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# Ultimate conversation: Fitzpatrick at Warwick, February 2020

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## Abstract

This is the edited transcript of a seminar on 27 February 2020 organised at Warwick Law School in appreciation of the work of Peter Fitzpatrick. Peter was seriously ill at the time but was desirous of online participation. Sadly, the seminar was the last public performance by Peter prior to his death. A variety of themes in Peter's work are discussed, including his critique of H.L.A. Hart, his notion of 'slow reading', the relationship between theory and grounded engagement with people, the idea of community and relationality, the role of the critic, self-criticism, the impossibility of law, decoloniality, occidentalism, mythologies and governmentality, and the significance of narratives.

**Keywords:** Fitzpatrick; Hart; occidentalism; community; governmentality; relationality; slow reading

## 1 Introduction

Peter Fitzpatrick was already seriously ill when he agreed to participate in this seminar on 27 February 2020 at Warwick organised jointly by the Law and Critique Group and the Law and Development Group. Because of the health issues, we knew he would not be able to travel to Warwick so his involvement would have to be online. Neither Peter nor we knew how effective his participation would be. Nevertheless, we felt the need to acknowledge Peter's enormous contribution to scholarship and also to Warwick over the years as a friend and mentor to the Law in Development Programme and as a colleague or supervisor for a number of us. Peter was highly desirous of the opportunity for intellectual stimulation to keep himself going. In the circumstances, we distributed two pieces of his work ahead of the discussion to enable flexibility for Peter to participate as little or as much as he could. The two pieces of work were the completed chapter 'In search of nothing: "unseen empires" and the law beyond development' for the book *The Limits of Law and Development* (Fitzpatrick, 2021) and the partially completed autobiographical chapter 'Ultimate legality: reading the community of law', which has since been published in the *Journal of Law and Society* (Fitzpatrick, 2020). In the circumstances, as the transcript shows, the session turned into a question-and-answer mode. While Peter's engagement took a significant amount of effort, he was as lucid as ever. We feel privileged to have participated in Peter's ultimate performance.

## 2 The transcript

*Tara Mulqueen:* Welcome Peter. We have distributed two of your pieces for this discussion. 'Ultimate legality', which is your retrospective piece (Fitzpatrick, 2020), and the chapter entitled 'In search of nothing' (Fitzpatrick, 2021). Okay, would anybody like to kick us off?

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*Abdul Paliwala:* Let me begin with an introduction to Peter's amazing contribution to me personally and to a lot of people at Warwick and to the world.

*Peter:* I did not pay for this.

*Abdul:* Unfortunately, I haven't got paid yet! I'd like to make five points. In the 'Ultimate legality' paper, Peter starts with Derrida (2002) and the indissoluble relationship between justice and law, but this indissolubility affects other realms as well as law. And the underlying notion that I've taken from a lot of your work is this relationship between determination and responsiveness that I think comes to the fore in your exciting analysis in *Modernism and the Grounds of Law* (Fitzpatrick, 1997).

The second point is one that you develop in *The Mythology of Modern Law* (Fitzpatrick, 1992), but it comes through very much also in the 'Ultimate legality' paper (Fitzpatrick, 2020). This is epistemological decolonisation. This notion of decoloniality is needed to clear the way for new intercultural communication involving an interchange of experiences and meanings as the basis for another rationality that may legitimately pretend to some universality.

*Peter:* Exactly, yes.

*Abdul:* The third point, which does not come through because that bit of the 'Ultimate legality' paper is not finished yet, is the relationship between post-structuralism and governmentality. This comes through much better in the 'In search of nothing' chapter in our book on *The Limitations of Law and Development* (Fitzpatrick, 2021). The point you make is the link between the notions of governmentality and homo economicus as a key aspect of developmental thinking.

The other issue about governmentality is the notion of totalitarianism, which is essentially based on the one hand on the abolition of the historical transcendence of governments and governmental powers, etc. and yet, at the same time, enables governmentality to invade all spheres of life. And I wonder whether and what is the link between Derrida and Foucault in that.

And then the next point, which is again made in the 'Ultimate legality' paper, in which I have the privilege of being quoted by you, is that our intimacy in sharing the firelight in Papua New Guinea, working socially, culturally, politically with the people, has remained an enduring basis for intellectual and political responses to post-coloniality through various theoretical avatars. The firelight links the personal, political and intellectual. Peter Fitzpatrick is not just the theoretician, but somebody who belongs in the groundedness. The firelight is not merely theoretical, but the political fire in the belly. And, finally, slow reading! Peter, your starting point in the 'Ultimate legality' paper is that 'nature would want us to read slowly, deeply, looking cautiously before and aft with reservations with doors left open with delicate eyes and fingers, and in this way to resist an age of work'. And I see in that beautiful stuff encapsulation of a way of reading, which we hope we all try to aspire to, but not necessarily succeed.

*Tara:* Abdul is going easy on you clearly.

*Peter:* Did you want a response?

*Abdul:* If you like, would people like to say more? Or would we like Peter to respond a bit?

*Peter:* Yeah. I do have the trouble of agreeing with all of that.

*Tara:* I have a question. I kind of wondered, because you return to Hart quite often and especially when read in the context of your personal story, I wonder if you're still really pissed off at Hart and what he represents for you?<sup>1</sup>

*Peter:*

<sup>1</sup>For a critique of Hart's *The Concept of Law* (1961), see Fitzpatrick (1992, chapter 6).

Well I'd say yes, and I'd say that his is just such a formidable force and is so obliquely pervasive that one doesn't have much choice but to be systematically critical. I don't like him!

*Tara:* Yeah, I mean, the more I come back to it and come back to your arguments around it, there's something deeply offensive about his pretence of understanding law in this systematic fashion. You scratch beneath the surface and there is an enormous kind of arrogance there. And not to mention, imperialism and racism and all these things under the guise of his positivism.

*Peter:* I think what is positive about that and what is a pity is that he did not enter exchanges and debates more often. But what is good about that is that the critical can be connected through. If he weren't critical then his criticism effectively linked up with conventional wisdom and that would be a rather interesting combination. And it's certainly a pity that he's not around any longer to engage with it but I don't think he would want to anyway.

*Illan Rua Wall:* There was a lovely romance, maybe romance is the wrong word, to those images of the fireside chats. It struck me in the middle of the (academic) strike and everything and coming back and the workload piling up that the thought of reading slowly felt incredibly luxurious. But it felt yeah. I wonder if it is something we've lost, like what would it be to have space to just build that groundedness where we all felt at home together in the way you described.

*Peter:* It's great. Can I say just as an aside, how great it is to be here. It's good to see you all.

One of the main interesting things that comes out of the show so far, apart from the fact that pretty well covers a lot of it, is the conjunction with the completeness of understanding the impossibility of law. That conjunction, of say with Abdul, of engagement with people by the fireside. How complete the engagement is when things join up with it and with each other, as opposed to just explored in random and diffused ways. In other words, there seems to be some imperative, some drawing of these concerns together that are true and intrinsic to themselves.

*Jayan Nayar:* Having had the experience that you described, of working in the firelight and working in the prime minister's office, and this long journey subsequent to that, thinking critically about the claims that law makes, which you've done immense work on debunking, how would you or would you change and what would you change of your experience? If you were back with those people that you worked with?

*Peter:* What I would change, and it's perhaps a matter of emphasis, is I have failed to explore fully enough and mould sufficiently to bring to bear (my little bit of self-pity) on parallel concerns that are ultimately fused with the concerns of my focus. In other words, stuff happening in other settings is always or often considered to be marginal, not sufficient or pertinent to that happening on site. How come we attach such enormous significance to the improbability or (the point we were making earlier) the impossibility of law? It is impossible indeed given the sort of law we are dealing with and often resistantly but not itself impossible when we match it or try to match it to its imperial pretensions. In other words, there is major clustering and drawing-together taking place in these settings that is deserving of a wider, wider is perhaps not a good word, a wider analysis of law as occidental. Law as enlightened as enlightenment and so on. There's a marvellous philosopher who has a wonderful phrase 'the imperialism of the same'. How can you make exception in relation to law and still see the outcome as the same for example enlightenment and the cohesiveness and supremacy of occidental enlightenment? In other words, we are stuck because the very claim to

self-constitute in this setting is the same as the claim to enlightenment, to appropriation.

*Illan:* What do you see is the role of the critic in all of this?

*Peter:* The role of the critic is to attempt to reveal. To reveal that occidentalism and enlightenment and the self-appropriation of this e.g. in Britain can be readily aligned. So, the critic of the occidental imperium is the revealer of the occidentalism.

*Tara:* Do you think – is part of the point that you’re making – that even as a critic we can’t help because we’re stuck with that inheritance that we will always reproduce to some extent? Even in the pursuit of critique?

*Peter:* That’s a great point. It’s a problem because what we’re trying to do is to reveal the occident, for example the exclusiveness of the imperial, the inclusiveness of occidentalism. It does, have the effect, if one accepts that line of argument, of bringing those things out and making them vividly uncontainable. That they are improbabilities in themselves and it becomes impossible to contain them within any of those criticisms.

*Abdul:* Can I ask about the idea of community that you find allusive and at the same time, it is there almost as a counterpoint? First, is the idea of community hardly the alternate reality to which we are trying to get? And, second, what is the relationship between the idea of community and the idea of relationality, which I don’t think you mentioned specifically in your work?

*Peter:* So, community is in sharp conflict to the kind of world that was inoperative, which we are trying to deconstruct. For Derrida and Nancy, the community itself is (un)attainable. The interesting thing is that these two leading post-structural philosophers are in conflict, or were in conflict, over what I would call loosely the constitution of community. For example, Derrida always had more like an obsession with countering Nancy’s elevation of community as somehow positivistically determinable, the community of political being that Nancy refers to in the *Politics* book is one that Derrida rejects very strongly, accusing Nancy of adopting a community that is purely determinate and comes together as a result of agreements between the different actors and players involved, whereas, for Nancy, it certainly seems to be that Derrida’s criticism in the book *The Politics of Friendship* ([1997] 2006) that the friendship seems to take place anyway. Nancy’s (1991) criticism is that the different components and players involved come together and form a community *but as part of the politics*. I think, judging from some of the literature that has been sent to me from Warwick, that line is accepted by some people, but it certainly would be rejected ultimately. In my view, the difference, putting it bluntly, is that community can only be – going back on the relationality element – part of an infinite relationality and openness between one element involved and another. The opener there can be found, going back to *The Politics of Friendship* (Derrida, [1997] 2006). Sorry, I’m in the wrong room for this (to check). But it does match the equation between law and sociality that you will find near the beginning of Derrida’s collection of essays in the *Acts of Literature* book (Derrida, 1992). Anyway, there are lots of settings including markedly the one to deal with law that are open and not bindable. Nancy never expressed, in my view, any cogent opposition to this. But it would be great to get together again to engage in those things because what Derrida was saying ultimately and what deconstruction would be saying ultimately would be that law and relationality are intrinsic to each other absolutely and ultimately. Those would be two of his references in bringing that out. I would say the link between them is great. Derrida’s take on deconstruction would I think ultimately be a match for Nancy. What that ultimately means, going back to Abdul’s point, is an intrinsic, an inseparable nature of the deconstructed entity – of the deconstruction played within the entity that is itself deconstruction and

the community being deconstructed. I stress *being* because part of its being this can't be separated from. I think they (Derrida and Nancy) were great mates but had trouble separating out this and bringing the result to bear on what could be called a concept like community.

*Raza Saeed:* I wanted to say a couple of things. One is just to thank you for the work and your time over the years. By way of anecdote, I was introduced to your work in 2008 and Abdul was the one who introduced me and a few others to your work, and I remember coming to see you a couple of years after that, to do a PhD with you. And I said quite bluntly at that time that I don't understand your work, especially on *The Mythology of Modern Law*. And you said, you still want to do a PhD with me? And I said, Yes, even more reason to, to work with you. So, I never got a chance to do that. But I've been reading and slow reading your work on mythology ever since then – slow reading in terms of what you say in your article. For me, it means rereading as well. So going back to the same work again and again, after perhaps every few months, a few years and trying to discover something new, and some of these substantial thoughts and works do open new doors every time you go back to them, so I just wanted to thank you for that. So, it connects with the other article as well in terms of your thoughts on governmentality and development. And one of the intriguing phrases that you brought in from Foucault is this idea that the ends of governmentality are internal to governmentality. So, the ends are the technologies that then they are reflected in that manner. And if development is also a technology of governmentality, and vice versa, then we could say the same thing about development more widely as well, that the ends of development are internal to the workings of development and that's something that we can reflect back on. We see how it is generally focused on economic growth and mass production, and creation of an economy or economic order of a certain kind. But if that's the case, then it raises the question, at least for me in terms of your other idea, your idea of myth. Why does development or governmentality then need a myth around them? Is it just to gain legitimacy? Is it to create another kind of social order? Is it to give an idea of justice that they can never achieve? I'm not sure whether the sceptical reading of development, at least for me, is easily reconcilable with the overall claims that these concepts make.

*Peter:* Wow. Thank you. I think the myth in this case is needed for revealing that there is a myth and that the myth is providing a cogent explanation for itself by being extracted from that setting. I think also the whole idea of the myth is something that needs to be projected back further than I have done in subsequent work. It needs to be projected in a way that shows it to be intrinsic to the occidentalism and part of that showing is that it is every bit as much part of ordinary ways of thinking, formulating and advancing Western claims, arrogations and powers. As something that is more widely accepted in terms to that extent whether it's law, imperial law, occidental law or imperialism generally or whether it is developmentalism and so on. All of these are usually associated with what's happening elsewhere and then being brought to bear critically through this. These concepts are different to the way in which developmentalism and so on becomes acceptable and formative in the West, whereas, in fact, as concepts, they are ordinary, just in the Western frame. Say the idea of developmentalism in Foucault around itself could be seen as myth. In other words, no matter how converted you are to the idea of myth and mythology and so on, in that setting, it is itself a type of belief that cannot be just marginalised or relegated or considered to be different and inferior to the myth that becomes criticised by people like the critics of globalisation, globalism and so on. So, yes, I would say myth is pretty much mythical as are Said's orientalism or more specifically globalisation or globalatinisation and

other Western mythological concepts. What you've hit upon here, and you can have it all back if you like, is not taking that whole perspective of community. You picked up on that and have shown them to be the case. I have been thinking about this for the last six months or so, of fusing it together. I still see it as something to be done so you are welcome to have it, but it does overlap with what I think needs to be done. There's some work being done by Shane Chalmers in Melbourne (2018) and he's very good at bringing this sort of thing out. And so, it might be as well to ask him about some of his recent work. It's very original, particularly his work on myth, and he makes a much better job of the mythology of modern law than I do.

*Tara:* How are you feeling Peter – do you want to keep going?

*Peter:* I'm feeling fine. I'm just a bit worried about other commitments – let me check with my principal. Yes, I'm fine

*Abdul:* We can go on for another few minutes.

*Tara:* We will keep you a little longer then. Does anybody else have something?

*Christine Schwöbel-Patel:*

Hi, it's Christine. The last time I saw you was in a restaurant somewhere behind Kings Cross and we were eating lovely dosa there. And I'm just wondering, it doesn't actually connect to anything that we were talking about just now, but I was wondering, having observed the critical community and all the different preoccupations throughout the years, has there been anything that you have thought was sort of really off course or something that was really unimportant that everyone seemed to be talking about? The reason why I think about this right now is because, a few years ago, I was at a conference that was about narratives. And one of the professors there said, why is everyone talking about narratives? It was so normalised in the whole debate that it was useful for someone to take a step back and say, hey, are we talking about my narratives? Why do we talk about narratives? So, I was wondering, Peter, whether there was anything similar that you had experienced in the past years where you thought that was a silly preoccupation?

*Peter:* No, it's nothing I've experienced. I'd like to appropriate the point you're making here and make the point of what we mean by narrative. And how readily visible and amenable and why amenable a narrative is. So, I would say it's a great point to be raising. What is also exciting is what covers up the bland existence of narrative as an active force and presents it with no barrier. So, I think narrative is very important. It is not a good answer but it's certainly an expression of appreciation!

*Tara:* I find myself wondering, do you think that what kinds of conclusions you come to about law are really telling us something about the kind of law as such, as though we could understand what law is and all of its manifestations? Or do you think that, ultimately, you're telling us something about modernity and a kind of pattern that repeats itself throughout modernity that we can see in ideas like governmentality or what you refer to in lots of places as the negative universal reference? Is this a way of constructing meaning and creating a way of seeing power dynamics in modernity that isn't really about law as such at all, even if law is one of its kind of primary means of effecting itself? Perhaps one of its most potent manifestations, but the thing that you're talking about is something more pervasive even than law?

*Peter:* That's marvellous, thank you. I don't think I could add to it. It has to do with community as well as law. What is it that is in these forces that come together and manifest themselves as narrative as whatever they purport to be? I think that the fusion of narrative and just taking as an example negative universal reference would be a way of bringing it and its significance out. Another way of helping me solve another few

problems. It looks very promising. What you looked at, and obviously I haven't, is you are bringing something tangible. You are bringing a relationality that happens to have a tangibility to join things together. It's almost like community, using somebody else's phrase, is being curated in that process in bringing together race and ideas and claims to the [universal] and so on together with some process of realisation of those claims and that process. It would either be seen as law or as community or as community as law. This is a very promising scenario I think to delve further into. It looks good.

**Tara:** Good. It gives me something to do. Peter, is there anything else that you wanted to say?

**Peter:** Yes, I could go on for a very long time but, unfortunately, I have got to go. We certainly packed in a lot of things as far as I was concerned.

**Tara:** Thank you for making the time for us. Thank you, Peter and Shelby.

**Shelby**

**Fitzpatrick:** I can say this means a great deal to Peter!

**Conflict of Interest.** None

**Acknowledgements.** Many thanks to Shelby Fitzpatrick, Warwick Law School and Sue Taylor.

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