

Bruno Latour, Law and International Justice: An Interview with Dr Kirsten Campbell

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The Birkbeck Law Review had the pleasure of interviewing Dr Kirsten Campbell¹ of Goldsmiths, University of London, where she is a senior lecturer in the Department of Sociology, and principal investigator of the European Research Council project and The Gender of Justice. Prior to that, Dr Campbell was a commercial litigation lawyer in Australia. Her research interests consist of contemporary social theory, gender and the law. In this interview, we explore one of those research interests, Bruno Latour,² and the application of Latour's concept of legal construction of 'the social'³ to the understanding of international justice mechanisms. Dr Campbell also discusses in her works the concepts of actor-network theory and its role within the understanding of law in a broader context. She is interested how the ideas of actants and practice can develop our understanding of law within the context of 'the social', particularly focusing on the context of Bosnia, the International Criminal Tribunal for the former Yugoslavia (ICTY) and ongoing developments in the international legal regime.

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² Bruno Latour is a renowned French sociologist, who won the 2013 Holberg Prize. In his book, *Making of the Law: An Ethnography of the Conseil d'Etat*, he uses ethnographic methods to illustrate the daily practices of the Conseil d'Etat (highest court in France).

³ Latour's social theory asks how actions and associations of the different actants which are both human (lawyers, defendants, witnesses) and things

Birkbeck Law Review (BKLR): Dr Campbell, thank you for taking the time to interview with us.

Firstly, you have discussed the work of the renowned French sociologist of science and anthropologist, Bruno Latour, extensively in your research. Why did you choose Bruno Latour?

Dr Kirsten Campbell (KC): I have had a longstanding interest in Latour in relation to science and technology studies (STS). I became interested in why law seemed to be such an intriguing problem for him, and why he thinks of it as a particular form of association. I am also interested in why so few STS scholars have engaged with his work on law, and equally, why he has been largely neglected by legal

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theorists (with notable exceptions such as Alain Pottage and Marianna Valverde).

The context of my coming back to Latour is actually a book that I am currently finishing

on forms of subjectivity and sociality in international criminal law. The book centres on what I think of as the anti-humanist theories of modernity, engaging primarily with the concepts of law proposed by

(court buildings, records, material evidence) operate to make ‘the legal’ and ‘the social’; this is in contrast with the classical understanding that assumes law and society are given phenomena that act upon each other. Latour understands law as a network of heterogeneous associations that build ‘the social.’ Law is a ‘vehicle, a movement of aggregation,’ that assembles entities through particular forms of semiotic and material associations. Latour argues that law ‘circulate[s] throughout the landscape to associate entities in a legal way.’ Law consists of chains of these associations: making these connections, linking up these elements, weaving the social. ‘All [of] this is law itself.’ For this reason, legality is better understood as a process, in which particular practices organise social relations (See Kirsten Campbell ‘Reassembling International Justice: The Making of “the Social” in International Criminal Law and Transitional Justice’ 2014 8(1) International Journal of Transitional Justice 53).

Evgeny Pashukanis, Jacques Lacan and Giorgio Agamben. This is, of course, in conversation with feminist theorists and feminist theory.

So, how do Latourian ideas of law ‘fit’ with this anti-humanist approach to international criminal law?

In my view, all three theorists offer very important insights. Pashukanis’ account of law has certain limitations, but nevertheless his understanding of the legal form remains important. Lacan offers a crucial theory of law and subjectivity, and Agamben has a powerful account of law and biopolitical power. However, these accounts of the legal form and subject do not engage with legal practices as such. Since Latour’s theory of ‘the social’ looks at legal practices as a way of bringing together things and persons, I have found his work very helpful in this regard. It is helpful in thinking about the practices of ‘legal association’ and the ways in which they link things and persons. What Latour gives socio-legal theory, I think, is ‘the social’ as a problem, and an account of legal practices. This is why Latour’s work has become a long standing interest for me.

BBKLR: In your research, you use Latour's works in many different contexts—for example, you apply it to the understanding of ‘the city’ in your recently published article, ‘The City of Law’.⁴ Can you explain the concept of the ‘city of law’, and how do you consider the city as an assemblage of different actors?

KC: I think the concept of the city of law poses a problem: it's not just a ‘thing’. The Latourian approach is useful for engaging with this problem because, rather than beginning with the assumption that the city is something that exists as a ‘thing’, instead it is seen as an assemblage. That approach then enables us to see the ‘city of law’ as the consequence of a process of assemblage, of which the legal form of association is part.

⁴ Kirsten Campbell, ‘The City of Law’ (2013) 9(2) *International Journal of Law* 192.

The next part of this problem is how legal association is part of the constitution of this urban space, which we call the city? The city of law is not static or fixed. A Latourian approach asks: how is it composed or assembled, and how does legal practice (in the Latourian sense) assemble that entity of ‘persons’ and ‘things’? That approach enables us, first, to think about the process of assemblage through a plurality of practices and second, to consider the particular ways in which legal association constitutes the city. This is a differentiated space through which legal association is woven as part of that process of composition.

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BBKLR: You just said ‘plurality of practices’. Do these practices have a hierarchical relationship or are they perhaps related to one another in a more rhizomatic way?⁵ How do you see the relations between these different practices?

KC: I should explain as well that part of my interest here is the problem of practice. One could argue that ‘practice’ is quite a specific concept in Latour's work because of his ethnographic approach to understanding action. Latour's approach in the *Making of Law*, is ethnographic, and accordingly attentive to the specificity of the legal practices in his field. However, this legal field – French administrative law - makes certain practices more visible than others. If, for example, we look at international criminal law, then it becomes necessary to make different kinds of arguments about other forms of legal association. That's when we have to be attentive to the problems of the ethnographic method. For example, Latour does not want to invoke the state in this account of administrative law. That position becomes much more difficult to sustain in relation to international criminal law. It necessarily involves practices of state,

⁵ ‘Rhizome’ in philosophy is a concept that was forwarded by Gilles Deleuze and Felix Guattari in their book, *A Thousand Plateaus: Capitalism and Schizophrenia* (Brian Massumi trs, University of Minnesota Press 1987), that opposes to hierarchical relationships between different actors and instead offers a relation that forms multiplicities.

power and violence, even if they are understood as other assemblages.

Being attentive to that difficulty is necessary for a feminist analysis, which involves the problem of value and the problem of resource: what value attaches to which actors, the resources that different actors have in these fields, their capacities to act and so on. This is Marianna Valverde's important intervention.⁶ So it's not so much a question of hierarchy, but it's a question of attentiveness to what practices can do, and what actants can do (in this Latourian sense). I think this question highlights both the richness and the difficulties of Latour's account of practice.

BBKLR: You mentioned actors and actants. Can you explain the difference between actors and actants? Are these humans or non-humans? How are they connected to one another?

KC: In the Latourian sense, actants are human and non-human actors. These persons and things modify other actants through action (or practice). A case file can be an actant. Let me illustrate this with an example from my research: if we follow a case file in the ICTY, then we can see the file is an actant, because it is part of the process of assembling international justice. This thing called a file moves in different ways. It moves through a trial, connecting many different people and things in a legal way. This legal association begins with an indictment, which is already a way of tying together persons and things. It is already working to associate many different actants, and it associates them in very particular ways. So, for example, it materialises a precedent form, which connects to the computer that stores the documents to which it refers, which in turn sits in a court room in The Hague, where it is read by trial judges. Then the file ends up in the ICTY repository, and can move into the so-called region, where it can make new networks, such as connecting media rhetoric and publics, or materialising in prosecution documents in domestic trials.

⁶ Director for the Centre for Criminology and Sociolegal Studies at the University of Toronto.

These actants are persons and things that have the capacity to act in this domain; they are able to connect to other actants and to use resources to build those connections. This is where the link between the idea of actant and the idea of practice as the modification of the actions of others becomes important. It raises the issue of how and under what circumstances actants have the capacity do this.

BBKLR: We just talked about actants and how they get into these networks. What are the gender related problems to these actants and these networks? What kind of a feminist approach can we think about when we are looking at these sorts of practices?

KC: This is an old critique of Latour's work. He is well-aware of this problem, and has engaged with Donna Haraway around precisely this question. The critique is that he sees the

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fields that he engages with as flat, as without hierarchy. This arguably is a liberal model because it assumes that all actants have the same capacity to act. This has been a standard feminist critique of STS generally and Latour in particular.

However, this problem becomes very apparent in fields like that of international criminal law, where it is clear that certain actants do not have the same resources as others, do not have the same capacity to connect to other actants, and do not have the same capacity to build networks that can sustain themselves or effect change. So, this issue in Latour's work becomes very evident in this domain, and this critique becomes particularly sharp.

This critique is important to developing a Latourian account of international criminal law, because it challenges us to ask which actants participate in the building of these networks and why; which actants have the capacity to act to build longer or more durable chains of association, and which do not. That is where feminist

engagement becomes particularly crucial. It's about asking that question: who gets included, and who does not, and why or why not? It's clear that this is a necessary question in the area of international criminal law.

BBKLR: You are underlining that there are certain differences between international criminal law and transitional justice practices in ICTY. What are the fundamental differences between the two?

KC: I would argue that international criminal law is a particular and peculiar way of constructing 'the social'. In essence, it makes 'the social' in law by creating 'short' chains of universal legal association. So, for example, the ICTY builds this 'social' in minimal ties of legal obligation and rights in a courtroom in The Hague; and one of its great failures has been to extend its forms of legal association to the so-called 'region' (a term I don't like but nevertheless is typically used as shorthand in this area). Whereas transitional justice, and this is particularly evident in Bosnia, aims to build a post conflict collective in a comparatively bounded and limited geographical space. Unlike international criminal law, these transitional justice mechanisms do not attempt to extend their networks globally, but instead they aim to build a more durable and larger assemblage of the 'social' in a given space. They attempt to reconstruct society, and see legal practices as a crucial part of that reconstruction.

So international criminal law and transitional justice assemble the social in different ways, using different practices of association to connect actants.

BBKLR: If we are talking about transitional justice, one would guess we have to think about the memories of the actors. What is the relationship between the memory of a particular region, people or peoples and the law? How do you see the memory or the collective memory, something static or, on the contrary, more in a reciprocal relationship with justice practice?

KC: That is the million dollar question! First of all, we need to be very careful when talking about collective memory because in this context precisely what is at stake *is* the ‘collective’.

The next problem is the ‘wager’ of transitional justice, which is whether it possible to change collective memory, and whether it is possible to do this using certain justice practices. These include not just criminal law, but a number of other practices. Again, a certain carefulness is necessary in assuming what the law can do, whatever the law might be in the particular context, because it needs to be linked to these extra-legal processes. I should say this is not an argument against criminal prosecutions. To return to your earlier question about the reason why Latour’s work is useful, in this instance it enables us to think about the ways in which different modes of associations construct what we might call the ‘post conflict social’, and how legal forms of association connect up with other forms of association. The wager of the transitional reconstruction of ‘the social’ as a homogenous whole is, in my opinion, an impossible project. Latour offers another understanding of the role of law in post-conflict reconstruction.

BBKLR: What about the victims in war? Could we explore the question of victims and the legal persons or legal subject?

KC: I understand these as two distinct categories.

BBKLR: Can you elaborate on this? Who is a legal person or legal subject? What is the relationship between the legal person and the victims?

KC: I would distinguish between the legal subject of international criminal law and the legal subject in a transitional context because I think they are two different things. So, for example, if we talk about the legal subject of international criminal law in the context of the ICTY, then I would argue this is the very familiar legal subject of the autonomous person with rights.

In terms of victims, that is the legal subject of rights—the classic liberal subject.

However, with international criminal law, I would also argue that there is in effect a group or a collective subject. So, for example, prisoners of war (PoWs) have certain rights, because of their status as PoWs, which are distinct from what we might call their human rights. Or, for example, genocide, which again relies on the notion of belonging to a group. The rights that flow to the victim are dependent on their membership of that group. So, what at first looks like a classical liberal subject is actually a group subject in many ways. It is possible to make similar arguments about perpetrators as legal subjects, but I will leave that to one side since you have asked me about victims.

I would also note that this is a classic liberal fiction of who can occupy that position. For example in relation to sexual violence, typically the victim is described as the subject of rights. Nevertheless, if we consider the example of ICTY, there is no universal subject, but rather particular persons who can occupy that space. Not all victims become the legal subject. Rather, there is a complex process by which victims, as empirical persons, come to take up the position of a legal subject of rights.

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For example, in sexual violence cases, there are clear gendered patterns of who gives evidence to what, and what kind of evidential testing they are subjected to. So who becomes a victim, and who can take up the status of the legal subject, is already a highly structured process.

BBKLR: And we can consider the same thing for perpetrators?

KC: Yes. I would argue that a similar process operates for the so-called lower level perpetrators or direct perpetrators; but once we are looking at higher level perpetrators—for example, military or

civilian leadership—then another set of structuring factors come into play.

BBKLR: Is the occupation of that position, the position of the legal subject, something coming from top-down or bottom-up?

KC: Both. For example, we could again consider sexual violence cases. If we think about these cases in terms of the making of networks, this involves a complex process of who comes forward, who has given a statement previously, who has been interviewed, and who is able to give evidence. Those that become witnesses are already actants. They are agentic, in the sense that they have a conditioned agency, but nevertheless, a capacity to act. That is why I am resistant to the idea that it's simply top-down. It also involves the practices of victims themselves, often forming their own networks, such as victims' associations or feminist groups.

BBKLR: We have talked about locality and the local practices and networks. What about universal values, values that are believed to be shared by everyone and constitutes the basis for universal rights? What is the relation between local laws and practices and universal values?

KC: I would be hesitant to use the language of universal value because, in my view, international criminal law is a modern legal form. Accordingly, it does not reflect universal values in that sense, but rather emerges from a particular form of global capitalism.

However, put in another way, then one could talk these 'values' as internationally agreed. That is, they reflect shared agreement at the state level about the conduct of war. The former Yugoslavian laws of war and current international criminal may differ in detail, and that difference may include important issues such as definitions of sexual violence crimes or sentencing. However, to reflect these internationally agreed values the Bosnian state passed new laws governing the prosecution of war crimes. So rather than framing these issues as universal values as opposed to local values, I believe

that what we are talking about is an international legal regime that works between and within states. These values articulate certain rights and duties. I would not want to call them human rights because this legal regime regulates violence, not the right of the person. I would not want to call them universal values, because they rely on state consensus rather than some inherent property of the person.

I would not want to call them human rights because this legal regime regulates violence.

BBKLR: In the last five years, there has been economic and political

unrest across Europe and the West. The most recent examples are Ukraine and Bosnia. Can you think of some changes, let's say, during these last five years in the legal form of international and criminal law?

KC: I would argue that the legal form of international criminal law already expresses those contradictions. For example, this can be seen in the tension between the concepts of the autonomous legal subject and the protected groups that are subjected to particular forms of violence considered to be illegal under international law. Already, there are tensions, ambivalences and contradictions in that legal form.

The changes that you are describing are emerging in what we can call, as shorthand, the global capitalist system, and so are already emergent in this legal form. And this can be seen in the working of international criminal law, both with the ICC and in the implementation of the laws of war. In particular, these insurrections are going to pose, again, a problem for states in terms of how they deal with their monopoly on violence.

BBKLR: What are your opinions on the current insurrections in Bosnia?

KC: I think this movement is very important and it's a measure of the state of the country and the legitimate concerns of its people. It

also contains great emancipatory potential, both in its abstract sense but also in a more concrete sense, against Dayton and ethno-nationalism and for another kind of social organisation. In my view, that is the crucial potential here.

BBKLR: Thank you again for undertaking this interview with the Birkbeck Law Review.

KC: Thank you very much for our discussion.