



UCL

A photograph of the UCL building facade, featuring a series of tall, fluted classical columns supporting a pediment. In the foreground, a bronze statue of a nude male figure stands on a pedestal. Several people are sitting on the stone steps in front of the building. The sky is clear and blue.

**UCL CENTRE FOR
ETHICS & LAW**
ANNUAL REPORT
2017/18

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Introduction

THIS REPORT SUMMARISES THE WORK OF THE UCL CENTRE FOR ETHICS AND LAW (CEL) IN THE ACADEMIC YEAR 2017/18.

Centre highlights include:

CEL Working Papers (mini launch and in progress)

Interdisciplinary Scholarship and Public Engagement

- CEL-Global Governance Institute, 'Visible Hands' event, 19 Feb 2018
- 'Algorithmic Transparency', 21 March 2018
- 'Commercial Boycotting and Conscientious Breach of Contract' (Dr Christopher Mills and Dr Prince Saprai) Journal of Applied Philosophy (forthcoming)

Engagement with Practitioners and Industry

- Ethics of Non-Disclosure Agreements (NDAs), 20 March 2018 and ongoing
- 'Who gets Heard', 27 Feb 2018
- Information and Technological Revolutions in Capital Markets, 22 March 2018

As ever, we are especially grateful to our sponsors: BAE Systems, HSBC, Norton Rose Fulbright.

And special thanks are due to our Advisory Board members for their advice and support:

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

Sam Eastwood,
Norton Rose Fulbright LLP

Richard Gray,
HSBC

Dr Prince Saprai,
Senior Lecturer in Laws, UCL

Professor Jonathan Wolff,
Professor of Philosophy, UCL

Philippa Foster Back,
OBE Institute of Business Ethics (IBE)

Mark Serföz,
General Counsel & Company Secretary, Spectris

David Barr,
co-founder, CampbellBarr

Professor Dame Hazel Genn QC,
Professor of Socio-Legal Studies and former
Dean of the Faculty of Laws, UCL

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

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

Dr Anna Donovan,
Lecturer in Laws, UCL

Alan Brener, UCL
Faculty of Laws, formerly of Banking Standards Board
and Santander, UK

Dr Kate Greasley,
Lecturer in Laws, UCL

Professor Stephen Mayson,
Honorary Professor of Law, UCL

Dr Lucinda Miller,
Senior Lecturer in Laws, UCL

Professor Richard Moorhead,
Vice-Dean Research, Laws, UCL

Dr Kevin Toh,
Senior Lecturer in Laws, UCL

Dr Steven Vaughan,
Senior Lecturer in Laws, UCL

**We also thank our Honorary Associates
for working with us in our research and
public engagement:**

Roger Barker,
Corporate Governance consultant,
Barker & Associates

Anna Triponel,
Business and Human Rights consultant,
Triponel Consulting Ltd

Paul Gilbert,
LBC Wise Counsel, LawBook Consulting Limited

Maddalena Neglia,
FIDH and Visiting Associate, CEL

Personnel changes 2017/18

Anna Donovan (co-Director September 2016-January 2018) has stepped down from her co-Director role as she is also Vice-Dean for Innovation at the Faculty, an increasingly time-consuming commitment. Anna wanted to take this opportunity to thank the members of the CEL for their support during her tenure. It has been a great pleasure working with the CEL's advisory board, sponsors and members and this was not a decision that I took lightly. However, the Vice-Deanship means that I can no longer give the Centre the attention I would like but I look forward to remaining an active member of the CEL community.

Alan Brener has offered to step up to help with Centre operations and has been appointed by Prof Piet Eeckhout, Dean of the Faculty of Laws as Deputy Director of the Centre, taking over from Anna in January 2018.

Sylvie Delacroix has left the Faculty for an appointment as Professor of Laws at the University of Birmingham.

Richard Tapp has left the Advisory Board, following withdrawal of sponsorship by the then-Carillion plc for the Centre in August 2017.



Projects

PROFESSIONAL AND LEGAL ETHICS

Richard Moorhead and **Steven Vaughan** have completed their forthcoming book *In-House Lawyers' Ethics: Institutional Logics, Legal Risk and the Tournament of Influence* (Hart Bloomsbury) expected late 2018.

The next report from the Ethical Leadership for In-House Lawyers Project authored by Honorary Fellow, Paul Gilbert is imminent and work is commencing on best practice thinking. In the past year, Richard Moorhead has given by invitation talks on this work at a joint Vrije University-Dutch Bar event, the Scottish Law Society, a Banking Standards Board Panel Event, Leeds University, and at various In-House Legal Team training events.

An event and publication on best practice in General Counsel/Non-Executive Director relationships is scheduled with the Banking Standards Board and Prudential Regulation Authority to be held at the Bank of England in the Autumn. This is being led by Richard Moorhead and Alan Brener from CELs and Dame Colette Bowe from the Banking Standards Board. It is a direct result of the Mapping the Moral Compass work.

Richard Moorhead has been leading a stream of work on Non-Disclosure Agreements. His many blogs on the Harvey Weinstein/Zelda Perkins case were instrumental in the Solicitors Regulatory Authority issuing a Warning Note to the Solicitors' Profession. He was asked to give evidence to the Parliamentary Women and Equalities Select Committee, which he did by way of written submission. It was influential in the Committee evidence sessions of 25 April 2018. A think tank, supported by Kingsley Napley and Iain Miller, was held with leading practitioners, policy makers and Non-Governmental Organisations which has led to a CELs publication.

An event with Lord Neuberger in conversation with Stephen Mayson on Legal Professional Privilege is scheduled for 14 November 2018.

Stephen Mayson is in the early stages of developing a major project on the reform of legal services regulation with support being shown from leading regulators and interested parties.

ACCESS TO JUSTICE

Steven Vaughan invited **Chris Hanretty**, Professor of Political Science, Royal Holloway and Bedford College to give a talk at UCL, co-sponsored with the UCL Judicial Institute on the challenges in access to justice in relation to appeals processes- 'Who Gets Heard' on 27 February 2018.

DEBATES ON PUBLIC VALUES

Prince Saprui (with Professor George Letsas) organised a Yale-UCL Collaborative Workshop, 10 October 2017 on a new book by Yale Law Professor Daniel Markovits called 'Meritocracy and its Discontents' (forthcoming with Penguin). The event brought together at UCL leading economists, philosophers, sociologists, lawyers and educationalists to discuss the book and the issues of global inequality and the strains on the ideal of meritocracy that they raise.

Prince Saprui was invited to participate in a roundtable at the St Paul's Institute, 19 March 2018 to discuss with Professor Michael Sandel (Harvard) and leading politicians, broadcasters, economists and theologians issues around public values and the common good in an age of populism.

CORPORATE REGULATION AND BEHAVIOUR

We continue to explore aspects of corporate regulation and behaviour, in particular the question of to what extent government regulation can be effective in shaping socially responsible corporate behaviour in a range of issues, from corruption to sustainability and supply chain responsibility.

Iris Chiu gave an inaugural lecture on 19 Jan 2018 providing an overview of recent corporate regulation reforms and argues that these reforms are institutionally shaped and will only provide an incremental impetus for change in corporate behaviour. The lecture is to be published with the UCL Faculty's flagship *Current Legal Problems* journal.

We collaborated with the **Global Governance Institute** and invited Professor Jette Knudsen, Tufts University, to discuss the role of governments in promoting multi-stakeholder initiatives and improving corporations' adoption of socially responsible programs, on the occasion of her new book 'Visible Hands-Government Regulation and International Business'. The joint event took place on 19 February 2018.

Our Honorary Associate **Anna Tripone** organised an event on Modern Work Practices and Human Rights to discuss companies' best practices in protecting workers and in supply chain responsibility at UCL. The panel included a senior practitioner from Eversheds, a representative from Shareaction and an executive from Hermes the parcel delivery company. This event took place on 9 November 2017.

We also hosted **Professor Jean Du Plessis, Deakin University** on 9 January 2018 to discuss anti-corruption developments in South Africa and the scandals in relation to the Gupta companies and former President Jacob Zuma.

Professor Catherine Malecki, University of Rennes presented a lecture on the French implementation of the non-financial disclosure directive that has been implemented in the UK too, on 24 April 2018.

Alan Brener has been appointed early in 2018 to a Parliamentary working group advising the All Party Parliamentary Group on Fair Business Banking.

Dr Prince Saprai (with Dr Chris Mills – Assistant Professor at Warwick Law School and formerly a Research Fellow at the Centre) worked together to produce an article on the morality of commercial boycotting. The paper has recently been accepted for publication in the *Journal of Applied Philosophy*. In the article we argue that commercial boycotting is not an uncontested economic right. Rather, the practice of boycotting often requires further moral justification. We argue that this justification should not rely solely on the consequences of boycotting, nor should it rely solely on the complicity of the consumer. We suggest that both justifications are subject to pressing objections. In light of these objections, we outline an alternative non-consequentialist justification of commercial boycotting that is grounded in the moral values of

conscience and personal integrity. We then explore the scope of this justification in the legal realm. We focus on cases where consumers lack freedom of exchange due to their contractual obligations and conclude by defending a qualified legal right to breach contracts on conscientious grounds.

CORPORATE GOVERNANCE

Iris Chiu and Honorary Associate **Dr Roger Barker** have published a book on institutional investor 'stewardship' – *Corporate Governance and Investment Management* by Edward Elgar Publishing. The book discusses critically the legal, regulatory, market and industry factors that pull institutional investors in different directions with regard to their corporate governance roles, and critically questions simplistic notions of 'stewardship'. The book launch was hosted at Cass Business School, 25 April 2018.

The Centre hosted **Prof Chee-Keong Low, Chinese University of Hong Kong** on 16 November 2017 to discuss a topical scandal in Hong Kong where executive remuneration seems to be unaffected by an executive's failure. The small roundtable discussed the law and codes on corporate governance and executive pay as well as how directors' duties should be applied and enforced.

FINANCIAL INNOVATION, TECHNOLOGY, REGULATION AND IMPLICATIONS

Iris Chiu and **Anna Donovan** have been working intensely on aspects of financial innovation and implications for industry and regulators.

Iris has published a number of papers this year on financial innovation, in relation to payment services and systems reforms and the FCA's regulatory Sandbox. She has a paper in progress on regulatory policy in initial coin offerings, and a work in progress on sustainable finance and innovation that has been presented at the Information and Technology Revolutions conference held at UCL on 22 March 2018.

The Information and Technology Revolutions in Capital Markets conference was held at UCL with sponsorship jointly from Durham University and Edinburgh University. This was a key occasion CEL organised this year,

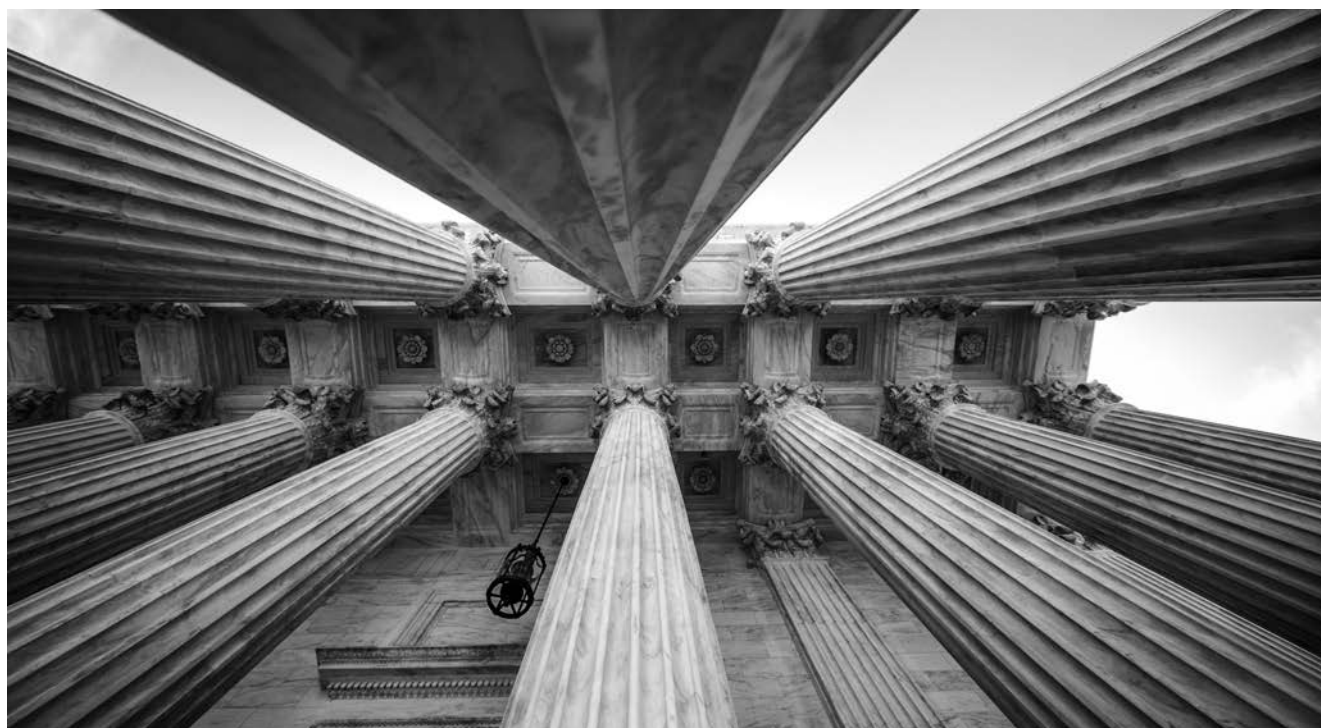
bringing together industry, practitioners, academics and regulators from the UK and EU to discuss financial innovation and regulatory implications. A conference volume is to be published by the European Business Organisations and Law Review later this year.

Anna is organising a lecture to be held on 27 June 2018 entitled 'Enslaving the Algorithm: Avoiding the Transparency Fallacy,' given by speakers Professor Lillian Edwards and Michael Veale. This complements Anna's inter-disciplinary work on algorithmic regulation as part of her membership of the UCL Centre for Blockchain Technologies. Anna continues to engage with the judiciary and the Ministry of Justice (MoJ) on distributed ledger technology, as well as innovation in legal education and practice more generally. Recent events include the MoJ innovative technologies event, giving a seminar on blockchain to members of the Business and Property Courts (together with Iris) as well as negotiating UCL's recently announced partnership with Barclays as part of its LegalTech Eagle Lab.

Iris and **Anna** have been involved in contributing chapters to the Research Handbook on Shadow Banking where financial sector innovation and regulation is canvassed across a broad scope of shadow banking activities. The book is in press with Edward Elgar Publishing.

Iris and **Anna** are also involved with the UCL Centre for Law, Economics and Society in their initiatives to develop theoretical discussions on fintech, blockchain and how financial innovation is disrupting the way life is conducted generally, the most recent event being the 'Blockchain Technology' conference on 26 April 2018

In conjunction with the UCL Journal for Law and Jurisprudence, Iris Chiu organised an 'In Conversation' session for two LLM students Sriram Kilapakkam and Xueming Wang to interview Distinguished Visiting Professor Steven Schwarcz, Duke University, on 27 March 2018. The students discussed fundamental issues of financial regulation with Professor Schwarcz and have produced an article to discuss Professor Schwarcz's views on how regulation can provide a systemic order for finance.



PhD Studentships

Jean Frédéric Ménard continues working on his PhD and has now taken up a tenure-track position at the University of Sherbrooke, Canada.

Greg Callus has unfortunately decided to withdraw from the PhD program as his part-time study has proved too demanding for his various other commitments.

Teaching

The following courses of particular relevance to the Centre's interests ran this year:

- Lawyers Practice and Ethics (Undergraduates)
- The Future of Legal Practice (Postgraduate)
- Law and Ethics (Postgraduate)
- Comparative Corporate Governance (Postgraduate)
- Philosophical Foundations of the Common Law (Undergraduate)

External Engagement

We continue to engage widely with interested organisations and individuals through our events (see below) and bilateral meetings.

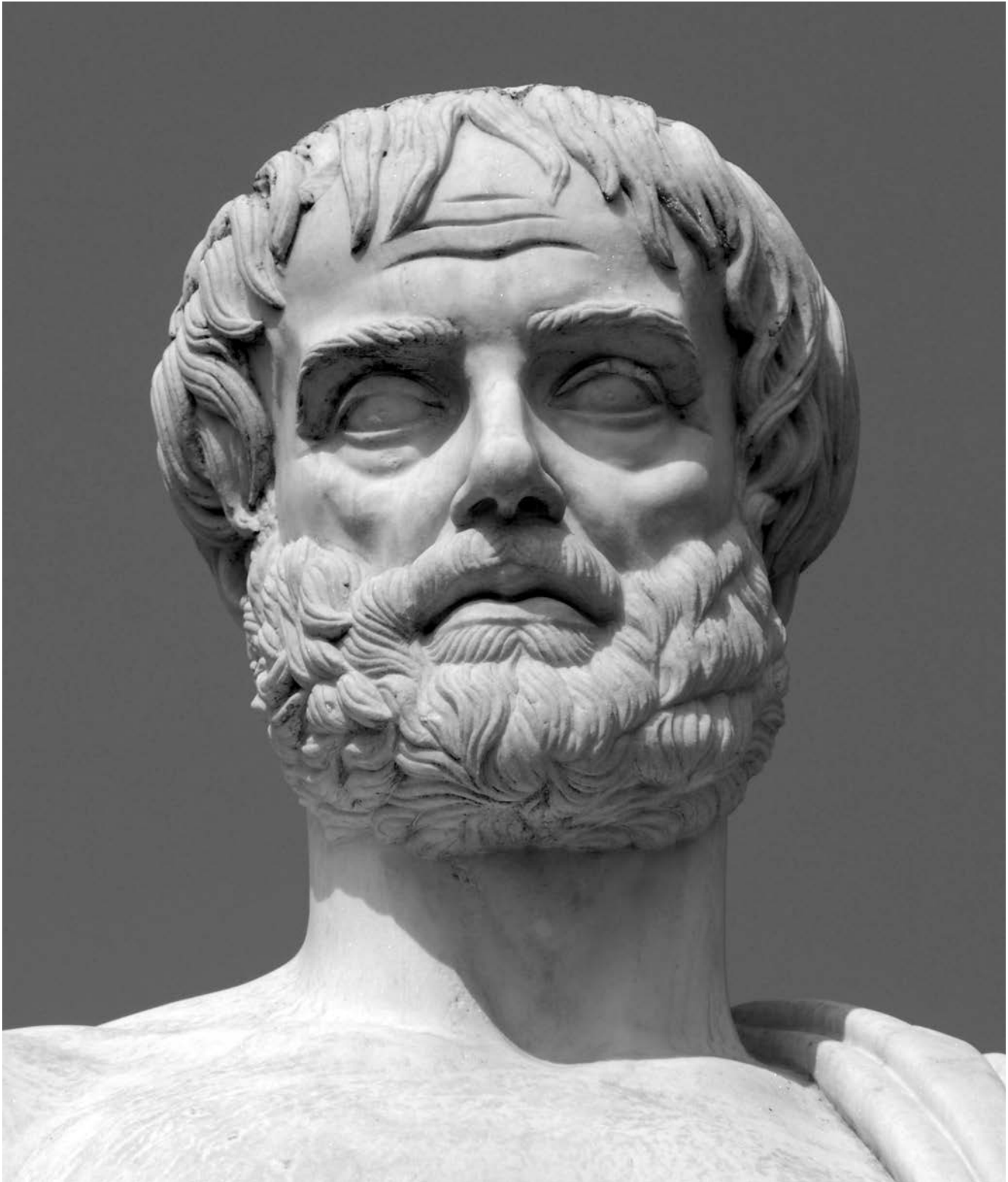
Within UCL, we continue our collaboration with the Centre for Criminal Law, UCL Centre for Blockchain Technologies, the Global Governance Institute (Department of Political Sciences), the Centre for Law, Economics and Society.

Our external academic collaborations include: University of Durham, University of Edinburgh and EBS School of Law, Wiesbaden Germany,

Outside of the academic sphere, we have also engaged with the Bank of England, Financial Conduct Authority, European Banking Authority, Financial Stability Board, Solicitors Regulation Authority, Bar Standards Board, The Inns of Court College of Advocacy (formerly the Advocacy Training Council), The GC100 and Association of Corporate Counsel, the IBA, The Law Society, FIDH, the Banking Standards Board, the Bar Council, London Common Law and Commercial Bar Association.

Operations

Alan Brener, in his new role with CEL has started work on developing the Centre's mailing list including ensuring that it is compliant with the new data protection regulations. He is also developing a code of practice for CEL sponsors working with the Centre and also new material to promote CEL and to encourage further engagement by firms, opinion leader organisations and individuals. Alan is also engaged on spreading word about CEL's work on social media working with both UCL's and the Laws Faculty media teams.



List of Events

Sexuality at the Bar: An Empirical Exploration into the Experiences of LGBT+ Barristers - 25 September 2017

Yale-UCL Collaborative Workshop 'Meritocracy and its Discontents' by Professor Daniel Markovits

The Future of Work and the UN Guiding Principles - 9 November 2017

Executive Pay Excesses: Golden Handshakes & (Potential) Breach of Directors Duties in Hong Kong - 16 November 2017

Corporate governance, corruption and reputational damage: A case study of the Guptas and KPMG - 9 January 2018

Visible Hands: Government Regulation and International Business Responsibility - 19 February 2018

Ethics of NDAs 20 March 2018

The Transformation of Finance and Investment: Information and Technology Revolutions, organised by the universities of Durham and Edinburgh with UCL CEL's participation - 22 March 2018

French Implementation of the EU CSR Directive: Sustainable Corporate Governance is Underway - 24 April 2018

Empowering the poor: turning de facto rights into collateralised credit - 10 May 2018

Enslaving the algorithm: avoiding the transparency fallacy while moving to meaningful control - 27 June 2018



CEL Workshops

The Centre launched the initiative to provide a small sum to fund presentations of work in progress by colleagues across UCL that showcase discussions in law and ethics generally. We unfortunately did not receive any applications for the Workshop this year, but are in discussion with a colleague at the Department of Philosophy to run a workshop in the next academic year on the concept of 'legitimacy'. The topic is to be finalised.

Recent relevant publications

ALAN BRENER

Justice, Financial Markets and Human Rights, (with Professor Rosa Lastra) in Lisa Herzog (ed), *Just Financial Market?*, (OUP 2017)

Shorter Articles for the CEL website:

Financial Conduct Authority's discussion paper on "Transforming Culture in Financial Services"

Banking Standards Board Annual Review

Boards of financial services firms: US Federal Reserve set out new expectations

Wells Fargo: further actions by the US Federal Reserve and further lessons Learnt from the Wells Fargo Debacle

IRIS H-Y CHIU

Corporate Governance and Investment Management: The New Financial Economy (Cheltenham: Edward Elgar 2018) (with Roger Barker)

Is there Scope for Reforming the Emaciated Concept of Fiduciary Law in Finance? Critically Discussing the Potential Achievements of Reform in Special Issue: Liber Amicorum- Mads Andenas (2017) 27 European Business Law Review 937

A New Era in Fintech Payment Innovations? A Perspective from the Institutions and Regulation of Payment Systems, (2017) 9 Law, Innovation and Technology 190

Unpacking the Reforms in Europe and UK Relating to Mandatory Disclosure in Corporate Social Responsibility: Instituting a Hybrid Governance Model to Change Corporate Behaviour? (2017) 5 European Company Law 193

A Rational Regulatory Strategy for Governing Financial Innovation, (2017) 8 European Journal of Risk Regulation 743

Corporate Governance and Firm Innovation: Are Corporate Governance Standards a Hindrance? (2018) 9 Journal of International Commercial Law 143

From Value Protection to Value Creation- Rethinking Corporate Governance for Promoting Firm Innovation (2018) Fordham Journal of Corporate and Financial Law, forthcoming April

ANNA DONOVAN

Reconceptualising Corporate Compliance: Freedom, Responsibility and the Law (Hart Publishing) (forthcoming 2018)

'(Shadow) Banking on the Blockchain: Permissioned Ledgers, Interoperability and Common Standards' in Iris Chiu and Iain MacNeil (eds.) *Shadow Banking, Legal and Regulatory Risks and Future Directions and Challenges* (2018, Edward Elgar)

RICHARD MOORHEAD

Ethics and NDAs (CELS working paper)

PRINCE SAPRAI

'Commercial Boycotting and Conscientious Breach of Contract' (with Dr Christopher Mills) Journal of Applied Philosophy (forthcoming)

'Lancet Commission: Stem Cells and Regenerative Medicine' (with Professor Giulio Cossu et al) (2017) 391 The Lancet 883-910

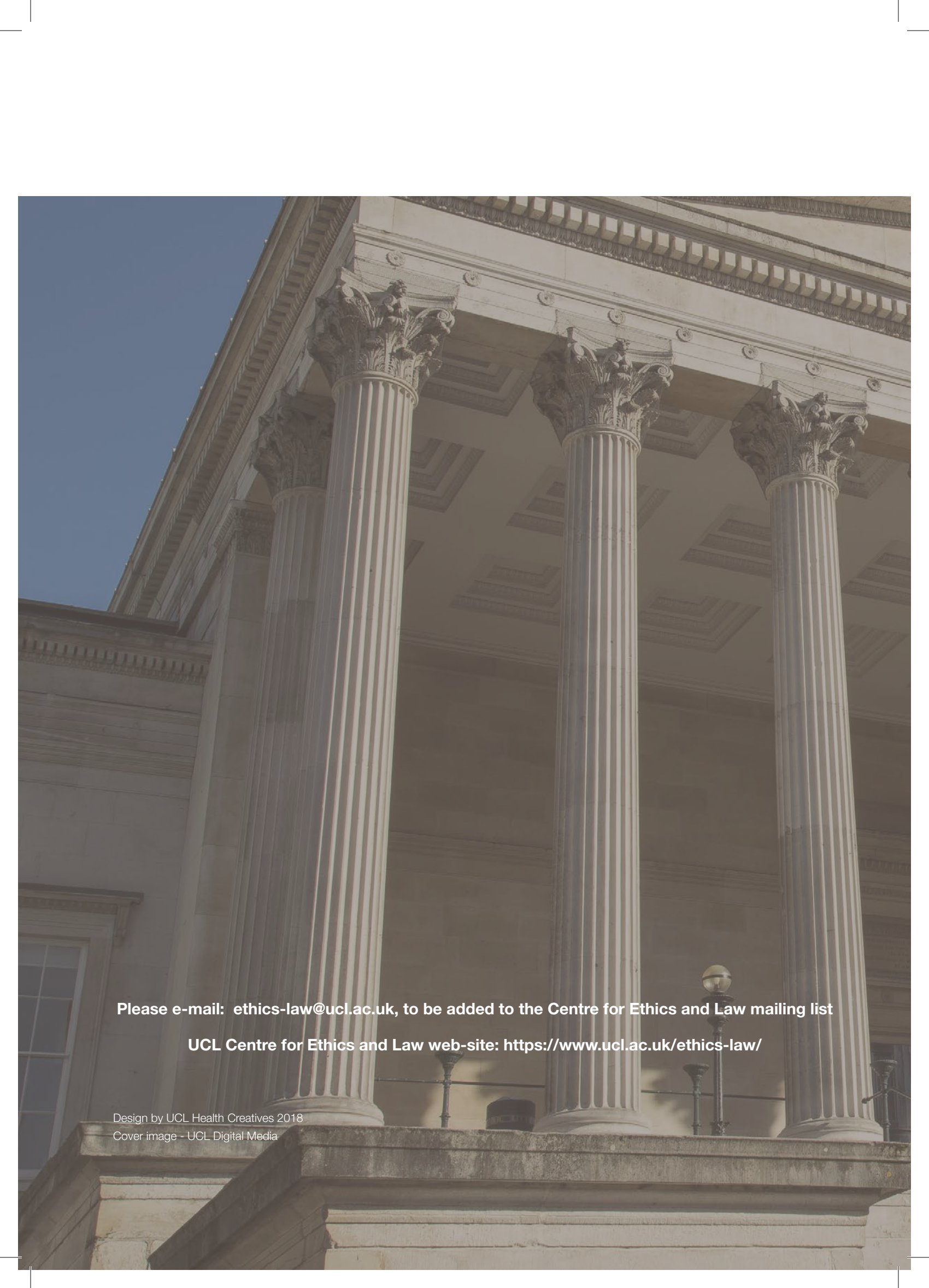
'Balfour v Balfour and the Separation of Contract and Promise' (2017) 37(3) Legal Studies 468-492

KEVIN TOH

"Legal Philosophy á la carte", in David Plunkett, Scott Shapiro, & Kevin Toh (eds.), *Dimensions of Normativity: New Essays on Metaethics and Jurisprudence* (Oxford: Oxford University Press, forthcoming).

"Plan-Attitudes, Plan-Contents, and Bootstrapping: Some Thoughts on the Planning Theory of Law", in John Gardner, Leslie Green, & Brian Leiter (eds.), *Oxford Studies in Philosophy of Law*, vol. 3 (Oxford: Oxford University Press, forthcoming).

"Law, Morality, Art, the Works", in Luka Burazin, Kenneth Himma, & Corrado Rovorsi (eds.), *Law as an Artifact* (Oxford: Oxford University Press, forthcoming).



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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