

St Andrews Institute of Legal and Constitutional Research

2016-17 Report



Now in its second year, the St Andrews Institute of Legal and Constitutional Research (ILCR) has built upon its successes in the 2015 - 2016 academic year and experienced another busy, enjoyable, and intellectually stimulating period of activity.

Over the past year, the ILCR has enjoyed success in a number of areas: internationally recognised academic publications; innovative public engagement activities; unique research projects; world-leading workshops; and the award of major research grants. At the beginning of the 2016 Martinmas term the ILCR also welcomed the first students on the Institute's new Legal and Constitutional Research M.Litt, studying a range of topics including international law, political history and medieval and early-modern law.

The 2017 - 2018 academic year promises to be equally stimulating. It will witness the first full year of activity on a major ERC Advanced Grant funded project on medieval legal history undertaken within the ILCR, the arrival of the second cohort of students taking the Legal and Constitutional Research M.Litt degree, and the development of further innovative research projects.

This report contains information about the activities of the Institute and its members over the course of the 2016 - 2017 academic year.

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The Legal and Constitutional Studies M.Litt 2016 - 2017 cohort with Professor Caroline Humfress: Photo - Friederike Ritzmann

2016-2017 Events and Research Activities

Lectures

Annual Lecture (April 2017): The ILCR's Annual Lecture was given by Professor William Ian Miller (Thomas G. Long Professor of Law at the University of Michigan). Professor Miller gave a characteristically lively and wide-ranging lecture, largely on the topic of: 'Food (Sticky and Fast) and the Ties that Bind'.

Law and Literature Lecture (April 2017): The ILCR's annual Law and Literature lecture was given by Professor George Garnett (University of Oxford), who gave a stimulating lecture on perceptions of the Norman Conquest in 17th century political writing, entitled: 'Thomas Hobbes and the Norman Conquest'.

History of Women, Gender and Sexuality Lecture (March 2017): The first annual lecture in the History of Women, Gender and Sexuality was given by Professor Sasha Roseneil (University of Essex) on a topic of particular contemporary significance: 'Intimate Citizenship: What difference have social movements made?'.

Reading Groups

Throughout the year, the ILCR held lunch-time reading groups, attended by graduate students and members of staff, on the following themes: The Universal Declaration of Human Rights; Originalism and Rights; Rights and Indigenous Peoples; and Natural Law and Rights.

Court of Canterbury Image Database

The ILCR, in collaboration with the Canterbury Cathedral Archives, has created an image database hosted by the University of St Andrews Library. This database includes a large number of 13th-century court records from Canterbury and will assist researchers working on canon law, administration, manuscript studies, and many other topics. This database of images has been constructed by Sarah White in connection with her Ph.D thesis.

The Law's Two Bodies

The Law's Two Bodies is a new ILCR project which asks the *question* 'what is law', but pursues an answer in a fashion different from typical jurisprudential studies. Through a series of interviews with legal professionals, it examines what legal practitioners do; how they regard law; to what extent they think about law in the abstract. Video recordings of the interviews will soon be made available to ILCR members. Four interviews have been conducted so far:

David Brynmor Thomas, Barrister, 39 Essex Chambers (October 2016).

Professor Malik R. Dahlan, Principal of the Institution Quraysh for Law & Policy (November 2016).

Lorna Drummond QC, sheriff of Tayside, Central and Fife, appeal court justice for Saint Helena, Ascension Island and Tristan da Cunha (March 2017).

Hugh Dillon, Deputy State Coroner, New South Wales; Committee Member, National Judicial College of Australia (May 2017).

2016-2017 Conferences and Colloquiums

Conferences

In September 2016, The Forum for British and Irish Political Thought co-hosted a conference on ‘The Present Crisis: Origins and Outcomes’ at the University of St Andrews. The colloquium was held under the auspices of the Forum for British and Irish Political Thought, the Carnegie Literature and Union project, the Scottish Constitutional Futures Forum and the St Andrews Institute for Intellectual History.

The ILCR co-sponsored a strand at the 2017 Leeds International Medieval Congress (with the *Iuris Canonici Medii Aevi Consociatio*) entitled ‘Sources of Legal Authority: *Ius Commune* and Customary Law in Conversation’. This strand contained three sessions, with papers given on common law, canon law and customary law c.1000 - 1300. The strand concluded with a roundtable discussion on the nature of legal authority in Europe in the Middle Ages.

The ‘Cambridge Comparative History of Ancient Law’

On May 25th-27th, the ILCR hosted the fourth and final project meeting for the ‘Cambridge Comparative History of Ancient Law’. This international project brings together over twenty ancient legal historians – including experts on ancient Greek, Roman, Near Eastern, Indian and Chinese material – who are working together collaboratively on two multi-author volumes, to be published by Cambridge University Press in 2018 (volume editors: Humfress, C., Ibbetson, D., and Olivelle, P.).



‘Cambridge Comparative History of Ancient Law’ project meeting attendees: Photo - Michael Sharp.

2016-2017 Visiting Scholars

Visiting Scholars

Lorena Atzeri: In January 2017 the ILCR welcomed Dr Lorena Atzeri (University of Milan), who gave a lecture on 'Infamy and Exclusion in Late Antiquity (Roman and Early Canon Law)'. Dr Atzeri also gave a stimulating workshop on 'Religious dissidents and infamy in Late Antique legislation and Early Canon law' in which the concept of 'infamy' in the Theodosian Code was discussed in detail.

Ros Faith: In February 2017 Dr Ros Faith (University of Oxford) held a workshop on 'The *Leis Willelme* and the Unfree'. In this workshop, Dr Faith led a discussion examining personal status, and in particular *villeinage*, through the lens of Anglo-Norman law codes, raising the question of how far provisions concerning status in these texts could be read back into the Anglo-Saxon period.

Thomas Gallanis: in April 2017, the ILCR welcomed Professor Thomas Gallanis (Associate Dean for Research, Allan D. Vestal Chair in Law and Professor of History at the University of Iowa) as a senior visiting fellow. Professor Gallanis gave the lecture 'What Happened to English Constitutional History?' in which he discussed developments in the study of constitutional history over the modern period. Professor Gallanis then gave a masterclass entitled 'Bloody Code, Bloody Historians', in which he discussed how different historians may take different approaches to historical case material.

Maria Macuch: In October 2016, the ICLR, in conjunction with the St Andrews Institute for Medieval Studies and Institute for Iranian Studies, welcomed Professor Dr Maria Macuch (Freie Universität, Berlin) to St Andrews. Professor Macuch presented a paper, 'Middle Persian Court Records from Tabarestān: Recent Evidence on Legal Proceedings in Eighth-Century Iran', which introduced a recent, spectacular find of thirty-three documents in Middle Persian, detailing the progress of a property dispute, resolved in favour of the plaintiff after the defendant failed to attend successive hearings. The paper prompted a lively discussion on the nature of these records: were these transcripts of court documents in the possession of the plaintiff as a private archive? Professor Macuch also ran a workshop, titled *Legal Constructions of Consanguinity: Succession in Sasanian Iran*, in which mechanisms of fictive kinship and inheritance were introduced and compared to Roman equivalents.

Brian Z. Tamanaha: In June 2017 the ILCR was fortunate to host Professor Brian Z. Tamanaha, (Washington University Law School), who gave a masterclass on his latest book, *A Realistic Theory of Law* (Cambridge: Cambridge University Press, 2017). Professor Tamanaha articulated an empirically grounded theory of law closely connected to social, cultural, economic, political, ecological, and technological factors. His masterclass provoked a wide-ranging discussion about legal systems and legal scholarship throughout history.

Milos Vec: In October 2016 the ILCR welcomed Professor Milos Vec (University of Vienna). Professor Vec led a reading group on 19th-century sources of international law, based on his article 'Sources in the 19th Century European Tradition: The Myth of Positivism' in *The Oxford Handbook on the Sources of International Law*, d'Aspremont, J., and Besson, S., eds., (Oxford: Oxford University Press, 2017). Professor Vec then and gave a seminar on: 'The "Family of Nations": a rhetorical figure and its ideology', which considered the use and history of the metaphor 'family of nations', and raised a number of thought-provoking questions.

Professor John Hudson awarded ERC Advanced Grant for Legal History Research Project

Professor John Hudson has been awarded a European Research Council 'Advanced Grant' of over two million Euros for a project entitled 'Civil Law, Common Law, Customary Law: Consonance, Divergence and Transformation in Western Europe from the late eleventh to the thirteenth centuries'. The project will be undertaken within the Institute and employ four post-doctoral fellows and two PhD students.

Professor Hudson outlines the project as follows: 'A highly significant division in present-day Europe is between two types of legal system: the Continental with foundations in Civil Law (law with an ultimately Roman law basis), and English Common Law. Both trace their continuous history back to the twelfth century. The present project re-evaluates this vital period in legal history, by comparing not just English Common Law and Continental Civil Law (or '*Ius commune*'), but also the customary laws crucially important in Continental Europe even beyond the twelfth century. Such laws shared many features with English law, and the comparison thus disrupts the simplistic English : Continental distinction. The project first analyses the form, functioning and development of local, national, and supra-national laws. Similarities, differences, and influences will then be examined from perspectives of longer-term European legal development. Proper historical re-examination of the subject is very timely because of current invocation of supposed legal histories, be it Eurosceptic celebration of English Common Law or rhetorical use of *Ius commune* as precedent for a common European Law.'

'Talking Law'

The ILCR's 2016 AHRC funded cultural engagement project 'Talking Law', a dramatisation and public debate about the trial of Patrick Hamilton, has been shortlisted for an Association for Heritage Interpretation 'Discover Heritage Award' in the category 'Interpretation for a Target Audience'.

Details may be found on the AHI's website (www.ahi.org.uk/www/awards/categories/6/).

The final outcome will be announced on 5 October at the AHI 2017 Conference.

M.Litt.

In 2016/7 St Andrews enrolled eleven students for the inaugural year of the MLitt Legal and Constitutional Studies. In addition to working with scholars and researchers from across the disciplines of History, IR, Philosophy, and Anthropology, the MLitt students participated in a series of reading groups and masterclasses. The group also enjoyed a range of social events and informal get-togethers (with law-themed playlists!). We warmly wish the graduating class of 2016/17 every future success and look forward to staying in touch with them all. Further information about the M.Litt in Legal and Constitutional Studies at the University of St Andrews can be found here: www.st-andrews.ac.uk/subjects/history/legal-constitutional-studies-mlitt/

Recent Publications and Related Activities

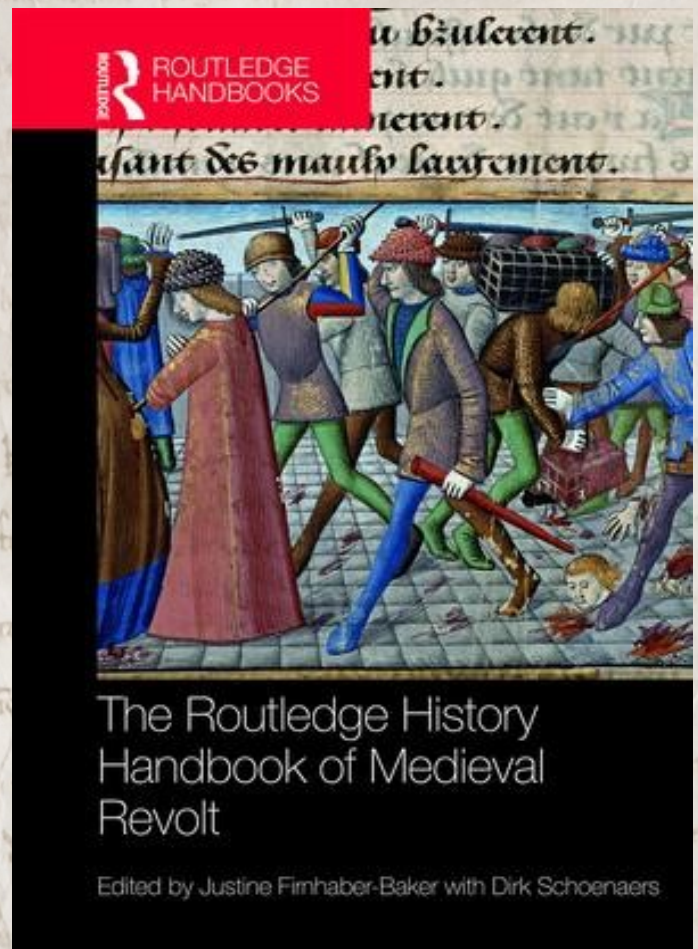
Mark Elliott published 'Law: Medieval Christianity', in the *Encyclopedia of the Bible and its Reception* 15 (2017) (pagination tbc).

Will Eves was invited to speak at the Cambridge Legal History Seminar Series and in September 2017 will take up a postdoctoral research fellowship at the University of St Andrews on the project 'Civil Law, Common Law, Customary Law: Consonance, Divergence and Transformation in Western Europe from the Late Eleventh to the Thirteenth Centuries'.

Justine Firnhaber-Baker (recently promoted to Senior Lecturer in the School of History) edited *The Routledge History Handbook of Medieval Revolt*, ed. Justine Firnhaber-Baker with Dirk Schoenaers (Routledge: Abingdon and New York, 2017), which includes Dr Firnhaber-Baker's chapter 'The Eponymous Jacquerie: Making Revolt Mean Some Things'. She also published 'Soldiers, Villagers, and Politics: The Role of Mercenaries in the Jacquerie of 1358,' *Routiers et mercenaires pendant la guerre de Cent ans*, ed. Guilhem Pépin, Françoise Laine, and Frédéric Boutoulle (Ausonius: Bordeaux, 2016), 101–14. Dr Firnhaber-Baker is also co-investigator on the ERC Grant 'Lordship and the Rise of States in Western Europe, 1300–1600' (PI: Frederik Buylaerts, Ghent University).

Tim Greenwood published 'A Contested Jurisdiction: Armenia in Late Antiquity', in *Sasanian Persia: Between Rome and the Steppes of Eurasia* ed. Eberhard W. Sauer (Edinburgh: Edinburgh University Press, 2017), 199–220.

John Hudson, in addition to being awarded an ERC Advanced Grant for the project 'Civil Law, Common Law, Customary Law: Consonance, Divergence and Transformation in Western Europe from the Late Eleventh to the Thirteenth Centuries', published 'Emotions in the early common law (c. 1166–1215)' *Journal of Legal History*, 38, no. 2 (2017), 130–154. He also gave the inaugural lecture in the Harvard Law School European Legal History Series and gave the papers: 'Defining Law for Comparative Legal History' at the Legal History & Legal Theory workshop, Edinburgh; and 'Reading Emotions in the Early Common Law' at the Powerful Emotions / Emotions and Power c.400 - c.1850 conference, York.



Recent Publications and Related Activities (contd.)

Caroline Humfress published 'Ordering divine knowledge in late Roman legal discourse' *COLLŒGIUM* 20 (2016), 160-176; 'Gift-giving and Inheritance Strategies in Late Roman Law and Legal Practice' in *Donations, Strategies and Relations in the Latin West and Nordic Countries*, Rønning, O.-A., Møller Sigh, H. & Vogt, H., eds. (Routledge, 2017); and 'A New Legal Cosmos', *The Medieval World* in Linehan, P., Nelson, J. L. & Costambeys, M., eds., 2nd ed. (Routledge, 2017). Professor Humfress is also subject editor for entries on 'law' in the *Oxford Dictionary of Late Antiquity*, Humphries M. and Nicholson O., eds. (Oxford University Press, 2017). Professor Humfress also spoke at conferences in the USA ('Individuals and Legal Institutions Around the Mediterranean', Center for Jewish Studies, Duke University); Israel ('Law as Religion, Religion as Law', Faculty of Law, Hebrew University); Egypt ('Informal requests for help and mediation in Egypt (from Roman times until the Ottoman era)', Netherlands-Flemish Institute, Cairo); and the UK ('Law as a Guide to Justice', University of Cambridge and 'Law in Theory and History: a Neglected Dialogue', University of Edinburgh). She gave research papers to the 'Roman Law Group' at the University of Edinburgh and the 'Intellectual History Seminar at St Andrews' University.

Lorna Hutson (now at Oxford University) edited *The Oxford Handbook of Law and Literature* (Oxford: Oxford University Press, 2017). This work reflects many of the themes and discussions pursued in the Institute's Centre for Medieval and Early-Modern Law and Literature, of which Professor Hutson was co-director until she moved to Oxford last year to become the Merton Professor of English Literature.

Miles Lavan was awarded a BA/Leverhulme Small Research Grant (£9,544), for the project 'Roman citizenship from Hadrian to Alexander Severus', September 2016-August 2018, with collaboration of Prof Cliff Ando, University of Chicago. Dr Lavan also convened a workshop on 'Roman citizenship from Hadrian to Severus Alexander' in St Andrews in July.

Konrad Lawson published 'Between Post-occupation and Post-colonial: Framing the Recent Past in the Philippine Treason Amnesty Debate, 1948', in *Debating Collaboration and Complicity in War Crimes Trials in Asia, 1945-1956* von Lingen, K., ed., (Palgrave, 2017).

Zoe Sutherland will take up a fellowship at the University of California, Santa Barbara's newly established International Center for the Humanities and Social Change. The inaugural year's theme is 'The Humanities as a Vocation: Fact and Value - After Truth'.

Sarah White was invited to speak at the London Society for Medieval Studies (Institute of Historical Research) and the Edinburgh Law and Religion Workshop (Edinburgh Law School). In October 2017 she will take up a postdoctoral research fellowship at the University of St Andrews on the project 'Civil Law, Common Law, Customary Law: Consonance, Divergence and Transformation in Western Europe from the Late Eleventh to the Thirteenth Centuries'.