

**HC LAW Honours Summer Course**  
**Law, Power & Inequality: Global Perspectives**  
**June 19 – 28 at Leiden Law School, the Netherlands**

**5 ECTS - 3 US Credits**

**The course will be graded on a pass or fail basis**

***Short description***

In this international and interdisciplinary summer course, we will pay attention to the question what the law has accomplished in different countries across the world.

Those in support of the law and legal reasoning have promised many things —the spread of human rights and the rule of law, the elimination of discrimination and the protection of the vulnerable, the lure of economic development and the fostering of global trade, endowments of human dignity and restraints on economic rapacity. Yet, its critics observe law as an instrument for repression, hegemonic control and infringements on privacy and intrusive surveillance - in the context of a never-ending and ubiquitous ‘war against terror’ - as a weapon against free speech or political opposition, as a tool of economic exploitation and domination, and as a retreat from politics.

As we aim to explore during this summer honours course, the reality will be somewhere in between. Law and legal norms, whether they’re state or non-state issued norms, can result in both positive and negative things. And these results can differ for different groups within society, but also between different societies and different countries.

We will engage law's promises and law's pathos in domestic and transnational contexts, through sessions addressing the roles of law in the war on terror, in land tenure, in emancipation and protection of the world's most vulnerable populations, and in law's relationships with religions. In discussing these matters, this summer course will go back to the roots of socio-legal scholarship by questioning the relationships between law, power and inequality.

In doing so will also pay specific attention to the question whether law and social science provide the expertise to stimulate and inform the impending social and political agenda? And whether social scientists and lawyers should become allies to address these pressing problems and if so, how they should collaborate?

For a more detailed description of the various components of the course, please see below.

***When?*** Three online sessions on April 18, 25 and May 2 for two hours between 17 – 21 (Dutch time) and 11am – 3 pm (Maryland time). The exact hours of the global classrooms will be picked based on the students’ time tables. The summer course in Leiden will take

place from June 19 – 28. In the afternoon of June 28<sup>th</sup> students will receive their certificate during a festive high-tea closing ceremony.

**Costs?** There is no fee to participate in the Summer Course. We aim to find free housing for all international students by placing them with Leiden students. During lecture days, lunch is included as well as the costs for fieldtrips and excursions.

**Coordinators:** Prof. Maartje van der Woude, Prof. Robert Koulisch & Prof. Sue Dwyer.

**Language:** English

**Collaborating Parties:** This summer course is a collaboration between: Honours Academy Leiden, the Van Vollenhoven Institute for Law, Governance & Society (UL), the University of Maryland MLAWs program and the University of Maryland Honors Academy.

**Who should apply?**

This course is definitely **not** just interesting for students who are thinking of going to law school, on the contrary. Due to its socio-legal perspective this Summer Course is interesting for students of all disciplines. From law to anthropology, from sociology to governance and social affairs to political science. As long as you are curious in critically thinking about and reflecting upon the role of state and non-state legal rules and regulations – Why do we have them? What is expected of the law? Do these expectations differ per person or per group in society? What are the foreseen but also the unforeseen side-effects of different forms of formal and informal control mechanisms?

**Contact information:**

**For UMD Students:**

Professor Robert Koulisch  
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**For Leiden University Students:**

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# **GLOBAL- ONLINE - CLASSROOM SESSIONS**

### Three global classroom sessions

Since this class will bring together students from different disciplines and with different national backgrounds, it is important to create a common understanding of the central concepts of the summer course – law, power & (in)equality – in order to work with these concepts throughout the various thematic sessions that are organised in June. In other words, the Global Classroom Sessions are to be seen as the knowledge foundation upon which we will build when we meet in June. Participating in the Global Classroom sessions is mandatory, unless there are pressing reasons for missing a session – such as having to be in another class, or personal circumstances, etc. In case of the latter, let us know as soon as possible by emailing [m.a.h.vanderwoude@law.leidenuniv.nl](mailto:m.a.h.vanderwoude@law.leidenuniv.nl)

Through the Global Classroom sessions and the joint assignments students from Leiden and UMD will be working on, we also aim to create a community feeling even before the students will meet in person. This will further be stimulated by using a joint Blackboard page through which students from UMD and Leiden can access all the materials but also can communicate with each other through an online discussion wall. Besides Blackboard, we have also created a Facebook page (<https://www.facebook.com/groups/1121978171244002/>) for those students who are active on Facebook to reach out to each other and to the professors. The page can be used for exchanging interesting news, exchanging thoughts, but also to plan social events. All class related information will be published on Blackboard as well.

During the “break” between the Global Classroom Sessions and the summer part of the course in June, students will need to prepare by reading and watching the required materials and preparing the questions asked by the different lecturers. Students will need to submit the questions as well as one-page reflection essays on the required materials of each lecture before the start of the summer part of the course – **the deadline for submitting is June 10.**

### **Session 1: Introductions, expectations & explaining the socio-legal lens April 18, 2017**

Legal scholars generally focus their attention on the law as it appears in books. They look at formal manifestations of the law, such as constitutions, statutes, legal rulings and court structures. While this is certainly an important aspect of studying law, we would miss quite a lot if we limited our attention to the formal structures of law, and ignored the larger society in which law functions. While law in action bears some resemblance to law in books, law as a social phenomenon is often far more complex than is apparent from the formal manifestations of law alone. This course looks at the law in action: it studies law as a social phenomenon. Only when we understand how the major elements of a legal system function together in a specific social context, can we really understand how law affects society and how society in turn shapes law. In this first Global Classroom Session we will introduce the sociological study of law and explain – by giving several examples – what it means to look at

rules and regulations through the socio-legal lens. In doing so, we will also pay attention to the question what we think of when we talk about law or legal rules and regulations.

### Required Materials

- Seron, Carroll, and Susan Silbey. 2004. "Profession, science, and culture: An emergent canon of law and society research." Pp. 30-59, *The Blackwell Companion to Law and Society*, edited by Austin Sarat. Malden, MA: Blackwell
- Davies, Margaret (2010). 'Legal Pluralism'." In: Peter Cane and Herbert Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research*. Oxford: Oxford University Press, pp. 805-827. To be downloaded at: <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199542475.001.0001/oxfordhb-9780199542475-e-34>
- Moore, Sally Falk (1972) 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', *Law & Society Review* 7, 1 pp. 719-746. To be downloaded at: <http://search.proquest.com/docview/1297910178/fulltextPDF?accountid=12045>

### Assignment

Students will prepare a 3 minute "pitch presentation" to be delivered "live" during the Global Classroom session in which they answer the following question: *in thinking about Law, Power & Inequality, I think of....* In answering this question make sure to reflect upon the question – What would you like to learn, what are personal experiences related to the topic of this course, why did you choose the course.

### Session 2: Social inequality

April 25, 2017

"Social inequality can refer to any of the differences among people (or the socially-defined positions they occupy) that are consequential for the lives they lead, most particularly for the rights or opportunities they exercise and the rewards or privileges they enjoy" (Grabb, 2007, p.1) Poverty is a visible marker of social inequality, so most people cite economic disparities when asked the question: "What is social inequality?" In this summer course we will come across the many causes and consequences of social inequality in different global contexts. In this Global Classroom Session, we will discuss the contributions of the classical theorists Marx, Weber & Durkheim to the scholarship and discourse on inequality.

### Required Materials

- [https://www.ted.com/talks/bryan\\_stevenson\\_we\\_need\\_to\\_talk\\_about\\_an\\_injustice](https://www.ted.com/talks/bryan_stevenson_we_need_to_talk_about_an_injustice)

### Assignment:

Students will be divided in groups, and have to prepare a brief online group presentation on one of the three classical theorists while addressing the question how the notion of social injustice is reflected in the work of the classical theorist they got assigned to. What do they see as the cause for inequality? What do they see as a mechanism to fight inequality, if any?

### **Session 3: Power and social control**

**May 2, 2017**

Law is the most important, and thus a very powerful, formal means of social control. Yet, social control encompasses both formal and informal mechanisms and a variety of institutions and social processes to deter inappropriate conduct, if possible, and/or punish and reform such conduct. Early societies depended upon informal means of social control but when societies grew in size and complexity they were compelled to formulate rules and regulations which define the required types of behavior and specify the penalties to be imposed upon those who violate them.

#### **Required Materials**

- Chambliss, William. 1964. "A sociological analysis of the law of vagrancy." *Social Problems* 12(1): 67-77.
- Provine, Doris Marie. 2007. *Unequal under law: Race in the war on drugs*. The University of Chicago Press, pp. 91-93, 103-119.

#### **Suggested Materials**

<https://documentaryaddict.com/films/the-law-in-these-parts>

<https://www.youtube.com/watch?v=h9JIKngJnCU>

#### **Assignment**

Students watch both clips – the documentary and the brief clip on Orwells 1984 and write a short reflective paper for themselves in which they (a) explain the relationship between the two clips and (b) in which they reflect upon the role of law and power in the documentary and (c) the feeling they had when and after watching the documentary.

## OVERVIEW OF THE SUMMER COURSE – JUNE 19 – 28

### **Monday June 19:**

#### **Fighting abuse of power and inequality: Legal Mobilisation & Social Movements**

Prof. Bert Klandermans

*In the afternoon there will be a round-table discussion with various NGO representatives e.g. Amnesty International, Black Lives Matter, etc.*

### **Tuesday June 20:**

#### **Power and inequality in the rulings and proceedings of the International Criminal Court**

Sarah – Jane Koulen

*In the afternoon there will be a field trip to and a tour of the International Criminal Court in the Hague.*

### **Wednesday June 21:**

#### **The Rule of Law and Access to Justice in a context of fragility**

Carolien Jacobs

*In the evening : Midsummer night festivities in the University's Botanical Garden*

### **Thursday June 22:**

#### **Gender and the Law: Making and Unmaking Equality**

Prof. Sue Dwyer

*In the afternoon there will be a field trip to the IC Museum in Amsterdam Bijlmer*

### **Friday June 23**

#### **Waiting for seeds to sprout: Power and inequality in debates over land and education in Timor-Leste**

Bernardo Ribeiro de Almeida & t.b.a.

*In the afternoon there will be a screening of a documentary on education in Timor-Leste followed by a discussion.*

**Saturday/ Sunday June 24/25 – FREE TIME!!**

### **Monday June 26**

#### **Structural Violence and inequality in justice: Racial Profiling in the US and the EU**

Prof. Robert Koulisch & Prof. Joanne van der Leun (t.b.c.)

*In the afternoon we will be walking through the Schilderswijk in the city of The Hague and meeting with both community activists and police officials.*

**Tuesday June 27:**

**Law, power and inequality in China: An ideological view**

Dr. Ewan Smith; Dr. Matt Ferchen & Dr. Rogier Creemers

*In the afternoon there will be a field trip to Museum Volkenkunde – the National Museum of Ethnology*

**Wednesday June 28**

**Unequal bordering in an age of terrorism & migration**

Prof. Maartje van der Woude

*In the afternoon we will have a closing lunch and a handing out of the certificates*

## **DESCRIPTIONS OF THE SESSIONS**

## **SESSION 1: PROTEST DEMONSTRATIONS**

*For capturing and highlighting a global sense of restless promise, for upending governments and conventional wisdom, for combining the oldest of techniques with the newest of technologies to shine a light on human dignity and, finally, for steering the planet on a more democratic though sometimes more dangerous path for the 21st century, the Protester is TIME's 2011 Person of the Year." (Time, Dec. 14, 2011)*

In the year 2011 *Time Magazine* selected the 'Protester' as the 'Person of the Year' memorializing the iconic role that person played in the previous decade. Indeed, the 21<sup>st</sup> century made a contentious start. In the 'new' democracies in Central Europe people protested about 'stolen elections'; in the 'old' democracies against austerity politics. People occupied city squares and parks around the globe to rally against inequality and to claim better governance; and in Hong Kong they staged what was soon called 'Umbrella protests' for more democracy. Almost daily our news media report on how people try to influence politics in contentious manners. Street demonstrations—the prototypical protest activity—have become part of the modal repertoire of today's citizens.

But, who are these protesters? Results from global surveys such as the European Social Survey (ESS) and the International Social Survey Program (ISSP), suggest that participants in street demonstrations are relatively young, more often male than female, highly educated, leftist, and dissatisfied with the functioning of democracy in their country. But is that all there is? Are demonstrators the same in whatever demonstration they take part? Do they spread in a random manner over demonstrations? Verhulst (2011, p.213) concludes "that *the* protester does not exist". He criticizes the social movement literature for indiscriminately treating the participants in protest events. "Should we just assume that a routinized peace protester and a worried factory worker have a lot in common, just because they are both protesters?" he rhetorically asks. "Of course not" is his answer. Participants in demonstrations are a mixed bag of people, as Verhulst shows. But this is hidden from vision by the fact that studies of movement participation are most of the time comparisons of participants with non-participants. Indeed, we know a lot about how participants differ from non-participants, but much less about how participants differ within and between demonstrations. Assessing such differences requires comparative studies, but comparative studies of street demonstrations are rare; let alone theoretical frameworks which account for such comparisons.

### **Readings, required preparations:**

- Special issue on Legal Mobilization, will be distributed through Blackboard

### **Questions/Food for thought:**

- Journalists often ask us "does that have any effect a demonstration? What do you think? Do demonstration have effect? And what would make them more or less effective?"

- We observe major difference between countries in terms of political participation (both in movement politics and party politics. Why would that be?)
- What would be an issue you really care for and would consider to engage in political action? What would you do in order to try to influence politics? Explain why?

### **About Prof. Bert Klandermans**

Bert Klandermans is professor in Applied Social Psychology. The emphasis in his work is on the social psychological consequences of social, economic and political change. He has published extensively on the social psychology of participation in political protest, social movements and labor unions. He edited Social Movements, Protest, and Contention, the prestigious book series of the University of Minnesota Press. His now classical Social Psychology of Protest appeared with Blackwell in 1997. He is the editor and co-author (with Suzanne Staggenborg) of Methods of Social Movement Research (University of Minnesota Press, 2002) and (with Nonna Mayer) of Extreme Right Activists in Europe (Routledge, 2006). With Conny Roggeband he edited the Handbook of Social movements across disciplines (Springer, 2007). He is the editor of Sociopedia and co-editor of Blackwell/Wiley's Encyclopedia of Social Movements. He was president of the Collective Behavior and Social Movement Section of the American Sociological Association; vice-president of the International Sociological Association; he was vice-president (2008-2010) and president of the International Society of Political Psychology (2013 -14). In 2009 he received a royal decoration for the efforts to link science and society. In 2013 he received the Harold Lasswell Award for his distinguished contribution to the field of Political Psychology; in 2014 he received the John D. McCarthy award for lifetime achievement in the scholarship of Social Movements and Collective Behavior. In 2014 he received a prestigious ERC Advanced Investigator Grant

## **SESSION 2: LAW, POWER AND INEQUALITY: THE ESTABLISHMENT AND FIRST 15 YEARS OF THE INTERNATIONAL CRIMINAL COURT**

The International Criminal Court (ICC) in The Hague, the Netherlands, established in 2002, is the first permanent international court with jurisdiction over the international crimes of genocide, war crimes, crimes against humanity and the crime of aggression. The Rome Statute, the founding document of the ICC, was adopted on July 18<sup>th</sup> 1998 at 2:00 a.m., in a warm conference hall in Rome after weeks of final negotiations and amendments, leading to a mostly jubilant response amongst the more than 160 state delegations and hundreds of NGO representatives gathered. John Washburn describes the moment as an “international epiphany”, writing: “Diplomats abandoned themselves to cheers and chants, tears and embraces, rhythmic stomping and applause. In this moment of celebration and recognition, many of them saw the future of international law transformed.”<sup>1</sup> A mere four years and the required 60 state signatures later, the Rome Statute entered into force. In 2002, the ICC started work in a rent-free building on loan from the municipality of The Hague with a handful of staff and a charismatic prosecutor, an empty docket, and a formidable mandate: to prosecute “the worst crimes of concern to the international community as a whole,” as per the preamble of the statute. The first 15 years of the ICC have been difficult. Cases have been slow, or have completely fallen apart for lack of evidence. The court is strapped for resources and operates under intense public scrutiny and increasingly vocal criticism. In recent years, African states have become increasingly critical of the perceived bias of the ICC towards the continent. All cases currently before the court relate to African countries and the arrest warrant for President Omar Al-Bashir, and especially the indictments of President Kenyatta and Vice-President Ruto added serious fuel to the fire. The African Union has threatened a mass withdrawal from the Court, with the Ethiopian prime minister accusing the ICC of being on some kind of ‘race hunt’ and the then Information Minister of the Gambia announcing that the ICC was in fact the “International Caucasian Court for the humiliation and persecution of people of color, particularly Africans.” This lecture will introduce students to the establishment and basic functioning of the ICC, and will focus particularly on the allegations of bias, political and racial selectivity that have been levelled at the Court and the key pressures it faces. Key issues to be covered are the main tenets of the AU critique of the ICC, the role and power of the Security Council and the P-5 in relation to the jurisdiction of the ICC, as well as the efforts to establish an African (regional) criminal court and its extensive subject matter jurisdiction.

### **Readings, required preparations:**

1. The Rome Statute of the International Criminal Court. Access [here](#).

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<sup>1</sup> John Washburn, “The Negotiation of the Rome Statute for the International Criminal Court and International Lawmaking in the 21<sup>st</sup> Century” *Pace International Law Review*, 11 (1999).

2. Kamari Maxine Clarke, 'Rethinking Africa through its Exclusions: The Politics of Naming Criminal Responsibility', *Anthropological Quarterly*, Vol. 83, No. 3, (Summer 2010), pp. 625-651.
3. Kendall, S., De Vos, C. and Stahn, C. (2015) Introduction: Contested Justice. In: *Contested Justice: The Politics and Practice of International Criminal Court Interventions*. Cambridge: Cambridge University Press, pp. 1-20.
4. Mamdani, M. and Mbeki, T. (2014) '[Courts can't end Civil Wars](#)', *The New York Times*.
5. Time permitting, watch in part or in full: [The International Criminal Court](#) (1hr, 26mins)

### Questions/Food for thought:

- After reading the Rome Statute, what surprised/interested/confused you?
- If you were a diplomat or legal advisor negotiating the establishment of the ICC on behalf of your government, what would you change or propose? Would you vote in support of the ICC as envisioned in the Rome Statute or against? [No need for long essay responses, just quick reactions and first impressions!]
- What is the relation between international politics and international law? Is this division between law on the one hand and politics on the other useful or important? Are these two distinct spheres? If so, why? If not, why not?

### About Sarah-Jane Koulen B.A. L.L.M.

Sarah-Jane Koulen is a Ph.D. candidate in Anthropology at Princeton University. She holds a B.A. in Liberal Arts & Sciences from University College Roosevelt (UCR) in Middelburg, The Netherlands, an L.L.M in Human Rights, Conflict and Justice from The School of Oriental and African Studies (SOAS) in London, The United Kingdom, an M.A. in Development Studies from the University of Nijmegen, The Netherlands and an MA in Anthropology from Princeton University, USA. Her dissertation research examines the work of the small community of legal experts who develop, advance and practice the field of international criminal law. She is interested in how commitments to particular understandings of violence, criminality, accountability and justice travel and gain - or fail to gain - traction globally. Her project is interested in producing an increased understanding of the the daily labor, personal attachments and social ties that shape the pursuit of international justice and the experience of that work by the small community of experts engaged in the 'fight against impunity'.

### SESSION 3: THE RULE OF LAW AND ACCESS TO JUSTICE IN A CONTEXT OF FRAGILITY

The rule of law and access to justice are two central and related concepts that play a prominent role in projects and programmes of international actors that aim at improving the justice sector in fragile and conflict-affected settings. Yet it is difficult to find the key to success and a delicate balance needs to be found in setting up interventions.

In fragile and conflict-affected settings, state actors often struggle to be considered as legitimate. In these settings, the state is often not able to adequately provide basic services to its citizens; a lack of proper health care, of education, of water and sanitation, but also, and maybe most essentially: no proper justice and security. In many instances, we see that a wide range of non-state actors will fill part of these gaps by taking over state-like functions; churches, national and international NGOs, traditional authorities, but also rebel groups. Some of them are working in partnership with the state, others are much less obvious partners. This clearly has implications for the way in which the state is perceived by its citizens and demands attention for the relationship between state and non-state actors.

In recent years, international actors such as DfID and the Dutch Ministry of Foreign Affairs are increasingly interested in understanding ways in which the relations between state and non-state actors are shaped and how this feeds into the legitimacy of the state. What is clear to all, is that non-state actors play a significant role in the provision of justice in fragile and conflict-affected settings.

To understand ways in which justice is provided, and to be able to pay attention to particular challenges, it will often not suffice to just observe whether certain justice providers have a presence on the ground. There are many more factors that play a role in determining whether somebody is able to obtain a solution for her/his 'problem'. By dissecting the concepts of rule of law and access to justice, we are able to analyse the impediments that may arise at each step of the process. From there, we can look for ways in which the challenges in terms of justice can be addressed and the role that international actors can play in this regard.

This lecture will help students to gain an understanding of the role that state and non-state actors play in providing justice in fragile and conflict-affected settings. We will discuss a framework to analyse access to justice and the rule of law, and from there we will look at the concrete case of the Democratic Republic of Congo and discuss the role of international interventions in this field. This will be illustrated by watching (in the afternoon) the movie 'Justice for Sale'. Drawing on the lecturer's own experiences in the DRC we will discuss the challenges the justice sector in this country faces and the unintended side effects of some of the international interventions in this country.

*Excerpt from the movie: "JUSTICE FOR SALE"* follows Claudine, a young and courageous human rights lawyer, in her struggle against injustice and widespread impunity in Congo. She investigates the case of Masamba, a soldier who was convicted of rape, and discovers that his trial was corrupt and unfair. He was jailed without any concrete evidence. In Claudine's journey to obtain justice, she uncovers a system where the basic principles of law are virtually ignored." (From <http://justiceforsale.nl/>)

### **Readings, required preparations:**

1. Bedner, A. and J. Vel. 2010. 'An analytical framework for empirical research on Access to Justice', *Law, Social Justice & Global Development Journal*, 1-29.
2. Toomey, Leigh T. 2010. 'A Delicate Balance: Building Complementary Customary and Legal Systems', *The Law and Development Review* 3(1): 156-207.
3. Rubbers, B. and E. Gallez. 2012. 'Why do Congolese people go to court? A qualitative study of litigants' experiences in two justice of the peace courts in Lubumbashi', *The Journal of Legal Pluralism and Unofficial Law* 66: 79-108.

### **Questions/Food for thought:**

- Is it necessary to seek connections between state and non-state justice providers? In whose interest are such connections? Or can they act independently?
- What elements of the RoLAX-framework are most likely to be problematic in a context of fragility? Is this very different from normal settings?
- How can international interventions best be tailored?
- If there are unintended negative side effects to international interventions, does that mean they should be stopped altogether?

### **About Dr. Carolien Jacobs**

Carolien Jacobs is Assistant Professor at the Van Vollenhoven Institute. She has a background in International Development (MSc, Wageningen University) and in Legal Anthropology (PhD Max Planck Institute for Social Anthropology/Wageningen University). She is interested in interdisciplinary research. Her research interests are in the fields of law, governance and international development, especially in Africa and in conflict-affected countries.

Carolien acquired most of her research experience in Africa, where she has worked on the role of religion in disputes and dispute resolution (Mozambique), and on an evaluation of the Dutch development aid (DRC), in relation to capacity building of Congolese NGOs and to civil society development.

## SESSION 4: GENDER AND THE LAW: MAKING AND UNMAKING EQUALITY

This session will be devoted to a large and central question: If the law itself constructs inequality, how can the law be used to achieve equality? To make this large question manageable, we will narrow our focus to consider how this question has animated a great deal of work in feminist legal theory and how answers to it – both optimistic and pessimistic – have been tested in the crucible of the “real world” application of law to the issues of pornography and prostitution.

We will begin by familiarizing ourselves with several major trends in feminist legal theory, with a special focus on the work of Catharine MacKinnon, one of the most important and influential feminist thinkers of the last 40 years. As we begin to apply the concepts and arguments we uncover to pornography and prostitution, we will aim to critically assess the extent to which feminist legal theory is or is not successful in its efforts to get gender taken seriously in the law.

### Readings, required preparations:

- Beaumont, Elizabeth. 2016. Gender Justice v. the ‘Invisible Hand’ of Gender Bias in Law and Society. *Hypatia* 31: 668-686
- Conaghan, Joanne & Yvette Russell. 2015. Talking Law and Gender. *Feminist Legal Studies* 23: 199-214.
- Jonsson, Sofia & Niklas Jakobsson. 2017. Is buying sex morally wrong? Comparing attitudes towards prostitution using individual-level data across eight Western European countries. *Women’s Studies International Forum*, 61: 58-69.
- MacKinnon, Catharine A. 2010. Gender- The Future. *Constellations*, 17: 504-511.
- MacKinnon, Catharine A. 1987. Difference and Dominance. In *Feminism Unmodified: Discourses on Life and Law*. Cambridge, MA: Harvard University Press, pp. 32-45.
- MacKinnon, Catharine A. 1983. Feminism, Marxism, method and the state: Toward a feminist jurisprudence. *Signs* 8:635-658.
- Sorial, Sarah. 2011. Habermas, Feminism and Law: Beyond Equality and Difference. *Ratio Juris* 4:25-48.
- Tan, Godwin. 2017. Is pornography merely obscene? Feminist perspectives on the regulation of pornography. *Legal Issues Journal* 5: 97-120.

### Deep background (not required)

- Conaghan, Joanne. 2015. *Law and Gender*. Oxford: Oxford University Press.
- Okin, Susan Moller. 1989. *Justice, Gender, and the family*. New York: Basic Books.
- MacKinnon, Catharine A. 1989. *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press.
- MacKinnon, Catharine A. 1987. *Feminism Unmodified: Discourses on Life and Law*. Cambridge, MA: Harvard University Press.

### About Prof. Sue Dwyer

Susan Dwyer specializes in moral psychology and at issues at the intersection of law and morality, including problematic speech, abortion, and pornography. She received her Ph.D. in Philosophy with a Graduate Minor in Linguistics from MIT. She has written regularly on

moral/legal/feminist issues for *Al Jazeera America*. Dr. Dwyer is a professor of Philosophy and the Executive Director of the Honors College at the University of Maryland

## **SESSION 5: WAITING FOR SEEDS TO SPROUT: POWER AND INEQUALITY IN DEBATES OVER LAND AND EDUCATION IN TIMOR-LESTE**

As argued by Lund, a state is never a finished product, it is always in the making. The political authority of state institutions and their agents over people is dependent on a constant exercise of its public authority. One area where the intervention of governments has more potential to (re)affirm their power is the regulation of access, use and loss of property. Property plays a key role in people's livelihoods, but it is also an integral part of their social status, and in many cases also part of their own identity. However, property is a finite resource: the access and use of property by one implies restrictions to its access and use by others. When regulating and enforcing rules over property, states are on one hand affirming their power by determining access and avail of property, and on the other promoting rights of certain groups to the detriment of others, and also contributing to a increasing or decreasing social equality.

Timor-Leste provides a remarkable example of the interaction between law and power in regard to property rights, and the role of this interaction regarding equality. Timor-Leste became an independent country in 2002, after centuries of Portuguese colonization and 24 year of a violent Indonesian invasion. As result of colonialism and several waves of violence, at the time of independence, property rights were one of the key problems of the new-born country; Portuguese and Indonesian land titles overlapped; property of displaced people was randomly occupied by others; customary rights had no recognition in the law, despite being the only way the great majority of Timorese could access to land. Addressing these issues and providing tenure security has been often stated by the Timorese government as a priority, but little has been achieved. In fact, the vague legal framework, weak rule of law, and under-developed public administration has been used by the government to claim ownership of vast tracts of land to implement infrastructure projects, and by elites to capture property for themselves. After many years, a new Land Law has recently been approved, and there is some hope that it can change this scenario. However, it is too early to claim any success.

### **Focus of the lecture**

In this lecture, we will use the case of Timor-Leste to debate the political dilemmas and legal problems that states around the world face when regulating access to and use and loss of property, and the impact that those decisions can have on raising or diminishing inequality. Which interests over property should be prioritized? (e.g., public vs. private; elites vs. general population; foreign investors vs. local producers.) Who takes these decisions, and influenced by which factors? Which are the legal and practical problems of regulating property rights? It is expected that, at the end of the lecture, students will have an overview of some of the main legal and political issues regarding property rights, and the role that land property policies can have in promoting or harming equality.

### **Afternoon session**

In the afternoon we will look at issues surrounding law, power and inequality in the education sector in Timor-Leste, specifically a 2013 Curriculum Reform that developed a

primary-school curriculum in the country for the first time. But while everyone in Timor-Leste agrees that education is an essential part of the country's development and future, not everyone agrees on how it should be delivered. Debates around which language(s) should be used, which subjects should be taught, and which teaching methods are effective reveal deep differences in experiences, philosophies, and everyday priorities between those with the power to shape policy and those with the obligation to implement it. In this session, we will watch the ethnographic film *Scripting Change: Education reform in Timor-Leste*, which explores the everyday challenges and different visions of education among the Curriculum Reform staff who create the new curriculum and the primary-school teachers who must implement it. We will discuss with filmmaker, Laura Ogden, the ways in which the Curriculum Reform illustrates contemporary issues of law, power, and inequality in Timor-Leste.

#### **Readings, required preparations:**

- Lund, Christian (2016). 'Rule and Rupture: State Formation through the Production of Property and Citizenship' in *Development and Change*, 47(6): 1199–1228.
- United Nations Mission In East Timor 1999 – 2009 - [https://www.youtube.com/watch?v=N2-Qjy\\_G8Gc](https://www.youtube.com/watch?v=N2-Qjy_G8Gc) (This documentary provide an overview of the major political events in Timor-Leste before and after independence).

#### **Questions/Food for thought:**

- What is the connection between property and state power?
- How can property-related legislation promote or harm equality?
- Which are the main dilemmas when legislating about property?

#### **About**

**Bernardo Almeida** is a development and legal professional, with special focus on land-related legislation. His main country of work is Timor-Leste, where he lectured property rights at the national university and worked for five years as a Ministry legal advisor for the land sector. Bernardo also worked before in Afghanistan with UNDP and UN Habitat. Currently he is writing his PhD thesis of the Van Vollenhoven Institute of Leiden University Law School (Netherlands), focusing on describing the development of the formal land tenure system in Timor-Leste.

## **SESSION 6: STRUCTURAL VIOLENCE AND INEQUALITY IN JUSTICE: RACIAL PROFILING IN THE US AND THE EU**

Over the past two years we've seen a strong display of community action and resistance against police brutality in the United States. Following the deaths of, among others, Michael Brown and Freddie Gray, people in cities such as Baltimore, Ferguson and New York took their concerns and frustrations to the streets. Based on the media, one could be under the impression that the core of the problems that was driving the growing national unrest in African-American communities throughout the U.S. was police brutality and racism. Yet, as we aim to show in this lecture, the driving forces are more complex.

Due to a combination of factors, including the exposure to violence and a lack of social support high levels of social toxicity have culminated on the streets of different US cities making people feel that they are marginalized, targeted, and harassed. Although these feelings transcend the police organization, as the street-level embodiment of the state's many failures, their unjust actions are of great impact. The physical violence demonstrated by the police is visible and therewith easier identified than what is often referred to as structural violence. Structural violence refers to the systematic ways in which social arrangements and social structures harm or otherwise disadvantage individuals. It is subtle, mostly invisible, and often has no one specific person who can (or will) be held responsible. This violence can be seen as structural because the social arrangements causing it are embedded in the political, legal and economic organization of our social world.

Police-citizen relations in multicultural neighborhoods and ethno-racial profiling are also increasingly being debated and researched in the Netherlands. These debates have grown more heated over the past year and a half in which there were several (violent) incidents between the police and minority groups. In the wake of the media coverage on the riots in Ferguson, politicians but also scholars were fairly quick to warn about "Ferguson-type situations" in the Netherlands. Although any form of unjust policing should be taken very seriously and therefore scrutinized, we should also be very aware of drawing unjust parallels. Without dismissing the situation in the Netherlands as unproblematic, it is of vital importance to be aware of the completely different situation of inner-city life in the Netherlands versus inner-city life in the United States. The conditions for and levels of structural violence and social toxicity in the United States differ greatly from the situation in the Netherlands. It therefore remains to be seen to what extent current tensions in the Netherlands can and should indeed be explained by the same processes that seem to be driving similar tensions in the United States.

In this session we will look into the concepts of social toxicity and structural violence and identify the different formal and informal power structures that affect the practice of ethno-racial profiling in the US and the Netherlands.

### Readings, required preparations:

1. Paul Farmer, *An Anthropology of Structural Violence*, Current Anthropology (2001)
2. Keon L. Gilbert, Rashawn Ray, *Why Police Kill Black Males with Impunity*, Journal of Urban Health (2015)
3. D. Watkins, *Black history bulldozed for another Starbucks: Against the new Baltimore*, SALON.COM, Mar. 23, 2015, [http://www.salon.com/2015/03/23/black\\_history\\_bulldozed\\_for\\_another\\_starbucks\\_against\\_the\\_new\\_baltimore](http://www.salon.com/2015/03/23/black_history_bulldozed_for_another_starbucks_against_the_new_baltimore).
4. Tami Luhby, *White-black wealth gap widens to near record levels*, BALTIMORETIMES, Dec. 12, 2014, <http://baltimoretimes-online.com/news/2014/dec/18/white-black-wealth-gap-widens-near-record-levels/>.
5. Kate Rabb, *Don't give city school kids an arrest record for mouthing off*, BALTIMORE SUN, Feb. 2, 2015, <http://www.baltimoresun.com/news/opinion/readersrespond/bs-ed-schools-cops-letter-20150202-story.html>.
6. Benji Hart. "Baltimore's Protesters Are Right: Smashing police cars is a legitimate political strategy," Salon.com. [http://www.salon.com/2015/04/28/baltimores\\_violent\\_protesters\\_are\\_right\\_smashing\\_police\\_cars\\_is\\_a\\_legitimate\\_political\\_strategy/](http://www.salon.com/2015/04/28/baltimores_violent_protesters_are_right_smashing_police_cars_is_a_legitimate_political_strategy/)
7. ROBERT KOULISH, THE DATABASING OF FREDDIE GRAY: WAS FREDDIE GRAY'S DEATH AN UNINTENDED CONSEQUENCE OF CITISTAT AND ITS PROGENY IN BALTIMORE?
8. DOJ Report: Executive Summary, Pgs. 1-11; Background to BPD Engages in a Pattern or Practice of Conduct That Violates the United States Constitution and Laws, and Conduct that Raises Serious Concerns, Pgs. 21-23; Background to System Deficiencies in BPD's Practices Contribute to Constitutional Violations, Erode Community Trust, and Inhibit Effective Policing, Pg. 128; BPD Fails to Engage in Effective Community Policing, Pgs. 156-162; Conclusion, Pg. 163 [Found here](#)

### Questions/Food for thought:

1. What is the connection between law and structural violence?
2. How to seek justice if the courts almost always side with the police?
3. What is the connection between the direct causes of Freddie Grey's death and indirect causes?

### About Prof. Robert Koulish

Robert Koulish, a political scientist, is Director of the MLAW Programs, Joel J. Feller Research Associate Professor in the Department of Government and Politics, and Lecturer at Law in the Carey School of Law. He has conducted several studies and authored numerous peer-reviewed and law review academic articles on immigration detention; immigration, asylum and human rights at the US/Mexico border; immigration privatization; and criminalization. In particular he is author of the several existing studies on risk and detention for Baltimore, Maryland: *The Immigration Detention Risk Assessment*, (Georgetown Immigration Law Journal); *Detained Without Process* (ACLU of MD); *Using Risk to Assess the Legal Violence of Mandatory Detention* (LAWS); *Immigration Detention in the Risk Classification Era*

(Connecticut Public Interest Law Journal); He is also author of *American Democracy: Subverting the Rule of Law* (Routledge Press, 2010), and co-editor of *Immigration Detention, Risk and Human Rights* (Springer Press, 2016).

## **SESSION 7: LAW, POWER AND INEQUALITY IN CHINA**

### *Part 1 Law, power and inequality in China: An ideological view - Dr. Rogier Creemers*

One thing that is often overlooked in discussions of China's legal system, is the extent to which it is new: there are nearly no currently valid legal rules, institutions or practices that predate 1978. That means, in order to understand how the law in China reflects or influences questions of power and inequality, we need to look outside of the legal system, and trace back their meaning and conceptualization within political discourse. In the People's Republic, that automatically means Party ideology: the always changing but always present combination of beliefs, assumptions, norms and aspirations that provides a guide to understand the present and influence the future.

At the heart of this ideology lies a classical Marxist-Leninist diagnosis of the nature of power: in order to lead the country to a better future, it is necessary for a disciplined vanguard Party to command complete control over all important aspects of political, social and economic life. While there may be limited space for deliberation within the Party-state structure, in principle, all power must be contained within the Party's orbit. Dividing or diluting power, for instance through the separation of powers or the institution of strongly protected constitutional rights would impede the vanguard Party's ability to lead the country, and therefore must be avoided.

The position of inequality in this belief system is somewhat more fraught with complexity. The Communist Party gained power with a message of thorough social equalization, often realized through violent class struggle. In 1978, the new leadership pronounced an end to this violence, asserting that class struggle had largely been won. In other words, the Party has, to a considerable degree, based its claim to legitimacy on the basis that economic exploitation has virtually ceased to exist. However, from the CCP's early days onwards, there was always a glaring difference between the claim to equality and the reality of meticulously arranged hierarchy. Amongst others, this triggered the first true internal crisis that Mao had to address in his capacity as Party leader. Moreover, the distributional nature of anti-inequality measures does not sit well with the classical Marxist assertion that increases in productivity would consign the notion of material scarcity to the dustbin of history.

That makes it difficult for equality to be addressed within the politically correct ideological context: if the Party were fulfilling its mandate, inequality could not have attained the scale it has. As a result, inequality is tackled more often through development policy, which gives particular preference not to interpersonal inequality, but interregional inequality. Interpersonal inequality is often managed through the anti-corruption process, indicating the unease within the legal system about enrichment.

### *Part 2 Economic informality and "stability maintenance" in China - Dr. Matt Ferchen*

Surprisingly, despite still being a developing economy, the concept of "informality" is almost never invoked to understand those huge swaths of China's economy that share similarities to the informal sector in many other developing countries. As in many countries in Latin America, Africa, South Asia and many others, many Chinese seek a living in on the margins of

both urban and rural economies. A prototypical example of informal workers are street vendors, seen on the streets of China's teeming metropolises just as in many other countries that have experienced rapid urbanization. At the same time, the way the Chinese state engages with those in the informal economy itself involved a form of governance, often at the margins of legal, administrative and in China, Party, authority. Part of the answer for this is the way in which the state interacts with those in the informal sector: it engages through legal and administrative institutions and tools that themselves are often improvised and that call into question state capacity and legitimacy. Moreover, the governance of informality in China involves the contestation of what is "orderly" or "chaotic" both in markets and in methods of governance. The informal sector in China is thus a site of contestation about "market order" and more generally about tropes of "development" and "stability" in contemporary China. All of this calls into question definitions of informality elsewhere that almost all hinge on the concept or notion of being "unregulated". China's legal and other urban governance institutions interact with and "regulate" those in the informal economy, but the outcome is often chaos rather than the promised stability.

*Part 3 The Party, the State and the Party-state – Dr. Ewan Smith*

What is the relationship between the CCP and the State? Does the CCP govern through the state, alongside it, or in its stead? If the CCP is able to govern outside the State, what does that mean for the state, the Chinese constitution and the Chinese legal system?

To understand China's constitutional order, or its legal order, we need to understand way in which the CCP inhabits the constitutional structures of the State. Party leadership should not be thought of as a latent principle, or as a principle of China's unwritten constitution. It is an explicit, written principle of state law. It is not something that the CCP just happens to do. It is something that the Party is supposed to do, by any satisfying account of the Chinese constitution.

In the last five years, scholars such as Jiang Shigong, Larry Catá Backer and Chen Duanhong have developed accounts such as these. They describe the leadership of the Party as a sort of sovereignty, and suggest that the most viable path for constitutional democracy and the rule of law is intra-party, not extra-party. However, the sort of Party sovereignty described in this literature is a special sort of sovereignty, and it does not sit well with the models of constitutional government that Jiang, Backer and Chen imagine. Instead theories like these draw on Carl Schmitt's account of the constitution, an account in which true sovereignty lies outside the state, and the body that wields sovereignty may suspend state law when it needs to. There is a tension between these approaches and the rules that currently structure the Party-State.

Ideas such as these arguably imagine a more arbitrary relationship between the Party and the State than is currently in force in China. This lecture considers those rules, both from the point of view of the Party and the State, in light of a general account of political parties and states, and in light of broader techniques of constitutional regulation of political parties.

### Readings, required preparations:

- Don Clarke's Puzzling Observations in Chinese Law - To be downloaded from: [http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1054&context=faculty\\_publications](http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1054&context=faculty_publications)
- Flock, R., and Breitung, W. (2016) Migrant Street Vendors in Urban China and the Social Production of Public Space. *Popul. Space Place*, 22: 158–169. doi: 10.1002/psp.1892.
- "Chengguan, Widely Despised Officers in China, Find Refuge and a Kind Ear", *New York Times*, September 29, 2016.
- My dissertation chapter on the Nanjing chengguan (will be provided)

### Questions/Food for thought:

- How do legal systems reflect particular underlying world views?
- It is often said that the Chinese Communist Party values, and has been effective at preserving, "stability". What does such a claim mean to you and what kinds of examples would you use to support or refute such a claim?
- In what context, if any, have you heard or read about the "informal sector" of economies? What kinds of activities on the part of citizens or the government would you associate with the informal economy?
- In the readings or videos about the Chinese "chengguan", what is most surprising to you about the organization's role in China?

### About Dr. Ferchen , Dr. Creemers and Dr. Smith

**Matt Ferchen** is a resident scholar at the Carnegie–Tsinghua Center for Global Policy, where he runs the China and the Developing World Program. There his previous research and writing have focused on the political economy of the “China model” of development, as well as China’s relations with Latin America. Building on this background, his current projects examine how China is managing political risk in its ties to fragile states, and on the nexus of development and security in China’s foreign policy. Ferchen is also an associate professor in the Department of International Relations at Tsinghua University, where he teaches undergraduate and graduate courses on Chinese and international political economy as well as on China–Latin America relations. In addition, he is a thesis advisor for Tsinghua’s Developing Country Studies PhD Program.

Ferchen is part of the Public Intellectual Program sponsored by the National Committee on United States-China Relations. His work has appeared in numerous media publications such as *Foreign Affairs*, *Caijing*, *the Diplomat*, *EL PAÍS*, and *Phoenix Weekly*, as well as in academic publications such as the *Review of International Political Economy* and the *Chinese Journal of International Politics*.

**Rogier Creemers** holds Master Degrees in Sinology and International Relations, and a Doctorate in Law. His main area of research is the development of Chinese law, with a particular focus on the interaction of law, technology and society, as well as legal ideology.

His work has been published in the China Journal and the Journal of Contemporary China, amongst others. Rogier also appears regularly in national and international media.

**Ewan Smith** is a Lecturer at Hertford College and an Associate at the University of Oxford China Centre. He is admitted to practice in New York. After qualification, Ewan practiced law with Debevoise and Plimpton in New York and London. In 2005, he joined the Foreign and Commonwealth Office and worked on UK policy towards the Middle East and China. From 2009-2014 he was posted to Beijing, where he analysed developments in Chinese leadership politics and government policy, with a particular focus on the reform of the legal system and the fight against corruption.

## **SESSION 8: UNEQUAL BORDERING IN AN AGE OF TERRORISM & MIGRATION**

Amid heightened hostility towards migrants, terrorism and stiffer migration controls, policing practices have been reshaped in tandem with border control imperatives in many countries around the world. Immigrants, foreign nationals, ethnic and racial minorities, and poor people have tended to bear the brunt of this transformation. Mobility itself has been subject to criminalization as immigration violations have become subject to criminal law and criminal penalties rather than to administration law. The overreach of criminal law has a long history in the regulation of the poor and racial and ethnic minorities deemed 'other', particularly those on the move, or coming from the global south, what Bauman referred to as global vagabonds.

In an attempt to re-claim their national sovereignty, several European countries have resorted to far-reaching measures to control the right to enter and remain within the national territory. Political leaders continue to assure that they can "secure the borders" and eliminate unauthorized immigration, but it is increasingly obvious that these are unachievable goals. Porous borders and transnational affiliations are realities of our times. The call to put more "boots on the ground" in border areas has nevertheless become a potent political rallying cry in many nations of the world, reflecting widespread anxiety about national security and seemingly uncontrolled and uncontrollable changes in economy and society. Although the current situation around immigration in Europe is extreme, as are some of the measures that were taken, for over ten years, members of the EU have increasingly relied on the tools, practices, logics, and rationales of the criminal justice system to respond to what the late Nils Christie called 'suitable enemies,' that is, stands in for the anxieties wrought by globalization: mass mobility, economic restructuring, and other social dislocations.

Scholars have pointed out that the merging field of crimmigration control – referring to the merger of crime control and migration control - functions as a clear gatekeeper in terms of membership and access. On the hand, this has resulted in borders seen as 'being everywhere' and a wide range of non-traditional social control agents becoming pulled into tasks of sorting out who belongs to a certain society and who does not on the other hand physical borders seem to become again viewed as major tools of exclusion "(...) that can be strengthened and fostered to protect a community and a society against a phantasmic threat of otherness that tends to become flesh in the demonized and abject figure of a migrant or refugee). At the border, a distinction is made between 'bona fide' global citizens and 'crimmigrant others'

During this final session we will examine immigration control and border control as governing mechanisms that contribute to inequality by affecting the mobility of humans in different ways. In doing so this session will shine light on both the law in the books and the law in practice by shining a light on what is actually happening In some of Europe's borderlands.

### **Readings, required preparations:**

- Aas KF (2014) Bordered penalty: Precarious membership and abnormal justice. *Punishment & Society* 16 (5): 520-541.
- Barker, Vanessa. 2012. Global Mobility and Penal Order: Criminalizing Migration, A View from Europe. *Sociology Compass* 6 (2): 113–21.
- Woude MAH van der and Berlo P van (2015) Crimmigration at the Internal Borders of Europe? Examining the Schengen Governance Package. *Utrecht Law Review* 11(1): 61-79.

### **Questions/Food for thought:**

- To what extent and/ or when is the threat of terrorism a valid reason to curb people's freedom of movement?
- What factors can be driving migration and to what extent will a stricter border regime/migration regime be successful in managing migration?
- Who deserves to be a bonafide traveller?
- Are "no borders" the answer to the challenges and hardships of global movement?

### **About Prof. Maartje van der Woude**

Maartje van der Woude is Professor of Sociology of Law at the Van Vollenhoven Institute for Law, Governance and Society and deputy judge at the Criminal Court of Noord Holland. In her research, Van der Woude is interested in the interplay between political decision-making, decision-making by more street-level criminal justice actors and the boundaries set by the Rule of Law and international human rights. Within this broad spectrum she tends to focus on uncovering and understanding rationales behind decision-making processes as well as on the (un)intended effects of decision-making. She seeks these effects on a more theoretical and normative level by questioning the impact of decision-making on procedural justice, systemic inequality and the fundamental principles underlying criminal law and criminal justice. Prof. van der Woude's expertise lies with legal and social matters related to (counter)terrorism, (border)security and immigration, and the growing interconnectedness of all three. The latter is also referred to as the process of crimmigration or the securitization of migration. Her current research on border control and border communities in the EU, for which Prof. Van der Woude was granted one of the competitive VIDI grants as issued by the Netherlands Organisation for Scientific Research (NWO), takes an interdisciplinary approach by focusing both on the legal normative questions as well as the empirical questions. By studying the political discourse and legislation on both the level of the EU as well as on the Member State level Van der Woude aims provide insight into the interaction and complex dynamics between the level of supranational decision-making and the level of national decision-making. Who are the responsible actors for border control decisions, and what are the political and humanitarian interests at stake? To what extent do the decisions on a supranational level leave discretionary space for the member states in further developing specific rules and regulations? And, while further descending, how do these rules and regulations on internal border control play out on the street-level and how do they affect

border communities? Together with two PhD students she recently finished the case study of the Netherlands for which the team spent over 800 hours in the field with the Dutch Military and Border Police (Koninklijke Marechaussee). The results of this study have been published, in Dutch, by Boom Criminologie (Beslissen in Grensgebieden, 2016).