

School of Oriental and African Studies

Centre for the study of Colonialism, Empire and International Law (CCEIL)
&
Centre for Gender Studies

SOAS Spring Queer Legal Theory Workshop Queer Perspectives on Law: Sharing Reflections

Russell Square, SOAS College Buildings, Room G3
Friday 13 May 2011
9am-5.30pm

Organisers:

Professors Aeyal Gross (Tel-Aviv/SOAS) & Dianne Otto (Melbourne/SOAS)

9.00-9.30	Registration and Coffee
9.30- 9.45	Welcome Matt Craven (SOAS Dean, Co-Director CCEIL) Catriona Drew (Director, CCEIL) Nadje Al-Ali (Chair, SOAS Centre for Gender Studies)
9.45 - 11.15	Panel I: Resisting Hegemonies - Local and Transnational Encounters Chair: Akhil Katyal (SOAS) Vanja Hamzić (King's College London) - '(Sub)alternative Muslim Perceptions of <i>Law</i> and <i>Justice</i> : Beyond Politics of <i>Fiqh</i> and Inadequacy of Human Rights Discourse' Rahul Rao (SOAS) - 'The location of homophobia: notes from Uganda' Eddie Bruce-Jones (Birkbeck) - 'Queering Culture: Some notes on transnational LGBTI legal work' Maria Federica Moscati (SOAS) - 'Use of Anthropology for Queer Culture and Marriage Debate'
11.15 -11:30	Break
11.30 - 13.00	Panel II: 'Homonationalisms': Reading the Effects of Progressive Legal Reforms Chair: Nadje Al-Ali (SOAS) Arturo Sanchez Garcia (Kent) - 'Mexico City is wonderland!; The new sexual politics in the Mexican state(s)' Suhraiya Jivraj (Oxford Brookes) - 'The Dutch homo-emancipation policy and its silencing effects on queer Muslim organizing' akshay khanna (Sussex) - 'Three hundred and seventy seven ways of being - Sexualness and the Indian self'
13.00-14.00	Lunch

14:00 – 15.30	<p>Panel III: What Queer Legal Theory Might ‘Do’ Beyond Rights Chair: Prabha Kotiswaran (SOAS)</p> <p>Daniel Monk (Birkbeck) – ‘Reading Wills Queerly: Beyond Rights’ Emily Grabham (Kent) – ‘Queer Times: Critical Perspectives on Law’s Temporalities’ Les Moran (Birkbeck) – ‘Legal Queeries – Past, Present Future’ Elena Loizidou (Birkbeck) – “‘To Have and Have Not” : No strings attached’</p>
15.30-15.45	Break
15.45- 17.15	<p>Panel IV: Queering International Law Chair: Caroline Osella</p> <p>Teemu Ruskola (Emory) – ‘Law of the Queer Nations’ Gina Heathcote (SOAS) – ‘The Retrosexuality of International Law’ Aeyal Gross (Tel Aviv/SOAS) - ‘Does each person have a sexual orientation?’ Dianne Otto (Melbourne/SOAS) – ‘Transnational Homo-Assemblages: contesting “gender” in counter-terrorism discourses’</p>
17.15-17.30	<p>Conclusions</p> <p>Aeyal Gross (Tel-Aviv/SOAS) Dianne Otto (Melbourne/SOAS)</p>

BIOS & PAPER ABSTRACTS

Panel I: Resisting Hegemonies - Local and Transnational Encounters

Vanja Hamzić (King's College London)
– '(Sub)alternative Muslim Perceptions
of Law and Justice: Beyond Politics of
Fiqh and Inadequacy of Human Rights
Discourse'

vanja.hamzic@gmail.com

Abstract:

This paper comparatively examines some present-day perceptions of the concepts of *law* and *justice* by sexually- and/or gender-variant Muslim communities, living in Muslim-majority states. Firstly, it analyses their encounters with two hegemonic identitarian/ideological discourses: that of Muslim theopolitical reductionism and that of the exclusionary (neo)liberal homonormative identity politics. Secondly, the paper discusses the strategies devised to resist these hegemonic currents and to negotiate the communities' own takes on *law* (including both on Islamic legal tradition and on international human rights law) and *justice* (including concepts such as *social* and *gender justice*). Thirdly, it is argued that concepts of *law* and *justice*, as re-claimed and re-developed by sexually- and/or gender-variant Muslim communities – notwithstanding their respective national, cultural and religious specificities – not only challenge the two identified hegemonic discourses, but also test the limits of global movements/disciplines developed, *inter alia*, as the critical alternatives to those two oppressive identitarian ideologies. Those include queer theory, in its capacity (or the lack thereof) to *represent* or *research* the communities whose intrinsic ties transcend the sexuality/gender scripts, and the dominant human rights discourse, in its reliance on rigid legalism inapt to accommodate more nuanced social justice claims.

Bio:

Vanja Hamzić LL.M. is a PhD in Laws researcher and a Visiting Lecturer at King's College London. He is a founding member of the *Initiative for the Advocacy of Gender, Sexuality and Human Rights in Muslim Communities*. He has researched and worked with a number of gender-variant and sexually diverse Muslim collectives in Europe, the 'Middle East', South Africa and South East Asia. In his native Bosnia and Herzegovina, he has been the co-founder and president of *Logos*, an inter-faith non-patriarchal organisation, and the Editor in Chief of *Abraham*, a magazine for culture of inter-religious dialogue. His main research and activist interest revolves around the contemporary non-patriarchal Abrahamic communities and their access to the interpretative legal, theological and social mechanisms which challenge both hetero- and homo-normativity. His current doctoral study analyses these phenomena in the context of various non-patriarchal Muslim communities. His recent publications include *Reforming Mental Disability Law in Africa: Practical Tips and Suggestions* (University of Nottingham, August 2010), co-authored with Peter Bartlett; *Control and Sexuality: The Revival of Zina Laws in Muslim Contexts* (Women Living Under Muslim Laws, December 2010), co-authored with Ziba Mir-Hosseini; and 'The Case of "Queer Muslims": Sexual Orientation and Gender Identity in International Human Rights Law and Muslim Legal and Social Ethos' (2011) 11/2 *Human Rights Law Review* [forthcoming].

**Rahul Rao (SOAS) – 'The location of
homophobia: notes from Uganda'**

rr18@soas.ac.uk

Abstract:

Controversies over queer belonging in postcolonial societies have tended to feature a discursive battle in which homophobic conservatives insist that

queers are culturally inauthentic, and queer activists respond that it is institutional homophobia that has been imported via colonial discourses of law, medicine and literature. Whilst advancing diametrically opposed political positions, both sides in this dispute tend to participate in a politics of nativism, in which that which is foreign has no place in the postcolonial community, and more broadly in a politics of essences, in which homosexuality is located or fixed in particular places, so that particular attitudes towards sexuality come to be marked as defining the essence of what it means to belong to those places. I argue that a politics of essences is both analytically disingenuous and normatively dangerous, and suggest, in line with recent work in geographical theory, a move towards a politics of encounters in which places have no unchanging essence and 'do not exist outside the processes, flows, and relations that create, sustain, or undermine them' (David Harvey). I attempt to operationalise an understanding of the institutionalisation of homophobia in Uganda in relation to two moments of encounter between Uganda and the West, in the late 19th and early 21st centuries. In doing so, I encounter a number of problems that I have yet to fully think through. This presentation will reflect on work in progress and, in particular, on field research conducted in Uganda over 2010-11.

Bio:

Rahul Rao is a Lecturer in International Relations in the School of Oriental & African Studies, University of London. He has a law degree from the National Law School of India University and a doctorate in international relations from the University of Oxford. He is the author of *Third World Protest: Between Home and the World* (Oxford University Press, 2010).

Eddie Bruce-Jones (Birkbeck) – ‘Queering Culture: Some notes on transnational LGBTI legal work’
e.bruce-jones@bbk.ac.uk

Abstract:

How does one 'do' critical transnational anti-racist work on LGBTI issues from the West? How is such work complicit in discursively reifying colonial fantasies and constructing a particular type of LGBTI struggle to the exclusion of others? On what basis does it make sense to speak of an international queer community? By synthesising a few texts and vignettes from working with queer community groups and NGOs, this paper aims to suggest ways to approach these questions at the necessary problem space between imperialism and human rights liberalism.

Bio:

Eddie Bruce-Jones is a Lecturer in Law at Birkbeck College School of Law at the University of London. He is also a visiting lecturer in public international law at King's College School of Law. He is the resource co-ordinator for LGBTI claims for the Southern Refugee Legal Aid Network and a member of the UK-based organisation Justice for Gay Africans. He serves on the board of directors of ORAM (Organisation for Refugee, Asylum and Migration), which focuses on gender and sexuality-based persecution claims.

Maria Federica Moscati (SOAS) – ‘Use of Anthropology for Queer Culture and Marriage Debate’
mm114@soas.ac.uk

Abstract:

The aim of the present paper is to consider the manner in which the recourse to anthropology supports the argument that distinctions such as 'traditional family' and 'queer family' are based on false assumptions. It is suggested here that, as for legal studies in general, also queer culture in dealing with legal issues, should embrace well-known approaches to law and methodology such as the relations between law and anthropology. Overall, the paper counters two false assumptions.

The first false assumption is the idea that same-sex unions represent something that is *alternative* to the universal model of heterosexual marriage, and, typically, a lesser alternative. The second false assumption is that it is only in Europe and North America since the 1970s, that the possibility of same-sex marriage has been raised – in other words, the assumption that same-sex marriage is *new*. A number of methodological weaknesses are found in contemporary approaches, both supporting and rejecting same-sex unions: first, the restriction of 'law' to only codified law; secondly the use of a functionalist approach which privileges similarities between cultures, and thirdly overlooking studies of traditional family law in non-Western cultures. This last omission at least partially explains both the false assumptions identified above, namely that same-sex marriages are 'alternative' and that they are new. In fact, issues involved with the recognition of different systems of family law, including harmonisation, were already dealt with in many instances of traditional family law in different countries in Africa. Although very interesting, the arguments expressed in the debate are incomplete, and based on the hetero-normative model of marriage. First, it seems to me that all the perspectives from which same-sex marriage is advocated or repudiated consider only social and legal models of marriage and family in Europe and the United States. Secondly, both supporters and opponents assume marriage to be a fixed and monolithic model universally accepted. As a consequence, all other examples of relationship are seen to be different and to be compared to marriage. Conversely, based on anthropological research on various societies in Africa, and historical notary documents in Italy the present paper underlines the fact that marriage of a man and a woman, and procreation within marriage, are merely some of several options among a wide range of family forms which are recognised by law.

Bio:

Maria Federica Moscati is Senior Teaching Fellow at the School of Oriental and African Studies where she is the convenor and principal lecturer on courses: Alternative Dispute Resolution, and Access to Justice & Dispute Resolution: Special Applications. She also teaches as Lecturer in Family Law at Queen Mary University. She is currently in the final stage of her PhD in Law at the School of Oriental and African Studies. Her research, which draws on themes in Comparative Family Law, Access to Justice and ADR is entitled: *Pasolini's Premonitions: Legal, Procedural and Social Issues of Same-Sex Unions and Same-Sex Disputes in Comparative Perspective*. Maria is a qualified lawyer admitted to the Rome Bar Association in Italy and a former Programme Officer for Save the Children Italy. She also gained her LLM in London and participated in several specialised courses including the Summer School on Sexual Orientation and Law, organised by the Williams Institute of UCLA and held in Amsterdam in 2008. She is a member of Avvocatura per i Diritti LGBT (Lawyers for LGBT rights) an Italian association of lawyers for legal support for, and implementation of the rights of LGBT people. Maria is affiliated to the Research Centre on Comparative Family Law of the University of Shantou – PRC. She has been also nominated Expert for the National Committee of Nepal on Sexual Orientation and Same-Sex Marriage.

**Panel II: 'Homonationalisms':
Reading the Effects of
Progressive Legal Reforms**

**Arturo Sanchez Garcia (Kent) –
'Mexico City is wonderland!; The new
sexual politics in the Mexican state(s)'
A.Sanchez-Garcia@kent.ac.uk**

Abstract:

Feminist, women's and LBGT activist have celebrated recently as progressive legal reforms of sexuality have been passed into law in Mexico City. This despite a national context where "the rule of law does not rule". I suggest in this

paper that that the process of legal reform have initiated new sets of authorities distributed between legal institutions and social movements (for example, bringing new experts to the legal arena) and that the politics of representation are being redefined (who is represented now? by whom? for what purposes?). I explore the logic of these new sexual politics through a case study of the enactment of the law on voluntary interruption of pregnancy, and the appeal on the grounds of unconstitutionality presented to the Supreme Court of Justice by the president of the National Commission of Human Rights that followed it.

Bio:

Arturo Sánchez García became involved in the human rights field working in feminist and youth organizations promoting the defence of sexual and reproductive rights. He is currently working on his doctoral thesis "Sexual Rights: Lessons of Empowerment and Resistance from Latin America" supervised by Dr. Kate Bedford and Prof Didi Herman; the project is focused on the study of contemporary legal transformations around sexuality in Mexico City. His areas of interest are sexuality and Latin America, queer studies, social movements, postcolonial and transnational feminism. Arturo holds a Diploma in Independent Filmmaking from AMCI (Mexico); a BA in Communications from the Universidad Iberoamericana (Mexico); and an MA in Human Rights from the Institute "Bartolomé de las Casas", University Carlos III de Madrid (Spain) where he co-founded the Grupo de Estudios Feministas and contributed to programmes on participative education in human rights. He is currently a Graduate Teaching Assistant at Kent Law School, University of Kent. Email: A.Sanchez-Garcia@kent.ac.uk

Suhraiya Jivraj (Oxford Brookes) – ‘The Dutch homo-emancipation policy and its silencing effects on queer Muslim organizing’
sjivraj@brookes.ac.uk

Abstract:

The recent Dutch homo-emancipation policy has identified religious communities, particularly within migrant populations, as a core target group in which to make homosexuality more ‘speakable’. In this paper I examine the paradoxical silencing tendencies of a ‘speaking out’ policy on queer Muslim organisations in the Netherlands. I undertake this analysis as the Dutch government is perhaps unique in developing an explicit ‘homo-emancipation’ policy and is often looked to as the model for sexuality politics and legal redress in relation to inequalities on the basis of sexual orientation. However, throwing caution on any impulses to reify the Dutch model my analysis seeks to learn lessons on issues of sexuality, race and religion for future policy developments that tend to view freedom of religion and sexual orientation within a paradigm of clashing rights or supposed conflict. In particular I highlight how the ‘speakability’ imperative in the Dutch homo-emancipation policy reproduces a paradigmatic, ‘homonormative’ model of an ‘out’ and ‘visible’ queer sexuality that has also come to be embedded in an anti-immigrant and specifically anti-Muslim discourse in the Netherlands. A political climate which is indicative of what Puar (27) has termed ‘homonationalism’ which in the Dutch context (as elsewhere) circulates in discourse that associates the ‘nation’ with sexual freedom whilst Muslims are viewed as oppressive and intolerant of queer sexualities. Drawing on the concept of *habitus* in the work of Gloria Wekker and Saba Mahmood, I outline an alternative view of queer sexualities and their configurations. I suggest that rather than relying on a ‘speakability’ policy model queer Muslim sexualities need to be understood in a more nuanced and intersecting way that attends to the lived realities of complex identity and subjectivity.

Bio:

Suhraiya Jivraj is a Lecturer in Law at Oxford Brookes University. Her current

research focuses on critical theories of religion and race and bringing them to bear on juridical conceptualizations. Her doctoral research and recent publications have interrogated the concept of 'religion' and its relationship with 'race' in English child welfare and education law and policy. Other research areas include comparative work in relation to queer Muslim movements in Europe. Her wider interests cover feminist perspectives on International human rights law as well as Islamic family law and Islamic human rights. She has been active in grassroots anti-racist work and issues of sexuality and gender for the last 15 years. She is a co-founder and former co-ordinator of the Safra Project, a resource organisation working on issues relating to queer Muslim women based in the UK. Her co-authored publications for the Safra Project include a social welfare needs assessment report as well as a resource on sexuality, gender and Islam. She is also a member of the Decolonize Queer working group which is an academic-activist transnational network working on issues of sexuality/gender from a post-colonial perspective.

akshay khanna (Sussex) – ‘Three hundred and seventy seven ways of being – Sexualness and the Indian self’
A.Khanna@ids.ac.uk

Abstract:

The High Court of Delhi recently declared that Section 377 of the Indian Penal Code, a colonial anti-sodomy law that effectively criminalised homosexuality, violates rights guaranteed by the Constitution of India. This has been the first juridical recognition of Lesbian, Gay, Bisexual and Transgender folk as citizens. This has also been the recognition of the Right to Sexuality of the abstract citizen-subject. In effect the juridical subject has been ascribed a 'sexuality'. 'Sexuality', in other words, has been identified as an aspect of personhood, the 'self' that the subject refers to. And yet, same-sex desire in India is not contained within discrete bodies, much less so within bodies presumed in bio-medical or juridical discourses as

'sexuality types'. This recognition lies at the centre of the Queer movement which made possible the ascription of sexuality to the juridical subject in the first place. Based on ethnographic fieldwork related to the litigation, this paper argues that the juridical register requires that demands for rights articulate in terms of subjectivity and personhood, and examines the ways in which this disjuncture came to be managed by the movement. The paper examines various theoretical approaches to subjectivity and argues for a conceptual distinction between the idea of the 'subject' and the 'self'. Subjectivity, it is argued, is better understood in terms of forms of (legal) legibility, bringing our focus onto the political-economic, historical and cultural conditions under which these forms come to be performed as embodiments-in-the-world.

Bio:

akshay khanna is a Social Anthropologist, lawyer and an activist associated most closely with the Queer movement in India. Heris doctoral research, completed at the University of Edinburgh, related to the Queer movement in India, with a focus on the law and epidemiology as two arenas where Queer activists negotiate claims to justice. In earlier avatars s/he has worked as a human rights lawyer and as a development consultant working on issues relating to sexuality, gender, biopolitics, human rights and intellectual property law. Heris current obsession, and research, is with the relationships between eroticism and violence. S/he is currently a Research Fellow at the Institute of Development Studies, Sussex

Panel III: What Queer Legal Theory Might ‘Do’ Beyond Rights

Daniel Monk (Birkbeck) – ‘Reading Wills Queerly: Beyond Rights’
d.monk@bbk.ac.uk

Abstract:

There is relatively little critical scholarship about Wills. In the US attempts have been made to read disputes about them from

critical race perspectives but in the context of sexuality, other than commentaries that privilege the status of the conjugal couple and assert an unquestioned commitment to equality or focus on stories where gays and lesbians can claim the status of victim, Wills and the issue of inheritance generally have attracted little attention. A key argument in this paper is that the reading and writing of Wills are positive, playful, self-reflective, meaning-making practices and performances - potentially, something, in other words, very queer. At the same time Wills provide a perspective for asking questions about the relationship between queer theory and the sociology of care, intimacy and kinship and about what queer theory might 'do' - culturally, socially and politically.

To tease out these questions, and the extent to which Wills can be understood to be potent sites for story-telling, this paper draws on three texts by the writer EM Forster, his novels *Howards End* (which discusses the writing of Wills); *Maurice*, (his posthumously published novel about homosexuality) and, finally, his own Will.

Bio:

Daniel Monk is Senior Lecturer in Law at Birkbeck College, University of London. Publications include *The Family, Law and Society* (2009, co-authored with Hale, Pearl and Cooke); *Feminist Perspectives on Child Law* (2000, co-edited with Bridgeman); *Legal Queeries* (1999, co-edited with Moran and Beresford). Most of his work to date explores the relationship between children's rights and the sociology of childhood and addresses issues such sex education, homophobic bullying, home education and school exclusions. His current research into wills, inheritance and sexuality is funded in part by a research award from the Socio-Legal Studies Association.

Emily Grabham (Kent) – ‘Queer Times: Critical Perspectives on Law’s Temporalities’
E.Grabham@kent.ac.uk

Abstract:

There has been a recent explosion of

interest in queer temporalities. Scholars such as Elizabeth Freeman and Dana Luciano have coined the terms 'chrononormativity' and 'chrono-biopolitics' to describe, and interrogate, the ways in which dominant modes of time, expressed through concepts such as life progression and reproduction, implicate and exclude queer constituencies. This work builds on literature which has examined women's time (Julia Kristeva) and the time of the nation (Homi Bhabha), as well as the social production of the daily rhythms of life (Eviator Zerubavel), although it also owes a great deal to the scholarship of Pierre Bourdieu. In this short piece, I introduce and discuss some questions which arise when we think about law's homonormative temporalities. Drawing on my recent work on the Gender Recognition Act, as well as in the area of UK employment equality law, I sketch some out future avenues for research. My main contention is that paying attention to law's temporalities provides us with new ways of looking at power relations and their implications for queer and racialised subjects.

Bio:

Emily Grabham is a Lecturer in Law at the University of Kent. She is currently working on a book project on Legal Temporalities and Corporeal Regulation. Her recent articles include 'Governing Permanence: Trans Subjects, Time, and the Gender Recognition Act' (Social & Legal Studies, 2010) and 'Doing Things with Time: Flexibility, Adaptability, and Elasticity in UK Equality Cases' (Canadian Journal of Law & Society, forthcoming). She is co-editor, with Davina Cooper, Jane Krishnadas, and Didi Herman, of 'Intersectionality and Beyond: Law, Power, and the Politics of Location' (Routledge, 2009).

Les Moran (Birkbeck) – ‘Legal Queeries – Past, Present Future’
lmoran@bbk.ac.uk

Abstract:

From its multiple origins, from HIV and sexual citizen activism, to literary

theoretical and poststructuralist scholarship 'queer' and 'queer theory' inflamed and inspired critique of law. It rapidly turned into 'just' another identity category. But is its potential lost? Has the rise of sexual citizenship abolished heteronormative cultures? Has the politics and practice of homonormativity evacuated its potential? I'll seek to answer these questions through a reflection on my own scholarship and practice.

Bio:

Professor Leslie Moran has written and researched extensively on matters relating to sexuality and law, criminal justice, with particular reference to hate crime, law and visual culture. He has a keen interest in social and legal theory and much of his work is interdisciplinary. His monograph, *The Homosexual(ity) of Law*, published by Routledge in 1996 is a pioneering historical and contemporary study of sexuality in law. He has edited two collections of essays in the field: *Legal Perversions* (1997) published as a special edition of the journal *Social and Legal Studies* and *Legal Queeries* (Cassel, 1998) edited with Daniel Monk and Sarah Beresford. *Sexuality Identity and Law* was published in 2006 as part of Ashgate's international Law and Society series. His research in criminal justice has focused on violence and safety. The monograph, *Sexuality and the Politics of Violence and Safety*, written with Beverley Skeggs and published by Routledge in 2004, is based upon empirical research undertaken as part of an Economic and Social Research Council-funded initiative, the *Violence Research Programme* directed by Professor Betsy Stanko.

Elena Loizidou (Birkbeck) – “To Have and Have not” : No strings attached’
e.loizidou@bbk.ac.uk

Abstract:

The title of this presentation is borrowed from the 1944 film *To Have and Have not* starring Humphrey Bogart and Lauren Bacal. The film you may recall tells the story of Harry Morgan who with his alcoholic friend Eddie run a boat hire

business in the Island of Martinique during the World War II. When a customer fails to pay them for a boat hire and they are short of money they break their pact of staying neutral during the war and help a resistance fighter to flee to Martinique. At the forefront of this story of capital, politics and resistance there is a love story: a turbulent love story between Mary ‘Slim’ Browning who is a resistance sympathiser and Morgan. To have and have not in the film appears to refer to holding on to a challenging position of non-attachment, to love without attachments, to business without being attached to politics at a time of social, political and economic disorganisation. I borrow the title and the overall theme of the film for its queer sensibility (queer understood in one of the ways in which Eve Sedgwick has indicated in the form of a question: What if instead there were a practice of valuing the ways in which institutions and meanings can be at loose ends with each other? (Eve Kosofsky Sedgwick *Tendensies* p.6)) and bring it to the theme of anarchism, to try and understand the dissonances of law and life. The paper will focus on the work of Emma Goldman, whose strand of anarchism, propagated at a time of social, political and economic transformation (prior, during and after World War I) enable us to see through her constant questioning of authority, of talking truth to power, how a queer life may be bereft of juridification. At the same time, her work enables us to see clearer the problems of juridification, its inability to allow ambiguity to work itself out. The juridical order is revealed as hasty, parochial and unreflective.

Bio:

Dr Elena Loizidou is a Senior Lecturer at Birkbeck College School of Law. Her recent publications include *Judith Butler: Ethics Law Politics* (2007) London, Routledge, and ‘This is what democracy looks like’, in James Martel and Jimmy Casas Klausen (eds) *How not to be Governed: Reading and Interpretations from a Postanarchist Left*, New York, Lexington Press (2011).

Panel IV: Queering International Law

**Teemu Ruskola (Emory) – ‘Law of the
Queer Nations’**

teemu.ruskola@emory.edu

Abstract:

What can queer theory do for, or in, the study of international law? To answer this question, I will examine colonial rhetoric from the twin perspectives of international law and queery theory. More specifically, I am interested in the ways in which international law has constructed Western states’ sovereignty in terms of normative masculinity and non-Western states’ sovereignty (or lack thereof) in terms of variously deviant masculinities. Indeed, there have always been many ways to fall short of the male norms of properly constituted masculinity, and with the aid of queer theory I will map out some key differences in the geopolitical distribution of masculinity across the globe.”

Bio:

Teemy Ruskola is professor of law at Emory University in the United States. His scholarship addresses questions of law, identity, and history from multiple perspectives, comparative as well as international, frequently with China as a vantage point. His articles have appeared in the *Michigan Law Review*, *Stanford Law Review*, *UCLA Law Review*, *American Quarterly*, and *Social Text*, among other places. He is co-editor (with Ugo Mattei and Antonio Gidi) of *Schlesinger’s Comparative Law* (7th ed., Foundation Press), and he currently is completing two new book projects. *Legal Orientalism: China, the United States, and Modern Law* is a study of “legal Orientalism” as a structure of knowledge for understanding Chinese law as well as a historical practice

in the context of U.S. extraterritorial jurisdiction in China from 1844 to 1943. *China, For Example: China and the Making of Modern International Law* analyzes the history of the introduction of Western international law into China, and the implications of that process for the theory and politics of international law. Ruskola is also co-editor (with David L. Eng and Shuang Shen) of a forthcoming special volume of the journal *Social Text*, titled “China and the Human,” an interdisciplinary examination of Chinese, Western and transnational conceptions of the human as a legal, political, ethical, medical and anthropological subject.

**Gina Heathcote (SOAS) – ‘The
Retrospectivity of International Law’**
gh21@soas.ac.uk

Abstract:

In this paper I focus on international law governing the right of states to act in self-defence under article 51 of the UN Charter and customary international law. My wider study of the international law on self-defence demonstrates how the international legal structure deploys a sexed and a gendered model that replicates the patriarchal biases prevalent in western domestic laws on self-defence. In this paper I argue these patriarchal biases are interwoven with a heteronormativity that permeates assumptions about the potential of international legal structures and limits the possible range of solutions. International legal subjectivities, particularly the vulnerabilities and strengths of states, are dependent on an understanding of gender relations akin to that perceived as normal by ‘retrospectives’ (a term coined in the US in the 1990s as a rejection of metrosexuality). Retrospectivity denies contemporary understandings of gender fluidity and sexuality through promotion of a return to clear distinctions between men and women, where men are not afraid to use force to protect (or correct) women. The consequence of perceiving states as capable of rationally self-defending in a manner that parallels heterosexual male perceptions of rational force in domestic

legal system facilitates an international legal system that privileges powerful states, denies the complexity of interstate and inter-community relationships, perpetuates force as a 'normal' or 'rational' enforcement mechanism while silencing feminist and queer voices. The post-2000 prevalence of feminist voices that engage collective security mechanisms to 'protect' women in conflict zones are thus permitted to participate in the international legal structure precisely through their failure to challenge the retro image of gender relations embedded in these contemporary security narratives and international law generally. The paper concludes with an analysis of changing accounts of self-defence in the era of global terrorism. I argue that post- 9/11 accounts of self-defence mark a regressive turn where self-defence under international law increasingly utilises narratives akin to domestic provocation laws, that have faced widespread challenges as provocation defences are seen to perpetuate impunity for homophobic violence and violence against women.

Bio:

Gina Heathcote currently lectures on Public International Law and the International Law on the Use of Force at the School of Law, SOAS. Gina's forthcoming book, to be published in September 2011, provides a feminist analysis of the law on the use of force or jus ad bellum. Gina's research interests include feminist methodologies and feminist legal histories, the law, gender, violence continuum, and law and narrative approaches. Her current research develops these methods in response to the work of the United Nations Security Council and state justifications for the use of force.

Aeyal Gross (Tel-Aviv/SOAS) 'Does each person have a sexual orientation?'
aeyal.gross@gmail.com

Abstract:

Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most

basic aspects of self-determination, dignity and freedom" – thus the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007). The Yogyakarta Principles are a major milestone in the attempt to address questions of gender identity and sexual orientation from a human rights perspective. The Principles are centered on the concept of sexual orientation as based on the question of the similarity or difference in gender between oneself and one's object of desire and around sexuality and gender as features of the self, which are distinct from each other. Thus, the determination cited above warrants contemplation as to whether we can think of a person without any specific sexual orientation and/or gender identity either because she or he lives in a society that lacks any notion of sexual orientation/gender identity in the Western sense or because she or he seeks to be free of the ideas of sexual orientation and gender identity, or because for that person the categories of "sexual orientation" and "gender identity" exist as intertwined, rather than separate categories. My paper thus addresses the tension between the universalizing project of Yogyakarta and diverse formations of sexual orientation and gender identity in the global context. I look at the work of human rights groups who try to struggle with this dilemma and at the criticism of writers who blame such groups for imposing the Western model of (homo)sexuality on non-western societies, pointing to the importance of critical thinking on the role of human rights discourse in this context, but also to the limits of criticism that ignores the complexities of globalization. Specifically Human Rights Watch's report on the persecution and prosecution of men who engaged in sexual activities with other men in Egypt will be read closely. I will consider how the complex realities of "glocal" sexual identities may encourage us to think queerly of the role international law plays in this sphere, and to better understand what transforming international law requires.

Bio:

Aeyal Gross is a professor and member of the Faculty of Law at Tel Aviv University and a Visiting Reader at SOAS. He holds an LL.B. from Tel Aviv University (1990) and an S.J.D. from Harvard Law School (1996). He was previously a member of the Board of the Association for Civil Rights in Israel. In 2007-2009, he served as a research fellow at the Institute of Advanced Legal Studies at the University of London and in 2009-2010 as a Joseph Flom Global Health and Human Rights Fellow at Harvard Law School. Additionally he taught as a visitor in Columbia University and the University of Toronto. He is the author of numerous articles, including *The Construction of a Wall between the Hague and Jerusalem: The Enforcement and Limits of Humanitarian Law and the Structure of Occupation* (Leiden Journal of International Law, 2006), *After the Falls: International Law between Postmodernity and Anti-Modernity* (in Helene Ruiz-Fabri, Emanuelle Jouannet & J.M. Sorel Regards D'Une Generation Sur Le Droit International (Editions Pedone, 2008), and *Gender Outlaws Before the Law: The Courts of the Borderlands* (Harvard Journal of Law & Gender, 2009) He is the co-editor of *Exploring Social Rights* (Hart, 2007), which includes his article *The Right to Health in an Era of Privatization and Globalization: National and International Perspectives*.

Dianne Otto (Melbourne/SOAS) – ‘Transnational Homo-Assemblages: contesting “gender” in counter-terrorism discourses’
d.otto@unimelb.edu.au

Abstract:

Yet another episode in the epic transnational contestation of the meaning of the term ‘gender’ unfolded on 26 October 2009, when the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, defined gender in his report to include socially constructed roles, functions and

responsibilities in relation to sexual orientation and gender identity. In this paper, I will reflect on three aspects of the struggle that emerges through the discussion of his report in the General Assembly, in order to raise some larger questions about the project of ‘queering’ international law. They are first, the disagreement about how to read the term gender; second, the claim that ‘women’, and possibly also others, will lose out if gender is understood as a social (fluid) rather than biological (fixed) category; and third, the refusal by some states to even engage in the debate. My reflection draws on Jasbir Puar’s analysis of the sexuality of ‘terrorism’, in order to reflect on Scheinin’s attempt to have those queer bodies that are targeted by counter-terrorism measures recognised by international law as ‘lives that matter’. In conclusion I turn to wikileaks for insight into the story behind this story, which reminds us that surface readings of epic contestations are likely to tell only part of the tale and that, as Puar proposes, we need new practices of ‘reading’ to supplement and extend the well-worn identity and representational categories that we have come to rely on.

Bio:

Professor Dianne Otto teaches at the Melbourne Law School, where she is also Director of the International Human Rights Law Programme (IILAH) and Project Director for Peacekeeping (APCML). She researches in the areas of public international law, human rights law and critical legal theory, with a current focus on gender and sexuality issues in the context of the UN Security Council, peacekeeping and international human rights law. Her recent publications include chapters in Hilary Charlesworth and Jean-Marc Coicaud (eds), *Fault Lines of International Legitimacy* (Cambridge University Press 2010), Mashood Baderin and Manisuli Ssenyonjo (eds), *International Human Rights Law: Six Decades after the UDHR* (Ashgate 2010), and Sandesh Sivakumaran, Sangeeta Shah, Daniel Moeckli and David Harris (eds), *International Human Rights Law* (Oxford

University Press 2010). Dianne's scholarship explores how international legal discourse reinforces hierarchies of nation, race, gender and sexuality, and aims to understand whether and how the reproduction of such legal knowledge can

be resisted. Her work draws upon and develops a range of critical legal theories particularly those influenced by feminism, postcolonialism, poststructuralism and queer theory.
