



UCL



Overview

The UCL Centre for Ethics and Law works at the interface between law and ethics.

The Centre's members are particularly interested in the relationships between ethics and the professions; law, ethics and business; innovation, technology and ethics, and ethics and risk. Our work draws on law, philosophy, psychology and practice.

The Centre:

- provides a focus for thought leadership
- organises a programme of events for engaging with and challenging business and professional approaches to ethics
- supports theoretical and applied research including funded postgraduate research opportunities.

The Centre aims to encourage ethical reflection, awareness and positive change through teaching, research and stakeholder engagement with the public, policy makers, regulators, practitioners and academics.

Through think tanks and other events we bring together academics, policy makers, practitioners and business leaders to discuss ethical dilemmas in business and professional life. Through teaching and research we provide thought leadership.

The Annual Report

This report sets out some of the activities of the Centre for 2022/3.

The Centre has, since the onset of Covid, continued to run a full programme of events. These are now almost exclusively run online. Additionally, Faculty staff continue to publish material relevant to the Centre and its work.



Advisory Panel

Special thanks are due to our Advisory Panel members for their advice and support

Dr Danae Azaria,
Associate Professor, UCL

Roger Barker

David Barr,
co-founder, CampbellBarr

Patrick Bourke,
Partner, Norton Rose Fulbright LLP

Dr Jonathan Chan,
Lecturer in Laws, UCL

Professor Barnali Choudhury,
Director of the Jack & Mae Nathanson Centre on Transnational Human Rights, Crime and Security, York University, Ontario, Canada

Dr Anna Donovan,
Lecturer in Laws, UCL

Sam Eastwood, Partner,
Mayer Brown International LLP

Ms Narine Lalafaryan,
Lecturer in Laws, UCL

Dr John Mair, Director,
Head of Project Integrity, European Bank for Reconstruction and Development (EBRD)

Professor Stephen Mayson,
Honorary Professor of Law, UCL

Dr Lucinda Miller,
Senior Lecturer in Laws, UCL

Professor Richard Moorhead,
University of Exeter, Honorary Professor of Law, UCL

Maddalena Neglia

Dr Francisco de la Peña Fernández-Garnelo,
Senior Teaching Fellow, UCL

Dr Ian Peters, Director,
Institute of Business Ethics (IBE)

Professor Prince Saprai,
Professor in Laws, UCL and Vice Dean for Strategy

Interim General Counsel, Ricardo

Joanna Talbot,
Chief Counsel, Compliance and Regulation, BAE Systems plc

Professor Kevin Toh,
Professor of Philosophy of Law, UCL

Anna Triponel,
Founder, Human Level

Dr Michael Veale,
Associate Professor, UCL

Professor Hse-Yu (Iris) Chiu,
Director of the Centre for Ethics and Law, UCL

Dr Alan Brener,
Lecturer (Teaching) and Deputy Director of the Centre for Ethics and Law, UCL

PANEL MEMBER LEAVING

It is with regret that **Narine Lalafaryan** is leaving UCL for Cambridge. We wish her all the best in her new role

Introduction

The Centre continues to run a full programme of events. However, most of these are now almost run exclusively

CORPORATE LAW, GOVERNANCE AND RESPONSIBILITY

The Centre continues to engage in bringing research visibility and stakeholder conversations in topics of corporate law, governance and responsibility. We hosted the following events, mostly online, except the hybrid event regarding Dr Ewan McGaughey's book launch on Enterprise Law.

Dr Akshaya Kamalnath (senior lecturer at the Australian National University, College of Law) anchored this event hosted by the Centre on board diversity and corporate governance. In a talk based on her book 'The Corporate Diversity Jigsaw', she argued the aspiration should be to ensure there is diversity in the entire corporation rather than just the board. She argues that diversity quotas for the board and quantitative disclosure requirements regarding the board's diversity are ineffective. One major reason is that these measures encourage short-term fixes but do not push companies to take actions that help attract and retain diverse candidates at all levels, and in the long-term. Dr Kamalnath advocates that firm-specific measures will be more effective and encourage societal justice and innovation at the firm level.

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This hybrid event is centred on Dr Ewan McGaughey's new book: 'Principles of Enterprise Law', (CUP, 2023). The key messages of the book, include the need for a broad perspective on what constitutes enterprise law. Such a perspective puts us in a better position to regulate corporate behaviour, economic relations, production and distributive issues, compared to adherence to a narrowly-framed 'law and economics' model of the corporation or the firm. Additionally, how should we reconceive enterprise law so that private economic activities contribute not just to private wealth creation but also to public good? Dr McGaughey's 'expansionist' vision of enterprise law would compel the removal of strict boundaries between corporate law and other legal areas like employment and regulatory law. The event provoked much critical discussion, in relation to how far stakeholders' interests can legitimately be advanced within the purposes and application of corporate law.

Dr McGaughey is a Reader who specialises in law, economics and history at King's College London.

The discussants at this event included:

Professor Elizabeth Pollman, Carey Law School, University of Pennsylvania

Professor Karsten Engsig Sørensen, University of Aarhus, Denmark.

Professor Barnali Choudhury, Osgoode Hall Law School, York University, Ontario, Canada.

Gerald Brown, Novaquest Capital Management and QHP. The latter is a global private equity firm focused on life sciences with over \$4bn under management.

Luke Sussams leads ESG Strategy for EMEA at Jefferies, an investment bank.

Liability-driven investment (LDI) strategies for defined benefit (DB) pension funds have been marketed by private sector financial services firms for some years. DB pension funds, outside the public sector, are now largely closed to new members but they still exist to provide for the 'long tail' of exiting members. They try and do two things at the same time: maintain a pool of long term assets (usually long dated government securities - 'gilts') with maturity dates which match the expected retirement dates of the schemes' members. However, the returns on these investments tend to be low. The other aim is to also hold another smaller pool of assets invested in equities to provide some enhanced return for the fund. The problem is that most funds do not have sufficient money to do both properly.

There are many different types of LDI strategy but in essence, using a variety of derivative based products, a pension fund can multiply its assets several times over (known as 'leverage'). So for example every £1 invested in LDI, a pension scheme could receive the equivalent of a £3 investment in gilts.

The issue is that the LDI derivatives need to be backed by collateral. When there is a fall in government bond yields (known as gilt yields) schemes receive collateral payments, when yields increase schemes must provide additional collateral.

This strategy meant that over a period of falling interest rates the pension fund assets benefited from having a high sensitivity to interest rates. Real asset values rose, matching the higher accounting value of discounted liabilities, while the equity returns and ongoing contributions were able to accumulate to close the

Discussants included:

Régis Bismuth (Professor of Law at Sciences Po Law School (Paris) and

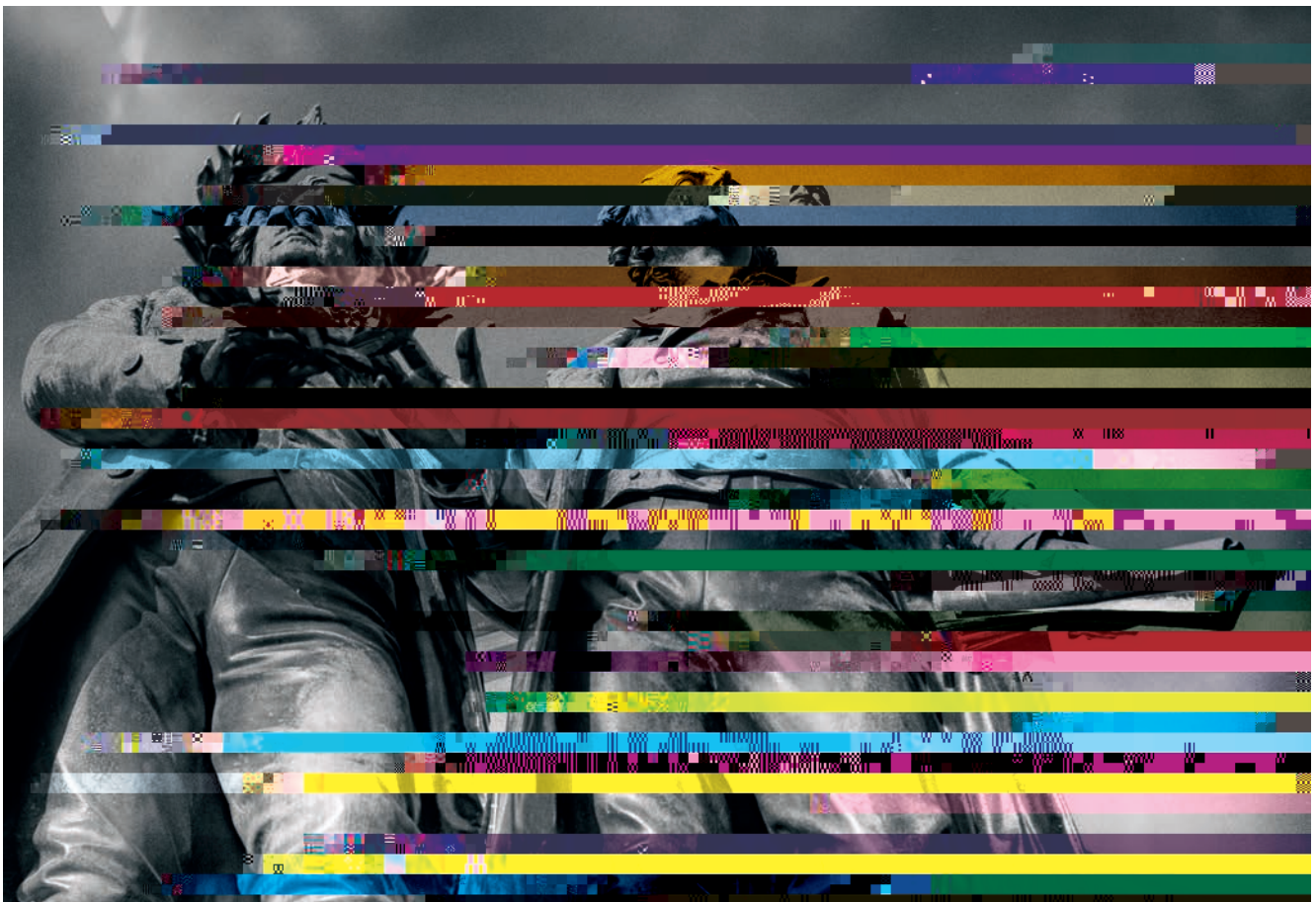
Pierre-Henri Conac, Max Planck Fellow at the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law, and Professor of Financial Markets Law at the University of Luxembourg.

LAW, SOCIETY AND ETHICS

The Centre continues to be interested in hosting stakeholder events and conversations in areas of law and ethics that are social in nature, whether or not related to business or commercial interests. In this

regard, we continue to appeal to members of the Centre and the Faculty more broadly to bring these conversations to the Centre. We were proud and delighted to host the book launch by Professor Raphael Cohen-Almagor on law and religion. Professor Cohen-Almagor was supported by the Centre during his research stay at the Faculty. He was researching on and completing the book, which is the subject of the book launch event.

Professor Raphael Cohen-Almagor, University of Hull, *The Republic, Secularism and Security: France versus the Burqa and the Niqab* (Springer Briefs in Political Science, 2022), 10 January 2023



Raphael Cohen-Almagor was a Distinguished Visiting Professor, Faculty of Laws, UCL where he undertook research for this book partly financed by the Centre. He is currently The Olof Palme Guest Professor, Lund University, Sweden. He is an expert in law and religion, and presented the key issues in his book and the broader implications for society.

The event was chaired by Alan Brener and he also presented the views of the discussant, Catherine Audard, chair and co-founder of the Forum for European Philosophy, who unfortunately due to a medical emergency, was unable to attend.

This book analyses French cultural policies in the face of what the French government perceives as a challenge to its Republican secular *raison d'être*. It makes general arguments about France's changing identity and specific arguments about the burqa and niqab ban. The book further explains how French history shaped the ideology of secularism and of public civil religion, and how colonial legacy, immigration, fear of terrorism, and security needs have led France to adopt the trinity of *indivisibilité, sécurité, laïcité* while paying homage to the traditional trinity of *liberté, égalité, fraternité*.

The book argues that while this motto of the French Revolution is still symbolically and politically important, its practical significance as it has been translated to policy implementation has been eroded. It shows how the emergence of the new issues when analysing the debates concerning cultural policies in France in the face of the Islamic garb. The book raises various important questions, such as: Is the burqa and niqab ban socially just? Does it reasonably balance the preservation of societal values and freedom of conscience?

The event was well-attended and provoked significant debate amongst attendees. This was an exclusively in-person event.

Other Speaking Engagements

In addition to those mentioned earlier Iris Chiu and Alan Brener chaired or organised the following events.

ALAN BRENER

Dr Alan Brener spoke at an online event on 'Transforming Civil Society Engagement with Financial Services', on 5 July 2022. The event itself was co-hosted by The Financial Innovation Lab and the Chartered Banker Institute to raise awareness of the need to support the voice of citizens in decision making in financial services. This follows the Treasury's paper, 'Financial Services Future Regulatory Framework Review: Proposals for Reform' issued towards the end of 2021. Alan spoke on the importance of banks retaining some prominent local presence in towns across the country to help sustain and develop local communities who might otherwise be neglected and left 'unvoiced'. The event was chaired by Maloes Nicholls whose role at the Financial Innovation Lab is to increase consumer engagement with a focus on social and environmental purpose.

IRIS H-Y CHIU

Iris was invited to present her work on crypto-finance to the Singapore Monetary Authority on 20 August 2022. This was an online event hosted by the Singapore MAS, and Iris advocated that regulation should be developed for both enabling purposes to support useful innovation while governing the risks and excesses of financializing crypto innovations.

Iris has also participated in policy engagements and discussions relevant to her research. She was invited to participate at a stakeholder invitation-only event on Sustainable Finance Roundtable hosted by the Financial Conduct Authority on 13 December 2022.

She has also been appointed Member of the Advisory Panel to the Law Commission Study on Decentralised Autonomous Organisations from September 2022.

Iris gave the following Keynote addresses:

Company Law Section, Society of Legal Scholars Conference 2022, on Decentralised Business Models and Corporate Governance.

Financial Regulation in an Age of Global Disorder, keynote speech at the inaugural conference for the Law and Financial Markets Review, University of Manchester, 16 September 2022.

Sustainable Finance Regulation and Policy- Authoritative or Market-Led Governance?, the keynote address at the Australian SCOLA annual conference, 5 Feb 2023

Publications

ALAN BRENER

(With Trevor Clark, Richard Moorhead and Steven Vaughan, 'Agency over Technocracy – How Lawyer Archetypes Infect Regulatory Approaches' (2022) *Legal Ethics*. This article looks at the role of in-house lawyers in regulated organisations in the financial sector. A recent Financial Conduct Authority consultation on whether to designate the head of legal of banks, insurance companies and other financial firms as 'Senior Managers' and the decision which flowed from it, reflected a flawed view of lawyers as a neutral technocracy of mere legal technicians; we show how the FCA's decision is potentially damaging to the public interest and failed to take into account that in-house lawyers are often important decision-makers and influencers within their organisations. The article puts the case for an alternative view; that in-house lawyers are professionals, with agency that requires them to act in accordance with ethical norms and means they should be made more accountable for their conduct.

JONATHAN CHAN

(with Martin Petrin) Lost Synergies and M&A Damages: Considering *Cineplex v. Cineworld*', (2022) 100 *The Canadian Bar Review* 2. This co-authored paper was presented at the Canadian Law & Economics Conference in October 2022.

Other papers, not yet published, presented at the Society of Legal Scholars conference at UCL mentioned above.

IRIS CHIU

(with Roger Barker) 'Independent Directors in Investment Funds in the UK: What Role for Investor Protection?' (2022) *Capital Markets Law Journal* 489.

(with Jason Allen) 'Exploring the Assetisation and Financialisation of Non-fungible Tokens (NFTs): Opportunities and Regulatory Implications' (2022) 37 *Banking and Finance Law Review* 401.

(with Alan Brener), 'Protecting What Matters: Reflections on a Central Bank's Role at Time of War' (2022) 55 *Vanderbilt Journal of Transnational Law* 875.

(With Christian Hofmann) 'Unlimited Central Bank Digital Currency: The Case for a Public Good in the Euro Area and its Regulatory (and Deregulatory) Implications for Modern Finance' (2023) *North Carolina Journal of International Law* 1.

'Sustainable Finance Regulation-Authoritative Governance or Market-Based Governance for Fund Management? (2023) *Journal of Financial Transformation*, (forthcoming).

Prospects for International Financial Deglobalisation and its Potential Impact on International Financial Regulation (2023) *Law and Financial Markets Review*, (forthcoming).

ANNA DONOVAN

A forthcoming book with the working title of 'The Ethical Corporation? Rules, Their Repercussions and Responsibility for Law Reform'

NARINE LALAFARYAN

'Orchestrating Finance with Material Adverse Changes?' (2022) *Legal Studies*, 42(1), 1-22.

PRINCE SAPRAI

'Never Let Me Go: Private Law and the Conservative Impulse' in Michelle Madden Dempsey and François Tanguay-Renaud, (eds.) *From Morality to Law and Back Again: Liber Amicorum for John Gardner* (OUP, 2022)

KEVIN TOH

(with François Schroeter and Laura Schroeter), 'The Limits of Metalinguistic Negotiation: The Role of Shared Meanings in Normative Debate', (2022) *Canadian Journal of Philosophy*, 52(2), 180-196.

MICHAEL VEALE

(with Kira Matus and Robert Gorwa), 'AI and Global governance: Modalities, Rationales, Tensions', (2023) *Annual Review of Law and Social Science*, Vol 19

(with Frederik Zuiderveen Borgesius), 'Adtech and Real-Time Bidding under European Data Protection Law', (2022) *F. (2022) German Law Journal*, 23(2), 226-25



Please e-mail: ethics-law@ucl.ac.uk, to be added to the Centre for Ethics and Law mailing list

UCL Centre for Ethics and Law web-site: <https://www.ucl.ac.uk/ethics-law/>

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