ADVOCATE magazine

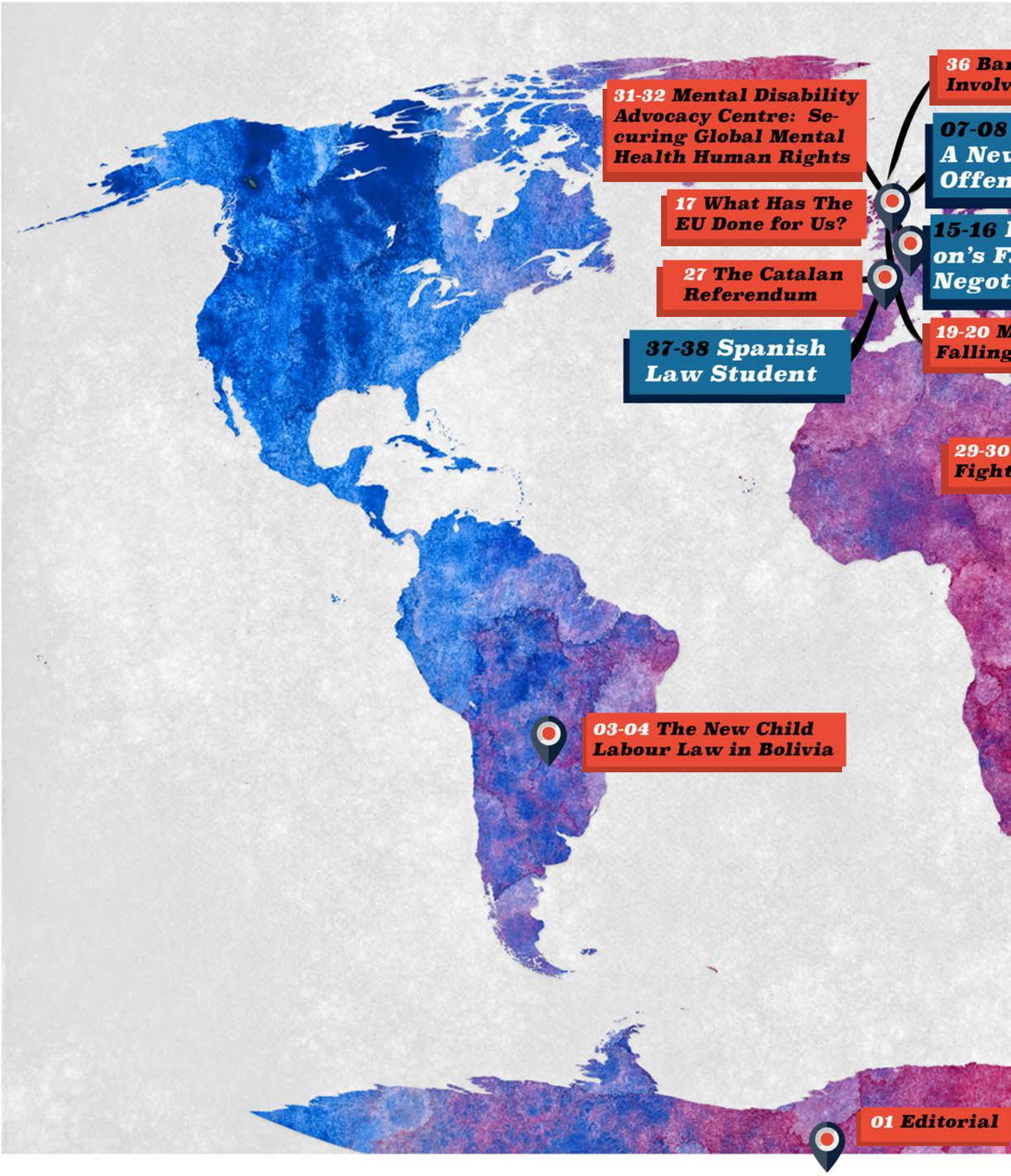
The Hong Kong Democracy Debate

Revenge Porn: A New Criminal Offence?

A Day in the Life: A Spanish Law Student

David Cameron's Failed EU Renegotiation

University of Nottingham
School of Law
Autumn/Winter Edition 2014



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ADVOCATE
magazine

Dear all,

Welcome to the Autumn/Winter 2014 edition of Advocate Magazine!

Firstly, I would like to thank everyone who has contributed to this magazine. I know many writers have put a great deal of effort into their articles and it is hugely appreciated. We hope you enjoy reading the articles as much as we have. I would also like to warmly thank our wonderful sponsors.

We are very proud of the magazine we have produced and working on it over the past semester has been a very rewarding experience. This year we have been really building our online magazine, expanding our social media and hosting more events than ever, such as our Law and Journalism evening, our writing sessions and a meet and greet event.

I need to extend a huge amount of thanks to my entire team who have made this magazine happen. My Vice Presidents, Nikhita and Victoria, have been amazingly supportive and I cannot thank them enough. We have worked as a team throughout and I cannot wait to continue to do so next semester with them. Our Associate Content Editors have been wonderful and we would like to thank our Journalists for their amazing articles too. Jamie, as our Web Manager, has done a great job with our online magazine. Finally, Beverly, our brilliant Head Design Editor has been incredible in designing and putting together this magazine with Trina, her Associate.

We hope you enjoy this edition, which we feel covers some key issues of the moment, particularly in our leading articles of each section. Advocate is a very welcoming society, and if you would like to get involved or write for us, please do so and see our contact details towards the back of the magazine.

Happy reading!

Lauren Turner

Lauren Turner
President of Advocate Magazine 2014/15

Trainee Profile: Oliver Jenkins

Vital Statistics

Education:	Law LLB Hons at University of Nottingham (2008 - 2011) Accelerated LPC at University of Law, London Moorgate (July 2012 - January 2013)
Joined as a trainee:	March 2013
Seats:	(1) Banking (2) Client secondment (3) Corporate Private Equity (4) Overseas secondment to Sydney and IT/Commercial (split seat)

Why Baker & McKenzie?

During the application process, I remember finding it difficult to really get a feel for a firm and to understand what it would actually be like to work there. When talking to people about Baker & McKenzie, a vast majority commented on how nice the people are and what a great firm it is to be a part of. Having spent nearly two years at the firm, I now find myself saying the exact same things!

It was also important to me that I joined a firm that was interested and willing to invest in me as a person. Throughout my training contract at Baker & McKenzie, each of my supervisors has taken an active interest in my personal development and has gone out of their way to help me reach my full potential.

Training contract

All trainees study the accelerated LPC together at the University of Law, London Moorgate. The course is tailored to Baker & McKenzie and is excellent preparation prior to starting your training contract. It is also a great way to meet and get to know the other trainees before joining the firm.

During my time at Baker & McKenzie, I have been involved in a number of complex high value transactions, which provided me with a multitude of opportunities to develop strong practical and commercial legal skills. Given the firm's global footprint, it is not surprising that nearly all of these transactions involved a cross-border element.

In my corporate seat, I was given an unrivalled level of responsibility when I was asked to manage the completion of a relatively complex share sale. The day of completion brought with it a great sense of achievement (as well as relief) and it was extremely rewarding to receive a personal expression of gratitude from the client.

Secondment opportunities

Nearly every trainee has the opportunity to undertake a client secondment or an international secondment during their training contract, and I have been lucky enough to do both!

My client secondment to a major bank provided me with a huge amount of practical and commercial experience at an early stage of my training contract, while my international secondment to the Sydney office has given me the opportunity to experience a different culture and to widen my network of contacts across the firm.

Other trainees are currently on client secondments to well-known media and technology companies, and international secondments to Hong Kong, San Francisco, and Singapore.

Getting involved

Baker & McKenzie has a wide range of diversity focus groups, pro bono initiatives, and sports teams. There are too many to list here, but trainees are actively encouraged to get involved in as much as they can right from the start. The firm is also extremely social and trainee favourites include bi-monthly Friday night drinks, vacation scheme social events, the trainee summer party, and the "Trainee Revue" at the annual Christmas party.

Beyond the training contract

My training contract at Baker & McKenzie has been challenging, stimulating, and immensely fulfilling, and has allowed me to gain the experience and develop the skills required of a successful commercial lawyer post-qualification.

THE NEW CHILD

By Richard Sweetman

On 15 July 2014 a new law was passed in Bolivia which legally allows children from the age of ten to work. Previously, in line with international law, the official minimum working age was fourteen. Such a change in the law has sparked international condemnation from various human rights NGOs, including the International Labour Organisation (ILO) and Human Rights Watch. This is not surprising as Bolivia has consequently contravened its legal obligations by ignoring the International Labour Organisation's (ILO) Minimum Age Convention which was ratified on 11 June 1997.

As a complicated issue, it is important to avoid analysing the situation solely in light of one-dimensional international norms. Instead, there is a need to try and understand the current socio-economic context of Bolivia in particular. Evo Morales, the President and former child labourer, cites that "to eliminate work for boys and girls would be like eliminating people's social conscience." These are strong words, but having spent three months in Bolivia this summer, I feel many Bolivians would agree with them.

The new law has been met positively, with Bolivia's Union of Child and Adolescent Workers (UNATSBO) actively campaigning for its passing. To even have such a trade union, comprised of 15,000 child workers, is unique in itself and reflects the circumstances on the ground. It is estimated that there are approximately 850,000 child labourers in Bolivia working as market sellers, shoe-shiners, crop pickers and miners. Child labour has always been a common tradition in rural communities. With the growing trend of urbanisation, this custom has now migrated into the cities: law or no law, this is the reality.

UNATSBO further argues that child workers "were invisible" prior to the law, but now safeguards are in place to ensure their rights are secured. If children are working out of necessity to help feed their families, as is predominantly the case, then they deserve as much protection as possible. The issue should not be pushed underground and out of sight. The safeguards try to take into account some of the main concerns directed at the new law. For example, ten to twelve year olds must be supervised by a parent and cannot undertake third-party employment. In addition, all children who are working must still attend school. Therefore, if implemented properly, the law could actually increase the levels of scholarly enrolment.

Having said this, the Ministry of Labour only has 78 inspectors to enforce child labour laws nationwide and it is not clear if this will increase. Consequently, it seems doubtful that the safeguards will be successfully realised. In response to the arguments in favour of the law, Jo Becker, Advocacy Director of the Children's Rights Division at Human Rights Watch, has described the law as "legalising exploitation". By stepping away from the majority of universally agreed international norms on the minimum working age for children, Bolivia risks legitimising the practice. It is important not to lose sight of the vulnerability of children between the ages

LABOUR LAW IN

IVIA

of ten and fourteen; their decisions are often made by others on their behalf and they are neither physically or intellectually able to stand up to oppression. If we normalise child labour, we risk making it more difficult to eradicate in the future.

The ILO estimates that 215 million children find themselves in adverse labour conditions around the world, of which 115 million are in conditions akin to slavery. This is clearly a big problem that needs to be tackled on a global level and legalising child labour sends out the wrong message. Considering the 30% decrease in child labour since the year 2000, the opprobrium directed towards Bolivia for being the first country to legalise child labour is understandable.

It is felt by some that arguments in relation to the regulation and protection of rights cannot always be used to justify the reality on the ground. If slavery or child prostitution were widespread, which in some countries they are, would arguments for legalisation be deployed? Sometimes, the exploitation, or risk of exploitation, is so severe and the act so abhorrent that to legitimise the practice is devoid of all rationality. It is felt by the international community that child labour is one such issue.

As Jo Baker emphasises, the new law is merely a "short term solution". It fails to address the structural issues that necessitate the need for children to work in the first place. Focus could be placed on creating better economic opportunities for parents in order to support the family to keep children in school and improved vocational education.

It is therefore apparent that child labour is a complex multi-faceted issue, with only a few key arguments outlined in this article. From the Bolivian perspective, the new law is completely reasonable. It reflects reality and tries to provide protection to a vulnerable group in society.

However, it is arguable that the consequences of the law have not been properly thought through. Generally, child labour does not lead to social mobility. In fact, the law may actually have the effect of entrenching the cycle of poverty these children find themselves in as they are now trapped in a culture where it is legitimate, normal and necessary to work from a young age. Bolivia, by passing this law, has decided to remain a country reliant on the labour of 850,000 young children.

When one postulates a perfect world, there is a tendency to envisage children between the age of ten and fourteen in school receiving an education, playing with friends and learning new skills through extracurricular activities instead of working. We should consider whether this ideal is merely, and perhaps more interestingly, a Western concept of childhood which cannot really be implemented worldwide in a practical way.

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29th October 2014 marked the end of an arduous and emotional four-year battle for Gary Lim and Kenneth Chee, a couple in Singapore who have been together for 17 years. These brave individuals, joined by Tan Eng Hoon, a man arrested in 2010 for allegedly engaging in a homosexual act, spearheaded a historical campaign to challenge the country's criminalisation of homosexual acts between males. This is found in Section 377A of the Penal Code, which is a continued relic of British colonial rule. The appellants argued that 377A contravenes Singapore's Constitution which guarantees that 'no person shall be deprived of his life or personal liberty save in accordance with the law', and that 'all persons are equal before the law and entitled to the equal protection of the law'.

Their appeal was, however, struck down. The Court found that 'freedom of individuals and groups to practice their values within the boundaries of the law' cannot extend to 'an insistence by a particular group or individual that its/his values be imposed on other groups or other individuals'.

Why should it be an imposition for a segment of society to seek equal rights that other Singaporeans are entitled to? To deny rights to individuals purely on the basis of whom they love is clearly discriminatory as it disallows them from living their lives autonomously and free from government interference and prejudice.

The law ultimately denies them freedoms which are recognised in international law: Human Rights Watch has noted that the statute is wholly out of step with international rights standards that guarantee protections for sexual orientation and gender identity. Members of this community are effectively 'second-class citizens' and, as lawyer M Ravi stated, a 'core aspect of a [homosexual] individual's identity' is criminalised. It forces us to question if Singapore is truly a country based on the ideals of 'justice and equality' as is so stated in its national pledge.

The government has argued that the statute is rarely invoked, with Singapore demonstrating some levels of tolerance towards the gay community in recent years. For example, Pink Dot is an event that supports the Lesbian, Gay, Bisexual and Transgender (LGBT) community. The event drew 26,000 people to its event this year such that it quickly became the largest ever civil society gathering in the country.

So long as the statute remains in place though, tolerance remains conditional. Individuals, albeit few in number, continue to be prosecuted under the Statute and 377A's retention continues to legitimise prejudice and discrimination towards the LGBT community. It implicitly fuels movements such as the recent anti-Pink Dot 'Wear White campaign', which aimed to discourage supporters from attending the event.

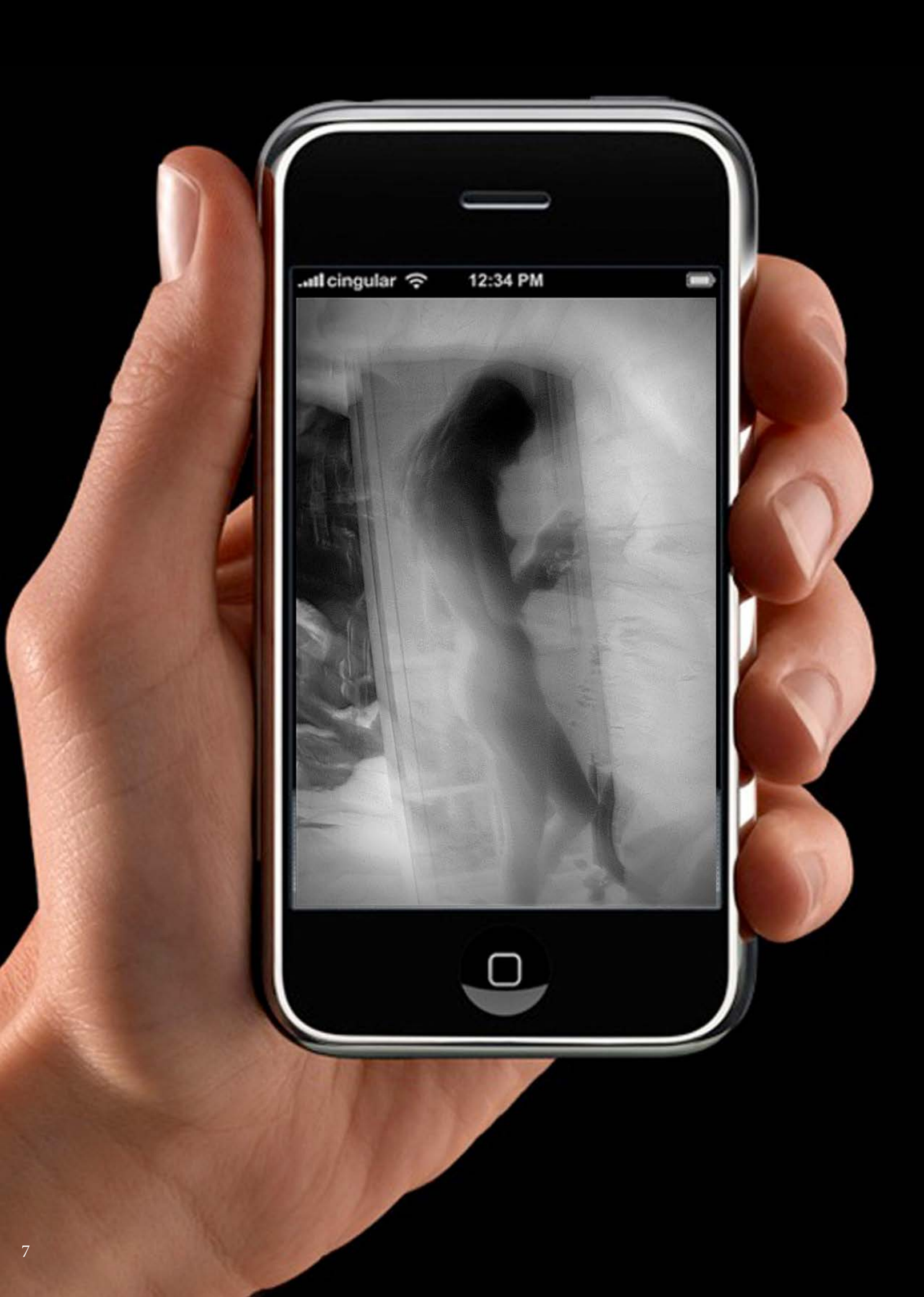
ased on justice and equality'?

By Lian Selby

It motivates groups to continue to harness prejudices against the LGBT community and exclude them from society. Ultimately, it is contradictory for a society that prides itself on being 'one united people' (as stated in the pledge) to call itself 'united' at all if the statute continues to foster feelings of indifference and disunity.

The situation, however, is anything but hopeless. Individuals like Gary Lim and Kenneth Chee have inspired increasing numbers of people both inside and outside of the gay community to speak out in the face of prejudice and inequality. There is no doubt that individuals will continue to fight to see 377A struck down and equal rights to one day be realised. Events like Pink Dot demonstrate the changing cultural landscape in Singapore, exemplifying the beginnings of a society that is learning to accept and appreciate different ways of life and the importance of inclusivity.

As Singapore slowly evolves into a more open and inclusive society, the government must reconsider the implications of 377A and its place in the Constitution. After all, the Constitution exists to safeguard the legal protections of minority groups and ensure that the majority does not unduly oppress these individuals. There is nothing that qualifies the government to deny the existence of the LGBT community as a minority group and render them undeserving of the same legal protections that any other minority group is afforded. Singapore must move towards recognising its citizens, all of its citizens, as equal. It must entitle each and every one of them, regardless of their race, language, religion, sexual orientation or gender identity, to be treated with respect and dignity. It is only then that it can truly call itself a society 'based on justice and equality'.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REVENGE PORN

By Joey Lim

A New Criminal Offence?

With the digitalisation of our modern world, individual privacy is becoming increasingly hard to maintain. Cases of privacy violation, particularly through social media, have skyrocketed in the past few years. Amidst the various types of cyberbullying that have come into existence, "revenge pornography" is a new phenomenon which has risen to prominence in recent years.

Put simply, revenge pornography is when people publicly post sexually explicit photographs of their former partners on the internet in order to get revenge after a break up. Posts often include the victim's full name, address, social network aliases, and sometimes even their workplaces. Ultimately, it is a sickening way of getting back at a former partner by subjecting them to the worst kind of humiliation possible; by exposing their most private pictures not just to a group of friends but to the world at large.

Despite being oddly specific, revenge pornography is becoming a frighteningly common problem in our society today. Our reliance on technology, online social networks and mobile communication has paved the way for these previously unthinkable offences. Nowadays, smartphones are omnipresent, with photo-sharing applications such as Instagram, Facebook, Twitter and Snapchat dominating many of our daily social interactions.

> **"Revenge pornography is becoming a frighteningly common problem in our society today"**

Revenge pornography first grew prominent in the United States. It is now a criminal offence in 12 states. Here in the UK, the first known website dedicated to revenge porn postings was established in 2010. Shocking as it is, over 30 websites are now believed to exist in the UK alone.

Organisations such as the Cyber Civil Rights Initiative, Women's Aid Charity, The National Stalking Helpline, and the UK Safer Internet Centre have been actively attempting to raise both public and political awareness of revenge pornography. In 2012, Dr Holly Jacobs, a past victim of revenge porn, set up the largest global campaign group against the offence called 'End Revenge Porn'. Along with Women's Aid Charity, it aims to support victims of revenge porn and garner political attention for the issue.

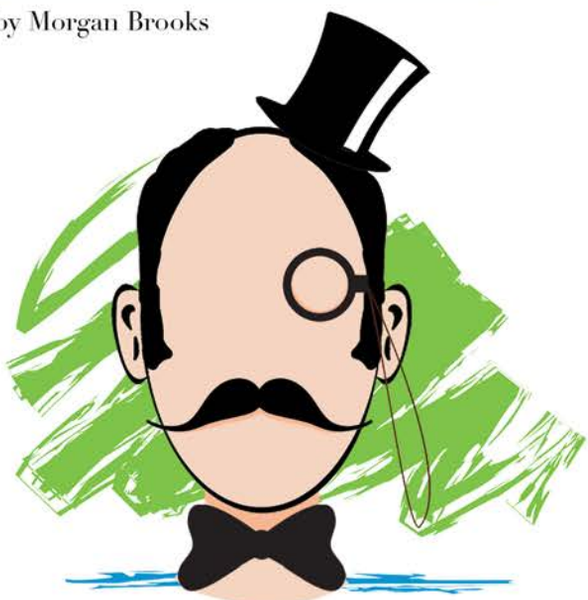
Recently, in October 2014, the House of Lords unanimously agreed to make revenge pornography a criminal offence under new UK legislation. If approved by MPs, it will be implemented as a change to the Criminal Justice and Courts Bill, and defined as "photographs or films which show people engaged in sexual activity or depicted in a sexual way or with their genitals exposed, where what is shown would not usually be seen in public". According to Justice Minister Lord Faulks, anyone guilty of distributing "revenge porn" will be sentenced to up to two years in prison.

The internet has become a perilous jungle of information where privacy is virtually non-existent. Fortunately, the UK government seems prepared to adapt by embracing new legislation in order to protect citizens from the unseen dangers of the digital world. Like Baroness Thornton, many of us will regard this move as a "positive step". As the nature of technology grows ever more invasive, constant vigilance must be exercised by the public and authorities alike.

PARTY CON SEASON

With the general election set to take place next year, the 2014 conference season was the last opportunity for Britain's electoral parties to formulate a plan that will see them into the House of Commons with a majority. The conferences were essentially a litmus test for both party followers and the public. Advocate is here to take you through the key policies announced:

by Morgan Brooks

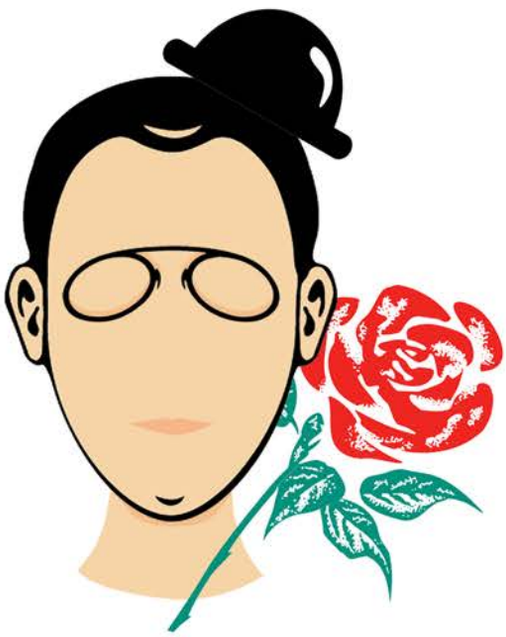


Conservatives

The biggest announcement from the Conservative leader, David Cameron, was a proposed tax cut that would reportedly benefit 30 million Britons. The Prime Minister said he would raise the tax-free allowance from the current level of £10,500 to £12,500 by 2020. This time frame also includes an increase in the 40p income tax rate threshold, which would be raised from £41,900 to £50,000 by the end of a five-year Conservative government.

The exact timing of when these proposals would be implemented would depend upon economic circumstances. Cameron said such changes to taxation were to support those who "do the right thing". Under these proposals someone working 30-hours per week earning minimum wage would pay no income tax, and the increased income tax threshold would benefit roughly 800,000 people. The Institute for Fiscal Studies estimated that the combined cost of the tax changes would be £7.2 billion, from this we can infer that the Conservative leadership must be optimistic of the economic circumstances improving greatly over the next 6 years.

So a tax-cut for the highest and lowest earners. Tempted to vote Conservative yet?



Labour

The keystone of Labour's conference was the NHS. As Blair did in 1997, Miliband is hoping to position his party as the protector of our beloved and sacred National Health Service (and hoping to replicate Labour's 1997 electoral success no doubt). An extra £2.5 billion is to be pumped into the NHS, specifically on recruiting staff. While there is no doubt that a staff boost would aid our struggling health service, earlier this year a series of reports were published with the worrying news

With a further £25 billion of cuts planned to public spending, the £7.2 billion cost of their tax proposals doesn't look that expensive anymore, and British taxpayers will need their extra cash to cover the cost of reduced government spending on services, so will any of us actually be better off under a Cameron premiership?

Another proposal announced, that has since come under intense criticism, is the scrapping of the Human Rights Act and its replacement by the British Bill of Rights. The exact details of this proposal were not given during the conference, but a draft bill was promised to be revealed before Christmas, so expect some heavy news coverage (and controversy) while you battle your way through the high street queues. Very convenient timing for such a contentious policy!

NFERENCE N2014

that by 2020/21 the NHS is facing a £30 billion funding shortfall. Suddenly £2.5 billion isn't looking that impressive! This boost is still better than the Conservative pledge to protect the NHS from cuts, meaning spending levels would more or less remain at their current levels. Labour politicians claim that this extra funding would come from a new tax on tobacco companies, a 'mansion' tax, and clamping down on corporate tax avoidance.

Unfortunately for Ed Miliband the most memorable part of his conference this year did not come from a vote winning announcement, but rather his own blunder which saw him (in a speech that lasted over an hour) forget to mention that all important deficit. Luckily the Shadow Chancellor Ed Balls was on hand to stake Labour's position on the issue; he promised to see Britain's budget into surplus and the national debt falling "as soon as possible in the next Parliament". So no exact date but that was probably a wise move by the Shadow Chancellor, seeing as the Conservative-Liberal coalition's set a goal of 2015 to balance the budget, which they will almost certainly be falling short of.

As mentioned earlier, a new 'mansion' tax was announced on properties worth over £2 million. Labour would also reintroduce the 50p tax rate for those earning £150,000+, and all government ministers would face a 5% pay cut (a loss of £7000 to the Prime Minister himself). On employment, a £8 national minimum wage was promised by 2020, a figure that is above the living wage (outside London at least).

Liberal Democrats

Finally we turn our gaze to the depreciated Liberal Democrats and their leader Nick Clegg. With UKIP polling at almost 20% and the Liberal Democrats struggling to hit 10%, next year may see UKIP replace the Lib Dems as the 'third' party in Westminster, but for now we can continue to pretend Nigel Farage is just a nightmare and give column inches to Clegg, the lesser evil.

The Liberal Democrats promised to find an extra £1 billion annually for the NHS, amounting to £5 billion by 2020. That is better than the offer by the other two parties but still £25 billion less than the predicted funding gap. The money would come from a range of sources; scrapping some tax breaks, no winter fuel allowance or free TV license for wealthy pensioners, a 7% increase in capital gains tax, as well as adding higher council tax bands for properties worth over, you guessed it, £2 billion.

The party would also raise the level at which you start paying income tax, a policy they have championed, and have been quite successful in achieving, throughout the current coalition. They would increase it from £500 to £11,000 by April 2016, and increase it to £12,500 by 2020. The same proposal as the one proposed by Cameron and the Conservatives then…

So there you have it, a brief summary of what was said during the 2014 conference season by the three main Westminster parties (probably the last time the Liberal Democrats are included). Of course there were many more policies floated around by a variety of figures within each party, but I predict it will be these policies that will be the focal points during the impending general election, the policies that will attract enough voters to see a majority government in power next May.

Redefining STATE FAILURE

By
Thomas Phillips

In modern politics, the phrase 'failed state' is on the tip of many tongues, used to describe states such as Somalia, Syria, Afghanistan, and Sierra Leone. Supposedly, the term conjures up a very clear picture; a state in which its institutions have lost control of all political and economic life, leading to rampant drug trafficking and corruption, and a state which cannot provide citizens with any semblance of security or public services, leading to internal conflict and creating a hotbed from which terrorists can jeopardise the safety of neighbouring states.

However, despite this supposed clarity, could we not also apply the term 'failed state' to the situation in North Korea? Indeed, the state rules political and economic life with an iron fist; its citizens need not fear internal conflict or terrorists. Yet equally, citizens have no democratic rights to speak of, and the state offers very few public services, leaving many to live and die in poverty.

Therefore the picture is evidently not as clear as some would have us believe, and the reality is that the phrase 'failed state' has entered into our vocabulary recently to describe, and brand, a vast range of states, often in wildly different situations to one another.

The first instalment of this article will begin to offer an overview of the varying definitions of state failure, exposing the issues relating to a single 'catch-all' definition of the concept.

The second instalment will continue analysis of the damaging nature of a single definition for 'state failure', before arguing that we must abandon attempts to create a unilateral definition, and instead measure the challenges states face by reference to 'state gap's and redefine 'failed states' as 'transition states'.

Problems in Defining a 'Failure'

The term 'state failure' emerged after the Cold War to describe the events occurring within different post-Soviet Union states in an ad hoc manner. However, since the 9/11 attacks there has been a noticeable drive in literature on the topic to produce a universalist, or rather, monolithic definition of the concept. Although 'state failure' as a notion or an idea undoubtedly exists, there is no consistent and coherent concept. Many scholars, organisations and legislators have attempted to define the concept in a plethora of different ways but ultimately, a single definition is simply inadequate.

The first issue is that, in these analyses, there are various different interpretations of what 'failure' is. Rotberg, in his somewhat 'textbook' definition of state failure, argues that a state 'fails' when it cannot deliver public goods, most notably security, to persons living within its borders. His definition therefore emphasises security as a key indicator of a state's success and thus North Korea would be considered a more successful state than Afghanistan, for example. By contrast, the OECD, despite also considering 'state failure' to be a state's inability to deliver public goods, place far more emphasis on ideas such as capacity, for example, the provision of schools, hospitals and legitimacy; democratic accountability. By this definition, it might not be so easy to say that North Korea is more 'successful' that Afghanistan.

Indeed, alongside this, in developing a single definition of 'state failure' a great many different words are used to describe failure, which such a state perhaps described as 'fragile' or 'weak'. Rotberg, for example, develops a spectrum ranging from 'strong' to 'weak', 'failed' to 'collapsed'. The issue with this kind of academic exercise is that it is largely arbitrary: if you already have a preconception of what 'failure' is, replacing the words to denote it or creating a spectrum adds nothing to the debate.

What this analysis really reveals, is that we cannot truly develop a single definition of 'state failure' because, whenever we use the term 'failure', we bring with it our own loaded preconceptions and prejudices of what 'failure' means.

Problems with the 'Failed State' Paradigm

As considered previously, the problems pertaining to a singular 'catch-all definition' of 'state failure' arise partly from confusion over specific classification and personal preconceptions. However, the problems with a single definition run far deeper than simply confusion over words and interpretations. As Call has systematically illustrated, the entire 'failed state' paradigm is jeopardised as a consequence of a single definition, and his arguments are presented here.

When we produce a definition of a 'failed state', we must necessarily place all the states we consider 'failures' under such an umbrella. This leads to such an excessive aggregation of so many diverse states that the concept itself is arguably rendered meaningless. If there are a number of different interpretations of 'failure', namely security, capacity and legitimacy, the definition cannot be too narrow through fear of excluding states. For example, if we were to focus solely on security as a yardstick, the definition might cover Somalia and East Timon, but we cannot catch, as a comparison, North Korea within that classification.

Conversely, in implementing a broader definition, the only commonality we will find is that the states face some form of challenge, with the challenges they face varying wildly. If we seek to help states conquer the challenges that they face, a definition that simply recognises that they are 'challenged' does not aid us in identifying and solving their problems, rendering the entire concept of 'failure' meaningless. This notion that a definition is necessary not only in identifying challenged states but also in resolving their problems is fundamentally crucial. If we cannot define and delimit a problem properly, we cannot solve it effectively.

As mentioned, 'failure' has often been judged with regard to state security. This has led to 'cookie-cutter' prescriptions for 'stronger states' in policy-making. In essence, increasing the security capacity of a state by training police and the army, where a state has a generally legitimate government but issues with internal security, seems like a generally sensible prescription. However, the same prescription can be actively devastating for the citizens of a state where it is the government that is illegitimate and hostile and who will use such enhanced security to repress the people further. If we are to face the reality that different states face different problems, a single conception of 'state failure' prescribing a single cure cannot help us into truly aiding states.

Finally, if we are to admit that our concept of 'state failure' will bring with it our prejudices of what 'failure' is, we must also admit that, conversely, our concept will carry our preconceptions of what 'successful' is. And that picture will almost always be 'Western'. There are two significant problems here. The first is that, if we view states and load our definition with a Western bias, we risk regarding a state

that simply operates differently from Western states as a 'failure'. More pressingly, however, is that this Western bias reveals the devastating damage that the 'failed state' paradigm can cause. If we continue with the paternalistic assumption that a state is a 'failure' because it does not look like the US or the UK, then our prescription for aiding these troubled states will invariably be to make them operate in a manner which is 'more Western'. This assumes that 'West is Best' when there is clearly no grounding for such a general claim, and more importantly, imposes a regime that might either be alien to the people, or something they actively do not want.

An Alternative Model: State Gaps and 'Transition States'

If we are therefore, as I suggest, to abandon the concept of a 'failed state', yet 'failure' as a notion still exists, what should we turn to instead?

Call in his later work, develops a 'gap-based' paradigm where the challenges that the state in question faces are categorised into three gaps. These are the capacity gap, where the institutions of a state are incapable of delivering minimal public goods and services to the population, the security gap, where states do not provide minimal levels of security in the face of organized armed groups, and the legitimacy gap, where a significant portion of its political elites and society reject the rules regulating the exercise of power and the accumulation and distribution of wealth.

This model shifts the debate from stamping a state with a preconceived monolithic definition of 'failure', or ignoring other challenged states altogether, to analysing the unique challenges the state in question experiences with a view to developing a unique, bespoke approach to aiding that particular state.

Yet, if we adopt this model and recognise that a state has 'gaps' in its regime rather than being an abject failure, what do we call these states? I suggest terming them 'transition states'. I have criticised the literature for using synonyms to 'failure' when those substitutes still carry preconceptions. The term 'transition' is entirely valueless and free from preconceptions. The meaning given to 'transition' will depend entirely upon the nature of the state in question, on its current situation and where it wants to get to; it can apply as equally to a state transitioning from a communist to capitalist economy, as to a state transitioning from a dictatorship to a democracy.

I hope that this redefinition goes some way to recalibrating our concept of 'state failure' so that we can develop effective and meaningful ways of supporting transition states.

DAVID CAMER FAILED EU RENEGOTIATIO

by Jamie Ball

Established as the European Coal and Steel Community (ECSC) in 1953, the now European Union promotes objectives which dwarf the ECSC's simple reason for commencement: preventing a future world war. The most recent development in the growth of this parasitic super nation arose from the Treaty of Lisbon in 2009, which simplified the written workings of the EU into two key agreements: the 'Treaty on the European Union' (TEU) and the 'Treaty on the Functioning of the European Union' (TFEU). However, whilst this development illustrates the intentional (and predicted) growth of the EU into a more politicised and controlling organisation, the establishment of an 'internal market' remains at the core of its operation.

It is due to this 'core operation' that Mr Cameron's latest promise will be even more difficult to achieve than the elimination of 'red-tape bureaucracy' which has historically dominated the Conservatives' EU agenda. Both treaties directly oppose such a renegotiation. Article 3(2) of the TEU provides that the EU shall offer its citizens an area without internal barriers to the free movement of persons, whilst Article 26 of the TFEU provides again for a lack of frontiers in an internal market, allowing the free movement of goods, persons, services and capital. Directly contravening the most important aim of the EU will not be an easy task for Mr Cameron.

In practice, Mr Cameron may express his views at meetings of the European Council, to an audience of leaders representing all EU member states. However, in order to effect a change, either the Treaty of Lisbon will need to be modified, or a legal measure will have to be produced allowing the UK to become exempt from the free movement of persons aspect of the internal market. In either case, this cannot be unilaterally effected, nor effected without the intervention of other institutions. Given the simplification of voting procedures within all of the major EU institutions, at minimum, such a change or measure will require at least the approval of a qualified majority in multiple institutions. In short, the UK would need other member states as allies.

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Last week British Prime Minister David Cameron delivered the latest in his string of 'European renegotiation' promises: a pledge to renegotiate immigration policy with the European Union (EU). Unfortunately, along with many of its predecessors, this promise is likely to disappear when next month's popular political view of the month is announced. This article assesses why I believe this will happen.

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...THE UK WOULD NEED OTHER MEMBER STATES AS ALLIES. ❝

What the EU has done for us

A question based on knowledge or numbers?

By Daniel Rainer

Britain's status in the European Union will undoubtedly be a pivotal issue in next year's general election. UKIP now holds nearly 27% of the UK's allocation of seats in the European Parliament, presumably because of their Eurosceptic stance. Although the Eurozone crisis has shaken faith in the common market, the main arguments for withdrawal from the Union appear to be based less upon economic rationales and more upon the issue of immigration. This is a contentious area that features skewed statistics and emotional rhetoric. Whether it is right to leave the EU is a moot point; however, some observations can be made about the way that statistics have been presented.

Most recently, the EU has asked the UK to pay an additional £1.7 billion in contribution to the EU budget. This has been described as the equivalent of hiring 60,000 nurses and paying their pensions, or an additional levy of £65 per year per family. In an economic climate that has seen the NHS struggle and unemployment rise, being billed for such a substantial sum has given rise to righteous indignation from the Prime Minister himself. Given the anti-EU sentiments in the UK, this demand could not have come at a worse time.

Happy news relating to the EU is rare, however we were fortunate enough to learn recently that analysts have found that immigrants from the 2004 accession to the EU (sparking the largest immigration in Britain's history) have provided £4.96 billion in tax to the UK. As this figure is approximately three times larger than that asked for by the EU, presumably 180,000 nurses can now be hired, or every family can receive a cheque for £195? Migration Watch has taken a different view; it has been stated that £4.96 billion equates to only £1 per person per week – hardly a worthwhile increase.

Here there is a clear disparity in the way that these sums have been treated. The money that the UK must pay to the EU is equated with hiring nurses, or potential benefits to families. The money that the EU has provided to the UK is dismissed as being negligible if divided up between individual people. Whatever your stance is on the membership of the EU, it cannot be denied that the figures in these cases have been given unfair treatment. In 'helping' the reader to visualise the size of the sums, these statistics have been skewed in favour of a particular interpretation.

In conclusion, wherever a statistic has been provided in support of a particular political agenda, it is worth viewing it with some skepticism. For example, UKIP's manifesto cites health tourism as costing the UK £2 billion. Before accepting this statistic, it may well be worth wondering how someone defines a 'health tourist'. The importance of being able to view political promises with a critical eye is vital, and all the more when it comes to issues of international prominence. The only proper response to potentially manipulated figures is to be informed, and to go looking for answers yourself.

Your World First

C/M/S/
Law . Tax

Louise Edwards
Trainee

I graduated from the University of Nottingham in 2010 with an LLB (Hons) law degree. I then went on to complete the LPC at the University of Law in Moorgate in 2012 and started my training contract in February 2013, after taking six months out to go travelling. I am now a fourth seat trainee in the Environment team at CMS.

During this seat I have been involved in a wide variety of advisory and transactional work where environment issues are dominant, as well as disputes work involving prosecutions, regulatory enforcement and civil nuisances. I am due to qualify as a lawyer in February 2015.

Competition for training contracts is high and it is important to understand what types of training contract are out there and what would suit you best before you start applying. CMS is a large corporate and commercial law firm with a strong presence in Europe and a growing presence in the UAE and Latin America. The legal work we do is varied and tailored to various industry sectors, such as Lifesciences, Energy, TMT and Financial Services. Many of our clients are large, international corporations and well-known brands however we also act for SMEs and charitable organisations. This background dictates the kind of work you will be exposed to during a training contract at CMS – it is often international, complex and high-profile. From my previous work experience I knew that this type and level of work was what I wanted to do and this is what initially attracted me to CMS. From my research it soon became apparent that CMS stood out in other ways too – it is in a unique position in the legal market due to the CMS network, an award-winning business model that enhances access to CMS legal services for our clients across multiple jurisdictions. CMS is also going places, literally! We recently opened new offices in Oman and Turkey, because that is where our clients want us.

CMS offers outstanding training and guarantees all of its trainees a secondment either to one of its regional or international offices, or to a client. There is a wide range of secondments and the opportunities vary each year. As an example, trainees in my intake went to Rio de Janeiro, Munich and Prague. Others were seconded to technology, banking or energy clients. I spent six months in the Corporate department of our Moscow office. I was the only London trainee in the office so I became the go-to person for local Russian lawyers with any English-law-related questions. I was given a lot of responsibility and high-quality work. For example, I assisted in drafting share purchase agreements, confidentiality agreements and ancillary loan agreements. I also helped one of our clients obtain EC anti-monopoly approval for a deal involving medical technology, and drafted parts of the heads of agreement for an oil and gas joint venture. Aside from work, Moscow was a fantastic place to spend six months. CMS arranged language lessons for me before I left, as well as providing me with an apartment near to the office and assisting with everything from arranging visas to putting me in touch with trainees from other law firms in Moscow. I also took advantage of being able to visit St Petersburg, Finland (there is an overnight train from Moscow to Helsinki), Suzdal and Kiev in Ukraine.

CMS is a great place to work and has featured in the Sunday Times 100 Best Companies to Work For. We have a lot of social events, including the annual Trainee Ball, trainee summer social and the Christmas party. There are many extra-curricular opportunities for trainees. For example, I have been involved in pro-bono work for LawWorks and with graduate recruitment initiatives at the University of Nottingham. Recently I took part in the CMS Three Peaks Challenge to support the Lord Mayor's Appeal. CMS also encourages us to get involved in sport; last year I attended the Annual CMS Football World Cup in Berlin with colleagues from all over Europe.

MARKETS, TAXES AND FALLING COMMODITIES

By Ammar Thair

"The raging bull of commercial awareness: when it all happens at once, it's worth taking note."

Companies have long found ways to save money, however their recent dealings to save on taxation, particularly the much-publicised efforts of Starbucks, Amazon and Google have raised age-old questions surrounding the ethics of a corporation's financial activity. Clearly much of this is chained within legal frameworks and regulations, to which of course the highest significance must be placed, however, one should not underestimate the effect of public condemnation as a mere stiff upper lip and furrowed brow; sometimes enough of these can be deadly.

Burger King in particular engaged in a deal over the acquisition of Canadian coffee firm Tim Horton's known as a tax inversion over the past few months, a move which caused much controversy from the general public towards those involved, sparking a staunch defence from the famed Wizard of Omaha himself, investor Warren Buffett, and not to mention the ire of the United States government, whose anger at the deal translated directly into the collapse of a later attempt by US pharmaceutical company AbbVie to purchase UK based Shire for around $54-billion. Clearly Burger King 'had it their way'; unfortunately the rest weren't so lucky.

A tax inversion is a process whereby a company buys another company in a lower tax domicile, with the aim of then moving its headquarters to that jurisdiction. This is obviously controversial in the same way that companies, who utilise such exotic places as the Cayman Islands, haven't exactly been keen to share their holiday snaps. However, given that the US government has now shown its willingness to intervene in such deals, it's clear that public and private outrage has done the unprecedented- permeating through the realm of civil discontent, shaping state legal policy along the way.

Moreover, the Financial Times reports that a knock on effect is that Shire's share prices fell around 11% immediately after the acquisition deal fell through. Thus, as argued, it's clear that concern regarding companies avoiding taxation translates from a disappointment of the general public, to a genuine pain of lasting financial consequences.

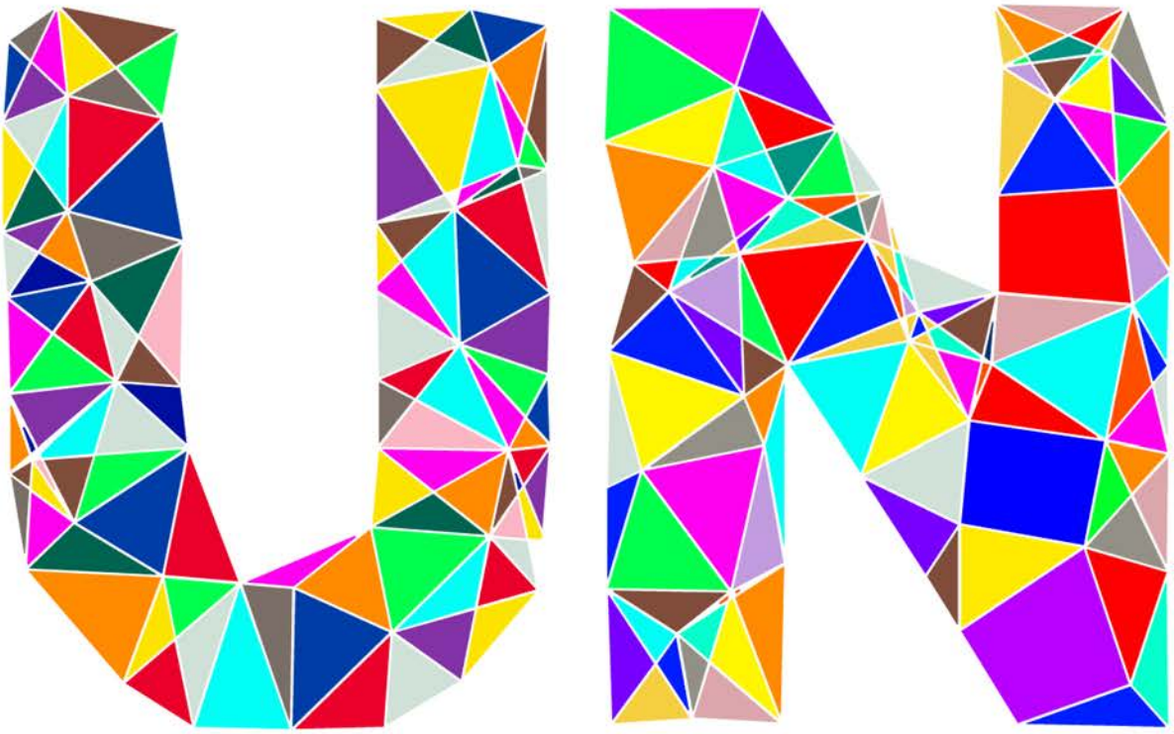
The dollar meanwhile has recently rocketed to heights not seen in seven years. After a time when the U.S Federal Reserve ended its experimentation with QE- an aggressive bond-purchasing scheme- the Bank of Japan, empowered by Prime Minister Shinzo Abe's special brand of economics, nicknamed 'Abenomics', did the exact opposite, and increased their already aggressive bond-purchasing scheme. The reasons for this are primarily to benefit exports and strengthen the Nikkei 225 Index. The resultant effect was a massive upsurge in the value of the dollar against the yen, and for the S & P 500 to reach its highest point in many years.

At the same time, commodities such as oil and gold fell sharply. Oil for instance fell to around $80 per barrel just months after it was sitting comfortably at $100 a barrel. The fact is that although this seems like a good deal for the consumer, the low trading price for oil potentially has a knock on effect as serving a purpose in what some have perceived to be a so-called proxy war between the United States and Saudi Arabia on one side, and Russia and Iran on the other- each not least unaware of the cold hard truth that each oil producing nation has a bench line price at which it must sell, per barrel, in order to at least break even. Press reports in certain nations had already alluded to the events in question, their fears at least understandable if a little sensational. Indeed, the USSR was bankrupted by Saudi Arabia's decision at the time to increase production of oil to such an extent that the USSR simply could not keep up, or break-even. Ultimately all sit with the knowledge that he, who can hold out the longest, can win both 'the battle' and 'the war'.

The nature of markets and the world of business are inherently unpredictable. They exist, continually shaped by factors ranging from international conflicts, to the investing confidence of single individuals. However, some things for the moment anyway are for sure. The Bank of Japan, for the time being, has conveyed its commitment to the future of Japan's economy as residing within its markets and exporting capacity, at the expense of its currency. On the other hand, this interplay of events led to the strongest position of the dollar as seen for a long while, illustrating the truly dynamic nature of the financial markets, from both a national to global stage. Meanwhile, on a universal level, corporations are beginning to realise that avoidance of adequate taxation will not just risk harming their reputation, but pose a real threat to their health also.

" The nature of markets and the world of business are inherently unpredictable. "

Delegation to the 27th Session of the



Human Rights Council 2014

By Jessica Allen

Delegations are unique experiences which offer students the opportunity to represent an association during conferences or council sessions organised by core international organisations. Those selected are invited to sit as delegates alongside both national delegates and representatives of renowned NGOs, and in attending, are given the chance to witness how decision and policy making works in an international environment. Through this, perhaps most importantly, students are enabled and encouraged to develop their understanding of current issues arising around the world.

I specifically chose to apply to a delegation to the United Nations Human Rights Council as, lacking the credits to choose optional law modules, I felt the scheme would allow me to further my study of the aspects of Human Rights Law covered in the first year Public Law module. I honestly didn't anticipate being selected as applicants could apply from many countries across Europe, but was thrilled to hear that that myself and four other delegates from Romania, France, Greece and Austria had been chosen! As delegations are self-funded, with this one based in a notoriously expensive country, I was even luckier to subsequently receive funding from our very own Human Rights Law Centre, in order to be able to facilitate the trip. With the provisions to confirm travel arrangements, and time to peruse several concept notes of the key sessions, I made my way to Switzerland.

Eighteen hours later, after a taxing four hour wait at security, my group and I found ourselves amid the activities of the session's second week. The group was given free rein to attend any event that piqued our interest, made easier by the variety of niche panel discussions and informal consultations taking place. As I had read some background materials of events to be held in the Council chamber itself, I managed to observe a Panel Discussion on the Role of Prevention in the Promotion and Protection of Human Rights. The Chair was none other than H.E. Mr. Baudelaire Ndong Ella, President of the Human Rights Council, with high profile panellists including Ms. Rita Izsák, Special Rapporteur on minority issues, and Ms. Sima Samar, Chairperson of the Afghan Independent Human Rights Commission. National ambassadors and stakeholder NGOs were given time to partake in the discussions, while I was given the chance to appreciate the intricacies of such an important interaction. Amongst others, I also observed discussions on the outcomes of Universal Periodic Reviews (UPR) for Albania and The Congo. These comprised presentations made by representatives for those countries under review, wherein they would establish the national stance on the recommendations made by compatriots to the Council. The floor was then open to other countries or stakeholders to praise or scrutinise their decisions during successive presentations.

As well as these core sessions, the Palais des Nations housed a huge variety of discussions and side events which were centred upon prominent Human Rights issues. With my fellow delegates, I attended a number of informal consultations on resolutions, such as one on ensuring safety for journalists. Here, national ambassadors would express any opinions held on the articulation and body of the resolution in question. During these discussions, I was able to witness the procedural process of policy making and the administrative role of the Council of the United Nations.

Side events organised by NGOs on Human Rights issues were ongoing throughout the week, and seemed to centre predominantly on three key victims of modern Human Rights violations: Children, Journalists and Minorities. In the case of the former, I attended sessions entitled 'Preventing the Sexualisation of Children' and 'the Rights of the Child in Syria' which were very well structured. While I was familiar with some of the problems alluded to during the sessions, it was no less disturbing to learn that children are still the principle fatalities of war. Concerning journalists, there were a number of panel events highlighting the dangers of foreign journalism following the recent death of Steven Sotloff, such as 'Defending Freedom of Expression and Information'. However, the most touching events to me personally were those which stood up for religious minorities, such as 'Preventing Religious Violence in India' and 'Islamaphobia and Hate Crime', as well as for LGBTI, persons who were frequently the majority of those suffering legal persecution in a UPR.

Since coming home, I have started to notice just how the experience has enhanced my understanding of Human Rights Law. It has also encouraged me to reconsider my route into the legal profession based on my preferences and skills. There are so many similar opportunities like this one that are open to law students if you just know where to look, and I could not recommend these schemes highly enough. I would like to end by extending a massive thank you again to the Human Rights Law Centre for their generous aid, without which I may not have even set foot in Geneva.


拒絕師奶


SOGO

The Hong Kong DEMOCRACY DEBATE

By Marjorie Kong

As a city that enjoys considerable freedom, Hong Kong is no stranger to protests. However, the most recent protest in Hong Kong became a talking point across the world when the city's police used unprecedented force to suppress protesters, leading to a furious escalation of events. The general message is clear: the crowd is fighting for democracy. Less clear however is the aim of the protesters, how the protests will end, and whether Hong Kong is ready for democracy now.

In 1997, Britain relinquished its colonial rule over Hong Kong and, pursuant to a joint declaration made in 1984 between China and Britain, handed the city over to China. Under the declaration, China was obliged to let Hong Kong retain the level of autonomy it had enjoyed under British rule. Thus, apart from foreign affairs and issues of defence, Hong Kong retained all decision-making powers related to its legal and economic systems under a principle known as "one country, two systems".

The demand for democracy is broadly rooted in Hong Kong's Basic Law, which is the city's constitutional document. The Basic Law states that imageits ultimate aim is for Hong Kong's leader, the Chief Executive, to be selected "by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures". In 2007, China confirmed that Hong Kong's Chief Executive could be democratically elected by Hong Kong citizens for the first time in 2017.

However, on 31 August 2014, China announced that in order to be a candidate for the Chief Executive election in 2017, one needed to secure more than half the votes of the nominating committee. This means that China would, in practice, retain significant control over who becomes the Chief Executive, depriving Hong Kong of the democratic process that it was promised. This, unsurprisingly, angered many citizens. Student groups boycotted lessons for a week, and on 28 September 2014, pro-democracy protesters made their way into Central, Hong Kong's key business district.

The pro-democracy protests have been declared by both the Hong Kong and Beijing governments as illegal. Also, while there were plans by the Hong Kong government to hold talks with the protesters, they were recently called off.

The fight for democracy raises some important questions: are the protesters truly fighting for democracy, and is democracy truly desired by the people of Hong Kong?

Are the protesters truly fighting for democracy?

It is clear that the most immediate cause for protest is the desire for a genuinely democratic election process in 2017. However, some commentators have stressed the importance of the wider context, noting that the protests are not motivated solely by a desire for democracy, but perhaps also by a general discontent amongst citizens.

In the article 'The umbrella revolution won't give Hong Kong democracy. Protesters should stop calling for it' published in The Washington Post, Eric Li, a venture capitalist and political scientist in Shanghai, argues that "general discontent has provided fertile soil for this movement". Li noted that Hong Kong's declining economic success, as a result of

China's prospering mainland market, has played a role in the growing resentment in Hong Kong. Additionally, Li highlights that problems such as increasing costs of living and the widening income gap have contributed to discontentment.

Arguably, China's proposals for the election process only served as a trigger. The protests, while shaped as a demand for democracy, are perhaps a manifestation of the underlying, broader discontentment amongst Hong Kong's citizens.

Is democracy desired by the people of Hong Kong?

It must be noted that the fight for democracy is not unilateral. Opposing the current protests are pro-Beijing activists, who believe that opposing the Beijing government would jeopardise Hong Kong's economy and reputation. Such activists have subsequently organised protests against the pro-democracy groups.

Furthermore, the protests for democracy fluctuate week to week, as the public strive to balance a desire to protest with a desire for normalcy. Indeed, the reality of the situation is reflected by the results of a recent survey conducted by The University of Hong Kong: less than half of those surveyed felt that the China's proposal regarding the election of the Chief Executive should be vetoed. While the pro-democracy groups are portrayed as the victors on social media, it seems the democratic movement has not necessarily garnered support from majority of the citizens of Hong Kong.

The enthusiasm, courage and resoluteness of the young protesters in Hong Kong is commendable, but whether their efforts will significantly influence the decisions of the Beijing government remains to be seen. The general consensus is that they will not achieve any tangible success.

Perhaps this would not be an undesirable outcome. While there are pertinent concerns of China barring genuine democracy for Hong Kong, the divided political views and aspirations of the citizens of Hong Kong do not make for a fertile ground for democracy at the present time.

"Are the protesters truly fighting for democracy?"

"Is democracy desired by the people of Hong Kong?"

The Catalan Referendum

A flash without a bang

By Parit Patani

It really does seem to be independence season. Following Scotland, Catalonia is now seeking to become an independent state apart from Spain. Between the two referenda however, there is one essential difference: whilst the UK and Scottish governments mutually agreed to a referendum, the Spanish government have denied outright the legitimacy of any Catalonian referendum, while the Spanish Constitutional Court has deemed the Catalan Declaration of Sovereignty to be unconstitutional.

This rejection is worrying given the support for Catalonia from other parts of Spain. The Basque Country, with a history of independence more violent and turbulent than that of Catalonia, has publicly sided with the Catalans. Likewise, Valencian and Galician political parties have defended the referendum to self-determine.

Following the declarations of unconstitutionality, one would be forgiven for wondering what purpose the protests and referendum would serve. If Catalonia votes for independence, it is still the Spanish central government that will ultimately grant independence. Catalonia is already in a privileged position in that it enjoys more discretionary freedom than most other Spanish communities. Had the Scottish people voted yes on the referendum, then the Scottish government would have been in a position to negotiate more liberties from Westminster. However, Catalonia already has significant liberties and therefore, short of becoming an independent state, it has little to negotiate.

A disturbing, yet largely undocumented aspect of the situation is the consequences of a Catalonian refusal to comply with its competences and state obligations. Article 155 of the Spanish Constitution, in a Hunger Games-esque manner, permits the Spanish government to 'adopt necessary measures' to compel the autonomous community to comply. Both the vague nature of this phrase, and the Foreign Ministers acknowledgement that invoking that article might be necessary, are a chilling allusion to what Spain used to be like during Franco's regime: totalitarian, autocratic and repressive.

Catalonia has a long history of nationalist identity and separatist thought. However, as it currently stands, the impending referendum seems to be yet another inconsequential uprising against a government who will not listen.

BRITISH NATIONALS FIGHTING FOR ISIS

By Alex Harvey

WHAT IS ISIS?

The rise of the Islamic State continues to grab the headlines as they take control of large amounts of eastern Syria and northern and western Iraq. Its brutal tactics, including mass killings and abductions of members of religious and ethnic minorities, as well as the beheadings of soldiers and journalists, have sparked outrage across the world and prompted military intervention from the West. In September the BBC reported that ISIS could have as many as 31,000 fighters in Iraq and Syria but the exact numbers of those who have joined the fighting from Britain remains to be vague. Reports suggest that at least 500 British citizens are thought to be involved, with this number still rising. The Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, recently revealed that every week at least five Britons are travelling to Iraq and Syria to join ISIS and claimed that the "drumbeat of terrorism in the UK" is now "faster and more intense".

The question remains for the UK government whether they will take a tough approach to those fighting abroad, or whether they will offer a more lenient stance and try to use the returning extremist jihadis for intelligence purposes.

Treason?

It has recently come to light that the government and members of parliament have been discussing the possibility that British nationals fighting for ISIS will be prosecuted for treason in UK courts should they decide to return home. The Foreign Secretary, Phillip

Hammond, has come out as a strong advocate of this proposition and conservative backbencher Phillip Hollobone said that "aiding and abetting enemies of Her Majesty is one of the greatest offences a British citizen can commit."

Treason has a maximum sentence of life imprisonment in the UK, although nobody has been prosecuted for high treason since the immediate aftermath of World War II over fifty years ago so whether prosecution is still an option for the government is doubtful. Hammond raised his concerns when he said that "we've seen situations of people declaring that they have sworn personal allegiance to the so-called Islamic State and that does raise questions about their loyalty and allegiance to this country and raises questions about whether offences of treason could have been committed."

This stringent approach seems to have support from the Metropolitan Police Commissioner who is highly concerned with the impact that returning fighters may have. The Met say they have made 218 arrests for terrorist-related activity this year, an increase of about 70% in three years, and the Commissioner said that "a large part of this increased arrest rate is due to terrorist activities, plots and planning linked to Syria. The trend is, I think, set to continue." He added that the return of "potentially militarised individuals" to the UK "is a risk to our communities."

FACTS TO KNOW

500 BRITISH CITIZENS THOUGHT TO BE INVOLVED IN ISIS

218 ARRESTS FOR TERRORIST ACTIVITY BY MET IN 2014

12,000 FOREIGNERS ESTIMATED TO HAVE JOINED ISIS

ISIS ORIGINATED IN 2002

12 MILLION PEOPLE DISPLACED BY VIOLENCE IN IRAQ IN 2014

AT LEAST 8,500 IRAQI CIVILIANS KILLED IN 2014

WELCOME HOME?

One may think that welcoming home extremist fighters back into Britain is not a risk worth taking, but that is not the view of former global counter-terrorism director of MI6, Richard Barrett. He has claimed that those fighting in the conflict need "to know that there is a place for them back at home" and emphasised the potential source of intelligence information that they can provide, stating that "many of the people who have been most successful in undermining the terrorist narrative are themselves ex-extremists."

"These ex-fighters could help the authorities to understand better than they do now why people are still going to Syria and Iraq and what needs to be done to slow the flow to a trickle or stop it altogether," said Barrett. To me, his argument seems to have a solid foundation; why marginalise these people when they can be a potential asset to the war against the Islamic State and religious radicalism.

Barrett does however understand the worries of many that by allowing these people back into Britain, they will bring terrorism with them. He knows that "the law must take its course" but goes on to argue that the repentant fighters "need to know there is a place for them back at home if they are committed to a non-violent future."

> "The drumbeat of terrorism ... is now faster and more intense."

THE QUESTION REMAINS

The question still remains as to how the government will react to those returning from the conflict in Syria and Iraq. A line must clearly be drawn between those who are returning with the intention of bringing terror to the streets of Britain, and those who are returning with genuine remorse and are committed to renouncing violence.

My views seem to be echoed by the former leader of the Liberal Democrats, Sir Menzies Campbell, who suggested that we shouldn't "give them a total amnesty, but we could treat them leniently in return for completing a de-radicalisation programme."

Mental Disability Advocac
Securing Global Ment

One in four Britons suffer from a mental health problem at some point in their life, according to a study published in The Economist. The impact of intellectual and psycho-social disabilities on society is felt in all countries across the world, and in a way that is more widespread and profound than many may realise. Legalistically speaking, the challenge to uphold the rights of those with these disabilities is important. Indeed, the law can serve as a powerful tool to guarantee the inalienable rights of those with mental disabilities, and also as the basis of enforcing them. In a nutshell, this is the credo of the Mental Disability Advocacy Centre (MDAC). This NGO, formed relatively recently, is worth our attention because of the expanding impact of its work across the globe in tackling obstructions to justice for the mentally disabled.

Introducing the Mental Disability Advocacy Centre (MDAC)

MDAC is a self-defined international human rights organisation specialising in mental disability advocacy, headquartered in Budapest, Hungary.

The Centre has a connection with the University of Nottingham's School Of Law through Professor Peter Bartlett, who has played an instrumental role in the MDAC's development, serving on its Board for six years—four of which was as Chair. For Bartlett, at the core of MDAC's progress is the reality that mental health is becoming an increasingly important human rights issue: "This is something international law can no longer ignore", he says. Mental health policy and practice is an incredibly contentious subject for governments and so MDAC assumes the difficult task of "taking on the whole world".

Founded in 2002, MDAC already has its foot firmly in the door in Africa and Europe, where it uses strategic litigation, advocacy, research and capacity-building to secure respect for the rights of citizens with mental and psycho-social disabilities. It also co-operates with various UN bodies and international NGOs.

acy Centre: tal Health Human Rights

By Caroline Armstrong-Hall and Iga Wojtasik

What Does MDAC Do?

MDAC's work centres around its core aims of providing people with mental disabilities with legal capacity, community living, freedom from ill-treatment, inclusive education, access to justice and political participation. All of these are necessary for those with disabilities to effectively advance their human rights.

Indeed, right to legal capacity has been at the heart of MDAC's agenda since its inception. People with mental disabilities are often stripped of their right to make decisions about their own lives and are subject to substituted decision-making. It is a legal mechanism that seems to allow for the preservation and concealment of these abuses. To combat this, MDAC is asking for a legal protection of autonomy, an end to plenary guardianship, and in its place, the introduction of supported decision-making.

Over the years, MDAC has taken a strong stand against the large-scale institutionalisation of people with disabilities. Often these institutions are large and remote with many existing to warehouse rather than rehabilitate. Indeed, conditions unacceptable for human habitation are still unwelcome realities. MDAC is arguing for their replacement with community-based support, and a legal right to live in the community. Over the years MDAC has challenged unlawful detention in psychiatric hospitals, physical and chemical restraints, and seclusion, investigating ill and forced treatment allegations.

Additionally, MDAC is calling for a legal right to inclusive education and the end to segregated schooling. A disproportionate number of disabled children have no formal education, and for children who do attend schools it is likely they will attend special or segregated educational establishments, often with lower standards, possibly situated long distances away from their families.

What Can You Do?

The information you have just read is only an introduction to an article series. Its authors intend to give readers an idea of the challenges facing this particular field of international human rights law; your awareness is crucial to the overall advancement of human rights for the mentally disabled. We hope you will look out for the next article in the series, to be released next week.

Making a World of Difference

"With your help, we will make equality a reality"

MALALA

Overturning an embedded notion

By Weiqi Li

In the words of its founder, the Nobel Peace Prize was established to award 'the person who shall have the most or the best work for fraternity between the nations, for the abolition or reduction of standing armies and for the holding and promotion of peace congresses'. With this in mind, it is undeniable that the Committee has a penchant for choosing controversial candidates, from Henry Kissinger in 1973, and Rigoberta Menchu in 1992, to Barack Obama in 2009. Meanwhile other, less controversial candidates such as Mahatma Ghandi, despite having been nominated five times, are seemingly overlooked. This suggestion has once again been substantiated by the decision of the Committee to award the prize to Malala Yousafzai, the youngest person yet to win the award. While she is lauded in the West, attitudes to Malala in Pakistan, her home country, are rather different. Indeed, the BBC quoted Tariq Khattack, editor of the Pakistan Observer as saying: 'She is a normal, useless type of a girl. Nothing in her is special at all. She is selling what the West will buy'.

Malala's rise to prominence began at the tender age of 11, when she first started writing a diary blog for BBC Urdu, chronicling the life of a typical schoolgirl living in the shadows of the Taliban's autocratic regime. Her identity was revealed when the Taliban were driven out of Swat Valley, and her hometown and her powerful blog posts were recognised. At 12, she was speaking to Richard Holbrooke, President Obama's Special Envoy to the regime, and sponsored by UNICEF, she led delegations to speak to local politicians about rights to education. She was further catapulted into the media spotlight at the age of 14, when the Taliban attempted to assassinate her. Since then, fame and controversy have been following her like a haunting melody.

While Malala is clearly the living martyr of Western democracy, she isn't universally loved and she remains a figure of fierce debate in Pakistan. Perhaps that Malala has been so uniquely honoured, while so many more young girls are suffering similar dangers or harsh conditions, has fostered hatred and jealousy amongst the people of Pakistan. She was personified as a 'lone voice in the wilderness' by Feryal Gauhar in the local Express Tribune. Perhaps that so many others are fighting to be heard, but lack the platform she enjoys, makes her especially convenient to hate.

It does seem premature for her to be lauded and placed on the same pedestal as other activists. Compare her for example, with other recipients of the Nobel Peace Prize, such as Kailash Satyarthi, a children rights advocate, who at 60, has devoted his life to protecting the rights of more than 83,000 children from 144 countries. In the words of a housewife from Islamabad: "What has she done to deserve [the Nobel Prize]? She may be brave, but she's only a child. They should have waited 10 years and let her make a mark among the deprived sections of the society."

The growing resentment directed against Malala became particularly evident last year, when students protested at an attempt by local officials to rename their girls' college after Malala. Students took to the streets, destroying a sign emblazoned with Malala's name and throwing mud at her image. It seems Malala has triggered deep insecurities in the Pakistani people.

From conservative members of the Pakistani society being upset about her upending the traditional separations between boys and girls' education, to broader concerns regarding US state policies towards Pakistan, negative theories about Malala have gained traction and support in Pakistan. The popular belief is that the USA, along with Malala's father, conspired to have her shot in order to promote a Western culture of nudity, and to defame Pakistan worldwide.

To put it in blunt terms, despite the laudable efforts of Malala to bring attention to the issue of gender equality, especially in the arena of education, her efforts are clearly overrated amongst the people she seeks to help. The very community she is advocating for has rejected her. With this in mind, instead of advocating issues by exposing the failings of her country and upholding Western values that her country so abhors in front of the worldwide media, would her continuing efforts not be better directed through a local platform?

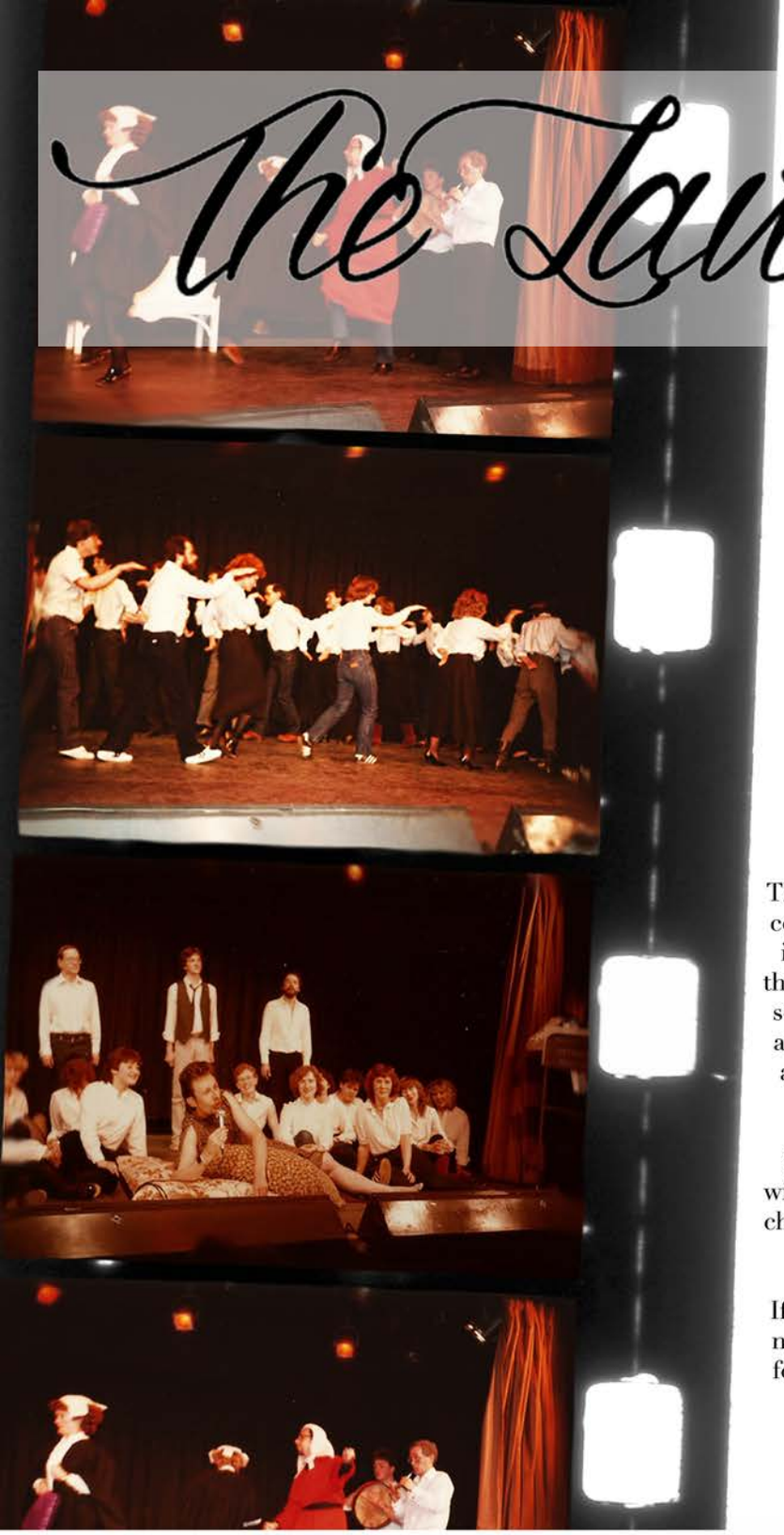
Even before Malala's stance on this issue, there has been strong media attention on gender equality in developing nations. However, due to the limited funding for international organisations and the wide-ranging concerns that fall within its scope, there is often little that non-governmental organisations can do. Malala is raising further attention to issues that are already under the spotlight, with the awareness proposing no feasible solution.

Ultimately, the one who can effect the biggest change in Pakistan is not the international communities, but the government and the people of the country. To effect any change for the people of her country, Malala must first regain the acceptance of her countrymen.

"MALALA MUST FIRST REGAIN THE ACCEPTANCE OF HER COUNTRYMEN.

The Law Revue

By Yuen Ping Lim



December is approaching – the term is ending, the winds are howling, due dates are looming, and papers are flying. It feels dreary but it is not all that bad, because the Law Revue is coming and the tickets are now selling!

The Law Revue is an annual law-themed stage production produced by your fellow students and professors from the School of Law. A tradition unique to the School of Law – It is a platform for members of the school to bond and flex some artistic flair while taking potshots at the law or life in the School of Law.

What is in Store This Year?

This year, we are back with more thrills and spills! Your fellow course mates and favourite professors will be on stage flaunting their talents and showing sides of themselves you never thought they had. Some of the acts include the likes of Professor Todd and Professor Birch singing, and Professor Gravells and Professor Todd acting (Hint: or being sung about). There are sketches and songs about some landmark cases, and the little things that we all go through as a law student.

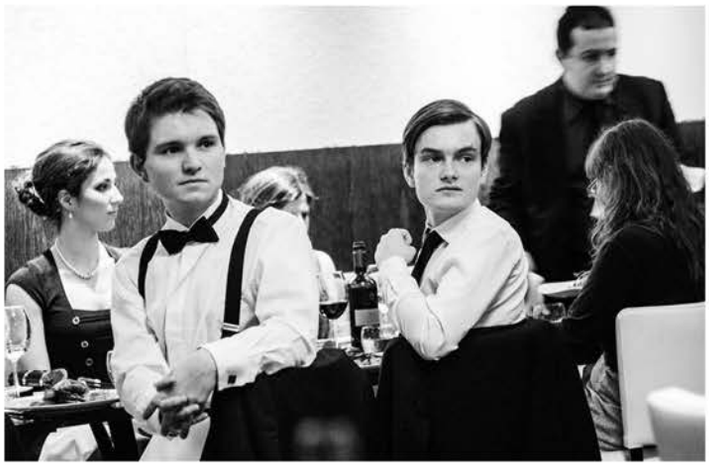
Strategically timed to happen right before we break for the winter holidays, the Law Revue promises to bring some festive cheer and cheeky takes on life in the School of Law from both the perspectives of the faculty and students.

If you feel stifled from all the Land Law coursework, EU case names and Contract Law, this would definitely be the avenue for you to get right back at them, because we have made sure that they would most certainly be laughed at!

Count Me In - Fill Me In on the Details!

The Law Revue will be held at the Keighton Auditorium on Thursday 11th December 2014 at 7pm. So what are you waiting for? Drop the cup of coffee you are holding, and surf over from your Facebook account to http://www.su.nottingham.ac.uk/events/9536/6641/ to secure your seat for the fantastical night for just £5!
All proceeds from this year's ticket sales will go to Oxfam's Ebola Charity appeal, which supports the relevant health authorities to address the Ebola outbreak. What better way to round off the term by having a good laugh and bringing some joy to those in need?
We hope to see you soon at the Law Revue 2014!

Bar Society: Get Involved



Ladies and Gentlemen of the Jury/Advocate Readers!

The University of Nottingham Bar Society has been named by the Bar Council of England and Wales as the 'Best Society' and I am certain that our committee and members could not agree more!

In the last academic year the society ran several successful trips to the Old Bailey, Lincoln's Inn, Gray's Inn and held a fabulous debut Christmas meal. Furthermore, several sessions were organised with leading barristers, judges and authors, who gave us an unprecedented insight into a career at the Bar – not to mention our alumni who keep coming back to see us!

If you are uncertain about becoming a barrister or even uninterested, the Bar Society is a brilliant opportunity to learn more about the legal profession as a whole, which is undergoing some significant changes right now. This society is undoubtedly an "enabling" society – meet, discover and enjoy with a characterful bunch of fellow students from several degree disciplines. It has certainly given me some great memories and new friends.

Our glorious President, Sam Peake (the LexisNexis guy), along with the rest of the lovely committee, promise an incredible year ahead, packed with more court trips, mock trials, skills sessions and formal dinners. What's there not to like? If you haven't joined yet, you probably should.

Oliver Heaton
General Secretary of the Bar Society

A Day

in the Life:

A Spanish Law Student

By Thomas Goodman

It's 07:30 it's almost 30°C outside, lectures begin at 08:30 and you know that you will not finish until 21:00 that night. This does not paint a pretty picture for those of us at Nottingham who are used to complaining about any lecture that finishes after dark; but this is my Monday and Tuesday timetable for my year abroad at the University of Valencia.

For an Erasmus student, life in a foreign law school can prove difficult. It has taken some time to get used to staying focused during two-hour lectures and trying to take down detailed notes in a foreign language. However, I'll admit that life in the law school may not be quite as difficult as I have made out. Whilst early starts and late finishes can be tough to manage at times, it would not be Spain if they did not have a three hour break in the day for a siesta. And although this is my timetable for Monday and Tuesday, I am fortunate to have the rest of the week off to catch up on lectures that I may not understand, and also to spend time exploring Valencia and the rest of Spain to make the most of my year abroad experience.

Although trying to pay attention to a lecture in a foreign language is a challenge, it has not taken too long to become attuned to the different accents of the lecturers, which has now given me far more confidence in my Spanish ability. I would recommend to anyone who is planning to embark on a year abroad in non-English speaking law school that they make attempts to improve their listening skills over longer periods, such as by watching films in that language. Hopefully this will prepare you for focusing for long periods of time whilst being taught in another language.

It is not only a different system of law that I am just getting used to, but also a different system of teaching. Lectures tend to be far smaller, of around 40-50 people, and there is a lot more student participation. The content of the course has also proven to be very different to that of Nottingham Law School. As Spain has a Civil Code and a Constitution, the majority of classes are spent on theoretical interpretations of these sources, as opposed to a Common Law system where a lot of time is devoted to interpretations of judgments from cases. This could be somewhat refreshing come exam time for those of us who do not enjoy learning case names!

Despite the difficulties that I have encountered I can safely say that I have loved my first weeks at Valencia Law School, and I cannot wait to spend the rest of my year here. Embarking on a year abroad is something that I would recommend to any student, as it will give you the opportunity to discover different interpretations of the law and meet some fantastic people.

Burges Salmon Trainee Profile: Charlotte Dutton

Charlotte Dutton is a second year trainee at Burges Salmon and a Nottingham graduate.

"I decided on a career in law when I was studying for my A Levels; a bit of a change of course from the vet med degree my subjects of biology, chemistry and maths had set me up for. But through various pieces of work experience I had become attracted to a career in the corporate world and felt a law degree would set me up for this perfectly, even if I didn't decide to pursue it as a career.

I secured my training contract at the end of my second year at Nottingham with Burges Salmon. I applied to lots of firms and to an extent ignored advice to keep my applications to a select few firms operating in similar sectors. However, I was excited about Burges Salmon because it stood out from the start. After lots of varied work experience, I had begun to appreciate the vast and diverse movement of business out of the City. In addition Burges Salmon's ethos, values and culture always appealed. As a firm, they hold themselves out as being committed to the local community which appeals (perhaps especially when you feel slightly transient during your uni years!), and the idea of all being in one office, under one roof to ensure a collaborative work environment and a seamless service for clients also made sense.

I studied my LPC at the University of Law in Moorgate, London and am currently running a matter with someone who was in my LPC class and is now at a London firm we are acting against!

I have so far sat in the Dispute Resolution, Real Estate, Banking and Pensions departments and largely enjoyed them all. Disputes was by far my favourite and most interesting seat with a huge range of work, client contact from day one, and working directly with partners on various matters. Real Estate taught me that I am not a transactional lawyer but also how to juggle what sometimes felt like hundreds of different matters to keep clients happy. In Banking and Pensions I have really enjoyed the larger corporate aspect of what we do – the deals are massive and the firm's collaborative approach really becomes evident when expertise from the various corporate and financial functions of the firm are drawn together to deliver results.

I said at my interview that I want to be partner one day, and a year and two months in I still do!"

BURGES SALMON

Get Involved.

Advocate is a welcoming society and accepts article submissions from all students on a variety of topics. If you are keen to write for Advocate, send us your articles of 800 words (maximum) to our email address. In the new year we will be recruiting journalists and a new associate design editor. If you are interested in either of these positions, feel free to get in touch with us and keep an eye out for more information in the new year. In the mean time, connect with us via our social media.

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