



Law: Reactive or Proactive?

McGill Annual Graduate Law Conference

Dean Maxwell and Isle Cohen Seminar on International Law

Wednesday May 8th, 2019 & Thursday, May 9th, 2019

New Chancellor Day Hall, Atrium, Moot Court and Third Floor, Faculty of Law, McGill University,
3644 Peel St, Montreal, QC H3A 1W9

Conférence annuelle des étudiant.e.s des cycles supérieurs en
droit de l'Université McGill

Séminaire en droit international du doyen

Maxwell et Isle Cohen

Les mercredi 8 mai et jeudi 9 mai 2019

New Chancellor Day Hall, Atrium, Moot Court et 3^{ème} étage, Faculté de droit, Université McGill,
3644 rue Peel, Montréal QC H3A 1W9

The Graduate Law Students Association (GLSA) of McGill University's Faculty of Law is pleased to present the 12th Annual Graduate Law Conference and the Dean Maxwell and Isle Cohen Seminar on International Law. The aim of these events is to offer an academic forum for graduate students, scholars and members of the legal profession, government and industry to exchange ideas and share approaches that bridge the gap between law and other disciplines.

L'Association des étudiant.e.s des cycles supérieurs en droit de la faculté de droit de l'Université McGill est fière de présenter la 12^{ème} édition de sa conférence annuelle et le Séminaire en droit international du doyen Maxwell et Isle Cohen. La conférence se veut un forum académique destiné aux étudiant.e.s des cycles supérieurs, aux chercheur.e.s, aux membres du barreau, du gouvernement et du secteur privé afin d'échanger des idées et partager des approches, et combler le fossé entre le droit et les autres disciplines.

Coming from all over the world, participants will gather in McGill University's uniquely rich intellectual environment to discuss the theme of 'Law: Reactive or Proactive?'. This theme acknowledges that tensions in law's relationship with the past and the future have long animated legal, philosophical and political thought. This year's program promises new perspectives – both theoretical and practical – in relation to these old but persistent questions.

Des quatre coins du monde, les participants et participantes se réuniront dans l'environnement intellectuel unique de l'Université McGill pour discuter du thème 'Le droit, réactif ou proactif ?'. Ce thème reconnaît en particulier que la tension entre le droit, le passé et le futur a longtemps animé la pensée juridique, philosophique et politique. Le programme de cette année engage de nouvelles perspectives, tant théoriques que pratiques, à ces questionnements qui ne sont pas nouveaux mais persistants.

Discussions will take place in two different kinds of sessions: panel sessions; and the Dean Maxwell and Isle Cohen Doctoral Seminar.

- In the panel sessions, a balance will be struck between individual presentations and lively discussion between

the participants and the audience. Accordingly, presentations will be kept short and moderators will take an active role in stimulating the exchange.

- In the Seminar, discussion of each paper will be inspired by a presentation by a discussant followed by a response from the author.

Deux types de séances caractériseront les discussions : les panels de présentations et le Séminaire doctoral du doyen Maxwell & Isle Cohen en droit international.

- *Lors des panels de présentations, les conférenciers et conférencières présenteront leur conférence, suivie d'une discussion avec les participant.e.s et l'audience. Pour ce faire, les présentations seront succinctes et les modérateurs et modératrices auront un rôle actif pour stimuler les échanges.*
- *Lors du Séminaire doctoral, la discussion de chaque article sera inspirée de la présentation du répondant.e, suivi d'une réponse de l'auteur.e.*

Members of the audience are highly encouraged to take part in the discussions following the presentations.

L'audience est fortement encouragée à participer à la discussion suite aux présentations.

In addition to these discussions, the conference will include keynote speeches from Dr. Oonagh Fitzgerald (Director, International Law Research Program, Centre for International Governance Innovation) and Dr. Genevieve Renard Painter (Assistant Professor, Simone de Beauvoir Institute, Concordia University).

Outre ces discussions, la conférence accueillera également deux conférencières d'honneur : la Dr. Oonagh Fitzgerald (Directrice, International Law Research Program, Centre for International Governance Innovation) et la Dr. Genevieve Renard Painter (Professeure adjointe, Institut Simone de Beauvoir, Université Concordia).

The organizing committee welcomes all participants and offers its best wishes for a successful event.

Le comité organisateur vous souhaite la bienvenue et espère le succès de cet événement.

The McGill Annual Graduate Law Conference is proudly held in collaboration with the Dean Maxwell and Isle Cohen Doctoral Seminar Series in International Law & the McGill Faculty of Law Graduate Programs Office.

La Conférence annuelle des étudiant.e.s des cycles supérieurs en droit de l'Université McGill est fièrement organisée avec la collaboration du Séminaire en droit international du doyen Maxwell et Isle Cohen et le Bureau des programmes des études supérieures de la Faculté de droit de l'Université McGill.

Also sponsored by/ *La conférence est également parrainée par* : McGill Graduate Law Students Association □ Dean Robert Leckey □ Prof. Angela Campbell □ Prof. Helge Dedek □ Prof. Evan Fox-Decent □ Prof. Fabien Gélinas □ Prof. Brian Havel □ Prof. Richard Janda □ Prof. Daniel Jutras □ Prof. Johanne Poirier □ Prof. Nandini Ramanujam □ Prof. Mark D Walters.

Conference Schedule

DAY 1: WEDNESDAY, MAY 8TH, 2019

JOUR 1: MERCREDI 8 MAI 2019

8:30 REGISTRATION AND BREAKFAST *INSCRIPTION ET PETIT-DÉJEUNER*

New Chancellor Day Hall, Atrium

9:00 INTRODUCTION

New Chancellor Day Hall, Moot Court (Room Salle 100)

Prof. Kirsten Anker

Faculty Welcome *Mots de bienvenue de la faculté*

Organizing Committee *Comité organisateur*

Introductory Session *Session d'introduction*

9:30 SESSION 1: Law and the Constitution of Society *Droit et société*

The Active Narrative in Law

Le récit actif en droit

New Chancellor Day Hall, Moot Court (Room Salle 100)

Prof. Shauna Van Praagh (McGill University)

Moderator *Modératrice*

Brian Cox (Queen's University)

Two Calls from Kunduz: The Discord Between Prospective Law and Retrospective Narratives in Armed Conflict

Gabriella Jamieson (McGill University)

Teaching Constitutional Law as Storied

Shannon Russell (University of British Columbia)

Penetration Requirements in Sexual Offences: Exploring Law Reform & Sentencing in England & Wales and Canada

Law as Reactive to Social Change

Le droit réactif au changement social

New Chancellor Day Hall, Room Salle 312

Alexandra Pasca (McGill University)

Moderator *Modératrice*

Miroslaw Sadowski (University of Wrocław)

Reactionary Revolution, Illiberalism and Law in Central Europe

Ceren Mermutluoglu (MEF University)

Criminal Law as the Voice of the Zeitgeist: The Turkish Example on Insulting the Head of State

Rachel Li (McGill University)

Making Environmental Regulations Work in Developing Countries: a Case Study of China

11:00 COFFEE BREAK PAUSE CAFÉ

New Chancellor Day Hall, Atrium

11:15 KEYNOTE ADDRESS: Dr. Genevieve Renard Painter How Do Words Make the Land in Time? History as Legal Method

CONFÉRENCIÈRE D'HONNEUR : Dr. Genevieve Painter Comment les mots font-ils la terre à temps? L'histoire comme méthode juridique

New Chancellor Day Hall, Moot Court (Room Salle 100)

12:15 VIDEO PRESENTATIONS AND STRUCTURED GROUP DISCUSSIONS *PRÉSENTATIONS VIDÉO ET DISCUSSIONS DE GROUPES STRUCTURÉES*

New Chancellor Day Hall, Moot Court & Rooms Salles 312 and 316

Georgina Dimopoulos (University of Melbourne)

Bound by Precedent or Advancing Children's Rights? Balancing Reactivity and Proactivity in Judicial Regulation of Medical Treatment for Children Diagnosed with Gender Dysphoria in Australia

Ramona Elisabeta Cirlig & Adrian Boboaca (University of Bucharest & Mozaic Works)

DAY 1: WEDNESDAY, MAY 8TH, 2019**JOUR 1: MERCREDI 8 MAI 2019***Agile Law: between Reactive and Proactive law***Amin Yacoub (New York University)***Who Holds the UN Responsible for its human rights breaches? An open inquiry into the Haitian case***Titiaan Keijzer (Erasmus University Rotterdam)***Beyond Agency Theory: Life-Cycle Implications for Voting Rights, Dual Class Structures and Index Composition***Dr. Martin Jarrett (University of Mannheim)***The Reactionary Police Powers Defence***12.45 LUNCH**

New Chancellor Day Hall, Atrium

13:30 SESSION 2: Sites of Tension and Balance between Reactivity and Proactivity *Sites de tension et balance entre réactivité et proactivité***Courts****Les tribunaux**

New Chancellor Day Hall, Room Salle 312

Prof. Omar Farahat (McGill University)Moderator *Modérateur***David Gill (University of Victoria)***A Failure in Principle: Gladue and the Incoherence of Canadian Sentencing Reform***Maria Bano Javed (Royal Holloway, University of London)***Judicial Proactivity: The Legal and Political Role of Sharia Councils in England and Wales***Xi Zhang (New York University)***On Stare Decisis: The Reactivity, Proactivity and Integrity of Law***Regulator, Risks and Social Policy****Législateurs, risques et politique sociale**

New Chancellor Day Hall, Moot Court (Room Salle 100)

Prof. Sebastien Jodoin (McGill University)Moderator *Modérateur***Poland Lai (York University)***Looking Back / Regulating Forward: the Use of Risk-based Approaches in Social Regulation***Yukio Sakurai (Yokohama National University)***Risk of the Elderly with Dementia and its Safeguards: Reactive or Proactive?***Maria Luiza Moura (University of São Paulo/University of Montreal)***Reactivity or Proactivity of Quebec's Law Facing Transgender, Intersex, and Non-binary People's Rights***David Desbaillets (UQAM)***Transnational Study of Housing First Models: Canada and Finland's National Housing Strategies and the Right to Housing***15:00 COFFEE BREAK PAUSE CAFÉ**

New Chancellor Day Hall, Atrium

15:15 SESSION 3: Reactions to a Changing World *Réactions à un monde en mutations***Issues in Changes to the Administration of Justice****Problématiques liées aux changements de l'administration de la justice**

New Chancellor Day Hall, Moot Court (Room Salle 100)

Prof. Fabien Gélinas (McGill University)Moderator *Modérateur***Issues in Changes to Health and Medicine****Problématiques liées aux changements dans le secteur médical et de la santé**

New Chancellor Day Hall, Room Salle 312

Dr. Agnieszka Doll (McGill University)Moderator *Modératrice*

DAY 1: WEDNESDAY, MAY 8TH, 2019**JOUR 1: MERCREDI 8 MAI 2019****Alexandra Allan (University of Cambridge)***Case Management and the Reform of Civil Procedure: Ideally Proactive, Practically Reactive?***Raphael Ribeiro (University of Ottawa)***Are We Prepared for "In Vitro" Gametogenesis? An Analysis of Brazil's and Canada's Legal Frameworks***Anastasia Konina (University of Montreal)***Judicial Administration in the Age of Privatization: Revisiting the Relationship between the Executive and Judicial Branches of Government***Lucy Davis (University of Limerick)***Shining a Spotlight on Do Not Attempt Resuscitation (DNAR) Orders in Ireland: The Need for a Proactive Response to Resuscitation Decision-making in Ireland***Jo Murray (McGill University)***Stuck in the Traffic Jam or Round and Round the Roundabout? A Discussion of the Red Light/Green Light Theories of Administrative Law***Mindy Nunez Duffourc (Passau Universität)***The Legal Reaction (or absence thereof) to Modern Error Prevention Science: A Duty to Manage Healthcare Risks in the U.S. and Germany***17:00 COCKTAIL**

First Floor Restaurant (in Basement), Thomson House, 3650 McTavish Street (across the street from the Law Faculty)
Restaurant, premier étage, Thomson House, 3650 rue McTavish Street (en face de la Faculté de droit)

DAY 2: THURSDAY, MAY 9TH, 2019**JOUR 2: JEUDI 9 MAI 2019****8:30 BREAKFAST PETIT-DÉJEUNER**

New Chancellor Day Hall, Atrium

9:00 INTRODUCTION

New Chancellor Day Hall, Moot Court (Room *Salle* 100)

Organizing Committee *Comité organisateur*
Housekeeping

9:15 SESSION 4: Dean Maxwell and Isle Cohen Seminar on International Law Séminaire en Droit International du Doyen Maxwell et Isle Cohen

New Chancellor Day Hall, Moot Court (Room *Salle* 100)

Prof. René Provost (McGill University)
Moderator *Modérateur*

Sean O'Reilly (London School of Economics)
Lost Futures and the Temporal Character of International Law

Discussed by/ *Répondante*: Heather Anderson (McGill University)

Julia Selman Ayetey (McGill University)
A Proactive Approach to International Space Law Compliance

Discussed by/ *Répondant*: Andrew Simon-Butler (University of Melbourne)

10.30-10.45 – Coffee break interval *Pause café*

Andrew Simon-Butler (University of Melbourne)
Compulsory Jurisdiction in the "Province of all Mankind"

Discussed by/ *Répondante*: Julia Selman Ayetey (McGill University)

Shivangi Misra (Queen's University)

Discussed by/ *Répondant*: Rine Vieth (McGill University)

DAY 2: THURSDAY, MAY 9th, 2019**JOUR 2: JEUDI 9 MAI 2019**

Breaking up the Band of Brothers: A feminist perspective on International Humanitarian Law

12:00 LUNCH

New Chancellor Day Hall, Atrium

13:00 KEY NOTE ADDRESS: Dr. Oonagh Fitzgerald (moderated by Prof. Richard Gold)

CONFÉRENCIÈRE D'HONNEUR Dr. Oonagh Fitzgerald (modéré par Prof. Richard Gold)

New Chancellor Day Hall, Moot Court (Room Salle 100)

14:00 SESSION 5: Corporate and Economic Perspectives *Perspectives corporatives et économiques*

Reactions of and to Corporations
Réactions des et aux corporations

New Chancellor Day Hall, Moot Court (Room Salle 100)

Prof. Ignacio Cofone (McGill University)
Moderator *Modérateur*

Michał Lutek (University of Warsaw)
The Possibility of the Use of the Blockchain Technology in Aviation Industry

Maria Lucia Passador (Bocconi University)
In Vogue Again: The Re-Rise of SPACs in the IPO Market

Ngozi Nwoko (University of Victoria)
The Imperative of Proactive Elements in a Draft Legally Binding Treaty on Transnational Corporations with respect to Human Rights

Frank Giaoui (Columbia University)
Reducing Judicial Uncertainty from Facts to Law : Methodological Innovations in Contract Damages

Forward and Backward-Looking Perspectives in International Economic Law
Perspectives prospectives et rétrospectives en droit économique international

New Chancellor Day Hall, Room Salle 312

Dr. Lukas Vanhonnaecker (McGill University)
Moderator *Modérateur*

Chen Yu (McGill University)
Investor-State Dispute Settlement, Treaty Interpretation, Judicialization, Political Intervention

Yueming Yan (McGill University)
Anti-Corruption Provisions in International Investment Agreements: Reactive or Proactive?

Dr. Siri Silvereke (Luxembourg University)
The Multilateral Investment Court (MIC) with Wisdom of Hindsight

15:30 COFFEE BREAK PAUSE CAFÉ

New Chancellor Day Hall, Atrium

15:45 SESSION 6: International Perspectives *Perspectives internationales*

Reactivity and Proactivity in Human Rights and International Law
Réactivité and proactivité en droits de la personne et droit international

New Chancellor Day Hall, Room Salle 312

Prof. Nandini Ramanujam (McGill University)
Moderator *Modératrice*

Slava Balan (University of Ottawa)
Rethinking Law and Human Rights: What does a Pro-Active Human Rights and Gender Based Approach to Law Mean?

A Preference for Proactivity in Public International Legal Order?
Une inclination à la proactivité en droit international des conflits armés ?

New Chancellor Day Hall, Moot Court (Room Salle 100)

Prof. Jaye Ellis (McGill University)
Moderator *Modératrice*

Jeong Woo Kim (National University of Singapore)
Metajuristic Pluralism, Reactivity, and Proactivity in the Law of War

DAY 2: THURSDAY, MAY 9th, 2019**JOUR 2: JEUDI 9 MAI 2019****Atagün Kejanlioglu (McGill University)***ECHR v Art as a Proactive Form of Expression***Aleksandra Smith (Queen's University)***A Case for Humankind as Subject of International Law***Sanja Dragić (Graduate Institute of International and Development Studies)***Unraveling Re-Activity: Case Study of the Human Rights Lex Specialis Treaty Rule***Gabriel Melo Viana (Universidade de Sao Paulo, USP, Brazil)***From the History to the Future: Roman Legal System as Latin American Stateless Law***Patryk Gacka (Warsaw University)***Victims of International Crimes – Then and Now? Legal and Victimological Perceptions of Transgenerational Harm***David Yuga Mansfield (University of Tokyo)***The International Criminal Court and Reparation Orders: A Proactive Future for a Reactive Tool?***Marie Steinbrecher (Royal Holloway, University of London)***The Importance of Legislation for Torture Prevention***Zachary Vermeer (University of Oxford)***Pro-Government Intervention in Civil Wars: The Quest for a 'Proactive' Prohibition and the 'Reactive' Reality***17:15 CONCLUSION**

New Chancellor Day Hall, Moot Court (Room Salle 100)

Organizing Committee *Comité organisateur*Closing Remarks *Mots de clôture***19:00 DINNER – Optional DÎNER – Optionnel****La Khaima**

142 Avenue Fairmount O, Montréal, QC H2T 2M5