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

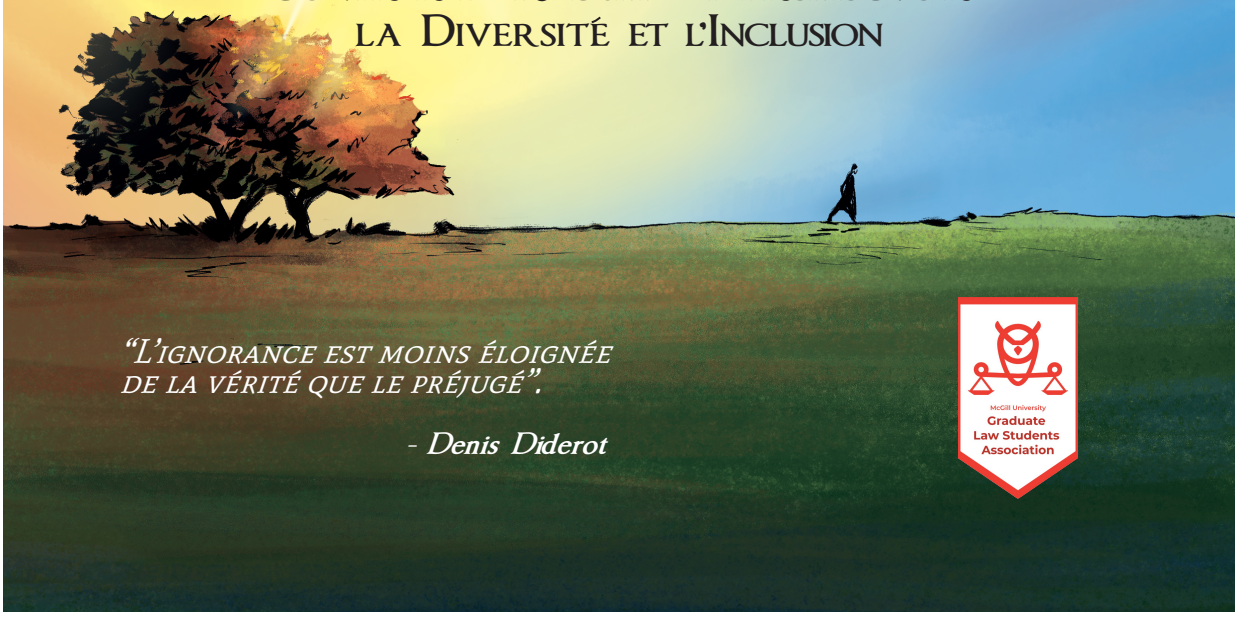
16ème conférence annuelle des étudiant.e.s
en droit des cycles supérieurs de McGill

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

McGill University
Graduate
Law Students
Association

Index

General Conference/ Conférence générale

General Conference Panel 1: **Culture, Heritage and the Cities**

Moderated by **Mastandrea Bonaviri Gianluigi**, *Italian Ministry of Foreign Affairs and International Cooperation*

Panelists:

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.

ABSTRACT: *Overcoming Prejudice Through Cultural Heritage: Monuments, Collective Memory and the Case of Post-Trianon Hungary*

My case study in this paper is Hungary after the Treaty of Trianon (1920), an event that continues to be immortalised in numerous monuments spanning every political era in Hungary. While these monuments – and other objects of cultural heritage created in the treaty's wake – stand for the antithesis of transitional justice's goal of reconciliation, a major source of prejudice towards the country's neighbours, keeping the collective memory of the national trauma of losing two-thirds of territory alive today – following other disastrous events of the twentieth century – their presence evokes and facilitates peace. Still reminders of trauma and minders of counter-memories in relation to its neighbours, Hungary's Trianon monuments have become a vital part of national identity, spreading the bias among current and future generations. Following a theoretical introduction to cultural heritage's relationship with

collective memory and transitional justice, as well as its role in maintaining peace and relationship with monuments, identity, and prejudice, I move to the question of the Trianon Treaty. I trace its origins and reverberating effects over the past hundred years, ultimately focusing on the monuments commemorating the treaty as both carriers of a biased memory and objects of cultural heritage. I conclude by showing their peacebuilding role as catalysts of collective memories of trauma, thus sketching out the links between the legal (Trianon Treaty), the political (construction of monuments as a major part of Hungary's cultural heritage and prejudiced official narrative) and the social (the monuments' role in sustaining – and placating – collective memory). In doing so, I hope to uncover an alternative account of the intimate details of the relationship between cultural heritage and peace, one that taps into narratives that do not necessitate the full conceptual apparatus, institutional machinery, and political load of transitional justice, which often includes repeating cycles of bias and prejudice.

Clarisse Delaville (*McGill University*)

I am currently a second-year DCL candidate at McGill Faculty of Law. My thesis focuses on gender inequalities in agricultural production in OECD countries, looking more specifically at Quebec and Switzerland's dairy production sectors as my case studies. Before joining the graduate community here at McGill, I completed a Master's degree in international law at the Geneva Graduate Institute in Switzerland. I am currently the assistant general secretary of the Quebec Society of International Law. My research interests are food governance, international trade law, international environmental law and agriculture.

ABSTRACT: *Cities and food: exploring how law and policy shape food (in)security in Toronto*

Food insecurity still exists in States with developed economies, in rural areas and cities. Urban dwellers have unequal access to quality and nutritious food, and some socio-economic groups face this problem predominantly, such as single women caring for young children and Indigenous people's families and individuals. Food security – based on the five pillars of availability, access, utilization, stability and quality of food – depends on a myriad of factors. For individuals living in cities in the global North, food (in)security revolves mainly around geographic location and income, two factors that often go hand in hand in urban geography.

In this article, I explore the role of law and policy in structuring, and responding to, food insecurity in our cities. This analysis will render more explicit law's duality, as it can be, at times, a tool for positive change, but it can also contribute to the perpetuation of how food insecurity impacts disproportionally specific segments of society, maintaining a prejudice against those groups. On the one hand, law regulating land use planning and development can have an ambivalent structuring role in perpetuating geographical inequalities. On the other hand, law and policies aimed at strengthening food security can prove to be adequate tools to reach the target of sustainable and healthy diets for all. Toronto is the case study for this exploration, where over 12% of the population reports insecure access to adequate food. The city also counts some food deserts, that is, urban areas where buying affordable or good-quality fresh food is difficult. I argue that the law, in direct or indirect ways, maintains this situation of indirect discrimination towards some socio-economic groups. I also suggest avenues of reflection showing that law can be part of the solution. Different visions of the city are emerging, and it is hoped that food governance and urban planning will increasingly take this issue of urban spatial food insecurity into account in the future.

Kaushalya Kumari Madugalla (*University of Peradeniya*)

I completed my PhD at School of Law in University of New England, Australia in 2022. I completed my LL.M Degree at Birkbeck, University of London and received my LL.B degree from the Faculty of Law in University of Colombo, Sri Lanka. Currently, I'm working as a lecturer at the Department of Law in University of Peradeniya, Sri Lanka. My research interests include intellectual property law, business law, company law and legal history.

ABSTRACT: *Law, prejudice and reproducing materials in libraries and archives in Australia*

This research is regarding sections 49 and 50 of Copyright Act 1968 of Australia '(Copyright Act (Australia)'), which permit libraries and archives ('collections') to make reproductions of works [1] for supplying to users and supplying to other collections respectively. The

[1] The term 'work' is defined as "a literary, dramatic, musical or artistic work" in section 10(1) of Copyright Act (Australia). The term 'reproduction' in relation to a work is defined in section 21(1)(A) of Copyright Act (Australia) as converting a work into the digital or any other electronic format.

interpretation of terms 'library' and 'archives' in sections 49 and 50 suggest that these collections ought to be 'accessible to members of the public' in order to make use of these sections.[2] The objective of this research is to analyse how the interpretation of this phrase affects users' interests, which is important to balance the competing interests involved in copyright law. The research question is how does the interpretation of 'accessible to members of the public' affect access to materials and circulation of the same held in collections under sections 49 and 50. This research adopted the doctrinal method, where a range of primary and secondary materials were examined.[3]

The results of the research revealed that the phrase 'accessible to members of the public' can be interpreted in different ways, which leads to uncertainty regarding the type of collections that can use sections 49 and 50. Such uncertainty shall restrict access to materials and circulation of the same, which have a crucial impact on users' interests. It indicates that interpreting the phrase 'accessible to members of the public' might lead to an interpretation of sections 49 and 50 that is contrary to their role as exceptions in copyright law, which is to uphold users' interests. Although reactive law-making is manifested regarding sections 49 and 50, where the legislature has amended these sections periodically in order to catch up with new technologies of copying materials, it is doubtful whether such amendments have addressed users' interests. Therefore, sections 49 and 50 can be considered as instances where the law operates to the prejudice of whose interests it is expected to protect.

Julia Salamądry (*Institute of Law Studies, Polish Academy of Sciences*)

Julia Salamądry is a PhD candidate at the Department of Public International Law of the Institute of Legal Studies of the Polish Academy of Sciences (INP PAN) in Warsaw, Poland. She holds an MA in Law from the University of Wrocław, Poland, where she was also the Vice-President of the

[2] It is because the phrase 'accessible to members of the public' is a part of the definition of 'library' and 'archives' in sections 49(9) and 50(10) of Copyright Act (Australia). It is provided in sections 49(9) and 50(10) that 'library means a library all or part of whose collection is accessible to members of the public directly or through interlibrary loans'. It is provided in section 49(9) that 'archives means an archives all or part of whose collection is accessible to members of the public'. For the purposes of section 50(10), the definition of 'library' also includes a definition of archives, which proceeds as 'library means: (c) an archives all or part of whose collection is accessible to members of the public'.
[3] Some of the primary materials used were statutes, judicial decisions, parliamentary debates, explanatory memorandums to amendments of Copyright Act (Australia) and reports of Law Reform Committees to amend the Copyright Act (Australia). Some of the secondary materials used were books and journal articles.

International and European Law Student Club. Her research interests include human rights, humanitarian law, criminal law and cultural heritage law.

ABSTRACT: *Underestimated Heritage? Sacred Mountains as UNESCO World Heritage Sites*

In my presentation, I would like to draw attention to the issue of the presence of sacred mountains on the UNESCO World Heritage List, in order to check how such particular heritage sites are treated during the inscription process.

Firstly, I would like to make a brief introduction on the significance of sacred mountains (as a subcategory of sacred sites), focusing esp. on those characteristics and associated values that determine their sacredness. Then, I will proceed to the regulations of the international legal framework for the protection of cultural and natural heritage, with an emphasis on the 1972 World Heritage Convention.

In the main part of the presentation I intend to focus on three aspects of the possible underestimation of sacred mountains as heritage sites, namely: the process of the inscription of heritage sites onto the UNESCO World Heritage List; the current representation of sacred mountains on this List; the way the sacrum element of those sites is referred to in their nomination files (is the emphasis placed on natural or cultural aspects, on tangible or intangible heritage, e.g. types of temples or religious practices).

Finally, I would like to end this evaluation by proposing some ideas (such as the alternative ways of legal protection) that could help to provide better protection to sacred mountains as heritage sites in the future.

I hope that this presentation would serve to show the great diversity in the way the sacrum element of heritage sites can be embodied, as well as what an important role international law plays nowadays in how we think about sacred mountains and their place among world heritage.

General Conference Panel 2: **Challenging Convention – Breaking Free from the Shackles of Prejudice**

Moderated by **Aurélie Lanctôt**, *McGill University*

Aurélie Lanctôt is a DCL candidate at McGill University. Her research focuses on law, literature, feminist and queer legal theory.

Panelists:

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.

ABSTRACT: *Family Law - does it work for the whole family?*

Popular discourse around Family Law is that Fathers are prejudiced in children's proceedings because custody of children is usually 'given' to mothers. This presentation will highlight that Family Law, although designed to be gender neutral and prioritising the needs of the children, in fact favours patriarchy, by looking at examples from England and Wales, America and Australia. This presentation will review literature around orders relating to children and its impact on the lives of single, resident parent mothers who are increasingly expected to have agency over their own life outcomes. Although the formulation and application of law is intended to be gender neutral, the literature reveals that its application frequently has a gendered impact. Fathers Rights groups argue that custody is mostly awarded in favour of mothers, yet research reveals that this is predominantly due to the gender differences in court applications for custody combined with a desire to continue the status quo, and is not a result

of court prejudices. Conversely, being the parent with the majority of parenting responsibility - usually the mother - may have wide reaching implications for areas such as career, relationships, education, life satisfaction. Using the literature as evidence this presentation will argue that the current court outcomes may have inadvertent negative effects on the lives of mothers that are neither acknowledged or redressed within Family Law, and that non-resident parents – usually fathers – do not face equivalent effects.

This contribution is significant against a backdrop of emerging Fathers' Rights Activism worldwide and addresses the under researched area of the impact of Family Law upon women including mothers. The implications of this could be wide reaching for gender equality outside of Family Law, including in the workplace and for domestic labour equality.

Yukiko Kobayashi Lui (*University of Toronto*)

Yukiko is an SJD student at the University of Toronto Faculty of Law. Her research interests lie in family law, defined broadly, feminist legal and political theory and law and political economy. Her doctoral thesis examines the connection between legal relationship recognition and the welfare state in North America.

ABSTRACT: *Care, Sex and Homophobia in Alberta's Adult Interdependent Relationships Act*

Non-conjugal relationships have limited recognition in the law, which still largely follows what the family law theorist Martha Albertson Fineman terms the 'sexual family'. But as understanding of alternative family forms gains ground, this sexual understanding of the family becomes increasingly outmoded and prejudicial. Deprioritising conjugality and instead looking to existing caring relationships provides a more coherent basis on which to decide which formations and arrangements which should count as 'family', and avoids differential treatment based on sexuality (or lack thereof).

Using an interdisciplinary study of the Canadian province of Alberta's Adult Interdependent Relationships Act and case law concerning the Act, this paper will consider the use and value of recognising non-conjugal caring relationships in Canadian family law. Enacted in 2003, the

Adult Interdependent Relationships Act provides marriage-like provision for couples in socially, economically, and emotionally interdependent relationships. This includes unmarried unrelated conjugal couples and non-conjugal couples, who may be genetically related. While the history of this Act is undoubtedly homophobic in origin, as scholars such as Brenda Cossman, Bruce Ryder, Nancy Polikoff, and most recently Nausica Palazzo have noted, it contains a potentially radical kernel. The question of who counts as family has implications that stretch beyond the narrow law of the family courts, especially where social welfare benefits, institutional caring and other similar public provisions are considered.

This paper employs an interdisciplinary approach incorporating feminist legal theory and feminist political theory to investigate the theoretical justifications for the legal recognition of family relationships in heteronormative, neoliberal welfare states. Ultimately, this paper argues that the frontier of relationship recognition lies in better understanding, recognising and valuing the provision and receipt of care—not just in the legal-sexual family but outside of it too.

Namrata Mukherjee (*Independent Academic and Legal Researcher*)

Namrata is a policy lawyer and legal academic based in India. As a policy lawyer, they have provided legislative research and drafting assistance to various Ministries of the Government of India on issues ranging from privacy and data protection to consumer rights. Their interests largely lie in the areas of law and technology, labour law and workers rights, and gender, sexuality and the law. Namrata also works closely with grassroots queers' rights organisations in India in the capacity of a policy and advocacy lawyer.

ABSTRACT: *Liveability on the Margins: A critical reading of judicial and legislative developments on transgender rights in India*

In 2015, the Supreme Court of India ('Supreme Court') passed a landmark judgement in the case of NALSA vs. Union of India ('NALSA'), wherein it recognised that transgender persons have fundamental rights. It located these rights in Articles 14 and 15 ('equality'), Article 19 ('speech and expression') and Article 21 ('liberty and dignity') of the Constitution of India.

This judgement was followed by the passage of the Transgender Persons (Protection of Rights Act), 2019 ('2019 Act') which was criticised for falling short of NALSA. The 2019 Act was silent on affirmative action and failed to recognise equal civil rights for transgender persons including the right of marriage, adoption and inheritance. While High Courts in India expanded marriage laws to bring transgender persons within their ambit, the same was confined to persons of opposite genders thus excluding same sex/gender partners. In 2018, the Supreme Court in *Navtej Johar vs. Union of India*, struck down India's anti-sodomy law for being unconstitutional. Subsequent attempts for recognition of same sex marriage continue to be resisted by the State, with litigation for the same underway at the moment. While the judiciary has played a critical role in expansion of rights of the queer community in India, the legislative response has been lukewarm at best and violent at worst. In 2021, the Central Government introduced the

Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 which was met with backlash by the sex workers for its draconian approach towards voluntary sex work. Similarly, several states in India continue to have anti-vagrancy legislations which penalise begging thereby in effect criminalising poverty. Considering that a significant number of transgender persons turn to sex work and begging for their livelihood, these laws in effect deprive them of their right to a dignified life. This paper seeks to critically examine judicial and legislative developments pertaining to transgender persons to reflect the contradictions in legal jurisprudence. It seeks to examine how judicial attempts to expand the rights of transgender persons are being thwarted by legislative responses that reek of prejudice and a lack of political will to give effect to the promise of NALSA.

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.

ABSTRACT: *The University, A Democratic Workplace? Academic Self-Governance and Unionization in University Governance*

McGill law professors who are tenured and tenure-track were certified as a bargaining unit in November 2022. The unionization of faculty is noteworthy because it seems to challenge the prevailing mode of university governance: academic self-governance, which rests on a view of professors as autonomous professionals who participate in collegial internal decision-making processes. In contrast, unionization involves a degree of legal coercion, including the employer's duty to bargain with the union in good faith; if no collective agreement is reached, the employees have a right to strike. Yet, the history of faculty collective organizing shows that faculty unions are not an aberration; rather faculty have opted for unionization as a mode of governance in response to financial cutbacks when academic self-governance has proven to be insufficient. Drawing on the lens of workplace democracy to look at the wider university, a diverse ecosystem of forms of collective organizing come into view, including among facilities staff and non-academic support staff, adjunct faculty and graduate students, and the student body more broadly. For workers at the university, there is often a divide in the means available to participate in governance: unionization for lower-paid workers and academic self-governance for professors. This inquiry surfaces insights about unionization and participation in internal university bodies as complementary modes of inviting more equal participation in university governance.

General Conference Panel 3: **Prejudice in Contours of Criminal Law and the Criminal Legal System**

Moderated by **Gabriel Lefebvre**, *McGill University*

Gabriel Lefebvre est un chercheur universitaire et doctorant à l'Université McGill. Son mémoire, Les infortunes de l'autisme de type Asperger en droit pénal canadien, déposé à l'Université de Montréal portait sur la responsabilité criminelle et morale des personnes autistes. Il travaille présentement sur une thèse doctorale portant sur la justice pénale préventive et ses impacts sur les délinquants socialement vulnérables. Ses champs d'expertise incluent la sécurité et la gestion du risque, la neurodivergence et le neurodroit, la pénologie et plus généralement, l'histoire et la philosophie du droit.

Panelists:

Kate Cameron Mitchell (*University of Toronto*)

Kate Mitchell is an SJD candidate at the University of Toronto. Before that, she completed a Juris Doctor at Queen's University, and a Master of Laws with a specialization in Criminal Justice and Prison Law from UCLA. She is also a practicing lawyer, working on criminal and prison law matters. Her current research focuses on how to create a system that takes prisoners' rights seriously.

ABSTRACT: *Deference in Canadian Prison Law*

Prisoners in Canada are exposed to harsh conditions and a range of cruel and degrading practices (segregation, dry celling, strip searches, etc.), and they are perpetually at risk of physical and sexual violence and mental suffering. However, prejudice against those who commit criminal offences runs deep, and there is rarely any public outcry and government action. Because of this, courts play a vital role in protecting prisoners' constitutional rights. The courts have an obligation to enforce constitutional rights, and prisoners have access to a broad array of legal tools to protect and vindicate their rights, including judicial review, habeas

corpus, and constitutional litigation. Yet, in practice courts offer remarkably little protection to prisoners.

One main reason for this is deference, the respect that judges show for the decisions of prison officials. Courts rarely question the expertise of prison officials and scrutinize their reasons for acting in a certain way. Deference is the main theme in prisoners' rights litigation in the United States (Sharon Dolovich, Forms of Deference in Prison Law, 24:4 Fed. Sent'g Rep. 245). My paper argues that the same is true of the patchwork that is Canadian prison law. Deference is formally embedded in judicial review (through the deferential reasonableness standard of review) and habeas corpus (which adopts the reasonableness standard of review), and deference also creeps into the analysis at various stages in constitutional litigation.

While Dolovich's work highlights problems with the constitutional law framework as applied to prisoners, the prevalence of deference across the patchwork of Canadian prison law suggests the problem is with the courts—not just the doctrine. My paper argues that taking prisoners' rights seriously requires rethinking the existing legal framework and not relying so heavily on courts that cannot on their own (for various institutional reasons) provide the meaningful oversight needed.

Wendy Jingwei Liu (*The Chinese University of Hong Kong*)

I am a year-1 PhD student at the Faculty of Law in The Chinese University of Hong Kong. My research interest revolves around law and society, criminology, criminal justice in the PRC, and feminist jurisprudence.

ABSTRACT: *The Tangshan Attack Case: Examining the challenges facing the victims' participation in sexual harassment in China*

Sexual harassment has increasingly aroused feminists' and social-legal scholars' concerns in the People's Republic of China (hereinafter referred to as the "PRC"). On October 30, 2022, China's top legislative body passed the revised Law on the Protection of Women's Rights and Interests (hereinafter referred to as the "Women's Protection Law"). The new Women's

Protection Law defines sexual harassment as verbal remarks, written language, images, physical behaviors, or other actions against a woman's will, which makes the definition of sexual harassment clear in the Law for the first time. The existing legislative model in China still distinguishes sexual harassment as a civil wrong, not a criminal offense, unless it involves violence. After that, remedies for sexual harassment are limited to civil claims under the Chinese Civil Code.

The recent high-profile Tangshan attack case reveals that victims' difficulties in carrying out their compensation claims arise from extralegal factors. Drawing on the semi-structured interviews with the victims of sexual harassment and the legal professionals who handled related cases, including police, lawyers, prosecutors, and judges, this article explores how hard it is for claimants to succeed in cases where women have made civil claims for compensation under civil law and the deeper roots of the plight of victims from the legal system.

By focusing in particular on gender norms, societal reactions, and institutional frameworks that play critical roles in the legal process, this article concludes that gender inequality is reproduced in the legal process of sexual harassment by marginalized victims' participation. Although recent legal reforms in China have been calling for promoting gender equality, given the Chinese state's unique political and entrenched patriarchal culture, victims' participation empowerment and gender neutrality in law are far off track.

Holly Wood (*Carleton University Student*)

Holly Wood (she/her) is a Masters of Legal Studies student from Carleton University. She is currently writing her MA Thesis on police responses to Sex Trafficking and sex work in Ontario. Holly works as a Researcher and Educator with BRAVE Education for Trafficking Prevention. She is also the Chair of the Advocacy Committee with the Ottawa Coalition to End Human Trafficking. Holly's research interests include anti-human trafficking, sex work, Indigenous rights, Social Justice, and human rights. She looks forward to pursuing a PhD in Sociology in the near future.

ABSTRACT: *Laws and Labels: Spotlight on Sex Trafficking*

Human Trafficking is a growing crime worldwide – 71% of which is dominated by the crime of sex trafficking. With recent Canadian legal cases such as R v Bedford, one must wonder how the growing debate between sex trafficking and sex work may shape Canadian society's perceptions and responses to sex trafficking. On the other hand, one might question how society's perceptions of sex work may influence legal responses to sex trafficking. This paper aims to discuss legal and societal responses to sex trafficking and sex work in Canada. Using research from my MA Legal Studies Thesis, I will discuss current statistics surrounding sex trafficking, statistics surrounding human trafficking prosecutions, and police responses to sex trafficking and sex work. Using a sociolegal lens, I will discuss how society's wide-ranging perceptions of sex work have influenced the law in recent decades, and how the law has come to shape society's current legal and moral debates of sex trafficking and sex work. Further, I will discuss how these perceptions have helped or hindered the work of law enforcement, crown attorneys, judges, and the like. Finally, I will discuss how the law is not evolving at the same pace as the crime of human trafficking – and how we change the legal narrative moving forward.

General Conference Panel 4: **Prejudice in the Digital Era**

Moderated by **Maître Allen Mendelsohn**, *Attorney and Sessional Lecturer*

Allen Mendelsohn has been a Montreal-based sole practitioner specializing in internet, technology and privacy law for more than a decade, and has taught Internet and Privacy Law at McGill's Faculty of Law for the last 7 years. He has also lectured at numerous other universities as well as in a variety of other public and private forums, and writes a popular blog about internet legal and privacy issues at allenmendelsohn.com.

Panelists:

Soorya Balendra (*McGill University*)

Soorya Balendra is an LL.M Thesis candidate and O'Brien Graduate Fellow at the Faculty of Law, McGill University. He obtained his Bachelor of Laws Degree (summa cum laude) from the University of Jaffna, Sri Lanka, where he graduated with a thesis on 'The necessity of introducing cyber defamation law to Sri Lankan Legal System'. Prior to McGill, Soorya was a lecturer at the Faculty of Law, General Sir John Kotelawala Defence University, Sri Lanka where he taught courses on Information Technology Law, Private International Law, and International Investment Law. He also gained extensive research experience since he was assigned as a researcher at Democracy Reporting International (DRI), a think tank based in Berlin that actively engages in research and advocacy on 'Digital Democracy'. Soorya has published extensively in the fields of Information Technology Law, Digitalization, Digital Authoritarianism and Digital democracy. As an O'Brien Graduate Fellow at McGill, His research primarily focuses on social media regulations and their impacts on free speech and democracy with a Comparative Analysis of Content Moderation Laws.

ABSTRACT: *Moderating online content: fighting harm or silencing dissent?*

Nevertheless, the information era transformed civic participation and democracy as one of its ambitious efforts; the open internet frequently ended up with deleterious consequences – such as hate speech, privacy violations, misinformation, cyber defamation, and many more. The

urgency of cyber governance has been realised by the global community and reasoning that the Authoritarian State approaches take place in distinguished forms – extending their agendas and suppressing dissent in cyber forums. Digital authoritarianism leads to declining global internet freedom and human rights in cyberspace. The repercussions created by these measures often prejudice fundamental freedoms – including Free Speech, Expression, and Access to information on the internet. The direct and indirect prejudice effects of regulatory frameworks demonstrate the urge for a strong commitment to the reforms. The study explores the various authoritarian approaches adopted by the authorities and their repercussions on human rights and democratic values. The paper traces through the 'content moderation approach' as one of the by-products of the co-regulation model and analyses three jurisprudences –Germany, India, and the European Union. To what extent do these models address contemporary challenges in cyber governance? How do they accommodate internet freedom and free speech in cyberspace? How has the power asymmetry between digital platforms and jurisprudence affected regulations? What are the roles of the big tech companies and providers, such as Facebook, Twitter, etc., on these regulations? To what extent are these models practically viable to the present challenge? How do these regulations take us forward in the 'fighting back' against digital authoritarianism? These are some of the questions to be attempted in this analysis. Finally, the study suggests the 'conditional immunity' approach of content moderation holds the guarantee of decentralized and democratised regulatory decisions with the participation of technology and the public – that would be the most convincing way to regulate online content without stifling fundamental rights, freedoms, and democratic values.

Katie Pentney (*University of Oxford*)

I am a doctoral candidate in Law at the University of Oxford and a Visiting Fellow at McGill's Centre for Human Rights and Legal Pluralism. My research examines government disinformation through the prism of freedom of expression guarantees, and the circumstances in which government disinformation may violate the public's right to be informed.

ABSTRACT: *Rethinking the Marketplace of Ideas in the Internet Age*

For over a century, jurists and legal theorists have held that a 'marketplace of ideas' is the ideal forum for society to arrive at the "truth." Since Justice Oliver Wendell Holmes coined the phrase in Abrams v United States (1919), it has become "the dominant rationale given for freedom of speech" in the US (Baker, Human Liberty and Freedom of Speech 3). It has also been cited by Canadian courts (see Grant v Torstar Corp 2009 SCC 61 [49]; Saskatchewan (Human Rights Commission) v Whatcott 2013 SCC 11 [102]) and relied upon as one of the key rationales underlying freedom of expression in the Canadian Charter (see Irwin Toy v Quebec (AG) [1989] 1 SCR 927, 979).

This paper examines the ongoing resonance of the 'marketplace of ideas' theory in the internet age. The internet is an unparalleled forum for the exchange of information and ideas, for a "free and open encounter" (Milton, Areopagitica 50). Yet it has exposed critical shortcomings in an unregulated (online) marketplace, three of which are considered here. First, the internet has enabled the proliferation of disinformation with ease and haste – falsehoods which have proven incredibly resilient in the face of truth. Second, the toxicity and vitriol in the online 'marketplace' disproportionately targets and affects marginalized communities – pushing them to the margins, silencing them altogether, or prompting their withdrawal from the public sphere. Third, most fundamentally, the theoretical and juridical defence of an unregulated 'marketplace' has been created, shaped and guarded by a select few (primarily white, affluent men) – from judges to law makers to tech billionaires – to the exclusion and marginalization of those whose voices are more easily drowned out or excluded. This paper thus explores whether and to what extent the marketplace metaphor should continue to occupy a privileged place in Canadian constitutional theory.

Ali Ekber Cinar (*McGill University*)

Ali Ekber Cinar is a doctoral student at McGill University Faculty of Law. Prior to his doctoral studies, he obtained an LL.M. from Istanbul University Faculty of Law. His current research focuses on law and technology, comparative law, and Islamic law and finance.

ABSTRACT: *Do "disruptive technologies" disrupt or construct? Technological advances and future of law schools*

Law is known for its resistance to innovation, which is reflected in its prejudice against technology. Some technological advances are viewed as "disruptive technologies," and law schools often hesitate to update their curricula to incorporate new technology-related courses and struggle to keep up with the transformation brought about by technology. However, the transformation is now set to accelerate at an unprecedented pace, and the challenge posed by technological advancements is undeniable and overwhelming.

This paper explores the impact of technology, automation, and artificial intelligence on the crisis of law and legal education and provides insights into whether this crisis can be overcome. I argue that, to avoid being "disrupted" by "disruptive technologies", law schools must transform themselves, radically change their long-standing traditions of legal education, and address a number of major challenges. In addition to ""thinking like a lawyer, "law schools must teach students" "thinking like a computer," which operates on the assumption that there is always one correct answer only for each question rather than the traditional legal assumption that it is common for a single question to have multiple answers. Moreover, and more importantly, law schools must learn how to think like a computer themselves, which appears to be an even greater challenge than teaching it to their students. To that end, this paper will provide concrete suggestions and examples as to how law schools can survive.

Aziz Öztürk (*University of Edinburgh*)

Aziz is a PhD Candidate in Corporate Law at the University of Edinburgh. He obtained his LLM degree from Queen Mary University of London. He is also a law tutor for Business Entities Law course at the Edinburgh Law School. His research interests include corporate law, corporate governance, competition law and capital markets.

ABSTRACT: *The Prejudice towards the Antitrust Policies for Acquisitions of Start-ups in Digital and Tech Sectors*

The past decade has witnessed a massive growth in the number of start-up acquisitions, where giant corporations like Google, Microsoft, Meta, Amazon, and Apple were actively acquiring start-ups deemed to have long-term growth potential. Acquisition activities are generally welcomed due to their benefits to the economy and transaction parties. However, hearing the name of such giants in relation to start-up acquisitions has led people to have an adverse reaction to those acquisitions owing to the fear that those giants will dominantly occupy the whole market and hinder the ability of other firms to compete. This atmosphere of fear has alarmed academics, lawyers, economists, politicians, and regulatory authorities regarding the need for protective regulations in digital and tech sectors. However, those calls are claimed to be based on populist views rather than a sound ground driven by legal and economic principles. In this regard, there has been a need for research on the real motivation behind antitrust policies in start-up acquisitions in these sectors.

This paper provides the insight that antitrust policies should be based on consumer needs and market characteristics in each state's own legal and economic system, and not on general legal and economic principles. Those principles are not neutral in nature and are generally coming from the capitalist approach and thus, not away from politics eventually. They are meant to be beneficial for home state's own interests. While a legal or economic principle may be totally good for one country, it may conversely be harmful to other countries. Therefore, it is not fair to let right or wrong prejudice driven by dominant views towards the antitrust policies for acquisitions of start-ups in digital and tech sectors while giant companies are dominantly capturing the market.

Alessia Zornetta (*UCLA*)

Alessia Zornetta is a doctoral student at the UCLA Institute for Technology, Law & Policy. Her doctoral research focuses primarily on Coordinated Platform Governance looking at the privacy and content moderation concerns arising out of interoperability initiatives. Her doctoral work is informed

by her previous research experiences which focused on privacy and data protection, and transparency practices by digital platforms.

ABSTRACT: *Quantum Computing and New Challenges For Encryption Policy*

Every day, individuals use the Internet to communicate, gather information, and engage in commercial transactions. Encryption renders such activities secure and possible in the first place. While interest in encryption policy has fluctuated among policymakers for the past three decades, this paper argues for the need to promote strong encryption at a global level. First, this argument is made in light of the recent actions by national leaders worldwide calling for the creation of backdoors and diminished encryption strengths. Second, the paper addresses the issue of encryption policy by considering the advancements in quantum computing, their significance for national security purposes, and the reactions of U.S., European, and Chinese regulators. Third, the paper explains the least trusted country issue to advocate for a global encryption policy aimed at incentivizing the widespread adoption of post-quantum cryptography algorithms.

General Conference Panel 5: **Post Colonialism and Prejudice in the East-West Narrative**

Moderated by **Prof. Miriam Cohen**, *Université de Montréal*

Miriam Cohen is an Associate Professor and holds the Canada Research Chair on Human Rights and International Reparative Justice at University of Montreal's Faculty of Law, where she teaches and researches in international, public and human rights law. She is the recipient of the Scholarly Book Award of the Canadian Council on International Law and the Legal competition Award of the Quebec Bar Foundation for her book Realizing Reparative Justice for International Crimes: From Theory to Practice (Cambridge University Press, 2020). She is also co-author of the 3rd edition of the Précis de droit international public with Professor Stéphane Beaulac (LexisNexis, 2021).

Panelists:

Giusto Amedeo Bocheni (*McGill University*)

Giusto Amedeo Boccheni is a doctoral candidate in comparative 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 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.

ABSTRACT: *A Righteous Prejudice? Human Rights, "Asian Values," and Non-Liberal Legal Pluralism*

Human rights and "Asian values" have long been at the center of a heated debate. Leaders like Lee Kuan Yew in Singapore and Mahathir Mohamad in Malaysia proclaimed that the former, as an expression of Western liberal values, were fundamentally opposed to the latter. Through discourses and policies, they contrasted the "Asian" ethos of communitarian harmony against

"Western" proprietary individualism. Critics dismissed their arguments as justifications for authoritarian oppression on relativist, if not "racist," grounds and as refusals to accept human rights as inherently universal aspirations. In the Cold War's aftermath, as liberal-democratic constitutional models spread along with economic globalization and networks of international and transnational governance, most observers concluded that, indeed, the prejudice against "Asian values" was a righteous one. Instead of resolving into an "end of history" scenario, however, at every hint of Eastern geopolitical resurgence, the two factions return to their posts and rehearse the same arguments. In this paper, I revisit the scholarly debate under the assumption that the dichotomy of universalism and relativism is misguided and conducive to exceptionalist readings of human rights and their normative horizons. Since the usual framing for the "Asian values" debate precludes a non-liberal understanding of human rights, I propose to adopt an inclusive framework for normative negotiation capable of opening up the discursive space of pluralism to non-liberal values. Subaltern actors claiming some form of "Asianness" would thus gain recognition at the expense of both authoritarian and hegemonic absolutism. In particular, by building networks of activism through intersectional alliances and strategic mobilization, subaltern actors in the region can articulate non-liberal pluralism in tandem with anti-racism, complexity, and inclusion. Only by acknowledging and fostering these developments can lawyers obtain a richer and more diverse understanding of the discursive relations underpinning the concepts of human rights and 'Asian values.'

Philipp Renninger (*Harvard Law School*)

Philipp is an SNSF Postdoc. Mobility Fellow and visiting scholar at Harvard Law School, financed by a Swiss National Science Foundation grant. He regularly teaches as an Assistant Professor at the China University of Political Science and Law. Philipp's first research focus lies on comparative public law, particularly federalism/central-local relations, urban law, and human rights. He contrasts China's constitutional and administrative law with Western countries, such as Germany, Switzerland, the UK and the U.S. Philipp has a second key interest in comparative jurisprudence. He specializes in Sinomarxism, ancient Chinese legal philosophy, and German-speaking legal theory. Philipp holds a dual-degree PhD in law from the Universities of Freiburg and Lucerne. Previously, he read law and Chinese in Freiburg and Nanjing. Philipp has held short-term and/or visiting appointments at Oxford, King's College London, NUS Singapore, MPI Heidelberg, and Lund University.

ABSTRACT: *Comparative Law and Prejudice*

One might understand "Comparative Law and Prejudice" in two different ways: First, as comparing the relation between prejudice and law in different countries. Second, as analyzing the relation between prejudice and comparative law. I will focus on the latter question.

Comparative law, per definition, compares different countries and thus operates along the national borders. This inherently raises questions of how we should deal with existing geographical and cultural prejudices.

Traditional comparative law is accused of being Westcentric. Whilst mostly happening unconsciously, some comparativists expressly demand Westerners' "conviction that one's own law is superior". When comparing Asian legal systems like China, such Westcentrism often accompanied by Orientalism.

As a reaction, we could promote an ethnocentric U-turn. Indeed, in Sino-Western comparisons, some scholars propose Sinocentrism. They "sinicize" Western legal concepts and methods, which they claim to be inherently inferior to their Chinese counterparts. Such Sinocentrism, however, is as essentialist as Westcentrism. It results in self- orientalization and only replaces a Western with a Chinese monologue.

A solution might be legal cultural relativism. On the first, national level of analysis, relativists suggest analyzing each country with its own legal concepts and methods. This, however, merely reflects the consensus in traditional comparative law. The conundrum lies on the second, comparative level: Strict relativists would have to first compare both countries with the first country's methods, and then again with the second's. This appears impractical and obstructs any synopsis. It results in legal orders talking past each other – whereas true comparisons require a dialogue between juristic traditions.

Therefore, I suggest an intercultural approach: On the second, comparative level of analysis, we should search for a common methodological denominator. This denominator must be

compatible with the juristic traditions of all the concretely analyzed countries. This empowers comparative law to overcome its methodological prejudices.

Priya Ayyappaswamy (*McGill University*)

Priya Ayyappaswamy is a master's thesis student at the faculty of law, McGill University. She has an interest in comparative constitutional law and wishes to specialize in health law. She also works as a research assistant at the Center of Genomics and Policy where she undertakes policy work and tutelage under Professor Bartha Maria Knoppers.

ABSTRACT: *Exposing Present Prejudices by Weaving the Colonial Fabric in Indigenous Law: Narratives Exploring Indigenous Societies in North America and Asia through a Retrospective Lens*

Indigenous societies were governed differently prior to colonialism. These societies changed to accommodate the dominant culture. This interaction of the colonized with the colonizer through the relationship between the governor and the governed has largely influenced the present laws governing indigenous communities. A nuance to observe would be how the common law/governor's law has been modified to accommodate indigenous traditions and vice versa. The author uses the past to narrate the present of indigenous societies in North America and Asia. The structure of colonialism is different in societies experiencing settler colonialism and exploitation colonialism; For instance, in Asia, the natives (to the land) can be either "indigenous" or "non-indigenous" this differentiation from the West, where the native demography is predominantly indigenous could one of the narratives to explore on how colonialism structures dominance over the law and culture of the natives. The translation of this superiority has coloured how indigenous law is read. This paper explores whether the ties between indigenous law and state law/ positive law have become closer but through a historical lens. In this discourse, how do present prejudices translate to a reflection of colonial practices?

Michal Swarabowicz (UNSW Sydney)

Michal Swarabowicz is a Swiss National Fund postdoctoral research fellow at the University of Amsterdam (UvA) and University of the New South Wales (UNSW). His current research concentrates on international economic law's liberal legalism in historical perspective. Michal holds a PhD in international law from the Graduate Institute in Geneva. Before that he completed his legal education at Sciences Po Paris and Paris I Pantheon Sorbonne. Michal also holds an undergraduate degree in economics from the Warsaw School of Economics. He worked on Russia-related arbitration cases at the Shearman & Sterling's LLP in Paris.

ABSTRACT: They do Things Differently There: International Economic Law's and a Making of the post-Communist State

In Vladislav Kim v. Uzbekistan, an investment treaty arbitration, tribunal found that a payment made to the President's daughter would not qualify as bribery because her "family relationship" did not render her "a government official". A myriad of other judicial and arbitral pronouncements dealing with: "systemic" deficiencies in local governance, the "highly uncertain legal environments", or "quid pro quos" of the post-Communist economies, raise questions about the lens deployed to engage with political economy of the post-communist State and market building.

This article describes the exoticizing gaze of the attempted interventions into constituting a boundary between the State and the economy. The argument spotlights the common ideational horizon which structures oppositions in legal argument about the power lurking behind the façade of "weak" institutions. The ideal-type approaches are abstracted from selected decisions of arbitral tribunals, ECtHR, and the US FCPA adjudication. The research complements two strands of scholarship. First, international economic law scholars usually operate with a model of a Western liberal regulatory State. Second, pos- colonial scholars focus on continuities and effects of power – they examine less often the legal imagery through which that power operates. The paper seeks to put the imagery developed in transnational adjudication in a perspective offered by on literature on law's role in post-Communist

governance and to contribute to discussions about law's engagement with heterodox forms of capitalism.

General Conference Panel 6: **Artificial Intelligence – the Road to Resolution or the Perpetrator of Prejudice?**

Moderated by **Stefan-Michael Wedenig**, *McGill University*

Stefan-Michael Wedenig is a Doctoral Candidate at the Institute of Air & Space Law at Mcgill University. He holds an LL.M Degree from McGill University and a Master of Laws (Magister Iuris) Degree from the Johannes Kepler University in Linz, Austria. He is the Executive Director of the Institute and Centre for Research in Air and Space Law at McGill University. He is part of the research team involving the Manual on the International Law Applicable to Military Uses of Outer Space (MILAMOS) and served as an Assistant Editor of the Annals of Air and Space Law. Before joining McGill University, Stefan-Michael worked for the Austrian Foreign Service at the Austrian Embassy in Ottawa, Canada. His research focuses on Artificial Intelligence and Space Law as well as Aviation and Space Asset Finance.

Panelists:

Émile Chamberland (*McGill University*)

Émile is an LLM student at McGill University. He conducts research in the areas of jurisprudence, technology and constitutional law, with a particular interest for judicial decision-making by artificial intelligence (AI). Émile sees the rise of AI as one symptom of a larger phenomenon that takes root in technical rationality, therefore his graduate work is about the modes of thought that underlie judging and whether the automation of courts undermines the essence of case law.

ABSTRACT: *Technological Prejudice: Building a Critical Theory of Legal Automation*

Critical legal theory allows an understanding of law beyond its apparent neutrality. This theoretical approach challenges power structures, revealing legal norms as being biased in favour of the dominant classes: prejudice is then a zero-sum game. The original Critical Theory, developed by the Frankfurt School and building on the ideas of classical Marxism, saw the capitalistic bourgeoisie as the beneficiary of the socio-economic systems of their time,

while some contemporary critical legal theories defend that the powerful use the law as a shield against the claims for justice of the subaltern. With technology such as artificial intelligence algorithms taking the delicate role of making legal decisions, concerns arise about the historical prejudice, including biases and discrimination, that could be carried into an automated legal system. Legal automation lends itself to critical theory, notably that of technology, but what are its gaps? Does artificial intelligence only perpetuate pre-existing prejudices of the law to the benefit of dominant groups, or does it carry further harms peculiar to technology as a phenomenon? This paper explores these questions through the work of Jacques Ellul, which was not critical theory, per se. I argue that his vision of technique as an autonomous apparel reveals the harms of the mechanization of law in a way that transcends structures of power, in the sense that Ellul sees all human beings being threatened by the mode of thought they have tried to harness but lost power upon. Given this conceptualization of technology, an algorithmic legal system becomes prejudicial in its very existence, rather than only through the discrimination biased data can keep going. I claim these views complement those inspired by critical theory and deserve equal attention in legal scholarship.

Damilola Oluwafunsho Awotula (*Dalhousie University*)

Damilola is a Nigerian trained attorney, and currently completing a Research LLM as a Seymour Schulich Law Scholar at Dalhousie University, Canada. His research interests are Artificial Intelligence and Law, Criminal Justice, and Public International Law. He was the 2021 Government of Ireland Roger Casement Fellow in Human Rights. He holds an Associate Law degree and a Bachelor of Laws from Olabisi Onabanjo University, Nigeria, Barrister-at-Law, Nigerian Law School, Lagos and a specialist Master of Laws, in Human Rights and Criminal Justice from the University of Limerick, Ireland.

ABSTRACT: *Automated Immigration and Administrative Law in Canada: Assessing the Immigration, Refugee Citizenship Canadas' TRV's Advanced Analytics Program*

Artificial intelligence (AI) now increasingly play important role in administrative decision making. One of such instance in Canada is the partial automation of Temporary Residence Visa (TRVs) applications by immigration Refugee Citizenship Canada. As expected, the turn

to AI was driven by its prospect to deliver an objective decision, eliminate bias, and fast-track visa decisions. As the introduction of AI into the immigration system 'fundamentally' changes immigration praxis, there is a need to consider its impact on administrative law principles. Generally speaking, AI systems enjoy a reputation for complexity, and inexplicability including the automation of implicit bias. Hence, this paper provides some reflections on current practices and how they may potentially implicate administrative law canons. First, the paper recognizes that there are insufficient hard laws regulating public agencies' use of AI in Canada. Equally, the paper recommends a rethink of the low spectrum threshold for procedural fairness in TRVs application by the Federal High Court. Most essentially, the paper argues inter alia that if public agencies like the IRCC result to AI in other to improve efficiency, then they should be held to a higher level of procedural fairness. Finally, the paper proposes a need to further interrogate how AI operates in the Canadian immigration system bearing in mind the potential impacts of algorithmic decisions on the interest of immigrants and refugees.

Saeed Rostamalizadeh (*University of Montreal*)

Saeed ROSTAMALIZADEH is a Ph.D. candidate in Innovation, Science, Technology, and Law (Ph.D.) at the University of Montreal. His research project concerns regulating the use of Artificial Intelligence (AI) and Algorithmic Decision Making (ADM) systems according to consumer protection principles. He is particularly interested in the legal and ethical aspects of new technologies specifically Artificial Intelligence (AI) and AI-based tools and applications such as Algorithmic Decision Making (ADM) systems, AI risk regulation, as well as a consumer protection against AI risks.

ABSTRACT: *Consumer Rights Impact Assessment (CRIA) as a Tool to Manage Algorithmic Bias and Discrimination in B2C relationship*

The use of AI and algorithms in decision-making may lead to discriminatory outcomes, even if they are not trained to do so. Because they are not independent of humans. They are designed, written, and made by humans. Therefore, they are inevitably influenced by the attitudes, values, views, tendencies, and personal desires of their designers and users. If they are not properly addressed and regulated, the expected benefits of these systems may come with unacceptable risks for consumers, governments, and society as a whole.

This paper examines discriminatory outcomes of AI and Algorithmic Decision Making (ADM) systems on consumers, using online price differentiation and credit scoring as examples. Considering that AI is a global and international phenomenon, and yet, consumer law is increasingly becoming a transnational phenomenon, our focus in this study, to regulate AI and ADM systems and protect consumers, will be based on international consumer protection principles and policies.

For doing that, we are looking for an effective solution to interpret the international consumer protection principles and apply them to an AI and ADM context. In this regard, we propose a model of Algorithmic Impact Assessment (AIA) tools that comprehensively evaluates the risk of bias and discrimination caused by the use of ADM systems in various types of Business to consumer (B2C) relationships and suggest adapted actions to be taken: Consumer Rights Impact Assessment (CRIA).

Within this paper, I am trying to discuss the various types of challenges and concerns raised by the use of AI and ADM systems from four dimensions: 1- the risk of bias and discrimination posed by the use of AI and ADM systems in B2C relationships, 2- the variety of the impact levels of ADM risks, 3- regulatory challenges, and 4- the lack of knowledge regarding the use of AI and ADM systems.

Hannah van Kolfschooten (*University of Amsterdam*)

Hannah van Kolfschooten is a PhD researcher at the Law Centre for Health and Life, University of Amsterdam. She is currently a visiting researcher at Harvard Law School. Her PhD research is on EU regulation of medical AI and its implications for patients' rights protection.

ABSTRACT: *The EU's Data Colonialism: Parallels between the EU's regulation of clinical trials and artificial intelligence*

The use of Artificial Intelligence (AI) in health is said to hold great potential for improving healthcare worldwide. AI systems are deployed to recognize patterns in enormous datasets,

predict a certain outcome, and take action accordingly. The use of health-related AI could improve the quality, effectivity, efficiency, and accessibility of healthcare.

At the same time, AI may deepen existing global health disparities. The development of medical AI requires large amounts of high-quality medical data. This data on European patients is scarce because of thorough regulation in EU Member States. Big tech companies (e.g., Google, Facebook, Microsoft) are therefore increasingly collecting these data in Low- and Middle-Income Countries (LMICs), taking advantage of the limited legal and regulatory frameworks surrounding personal data protection and product regulation. The products developed with these data are then marketed in the Global North. This emerging practice is also described as "data colonialism".

Data colonialism is however not a new phenomenon: there are many examples of medical researchers escaping restrictive regulatory regimes in some parts of the world by exporting otherwise prohibited research practices to LMICs – referred to by the European Commission as "ethics dumping". In this way, researchers located in an EU Member State do not have to comply with the strict EU framework for clinical trials. In many cases, burdens and risks are imposed on people without sharing the benefits, such as the profitable export of human tissue materials from LMICs to develop medicines for countries in the Global North.

We argue that the rapid emergence of research and development of "data-hungry" AI – governed by strict EU rules – may give rise to a new reality of "digital ethics dumping". Research already suggests that the adoption of strict rules for data protection in the EU seems to affect the exporting of clinical trials to LMICs. The new regulation for AI products proposed by the European Commission in April 2021 may amplify this effect.

In this paper we explore the parallels between the experience of outsourcing drug development, specifically clinical trials, to LMICs and the development of health AI.

General Conference Panel 7: **Prejudice in Theoretical Notions and State Affairs**

Moderated by **Prof. René Provost**, *McGill University*

Prof. René Provost, F.R.S.C., Ad. E., is a Full Professor at McGill University's Faculty of Law. Prof. Provost teaches and conducts research in public international law, international human rights law, international humanitarian law, legal theory and legal anthropology. He is particularly interested in human rights, international criminal law, the law of armed conflict, and the intersection of law and culture. Prof. Provost was the founding Director of the Centre for Human Rights and Legal Pluralism from 2005 to 2010. He was awarded the Barreau du Québec's Advocatus Emeritus (Ad. E.) distinction in 2017. Furthermore, he was elected a Fellow of the Royal Society of Canada (RSC) in September 2019.

Panelists:

Elazar Weiss (*Yale University*)

Elazar Weiss is a J.S.D. candidate at Yale Law School, where he also earned his LL.M. degree in 2020. Elazar's research focuses on the intersection between law, culture and language. His J.S.D dissertation examines the metaphors and paradigms underlying US abortion jurisprudence and the "culture wars". Before coming to Yale, Elazar studied Law, Economics and Philosophy at Tel-Aviv University and clerked on the Supreme Court of Israel. His work 'This Time – a Journey through the Holy Land' is currently on exhibit at the Slifka Center for Jewish Life at Yale.

ABSTRACT: *Metaphors we judge by - privacy and destiny in US abortion jurisprudence*

In my doctorate book-project, I bring to the US abortion debate a new method of analysis: the study of metaphors in law and society ('metaphorology'). Metaphors, I argue, shape the way we imagine ourselves and the world. In the legal context, they serve as paradigms shaping the 'normal science' of law – legal arguments, doctrinal outcomes and social debates. A close reading of US abortion jurisprudence and socio-cultural discourses exposes two competing metaphors for liberty – the PROTECTED SPACE and the OPEN PATH. In Griswold and

Roe, the court talks of a "zone of privacy" that may not be "invaded" by the state. This is the language of the PROTECTED SPACE. In Casey however, the court explains the "undue burden standard" as a shorthand for concluding that "a state regulation has the purpose or effect of placing a substantial obstacle in the path of a women seeking an abortion". This is the alternative language of liberty as an OPEN PATH. These metaphors and their logic also show up in social debates. "My body my choice" is an example for the first. The talk of ability "to control the course of one's life" for the second. Although underlying the abortion debates over the past decades, these metaphors have not yet been systematically exposed or analyzed. Moreover, each metaphor also constitutes its own legal right. The PROTECTED SPACE of Roe famously created the right to privacy (this is nicely exemplified in the talk of an "invasion of privacy" which appears in the call for abstracts). Acknowledging the alternative OPEN PATH metaphor of Casey should thus ultimately lead the court and social movements to regroup around a new constitutional right – the right to destiny. Metaphor is thus an important and unique tool for exposing the prejudices that underlie and shape our laws and culture.

Christoph Resch (*Max Planck Institute for Legal History and Legal Theory*)

I am currently a PhD Candidate at the Max Planck Institute for Legal History and Legal Theory in Frankfurt, Germany. I focus on contract law, legal history and comparative law. I did a Master of Laws at Harvard Law School in 2020. I qualified to practice law in Germany in 2017. In 2014, I passed the First State Examination in Law, after having read law at the Free University of Berlin and the University of Paris 1 (Panthéon-Sorbonne).

ABSTRACT: *Prejudice: Written Contracts are Complete and Accurate Statements of the Parties' Intentions*

This paper compares the evidential function of written contracts as well as of integration clauses in different common and civil law jurisdictions from a historical perspective. Integration clauses as part of a written contract state that the writing represents the entirety of the parties' agreement. These clauses reaffirm the law's presumption or prejudice that written contracts are complete and accurate statements of the parties' agreement. Rulings based on these presumptions (or clauses) generally favor the economically stronger party, which has access to legal consul, or is even able to set the written terms. This is often the case in contracts

between consumers and businesses. Consumers might have difficulties to prove (oral) terms, which are not set out in the written contract.

In early modern times, legal proceedings were increasingly aimed at establishing the truth. Since witness statements often contradicted each other, they were seen as potentially fraudulent and thus not apt for achieving this aim. Making written contracts mandatory and unimpeachable by extrinsic evidence promised to solve the issues regarding the reliability of witnesses. The initial rhetoric that writing would further the establishment of the truth, however, was gradually replaced by an emphasis on the foreseeability and legal certainty that writing provided, because in many instances the writing appeared to contradict the apparent truth. As a result, courts allowed more and more exceptions to the finality of written instruments, in an effort to balance legal certainty and justice.

The use of integration clauses is an attempt to swing the pendulum back towards legal certainty, and to reinstate rules rendering the written contract indisputable. The historical background of these rules helps to understand the different functions of integration clauses in different legal systems today, and to explain the law's bias in favor of the writing and ultimately the economically stronger party.

Dana Zuk (*Harvard University*)

Harvard Law School LL.M. candidate. Additionally, I hold a LL.B. in law and a B.A. in philosophy from Tel Aviv University. My research area concentrates mainly on law and political economy.

ABSTRACT: *The Distributive Effects of Public Debt: Economic Design, Property Rights and Distribution in the Early Days of Israel*

In the modern economy, public debt is a budgetary reality. Despite some scholarly work examining how public debt distributes wealth among current and future taxpayers, only limited research has examined how public debt distributes wealth between classes, races, and ethnicities. Among others, Sandy Brian Hager examines the distributional effects of public debt in the United States in the 20th century. While useful in demarcating the discourse around

public debt's distributive aspects, this line of work fails to place the current financial situation in a historical and theoretical perspective. Furthermore, it usually neglects to reveal the delicate story of semi-peripheral countries, in part dependent on the U.S. economy for their survival.

My research aims to explore one of the forgotten histories of public debt: that of Israel's early days after independence. During this period (1948-1953), the government faced severe financial challenges due to its deficit spending policy. The young state was plagued by inflation, unemployment, and import surpluses. To generate revenue and reduce purchasing power, the government imposed mandatory lending on all Israelis with liquid funds. It was part of a larger initiative to launch a new Israeli paper-note currency. As part of the process, old money had to be exchanged for newly paper money at the main bank, and a 10 percent was deducted as a loan to the government. Despite its benefits, the plan was heavily criticized as being unfair to the poor. Additionally, the plan adversely affected the Palestinian community, which was unaware of the need to replace old money by the set date.

The paper examines Israel's early economy and places its policy within the broader scholarly debate about public debt. In this project, I will evaluate the distributional effects of the mandatory lending from the perspective of the lenders and their sector, class, and ethnicity affiliation.

General Conference Panel 8: **Prejudice and the Planet - Overcoming Environmental Concerns and Climate Change**

Moderated by **Clarisse Delaville**, *McGill University*

Currently a second-year DCL candidate at McGill Faculty of Law. Her thesis focuses on gender inequalities in agricultural production in OECD countries, looking more specifically at Quebec and Switzerland's dairy production sectors as my case studies. Before joining the graduate community here at McGill, she completed a Master's degree in international law at the Geneva Graduate Institute in Switzerland. She is currently the assistant general secretary of the Quebec Society of International Law. Her research interests are food governance, international trade law, international environmental law and agriculture.

Panelists:

Alisson Felipe Moraes Neves (*University of São Paulo*)

Alisson is a Master's student in Sustainability at the University of São Paulo (USP) and has been involved in socio-environmental projects from a young age. His research is focused on analyzing the implementation of international agreements on hazardous waste management in Brazil. He holds a Bachelor's degree in Public Policy Management from USP, where he graduated as the top-ranked student. Additionally, he is a researcher in the Environmental Diplomacy group at the Institute of International Relations and Foreign Trade. His work was recognized with an Honorable Mention for his presentation at the 30th University of São Paulo International Symposium of Undergraduate Research.

Abstract: *Environmental Racism in Brazil and the Basel Convention*

The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal is an international treaty that guides the control of the manufacture, transport, management and disposal of residues that are hazardous to the environment and human health.

The adoption of the Basel Convention was relevant to foster the international chemical safety regime, as it led to the adoption of several legally binding agreements.

The Basel Convention is related to the concept of "Environmental Racism", particularly related to cases of exportation of waste by developed countries to developing countries. Environmental Racism refers to the disproportionate impact of environmental hazards and pollution on marginalized communities, often along racial or ethnic lines. The concept emerged in the 1980s in a context in which the black American population was affected by the incorrect disposal of toxic waste in their community.

Almost 30 years after the Basel Convention ratification in Brazil, which was through Decree 875/1993, the country has been struggling to enforce its regulations and prevent illegal dumping of hazardous waste, leading to the contamination of land, water, and air in places of socioeconomic vulnerability. These places are often located in low-income communities and are predominantly composed of black people.

The main Brazilian public policy referring to the Basel Convention is the National Solid Waste Policy (Law 12,305/2010), which aims to establish integrated management for the preservation of human health and the environment. The cases of inappropriate disposal of hazardous waste in Brazil are often in landfills and dumps, created near communities not consulted or informed. This scenario of environmental racism violates the principles of the Basel Convention, which seeks to prevent waste transfer and protect vulnerable communities from the harmful impacts of waste.

Caroline Lepage (*Université de Montréal)*

Caroline Lepage est étudiante au doctorat à la Faculté de droit de l'Université de Montréal et notaire. Ses recherches actuelles portent sur le droit des personnes physiques, le droit de l'enfant et le droit des successions. Elle s'intéresse également, sous un angle interdisciplinaire, à la conception sociale de l'enfant et à la tension entre protection et autonomie des personnes en situation de vulnérabilité.

ABSTRACT: *Les préjugés envers les personnes mineures comme frein à l'action climatique : quand les enfants ne sont plus insouciants*

L'enfance est perçue, dans les sociétés occidentales modernes, comme une période d'insouciance où les responsabilités de la vie adulte ne sauraient avoir de répercussions. De cette vision idéalisée découle une réticence à traiter les personnes mineures comme véritables sujets de droit, véhiculant le préjugé qu'ils ne possèdent pas les capacités requises pour exercer leurs droits et ce, tant au niveau individuel que collectif. Or, cette conception est fortement confrontée par le fait que les enfants, parfois plus éduqués au sujet des risques que posent les changements climatiques pour leur avenir et conscients de ceux-ci que la population adulte, mènent de front plusieurs initiatives en matière de lutte à ces derniers.

La Convention relative aux droits de l'enfant, adoptée le 20 novembre 1989, prévoit à son article 12 ce que la doctrine a nommé comme étant un droit de participation. Cette Convention reconnaît également, à son article 13, le droit à la liberté d'expression. La formulation de ces dispositions ne comporte aucune limite intrinsèque justifiant de ne reconnaître à ces droits qu'une portée strictement individuelle : il est donc possible de les concevoir comme ayant une portée collective.

Nous souhaitons donc explorer l'idée que les préjugés envers les personnes mineures nuisent à leur capacité d'action en matière de lutte aux changements climatiques et qu'une réelle adoption de la conception moderne de l'enfant mise de l'avant par la Convention pourrait être une solution à ce que nous perçevons comme étant un problème. Nous conclurons sur une réflexion critique à l'effet qu'il est probable, ou minimalement possible, que ce soient les adultes qui, en fait, font réellement preuve d'immaturité face à ce grand défi du XXIe siècle. (We therefore wish to explore the idea that prejudice against minors undermines their capacity to act on climate change and that a real adoption of the modern conception of the child put forward by the Convention could be a solution to what we perceive as a problem. We will conclude with a critical reflection that it is likely, or at least possible, that it is adults who are in fact being immature in the face of this great 21st century challenge.)

Menes Abinami Muzan (*University of Hull*)

Menes is a Law Lecturer at the University of Hull. Before that, he was a Law Lecturer at the University of Winchester, and the University of Port Harcourt, Nigeria. Menes is also a part-time Doctoral Researcher at the University of Birmingham. His area of research interest is broadly on environmental law, particularly the law of ecological restoration in Nigeria. He obtained an LLM from the University of London, and an LLB from Rivers State University, Nigeria. He qualified as a Barrister and Solicitor of the Supreme Court of Nigeria. He is a reviewer for the Law, Environment, and Development Journal.

ABSTRACT: *A Conceptual Framework for the Law and Governance Relating to Ecological Restoration in Nigeria*

The lack of understanding among policymakers about the (ecological) complexities that underpin ecological restoration can undermine the implementation of restoration obligations and, ultimately, of restoring degraded ecosystems. The relationship between environmental restoration science and law involves mutual influences: on the one hand, restoration science is one of the critical foundations for ecological restoration law. On the other hand, restoration law plays a vital role in putting scientific insights into practice through ecological restoration obligations. Yet, academic discussions need to provide a helpful understanding of the links between science and the law of ecological restoration. Scientific research has yet to be matched by similar advances in the law and governance of ecological restoration, not to mention advances in legal reforms. Recognising ecological restoration as not simply a scientific phenomenon but a human-centred practice where governance is a crucial component is essential.

While science is essential, conflicting views amongst scientists can render legal decision-making and implementation more difficult. Thus, restoring nature should be seen as embedded within a legal framework that determines what it is, when it should be done and how it should be undertaken. Hence, this paper presents a more comprehensive framework of what is arguably an alternative governance approach and generally defines the parameters within which future legal reforms could be considered. This framework applies to Nigeria and broadly

to countries with historically similar legal cultures, environmental governance challenges, and other extractive industries such as mining to comprehend these complexities and develop solutions. This framework will improve our general understanding of ecological restoration as a concept and serve as the theoretical basis for examining more concrete legal and practical reforms regarding Nigeria's oil spill response frameworks.

Vito Di Mei (*McGill University*)

Vito Di Mei is a recent Ph.D. graduate from the Institute of Air and Space Law at the Faculty of Law of McGill University. His research focuses on both sectors of air law and space law, particularly in an international law context. His doctoral thesis discusses how to regulate airport charges in a cost-effective manner by adopting a private law approach. His current projects focus on the regulation of non-State actors for their space activities and how space law can be implemented and reformed to protect the environment.

ABSTRACT: *International Law Against Prejudice: Outer Space Capacity Building Against Climate Change*

Climate change is now a pressing issue. Particularly, due to the lack of technology, funding, regulations, and other resources, developing countries are more vulnerable in face of this issue. International cooperation, through various forms of international treaties and agreements, serves as an effective solution to combating climate change. Among all the aspects of international cooperation, the application of space technology plays a key role by providing continued observations and long-term monitoring of climate change and other relevant changes arising out of climate change, such as the change in the ozone layer, through satellites or space stations.

However, this key role of space technology in promoting environmental welfare has been heavily underestimated by the international community. Such underestimation implies prejudice: the lack of awareness that capacity building in outer space can fight climate change forms an unfair and unreasonable opinion, which is produced without enough thought or knowledge, namely, prejudice. Accordingly, my search explores how international law can

combat climate change by enhancing capacity building in outer space. Differently put, the research will mitigate such prejudice.

I will examine key international legal instruments, including hard-law treaties and agreements, including the 2015 Paris Agreement, the 2021 Glasgow Climate Pact, and soft-law instruments, for example, Principles Relating to Remote Sensing of the Earth from Outer Space by the UN General Assembly. I will argue that existing international law lacks detailed and practical provisions, resulting in a low level of implementation in building robust capacity in outer space to combat climate change. This study will thus propose that future rule-making activities should pay attention to at least four fundamental regimes: the development of scientific and technological capacities for climate change combat actions, relevant human resources, organizations, and basic principles and critical rules.

General Conference Panel 9: **Constitutional Identity – Cohesion or Exclusion?**

Moderated by **Federico Suarez Ricaurte**, *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.

Panelists:

Wojciech Engelking (*University of Warsaw*)

Assistant Professor at the Faculty of Law and Administration, University of Warsaw, Poland, Principal Investigator of a Polish National Science Centre grant on normativity in post-World War I Europe. Main research interests: sociology and philosophy of law, Carl Schmitt, political theory, Israel, totalitarian law.

ABSTRACT: *Israeli Constitutional Identity as a Method of Exclusion*

In July 2018, the Knesset introduced the new Israeli Basic Law (functioning as a substitute for the constitution, never adopted in this country): the Nation-State Bill, which stated that „the right to exercise national self-determination in the State of Israel is unique to the Jewish people". This law was a subsequent chapter in the process of creation of Jewish identity as Israeli identity - the citizen of, to use the title of Theodor Herzl's novel, the Altneuland. The law has faced criticism from organizations dealing with human rights, which stated that it - as well as other legal documents that exclude citizens of the State of Israel on the basis of their ethnic identity (such as the denial of the possibility of serving in the army for Arabs with Israeli

citizenship) - is racist. In the proposed paper, the author will adopt this accusation, although not to criticize the Israeli solution. The purpose of the paper is to describe - on the Israeli example - the creation of a constitutional identity through the process of legal exclusion. The author will show, how the Nation-Sate Bill and other legal instruments are introducing distinction before the law, which uses ethnic prejudices as overriding the principle of the equality of every legal subject to create a constitutional and political identity - and diversify those who are political citizens from those who are citizens only as subjects of non-constitutional law. Israeli legal solutions thus will be presented as the creation of dual citizenship in this country based on ethnic prejudice.

Eleonora Iannario (*Sapienza - University of Rome*)

Eleonora Iannario, from Pescara (Italy), since November 2020 has been a Ph.D. student in Public, Comparative and International Law at the Department of Political Science, Sapienza University of Rome. In 2019, she obtained a master's degree in Sciences of Administration and Public Policies at Sapienza University of Rome and her graduate thesis was about European Citizenship Fundamentals. Furthermore, she has a bachelor's degree in Political Sciences and International Relations with a thesis investigating the EU Charter of Fundamental Rights and its interpretation by the Italian jurisprudence. Both times she graduated cum laude. After a period of research as a DAAD (Deutscher Akademischer Austauschdienst) scholar at the Ludwig-Maximilians-Universität München, she won a CIVIS Mobility scholarship and moved to the Faculty of Law of the Eberhard Karls Universität Tübingen. Afterwards, she won a Sapienza Young Researchers Mobility Grant and spent three months at the Department of Politics and International Relations of the University of Oxford as Visiting Ph.D. Student. She is a member of the editorial board of the scientific journal Federalismi.it and her research interests include citizenship, human rights, migration policies and naturalization policies. E-mail: eleonora.iannario@uniroma1.it

ABSTRACT: *Dual-citizenship among Diaspora Communities. Social Ties or Economic and Political Resources?*

States' attitudes towards their expatriates and diaspora communities have greatly strengthened the extraterritorial dimension of citizenship. Expatriates have long been transformative actors

in their countries of origin: they foment atypical citizenship-granting practices and create renewed identities at home. Moreover, while diasporic states use the rhetoric of engaging the global nation, their policies often target specific populations abroad; does it depend on what these populations can offer the home State? This also raises the question of how relevant diaspora politics, extraterritorial voting and the extension of citizenship rights beyond the borders of nation-states actually are, and how they can contribute to the ongoing transformation of national citizenship.

Concerning the methodology, this paper will start by analysing the Italian case as an example of atypical granting of citizenship to many emigrants, principally in Argentina and Romania. In fact, Italy, which has been one of the main countries of emigration for over a century, also permits the so- called italiani oriundi i.e. persons of Italian ancestry living permanently abroad, to regain Italian citizenship if they can prove that none of their direct ancestors has explicitly renounced it. Moving towards East, it will be examined the case of Israel, with its Law of Return, which dates back to the era of exclusive and territorial citizenship. Then it will be analysed the Russian-speaking diaspora especially in the Baltic States. Concluding the macro-comparison will be the case study of the African Diaspora in the United States. For each of these countries, the articles within the various nationality legislations regulating the granting of citizenship to expatriates will be examined. These ways of granting citizenship will also be interpreted in the light of the presence or absence in these observed legislations of the possibility of dual-citizenship. If the granting of dual citizenship also had different rules in the case of Diaspora communities, would this represent an unequal treatment and thus prejudice against those who do not possess the blood tie with the homeland?

In sum, this contribution aims at exploring the changing forms of belonging and citizenship and the compatibility - or incompatibility - between migrant integration and cultural distinctions.

Mafo Ndibe Mankah (*Université de Montréal*)

I am currently a PhD candidate in Law at the University of Montreal, researching in comparative constitutional law, precisely on federalism, language rights and cultural rights. Regarding academic

achievements, I have thrice received scholarships from the Head of State for the most performant students at the undergraduate and graduate level.

ABSTRACT: *Law and Prejudice in the African Constitutional Context: A Comparative Analyses*

"It is a truth universally acknowledged that a single man in possession of a good fortune must be in want of a wife". Typical of our forefathers, who in the 19th century with the future of Africa in their hands married the colonial masters to meet their social needs, unfortunately, their biased views of the global north's legal tradition have turned sour over time with the international prioritization of western cultures. Nonetheless, how can this love be enkindled through constructively conveying the uniqueness and beauty of the African legal tradition?

These affirmations respond to our pluralistic constitutional approach of "Law and Prejudice". Where the social phenomenon aimed at organizing life in society by general and impersonal rules creating rights and prerogatives for individuals is constantly attacked by an unreasonable dislike of or preference for something. Considering such pre-conceptions as prejudice, the need for a critical reflection in legal decision-making emphasizes Ricœur's hermeneutical philosophy in a mimesis theory. Since, inconsiderate readings, interpretations, and applications continue to inflate domestic legal orders. For instance, the question of integrating human rights treaties into domestic law is biased depending on the dictatorial or democratic regime existing nationally. In short, the global North's tradition is often adopted or refuted per domestic or international perspectives regardless of the social realities.

By a comparative constitutional method, concrete proof that western legal traditions are prioritized over the global south internationally is seen through the theory of constitutionalism. Whose constituents: separation of power and democracy navigate Southeast Asia and Africa through tripartite parliamentary or presidential regimes copied from British, French, German, or American colonial masters. Regrettably, a decline in democracies deepens authoritarianism and implicitly reverts African governance to a "chieftain" rule, necessitating adaptable international legal models.