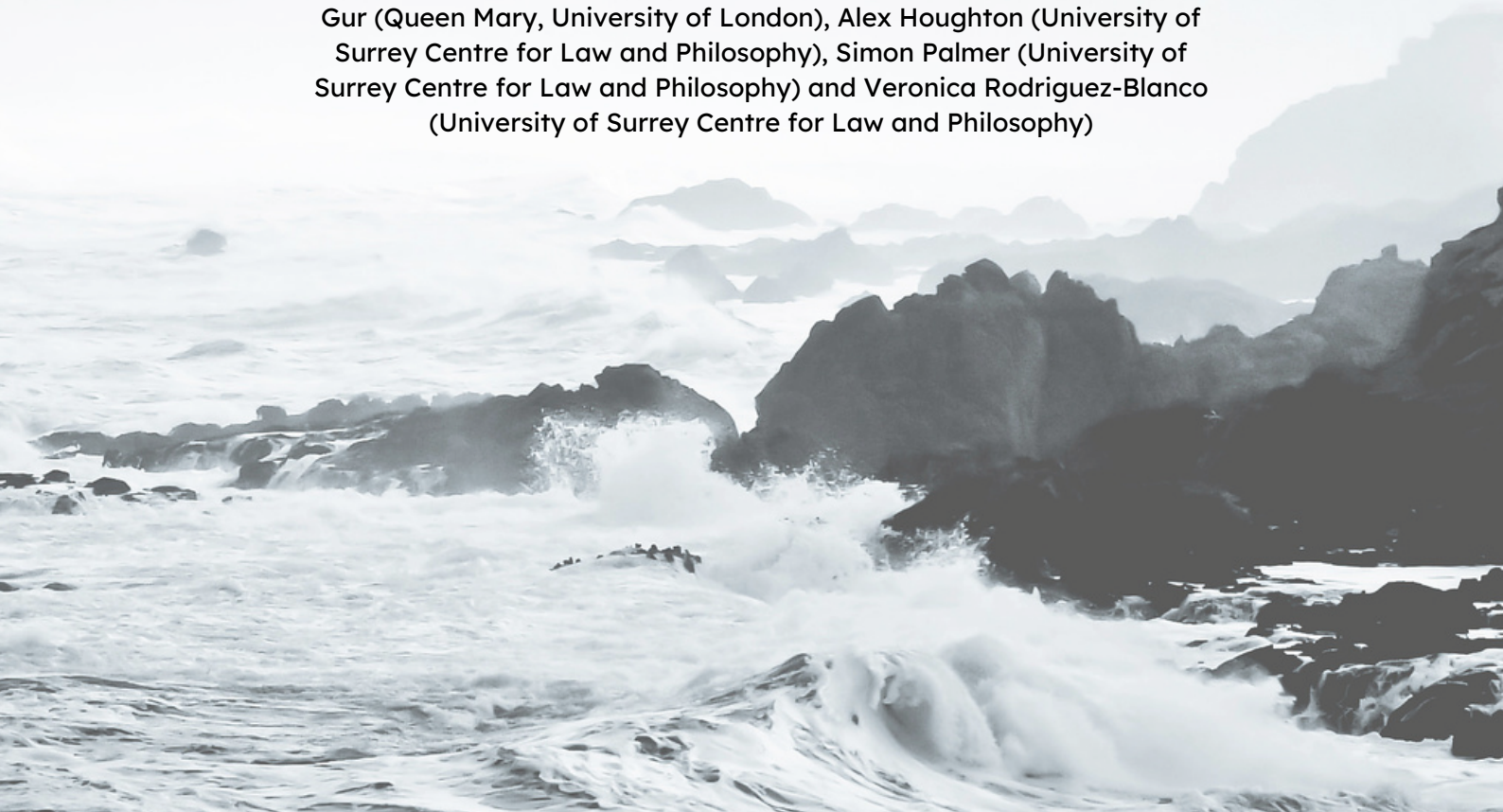
IVR-UK 2022 Conference e-brochure

Law, Rationality and Practical Reason: Ancient and Contemporary Perspectives

June 10th - 11th, 2022

Registration (free, but required) at:
Eventbrite (click here)

Organising Committee: Antony Hatzistavrou (University of Hull), Noam Gur (Queen Mary, University of London), Alex Houghton (University of Surrey Centre for Law and Philosophy), Simon Palmer (University of Surrey Centre for Law and Philosophy) and Veronica Rodriguez-Blanco (University of Surrey Centre for Law and Philosophy)



Day 1 Schedule, June 10th (clickable for Zoom links)

	Session 1	Session 2	Session 3	Workshops
9.15-10.45	Plenary 1	Terence Irwin (University of Oxford and Cornell University)	'Morality as Law'	
11.00-11.45	Akos Tussay (University of Public Service, Budapest): 'Nomos and Logismos in the Tarantine Archytas' Thought'	Shivprasad Swaminathan (Jindal Global Law School): 'Polycentricity and Analogical Reasoning in Law'	Martin Brenncke (Aston University, Birmingham): 'Rationality and Reason in Behaviourally Informed Consumer Law'	**Workshop**: 'Economic Rationality and Practical Reasonableness' **11.00-11.35:** Giovanni Tuzet (Universita Bocconi): The fundamental scheme of Law & Economics and the rationality assumption
11.45-12.30	Rene de Nicolay (University of Zurich): 'Extraordinary Circumstances in Cicero's Theory of Law: Rule-Exemption or Rule-Specification?'	Cecile Degiovanni (University of Oxford): 'The Puzzles of Negative Incompetence'	Markus Kneer (University of Zurich): 'Reasonableness, Rationality, and the Law'	**11.35-12.10**: Peter Cserne (University of Aberdeen): The problem of motivational assumptions in economics and law
12.30-13.15	Ashley Lance (University of Cambridge): 'Pericles as "Phronimos" in Book VI of the Nicomachean Ethics'	Josh Pike (University of Oxford): 'The Law Does Not Exist To Guide Us'	Niek Strohmaier (Leiden University), Marc-Andre Zehnder (University of Zurich), and Markus Kneer (University of Zurich): 'The Biasing Effect of Bad Character Evidence on Mental State Ascription and Legal Judgments'	**12.10-12.45**: Diego M. Papayannis (Universitat de Girona): Reasonable care and exclusionary reasons in tort law **12.45-13.20**: Felipe Figueroa Zimmermann (University of Warwick): Why can't we be friends? Balancing epistemic values between Law and Economics
13.15-14.00	Lunch	Lunch	Lunch	Lunch
14.00-14.45	Laura Bevilacqua (University of Chicago): 'How did the Romans Establish Whether Something was Appropriate?'	Alma Diamond (New York University): 'Membership as Authority'	Levin Guver (University of Zurich): 'Misascription of Action-Descriptions'	**Workshop**: John Gardner's *Torts and Other Wrongs* **14.00-14.45:** Sari Kisilevsky (Queens College CUNY) **14.45-15.00:** Break.
14.45-15.30	Jyl Gentzler (Amherst College): 'The Rationality of Justice: Thrasymachus' Challenge Revisited'	Nina Varsava (University of Wisconsin): 'Derivative Recognition and Intersystemic Interpretation'		**15.00-15.45**: Avihay Dorfman (Tel Aviv University) **15.45-16.30**: Claudio Michelon (University of Edinburgh)
15.30-15.45	Coffee Break	Coffee Break	Coffee Break	Coffee Break
15.45-16.30	Lavinia Peluso (Fondazione Collegio San Carlo di Modena & Universite Jean Moulin): 'The Rule of Law as the Rule of Reason: the Second-Best Solution of Plato's Laws'	Barbara Baum Levenbook (North Carolina State University): 'Supplanting Defeasible Rules'	Danae Azaria (UCL): 'Not All State Silences 'Speak': A Theory of (Non-)Communicative State Silences'	
16.30-17.15	Iman Roohnavaz (CSU Stanislaus, California): 'Virtuous Law: Plato on Law and the Development of Virtue'	Ezequiel Monti (Universidad Torcuato Di Tella, Argentina): 'An Accountability First Account of the Normativity of Law'	Gustavo A. Beade (Universidad Austral de Chile): 'Public Blame as Vigilantism? Recasting the Idea of Blame as Persuasion'	
17.30-19.00	Plenary 2	Melissa Lane (Princeton University)	'Did the Greeks believe their lawgivers invented law?'	

Day 2 Schedule, June 11th (clickable for Zoom links)

	Session 1	Session 2	Session 3	Workshops
9.15-10.45				
11.00-11.45		Eric Boot (Tilburg Law School): 'The Public Interest and the Law'	Benjamin Newman (Tel-Aviv University): 'Plea-Bargaining with Wrong Reasons: Coercive Plea-Offers and Responding to Wrong Kind of Reasons'	
11.45-12.30	Tom Bailey (LSE): 'Ambiguous Sovereignty: Political Judgment and the Limits of the Rule of Law in Kant's Doctrine of Right'	Claudia Wirsing (Technische Universität Braunschweig): 'Recognition and Legal Authority'	Emmi Kiander (University of Helsinki): 'Security as a Rationale of Criminal Law – the Backwards Logic of Preventive Punishment'	
12.30-13.15		Andreas Marcou (UCLan Cyprus): "Illiberal Democracy' in Europe and Populist Threats to the Rule of Law'	David Edward Campbell (University of Oxford & UCL): 'The Curious Case of Self-Defence'	
13.15-14.00	Lunch	Lunch	Lunch	Lunch
14.00-14.45	Xi Zhang (New York University): 'Are Reasons of Partiality Deontic?'	Kacper Majewski (University of Oxford): 'Jurisprudence for Cats'	Andreas Vassiliou (University of Oxford): 'The Normativity of Law: Has the Dispositional Model Solved our Problem?'	**Roundtable Discussion:** George Duke's *Aristotle and the Law: The Politics of Nomos (14:00-17:15)* **Author** George Duke (Deakin University) **Commentators** Myrthe Bartels (University of Pisa) Thornton Lockwood (Quinnipiac University) Steven Skultety (University of Mississippi) David Riesbeck (Purdue University)
14.45-15.30	Yohan Molina (Pontifica Universidad Catolica De Chile): 'On Peter's Conception of Normative Facts and Reasons'	Manish Oza (University of Western Ontario): 'Fictions in Legal Reasoning'		**Workshop**: John Gardner's *Torts and Other Wrongs* (continued) **14.00-14.45:** Adam Slavny (University of Warwick) **14.45-15.00:** Break. **15.00-15.45**: Paul B. Miller (University of Notre Dame) **15.45-16.30**: Haris Psarras (University of Southampton)
15.30-15.45	Coffee Break	Coffee Break	Coffee Break	Coffee Break
15.45-16.30		Pedro Caballero Elbersci (Monterrey Institute of Technology Higher Education): 'On the Ontology of Legal Norms: Abstract Entities Grounded in the Practical Attitudes of Participants'	Hochan "Sonny" Kim (University of Princeton): 'Distributive Injustice and Structural Entrapment'	**Roundtable Discussion:** George Duke's *Aristotle and the Law: The Politics of Nomos (continued).*
16.30-17.15		Steve Chan (University of Houston): 'Ignorance Explanation for Hard Choices'	Hannah Widmaier (UCLA): 'Civic Obligations Among Victims of Injustice: On Shelby's Idea of Reciprocity'	
17.30-19.00	Plenary 4	Kimberley Brownlee (The University of British Columbia)	'The Razian Elephant in the Room: When Do Interests Give Rise to Rights?'	

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- John Gardner's *Tort's and Other Wrongs* 44
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Condensed Schedule with Links to Abstracts

Plenary Lectures

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14.00-15.30	Discussion
15.30-15.45	Break
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Author: George Duke (Deakin University)

Commentators: Myrthe Bartels (University of Pisa),Thornton Lockwood (Quinnipiac University), Steven Skultety (University of Mississippi), David Riesbeck (Purdue University).

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Melissa Lane (Princeton University)
Did the Greeks believe their lawgivers invented law?

This lecture explores the figure of the lawgiver in classical and post-classical Greek thinking, arguing that the great lawgivers were depicted in terms of their systematic selectivity in promulgating laws that could (re)shape social norms. Such selectivity meant that the figure of the lawgiver did not create laws from scratch, but rather, presupposed their social evolution both in the polity in question and elsewhere. In other words, I argue, the Greeks figured the lawgiver not as a *protōs heuretēs* but rather as what I shall dub a *protōs hairetēs*: not as a first inventor but as a first chooser or selector.

Systematic selectivity could involve borrowing laws from other polities, as lawgivers including Lycurgus, Solon, Charondas, and even Zaleucus were said by at least some classical authors to have done; alternatively, it could involve inverting laws existing elsewhere to achieve the opposite effect, as Xenophon described Lycurgus as having done. Building on Karl-Joachim Hölkeskamp's study of the fourth-century BCE philosophical delineation of the figure of the lawgiver (against the varied backdrop of the actual emergence of Greek laws), this lecture relates to debates about the ultimate originator of laws in a given polity (or in Greek polities overall); the role of colonization and the borrowing of laws in that context; the technology of writing as a means for promulgating laws; and the role of the gods in inspiring various lawgivers.

Kimberley Brownlee (The University of British Columbia)
The Razian's Elephant in the Room: When Do Interests Give Rise to Rights?

Many legal theorists and political philosophers – myself included – rely on Joseph Raz's version of the interest theory of rights: we use rights-talk when we believe that some person's interest has sufficient moral importance to justify holding others to be under specific duties to serve that interest. Sometimes the specified duties are purely moral, but often they're presumptively legal too. When we rely on Raz's interest theory we tend not to dwell, however, on the fact that we can conceive of the moral importance of interests in different ways which yield different answers to the question of whether those interests generate rights. This paper explores four factors that can alter our assessment of the moral importance of interests. These four factors represent challenges that must be grappled with if we are to draw determinate boundaries around rights-generating interests, especially in key areas such as human rights law. First, when assessing the moral importance of an interest, should we take into account whether it is *possible* to secure that interest? Second, should we consider an interest in isolation from a person's other interests or in aggregation with some of her other interests, thereby allowing that individually unimportant interests could aggregate to form morally important bundles that generate rights? Third, should we focus on *types* of interest or on *token* interests? For instance, in the case of marriage, should we focus on the fact that adults have a type-interest in being able to marry or on the fact that many women (and girls) lack token-interests in being able to marry? Fourth, should we take into account a person's own perspective on the importance of her different interests? This lecture will unpack these four challenges and consider the pros and cons of possible solutions.

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Akos Tussay (University of Public Service, Budapest):

'Nomos and Logismos in the Tarantine Archytas' Thought'

Abstract: Archytas of Tarentum, a contemporary of Plato, was one of the last major ancient Pythagoreans, one who was credited with solving the Delian problem, and who is mostly considered as an ancient authority on mathematics and harmonics. This picture of Archytas is somewhat challenged by the sheer existence of some spurious ethical fragments, such as the five passages of *On Law and Justice*, which came to us under Archytas's name, and by those ancient testimonia (Cic. *Senect*. 12.39–41; Ath. 12.64–65) which describe the events of a dialogue between Archytas and a Sicilian hedonist, Polyarchus, over the use of aretē in general and dikaiosynē in particular. To these, one may add some of Phillip Sidney Horky and Monte Ransome Johnson's recent findings (*Early Greek Ethics*, OUP 2020) which elaborate on Archytas's contribution to the so-called nomos-physis problem and his indirect authorship of *On Law and Justice*, preserved in Stobaeus's fifth-century *Anthology* (Stob. 4.1.135–138; 4.5.61).

In this paper, I focus on Archytas's surviving works from a legal perspective mostly by way of drawing a parallel between the arguments of the genuine Fragment 3 (Stob. 4.1.139) and the five passages of *On Law and Justice*. In my opinion, Fragment 3 clearly serves as the counterpart of Polyarchus's position, for, while in Polyarchus's account the lawgivers wanted to level society and wrote laws about our mutual dealings that our conditions be equal, and hence they waged war against the clan of those who wanted more, according to Archytas, society is established by the very realisation of numerical calculation by which pleonexia is subdued and proportional equality is brought about. In short, numerical calculation, a specific mental exercise, is the key both to one's mastery over pleonectic desires and the community's ability to maintain homonoia.

I argue, that *On Law and Justice* picks up the thread right at this point for its second passage labours to show that not any kind of law is capable of educating one's soul in such a manner that may eventually bring an organised living about, but only those laws which are equitable, effective, and beneficial to the political community. In conclusion, those laws which are compliant with nature, that is, those which imitate the justice of nature.

Rene de Nicolay (University of Zurich):

'Extraordinary Circumstances in Cicero's Theory of Law: Rule-Exemption or Rule-Specification?'

Abstract: The present paper aims to address a philosophical problem with historical and philological implications: the question of Cicero's reception of Plato's critique of law in the Statesman (Pol.294a10-295b5; cf. also Laws 875c6-d2) – or lack thereof. The question was asked almost thirty years ago by Ferrary 1995, with no definitive solution; the present paper takes up the dossier and offers a (qualifiedly) negative answer: Cicero did not take up Plato's critique, offering instead a law-based account of political decision, even in exceptional circumstances.

Philosophically, the question is whether Cicero's legal thought is rule-based: did he deem that exceptional circumstances resist being addressed by applying rules, or did he rather think exceptional circumstances call for an adjustment, but not a jettisoning, of rules?

The first position would be in line with Plato's critique of law: in the Statesman, Plato argues that empirical reality is too shifty and variegated to lend itself to being captured by general rules(see on this point Lane 1995; Schofield 2006; El Murr 2014; Peixoto 2019; Trivigno 2021; Horn 2021). The second stance, however, would put Cicero closer to the Stoic conception of law and duty (Vogt 2021; but see contra Visjnic 2021): cosmic reason is formulated in the form of universal rules of reason (νόμοι); exceptional circumstances (περίστασεις) require the application of special rules, but of rules nonetheless. The rule-based nature of Cicero's legal thinking has been recently argued by Straumann 2016, and contested by Schofield 2021: the present paper wishes to shed light on the debate.

I argue that evidence from the treatises (De Re Publica, De Legibus, De Officiis) and the speeches (Pro lege Manilia, the Philippics) suggests that, for Cicero, even exceptional circumstances can be subsumed under rules – rules of reason, or natural law. I focus on one example: the assignment of extraordinary commands to Cassius and Brutus in 43 (Phil. 11.28) which, while breaking positive legislation, is justified in terms of rational lex. This positive argument is supplemented by a negative one: there is no trace, in Cicero's thinking, of the Platonic view that the law is second-best; on the contrary, right reason is presented as expressed in legal form (De Rep. 3.33 Ziegler). Ultimately, this absence is due – I suggest – to a change in metaphysical framework between Cicero and Plato: Cicero does not take up, at least in his political theory, the Platonic distinction between intelligible, rational principles and an ever-shifting sensible reality. This, I argue, was missed by Ferrary 1995, and explains Ferrary's Platonizing interpretation of Cicero's theory of law.

Solving this philosophical problem sheds light on a historical question of primary importance, Cicero's attitude towards extraordinary commands (imperia extra ordinem), which played a key role in the fall of the Roman Republic; and on a philological problem, that of Cicero's reception of Plato's political thought. While Cicero's knowledge of the Republic and Laws is undoubtable, his lack of reference to the Statesman is significant, and hints to a paradigm shift in the history of legal thinking.

Ashley Lance (University of Cambridge): 'Pericles as "Phronimos" in Book VI of the Nicomachean Ethics'

Abstract: Book 6 of the NE is an attempt to categorize what Aristotle calls the intellectual virtues. Of these intellectual virtues special attention is paid to phronesis – which for the purpose of this paper will be translated as "practical wisdom" – and its role in decision making for the state. In defining phronesis, Aristotle points to Pericles as someone who "we" would think of as the model for the phronimos person. Notably, Pericles is the sole historical exemplar of this virtue. Problems arise when considering the tension between Pericles as phronimos and the contested historic understanding of Pericles as an imperfect enactor of policies. Even in Aristotle's other works where he is referenced the considerations on his character are balanced rather than uncritically praised. Other contexts, including opinions of Pericles closer to his own time as well as in the Platonic context draw harsher criticisms against him, which in the latter goes so far to question if it can be said that Pericles has knowledge at all. This paper will consider the weight of Pericles as the sole exemplar of phronimos, and how persuasive he might be to Aristotle's audience. How is it sufficient for Pericles to be called a phronimos if he only appears to act virtuously some of the time? At the same time, how does this affect the audience who are supposed to easily see examples of phronesis when they are named, and what state do they have to be in order to recognize a phronimos?

This paper answers these questions by briefly sketching out Aristotle's remapping of the soul and how it helps him categorize phronesis and Pericles as phronimos. I then consider the opinions and characterizations the audience and Aristotle might have about Pericles. From these opinions and characterizations, I argue that a clearer understanding of who the audience might be helps us alleviate the tensions between Pericles as a historical figure and Aristotle invoking him as phronimos.

Jyl Gentzler (Amherst College): 'The Rationality of Justice: Thrasymachus' Challenge Revisited'

Abstract: In Plato's Republic, Socrates defends the rationality of the life of justice. The challenge to defend justice is first posed by Thrasymachus, whose own rationality is almost unanimously dismissed by scholars. My paper is a defense of Thrasymachus.

It's not that I endorse injustice. Far from it. I try to be just and work to create a society characterized by social justice. But I argue that Thrasymachus is right to suggest that the conceptions of justice articulated by Cephalus, Polemarchus, and

Socrates before he enters the conversation are either hypocritically self-serving or hopelessly naive within the context in which they are uttered. Cephalus owned a factory that supplied Athens with armaments used to fight Sparta, but also to put down revolts against her own allies. Thrasymachus was a native of Chalcedon, a small colony, that was besieged and plundered by Athens during the war. As Thucydides describes vividly, the world of the lengthy Atheno-Peloponnesian war consisted of sheep and shepherds–the weak and the strong–where the strong consistently preyed on the weak, sometimes, but not always, appealing to considerations of justice to justify their predation. Within this context, to strive to be genuinely just is, as Thrasymachus puts it, "noble simplicity"--one "nobly" ends up being easier prey for the predators who are everywhere.

How then can we persuade people like Thrasymachus to live a life of justice? I argue that this is the wrong question to ask. We who have the luxury to think deeply about this question will find it easy to endorse a life of justice. In our privilege, we are buffered against the significant costs that justice, as we have defined it, might require. Rather than coming up with a priori arguments to convince others to follow these norms, we must first figure out whether the norms that we are advocating are truly just or whether instead they are biased in our own favor. Even if these norms are truly just, it would nonetheless be wrong in the actual unjust world to persuade those who are disadvantaged to conform to norms that would further disadvantage them. Instead, like Plato, we should try to figure out how to create a world in which moral cynicism doesn't get a rational foothold. For, in such a world, justice actually does pay for everyone.

That, I argue, is what Plato actually sets out to do in the Republic, despite millennia of intellectual distraction caused by Glaucon and Adeimantus' aristocratic reformulation of the challenge. During these same millennia, we have also gained significant insights. Humans around the world have engaged in many diverse experiments in human living, albeit with great costs to humans and other creatures, that have yielded important insights– insights that will help us to meet Thrasymachus' important challenge to the rationality of justice.

Lavinia Peluso (Fondazione Collegio San Carlo di Modena & Universite Jean Moulin):

'The Rule of Law as the Rule of Reason: the Second-Best Solution of Plato's *Laws*'

Abstract: According to the usual interpretation, Plato's Laws indicate a substantial change in his political thought, namely, that the rule of law represents the best possible political order. Based on this interpretation, Plato seems to have changed his mind compared to the philosophical government of the Republic. Whether one opts for a unitary or a developmentalist reading of Plato, there are differences at least in approach and perspective. As far as I am concerned, I do not think that Plato has changed his mind about the aim of politics, that is, virtue, but I believe that there is some change of perspective in his political dialogues about the tools through which society can attain virtue. In this presentation, my purpose is both to sketch the political project and the notion of law that Plato introduces in the Laws, and to make a comparison with the Republic. While the latter has been studied by almost all Plato's readers, the Laws have been put on the back burner by scholars; thus, it is necessary to take it into a renewed account. Now Plato presents a second-best solution based upon the rule of law given the unlikelihood of realizing the philosophical government of the Republic; he copes with the practical problems imposed by his own sociopolitical background and tries to conform his philosophical ideal to a context favorably disposed to democracy. Nonetheless, this does not mean Plato to reject the paradigm of the Republic as the best possible political order.

First, in order to frame the dialogical context of the political project of the Laws, I will argue that Plato speaks from a pragmatic and demotic point of view - that is, he does not speak from a purely philosophical standpoint as in the Republic. This shift of perspective leads him to recognize as valuable a different political project which is grounded upon the rule of law (nomos). Secondly,

I will claim that Plato conceives the rule of law as the means by way of virtue can be acquired. Indeed, laws are conceived as edicts of reason, that is, as the product of the distribution of reason (nous) in our public and private life (Leg. 644d1-3, 713e8-714a2). Law serves both the purposes of conducting citizens to attain virtue and that of establishing the correct hierarchy among citizenry. Third, I will hold that nonetheless Plato has not renounced to his ideal of the philosophical government of the Republic and that the rule of law is just a second-best solution (Leg. 739b8-e1, 875c-d); in fact, its limit relies in the fact that it cannot consider and foresee every situation given its fixed written form, as Plato asserts also in the Statesman (Pol. 294a). Therefore, if a natural genius had the chance to assume a position of absolute control over a state, he would have no need of laws to control him. Knowledge is unsurpassed by any law, as Plato asserts in the Republic and restates in the Laws.

Iman Roohnavaz (CSU Stanislaus, California):

'Virtuous Law: Plato on Law and the Development of Virtue'

Abstract: According to Plato in the Laws, the lawgiver always must have virtue in mind as his ultimate goal. Although it is an admirable goal, one, especially in our age, may struggle to understand how laws that are supposed to obligate us to do or refrain from some actions make people virtuous, which requires a transformation of one's whole character. Christopher Bobonich, and Julia Annas, respectively, in some parts of their works, Plato's Utopia Recast (2002) and Virtue and Law in Plato and Beyond (2017), addressed the mentioned issue. Bobonich focuses on the rational aspect of the laws as a necessary element for cultivating virtues. Annas, though, sees the non-rational aspect of the laws as another essential element for the development of virtues. However, she interprets the non-rational aspect in a way that leads to some problems for Plato. Considering the two scholarly works, I argue for the importance of the special relationship between the lawgiver and the laws on the one hand and the citizens, on the other hand; a unique relationship primarily manifested in preambles. That is a relationship based on friendship or love, enabling citizens to become as virtuous as possible. In other words, friendship or love is the necessary condition of the possibility of becoming virtuous in Plato's Magnesia.

Day 1, Session 2

Chairperson: Kenneth Ehrenberg (University of Surrey)

11.00-11.45	Shivprasad Swaminathan (Jindal Global Law School): 'Polycentricity and Analogical Reasoning in Law'
11.45-12.30	Cecile Degiovanni (University of Oxford): 'The Puzzles of Negative Incompetence'
12.30-13.15	Josh Pike (University of Oxford): 'The Law Does Not Exist To Guide Us'
13.15-14.00	Lunch Break

Chairperson: Noam Gur (Queen Mary, University of London)

14.00-14.45	Alma Diamond (New York University): 'Membership as Authority'
14.45-15.30	Nina Varsava (University of Wisconsin): 'Derivative Recognition and Intersystemic Interpretation'
15.30-15.45	Coffee Break
15.45-16.30	Barbara Baum Levenbook (North Carolina State University): 'Supplanting Defeasible Rules'
16.30-17.15	Ezequiel Monti (Universidad Torcuato Di Tella, Argentina): 'An Accountability First Account of the Normativity of Law'

Shivprasad Swaminathan (Jindal Global Law School): 'Polycentricity and Analogical Reasoning in Law'

Abstract: On the standard picture of analogical reasoning—presupposed by adherents and sceptics of the technique alike—the relevant past case is the 'source' from which one analogically reasons to the 'target' i.e. the present decision. The standard picture has it that the normativity of the technique is held in orbit either by a 'rule' inherent in the past case (as the 'rule rationalists' would have it) or the judge's knack to project a strand of relevance from the past case to the decision in the case at hand (as the 'particularists' would have it). The sceptics deny that the standard picture could sustain normativity of either kind.

Drawing upon the idea of decisional polycentricity in Michael Polanyi's sense of the term— not Lon Fuller's unrelated 'substantive' polycentricity—this paper proposes a normative model of analogical reasoning in the common law that turns the standard picture on its head. Polycentricity in Polanyi's sense is a method of decision-making where independent judges decide cases, not by referring to some common blueprint or objective standards, but rather, by learning to anticipate (by a form of tacit knowledge) what is likely to pass muster with the legal community. And having done so, fall back on a shared fund of past responses (precedent) so as to be able to persuade the community. This picture does not entail an 'unconstrained' decision since the judge uses tacit knowledge of common expectations to anticipate what is likely to be acceptable to the legal community. A past case is then picked (hence it is the 'target' on this model) to be used as an 'example'. The solution proposed to the case at hand is shown to be sufficiently similar to one reached in a past case; and the past case being thought reasonable counts in favour of the proposed solution. This account recharacterizes what is miscalled 'analogical' reasoning for the 'exemplary' reasoning (the past case is used an 'example') that it really is, with its roots in philosophical rhetoric (not in the pejorative sense that sceptics like Richard Posner use it). Exemplary reasoning was an essential element of ancient rhetoric, which, in turn, was regarded as a respectable component of the philosopher's repertoire.

The polycentric model also eschews a doubtful presupposition of the standard picture, namely, that of the static nature of the legal past. The standard picture presupposes that either the rule or point of relevance inherent in the past source analogue are normatively constraining because they can be objectively known in advance (i.e. before the present case comes up for decision). Without this assumption of staticity, the 'past source-present target' rubric cannot really get off the ground. The polycentric account, in contrast, conserves the moving nature of the legal past by postulating a reverse direction of fit between the case at hand (source) and case invoked (target).
On this account, therefore, each new decision creates its own precursors—which would account for the malleability of rationes in past cases and the role played by the judge deciding the present case, in fixing them.

Cecile Degiovanni (University of Oxford): 'The Puzzles of Negative Incompetence'

Abstract: In many constitutional democracies, negative incompetence (NI) is prohibited. Parliaments must make full use of their powers: they cannot, out of omission, indetermination or explicit delegation, delegate them to other institutions. This prohibition is often justified on democratic grounds and applies particularly in the realm of human right. This raises at least three puzzles. An empirical one: why would Parliaments be guilty of NI? Section 1 considers several possible motivations. A second puzzle is normative: how can one democratically justify preventing the representatives of the people from doing what they want with their powers? Section 2 shows how NI amounts in fact to a certain kind of positive incompetence (PI), and is thus as democratically condemnable as other PI. The third, institutional puzzle concerns democracies which both prohibit NI and allow for a strong judicial review. Why do they require Parliaments to have the first word, if they are not to have the

last one anyway? Section 3 suggests that these two features make most sense together if we endorse a somewhat Aquinian understanding of human rights.

In both sections 2 and 3, I adopt a Dworkinian interpretive approach, trying to offer an interpretation of basic principles that puts the whole system "in its best light" and finds consistency behind apparent paradoxes. This interpretive stage can then give way to a "post-interpretive" stage: how should institutional practices evolve to best match the interpretation just offered? Section 4 suggests three adjustments. First, if indeed NI amounts to PI, supranational courts such as the European Court of Human Rights, when confronted to a case where Parliament did not take a clear stance, should sanction it at the stage of the legality test, without going further into the proportionality test. Second, again if NI does amount to PI, national judges should have no scruple in invalidating statutes on NI grounds. In so doing, they are accomplishing their least contestable function, as guardians of the procedural constitution. Thirdly, if indeed an Aquinian understanding of human rights law makes best sense of apparently conflicting constitutional features, constitutional judges should not try to identify the best human rights answer to a problem. They should only check whether the answer provided by Parliaments was an acceptable one. In fact, they should more or less apply to their own country the idea of "margin of appreciation" that is currently applied at the European level.

Josh Pike (University of Oxford): 'The Law Does Not Exist To Guide Us'

Abstract: It has become a popular view in jurisprudence that the law exists to guide us. The aim of this article is to cast doubt on this popular view. I will argue that it is plausible to think that the law does not necessarily exist to guide us. I do this while accepting that the law is necessarily normative. The argument is qualified in two key ways, however. The first is that by 'guidance', I have in mind a certain kind of interaction between people and the law, an interaction that (at least partly) occurs in people's minds. The second is that, in arguing that it is plausible to think that the law does not necessarily exist to guide us, I do so from the premise that the law necessarily aims to be a supreme normative authority.

Whilst qualified in this way, the upshot of the argument is significant. Viewing an attempt to provide guidance so understood as a necessary or central feature of the law gives rise to some valuable functions that the law can aspire to achieve by guiding, as well as a distinctive mode of operating that some think has inherently valuable qualities. We get to say, for example, that the rule of law provides some necessary constraints on how laws should be designed. These valuable aims and constraints become external aims and constraints once guidance is jettisoned from the concept of law. It would not, for example, be true just in virtue of the very nature of law that it should not be secret or oppress people into conformity.

Section 1 begins to motivate the argument by demonstrating that to be guided by the law as a supreme normative authority involves nothing more than an exploitation of your structural rationality in such a way as to bypass the need for any substantive practical reasoning on your part. This gives us good reason to doubt the central feature claim, according to which the law is in one way deficient qua law if it fails to guide in this way. It is both undesirable and implausible, I will suggest, to think that the law is in one way deficient qua law for failing to exploit your structural rationality.

Section 2 then turns to the conceptual necessity claim, according to which it is part of what it is for something to be law that one of its functions is to guide us. Here I provide a sketch of possible worlds in which, I suggest, we can imagine legal systems the function of which is not to guide us. Stripped of their guiding function, these legal systems reveal the conclusion that does follow from the law's normativity: that the law necessarily seeks to determine the answer to normative questions by making it the case that we ought to do as it directs—it being a further, contingent, matter whether legal directives are also there to actually be used in your practical reasoning and thereby to normatively guide you to such answers.

Alma Diamond (New York University): 'Membership as Authority'

Abstract: This paper explores a familiar puzzle within legal philosophy. Law seems to operate in a distinctive modality: it engages human consciousness and agency, it is addressed to intelligent self-directing subjects capable of grasping it as legal. Legal practice takes shape amidst the intelligent and intelligible giving of (and asking for) reasons, justifications, and evaluations. In this way, law seems to be a normative endeavour. But once we insist that law is normative in this way, are we not also claiming that it is connected to the reasons subjects have to submit to legal authority? And if such a connection exists, what distinguishes legal authority from the authority of morality or practical reason? How can law be a fallible, often unjust, contingent, human institution and also be normative for its subjects? I explore the ways in which this tension reveals itself in contemporary theories of law as a matter of authority. A common positivist strategy is to insist on a cleavage between the authority that law actually has and the recognitions or claims of such authority by participants in legal practice. This paper scrutinizes that strategy.

To the extent that positivist theories of law incorporate ideas about law "claiming" authority; participants in legal practice "presupposing" authority; or officials "accepting" law as authoritative, these theories are invoking the normative attitudes of participants to legal practice. I show that such talk of normative attitudes cannot be vindicated in isolation from the object of these attitudes: the normative status of (legal) authority. In the background of any talk about attitudes towards authority lurks an account of authority itself. That background account usually takes a standard form, one which I call a vertical. Vertical accounts explain legal authority as emanating from an already-assumed authoritative source, relying on so-called "prior reasons" to obey. I show that such an understanding of legal authority is incapable of explaining legal normativity. On this vertical explanation, legal authority has a conditionality built into it, forcing us to choose between two ideas. Either the legal is confined to those instances where it meets some extra-juridical demand (moral or instrumental); or the legal extends to wherever participants think it meets such demands–but then legal normativity is either a systematic mistake or present only in virtue of extra-juridical facts. On both, we end up being eliminativists about legal normativity.

The solution, this paper argues, lies in recognizing a different kind of background explanation of authority, one which I term a "horizontal" explanation. On this account, legal authority is conferred from within an ongoing political practice. In the final section I offer an outline of how one such explanation might go, and note some of the advantages of such an account. I conclude with two thoughts on what this means for our understanding of the so-called internal point of view of both subjects and officials.

Nina Varsava (University of Wisconsin): 'Derivative Recognition and Intersystemic Interpretation'

Abstract: H.L.A. Hart distinguished between two kinds of judicial recognition of the law, which he called *original* and *derivative* recognition. In a case of original recognition, a court interprets and applies its own jurisdiction's law. In a derivative recognition case, the court adjudicates a dispute arising under another jurisdiction's law. In this paper, I explore how the difference between the two types of recognition affects the interpretive approach that a law-applying court ought to take. I focus on statutory interpretation and take the American federal-state context as a central example of intersystemic adjudication. I argue, against a dominant strand of American legal scholarship, that a court can discharge its duty to apply a foreign jurisdiction's law without following that jurisdiction's interpretive norms. I find that methods of statutory interpretation such as textualism and intentionalism, as we know them from judicial practice in the United States, are not part of a system's rule of recognition. This separation of interpretive methodology and the rule of recognition makes it possible, although not guaranteed, that various interpretive methodologies will be capable of identifying the

law and no single one will be binding on judges. I argue that, given the character and range of the interpretive methodologies in American jurisdictions, and the determinants of statutory law in those jurisdictions, we have good reason to believe that multiple interpretive methodologies *are* capable of identifying the law and that a methodology's capability in this regard will depend on epistemic and institutional features of the interpreters—variables that can differ considerably between law-supplying and law-applying courts. Further, because a court applying its own law must be guided by its system's rule of recognition, the interpretive approach of an original recognition court is beholden to that rule in a way that will necessarily shape its approach. A court applying the very same law but exercising derivative recognition is not subject to the same constraint, making interpretive approaches available to the derivative recognition court that are unavailable to the original one. Although I focus on the American federal-state adjudicative context, the analytical framework that I develop is not context-specific, but rather provides the tools necessary for assessing judicial duties in other intersystemic settings as well.

Barbara Baum Levenbook (North Carolina State University): 'Supplanting Defeasible Rules'

Abstract: One of the leading accounts of what it is to follow precedent is a rule model, on which following precedent is applying the rule laid down or referred to by the source court. Decades ago, I argued that following precedent ought not to be conceived of as applying a rule, except in the limiting case (Barbara Baum Levenbook, `The Meaning of a Precedent' (2000) 6 Legal Theory 185). Rather, precedent is more fruitfully conceived of as laying down an example, which may have partial categories or, as I shall now say, partial groupings.

Since then, a handful of writers have developed an amended rule model, designed to meet the objection that the rule model is unable to account for the practice of distinguishing a precedent. The amended model employs the notion of a defeasible rule. The idea is that a court bound by precedent is following precedent whenever the court applies a rule provided by a source court case. A court is distinguishing precedent whenever a source court provides an applicable precedential rule that is treated as defeated (but not rejected) in the case before the target court; and, if there are only two choices of result, the target court reaches the opposite result in a way that does not challenge the source court result. Both of these ideas assume that there is satisfactory rule individuation that produces distinct – if defeasible – rules from source court cases.

In this paper, I argue that the defeasible rule model cannot be combined with a satisfactory account of rule (or, to be more specific, content) individuation and be explanatorily adequate – that is, fit precedential practice in legal systems. On no discernible account of content individuation can a defeasible rule theorist plausibly maintain that by and large courts required to follow precedent do so but sometimes distinguish, and that other courts authorized to overrule sometimes do so as well. In addition, the defeasible rule model is blind to the possibility of following precedent when there is no single defeasible rule that emerges from a source case. Precedential practice is better explained by an alternative founded on the idea of partial groupings of sameness with a source case, where the partial groupings are contextually salient. Distinguishing can then be explained in terms of winnowing the range of antecedently salient category candidates for a source case. There will be such salient partial groupings sometimes, and perhaps often, even in the absence of a determinate (even if defeasible) rule set down by the source court.

Ezequiel Monti (Universidad Torcuato Di Tella, Argentina): 'An Accountability First Account of the Normativity of Law'

Abstract: The law purports to (i) gives us reasons to act as it requires, and (ii) make us accountable for so acting. These two claims seem to be related. According to the dominant view, the law gives us reasons to act as it requires, and it is precisely because we have reasons of a certain kind to act as it requires that we are accountable for so acting.

Call this the *Reasons First* account of the normativity of law.

In the wake of *Reasons First*, philosophers of law have focused their attention in trying to explain how law manages to give us reasons. There are two very basic models in this respect. According to the *Triggering Model*, legal institutions give reasons simply by way of causally manipulating the non-circumstances so as trigger pre-existing reasons that we have independently of the action of legal institutions. But triggering is cheap. Legal institutions trigger all sorts of reasons and not all of them can be adequately regarded as legal reasons. Thus, defenders of the *Triggering Model* need some way of distinguishing between legally proper and legally improper triggering. However, as I argue elsewhere, there is no way of drawing this distinction so as to rule out all the false positives in a way that is not *ad hoc*.

According to the *Normal Justification Model* defended by Joseph Raz, the law gives us protected reasons directly by way of mediating between us and the reasons that apply to us independently of the law. However, legal reasons so understood cannot ground accountability, and cannot adequately account for the role that legal reasons are supposed to play in justifying judicial decisions.

In light of these difficulties, I suggest that we abandon *Reasons First*. According to *Accountability First*, the law makes us accountable for acting as requires, and it is precisely because we are so accountable that we have a reason (ie, a second-personal reason) to so act. The key here is that there are facts that can make us accountable for doing something without counting in favour of doing so. In this vein, I develop an account according to which the fact that we hold each other accountable for doing something, and that it is valuable that we are so accountable, can makes us accountable for so acting.

Day 1, Session 3

Chairperson: Alexander Sarch (University of Surrey)

11.00-11.45	Martin Brenncke (Aston University, Birmingham): 'Rationality and Reason in Behaviourally Informed Consumer Law'
11.45-12.30	Markus Kneer (University of Zurich): 'Reasonableness, Rationality, and the Law'
12.30-13.15	Niek Strohmaier (Leiden University), Marc-Andre Zehnder (University of Zurich), and Markus Kneer (University of Zurich): 'The Biasing Effect of Bad Character Evidence on Mental State Ascription and Legal Judgments'
13.15-14.00	Lunch Break

Chairperson: Stephen Bero (University of Surrey)

14.00-14.45	Levin Guver (University of Zurich): 'Misascription of Action-Descriptions'
15.30-15.45	Coffee Break
15.45-16.30	Danae Azaria (UCL): 'Not All State Silences 'Speak': A Theory of (Non-)Communicative State Silences'
16.30-17.15	Gustavo A. Beade (Universidad Austral de Chile): 'Public Blame as Vigilantism? Recasting the Idea of Blame as Persuasion'

Martin Brenncke (Aston University, Birmingham): 'Rationality and Reason in Behaviourally Informed Consumer Law'

Abstract: Current debates in behaviourally informed consumer law focus on (1) the use of nudging as a regulatory tool to make consumers better off, (2) the appropriate regulation of personalised online advertising that exploits consumer vulnerabilities and (3) the regulation of design choices on digital platforms that manipulate consumers (dark patterns). Scholars commonly discuss these issues within two paradigms. The first is behavioural law and economics as a frame of analysis. The second is an analysis of consumer biases and their implications for law and policy. Both paradigms rely on rational choice theory as defined in neoclassical economics as a normative theory of consumer choice.

This paper critiques rational choice theory as a normative foundation for behaviourally informed consumer law and develops alternatives. First, I demonstrate that rational choice theory is not an appropriate normative theory of choice under conditions of true uncertainty and computational intractability, which are common in the real consumer world. Second, I show how two alternative frameworks – ecological rationality theory and autonomy theory – can function as normative foundations for behaviourally informed consumer law. Ecological rationality and autonomy, if conceptualised as normative theories of decision-making, differ significantly from rational choice theory. Adopting either one of the alternative frameworks would lead to significant changes (compared to behavioural law and economics) in terms of what consumer biases are, when they occur, how they are caused and when they warrant regulation.

With regard to ecological rationality theory, I first outline the core elements of the theory. Ecological rationality determines rationality not in terms of conformity with a set of rules and axioms but in terms of success of cognitive strategies in the real world. I then propose that the theory can be incorporated into the dominant paradigm of behavioural law that analyses the implications of human biases for law and policy. Yet, I will also argue that a lawmaker who intends to rely on this theory faces significant obstacles, which limit the utility of ecological rationality theory for behaviourally informed consumer law.

With regard to autonomy theory, reasoned decision-making which is based on conscious reflection is often seen as the paradigm model of autonomous decision-making. A rational choice is thus a choice that is the result of a deliberation process. This benchmark has come under criticism from scholars who demand a more psychologically realistic conception of autonomy based on behavioural insights about consumer decision-making. Taking this criticism into account, I discuss behaviourally informed conceptions of autonomous choice. I posit that a normative autonomy standard that integrates heuristic decision-making without reflective deliberation does not break the connection between autonomous and rational decision-making. Consumer choices can be guided by good reasons without consumers engaging in reflective deliberation. Therefore, a behaviourally informed conception of autonomous decision-making can provide a normative foundation for behaviourally informed consumer law.

Markus Kneer (University of Zurich): 'Reasonableness, Rationality, and the Law'

Abstract:

1. Summary

This talk presents a series of studies which demonstrate that folk judgments concerning the reasonableness and rationality of decisions and actions depend strongly on whether they engender positive or negative consequences. A particular decision is deemed more reasonable and rational in retrospect when it produces beneficial consequences than when it produces harmful consequences, even if the situation in which the decision was taken and the epistemic circumstances of the agent are held fixed across conditions.

This finding is worrisome from the point of view of practical rationality. It is particularly worrisome for

the law, where the reasonable person standard plays a prominent role. The legal concept of reasonableness is outcome-insensitive: whether the defendant acted in a reasonable fashion or not depends exclusively on her context of action, no matter how things play out. Folk judgments of reasonableness are thus inconsistent with the legal concept of reasonableness. Problematically, in common law jurisdictions, the decision whether a defendant's behavior was reasonable or not is frequently (though not necessarily) delegated to a lay jury. Below I will briefly outline one of four experiments which I will present at the talk. The latter also focuses on what could, and should, be done about this problem in Western Criminal Law.

2. Example Experiment

2.1 Participants, Methods and Materials

Participants (N=687, roughly equal samples from the US, Germany and Japan) were shown a vignette in which Mr. Smith thinks of expanding his furniture business to the West Coast and asks Jones to conduct a market analysis. Jones finds that there's an 80% chance that the expansion will be successful, in which case they will be able to hire new employees. However, there is a 20% chance that they will not be successful. In which case they will have to close the new stores in West Coast and also let go some of their current employees.

Having read the scenario, participants had to rate on a Likert scale anchored at 1 with "completely disagree" and 7 with "completely agree" to what extent they agreed that it would be reasonable for Mr. Smith to expand his business. They did so before (ex-ante) and after (ex-post) reading that Mr. Smith decided to expand his business and what the actual outcome was (failure v. success). Besides outcome type (success v. failure), I manipulated the formulation of the claim about the practical rationality of the expansion ("reasonable" v. "rational" v. "should"):

- Reasonable: "It is/was reasonable for Smith to expand to the West Coast."
- Rational: "It is/was rational for Smith to expand to the West Coast."
- Should: "Smith should expand/have expanded to the West Coast."

In total, there were thus six conditions (2 outcome types x 3 formulation types), to which participants were assigned randomly.

2.2 Results and Discussion

Figure 1 graphically represents the results including pairwise within-subjects comparisons of practical rationality ratings (rational, reasonable, should) ex ante – i.e. before the outcome information was available, and ex post – i.e. once it was available. All 18 paired comparisons were significant, the effect sizes were at least medium in size.

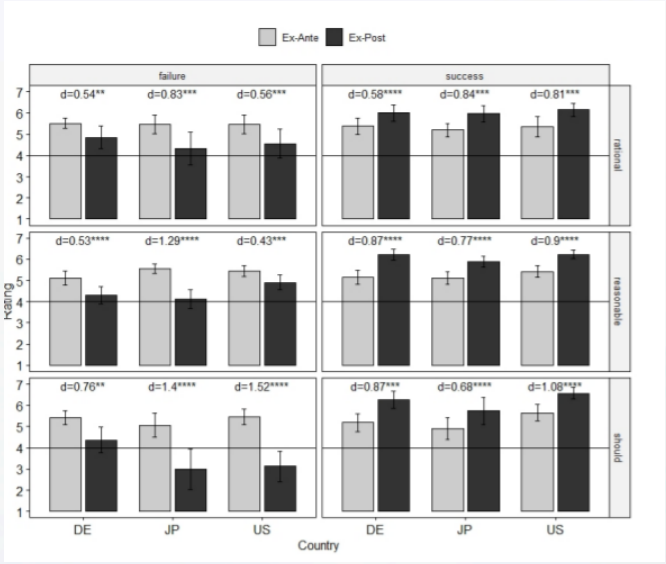


Figure 1. Mean rating of practical rationality across condition (failure, success), expression (rational, reasonable, should) and country (DE, JP, US).

The results suggest that the folk concept of reasonableness (as well as rationality) is outcome-dependent. In countries like the US, where judgments concerning the reasonable person standard (e.g. in negligence cases) this could constitute a serious problem. In a suite of further experiments, I show that in scenarios based on classic US negligence and medical malpractice cases, the effect is even stronger, and that it remains even if a possible hindsight bias is corrected for.

Niek Strohmaier (Leiden University), Marc-Andre Zehnder (University of Zurich), and Markus Kneer (University of Zurich):

'The Biasing Effect of Bad Character Evidence on Mental State Ascription and Legal Judgments'

Abstract: In deciding private law disputes, courts apply different styles of narration, persuasion and argumentation in their reasoning. Some courts may apply a formalistic style, referring to code articles and precedents and applying logical deduction rhetoric. Others may apply a more venerable, sacral style, referring to grand principles of law and ethical considerations that are presented as inescapably leading to one right solution. Undoubtedly, such differences are steeped in legal culture and history. They may, however, fall short of convincing the general public, for whom court reasoning styles may read and sound redundantly archaic, cold, fuzzy, impenetrable, or worse. As a result, in recent years legal systems have witnessed a call for a more free-spoken, deliberative style of judicial reasoning. It is sometimes said that such a style would offer a clearer and more palpable alternative to the unnecessarily formalistic or venerable styles. Indeed, some even argue that a deliberative style would enhance the level of approval of court decisions by the lay public. This article reviews the evidentiary basis of such claims; it asks what empirical legal scholarship teaches us about the relationship between judicial reasoning styles and acceptance of court decisions by the general public. Does the use of a certain reasoning style influence the degree of acceptance, or should we look elsewhere for determinants of judicial legitimacy?

To shed led on this matter, an experimental vignette study was conducted. Dutch citizens (i.e., law students and lay people) were surveyed and presented with one of three legal cases describing a judge's verdict, which was motivated using one of three styles (i.e., deliberative, sacral, formalistic). The participants were surveyed on their institutional loyalty, the moral mandate for the verdict, as well as the degree to which they accepted the judge's verdict, regardless of their agreement with the verdict. The results we found tell us that the style a judge uses to motivate a judgment has little predictive value for the degree to which third parties accept a ruling. The most important factor for social acceptance of justice seems to be whether people agree with the judgment (i.e., the moral mandate). Next, institutional loyalty also has a predictive value for the degree of acceptance of a judgment, albeit to a lesser extent than moral mandate. Finally, characteristics of individuals also seem to play a role in the degree of acceptance. For example, the lawyers in this study showed a higher degree of acceptance overall than the general public.

We conclude from the results that one should not overestimate the (societal) need for deliberative motivations, a tendency that something seems to emerge from the literature on judicial law making. The idea there that, particularly in socially sensitive legal cases, a deliberative substantiation can benefit the social acceptance of jurisprudence is not confirmed by our research.

Levin Guver (University of Zurich): 'Misascription of Action-Descriptions'

Abstract: Imagine the following. You are in a court proceeding, either as judge, or a member of the jury. In either case, you serve the role of *fact finder*. Here is what you know so far: The defendant, whom we will call Mark, has tight connections to a group of money-laundering white-collar criminals. On a warm September day, the complainant – henceforth Lauren – met with Mark in a restaurant to arrange for the selling of large amounts of aluminium. Lauren did not know of Mark's criminal ties and was simply looking to sell some goods. Yet there was clearly something afoul with Mark's behaviour. Lauren's rising suspicion was matched by Mark's increasing agitation and culminated in him uttering the following words:"If you investigate any further, you will be missing at breakfast."

Unsurprisingly, the deal was blown – no aluminium was sold that day. What *did* happen, however, was that Lauren went to the police and reported the incident. The police forwarded it to the prosecutor, and now you are in court and have to delineate *what it is that Mark did* – what the utterance of those words qualifies as. On the one hand, Lauren clearly felt threatened by them. Yet Mark insists that he did not threaten her – he merely *warned* her. He did not intend to say that *he personally* would make sure that she is "missing at breakfast" – rather, he could not guarantee her

safety if her investigations were to lead her to the group of money-laundering criminals. Convinced? The Swiss Supreme Court was not, and it upheld the verdict of the previous instance, ruling that Mark's utterance was to be classified a threat, not a warning, and that he was in fact guilty of *coercion* (Art. 181 Swiss Penal Code).

The introductory case – let us call it *Breakfast* – raises several interesting questions. Assume for a moment that Mark *really* took himself to be issuing a warning. If Mark *knew* that his words would come across as threatening, but it was not his purpose to threaten, did he nevertheless *intended to threaten*? Does the threat–warning distinction help us understand further abstract properties of action? What does it even *mean* for the law to assess the agent's doing, standardly dealt with in the objective elements of the offense, the *actus reus*? What is the relationship between this *doing* and the accompanying mental element, the *mens rea*? To what degree do the answers to these questions differ based on the lens one views them through, be it jurisprudence, philosophy, psychology, or linguistics? And finally, can the inclusion of empirical work further our legal understanding, and if yes, how?

My paper will take a stance on all these questions, employing both theoretical arguments and empirical ones in form of vignette-based studies (N=405). I will defend the claim that the law must venture to adjacent disciplines if it wants to maintain its legitimacy and serve its proper role as the bedrock on society, and highlight issues with its present manner of operation.

Danae Azaria (UCL): 'Not All State Silences 'Speak': A Theory of (Non-)Communicative State Silences'

Abstract: 'Silence may also speak, but only if the conduct of the other state calls for a response'. In these imaginative words the International Court of Justice ('ICJ') described in Pedra Branca (Malaysia/Singapore) (2008) the concept of acquiescence. The ICJ assumed that a presumption from silence (acquiescence) is silence that speaks. This article disagrees. Building on pragmatics, it argues that a distinction can be drawn in international law between on the one hand State silence that speaks and on the other hand rules on presumptions about the state of mind of a State drawn from the fact of State silence. In the former case, State silence is functionally equivalent to an illocutionary commissive speech act (in the Austinian) communicating an intended message (in the Gricean and Searlean sense). In the latter case, State silence does not communicate any message – the silent State may be trying to conceal its intentions by remaining silent. However, from the fact of State silence inferences are drawn on the basis of a rule of presumption of acceptance or of opposition.

In international law, States (or qualified others) often pre-assign the meaning of acceptance to silence to promote the rule of law, to ensure the peaceful settlement of disputes, to enable fast adaptation to new (scientific) knowledge and circumstances, or to allow the efficient and smooth functioning of the organs of international organizations.

State silence can be a means of communicating acceptance because States are free to communicate their intention in whatever fashion they choose. When no meaning has been pre-assigned to it, acceptance in silence can be communicated when a 'conversation' between States (or States and non-State actors) exists and the relationship is such that there is an expectation that a State would answer positively. Given these narrow conditions, real-life scenarios in which State silence can communicate acceptance are very limited. This is important because communicated intention (rather than presumed consent) is required for making an international agreement and for giving consent to an otherwise wrongful act, such as intervention by invitation.

Instead, the reasoning behind establishing presumptions drawn from State silence is the need to extricate an 'assessor' (a court or a State organ) from being impeded from acting because a decision materially rests on the meaning of State silence. All presumption rules are biased towards a particular inference. This bias is justified by probability but crucially also by normative goals: the acceptability of error. Errors in considering innocent a person that is in fact guilty are less important than instances where innocent people

would be convicted; hence the presumption of innocence. Errors in presuming consent where there is none are less important than predictable legal relations in a decentralized legal order, such as international law, in which States ought to act diligently. Errors in presuming opposition are less important than the occurrence where deliberate silence would defeat the jurisdiction of international courts and tribunals and #would thus undermine international justice.

Gustavo A. Beade (Universidad Austral de Chile): 'Public Blame as Vigilantism? Recasting the Idea of Blame as Persuasion'

Abstract: Vigilantes 'take the law into their own hands': they claim powers of investigation, arrest, adjudication, and punishment that, in the law's eyes, belong only to the law's officials. They might claim that they are justified in taking the law into their own hands because it is their law: they are taking back into their hands the law they had entrusted to officials, who have failed to discharge that trust. We, as defenders of the rule of law, need to be against this kind of conduct. This idea, however, has been challenged by new forms of 'public blame'

'Public blame' comes in very different forms. Sometimes it involves lay citizens taking actions that the police or the official institutions of criminal justice are supposed to take, and thus in some sense 'taking the law into their own hands'. Many people will argue that this could be considered as 'vigilantism'. If the police have decided not to investigate, or prosecutors not to prosecute, a particular (kind of) crime, and a group of citizens then set about publicly exposing the (alleged) offenders to persuade the authorities to think again, aren't they taking the law into their own hands in the sense that they seek to render effective their judgment claiming that these people should be prosecuted, against the officials' judgment which considers that they should not?

This is probably the case of the so-called 'escraches' in Argentina. After a couple of legal decisions that limited the military's prosecutions and trials and a presidential pardon, they include the release of officials accused of human rights violations during the dictatorship, the civil organization H.I.J.O.S., an organization led by the children of the people who disappeared or were forced into exile during the dictatorship, started to develop an effective communication strategy, namely 'escraches'—from the verb escrachar, an Argentine slang term meaning roughly 'to expose' or 'uncover'. Its origin isn't very clear, but it means to show someone up. The 'escraches' were public acts that took place, mainly in front of military officers' homes, and aims to denounce impunity and to keep the military trials on the public agenda. However, why isn't this considered vigilantism? Is this a kind of public blame or a type of social punishment?

My aim in this paper is to defend how the 'escraches' are conducted as a form of public blame. Blame is not something we do to people to modify their conduct. Following Antony Duff, I will recast the idea of blame as moral persuasion. Thus, I will argue that blame (and public blame) is a kind of moral argument with another person. It aims to modify his attitude and conduct. According to this approach, the 'escraches' -as many other forms of public blame- are a persuasive and democratic way to influence the authorities to modify their criminal policies and to show them that they are building a chain of injustices that need to be repaired. Perhaps, there is no real possibility for victims to persuade the government to modify these decisions. However, the 'escraches' as a form of public blame allow the members of a community to be aware of victims' claims and it is a strategy to persuade them about the injustice involved in the legal decision made.

Day 2, Session 1

Chairperson: Marie Newhouse (University of Surrey)

11.45-12.30	Tom Bailey (LSE): 'Ambiguous Sovereignty: Political Judgment and the Limits of the Rule of Law in Kant's Doctrine of Right'
13.15-14.00	Lunch Break
	Chairperson: Ambrose Lee (University of Surrey)
14.00-14.45	Xi Zhang (New York University): 'Are Reasons of Partiality Deontic?'
14.45-15.30	Yohan Molina (Pontifica Universidad Catolica De Chile): 'On Peter's Conception of Normative Facts and Reasons'
15.30-15.45	Coffee Break
15.45-16.30	Laura Bevilacqua (University of Chicago): 'How did the Romans Establish Whether Something was Appropriate?'

Sebastian Figueroa Rubio (Universidad Autónoma de Madrid): 'Interpreting Actions with Norms: The Twofold Nature of the Ought Implies Can Principle'

Abstract: The idea of responsibility is closely connected with idea of duty, and the OIC principle is usually seen as a link between the two. One way to illustrate this is as follows:

(i) If S is blameworthy for not having performed action a, then S ought to have performed action a
(ii) If S ought to have performed an action a, then S could have performed action a
(iii) Therefore, if S is blameworthy for not having performed action a, then S could have performed action a

Nevertheless, we can imagine cases where (ii) is false, but (i) and (iii) remain true. This can be illustrated by an example. On a battlefield, a soldier is injured and the platoon commander orders the platoon medic to treat her. The medic, paralysed with fear, replies that she cannot do so. In this situation, "it is true that the medic ought to treat the wounded soldier (...) even though it's false that he can actually do so." (Mizrahi, M. (2009) "Ought" Does Not Imply "Can" Philosophical Frontiers, Vol. 4, N°1: 21-22.)

This type of case presents a challenge in connecting the principle to the ideas of duty and blameworthiness. This presentation proposes to address this challenge by distinguishing between two ways of interpreting actions with norms. To this end, the distinction between rules of imputation and conduct rules and their interplay with practical reason is used.

With this distinction in mind, when an agent's behaviour is interpreted using a conduct norm, we use an abstract standard given by the content of the rule. That content is the duty, and the behaviour is considered to be something that conforms (or not) to that duty, regardless of what happens in the mind of the agent. In contrast, when a rule of imputation is applied, the behaviour is interpreted in its circumstances as something that can be attributed to the agent. To say that a person's action violates a duty is not the same as saying that the violation of the duty can be imputed to her.

I think that within this framework we can make sense to the distinction between "the things we do" and "our acts of doing them." While conduct rules allow us to talk about the things we do, responsibility judgments (which apply the rules of imputation) refer to our doings.

This line of thought tells us something about the meaning of "can" when we talk about actions using norms, and also about the relevance aspects of the agent's perspective. Therefore, it is suggested that according to the OIC, before the action is done, it should be physically possible to comply with content of the duty, but when the action is being done, it should be contextually possible to act according to the duty. If circumstances make it impossible to fulfil the duty, the person is excused, but the duty remains applicable to her. The example of the medic could be understood as such a case.

Tom Bailey (LSE): 'Ambiguous Sovereignty: Political Judgment and the Limits of the Rule of Law in Kant's Doctrine of Right'

Abstract: Kant's political and legal philosophy has received increasing attention of the last two decades. Seminal texts such as Arthur Ripstein's Force and Freedom (2009), Private Wrongs (2016), Rules for Wrongdoers (2021), Kant and the Law of War (2021) and Sharon B. Byrd and Joachim Hruscka's Commentary to The Doctrine of Right (2010), have begun the task of developing a Kantian theory of law. In contrast to previous Kantian theories such as those of Rawls and Habermas, this new Kantian theory takes Kant's political and legal text The Doctrine of Right as the starting point, rather than ethical texts such as The Groundwork of the Metaphysics of Morals.

Like those previous theories this new Kantian theory of law is ambitious, both in terms of the range of issues it seeks to address (see Luke Davies, 'Kant on Welfare', 2018 and Japa Pallikkathayil 'Persons and Bodies', 2017 on welfare provision and issues in bodily autonomy,

such as organ donation, respectively), and because it aims to supplant those highly influential theories of politics and law (see Pallikkathayil, 'Neither Perfectionism nor Political Liberalism', 2016 and Louis-Philippe Hodgson, 'Kant on the Right to Freedom: A Defense', 2010 as examples).

This new legal and political theorising in a Kantian key is sophisticated, influential and bold in scope and purpose. Moreover, there is a theoretical coherence to this work that means that it can be assessed as a whole, whilst acknowledging differences between different scholars. The paper characterises this theory as 'Kantian Legalism'. By 'legalist' I mean both that the substantive conclusion drawn from Kant's political philosophy is that political problems must be resolved through the creation of a system of rightful law, and separately but relatedly that the purpose of Kant's political philosophy is the elaboration and justification of the a priori principles of this legal system.

For Kantian Legalism, the model of practical reason that applies in the context of collective decision making is thus a thoroughly legal one. The questions that matter are what the law should be and how it should be applied. The rule of law is absolute. Against this, the paper aims to recover a distinctively political aspect of Kant's political practical reason. This is the role of political judgment.

Whilst Kant remains committed to the rule of law as an ideal, his understanding of the role of law in politics is more nuanced. Specifically, Kant allows for extra-legal or even straightforwardly illegal actions if necessary to secure the survival of the state as condition for the possibility of law. The locus for this political judgment is Kant's ambiguous sovereign, which is ideally purely legislative, but practically political and decisionist, governed by political practical reason rather than law.

The paper thus brings a challenge to Kantian Legalism based on Kant's own reasons for rejecting a theory based on the complete subordination of politics to law.

Xi Zhang (New York University): 'Are Reasons of Partiality Deontic?'

Abstract: This paper aims to refute that both conceptual interlocks in Scheffler's thesis as of valuing, partiality, reasons, and duties are untenable. For one thing, it argues that valuing one's relationship with another person non-instrumentally constitutes neither sufficient nor necessary condition for reasons of partiality. For another thing, despite the genuineness and pervasiveness in our social lives, it argues that reasons of partiality are not deontic ones constituting special responsibilities that we have to undertake in an obligatory manner.

This paper would unfold as of the following two parts. In *Part One*, it first starts from a phenomenological exploration of partiality, in contrast with impartiality, universality and generality, by observing its propositional contents and multi-faceted manifestations in our social practices. Next, it puts forward a folk conception of valuing, including but not limited to, a favorable attitude towards the valued object, the embedded value in the valued object as well as the emotional vulnerability triggered by the action of valuing so as to have a better grasp of what the action of valuing consists of. Further to this, with reference to the nuanced distinctions between instrumental and non-instrumental value as well as intrinsic and extrinsic value, it elucidates what valuing one's relationship with another person *non-instrumentally* amounts to. Based on all those preparatory work, it finally disentangles the conceptual interlock between valuing one's relationship with another person non-instrumentally and the alleged reasons of partiality, and argues that valuing one's relationship with another person non-instrumentally constitutes neither sufficient nor necessary condition for reasons of partiality.

In *Part Two*, it first draws our attention back to the common sense morality and our daily social practices as of the dynamics between reasons of partiality and special responsibilities. Despite the genuineness and pervasiveness in our social lives, it observes that there is a huge conceptual gap between reasons of partiality and special

responsibilities being essentially deontic. Next, it specifically revisits R. Jay Wallace's account of deontic structure of morality that Scheffler largely relies on in his argument for the deontic nature of reasons of partiality. To be more specific, it scrutinizes whether the reciprocal or relational or bipolar normativity being the additional dimension of the normativity of morality can explain the deontic structure of morality so that reasons of partiality could be thus justified to be deontic. Further to this, it brings about another perspective of critique, namely the pluralism nature of reasons of partiality, against its alleged deontic nature. It argues that considering people's beliefs, dispositions, and attitudes vary about partiality embedded in one's relationship with another person, their reasons of partiality can nonetheless diverge considerably, which is manifestly convincing in the case of political community as of the political obligation denoting our moral duty to obey the law of the state. Based on all those elaborative arguments, it finally concludes that reasons of partiality are not deontic ones constituting special responsibilities that we have to undertake in an obligatory manner.

Yohan Molina (Pontifica Universidad Catolica De Chile): 'On Peter's Conception of Normative Facts and Reasons'

Abstract: Peter in 'Normative Facts and Reasons' (2019), contends that according to the dominant view of practical normativity, practical warrant only obtains when an action is justified on the basis of normative reasons. In other words, an agent A is warranted in undertaking action ϕ only if ϕ is supported by normative reasons. She calls this view the 'Centrality of Reasons' view. What underlies behind this name is the idea that reasons are the only entities capable of determining the normative relevance of actions. A prominent version of this view advocates both that normative reasons are *facts* and that the property of being a reason cannot be analyzed or explained further in terms of other normatively relevant entities or properties (P.54). The prominent version consists of three connected theses:

(1) Normative Reasons are facts (Factualism about reasons).
(2) Normative Reasons are fundamental or non-analyzable normative entities (Reason Fundamentalism).
(3) There is only a type of practical warrant, which is based on normative reasons.

Peter makes a case for an alternative view. She argues that it is possible to distinguish between two different types of practical warrant: 'entitlement warrant' and 'reason-based justification'. This distinction relies fundamentally on the denial of thesis (1), since she distinguishes between normative facts and normative reasons. On her view, normative facts are facts that 'have the power to favour actions', while reasons are *propositions* which represent such normative facts. This idea allows her in turn to reject thesis (2). Normative reasons are not practical fundamental entities because reasons are propositions deriving their normative standing from their representative relation with normative facts. Likewise, from (1) and (2) we can conclude that thesis (3) is false, because it is possible to identify two types of warrant: a type of warrant, called entitlement warrant, based on normative facts having the power to favour actions; and a type of warrant, called reason-based justification, based on normative reasons deriving their normative relevance from normative facts. The fundamental argument used by Peter to separate normative facts from reasons is what she calls the 'Normative objection': a normative reason must be the kind of entity we can reason with and evaluate in our normative deliberations. But this role would not fit with states of affairs as they cannot directly figure in our deliberation about how we should act. We can reason *about* them, but not *with* them (P.57).

In this presentation, I will argue for two main points. First, Peter proposes an agent-dependent conception of reasons which does not fit our intuitive understanding of reasons, and is unnecessary for her thesis that there are two kinds of practical warrant. Second, she is not able to justify this thesis because the Normative Objection fails, which mean that she cannot support the distinction between normative facts and normative reasons. Therefore, normative reasons are just normative facts.

Laura Bevilacqua (University of Chicago): 'How did the Romans Establish Whether Something was Appropriate?'

Abstract: This paper is about a subgroup of homogeneous virtue-centered deities, usually referred to as "abstract divinities" or "personifications": Concordia, Fides, Honos, Mens, Pietas, Pudicitia, Salus, Victoria and Virtus. I analyze the main attributes of these divinities as the Romans themselves described them: virtues that have a human essence and are functional for the community. Such personified virtues embody the divine representation of determined collective behaviours, reckoned to be righteous among Roman citizens. They are regarded as "useful" to Roman citizenship as a whole: i.e., worshipping them leads to being a good citizen. By the same token, I analyze both the religious and civic nuance of the notion of utilitas as a category of public Roman thought, using as primary source Cicero, somewhat influenced by Stoic ethics. The notion of utilitas allowed citizens, ideally, to understand what is the best thing to do in a given situation, both in terms of appropriate behaviour and for the benefit of the State.

Sam Stevens (UC Berkeley): 'Plato on Precision in Politics'

Abstract: There is a trope that suffuses much of the scholarship on ancient political thought: Plato the utopianist is compared (often negatively) to the more practically-minded Aristotle. Plato's unfettered faith in the power of philosophy to remake the world is tempered by Aristotle's more nuanced understanding of the limits of political knowledge and consequently of political action.

There is undoubtably a degree of truth to this picture. Plato does seem to think that a condition of the knowability of political concepts is that all their parts are, in principle, separable from the messiness and polysemy of human life. Aristotle, in contrast, insists that political knowledge requires us to take account for the limitations of practice. Famously, he says we can only be as precise as our material allows. Yet Plato's commitment to the in principle separability of political concepts does not commit him to the view that political practice – the day to day management of political life – is similarly completely knowable or perfectly manageable. That we can completely know the form of justice does not in itself guarantee that we can flawlessly instantiate justice in the world.

So, to maintain (the strong version) of the trope, we would need to look in Plato's writings for statements that establish the complete knowability of political practice. What we find, however, is the opposite. The clearest expression of this in the Philebus. There we clearly find that mathematical precision (nor, even, the precision found in exact disciplines like building) cannot be expected in the ordering of complex mixtures like human soulsand lives. There are limits to the certainty possible in political life; he anticipates Aristotle's view that our material limits our precision.

So the Philebus seems unequivocal. But perhaps this represents a change of view on Plato's part. Yet, there is surprisingly little evidence that would establish a different view in the Republic. We never actually see how the philosopher-rulers will go about managing their city. We don't have any real depiction of how they will decide mundane disputes, how they will judge whether war is propitious, or how they will plan for the future. Socrates's interventions, in his role of founder, are almost pre-political, having to do with psychology and education rather than management and decision-making. This focus on the formation of the soul in place of political management reappears in Plato's Statesman, the final account of political weaving returns to education, and, strikingly, in the best polis of Aristotle's Politics. Both Plato and Aristotle seem convinced that the cultivation of the soul can produce the best form of politics, presumably by reducing the magnitude of the conflict which political processes might have to manage. Yet what happens if there is conflict? What if there is ineliminable conflict in the best city? And what are we to make of the conflict that exists in more familiar political contexts? The Republic does not tell us.

So, the difference between the Republic and the Philebus is not as large as some have led us to

believe. It is best characterized as an explicit statement of the epistemic limitations on political practice in the Philebus and a silence about political practice in the Republic. This is still a difference that calls for explanation. We might account for this difference by appealing to the differences of the question being asked in each of the dialogues. The Philebus directly addresses the question of precision. But the Republic is interested in something else. It asks whether we can demonstrate that there exists a stable and knowable concept of justice, and whether we can know that this justice has certain properties. The demands of answering this question do not require Socrates to engage with the problem of the instantiation of justice, which he takes to be a secondary and separable question.

So, Plato does require the absolute knowability of political concepts, and their in principle separability from the world, and this does constitute a contrast with Aristotle. But we should not take this to imply that Plato is insensitive to the contingencies and tragedies of political practice when there is no textual reason that demands we do so.

Day 2, Session 2

Chairperson: Bebhinn Donnelly-Lazarov (University of Surrey)

11.00-11.45	Eric Boot (Tilburg Law School): 'The Public Interest and the Law'
11.45-12.30	Claudia Wirsing (Technische Universität Braunschweig): 'Recognition and Legal Authority'
12.30-13.15	Andreas Marcou (UCLan Cyprus): ''Illiberal Democracy' in Europe and Populist Threats to the Rule of Law'
13.15-14.00	Lunch Break

Chairperson: Dennis Patterson (University of Surrey and Rutgers University)

14.00-14.45	Kacper Majewski (University of Oxford): 'Jurisprudence for Cats'
14.45-15.30	Manish Oza (University of Western Ontario): 'Fictions in Legal Reasoning'
15.30-15.45	Coffee Break
15.45-16.30	Pedro Caballero Elbersci (Monterrey Institute of Technology Higher Education): 'On the Ontology of Legal Norms: Abstract Entities Grounded in the Practical Attitudes of Participants'
16.30-17.15	Steve Chan (University of Houston): 'Ignorance Explanation for Hard Choices'

Eric Boot (Tilburg Law School): 'The Public Interest and the Law'

Abstract: The public interest is routinely appealed to in law: the European Union's General Data Protection Regulation prohibits the processing of personal data unless "processing is necessary for reasons of substantial public interest;" whistleblower protection legislation maintains unauthorized disclosures may be justified if the revealed information serves the public interest; human rights law recognizes sundry public interest justifications of rights limitations; in the United States, broadcasters' programming is expected to meet a public interest standard; expropriation law holds that expropriation may be justified if it serves an important public interest. The public interest thus plays a crucial role in law: it provides a justification for an exception to the application of a rule. All the more regrettable it is that the law does not provide a clear definition of the public interest, or at least a procedure to determine it in a particular case. This deficiency, according to some legal scholars, has led to ad hoc applications of the public interest and, consequently, judicial idiosyncrasy, which may pose a threat to legal certainty.

Legal scholars as well as political and legal philosophers, however, have largely remained silent on the question of the public interest. The main aim of this paper is, therefore, to remedy the neglect of the public interest by providing a conceptual clarification. Sections 1 and 2 break up the composite concept 'public interest' into its constituent parts 'public' and 'interest.' The goal is to provide definitions that are not entirely detached from our ordinary usage of the concepts, but that can at the same time make better sense of our considered moral judgments than rival understandings. I will define the noun 'public' as all the members of a particular political community collectively and the adjective 'public' as concerning all members of a particular political community collectively. Furthermore, I propose we define 'x is in A's interest' not as 'x provides A pleasure' nor as 'x satisfies A's desire,' but rather as 'x increases A's opportunities to realize her permissible ends,' whereby 'permissible' is meant to express the intuition that the achieving of certain ends may be harmful to the agent and so that laws or policies that help her achieve that end are not in her interest. The term 'permissible' is, furthermore, used to highlight the fact that 'x is in A's interest' is not simply a statement of fact, but instead already contains a normative element.

Based in part on the findings of Sections 1 and 2, Section 3 provides a set of three desiderata that a convincing theory of the public interest ought to meet. Having completed this task, Section 4 expounds my civic account of the public interest and illustrates how this account meets the several desiderata and complies with our definitions of 'public' and 'interest.' Here I propose that something is in the public interest if it increases the opportunities of the members of the public to pursue and realize the (permissible) ends they all share qua members of the public.

Section 5 demonstrates how the civic account of the public interest enables a critical assessment of concrete applications of the concept in law. This critical assessment leads to the conclusions that, first, more legislative guidance, informed by thorough conceptual analysis, is needed to ensure a more consistent and predictable use of the public interest in law and, second, that the public interest ought to be employed far more sparingly than is currently the case.

Claudia Wirsing (Technische Universität Braunschweig): 'Recognition and Legal Authority'

Abstract: This presentation addresses the problem of the normative status of legal norms in the context of G.W.F. Hegel's and Robert Brandom's work. It argues that legal reasoning cannot be reduced to transcendental argumentation of a pure reason but has to be grounded, instead, in the actual legal practice embedded in historical process of recognition.

In the first part of the presentation, I argue that Hegel's legal philosophy can be read as a theory of justice, demonstrating that the constitutional legal norms must have their deeper foundation in the universal and true principles of justice. Justice, however, is not a question of morality: it cannot be

reduced to a formal moral principle. Rather, Hegel shifts the question away from ethics to the concept of "ethical life" [Sittlichkeit] as a form of mutual recognition aiming at promoting individual freedom within a society. Recognition is an ethical-political concept that is suitable for understanding structures relevant to the justice and correctness of legal norms in free democratic societies and for normatively evaluating them.

Robert Brandom has given the notion of recognition as a normative social structure a pragmatist construal, examined in the second part of this presentation. Brandom, like Hegel, does not believe in the transcendental justification of the norms but, unlike Hegel, he does not choose torely on a metaphysical approach. Instead, he offers an alternative Hegelian solution to the problem of legal justification by introducing a new type of practical rationality called "recollective rationality". This concept aims to show how legal decision making is a process of reciprocal recognition of judges exercising authority within a historical tradition. For Brandom recollective rationality means that legal norms are not simply grounded in the recognition of a rational authority (of a judge) that constitutes norms for good; it means that current judgments are determined by judgments of previous successful application that now have to be justified retrospectively by applying them successfully again in the present. Thus, legal norms are the product of the reflection of their successful application within the past as judged from the perspective of the present.

In the third part I will call attention to a blind spot in Brandom's pragmatist account of recognition by showing that his reconstruction of judicial process fails to give adequate criteria for self-correction. Brandom's conception of recognition falls prey to precisely that which he tries to escape from: namely to ensure that the "correctness" of a legal practice can be guaranteed by the possibility of a symmetrical relationship of recognition between judges. Following the discussion of Brandom's position, I conclude by arguing that, while the justification of legal norms depends on their correct application, the contexts of the application may still be unjust, distorted or ideological. Making justification of legal norms dependent on its mere application is, therefore, a low criterion, pending the rational justification of this application itself.

Andreas Marcou (UCLan Cyprus): ''Illiberal Democracy' in Europe and Populist Threats to the Rule of Law'

Abstract: Right-wing populism across the European Union has emerged as a key threat to core values European values such as democracy and the rule of law. The European Commission has brought multiple actions against countries governed by populist parties, such as Hungary and Poland, for activity that undermines judicial independence, erodes the rule of law, and attempts to maximise executive hold over the judiciary. In response, populist figures stress their democratic credentials, claiming to be enforcing the will of the people. Such populist attacks on the judiciary are not limited to Hungary and Poland, with the Daily Mail's frontpage deriding English judges as 'enemies of the people' due to their decision in the famous Miller case being a notorious example from the UK. Uneasiness about the role of the courts within democracy predates the rise of populism in Europe, but right-wing populists have pushed this question to the forefront.

This paper evaluates activity undertaken by populist actors that threatens the rule of law and democracy. In doing so, it draws from Aristotle to propose an analysis of the relationship between populist rhetoric and democracy and the rule of law. In the first part, I shall examine the basis of the populists' attacks on the judiciary. Lauding their democratic mandate, right- wing populists pursue an 'illiberal democracy' that promises to realise the democratic will unconcerned with 'liberal' constraints. The rule of law becomes, on this account, the salient liberal value that external agents, such as the EU, seek to impose. Attacks against the courts are thus unsurprising. Courts that review government actions, even when seeking to protect entrenched constitutional protections or key principles of justice, will be marked as enemies of the people and impediments to the realisation of the popular will. A deep conflict therefore obtains between democracy and principles of the rule of law.

Despite some valid concerns about the role of the courts within a democratic system, again anticipated in Aristotle's discussion about the power of experts in a democracy, I shall show that the conflict such populist agents emphasise is overstated. Their pursuit of an 'illiberal democracy' depends on an impoverished version of democracy. By tracing in Aristotle a rich conception of the rule of law that is intrinsically linked with democratic government, I shall show that populist attacks on the rule of law also have an eroding effect on democratic government. To suggest that principles of the rule of law should be suspended in pursuit of popular desires, is to dismiss a fundamental element of democracy Aristotle praises. In conclusion, this paper advances an Aristotelian model of democracy and the rule of law that not only counters populist narratives, but also pinpoints the flaws in our democracies that offer fertile ground for the rise of right-wing populism.

Kacper Majewski (University of Oxford): 'Jurisprudence for Cats'

Abstract: Legal theorists sometimes ponder whether they should be like foxes (who, in Archilochus' line, know 'many things') or hedgehogs (who know 'one big thing'). But theorists and scholars are not the only people to think and talk about law: virtually anyone will have some legal knowledge merely by virtue of living in a law-governed society. I ask two questions about this 'common' legal knowledge of ours. First, what is it for, what is its purpose? Answer: its purpose is to give us practical guidance, but by telling us what it would mean for us to act in this or that way—what meaningful label the law would attach to this or that decision of ours—and not, as most contemporary legal theory would have it,by telling us directly how we ought to behave. Second, given its purpose, how far is it supposed to extend? Answer: not necessarily very far; it is likely to be fragmented, unsystematic, and ad hoc, but not necessarily any worse or less complete for that. Again, this answer stands in tension with the common view that all law can and should be thought of as forming a systematic whole. The consequence of the inquiry is therefore that there are limits to how much we can explain with the established idea that law is a system of norms; it follows that our jurisprudence should be more foxy, open to a broader and not necessarily uniform range of epistemologies beyond that of legal scholars and professionals. But that is not because we ourselves, as we live our everyday lives under law, are like foxes. Rather, we are like cats: we know neither many things, nor just one big thing, but just as much as we need to know to do whatever we want to do, and whether we want to do it in keeping with the law's requirements.

Manish Oza (University of Western Ontario): 'Fictions in Legal Reasoning'

Abstract: While they are pervasive in the law, legal fictions are an enduring puzzle for theorists. Much discussion of fictions has focused on evaluative questions – are they good or bad, and in which ways? I address the prior question of how legal fictions operate, drawing on recent work in the philosophy of language. In my view, reasoning with legal fictions is an instance of semantic pretence. The account shows that reasoning with legal fictions is not an unconstrained exercise in doing whatever the court wants; rather, it has a distinctive structure which differs from that of ordinary legal reasoning.

I begin with an example of fictional reasoning. The rule in insurance law is that when an insured dies, benefits go to those of the insured's dependents who were alive at the timeof their death. However, if A is in an accident and dies before the birth of their child B, courts will proceed on the basis that B was born at the moment of A's death. This allows B to claim benefits as a dependent of A. This simple example displays the core problems with fictional reasoning: it is unsound, because it proceeds from false premises.

Before offering my own account, I respond to an objection raised by Kelsen. He argued that apparent 'legal fictions' reflect a failure to correctly describe the legal rule. A Kelsenian would argue that the rule in insurance law is that when the insured dies, benefits go to those of the insured's dependents who were alive at the time of death or are subsequently born. In response, I

distinguish immanent from transcendent legal theorizing. An immanent theory aims to analyze legal reasoning as understood by participants in the relevant legal system; a transcendent theory aims to analyze it in concepts applicable to all legal systems. Kelsen is a transcendent theorist. I aim to offer an immanent theory. To participants in the relevant legal order, Kelsen's rule is simply not the correct legal rule.

My account draws on the idea of a semantic pretence. A pretence is a structured game of make-believe in which we treat certain words as bearing meanings that they standardly do not (See Walton, Mimesis as Make-Believe and Armour-Garb and Woodbridge, Pretence and Pathology). By following the rules of the pretence, participants can communicate nonstandard meanings in predictable ways. Semantic pretence allows us to expand our expressive abilities without increasing our stock of words. This is a useful tool for courts, given the limits on their ability to introduce new rules.

I offer a semi-formal analysis of the semantic pretence involved in legal fictions such as the insurance example. The analysis displays the logical structure of the reasoning in a way that tracks the understanding of participants in the legal system. More broadly, it shows that reasoning with legal fictions is structured, not arbitrary, although its structure differs from ordinary legal reasoning. Before characterizing judicial reasoning as irrational and results-oriented, we should perhaps expand our conception of rationality.

Pedro Caballero Elbersci (Monterrey Institute of Technology Higher Education): 'On the Ontology of Legal Norms: Abstract Entities Grounded in the Practical Attitudes of Participants'

Abstract: In this work, the ontology of legal norms –i.e., what kind of entities are legal norms and how these entities come into existence– is analysed. Firstly, the following positions are rejected: (i) legal norms are concrete entities dependent on other entities; (ii) legal norms are abstract entities independent from other entities. Instead, it is defended that legal norms are abstract entities dependent on other entities. Secondly, the following positions are rejected: (i) the notion of causality correctly explained this dependence relation; (ii) the notion of supervenience correctly explained this dependence relation. Instead, it is held that a liberal notion of grounding correctly explains this dependence relation.

Steve Chan (University of Houston): 'Ignorance Explanation for Hard Choices'

Abstract: Consider the choice between two different careers you really want to pursue. One career is better in some respects while another career is better in some other respects. It seems you cannot decide between the two. If so, this is a hard choice. In "Hard Choices", Chang argues for the strong claim that all hard choices are hard because the options are on a par. In "The Possibility of Parity", Chang argues for the weaker claim that some hard choices are hard because the options are on a par. Either way, Chang is explaining at least some hard choices in terms of parity. I call this the parity explanation. Crucially, according to Chang, the value relation denoted by "on a par" or "parity" is a novel, fourth value relation besides "better than", "worse than" and "equal to".

Contrary to Chang, I think a lot of hard choices are hard because of decision makers' ignorance. I call this the ignorance explanation. Let me first explain the terminologies. The ignorance I talk about is of a specific kind – ignorance about how much the different features of the options contribute to the relevant covering consideration. For example, two careers are comparable on particular features: how much the two different careers pay in the short run and the long run, how well the different working cultures fit you, etc. I call these the features of the options.

When we consider which career is overall better, Chang suggests we are calculating which career has the higher (overall) "goodness as a career", which is the covering consideration in this example. According to the decision theoretical model both Chang and I assume, agents calculate an option's goodness as a career by adding up the

weighted value of the option's features. Agents also generally choose the option with the highest value in the covering consideration.

The ignorance explanation suggests for a lot of hard choices, the choice is hard because we do not know how weighty each of the features is when we calculate the options' overall goodness. Even though the agents know which option is better in terms of certain features, they do not know which feature is more important. Their ignorance about the weight of each feature makes it hard for the agents to decide which career is overall better and thus makes it hard for them to choose one over another.

The thesis of this essay is modest. Whereas Chang motivates the parity explanation by rejecting the ignorance explanation, I argue that Chang fails to show ignorance is not what makes hard choices hard. So, in this essay, I do not argue for the conclusion that ignorance is what makes a lot of hard choices hard. Instead, my goal is only to show ignorance is not ruled out as an explanation as to why hard choices are hard. I will also end the essay by explaining how one can resolve a hard choice in the face of ignorance and contrast it with Chang's proposal.

Day 2, Session 3

Chairperson: Christopher Taggart (University of Surrey)

11.00-11.45	Benjamin Newman (Tel-Aviv University): 'Plea-Bargaining with Wrong Reasons: Coercive Plea-Offers and Responding to Wrong Kind of Reasons'
11.45-12.30	Emmi Kiander (University of Helsinki): 'Security as a Rationale of Criminal Law – the Backwards Logic of Preventive Punishment'
12.30-13.15	David Edward Campbell (University of Oxford & UCL): 'The Curious Case of Self-Defence'
13.15-14.00	Lunch Break

Chairperson: Ira Lindsay (University of Surrey)

14.00-14.45	Andreas Vassiliou (University of Oxford): 'The Normativity of Law: Has the Dispositional Model Solved our Problem?'
15.30-15.45	Coffee Break
15.45-16.30	Hochan "Sonny" Kim (University of Princeton): 'Distributive Injustice and Structural Entrapment'
16.30-17.15	Hannah Widmaier (UCLA): 'Civic Obligations Among Victims of Injustice: On Shelby's Idea of Reciprocity'

Benjamin Newman (Tel-Aviv University): 'Plea-Bargaining with Wrong Reasons: Coercive Plea-Offers and Responding to Wrong Kind of Reasons'

Abstract: The notion of a defendant submitting a false guilty plea due to the penal incentive offered is not an uncommon phenomenon within the Anglo-American criminal procedure. The practice of induced guilty pleas and plea bargains have long been under scrutiny due to the risk of miscarriages of justice; and while the practice has been legitimised on the basis of the defendant's voluntary informed consent, it has often been argued that the structure of the plea-bargaining practice is coercive, particularly whenever the plea-offer entails a large sentence differential, discrepancy in the form of punishment (a non-custodial sentence relatively to a custodial one), or when the alternative of pleading guilty includes the risk of capital punishment.

Having said that, plea-bargains have often been classified as a non-coercive offer, whether due to their mutual advantageous character according to a baseline conception of coercion, or alternatively being an offer, which one can overcome according to an irresistible psychological account. While many scholars have struggled with this ambiguous notion of "coercive offers", the paper offers an alternative approach, arguing that it's the type of reasons which are to be considered within the offer which renders the bargain less than fully autonomous. It will be argued that the plea-bargain proposition infuses irrelevant (guilt-uncorrelated) penal considerations, which are unrelated to the question of guilt, imposing wrong kind of reasons which distorts the defendant's intentional character of his guilty plea decision, albeit voluntary. It is part of the conception of the guilty plea, and though the defendant may autonomously intend to take into consideration irrelevant penal considerations, such a decision cannot be genuinely considered an admittance of guilt.

Emmi Kiander (University of Helsinki): 'Security as a Rationale of Criminal Law – the Backwards Logic of Preventive Punishment'

Abstract: Contemporary criminal law has become seemingly saturated with security. The growing number of preventive offences, that have extended the limits of criminal liability to cover conduct preceding an ultimate harmful crime, are indicative of a notable temporal shift in criminal law. Much like security, criminal law too has shifted its gaze forward, from past wrongs to future harms. The criminal justice system, once satisfied with reacting only after harm has occurred, has become increasingly proactive, seeking prevention in the name of security. Despite the growing influence of security in the field of criminal law, the viability of security as a rationale for criminal law remains questionable. The purpose of this study is to assess what becomes of criminal law when it is harnessed as means of providing security – when criminal law becomes to be guided by the logic of security. The paper considers the implications of the security pursuit to criminal law and assesses critically the elusive but powerful argument of security as a driver of contemporary preventive criminal law policy. Considering security is necessarily future-oriented, security as a rationale for criminal law might provide a compelling explanation for increasing preventionism in criminal law. Yet, there remains a fundamental clash between the prospective logic of security and the retrospective orientation of punishment. The development of the criminal justice system to meet the demands of security alters its function and purpose and transforms criminal law from an instrument of punishment to an instrument of protection. Embedding the future-oriented logic of security into the framework of criminal law through preventive offences places tension within the criminal justice system since it changes the retrospective means of punishment to the prospective means of prevention. Security as a rationale of punishment introduces a backwards logic to the previously past-oriented system of punishment. Built upon the premises of prevention, the imperative of security requires using punishment preventively. Instead of crime preceding punishment, punishment now precedes crime. This has significant implications for criminal law since it is forced to meet objectives that are in a seeming contradiction with its traditional function. Furthermore, it requires eroding the very

principles that have kept the state's penal power in check, making security a self-defeating pursuit.

David Edward Campbell (University of Oxford & UCL): 'The Curious Case of Self-Defence'

Abstract: Why is it that an agent can benefit from a claim of self-defence in a criminal trial but based on the exact same set of circumstances not meet the requirements of self-defence in a tortious action - such as occurred in Ashley v Chief Constable of Sussex Police [2008] 1 AC 962? This paper posits an answer which disturbingly entails that self-defence claims can be denial claims or justificatory defence claims or both.

The paper draws upon an underdeveloped distinction noted in Practical Reason and Norms, namely between being well-grounded in reason and being reasonable. The former being an assessment of conformance with the outcome of a second-order reasons calculus conducted from an objective epistemic perspective and the latter being an assessment of compliance with a first-order weight analysis conducted within a subjective epistemic ambit. It is argued that self-defence defence claims are a species of the latter because they are assertions of the quality of the practical reasoning of the agent. In this way they offer a defence against the admitted norm violation. Self-defence denial claims are species of the former. They are claims of objective conformance with the norm. They claim a cancelling condition of the norm, i.e. permission.

If the argument of this paper is correct it offers a number of contributions to both theory and practice. As well as identifying two distinct forms of self-defence claims, it deepens our understanding of the law and offers a tool for better assessing defendants' claims to reasonableness. It marks out a significant division between the criminal law and tort law adding insight to the crime/tort distinction. It also contributes to our understanding of the offence/defence distinction providing us with a framework of disambiguation at law. Doctrinally it offers a tool for courts to solve Ashley type scenarios where courts have to consider the applicability of criminal defences in tort law.

Andreas Vassiliou (University of Oxford): 'The Normativity of Law: Has the Dispositional Model Solved our Problem?'

Abstract: In Legal Directives and Practical Reason, Noam Gur has presented a novel account, called the dispositional model, in order to explain how law bears on our normative practical reasons. Gur argues that his model is superior to the two current models, namely the standard weighing model—which holds that legal directives provide us with ordinary (first-order) reasons that are put to the balance along with all our pre-existing reasons—and Joseph Raz's exclusionary model—which holds that legal directives provide us also with second-order reasons that exclude all or some of our underlying reasons. Although Gur's interdisciplinary approach is exemplar and his work offers valuable insights into the practical impact of law, the paper argues that his project as conceived is ultimately not successful. First, Gur's challenge against the exclusionary model is valid only insofar as one accepts Raz's normal justification thesis as a basis for the model; it thus shows at best an internal inconsistency in Raz's account without necessarily refuting the exclusionary model. Second, Gur's challenge against the weighing model misses its target because it attacks the model qua a decision-making procedure while the weighing model is an account of practical reason. Finally, the dispositional model only shows how will be better conform to our decisive normative reasons by adopting a law-abiding disposition. Therefore, it solely presents a decision-making strategy and fails to explain how law affects our normative practical reasons. Hence, the dispositional model is not a competing account to the current models of practical reason. Since both the weighing and the exclusionary model can survive Gur's attacks, the problem of choosing between them and accounting for the normativity of law remains.

Hochan "Sonny" Kim (University of Princeton):

'Distributive Injustice and Structural Entrapment'

Abstract: Most, if not all, political communities today fail to ensure distributive justice: segments of the population possess less than their fair share of goods and services produced through social cooperation; indeed, some segments live in abject poverty. Call these individuals *the dispossessed.* How, if at all, does this fact affect the legitimate authority of the state to punish its dispossessed subjects? One prominent view, recently defended by R.A. Duff and Tommie Shelby, is that such failure vitiates the social contract between the state and its dispossessed subjects and thus nullifies their civic obligation to obey the laws. Where there is no separate moral justification for the law, e.g., natural duties against harming others, the dispossessed are not bound by that law, and the state cannot legitimately punish them for those transgressions.

In this paper, I develop a different line of argument, building on the work of Victor Tadros and Jeffrey Howard: on my view, the state loses its legitimate authority to punish because its distributive failure constitutes what I call *structural entrapment.* When the state knowingly or negligently places some of its subjects in conditions of severe socioeconomic deprivation, and when those dispossessed subjects go on to commit crimes as a result of such deprivation, then the state has created the very crimes it is supposed to punish. This constitutes entrapment, and so the state cannot legitimately punish these crimes.

My argument begins in Section II with an account of structural entrapment. Following recent analyses of entrapment by legal philosophers, ordinary entrapment in the law refers to situations where, roughly, an agent of the state manipulates the choice set of an otherwise-innocent individual into committing a crime. Structural entrapment, I suggest, refers to a similar situation where the individual's crime is the result of certain structural conditions for which the state is responsible. I argue that entrapment can be delegitimizing in two distinct ways: by reducing the *culpability* of the entrapped offender, and by undermining the *legitimacy* of the state's authority to make and enforce the law.

Using this account of structural entrapment, Section III argues that severe distributive injustice meets the relevant criteria to count as structural entrapment. Two claims are important here: (1) that the state knowingly or negligently dispossesses individuals; and (2) that socioeconomic deprivation is strongly causally connected to criminal activity. Together, these claims are sufficient for the charge of structural entrapment.

Section IV then draws out the normative implications of structural entrapment for punishing the entrapped. I suggest that my account has wider and more powerful implications on this front compared to previous work which have advanced similar arguments. We need not presuppose an expressivist theory of punishment to explain why the state's authority to punish is delegitimized by entrapment, and the range of crimes that cannot be legitimately punished by the entrapping state is not limited to certain types of crimes.

Section V addresses objections, before Section VI concludes.

Hannah Widmaier (UCLA): 'Civic Obligations Among Victims of Injustice: On Shelby's Idea of Reciprocity'

Abstract: In "Justice, Deviance, and the Dark Ghetto" (2007), Tommie Shelby argues that intolerable injustice vitiates the civic obligations that victims of injustice might otherwise have to work "legitimate" (i.e. socially accepted) jobs or to obey the law. These civic obligations are grounded in conditions of reciprocity: the treatment of all citizens on terms of equality and fair cooperation. Our social structure, with its entrenched institutional racism and class stratification, fails to establish reciprocity. This failure of reciprocity vitiates ghetto denizens' civic obligations, such that they do not act wrongly by, e.g., committing certain crimes and refusing to work legitimate jobs.

But assuming Shelby is right that our social structure's failure to extend reciprocity to denizens of the ghetto vitiates their civic obligations to unjustly advantaged citizens, might they still have civic obligations to other severely disadvantaged citizens – e.g., to each other? It seems implausible, and perverse, for an unjustly disadvantaged citizen's civic entitlements (e.g. her entitlement not to be subjected to crime) to be undermined by the very social conditions that unjustly disadvantage her in the first place. To avoid that implication, I aim to develop a notion of reciprocity that explains how victims of injustice can retain entitlements to others' civic compliance, including each other's civic compliance – thus retaining civic obligations to each other – even when the injustice of their circumstances vitiates their civic obligations to unjustly advantaged citizens.

I compare two accounts of reciprocity. On the structural account, reciprocity fundamentally inheres (or doesn't) in the social structure. So, when the structure is intolerably unjust, it fails to embody the value of reciprocity that grounds civic obligations. In this case, civic obligations in general simply do not get off the ground. On the relational account, reciprocity is fundamentally a feature of relations between citizens. So, the relation between one citizen and another is reciprocal insofar as they act as though they both have equal moral responsibility to contribute to the public good and equal moral entitlement to benefit from the social cooperative scheme. The relational account has two advantages. It treats more seriously the normative aspiration that I take to inform the political value of reciprocity: namely, that citizens should relate to each other as equals, rather than as subordinators and subordinated. It is also more precise as a tool for moral criticism, making reciprocity sensitive to who fails whom in cases of injustice, and so whose civic obligations and entitlements are thereby changed and how.

On the relational account of reciprocity, unjustly disadvantaged citizens retain civic obligations to certain others. In particular, if an unjustly disadvantaged citizen attempts to interact with others on terms of equality and fair cooperation, then they retain a legitimate moral claim, grounded in reciprocity, to the same treatment by other citizens, including by other similarly disadvantaged citizens.

I conclude by considering an important kind of "second-order" injustice that my relational account of reciprocity illuminates: The demands of reciprocity disproportionately burden victims of injustice, since they must sacrifice more in order to meet the civic obligations that they do bear (e.g., their civic obligations to each other).

Workshop: 'Economic Rationality and Practical Reasonableness'

June 10th	Organiser: Peter Cserne (University of Aberdeen)
11.00-11.35	Giovanni Tuzet (Universita Bocconi): The fundamental scheme of Law & Economics and the rationality assumption
11.35-12.10	Peter Cserne (University of Aberdeen): The problem of motivational assumptions in economics and law
12.10-12.45	Diego M. Papayannis (Universitat de Girona): Reasonable care and exclusionary reasons in tort law
12.45-13.20	Felipe Figueroa Zimmermann (University of Warwick): Why can't we be friends? Balancing epistemic values between Law and Economics

Abstract: A self-standing and uniform notion of reasonableness in law can be challenged from several directions. Self-standingness is questioned as the law relies on motivational assumptions that are not grounded in law itself. relies on normative arguments and empirical findings, neither of which are specific to law. Political and legal philosophers from Plato to Rawls (the latter, for instance, when discussing the "circumstances of justice") have been explicit about the motivational assumptions of their theories. Social sciences such as economics explain the behavioural consequences of law and propose policies under simplifying motivational assumptions although an a-contextual motivational uniformity is challenged by empirical findings.

Uniformity is questioned as the law's assumptions vary functionally, according to the underlying problem that law regulates. Such assumptions also serve different practical and theoretical purposes. In particular, there are valid considerations for the law to adopt 'psychologically adequate' or 'counterfactual' models of agency, and rely on assumptions or fictions in narrower contexts. The law's assumptions of rationality raise questions not simply as a matter of hermeneutic interpretation but as a matter of institutional design. Given that individuals are guided by a wide range of motives and reasons, how should the diverse motives for (non)compliance be taken into account, without making the rules naïve, relying too heavily on private virtues or becoming vulnerable to free riders on the one hand; and without being overly pessimistic on the other hand, thus reducing law to a "pricing machine" where people do not obey the rules unless they are deterred by sanctions.

In this context, the workshop addresses the role of various notions of rationality and reasonableness in law, with special emphasis on the role of economics in supplying, clarifying or challenging these notions. Contributors address four aspects of this general theme, focusing on (1) the assumptions, features and scope of the fundamental scheme of Law and Economics, in particular on the behavioural challenges to the assumption that the law's addressees are rational in the sense of responding to incentives in a predictable way (Tuzet); (2) how law is linked to common sense ideas of agency and reasonableness that resist empirical tests, consequentialisation and optimisation (Cserne); (3) whether generic standards of tort law such as reasonable care are in conflict with specific standards and how both kinds of norms provide the best normative framework for private interactions (Papayannis); (4) finally, on reconstructing Legal Realism as an epistemic framework, integrating the disciplines of law and economics in a manner that is superior to both legal formalism and institutional economics (Figueroa-Zimmermann).

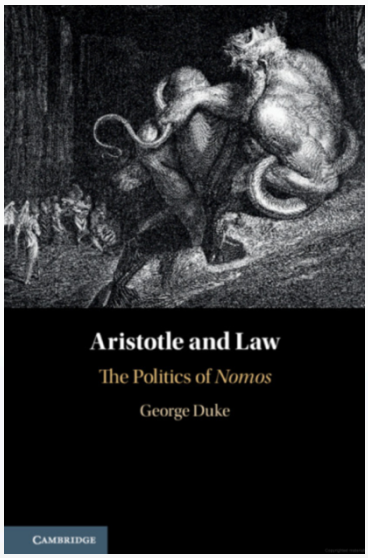
Workshop: John Gardner's *Torts and Other Wrongs*

June 10th	Organiser: Haris Psarras (University of Southampton)
14.00-14.45	Sari Kisilevsky (Queens College CUNY)
14.45-15.00	Break
15.00-15.45	Avihay Dorfman (Tel Aviv University)
15.45-16.30	Claudio Michelon (University of Edinburgh)
June 11th	
14.00-14.45	Adam Slavny (University of Warwick)
14.45-15.00	Break
15.00-15.45	Paul B. Miller (University of Notre Dame)
15.45-16.30	Haris Psarras (University of Southampton)

Abstract: The posthumously published volume *Torts and Other Wrongs* (OUP, 2019) brings together John Gardner's most significant essays on the philosophy of tort and private law theory. The essays discuss the place of corrective justice and distributive justice in the law of torts, the moral underpinnings of fault and strict liability, the concretisation of practical reasons into standards of liability, and other topics. They also critically engage with neo-Kantian theories of private law and with approaches to tort inspired by public policy considerations and the economic analysis of law. In this symposium, leading scholars in legal philosophy and private law will cast fresh light on themes, arguments, and theoretical controversies from the book and from Gardner's broader theory of private law. The symposium is intended to be highly interactive and will dedicate a substantial amount of time to Q&A. Reading materials will be pre-circulated among registered participants.

Roundtable Discussion: George Duke's *Aristotle and Law: The Politics of Nomos*

June 11th



14.00-15.30 Discussion

15.30-15.45 Break

15.45-17.15 Discussion

Author
George Duke (Deakin University)

Commentators
Myrthe Bartels (University of Pisa)
Thornton Lockwood (Quinnipiac University)
Steven Skultety (University of Mississippi)
David Riesbeck (Purdue University)

Abstract: Abstract: This book symposium will provide scholarly commentary on and discussion of George Duke's *Aristotle and Law: The Politics of Nomos* (Cambridge University Press, 2020). Duke argues that Aristotle's seemingly dispersed statements on law and legislation are unified by a commitment to law's status as an achievement of practical reason. This book provides a systematic exposition of the significance and coherence of Aristotle's account of law, and also indicates the relevance of this account to contemporary legal theory. Each commentator will focus on a specific chapter or subject within the book and the author will furnish responses to each commentator. The panel hopes to explore both ancient and contemporary insights about the nature of law and practical reason.