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## Exploring Relationships between Time, Law and Social Ordering: A Curated Conversation

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**M'charek:**^ Participants

### Introduction

When I first set out on the task of researching time and temporalities, I came across a strange type of academic artifact. It was a structured email conversation about time published in an academic journal devoted to lesbian and gay studies. This was the wonderful piece “Theorizing Queer Temporalities: A Roundtable Discussion”, which appeared in *GLQ* in 2007 (Dinshaw et al., 2007). The conversation itself had taken place through what I imagined to have been a series of disjointed, often overlapping discussions, queries, and interventions. Yet as a published article it was coherent, often light-hearted, and specific about how the contributors had thought about time in relation to sexuality, race, gender, and culture. Here was Carolyn Dinshaw, for example, talking about her queer desire for history and about imagining the possibility of touching across time. Here was Nguyen Tan Hoang talking about the transmission of queer experience across generations, and Roderick A. Ferguson talking about how the “unwed mother” and the “priapic black heterosexual male” figured outside of the rational time of capital, nationhood, and family (Dinshaw et al., 2007, p. 180). Here was Jack Halberstam recalling a point in childhood when time and temporality became vitally important:

I am in a grammar school in England in the 1970s, and in assembly hall the headmistress wants to let the girls know that it is our responsibility to dress appropriately so as not to “incite” the male teachers to regrettable actions. This, she says, will be good training for us, since we are here to prepare ourselves for marriage and family. I hear a loud voice in my head saying fuck family, fuck marriage, fuck the male teachers, this is not my life, that will not be my time line. (Dinshaw et al., 2007, p. 182)

In a short introduction, Elizabeth Freeman, convenor of the virtual roundtable, confessed her temporal pruning of these interventions. She said: “I edited the results for continuity, occasionally shifting a remark to an ‘earlier’ or ‘later’ place in the conversation, cutting digressions or adding transitions”. She acknowledged that this produced a different “temporality, polyvocality, and virtual space” from the “real time” of a face to face roundtable (Dinshaw et al., 2007, p. 177). I came to admire Freeman’s weaving of anecdote and exposition,

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inquiry and reflection, as she stitched together an enlivening narrative from participants' thoughtful reflections. Freeman's edited email conversation avoided many of the over-worn debates about time then circulating in the humanities and introduced much of the specificity and un-evenness of the contributors' own work, tethered as it was to distinct inquiries, contexts, and political projects. The fact that email was the chosen medium was refreshingly 'low-fi', adopting one of the tools of the academic working day for a conversation about time, political power, culture, and knowledge-production. The edited email conversation contained sparks of insight, and new questions, that have enriched my own research journey many times over the years.

From 2015 to 2017, the sociologist Siân Beynon-Jones and I coordinated a scholarly network on law and time: the *Regulating Time* network, which was funded by the Arts and Humanities Research Council.<sup>1</sup> Our aim with this network was to foster interdisciplinary conversations about law's relationship with time and temporalities. It seemed to be a particularly good moment to think about this, because the intensity of debates around law and time seemed to be increasing. Earlier articles and books by 'law and society' and 'law and anthropology' scholars, had explored the rationalities of time inhabited by distinct communities and what these had to say about mechanisms of sociality and governance (Engel, 1987; Greenhouse, 1996; Richland, 2013). Over the years, this scholarship had been augmented and further enriched by reflections from feminist legal theory (Chryssostalis and Drakopoulou, 2013; Conaghan, 2006; van Marle, 2003), post and anti-colonialist perspectives (Keenan, 2015; Mawani, 2014), international law and human rights (Craven et al., 2006; Johns, 2016), and critical legal theory (McNeilly, 2017; Valverde, 2015). To indulge in a bit of ad-hoc periodization, it is arguably possible to identify a period running from a couple of years before the network began, right up to the present moment when research on law and time has only just become a more regular feature of academic events, projects and publications. This in many ways has mirrored the 'temporal turn' in social science and humanities research over the past decade, which itself has seen a flourishing in networks, research initiatives, and publications on time: the *GLQ* roundtable was an early example of this wave of 'time work', as have been the *Temporal Belongings* and *Austerity Futures* networks, the *Black Quantum Futurism* and *Future Matters* collectives, and the *Waiting Times* project, for example.<sup>2</sup>

From lunchtime chats or other informal exchanges with colleagues, Siân and I had seen points of resonance emerging across law and sociology research on time, and we wanted to develop these conversations to reach out to more

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<sup>1</sup> The AHRC funded *Regulating Time* network ran between 2015 and 2017 and was coordinated by Siân Beynon-Jones (Sociology, University of York, UK) and Emily Grabham. The intention was to create an interdisciplinary, international network of scholars to support collaborative research into law, regulation and time. Further information here: <https://www.kent.ac.uk/law/time/>

<sup>2</sup> See: <http://www.temporalbelongings.org/>; <http://www.bbk.ac.uk/waitingtimes/>; <https://www.blackquantumfuturism.com/about>; <http://www.austerityfutures.org.uk/>

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disciplines and a wider range of scholars. At some point in this enjoyable, if rather energetic, endeavour, I began wondering about how we might capture the more informal conversations that the network was producing. We eventually published an edited collection – named *Law and Time* – from an open call through the network (Beynon-Jones and Grabham, 2018), but we also wanted to capture the fleeting moments of insight and exchange that we found so engaging through the network's many events, which raised slightly different questions of theory and practice.

Siân joked about a year into the network that she had never realized that it would be largely about counting vegetarian sausage rolls,<sup>3</sup> although to be fair, she often managed to do this whilst talking about the gendered temporal-legal politics of abortion. And this, essentially, is the point of the curated conversation: to acknowledge the value of our more haphazard research conversations about law and time, which emerged (and still emerge) in strange places, on the edges of events, or during other activities. Indeed, we discovered that even in what felt like the more organizational aspects of the work, ideas about law and time still somehow had a habit of getting through. Many of the most interesting conversations took place in harried, partial encounters with speakers and participants: walking from here to there; packing and unpacking boxes of programmes; feeding ourselves and others with institutional catering products of varying quality. Even the most carefully balanced conference schedules were often upstaged in moments between the last tepid coffee of the day and the first drink in the pub, when we were packing up and trying not to leave the institutional laptop behind, and someone would get a text saying that an esteemed plenary speaker had been stranded on a ring-road outside town, and somebody else would mention, for example, that did we know Nasser Hussain had written about the colonial politics of emergency (Hussain, 2009)?

Co-ordinating and participating in academic networks involves working in the medium of months-long email conversations and frantic half-finished chats as much as through beautifully constructed workshop papers or polished journal articles. And there's something useful about the un-finishedness of these encounters. The errant temporality of ideas unfolding across formal and less formal spaces can be just as generative of academic inquiry, perhaps even more so, than the serious publications we go on to produce (Berg and Seeber, 2016). There's something alive in the midst of all these emails, workshop contributions, conversations with colleagues, and lunches, and if pressed, I would suggest that it's a sort of amphibious academic creature, suited to the solid ground of formal academic conferences as much as the more fluid environment of everyday encounters and informal debate.

Inspired by Freeman's quasi-heroic capture of email in the service of academic debates on gender, sexuality, time and culture, then, I wanted to find a way of

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<sup>3</sup> Vegetarian sausage rolls were on offer alongside meaty ones, and part of the trickiness of this task was to make sure that the number of vegetarian sausage rolls approximated the number of vegetarian colleagues.

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discerning our own amphibious creature, harnessing some of the unruly, distractable, yet strangely productive energy of the *Regulating Time* network, without capturing the creature entirely and forcing it to behave in a way that it did not want to. After finding a group of feminist scholars across law, sociology and anthropology who agreed to participate in an email discussion, and after scoping some potential topics for the conversation, we embarked on a conversation unfolding over four days across time zones between Europe and North America. The participants are engaged in research across feminist, critical race, queer, and/or postcolonial studies and have brought these scholarly inheritances to the task of thinking about time. For example, Amade M'charek's ethnographic work has shown how race is constructed through particular modes of folding time found in genetic practices (M'charek, 2014), Emma Cunliffe's socio-legal research has followed the gendered temporalizing effects of expert evidence in cases of unexplained infant death (Cunliffe, 2011), and Sarah Keenan has analysed how land registries and their associated technicalities intervene in the temporalities of property and belonging otherwise at play in colonized spaces (Keenan, 2018). As participants' research suggests, diverse people, laws, objects, and historical flows come into focus when exploring how concepts and practices of time can be conjured and transformed. Renisa Mawani's work on the travels of the Komagata Maru steamship between Hong Kong, Vancouver and Calcutta in 1914 uses "oceans as method" for understanding how ships inaugurated new forms of global time (Mawani, 2018). Stacy Douglas proffers museums and their associated temporalizing practices as a focus for exploring the centrality of sovereignty in public memorialization (Douglas, 2017).

With these concerns and intellectual inheritances, we began by articulating some of our research dilemmas in exploring law's relationship with time, and mapping out how we had become interested in time in our research, trying to summarise where it had taken us. Some of us had been pondering the significance of thinking about time as legal theorists using, and having difficulties with, theories of space. Others were questioning what was distinct about legal scholarship and legal forms of knowledge when compared with approaches to time in other disciplines. Understanding how race emerges in and through legal practices and temporal epistemologies also became a key feature of the conversation, thereby intersecting with recent work on race in critical geography (Krupar and Ehlers, 2017) and, more generally, the rise of scholarly and creative work on black quantum futurism (Phillips, 2015). We reflected on, and compared, the theories and theorists that had influenced us and began to reflect on the effects of diverging conceptual approaches to time. The conversation ended because time ran out, and many of us felt that we could have returned to elaborate on particular features of the discussion.

I had initially wanted to present this conversation exactly as it happened, eschewing the retrospective tidying that Freeman and her colleagues used. But our own need for order, and the temptation to create something just that little bit more coherent, took the better of us. The discussion took place over several days, with contributors pitching in around teaching, caring, and other commitments, starting and re-starting conversations that had been begun or

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dropped hours or days earlier, and often overlapping. After it had concluded, I created a long 'transcript' of the conversation by piecing it together from emails in chronological order. When I circulated the transcript, it became clear that some tidying of themes would need to happen. Subsequent drafts have identified the clear(er) conceptual strands in the conversation and eliminated much of the raucous over-talking or disjunctive questioning and answering. And so what is presented below is my edit of our own brief, lo-fi excursion into temporalities, legalities and social ordering. It's only the beginning of the conversation, and we look forward to continuing it with you over coming years in a kaleidoscope of alternately hasty and measured, provisional and thoughtful encounters, which, we hope, will involve the correct number of vegetarian sausage rolls.

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**Emily Grabham:** I thought we could start with a broad question: How did you come to work on time and temporalities in your own research?

**Sarah Keenan:** My previous work focused on property as it is produced through law and space. In my work I draw heavily on geographer Doreen Massey's definition of space as "dynamic, heterogenous simultaneity" (Massey, 2006). As this is a very temporal definition, I have recently moved to interrogate the relationship between space and time - how property is produced through legal temporalities, and how legal temporalities are produced through property. In my most recent work focussing on land title registration I argue that there is a disjuncture between the temporality of registered titles and the temporality of the land to which those titles pertain: registered title and land are out of sync. This temporal disjuncture renders some residents' connections with land temporary and unlawful, turning them into bodies to be removed from the land and thereby reproducing categories of race.

I came to time via space. In my previous work on property I wanted to think about what space does to produce property, and I engaged with legal and human geography to think through that question. I was particularly enamoured with Massey's understanding of places as "articulated moments in networks of social relations and understandings" (Massey, 1993). Massey's argument is that space is not static, but rather is actively produced all the time, in no fixed shape or direction. I found this argument politically exciting because it opens the possibility for radical political change to be realized in the here and now rather than in an always unreachable future.

Massey's book *For Space* is set up as an argument for space, rather than time, to be understood as the element of change and of 'becoming' (Massey, 2006). But at some point I realized that Massey's understandings of both space and place are themselves very temporal - space as dynamic simultaneity, places as moments. Setting up a dichotomy between time and space, and arguing that one or the other is the more useful analytical framework seems unnecessary and perhaps counter-productive. Time and space are intertwined, and so I moved to thinking about the temporality of property - what time does to produce

property. I argued in my book that a level of permanence is required for something or someone to belong in the way I was thinking about property; if something or someone belongs only fleetingly, then it is more likely a loan, a joke or a protest that has occurred rather than a shift in property relations, because ultimately that something or someone belongs somewhere else (Keenan, 2015). I then went on to think about inheritance on the one hand, and futures trading on the other - property relations that appear to have very different temporalities. These are themes I am still working on now.

**Renisa Mawani:** My work sits at the nexus of critical theory and colonial legal history. My first book, *Colonial Proximities* (Mawani, 2009) details the legal encounters between indigenous peoples, Chinese migrants, “mixed-race” populations, and Europeans in late-nineteenth and early-twentieth-century British Columbia. My second book, *Across Oceans of Law* (Mawani, 2018), is a global and maritime legal history of the British-built and Japanese-owned steamship, *S.S. Komagata Maru*. The book draws on *oceans as method* to trace the ship’s 1914 route across the Pacific and Indian Oceans, to advance the argument that legal forms of colonial and racial violence are deeply entangled, and to consider time as a critical register of empire. With Iza Hussin, I am co-editor of “The Travels of Law: Indian Ocean Itineraries” published in *Law and History Review* (Mawani and Hussin, 2014).

As someone who is regularly late, I’ve always thought about time...! Like Sarah (and others, I’m sure), I spent a great deal of my career thinking about space, reading critical and legal geography. I found this literature compelling but always wondered why we didn’t seem to spend as much time talking about time (pun intended)! As a colonial legal historian, I found this peculiar. Colonialism, as I understood it, was all about time and its reordering. And in my own life, I experienced time as a burden, or more specifically, as a register of governance (don’t be late!). The idea of time as a critical register of empire has become a focus of my current book.

Part of my thinking about time has emerged through a dissatisfaction with the ways in which time is discussed in various literatures. Although geographers/ historians/ legal scholars often write about time and space and note their interconnections, two things seem to happen: 1) space is discussed over time (time disappears); and 2) when time is discussed, it is often reduced to history and/ or to periodization. The work I am involved in now aims to think about time more robustly, to think of things (law, ships, etc.) as having their own (multiple) temporalities.

**Stacy Douglas:** This has been a helpful question to reflect on. It has forced me to confront the ways in which my thinking has been stuck to a concern with time that I had not yet recognized! It is also telling that I, like Renisa and Sarah, also came to time after a prolonged study of space (my earlier work was using Henri Lefebvre), and that we all also share an interest in time and colonialism.

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Some of my earlier work in the area of law and temporality is concerned with law, memory, and memorialization (Douglas, 2011a), as well as the notion of “state time” in the modern era (Douglas, 2013). In the latter piece, I explore competing critiques of linear time, especially from Carl Schmitt and Walter Benjamin, as a device that legitimates an institutionalized concept of politics over and above broader conceptions of the political.

When I organized a 2010 panel and subsequent multimedia publication entitled *Time for Reflection: Considering the ‘Past’, ‘Present’ and ‘Future’ of Feminist Legal Scholarship* (Douglas, 2011b), I was reading a lot of Walter Benjamin, who continues to animate my thinking. However, since then I have also explored the role of time beyond periodization (as Renisa helpfully characterized), to think of the very conception of time as itself a product of history and a tool in the service of legitimizing political projects. For example, I remember being fascinated with the French Republican's attempt to re-imagine a new France with a secularized calendar that rejected the names and dates of the Gregorian device that regulated life under the *ancien regime*. I even had a widget on my computer that gave me the current date in revolutionary decimal time (Don't worry everyone, I am not a closet Rousseauian! Even then the paradox of the swapping out of one lionized symbol into another was not lost on me.)

But I was also curious about how contemporary discourse about parliamentary democracy and especially liberal-democratic constitutionalism relied on naturalized notions of time.<sup>4</sup> In a piece in the *Australian Feminist Law Journal* in 2013, I wrote about how chronological time is used to authorize a very institutionalized form of capital “P” politics, and its subsequent effects on the limits of our political imaginations (Douglas, 2013). For me, it is interesting that we so unthinkingly accept that our notions of time are natural, and not a product of a particular historical moment. This isn't to say that we are wrong or should change our opinions about time but that at least we should be aware of them. In a way, my interest in time is still very Lefebvrian in its approach; time isn't just there, it is actively produced.

I am still interested in this question but just thinking about it from another site – now, the deployment of time in the narratives of film and literature and its ability to shape the audience's sphere of intelligibility. In my current work, I examine the literary device whereby central characters wake up one day on the wrong side of the law. I am interested in what narratives of violence this particular temporal encounter with law allows to be rendered legible and what narratives it covers up. I also trace the translation of this device into real world situations where it is deployed as a mechanism for garnering sympathy for individuals facing indefinite detention, wrongful accusation, and charges relating to national security. I don't find the fact that I am writing about the same question unfortunate or lamentable (does stating that mean I do, Sigmund?). It seems that we are all always asking the same question we started with, just in different ways... Another point for Freud, I guess.

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<sup>4</sup> See: <http://criticallegalthinking.com/2011/09/19/constitutionalism-the-time-of-the-political/>

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**Amade M'charek:** My research has focused on the social aspects of various biomedical technologies and practices, such as human genetic diversity, diversity in medical practice, and forensic genetics. I have typically conducted ethnographies of scientific or clinical practices looking at the entwinement of technologies and the objects of study/intervention. My most recent research is on face making and race making in forensic identification in which I work together with a team of 5 PhDs and 2 post-docs. In this ethnographic study on race in forensic practice, we will examine how technologies of *face-making*, aimed at the identification of a suspect or a victim, are also involved in *race-making*. The primary research aim of the *RaceFaceID* project is to develop methods and theoretical concepts with which to understand the simultaneous presence and absence of race in science and society.<sup>5</sup> By taking into account biological factors, this research project will go beyond the social constructivist paradigm and unravel the ways in which 'race' is shaped as a set of relations between the biological, the social and the technical.

I guess that my turn to time and temporality was prompted by my interest in race as an object of studies. Working on human genetic diversity in the tradition of actor-network-theory, my research has been showing that in genetic practice identities (the individual, population, sex or race) do not inhere in 'the body' or cannot be reduced to one single marker. Rather they are distributed and come to be enacted as a relation between various different kinds of entities (biological, cultural etc). So this means that in a good ANT-tradition, identities are spatial; they are spatial configurations. Things became tricky when I started to focus my research on race. The main question in my work is: what is race made to be in practice? So rather than defining race, suggesting that we know what it is, I follow what it is made to be ethnographically. And here the problem starts. If we do not know what race is how can we recognize it? It is here that I became interested in history and in how knowledges, objects, practices from the past might resonate with current practices and thus racialize technologies and practices that otherwise might be indifferent to race.

In a recent paper, I trace back the history of a genome and show how race figures in it (M'charek, 2014). In that paper I started to work with Michel Serres's spatial notion of time (topological time). Time that is not "natural" or "out there", but rather an effect of technologies, interactions, etc. As some of you have already indicated time is multiple. And Emily is spot on to suggest that we need an ethnography (or was it even a "praxiography" following Annemarie Mol) of time (Grabham, 2016). How does time come about, what version of time is being produced, and what are the politics of a specific version of time? What kind of work does a particular version of time do?

**Emily Grabham:** When I was working as a "lesbian caseworker" for an employment rights organization in the early 2000s, my colleague (the "gay men's

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<sup>5</sup> See: <https://race-face-id.eu/about.html>

caseworker”) spent much of his time on HIV discrimination cases. Much of that work was about proving someone's HIV was a “disability” for the purposes of the discrimination laws in force at the time. In turn, proving disability was about a person's prognosis - whether their HIV was likely in the future to lead to an impairment. Prognosis and likelihood acted as sort of temporal legal ghosts for my colleague, besetting him with fresh problems and requiring new legal strategies. But they weren't immaterial as such. In fact, prognosis and likelihood materialized in his life in the form of massive piles of medical reports and other medico-legal paperwork about people's lives and health and deliberations over the meaning and status of clinical tests: T cell counts, for example. It became very difficult for me to think about prognosis without deliberating medical reports, and to think about likelihood without all the documentary practices that are associated with a disability discrimination claim.

As I came to think in more depth about law and time, I became more preoccupied with this question of how temporalities can be materialized in assemblages of human and non-human actors. This is quite different from accounts of time that presume it to be in some way cohesive or “natural”. Drawing on Jane Bennett's work on vibrant matter (Bennett, 2010), for example, I have been thinking about the agentic capacities of objects - what she terms their “trending tendency to persist” (Bennett, 2010, p. 2) - and how these agentic tendencies can inaugurate fresh or specific temporalities in relationship with other elements and actors. This thinking forms the basis for my recent book *Brewing Legal Times: Things, Form, and the Enactment of Law* (Grabham, 2016). We might be able, then, to think about “likelihood” as a specific type of future-oriented, expectational legal temporality, resulting from the interactions of people living with HIV, legal activists, tribunals, forms, documentary routines, clinical tests, and T-cells, for example. This is an approach that aims to capture the congregational (following Bennett) proliferation of temporalities, which might be small or specific or marginal but are no less interesting for that.

**Emma Cunliffe:** It has been so helpful to read how each of you came to questions about time and legal ordering in your own work, and to reflect on the ways in which my trajectory has been a bit different (though resonant in many ways with Sarah's and Amade's, in particular). In my research, I trace the relationships between legal knowledge, expert knowledge and normative beliefs about subject identity within criminal trial processes. I am especially interested in moments where criminal trials seem particularly apt to fail: primarily, sexual assault and child homicide. The temporal dimension of legal processes is a constant, but often unexamined, factor. Trial transcripts and court records reveal that judges and legal actors are driven by time-based constraints: how many witnesses will we get through today; how long a lunch break does the jury need; how many days do we have set down for this trial? Time also operates in other registers: witnesses are pressed to remember details despite the passage of time or disparaged for claiming memories that are too vivid or too detailed to account for time lapsed since a relevant event; the date on which a law was changed determines the options available to the court; the scientific evidence given at trial depends to

some extent on the theories that prevail within a given field at the time of the trial, and law contains no automatic process for revisiting past decisions when the science changes; meanwhile a convicted offender “does” her time.

In the landmark decision *Daubert v Merrell Dow Pharmaceuticals* in 1993, Blackmun J on behalf of a majority of the US Supreme Court held that time works differently in science and in law (although – revealingly – he framed it as a comment about truth): “ ... there are important differences between the quest for truth in the courtroom and the quest for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law, on the other hand, must resolve disputes finally and quickly.”<sup>6</sup>

Justice Blackmun's characterizations of law and of science are oversimplified, of course, and they have rightly been criticized. But there is something important about this observation, in terms of the pressures of the trial process. The demand to resolve a case now often runs past the limits of expert knowledge, and courts are not good at recognizing that moment in which their demand for knowledge exceeds present understanding. I spend a great deal of my research time thinking about this intersection of different time scales, and in particular about what happens when a development in scientific or medical understanding casts doubt on a pre-established legal truth. In her book *Flawed Convictions* (Tuerkheimer, 2014), Deborah Tuerkheimer points out that the criminal legal system in the US has no systematic way to revisit convictions that were obtained in part on the basis of discredited scientific testimony.

That’s where Blackmun J’s elision of time and truth is so interesting – law strategically makes truth claims, but there are also moments when it disclaims its capacity to discern eternal truths. How does this systemic posture further victimize the woman or man who, having been convicted on the basis of expert testimony, faces the burden of proving to an indifferent legal community that, in light of developments in knowledge, they should now be released? When the shift in scientific knowledge is not from one truth to another – but rather from one truth to a recognition of uncertainty – how does a convicted woman or man articulate the injustice they have experienced? This trajectory is shown, for example, in the shifting medical understandings of repeat infant death in a single family (the Sally Clark, Angela Cannings, Trupti Patel and Kathleen Folbigg cases) and in research into shaken baby syndrome or abusive head trauma.

**Stacy Douglas:** Emma, I am curious about this formulation that you put so eloquently: “law strategically makes truth claims, but there are also moments when it disclaims its capacity to discern eternal truths”. But then “law” can't do anything, or can it? Who is the culprit in your opinion? Is it the experts you discuss, and their intentional and unintentional reliance on deep legacies of racism, sexism, transphobia, etc.? Or is there something in the form of law itself? I am thinking here of some kind of Schmittian-inspired remnant of human action

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<sup>6</sup> 509 US 579.

that can never quite be captured by an order of rules. How do you think "law" gets away with it?

**Emily Grabham:** Building on this, I think what I find particularly interesting is that shift to "uncertainty" amongst scientific communities - how it happens, how it's achieved, what it does, and then what happens when that comes into contact with law or trials or legal processes with their very different orderings and temporalities. It seems to me that Emma's on-going research sits at the interface of this epistemological divide, as it reconstitutes itself. Emma, do you think that scientific uncertainty (as opposed to other temporal genres, for want of a better word) can ever translate smoothly enough into legal knowledge about time? This might also be another way of asking Stacy's question about the form of law: what if anything is distinct about law's approach here?

**Emma Cunliffe:** Stacy's question about who is the culprit when legal processes fail is one I have thought about a lot, of course! And I have had different answers at different moments. But oddly, having felt for a long time that there is no such thing as "law" (and if there is, it certainly can't be an actor), I have found myself circling back to a revised conception of a social and moral force that, for want of a better term, I call law. I haven't read Schmitt, but I clearly should! The force I have in mind is something that exceeds the work of legal officials, experts and other actors in the legal system, and it exceeds the mechanics of legal processes themselves. It seems to exist underneath – and at times resist – the formal law of judicial decisions and statutes. It is more akin to a Gramscian conception of hegemony, a normative conception of right and wrong that (among other things) induces human actors to participate in and try to make the best of a system that has its own centripetal inertia. In my article, "Judging, Fast and Slow", I tried to think through how implicit bias and stereotypes are implicated in the failure of law reform efforts that were intended to protect sexual assault complainants from further victimization within the legal process (Cunliffe, 2014). I try to do this by working at the boundaries of law, medicine, theory and empirical studies of reasoning.

How does all of this connect with conceptions of time? The first way is that this body of beliefs I have described seems to pre-exist the instant legal case. It operates almost as a palimpsest. I am interested in trying to identify when the pre-conscious seeps through and changes the form of what's written at trial, with what results. Again, we come to method here – my method is to pull apart the transcript and court record, which is frustrating and laborious and incomplete, but it does allow one to glimpse moments of elision, moments in which the shift is made from evidence to belief. The second way is that various bodies of knowledge – now medical, now legal, now psychology – intersect, run past one another, have different methods for achieving similar values. A third is the relentless way in which the legal values of judicial efficiency and certainty displace claims about uncertainty in trial processes. I'm not sure if this is just how law is – one could equally argue that principles associated with the burden and standard of proof evince a deep commitment to the existence of uncertainty, but in the transcripts I read, most of the actors – even those who stand to benefit

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from it – seem to resist this commitment. There is something unsatisfying to conceptions of justice about simply saying “I don’t know what happened here.”

**Emily Grabham:** We have many shared themes in the discussion so far. Perhaps one overarching theme, and I mean very overarching, is how to think political time beyond a sense of linear chronology when we’re trying to understand the role of law. For example, I was particularly struck with your paper at the *Diagnosing Legal Temporalities* workshop,<sup>7</sup> Stacy, which used film as a powerful way into thinking about the political possibilities and temporal dimensions of arguments about “Kafka-esque” legal dynamics (Douglas, 2015). And as this conversation shows, we have turned to courts, ships, museums, films, and land registries to begin this work; to begin, as Amade would put it, seeing how time “comes about” in relation to law. Even though we are inspired by critical scholarship on space, it leaves us wanting more. Do I have that correct? If so, where does that leave us thinking time alongside space? And how have we been influenced in thinking about this?

**Stacy Douglas:** Yes, I am looking at how films and novels ask us to understand events in particular temporal segments and how time influences the resulting conception of justice or legality. In Franz Kafka's *The Trial*, for example, I wonder if Josef K.'s sudden run in with the law actually tells us a quite liberal story about experiencing law's violence as occasional, rather than everyday. After all, Josef K. must have had a fairly innocuous relationship with law up until the morning of his thirtieth birthday; indeed, the whole story relies on the jarring device of waking up “one day” on the wrong side of the law, rather than being born into it. And then I am also curious about how these narratives of “one dayness” travel and get taken up by activists in campaigns to end arbitrary detention or overturn wrongful convictions. I am concerned that these temporal narratives continue to allow us only to tell very simple stories about deserving and undeserving subjects, and mask the more insidious violence and temporalities of everyday state practices.

Renisa, I am curious, what took you to Bergson, of all of the possible theorists on time? I have always been fascinated by your use of him in particular.

**Renisa Mawani:** I think Bergson really resonated with me for a number of reasons. First, he was very critical of how time had been ignored and/ or spatialized both in science and philosophy. I found this very compelling. When we talk about time, he says, it is space that “answers our call” (Bergson, 1946, p. 13). Second, I was quite taken by his efforts to provincialize (if I can use that term here) the hubris of humans. Everything exists in time, we just decide what that time looks like. Third and perhaps more intuitively, I felt that Bergson gave me a useful vocabulary to think about movement, including the movements of

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<sup>7</sup> *Diagnosing Legal Temporalities* (April 2015) was the first workshop of the *Regulating Time* network. See further: [http://regulatingtime.blogspot.com/2015/06/diagnosing-legal-temporalities-workshop\\_2.html?view=flipcard](http://regulatingtime.blogspot.com/2015/06/diagnosing-legal-temporalities-workshop_2.html?view=flipcard)

law. Finally, I'm very interested in the ways in which Bergson has appealed to anti-colonial thinkers.

The question of method is key. How do we study time concretely, without reducing it to space, and without making time into periodization or history? It's a challenge!

**Emily Grabham:** We always need to be aware of what “answers the call” when we attempt to follow, evoke or describe time. I often find myself thinking in spatial terms even tangentially. I'm not always too worried about this, especially given the work of Doreen Massey, Mariana Valverde (Valverde, 2015) and Andreas Philippopoulos-Mihalopoulos (Philippopoulos-Mihalopoulos, 2013) and others who think about temporality as they engage with space. But it's just that we might find time in strange or unexpected forms. I have been thinking about how concatenations of documentary practices, objects, technoscientific practices create temporalities which can't then be reduced to specific actors or relations. Having said that, sometimes it is possible to get a different view on how a temporality became possible by grasping a specific relationship. For example, the “manifesting antibodies” legal test that became so important in Canadian law on HIV in the late 1980s couldn't have come about without clinical disease progression guidelines and the HIV antibody test itself, both of which were complex processes. So in terms of method, for me, it's been increasingly about accepting that objects, practices and legal technicalities exert their own shades of agency in relation to time. By accepting this, time has become intensely material and this has blown apart my previous reliance on an idea of time as in some way metaphysical or ineffable, ethereal.

**Sarah Keenan:** Because of my loyalty to Massey it's hard for me to think about this without feeling defensive of space. Massey's reading of Bergson is probably ungenerous, and some say it is incorrect: she argues that Bergson reduces space to representation, and that this is a problem, because space is and must be understood to be as difficult to represent as time. Leaving the debate over Massey's reading of Bergson aside, for me what is important is that space and time are always connected, and neither should reduce or be reduced to the other.

When I began thinking about time and land title registration, my focus was on the fact that the registry creates legally authoritative histories for each parcel of registered land. In the Australian and Canadian contexts, these histories conveniently exclude any record of pre-colonial ownership. The blatantly artificial history created for registered land might be seen as a truth claim by law, although it is not framed in quite those terms, and I think the most insidious damage perpetuated by the temporal order of the land title registry is that it is productive of race. Connecting with Amade's work, it is productive of a category which comes to be recognizable as race: those with un-registerable, pre-colonial connections with land, those rendered out of place on the land and subject to lawful dispossession, they are “Indigenous”. Of course the temporality of title registration is just one method of racialization, but I think a particularly subtle and devastating one.

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I had been thinking about land and registered title as out of sync when I came across Michelle Bastian's work on the performative nature of telling the time (Bastian, 2012). I read Bastian's article as arguing that telling the time using clocks in this era of climate change helps us to coordinate ourselves for the daily requirements of capitalism, but is actually causing us to be "fatally confused" in regard to the potential imminence of environmental catastrophe. Using Bastian's work, I have been thinking about title registries as clocks, because they are "devices that signal change in order for their users to maintain an awareness of, and thus be able to coordinate themselves with, what is significant to them" (Bastian, 2012, p. 31). Registries signal change in legal title so that buyers, sellers and lenders can coordinate with each other; the colonial history of the land and contemporary claims to sovereignty over it are simply not part of the calculation.

**Renisa Mawani:** Sarah, I love the idea of land title registration as a kind of "clock". I certainly see legal time (whatever that means at/ in the moment) as a mode of imposing certainty on uncertainty...a way of imposing order on continual movement, to evoke Bergson, a way of rendering intelligible.

I am intrigued by the discussion of race thus far. To return to the question of method, how might we think about race and temporality? This is a question not just for Amade and Sarah, but everyone/anyone.

**Emma Cunliffe:** Amade's work on the ways in which past understandings of race might infuse present technologies that appear on their face to be raceless or neutral is so important, as is her observation that this is (deeply) a method question. Her insights have great resonance with other strands within the child homicide transcripts I read. Law cleaves to the illusion that race is not relevant to the formal determination of guilt. This makes it difficult to investigate how stereotypes about race play out in individual trials. In the wrongful child homicide convictions that occurred in Ontario between 1991 and 2003, for example, Indigenous families and Jamaican-Canadian families were over-represented. And yet in his Commission of Inquiry, Goudge JA interpreted his terms of reference (to investigate the systemic factors that led to errors being made) in a manner that paid little or no attention to the role of racialization and racism in the work of forensic pathologists and in the work of the courts. The characterization of these cases as failed science precludes a characterization of them as being (also) failures generated by racism, by the poverty of racialized groups including Indigenous communities. We live in a time in which liberal conceptions of formal equality make race unspeakable and this affects what injustices we see, and respond to.

**Sarah Keenan:** I have been thinking about race and time in three ways. First, temporalities are productive of social belonging, and thus of categories which come to be recognizable (I am referencing Amade here) as race. I began thinking about this in my work on diaspora, noting how adhering to particular cultural calendars is an important practice in the reproduction of diasporic communities.

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This makes me think of a pleasant childhood memory - celebrating Chinese New Year. For all my white friends, the festive season would come to a predictable end with January 1, but I always had the Toowoomba Chinese Year New dinner to look forward to. Being based on a lunar calendar the date changes every year, with a different animal welcomed in at each shift along the 12-year cycle. Together with the two or three other Chinese families in town, we would go to a restaurant and eat from a banquet that included whole steamed fish and fried ice cream. I felt a strong sense of cultural pride and belonging at these dinners, and "Gong Hey Fat Choy" ("Happy New Year") was one of the few Cantonese phrases I managed to learn from my mum.

Second, the positioning of subjects along legal timelines can be (re)productive of categories which come to be recognizable as race. That's the timeline of land title registration for my work, but for Emily and perhaps Amade there are medical timelines accepted or coproduced by law which have a similar effect. And third, I have been working with Ruth Wilson Gilmore's definition of racism as "the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death" (Wilson Gilmore, 2007, p. 247). So this is a definition of racism that explicitly links race with a temporal indicator.

Emily previously asked me about my experience in practice. One thing I remember as a trainee solicitor is traveling to Palm Island in 2006 for one of the hearings of the coronial inquiry into the 2004 death in custody of Cameron Mulrunji Doomadgee. We were there to hear evidence of previous brutality against Aboriginal people by the officer in question, Sergeant Hurley. In one exchange, the barrister for the state kept pushing Barbara Pilot, the witness, to clarify what time it was when, in early 2004, she alleged that Hurley had driven his police car over her foot, causing a compound fracture so severe that her bone was protruding. Barbara Pilot was a softly spoken and timid witness, but when she answered "it was Murri time" to the sound of hushed, approving laughter from her supporters in the room, she won the exchange. The barrister did not have a response. He tried to laugh along with the room, but in one short sentence she had revealed his line of questioning as bullying, pernicky and illegitimate. Though it was just a moment, the violence and illegitimacy of the colonial legal system in Palm Island felt exposed and even vulnerable in the courtroom. It was this idea of "moments of decolonization" that I was trying to think through in the article I wrote on that idea for Stacy and Suzanne Lenon's special issue on "Law and Decolonization" in the *Canadian Journal of Law and Society* a couple of years ago (Keenan, 2014).

**Emily Grabham:** I think the phrase "it was Murri time" encapsulates why it is so important, and so generative, to think about race and time. This kind of enquiry also splits, and illuminates existing fissures in, the time of the nation state, whether those national projects are marked by settler colonialism or other racializing institutions or practices. Colonial time is on-going as a form of ordering and is created at least partly through law and specific legal registers. I'm thinking here about your work on immigration status Renisa, and your work

on land registries, Sarah. David Scott has written eloquently about the temporalities of postcolonial politics during and after the Grenada revolution. Of those inspired by Marxist anti-imperial and socialist politics in the 1970s, and then affected by the revolution's failure, he states: "... they were like leftovers from a former future stranded in the present" (Scott, 2014, p. 5). So it is not just that unearthing racializing and colonial times recovers a range of political experiences and possibilities beyond something like "hegemonic" national time, but also that political ontologies temporalize people and movements in specific ways, leaving them adrift or stranded. And yet time can also be re-seized, as happened in Sarah's anecdote about "Murri time".

**Amade M'charek:** If I may, I would like to add two (somewhat longer) remarks. My first remark is a reflection on the conversation about different modes of truth-making (scientific and legal truth), initiated by Emma. Although I can very much relate to the difference between scientific and legal modes of doing truth I was also wondering whether this difference is a "momentary" end result rather than what we see happening in practice (like a still in a movie). I was reminded of a Dutch case that I (together with two colleagues) had worked on in which we analysed the DNA evidence in a rape/murder case, in the early 90's (M'charek et al., 2013). This N-case was a very complicated case: there was hardly any evidence except for a little DNA (found in sperm cells in the body of the young boy). But there was no technology available to extract the little DNA for further research. The evidence was thus sent to Germany. But there the proper technology was still to be developed which would take more than 2 years. The suspect was held in custody. The defence objected that *waiting* for more than two years for scientific evidence can hardly be qualified as an *activity* of truth finding. Although he initially accepted this delay, the defence would later try to get the case dismissed on the basis of "reasonable term." This legal principle states that criminal investigations should conclude within a reasonable time, generally determined on a period of two years. According to the defence, the prosecution's "inactivity" was in conflict with the terms of the European Court for Human Rights. The suspect was released but the case was not dismissed.

The DNA evidence was then delivered in 1995. The suspect was immediately arrested. But the defence argued that the DNA evidence was not admissible because it was not produced according to the freshly (in September 1994) introduced Dutch DNA law.

Now here three different chronological temporalities are interfering with one another (chronological at this more general level, but I am sure that if we would look more closely other versions of time will emerge): 1) the temporality of the court and legal practice; 2) that of scientific practices; 3) that of politico-legislative practice (resulting in a new law).

As things became even more interesting and complicated in this case, it was the very mixture of legal and scientific truth making that saved the day. One of the DNA experts (a geneticist) was assigned to answer whether the DNA evidence

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from Germany was scientifically sound and legally admissible (!). He became the key actor in this case.

I share this with you because I think it is a nice case to think about the heterogeneity that is going on in the everyday legal practice; just before the gavel falls there much more admixture going on that deserves our attention. Probably because it might help us to grasp the normativities of legal practices. (I should tell you that I did not work on temporalities in this case, but this conversation has made me want to revisit the case with newly gained insights. It would be great to also look more closely at the process that Emma describes about tracing how evidence slips into belief and the other way around!)

My second remark is prompted by a question Sarah has raised about the relation between temporality and belonging. And for me this resonates with Emma's remark on the intersection of different time scales. Such intersections might in one practice cast doubt, but in others actually help to produce modes of belonging. I am thinking in particular of genetic archaeology. Picture an excavation in the middle of a European city. An open area and citizens pass by. Many artefacts but also bones and human skeletons. Quite often such excavations reveal remains from the Middle Ages. What strikes me is that local people often feel a distance between them/us-here and those bones/them-there (there might even be disgust at the sight of skeletons). The skeletons are fitted easily on the chronological/modernist time scale, producing a distance, pointing at a time that has passed. Once DNA enters the scene, the same old bones become us; ancestors. In many projects in the Netherlands I have seen people engaging fervently with *their* ancestors and willing to establish a genetic link with these human remains. So it seems to me that whereas the skeletons produce a thousand years' distance, DNA produces a different kind of temporality. DNA produces immediacy. It crosses this thousand years by producing (the possibility of) a similarity between the DNA in the bones (there) and that in a person's body (here). In the universe of Michel Serres DNA folds time and undoes the distance between past and presence, contributing to a sense of belonging.

So I wonder whether the very intersection between these temporalities produces a stronger sense of belonging. Can it be that a sense of belonging becomes stronger as a result of a simultaneous proximity and distance? Can it be that the co-existence/co-production of topological/folded time and modern/chronological time (time line) is productive of belonging? And does the distance somehow contribute to a sense nativism/exclusive belonging?

**Emily Grabham:** Amade, your contribution is so rich and much appreciated. Even though I don't want this conversation to end, we have sadly run out of time. Thank you so very much to everyone for your thoughtful conversation over the past few days. It really has been a pleasure to watch the exchanges unfold and I appreciate the time all of you have put into this.

## Biographies

Emma Cunliffe is Associate Professor at the Peter A. Allard School of Law, University of British Columbia, Canada. Her publications include the books *Murder, Medicine and Motherhood* (2011) and *The Ethics of Expert Evidence* (2016) and the article “Judging Fast and Slow” in the *International Journal of Evidence and Proof* (2014). She is currently working on a project on the role of expert evidence in Canadian trials and commissions of inquiry focusing on gendered violence, including violence against Indigenous people (funded by the Social Sciences and Humanities Research Council, Canada). See further: <http://www.allard.ubc.ca/faculty-staff/emma-cunliffe>.

Stacy Douglas is Associate Professor in the Department of Law and Legal Studies, Carleton University, Canada. Her publications include *Curating Community: Museums, Constitutionalism, and the Taming of the Political* (2017) and the articles “Museums as Constitutions: A Commentary on Constitutions and Constitution-Making” in *Law, Culture, and the Humanities* (2015) and “The Time That Binds: Constitutionalism, Museums, and the Production of Political Community” in the *Australian Feminist Law Journal* (2013). Her current research analyses the 2013 partnership between the Canadian Museum of History and the Canadian Association of Petroleum Producers (funded by Carleton University and Mitacs Globalink Research Internships). See further: <https://carleton.ca/law/people/douglas-stacy-2/>

Emily Grabham is Professor of Law at Kent Law School, University of Kent, UK. Her publications include the books *Brewing Legal Times: Things, Form, and the Enactment of Law* (2016) and *Law and Time* (2018, co-edited with Siân Beynon-Jones). She is currently working on a socio-legal study of legislative drafting and is co-investigator on the *Future of Legal Gender* project, which aims to critically explore different ways of reforming legal gender (funded by the Economic and Social Research Council). See further: [https://www.kent.ac.uk/law/people/academic/Grabham,\\_Emily.html](https://www.kent.ac.uk/law/people/academic/Grabham,_Emily.html)

Sarah Keenan is Senior Lecturer in Law at Birkbeck Law School, University of London, UK. Her recent publications include *Subversive Property: Law and the Production of Spaces of Belonging* (2015) and *Spatial Justice and Diaspora* (Keenan and Patchett, 2017). Her current research focuses on the temporalities of land title registration and its role in the production of categories of race (funded by the Leverhulme Trust). She is co-director of the Centre for Research on Race and Law, Birkbeck University of London. See: <http://www.bbk.ac.uk/law/our-staff/keenan>

Renisa Mawani is Professor of Sociology at the University of British Columbia. She is the author of *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871-1921* (2009) and *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (2018). She is currently working on a book, provisionally titled *Enemies of Empire*, which focuses on the role of piracy and the criminalization of non-European seafarers as means of

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extending British and American jurisdiction over the high seas. See:  
<https://soci.ubc.ca/persons/renisa-mawani/>

Amade M'charek is Professor of the Anthropology of Science in the Department of Anthropology, University of Amsterdam. Her publications include *The Human Genome Diversity Project: An Ethnography of Scientific Practice* (2005), and the articles "Race, Time and Folded Objects: The HeLa Error" in *Theory, Culture & Society* (2014) and "Beyond Fact or Fiction: On the Materiality of Race in Practice", in *Cultural Anthropology* (2013). She is currently working on the project *RaceFaceID*, an ethnographic study of practices of giving faces to unknown individuals in forensic identification (funded by the European Research Council). See: <http://www.uva.nl/profiel/m/-/a.a.mcharek/a.a.mcharek.html>

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