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**UNIVERSITÄT
BERN**

THE PROGNOSTICS OF FEAR AND HOPE

2017 EASA LOWNET CONFERENCE
19-21 SEPTEMBER 2017

Institute of Social Anthropology
Institute of Public Law

Anticipating Law



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The 2017 EASA Lawnet Conference engages with the theme of “Anticipating Law”. We call into view both anticipations of law—the hopes and fears people put into law—and the anticipatory laws that attempt to legally regulate the future. Both anticipations of law and anticipatory laws are shaped by fear and hope as different forms of anticipation.

The Prognostics of Fear and Hope

Many laws are geared towards organising and regulating the future. Some of these pursue specific developmental goals—‘social engineering’—and attempt to shape the future by giving incentives for achieving those goals; others are geared more specifically toward preventing future events and diminishing risk. The regulation and prevention of events in the future is a legal field of increasing importance. This is related to rapid technological change that poses problems of unknown effects ever more frequently. The hopes of shaping the future by legal regulation have diminished in the face of the seemingly autonomous dynamics of distributed agency in a globalised world, and have given way to logics of prevention.

The regulation of the future is implicit in law generally, as law is based on the assumption that it orients action by people and thereby produces wanted outcomes in the future and prevents unwanted ones; by threat of sanction or by award of benefit. However, theories about law’s effect on human action change. They change in accordance with changing understandings of safety and security and related ideas of what it needs to produce or safeguard social order. Whether thus preventive logics prevail, or rather those, which are confident about the possibilities of law to shape the future, is a matter of social analysis.

This raises one strand of questions: How does law know the future? What techniques and technologies provide information about the future that is used by law? How are fear and hope inscribed in law?

A second strand of questions concerns anticipations of law by people subjected to it: Fear and hope that are implicit in law’s making, are also central to the experience of law. Experiential and normative dimensions of expectations toward law are entangled in often contradictory ways, disappointments with law from past encounters do not necessarily diminish hope in it for the future. What is it precisely that inspires hope and fear? Is “the law” that is feared a different one than that which people employ in hope in their various struggles and endeavours? What is it that inspires hope in law, and how does it relate to other hopes and aspirations, to visions of the future?

Keynote Speaker: Prof. Dr. Laura Bear (LSE London, UK)

Panel Discussants: Gerhard Anders (University of Edinburgh, UK) David Bozzini (University of Fribourg, CH), Jane Cowan (University of Sussex, UK) Heike Drotbohm (University of Mainz, D), Ellen Hertz (University of Neuchâtel, CH),

Conveners: Julia Eckert, Tobias Eule, Miia Halme-Tuomisaari, David Loher

PROGRAMM

Tuesday 19 September 2017

Venue: Kuppelraum 501, Main Building H4, Hochschulstrasse 4, Bern

6:15 to 7:45 pm

Keynote Lecture – Public Goods: Anticipation, Capital, and the Legal Regimes of Public-Private Partnerships

Prof. Dr. Laura Bear (LSE London, UK)

Wednesday 20 September 2017

9 to 9:30 am

Introduction

Panel 1 – **Law and the Transformation of Society**

9:30 am to 1 pm

— Agathe Mora (University of Edinburgh, UK). “Rough Justice”: Cynical Anticipation and Quick-Fix Juridification of Property Politics in Post-War Kosovo

— Olaf Zenker (University of Fribourg, CH). The Futures of South African Restitution Law: Contested Visions of a Changing Landscape

— Julie Billaud (University of Sussex, UK). Utopia and the Pragmatism in the Practice of International Law

— Miia Halme-Tuomisaari (University of Helsinki, FI). What's There to Fear? Exploring Attempts to Retroactively Annul the Law

Panel 2 – **Prevention, Securitisation, and the Governance of Fear**

2 to 5 pm

— Anya Degenshein (Northwestern University, USA): Construction of Constitutional Rights and the Expanding Reach of FISA in the “Prevention” of Terrorism in US vs. Mohammed

— Deniz Yonucu (Humboldt Fellow Berlin, D). Demonic Law: Turkey's Anti-terror Law and Its Threatening Force

— Grégoire Mallard (The Graduate Institute Geneva, CH). From Europe's Past to the Middle East's Future: The Constitutive Purpose of Forward Analogies in International Law

5 to 5:30 pm Network Meetings: EASA Lawnet/ Legal Anthropology in Switzerland

Thursday 21 September 2017

Panel 3 – Law's Promises

9 to 12:30 am

— Isabelle Schulte-Tenckhoff (The Graduate Institute Geneva CH). tba

— Thomas van der Molen (SOAS London, UK). Hope Deferred: Rumours of Tibetan Refugees

— Irène Marti (University of Neuchâtel, CH). Preventively Locked-up. Insights Into the Lived Experiences of "High-Risk" Offenders Sentenced to Indefinite Incarceration in Switzerland

— Maya Avis (The Graduate Institute Geneva, CH). Unsettling Justice: Codes of Struggle in the Naqab-Negev

Panel 4 – Anticipation Between Law and Bureaucratic Practices

1:30 to 4:15 pm

— Amy Krauss (Princeton University, USA). The Threat and Promises of Exceptional Legality

— David Loher (University of Bern, CH). Promises and Premises in Law and Bureaucracies: Governing So-Called Voluntary Return Migration

— Tobias Eule (University of Bern, CH). Anticipating What? Immigration Enforcement and Control Avoidance in the "Absence" of Black Letter Law

4:15 to 4:45 pm

Plenary Discussion

Venue:

University of Bern, Hochschulstrasse 4, CH-3012 Bern

Main Building H4, Kuppelraum No. 501

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