*International Journal of Law in Context* (2026), **22**, 371–376
doi:10.1017/S1744552326100603

§

SPECIAL ISSUE INTRODUCTORY ESSAY

# Trusting in the world

Eric Loefflad[1] and Raul Madden[2]

[1]Kent Law School, University of Kent, UK and [2]School of Law, Queen Mary University of London, UK
**Corresponding author:** Eric Loefflad; Email: e.d.loefflad@kent.ac.uk

(Received 27 April 2026; revised 27 April 2026; accepted 27 April 2026; first published online 13 July 2026)

## 1 Trusting and legal scholarship

What does it mean to think about trust as a legal scholar? From one perspective, there comes the broad question of why people trust or mistrust the law as it pertains to their lives and communities. Although there is no shortage of analytical angles from which to examine this question, to configure trust in relation to the lives of people and their communities is to broadly think about trust as a broad social phenomenon. That is because law is all-pervasive in structuring the social relations that shape the lives of individuals and their communities. On this basis, the multi-faceted traditions of 'law and society' and 'socio-legal studies' must become relevant for selecting the appropriate methods for exploring trust and trusting in relation to the law.

From another perspective, a legal scholar might be thinking about trusts as a distinct arrangement for holding property across a multiplicity of parties according to a multiplicity of interests. A notoriously complex and highly technical area of law, the image of the trusts scholar is one who is rigidly doctrinal and likely law-practice oriented in one form or another. After all, wealthy interests seek to make use of trusts. Knowledge of this area of law can therefore be captivatingly lucrative. Given the division between the typical paths of critical and social theorists seeking to understand law beyond its practice and those focused on the realm of legal practice, those interested in the broad domain of law and trust and those interested in the more strictly demarcated law of trusts rarely have the opportunity to engage each other. This is unfortunate given that their ability to learn from each other's insights and techniques is so vastly untapped in its potential.

## 2 Cotterrell's bridge across conceptions of trust

Through this special issue, we contribute to bridging this gap by presenting an array of distinct, and frequently overlapping approaches for conceptualising these two understandings of law in relation to trust(s). Our guiding figure who provides common grounding for the diverse array of accounts that follows is Roger Cotterrell. As one of the leading socio-legal theorists, Cotterrell (1987, 1993) notably ventured into the rarefied world of trusts scholarship and, drawing on his characteristically sociological approach to legal ideas, produced definingly critical accounts of this area of law. While Cotterrell drew many poignant connections between the technical machinations of the law of trusts and multilayered social questions of trust, we must ask what it might mean to revisit these connections in light of Cotterrell's overarching contribution to legal knowledge. Fortunately, he spelt out his contribution rather clearly. In the Introduction to a 2008 collection of essays produced over the course of his long career, Cotterrell stated that:

© The Author(s), 2026. Published by Cambridge University Press. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (https://creativecommons.org/licenses/by/4.0/), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

https://doi.org/10.1017/S1744552326100603 Published online by Cambridge University Press

> 'My research has gradually led me to a perspective that can be summarised in the claims that (i) law cannot satisfactorily be analysed or interpreted except in terms of a sociologically-informed concept of community, and (ii) all law has to find its meaning and significance as an expression and guarantee of social relations of community' (Cotterrell 2008, pp. xxii–xxiii).

On this footing, one of Cotterrell's defining themes is the legal significance of trust writ large. After all, it can be argued that the presence of trust, in some manifestation, is that which separates a 'community' from any other grouping of people. On this basis, the experience of trust creates a community's lived experience of moral, and by extension legal, cohesion – a reality Cotterrell presented as a challenge to liberal conceptions of jurisprudence and moral philosophy derived through high levels of abstraction and thus removed from the messy realities of social life (1986, pp. 523–24). However, Cotterrell was clear that his proclamations on trust-based community as the grounding of legal order were apt to invite immense cynicism. In his words, 'the mere invocation of words like "community" or "morality" – and even "legal responsibility" (if thought of as something more than a matter of transaction costs) – may ... produce wry smiles and accusations of utopianism' (Cotterrell 2008, p. xxii).

## 3 Trusting today

Cotterrell's statement rang true in 2008. It rings even truer in the mid-2020s. Across a vast diversity of locations, few defining social, political and legal institutions are trusted as they once were.

In the domain of business and economics, the 2008 Global Financial Crisis and its long aftermath have revealed vast degrees of instability as well as maldistributed risk and privilege within the management of the world economy (Tooze 2018). On the question of the environment, global warming has arguably reached a point of no return in defiance of one warning after another (Carton and Malm 2024). When it comes to geopolitics, the ability of international law and institutions to prevent major wars between rival great powers appears to be breaking down fast (Peterke and Van Aggelen 2023). This is to say nothing of how, despite prolific condemnation, state-sanctioned mass killing can so easily occur with seemingly no prospect of accountability (Shaw 2025). In the technological realm, the mass proliferation of artificial intelligence has limited the ability to trust what one sees or reads as perhaps never before (Afroogh *et al.* 2024). As artificial intelligence becomes increasingly involved in the decision-making of state authorities, the worsening lack of accountability may make people increasingly mistrustful of government institutions and the political system more broadly (Coeckelbergh 2024, p. 66). At the scale of the human body, the Covid-19 pandemic has revealed a vast multitude of social and interpersonal division when it comes to whose medical and public health advice should be trusted (Ojikutu *et al.* 2022). Furthermore, the turn to right-wing populism throughout the world is difficult to imagine in the absence of a generalised crisis of trust (Heller *et al.* 2022). While filtered through local cultures across its many locations, the demagogues' formula is largely the same – the existing order cannot be trusted so you *need* to trust me.

One might even suggest that today the concept of trust itself can rarely be trusted in real terms.

Cotterrell wrote that 'a likely effect of insufficient emphasis on moral foundations of trust relationships in big trusts and, more generally, in the systems which [pervade in] social, economic and political life is that, where possible, people vote with their feet ... ' (1993, p. 94). This does not mean that the alternatives to which many turn are actually morally trustworthy, or even truly trusted in any deep sense of the term. The alternative might be that in which one merely *hopes* will be practically more trustworthy than what preceded it, as one comes to feel that they have little option but to 'entrust' 'the devil you don't know'. People might '[opt] out of involvement and

https://doi.org/10.1017/S1744552326100603 Published online by Cambridge University Press

concern', or 'use alternative (sometimes illegitimate) methods for protecting one's interests, acting perhaps on the basis of distrust rather than trust'. At least, people become more sceptical about involving themselves 'in relationships of reliance which appear to them increasingly insecure' (ibid.).

When thinking through this polycrisis of trust, a common factor is how the present age is one of astronomical economic inequality where wealth provides privileged access to political power. Across such divides, there is little prospect for a common sense of community to ground a common sense of morality (Magnani 2024). The interests between those who profit immensely from immiserations including, but in no way limited to, misinformation, war, pollution and physical/mental health disorders, are fundamentally irreconcilable with the interests of the vast majority of people who seek to live long, healthy and dignified lives (Tyner 2019). In other words, what is the meaning of common social trust in a world where, according to the latest Oxfam (2026) report on global inequality, 'billionaires [are] estimated to be 4,000 times more likely to hold political office than ordinary citizens'. Mass alienation cannot but result from this maldistribution (Tyner 2022).

## 4 Trusting and the trust

When comprehending how such extreme inequality is possible, the trust as a legal instrument is of central importance. As a means of preserving generational wealth and placing it beyond transparency, the trust has flourished under conditions of neoliberal privatisation and financialisation (Harrington 2017). This is especially true as it enables wealth-holders with access to high-level legal and financial service providers to escape a variety of regulatory restrictions concerning taxation and indebtedness (Bennett and Hofri-Winogradow 2021). For his part, Cotterrell's (1987) scholarship was crucial in showing how the inequities made possible by trusts and a trusting belief in liberal notions of fairness and equality could only coexist by virtue of intensive concentrations of ideology, understood as the ability of ideas to mask domination.

While knowledge of these trusts-based inequities might lead one to rationally conclude that trusts as a legal arrangement should be abolished, such a stance would be short-sighted. It is possible to imagine that the trust – as a unique vessel for distribution according to equitable mandates – might be retooled to accomplish a number of egalitarian ends. This might include the empowerment of working people, the reduction of socio-economic inequality and even reparations for historical injustices via the disgorgement of unjust gains (Meister 2011, pp. 233–47; Meister 2021). Cotterrell (1993) himself offered important thoughts as to how trusts should be categorised and regulated according to the social purposes they served. On this account, what must be developed is a principled method for consequentially distinguishing between the social purpose and utility of a capital management trust that serves the very rich and a pension trust intended to compensate the labour that creates the foundations of wealth (Cotterrell 1993, pp. 90–93). To think of re-shaping trusts toward such ends must not be done without thinking about broader socio-legal landscapes of trust in the actually existing world. Here, as Hendrik Simon (2025) argues, to focus too heavily on the decline of trust is to potentially ignore how new manifestations of trust forming in the breakdown of once trusted institutions might mobilise to build fairer and more equitable orders of social life. For those seeking to stand in solidarity with these movements, many questions are open as to how new formulations on the law of trusts might legally entrench new regimes of distribution according to these social visions.

Cotterrell's theories of law and society generally and the law of trusts specifically could certainly have much to contribute to the above-envisioned horizons. Yet, in furthering consciousness of trusting as it simultaneously exists within and beyond the law, we must confront a key disjuncture. In returning to the problematic posed at the beginning, while Cotterrell's ideas have greatly inspired those interested in law's social functions generally on the one hand

https://doi.org/10.1017/S1744552326100603 Published online by Cambridge University Press

(Nobles and Schiff 2014), *and* provided the grounding for a new generation of critical trusts scholarship on the other (Piška and Gibson 2024), the two discourses are not in sufficient dialogue. If a new understanding of trusts is to serve the struggle to build a new society where collective trust is experienced by the vast majority, this gap must be overcome. To only study the legal dimensions of social trust in a broadly theoretical way is to miss out on how exactly the law of trusts functions in ways that control the distribution of resources, authority and obligation that ultimately shape the very social reality being studied. To only study the law of trusts doctrinally is to easily sink into consciousness-insulating technical debates and thus be easily blinded to the stakes of how trust and/or mistrust, at their most extensive scales, make and unmake the social world in which the law of trusts inevitably operates. Beginning with the most socially focused efforts to centre trust in the study of law and concluding with the most technical doctrinal reckoning with the law of trusts, this special issue is arranged across a spectrum between these approaches to studying trust and trusts. Through this arrangement, we hope to avoid as many blind spots in the consciousness of trusting as possible. The ideas of Cotterrell provide a common thread through which this unfolding endeavour might make sense.

## 5 Contributions to this issue

Beginning with a concern about how to understand trust within the context of socio-legal research itself, Allison Lindner builds upon Cotterrell's framework for the sociological interpretation of trusting to deliver a methodology for empirical researchers. Specifically, she focuses on examples from her fieldwork within the South African informal waste economy and the questions it raises on how to manage challenges in building trusting relationships between researcher and respondent. In the second contribution, Cyprian Kambili also focuses on informal economies in Africa. He draws from Cotterrell's concept of community based on trust-centred interactions in society to offer an alternative approach to understanding informality in African 'development' contexts, one which reconceives law in ways that include other normative orders that so far have been insufficiently accounted for in Economic Sociologies of Law. These first two contributions, while borrowing insights from Cotterrell about the legal instrument of the 'trust' as it is known in common law systems, are not about 'the trust' but concern important politics of *trusting* within societies in the Global South.

In showcasing the relevance of trusts as a legal instrument to the situations detailed by Lindner and Kambilli, Eric Loefflad and Veronika Stoyanova consider the significance of the legal device of the trust vis-à-vis sociopolitical trusting at its broadest, as these conceptions of trust concern the rise of neoliberalism in the contexts of decolonisation, the Cold War and ideological struggles over the nation-state. They focus on the role of offshore trusts in weakening efforts of post-colonial, and later post-socialist, states to build trustworthy institutions for their societies, with respect to the transformations wrought by the end of empire in the Global South and the end of the Cold War in Eastern Europe. Through this account, they centre the issue of how violence and mis-management within these historically marginalised locations are typically blamed on local cultures as opposed to the transnational legal innovations that, through offshore trusts, facilitate capital flight and its resulting local deprivation. On this matter of trusts as a political question, Jedediah Kroncke takes up Cotterrell's call for further sociological inquiry into the law of trust by theorising the 'permissive invisibility' of trust law. That is, the way in which trusts quietly confer social power which legal systems simultaneously perpetuate and shield from democratic oversight. Through this account, he poses the question of why, despite their role in structuring social and political life, trusts – in contrast to so many other areas of law – maintain a low democratic salience among broader political communities.

From here, Raul Madden offers an approach, inspired by Cotterrell, to introducing students to trusts law with a view to helping them engage in learning and enhance their understanding. That

https://doi.org/10.1017/S1744552326100603 Published online by Cambridge University Press

method poses the problem of the role of trusts in relation to the increasingly economically unequal societies with which students are familiar. To facilitate classroom discussions, it draws upon Cotterrell's insights about power relationships between trustees and beneficiaries as well as the extent to which the trusting that beneficiaries place in trustees is displaced toward the law itself. The conversation would ultimately lead to the question of whether some classes within society are more able to meaningfully trust in the law of trusts than others. In concluding with the question of how creative legal practitioners might 'restore trust in the trust', Michael Bryan considers problems arising from the trend that Cotterrell termed 'moral distancing' toward displacement of actual trusting by beneficiaries from trustees toward systems that hold them accountable. His focus is upon the 'contractualisation' of trust; in other words, the departure from default rules that protect beneficiaries through terms of trust instruments that shield trustees from liability.

## 6 Continuing Cotterrell's work: traversing, extending and expanding the bridge

This special issue thus traverses, expands and extends a bridge of intellectual work that Cotterrell built, over a series of decades, for the consciousness of our communities about trusting. Others, including the contributors to the edited volume collected by Piška and Gibson (2024), have put excellent work into this bridge, predominantly in relation to the world of trusts. Here, the bridge is expanded in various directions, to connect spaces across trusting in researchers, informal economies and economic systems, the state and its institutions, as well as the law of trusts in the context of legal education and practice. The bridges that connect those who have trusted and those who have been trusted are continually overburdened and burned in contemporary society. At this time, then, the intellectual work of Cotterrell that has every potential to help to strengthen existing bridges and establish new ones is more demanding of continuation than ever.

## References

**Afroogh S *et al.*** (2024) Trust in AI: Progress, challenges, and future directions. *Humanities and Social Sciences Communications* **11**, 1–30.

**Bennett M and Hofri-Winogradow A** (2021) The use of trusts to subvert the law: An analysis and critique. *Oxford Journal of Legal Studies* **41**(3), 692–718.

**Carton W and Malm A** (2024) *Overshoot: How the World Surrendered to Climate Breakdown*. London: Verso.

**Coeckelbergh M** (2024) *Why AI Undermines Democracy and What to Do about It*. Cambridge: Polity.

**Cotterrell R** (1986) Liberalism's empire: Reflections on Ronald Dworkin's legal philosophy. *American Bar Foundation Research Journal* **12**(2–3), 509–524.

**Cotterrell R** (1987) Power, property and the law of trusts: A partial agenda for critical legal scholarship. *Journal of Law and Society* **14**(1), 77–90.

**Cotterrell R** (1993) Trusting in law: Legal and moral concepts of trust. *Current Legal Problems* **46**(2), 75–95.

**Cotterrell R** (2008) *Living Law: Studies in Legal and Social Theory*. Farnham: Ashgate.

**Harrington B** (2017) Trusts and financialization. *Socio-Economic Review* **15**(1), 51–63.

**Heller A *et al.*** (2022) On the association of interpersonal trust with right-wing extremist and authoritarian attitudes. *Journal of Social and Political Psychology* **10**(2), 460–74.

**Magnani E** (2024) Cultures of inequality: Labor, social finance, and the swinging pendulum of trust in capitalism. *Social Currents* **11**(4), 308–326.

**Meister R** (2011) *After Evil: A Politics of Human Rights*. New York: Columbia University Press.

**Meister R** (2021) *Justice Is an Option: A Democratic Theory of Finance for the Twenty-First Century*. Chicago: University of Chicago Press.

**Nobles R and Schiff D** (eds.) (2014), *Law, Society and Community: Socio-Legal Essays in Honour of Roger Cotterrell*. Abingdon: Routledge.

**Ojikutu B, Bogart L and Dong L** (2022) Mistrust, empowerment, and structural change: Lessons we should be learning from COVID-19. *American Journal of Public Health* **112**(3), 401404.

**Oxfam** (2026) Billionaire wealth jumps three times faster in 2025 to highest peak ever, sparking dangerous political inequality says Oxfam (Oxfam) https://www.oxfam.org.uk/mc/ax2v6v/ (accessed 25 February 2026).

**Peterke S and Van Aggelen J** (2023) International law's premature farewell to the concept of war. *Brazilian Journal of International Law* **20**(1), 91–113.

https://doi.org/10.1017/S1744552326100603 Published online by Cambridge University Press

**Piška N and Gibson H** (eds.) (2024) *Critical Trusts Law: Reading Roger Cotterrell*. Coventry: Counterpress.
**Shaw M** (2025) *The New Age of Genocide*. Newcastle on Tyne: Agenda Publishing.
**Simon H** (2025) Class conflict as catalyst of trust: A new research agenda for international political sociology. *International Political Sociology* **19**, 1–20.
**Tooze A** (2018) *Crashed: How a Decade of Financial Crisis Changed the World*. New York: Viking Press.
**Tyner J** (2019) *Dead Labor: Toward a Political Economy of Premature Death*. Minneapolis: University of Minnesota Press.
**Tyner J** (2022) *The Alienated Subject: On the Capacity to Hurt*. Minneapolis: University of Minnesota Press.

**Cite this article:** Loefflad E and Madden R (2026). Trusting in the world. *International Journal of Law in Context* **22**, 371–376. https://doi.org/10.1017/S1744552326100603

https://doi.org/10.1017/S1744552326100603 Published online by Cambridge University Press