carolyn N. Biltoft
Max Planck Institute for the Study of Societies

The Politics of Sound and Silence: Some Legal Implications of the Growth in Global Communications and Economic Infrastructures, 1886-1929

The 1886 U.S. law respecting a suspected criminal's "right to silence" was supposed to serve as protection from self-incrimination. What began as a U.S law, however, opened the door to a series of similar constitutional amendments across the world. At the same time, this moment saw developments in communications technologies and infrastructures that stretched the act of communication across unprecedented physical distances. Words became more powerful and dangerous in the phase of technologies that spread them rapidly. This paper uses the insertion of a "right to silence" into the legal framework to show how personal rights tied to local legalities of national constitutional protections were bound up within the growth and development of global communications infrastructures and the economic systems that came to depend upon those wires and waves.

PANELIST 3 Sherally Munshi
Columbia University

Law, Photography, and the Making of Race

In 1932, Dinshah P. Ghadiali received a complaint from the government alleging that "by reason of his not being a free white person or a person of African nativity and descent is, and was, ineligible racially for naturalization." At his trial, Ghadiali produced "scientific" and documentary evidence to prove that he was white, but most compelling to the judge was the series of photographs Ghadiali displayed while insisting "You will see my family became so American." In this paper, I offer a reading of Ghadiali's self-published narration of his otherwise unpublished

trial to consider the ways in which the embodied experience of racialized difference is made to appear and to disappear within legal rhetoric. How does law participate in the construction of a visual field saturated with racial meaning? How do photographs illuminate the embodied experience of racial difference that eludes the kinds of legal rhetoric it nonetheless animates?

PANELIST 4 Jake Goldenfein
University of Melbourne

Managing the Biotype: Histories of Photography, Privacy and Politics

In 1890 Warren and Brandeis argued that ‘instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life... what is whispered in the closet shall be proclaimed from the mountain tops.’ One history of privacy law articulates its development as a response to unwanted exposure to public scrutiny (see Lake, 2011). But there is another earlier reading of privacy law that represents it as a limitation on intrusive surveillance by the State (for instance the ancient case of *Entick v Carrington* (1765) and the US Fourth Amendment), or more particularly limiting attempts by the State to characterise the individual actor as in some way deviant or pathological, often for political reasons. Yet not until the development of photography in the nineteenth century did the State possess the most potent means to make visible, ‘manage,’ and construct a bio-typology of vagrants, criminals, and other ‘degenerates.’ By the turn of the century photography had become an indispensable documentary medium for criminal surveillance and judicial administration (Jäger 2001). Photography is still used by States for surveillance and the concept of privacy (for example under the auspices of Article 8 of the European Convention on Human Rights (1950)) is still deployed to establish its limits (*X v UK* (1973) *Lupker v Netherlands* (1992), *Friedl v Austria* (1995), *Perry v UK* (2003), *Wood v Commissioner of Police* (2009), *RMC and FJ v Commissioner of Police* (2012)). But there is little material linking the historical uses of ‘judicial photography’ with the development of privacy law as it applies to image-based State monitoring.

This paper will therefore explore the historical relationship between privacy law and photography’s defining of the deviant body and its inscription in what Sekula (1986) describes as the ‘archive’ – the statistical system of relations that assesses both normality and the ‘darker regions of monstrosity and biosocial pathology.’ It will be argued that aspects of privacy law emerged from these photographic and archival techniques that invented the criminal type, biologised class relations, and predicated contemporary surveillance practices such as ‘mugshots,’ CCTV, and algorithmic data processing that places individuals in a distribution curve between the benign and the criminal.

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9.7 Nature and Rights Reconfigured

CHAIR Valentina Adami
University of Verona

DISCUSSANT Francesca Vitali
University of Verona

PANELIST 1 Shontavia Johnson
Drake University Law School

Memetic Theory & Trademark Law

This Article proposes that memetic theory is a useful lens through which to view trademarks. Memetic theory, or memetics, is an emerging field of scientific study related to how units of information evolve and replicate. These units of information, called memes, undergo a process of natural selection similar to that of genes. To view trademarks as memes, they must not only exist in the proper form, they must also subsist in an environment where replication, variation and selection exist in appropriate measure. Under current trademark jurisprudence, over-protection and over-enforcement of trademarks pose a threat to the natural selection environment. The recent phenomenon of trademark applications for culture-driven words and catchphrases are but one manifestation of the interaction between memetic theory and trademark law. Applying memetics calls for a reassessment of current legal standards, and the Article offers insight into where to explore the intersection between memetics and trademark law.

PANELIST 2 Valentina Adami
University of Verona

Rights of Humans, Rights of Nature: the language of human and environmental rights in UN documents

The interconnectedness of human rights and environmental rights has been recognized at international level since the 1972 Declaration on the Human Environment, or “Stockholm Declaration”. In the following years, several declarations, reports and principles for environmental protection were developed by the United Nations, including the Brundtland Report (1987), the Rio Declaration on Environment and Development (1992), the Draft Declaration of Human Rights and the Environment (1994), and a series of resolutions by the UN Human Rights Council. Through the use of Ecocritical Discourse Analysis methodologies, my paper aims to reveal the anthropocentrism of the UN-language of environmental rights, which are often defined by the United Nations in relation with – or as subordinate to – human rights. As suggested by Fill (1997), the linguistic devices under scrutiny will include the use of euphemisms, utility naming, distancing strategies, and the objectification of all non-human sentient beings.

PANELIST 3 David H Fisher
North Central College

Noticing Law's Silences

Robin West, in **Normative Jurisprudence** and Costas Douzinas and Adam Geary in **Critical Jurisprudence** explore neglected resources in natural law theory as a basis for justice in the face of "law's silences". The paper explores their shared goal – finding a basis for a progressive agenda in law and politics within the context of a re-configured or re-imagined natural law perspective - and their differences in imagination. Before it is a way of thinking, “natural law” is a way of imagining; imagining individual goods against the background of a common good – a commons – and imagining nature as other than what culture as a system of traditions: a way of seeing in the dark as well as in light.

9.8 Juries, Justice, and the Law

CHAIR Michelle Farrell
University of Liverpool

DISCUSSANT Michelle Farrell
University of Liverpool

PANELIST 1 Cassandra Elizabeth Sharp
University of Wollongong

Justice with a vengeance: Exploring retributive desire in popular image

The punishment of criminal bodies attracts enormous public attention and debate, and recent quantitative studies have demonstrated that punitive public attitudes are built on misconceptions about crime and sentencing, and that mainstream media and popular culture heavily contribute to an inaccurate picture of crime and justice. This paper seeks to showcase a qualitative exploration of these conclusions. This paper explores the popular images of retributivism as a theoretical stimulus for penal populism. Through an interrogation of the way the concept of ‘justice’ is articulated, negotiated, shared and transformed through public discourse, the paper explores the hypothesis that penal populism is a cultural construct contingent upon a very ‘human’ desire for ‘just desert’. It will analyse popular understandings of the (in)visibility of law in promoting and/or achieving criminal justice, and it will argue that the retributive images in popular culture reflect a public dissatisfaction with law.

PANELIST 2 Julia Simon-Kerr
The University of Connecticut

Pious Perjury, Testifying and the Problem of Systemic Deceit

Systemic lying is an endemic response to discontinuities in our legal system. In the eighteenth-century, juries, witnesses and judges routinely violated their oaths in order to avoid imposing

the death penalty that substantive law prescribed for many petty crimes or offenses. Dubbed "pious perjury" by Blackstone, the practice was so common that it formed a central piece of the argument for law reform in late eighteenth-century England. Pious perjury has been analogized to jury nullification by scholars who note that in both instances juries act to reduce dissonance between legal and social norms of punishment. I explore the problematic of that comparison by offering an alternate counterpart. Recent empirical work on exclusionary rule hearings has shown that lying by police is so common and accepted that it arguably qualifies as a modern analogue to pious perjury. This "testilying" has been explained as a response to discomfort with the exclusionary rule: police and courts conspire to admit evidence that would otherwise be inadmissible because, having seen the evidence, they believe in the guilt of the defendant. By juxtaposing two moments in which legal actors have embraced systemic lying, I question the conditions under which the letter of the law should be contravened based on the moral convictions of actors in the system.

PANELIST 3 Anna Offit
Princeton University

Juror Nullification: Contested Agency in a Legal Movement

My paper will analyze the positions on "jury nullification" as illustrations of the way academics and legal professionals understand jurors. Critics—by far, for now, the majority—see jurors as agents of the state. They are dehumanized automatons meant to select from among a narrow set of possible outcomes: innocent, guilty, no consensus. Jurors furnish judgment on the defendant, not the system itself, even if doing so means silencing their voices and ignoring their perspectives on the laws they're meant to enforce. Justice requires them to check their human-ness at the courtroom door.

Nullifiers have a different view of the role of jurors. By conferring power to these lay actors, they imbue jurors with the power of the state, subordinating the formal justice system to the voices that constitute it, rather than vice versa. In this view, human-ness is not just an ingredient in rendering justice; it is the trump.

PANELIST 4 Christopher Mark Hutton
The University of Hong Kong

Judicial populism, the common moral and linguistic-social categories

In the case of *McBoyle v United States* (1931) Justice Holmes rejected the statutory definition of 'vehicle' found in the National Motor Vehicle Theft Act (1919) to rule that an airplane was not a vehicle. Holmes' decision reflects a form of judicial populism, in which ordinary people are held accountable for categories and images that words evoke in the 'common mind'. However the authority for this populist principle was *United States v Bhagat Singh Thind* (1923). There the category at stake was 'white person', in the context of eligibility for US citizenship. Faced with a baffling array of authorities about how to define race, the court invoked the popular understanding of 'white'. The paper analyzes law's tendency to elide the difference between assigning human beings to categories and its categorization of objects, focusing issues of gender, transgender and self-classification.

9.9 Violence and the Vulnerable: Law and the Qualified Life

CHAIR Alejandro Lorite escorihuela
Helsinki Collegium for Advanced Studies

DISCUSSANT Alejandro Lorite escorihuela
Helsinki Collegium for Advanced Studies

PANELIST 1 Elizabeth Jane Dickson-Gilmore
Carleton University

Historic Trauma, Law and Resistance: Aboriginal and Non-Aboriginal Legal Responses to Intimate Violence

In Canada and elsewhere, Aboriginal communities struggle to assert their understanding and orderings of human relationships through the lens of traditional forms of law and governance within an atmosphere of ongoing cultural and historic trauma perpetrated by newcomer societies, their laws and philosophies of governance. Nowhere is this trauma and the clash of legal and social cultures more obvious than in efforts staunch the tide of intimate partner and family violence within Aboriginal communities. This crime, which is epidemic in Aboriginal communities, is both a direct outcome of historic trauma and an indictment of external criminal justice policies as efficacious responses to Aboriginal family violence; it is also the single most compelling challenge to the reassertion of traditional indigenous forms of law and governance through restorative and community justice. This paper will examine state and indigenous responses to intimate partner and family violence in Aboriginal communities, focussing on the differing legal and cultural constructions of family impact our understandings of the human within families, their rights to live without violence and how best to achieve that end.

PANELIST 2 Barbara Kraml
University of Vienna

Precariousness and Penal Law: Theoretical considerations on the unequal allocation of sexual vulnerability

Following Butler's thoughts on precariousness, sexual penal law must be conceived as part of a powerful formation distributing vulnerability unequally – via the idea of individual sexual integrity and self-determination as legally protected objects. Political processes towards codifying this idea into penal law have been by no means without controversies and rely upon certain notions of human sexuality, which can be grasped by means of the concept of heteronormativity. The "heterosexual matrix" (Butler) directs attention to the concurrence of different modes of power in a Foucaultian sense. Penal law as a prototype of a juridical code (sovereign power) co-operates with the normation of the body (discipline) and the regulation of the entire population (normalisation). In order to understand the arising of differential allocations of sexual vulnerability, it is important to recognise sexual penal law as a contingent social phenomenon embedded in sexuality as a complex of power and knowledge.

PANELIST 3 Esen Ezgi Taşcıoğlu
University of Milan

"We are like refugees in our own country": Transwomen as homo sacers of governmental practices

Based on ethnographic work conducted in Istanbul, Turkey, this paper studies the interaction of social and legal dynamics in the lives of transwomen and argues that their governmentalization by law bring them the constant and pervasive risk of being reduced to the status of homo sacer. Unlike Agamben in whose analysis space, time and body are collapsed and individuals are turned into homo sacers in a nationally homogeneous way, it directs attention to the simultaneity of various legal practices which only apply to transwomen in a given space and time in relation to their particular bodily experiences. Such an analysis brings to the fore the question of the performances undertaken in the name of legal and/or social authority and sheds light on the ways the law works to draw the boundaries of what is to qualify as human and what not in dialogue with global, national and local processes.

PANELIST 4 Jessica Cooper
Princeton University

Unequal Under the Law: Biopolitics in an American Mental Health Court

In a liberal environment in which all citizens are ostensibly equal under the law, how do legal structures themselves act to divide and differently govern citizen populations? How do legal structures determine valuable categories of human life? What types of unique interventions are authorized at the hands of the state as a result of this juridical form of biopolitics? Using a theoretical frame borrowed from Foucault and Agamben, this paper seeks to answer these questions through an ethnographic analysis of the Costa County Mental Health Court (CCMHC). The CCMHC is a unique, nonadversarial court that only adjudicates mentally-ill offenders using therapeutic, rather than carceral, technologies. This paper asks how this unique legal structure recasts our notions of the human and qualified life in a liberal milieu.

9.10 Affect, Art, and the Legal Subject

CHAIR Anne Bloom
University of the Pacific McGeorge

DISCUSSANT N/A

PANELIST 1 Rafal Manko
European Parliament

From Working Class Hero to Entrepreneur: How Polish Legal Ideology Has Been Sculpting the Human Subject

Departing from the Althusserian assumption that 'the category of the subject is constitutive of all ideology' and that 'all ideology has the function [...] of "constituting" concrete individuals as subjects', the paper aims at analysing how Polish legal ideology has been sculpting human subjects during the period of Really Existing Socialism (1944-1989) as contrasted with the period of neoliberal capitalism (1989-). On the basis of an analysis of legal texts, I will show that the basic tenets of both ideologies (Marxist-Leninist and neoliberal) have been translated into the way that individuals are constituted as subjects. Examples will include the notions of "worker", "working peasant" and "working intelligentsia" in the 1952 Constitution as contrasted with those of "entrepreneur" and "work-giver" (employer) introduced into post-1989 legal texts. I will argue that the way in which legal ideology sculpts the human subject is determined, in the last instance, by the underlying socio-economic relationships.

PANELIST 2 Katherine Isobel Baxter
Northumbria University

'It was another day of laughter at the treasonable felony trial today': Affect and the Treason Trial of Obafemi Awolowo

In this paper I examine the 1962-63 treason trial of Obafemi Awolowo in Nigeria. Throughout the trial the press reported daily from the courtroom, frequently quoting at length from witnesses in the stand. This reportage is startling for the drastic differences of emotion and affect used in reporting the same witnesses' statements. Through comparative readings of these newspaper accounts I demonstrate how the media coverage, in dramatizing the emotional qualities of the courtroom and the bodily experiences of the witnesses, sought to give human form both to the nation state and to the figure of its defining and definitive other: the traitor. Drawing on Agamben's theorization of the homo sacer as integral to nation formation, I ultimately argue that the trial, which was concluded immediately before Nigeria became a republic in October 1963, was used by the government and by the media as a process of national self-definition.

PANELIST 3 Riccardo Baldissoni
Birkbeck College/Curtin University

Legal Sculptures of the Human: Reassessing the Juridical Chisels beyond Teleological Legal Histories

In the eleventh century, the canonists put at work the performativity of the legal text in a way that was to be exploited by all medieval and modern authors to come well beyond the legal field. Since then, legal and philosophical definitions, including those ones of the human subject, were to produce wide-ranging performative effects, which modern thinkers generally claimed as their descriptive ability. Despite Marx's early remarks on human essence, an alternative theoretical framework only began to emerge with the exploration of practices of subjectivation as construed, for example, by Foucault. I contend that by focusing on the role of legal inscriptions in the definition and the construction of the various Western human identities over time, we could not only produce a different account of legal and political history, but we could also reopen from within the legal horizon a perspective beyond the straitjacket of legal and political individualism.

PANELIST 4 Anne Bloom
University of the Pacific McGeorge

Plastic Injuries

Injuries are mediated, mutable and plastic. They are both real (sometimes unbearably) and not real, in the sense that the recognition of injuries is shaped by considerations that sometimes have little to do with how the injuries are actually experienced. This paper explores the plasticity of injuries through the lens of plastic surgery practices and litigation in the United States. My working thesis is that current plastic surgery litigation practices give undue weight to medical opinions on issues that are fundamentally questions of aesthetics and largely ignore the real-life experiences of those alleging injuries. In doing so, law indirectly enforces the aesthetic norms of plastic surgeons and related notions about what constitutes physical normality. A better approach, I argue, would acknowledge that legal assessments of injuries involve cultural standards as much as medicine.

To make these arguments, I draw upon recent case law and historical research on plastic surgery practices and the valuation of injuries. I also draw upon interviews with lawyers, plastic surgeons and their clients/patients. The project is informed by the work of Lochlann Jain (Injury), David & Jaruwan Engel (Tort, Custom, and Karma), Lisi Oliver (The Body Legal in Barbarian Law), and Judith Butler (Bodies That Matter, and by my own prior work on law, sex, disability and biopower. My aim is to encourage a rethinking of how U.S. law approaches injuries stemming from plastic surgery and, more broadly, to encourage a rethinking of how U.S. tort law approaches the concept of injury itself.

9.11 ROUNDTABLE: Václav Havel on Modernity, Humanity, and Post-Democracy

SUBJECT Political theory
AREA

CHAIR Steven Winter
Wayne State University

PANELIST 1 Steven L Winter
Wayne State University

PANELIST 2 Albena Azmanova
University of Kent/Brussels School of International Studies

PANELIST 3 Petra Gümplová
Justus-Liebig University Giessen

PANELIST 4 Delia Popescu
Le Moyne College

9.12 ROUNDTABLE: Blackstone's Commentaries on the Laws of England

SUBJECT AREA	Law, literature & culture
CHAIRS	Jessie Allen & Kathryn Temple University of Pittsburgh
PANELIST 1	Kathryn Temple Georgetown University
PANELIST 2	Ruth Paley History of Parliament Trust
PANELIST 3	Michel Morin Universite de Montreal
