LAW & PREJUDICE

16th Annual McGill Graduate Law Conference

4th - 5th
MAY 2023

General Conference

Dean Maxwell and Isle Cohen Doctoral Seminar in International Law

Scotiabank Seminar on Addressing Anti-Racism, Diversity and Inclusion

"Ignorance is less remote from the truth than prejudice".

- Denis Diderot

McGill University
Graduate Law Students Association

DROIT *et* PRÉJUGÉS

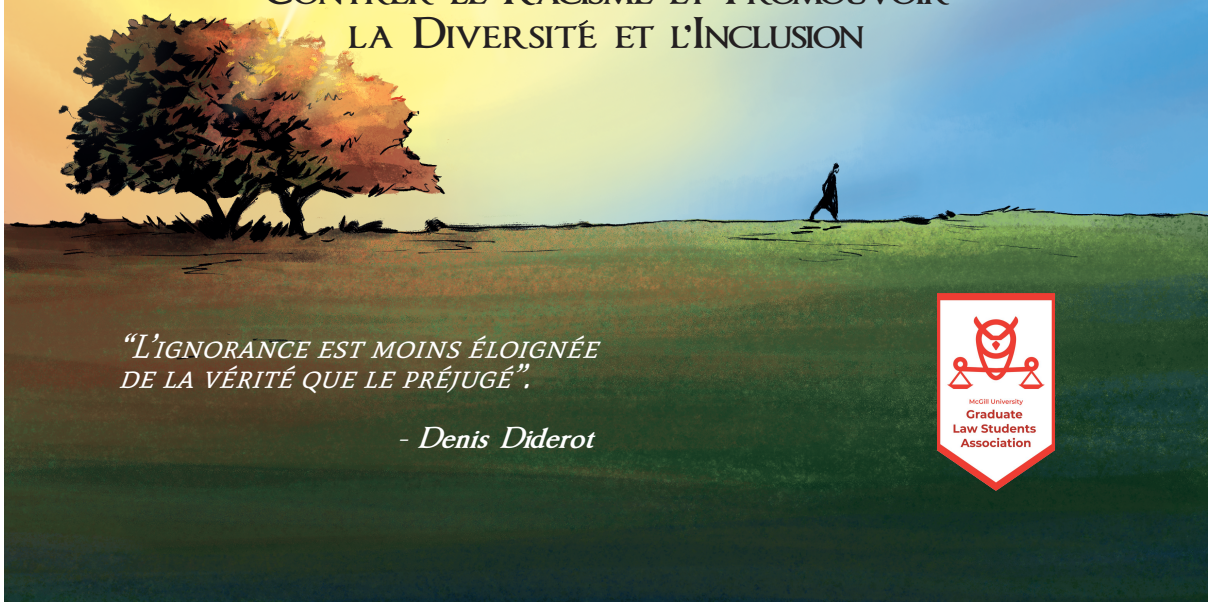
16ème conférence annuelle des étudiant.e.s
en droit des cycles supérieurs de McGill

4 - 5
MAI 2023

Conférence Générale

Séminaire Doctoral du Doyen Maxwell and Isle Cohen en Droit International

Séminaire de la Banque Scotia pour Contrer le Racisme et Promouvoir la Diversité et l'Inclusion



"L'ignorance est moins éloignée de la vérité que le préjugé".

- Denis Diderot

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ABSTRACTS AND PANELIST/ DISCUSSANT INTRODUCTION

SESSION I

Panelist: **Suzana Rahde Gerchmann** (*City, University of London*)

Suzana Rahde Gerchmann (she/her) is a PhD Candidate in Law and Graduate Teaching Assistant at City, University of London. Suzana is one of the Co-Directors of the Centre for Law and Social Change. Her research explores the gendered aspects of legal subjectivity, focusing on the relationship between law, gender and capital and the role of law (or the limits of law) in liberation. In her research, Suzana builds from Marxist Feminist and decolonial perspectives. She is inspired to challenge everyday injustices.

Abstract: *Gendered Subjectivity, Law and Capitalism: Identity, Gender Pricing, Women's Oppression and the Role of Law in Emancipation*

This research explores the legal dimension of subject formation, focusing on the relationship between law, gender and capital and the role of law (or the limits of law) in liberation. To unfold this entanglement, I take gender pricing – the practice of charging men and women differently for the same or substantially similar products and services where women are the most affected – as a case study.

Until now, legal scholarship analysed this phenomenon under a positivist/liberal scope and classified it as sex discrimination, claiming regulation as an efficient way to abolish gender pricing. However, these solutions do not address the problem adequately, as they rely on individualised and anti-discrimination measures, overlooking the structural causes of gender oppression and women's experiences in capitalist societies.

To have an emancipation-driven discussion, this gap must be filled. And to address it, my overarching research question is: How are law and capitalism interrelated in the gendered constitution of the legal subject as a consumer? Taking gender pricing as a case study, what

can we learn about (1) the legal aspects of a gendered subjectivity, (2) the meaning of being a woman in capitalist societies, and (3) the role of law (or the limitations of law) in liberation?

In responding to this question, through a theoretical methodology and a critical framework, I situate gender in capitalist societies. When I turn to gender pricing, I am interested in mapping the sites of intersection between law, gender and capital and how they are interlocked in a system that not only gives rights but imposes subjectivities. By unveiling the role of law in the construction of gender identities, I draw from a Marxist perspective, precisely Evgeny Pashukanis's Commodity Form Theory of Law, and hope to elucidate its limits in our struggle for liberation and explore different solutions to emancipation.

Discussant: **Sarah Groszewski** (*University of Portsmouth*)

Sarah Groszewski is a part time PhD student at the University of Portsmouth where she is researching the impact of orders made under section 8 of the Children Act 1989 on the lives of separated mothers. A keen advocate for digital transformation, she recently attended the UN Commission on the Status of Women (CSW) as a UK Delegate to work towards achieving gender equality through technological innovation. She also has experience within the field of domestic abuse, and is a trustee for a domestic and sexual abuse charity.

SESSION II

Panelist: **Guy Priver** (*Harvard Law School*)

Guy Priver is a doctoral student (SJD) at Harvard Law School, interested in the turn to the local in global governance. His research is focused on international law and the reorientation of peacebuilding and development projects to the local realm. He is also a grad student associate at the Weatherhead Center for International Affairs at Harvard University, and a research fellow at Molad – the Center for the Renewal of Israeli Democracy. Occasionally he also publishes op-eds on law and left politics.

Abstract: *The Turn to the Local in International Law: Development for Whom?*

In recent decades, cities have become central sites of global governance. Since the 1970s, international organizations have been gradually reorienting development agendas away from the advancement of nation building based on centralized bureaucracy toward policies at the local realm. Recently, international legal scholarship has also started theorizing the turn to the local, pointing to the embracement of human rights and environmental agendas by cities and celebrating their democratic, participatory and inclusive nature.

My paper offers a critical analysis of the international legal turn to cities. Focusing on "conflicted cities" which became sites for experimentation with novel legal and institutional approaches, the paper sheds light on the less visible ways in which international law has been functioning as a distributional instrument in its encounters with the "local".

It demonstrates how in divided Nicosia, World Bank loans and the international investment regime have been recruited to boost city development, creating a direct "global-local" relationship and rendering the nation state obsolete. However, International law's efforts to promote local development and community reconciliation, fruitful as they may be in some respects, might also generate some exclusionary effects. In Nicosia, the international imaginary of urban reconciliation is challenged by studies that document increasing gentrification, and violent repression of unauthorized local struggles – such as those undertaken by the Cyprian Occupy Movement, stating its claims in class rather than national terms.

Turning the gaze to Jerusalem, the paper demonstrates how international obligations to protect cultural heritage are being leveraged in local planning committees. However, it argues that the multiplicity of possible interpretations of international legal norms allows also reactionary and exclusive plans to be stated and justified on their behalf. Together, these case studies offer a nuanced depiction of the conflictual nature of local development and the emergence of cities as sites of global governance.

Discussant: **Mirosław Michał Sadowski** (*McGill University*)

I am a Doctor of Civil Law (DCL) alumnus of McGill University's Faculty of Law, a Research assistant at the Institute of Legal Sciences, Polish Academy of Sciences (INP PAN) and a Researcher at the Centre for Global Studies (CEG) at the Universidade Aberta in Lisbon. My main interests lie in the intersections between law and memory, sociology of law, cultural heritage law and the law of Hong Kong and Macau SARs, also exploring international law and political science in the research. My recently defended thesis focused on a comprehensive examination of the relationship between law and memory.

SESSION III

Panelist: **Bahareh Jafarian** (*University of Ottawa*)

Bahar Jafarian is a PhD candidate in Law at the University of Ottawa. Her research focuses on business and human rights law, with a strong background in international human rights law. While pursuing her PhD, Bahar has worked as a policy analyst at Environment and Climate Change Canada, where she participated in and contributed to international negotiations with international partners on trade and environment issues. Bahar's expertise in both international law and policy make her a valuable contributor to discussions on the intersection of business, human rights, and environmental issues.

Abstract: *Multi-faceted Conceptualization of the Dispute Settlement Mechanisms in North-South Free Trade Agreements: Where post-colonial Fears Collide with Environmental Obligations in International Trade*

The raison d'être of Free Trade Agreements (FTAs) is to augment trade among signatories. Dispute Settlement mechanisms (DSMs) in international trade agreements are essential tools for ensuring that Parties to the Agreement play by the rules and respect their commitments. Due to the driving negative impacts of global trade on the environment, and in the absence of a universal enforcement mechanism regarding the environment, most modern FTAs frequently address them, and include chapters on these areas.

From a policy perspective, the focal issue is to design the FTAs in a manner which would maximize environmental gains while minimize their harmful impacts on the environment. To achieve this goal, the provisions reflected in the Environment Chapter should be comprehensive and enforceable, aimed at ensuring that environmental protection is upheld as trade and investment is liberalized. Provisions should also promote robust environmental governance as well as address global environmental issues.

Most often, chapters or provisions covering non-trade issues such as labour or the environment are not subjected to the FTA DSM. Nevertheless, although many countries do not follow a consistent approach with respect to the application of dispute settlement, the overall trend is that most countries resist accepting an Environment Chapter that would be subject to a DSM. This is especially pertinent in agreements among asymmetric

states, leading less developed economies to adopt weaker or "diplomatically-based solutions" to dispute settlement due to sovereignty-based concerns. Such concerns are particularly tangible when negotiating with some Asian States or countries across the African continent with post-colonial fears of transferring power to supranational institutions.

This study revisits the enforceability of environmental obligations in North-South FTAs, both in terms of conceptualization and scope, to analyze the richness of agreements showcasing diverse DSMs while considering the power asymmetry among Parties and the impact of their post-colonial concerns.

Discussant: **Federico Suarez** (*McGill University*)

Doctoral Candidate of the Faculty of Law at McGill. Professor of Constitutional Law at Externado de Colombia University. Researching the relationship between International Investment Law and Investment Arbitration with Constitutional Law in Latin America from a Law and Political Economy framework. Master in International Commercial Law with Public International Law from Kent Law School and Master in Human Rights and Democratization from the Externado in agreement with Carlos III of Madrid, Spain. Visiting Fellow of the Transnational Law Institute at Kings College London and the Nathanson Centre for Transnational Human Rights of Osgoode Hall School of Law, York University, Toronto.

SESSION IV

Panelist: **Karinne Lantz** (*Dalhousie University*)

Karinne Lantz is a doctoral candidate at the Schulich School of Law at Dalhousie University in Halifax, Canada, where she also teaches part-time. Her current research focuses on implementing and securing the international human right to health in Canada and abroad. Prior to undertaking doctoral studies, Karinne was an assistant professor at the College of Law at the University of Saskatchewan. She previously practiced labour and employment law in Toronto and worked as a labour relations officer in Saskatchewan. Karinne received a JD and an MA in international affairs through a joint program at the University of Ottawa and the Norman Paterson School of International Affairs at Carleton University. She holds an LLM in international law from the University of Cambridge, as well as a BA in political science and international development studies, and a BSc in chemistry from Saint Mary's University in Halifax.

Abstract: *Mind the Gap: Toussaint and the Reception of International Human Rights Law in Canada*

This article explores the reception of international law in Canada and how the failure to implement human rights treaties legislatively can create a barrier to their effective implementation domestically. The enforcement gap that arises when international human rights that Canada has committed to respecting cannot be tied to the Canadian Charter of Rights and Freedoms (or other legislation) is illustrated by the (as of yet) unsuccessful efforts of the late Nell Toussaint to use international human rights law to assist with claims against the federal government regarding her rights to health, life, and non-discrimination.1 In addition to exploring the enforcement gap that may arise on account of Canada's human rights treaty-making practices—particularly for socio-economic human rights—this paper will examine ways in which this gap may be closed. This paper will also argue that Ms. Toussaint's litigation demonstrates that questions can be asked about the litigation strategy used by governments in Canada when defending claims invoking international human rights, which Justice Perell of the Ontario Superior Court of Justice has poignantly described as, "a dog whistle argument… reek[ing] of… prejudicial stereotype."2 Finally, this paper also will examine the strength of the argument that Canada is under a legal—in addition to a normative—obligation to undertake its international human rights treaty obligations in good faith and give meaning to the right to an effective remedy, particularly by taking steps to implement human rights treaties it has ratified and by giving due

consideration to abiding by decisions of bodies (like the United Nations Human Rights Committee) that Canada has recognized have the competency to hear individual complaints arising under human rights treaties.

Discussant: **Leanna Katz** (*McGill University*)

Leanna Katz is a doctoral student at McGill University Faculty of Law and an O'Brien Fellow at the Centre for Human Rights and Legal Pluralism. Her current research studies the relationship between the state, law, and collective organizing by focusing on case studies in the childcare sector. Her interests include labour and employment law, social welfare law, contract law, administrative law, and critical and feminist legal theory. She holds an LL.M. from Harvard Law School, a J.D. from the University of Toronto Faculty of Law, and a B.A.Sc. from McMaster University.

SESSION V

Panelist: **Janakan Muthukumar** (*Carleton University*)

Janakan Muthukumar is a doctoral candidate at the Department of Law and Legal Studies at Carleton University, where he conducts research on the intersection of international law and Canadian foreign policy regarding nuclear weapons. In addition, Mr. Muthukumar serves as a senior fellow at the NATO Association of Canada and conducts research with the NATO Research Group at Trinity College, University of Toronto. He has also obtained an LL.M from Queen Mary University of London, as well as a MA in Human Rights and Democratization from the University of Sydney, Australia. Mr. Muthukumar's research interests are primarily focused on the areas of collective security, foreign policy, international law, and international legal theory.

Abstract: *Ukraine v Russia: A Positivist Approach of International Law*

The Order for Provisional Measure made by the International Court of Justice (ICJ) is part of the legal proceeding Ukraine initiated against Russia in response to Russia's use of force. As Russia claimed that its military intervention is to protect certain groups of people in Ukraine from an alleged genocide conducted by the Ukrainian government, Ukraine decided to dispute this argument by requesting ICJ to make legal declarations and provisional measures for Russia to immediately suspend and not to furtherance the military operation and refrain from any action that would 'aggravate or extend the dispute. Although ICJ ordered provisional measures, calling Russia to suspend its military operations, Russia's operations have only escalated since. Russia's deliberate intention not to participate in the oral proceedings and their illegitimate use of force contextualize the disorderly reality and the limited capacity of international law to be enforced.

While realists may argue that power precedes law, I argue that international law – irrespective of being largely unenforceable – continuously impacts international relations and state decision makings by referring to the positivist argument made by Orakhelashvili. By articulating that international law delivers the locus classicus, I argue that international law operates as a 'sleight of hands' between the relationship of statehood and sui generis sovereignty. As part of positivist ideology, functionalism holds states to create international organizations to achieve common goals that individual states cannot achieve.

Interpreting these theoretical arguments in Ukraine – Russian conflict, I argue that the consequences of rejecting international law not only isolate Russia but equally demonstrate the power of international law in bringing collective action against perpetrators at possible forums. While Russia denies the order of ICJ, Russia's intention to submit a legal document to ICJ as part of the proceeding indicates Russia's motive to be governed by the international legal system. I conclude that 'sleight of hands' not only offered legitimacy and reasons for Finland and Sweden to join NATO but also for all parties to continuously rely on deterrence-based security, an assurance based on both the consequences of security complexities and regards to international law.

Discussant: **Giusto Amedeo Boccheni** (*McGill University*)

Giusto Amedeo Boccheni is a doctoral candidate in comparrrative law at McGill University. He is the President of the Graduate Law Students Association, Associate to the Canada Research Chair on Cosmopolitan Law and Justice, and a member of the IUCN-WCEL Task Force on the Rights of Nature. His research is in the fields of comparative constitutionalism, international legal theory, and commons governance, and his doctoral thesis e analyzes the relationships between sovereignty and freshwater governance through the prism of critical legal pluralism, especially in connection to Indigenous Peoples, non-human beings, and property owners in the Columbia and Mekong river basins.