TLA NEWSLETTER – DECEMBER 2018

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ASSOCIATION NEWS

SAVE THE DATE! TLA BIENNIAL DINNER, 16 MARCH 2019

This academic year brings us two major anniversaries: domestically, we celebrate the last of the fortieth anniversaries of Women at Trinity – 1978-79 was the first year of undergraduate women students, and nationally, we celebrate the centenary of women's admission to the legal profession in 1919. And of course March 2019 is currently scheduled to augur another significant event that will go down in history, one way or another.

We will be combining all these themes at our biennial dinner in College on Saturday 16 March 2019, programme to include:

- Afternoon lecture from Professor Catherine Barnard on Brexit.
- After-dinner speaker Fiona Clark (1978) on women in the law at Trinity and beyond.

More details to follow nearer the time, but please SAVE THE DATE now!

TLA COMMITTEE NEWS – THANKS TO OUTGOING MEMBERS, AND NEW SOLICITORS NEEDED!

First of all, we must offer a big "thank you" to Hardeep Nahal who finishes his final term of office as an elected member of the committee and as Chair for the past couple of years. And to Mark Hough and Amy Ludlow who are stepping down now having also completed three terms in office, and to Sarah Inge-Parker.

We are now due another set of elections to the TLA committee this winter. There are currently four vacancies, with all other present committee members willing to continue to serve (if elected!).

Given Hardeep and Mark's retirement from the committee, we are now particularly in need of a new injection of **solicitors**, particularly at mid-career and senior levels. So, don't be shy – please step forward!

The burden of committee membership is far from onerous, with usually just two meetings a year in London (with dial-in for those unable to attend in person) and sometimes an additional meeting on the fringes of one of our events, whether in College or in London.

Anyone interested in serving on the committee should contact Jo Miles on jkm33@cam.ac.uk **by 21 December 2018**. A ballot will only be required if we have more nominees than vacancies.

AU REVOIR TO DECLAN

We are very sorry indeed to be losing the good offices of Declan Hamilton, who for the last few years has served as the College's ever-charming, always unflappable TLA alumni contact and general organiser (!) in the Alumni Relations and Development Office. Declan has done a magnificent job of marshalling the committee and ensuring that our events operate seamlessly. Thank you, Declan! But it's not a complete "goodbye", as Declan is staying on at ARDO in a new role as one of the College's Major Gifts Officers.

ALUMNI MENTORING PLATFORM

All TLA members should have received an invitation to register with the new iteration of Trinity Members Online. This is a password protected networking platform which allows Trinity alumni to connect with one another. (Please note that this alumni-to-alumni platform is separate from the TLA mentoring scheme operated primarily for current students to be mentored by alumni.) There are various search options, a nifty Google mapping feature, and the option to synch your LinkedIn profile. The other benefit is alumni-to-alumni mentoring. Mentors can offer a range of help: from email contact to an internship. Mentees can connect directly and make the most of the Trinity law alumni network. If you have not registered, you can do so at: https://www.trincam.aluminate.net/

THE UNIVERSITY OF CAMBRIDGE ALUMNI ARBITRATION LAW ASSOCIATION (CamARB)

A group of Cambridge alumni have launched a new group – The University of Cambridge Alumni Arbitration Law Association (CamARB). The group is, as its name suggests, aimed at any alumni who have an interest in arbitration. Its main goal is to help alumni in that field to build and strengthen relationships with each other. It is run by and for alumni and, of course, on a not-for-profit basis. It is registered with CUDAR (https://www.alumni.cam.ac.uk/group/university-of-cambridge-alumni-arbitration-law-association-camarb). It has its own website at: www.camarb.org.

PAST TLA EVENTS

TLA: Leaders in the Law, 8 November 2018: The Future for Justice, Access to Justice and the Lawyers

A large group of student and alumni members of the TLA met at Quadrant Chambers in November for an "in conversation" event and drinks reception. A happy alignment of the stars in 2018 has seen two of our Law alumni become high profile leaders in the legal profession at the same time: Andrew Walker QC (Law, 1987) as Chair of the Bar, and Angela Rafferty QC (English/Law, 1989) as Chair of the Criminal Bar Association.

A crisis at the criminal Bar led to them working together very closely, but bringing very different strengths and perspectives, born of contrasting personal backgrounds, experience, and professional career paths (chancery/commercial and criminal).

In conversation with Trinity Law Fellow, Jo Miles, they reflected on their experiences as leaders, and debated a selection of the most pressing issues for the future of law and justice in England and Wales, such as the crisis in access to justice, threats to the rule of law, the future of legal practice, Brexit, and the incomparable experience of Tony Weir supervisions…

Many thanks to our speakers, and to Tom Macey-Dare QC and the team at Quadrant for hosting us in their magnificent library.

MEMBERS' NEWS

JUDICIAL APPOINTMENTS

Jai Penna (1980) has retired from being a Circuit Judge from March 2018.

Richard Pearce (1981) has been appointed Specialist Civil Circuit Judge from May 2018.

Kate Gallafent (1989) has been appointed as Deputy High Court Judge from September 2018.

Silas Reid (1989) has been appointed as Circuit Judge from July 2018.

Samuel Green (1994) has been appointed as Recorder from April 2018.

Timothy Bowe (1998) has been appointed as Recorder from April 2018.

Anton van Dellen (2007) became Her Majesty's Assistant Coroner for West London from January 2018.

QUEEN'S COUNSEL 2018 APPOINTMENTS

Thomas Macey-Dare (1987) – Quadrant Chambers

Robert Marven (1988) – 4 New Square

Mark Sefton (1991) – Falcon Chambers

Nicholas Yates (1991) – 1 Hare Court

Jern-Fei Ng (1998) – Essex Court Chambers

OBITUARIES

Arthur Davidson (1946) (1928 – 2018) https://www.theguardian.com/media/2018/jan/29/arthur-davidson-obituary

William Aldous (1956) (1936 – 2018) https://www.thetimes.co.uk/article/sir-william-aldous-obituary-zdtwlz76d

David Vaughan (1959) (1938 – 2018) https://www.daqc.co.uk/2018/05/01/david-vaughan-qc-1938-2018/

OTHER MEMBERS' NEWS

Charles Garraway (1968) was appointed to the Group of Eminent Experts on Yemen established by the Human Rights Council from September 2017. For further information on the Group please click here: https://www.ohchr.org/EN/HRBodies/HRC/YemenGEE/Pages/Members.aspx

Christopher Vane (1971) has been appointed Chester Herald of Arms in Ordinary from September 2017.

Nilufer von Bismarck (1980) has been appointed Officer of the British Empire for services to financial services in the New Year's Honours List for 2018.

Andrew Walker (1987) became Chair of the Bar from January 2018.

Angela Rafferty (1989) became Chair of the Criminal Bar Association from September 2017.

FELLOWS' NEWS

PHILIP ALLOTT (1955) (E1973)

Professor Emeritus of International Public Law

THE CURRENT STATE OF UK WITHDRAWAL FROM THE EU (BREXIT):

Comprehensive Legal Analysis

The unfolding drama is now moving into its fifth Act, when law moves to the front of the stage. If politics is the art of the possible, then it is the job of law to tell politics what is legally possible. There are some knowns, and many known unknowns, in the current situation. The following is a first attempt to solve the Rubik's Cube of separate but intersecting legal certainties and uncertainties in the current deeply confused situation. It is meant to be readable by a rather patient general (non-lawyer) reader.

There are five different forms of action available under Article 50 of the Treaty on European Union.

a. Withdrawal complete within two years.
b. Implementation of a withdrawal agreement.
c. Withdrawal by default of agreement after two years.
d. Extended negotiation period.
e. Withdrawal of a notification of intention to withdraw.

WITHDRAWAL COMPLETE WITHIN TWO YEARS.

(1) A withdrawal agreement is negotiated by the British Government on behalf of the UK, and by the European Commission on behalf of the EU.

(2) The agreement is concluded by the European Council by a qualified majority vote (ie, not necessarily unanimously), after obtaining the consent of the European Parliament.

(3) The general assumption seems to be that it will not be a 'mixed' agreement. A mixed agreement covers matters exclusively within the jurisdiction of the EU and also matters that remain within the jurisdiction of the Member States. A mixed agreement requires ratification by the member states.

(4) Given the complexity, and often obscurity, of EU law and the degree to which EU law is implemented through national law, it is not easy to see how a withdrawal agreement could manage to avoid all matters in the latter (mixed) category.

(5) There would be a period between the conclusion of the agreement and its entry into force, on or before 29 March 2019. On the agreement's entry into force, the UK would cease to be a member state of the EU.

IMPLEMENTATION OF A WITHDRAWAL AGREEMENT.

(1) Article 50 TEU deals with the conclusion of a withdrawal agreement, but not its implementation in the EU itself and in the other member states. If the withdrawal agreement is not a mixed agreement and the member states are not contracting parties, a difficult question arises about the participation of the member states in the conclusion and implementation of a withdrawal agreement.

(2) Accession agreements admitting a new member to the EU are mixed and multilateral, including amendments to the EU treaties and subject to ratification by all member states. The profound transformation of bilateral relations between the existing member states and the new member state must surely be mirrored in the reverse transformation caused by the withdrawal of a member state.

(3) Does a withdrawal agreement simply take direct effect in all the member states? Direct effect is a foundational principle of EU law. EU legal acts normally take automatic effect in the national legal systems without intervention by the national legislator (except in the case of 'directives'). Parliaments would surely expect to have a say in the conclusion and implementation of a withdrawal agreement that affects their country so profoundly.

(4) In normal international practice, the period between conclusion of a treaty and its entry into force is devoted to two things: seeking the approval of national parliaments to ratification of the treaty, and adopting the internal law necessary to allow the treaty to take effect internally. Both things (the national action and the act of accepting the treaty internationally) are usually called 'ratification' in two different senses of the word.

(5) The UK is a very rare case of a state that, as a matter of constitutional law, does not require parliamentary ratification of a treaty. Under a constitutional convention, treaties are almost always laid before Parliament prior to ratification. Legislation is passed if necessary to give effect within the UK to a treaty before it can be ratified internationally.

(6) The other member states do require parliamentary approval for the ratification of a treaty. Will they seek parliamentary approval before they take part in the European Council vote concluding the

withdrawal agreement – or, even, before their Members of the European Parliament vote to consent to the agreement?

(7) Even if the withdrawal agreement has some sort of mega-direct-effect, there may still be need for internal legislating, and subordinate legislating, in the EU itself and in the Member States (including federated 'states' and devolved governments for matters within their jurisdiction) on national internal effects.

(8) Could the withdrawal agreement be prevented from entering into force if one or more member states failed to adopt the legislation required to allow it to be implemented internally in their country? A deal-but-no-deal Brexit?

(9) In the case of UK withdrawal, there would presumably be a transitional period after the entry into force of a withdrawal agreement, when the UK's relationship with the EU and its member states would be finally implemented in great detail, by EU legislation applying to the EU institutions and in the remaining member states and by corresponding legislation in the UK.

(10) The EU (currently including the UK) has trade agreements with most countries and customs unions and free trade areas across the world. Alongside its member states, the EU (currently including the UK) is a member of the World Trade Organisation and a party to the UN Law of the Sea Convention. The UK itself, and countless UK non-state actors, have legal agreements all over the world, of which a fundamental term, express or implied, is UK membership of the EU (including investment protection treaties). A challenging task of legal unscrambling (not a legal term).

(Note. Ireland held constitutional referendums to ratify amendments to the EU treaties in the Single European Act (1987), the Maastricht Treaty (1992), the Amsterdam Treaty (1998), the Nice Treaty (2001 and 2002), the Lisbon Treaty (2008 and 2009), and a referendum on the Good Friday Agreement (1998). The position on referendums in other Member States is not known to the present author.)

(Note. The Canada-EU Trade Agreement is a mixed agreement. It consists of 1,634 pages. Negotiations began in 2008 and, after nine rounds of negotiation, ended in 2014. The Agreement was concluded in 2016. It is not in force. Parts of it are being provisionally applied. A question of the legality of one part of the Agreement has been submitted to the European Court of Justice. Aspects of the Agreement were submitted to the German Federal Constitutional Court in 2016. The Court upheld the legality of German ratification.)

WITHDRAWAL BY DEFAULT OF AGREEMENT AFTER TWO YEARS.

(1) In accordance with Article 50(3) of the Treaty on European Union, the EU Treaties would cease to apply to the UK, and the UK would cease to be a Member State, if an agreement has not entered into force two years after the notification of the UK's intention to withdraw from the EU, that is to say, by 29 March 2019.

(2) The legal consequences of that situation are too complicated and extensive to foresee with any degree of clarity or certainty.

(3) The sudden withdrawal of the UK as a member state would presumably take legal effect by some sort of mega-direct-effect (see 4(7) above), followed by a vast amount of internal legislating, and subordinate legislating, in the EU itself and in the Member States (including federated 'states' and devolved governments for matters within their jurisdiction).

(4) The UK would not take part in the EU legislating which, however, would have enormous effects on the UK. The UK, and its corporations and citizens, would be subject to all post-withdrawal EU law, if they wish to conduct any activity whatsoever, in trade or otherwise, in the EU.

(Note. On one reckoning, the UK is the world's sixth largest economy. On one reckoning, UK exports to the EU are 44% of its overseas trade and imports are 53%. It might be argued in proceedings before the ECJ or the ICJ that the default provision in Article 50(3) cannot be interpreted to apply to a Member State such as the UK, since such an interpretation would be 'manifestly absurd or unreasonable' according to the general principles of treaty interpretation set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (1964), given the immense scale of its consequences.)

EXTENDED NEGOTIATION PERIOD.

(1) The European Council, in agreement with the UK, may unanimously decide to extend the period of negotiation beyond the two-year limit.

(2) The extending of the period could presumably be done informally, by an exchange of letters, or even by simply scheduling a further meeting after the date of 29 March 2019. It might be for another fixed period, or open-ended.

(3) It would be a matter to be decided how to involve the member states prior to a unanimous decision by the Council to extend the period of negotiation.

(4) If an agreement were to be negotiated and concluded in an extended period, the matters discussed above would apply.

WITHDRAWAL OF THE NOTIFICATION OF INTENTION TO WITHDRAW.

(1) It is a Member State that 'decides' to withdraw from the EU in accordance with its own constitutional requirements, notifying the European Council of its intention.

(2) Section 1(1) of the European Union (Notification of Withdrawal) Act 2017 conferred on the Prime Minister a power 'to notify the United Kingdom's intention to withdraw from the EU'.

(3) The Prime Minister so notified the President of the European Council in a letter dated 29 March 2017.

(4) It must surely be possible for a Member State to notify the President of the European Council that it no longer has the intention to withdraw from the EU. This is not explicitly provided for in Article 50. However, it must be an implied term of that provision.

(5) Countless treaties contain a unilateral power of withdrawal by a contracting party. The state in question notifies its withdrawal to the depositary of the treaty, and the withdrawal takes automatic effect in accordance with the terms of the treaty provision.

(6) Withdrawal from the EU is not unilateral. It is multilateral, requiring the agreement of the EU itself and all the other Member States. Withdrawal by default under Article 50(3) TEU is the consequence of a failure to reach agreement.

(7) If the Member State in question cannot reach a satisfactory agreement with the other parties, or if there is no prospect of such an agreement being reached, it must be possible for that Member State to decide not to pursue its withdrawal.

(8) To interpret Article 50 TEU otherwise would lead to a 'manifestly absurd or unreasonable' result. (See Note to section 5 above). It would mean that a member state having the intention to continue as a member state would be obliged to cease to be a member state by the mere fact of having sent a letter to the European Council (notifying an intention to withdraw, but not actually notifying withdrawal, as in the case of other treaties), causing profound and far-reaching consequences unwished-for by the EU and by other Member States.

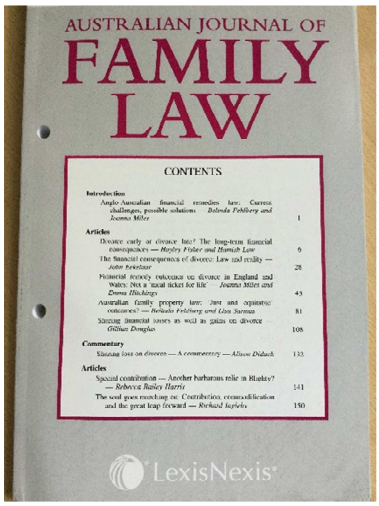
(9) The question of the legality of a unilateral withdrawal of an Article 50 notification of an intention to withdraw is the subject of a request to the European Court of Justice for a preliminary ruling (the Wightman case).

CATHERINE BARNARD (e1996)

My academic year – some might say my life – has been dominated by Brexit. Since 2016 I have been working with Economic and Social Research Council (ESRC)'s non-partisan UK in a Changing Europe programme. In this programme academics conduct research into Brexit and has as an express mission to provide the public with information about all aspects of Brexit. For me, this means blog writing on issues such as a the cost of a no deal Brexit, the Chequers White Paper, and what is going to happen to financial services in a trade deal. I've spoken at numerous conferences and seminars, given evidence to a number of select committees and done a large number of media interviews on *Today*, *5Live*, *and The Briefing Room.* Most recently this included appearing on *BBC Breakfast* with a large Family Fortunes style buzzer in front of me. I've appeared in the *Daily Express* alongside Theresa May (see picture) and have argued in the *Guardian* for a Royal Commission or equivalent to be involved in determining what would be in the UK's interest in a future deal.

I have also been exploring with Sarah Fraser Butlin (Selwyn) and Emilija Leinarte (Trinity) what a future migration policy might look like for the UK (see here for an example). I have argued for continued preferential access for EU nationals, based on a system of fair migration, not free movement, and not introducing a visa scheme. This is not the direction of travel the UK government appears to want at the moment. Wearing my Senior Tutor's hat, the current government approach, as advocated in Chequers and now supported by the Migration Advisory Committee report will impose significant financial and administrative burdens on the University and the College through the application of a visa scheme for all EU nationals as well as non-EU nationals.

JOANNA MILES (e1999)



Not quite in the order of Brexit, but I have also been grappling with politicians in the last year, in particular with Baroness Ruth Deech, whose Divorce (Financial Provision) Bill would effect radical change to financial remedies law on divorce, and not in a way that would improve matters for women. This matters, as all the official data and academic analysis of representative survey data (including valuable work by Trinity Fellow and IFS economist, Prof Hamish Low) show that it is women who continue to be disadvantaged by the "economic shock" of divorce. This is the result of the continued gendered division of paid and unpaid labour during marriage and the inadequacy of divorce settlements even under the *current* law. These data sit uneasily alongside continued complaints that divorce settlements give wives "meal tickets for life", a trope that gives the impression that women in general are doing rather too well out of the current situation. I have published work this year with colleague Emma Hitchings from our empirical study of financial settlements under the current law which shows, amongst other things, that (once one looks beyond newspaper headlines) the "meal ticket for life" is actually rare. Detailed findings from the study have appeared in the *Australian Journal of Family Law*, in a special issue emanating from the workshop I co-hosted in College last autumn with Melbourne Law School colleague Prof Belinda Fehlberg, and more locally in *Family Law*. The findings of this and other studies, including Hamish Low's work, were also disseminated at a roundtable event I organised with senior UK family law colleagues at the House of Lords this June, attended by parliamentarians (including Baroness Deech), policy makers and representatives of the key practitioner organisations. Meanwhile, another project that I'm involved in is trying to deal with the really head-scratchingly difficult issue of pensions on divorce, which again we know from good empirical data are not adequately factored into divorce settlements, storing up major problems for many women in later life. Baroness Deech responded to the work with a characteristically robust letter in *Family Law*, suggesting that many academics (Emma and I included?) consider that "women should be regarded as exempt from the job market after marriage". We were surprised to find ourselves writing a letter in reply putting it on record that that is not our view… All the more surprising for me as one of the team of Trinity Fellows who have been spear-heading the various events in the last three years celebrating 40 years of women at Trinity. So, just for the record: I don't think we've been in the business of educating brilliantly talented Trinity women for the last 40 years just to make them more stimulating conversationalists for their husbands! But I do think that women (or indeed anyone, of whatever gender) who find themselves disproportionately reducing paid employment opportunities because of family commitments should receive a financial settlement on relationship breakdown that recognises that economic disadvantage incurred for the benefit of the family.

LOUISE MERRETT (e2003)

My research is currently focused on the interpretation and enforcement of jurisdiction agreements. I

am the English Rapporteur to the Hague conference on optional jurisdiction agreements and have prepared a 60 page report (jointly with Professor Janeen Carruthers) analysing the treatment of optional jurisdiction agreements in English and Scottish law. I have also had two articles published on optional and asymmetric agreements and gave a paper '*How far can parties go in deciding which national courts will hear their disputes?*' at the recent Cambridge Law Club dinner (for judges and members of the Faculty). I continue to be engaged in Brexit issues and was part of a panel on Dispute Resolution Post Brexit - Lessons from Denmark, Switzerland and The Hague', at the British Institute of International and Comparative Law. I am a member of a sub-committee of the *Bank of England Financial Markets Law Committee*, which has published a report on legacy financial contracts and the implications of cross border illegality.

SARAH WORTHINGTON (e2011)

Sarah Worthington, on top of juggling a very busy schedule as Treasurer of the British Academy and responsibilities as Deputy High Court Judge, has given several public lectures to the profession, including to the Chancery Bar Association and the Commercial Bar Association in the UK, the Auckland Law Society in NZ, and the Victorian Supreme Court judges in Australia.

LAW FELLOWS' OUTREACH ACTIVITIES

As undergraduate application deadlines loom, public attention is drawn to Cambridge and Oxford's distinctive admissions processes, and their efforts to widen participation from under-represented parts of our society. Our Vice-Chancellor, Professor Stephen Toope, focused on some of Cambridge's newest initiatives in his recent annual address; journalist and Oxford Head of House, Alan Rusbridger, reflected on the many interconnected issues in a recent magazine article. The College is actively engaged in a significant range of access and outreach activities, led by the Director of Admissions, the Fellow for Widening Participation and two dedicated Schools Liaison Officers. The Trinity Law Fellows – led by Dr Ben Spagnolo – have been at the forefront of many of these initiatives, and are delighted to report that we are reaching more people than ever.

This year's annual Trinity Law Residential attracted some 250 applicants from around the UK, keen to take part in its expanded three-day programme of lectures, supervisions and moots – as well as opportunities to explore Trinity and Cambridge, to learn about the admissions process, and to meet current students. In selecting participants, particular attention is paid to indicators of educational and socio-economic disadvantage, sex, ethnicity and levels of parental education, in addition to academic

performance and potential. We were delighted that Sabena Panesar (2009) and Becky Hadgett (2010) were able to join us for the Alumni Discussion and that the Rt Hon the Lord Walker of Gestingthorpe (1955) again made time to speak with the students. More than half of the participants took time to offer feedback, which was overwhelmingly positive: "a brilliant few days"; "I wish the residential lasted for a week"; "a really fun and educational opportunity to get insight into higher education and meant that the process of applying to and studying at Cambridge doesn't seem quite so intimidating". While we were able to accommodate some 60 applicants in Trinity, we kept in touch with all those who applied for this year's Law Residential, sending emails over the summer touching on legal news, law and law admissions at Cambridge, and ways to find out more about the study and practice of law. Recipients have expressed their gratitude for this contact, and several have indicated they would not have applied to Cambridge without this encouragement.

On the theme of reaching out by electronic means, we received a record number of entries in this year's Robert Walker Law Essay Prize competition, with essays submitted electronically from 110 UK entrants and 44 overseas entrants in 16 countries. Moreover, our full-length mock law admissions interview, recorded in collaboration with the Faculty, has been viewed more than 167,000 times on YouTube in the ten months since it was posted – not counting those who view it via the Faculty or College websites.

The Law Fellows also take part in some of the College's other residential programmes, including discussing the rule of law in the Humanities Residential and exploring referendums at the Trinity Stonehouse Residential, a new initiative in 2018 for Year Eleven students in collaboration with Villiers Park Educational Trust. We also participate in many of the University's outreach programmes, from the Oxford-Cambridge Student Conferences – Open Day-style events that travel around the UK to reach some 8,000 students who cannot visit in person – to the Sutton Trust Summer Schools and Experience Cambridge events held in Cambridge over the summer, and Target Oxbridge, a free programme in collaboration with Rare Recruitment that aims to help black and mixed race students with African and Caribbean heritage to gain admission to our Universities.

Like the College and the University, the Law Fellows are conscious that there is a great deal more study and more work to be undertaken in improving our admissions processes and in augmenting our outreach activities. This work is an essential and embedded as part of what we do as Law Fellows, alongside teaching, research and administration. We share the Vice-Chancellor's ambition to "be genuinely open to all who have the talent to flourish at Cambridge".

NEW RESEARCH STUDENTS

CATHERINE DRUMMOND

Catherine Drummond is pursuing a PhD in public international law. Her topic is the concept and function of a breach of international law. Catherine is interested in the role breach plays beyond that of a mere trigger for the secondary rules of responsibility and intends to study its influence on the content and development of both primary and secondary rules of international law.

Catherine was formerly an Associate in public international law and international arbitration at Freshfields Bruckhaus Deringer in Paris where she represented advised and clients in disputes before international courts, tribunals and other bodies, including the International Court of Justice, the European Court of Human Rights, the International Criminal Court, the United Nations Human Rights Committee, and investor-State and commercial arbitration tribunals.

Prior to joining Freshfields, Catherine taught public international law in Australia and worked as a consultant in international law on issues relating to the international arms trade, and international human rights, humanitarian and criminal law. She also served as Associate to the President of the Queensland Court of Appeal, worked in criminal prosecution and defence in Australia, and interned with the United Nations International Criminal Tribunal for Rwanda.

Catherine is also a seasonal lecturer in public international law and dispute settlement at the American University of Paris and regularly guest lectures in public international law at the University of Queensland in Australia.

Catherine holds a Masters of Law (Class I) from the University of Cambridge where she was the Whewell Scholar in International Law and a General Sir John Monash Scholar. She also holds a Bachelor in Law (with honours) and a Bachelor of Arts (Peace and Conflict Studies and International Relations) from the University of Queensland. She is admitted as a legal practitioner in the Supreme Court of Queensland, Australia.

KHOMOTSO MOSHIKARO

I completed my undergraduate law degree at the University of Pretoria in 2012. I then completed a Bachelor of Civil Laws (2014) and an MSc in Contemporary Chinese Studies (2015) at Oxford. I subsequently worked as a law clerk in the Constitutional Court of South Africa and as a researcher at the South African International and Advanced Constitutional Law Institute (SAIFAC). I was then appointed a lecturer in Private law at the University of Cape Town where I taught jurisprudence, property law and selected topics in criminal law and statutory interpretation. I have also convened and taught on Foundations of South African Law and an elective on Social Justice and the Constitution. My areas of interest are legal theory, constitutional law, criminal law, property and unjustified enrichment. My current doctoral research is on the moral and legal foundations of fair-labelling in criminal theory.

MIRIAM SHOVEL

Originally from Brighton, UK, I did my undergraduate degree at Trinity, in Politics, Psychology and Sociology. I then completed an MPhil at Christ's in Multidisciplinary Gender Studies. After that, I moved to London and worked both as a professional singer, and in a variety of policy roles at Brent Council (including work on domestic abuse policy and knife crime prevention). In my doctoral studies, I will be exploring the use of 'out of court resolutions' (OOCRs) in domestic abuse cases in England and Wales. OOCRs are defined as police-led restorative justice methods, including community resolutions. Police forces in England and Wales are using OOCRs to respond to domestic abuse, despite government and police advice not to do so. Opinion of the application of OOCRs in domestic abuse cases is deeply divided, with many stakeholders competing to influence policy on the matter, including a strong victims' lobby. However, a gap exists in the empirical literature regarding police use of OOCRs for domestic abuse in England and Wales. To gain a comprehensive view of this, I will collect data from three sources: police, voluntary sector, and domestic abuse victims. The mixed-method study will use surveys and semi-structured interviews from members of each stakeholder group. I will capture local variation by collecting data from at least four police forces across England and Wales. The study will examine: reasons why police use OOCRs; how OOCR usage differs between localities across England and Wales; and the variation in opinion of such initiatives across stakeholders, specifically police, voluntary sector, and domestic abuse victims. Depending on the results of my investigations, I will consider how policymakers can either prevent the use of OOCRs for domestic abuse, or provide guidance and safeguards to ensure OOCRs are used effectively. 'Effectiveness' in this context will be explored, and will include increasing victims' safety and reducing reoffending rates.

FROM OUR FOREIGN CORRESPONDENTS

FROM HILLARY RAY (1990), OUR CORRESPONDENT IN SYDNEY, AUSTRALIA

Greetings from Australia! Not just the locale of a recent royal visit, Australia has had a busy year in financial services because of the launch of a Royal Commission into Misconduct in the banking, superannuation and financial services industry was established on 14 December 2017 by the Governor-General of Australia.

During the year, there have been public hearings focusing on the banking, superannuation, financial advice and insurance industries, as well as hearings featuring ASIC (the Australian Securities and Investments Commission) and APRA (the Australian Prudential Regulatory Authority).

Whilst the enquiry is not a judicial body such as a Court, it has revealed systemic and egregious misconduct in all of these of industries at board level, amongst directors, to senior managers down through to financial advisers and telemarketers of various financial products such as insurance policies. The Royal Commission cannot itself impose penalties for this misconduct however the media attention that the hearings have attracted, namely, stories in every newspaper and on television channels on an almost daily basis, have meant that a number of specific cases of wrongdoing will now be prosecuted by the relevant regulator.

The Royal Commission has been criticised for using the most dramatic cases of malfeasance, however, it has managed to cause an upheaval at board level by precipitating the resignation of directors on a number of well-known boards such as AMP, to various directors being charged and financial advisers or dealer groups banned from the financial services industry and their Australian Financial Services Licence cancelled by ASIC. For an extra judicial body, this is an unprecedented effect on the financial services industry.

As a practitioner in financial services regulation, I have observed first hand an increase in matters both advisory and enforcement/litigation related. The interaction that I have with both APRA and ASIC is now much more intensive. There is also a greater demand for training and speaking about trends and predictions in financial services regulation. For example, this year I spoke at several summits and governance conferences held by Australian Financial Services Licence holders in Sydney, Brisbane and Melbourne, presented regulatory updates to financial advisors also in Sydney, Brisbane and Melbourne, spoke at the Credit Law conference on the future of regulators in the wake of the Royal Commission, and the Australian Financial Advisors conference on the future of the statement of advice (a required disclosure document) after the Royal Commission, as well as attending training days for Australian Financial Services Licence holders.

The interim report by the Commissioner of the Royal Commission was published on Friday 28 September with the final report due to be submitted by 1 February 2019. November 2018, the Commission will hold hearings on the policy questions that have arisen from the first six rounds of hearings. Suffice to say that these final hearings will provide a forum for much soul searching in Australian Financial Services regulation. I think we can expect that the regulators will be given more traditional enforcement powers such are those that already exist in the UK, for example, product intervention powers, as well as the ability to levy higher fines and potential jail sentences. It is a very dynamic and exciting time to be practising in financial services in Australia and I encourage any of my former classmates to get in touch with me should they ever be visiting Sydney or other Australian cities.

Presentations and Conferences

	Date	**Host**	**Title**
1.	04 June	Conexus Financial	Licensee Summit (Blue Mountains, NSW) on governance since the Royal Commission, lessons from ASIC.
2.	30 July	Madison Financial Group	Good Governance Summit (Sydney), ASIC update
3.	01 August	Madison Financial Group	Good Governance Summit (Brisbane), ASIC update
4.	03 August	Madison Financial Group	Good Governance Summit (Melbourne)
5.	09 August	AICD	Financial Adviser Presentation (Sydney), advice in the wake of the Royal Commission
6.	16 August	Cowell Clarke	AFSL Presentation (2No)
7.	07 September	Informa	Credit Law (Gold Coast)- What we can expect in the wake of the Royal Commission
8.	13 September	Paragem	Conference (Sydney)- The new regulatory order
9.	04-05 October	Madison Financial Group	Conference (Sydney)
10.	11 October	AFA	Conference (Gold Coast) on the future of the Statement of Advice

FROM QUEENIE LAU (2001), OUR CORRESPONDENT IN HONG KONG

On 21 June 2018 I had a small gathering in Hong Kong with two Trinity Law alumni. Lord Robert Walker (1955) is one of the non-permanent Judges of the Court of Final Appeal (CFA) in Hong Kong. His wife, Suzanne, was also in Hong Kong at the time. Also, Mr Justice Godfrey Lam (1988), who is my Pupil Master and a Judge of the Court of First Instance in Hong Kong, together with his wife, Annette (a Newnham alumna). We all had dinner at a Chinese restaurant called Imperial Treasure in the Crown Plaza Hotel – pictured left to right are Godfrey Lam, Robert Walker, Queenie Lau, Suzanne Walker, and Annette Tso.

FROM CHRIS COULTER (2014), OUR CORRESPONDENT IN HARVARD LAW SCHOOL, USA

Having graduated from Trinity in June 2017, I moved to the 'other Cambridge' and took up a place on the Harvard LLM program as a Frank Knox Fellow. My first weekend in Boston set the stage for an exciting year in the States and highlighted the social unrest in America as I inadvertently got caught up

in a 15,000 strong march protesting against the activities of far right movements in Charlottesville, Virginia. This meant I was ignoring the first piece of advice I was given by the Harvard police at an induction meeting for international students - do not attend any protests or your visa will be revoked - but thankfully I still managed to complete the year!

I was immediately struck by the difference in size of the two institutions and the two cities. Harvard has an intake of close to 700 new law students per

year which is almost triple the number of law students per year at Cambridge. When you add in over ten faculty buildings, countless libraries (which are essential for most students given that textbooks can cost over $500!) and around 600 courses to choose from you can begin to see why Harvard's fees are so steep. In Boston, I never missed Cambridge's compact size during the warm summers and crisp autumns when I was quite thankful for a refreshing fifteen minute stroll from one end of the campus to the other. This all changed in the depths of winter, when Boston experienced a 'bomb cyclone' with three feet of snow falling in twenty-four hours and during one week in early February, the highest temperature was -18.

Academically, my main focus during the first semester was criminal law and I relished the chance to study specialised papers such as cybercrime. Before starting at Harvard, I thought that I would finish my year with a detailed knowledge of the criminal law of Massachusetts. However, there was only a minor emphasis on the substantive elements of different crimes. The major focus of the different criminal courses was the social impact of the criminal law. For example, instead of saying California defines theft as X whereas Massachusetts defines theft as Y, we focused on case studies to help determine the likelihood of different races and genders committing theft depending on whether it was defined as X or Y. I am hoping that this socio-economic study of the law will help me embark on policy work in the future.

I am glad that I did not fill my schedule exclusively with criminal courses because this would not have utilised all that Harvard has to offer. Prior to arriving at Harvard, I left flexibility in my schedule so that I could join courses which were highly recommended by the student body. Initially I was not planning on taking International Trade Law, but in the end it was my best academic experience at Harvard, taught by Professor Wu who was previously lead negotiator for the US in IP related issues in free trade agreements. To my surprise a full week was spent studying the potential impact of Brexit with the major focus being the impact on Northern Ireland - I had an advantage here over many of the American students who thought NI was attached to the top of Scotland! The course was taught primarily through simulated negotiations which greatly increased my diplomacy skills.

Overall, I think Cambridge offers a more rigorous academic experience. The style of teaching is markedly different with Cambridge's method reigning supreme. At Harvard the courses are primarily taught via 'lectures' which are the equivalent to Cambridge's supervisions - if a supervision was conducted amongst 50 students. To some this might sound like an advantage as you can hide in the

crowd if unprepared, but most Professors use the 'socratic cold calling' teaching method which means any student can be randomly selected for quizzing at any stage. Exams at Harvard are primarily intended to test research skills and often ask students about new material which was not necessarily taught, unlike Cambridge's knowledge focused and syllabus based exams. At Harvard, there was an exam week when students choose which day they would do their exams. Exams lasted eight hours but were undertaken on the student's own laptop and you had access to any library or internet resources that you could find. Most exams were also subject to a strict word limit of 2,000 words. Who would've guessed that from the other side of the Atlantic I would miss the intensity of the Tripos experience - but not enough to ever want to do it again!

The only possible way to conclude is by offering my most sincere gratitude to Professor Barnard, Professor Dyson, Dr Merrett, Ms Miles and Professor Worthington. I know that I would not be writing today as a Harvard graduate if it wasn't for the countless words of wisdom and support that the Law Fellows gave me during my time at Trinity.

HOLLOND FUND BENEFICIARIES

UNCRC IN GENEVA, SARAH-ANNE GILES (2014)

I was fortunate enough to be given a small grant from the Hollond Fund for a three-month internship in the United Nations Office of the High Commissioner for Human Rights in Geneva, which I am currently undertaking. Now into my fourth week of the internship, I can definitively say that it is everything and more than I could have hoped.

The first few days were a blur: I couldn't quite believe that I was in Geneva with a security pass to the United Nations! The city itself is small but with so much to it: amongst others, a beautiful old town, the huge lake surrounded by mountains, and a scarily efficient public transport system- it couldn't be any other way in Switzerland! Much like the UN itself, the city is very multicultural; being so full of international organisations, it is a city of expats. The other interns in my section, too, are from all over the world, which gives me the opportunity to learn about so many different cultures. It's a particular reason that I have always loved living and studying abroad.

Sarah-Anne with the other UN Interns

Within the OHCHR, I work for the Committee on the Rights of the Child, which specialises in looking at how the Convention on the Rights of the Child is being implemented in Member States, as well as its two Optional Protocols on sale of children and children in armed conflict. A majority of my work initially

involved background research on the Member States that would be coming in for interactive dialogues during the committee session. Trinity Law had clearly prepared me well for this, since my bosses were amazed at my ability to get through so many reports so quickly, and- in what will be a relief for my supervisors who agonised over my wordy essays- summarise the information so concisely! Good performance there led to more substantive work. I have been lucky enough to draft Lists of Issues (which are follow-up questions posed to the State Party in light of the report that they submit to the Committee), essentially meaning that I am responsible for identifying the exact issues to be clarified in any particular Member State based on NGO and State reports. My most recent assignment is also my most prestigious to date: I am responsible for drafting the concluding observations that the Committee will present to Saudi Arabia after the interactive dialogue is finished, providing its concerns and recommendations for proper implementation of the Convention and its Optional Protocols. The interactive dialogues themselves have now begun, and they are quite the experience.


The UN Committee Session Room

So far, we have held meetings with Mauritania, El Salvador, Laos, and Niger. I have been able to meet the Member State delegations, as well as all of the Committee members who are incredibly impressive people highly specialised in children's rights and plucked from all over the world. Amongst them are a Togolese mayor, a Samoan Supreme Court Justice, and a Bahraini presidential advisor, as well as countless leading professors in international law. Many of them are Francophone and so I find myself constantly flitting between French and English, and even occasionally Italian. I am also an interpreter for the confidential working group meetings, where official interpreters are not able to be present. It can be quite intimidating, given that these responsibilities are so crucial to the workings of the Committee, but it is all part of what makes the internship so rewarding and invaluable to me as an experience.

Outside of work, I have also had numerous opportunities to get involved in my other interests. I currently have the privilege of training alongside and playing against the Swiss national netball team on a regular basis, which- whilst leaving me a little battered and bruised- is obviously incredible. I have visited Chamonix, to see the ice caves and, of course, to take the cable car up Mont Blanc. I also have plans to visit Lausanne, home to the Olympic Museum; Turin, a beautiful city in Northern Italy that was also the backdrop to "The Italian Job"; and to hike up Geneva's main mountain, the Mont Salève.

Overall, then, the first four weeks of my internship have been wholly positive and I am eternally grateful to Trinity and its Hollond Fund for facilitating an opportunity that I would otherwise have had to turn down. I am relishing every moment at the OHCHR and everything that it is teaching me about international relations and international law and I cannot wait for the next two months, although I admit that it is already going too quickly!

HOLLOND FUND GRANT FOR PUBLIC LAW CONFERENCE 2018, JELENA GLIGORIJEVIĆ (2016)

I received a grant from the Hollond Fund to attend the Public Law Conference at the University of Melbourne in July 2018, at which I presented a paper on privacy and the convergence of public law and private law.

The Public Law Conference

The Public Law Conference is a major biennial international conference, which attracts jurists from across the whole of the Commonwealth, and jurisdictions beyond. It began in 2014, and the first two conferences were both at the University of Cambridge. This year's conference at Melbourne University had the theme of "The Frontiers of Public Law", and was organised by Associate Professor Jason Varuhas (Melbourne), and Dr Shona Wilson Stark (Girton, Cambridge). Because it is a biennial conference, this year's conference is the only one to take place during my doctoral studies (during my second out of three years). Therefore, I was particularly fortunate to receive funding from Trinity College to travel to Melbourne in order to present my work at the conference.

My Paper: "Privacy on the Frontiers of Public Law"

My paper, "Privacy on the Frontiers of Public Law", discusses how the common law protects informational privacy. I argue the common law can and should evolve to recognise tort remedies for informational privacy breaches, independent of legislation. Public law concepts and reasoning, especially proportionality, can be used within such private law remedies, to ensure effective and legitimised protection of fundamental rights in a pluralistic society. Privacy is adequately protected, and interferences with freedom of expression are justified. That places privacy in an important convergence of public law and private law.

Many arguments have been made against the development of private law remedies for breaches of informational privacy (eg recently, Tilbury, and Beswick and Fotherby). Such scholars argue privacy is a concept that is difficult to define and that poses serious threats to freedom of expression. It is therefore not appropriate to base civil liability on privacy interests. If privacy is to be protected by law, that would best be achieved through statute.

I seek to rebut such propositions by arguing the structure and rationale of the English tort of misuse of private information show how common law can successfully evolve to protect informational privacy, through the convergence of public law and private law. Nothing stands in the way of Commonwealth jurisdictions, like Australia, New Zealand and Canada, using the English tort as a model for improving their privacy-based remedies.

The English tort's evolution through the common law, from the equitable action in breach of confidence and alongside the introduction of the Human Rights Act 1998, shows the capacity of common law to meet normative needs. This tort is a private law mechanism, enhanced by public law concepts and reasoning (recognised in common law), that serves to uphold fundamental rights (also recognised in common law). I argue this common law evolution was organic and the current tort does not depend upon the Human Rights Act. This is why the English common law approach is transferable to other Commonwealth jurisdictions.

The English tort's second, rights-balancing, stage depicts the optimal way of protecting privacy without breaching freedom of expression. Proportionality demands the courts undertake a focussed and nuanced assessment of how privacy and freedom of expression are affected in each case. This is intended to direct the courts towards a resolution that preserves the normative importance of each right, guarding against unjustified encroachment upon either right. Insofar as there is a misapplication of proportionality, or deficiencies in the courts' reasoning in the tort's second stage, such problems should be addressed by constraining the balancing process with principle, rather than entirely abandoning balancing or proportionality.

The Value of the Hollond Fund Grant

My paper is closely related to, and indeed arose out of, my doctoral work, which focusses on how the conflict between the rights to privacy and freedom of expression can best be resolved in private law. Although the paper will not form a distinct part of my thesis, the central argument in it – that the common law can and should protect privacy through private law remedies enhanced by public law reasoning – underpins the whole of my thesis. Presenting this paper in Melbourne therefore was an invaluable opportunity to test the underlying rationale of my thesis with an audience of the most distinguished public lawyers and scholars from across the common law world. I remain grateful to Trinity College and the Hollond fund for making this possible.

OLIVIA ANDERSON (2015)

I would like to thank the Hollond Fund for its generosity in enabling me to take up the position of an intern in the Antitrust department of Clifford Chance LLP in Madrid for 3 months during the summer. The prospect of starting a new job in a new city can be daunting to say the least but the support I received from the Hollond Fund helped to make the transition process a lot less stressful and allowed me to focus on making the most of this fantastic opportunity!

I was naturally quite apprehensive before starting; I had never studied competition law before and I was also very much aware that my Spanish was more than a bit rusty, having not spoken a word since my A Level oral exam. However, such worries were quickly forgotten thanks to the friendly and outgoing culture of the firm, and the Spanish in general. Being one of only two interns in a rather small department over a prolonged period of time meant I was able to get properly stuck in to a variety of work, from scouring over boxes on boxes of evidence in preparation for a major hearing before the Spanish Competition Authority following a landmark overruling by the Supreme Court, to drafting submissions to the General Court of the European Union and helping to carry out routine competition analyses for individual clients. Overall, I thoroughly enjoyed working in such a dynamic area of law, seeing how it operates at both national and EU level, as well as gaining a better understanding of the interplay between legal and business concerns in a commercial practice.

Of course, the summer was not entirely all work and no play and during my time in Spain I managed to take in the sun and sights with trips to neighbouring Toledo and Segovia as well as venturing further afield to savour the flavours of Valencia and San Sebastian.

I have come away grateful for the new knowledge, skills and confidence I acquired during this superb experience. A summer well spent!

ISABELLA NUBARI (2016)

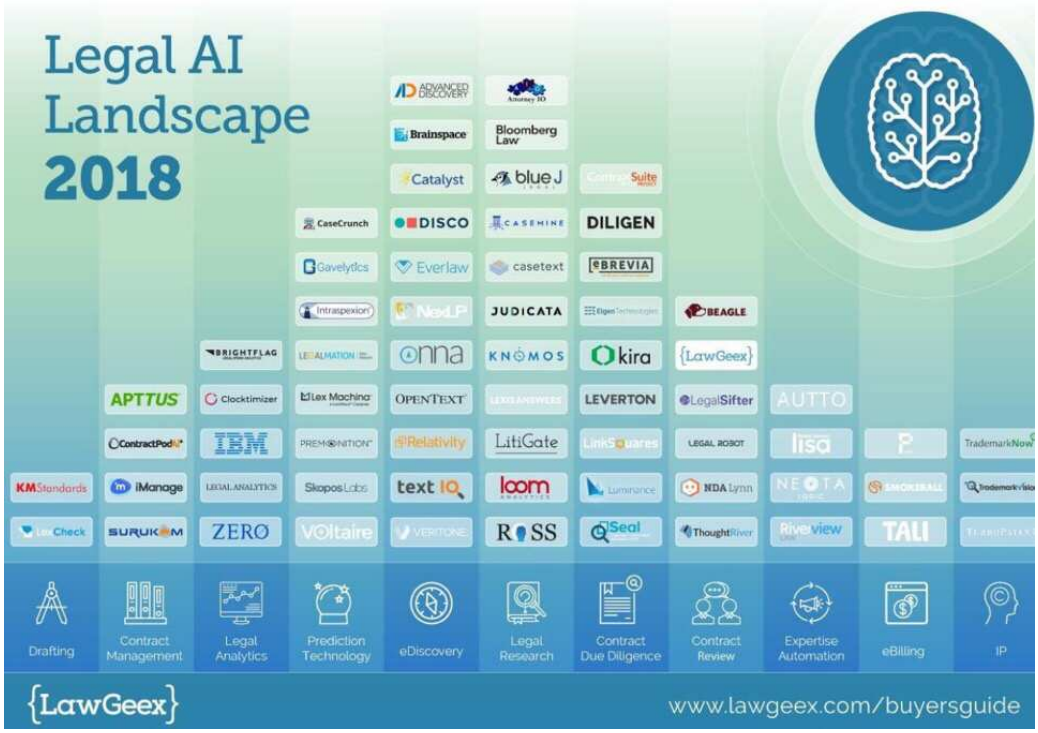
Over six weeks of the summer, I was a Data Engineer intern dealing with legal content at INTELLLEX, a dynamic legal-tech start-up specialising in Knowledge Management and Legal Research, thanks to support from the Hollond Fund. Headquartered in the sunny island of Singapore, but with offices in London and employees working remotely from Silicon Valley to Penang, INTELLLEX has been a great springboard into the global legal-tech scene for me.

During my stint there, I was initially staffed on coding crawlers, managing and debugging the scraping framework, and experimented with OWL, a Semantic Web Language, in the creation of a greater web of legal ontology. However, my role eventually evolved into a general 'All-Purpose Intern' as I volunteered to help on tasks ranging from Equity Research to the back-end administration of Stacks. In between, I have been able to conduct legal research in areas such as Contract Law, Arbitration, Company Law, and Competition Law, in a bid to generate training data for the Machine-Learning Algorithms. After a gruelling 6 weeks, here are my two key takeaways:

The AI Legal-Tech Scene

Legal tech can be roughly divided into two (sometimes overlapping) sub-groups: one which increases the efficiency of lawyers (knowledge management systems, automatic billing, etc), and one which focuses on replacing certain roles of the commercial lawyer (automated due diligence reports, utilising AI for legal research, prediction technology, drafting, etc). Whilst the former group of technology would most likely be welcomed by practitioners alike because it streamlines their workflow, the latter group of technology might cause some apprehension, as it replaces certain functions of a lawyer.

A rough layout of the legal-tech scene, with noteworthy firms listed.



Technology and the Rate of Revolution

However, to better understand how legal tech would change the industry, and at what speeds, a rudimentary understanding as to the technology needed to enact such changes is essential. In general, I believe that the first wave of technological revolution would encompass the coming-to-market of the first group mentioned above. This is because the technology to increase efficiency has matured and can be easily adapted towards functions such as time-tracking (for e-billing). Cloud-based compatibilities with integrated internal searches, for example, would allow firms to access relevant proprietary information quickly and efficiently. These changes will cut down costs, and increase productivity, thereby increasing profit margins.

On the other hand, the second wave of technological revolution, carries greater potential impact, in terms of redefining a lawyer's job-scope. This is because it aims to automate certain key deliverables. For example, automating the due diligence process would reduce the need for as many lawyers from conducting due diligence. If the technology is sold to banks and private equity firms directly, it removes the need for lawyers (to conduct due diligence) altogether. However, such technology has not matured. This is because the automation of legal language processing and legal thinking is a behemoth task – and runs into multiple technical problems. For example, how can the technology be programmed to recognise and process different naming and drafting conventions? How would legal logic be represented in a graph? How can the different statutory frameworks and common law concepts be integrated to form a more complex web of logic? How would algorithms handle conflicts of law? How would neural networks, trained to identify different things, be integrated into a cohesive whole? These unresolved questions, as of now, restrict how smart the technology is.

A picture of me at the company BBQ, with most of the team (based in Singapore)

NEW ALUMNI MEMBERS

This year's graduating students and so newest alumni include…

Joshua Fung - I will be spending one year at New York University on their Traditional LLM Program, specialising in constitutional law, administrative law and jurisprudence.

Wahdana Bilal - I will be undertaking an LLM at Harvard next year, after which I will join Linklaters as a trainee solicitor in London.

Isaac Freckleton - Hopes of Sandhurst followed by a commission in the Royal Armoured Corps.

Shani Wijetilaka – I will be starting work as a consultant at McKinsey London in September.

Danielle Carrington – She is now studying for the LLM at the NYU School of Law, USA.

Rebecca Hughes – She will start her graduate training programme at Vardags in January 2019.

Finn Kristensen – He is off to Fudan University, Shanghai to study Chinese language next year.

Sarah-Ann Giles – She is working in the Human Rights Treaties branch of the Office of the High Commissioner for Human Rights, primarily working with the Committee on the Rights of the Child, assisting the Committee as they sit to hear reports from various countries about their compliance with the Convention on the Rights of the Child. The work will also take in reports from Benin and Saudi Arabia on their compliance with the optional protocols on involvement of children in armed conflict, and the sale of children, child prostitution, and child pornography.

LONGER ARTICLES

THE RULE OF LAW IN POLAND, WITOLD PAWLAK (1966)

Montesquieu asserted that to promote liberty and the balance of power most effectively, the legislature, executive and judicial powers of the state must be separate and act independently of each other. The Polish Constitution provides that Poland is a democratic state ruled by law and its political system is strictly based on the tripartite separation of powers with an independent judiciary.

So why on the 17 September 2018 did the European Network of Councils for the Judiciary decide that the Polish National Judicial Council was no longer independent of the executive and legislature and that there had been a very considerable power shift from the judiciary to the executive, a shift which infringed very seriously the independence of the judiciary and the separation of powers, in consequence of which the Polish Council was suspended from membership and excluded from participation in ENCJ activities?

In October 2015 the Polish general election was won by the "Law and Justice" party (PiS), with an absolute majority in both houses of parliament, replacing the previous government, PO. It had campaigned under the slogan of "good change" and it now had complete legislative and executive control, although not the necessary majority to change the Constitution. The next general election will be in 2019. In August 2015 the PiS-backed Andrzej Duda took office having won the presidential election. The next presidential election will be in 2020. The Supreme Court has exclusive jurisdiction over electoral disputes.

One of the first changes was to reverse a change made in 2009 and to make Zbigniew Ziobro, a PiS member of parliament, both Minister of Justice and Public Prosecutor General. Since that time extensive changes have taken place in the personnel of the prosecution service. The Constitutional Tribunal (CT) has the power to review acts of parliament if they are unconstitutional. Its function, inter alia, is to safeguard the rule of law and the protection of human rights. I t consists of 15 judges each appointed for a 9-year term. Five of the judges were due to retire in the autumn of 2015. The president of the CT decides which judges and how many will decide which cases. The previous government (PO) had appointed five judges, two of whom the CT had subsequently ruled had not been appointed in accordance with the law. It ruled that three were lawfully appointed. PiS rushed through legislation requiring President Duda to swear in new judges before their period of office could begin and also appointing five new judges. The President refused to swear in the three whose appointment was lawful and he swore in the new five.

Decisions of the CT only take effect when published in the Official Journal of Law but PiS did not publish the decision of the CT so it could not take effect. The then –President of the CT refused to allow the three "unlawful" replacements to sit. Ziobro on the 5 April sent a letter to him saying that he would not allow any attempts by the CT to act outside the constitutional and statutory regime. It could only be subject to his scrutiny for legal compliance. The President on the expiry of his term of office was replaced by one of the new appointees. The first decision of the new President was to remove the Vice-President from his current room to another, to forbid him from meeting the media in the Tribunal building and to send him on holiday. Various other changes were made which in effect disabled the CT from performing its functions as it had before. Eventually the Venice Commission concluded that the CT decision-making process had been significantly hampered by parliament. Thereafter any decision of the CT which PiS did not like was not published and therefore could not take effect. The Helsinki Foundation for Human Rights filed a complaint in Poland that the failure to publish the judgments of the CT was a breach of the democratic rule of law in Poland. The prosecution service dismissed the complaint.

Various unpublished decisions have disappeared from the official electronic database of judgments accessible via the internet. The new vice-President said that as they were not published they were not effective and therefore to keep them on the database would "complicate legal reality". On the 27 July 2016 the European Commission found that there was a systemic threat to the rule of law in Poland.

Meanwhile the Polish Supreme Court had on the 26 April 2016 adopted a resolution declaring that the decisions of the CT took effect from the moment they were announced regardless of whether they were published in the Official Journal or not. A PiS spokesman commented that "*the message of today's position of the Supreme Court is clear. It is producing further anarchy in our country.*" There followed the so-called billboard campaign in which the judiciary were publically vilified and referred to as a "privileged caste."

In 2017 a law was passed whereby, *inter alia*, the retirement age for judges was reduced from 70 to 65. Any judge affected could apply to President Duda for an extension. P ublic protests followed and the President said he would not sign off the Act until he had looked at it further. He did so and in due course introduced a Bill to much the same effect which was duly passed.

During 2018 the reforms have been taking effect. 40% of the judges in the Supreme Court have been retired. Attempts to replace the President of the Supreme Court (Malgorzata Gersdorf) have been resisted by her on the entirely correct ground that the Constitution provides for her 6-year term of office. Judges who have asked for an extension have been refused without any reason being given.

Court presidents and vice-presidents all over the country have been dismissed and replaced, again without reasons being given.

The National Council of the Judiciary chooses candidates for judicial appointment or as presidents of courts. The enforced retirement of so many judges has created many vacancies. As a result of the reforms the members of this Council are now elected by a parliamentary majority and the Council has been reconstituted. One such member *ex officio* is Zbigniew Ziobro. Also judges may be appointed by parliament if they are supported by 25 judges or a group of 2,000 citizens. This newly-reconstituted National Council has recently been appointing judges to the newly-created disciplinary division of the Supreme Court as well as the Supreme Court. This new division will decide cases brought against judges and public prosecutors who are alleged to have behaved badly. A few first-instance judges are currently being investigated for alleged misbehaviour, "*being unable or unwilling to perform their duties in a reliable and serious way.*" The Minister of Justice/Prosecutor General has ordered criminal investigations against judges who pass judgments of which he does not approve and against judges who are critical of the reforms.

In several extradition cases, in the Republic of Ireland and now the Netherlands the issue of whether a Polish individual should be extradited to a country where the judiciary may not be independent has been referred to the European Court of Justice. Also Polish courts have themselves been referring cases for a ruling from the Court of Justice.

Earlier this year the Supreme Court referred the enforced retirement of its judges who are over 65 to the ECJ. On 19 October 2018 the ECJ ruled that the reduction of the retirement age to 65 was unlawful and it has ordered the reinstatement of the judges who were retired. On the 22 October many of those judges returned to work. However, on 11 October President Duda swore in the new judges who are to replace those who had been retired. He did this despite the Supreme Administrative Court requesting him not to do so as some of the unsuccessful candidates for the Supreme Court were contesting the validity of the selection process. Also a day or so before the ECJ announced its decision, Justice Minister/Prosecutor General Ziobro referred the question of whether Article 267 was compatible with the Polish Constitution to the Polish Constitutional Tribunal.

HH Witold Pawlak retired in March 2017 and is currently a Deputy Circuit Judge. In 2015 as an observer he attended the second of the hearings in the Constitutional Tribunal regarding the appointment of judges to that Tribunal.

AI, BLOCKCHAIN AND CRYPTO – WHAT DOES IT MEAN FOR LAW FIRMS?
ADRIAN KNIGHT (1976)

'**AI, Blockchain and Crypto – what does it mean for law firms?**' was the title of a talk which The Law Society asked Adrian Knight (Class of 1976) and two others to give at their recent *Risk and Compliance* Conference held in Leeds. The following sets out what I said in Leeds and on reflection probably what I should have also said.

Law and its relationship with concurrent technology has always been a challenge and an opportunity.

My experience of Tech 1982 – 2018

In 1984 I qualified at Allen & Overy. I have fond memories of liaising with the telex department during three months of articles in the 'Eurobond' department. Seconded to the Quotations Department of The London Stock Exchange in 1986 and 1987, I gained first-hand experience of 'Big Bang' and witnessed 'Black Monday' on the LSE's computer screens.

When I became a partner of Ashurst in 1991 I possessed neither a desk top PC nor a mobile phone. They came later. I joined Shearman in 1999 and for the first time became a daily user of a laptop. At Skadden, between 2006 and 2013, I advised a global financial and commodity derivatives marketplace (Exchange) on various matters including the purchase of three technology companies.

My principal contact at the Exchange, subsequently a Knight client, was convinced the company would get 'more bang for its buck' if it instead invested its technology budget in FinTech start-ups. It was the first time I heard the word 'FinTech'. I was told that shortly I would be able to do my business on the move entirely from my smart phone. Tablets were and soon laptops would be technology of the past.

Corporate venture capital – how corporates learn how to apply Tech

Differentiating itself from its competitors by the quality of its technology was important to the Exchange. To retain the Exchange's global leadership in trading financial and commodity derivatives the Chief Executive Officer needed to know what the Exchange's business would look like – from a technology perspective - in five, ten and twenty years' time.

My principal contact at the Exchange convinced the CEO that the company should start investing in Tech start-ups – corporate venture capital (CVC) – which was established as a separate business (Ventures) within the Exchange. The establishment of Ventures was concurrent with my move to sole practitioner status. I chose to link up with another US law firm – one specialising in venture capital and intellectual property and more used to value billing - to advise the new client. Ventures invested – principally in A and B funding rounds – in technologies expected to be compatible with the Exchange's core business. These companies included IQbit (quantum computer software), Dwolla (payments), Ripple (blockchain) and Privatar (data privacy).

CVC seeks to improve the technology and the relevant Tech understanding of the 'mothership'. One of the founders of Privatar in a former life is a good example. He managed the CVC business of a global media company. It invested in Yahoo. Although making a substantial profit on the Yahoo IPO the media company achieved greater value from Yahoo's engineers improving the 'mothership's' technology.

For any CVC business to bring value to the 'mothership' it is important to establish an investment committee which represents the key value drivers of the 'mothership's' business and for that committee to meet with the senior management of the various portfolio companies.

AI/machine learning and disruption

In 2015 in Palo Alto I attended a Ventures off-site for its investment committee. It was here for the first time that I understood the significance and potential of AI/machine learning, conducted though quantum computers.

The first speaker was a consultant to the investment committee. He gave two examples of the value that AI/machine learning had brought to medical research and insurance. He had suggested cures that academics did not disagree with and solved actuarial issues more quickly than the insurer's own team of 'human' actuaries. However, what surprised the medical academics and insurer was not the results but that 1) none of the staff 'feeding' big data into the quantum computer were medically or actuarially qualified or trained and 2) the speed in which the quantum computer achieved its results.

In London I explained my experience of Palo Alto at a meeting with a leading professional services firm. What surprised me was the partner's response. He told me that seventy per cent of the jobs in his building could be done by machine. I was not sitting in a building housing the firm's auditors but its tax specialists, corporate financiers and consultants.

For some years AI/machine learning has been used by law firms to more effectively and efficiently carry out due diligence, prepare first drafts of agreements for non-contentious work and carry out and process documents for a discovery exercise in contentious work.

Blockchain and further disruption

This process is about to be transformed by linking AI/machine technology with blockchain. Instead of efficiently transporting documents and agreements over the internet, processes are being developed where added value can be created and transferred securely.

My first connection with blockchain was in late 2016 when my principal contact at Ventures, now a partner in a US venture capital firm with a portfolio company operating in blockchain, called and asked whether I knew anyone at the Bank of England because the company wished to participate in the Bank's 'RTGS Renewal Programme Proof of Concept: Supporting DLT Settlement Models' for the Bank to understand how its renewed RTGS service could be capable of supporting settlement

systems operating on innovative payment technologies. RTGS stands for 'Real Time Gross Settlement' – effectively RTGS is the daily UK balance sheet since up to £500B is settled between banks in the London inter-bank market. 'DLT' standing for Distributed Ledger Technology, in effect blockchain.

I relied on a Trinity chum (also Class of 1976) to help direct my enquiry within the Bank. To cut a long story short, the company, now a Knight client, with probably only six employees and a similar number of individual sub-contractors, was one of only four tech companies to be invited by the Bank to participate in the POC and, as announced by the Bank in June 2018, was one of only two companies which successfully connected with the Bank's API, which simulated settlement within RTGS.

Of most interest to me was participating in the commercial meetings at the Bank. There for the first time I was able to appreciate – from a simulation the blockchain company had originally prepared for the US Commodity Futures Trading Commission and now shown to the Bank – how blockchain was able to operate and function effectively to bring greater transparency to assist regulators in getting a better understanding of the real-time movements in markets and the 'pressure points' when the Bank may be required to 'lend to the market' to effect settlement. The Bank was better able to appreciate how blockchain could effectively transfer payments between banks inter se and between them and the central bank, all on a secured basis. Utilising blockchain, the client has demonstrated – through this simulation – how it should be possible to disrupt how payments are processed and settled compared to the traditional basis by way of the conventional SWIFT system.

Disruption in law

Immediately one understood the possibilities for disrupting other services apart from payments, including law.

Each senior partner/management committee of a law firm in 2018 has a similar quandary to the CEO of the Exchange in 2013. What will the business of law look like – from a technology perspective - in five, ten and twenty years' time?

Having spoken with entrepreneurs who are active in the AI/blockchain space, it would appear to be only a matter of time in non-contentious work for AI/blockchain to permit not just the preparation of a first draft of the agreement but 'machine lawyers' of two firms or two legal Tech companies will be able to negotiate and agree a 'machine completion' final draft permitting principals and 'human lawyers' of the two firms or legal Tech companies to spend a couple of days effecting 'human completion'. This is probably not five years away. I expect it will be quite common place in twenty years, possibly in ten years.

AI/blockchain disruption will not be limited to non-contentious work. Traditionally insured persons and insurers have generated much contentious work. With co-founders from insurance and tech, I am working on data privacy and the InsurTech app (based out of Trinity's Bradfield Centre on the Cambridge Science Park).

From my InsurTech perspective I was interested in seeing whether dispute resolution could be effectively resolved by a 'bot'. With a former law firm I visited an arbitration tribunal to ascertain whether there was interest in an 'arb-bot', work in progress being the realistic outcome of those discussions. My former firm suggested Asia, either Singapore or Hong Kong, with its greater zeal for disruption, would be more likely to be interested in an 'insur arb-bot'. During the summer Radio 4's *Today* carried an item regarding a possible 'judge-bot'. Realistically London based 'bots' for resolving contentious matters are likely to be at least ten years' away.

Law firms – Tech projections for next five, ten and twenty years

- Life for law firms will rapidly change because of AI/blockchain.
- Existing business models will not exist in twenty years' time, probably not in ten years' time.
- Both non-contentious and contentious work will be affected.
- The Law Society and SRA expect to implement further changes to their rules and regulations to implement law Tech.
- HMG though Justice Ministry in due course will rely upon 'bots' in dispute resolution to reduce costs of legal aid and costs of administering justice in the lower courts.
- By 2038 'bots' will decide High Court cases, with 'human judges' generally restricted to handling appeals to the Court of Appeal and Supreme Court.
- English Law and London courts must ensure they keep global leadership for common law dispute resolution because of the threat of Asia and its enthusiasm for Tech.
- English Law and London courts to consider practicalities of giving judgement in civil law disputes from other EEA jurisdictions. Leading civil law firms open an office in London more because of transparency, integrity and speed of London dispute resolution rather than London's role in capital markets (capital markets themselves likely to be disrupted by AI/blockchain).
- Law firms charging principally by hourly billing rates will be gone within ten years. Clients happy to pay for success. Value billing *de rigueur* within ten years.
- Law firms will expand into other parts of the value chain such as general and commercial advisory (General Work). Possibly bankers and lawyers working together in a professional services firm. May require The Law Society and SRA to seek changes to the FSMA Regulated Activities Order.
- Need approval of professional indemnity insurers. InsurTech probably the answer.

- Bigger law firms (and smaller firms by aggregating resources through local law societies) should do their own 'Ventures' (at the Bar a possible Lincoln's Inn 'Ventures'?) and be willing to invest in law Tech start-ups. Lawyers underestimate the desire of Tech start-ups to work on real not just theoretical situations by collaborating with law firms.
- 'Ventures' a better investment for law firms than simply paying big bucks to a professional services firm to top and tail a consultants' report previously provided to other law firms.
- Simply appointing a Head of Innovation but retaining the existing governance and capital structure of the law firm no longer sufficient for effective disruption.
- When will the SRA authorise and regulate 'Amazon Law' (or a Chinese equivalent)? With its 'Amazon cloud' Amazon has demolished UK High Street Retail. Why not also UK Services, particularly UK law?
- Difficult for any law firm to self-disrupt – too many vested interests – in addition to 'Amazon Law' SRA to authorise and regulate law Tech companies within ten years' time, possibly five. Amazon more likely to continue its disruption of Retail but this time concentrating on Retail law so more B2C disruption. Law Tech companies more likely to affect by way of B2B disruption.
- Law Tech companies would probably only need ten partners/forty non-partners supported by quantum computers. Look what has happened in social media. Edward Luce in *The Retreat of Western Liberalism,* when describing the consolidation of big data and social media, highlights the relatively small number of people involved. YouTube had only sixty-five employees when acquired by Google. Instagram and WhatsApp having thirteen and fifty-five employees respectively when each acquired by Facebook.
- Finally, how long can certain Magic Circle firms continue with around 500 partners and 5000 staff without changing their business model to take account of tech and General Work? Does the Magic Circle firm become the 'mothership' with various connected legal Tech companies operating off the 'mothership's' Platform?

However, the future is not entirely negative.

In 2016 I attended in a conference in Tel Aviv - given by the state fintech and biotech body – the Israel Advanced Technology Industries - the opening remarks were given by the CEO of Microsoft Israel. I may be slightly 'out' on his numbers and years quoted but you will get the point I am trying to make:

'…the Bad News?… 175 careers which exist today will disappear in twenty years' time….the Good News?….125 of the careers that will exist in twenty years' time do not yet exist today…'

THE "LEARNING TOGETHER" PROJECT, AMY LUDLOW (2005)

Learning Together brings together people in criminal justice and higher education institutions to study alongside each other in inclusive and transformative learning communities. Partnerships provide higher education opportunities for people to study together, and learn with and from each other through dialogue focussed on academic content and the sharing of relevant experiences. Courses are academically rigorous and their design and the delivery builds upon and, through evaluation, advances educational, sociological and criminological research and best practice. We collaborate nationally and internationally through The Learning Network, which has a common vision, mission, strategy and a common set of core purposes and values. Our learning communities aim to be individually aspirational and socially transformative. They provide progression and pipeline opportunities for learners to nurture individual growth and to challenge social disadvantage as a barrier to learning.

At Cambridge, we now have partnerships with three prisons - HMP Grendon, Warren Hill and Whitemoor. We offer an increasingly wide range of courses - from 'Hands on Proability' to creative writing, 'French Film and Literature', philosophy and ethics, legal research, criminology, a reading group, study skills group and an interdisciplinary 'Big Ideas' seminar series.

We've just created some bursaries for our prison based LT students to come at study a Level 4 (UG Certificate) at Cambridge through ICE either post-release or on day release from prison in open conditions: https://www.timeshighereducation.com/news/prisoners-get-bursaries-study-cambridge With the support of the VC, we are working towards the delivery of a full Cambridge degree inside, working hard at the minute to push the boundaries with computer technology in prison to forge the path that might make this possible.

On 21 October we are all running the Great South Run to fundraise for travel bursaries for students with low incomes to be able to join us for LT events. Running with the family members of some students, CJ practitioners, policymakers etc in Portsmouth with sister runs in Grendon, Whitemoor and Warren Hill. https://uk.gofundme.com/LearningTogetherCambridge

For more information about the Learning Together project, see www.ccgsj.crim.cam.ac.uk/LT/What and the blog - https://learningtogethercambridge.wordpress.com
The project was featured on the Today programme, BBC Radio 4 on 12 October at around 7.45. You can "listen again" on iplayer: www.bbc.co.uk/programmes/b006qj9z

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