<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Chair</th>
<th>Speaker(s)</th>
<th>Title</th>
</tr>
</thead>
</table>
| 9:00 - 10:30 | Tax, Corporations and Society  | S. Bittle, H. Cheng | K. Brooks & S. Singer, L. Philipps | *Financial Fraud in China: A Structural Examination of Law and Law Enforcement*  
*Tax-Free Reorganizations: A Growing Business Tax Expenditure?*  
*L. Philipps*  
*Tax Expenditures and Fiscal Transparency in Developing Countries*  
*S. N. Hamilton*  
*J. Henderson* |
|       | Narrating the Nation      | L. Thomas-Hawthrone | C. Wilke, B. Authers, J. Henderson  
*Making the Past a Foreign Country (While keeping an eye on the ghosts)*  
*Propriety, Paternalism and Pains Patriae: Reading R. v. Sharpe as a Mediated Legal Event*  
*Torture is the Truth of Colonialism: Notes on an Argument about Colonial Legality*  
*M. H. Picard*  
*M. Ptacek* |
|       | Extreme Measures and National Security | E. H. Reiter, R. Diab | D. Pacione  
*The Twilight of Human Rights: What Motivates the Use of Extreme Measures in National Security?*  
*From the Extraordinary to the Ordinary: A 20th Century Examination of the Constitution of Permanent Emergency Laws in Northern Ireland*  
*Order and Disorder: vers un état d’exception international?*  
*T. Ferlat*  
*M. Ptacek* |
|       | **Regards critiques sur le crime et la sanction** | B. Quirion | J. Velloso  
*Au-delà des crimes et des peines : châtiments légaux non pénaux et enjeux pour la criminologie critique*  
*M. A. Bertrand*  
*L. Thomas-Hawthrone*  
*R. Diab*  
*D. Pacione* |
|       | Joint Panel with the Canadian Association for Studies in International Development | A. Nononsi | D. M. Cruz Herrera, J. Guan, P. Simons  
*L. Thomas-Hawthrone*  
*R. J. Sharpe*  
*R. Diab*  
*R. Brassard & J. Martel* |
|       | Assessing the Contours of Clemency in the History of British North America and Canada | J. Phillips | P. Connor  
*L. Thomas-Hawthrone*  
*R. J. Sharpe*  
*R. Diab*  
*R. Brassard & J. Martel*  
*R. J. Sharpe*  
*R. Diab*  
*R. Brassard & J. Martel* |
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Chair(s)</th>
<th>Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 00 -</td>
<td><strong>Indigenous People, Rights and Land</strong></td>
<td>J. McMillan</td>
<td>M. Ilg, A. Ingelson &amp; R. Malach, D. Lertzman</td>
</tr>
<tr>
<td>12 30</td>
<td>Light refreshments available outside the conference rooms.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 30 -</td>
<td><strong>Critical and Interdisciplinary Perspectives on the Latimer Case</strong></td>
<td>J. Phillips</td>
<td>B. Berger, J. Martel, R. Weisman, <em>A. Pelta</em>, J. McMillan</td>
</tr>
<tr>
<td>14 00</td>
<td><strong>Droit, environnement et histoire/ Law, Environment and History</strong></td>
<td>P. Girard</td>
<td>P. Girard, <em>D. Gilles</em></td>
</tr>
<tr>
<td>14 00 -</td>
<td><strong>Theorizing Justice: Critical External Analytics</strong></td>
<td>K. Gorkoff</td>
<td>K. Gorkoff, R. P. Datta, <em>D. Gilles</em></td>
</tr>
<tr>
<td>15 30</td>
<td><strong>Constructions of Mental Health and Reasonableness</strong></td>
<td>J. Webber</td>
<td>J. Webber, K. White, K. Sandford, <em>K. White</em></td>
</tr>
<tr>
<td></td>
<td><strong>New Socio Legal Research I</strong></td>
<td>H. McLeod-Kilmurray</td>
<td>H. McLeod-Kilmurray, A. Bunting, M. White, V. Kazmierski</td>
</tr>
<tr>
<td></td>
<td><strong>Integrated Teaching Collaborations</strong></td>
<td>A. Bunting</td>
<td>A. Bunting, M. White, V. Kazmierski</td>
</tr>
<tr>
<td>Title</td>
<td>Author(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Western Conception of Self</td>
<td>Y. Bitton</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discrimination Based on Sameness, Not Difference: Re-reading the Israeli Case for Discrimination</td>
<td>J. Epp-Buckingham</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A Leap of Faith: Rights, Wrongs and Canada’s Religious Accommodation</td>
<td>H. Kislowicz</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The (Contested) Objectives of Multiculturalism and Canadian Law</td>
<td>*E. H. Reiter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>de la gouvernance environnementale : de l’intendant à la loi sur l’hygiène publique de 1901</td>
<td>S. Hamil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creation and Control: The Battle to Control Liquor and Natural Resources in Alberta 1905-1940</td>
<td>R. Jochelson &amp; K. Kramar</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Environment Physical, Human, and Legal: Unpacking Nuisance in Late Nineteenth-Century Montreal</td>
<td>J. Silcox</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maoists and Islamists</td>
<td>E. Dej</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disciplining Capital: Theorizing Corporate Crime in Neo-Liberal Times</td>
<td>Connecting Epistemologies: The Shifts in the Ways of Knowing Mental Illness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Critical Methodologies and Swinging Sexuality – Describing the Harm Principle of Obscenity and Indecency in Canada</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Un)reasonable Women: Female Only Defenses and Their Legal Implications</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>“Not a Right, but a Privilege”: Blood Donation Policy in Canada, Risk, the Construction of “Tainted” Bodies and the Exclusion of “Men Who Have Sex with Men”.</td>
<td>M. Raguparan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mongols or Legal Subjects? Contested Identities Of Indoor Sex Workers</td>
<td>C. Buccafusco, J. Bronsteen &amp; J. Masur</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contexts for Attire and Order Within Formal Adjudication</td>
<td>K. Scheer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecting Epistemologies: The Shifts in the Ways of Knowing Mental Illness</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion, Race, Rights: Connected Understandings in Anglo-American Law</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**16 00 – 17 30**

**Plenary Session (MB-S2-210)**

Eve Darian-Smith (University of California at Santa Barbara)

*Religion, Race, Rights: Connected Understandings in Anglo-American Law*
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
</table>
| 9:00 AM – 10:30 AM | **The Legal Profession:** Historical and Contemporary Perspectives  
Chair: E. Adams  
B. Aron  
P. Girard  
D. Prabhat  
N. Kovalev  
Les mesures d'internement préconisées par le Canada à l'encontre de ses citoyens et des ressortissants étrangers (1914-20 et 1940-45)  
W. Crichlow  
Policing Terrorism  

Internment, Undercover Interrogations and Policing  
Chair: D. Parkes  
H. Cheng  
Fairness and Effectiveness in Policing: An Evaluation of the Saskatoon Police Service  
A. Khoday  
Rezoning the Right to Silence: Modifying Legal Protections to Govern the Admission of Incriminating Statements Procured by Undercover Interrogations Conducted Outside of Detention  
*S. Gaudette  

Revolution and the Legal Profession in North America 1750-1950  

Constrained to Think Outside the Box: Laundering for Guantanamo Prisoners/ Detainees in the U.S.A.  

In Search of “Quality” Juries: Secret Background Checks and Manipulation of Jury Selection.  

Regulating Corporations  
Chair: M. Coutu  
V. Sukdeo  
Corporate Social Responsibility and the Intersection of Workers' Rights  

*A. Talorico  
Codes de conduite et droit d'association: une étude de cas du secteur du textile  
S. Bittle & L. Snider  
Getting Tough on Corporate Crime? Law, State and the Corporate Criminal  

**Criminalization, Victimization, and Practices of the Self  
Chair: U. Khan  
D. Spencer  
Events and Victimization: Unsubstitutability, Trauma and Witnessing  

M. Chandler  
Becoming Criminal: A Phenomenological Sketch of Criminal Identification  

L. Karaian  
The Pleasure Principle: Why the Greatest Challenge to the Legal Regulation of Sex is Not Pain but Pleasure  

Law and the Environment  
Chair: M. Picard  

*N. J. Chalifour & Karen Bubna-Litic  
Fairness in Domestic Climate Change Policies  

H. McLeod-Kilmurray  
Vegetarianism and Food Governance  

A. Green  
Bundling Carbon: Property Rights and REDD  

Domestic Violence and Family Law Process  
Chair: G. S. Rigakos  
M. Legacy  

Historical Antecedents: Looking Back at Mid 18th Century Marital Violence: Legal Cruelty, Provocation and Resistance  

L. Ma  
Women and Domestic Violence in China  

J. Lassonde  
Dealing with Family Problems in Ontario  

N. Semple  
Litigating the Best Interests of a Child  

---

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
</table>
| 10:30 AM – 11:00 AM | Health Break  
Light refreshments available outside the conference rooms.  

Pause santé  

---

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
</table>
| 11:00 AM – 12:30 PM | Governance and Risk in Education  
Chair: R. Cairns  
D. Crosby  
The Politics of Community  

Transitional Justice  
Chair: A. Chatterjee  
M. Pritchard  
Land, Power and Peace: Tenure Systems and the  

Neoliberal Governance  
Chair: M. Valverde  
R. Jochelson & K. Kramar  
The Labaye Harm  

Murder, Death Penalty and Clemency  
Chair: M. Méthot  
T. Brooks & C.  

**Critical Criminology in Canada (Roundtable)  
Animated by: A. Doyle  

Le droit comme terrain de recherche/ Law as a Research Field  
Chair: S. Gaudette  

---
<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
</tr>
</thead>
<tbody>
<tr>
<td>12:30 – 14:00</td>
<td>Lunch Break</td>
</tr>
<tr>
<td></td>
<td><strong>Theoretical Engagements</strong></td>
</tr>
<tr>
<td></td>
<td>Chair: M. Larsen</td>
</tr>
<tr>
<td></td>
<td>D. Young</td>
</tr>
<tr>
<td></td>
<td>Rights and the Social in Legal Reasoning</td>
</tr>
<tr>
<td></td>
<td>N. Carrier</td>
</tr>
<tr>
<td></td>
<td>G. S. Rigakos</td>
</tr>
<tr>
<td></td>
<td>The Security Commodity</td>
</tr>
<tr>
<td>14:00 – 15:30</td>
<td>Sexting, Sexual Identity and Child Protection</td>
</tr>
<tr>
<td></td>
<td>Chair: A. Slane</td>
</tr>
<tr>
<td></td>
<td>J. Bailey</td>
</tr>
<tr>
<td></td>
<td>Sexting: Policy Approaches</td>
</tr>
<tr>
<td></td>
<td>C. Janzen</td>
</tr>
<tr>
<td></td>
<td>Monster Crusades: The Construction of Responsibility for the Commercial Sexual Exploitation of Children and Youth</td>
</tr>
<tr>
<td></td>
<td>V. Trerise</td>
</tr>
<tr>
<td></td>
<td>Child Protection: Appeasing the Gods of Risk Society</td>
</tr>
<tr>
<td></td>
<td>A. McGillivray</td>
</tr>
<tr>
<td></td>
<td>Paternal Power, Fiduciary Duty and Children’s Rights</td>
</tr>
<tr>
<td></td>
<td>*Women, Law and Society in India (Roundtable)</td>
</tr>
<tr>
<td></td>
<td>Chair: K. Bates</td>
</tr>
<tr>
<td></td>
<td>K. Bates</td>
</tr>
<tr>
<td></td>
<td>M. H. B. Bérubé</td>
</tr>
<tr>
<td></td>
<td>C. Chevrier</td>
</tr>
<tr>
<td></td>
<td>K. Gagné</td>
</tr>
<tr>
<td></td>
<td>N. Rigillo</td>
</tr>
<tr>
<td></td>
<td>C. Robitaille</td>
</tr>
<tr>
<td></td>
<td><strong>On Publishing Socio-Legal Books (Roundtable)</strong></td>
</tr>
<tr>
<td></td>
<td>Chair: D. Crocker</td>
</tr>
<tr>
<td></td>
<td>V. Singer</td>
</tr>
<tr>
<td></td>
<td>The Use of High Risk Case Coordination to Prevent Intimate Partner Femicide</td>
</tr>
<tr>
<td></td>
<td>L. Haskell &amp; M. Randall</td>
</tr>
<tr>
<td></td>
<td>Law, Restorative Justice and Gender Based Violence</td>
</tr>
<tr>
<td></td>
<td>A. Glasbeek</td>
</tr>
<tr>
<td></td>
<td>Women, Fear of Crime, and Self-Defense</td>
</tr>
<tr>
<td></td>
<td>A. Nelund</td>
</tr>
<tr>
<td></td>
<td>Conflict in Nova Scotia? Women’s Organizations and Institutionalized Restorative Justice</td>
</tr>
<tr>
<td>Time</td>
<td>Session</td>
</tr>
<tr>
<td>----------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>15 30 –</td>
<td></td>
</tr>
<tr>
<td>16 00</td>
<td><strong>Health Break</strong></td>
</tr>
<tr>
<td></td>
<td>Pause santé</td>
</tr>
<tr>
<td></td>
<td>Light refreshments available outside the conference rooms.</td>
</tr>
<tr>
<td>16 00 –</td>
<td></td>
</tr>
<tr>
<td>17 30</td>
<td><strong>Sexual Assault and Monsters</strong></td>
</tr>
<tr>
<td></td>
<td>Chair: C. Backhouse</td>
</tr>
<tr>
<td></td>
<td>E. Finestone</td>
</tr>
<tr>
<td></td>
<td>What Kind of Man Would Sexually Assault a Woman? Exploring Gendered</td>
</tr>
<tr>
<td></td>
<td>Interpretations and Discussions of Sexual Assault Media Campaigns on</td>
</tr>
<tr>
<td></td>
<td>Campus</td>
</tr>
<tr>
<td></td>
<td>L. Vandervort</td>
</tr>
<tr>
<td></td>
<td>When It’s Not ‘YES’ It’s ‘NO!’ Affirmative Sexual Consent in Canadian</td>
</tr>
<tr>
<td></td>
<td>Jurisprudence and Legal Theory</td>
</tr>
<tr>
<td></td>
<td>A. Lam</td>
</tr>
<tr>
<td></td>
<td>From Werewolves to Pedophiles: Reading Lan and Monters in Little</td>
</tr>
<tr>
<td></td>
<td>Riding Hood.</td>
</tr>
<tr>
<td></td>
<td><strong>Law and the Environment II</strong></td>
</tr>
<tr>
<td></td>
<td>Chair: N. Chalifour</td>
</tr>
<tr>
<td></td>
<td>E. Bowness</td>
</tr>
<tr>
<td></td>
<td>Public Participation in Natural Resource Protection: A Critical</td>
</tr>
<tr>
<td></td>
<td>Comparison of Western Canadian Jurisdictions</td>
</tr>
<tr>
<td></td>
<td>Z. Haider</td>
</tr>
<tr>
<td></td>
<td>Environmental Terrorism in South Asia: How to combat it with</td>
</tr>
<tr>
<td></td>
<td>International law</td>
</tr>
<tr>
<td></td>
<td>A. Lam</td>
</tr>
<tr>
<td></td>
<td>From Roman law to common law to the Supreme Court of Canada</td>
</tr>
<tr>
<td>17 30 –</td>
<td></td>
</tr>
<tr>
<td>19 00</td>
<td><strong>Governance in Action</strong></td>
</tr>
<tr>
<td></td>
<td>Chair: K. Kramar</td>
</tr>
<tr>
<td></td>
<td>R. Huising</td>
</tr>
<tr>
<td></td>
<td>Governing the Gap: Forging Safe Science Through a Community of Practice</td>
</tr>
<tr>
<td></td>
<td>C. Levesque &amp; A. B. Adanhounme</td>
</tr>
<tr>
<td></td>
<td>La citoyenneté industrielle à l’épreuve de la flexibilité</td>
</tr>
<tr>
<td></td>
<td>*C. Levesque</td>
</tr>
<tr>
<td></td>
<td>&amp; A. B. Adanhounme</td>
</tr>
<tr>
<td></td>
<td>La citoyenneté industrielle à l’épreuve de la flexibilité</td>
</tr>
<tr>
<td></td>
<td>*J. Paquin</td>
</tr>
<tr>
<td></td>
<td>Le gestion du risque par le contrat : confiance et coopération dans le</td>
</tr>
<tr>
<td></td>
<td>secteur de l’aéronautique</td>
</tr>
<tr>
<td></td>
<td>*I. Martin</td>
</tr>
<tr>
<td></td>
<td>Le redéfinition des dignités dans l’entreprise par l’adoption des</td>
</tr>
<tr>
<td></td>
<td>principes de bonne gouvernance</td>
</tr>
<tr>
<td></td>
<td><strong>Prisoners on Prison: Voices from Inside the Universal Carceral</strong></td>
</tr>
<tr>
<td></td>
<td>Discussants / Readers:</td>
</tr>
<tr>
<td></td>
<td>K. Walby</td>
</tr>
<tr>
<td></td>
<td>C. Gervais</td>
</tr>
<tr>
<td></td>
<td>J. Kilty</td>
</tr>
<tr>
<td>19 30 –</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Congress 2010 President’s Reception</strong></td>
</tr>
<tr>
<td></td>
<td>Grey Nuns Residence, 1185 St-Mathieu</td>
</tr>
<tr>
<td></td>
<td><strong>CLSA Annual Banquet</strong></td>
</tr>
<tr>
<td></td>
<td>Le Mas des Oliviers, 1216 rue Bishop</td>
</tr>
<tr>
<td>Time</td>
<td>Session</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| 9 00 – 10 30 | **New Socio Legal Research II**  
Chair: T. Kuttner  
E. Adams  
S. D. Frederiksen  
D. George  
V. Iafolla  
**Access to/Freedom of Information (I)**  
Chair: T. Dafnos  
S. P. Hier  
F. Vallance-Jones  
Y. Hameed & J. Monaghan  
**Errors of Fact an Law: Christie v. York Redux**  
Chair: E. Adjin-Tettey  
U. Khan  
L. Karaian  
A. Slane  
**Little Criminals/ Little Victims: Critical Considerations of Youth, Sexuality and the Law**  
Chair: E. Adjin-Tettey  
U. Khan  
L. Karaian  
A. Slane  
**Contemporary Issues in Critical Criminologies II**  
Chair: D. Moore  
M. M. Gómez  
A. Doyle  
C. Pires  
A. Ilea  |
| 10 30 – 11 00 | Health Break  
Light refreshments available outside the conference rooms.  
Pause santé |
| 11 00 – 12 30 | **On the Position of Victims of Crime in the Criminal Justice System in Canada and Beyond**  
Chair: P. Noreau  
T. Van Camp  
**Book Panel on D. Crocker & V. M. Johnson (eds.), Poverty, Regulation and Social Justice**  
Chair: D. Crocker  
L. Freeman  
**Deliberative Democracy and Participation**  
Chair: K. White  
L. Jacobs  
**Contemporary Issues in Critical Criminologies II**  
Chair: D. Spencer  
D. Parkes  
M. Chandler  
**Migration I**  
Chair: M. Méthot  
*A. Sabourin Laflamme  
The Uses of Violence: A Critical Approach to Hate Crimes Laws  
A. Doyle  
A. Ilea  
*M.-E. Paré  
La migration, vecteur de transformation du juridique : une étude de cas des Mossi du Burkina Faso  
J. Webber  
The Generosity of Toleration |
| Crime Cases: The Victims’ Point of View | J. Scriver  
Justice pour les crimes contre l’humanité et les crimes de guerre : Attentes et point de vue des victimes |
|---|---|---|
| A. Glasbeek  
Apprehensive Wives and Intimidated Mothers: Women, Fear of Crime and the Criminalization of Poverty in Toronto | T. W. Harrison  
Social Assistance and the Politics of Welfare Fraud Investigations: The Case of Alberta | V. M. Johnson  
Reading the Criminalization of Poverty  
J. Karabannow  
Street Kids as Delinquents, Menaces and Criminals in Canada and Guatemala: Another Example of the Criminalization of Poverty |
| Disabilities Act, 2005 | L. Shantz  
Who Does She Think She Is? Older Women’s Identity Negotiations in Neoliberal Society | M. Paré  
A l’écoute des enfants handicapés : de la définition du principe de participation et de sa mise en pratique en éducation |
| *M. Paré  
A l’écoute des enfants handicapés : de la définition du principe de participation et de sa mise en pratique en éducation | Globalization, and the Criminalization of ‘Growing Weed’ | *E. Raymond  
Justice pour les crimes contre l’humanité et les crimes de guerre : Attentes et point de vue des victimes |
| P. Ranasinghe  
Between Compassion and Discipline: Homeless Shelter Service Providers, (In)Formal Rules and Their Tactics | M. McMahon  
Tasers Under Fire: Some Cautionary Observations | C. Bellot  
Bernard St-Jacques  
Isabelle Raffestin  
Philippe Antoine Couture-Ménard |

**De la pensée critique à l’action**  
Chair: N. Carrier  
*C. Bellot  
Comment la recherche peut sortir la défense des droits des populations marginalisées?  
*D. Joubert  
Sur les représentations cliniques de la pédophilie: Approche ‘critique’ et considérations pour l’intervention  
*B. Quirion  
Criminologie critique et intervention clinique : vers une nouvelle clinique criminologique indépendante |

**Problem Solving Courts in Canada (Roundtable)**  
P. Maurutto  
K. Hannah-Moffat  
D. Moore  
J. McMillan |

**Teaching Criminal Law Radically: Connecting Understandings Across Institutions (Roundtable)**  
C. Backhouse  
D. Gilbert  
R. Cairns Way  
Resisting the Hidden Curriculum; Teaching Sexual Assault |

**Access to / Freedom of Information (II)**  
Chair: J. Piché  
M. Larsen & K. Walby  
Getting at the Live Archive: on Access to Information as Data Collection in Canada  
T. Dafnos  
Behind the Blue Line: Researching the Policing of Aboriginal Activism Using ATI  
A. Rees  
Sustaining Secrecy: Executive Branch Resistance to Access to Information in Canada |

Lunch break
CLSA Board Meeting (H 1226)

<table>
<thead>
<tr>
<th>12 30 – 14 00</th>
</tr>
</thead>
</table>
| Protecting Marginalized Bodies  
Chair: L. Jacobs  
M. Deckha  
Discordant Discourses? A Feminist [Pro-choice] Legal Analysis of Embryo Research Restrictions in Canada  
E. Adjin-Tettey  
Sexual Wrongdoing: Do the Remedies Reflect the Wrong?  
F. Kodar  
Selective Justice Invoking Crown Immunity to Avoid Liability for Historical Abuse Claims |

<table>
<thead>
<tr>
<th>14 00 – 15 30</th>
</tr>
</thead>
</table>
| **De la pensée critique à l’action**  
Chair: N. Carrier  
*C. Bellot  
Comment la recherche peut sortir la défense des droits des populations marginalisées?  
*D. Joubert  
Sur les représentations cliniques de la pédophilie: Approche ‘critique’ et considérations pour l’intervention  
*B. Quirion  
Criminologie critique et intervention clinique : vers une nouvelle clinique criminologique indépendante |

<table>
<thead>
<tr>
<th>12 30 – 14 00</th>
</tr>
</thead>
</table>
| Protecting Marginalized Bodies  
Chair: L. Jacobs  
M. Deckha  
Discordant Discourses? A Feminist [Pro-choice] Legal Analysis of Embryo Research Restrictions in Canada  
E. Adjin-Tettey  
Sexual Wrongdoing: Do the Remedies Reflect the Wrong?  
F. Kodar  
Selective Justice Invoking Crown Immunity to Avoid Liability for Historical Abuse Claims |

<table>
<thead>
<tr>
<th>14 00 – 15 30</th>
</tr>
</thead>
</table>
| **De la pensée critique à l’action**  
Chair: N. Carrier  
*C. Bellot  
Comment la recherche peut sortir la défense des droits des populations marginalisées?  
*D. Joubert  
Sur les représentations cliniques de la pédophilie: Approche ‘critique’ et considérations pour l’intervention  
*B. Quirion  
Criminologie critique et intervention clinique : vers une nouvelle clinique criminologique indépendante |

<table>
<thead>
<tr>
<th>12 30 – 14 00</th>
</tr>
</thead>
</table>
| Protecting Marginalized Bodies  
Chair: L. Jacobs  
M. Deckha  
Discordant Discourses? A Feminist [Pro-choice] Legal Analysis of Embryo Research Restrictions in Canada  
E. Adjin-Tettey  
Sexual Wrongdoing: Do the Remedies Reflect the Wrong?  
F. Kodar  
Selective Justice Invoking Crown Immunity to Avoid Liability for Historical Abuse Claims |

<table>
<thead>
<tr>
<th>14 00 – 15 30</th>
</tr>
</thead>
</table>
| **De la pensée critique à l’action**  
Chair: N. Carrier  
*C. Bellot  
Comment la recherche peut sortir la défense des droits des populations marginalisées?  
*D. Joubert  
Sur les représentations cliniques de la pédophilie: Approche ‘critique’ et considérations pour l’intervention  
*B. Quirion  
Criminologie critique et intervention clinique : vers une nouvelle clinique criminologique indépendante |
<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Chair(s)</th>
<th>Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 30 –</td>
<td>Health Break</td>
<td></td>
<td>Light refreshments available outside the conference rooms.</td>
</tr>
<tr>
<td>16 00 –</td>
<td>Teaching Trans-systemically:</td>
<td>H. Lessard</td>
<td>Chair: H. Lessard</td>
</tr>
<tr>
<td>17 30</td>
<td><strong>Contemporary Issues III</strong></td>
<td>L. Karaian</td>
<td>A. Woolford &amp; A. Curran</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Community Positions, Neoliberal Dispositions: A Field Analysis of the Inner City Not-for-Profit Justice Agencies in Winnipeg</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>M. Walker</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Prison and the Commodification of the Prisoner</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>U. Khan &amp; S. Khan</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The Pauchay</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Case: Aboriginal Identity, Addiction Theories and Adjudicative Consequences</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>B. Hogeveen</td>
</tr>
<tr>
<td></td>
<td>Migration II</td>
<td>M.-E. Paré</td>
<td>S. Marsden</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Whose Protection? Assessing recent developments in the regulation of foreign workers in Canada</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>R. Russo</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Colonialism and Its Effects on Temporary Migration: The Caribbean Commonwealth and the Origins of the Canadian Seasonal Agricultural Workers Program</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>M. E. Dill</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Constructing and Contesting Boundaries: Filipina Live-in Caregivers and Acts of Citizenship</td>
</tr>
<tr>
<td></td>
<td>Counseling and Social Work</td>
<td></td>
<td>G. F. Mendez</td>
</tr>
<tr>
<td></td>
<td><strong>Access to / Freedom of Information (III)</strong></td>
<td>K. Walby</td>
<td>W. de Lint &amp; R. Bahdi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>National Security Information Access Brokering</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>J. Piché</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Un)mapping Penal Expansion in Canada: A Note on Method and the Policing of Criminological Knowledge</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>D. McKie</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Access Denied: The Right to Know in an Era of Government Secrecy</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Legend/ Legende</strong></td>
<td></td>
<td>* communication en français et/ou bilingue /French and/or bilingual paper</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>criminologie critique/critical criminology stream</strong></td>
</tr>
</tbody>
</table>
Hongming Cheng (University of Saskatchewan)

Financial Fraud in China: A Structural Examination of Law and Law Enforcement

China has not escaped the recent worldwide wave of financial scandals. Fraud has increasingly become recognized as a serious problem in the financial sector, which causes billions of dollars in loss every year according to official government bodies such as China Banking Regulatory Commission and the Public Security Ministry. This article attempts to examine the law enforcement response to the financial fraud from a structural perspective. Based on an analysis of statutes, government documents, news reports, and in-depth interviews with financial regulators and law enforcement officials, this study finds that law and law enforcement in China varies with power and organization. When fraud offenders are more powerful and/or more organized than their victims, they receive less severe treatment in the legal system. But when the offenders are less powerful and/or less organized than the victims, they receive more severe treatment. However, occasional crackdowns on powerful and/or organized fraudsters can happen when such offenders have been deemed to constitute a significant actual or potential threat to the structural stability of economy and society. The article suggests that an equal and consistent approach of law and law enforcement is needed to control financial fraud for the long-term interest of the state.

Kimberly Brooks (McGill University)
Sam Singer (McGill University)

Tax-Free Reorganizations: A Growing Business Tax Expenditure?

Non-recognition rules for corporate reorganizations have been an important part of Canada’s tax system since 1972, and even before that time; however their generosity and scope has increased dramatically. Initially they only applied to essentially formal rearrangements of corporate capital, paper transactions as they were called. However, Canada now allows tax-deferred corporate rollovers for almost all corporate reorganizations, including those in which the nature of the ownership interests have completely changed and a wide variety of international transactions. This paper will explore the growth in the liberalization of Canada’s corporate tax reorganization rules and examine whether they should be treated as tax expenditures for corporate mergers and acquisitions and, if so, whether they represent sensible government spending policy.

Lisa Philipps (Osgoode Hall Law School)

Tax Expenditures and Fiscal Transparency in Developing Countries

Tax expenditures (targeted tax concessions) are widely used by governments around the world to advance myriad public policy objectives. A common criticism of tax expenditures is that they lack transparency compared to direct spending or regulatory instruments, reducing political accountability for the costs, distributive impact, and target effectiveness of public policy. Most wealthy countries undertake some form of tax expenditure reporting which attempts to address this transparency concern and there is a broad academic literature on tax expenditures in these countries. More recently some developing and emerging countries have also begun to publish tax expenditure data. This paper will investigate the current state of tax expenditure reporting in developing countries and the possible reasons for this new trend. It will also consider whether norms of fiscal transparency articulated in developed countries and by international financial institutions are well suited to the developing country context.
NARRATING THE NATION
RACONTER LA NATION

Chai Chair: Luanda Thomas-Hawthrone (University of South Africa)
Christiane Wilke (Carleton University)

Making the Past a Foreign Country (While keeping an eye on the ghosts)

“The past is a foreign country: they do things differently there”
(L.P. Hartley, The Go-Between (1953))

In the context of democratic transitions, the efforts to draw a “thick line” between the present and the past (Tadeusz Mazowiecki) seem to contrast with the injunction to remember. Yet, I argue, in order for the past to become an object of remembrance and instruction, it needs to be made into a “foreign country.” This paper examines one site at which the past is sealed off as past: criminal trials for state atrocity such as killings and enforced disappearances in Argentina and Germany. At these trials, I argue, key participants articulate “transition stories” that turn the non-democratic past into a distant “foreign country” replete with lawless violence, understand the political present as a time of transition in which the past is overcome, and project hope for a future in which law, human rights, and democracy promise order.

Transition stories enable judgments on responsibility for state atrocity: the stories’ narrative arc points to a moral in which the lawless violence of the dictatorship is overcome through the justice inherent in the law. Yet not all participants in trials tell transition stories in which the past, the present, and the future are clearly distinguishable; and in which law and violence are polar opposites. Some actors challenge the temporality of transition stories by making different pasts present, by conjuring up ghosts, and by pointing to troubling continuities of injustice instead of clean transitions.

Drawing on court records and theoretical texts on temporality, haunting, and judgment by Walter Benjamin, Avery Gordon, and Jacques Derrida, I argue that participants in trials for state atrocity craft and challenge transition stories. Transition stories enable judgment by locating state violence in the past and the justice of law in the present. Ghost stories, in contrast, trouble the distinction between past and present in favour of more complex temporalities and, as a result, more troubling questions of justice that transcend the time and space of a courtroom.

Benjamin Authers (University of Alberta)

“What Might Be a Crime Need Not Necessarily Be a Sin”: Legal Ambivalence in John Mackie’s Sinners Twain

In his 1895 novel Sinners Twain: A Romance of the Great Lone Land, John Mackie’s depiction of Western Canada is shaped by an ambivalent understanding of the meaning of law’s institutionalisation. Mackie, an Englishman who served with the North-West Mounted Police, establishes his ideal Mountie as an English expatriate whose enforcement of the law is depicted as an act of gentlemanly duty, even as Prairie society at large questions the necessity of those laws. The consequence is an ambivalence about the law and the moral culpability of those who break it: indeed, in many ways the greatest threat in Mackie’s novel is not the heroine’s smuggler father, whose legitimacy is established by his aristocratic French descent, but rather the low-born officer whose promotion to a position of command upsets the social order.

This paper will examine Mackie’s representation of legal ambivalence in the West in the context of nineteenth-century Canadian ideas about moral and criminal responsibility. In particular, it will interrogate the novel’s racialised and classed assumptions about culpability, and consider how they work to establish, or to undermine, the role of law as a form of social order. The consequence, I will argue, is a novel that attempts to legitimate legal institutions, such as the NWMP, in the Prairies, but whose uncertainties simultaneously suggest ongoing anxieties about the creation, absence, and disruption of law and order in the Canadian West.

Sheryl N. Hamilton (Carleton University)

Propriety, Paternalism and Parens Patriae: Reading R. v. Sharpe as a Mediated Legal Event

On January 26, 2001, the Supreme Court of Canada rendered its decision in R. v. Sharpe, a case under Canada’s child pornography prohibitions. The legal issues in the case pitted child pornography advocate, John Robin Sharpe’s, right to freedom of expression against broad criminal legislation prohibiting the production and possession of child pornography. While ultimately the Supreme Court upheld the legislation, a legal analysis of the case alone, does not begin to capture what this case means in Canadian civil society – to do this, I argue, we must examine its cultural life.
The cultural life of the Sharpe case is evident in textual traces such as: the death threats directed at the trial judge who ruled the law unconstitutional; the claims made by intervenors ranging from the Evangelical Fellowship of Canada to the Canadian Police Association to the British Columbia Civil Liberties Association; the widespread national media coverage; vitriolic letters to the editors; inundated radio call-in shows; editorials and cartoons; the legal decisions themselves, and more. When examined as a 'mediated legal event,' Sharpe emerges as a site for the performance of a particular mode of Canadian paternalism. It is a paternalism that understands the moral protection of population as the legitimate work of the state; demarcates immutable boundaries of propriety written onto national identity; invites a response of outrage whose “proper” target then becomes all sexual deviance; and codes “children” as nonsexual victims perpetually at risk and requiring constant vigilance on “our” part. All good citizens are, in this way, interpellated as parens patriae.

Jennifer Henderson (Carleton University)

Comparative Canadian Redress: Reading Tropes of Confinement and Childhood in Two Movements for Reparations

This paper examines the discursive nexus of liberal human rights, the child, and “culture” in contemporary redress campaigns in Canada. It works to situate the proliferation of these campaigns, and their most recent means of recognition by the state, in the context of a settler-state’s negotiation with colonial legacies and the exigencies of national competitiveness in the global market. The popularization of trauma theory as a means of understanding collective injuries has brought forward a language for harm that confounds the distinctions between public and private spheres, and potentially, also, the boundaries between an error-ridden past and an enlightened present. However, I argue that more attention needs to be paid to the ways in which initiatives for collective historical redress that mobilize the concept of traumatic injury can fit themselves to a neoliberal landscape, and naturalize its contours. Redress demands and state acknowledgements can actually work to enlarge the properly “private” and celebrate the achievement of an allegedly post-ideological present. In order to describe the “sayable” of recent movements for redress, this paper sets side-by-side two instances of redress mobilization. The reparations movements formed around Aboriginal residential schooling and Ukrainian Canadian wartime internment are an unlikely pairing for study: they are inequivalent in many respects—in their scale, in their terrain, and in their stakes for a national narrative of progress through acknowledgement of past wrongs. However, the interfaces between the iconography and discourses used to frame residential schooling and internment as reparable historical injustices suggest that there may be an important exchange relation at work here.

On the one hand, in order to understand why residential schooling should now serve as a “truth-event” for a long and ongoing history of colonial subjugation, I suggest that we might look to the terms in which diasporic communities have been able to frame the experience of wartime internment. In the language of modern liberal nation-states, internment was an illegal incarceration that violated human rights under international law. A process of transcoding and selection must take place before settler colonialism can be made to stand as a comparable injury, a delimitable past action that caused calculable damages—that is to say, before it can be translated into the terms of diasporic communities’ negotiations with the state. On the other hand, the iconography of innocent childhood used to frame residential schooling as a historical injury exerts a reciprocal influence on the kinds of claims that can made by ethno-cultural groups seeking redress.

By analyzing the exchange of tropes between these heterogeneous cases, the paper aims to expose some of the contingencies and constraints shaping the culture of redress, and their implications for conceptions of harm, agency, and justice.
Robert Diab (University of British Columbia)

The Twilight of Human Rights: What Motivates the Use of Extreme Measures in National Security?

A pervasive assumption in legal scholarship on counter-terrorism holds that human rights are compatible with national security. Western states purport to endorse what can be called the compatibility theory, but continue to engage in practices that clearly contradict it. President Obama, for example, may have ordered the closure of Guantanamo and rejected as false “the choice between our safety and our ideals”, but the US remains committed to indefinite detention for certain “high value” detainees and the practice of extraordinary rendition. A series of cases from Arar (2003) to Abdelrazik (2009) have exposed Canada’s complicity in torture, rendition, or cruel and degrading treatment. The failure of the compatibility theory to account for this ongoing practical conflict has left much of the current debate over rights and security at an impasse.

This lecture will explore conflicting “architectures of belief” that shape perspectives on national security and civil liberties. How do beliefs about the absolute prohibition on torture and other core rights marginalize or exclude beliefs central to national security? How are these excluded beliefs key to understanding the persistence torture, rendition, and other extreme measures?

Darren Pacione (Carleton University)

From the Extraordinary to the Ordinary: A 20th Century Examination of the Constitution of Permanent Emergency Laws in Northern Ireland

This is a paper about law in times of crisis. Carl Schmitt, infamous German political and legal theorist of the Third Reich, explained that there exists no norm that can be applicable to chaos. Therefore, legal order and the rule of law are contingent upon the normal situation. The boundaries of the normal situation and the rule of law are traditionally defined by a constitution. However, in times of crisis, when the constitution is suspended, what is left? What exists beyond the norm, beyond the rule of law, and beyond the boundaries of normative law? Schmitt, again explained, that we are left with the ‘state of exception’.

More specifically, this paper explores the constitution of ‘permanent emergency laws’ in Northern Ireland. These are laws constituted within the state of exception. I argue that the state of exception in Northern Ireland in 1973 constituted emergency provisions that have consequently permeated the state of exception and taken on normative value within the ordinary situation. This breach of the exception leads me to question: how does law constituted within the exception take on normative value within the ordinary situation? Furthermore, does this normative value give way to legitimacy, and are exceptional laws cloaked in normality proliferating within the ordinary situation?

The normalization of extraordinary measures in Northern Ireland presents both a historically critical and scholastically topical site from which I intend to continue on the conversation of the long-term consequences and costs of exercising emergency powers.

Michael Picard (Université du Québec à Montréal)

Ordre et désordre: vers un état d’exception international?

système d’exploitation capitaliste occidental dans un contexte d’anticipation de crises énergétiques mondiales.

Melissa Ptacek (University of New Brunswick)

Torture is the Truth of Colonialism: Notes on an Argument about Colonial Legality

In 1958, when Henri Alleg, a newspaper editor, communist, and supporter of Algerian independence from France, issued his account of his arrest, detention, and torture, entitled La Question, he articulated an argument that would become pervasive in French discussions of the Algerian War in years to come. The use of torture, he claimed in what was to become a bestseller, was not simply “the repugnant fruit of the colonial system” but more specifically its normal product.

My paper delineates the workings of this pervasive argument on the part of opponents to the Algerian War—and specifically to the use of torture in the conduct of the war—that violent illegality, torture in particular, was the truth of colonialism, revealed by the conditions of war. This argument asserted that colonialism is premised on, if not lawlessness as such, then lawlessness as limit, in a sense lawlessness as law. I argue instead that we should see the practice of torture during the Algerian War more as an operation of colonial legality, that is, a particular mode of lawfulness. On the other hand, neither should colonial legality be understood as a regression to a time, such as the Middle Ages in Europe, when torture functioned within the confines of the law as a mode of proof. Rather, by examining accounts of trials and hearings regarding victims of torture, we may trace the modernity of colonial legality in Algeria in the very gratuitousness and uselessness of its cruelties, which often shaded paradoxically into counterproductiveness.

REGARDS CRITIQUES SUR LE CRIME ET LA SANCTION
CRITICAL LOOK AT CRIME AND SANCTION
CHAIR: Bastien Quirion (Université d’Ottawa)

Joao Gustavo Vieira Velloso, Université d’Ottawa

Au-delà des crimes et des peines : châtiments légaux non pénaux et enjeux pour la criminologie critique

Le but de cette communication est de discuter de l’importance grandissante des châtiments légaux non pénaux dans le champ pénal, à partir de l’administration institutionnelle des conflits en droit administratif, et en particulier de ceux liés à l’immigration au Canada. À l’aide de données empiriques, nous tenterons de problématiser certains fondements théoriques et méthodologiques de la criminologie critique, en particulier le rôle central encore occupé par le duo crime et peine au sein de cette école. En ce sens et paradoxalement, la criminologie critique se rapproche souvent du paradigme criminocentrique dominant en criminologie (traditionnelle), une situation qui s’est aggravée en partie avec l’influence de Surveiller et Punir qui a prétendu que l’emprisonnement était essentiellement devenu une peine. En conséquence, les châtiments légaux non pénaux (mesures de police et sanctions administratives) ont généralement été ignorés ou encore, ils ont été catégorisés en termes de crime et de peine, que ceux-ci apparaissent dans le cadre même du droit criminel (e.g. détention préventive ou provisoire, détention temporaire) ou à l’extérieur de celui-ci (e.g. certificat de sécurité, détention administrative ou sursis en droit de l’immigration). Je suggère qu’il faut plutôt appréhender ces châtiments légaux non pénaux comme tels et repenser leur rôle au sein du champ pénal (un rôle de plus en plus important) et ce, afin de mieux comprendre l’ensemble des réactions sociales dans les différentes institutions, l’interaction et la complémentarité de celles-ci ainsi que leurs logiques de mise en forme et leurs implications sociales.

Marie-Andrée Bertrand (Université de Montréal)

L’oubli de l’Objet

Alors que les organisateurs du colloque affirment que la recherche “prend appui sur une importante et riche tradition de recherche en criminologie critique”, nombreux sont les chercheurs canadiens qui ont démontré la faiblesse et les apories de la production critique dans les périodiques canadiens. La cause de cette pauvreté est simple: la criminologie a oublié son Objet, le crime, un objet d’aillers emprunté au droit; elle n’a jamais eu le courage de se donner un champ propre. L’interdit défini par le législateur est pour la criminologie une donnée intouchable. La discipline a beaucoup étudié le criminel et la criminalité, auscultant le premier sous la loupe des sciences naturelles et humaines, et décrivant l’évolution d’un phénomène qui se situe en aval. Elle a porté peu ou pas d’attention au crime. Il est intéressant de constater que dans la version anglaise de l’appel de communications on écrit que le colloque portera sur les “crime
related issues”, en français “la question criminelle”, des questions autour du crime. La légitimité de l’interdit, la justification des infractions, l’inapplicabilité et l’inapplication de l’infraction aux torts majeurs et à leurs auteurs sont des questions à peine effleurées par quelques chercheurs isolés. En somme, la criminologie ne veut pas parler du crime, elle travaille en aval du droit pénal dont elle observe les effets. Ma proposition: s’intéresser au crime, questionner l’interdit.

Renée Brassard et Joane Martel (Université Laval)

Société de risque et logique actuarielle : regard sur la mutation temporelle du statut de la communauté autochtone dans la gestion du risque applicable aux autochtones incarcérés au Canada

La légitimité de la peine contemporaine s’articule autour de paramètres à géométrie variable. Cette géométrie est façonnée par des acteurs sociaux diversifiés et interchangeables dans le temps et l’espace. Au cours de la dernière décennie, les Autochtones ont acquis suffisamment d’influence politique pour devenir un de ces acteurs sociaux. En effet, certains lobbies autochtones ont dénoncé la surreprésentation endémique des Autochtones au sein de la population carcérale. Fraîches de ce constat, les autorités correctionnelles canadiennes ont adaptés les pénitenciers canadiens aux particularités culturelles des Autochtones, notamment en y intégrant des acteurs correctionnels autochtones (agents correctionnel autochtones, Aînés, etc.). Dans le cadre de cette présentation, ces différentes adaptations seront mises en relation avec la société de risque et la justice actuarielle de manière à mettre en lumière un paradoxe relatif au rôle de la communauté autochtone comme facteur de (re)production et de réduction du « risque autochtone ». Par ricochet, ce même paradoxe mettra en exergue la transformation singulière dans la nature ontologique de la communauté autochtone comme espace d’inscription résidentielle, soit : le passage, dans le cadre des pratiques de gestion du risque, du statut de la communauté autochtone comme facteur d’accroissement du risque pénal à la réinsertion sociale au sein de cette même communauté comme facteur de réduction de ce même risque.

Nicolas Carrier (Carleton University)

Pénalité et temporalité: contributions (et limites) de la théorie de systèmes sociaux à une sociologie de la peine

Cette communication propose d’identifier et de soumettre à un examen critique les potentielles contributions dont la théorie des systèmes sociaux de Niklas Luhmann est susceptible d’être porteuse pour la sociologie de la peine. La pensée sociologique sur la peine place traditionnellement le droit pénal en position de soumission, partielle ou entière, à une vaste série de forces et groupes. De plus, elle aborde généralement la peine comme outil participant à coordonner l’action sociale, favoriser l’intégration sociale, subjectifier, ou encore générant ou renforçant une gamme hétérogène d’asymétries sociales, économiques, etc. Les propositions radicales de Luhmann suggèrent un différent point d’entrée pour analyser le rôle de la peine dans la société contemporaine: produire une réalité bien particulière par la force, dont l’effet ne relève pas d’un projet de gouvernement de la conduite, mais plutôt de permettre le maintien d’attentes - de projections temporelles - en dépit de leurs constantes déconvenues. La peine se présenterait donc avant tout comme un outil rendant possible d’envisager une réalité non advenue sans subir les affres du risque. Mais une telle proposition n’est pas sans limites pour un examen critique des usages de la force et du pouvoir du droit pénal.
Dulce Maria Cruz Herrera (Université Paris X-Nanterre)

Le droit international au développement revisité par la CIIE dans l’énoncé de «la responsabilité de protéger» en 2001

En dépit de l’absence de références explicites dans le rapport sur la «Responsabilité de protéger», publié en 2001 par la CIIE, le droit international au développement et les différentes approches contemporaines du développement international sont au cœur de la démarche de cette commission, née grâce à une initiative canadienne. L’axe opérationnel «à l’abri du besoin», développé dans le rapport de la CIIE, a été retenu dans le cadre de cette communication afin d’expliquer l’influence de grands principes du droit international au développement sur le travail de la CIIE. Partant des interfaces communes possibles entre le droit au développement comme droit de la personne et l’axe «à l’abri du besoin», cette communication propose des pistes de réflexion autour de l’approche contemporaine du développement international, sous l’angle du droit international, considéré ici comme un corps de règles visant à encadrer les relations entre acteurs internationaux. Reprenant les mots de Kofi Anan prononcés en 1999 : «(...) aux questions complexes, réponses complexes s'imposent donc, et action interdisciplinaire (...), nous endossons entièrement l'interdisciplinarité, appuyée sur un cadre théorique propre au droit international public non sans tenir compte des rapports multiples que cette discipline entretient avec le domaine d'étude des relations internationales dans son ensemble, largement complexifiés à l'heure de la mondialisation des échanges... Notre argumentaire reposera essentiellement sur une grille des concepts bien établis par le droit international des droits de la personne, le droit international de l'environnement et le droit du commerce international.

Penelope Simons & Lynda Collins (University of Ottawa)

Participatory Rights in the Ontario Mining Sector: An International Human Rights Perspective

Recent developments in law and policy, including the outcomes of the National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Sector in Developing Countries, and Bill C-300, signal a growing domestic concern with respect to the environmental and social impacts of Canadian extractive companies operating extraterritorially. Canada is home to over 75 per cent of the world’s largest exploration and mining companies and a significant number of Canadian extractive companies operate in developing countries. These developments are based on the policy imperative that Canadian corporations operating abroad should comply with the same environmental and social standards to which they are legally bound in Canada, and that these standards are reflective of Canada’s international law and international human rights obligations. This view is expressed in recent Parliamentary debates and, in a bill tabled by the NDP on June 16, 2008. However, recent disputes concerning lack of public consultation on proposed large mining projects, and concerning peaceful protest and Aboriginal rights in lands subject to mining claims have highlighted significant human rights concerns associated with Canada’s own provincial and territorial mining regimes.

Canada has some of the highest mineral exploration activity in the world within its own borders. In 2005, it was host to nineteen per cent of total global mineral exploration. In addition, Ontario mines produce one third of Canada’s mineral output. Little academic research has been conducted on the human rights impacts of Canadian provincial and territorial mining regimes and, where research has been undertaken, it has focussed on environmental issues. Thus while the federal government, industry and other members of civil society are focussing on non-mandatory regulation of corporate impacts abroad, and the provincial and territorial governments are beginning to revise their mining regimes, it is pertinent and timely to consider the extent to which international human rights (including indigenous peoples’ rights and environmental human rights) are respected and protected in the domestic Canadian mining sector.

This paper will examine participation rights: the general environmental right to participation in environmental decision-making; the right of aboriginal communities to free prior and informed consent; and the right of peaceful assembly. It will consider their relationship to each other and how these rights have been treated in domestic mining legislation as well as by the courts in current disputes over mining activity on land subject to aboriginal title claims.
Jing Guan (McGill University)

Lip Service or True Commitment? Reassessing the “Responsibility to Protect” after the 2009 UN General Assembly Debate

The “responsibility to protect” (R2P) is a relatively new concept unanimously adopted by world leaders at the 2005 UN World Summit. Its central theme is “sovereignty as responsibility” – the idea that sovereign states have a responsibility to protect their own populations from mass atrocities, but that when they are unwilling or unable to do so, that responsibility must be borne by the international community. Despite the ostensible unanimous adoption at the World Summit, complex moral, legal, political and operational questions surrounding R2P’s rhetoric and efficacy emerge one after another. While what R2P really entails for each individual state and the international community as a whole remains vastly unclear, UN Secretary-General Ban Ki-moon currently urges states not to reinterpret or renegotiate the conclusions of the World Summit, but implement R2P in a fully faithful and consistent manner. His report “Implementing the R2P” went through a heated UN General Assembly debate in July 2009. Now is an opportune time to reflect on the development of R2P and reassess its strengths and limits in order to set a clearer basis for further discussion and actions. This paper contributes to such an endeavor with a focus on states’ positions towards R2P during the 2009 General Assembly debate, and argues that R2P currently remains a vague political commitment lacking enough political will to be turned into a binding legal obligation any time soon. But its potential for reinforcing existing mass atrocities related human rights and humanitarian obligations for states should be further explored.
Patrick Connor, York University

Clemency and the Rhetorical Metaphor of the Family in 19th Century Upper Canada

Between 1791 and 1841, some 2,000 Upper Canadian convicts petitioned the Crown for clemency. These men and women offered many reasons why the colonial Executive should grant them a pardon. The most widely used argument in favour of mercy, however – used by some 40% of petitioners – was the anticipated effect their continued imprisonment, or execution, would have upon their dependant families. Such an argument was often a successful one, for it combined a highly sympathetic narrative, with a discourse of king as father, and did so within the petition – itself a highly paternalistic form of address. However, the use of the family as a means to secure a pardon also reveals, in a distinctly material way, the nature of community organization in Upper Canada. A family was not only metaphorically dependent upon the petitioner – often a husband or father; it very often quite literally relied upon him for material survival. Lacking a public welfare system, those who might be asked to support a petition for clemency were also doubtless influenced by the knowledge that a destitute family would become a community responsibility. The integration and interdependence – both vertically and horizontally – of Upper Canadian communities meant that a supportive signature offered to pressure the executive for a pardon was often less a comment on the offender’s culpability vis-à-vis the original crime, so much as it was a recognition of his place in neighbourhood credit, labour, and extended kin networks, as well as the degree to which the community as a whole might suffer if a pardon was not granted. The self interest of community members unconnected (in the narrowest sense) with the offence in question would not have been considered by authorities as a legitimate reason to support a pardon campaign. In favouring those who were the most well-integrated within their communities and possessed the most social capital, while simultaneously discriminating against those who were strangers, who lacked family and kin ties, or who were for other reasons considered community undesirables, the pardon petition

nevertheless fulfilled the state’s intent that it should grant mercy to those who were worthy, and make examples of those who were not.

Robert J. Sharpe (Court of Appeal for Ontario)

Murder in Late Nineteenth-Century Picton, Ontario: A Case Study of Wrongful Conviction and Capital Punishment

This paper examines the circumstances surrounding the 1884 trial and execution of Joseph Thomset and George Lowder in Picton, Ontario, providing a window on criminal justice in late nineteenth century Canada, the brutality of capital punishment, and the enduring problem of possible miscarriages of justice. In particular, this paper focuses on the post-conviction review of the case. The law did not afford Thomset and Lowder a right of appeal against their convictions for murder or the sentences of death. A convicted person could only ask the trial judge to “reserve the case” if it raised a difficult legal point. If the trial judge agreed that there was a contentious point of law, he could refer the question to a panel of judges for consideration. There is no indication that any of the three defence counsel thought the case against the accused raised a point of law that would merit a request to trial judge Justice Paterson that he reserve the case. Any complaint the prisoners had with their convictions related to the facts and that did not amount to a point that could have been appealed to a higher court. The Governor General in Council - the federal cabinet - reviewed all capital sentence cases in the country. Justice Patterson prepared his report on the case giving his assessment of the evidence and the soundness of the verdict, a full transcript of the evidence was prepared, and anyone, including the prisoners or their lawyers, could make written submissions to plead for mercy. In keeping with this practice, Justice Patterson prepared a detailed handwritten report on the case for the Secretary of State so that the Minister of Justice and the rest of the Cabinet would have the benefit of his opinion when considering whether to commute the death sentences. The jury's recommendation of mercy carried no weight with Justice Patterson and his report certainly did not help the efforts mounted to gain a reprieve. He was entirely satisfied with the jury’s verdict and convinced that the convictions of both men were well founded both on the evidence and in law. Against the weight of his opinion, the efforts of those who wrote letters, organized and signed petitions and the advocacy of Dalton McCarthy, who presented the petition to the cabinet, were to no avail. The trial judge’s report was frequently a crucial factor and that the entire process often filled significant gaps in the law. Justice Patterson, like many of his contemporary colleagues, regularly gained
a sympathetic ear when urging the reprieve of condemned individuals in cases where the letter of law failed to take into account facts bearing upon moral culpability such as intoxication, insanity and the harsh application of the felony murder rule. On the other hand, Justice Patterson was reticent about questioning a jury verdict. Executive clemency offered an uncertain and unreliable way to uncover or correct errors in the trial process itself. Thomset and Lowder’s respective fates were effectively sealed by the lack of any effective post-conviction remedy and by the cold efficiency of a legal process which sent them to the gallows less than six months after the murder of Peter Lazier, just as public opinion was beginning to swell in their favour. Twenty years after the Lazier murder trial, prosecutor Roger Clute failed to persuade a Picton jury to convict another accused murderer despite strong evidence of guilt. The acquittal was attributed in part to misgivings about Clute’s success in convicting Thomset and Lowder and the doubt as to their guilt that lingered in the community.

Brian Raychaba (contract historical researcher)

_Clemency and Community: Local Knowledge, Privileged Narrators, and the Construction of Criminal Culpability in Capital Cases, Canada, 1919-1939_

This paper focuses on the Royal Prerogative of Mercy in Canada during the period 1919-1939 and explores the structure of the spatially embedded interpretive practices through which the culpability (and ultimately, the fate) of capitally condemned persons was constructed. Historiographically, the paper combines a post-structuralist appreciation of capital case files as textual artefacts of competing truths informing social action with the New Critical Legal Geography’s emphasis on the spatial contingency of law. Not all of the texts or ‘stories’ communicated to Ottawa about condemned persons and their deservedness of execution carried equal weight with the federal Cabinet, the ultimate decision-makers in capital cases. The narrations of certain privileged local or spatially proximate story-tellers, I argue, – most crucially the trial judge but also, in specific circumstances, local law enforcement officials and others - exerted greater influence vis-à-vis the final disposition in capital cases than those stories told by the, less authoritative narrators such as the condemned person’s family members, community advocates of various sorts, local notables, or members of the public at large. Historian Carolyn Strange depicts the Chief of the Remissions Branch of the Department of Justice - the federal civil servant in Ottawa chiefly responsible for organizing case file materials and making recommendations to Cabinet - as “the arbiter of truth” in capital case deliberations. Strange describes his final memorandum to the Minister of Justice on each capital case as “the most important document” in case files. This paper argues against what I consider to be the centrist flaw in this interpretation. At least in terms of the period under review (1919-1939), this paper makes the case for the discursive primacy of the trial judge’s more locally situated narrative contribution to capital cases final outcomes. Local knowledge and opinions relevant to the construction of criminal culpability mattered greatly in capital cases but only when endorsed and constructed as authoritative by the trial judge in question. Interestingly, in a majority of capital cases decided during this period trial judges _abdicated_ their interpretive responsibility either by focusing solely on the appropriateness and veracity of the legal verdict or by refusing to provide an explicit recommendation either for or against commutation. Such cases, I submit, opened up a post-trial interpretive vacuum within which other, less authoritative story-tellers - namely local law enforcement personnel, Branch-appointed psychiatrists, Crown Prosecutors or other local administrative notables - could then step in and have their narrations and recommendations prove influential to the final outcome without the endorsement of the trial judge. Rather than seeing the trial judge’s recommendation as merely another quantitative variable among others influencing the final disposition, as some statistically-minded analysts are content to do, this paper argues that the trial judge in capital cases during this period is perhaps best understood in spatial and discursive terms as a spatially situated and all-too human agent of the state. In metaphorical terms, the trial judge in capital cases functioned as an interpretive prism or “lens” – often though certainly not always responsive to local community sentiment and knowledge(s) - through whom the multiple considerations (legal as well as extra legal) in capital cases could be, and often were, interpreted and constituted as authoritative, or not. This privileged interpretive function had serious implications for the construction of condemned persons’ criminal culpability and for the state’s decision whether or not to execute them.
Michael Ilg (University of Calgary)

A Theory of Liberal Rights for Aboriginal Self-Determination and Developments in Light of Globalization

Aboriginal advocacy through law is unique in its combination of past, culture, and place. While the joining of aboriginal cultural practices with a past occupation of territory or resource usage has resulted in the recognition of inherent rights in both international and domestic contexts, the tangible quality of life improvements have been minor. The result has been that universal notions of rights and liberal equality are compromised, in that individual preferences to resources are only granted to select ethno-cultural groups, with only meager development gains in exchange. This paper proposes to reverse this relationship in providing for a vision of aboriginal rights as yielding self-determination over regional resources, via regulatory powers, which are more conducive to development and consistent with liberal equality.

Part one of this paper canvases academic advocacy for aboriginal rights as sui generis and deserving of unique constitutional or inherent status unavailable to all other individuals and groups. This sui generis advocacy will be contrasted first with the legal adoption that it has received, whether in international agreements like the UN Declaration on the Rights of Indigenous Peoples or in domestic jurisprudence, with Canada as a foremost example. Next, the sui generis approach will be contrasted against critiques of aboriginal rights that stress inconsistencies with both equality and logic.

Part two discusses the theoretical justifications for group and cultural specific rights, and multicultural liberalism in particular. In engaging with the individual autonomy rationale for group and cultural rights, it will be argued that if such rationales are accepted they must be qualified by limits of time and be open to individual transference between groups to be reconcilable with liberal equality. Although majority individuals may be disadvantaged procedurally in the near to medium term in order to alleviate past injustices suffered by minority groups, a truly liberal system should not discount any interest perpetually. Ideally, the alleviation of past minority injustice would occur as a project in which both minority and majority may envision individual benefit.

Allan Ingelson & Robert Malach (University of Calgary)

Adequate Consultation with Indigenous Stakeholders for Mineral Development in Canada

What is “adequate consultation” with indigenous stakeholders for regulatory approval of a proposed energy or mining project in Canada? Analysis of administrative and judicial decisions suggests that it can be a challenge to identify the appropriate members of an indigenous community to consult with, to demonstrate “adequate” consultation and secure regulatory approval. Project notification methods frequently used by project proponents such as newspaper advertisements, mail outs and websites can be ineffective communication and consultation vehicles with some indigenous groups. The lack of response from an indigenous community does not necessarily reflect a lack of concern about the potential environmental, social and cultural impacts of the project. Recognition by the project proponent of the importance of establishing an ongoing, positive relationship with an indigenous community is a consideration in providing an “adequate” consultation program. Establishment of advisory groups with participation from members of an indigenous community can improve the communication process and understanding of the proposed project by the stakeholder. Providing reasonable funding to an indigenous group so that it can better understand the implications of the project, and creating a memorandum of understanding and community partnership
agreements can contribute to an “adequate” consultation program in the review process.

David Lertzman (University of Calgary)

*Reflections on the Duty to Accommodate*

In Canadian law it is unclear as to what the duty to accommodate means in the context of energy development and aboriginal stakeholders. Considerable work remains to understand the requirements of the duty and its implications for the equitable benefit and cultural sustainability of Indigenous peoples. One of the reasons that accommodation is less understood than the legal duty to consult is because so many of its examples stem from models either reactive to or generated by industry. Models of accommodation authentically generated by First Nations communities and other indigenous groups are only starting to emerge. One such model from our research in northern Alberta is based on principles of ‘equitable benefit for cultural sustainability’. In this model, cultural sustainability is nested within ecological integrity and systems thresholds which allow for subsistence economies based on traditional land-use guided by traditional ecological knowledge (TEK) along with other market based economic development. One strategic negotiating tool for First Nations communities to obtain requisite accommodations through negotiation as part of the consultation process appears to be founded in cross-cultural research leveraging TEK with Western science using geographical information systems to map traditional land use in the form of a traditional-use study (TUS). Examples extant in forestry are being examined for their application to the energy sector. The First Nations community in our case seems to be playing the mentor role to industry in modeling and instructing on the principles and practices of dutiful consultation and accommodation.

Anne Pelta (Université Laval)

*Prouver sa différence: le cas des membres de la Communauté métisse du Domaine du Roi et de la Seigneurie de Mingan au Québec*

Je travaille actuellement sur une communauté métisse qui est en procès contre le gouvernement du Québec pour la reconnaissance de son identité et de ses droits. Il s’agira dans un premier temps de mettre brièvement en contexte cette lutte dans le contexte particulier de “l’éveil” des Métis de l’est. Par la suite, je m’intéresserai plus particulièrement à la dynamique complexe qui veut que les Métis doivent se faire reconnaître comme différents des autres Québécois pour protéger leur identité et leurs pratiques. Cette différence a fait l’objet de tentatives de normalisation par les courts au travers de tests (l’arrêt Powley par exemple). Cette normalisation a énormément d’impacts sur la façon dont les Métis se mobilisent dans leur lutte politique, mais les critères posés par les courts ne s’imposent pas implacablement sur les communautés non-plus, ils permettent au contraire un jeu particulier, d’où émerge créativité et dynamisme.
Benjamin Berger, University of Victoria

*What R. v. Latimer Tells us about our Constitutional Lives*

This paper draws on a larger project that explores a certain mismatch between the stories we tell about the shape of public law in a modern constitutional democracy and what we learn when we pay attention to the way in which the criminal justice system operates. Influential aspects of constitutional theory seek to describe modern constitutionalism in terms of the triumph of law's reason expressed in the logic of proportionality. Such theories seek to extinguish any space for the exceptional decision – the decision made in spite of the law. Yet close attention to the imaginative architecture of our criminal justice system shows the abiding presence of the conscience-based exception as an important aspect of the relationship between the rule of law and a just state. The idea that conscience is necessary to do justice despite the law has deep roots in our constitutional history. Although generally unacknowledged, and despite its inherent dangers, it is an idea that continues to underwrite our conception of criminal justice. This abiding role for the conscience-based exception in the criminal law suggests that theories of constitutionalism that focus on the logic of proportionality miss important parts of our constitutional lives. Although this continued force of the conscience-based exception expresses itself in numerous ways in the criminal justice system (expressions explored in the larger piece) this paper looks to the case of *R. v. Latimer* to develop these themes and to draw out the contemporary role of conscience and the exception in the contemporary state.

Joanne Martel (Université Laval)

*Remorse and the Production of Truth*

When combined with sincere remorse, confession of a crime tends to acquire a “correctional” value for the offender as well as a restorative value for the community. In this paper, confessing to the commission of a crime, and expressing remorse for it, are conceived of as two key moments of the same socio-legal act, that of *Truth* production. As such, remorse is envisaged as a major site of conflict between the offender, the offended, and the criminal justice officials responsible for “doing” justice, that is for restoring the *Truth* about the criminal and his crime. This paper reflects on the “necessary” meshing of issues of impenitence and contrition with notions of denial, confession and *Truth* as a traditional focal point of Criminal law and of its operative apparatus, the Criminal justice system. The paper questions the privileged status traditionally conferred to the confession within the hierarchy of legal proof, and the concomitant constitution of harms to the offender caught up in the dichotomous scheme of remorsefulness versus remorselessness. Here, remorselessness may be said to strike at the foundations of Criminal law, assailing its hard philosophical core and threatening the stability-producing effect of the existing normative expectation.

Richard Weisman (York University)

*Defiance: Reflections on the Principled Refusal to Show Remorse in the Trials of Robert Latimer*

This paper is part of a larger project that seeks to identify the role of the court and community in the regulation of emotions, more specifically, the regulation of when and in what form those who transgress legal and moral norms should express remorse. From this vantage point, my interest in the trials of Robert Latimer centers on his refusal to show remorse after his conviction for 2nd degree murder coupled with his assertion that the act for which he was found guilty was morally justified. I want to use the judicial and public response to Latimer’s defiance to show what is at stake for the court and the community when an individual fulfills or contravenes the expectation that an act that results in a criminal conviction should be accompanied by expressions of remorse.
Heather Shipley (University of Ottawa)

Creating Categories of Identity in Law

This paper will analyze and compare normative identity constructions regarding sexuality and sexual identity in Canadian public and media discourses, which are then reperformed and reinforced in legal discourses. The purpose of this paper is to explore the use of religious ideologies in Canadian law, as a means of framing a heteronormative standard of identity. I argue that this heteronormative standard is reinforced and supported as part of a national identity in Canada, as an aspect of a national community to which individual participants are meant to want to belong to. I will examine constructions of “acceptable” identity traits developed through discussion of marriage and family regarding sexual difference through an analysis of the role of religious beliefs and legal standards in Canadian court cases. This analysis will explore the theme of connected understandings regarding sexual identity, religious identity and citizenship recognition in a Canadian context, with specific discussion of the recent modifications to the Alberta Human Rights Act (Bill 44).

Shubhankar Dam (Singapore Management University)

Dialogues from South Asia and Africa: Gay Rights and the Moral Case Against Commonwealth Aid to Africa

In this paper, I wanted to lay out two contrasting narratives on gay rights, partly influenced by Commonwealth precedents, gradually taking hold in South Asia and Africa. First, South Asia. Driven by well-drafted judicial decisions, the hetero-normative structure of legal texts, precedents and practices in South Asia (particularly Nepal, Pakistan and India) has increasingly come under challenge. For example, the Delhi High Court, in a remarkable decision in August 2009, invalidated a provision of the penal code that criminalized sex between consenting gay adults. This penal provision of law, drafted under the chairpersonship of Lord Macaulay in 1837, was the first formal attempt to export “Victorian morality” to the British colonies. In invalidating the provision, the Delhi High Court extensively drew upon Commonwealth precedents to make the case for constitutional rights of sexual minorities in India. Similar decisions have originated from the Supreme Court of Nepal and Pakistan respectively. Despite the numerous legal (and social) obstacles that remain, taken together, these developments give reason for cautious optimism regarding the state of gay rights in South Asia.

Developments in Africa are a study in contrast. With some notable exceptions, the continent is, to invoke the timeless imagery of Joseph Conrad, walking back into the “heart of darkness.” Currently, nearly 37 African jurisdictions criminalize same-sex conduct, and more are joining the bandwagon. While many jurisdictions prescribe 7 to 10 years imprisonment, some have instituted the death penalty to deal with homosexual behavior. Most egregious of this is the recent example of Uganda, with its “Kill the Gays” bill. It seeks to criminalize not just gay sex, but even the fact of being gay. With increasing evidence that fundamentalist Christian missionaries, particularly from the US, are exploiting the deadly cocktail of poverty, bigotry and violence to promote a new front in Africa, there is little hope that the trends will be reversed in the near future.

How then should the Commonwealth – particularly Australia, Canada, NZ and the UK – respond? How should Commonwealth jurisdictions seek to influence municipal law in Africa? At the very least, there is a moral case to be made for withdrawing direct governmental aid to these countries. Like the Structural Adjustment Program (SAP) pioneered by the IMF and the World Bank in Asia and Latin America that made funds for “developmental programs” dependent on specific levels of privatization and deregulation, Commonwealth nations, I will argue, have a moral obligation to make funds dependent on minimum guarantees of rights and freedoms. Current levels of institutionalized homophobia and the legal sanction to kill gays, whether inspired by religious bigotry or cultural confabulations, fall far short of the minimum guarantees.

Lane R. Mandlis (University of Alberta)

Human Rights, Transsexed Bodies and Healthcare in Canada: What Counts as Legal Protection?

Transsexed and transgendered activism has typically attacked systemic discrimination through appeals to human rights. Within Canada, this protection is extended through the Canadian Charter of Rights and Freedoms, which does not currently specify protection based on ‘gender identity’ or ‘gender expression’; therefore activism has tended to centre on having these categories added as specific named protections.
This type of activism is lauded as having served the gay and lesbian community well, and is therefore seen as a tried and true method with which the transsexed community should secure protection in law. However, the transsexed body’s relationship to law is complicated by its relationship to psychiatry and medicine. Moreover, because access to documents of citizenship are tied to genital surgeries, access to healthcare funding equates to access to citizenship; a situation that is decidedly different than those faced by the lesbian and gay community.

Following in the footsteps of Ontario’s transsexed community 11 years earlier, Alberta’s community filed human rights claims over the delisting of sex reassignment surgery from Alberta Healthcare in April 2009. Yet, with the impact of Hogan v. Ontario being largely overestimated by transsexed communities across the country, the Albertan claimants have a different battle than they originally thought. This presentation examines the two provincial situations in relation to the larger context of human rights reforms in order to expose ways in which the seeming lack of explicit protection in law may actually serve to assist the community in their efforts to secure healthcare funding.

Viviane. Namaste (Concordia University), Sean Rehaag (Osgoode Hall Law School) & Tamara Vukov (McGill University)

Testimony Regarding (the Claimant’s) Sexual Orientation Was Inconsistent and Confusing to Say the Least Assessing Bisexuality at Canada’s Immigration and Refugee Board

Previous research indicates that refugee claims involving persecution on account of sexual orientation made by bisexuals are less successful than similar claims made by gay men or lesbians. This study examines the causes of these differences in success rates. One challenge for empirical studies of Canadian refugee determinations is that few Immigration and Refugee Board (IRB) decisions are publicly available. However, the IRB maintains a database containing copies of decisions and information about claims. This database includes claim-type information, whereby the IRB categorizes the type of persecution that the claimant is alleged to have faced. In this claim-type information, the IRB distinguishes between sexual orientation cases involving bisexuals, homosexuals, and lesbians. While the IRB database is not publically accessible, information from that database can be obtained through Access to Information procedures. For this study we requested copies of all IRB decisions categorized as involving bisexuals. We then reviewed each decision and collected information about the decisions in a database. Our database covered matters such as:

- Was the claimant’s asserted sexual orientation accepted by the IRB?
- Was the claimant’s opposite-sex sexual behaviour cited by the IRB?
- Was evidence of the claimant’s lack of involvement in sexual minority communities while in Canada cited by the IRB?

Using this database, we conducted quantitative and qualitative analysis of patterns in the decisions to examine whether these might partly account for the difficulties encountered by bisexual claimants. Our presentation will set out our findings regarding IRB reasoning in bisexual refugee cases. We will also discuss the methodological challenges for research of this kind. Our presentation will interest scholars working on sexuality, refugee law and adjudication, as well as those interested in innovative ways to do empirical legal research.
Farah Deeba Chowdhury (Osgoode Hall Law School)

Dowry, Islam and Women in Bangladesh

Dowry refers ‘the transmission of large sums of money, jewellery, cash, and other goods from the bride’s family to the groom’s family.’ Dowry increased with the expansion of capitalist relations that help capital accumulation by men in Bangladesh. It has been turned into ‘demand, extortion, material gain, and profit maximization.’ The most common motives behind the dowry system are the grooms’ and their families’ greed, growing consumerism, excessive materialism, the need for status-seeking, and rising expectations of a better and luxurious life. The dowry system in Bangladesh has shifted as a result of women’s increasing paid labour force activity. In most of the cases husbands or in-laws control and appropriate women's income. Husbands consider their wives’ income as a source of wealth accumulation. Islamic law prohibits the appropriation or control of a wife’s income by her husband or in-laws. Dower is an essential part of Muslim marriage and maintenance is the lawful right of the wife to be provided at the husband’s expense with food, clothing, accommodation and other necessaries of life in Bangladesh. In Bangladesh a wife is entitled to maintenance whether she is economically solvent or not. According to Islam, women have every right to spend their income independently and to control their money. According to maintenance law a husband cannot force his wife to spend money on family expenditure. In this paper I argue that appropriation of wives’ income or controlling wives’ income should be considered as dowry and therefore as a criminal offence in Bangladesh.

Cristina Nitu (Université du Québec à Montréal)

La Libéralisation des droits reproductifs dans la Roumanie postcommuniste: un résultat mitigé?

Notre communication propose une analyse de l'évolution des droits reproductifs dans la Roumanie postcommuniste. Nous évaluerons dans une perspective féministe la réforme portant sur la libéralisation du droit à l'avortement et sur l'accès aux moyens de contraception, interdits sous le régime communiste. La réforme, initiée après 1989, témoigne d'une approche préventive en matière de reproduction. L'objectif a été d'éliminer la pratique des avortements exercés dans des conditions insalubres et de réduire le taux d'avortements par la mise en place d'un système de contraception moderne, remplaçant les méthodes contraceptives empiriques peu fiables.

Le résultat mitigé de la réforme renvoie-t-il aux défaillances du processus de démocratisation? Ces défaillances, demeurent-elles tributaires de l'inégalité entre les sexes, du dérapage économique du pays, des anciennes coutumes liées au mariage, de la perception de la grossesse et de la sexualité?

Pour répondre à ces questions, nous analyserons d'abord les avancements du cadre législatif national et international portant sur la condition de la femme et ses droits reproductifs. Au-delà du cadre strictement juridique, nous visons ensuite à comprendre les facteurs socioculturels qui catalysent ces changements dans les attitudes et la conscience des gens. Ces facteurs reflètent tant la continuité avec e passé que la diffusion d’un modèle occidental favorisant la prévention en matière reproductive. L'analyse féministe de la législation et des fondements socioculturels de l'avortement et de la contraception en Roumanie fournira les outils d'évaluation de la réforme dans le domaine.

Emile Darius (Université de Montréal)

Le viol comme stratégie de guerre biopolitique

Les femmes ont été toujours victimes de violences durant les guerres. Cependant, contrairement aux anciennes guerres où les violences sexuelles étaient considérées comme un dommage collatéral, dans les nouvelles guerres, le viol des femmes est devenu une tactique moderne de combat ou un instrument biopolitique, utilisé en d’humilier, exterminer voire de détruire les populations adverses. Lorsqu’il s’accompagne d’une contamination délibérée par le VIH/sida, il est comparé par plusieurs à une arme de destruction massive à l’endroit des victimes et de leur communauté.

Cette communication vise d’abord, à situer cette pratique de viols massifs et collectifs durant les conflits armés comme l’une des conséquences néfastes de la modernité ; ensuite, l’analyser comme stratégie de génocide biopolitique, envisagée suivant une rationalité instrumentale dans le cadre d’une culture bureaucratique; enfin, identifier ses impacts et répercussions sur les victimes et leur communauté dans un contexte de justice transitionnelle.
Nous analyserons le phénomène depuis les crimes nazis et l'opération Lebensborn aux génocides dans l'Ex-Yougoslavie (1991) et au Rwanda (1994). Nous serons ainsi en mesure d'évaluer comment l'usage de cette stratégie biopolitique par des États d'exception est graduellement classé et traité parmi les crimes graves relevant de la justice pénale internationale, tout en tenant compte des limites et faiblesses juridiques en la matière, à la fin des hostilités. La recherche se penche notamment sur l'évolution des normes internationales, la jurisprudence et les rapports d'activités des ONG et organisations internationales, dans un cadre d'analyse foucaldien, agambénien et baumanien.
LAW, RESISTANCE AND GEOGRAPHICAL SPACE
TENIR LE HAUT DU PAVÉ: DROIT, RÉSISTANCE ET ESPACE GÉOGRAPHIQUE

Chair: Christiane Wilke (Carleton University)

Karen Crawley (McGill University)

Viewing Graffiti as Resistance

The phenomena of illegal street art, or graffiti, has developed new aesthetic strategies and practices in response to legislative enforcement and surveillance practices. In this paper I consider the complex interaction between the law and the aesthetic practices of graffiti as a dynamic of power and resistance, showing how enforcement targets and aesthetic strategies have been redrawn in light of one another e.g. the use of stenciling, stickers or paste-ups; the police targeting of aerosol implements; the bivalent function of photographs as promotional documents and legal evidence. In particular, I examine two forms of street art which have garnered widespread public support, proved resistant to legal intervention, and been politically transformative: Roadsworth’s site-specific pieces around the city of Montreal during 2001-2003, and the emerging practice of ‘reverse’ or ‘clean’ graffiti. The transformative power of these forms of street art lies in the response they arouse in the viewer, and how they change the way we experience the city through their interruption to its commercialized system of signs and codes, property and propriety. Adopting a resistance perspective allows us to see how these works function as sites of eruption of the extraordinary in the everyday, and as a reminder of an insurgent or constituent power that cannot be fully captured in the legal forms of the state.

Claris Harboun (McGill University)

“Affirmative Squatting” in Israel – Mizrahi Women Correct Past Injustices: From Criminality To Civil Disobedience

In 21st century Israel, Jewish women, on the whole, enjoy equal rights and recognition. However, at the same time, there are still “other” marginal, invisible women who lack the fundamental right to adequate housing, devoid of basic shelter or a place to sleep, rendering notions of equality relatively irrelevant in their case. Since they are faced with the danger of being ‘thrown out into the streets’ they are obliged to create their own solution and some have taken to squatting in vacant public houses. These women are then considered trespassers and “invaders” and are soon evicted either by court order or through mechanisms of “self-help”.

My approach towards this legal issue is innovatively different: Being a Mizrahi (Jews of Arab/Muslim Descent) feminist legal scholar of color, I have noticed that they all shared the same ethnic and historical narrative - being second generation Mizrahi women whose parents were brought to Israel from Arab/Muslim countries, and which endured structural discrimination by the Ashkenazi (Jews of European Descent) establishment especially by its differential Land Regime and public housing policies, preferring Ashkenazis.

I argue the Israeli differential Ethnocratic mechanisms, especially those concerning the deprivation of the right to land ownership, had a central structuring role in the stratification system of Mizrahis in Israel. Unlike Ashkenazis, Mizrahis were deprived of a fair opportunity to purchase their homes and enlarge their family capital designated for inheritance as a means of securing their children’s social - economic status, thereby giving them a “chance in life”.

I argue that it is from this historical context that the squatting phenomenon has emerged. These women resist the ruling order through land and property lawbreaking. My argument is that the acts of squatting, albeit individual, are acts of civil-disobedience, correcting past injustices, and rooted in a larger context of discrimination; bearing collective features of resistance to injustices, namely to the Israeli discriminatory land regime that has deprived these women of the right to home ownership and has created their special inferiority within the Israeli society, obliging them to squat.

By squatting, these women correct and rectify the past injustices suffered by Mizrahis as they redistribute the power and wealth that first generation Mizrahis were denied and take what should have been theirs as second generation, had wealth been distributed equally. I, therefore, propose to redefine “trespassing” by conceptualizing and employing a new definition: “affirmative squatting”.

Alexandra Harrington & Amar Kodhay (McGill University)

Securing the Commons: Enforcing Indigenous Land Tenure Rights in Latin America Through Resistance

Indigenous land tenure is a constant issue in Latin American law and society. Indigenous land tenure and the relationship between indigenous peoples’ rights to land and the state’s rights to exercise control over lands within its sovereign territory occupies space in
Latin American constitutions and international instruments to which Latin American states are parties.

Yet, the most profound method for indigenous communities to assert these rights and their place in the dialogue regarding them is through resistance. In this context, resistance has taken many forms. In some instances, it has taken the form of physical resistance to governmental or corporate agents. In other instances, resistance has involved vocal assertions of rights to land tenure and recognition of it, by indigenous groups and those assisting them. And in other instances, resistance takes the form using the judicial system within the state and also at the international level, principally the Inter-American Court of Human Rights, as forums in which to assert the indigenous rights to law and land.

This paper will examine the relationship between indigenous land tenure claims and various forms of resistance, as well as the validation of at least some of these forms by the international community. In particular, it will examine the idea that land tenure rights and resistance in their enforcement legitimize and reinforce each other.
Questions of space and place are increasingly central to socio-legal studies, such that asking where is law has become as important as asking what is law. Nicholas Blomley and Mariana Valverde are amongst scholars in Canada who have made important contributions to this area of interest. Space and place are now also significant to some criminologists, who study where prisons are built and why or focus on the spatial elements of criminalization, for example. This spatial turn in socio-legal studies as well as criminology builds on important contributions by Marxist, feminist and Foucaultian scholars, but adds an extra dimension to perennial debates regarding law, imprisonment, punishment, and criminalization. Our session invites papers that draw from and extend this spatial turn. Papers will elaborate on issues of jurisdiction, territory, zoning, scale, spatialization of law, penal geography, privatization, and the geopolitics of criminal justice institutions. Papers may also examine issues of space concerning resistance to legal regulation and other governance processes. Papers in these sessions are intended to enrich the growing interest in questions of space and place in socio-legal studies, criminology, as well as related disciplines.

Kevin Walby (Carleton University) & Randy Lippert (University of Windsor)

Dispersal Policing of the Homeless by Conservation Officers in Ottawa, Canada

This paper examines the regulation of homeless people by National Capital Commission (NCC) conservation officers in Canada’s capital city, Ottawa. The NCC is an organization responsible for ‘beautification’ of Ottawa. Conceptualizing NCC conservation officer work as policing, we analyze conservation officer occurrence reports, demonstrating how NCC conservation officers are enrolled in an urban security network integral to campaigns for urban order and cleanliness. Contending that the logic of NCC park governance is organized around the notion of immediate dispersal, we explore the issue of aesthetics as it concerns conservation officer discretion. Classic accounts of police practices point to low visibility as that which permits their discretion to be exercised unchecked; our analysis of NCC conservation officer practices suggests it is on the spatial and temporal margins of city street life that this visibility is considerably less, but not zero, since the point of their policing the visual order is to preserve an aesthetic for public consumption. Here ‘public’ refers to the urban scale of governance and, because of the NCC mandate to create a miniature vision of Canada in Ottawa parks, policing of homelessness is also a matter of forging and preserving national character. The theoretical implications of this analysis for understanding policing, dispersal and urban governance are elaborated.

Chris Hurl (Carleton University)

Causing a Stink: Geographies of Debt, Security, and Health in the 2009 Toronto City Workers Strike

In June 2009, over twenty-four thousand civic workers walked off the job in Toronto, frustrated by six months of fruitless negotiations with the city government. Daycare centres, water and sewers, swimming pools, summer camps, community centres, museums and galleries, ferries, and libraries were all affected. Moreover, as garbage pickup was halted to 400,000 homes, residents were made responsible for disposing their trash in city parks which were quickly converted into ad hoc dumping sites. Off the job for over two months, the striking civic workers posed a major problem for the city government. I will briefly examine how this struggle manifested as a crisis of debt, social security, and public health. I argue that the strike by Toronto city workers exemplifies contemporary struggles over the configuration of employment contracts, norms, and social security. First, I argue this is reflected in the shifting locus of class struggle from the factory, extending to include institutions responsible for public health – daycare cares, swimming pools, hospitals, transit stations, and welfare offices. Second, there is a shift from normalization within disciplinary enclosures to an apparatus of social security that is predicated on managing uncertainty. Third, labour relations are not simply regimented by employment contracts and inspection, but are increasingly modulated by debt. Fourth, there is the changing constellation of class solidarities as the employment contract is subsumed under an extensive apparatus for the maintenance of public health.

Mike Larsen (York University)
Integrated (In)security: Collaborative Security Practices and/as Barriers to Knowledge and Accountability

This paper argues that the trend towards integrated and collaborative national security practices in Canada contributes to gaps in public accountability and meaningful oversight. These gaps can be attributed to (1) the inability of existing accountability bodies of limited jurisdiction to keep pace with a complex and increasingly interconnected field, and (2) the ease with which collaborative practices that transcend jurisdictions and mandates make a mockery of Canada’s Access to Information (ATI) laws, which remain rooted in a rigid agency-specific paradigm. This arrangement of structured opacity is explored through a case study of Canada’s security certificate regime, based on ATI research. Security certificate detention is conceptualized as an assemblage of spatial practices (Martin and Mitchelson, 2008) characterized by legal and spatio-temporal indeterminacy. It is integrated in nature, operating through interdepartmental working groups, memoranda of understanding, and outsourcing / in-sourcing arrangements between participating agencies. The paper demonstrates how this regime of integrated (in)security advances (and is advanced by) the politics of secrecy by operating in spaces (both physical and legal-jurisdictional) of indeterminacy and unaccountability. Secret trials and special prisons exist in large part in the ambiguous zones between islands of accountability. Resistance to these practices, it is argued, must therefore involve broader efforts to render integrated (in)security knowable.

Justin Piché (Carleton University)

 Locating Penitentiaries in Canada: Where They Are Built and Why

While the location of prisons has been the focus of several criminological studies in the United States, questions of why penal institutions are built in their given locations in Canada have never been the central focus of any research project. In this paper, I identify and analyse the different factors considered by politicians and policy makers when they have decided where to construct Canadian federal penitentiaries from Confederation to present. In contrast to American studies which attribute the location of penal institutions constructed since 1980s to the availability of surplus land no longer used in capitalist production and the need to provide employment to individuals living in prospective prison towns, I argue that the location of penitentiaries in Canada has been largely shaped by other factors such as the proximity of sites to prison labour as well as the availability of government owned land and facilities. I conclude by considering the implications of my study for those interested in penal geography, particularly the need to expand the historical and geographical scope of such studies in order to nuance our understanding of the factors that shape penal expansion.
Racha. Al Abdullah (Carleton University)

**The Veiled Muslim Woman: A Threat to the Western Conception of Self**

In 2004, the French government passed a law banning the wearing of religious signs in schools, including skull-caps, large crosses and Muslim headscarves. More recently, an Ontario Superior court judge ruled against permitting a Muslim rape victim from wearing a veil while giving testimony. These examples all highlight the peculiar attention the headscarf has received in different Western countries. The headscarf issue is interesting still because it raises questions about the status of women in Islam and the place of Muslims in Western European societies. In this paper, I explore this tension further by investigating what the headscarf issue reveals about the Western liberal self and the ways in which such a construction limits other groups' (namely Muslim women's) ability at self-expression and how it influences processes of identity formation. I argue that the veil is a point of contention for Europeans and Westerners in general because the veiled Muslim woman represents a threat to the West’s conception of the autonomous liberal subject both theoretically and legally. I examine Western Enlightenment philosophy and particular court cases in different Western countries to argue that the subject of Western philosophy and legal discourse has typically been conceptualized as “an individual”, who is “male”, “autonomous”, exhibits “free choice”, and is “rational”. I contend that the Muslim woman challenges these characteristics when she chooses to veil because she exhibits traits contradictory to those enjoyed by the Western liberal subject, since she is female, and is (allegedly) ‘heteronymous’, incapable of free choice, and irrational.

Yifat Bitton (College of Management Law School, Israel and Peking University School of Transnational Law, China)

**Discrimination Based on Sameness, Not Difference: Re-reading the Israeli Case for Discrimination**

My research points to a general weakness in rights discourse, and specifically in the antidiscrimination stratagem. It argues that the antidiscrimination stratagem is limited due to its perception of “difference” as constituting the heart of discrimination. However, reliance on “difference” as formatting discrimination fails to acknowledge discrimination held against a group within settings characterized by “sameness,” thereby rendering antidiscrimination tools irrelevant to such groups. This point is exemplified by analyzing the case of the de facto discriminated group of Mizrahi Jews in Israel (Jews of Arab/Muslim country descent), who are conceptualized under their shared sameness rather than difference with Israeli hegemony vis-à-vis the Palestinians, their ultimate “Others.” Employing an interdisciplinary methodology, the argument relies heavily on the theory of Orientalism, developed in the fields of cultural studies and colonialism and on its succeeding implementations on re-reading Israeli social stratifications. Fortified with these richer, contextual notions, the article turns to the legal sphere to arrive at better understanding of the constituents of discrimination against Mizrahis. Specifically, it targets the antidiscrimination stratagem, stressing its limited effectiveness when applied from within its traditionally a-historical, de-politicized “difference”-based framework. In a radical move, the article argues that to cross into the antidiscrimination discourse in an effective way, Mizrahi Jews should embrace the “Arab” component of their own identity. Reconstructing Mizrahis’ legal identity will create a discursive “third space” for both Palestinians and Mizrahis, in which they can articulate and contest unique shared allegations. This two-pronged critique of Israeli discrimination structure can benefit both groups, and enrich the antidiscrimination discourse in a manner critical to achieving a better and more just society through it.

Janet Epp-Buckingham (Trinity Western University)

**A Leap of Faith: Rights, Wrongs and Canada’s Religious Accommodation**

The recent Supreme Court of Canada decision in *Alberta v. Wilson Colony of Hutterian Brethren* [*Wilson Colony*] represents but the latest in numerous cases addressing separatist religious communities. Hutterian Brethren, Mennonite or Amish, these communities wish to remain separate, yet they often require accommodation from governments.

This paper will analyze laws and legal cases dealing specifically with separatist communities. It will briefly address the religious reasons for their separatist lifestyles and how they then justify taking their issues before secular courts to attempt to force accommodation.
Canada prides itself on being a multi-cultural, multi-religious nation. It has long encouraged immigration from a wide variety of religious and cultural backgrounds. Yet accommodating the “other” has been challenging. The treatment and experience of separatist communities seems to be at the fringes of multiculturalism; after all, these communities voluntarily separate from the rest of society. Yet because they separate, one would think that they would be easier to accommodate. When these isolate communities cannot be accommodated, it does not bode well for the rest of society being able to work out accommodation issues. These legal problems are therefore a harbinger of how well the society at large is dealing with accommodating the various interests of our “multi” society.

Howard Kislowicz (University of Toronto)

*The (Contested) Objectives of Multiculturalism and Canadian Law*

Canadian courts frequently make allusions to the values of multiculturalism when confronting perennial and varied questions of cultural and religious diversity. Judges have referred to the values of multiculturalism in determining, for example, whether a student could wear his kirpan in a public high school, whether residents of a condominium could erect a succah on their balconies, whether some Albertans could be exempted from the mandatory photograph requirement on driver’s licences on religious grounds, and whether a sexual assault complainant could testify while wearing a veil. However, judges (and other jurists) rarely engage explicitly with the important work done by leading political theorists in the field of multiculturalism. Such an engagement would provide for more nuanced decisions, and help make sense of the vague notion of multiculturalism that is often invoked with little reference as to its content. In this article, I provide an overview of five leading theories of multiculturalism, and then explore the extent to which these ideas can be found in Canadian legislation. I argue that the ideas of recognizing minority cultures and the promoting cross-cultural dialogue emerge as dominant themes in the legislation. These ideas are most often associated with the work of Charles Taylor and Bikhu Parekh, respectively. To the extent that these ideas are vague in the statutes, the works of the theorists described in this article are helpful in providing clarification as to the import and implications of the legislated commitments.
DROIT, ENVIRONNEMENT ET HISTOIRE
LAW, ENVIRONMENT AND HISTORY
CHAIR: Philip Girard (Dalhousie University)

David Gilles (Université de Sherbrooke)

Statut de l’eau et genèse de la gouvernance environnementale : de l’intendant à la loi sur l’hygiène publique de 1901

Depuis les débuts de la colonisation les administrateurs de la Nouvelle-France puis de la province de Québec ont gérer la première richesse du territoire à développer: l’eau. Principal moyen de déplacement, cadre permettant l’esquisse d’un découpage territorial et d’une propriété foncière, l’eau bénéficie d’un statut juridique très marqué par la tradition juridique civiliste. Toutefois, dans les mains de l’intendant puis des administrateurs britanniques, un statut spécifique au territoire québécois émerge petit à petit, alliant progressivement tradition civiliste, aménagements nés de la common law et adaptations aux nécessités locales.

Les contingences économiques, le développement de la forêsterie ont permis de passer d’un statut patrimonial de l’eau à l’esquisse d’une gouvernance, sans toutefois que les objectifs d’une telle gouvernance apparaissent clairement sous la plume du législateur. Cette communication cherchera à faire apparaître les points d’ancrage d’une éventuelle gouvernance de l’eau affirmée à l’orée du XXe siècle et les résonances actuelles qu’elle peut avoir sur les enjeux juridiques contemporains.

Sarah Hamill (University of Alberta)

Creation and Control: The Battle to Control Liquor and Natural Resources in Alberta 1905-1940

This paper is part of a larger project examining the history and development of two administrative bodies in Alberta: the Energy Resources Control Board (ERCB), and the Alberta Liquor Control Board (ALCB). The paper sets the creation of these two boards in the context of the development of the province of Alberta. The paper argues that the creation of the ALCB and the subsequent liquor control was part of a larger project to “Canadianize” new immigrants. The population of the west was crucial in Canada’s claim to the land between Ontario and the Rockies, but it was important that it was populated by the “right” kind of people. By examining the creation of the ALCB, this paper investigates the way the law was used to shape new Canadians in the Anglo-Canadian image. The ERCB was created after the Albertan government had fought to gain control of Alberta’s natural resources. This paper examines the battle that the provincial government fought to win control of Alberta’ natural resources, and argues that for the first twenty-five years of Alberta’s existence, federal control of natural resources was part of a quasi-colonial project to ensure Alberta was fashioned in the image of Anglo-Canada. This paper also examines the intellectual development of administrative law in Canada up until 1940. It will argue that legal academics, by focusing on judicial review, failed to notice the ways that administrative law, as used by the Boards to regulate aspects of life and business, was a form of cultural imperialism directed towards non-white, non-Protestant Canadians.

Eric H. Reiter (Concordia University)

Environments Physical, Human, and Legal: Unpacking Nuisance in Late Nineteenth Century Montreal

The law of nuisance has always been a point of conflict – between different theories of liability, between fact and principle, between the law of property and the law of obligations, and of course between neighbours. In Quebec, further layers of conflict are added – between common law and civil law principles and precedents, and between French and English parties and judges. This paper is part of a social history of Canada’s first major nuisance case – the Quebec case Drysdale v. Dugas (Supreme Court of Canada, 1896). By unpacking the layers of conflict – the different environments of a nuisance case – I am interested in how the human story and the legal conflict intersect to influence the physical layout of space, the social relationships within that space, and ways in which space is understood in economic and class terms. Mapping the legal conflict onto the history of the litigation as revealed by extra-judicial sources reveals some of the ways in which legal principle and social fact intersect and interact.
Ronjo Paul Datta (University of Alberta)

The Aporia of Justice in Foucault: Jacobins, Maoists and Islamists

Foucault’s expulsion of law and his association of the importance of justice with the archaic juridico-discursive model of power, suggest that much like his treatment of law, there is an expulsion of justice in Foucault. And yet, his discussion of popular justice with Maoists, especially when seen in light of his opposition to penal incarceration and the state repression of dissent, resonate with his description of the French Revolution in The History of Madness. This description in The History of Madness is suggestive of his commentary on the Iranian revolution. The reference point for each of these cases is a “sovereign” (the agent of the negative exercise of power), generating a discrepancy between Foucault’s analytics of power and government, hence rendering what can be meant by “justice” aporetic. I will contend however, that this is a productive aporia, one well worth exploring since a resource for decentring the location of normative judgments from the “ethical subject” into a collective actor, without an essence.

Steve. Bittle (Queen’s University)

Disciplining Capital: Theorizing Corporate Crime in Neo-Liberal Times

This paper critically examines the assumptions, agendas and relations of power that shaped Bill C-45, An Act to Amend the Criminal Code (criminal liability of organizations), revisions to the Criminal Code of Canada aimed at strengthening corporate criminal liability. Colloquially referred to as the Westray bill, the legislation was passed in the fall of 2003 in response to the deaths of twenty-six workers at the Westray mine in 1993, a disaster caused by unsafe and illegal working conditions. Based on twenty-three interviews with individuals with knowledge and insight into the introduction of Canada’s corporate criminal liability legislation, and transcripts from Canada’s Parliament regarding the enactment of this law, the paper critically examines the constitution of corporate criminal liability – the factors that produce legal categorizations of corporate harm and wrongdoing. It draws theoretical inspiration from Foucauldian and neo-Marxist literatures to explore how particular legal, economic and cultural discourses animated the evolution of corporate criminal liability, and the extent to which these discourses help stabilize, reproduce and transform the class-based capitalist social formation. Overall, the paper challenges the audience to look beyond traditional theories of crime and justice to critically examine the serious and extensive harms caused by corporations, as well as the potential and limits of disciplining the modern corporate form.

Richard Jochelson & Kirsten Kramar (University of Winnipeg)

Critical Methodologies and Swinging Sexuality – Describing the Harm Principle of Obscenity and Indecency in Canada

We wish to tie the methodologies of justice as presented by the panel organizer into a socio-legal context by studying the governance of sexual expression in Canada.

Using external critique, in this case by unpacking the neo-liberal rationalities behind obscenity and indecency law, we seek to engage in a critical analysis that deconstructs a notion of justice – the harm test of obscenity and indecency. This paper argues that the recent organization of the actus reus of obscenity and indecency offences in Canada (in the Labaye 2005 case) into 3 categories of harm replaces abject moral barometry (the “retired” community standards of tolerance) with functionalism (the purported harms of obscenity and indecency) and results in a juridical reordering of Canadian society into conceptions of sexual expression that are devoid of the politics of recognition. As the judiciary accepts conceptions of the harms of sexual expression or conduct as empirical, it reifies a universalized sexual subject. In an ironic twist, such functionalism philosophically duplicates the work of moral conservatives even if its rationales are based in the faux atomism of the neo-liberal subject.
Kimberly White (York University)

**Mediating and Marketing Canada’s Mental Health**

Using the newly created Mental Health Commission of Canada (MHCC) as my primary site of analysis, I interrogate how the structure of the Commission (as a registered corporation) both prescribes and manages representations of mental health/illness in and through Canadian media. Drawing on the social marketing strategies and selected media venues, the MHCC recently pronounced, and then pledged to eradicate, Canada’s “mental health crisis.” In efforts to inform the public of the true nature of mental illness, the inevitable socio-economic consequences of untreated mental illness, and their proposed national strategy to move the nation toward mental wellness and recovery, the MHCC has relied heavily on familiar representations of ‘danger’, ‘disorder’ and ‘disease.’ This ambitious national marketing campaign, intended to raise social consciousness and transform the minds of Canadian citizens, simultaneously calls forward and disavows an oppressive and violent history of mad people in Canada. In understanding the MHCC as both a cultural phenomenon and a cultural artifact, this research raises critical questions regarding the production and effects of official knowledge in general, and the policy/legislative implications of the corporatization of mental health knowledge in particular.

Erin Dej (University of Ottawa)

**Connecting Epistemologies: The Shifts in the Ways of Knowing Mental Illness**

I trace the various epistemologies that present mental illness as a knowable identity and consider the social and political context within which these knowledges took shape. The medical model considers the patient as a sick body, one that can be cured with greater scientific evidence and professional intervention. In the 1950s and 1960s a cultural revolution took place that saw the rise of the gay rights, civil rights, and feminist movements. Within this cultural climate came the anti-psychiatry movement which was couched upon a rejection of the medical model as an explanation for abnormal conduct and considered the ways families, institutionalization, and ‘problems in living’ (Szasz 1989) explained behaviour that was otherwise regarded as insane.

With the success of the anti-psychiatry movement and the deinstitutionalization of the mentally ill a paradigm shift (Kuhn 1970) took place that called for the creation of a distinct movement – the mad movement. Based on the neo-liberal ideas of self-help, the proliferation of community as the site for the production of ‘professionalized’ knowledges, and the rise of big pharma, a new movement has established that emphasizes the values of self-determination, empowerment, the use of narratives, and the notion of recovery. The mad movement, built by psychiatric consumers and survivors, reject the mentally ill label and seek to produce knowledges distinct from the medical model and even the anti-psychiatry movement by emphasizing personal and community based commitment to support and enhance the well-being of all who come in contact with the mental health system.

Jennifer Silcox (University of Western Ontario)

**(Un)reasonable Women: Female Only Defenses and Their Legal Implications**

The concept of ‘reasonableness’ represents a complicated and problematic location within Canadian legal frameworks since it has often been predicated upon socially constructed categories of inequality. Until recently, the courts have failed to consider that this notion of ‘reasonableness’ is predicated upon gendered constructs which fail to comprehend how women’s understandings of reasonableness might differ from men’s conceptualizations, depending on subjective experiences of inequality, fear, abuse and disorder. This paper will analytically and theoretically explore the implications of female-only legal defenses and concepts of reasonableness. Although the courts have begun to use a ‘reasonable woman’ standard for domestic abuse and sexual harassment cases, the use of this standard becomes problematic when medically-defined female-only disorders are interpreted as excuses rather than justifications for a woman’s criminal and deviant behaviour. When a legal defense serves as a justification, it is believed that the individual acted and behaved voluntarily. However, when a syndrome or disorder is used as a legal defense, it becomes interpreted or viewed as an excuse because the offender is not deemed responsible for their behaviour due to a loss of control. By using medical categories in court proceedings, female-only legal defenses promote the idea that women’s actions are pathological rather than reasonable, reinforcing...
gendered social and legal constructs. Therefore, when a woman successfully uses a defense based on a female-only biological or mental illness she may receive a lenient sentence, but she ceases to be seen as reasonable in the eyes of the law.

NEW SOCIO LEGAL RESEARCH I
NOUVELLES RECHERCHES SOCIO-LÉGALES I
CHAIR: Heather McLeod-Kilmurray (University of Ottawa)

Karrie Sandford (University of Toronto)

Have You Got the Look? Contexts for Attire and Order within Formal Adjudication

My dissertation research analyzes legal order and disorder in the context of the proceedings of judicial and quasi-judicial venues in Toronto, Ontario, Canada. The analysis I will present here implicates the formal as well as extra-legal interactivity during routine legal adjudication amongst court staff and laypersons in the production of ‘order in the court’. I hypothesize that ‘order’ can be better understood by examining the relationships amongst ‘actants’ while each disrupts or tries to keep the prescribed order in their venue. I focus on the question of attire and actors’ ‘presentation’ in court. For example (more) formal clothing is part of the prescribed order during adjudication, but each and every individual appears in the courtroom lacking to some degree in their compliance with this prescribed order. The actual norm can be, for example, the accused in t-shirts with obscene logos, judges without robes, and lawyers without shirts or ties. The justifications for such ‘presentation’, or lack thereof, are not as straightforward as the simple compliance or not to a prescribed dress code. I argue that order in the court must be re-conceptualized and take into account the circumstances under which such things as attire are problematic. The co-existence of both appropriate and inappropriate dress or conduct implies degrees of compliance, and the variation of venues situate such in diverse contexts. I explore this slippery ‘order’ by drawing from ethnographic observations and interviews, and I argue that varied compliance is a necessary characteristic of ‘order in the court’.

Kerri Scheer (York University)

“Not a Right, but a Privilege”: Blood Donation Policy in Canada, Risk, the Construction of “Tainted” Bodies and the Exclusion of “Men Who Have Sex with Men”

A nationwide public calamity took place in Canada in the late 1970s and 1980s. The incident resulted in the infection of thousands of Canadians with Hepatitis C and HIV. Blood donation was transferred to a new structure incepted exclusively to manage Canada’s blood supply – Canadian Blood Services (CBS). The memory of “The Tainted Blood Tragedy” is frequently invoked by CBS to validate the safety of the contemporary blood supply and to justify current policies that are stringent and, for some, exclusionary.

This paper examines CBS policy standards that exclude “men who have sex with men” from the blood donation process in Canada. In particular, an analysis of the knowledge production and discourse construction surrounding this exclusion will be undertaken. In confronting accusations of discrimination on the basis of sexual orientation, CBS has adamantly claimed that their policy does not exclude identities or populations but rather denies donations from those engaged in a “risk lifestyle” – ultimately they state that, “Blood donation is not a right, it’s a privilege”. This dialogue is reified by scholarly studies that approach the issue of exclusion as one of “risk management” that requires balancing the “rights” of the recipient against the “obligations” of the donor. CBS’ “management” of the donor pool is cited as a necessity to (and a noble protection of) a “safe” blood supply in Canada, and the “Tainted Blood Tragedy” is referred to as a consequence of a lapse in such vigilant surveillance. This paper is concerned with the implications of such relational discourses (our developed perceptions of which individuals and their bodies are “risky” and have thus lost “privilege”, violated “obligations” and pose a “threat” to our public health) and will discuss whether or not current policies are capable of change.

Menaka Raguparan (Carleton University)

Criminals Or Legal Subjects? Contested Identities Of Indoor Sex Workers

Women’s participation in the sex trade industry has always been a subject of contention, with conflicting representations. This paper is based on research undertaken through interviews with ten women in three Canadian cities who are involved in the independent in-call
and/or out-call service sector of sex trade. During the forty minute to hour-long, open-ended interview process I asked participants how they think they are viewed and treated by law, social justice advocates, feminists, the media and the general public, and how they thought perceptions around sex work ought to change. In this presentation I focus on their diverse response to “how does the legal system view you and treat you for being involved in the sex industry?” I argue that the ways in which the participants of this study interpret law’s perception of sex work depends on whether they engage, avoid or resist the legal meanings, names and characters that are attributed to them. I will show how the gaps and inconsistencies between legal doctrine, its actions and regulatory practices create spaces for resistance against legal and cultural hegemony. Given that sex workers everyday lived experiences and the ways in which they organize their social and political lives are seriously impacted by law and its actions, exploring the understandings and meanings of law circulating in social relations will show that identities are interlinked and repeated through social logics, local cultural categories, legal actions and other formal and informal regulatory practices. Importantly, by focusing on sex workers’ patterns of active resistance, I will show how the participants of this study challenge the definitions and ideas of legitimacy, work and culture and in turn produce innovative sites of collaboration and contestation.

Christopher Buccafusco (Chicago-Kent College of Law) John Bronsteen (Loyola University Chicago College of Law) Jonathan Masur – (University of Chicago School of Law)

Well-Being Analysis

Perhaps the most important goal of law and policy is improving people’s lives. But what constitutes improvement? What is quality of life, and how can it be measured? In previous articles, we have used insights from the new field of hedonic psychology to analyze central questions in civil and criminal justice, and we now apply those insights to a broader inquiry: how can the law make life better? The leading accounts of human welfare in law, economics, and philosophy are preference-satisfaction - getting what one wants - and objective list approaches - possessing an enumerated set of capabilities. This Article argues against both major views and in favor of a third, defining welfare as subjective well-being. As a result, we advocate the replacement of cost-benefit analysis (CBA, the tool of the preference-based approach) with well-being analysis (WBA). Like its sibling CBA, WBA compares the costs and benefits associated with enacting some law or policy. But while CBA requires monetizing costs and benefits to make them commensurable, WBA simply considers their direct effects on reported well-being. Groundbreaking new research in hedonic psychology makes this possible, and we discuss how it can be accomplished.
INTEGRATED TEACHING COLLABORATIONS
COLLABORATION EN ENSEIGNEMENT INTÉGRÉ

Organizers: Annie Bunting & Maura Matesic (York University)
Vincent Kazmierski (Carleton University)

In the spirit of “Connected Understanding”, this panel will explore the nature of teaching collaborations between teaching faculty and librarians in the discipline of Law and Society and the contribution of such collaborations on curriculum development in university programs. Focusing on the subject of research methodologies, these novel partnerships are able to draw on the strengths of each of the collaborators to create courses which critically engage students in the academic discourse of the discipline. Trial programs have demonstrated the potential of such partnerships to promote information literacy and deepen students’ understanding of the intricacy inherent in the structure and nature of research in this multi-disciplinary field. This type of course may fill a gap in the learning opportunities of most Law and Society programs, providing a solid foundation for students moving on to senior year studies and into evolving graduate programs.

Panel members will discuss the complexity of course design, highlight key instruction modules, and present examples of successful assignment design. Particular emphasis will be placed on the dynamics of co-teaching arrangements and joint contributions of faculty and librarians to successfully address course objectives and student learning outcomes.
My hypothesis is that the background and personality of the mediator, his or her life experience, attributes, and intuitive skills play a significant role in resolving disputes. The achieving of positive outcomes can be further enhanced by the matching of the personality traits, cultural and religious backgrounds, and life experiences of the mediators with those of the disputants. Through the use of co-mediators, who are of diverse backgrounds, there is an even greater opportunity to match up positively and effectively with the litigants. There is an obvious need to exercise caution and sensitivity in implementing such an approach, but based on my experiences in the Small Claims Court, there have been some impressive results. Parties have been able to patch up their differences, mend their relationships, and be dispatched from the court process in order to move on with their lives.

The emphasis on matching should begin with the co-mediators, whose contribution to the dispute resolution process can be enhanced by a broader representation of cultural differences. With an increasingly diverse society where visible minorities will dominate the populace in the Greater Toronto Area in the next ten to fifteen years, the mirroring of society in the composition of the mediation team will prove advantageous. There will be a greater understanding among the participants of the assumptions and norms being brought to the mediation table, and this will facilitate productive dialogue and resolution of conflict. While subject matter expertise and skills training are essential for proficient mediation practice, having an increased relational empathy with the disputants will enhance the conflict resolution process.

A significant benefit of the skillful matching of the co-mediators themselves, and the co-mediators with the disputants is the evolution of transformative outcomes. The interaction of the co-mediators with each other can transform the mediator from an ethnocentrism outlook to an ethnorelativism approach, and thereby add to the skill-set of the mediator. In pairing a mediator with a colleague of a different background, the mediator can gain important insight into the assumptions and norms of that person, which can be drawn upon when dealing with disputants of similar backgrounds. In a sense, the co-mediation experience can be a form of cultural training for the co-mediator who can embark on future mediation sessions either solo or in a co-mediation context, having attained a greater depth of understanding of cultural diversity.

Prior to the American Revolution, the organization, training and activities of lawyers were similar across all the colonies of British America. In Revolution and the Making of the Contemporary Legal Profession, Michael Burrage argues that the American Revolution was the fundamental cause of the nineteenth-century changes that gave the U.S. legal profession its distinctive shape: the collapse of self-regulation, the rise of university legal education and the protean, client-centred nature of lawyers’ activities. Canada provides the ideal non-revolutionary laboratory in which to test Burragae’s thesis. By comparing developments in British North America/Canada with those in the new United States, this paper will challenge some of his conclusions. It will demonstrate that emerging differences in corporate organization and training as between the states and the British colonies/provinces were significant, but go on to argue that these differences should not obscure the commonalities of the two professions. What united them was the pre-revolutionary North American innovation of the fused profession, which made it more responsive, more client-centered, less bound by tradition and more open to change, especially when compared with the nineteenth-century English legal professions. The paper will illustrate this theme by contrasting North American practices with regard to partnerships and firm size, lawyers’ involvement with corporations, and legal ethics and billing practices, with their English equivalents. This comparative history of the legal profession illustrates ongoing themes in North American history: significant differences in governmental institutions and ideologies on either side of the Canada-U.S. border, but deep cultural (including legal) connections based on a shared economy and way of life.

A significant benefit of the skillful matching of the co-mediators themselves, and the co-mediators with the disputants is the evolution of transformative outcomes. The interaction of the co-mediators with each other can transform the mediator from an ethnocentrism outlook to an ethnorelativism approach, and thereby add to the skill-set of the mediator. In pairing a mediator with a colleague of a different background, the mediator can gain important insight into the assumptions and norms of that person, which can be drawn upon when dealing with disputants of similar backgrounds. In a sense, the co-mediation experience can be a form of cultural training for the co-mediator who can embark on future mediation sessions either solo or in a co-mediation context, having attained a greater depth of understanding of cultural diversity.
Lawyering for the rights of the Guantanamo prisoners has been qualitatively different from the ‘usual’/‘everyday’ representations of terrorism suspects by American criminal defence lawyers. To begin with, very often lawyers of illegal detention cases are not criminal defence lawyers. Transcending the substantial internal differentiation and internal stratification of the profession, different kinds of lawyers (corporate lawyers doing pro bono work, solo practitioners, NGO lawyers, academics, military defence lawyers) with specializations in different fields (constitutional-habeas work, criminal defence & death penalty litigations, human rights work) collaborated on these representations, sometimes at great personal and professional risk. Drawing from in-depth interviews with 35 lawyers, as well as from public accounts available about lawyer participation in recent terrorism cases, this article attempts to understand why individual lawyers, from a variety of practice settings, who have previously not worked on terrorism cases, volunteered their time and (in many instances) money for this work. Additionally, it scrutinizes how the participation of these lawyers (more than 400 in number) has impacted the cases. Some significant differences between the everyday criminal lawyering of terrorism cases and the lawyering in Guantanamo cases are: 1. collaborations between lawyers (both within the Sand transnationally), 2. Strategies devised by lawyers grounded in non-traditional laws such as humanitarian law and 3. New resources (such as organizational support) available to these representations because of their human rights dimensions. Piecing together motivations and effects of lawyer participation, the paper concludes that paradoxically, the denial of basic criminal processes to the prisoners has both spurred on lawyers from all backgrounds to participate, and facilitated collaborative lawyering, in these cases in innovative ways which do not usually occur in everyday criminal lawyering for terrorism suspects/accused in America.

Nikolai Kovalev (Wilfrid Laurier University)
INTERNMENT, UNDERCOVER INTERROGATIONS AND POLICING
EMPRISONNEMENT, INTERROGATIONS CLANDESTINES ET POLICE
Chair: Debra Parkes (University of Manitoba)

Hongming Cheng (University of Saskatchewan)

Fairness and Effectiveness in Policing: An Evaluation of the Saskatoon Police Service

The Saskatoon police department has been criticized for their ineffectiveness to fight crime. There have also been allegations of the Saskatoon police misconduct as tension was peaking between police and civilians, particularly Aboriginal people. Over the last several years the Saskatoon Police Service has seen repeated efforts at reform. Initiatives to improve relationships between the police and the public, in particular the Aboriginal populations, in the light of race-related or social conflicts, went hand in hand with a steady drive towards reducing crime and improving public opinion through improving police performance. This study reanalyses existing surveys and conducts interviews to explore public perceptions and experiences of the police in the light of the new strategies and initiatives adopted by the Saskatoon Police Service. The study concludes that community policing strategies and more frequent interactions between the police and the community would increase the public’s satisfaction with the police performance.

Amar Khoday (McGill University)

Rezoning the Right to Silence: Modifying Legal Protections to Govern the Admission of Incriminating Statements Procured by Undercover Interrogations Conducted Outside of Detention.

In 1990, the Supreme Court of Canada created an implied constitutional right to silence which regulates the admission of incriminating statements procured by surreptitious interrogations conducted by undercover state agents within the detention context. The Court however held that right would not apply to such interrogations outside of detention. This was based on the notion that an accused who is detained by the state is in greater need of protection than individuals subjected to interrogations transpiring outside of detention.

In this paper, I challenge the notion that all individuals who are surreptitiously interrogated by undercover state agents outside of detention are in less need of the same constitutional safeguards offered to those confined in state facilities. In particular, I shall argue that individuals who are arrested and charged with a crime(s) but who are then subsequently released from detention pending trial continue to remain in a vulnerable state. Notwithstanding the fundamental norm that an individual remains innocent until proven guilty, the social realities of everyday society suggests that many individuals are likely to be excluded or restricted from earning legitimate sources of income and social discourse as a result of an arrest and pending criminal charge. This makes them highly susceptible to the advances of undercover police officers masquerading as criminals seeking to recruit such vulnerable individuals. In exchange for employment and legitimacy, accuseds are induced into providing incriminating statements, whether true or false, in order to survive and make a living. Consequently, the statements are then admitted into evidence resulting in a conviction. Such techniques substantially impact upon their freedom to choose whether to speak to authorities, which is at the heart of the right to silence.

Sylvain Gaudette (Université du Québec à Montréal)

Les mesures d'internement préconisées par le Canada à l’encontre de ses citoyens et des ressortissants étrangers (1914-20 et 1940-45)

En fait, ces «citoyens et ressortissants étrangers» étaient ceux issus de la communauté ukrainienne lors du premier conflit mondial et du Japon lors du second.

Dans les deux cas, la Loi sur les mesures de guerre (de l’époque) fut appliquée à l’encontre d’individus sur lesquels ne pesaient pourtant que de vagues soupçons. Sans le moindre ménagement et dans des conditions indignes d’un pays se targuant de favoriser une approche basée sur le multiculturalisme, des milliers de citoyens canadiens et des ressortissants issus de ces communautés furent «déplacés» vers des camps de travail et dépossédés de leurs biens sans la moindre compensation.

Certes, il serait possible de plaider que les autorités se devaient de protéger leurs concitoyens contre une «cinquième colonne» et une éventuelle attaque aussi sournoise que celle de Pearl Harbour.

Toutefois, le droit n’est-il pas censé justement prévenir de telles pratiques aussi sommaires qu’arbitraires ? Ou préfère-t-on alors adopter une attitude passive et du même coup, écarter les normes habituelles au nom d’une sécurisante raison d’État ?
D’autant plus qu’il s’agit là de citoyens que plusieurs considèrent de “seconde zone” et ce, du simple fait qu’ils sont issus de communautés culturelles différentes de la majorité blanche et anglo-saxonne de l’époque.

William Crichlow (Ontario Institute for Studies in Education)

Policing Terrorism

This paper examines the shift from traditional policing, including community policing to post September 11. The use of new technologies, the changing face of policing and the impact it is having on communities across Canada and the United States. What rights the public or society is willing to give up to the state, what the public expects from police in an era of policing terrorism, and how this has impacted police culture and attitudes in general.

REGULATING CORPORATIONS
RÈGLEMENTER LES CORPORATIONS

Chair : Michel Coutu (Université de Montréal)

Vanisha Sukdeo (Osgoode Hall Law School)

Corporate Social Responsibility and the Intersection of Workers’ Rights

This paper argues that corporations that are socially responsible in regard to respecting the rights of workers are more likely to comply with existing laws and regulations than corporations that are not socially responsible. It is possible to build corporations that are socially responsible and that can improve the rights of workers, as the two are not mutually exclusive. This is demonstrated by the fact that improved treatment of workers leads to increased productivity, and that corporations can increase their consumer base and face less lawsuits by branding themselves as socially responsible. The term ‘corporate social responsibility’ is used to differentiate from the former model of corporations existing merely for their shareholders and to increase profit and means that corporations have duties to other stakeholders beyond shareholders. Those stakeholders include, but are not limited to, employees, the environment and government. This paper will also examine the differences in how ‘soft law’ can be used to help develop the rights of workers and increase enforcement and compliance versus ‘hard law’. In both soft law and hard law the proper mechanisms need to be implemented to remedy breaches of the terms, be it laws or simply rules. It will also be studied how soft law can become hard law by stakeholders’ ability to campaign for changes from voluntary codes, regulations, and agreements to legally binding contracts, laws, etc.

Andrea. Talaric (Université de Montréal)

Codes de conduite et droit d’association: une étude de cas du secteur du textile

Avec la globalisation de l’économie, l’entreprise traditionnelle est devenue un réseau global de producteurs liés par des contrats. Face à certains abus commis par les entreprises multinationales, les entreprises et la société civile ont développé certains mécanismes de régulation dont les codes de conduite privés. Ces codes empruntent des normes au droit local et/ou international, les rendant ainsi des exemples intéressants d’internormativité. Le but de notre étude était de déterminer qui, parmi les travailleurs de l’entreprise, étaient les véritables destinataires des codes de conduite privés : les travailleurs du pays d’origine de l’entreprise (généralement situés dans un pays développé) ou les travailleurs des pays de production (généralement situés dans des pays en développement). En comparant le contenu des codes de conduite de Nike, de Gap et de Lévi-Strauss sur la question de la liberté syndicale avec les observations de l’Organisation internationale du travail pour les travailleurs des États-Unis, de l’Inde et du Bangladesh, nous avons identifié certains écarts entre les protections accordées par les codes et les besoins des travailleurs. Dans la dernière partie de l’étude, nous avons élargi la question d’étude afin d’examiner si les codes ne seraient pas destinés à des personnes autres que les travailleurs, soient les consommateurs, les actionnaires ou l’entreprise elle-même.

Steve Bittle & Laureen Snider (Queen’s University)

Getting Tough on Corporate Crime? Law, State and the Corporate Criminal

This paper examines the aftermath of law passage, the processes surrounding and constituting state follow-up and enforcement of new legislation. It critically compares and contrasts the enforcement of two Bills aimed at regulating powerful corporate actors: Bill C-13, passed in 2002 to crack down on financial corporate crime following
the collapse of Enron, Worldcom etcetera; and Bill C-45, passed in 2003 to crack down on corporate negligence/manslaughter in the workplace following the deaths of 26 miners in Nova Scotia (the Westray disaster). Using court records and other data from 2002–2009, the paper argues that state action is constituted by a convergence of mutually reinforcing political, economic and cultural discourses that downplay the seriousness of corporate crime and shape the (non) enforcement of related laws. In the process, the factors that contribute to corporate wrongdoing – the pressures of profitability and the relative value of corporate interests versus those of workers and consumers – remain intact. Overall, the paper raises questions about the ability of recent (largely symbolic) gestures by the state to punish powerful corporate actors for their harmful and illegal acts.
CRIMINALIZATION, VICTIMIZATION, AND THE PRACTICES OF THE SELF
CRIMINALISATION, VICTIMISATION ET LES PRATIQUES DU SOI.
Chair: Ummni Khan (Carleton University)

Dale Spencer (Carleton University)

Events and Victimization: Unsubstitutability, Trauma and Witnessing

This paper joins recent existentalist interventions in critical criminology (see Lippens and Crewe, 2009) and offers the existential concept of ‘event’ as a guiding image for critical victimology (cf. Lippens, 2008). Whereas critical existential criminologists have examined crime and wrongdoing, very little attention has been given to victims and victimization. I utilize the existential phenomenology of Martin Heidegger and Claude Romano to offer a critique of existing approaches to events and victimization within mainstream criminology and develop a novel evential analytic and alternative research agenda in victimology. This paper begins with a brief discussion of Heidegger’s (1962) fundamental ontology and then turns to connections of fundamental ontology to Romano’s (2009) recent discussions of events and world. I then engage with the problem of number in conventional victimology and offer a critique of quantitative approaches to victimization based on the unsubstitutability and singularity of existence. The examination of victimization is then envisaged within an evential analytic inspired by Romano. Attention is turned to problems with discussions of identity and victimization in victimology and I describe how selfhood and bodies from an evential standpoint move beyond existing approaches. In subsequent respective sections, I consider trauma and bereavement from an evential standpoint. In the final section of the paper I carve out an alternative research agenda through a discussion of bearing witness and events of victimization.

Mielle Chandler (York University and The Rogue Institute)

Becoming Criminal: A Phenomenological Sketch of Criminal Identification

Taking its theoretical and methodological orientations from the phenomenology of Emmanuel Lévinas, the philosophy of Gilles Deleuze and Felix Guattari, and the practice of embedded journalism, this paper pushes the boundaries of the traditional academic paper by taking the audience on a journey of sensibility and experience. A piece of creative non-fiction, this paper presents a phenomenology of ‘becoming criminal’ through five vignettes. The first, ‘the act,’ evokes a set of sensibilities involved in committing the crime of cannabis gardening: desperation, economic responsibility for others, the quest for opportunity, reluctance, fear, frustration, excitement, and pride. The second vignette, ‘at war,’ tackles the state of war that is created by criminalization. It explores what it means, and feels like, when the state, its police forces, juridical system, and civil and administrative bodies become one’s enemy, when one becomes the enemy within the state. It ponders what happens in the ‘interhuman’ face-to-face contact of ‘criminal’ and ‘enforcement agent’ during the events of arrest, detention, and incarceration? ‘Fugitive existence,’ the third vignette, explores experiences of bail. Speaking to the coercive circumstances under which accused persons agree to bail conditions, this section looks at life in the shadows, liberty in peril, and the everyday hiding which accompanies impossible compliance. Fourth, ‘domicide’ describes the fissuring and disorientation of self which follows from the juridically forced displacement from one’s home and community. Lastly, ‘silence and condemnation’ explores the affectivity of being accused within the criminal justice system, but prevented, by this system, from speaking to one’s identity as accused.

Lara Karaian (Carleton University)

The Pleasure Principle: Why the Greatest Challenge to the Legal Regulation of Sex is Not Pain but Pleasure

Elain Craig asks,

[How can the law map onto the complexity of issues such as sexual autonomy, the commodification of sex, sexual victimization, sexual diversity, sexual desire and sexual harm? A legal approach that starts from the premise that women, because of the social realities such as economic deprivation, or social conditioning and false consciousness, can never truly consent to, for example, loveless sex, or involvement with pornography or sadomasochism or prostitution is dogmatic, paternalistic and silencing for many women. At the same time, a legal approach that relies exclusively on consent will not do the all the work necessary to protect and improve the lives of women.”

Craig suggests that what is needed is “an approach that moves the law closer to the truth about the complexity that women engage with in relation to sexuality.” Her answer is to praise the Supreme Court in R. v. Labaye [2005] for shifting its focus towards what she calls a “political morality” and away from a sexual morality, when
determining that a private “swingers club” was not indecent. While I don’t disagree with Craig, I would like to suggest that the law might better map onto the complexity of sex and sexuality through the development of what I’m calling a Pleasure Principle in law. In Craig’s, and in the law’s, conceptualization of the legal regulation of sex, a distinction often gets drawn between the Harm Principle and Consent. Where is pleasure in this dichotomy? Are we to assume that Consent equals pleasure? Is it the case that pleasure has no place in law? I argue that not only is consent a poor substitute for the role of pleasure in law but that the belief that law has no interest in pleasure, and that pleasure has no place in law, is a fallacy. Moreover, I suggest that law cannot come to a greater understanding of the truth of women’s complex relation with sexuality until in acknowledges the importance of pleasure to women, a perspective that has had little play in the legal arena. The case for pleasure in law is made not only in relation to the legal regulation of consensual crimes (bathhouses, swinging, and sex work) but also for crimes of sexual victimization (sexual assault law).
**LAW AND THE ENVIRONMENT**  
**LE DROIT ET L’ENVIRONNEMENT**  
Chair: Michael Picard (Université du Québec à Montréal)

Nathalie J. Chalifour (University of Ottawa) &  
Karen Bubna-Litic (University of Technology, Sydney)

**Fairness in Domestic Climate Change Policies**

This paper explores the question of fairness in national and sub-national climate change policies. There is an emerging “climate justice” scholarship that examines fairness in the context of international climate change policy, dealing notably with the tension between responsibility for emission reductions between richer and poorer nations. While there is economic literature assessing the regressivity of carbon taxes, there is very little research on fairness of domestic carbon pricing policies in other fields and virtually nothing within the climate change context that evaluates other vectors of analysis in a critical justice framework, such as gender, race, age and region. Also missing is the conceptual framework within which to pose and discuss these questions. While Klinksy and Dowlatbadi have made a commendable contribution to the development of a conceptual framework for climate justice at an international level, this paper focuses on building a framework for evaluating the fairness of carbon pricing policies at a national or sub-national level.

The paper’s methodology will consist of a literature review of both theoretical and empirical research on justice and fairness from a broad range of disciplines, including philosophy (ethics), political science, economics, psychology, sociology and law. Drawing mainly from the theoretical literature, the paper will develop common terminology and propose a conceptual framework for evaluating the fairness of carbon pricing policies. In addition, we will draw on respective case studies of the impact of carbon taxation on women (Canada) and the impact of emissions trading on Aboriginal communities (Australia) to inform the conceptual framework and discussion about the inherent tensions in developing fair climate change policies.

The paper aims to make two specific contributions. The conceptual framework is intended to create a bridge to facilitate dialogue and (undoubtedly) debate among the disciplines writing on fairness of carbon pricing policies. In addition, the paper will discuss the tension of creating fair policies without jeopardizing critical climate change policy goals (i.e. by delay), which in and of themselves are fundamental to social justice objectives.

Heather McLeod-Kilmurray (University of Ottawa)

**Vegetarianism and Food Governance**

Much of the attention to environmental issues is currently focused on climate change, and particularly the contribution of major industrial polluters and vehicle emissions to this problem. On a separate front, there is much consumer interest in the local food and organic food movements. Yet the connection between climate change in particular (and sustainability in general) with what and how we eat is often not made. This paper will explore the role of legal regulation and food governance in encouraging, or undermining, sustainability and ecological justice. It will explore the system of food governance in Canada and at the international level, and in particular will focus on how the structure of food governance as it currently exists encourages a mode of eating that places the dietary desires and preferences of the wealthier nations above the food, environmental and economic survival needs of the rest of the world. How did the system get this way, how can it be changed and what are the most challenging barriers to achieving sustainable food systems based on an approach centered on ecological justice?

Arthur. Green (McGill University)

**Bundling Carbon: Property Rights and REDD**

The 2009 Copenhagen Accord produced at the United Nations Climate Change Conference (COP-15) recognized the importance of natural forest protection for reducing carbon emissions and supporting local livelihoods. The accord supported the creation of an international mechanism known as REDD (Reducing Emissions from Deforestation and Degradation) for establishing standing forests as carbon offsets tradable in carbon markets. Yet, the accord provided little guidance as to how REDD would take place. REDD is based on the assumptions that (1) forest carbon flows and stocks can be adequately identified; (2) carbon additionality, permanence, and leakage issues can be addressed; (3) a legal framework that can recognize transferable forest carbon rights exists; and (4) carbon offset payments can be assigned and distributed to owners of forest
carbon rights. In this paper, I focus on the legal aspects of the third assumption and how unresolved issues regarding forest tenure and the nature and legal standing of forest carbon rights threaten to derail the entire REDD endeavor. Indeed, failure to address the legal aspects of forest carbon rights risks creating perverse incentives that threaten rather than protect standing forests. I outline problems posed by (1) the characteristics of forest carbon rights, (2) national legal frameworks for forest tenure, and (3) the flexible, legally pluralistic resource management common in many possible REDD areas. In conclusion, I propose ways that forest carbon rights might be formulated to work with existing tenure systems and fit into the metaphorical “bundle of sticks” that defines property.
DOMESTIC VIOLENCE AND FAMILY LAW PROCESS  
VIOLENCE FAMILIALE ET LE DROIT DE LA FAMILLE  
Chair: G. S. Rigakos (Carleton University)

Marc Legacy (Carleton University)  

*Historical Antecedents: Looking Back at Mid 18th Century Marital Violence: Legal Cruelty, Provocation and Resistance*

Marital violence remains a contentious social, political and legal issue that connects our past misunderstanding to our current misperception. Today, many similar unfounded questions remain unanswered; why do women stay with violent husbands; why do women return to violent husbands; and, to what degree did ‘she’ provoke violence.

Much of the literature suggests that violence against women and family violence grew out of 1970’s growing awareness and resistance. More recently however, statistical trends (2008) confirm that “women are [still much] more likely than men to be the victims of the most severe forms of spousal assault (Johnson, 2006, p. 13).

But, historical antecedents suggests growing opposition to marital violence as early as the twelfth century. For example, mid 18th century evidence reveals growing public opposition to marital violence in the form of public denunciation and judicial reform. Habitually violent husbands were the subject of charivaris, while the courts were struggling with defining marital violence in terms of excessive legal cruelty.

This paper attempts to raise historical questions concerning how, in some instances, the use of moderate or reasonable physical force was considered to be legitimate methods of reasonable chastisement or moderate correction ultimately leaving wives to shoulder the burden of marital violence. Along the way, I will draw from various legal pleadings and historical records to foster a discussion of what constituted grounds for legal cruelty and judicial intervention.

Ling Ma (University of Saskatchewan)  

*Women and Domestic Violence in China*

This exploratory study is principally an attempt to understand mainland Chinese women’s experience of domestic violence. The research documents the voices of twenty Chinese women, who have experienced domestic violence from their male partners, and discusses my knowledge and legal practice experience on this issue and the limited reports available. Findings leads to the development of the Integrated Feminist Model, which expands the traditional feminist perspective and emphasizes the relationship among resource, exchange, subculture and social structure in the Chinese social environment.

J. Lassonde (Law Commission of Ontario)  

*Dealing with Family Problems in Ontario*

Where do people go to find help when they experience a family problem? What is their entry point into the family justice system? I have been asking these questions as part of a law reform project at the Law Commission of Ontario (LCO). This project aims to recommend improvements to early intervention mechanisms in family law disputes. The main issues raised relate to how health, social and legal services providers can coordinate more effectively and how they should respond to people in light of their complex identities and family experiences. Because some would argue that these matters are not strictly “legal” in nature – for example, they do not necessarily require legislative or regulatory changes – the project also raises interesting questions about the nature of law reform work.

As part of the LCO project, I have conducted consultations with various users of and workers in the family justice system in Ontario. The next stages of the project will involve compiling results and conducting further research. The timing of the CLSA conference will allow me to share preliminary findings and reflections flowing from the LCO law reform consultation process. It will also allow for a discussion of preliminary recommendations with CLSA conference participants. I also hope the conference will provide an occasion to develop further connections between Canadian law reform bodies and law and society theoretical frameworks.

Noël Semple (Osgoode Hall Law School)  

*Litigating the Best Interests of a Child*

When two parents part company and cannot agree about the future care of their children, by what processes are those disputes eventually resolved? What are the costs and benefits of these dispute resolution processes for the children involved? Between January and April of 2010, I will be conducting a series of long qualitative interviews with judges, lawyers, psychologists and social workers in the Toronto area who work with custody and access disputes on a
While the existing literature has analyzed the roles of various professionals, my research seeks to comprehend the custody and access dispute resolution system as a whole. How do the various professionals perceive each other, and make decisions about whether to involve each other in a given case? Who are the gatekeepers to the system, and how do they exercise power? Does a given lawyer turn reflexively to the same form of alternative dispute resolution, or to the same individual provider? Do family lawyers function like the triage intake officers envisioned by scholars of differentiated case management, dispassionately allocating each case to the most appropriate path? Do they practice a more collaborative, less zealous form of advocacy when dealing with a custody or access dispute than they would otherwise?
Dayna Crosby (York University)

The Politics of ‘Community’ and the Scarborough Youth Justice Committee: A Conversation of Governance, Risk and the Production of the “Good ‘Canadian’ Citizen

The focus of this Major Research Paper beings in the field of youth justice in order to interrogate the conception of ‘community’ both in the Youth Criminal Justice Act (2003) and through the corporealization of community under the Youth Justice Committee Program (YJC). I approach this work informed by my professional experience as the West Scarborough Neighbourhood Community Centre (WSNCC) YJC Facilitator. I put forth a site specific analysis of the WSNCC YJC framed within neo-liberalism and further this by identifying Canada as a colonial state in order to enter a discussion of the major themes of governance, risk and citizenship. I assert that ‘community’ is a quasi-legal concept and through the review of relevant literature, fieldwork and interviews, interrogate the effects of community within this context. I articulate that the guise of community under youth justice legislation conceals the complexities of governance operating within this framework while contradicting its claim to a restorative approach to justice. By providing an in-depth analysis of the how community is governed and its operation as a site of governance, I conclude this project by converging my major themes in order to assert that community is assimilationist in its partial success in re-affirming the “good ‘Canadian’ citizen” through the community members and by its attempts to produce the “good ‘Canadian’ citizen” in the youth, their parent(s) or guardian(s) and the volunteers who participate in the YJC program.

Julie Gregory (Queen’s University)

In the Name of (In)Security

During recent years, educational institutions across Canada have increased and/or intensified their security apparatuses. For example, universities across the country have spent billions of dollars implementing emergency notification systems and/or increasing the size and scope of their security departments. There are various ways to interpret such trends: as evidence that steps are being taken to ensure student and employee safety, particularly in the context of highly publicized incidents of violence on campuses in Canada and abroad; as confirmation of the pervasiveness and productivity of “risk” and “fear” discourses vis-à-vis campus crimes; as verification of intimate links between schools, police departments, and security companies, for example. Arguably, these interpretations are not mutually exclusive. Instead, each might be understood as an aspect of a larger trend in “selling (in)security”. Indeed, in this paper I consider how, when taken together, each of these interpretations might help to contextualize one Canadian university’s ongoing efforts to (co)produce and (re)present “a broad culture of safety” (Carleton University Newsroom 2008: ¶5). I do this via an analysis of institutionally-generated, publicly available document representations of Carleton University’s $1.6 million “investment” in “an even safer, more secure campus community” (Carleton University Newsroom 2009: ¶3).
TRANSITIONAL JUSTICE
JUSTICE TRANSITIONELLE

Chair: Aloke Chatterjee (University of New Brunswick)

Matthew Pritchard (McGill University)

*Land, Power and Peace: Tenure Systems and the Formalization Agenda in Post-Genocide Rwanda*

Land tenure and agricultural reform are essential components of postwar development. The ability to build and maintain peace is inherently tied to the resettlement of land and the re-organization of agricultural production. This is especially true in post-genocide Rwanda where eighty percent of the population depends on subsistence agriculture in a rural system characterized by declining production and increasing population pressure. Given these challenges, in 2005 the Government of Rwanda introduced the Organic Land Law, an ambitious set of tenure and agriculture reforms aimed at replacing subsistence farmers with a highly commercialized and monetized agricultural sector. While promulgated as a 'pro-poor' policy, data from pilot sites demonstrate that the goals and application of the Land Law have severely restricted farmers’ rights and undermined subsistence livelihoods. Fieldwork data from 2009 contradict government claims to increased agricultural production and food security, and demonstrate that the ambitious goals and aggressive implementation of the land policy have decreased food security, increased landlessness and precipitated acts of resistance in pilot areas. While decreasing production and increasing conflict over land validate the need to reorganize rural Rwanda, the goals of government policy, forceful implementation of large-scale changes, and continued marginalization of the most vulnerable groups present a significant security risk and undermine the government’s development framework.

Annie Bunting (York University)

The kidnapping, rape, forced impregnation, and assault of women during war are not new phenomena. Indeed, scholars have documented the role of sexual violence and other gender crimes in conflict situations in historical contexts related to war and enslavement (Jain, 2008; TRC, Liberia). Holding perpetrators responsible for those crimes against women, however, is a relatively new phenomenon in international criminal law (Nowrojee, 2005). Even after the Second World War, the Japanese commanders and soldiers who sexually enslaved women were not subject to criminal prosecution for mass rapes of the so-called “comfort women” (McDougall, 1998). As the Geneva Conventions and international humanitarian law developed, though, rape and sexual slavery were included in war crimes and crimes against humanity (Fourth Geneva Convention; Oosterveld, 2009). Extensive gender violence took place during the genocides in Rwanda and the former Yugoslavia. The United Nations ad hoc tribunals in both cases have charged commanders with rape as a tool of genocide and other gender crimes (Copelon, 2000). The Rome Statute (2002) for the new International Criminal Court also includes provision for the prosecution of gender violence. This is a sea change in international law (Palmer, 2009 at 141). During the prolonged conflicts in Sierra Leone and Uganda, women and girls were routinely abducted from their homes and taken by rebel forces (Sierra Leone TRC, 2004; Carlson and Mazurana, 2008; Human Rights Watch, 2003). This collaborative research project explores the intersecting (yet sometimes separate) understandings of forced marriage in international law as i) a form of slavery or ii) a distinct crime against humanity.

Robert Kibaya & Lillian Asimimwe (Kikandwa Rural Communities Development Organization)

*Rural Communities Criminal Justice Awareness Project*

Extending Criminal Justice Services to Rural Africa is the key for rule of law and democracy in Africa. Criminal justice is greatly missing in most of the rural communities in Uganda due to greater distances between criminal justice service providers and the community people. Additionally, lack of information has led to continuous suffering of mostly women and children in the hands of fellow men because they do not know how, where to express and report their criminal cases. Rural women and children in my community face many hardships which include but not limited to rape, harsh treatment, property rights abuse, name it. Most of their cases are never presented in courts of law for judicial action because they lack information on whom to contact and so, issues are always resolved unprofessionally on a personal ground fully centered with bribery.
This paper will share experiences from my Justice Makers project currently in its later stages of implementation in Kyampisi Sub-County. The project has created two Community Criminal Justice Monitoring Committees (CCJMCs) at the village level which are equipped with basic criminal justice and human rights skills by two contracted experienced visiting lawyers and they play a monitoring, evaluation and sensitization role on rule of law and justice within the rural communities. Further, the strategy involves periodical community public workshops between the community people in under-served areas and the legal actors from various departments in connection to Justice and Human Rights aiming at extending justice services nearer to rural communities.

Halidou Ngapna (Université de Montréal)

*Justice transitionnelle: quel est l’apport du droit dans les transitions? Exemple de la Sierra Léone*

Penser le droit dans une société quelle qu’elle soit revêt une difficulté particulière, les institutions et les hommes qui les dirigent ou subissent leurs actions étant conditionnés par des présupposés idéologiques ou philosophiques différents. Dans les sociétés qui fonctionnent – c’est-à-dire celles qui ont des institutions définies et dont les moyens humains et financiers permettent une exécution efficace des pouvoirs – la tâche est beaucoup moins ardue que dans les juridictions où l’application du droit est difficile et où les outils d’analyse sont difficilement appréhendables. La plupart des sociétés conflictuelles appartiennent à cette deuxième catégorie. Ce sont des pays où l’État a perdu son emprise sur certaines portions du territoire national et est incapable, même dans celles qu’il contrôle de remplir ses fonctions régaliennes.

Le retour de l’État de droit dans ces sociétés passe par la mise en œuvre des mécanismes de justice transitionnelle et des réformes institutionnelles conditionnés par l’adhésion des citoyens et acteurs politiques. Le rôle que le droit a à jouer dans la gouvernance de cet ordre social reste controversé, l’importation ou l’imitation des institutions et valeurs juridiques ne correspondant pas souvent aux normes et modes locaux.

Il conviendra donc, de déterminer, après presque dix ans quel rôle a joué le droit dans la gouvernance de la transition sierra léonaise. En d’autres termes, quelle accueil a été réservé aux mécanismes juridiques (nationaux ou internationaux) et avec le recul, quel peut être l’impact de ce droit sur la transition en Sierra Léone?
The Labaye Harm Technology, Old Functionalism in Neo-liberal Attire

This paper traces the genealogy of the Supreme Court of Canada’s construction of “harm” in the obscenity/indecency context from Hicklin (1868) through Labaye (2005). The Canadian approach is concerned with functionalist normativity. Harm assemblages are risk-based, and concern the maintenance of social cohesion, organized in relation to the impact of obscenity/indecency on abstract legal subjects. The Court constitutes a ‘new’ harm test and delegates discretionary authority to the capillaries of power (police, administrative officials, and lower courts/tribunals). This new technology of harm denies recognition to sexual minorities and inscribes the public/private divide while propagating the nimble lie that Courts are required to rely on expert opinion evidence of harm. The Court claims to be concerned with the proper functioning of society, unafraid to delegate regulation in order to discipline those who threaten this functionalism. The value of equality, long considered a Canadian innovation in international obscenity law, is muted.

A Bully in the Playground: Examining the Role of Neoliberal Economic Globalization in Children’s Struggle to Become ‘Fully Human’

The ideological and practical realities influencing the recognition of children’s rights exist in an increasingly globalised world in which international economic dynamics play a particularly influential role. It is proposed that the dominant form of globalization, neoliberal economic globalization (NEG), perpetuates ideological exclusionary criteria which thwart children’s rights. This is most evident in the neoliberal views on the paramount importance of the individual, and on the limited role for the state. It is the NEG perception of the child, in locating her/him within an individualistic framework and dismissing the wider societal context, which justifies at best a welfare agenda and denies children rights. Further, this results in a justification of the effects of poverty, in particular for children of the South. This exclusion of children from bearing rights is achieved globally through NEG systems and processes which handicap the autonomy of states.

The NEG maintains this exclusion of children through its deemed legitimate and commonsensical hegemony. These complex dynamics are viewed through the lens of Baxi’s “logics of exclusion and inclusion” in which becoming “fully human” is applied to children and their achievement of internationally recognized human rights. Through these exclusionary mechanisms, it is proposed that NEG bullies states into advancing a new form of colonialism that discriminates against children. The effective recognition of children’s rights requires an understanding of the exclusionary criteria imposed by NEG. A fundamental modification of the terms and mechanisms within which NEG functions is essential to compensate for children’s unique and disproportionate vulnerabilities.
Tyler Brooks & Chantelle Olson (University of Alberta)

**The Mediatization of the 1945-46 Murder Trials of Seven German POWs**

What to do when the case files of two sensational murders are too slim to conclude anything about the events? One turns to newspapers account. The coverage in the *Medicine Hat Daily News* and the *Lethbridge Herald* (more than 200 articles) of the 1946 trials of 7 German POW may not unravel the truth on the July 22nd 1943 murder of fellow prisoner August Plaszek and of the September 10th 1944 “slaying” of Karl Lehman, but it sheds light on the public perception of the unconventional “visitors”. Surprisingly the articles contain little or no overtly hostile language ... how although nearly all involved in the events were POWS, reporters distinguished between the victims and the accused.

Joel Kropf (Carleton University)

**Reading Lethal Trends: The Interpretation of Crime Statistics During the Canadian Death-Penalty Debate in the 1970s**

Those who take note of present-day discussion of Canadian affairs will at various points hear crime described as being “on the rise.” They will also frequently hear commentators point out that this description simply fails to hold water, in light of statistical data: on the whole, the past two decades have actually brought Canada encouraging statistical news regarding current crime levels. However, when we examine the Canadian debate in the 1970s over the abolition of the death penalty, we find an intriguing situation in which crime rates and public arguments surrounding them followed different patterns than those with which we are currently most familiar. The capital-punishment tradition in Canadian criminal justice came to an end in the 1960s and 1970s. The authorities did not actually call the executioner into action at any point after 1962.

Thanks to partially abolitionist federal legislation, only the murder of policemen or prison guards elicited capital sentences from the courts after 1967. And in 1976 the Criminal Code ceased to threaten any offender with a death sentence. During this period, anti-death-penalty leaders took a special liking to the argument that, in getting on board with abolitionist policies, Canada would not be putting itself at any serious risk of seeing murder occur more frequently. However, the 1962-1976 period turned out to be a poor time frame for proving the abolitionists’ point: the murder rate did not behave as they had hoped. By the final round of the debate, statistical data appeared to show that Canadians had been only half as likely to die at a murderer’s instigation in 1962 as in the mid-1970s. Yet Parliament still chose in the end to make Canada a death-penalty-free zone. How did the abolitionists manage to win out?

My presentation will explore the reasoning that Canadians, especially parliamentarians and key abolitionists, used as they interpreted the murder statistics of the day. Anti-capital-punishment voices of the 1970s, I will argue, succeeded in portraying abolition as viable partly because they found a statistical argument which affirmed the abolitionist perspective, but which also seemed to acknowledge that a crime bug had bitten the country—a notion that aligned well both with the numerical evidence and with the allegation, widespread in the 1970s, that the tentacles of “violence” or “permissiveness” were sticking more tightly to society. More generally, my evidence will illustrate a familiar point—namely, that people will embrace a statistical argument to the extent that it calls for a type of conceptual reasoning of which they feel capable, portrays social trends in a manner to which they are accustomed, and affirms policies that they find morally desirable.

Carolyn Strange (Australian National University)

**Sovereign Popular Justice? Executive Clemency in 19th Century New York**

Despite socio-legal scholarship’s acknowledgement of the porosity of legal institutions and the dynamic inter-relation of law and society, polarised notions of popular justice (low) and the rule of law (high) persist. Sovereign justice, in particular, is typically characterised as remote, prepared at best to accede to popular will solely for the purposes of willing subjection. But do such mechanistic, instrumental readings do justice to sovereign justice? Can executive justice be popular?
As Sarat and Hassain (2004) argue scholars have been far more concerned with the sovereign power to claim life than to spare it. There are many jurisdictions in which historical studies of executive clemency have yet to be analysed. New York State is one of them. From 1777 the state constitution authorised the Governor to review the post-conviction fate of prisoners, some, though not all, sentenced to death. A remarkable run of over 8,000 cases files has recently been accessioned, providing a sense of the rationales that typically induced clemency, including age, previous character, associates, and community reputation. Neither lawyers nor formal petitioners were required to appeal for mercy, and the humble greatly dominated the ranks of petitioners. Focusing on one decision, the pardon of Frank Walworth in 1877 for the murder of his father in 1873, and placing it in the wider context of executive clemency this paper confounds prevailing notions of high and low, privilege and prejudice as the assumed distinctions between popular and executive justice.

CRITICAL CRIMINOLOGY IN CANADA (ROUNDTABLE)

CRIMINOLOGIE CRITIQUE AU CANADA (TABLE RONDE)

Aaron Doyle (Carleton University)
Sylvie Frigon (Université d’Ottawa)
Bryan Hogeveen (University of Alberta)
Joanne Martel (Université Laval)
Justin Piché (Carleton University)
George Rigakos (Carleton University)
Andrew Woolford (University of Manitoba)

Panelists from across the country discuss how critical criminologists in Canada might work to strengthen ties among ourselves. How can we work more effectively to bridge the “two solitudes” of Anglophone and Francophone criminology? What are the best ways to strengthen scholarly exchange and collaborative work among Canadian criminologists more generally, given our geographic dispersal? What are the prospects for a collective criminological response to the Harper government’s crime bills, which the vast majority of Canadian criminologists seem to oppose? On what other questions and issues might we work collectively, and how?

LE DROIT COMME TERRAIN DE RECHERCHE

Éveline Jean-Bouchard (Université d’Ottawa)

Les États déstructurés : une critique féministe et pluraliste des approches internationales actuelles

Dans les sociétés modernes et libérales, un État est jugé fonctionnel si les institutions qui encadrent sa souveraineté sont structurées par le droit. Il s’agit de l’État de droit, dont la principale composante est un système judiciaire efficace et distinct du pouvoir exécutif. Malgré l’incessante théorisation portant sur les liens entre l’État de droit et le développement, le nombre d’États déstructurés (failed states) va croissant. Ils inquiètent la communauté internationale qui déploie des moyens impressionnants afin d’y rétablir la démocratie et de réformer les systèmes de justice (par exemple Haïti et l’Afghanistan). Mais où se situe l’intérêt des communautés locales dans ces approches internationales à la fois stato-centristes et cosmopolitaines? Car le concept de la déstructuration d’un État entraîne d’abord des conséquences directes et catastrophiques à l’échelle locale. Dans ce contexte, l’État est depuis longtemps devenu une source inefficace du droit ou encore, une source de droit vide de sens au niveau communautaire. Nous pouvons ainsi imaginer l’apparition de multiples zones de « non-droit », proches de l’état de nature tel que développé par Hobbes et Rousseau. Mais est-ce vraiment le cas? L’État est-il réellement la seule source de droit au niveau local? Pas selon la perspective du pluralisme juridique, qui propose l’existence de sources opérationnelles de droit autre que l’État. Suite à une éventuelle recherche qualitative sur le terrain en République Démocratique du Congo, nous aimerions démontrer que les femmes ont un rôle et une place prédominante au sein de ces mécanismes de création du droit au niveau local, utilisés comme des moyens de résistance face à l’oppression étatique qu’elles subissent. Bien que le cadre du pluralisme juridique nous permette de mieux comprendre la façon dont les identités propres à chaque individu forgent leurs rapports avec le droit et l’État, nous croyons également que malgré la concurrence entre les identités et les systèmes, il existe à la source des normes issues de valeurs universelles qui sont celles reconnues par le droit international des droits de la personne.

Erica See (University of Ottawa)
Framing the Field: Barriers to Legal Field Research of “Vulnerable” Populations

One of the most substantial hurdles faced by legal scholars seeking to conduct primary research is the ethics review board of their academic institution. As has been noted by other scholars, such bodies operate through a quasi-medical assessment of the likelihood of risk to the ‘subjects’ of the research and of the legal liability of the institution permitting the research. This positivist mode of analysis requires that research applicants characterize their research in specific ways. In essence, research ‘subjects’ must be characterized by their degree of victimhood, rather than by their degree of agency. Narratives of strength, resilience, and resourcefulness in the face of adversity are pushed to the side. Meanwhile, narratives speaking to subjectivity, vulnerability, and helplessness are brought to the fore. Successful applications are those that reify these problematic scripts. This paradox is further exacerbated when overlaid by constructs of positivist legal discourse that further limit the ways in which the experiences of marginalized communities can be framed in legal research. Because of this, legal scholars wishing to carry out progressive research aiming to give voice to marginalized communities are compelled to speak in ways that reduce their ability to challenge neo-colonial, paternalistic understandings of marginalized communities. This paper suggests possible ways progressive legal scholars working in academic institutions can subvert these scripts.

Anastasia Tataryn (University of Ottawa)

To Move Beyond “Our own constructions of other people’s constructions…”

This paper is based on research conducted with persons living without legal status in the Greater Toronto Area (GTA). I explore the relationship between persons without legal status and the law that deems them “illegal”. In qualitative interviews that drew on methods from enriched ethnohistory and Indigenous research methodologies, I was challenged to deeply consider the variety of experiences of migration and attempts to legalize status, but also the multilayered, dynamic processes of representation, identity, narrative and performativity. Clifford Geertz explores ethnographic work as “thick description” to encompass the experience of data collection to the extent that data is “really our own constructions of other people’s constructions of what they and their compatriots are up to.” I will reflect on the way my role as a Canadian, English-speaking, researcher based in a Law faculty informed, limited, and constructed my experience of engaging with the “subjects of my research”. Of particular interest is the way (social) citizenship, legality, and lawfullness was described and discussed – what it means to “live legally”, the need for law and continuous faith in the law expressed by persons who are commonly referred to as “illegal”.

In many ways, these conversations and speaking to people confuses. It is difficult to refer to conversations when speaking to policy because it can lead to more questions and substantially less answers, while at the same time offering little in return to those informing the research. So is an ethnographic approach useful? I will explore this question in light of the problematic dynamic of “those who are studied” versus “those who study”. And how we, as researchers situated in the legal discipline, strive to deconstruct, to subvert and challenge the very system that we represent.
Sexting: Policy Approaches

Sexting has become something of a media cause célèbre, particularly in light of controversial decisions in some U.S. states to prosecute or threaten to prosecute various kinds of sexting activities under that country’s child pornography laws. As the pressure for some form of intervention intensifies, others have come forward to argue against legal intervention by comparing sexting to many other kinds of teen and adolescent sexual exploration. Both positions seem to be underlain by an all or nothing approach that leaves little room for moving beyond the generic sexting label to analyse the context surrounding any particular instance of sexualized self- or other-exposure by adolescents and teens. This paper will explore policy approaches to sexting.


Monsters walk among us... at least this is the story presented in the daily barrage of newspaper articles, best-selling biographies and television exposés focused upon the commercial sexual exploitation of children and youth. This paper draws upon my research on the social construction of the pedophile monster figure in Western societies. The first part of this paper will trace the historical genealogy of the pedophile monster. Drawing on the work of Walkowitz (1992) and Valverde (2008), I focus on the Victorian era. I argue that this monster has historically served as a container in which we, constituents of Western culture, place all responsibility for the sexualization of children and youth. Unfortunately, the establishment of the pedophile monster as a long-standing cultural trope has not resulted in the eradication of sexual exploitation of minors. I return to the current context by presenting my findings from a discourse analysis of postings collected in online chatrooms where men discuss their experiences as perpetrators of commercial sexual abuse of youth. My findings demonstrate how these men employ mainstream discourses which sexualize children and youth to normalize and rationalize their behaviours.

Child Protection: Appeasing the Gods of Risk Society

The idea of risk has come to dominate the field of child protection, both in social work policy and in law. This paper posits that the risk paradigm is operating in a context in which its subjects are predominantly women, and their children, who are likely to be among the most disadvantaged, vulnerable and marginalized in our society. These very circumstances become fodder for the actuarial risk assessment process by which a family is categorized as ‘high risk’, which is information used to support a legal finding that there is ‘risk of harm’ to a child, a finding which will trigger legal intervention up to and including removal of the child from its home. This paper argues that the logic which underlies actuarial risk assessment is singularly inappropriate as a basis for a legal determination that a child should be removed from its family.

An overview of risk theory is developed, and then used in the context of a feminist analysis of how risk management operates to govern state intervention into the lives of ‘child protection mothers’ and their children; ethical questions related to the use of actuarial categories to predict the behaviour of individuals are identified. The author proposes that the child protection categorization of risk is comparable to that of risk classes created for insurance purposes; she argues that the risk assessment methodology is being used to create a large class of ‘high risk’ families which must share the costs attributable to the few families in their midst in which abuse will actually occur.

Paternal Power, Fiduciary Duty and Children’s Rights: From Roman law to common law to the Supreme Court of Canada

Anne McGillivray (University of Manitoba)
In the face of children's rights, parental rights over children are a thing of the past, the Supreme Court of Canada unambiguously asserts. Yet the court lowered the fiduciary bar for parents from 'best interests' to 'interests', upheld the parental power of chastisement, and justified a statutory incursion into the mature child's rights to freedom of conscience and security of the person. In so doing, the court overturned the right of custody, one of three rights inherent in paternal power under Roman law, but upheld the other two — control and corporal punishment. Other-directing rights are, for the most part, anathema in liberal philosophy and modern rights discourse. If parents have rights over children, then children cannot have rights, or at least not of the kind guaranteed by the Charter of Rights and Freedoms and the Convention on the Rights of the Child (which, confusingly, refers to rights and duties of parents). What were, and are, parental rights?

I consider the meaning of parental rights in the (postmodern) era of children's rights, in and through recent jurisprudence of the Supreme Court of Canada, beginning with the origin of parental rights in patria potestas with its incidents of custody, control and corporal punishment, and the concomitant parens patriae jurisdiction of the state. Here I consider the core paternal right of custody, its extension to mothers and its rebirth as a right of the child. I then turn to the fiduciary obligation of parent and state to the child, and the standard of fiduciary care. Despite the Supreme Court's insistence that parental rights are a thing of the past, the court upheld the constitutionality of the parental rights of child corporal punishment, in justifying the corrective assault of children in s. 43 of the Criminal Code, and control, in justifying a statutory override of the right of mature children to determine medical care. I conclude with thoughts on the problem of touch and children's rights, and the partial shift from parental rights to children's rights.
Critical criminologists – particularly those who have been influenced by Foucaultian theory – and legal theorists who concern themselves with criminal law conceive of power in very different ways. Foucault’s understanding of power does not focus on the law; power is rather a more diffuse social phenomenon involving modes of governance that may follow disciplinary or pastoral models. Legal theorists, on the other hand, largely concern themselves with the power of judges to interpret and apply the law, and the internal rationale of legal discourses employed to limit, or legitimize, that power. There is a stark distinction between these two conceptions, as they are based on very different concepts of autonomy and subjectivity, both of which are significant in liberal societies. One suggests that the modern liberal view of the autonomous subject requires submission to or engagement with various modes of governance. The other delineates subjectivity through the use of boundaries of inviolability delineated by rights. However, we can see in some cases that the barrier between the two conceptions is porous. In this paper I will consider various examples of how discourses used to identify appropriately disciplined subjects are transformed into the rights discourses employed by judges in criminal cases.

George S. Rigakos (Carleton University)

The Security Commodity

In this paper I reconsider the conceptual utility of Marx’s 19th century critique of political economy which distinguished between productive and unproductive labour. Contemporary theorists have found this dichotomy theoretically dated, politically and normatively biased, and riddled with inconsistencies and exceptions. By connecting Marx’s pronouncement that “security is the supreme concept of bourgeois society” to his critique of political economy I instead offer a reading which explains the contemporary commodification of security, the valorization of capital through insecurity, and even contemporary material transformations in the fundamental relationship between police and capital.

ON PUBLISHING SOCIO-LEGAL BOOKS (ROUNDTABLE)

This panel will provide a forum for roundtable guests and participants to discuss some of the advantages and disadvantages of book publishing, the scholarly objectives and inspirations for particular kinds of books, and some of the “nuts and bolts” of publishing your work. Roundtable participants will address a broad range of questions including: How did you know you had a book length idea? What was it like to coordinate a collection? How do you make sure you schedule time to write? How do you pick a publisher? How do you negotiate a contract? What do you wish you knew before you wrote the book? What was the best thing you did in planning/working on/publishing the book or collection?

Constance Backhouse (University of Ottawa)
Kim Brooks (McGill University)
Brenda Cossman (University of Toronto)
Robert Leckey (McGill University)
Renisa Mawani (University of British Columbia)
Vrinda Narain (McGill University)
FEAR, RESISTANCE AND VIOLENCE AGAINST WOMEN
PEUR, RÉSISTANCE ET VIOLENCE CONTRE LES FEMMES

Chair: Diane Croker (Saint Mary’s University)

Verona Singer (Dalhousie University)

The use of high risk case coordination to prevent intimate partner femicide: A liberating or controlling experience for abused women?

My research examines whether a protocol used in Nova Scotia to classify and protect women at risk of being killed by their abusive partner contributes to their safety and well being or further enhances mandatory state intervention in their lives which can have unintended consequences. I am trying to determine if no harm has been done to these women. Using data from my interviews with abused women I will discuss whether they have experienced fear and resistance in their experience with the high risk protocol.

Lori Haskell (University of Toronto) & Melanie Randall (University of Western Ontario)

Law, Restorative Justice and Gender Based Violence

In this presentation we critically assess some of the possibilities for the application of a restorative justice legal approach to crimes of violence against women in intimate relationships and engage feminist debates on this issue.

Several decades of research and analysis of traditional criminal justice system approaches to domestic violence and sexual assault suggest that this system has profound deficiencies in providing an adequate legal response or remedy. These deficiencies are even more stark when examined from victims’ perspectives. Restorative justice is an approach which potentially offers a more respectful, inclusive and victim centred response to remedying crimes of gendered intimate violence, yet it also carries with it significant challenges and limitations, conceptually and concretely. Part of this presentation will involve critically engaging the major lines of controversy within the field, especially the feminist literature, surrounding restorative justice and crimes of gendered violence.

In order to take seriously the concerns, challenges and transformative possibilities of the use of a restorative justice approach to cases involving gendered violence, we need to think about the issue from a more sound theoretical base which builds upon a more clearly articulated definition of what restorative justice actually is, and a recognition that all those programs siting themselves under the restorative justice umbrella may not, in fact, adhere to its defining principles. This presentation will address these issues in the context of the larger project of which it a part, an academic-community collaborative research study being undertaken in Canada (Nova Scotia) to contribute theoretically and empirically to our knowledge about restorative justice in practice.

Amanda Glasbeek (York University)

Women, fear of crime, and self-defense

Fear of crime is a gendered phenomenon that adversely affects women’s quality of life. While a great deal of scholarship documents the contours and implications of women’s fear of crime, surprisingly little research exist to document women’s resistance to the risk logics and responsibilization strategies that define them as already-victims. This paper begins to address this gap through an investigation of a concrete instance of women’s resistance: self-defense classes. The increasing popularity of these courses invites important questions, including whether they are sites for new feminist mobilizations against violence or yet another form of responsibilization for women. In particular, I treat these classes as a site through which to interrogate whether and, if so, how women directly challenge productions of themselves as especially ‘at risk” and seek to constitute themselves, instead, as fearless subjects with their own autonomous claims to public space.

Amanda Nelund (Saint Mary’s University)

Conflict in Nova Scotia? Women’s Organizations and Institutionalized Restorative Justice

In 1998 the Nova Scotia provincial government outlined its plans for a comprehensive, institutionalized restorative justice (RJ) program for youth. Upon the release of these plans women’s equality seeking organizations in the province became concerned about the potential expansion of this program to adults and the use of restorative justice in cases of sexual and partner violence. The women’s organizations were able to initiate a consultation process with the provincial government which included a listening day, during which the organizations presented a piece of research they had constructed on women’s thoughts on RJ, and a joint working group. They were also able to influence the government’s decision to place a moratorium on
the use of RJ in cases of sexual and partner violence. This paper situates this case in the broader context of neoliberalism. The case stands in contrast to research that document the marginalization of women’s organizations within neoliberal contexts. This problematizes the case in an interesting way and makes it a fruitful source of data with which to examine questions around the power of women’s organizations to resist or even influence government policy in neoliberal times. What is the role of women’s organizations in neoliberal governance?

**WOMEN, LAW AND SOCIETY IN INDIA (ROUNDTABLE)**

**FEMMES, DROIT ET SOCIÉTÉ EN INDE (TABLE RONDE)**

The objective of this round table is to analyze the interactions between law and society in the context of contemporary India. Through the analysis of their recent research, the panelists will identify the common challenges face by Indian women in their process to obtain various forms of rights: right to financial and economic resources (from water to education and employment), right to health along with right not to be discriminate on the basis of sex (from female infanticide to sex selective abortion and other new technology of reproduction), right to access the state legal system (from village to court). This round table aims at establishing an interdisciplinary empirical dialogue in order to develop a comprehensive approach to law and society in India that would encourage further research.

Karine Bates (Université de Montréal)  
Marie-Hélène Bérubé (Université d'Ottawa)  
Claudyne Chevrier (Université de Montréal)  
Karine Gagné (Université de Montréal)  
Nicole Rigillo (Université McGill)  
Camille Robitaille (Université de Montréal)
**PROPERTY, CONTRACT AND EXCESS**
**PROPRIÉTÉ, CONTRAT ET FRANCHISE**

Chair: Michael Ilg (University of Calgary)

Michael Cody (University of British Columbia)

Corporations, Coalitions and Conflict

There are two types of corporate theories: Consensus Theories and Conflict Theories. Consensus theories assume that corporations are organizations where decisions are made by those in charge and everyone abides by those decisions. Conflict theories argue that decisions within corporations are made by opposing coalitions competing for the power to decide. The difference between these two theories is very important to corporate regulation and the ability to police the decisions that corporations make.

Generally, in North America we have always favoured consensus theories. Building on my previous work on corporate theory and a recent experience running an organization of over 400 people for 2 years, I explore the difference between the two types of theories and using real life examples, show how conflict theories more accurately describe reality. I will conclude with some thoughts about what this finding means for our corporate law and corporate regulation.

Megan Hall (University of Toronto)

Finding Law in the Virtual World

The virtual world has emerged as an integral aspect of our reality. The Internet no longer represents a simple resource of information, it is now a world unto itself with virtual residents and virtual businesses generating real money and real debates. Virtual worlds such as Second Life, There and Entropia Universe are growing at astounding rates, both in terms of population and economy, and with their growth have come questions about virtual property rights and ownership.

Debates centred on real versus virtual property highlight the importance of virtual property's inherent intangibility and real-world value. Users can exchange real currency for virtual currency and are able to extract any profits for use in reality. These developments are important because virtual worlds now have real-world implications such as the generation of wealth, the use of digital property as real-world assets, instances of intellectual property theft and the emergence of virtual sweatshops.

The fast-developing field of virtual property law finds itself defining and redefining the meaning of virtual property as well as advocating for the emergence of virtual property laws. This real world link to a world ruled simply by one-sided End User License Agreements is an important aspect in the development of virtual worlds. This paper explores the real-world implications of virtual property, the evolution of the language surrounding virtual property and the developments within virtual property law since the emergence of virtual worlds.

Katherine Poole (York University)

Squalor and Sovereignty. The Regulation of Hoarding and the Spectacle of Excess

The rising popularity of interventionist reality television shows such as Hoarders demonstrates the ubiquity of excess in Western society, and our shared anxieties regarding who may possess surplus goods. In this paper, I utilize the general economy of Georges Bataille to interrogate the governance of “hoarders” and “squalorers” through both the media and the apparatuses of the state. Both squalor and hoarding, if the two are extricable phenomena, may be understood as signifying Bataille’s accursed share, the energy in any system destined to be wasted.

As Bataille states, “we may call sovereign the enjoyment of possibilities that utility doesn’t justify...Life beyond utility is the domain of sovereignty.” (The Accursed Share, Vol. III, 198) Squalor, then, understood as the collection of items without use values, marks a sovereign transgression in the direction of freedom. In contrast, the hoarder, or Bataille’s “servile man,” is one concerned only with use-values, collecting objects for some imagined future end. The hoarder may thus be managed through regimes of normalization, whereas the transgressive squalorer comes to be subject to punitive measures. The factors that may mark one as a squalorer or a hoarder, seemingly constituted solely through one’s relationship to consumption and productive labour, are necessarily underpinned by broader assumptions regarding gender, race, and ability. If sovereignty is, as Bataille suggests, “the power to rise, indifferent to death, above the laws which ensure maintenance of life” (Literature and Evil, 1985, 182) I seek to explore the regulatory measures through which squalorers are reinserted under the law, and the impetus for and implications of the normalization of hoarders.
The dominant paradigms within contract law range from a freedom orientated approach to a fairness orientated approach. The guiding principle of the freedom orientated approach is party autonomy and thus supervision over contracting is reduced to a minimum. The contract is viewed as a compromise of opposing adversarial interests and the common good is held to be served by the parties’ pursuit of their self-interest. Against the backdrop of individual liberty and formal equality the role of fairness in the survival of the fittest is limited. This contract regime denies the judiciary any power to interfere in the bargain to foster substantive justice and closed the door to both connected understanding and understanding connectedness. As a result legislative intervention foreclosed the worst excesses and today contract law is characterized by materialization and differentiation.

The introduction of substantive equality and a concept of fairness in the form of consumer protection legislation constituted a major paradigm shift within the law of contract. Mandatory consumer protection legislation introduced a fairness based approach to contract law. The impetus for this drive has been serious recognition of human rights, as since WW2 both international instruments and national constitutions strive for ideals in their attempts to achieve social harmony based on the rule of law. Today the state is both tasked to respect as well as to realize human dignity and courts, legislators and legal theorists are confronted by this dualism.

In this paper I will argue that in order to concretise the constitutional values in the law of contract it is necessary to understand the interconnectedness between the modern constitutional state and the classical contract, the so-called “value-free” market mechanism. In addition it is also necessary to connect this understanding to the question of the hierarchy of constitutional values.
SEXUAL ASSAULT AND MONSTERS
AGRESSION SEXUELLE ET MONSTRES

Chair: Constance Backhouse (University of Ottawa)

Elana Finestone (Carleton University)

*What Kind of Man Would Sexually Assault a Woman? Exploring Gendered Interpretations and Discussions of Sexual Assault Media Campaigns on Campus*

How do first-year university students interpret public communication media campaigns about sexual assault on campus? Are these campaigns directed only to women or are men included as part of the problem and possible prevention of sexual violence? My research is rooted in feminist theoretical work on sexual violence and in critical discourse analysis of social media. The paper begins with the view that sexual assault is not only a woman’s issue; it is a community issue; a crime in which both men and women can play a role in preventing.

Drawing on focus groups with 25 first-year students in a Canadian university, I argue that current media approaches for raising awareness about, and ultimately preventing, sexual assault are largely ineffective. My findings suggest that while male university students express the need for male-centered discussions about sexual assault, achieving such spaces is difficult given that they must paradoxically conform to some rigid stereotypes of what a “real man” is to attract men to this discussion. Significant challenges thus remain in efforts to involve men in sexual assault discussion because it implies that men must simultaneously engage in questioning hegemonic masculinities. One of the key implications of my research is that media campaigns for sexual assault must incorporate masculinities theory in order to understand how gender roles shape men’s interpretation of media campaigns and how they can both hinder and determine a campaign’s effectiveness in sexual assault prevention.

Lucinda Vandervort (University of Saskatchewan)

*When It’s Not “YES” It’s “NO!” Affirmative Sexual Consent in Canadian Jurisprudence and Legal Theory*

This paper examines development of affirmative sexual consent in Canadian jurisprudence in reasons for judgment and articles published in legal theory and philosophy of law. The wide-spread assumption that affirmative sexual consent was first discussed in Canadian legal theory only in the last decade and has not been implemented is shown to be quite mistaken. In Canadian law, when it’s not “Yes!” it’s ‘No!’ The impetus for this paper was an email exchange with a university based student feminist organization over the rhetorical and legal differences between the slogans “Quand ce n’est pas ‘Oui!’ c’est ‘Non!’” and “Quand c’est ‘Non!’ c’est ‘Non!’” Experience with non-enforcement of the law causes the students to believe this distinction may be one without practical effects. This paper argues that in the cultural transformation process rhetoric is significant; rhetoric is linked to cognition; it has a powerful potential to change legal consciousness among ordinary citizens and to reshape the deliberation processes of decision-makers within the criminal justice system. Contemporary academic discourse by social scientists, philosophers, and others that describes affirmative sexual consent as a novelty that might prove impractical if it were adopted in law is uninformed and should cease; it confuses and misleads audiences inside and outside Canada. Disinformation about affirmative sexual consent in law and legal theory undermines the efforts of Canadian activists and criminal justice critics; when disinformation is not effectively challenged it may deter activists and change agents from using of some of the most powerful rhetorical tools available to transform Canadian culture.

Anita Lam (University of Toronto)

*From werewolves to pedophiles: Reading law and monsters in Little Red Riding Hood*

Monsters exist within the realms of fairytale and law as social constructions that are informed by fears particular to a specific socio-political context. In examining the relation between law and fairytale, this paper argues that law gets into fairytale when legal reality veers into fantasy (historical criminals become fairytale monsters) and this fantasy continues to frame our current (pop) cultural reality, including our legal reality (fairytale monsters and their associated connotations are loaded onto a contemporary class of criminals). Using *Little Red Riding Hood* as a case study for an inquiry into the cultural imaginary of law and society, the representation of the wolf will be examined as a fairytale monster that is mapped onto various legally-created criminal figures as the fairytale was adapted into new contexts and for new audiences over time: specifically, the wolf as
werewolf in early oral versions of the tale, unsuitable suitor in Charles Perrault’s *Le petit chaperon rouge*, and pedophile from the Brothers Grimm’s *Little Red Cap* to more contemporary cinematic adaptations (e.g. *Freeway* and *The Woodsman*). As the fairytale holds much of the structure of the plot constant, it allows us to analyze the figure of the wolf and the ways in which his relations to Little Red (adult/child, victim/survivor) and the wood-cutter (law as capable/incapable of rescuing the victim) shift over time, as cultural and legal understandings of sex crime evolve.

**LAW AND THE ENVIRONMENT II/LE DROIT ET L’ENVIRONNEMENT II**

Chair: Nathalie Chalifour (University of Ottawa)

Evan Bowness (University of Manitoba)

*Public Participation in Natural Resource Protection: A Critical Comparison of Western Canadian Jurisdictions*

Over the past 35-40 years, public participation has become essential to any effective environmental regulatory regime, marking a democratic turn in the state management of environmental issues. This is a reflection of the ecological movement and growing concern for environmental degradation which has espoused more progressive forms of environmental law and policy. There is, however, a wide range of participation mechanisms—progressive jurisdictions are governed by legislated clauses and regulations that have the potential to carry forward substantial results in citizen-led environmental protection, while others tend towards ‘tokenistic’ procedures of participant input that amount to essentially non-participation. This questions just how ‘participatory’ regulatory regimes really are.

‘Ecological modernization’ and the ‘treadmill of production’ offer competing expectations about the role and effect of public participation in natural resource decision-making. In the first case, the increase in public participation will continue to produce better, more sustainable environmental decisions as the jurisdiction continues to modernize. Alternatively, progressive public intervention legislation and regulations threaten economic development, and therefore exist in limited forms where there is a high economic stake in ensuring continued, and increased natural resource development. This paper offers a critical interrogation of the democratization of natural resource law in Canada through a variety of regulatory jurisdictions: hydro-electricity production in Manitoba, fossil fuel development in Alberta and Mining in the Yukon. In light of the avenues to public participation in these regulatory jurisdictions, is there evidence of modernization towards sustainable development or do existing forms of public participation amount to treading water in an environmental maelstrom?

Zaglul Haider (University of Rajshahi, Bangladesh, Osgoode Hall Law School)

*Environmental Terrorism in South Asia: How to combat it with International law*

Environmental terrorism “is the unlawful use of force against environmental resources or systems with the intent to harm individuals or deprive populations of environmental benefits in the name of a political or social objective.” In South Asia Indian unilateral construction and regulation of Farakakah barrage has severely affected 37% of the total area and 33% of the population of Bangladesh who are dependent on the Ganges basin. India has also proposed to implement a new river linking Project, to interlink 37 rivers to divert waters from one basin of a river to another and thus solving the water crisis in the draught affected regions. This will seriously threaten the very existence of Bangladesh, because 80% of its annual fresh water supply comes as a trans-boundary inflow through 54 common rivers. India further initiated construction of the Tipaimukh dam located 500 m. downstream from the confluence of the Barak for the generation of Hydro-electric powers. Barak is an international river and its tributaries are Surma & Kushiara rivers of Bangladesh, The Surma River feeds the mighty Meghna River which flows through Bangladesh. This will seriously damage the ecology, economy and livelihood of millions in Bangladesh.

The author argues that by any standard Indian actions already caused environmental terrorism and its attempts further threatening to Bangladesh. In order to combat these with international law, Peaceful settlement is the only option. And given the power balance of India the third party mediation is the best strategy for sustainable development of the region.
Angela Campbell (McGill University)
Sarah Berger Richardson (McGill University)

The Pedagogical Relevance of Empirical Research

In this paper, I draw on work I have recently undertaken on the experiences of women in Bountiful, B.C., a place where polygamy is taken up as a religious practice. My research has sought to gather accounts from women in this community about the way they view and experience formal Canadian law governing plural marriage. To this end, I have made two research trips to Bountiful to meet and interview community members.

My paper will explore some of the main methodological challenges I have faced as a legal scholar pursuing empirical work within a community rooted in a distinct cultural and social framework that stands apart, quite markedly, from the Canadian mainstream. Moving beyond a discussion of these challenges, I will focus on opportunities this research has yielded for law teaching. Through this work, I have been prompted to encourage my students to imagine how the “facts” yielded by usual legal methods of inquiry (e.g., statutory interpretation, expert evidence) might be nuanced or countered by the narratives of those directly affected by formal laws, but who may not have the political wherewithal to be heard in legislative and judicial processes. Moreover, during both of my trips to Bountiful I have traveled with two student research assistants. Working intensively with these students in the field provided an unpredictably rich opportunity for thinking about law teaching in an unexplored context. My paper will therefore consider the pedagogical value of teaching “in the field”, assessing both its benefits and potential drawbacks.

Colleen Sheppard (McGill University) & Genevieve Painter (University of California, Berkeley)

Equality in Community: Reflections on Critical, and Engaged Legal Research.

This paper reflects upon the methodological challenges of doing community-based legal research. To begin, we examine the entrenched dichotomy between legal theory and practice – a dichotomy that operates to devalue community-based initiatives in scholarly legal research. Community engagement is viewed as non-theoretical, practical and instrumental. While critiquing this dichotomy, we nevertheless suggest that there is a need for more reflection on how to bridge the theory-practice divide in legal scholarship. To begin this process, we review a number of methodological approaches that provide important insights into how to pursue engaged, community-based scholarship. First, we examine the methodological approaches contained in socio-legal scholarship on issues facing vulnerable communities, focusing on how ethnography has been used by sociologists and anthropologists. Second, feminist and critical race theories in a number of disciplines raise questions about how knowledge about theory and practice is produced. Third, the methodological principles developed in participatory action research fundamentally recast research processes and objectives. Finally, emerging research ethics principles and practices elaborate important safeguards and protections for the individuals and communities whose lives are most directly affected by research. The concluding section focuses on how these myriad methodological insights provide a foundation for developing new directions in legal research to address inequality and exclusion within socially and economically disadvantaged communities in Montreal.

Theresa E. Miedema (University of Toronto)

Teaching Law in Law and Society Programs

This paper examines legal philosophy with a view to analyzing how law should be taught in law and society university programs. I argue that the teaching of law, particularly private law, requires legal specialists due to the nature of law itself.

There is an increasing proliferation of law and society programs in universities across North America. These inter-disciplinary programs typically feature at least one introductory course to law, in addition to courses that consider the intersection between law and other socio-political areas. How should the teaching of law be approached in
such courses? Is it necessary to have the law taught by those with specialized legal training or are political scientists, sociologists, and other social scientists equally equipped to address the legal content?

My paper examines the question of how law should be taught in law and society programs by critically assessing what “law” is. I use a legal philosophy framework to explore different understandings of law, including the approaches taken by functionalists, positivists, and formalists. Ultimately, I argue that there is an important underlying structure (some would say “morality”) within law and that law is not merely public policy. Law, especially private law, involves a unique lexicon, rationality, system of justification, and set of institutions. While some areas of law (particularly within the realm of public law) are open to inter-disciplinary approaches, nevertheless, I make a case for courses focusing on law alone (law qua law) and for the need to have legal scholars actively engaged in the delivery of such courses.
The rise of the concept of governance has signalled a shift from top-down, rule-based regulation to new modes of regulation focusing on the adoption of the «right» processes and the implementation of monitoring systems. This process entails a significant change in our understanding of the nature of law and the relationship between rules and the social life it seek to regulate. Yet, while new modes of regulation contribute to blurring the boundaries between «formal (State) law» and informal norms, they leave unsettled the issue of the gap between norms (or standards) and «real life». An important issue in this respect concerns the reactions of individuals to the implementation of new standards and reporting systems. Another connected issue relates to the impact of these new modes of regulation on patterns of relationships already structured around a different compact. What are the advantages and drawbacks of these modes of regulation on the performance of firms and the status of their members? Does the heightened proximity of regulation increase commitment to the goal it seeks to further and thus normative efficiency, or does it lead to the development of new parallel informal norms? And what impact do they have on our conception of the individuals who form organizations and the relationships in and across organizations?

Ruthanne Huising (McGill University)

Governing the Gap: Forging Safe Science through a Community of Practice

This paper identifies a common impediment to successful regulatory compliance in systems for managing risk, describing how members of one organization overcome the gap between standardized descriptions of processes and the actions necessary to ensure compliance. Promoted globally by the International Organization for Standardization under ISO1400, environment, health and safety systems (EHS-MS) have become ubiquitous managerial tools for assuring compliance with myriad legal regulations. In this paper, we observe how management systems detach knowledge of what constitutes compliance from the work of achieving compliance by attempting to codify the knowledge and experience of specialists and distributing it to members throughout the organization. However, these formalized recipes are often insufficient to deal with the complex, situated demands faced daily. Drawing on data from a longitudinal study of the implementation of an EHS-MS management system, this paper describes how members of an organization collaboratively develop understandings of what constitutes compliance. Largely through talk - sharing and making sense of their local experiences, information, and insights – actors collectively develop and modify work practices by mapping the social relations and structures of the organization, developing a relational perspective. Through this discursive process, a community of practice emerges. The community enables members of the organization who are responsible for compliance to meet their obligations but also redefines their roles, creating both structure and sense for their work. Communities of practice are discussed as a means of governing the gap created by relocating responsibility for regulatory compliance from professional occupational specialties to management systems.

Christian Lévesque & Armel Brice Adanhounme (École des Hautes Études Commerciales, Université de Montréal)

La citoyenneté industrielle à l’épreuve de la flexibilité : Vers de nouvelles formes d’exclusion et d’intégration

La flexibilisation de l’emploi a imposé la naissance de nouvelles formes de représentation qui ont remplacé le modèle homogène de représentation issu de la citoyenneté industrielle. La régulation syndicale de la flexibilité a institutionnalisé le précariat des travailleurs temporaires ou occasionnels (Castel, 2009). Plutôt hétérogènes, les nouveaux contrats issus de la sous-traitance ont posé un défi à la représentation syndicale traditionnelle qui a procédé à la syndicalisation de contractuels, tentant de reprendre le contrôle de cette diversification du monde ouvrier. Mais l’articulation entre les nouvelles formes de flexibilisation de l’emploi et des systèmes de représentation sensés les encadrer n’a pas garantie la citoyenneté des travailleurs contractuels.

Pour pallier au blocage institutionnel relevant de l’administration des conventions collectives des uns et des autres, les acteurs syndicaux ont eu recours à des moyens jusque là inédits pour faire tenir ensemble des travailleurs hétérogènes. La régularisation du précaire s’effectue cependant au prix d’une négociation à la baisse des conditions de travail des employés contractuels. Deux études de cas au Québec dans l’industrie de la première transformation, appartenant à la même centrale syndicale mais à deux différentes firmes multinationales nous permettront de répondre à cette question de la régulation du travail à l’épreuve de la flexibilisation de l’emploi. Partant de trente entretiens réalisés dans chacun des sites, il apparaît qu’au-delà de l’encadrement structurel des nouveaux...
rapports collectifs, des stratégies de bricolage institutionnel (Campbell, 2004) ont permis une mise à jour des systèmes de représentation au-delà du modèle de la citoyenneté industrielle. Redéfinissant les conditions du bien-être des travailleurs, les initiatives syndicales face à la sous-traitance, entre collaboration et opposition, ont donné lieu aussi bien à de nouvelles formes d’exclusion que d’intégration des travailleurs; bref, à des nouveaux régimes de citoyenneté au travail.

Julie Paquin (École des Hautes Études Commerciales, Université de Montréal)

**La gestion du risque par le contrat: confiance et coopération dans le secteur de l’aéronautique**

Au cours des 10 dernières années, le secteur de l’aéronautique a été marqué par un mouvement de repli des assembleurs vers les activités de conception et d’assemblage et une implication plus grande des fournisseurs dans le développement des produits. Selon certains, la gestion efficace des risques accrus de fuite d’information confidentielle liés à cette transformation de l’industrie requiert la mise en place de modes de contrôle social reposant sur la confiance. Cependant, le recours à de tels modes de contrôles semble en même temps limité par la mise en place de systèmes de certification des fournisseurs et de gestion des achats laissant peu de place à la discrétion. Dans de tels systèmes, la « confiance », autrefois fondée sur de l’expérience commune des acteurs, fait place à un type de confiance dépersonnalisée, reposant sur l’efficacité du système lui-même et la formalisation des attentes des partenaires. On peut donc se demander dans quelle mesure les mécanismes en place constituent un mode approprié de gestion des risques. Pour répondre à cette question, il convient d’évaluer la gestion de ces risques au quotidien. Les nouveaux systèmes ont-ils éliminé les formes de contrôle social fondées sur une confiance personnalisée, ou ont-ils simplement entraîné une transformation de leurs modes d’opération? Comment les acteurs impliqués sur le terrain se sont-ils ajustés à la nouvelle réalité?

Isabelle Martin (Université McGill)

**La redéfinition des dignités dans l’entreprise par l’adoption des principes de bonne gouvernance**

Les relations nouées dans l’entreprise sont structurées par la réglementation qui s’y applique. Cette présentation vise à situer la dignité comme principe actif des relations dans l’entreprise tout en distinguant entre deux types de dignité : la dignité sociale et la dignité humaine. La détermination des rôles et des responsabilités définit la dignité sociale des membres de l’entreprise en leur assignant des positions hiérarchisées et des devoirs différenciés. En conférant dignité à ses membres, l’entreprise peut s’assurer d’une adhésion supérieure aux normes que celle motivée uniquement par une réciprocité immédiate. Dans ce contexte, la notion de dignité humaine paraît secondaire. Pourtant, le recours croissant à la coordination par contrat assoit sa légitimité notamment sur le respect de la rationalité et de l’autonomie morale des acteurs, fondements kantiens de la dignité humaine. Comment évaluer, du point de vue des différents types de dignité, les effets des nouvelles formes de réglementation sur les relations entre les principaux acteurs de l’entreprise? Seront étudiés en particulier les effets de l’adoption des principes de bonne gouvernance de l’entreprise sur la dignité de ses membres.
The Journal of Prisoners on Prisons (JPP) is a prisoner written, academically oriented and peer reviewed, non-profit journal, based on the tradition of the penal press. In a context where there is little ethnographic research on prison life, the JPP brings the knowledge produced by prison writers together with academic arguments to enlighten public discourse about the current state of carceral institutions. Drawing on a tradition of prisoner participation in debates in the sociology of punishment, such as the Norwegian Association for Penal Reform meetings (KROM) and bi-annual International Conference on Penal Abolition (ICOPA), the papers presented in this session will critically examine the inner workings of carceral spaces through the scholarly writings of current or former prisoners from volumes 19-1 (a special issue on the PEN American Center Awards), 19-2 (a special issue on torture and political imprisonment) and 20-1 (a special issue on women prisoners) of the JPP. On account of the authors being currently incarcerated or otherwise unable to attend the conference, the papers will be read in absentia. Discussants will also speak to key themes from each issue.

Discussants / Readers:
Volume 19(1)
Kevin Walby – JPP Prisoners’ Struggles Editor
Volume 19(2)
Christine Gervais – Issue Co-editor
Volume 20(1)
Jen Kilty – Issue Editor
Eric Adams (University of Alberta)

Errors of Fact an Law: Christie v. York Redux

History has been kind to Justice Henry Davis’s dissent in Christie v. York. Alone among his colleagues on the Supreme Court of Canada, Davis J. held that taverns licenced by the State have a duty to sell their goods without discrimination to members of the public. As generations of law students have learned, Fred Christie and two friends had been on their way to a hockey game when they entered the York Tavern at the Montreal Forum seeking a beer before the game. The York “was strictly within its rights,” the Supreme Court held in denying service to Christie on the grounds of race. Christie v. York has pride of place among decisions wrongly decided in Canadian legal history. But its errors of law have directed attention away from its errors of fact. My paper explores a riddle still buried deep in the facts – what were Christie and his friends doing that night at the Forum? One thing we can be sure of is that they were not attending a hockey game. How did hockey mistakenly find its way into the facts, and what role has it played in our sense of the case? Understanding the errors of fact within Christie v. York sheds new light on a classic case of Canadian legal history, while also exposing the fragility of fact itself.

Soren D. Frederiksen (York University)

Shifting the Forensic Paradigm

Last year, the National Research Council of the National Academies released a report entitled Strengthening Forensic Science in the United States. Empowered by Congress, the Forensic Science Committee was explicitly tasked with evaluating the current status of forensic evidence and making recommendations as to how the field of forensics should develop in the future. Explicit in the direction from Congress was the notion that the model for this process was to be the one that was used in the development of two previous reports on the evaluation of forensic DNA evidence. The recommendations in the final report of the Forensic Sciences Committee reflect this, using forensic DNA as a model for many of its recommendations in the area of traditional forensics.

Dianne George (Carleton University)

Love and Law in Cervantes and God of Animals

In his study of Cervantes, Roberto Gonzalez Echevarria theorizes that the novel, in particular Don Quixote, transmitted the new regulation of love by law that arose in the new society of the Renaissance. Don Quixote, writes Echevarria, is a succession of stories whereby the mingling of love and law, with the story of marriage as the resolution was absorbed by the population. At the same time, the law was transformed by the new ideas of love: in short, the marriage of love and law.

The new society, however, seeking a hierarchy of nature to replace the hierarchy of the medieval church, excluded animals entirely from the law. The contemporary novel, God of Animals, challenges the differing treatment between horses and humans in the patriarchy by claiming that the love of horse for rider and vice versa is no different from the love of human to human. The author, Aryn Kyle, forces us to see the double standard imposed upon horses who are trained to be human pets and the ways that those humans treat one another.

I take her ethical and moral outrage into the realm of law and propose that pets should be included in the law that governs the love of human to human.

Vanessa Iafolla (University of Toronto)

Know Your Customer Principle

During the past decade, concerns about threats posed to the financial services industry by activities such as money laundering and terrorism financing have become increasingly salient. Yet within retail banks, managing security risks also has another dimension: to
protect bank security, bank employees are expected to develop interpersonal relations with their clients, and rely on this knowledge to monitor client transactions. This “Know Your Customer” (KYC) principle is designed to harness trust relationships between tellers and clients, from which to develop an official knowledge of clients and the risks they may pose. Relying on 40 interviews across 12 retail banks, and analyses of internal banking manuals, this paper examines the use of KYC principles by bank employees, inquiring into the nature of trust and risk within the retail bank, and the way in which these relationships are created and maintained. In addition, attention will be had to how different forms of client financial activity can call into question the perceived accuracy of the client knowledge obtained, and thus rebut the presumption of whether this client is worthy of the institution’s trust.

Fred Vallance-Jones (University of King’s College)

Access, Administration, and Democratic Intent

In the words of the Supreme Court of Canada, “The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process.” But getting that information is becoming increasingly difficult in the face of administrative delays to release under access statutes. One author, Stanley Tromp, says delays under the federal Access to Information Act have “reached a true crisis level.” Federal bureaucrats now routinely extend the time to respond to requests by six months and more. Researchers working for the Canadian Newspaper Association in 2008 were quoted fees into the thousands of dollars for straightforward requests to provincial and municipal governments. And a survey of journalists by this author in 2009 found almost all the journalists who replied had abandoned requests because of long delays or high fees. This chapter takes a close-up look at how administrative hurdles are frustrating the democratic intent of access laws. The author interviewed prominent journalists and other users of the federal and Ontario acts, and obtained detailed data on the federal government’s handling of requests to draw a disturbing picture of a system in crisis. The chapter will include suggestions on ways to make the acts work again.

Yavar Hameed & jeff Monaghan (Carleton University)

Partners in Apartheid: An ATI Investigation of Canada - Israel Prison Collaboration

Israel is a ‘world leader’ in the development and commercialization of new military, surveillance, and penal technologies (Halper, 2004; Weizmann, 2007; BTselem and Hamoked, 2007). Likewise, Canada has well-developed penal, military, and surveillance industries, and a long history of cooperation with Israel. In 2008, they signed the Declaration of Intent that creates the joint Canadian-Israeli Committee responsible “for mapping, coordinating, and developing the cooperation.” Other than a description of 11 areas of cooperation, none of the content of the Declaration has been publicly disclosed. It
is publicly known that Sections 2 and 3 of the Declaration deal with correctional services and prisons; and crime prevention. Using the Access to Information Act, this research project documents areas of cooperation and development on these two Sections of the Declaration. This research explores areas of interest as detailed by both parties; specifically, Israeli expertise of interest to Canada includes border control technologies, biometric passports, private prison contracts, areas of research and development, and national security. Areas that interest Israel include electronic surveillance equipment and knowledge technologies such a Canadian-developed actuarial model known as the “custody ration scale.” Stressing that these penal technologies are integral aspects of the military occupation in Palestine, this research documents how prison populations in both these countries are being utilized as objects for development and commercialization of penal, military, and surveillance technologies. In Canada, this results in the implementation of technologies/strategies commercialized through the practice of occupation while, in Palestine/Israel, Canadian innovation aids in the continuation of occupation.
LITTLE CRIMINALS/ LITTLE VICTIMS: CRITICAL CONSIDERATIONS OF YOUTH, SEXUALITY AND THE LAW

PETITS CRIMINELS/PETITES VICTIMES: CONSIDÉRATIONS CRITIQUES DE LA JEUNESSE, SEXUALITÉ ET LE DROIT

Chair: Elizabeth Adjin-Tettey (University of Victoria)

Ummni. Khan, Carleton University

Lovelorn and Sex Slaves: The Representation of Prostituted Girls in “Fact” and “Fiction”

This paper deconstructs the image and discourse surrounding the girl prostitute in the fictional novel Lullabies for Little Criminals and the social science monograph, Gangs and Girls: Understanding Juvenile Prostitution. While the former text is ostensibly fictional and the latter purportedly factual, both, I will argue, are implicated in a voyeuristic economy that feeds off of the juxtaposition of innocence and sexual corruption. Both books also suggest that the intense desire for love leads unwitting girls into the arms of pimps. One primary solution to this problem, both books suggest, lies in the promise of the nuclear family as a source of true love and support. What is surprising from this comparison is that Lullabies seems to offer a more complex and nuanced picture of juvenile prostitution and the place of the family than Gangs and Girls. While one can read Lullabies as a text that reinforces the primacy of maternal love, the book also recognizes individual oppression within the family and systemic factors that contribute to the exploitation of youth. Importantly, the novel shows the inefficacy and indeed the harm perpetrated by the socio-legal response to juvenile prostitution. In contrast, Gangs and Girls portrays parents, police officers, teachers and social workers as the “good guys” who can save these wayward girls from sexual slavery. This analysis then, relies on a “law and literature” lens to trouble the line drawn between fiction and nonfiction, and to analyze the narrative entertainment value that is reflected in both texts.

Lara Karaian (Carleton University)

Sexting and Sanctimony: The Problem with Legally Protecting Youth from the Harms of Sexual Expression

This paper critically analyzes emerging legal and extra-legal constructions of, and responses to, youth sexual expression. In particular the paper examines “sexting”, the practice of sending, posting or possessing sexually suggestive text messages and images via cell phones or the Internet. In the U.S. child pornography laws have been deployed in order to protect youth who “sext” from the apparent harms of this practice and, it would seem, from their own very legal sexuality. This paper examines Canada’s legal response to this practice and argues that a criminal justice response to these behaviours is unwarranted. The discussion of this issue is framed, in part, by emerging concerns about the negative impact of feminist legal influences on Canada’s obscenity laws, particularly as they have impacted on non-normative sexual subjects, such as queers and sadomasochists. In addition, youth expression is compared and contrasted with emerging expression rights of transgender youth making legal demands for access to hormones and surgery. “Sexting” and transitioning, it is suggested, raise a host of questions about the legal regulation and production of youth sexual subjectivity, agency, and consent. Given the growing technologization of society and broader cultural shifts, such as concerns about the “pornification of a generation”, the question of youth sexual expression as a constitutionally protected form of expression requires a more concerted analysis. I conclude the talk with a call for a more concerted push to advance a positive theory of sexuality in law despite, and indeed in light of, the difficulties raised in this area by the question of age.

Andrea Slane (University of Ontario Institute of Technology)

Luring Lolita: Shifting Conceptions of Deviance in Online Relationships

This paper critically analyzes emerging legal and extra-legal constructions of, and responses to, youth sexual expression. In particular the paper examines “sexting”, the practice of sending, posting or possessing sexually suggestive text messages and images via cell phones or the Internet. In the U.S. child pornography laws have been deployed in order to protect youth who “sext” from the apparent harms of this practice and, it would seem, from their own very legal sexuality. This paper examines Canada’s legal response to this practice and argues that a criminal justice response to these behaviours is unwarranted. The discussion of this issue is framed, in part, by emerging concerns about the negative impact of feminist legal influences on Canada’s obscenity laws, particularly as they have impacted on non-normative sexual subjects, such as queers and sadomasochists. In addition, youth expression is compared and
contrasted with emerging expression rights of transgender youth making legal demands for access to hormones and surgery. “Sexting” and transitioning, it is suggested, raise a host of questions about the legal regulation and production of youth sexual subjectivity, agency, and consent. Given the growing technologization of society and broader cultural shifts, such as concerns about the “pornification of a generation”, the question of youth sexual expression as a constitutionally protected form of expression requires a more concerted analysis. I conclude the talk with a call for a more concerted push to advance a positive theory of sexuality in law despite, and indeed in light of, the difficulties raised in this area by the question of age.
The Uses of Violence: A Critical Approach to Hate Crimes Laws
Maria M. Gómez (Saint Mary’s University)

This paper explores definitions of prejudice, violence, and hate crimes and relates them to the debate on hate crimes laws. I begin by defining violence and prejudice from the point of view of two different systems of misrecognition that are continuous but distinct: discrimination and exclusion. I argue that explanations about different types of prejudices have been collapsed into a single logic of discrimination but that this logic is insufficient to explain the complexity of exclusionary practices. While discrimination seeks to maintain “the other” as inferior, exclusion seeks to liquidate or erase “the other” from the social world of the aggressor. Both discrimination and exclusion materialize in two uses of violence, which I call hierarchical and exclusionary respectively. In the hierarchical use of violence, perpetrators maintain and enjoy difference as a mark of inferiority. In contrast, the exclusionary use of violence attempts to eliminate differences because they are understood to be incompatible with the perpetrator(s)’ world-view. I illustrate this tension by analyzing the parallel between anti-discrimination laws and hate crime statutes in the United States. The paper concludes with some remarks on the advantages and disadvantages of advancing hate crime laws as remedies for violence based on prejudice.

Aaron Doyle (Carleton University)

Fear of Crime and Stigmatized Neighbourhoods

Cristina Pires (University of Ottawa)

Absorbing Restorative Justice: The Effects of Funding Agencies on the Practice of Restorative Justice

Oftentimes, community-oriented programs inspired by principles of restorative justice become integrated in penal institutions and subsequently, co-opted and absorbed by the latter (Mathiesen, 1974; Piché & Strimelle, 2007; Strimelle, 2007). Some community-oriented programs are pressured to modify their practices in order to accommodate the goals and requirements of the agencies that fund them. This article presents a case study of the generation, functioning, and sustainability of one such community based restorative justice program. In order to preserve anonymity, the name of the organization about which this research pertains is not revealed; as such the organization is referred to as the Agency. Based on five semi-structured interviews, personal communications with Agency caseworkers, and four months of observational research, this study found that the Agency is becoming absorbed by the court system as it adapts its practices to meet the goals and requirements set by the Ministry of the Attorney General (MAG), the agency that funds them. Some of the requirements imposed on the Agency by MAG include: (1) a volunteer-based model of operation; (2) the goal of expediting cases out of the court system; and (3) the language and standardized checklists funders use to monitor and evaluate the Agency’s case work and practices.

Adina Ilea (University of Ottawa)

Friends or Foes? Analyzing the Risk, Needs, Responsivity Model and the Good Lives Model of Offender Risk Assessment and Treatment

This paper analyzes the current model of offender assessment and treatment used by Canadian corrections—the Risk, Needs, Responsivity (RNR) model and a proposed alternative—the Good Lives Model (GLM). Using risk discourse, this paper seeks to uncover whether the GLM can provide a true alternative to the current approach or if the two models are conceptually linked in their assumptions and implications. Although purporting to be distinct models, both models focus on the individual, lack an analysis of how conceptions of risk are used to construct the risks posed by offenders and omit broader social and structural barriers. Both models ‘responsibilize’ offenders and designate them ‘transformative risk subjects’ (Hannah-Moffat, 2005) who are responsible for identifying their triggers and are therefore responsible for desisting from criminal behaviour. The goal of both models is to change offenders by focusing on their defects (cognitive distortions, lack of skills, poor choices) to the exclusion of social causes. Both models fit with the current Correctional Service of Canada (CSC) approach to dealing with offenders, which while acknowledging that crime may in part be caused by social factors, assumes that it is more likely the result of individual people’s poor choice of behaviour (Meyer and O’Malley, 2005). This assertion is premised on the assumption that offenders
are free agents who can freely choose between ‘good’ and ‘bad’ behaviours. The paper concludes that although it may serve as a complement, the Good Lives Model does not offer a true alternative to the current approach.
Andréeane.Sabourin Laflamme (Université de Montréal)

L’hospitalité comme paradigme sous-tendant les mesures de contrôle migratoire : pour une déconstruction de la dialectique de l’hôte et de l’étranger

À la lumière des difficultés croissantes auxquelles font face les migrants, plusieurs auteurs se sont penché sur la question d’une présence implicite du concept d’hospitalité au sein du discours dominant sur les politiques migratoires nationales et internationales ainsi que sur les questions et les problèmes que posent une telle conception de l’accueil de l’étranger. La réflexion de Jacques Derrida sur l’hospitalité exprime de manière particulièrement juste les enjeux philosophiques, politiques mais aussi légaux qui découlent d’une importation subreptice mais omniprésente du concept d’hospitalité au sein des politiques nationales et internationales de migration et du droit d’asile.

Cette communication vise à exposer comment la déconstruction qu’opère Derrida du concept d’hospitalité, en passant par une critique de cette notion au sein de la théorie cosmopolitique de Kant, dévoile la nature dialectique du concept d’hospitalité qui, sous le couvert d’un devoir vertueux envers l’étranger qui cherche refuge ou accueil, justifie une logique de domination de l’hôte sur l’invité. À partir de la réflexion derridienne, il est possible de mettre en lumière comment l’hospitalité, conçue dans l’Antiquité comme une geste charitable, est aujourd’hui récupérée par les États et renversée de manière justifier une fermeture des frontières aux migrants. La philosophie de Derrida fournit les outils qui permettent de mettre au jour le danger inhérent au concept d’être mis au service d’une consolidation de la souveraineté de la nation hôte, qui aboutit au final à une logique d’exclusion de l’étranger. En fait, sa philosophie invite le juriste à retrouver la dimension inconditionnelle de l’hospitalité.

Marie-Ève Paré (Université de Montréal)

La migration, vecteur de transformation du juridique : Une étude de cas des Mossi du Burkina Faso

Depuis plus de cent ans, les Mossi du Burkina Faso évoluent avec les migrations de travail. Entre les travaux forcés de l’ère coloniale et les flux migratoires actuels, la migration est devenue une institution centrale chez les Mossi, voire un phénomène social total qui traverse toutes les sphères de la société. Elle s’est imposée comme une solution aux bouleversements engendrés par de l’économie de marché et la dégradation de leur environnement. Elle prend également sa source au sein des déséquilibres internes et des tensions ancrées dans la structure du système normatif « traditionnel ». De sorte qu’il s’y est développé des normes, des règles, des codes de conduites et un réseau migratoire, qui encadrent et entretiennent la migration. Devant l’importance qu’elle a prise au cours des cinquante dernières années, on ne peut plus nier son institutionnalisation, ni la considérer comme une manifestation éphémère. Or, cette intégration institutionnelle a engendré un affaissement de la gérontocratie et du patriarcat ce qui a déséquilibré le système normatif/juridique « traditionnel ». Les résultats de mes recherches tendent à démontrer que la destabilisation des rapports de pouvoir entraîne un désordre social qui affecte particulièrement le fonctionnement du système juridique. Dans le cadre de cet exposé, nous verrons comment cette institutionnalisation se répercute sur les rapports générationnels, les règles de mariage et le régime foncier.
important distinctions. We do not want to repeat the same error with toleration. Even where toleration is appropriate, there is the possibility that we will move beyond toleration toward more extensive forms of engagement. Indeed, the internal dynamic of toleration tends in that direction. But in its proper sphere, toleration remains an extraordinarily useful concept, in some ways more flexible - more tolerant - than recognition. Toleration addresses the central conundrums of intercultural recognition in a direct and useful fashion. Paradoxically, it can allow greater acceptance of strange and ill-understood practices than richer forms of recognition do, forms of recognition that often carry an intolerant sting in their tale. This paper is, then, a reaffirmation of the value of toleration as a foundation of a plural society. It affirms the surprising generosity of toleration.
ON THE POSITION OF VICTIMS OF CRIME IN THE CRIMINAL JUSTICE SYSTEM IN CANADA AND BEYOND

LA PLACE DES VICTIMES DANS LA JUSTICE CRIMINELLE AU CANADA

Chair : Pierre Noreau (Université de Montréal)

Tinneke Van Camp (Université de Montréal)

On Restorative Interventions in Violent Crime Cases: The Victims’ Point of View

Restorative justice projects have been developed and implemented worldwide to respond to the offenders’ and victims’ need to communicate and work together on a way to resolve the consequences of the crime committed. Restorative programs are available to victims of property crime and of crime against a person, including serious violence, committed by juvenile or adult offenders. Research data demonstrates that victims of any type of crime are very satisfied with their participation in a restorative intervention as a complement to traditional judicial procedures, in contrast with some of their frustrations with the traditional criminal justice system. Restorative justice seems to respond well to the needs of victims. These are for instance the opportunity to express how victimization impacted their lives and to be involved in the procedures in response to the crime. I have conducted in-depth interviews with victims of violent crime who have participated in a restorative intervention (i.e. victim-offender mediation or victim-offender encounters) in Canada and in Belgium to learn more about their assessment of the restorative intervention. The particular aim of the research project is to determine the compliance of restorative justice with the procedural justice theory (Tyler and Lind, 1988) and if, and to what extent, restorative justice exceeds the predictions made by this theory in explaining the satisfaction of victim-participants. A preliminary account of the analysis of the qualitative research data will be presented.

Justine S. Scriver (University of Ottawa)


Providing standing in a criminal court for victims of crime would allow victims to protect their personal interests. Currently, victim participation in Canada is essentially limited to being a witness or to providing a victim impact statement, which allows victims to describe the emotional, psychological, and financial consequences of a crime. I conducted a critical analysis examining victim participation and victim policy to determine if the Ontario Criminal Court can implement standing for victims of crime. In this paper I will present the results of this analysis.

First, I will look at the history and situation of victims of crime today and what they want. I will then look at victim participation at the international level. I will examine the International Criminal Court, France, and Japan to illustrate how standing is given to victims of crime, including the provision of legal aid. I will discuss the main arguments against standing, which include the emotions brought into the court, the potential for delays and the extent to which the victim impact statement provides standing. A few recommendations will then be made in order for victims to have their personal interests protected. I will for instance discuss the possibility of amending the Criminal Code, the Youth Criminal Justice Act, and the Charter of Rights and Freedoms. Also, in order for victim standing to be incorporated into the Ontario criminal court, we should create a demonstration project to see how we can combine our civil and criminal justice system to provide victims’ standing.

Émilie Raymond (Université de Montréal)

Justice pour les crimes contre l’humanité et les crimes de guerre : attentes et point de vue des victimes

Depuis la fin de la Guerre Froide, les conflits armés auront pris la vie de plus de cinq millions de personnes, parmi lesquelles on estime à 80 pour cent le nombre de civils non combattants (Mani, 2002) et des génocides auront tué plus de dix millions d’individus (Nyankanza, 1998). Des mécanismes de justice ont été élaborés à l’international et des initiatives ont vu le jour dans divers pays pour faire suite aux atrocités de ces guerres et de ces violations aux droits humains. Toutefois, les victimes demeurent peu consultées dans le développement de ces mécanismes. Cette présentation a pour objectif de montrer les résultats d’une recherche dont le but est de connaître et comprendre ce qu’est la justice pour les victimes de crimes contre l’humanité et crimes de guerre. À l’aide d’entrevues semi-dirigées effectuées auprès de membres de la communauté rwandaise et cambodgienne résidant au Québec, cette étude explore les attentes de ces victimes en tenant compte des mécanismes nationaux et internationaux existants. La perception de justice des victimes sera analysée à la lumière des théories en justice sociale. Concrètement, l’expérience de ces victimes avec les mécanismes de justice, leur
perception de justice et les facteurs influençant ce sentiment et leurs attentes envers les tribunaux seront les thèmes abordés.
This panel articulates the work of a soon to be published volume—\textit{Poverty, Regulation and Social Justice: Readings on the Criminalization of Poverty}. In late 2004 the editors organized a public colloquium on the criminalization of poverty in Halifax. This emerged out of their concern about the growing use of criminal law to regulate the poor, and anxiety about the emergence of a local version of legislation akin to the \textit{Safe Streets Acts} in Ontario (1999) and British Columbia (2004), that criminalize the life-sustaining activities of the poor in urban space, and arguably their very presence in the public realm. The event was co-sponsored by the Law Commission of Canada, whose interest in the proceedings stemmed from its “What is a Crime?” project. The colloquium explored the problematic dimensions of criminalization as a response to poverty and attempted to redirect public debate into non-criminalizing solutions. Academics, policy makers, community advocates, and those with lived experience of the intense regulation that often accompanies poverty, gathered into public conversation. The response to this event suggested that a widely relevant book could be built from the proceedings. The resulting volume and this panel investigate, in various locales and in broader terms, how state and private practices have come to over-regulate people with limited economic resources. We examine how this trend is part of broad socio-economic dynamics in contemporary liberal capitalist societies, as well as rooted in their histories, and how groups have resisted this criminalization. We hope the work will contribute to solutions that minimize the use of criminal law or intense regulation to deal with poverty, and that maximize potentials for a more imaginative future.

Lisa Freeman, University of Toronto

\textit{Squatting the Spaces of Urban Illegality in Ottawa}

The criminalization of poverty does not always surface in the criminal courts. But when it does, it draws our attention to the ways in which anti-poverty political action can foster new spaces for resistance. Activist plights in the criminal justice system can be criticized for sensationalism, symbolic representation of anti-poverty activism and over-shadowing less confrontational political struggles in the city. Yet, they can also be successful in multiple ways. This paper will follow the case of R. v. Ackerley et al.(2004).—\textit{a group of activists and street youth who occupied an abandoned house in Ottawa in 2002—to show how fighting indictable criminal charges can lead to a re-examination of activism in the courts and additionally can help us re-consider the role of law in the city. The Gilmour Street squatters challenged the space of provincial courts to insert political arguments but how does this form of resistance help less sensational struggles for housing security in the city? Is the criminalization of poverty only applicable when people are in confrontation with the criminal courts? How do anti-poverty struggles, like squatting, help us understand the criminalization of poverty within municipal law? The analysis presented in this paper will critically examine how direct action approaches to housing security, anti-poverty activism and political resistance in the courts lead to a critique of the criminalization of poverty at the scale of municipal law.

Amanda Glasbeek (York University)

\textit{Apprehensive Wives and Intimidated Mothers: Women, Fear of Crime, and the Criminalization of Poverty in Toronto}

In this paper, I explore the role played by women and, even more tellingly, by gendered conceptions of urban space, crime, safety, and mobility as these were played out in public debates about squeegee kids in Toronto, 1998-2000. I argue that, troublingly, in the discourses about securing “safe” streets in Toronto, women’s fear of male violence was appropriated to bolster a law and order agenda. Women were cast as natural victims and as inappropriately compassionate by male supporters of anti-squeegee legislation. In this framework, the criminalization of the poor appeared as a form of chivalric governance that protected women from “dangerous” and intrusive men and that rendered women objects, rather than agents, of governance. For women, this relationship was more complex. Many women were fearful of strange men in public places. Other women conflated their sense of class entitlement with gender security. Still other women resisted these constructions of themselves as helpless, and evidenced what is termed here a “resistant compassion”. The contours of these debates offer important lessons for feminist activists, and point to the need to reclaim a concept of safety that does not allow gender security to be pitted against the needs of the poor.

Trevor W. Harrison (University of Lethbridge)
Social Assistance and the Politics of Welfare Fraud Investigations: The Case of Alberta

This paper examines the politics underlying efforts by governments to locate, prosecute, and publicize welfare fraud. Specifically, it is argued that government actions in collecting welfare fraud statistics present a picture of welfare clients that undermines public support for the poor and provides ammunition for conservative governments bent on slashing social assistance funding. I further argue that welfare retrenchment predates the rise of neoliberalism in the 1980s and 1990s. The fiscal crisis of the 1990s, identified by various governments, can be viewed as less a cause than an excuse for welfare state retrenchment. The specific case examined here is that of Alberta during the period of the Conservative government of Ralph Klein (1992-2006). The arguments presented however, pertain to Canadian governments at large.

Val Marie Johnson (Saint Mary’s University)

Reading the Criminalization of Poverty

This paper examines the theory and context of the criminalization of poverty in advanced liberal societies, and how this links in with longer and diverse histories. It provides a synthesis of the overall contributions of the volume as a whole and its individual parts, as well as an overview of the book's chapters.

Jeff Karabanow (Dalhousie University)

Street Kids as Delinquents, Menaces and Criminals in Canada and Guatemala: Another Example of The Criminalization of Poverty

Much of the current academic literature about street youth has conceptualized this diverse population as significantly exploited, stigmatized and in need of support and care. Interestingly, the majority of government approaches taken to deal with street youth resemble correctional and/or rehabilitative dimensions which tend to identify the population in homogenous terms that blame the individual for his/her situation, label the entire population as delinquents or threats to society and attempt to remove them from society in order to fix their pathologies. Moreover, nation state policies (both in the Northern and Southern hemispheres) concerning young people on the street have become increasingly draconian and punishing. This discussion explores the current plight of young street people as they attempt to survive within such spaces. The discussion is informed by reflections from numerous studies by the author in both Canada and Guatemala. In-depth interviews with over 300 street youth and 100 service providers in both countries shape the analysis and explore the multiple ways in which young people enter street life, survive on the street, and for some, exit street culture.
Deliberative Democracy and Designs of the Disability Community: Measuring the Impact of the Accessibility for Ontarians with Disabilities Act, 2005

This paper aims to measure the impact of the Accessibility for Ontarians with Disabilities Act, 2005 (AODA) in terms of its ability to meet the aspirations of the disability community. In 2005, the Ontario government introduced the AODA, making Ontario one of the first jurisdictions in the world to implement standard-setting legislation in the context of disability.

A unique element of the AODA is the collaborative public policy that lies behind the legislation itself. Members of the disability community are able to participate in the development of standards through legislated processes. Lawmaking arises from discourse amongst stakeholders, infusing the law’s creation and development with significant potential to represent the designs and aspirations of the disability community. The political and legislative process of the AODA therefore puts into action the theory of deliberative democracy – yet raises, in very concrete ways, the challenge of “reconcil[ing] equality with liberty, unity with diversity [and] the right of the majority with the right of the minority”.

How has the AODA fared in meeting the concerns of the disability community? This paper will use the public hearings that took place last fall as part of the statute’s four-year review as a site for understanding the concerns of the disability community. It will also comment on deliberative democracy as a tool for addressing disability issues.

A l’écoute des enfants handicapés. De la définition du principe de participation et de sa mise en pratique en éducation.

La participation est un principe qui trouve une affirmation de plus en plus forte en droit international. Ce principe cherche à inclure ceux qui ont été traditionnellement exclus des processus de prise de décision. Alors que l’on trouve différentes formulations de ce principe et des obligations étatiques qui en découlent, un des groupes qui bénéficient d’une affirmation particulièrement soutenue est l’un des groupes les plus marginalisés : les enfants handicapés. Tandis que le gouvernement du Canada s’apprête à ratifier la Convention relative aux droits des personnes handicapées (CDPH), il importe de tenter de définir le principe de participation et de prévoir les effets pratiques découlant des obligations internationales.

Pour commencer à aborder l’étendue des obligations, sur la base de la CDPH, cette étude se concentre sur la participation des enfants dans le domaine de l’éducation. En effet, l’accès à l’éducation et la qualité de l’éducation ont un rôle crucial dans la détermination de l’égalisation des chances pour les groupes marginalisés. En plus, l’éducation peut offrir une plateforme idéale pour la participation des enfants.

Après une analyse préliminaire des textes de loi et des politiques concernant l’éducation et les enfants handicapés, la présente recherche se concentre sur les expériences des enfants et les points de vue des organisations qui les représentent. Les entrevues, qui portent sur le vécu et les suggestions des enfants et de leurs représentants, mèneront à des constatations préliminaires permettant de discuter de la participation à travers les liens nécessaires entre le droit international, la pratique interne et la situation des personnes concernées.

Who Does She Think She is? Older women’s identity negotiations in neoliberal society

One’s identities are highly important to everyday life: identities allow people to negotiate social settings, interact with others and form ideas about their relative positions in the social world. While some identities are non-problematic and are easily accepted by the individual and society at large, others may be difficult or uncomfortable for the individual and contested or rejected by others. Thus, the process of forming identities requires ongoing socio-cultural negotiation. Older women, those aged fifty and older, form identities that incorporate dominant social and cultural messages about aging, as well as their own perceptions of their aging bodies; social and familial referents to aging; and the knowledge that they may die. Older marginalized women incorporate these notions of aging into their identities, and negotiate the identity-specific challenges posed by their marginalized or criminalized statuses. Older marginalized women, despite facing severe social pressures, are
able to create and negotiate unique identities, using resistance strategies to navigate a maze of ageist aging discourses, stigmatizing criminal labels and liminal living on the margins of society. Here, I outline the forces and discourses shaping older marginalized women's identities, both as aging women and as marginalized and criminalized women, as well as how the women interpret, negotiate, resist and/or subvert aging discourses as they construct their identities.
Prashan Ranasinghe (University of Ottawa)

Between Compassion and Discipline: Homeless Shelter Service Providers, (In)Formal Rules and Their Tactics

This paper examines the competing interests at play between compassion and discipline that social service providers are called upon to balance in providing services to the homeless. I draw on ethnographic data conducted at a homeless shelter to probe the way these two logics are made sense of, thought about and acted upon by staff at homeless shelters, paying particular attention to the enactment and deployment of (in)formal rules.

Maeve McMahon (Carleton University)

Tasers Under Fire: Some Cautionary Observations

As of October 2009 there had been at least 26 deaths in Canada involving police use of Tasers in their dealings with the public. In the USA from 2001 until then there have been at least 350 people that have died following being hit by a Taser.

My research is a multifaceted examination of the use of Tasers by police. I am tracing the emergence of the phenomenon and the contours of public culture discourses about Tasers. I am reflecting on the significance of Tasers with respect to relevant criminological issues.

Mielle Chandler (York University and The Rogue Institute)

Colonization, Globalization, and the Criminalization of ‘Growing Weed’

This paper locates the criminalization of the cultivation of cannabis within the two contexts of a postcolonial critique of property, agriculture and criminalization in colonial history and contemporary concerns regarding the corporate control of our food and drugs. Placing the criminalization of the cultivation of marijuana within a larger narrative of the regulation of those who cultivate and trade agricultural goods outside of state and corporate regulation and control, this paper aims to contribute to contemporary postcolonial critiques of criminalization. A genealogical sketch of the criminalization of growing explores the role of criminalization and prohibition as modes of coercion and economic control in the imperial generation of wealth through the plantation cultivation and mass distribution of what have now become everyday ‘uppers’—sugar, coffee and tea. This sketch is continued with a look at how the contemporary postcolonial, post industrial and late capitalist generation of wealth and economic control is, likewise, founded upon systems of prohibition and criminalization, with ‘big pharma,’ factory farming, and the biotech industry defining and laying claim to an entirely new strata of colonisable territory. It is between European colonial expansion and the contemporary corporate patenting of life—in which farmers who attempt to retain and sew their own seeds are criminalized—that this paper seeks to locate the criminalization of cannabis cultivation, ultimately arguing for a deeper understanding of ‘growing weed’ as ‘a common man’s refusal’ of state and corporate control.
themes including crime control as enterprise resulting in substantial profit (notably for the corporation Taser International), as well as enduring issues of police use of force, and of police accountability. I am also going to examine issues with respect to police work historically and its intersection with advances in technology.

In my workshop presentation I will provide some insights from my preliminary research. The research is challenging because in addition to involving criminological and social scientific issues that I have prior familiarity with, it also requires my efforts to grapple with materials concerned with the logistics of electricity, and further requires my engaging with materials in medical journals (e.g. The Journal of Emergency Medicine). I can well understand why Justice Thomas Braidwood who is conducting a 2-phase inquiry into the use of Tasers and the death of Robert Dziekanski at Vancouver airport in October 2007 sought several deferrals in the presentation of the first report concerning Taser use and safety issues. According to Justice Braidwood one reason for the delay was because of the “complexity and volume” of the information that had been presented concerning Conducted Energy Devices (Braidwood Inquiry, press release, November 4, 2008). As of February 2010 we are still waiting for the release of the second report from the Inquiry.
Depuis les années 90, l’adoption et la mise en œuvre d’une politique de lutte aux incivilités à la Ville de Montréal, et l’utilisation et l’interprétation d’outils législatifs réglementant l’occupation (légitime?) des espaces publics, ont eu pour effet de pénaliser et de judiciariser les personnes itinérantes, des pratiques coûteuses, inefficaces et ayant des conséquences graves pour les droits des personnes itinérantes et le système de justice au Québec. En se fondant sur un travail de terrain réalisé au cours des sept dernières années à Montréal auprès de personnes itinérantes judiciarisées (Bellot, Raffestin et St-Jacques) et auprès des acteurs impliqués à différents niveaux de la judiciarisation (production de droit et de discours, mise en œuvre et administration de la justice, représentation et défense des droits) (Sylvestre, Bellot, Couture-Ménard), les participants à cet atelier feront état des dernières pratiques en matière de judiciarisation, des différents parcours judiciaires auxquels les personnes sont assujetties, des discours qui sont développés afin de les soutenir et de les encadrer et des perceptions entretenues par les acteurs. Ce faisant, nous tenterons de répondre aux questions suivantes : Quelles expériences et quelles conceptions de la justice sont présentées par les acteurs? Quels rapports les acteurs entretiennent-ils entre eux et envers le système de justice pénale? Quelle place notre système de justice réserve-t-il à l’innovation, à la recherche de solutions véritables et à la prise en compte de l’expérience de la rue? Et quelles leçons peut-on tirer pour la recherche engagée?

Organisatrices : Marie-Ève Sylvestre (Université d’Ottawa) et Céline Bellot (Université de Montréal)

Bernard St-Jacques (Réseau d’aide aux personnes seules itinérantes de Montréal)

Isabelle Raffestin (Université de Montréal)

Philippe Antoine Couture-Ménard (Université de Montréal)
Céline Bellot (Université de Montréal)

Comment la recherche peut sortir la défense des droits des populations marginalisées ?

L’objectif de cette présentation est de montrer comment une alliance entre le milieu de la recherche, le milieu de l’intervention sociale et les personnes itinérantes peut soutenir le développement de stratégies de défense des droits individuels et collectifs. Cette alliance, l’Opération Droits devant, inscrite dans un cadre théorique et d’action inspiré de la théorie de la reconnaissance a depuis 2003 pu dénoncer la judiciarisation des personnes itinérantes à Montréal et soutenir le développement d’alternatives. Ce cadre permet d’orienter la démarche autour d’une lecture critique de la non-reconnaissance d’injustices produites socialement et de travailler à les faire reconnaître comme telles. Par la production de données de recherche, de leur diffusion, de l’interpellation des autorités socio-judiciaires et politiques, le travail réalisé dans cette alliance a visé de manière constante, la reconnaissance de la judiciarisation des personnes itinérantes comme une forme d’injustice notamment en raison de son caractère discriminatoire.

David Joubert (Université d’Ottawa)

Sur les représentations cliniques de la pédophilie: Approche “critique” et considérations pour l’intervention

Dans un sociétée comme la nôtre où l’image de l’enfant est essentiellement celle d’un être fragile, vulnérable et évoquant un besoin de protection contre le monde extérieur, il n’est pas surprenant que le seule mention du mot “pédophile” suffise à provoquer chez bon nombre de gens de vives réactions émotionnelles. Parallèlement à cette préoccupation marquée concernant l’abus sexuel de l’enfant, les dernières décennies ont vu un accroissement rapide de la littérature scientifique sur le sujet, ainsi que le développement de nouvelles technologies d’intervention destinées aux abuseurs sexuels, allant des agents pharmacologiques aux programmes élaborés d’orientation cognitive-comportementale. Bien que les intervenants travaillant dans le domaine s’entendent sur le fait qu’il faille “traiter” le pédophile, il est parfois difficile de discerner jusqu’à quel point le clinicien peut exercer son activité de façon “autonome” des pressions sociales existantes. Dans cette optique, il convient peut-être de s’interroger sur les représentations sous-jacentes au travail clinique avec cette population. La présente étude, de nature exploratoire, suggère deux représentations fondamentales: 1) la pédophilie comme entité pathologique (paraphilie), et 2) la pédophilie comme “agression sexuelle”. L’auteur propose que : 1) Ces dimensions reflètent des biais significatifs, lesquels visent à “objectifier” la menace perçue et justifier une intervention de type médico-légale, et 2) L’adoption d’une perspective éthique peut permettre de mieux se situer dans l’intervention auprès de l’individu pédophile, en évitant de disqualifier son expérience subjective tout en reconnaissant l’aspect “probématique” de sa conduite.

Bastien Quirion (Université d’Ottawa)

Criminologie critique et intervention clinique : vers une nouvelle clinique criminologique indépendante

Sous le registre général de la criminologie, on retrouve un champ disciplinaire composé de nombreuses approches et perspectives. Cette variété nous autorise dès lors à postuler l’existence d’une pluralité de criminologies. Dans ce foisonnement de criminologies, la criminologie critique se distingue à la fois par sa posture épistémologique et par son engagement politique explicite. On peut en effet décrire la criminologie critique comme une perspective qui cherche à conserver son indépendance, tant au niveau épistémologique que politique, par rapport à une criminologie plus traditionnelle qui cherche de son côté à répondre aux besoins explicites des agences du système pénal. Or, la courte histoire de la discipline nous enseigne que la criminologie critique et l’intervention clinique ont rarement fait bon ménage. Pour les criminologues critiques, l’intervenant clinique a souvent été considéré comme un agent à la solde des institutions de contrôle et de répression. Chez les intervenants cliniques, on voit plutôt le criminologue critique comme un rêveur complètement déconnecté du terrain et dont les allégeances révolutionnaires n’auraient aucune application pratique. L’objectif de cette présentation est d’explorer la possibilité de réconcilier ces deux approches, et d’établir des bases pour le développement d’une clinique criminologique qui puisse intégrer l’héritage de la criminologie critique. Après un bref survol des principaux éléments qui caractérisent la tradition critique en criminologie, nous présentons quelques remarques générales sur les aménagements qui permettraient à la criminologie clinique de
préserver son indépendance épistémologique et politique par rapport aux institutions pénales. Nous espérons ainsi en arriver à établir les grande lignes d'une criminologie clinique appelée à mieux répondre aux besoins de ceux pour qui elle devrait être pensée, soit les personnes judiciarisées qui manifestent des besoins thérapeutiques particuliers.

**PROBLEM SOLVING COURTS IN CANADA (ROUNDTABLE)**

**TRIBUNAUX ALTERNATIFS AU CANADA (TABLE RONDE)**

Paula Maurutto (University of Toronto)
Kelly Hannah-Moffat (University of Toronto)
Dawn Moore (Carleton University)
Jane McMillan (St. Francis Xavier University)

Problem solving courts are proliferating the Canadian legal landscape. The rapid expansion of these courts (including drug treatment court, Gladue court, domestic violence court, mental health court and community court) has sparked a small but strong interest in the research community. This roundtable brings together many of the critical researchers actively studying problem solving courts. Roundtable participants will discuss their own research work as well as cover major themes presented by problem solving courts including the blending of juridical, therapeutic and cultural institutions and worries about loss of protection for due process rights. Panelists will also discuss the gendered and racialized aspects of these courts as well as how they impact Aboriginal peoples and their communities.
In 2005, Professors Backhouse, Cairns-Way and Gilbert began a productive and challenging collaboration, the creation of a first year criminal law course which specifically targeted incoming students with a commitment to social justice, and which was deliberately non-traditional in content, evaluation and teaching approach. An article on that experience, “Resisting the Hidden Curriculum: Teaching for Social Justice” was published in the Canadian Legal Education Annual Review in 2008. In a follow-up to that article, Professors Gilbert and Cairns-Way wrote a piece exploring the dynamics of teaching the topic of sexual assault, an especially politicized and challenging subject, in the first year criminal law classroom. As part of the research for that article, we surveyed colleagues teaching first year criminal law in various institutions to learn about their approaches to sexual assault, and discovered a range of concerns, questions, and most especially, interest in working communally and across institutional borders to examine, engage with, and confront the challenges of teaching that topic.

We propose to organize a panel session on the general topic of “Teaching Criminal Law Radically.” We intend to invite a number of colleagues to discuss approaches to teaching first year criminal law from a radical perspective. We imagine that one way to begin this conversation is to choose a series of challenging and discrete doctrinal topics, (sexual assault, aboriginal justice issues, racial profiling, the war on drugs, sentencing, etc.) and ask colleagues to reflect on their objectives, their pedagogical choices, and the challenges they face in the delivery of what they perceive as an especially challenging or controversial unit within a first year criminal law course. Each of us would speak, and we anticipate inviting three or four other speakers. We anticipate that this exercise will lead to a discussion of a number of themes which relate to our pedagogy: first, the politics embedded in our choices about how to teach particular topics; second, understanding and making explicit our objectives in teaching a particular area; third, the difficulty in distinguishing or unpacking the interaction between law’s doctrines or rules and the influence of social policy in the construction of those rules; fourth, the problem of identity in the classroom—both our own as law professors and the students’ own multiple identities; and finally, the sensitive classroom dynamics that controversial topics and deliberately radicalized teaching provokes. We hope, by this process, to disrupt the isolation characteristic of university teaching, and, in particular, to open a dialogue on what, if any, professional obligations might inhere in our teaching of particular subjects.
ACCESS TO / FREEDOM OF INFORMATION II
ACCÈS À L'INFORMATION II

Chair: Justin Piché (Carleton University)

Organizers: Mike Larsen (York University), Kevin Walby (Carleton University)

Access to information (ATI) and freedom of information (FOI) protocols are little known about but increasingly relevant features of government in many liberal democracies today. Citizens, organizations, and permanent residents in Canada can request unpublished information from federal, provincial, and municipal government agencies. However, the right to request information does not necessarily translate into the timely or comprehensive release of records. A range of in-built governance mechanisms – from the application of various legal exemption and redaction clauses, to the design of information management and access software, to the response tactics of ATI coordinators – mitigate against full disclosure. The process is also highly politicized. For instance, requests by journalists and critical scholars, whose research findings could potentially be damaging to the interests of government, are frequently the subject of delay, obfuscation, and stonewalling tactics. Additionally, the emergence of ‘security’ as an organizing principle for government has fueled expansions in practices of state secrecy as well as the centralization and control of information, producing further barriers to access. Of note is that the vast majority of social scientists appear to be either unfamiliar with ATI/FOI or perceive it to be an approach used mostly by journalists rather than a scholarly research method that can be used systematically to produce qualitative, longitudinal data about government practices. This session will include papers that use ATI/FOI as a method of data collection and papers that offer theoretical and empirical accounts of ATI/FOI processes in Canada. The session aims to foster a multi-disciplinary discussion of the strengths and weaknesses of ATI/FOI as a research strategy. Papers will also raise broader questions about the future of ATI/FOI in Canada and how the approach connects to broader conceptual issues concerning access to and the politics of criminological and socio-legal knowledge.

Mike Larsen (York University) & Kevin Walby (Carleton University)

Getting at the Live Archive: on Access to Information as Data Collection in Canada

The Access to Information Act allows individuals in Canada to obtain information from public organizations that would not otherwise be released. Although there is reluctance amongst many criminologists and socio-legal scholars to use access to information (ATI) mechanisms because of their supposed association with investigative journalism, some scholars have started to use ATI systematically to gather what Marx (1984) calls “dirty data” produced behind closed doors (especially in security and policing agencies). We develop the concept of ‘the live archive’ as a means of theorizing the information management and access brokering processes involved with ATI at federal, provincial and municipal levels. There are limitations associated with this method of data collection – some resulting from the structure of government ATI and information management bureaucracies as well as others associated with more direct and deliberate stonewalling techniques such as amber lighting and red filing. Despite these factors, we argue that ATI can be an effective tool for getting at data that is not already a matter of the public record, and for furthering our understanding of the management of the public record by governments. Drawing examples from our previous research using ATI to obtain classified documents from Canada Security Intelligence Service (CSIS), Canada Border Services Agency (CBSA), Royal Canadian Mounted Police (RCMP), Public Safety Canada (PSC), as well as Atomic Energy Limited Canada (AECL), we contend that use of ATI can supplement current social scientific research strategies as it concerns understanding governmental agencies and practices.

Tia Dafnos (York University)

Behind the Blue Line: Researching the Policing of Aboriginal Activism Using ATI

This paper draws my use of Access to Information (ATI) requests in pursuing research on policing practices, and focuses on my current project that examines the policing of protests and reclamations conducted by Aboriginal peoples. This project examines the dynamics between negotiated management – a more flexible, communication-based, use-of-force minimizing approach in public order policing – and a paramilitarization trend in policing. Through an analysis of records obtained through ATI requests relating to the Six Nations reclamation in Caledonia, and the National Day of Action in 2007, these dynamics manifest in discourses and practices based on a framing of these events as national security issues. The implications
of this framing are the justification for the use of covert intelligence activities and other paramilitaristic responses, as well as the direct involvement of national security agencies and non-police/security government departments such as Indian and Northern Affairs Canada. This securitized, defensive response by the state is normalized by the challenge to state sovereignty inherent in struggles of Aboriginal peoples and must therefore be viewed in the context of colonialism. In light of the secrecy that shrouds the decision-making and practices of the various intelligence and police organizations involved in these events and in policing generally, ATI requests can be an effective research strategy to address this barrier and obtain some transparency of repressive state practices.

Ann Rees (Simon Fraser University)

Sustaining Secrecy: Executive Branch Resistance to Access to Information in Canada

While publicly endorsing democratic principles of government transparency and accountability, successive executive branches of the Canadian federal governments have instead worked to curtail the transparency mechanisms provided by the 1983 Access to Information Act (ATIA). Ongoing government resistance to ATIA has been led and encouraged at the highest levels by the executive branches of every government since the law was first introduced to Parliament in 1982. The resistance has been at the direction of successive Prime Ministers and members of cabinet, and has been fought on several fronts including: court challenges to restrict the scope and jurisdiction of the law – in particular as it pertains to Cabinet and the Prime Minister’s Office (PMO); overrides on the law through anti-terrorism legislation following 9/11; and through systematic and systemic political interference in the processing of ATIA requests. Governments’ resistance to the ATIA is best understood in the context of the challenge that ATIA offers to the normative secrecy paradigm of governance. This regime of secrecy was codified by the British Parliament, and adopted in whole by the Canadian Parliament which passed identical secrecy laws during the late 19th century, which were repeatedly updated and strengthened during the 20th century. The Official Secrets Acts and subsequent revisions by the Canadian Parliament granted the PM and cabinet sole and absolute authority to decide what information concerning governance would be made public. The secrecy laws not only served to protect the public’s interest in issues such as national security, they also provided the executive branch with the obvious political advantage of complete and unchallengeable control over the dissemination of information about how it governed. While the ATIA adopted all prior secrecy provisions concerning protection of the public interest, it ended the exclusive and absolute right of the executive branch to release or withhold government records as it pleased, including for reasons of political expediency. Instead, like other Freedom of Information legislation, the ATIA requires government officials to release or withhold government records in accordance with the law. There is no provision to withhold records in order to protect the political interests of the governing party. This chapter argues that government resistance to disclosure law in Canada is politically-motivated and profoundly anti-democratic because it limits the potential for meaningful public deliberation about government.
PROTECTING MARGINALIZED BODIES
PROTÉGER LES CORPS MARGINAUX
Chair: L. Jacobs (University of Windsor)

Maneesha Deckha (University of Victoria)

**Discordant Discourses?: A Feminist (Pro-choice) Legal Analysis of Embryo Research Restrictions in Canada**

Canada is one of only three countries worldwide without any direct abortion regulation at all. When positioned along a global spectrum, Canada occupies an “extreme” position in its (dis)regard for the in utero embryo/fetus and its (high) value for the bodily integrity of women’s reproductive lives. But the abortion debate is not the only venue where questions and arguments regarding the moral status of the embryo circulate. Embryonic stem cell research and the miracles it promises has caught the imagination of scientists, politicians, and the public alike, for reasons not the least of which involves the fate of in vitro embryos, which are vital to this promising form of stem cell research. Although not as ubiquitously regulated as abortion, a substantial number of countries have passed legislation specifying the scope of embryonic stem cell research they find acceptable. Canada is among these countries and, interestingly, has adopted a middle position when compared to its peers, generally permitting research on existing embryos under certain conditions, but not the creation of new ones.

While Canada’s tempered position in the debate may appear to be a sensible compromise, further query gives notable pause. If the rationale for the mid-way position is indeed a desire to afford human embryo life some respect and dignity, it is a striking one since Canadian law has held that the fetus, and thus presumably the embryo which is even further removed from the moment of birth, is not a person and thus is denied the rights and ethical significance that that legal status entails. While a restrictive stem cell regime makes sense in jurisdictions where restrictive abortion regimes also exist, it seems discordant in a country where references to the “sanctity of human life” and the embryo as “unborn life” are not staples in public discourse and the criminalization of abortion is not a live political issue.

Feminists have traditionally favoured restrictions on embryo research due to concerns regarding the exploitation and commodification of women’s bodies as sources of eggs from which to create research embryos. Feminists should revisit their support for legislated embryo restrictions due to the “sanctity of human life” discourse, reminiscent of pro-life discourse, these restrictions reflect and cultivate.

Elizabeth Adjin-Tettey (University of Victoria)

**Sexual Wrongdoing: Do the Remedies Reflect the Wrong?**

Sexual wrongdoing is a serious affront to bodily autonomy, security and human dignity, and a tool of oppression, subordination and exploitation. Perpetrators often target vulnerable people – women, children, and disabled and/or institutionalised persons. Courts and legislatures have felt the need to preserve survivors’ rights of action through mechanisms such as generous constructions or elimination of limitation periods for sexual wrongdoing. This paper asks if this understanding of sexual victimisation is also reflected in the remedies for the wrong.

Sexual victimisation may result in tangible and intangible harms. However, survivors are more likely to sustain intangible injuries, and hence compensated mostly non-pecuniary damages, a category that has come under criticism in recent years. Reformers have questioned the availability and quantum of non-pecuniary damages, putting forward a number of arguments for restricting the amount and scope. Although non-pecuniary damages have not been eliminated, reformers’ concerns have resulted in a devaluation of intangible losses and/or modest awards.

While these concerns may be defensible in claims with substantial pecuniary losses, they are less so where the plaintiff’s injuries are predominantly intangible. Construction and (de)valuation of harms from sexual victimisation may reinforce hierarchies of harm and other bases of disadvantage such as gender, race, and (dis)ability. Valuing tangible over intangible losses could also be understood as a gendered characterisation of harms, and reinforces men as the standard against which to assess consequences of tortious injuries. It also reinforces the reason/emotion dualism and the perception of “public” and/or tangible harms as the proper domain of tort law. Ultimately, inadequate compensation undermines responsibility for sexual victimisation, may affect the desire to seek redress, and exacerbate the effects of victimisation, resulting in anti-therapeutic outcomes for a serious social problem.

Freya Kodar (University of Victoria)

**Selective Justice: Invoking Crown Immunity to Avoid Liability for Historical Abuse Claims**
The announcement of the Woodlands School Settlement Agreement in October 2009, and in particular, that the settlement excluded abuse claims arising before August 1, 1974 - the commencement date of British Columbia's Crown Proceedings Act (CPA) - generated much discussion in legal and non-legal communities. Excluding pre-CPA claims from the Settlement has its antecedent in Richard v. British Columbia, (2009 BCCA 185), and other decisions that have held that such claims could not be sustained because the Crown was immune from tort liability prior to the CPA commencement date. The invocation of Crown immunity in these types of cases raises a number of issues for survivors of historical abuse. It creates distinctions amongst survivors based on a type or class of abuser, and could complicate the assessment of damages. Triers of fact will have to separate pre and post-CPA claims in situations where the effects of abuse during those periods may be indistinguishable.

Crown immunity has not been invoked to defeat all historical abuse claims even within the same jurisdiction. In the cases in which it is invoked, the generous constructions and/or elimination of limitation periods intended to promote access to justice for victims of historical abuse become meaningless to those abused by state officials. It appears to be yet another strategy for avoiding liability for the victimization of children placed in vulnerable situations pursuant to state action and because of their marginalized status.

This paper will explore the rationale behind this strategy, noting its effect on survivors of historical abuse. It will highlight the selective application of Crown immunity with the aim of exploring factors influencing that approach within and across jurisdictions, and ask whether the strategy (1) further marginalizes claimants from particular backgrounds; and (2) undermines the purpose of crown proceedings legislation.
TEACHING TRANS-SYSTEMICALLY:
ENSEIGNER TRANS-SYSTÉMATIQUEMENT
Chair: Hester Lessard (University of Victoria)

Val Napoleon (University of Alberta)

Teaching Trans-systemically: Indigenous, Common and Civil Law Traditions

The question I will explore is whether employing trans-systemic legal pedagogical strategies is useful to indigenous communities wishing to draw on their own legal traditions to manage internal and external conflicts. Indigenous territories and communities are multi-juridical as is the rest of Canada. Consequently, as with students in a trans-systemic law classroom, indigenous peoples at the community level might benefit from deliberations that separate law from the State, challenges state law’s values and methods, and draws on a multitude of legal responses to common legal problems. Arguably, a trans-systemic legal pedagogical approach to indigenous law has the potential to create practical ways to focus on the human problems within the conflicts, and generate constructive dialogues between a number of legal perspectives (i.e., common law or civil law, and indigenous law). Using a case study approach, I will first set out a deeply entrenched conflict involving an indigenous group. Second, I will explore how a trans-systemic model might be applied and how the people involved with the conflict might work through the steps of identifying the doctrines, principles, and resources from their own legal traditions to analysing the overall power dynamics and context. Finally, I will articulate the lessons that might be drawn from the case study exercise.

Roderick A. Macdonald (McGill University)

Is Law a Zoo?

Zoology engages its theorists and researchers in taxonomic excess. We project many different classifications and categories of the Animal Kingdom, sometimes acknowledging that animals are themselves but one of three classifications of the phenomenal world, and very occasionally recalling that the mind attends to both the phenomenal and the noumenal. When we theorize, teach and write about law we (most often implicitly) privilege a particular location – species, genus, order, family, etc. When we theorize, teach and write about law, we (most often implicitly) make substantive choices about our organizing frames: sometimes these frames are sites of law; sometimes the modes of legal expression; sometimes a disciplinary extroversion that serves to police the boundaries of inquiry. This paper will evoke a decade’s experience with transsystemic teaching in one particular field (Secured Transactions) that implies multiple fields (property, contracts, civil procedure, bankruptcy) and multiple artefacts (the legal professions, bailiffs, the courts) of state law, as was as multiple agents and interactions of everyday law in multiple jurisdictions (Ontario, Quebec, Ukraine). Using specific teaching moments it aims to show how teaching that (1) treats particular legal regimes as instantiations of the policy choices made by States, and (2) treats particular legal practices as instantiations of the policy choices made by participants in the non-legal orders to which they give loyalty puts into question shibboleths both of orthodox doctrinal approaches to law and of now-traditional critical approaches that instrumentalize law as a technology operating to subordinate people on grounds of gender, race and class.

Shauna Van Praagh (McGill University)

The Challenge of (Un)Charting Law

Students and teachers of law – particularly when confronted with the integration of legal traditions – tend to imagine, create, and implement “charts” of legal sources, rules, principles and policies. “Charting” law in order to navigate and understand it through a “trans-systemic” lens seems like the major challenge of a “trans-systemic” program. It is more difficult – and perhaps more insightful – to attempt to discard the charting endeavour and to avoid the comparative exercise of looking for sameness and difference in the substantive preoccupations of legal traditions and systems. A rejection of the utility and desirability of “charting” means that we can enjoy moments of learning in the law classroom when they allow us to “meet” people, “hear” voices, and join in “conversation”. Examples drawn from a “trans-systemic” course in civil wrongs illustrate how integrated learning of law need not depend on the constant comparison of examples drawn from two traditions; conversely, examples drawn from a “tradition-specific” course in the law of obligations illustrate some of the often-hidden objectives of integrated legal pedagogy. Connected understanding may indeed come from an approach to learning law that recognizes and delves into more than one legal tradition; and yet, the fact that more than one tradition informs a classroom discussion or even an entire curriculum of legal education, does not necessarily produce connected understanding. A complex chart of legal knowledge offers
the guise of connected understanding, but “un-charting” may lead to the real thing

Hadley Friedland (University of Alberta)

What Raises Eyebrows: Conversations about Trans-systemic Learning

Many legal theorists claim all explicit law relies upon a rich layer of implicit law. One of the greatest learning experiences I gained from participating in trans-systemic learning about Indigenous legal traditions, and applying this methodology in my own work, has been recognizing and reflecting on the implicit assumptions that often go unstated and even unrecognized within both Common-law and Indigenous legal traditions. This implicit layer of law is most apparent in informal conversations outside of the classroom. Very different aspects of trans-systemic pedagogy and methodology, applied to Indigenous legal traditions, raised eyebrows in conversations within an Indigenous community, and within the law school. Conversely, very different aspects were considered unremarkable. Using two examples from informal conversations, I explore the question of how we recognize and respond to differences at this implicit level, and some of the challenges and possibilities this may present when approaching Indigenous legal traditions trans-systemically.

Mitchell Walker (Queen’s University Belfast)

Private Prisons and the Commodification of the Prisoner

In a critical examination of the current relationship between punishment and capitalism in the United States, the current priorities of the carceral system will be discussed and examined to determine the origins of the current prioritization of security, confinement and detention over the ideals associated with correction and rehabilitation. Exploring the current state of incarceration in the contemporary United States, publicly available textual sources will be examined to contextualize the emergence and prosperity of the private prison industry. During the investigation of current justifications for proprietary imprisonment such as cost savings, economic stimulus and market competition, voices from politicians, correctional officials, private proponents and academics will be included to evaluate the debate surrounding the current state of proprietary incarceration.

Locating the debate within context of the political economy of punishment in the United States, the study concludes that the advancement of private prisons represents the culmination of the reciprocal and synergistic relationship between global economics, conservative governance and a reliance on the market model of capitalism to inform modern methods of ‘crime control’. Finally, the human consequences of a market based system are disseminated through an examination of the structural foundations of the Corrections Corporation of America and the commodification of the prisoner.
were exposed to extremely cold weather. The children died of hypothermia.

Pauchay’s guilty plea meant that the Criminal Justice System needed only to decide an appropriate punishment. In order to reach a proper determination, the sentencing judge, Justice Morgan, decided to receive the input of a circle sentencing that took place in Pauchay’s community, Yellow Quill First Nation. The recommendations included substance abuse treatment and life-time service to the community. What was not recommended, however, was incarceration. Justice Morgan ultimately rejected these recommendations and sentenced Pauchay to a 3 year prison sentence in a federal prison.

In this presentation we use Pauchay’s interactions with the Criminal Justice System as a case study to consider the purposes and effects of punishment in the context of Aboriginal identity and addiction issues. We believe our combined expertise in cultural studies, and our respective expertise in punishment theory and mental illness, will permit a nuanced approach to evaluating guilt, rehabilitative goals and community healing.

Our tentative hypothesis, at this stage, is that the Criminal Justice System failed on three levels. First, the sentence did not correctly measure Pauchay’s guilt, considering his addiction and his marginalized position as an Aboriginal person. Second, the sentence lacked utility in terms of rehabilitation and deterrence. And third, the sentence prevented community healing at Yellow Quill First Nation.

What the prison sentence did accomplish, however, was a restoration of the wider Canadian community’s faith in the “objectivity” of the Criminal Justice System through retributive denouncement. In other words, it is our contention that the “court of public opinion” had an undue influence on the sentencing decision, such that the goal of denouncing wrongful behaviour to reinforce social values was achieved at the expense of both fairness and more pressing instrumental goals.

A further research hypothesis is that the sentencing judge would have benefited from a psychiatric report on the issue of substance abuse as a mental disorder in general, and in Pauchay’s case in particular.

If our hypothesis is correct, the traditional justifications for punishment - from just desserts to utilitarianism - are not being properly applied in practice with Aboriginal offenders who suffer from substance abuse. Equally troubling, it seems that the ‘court of public opinion’ can work against the legislation and precedents calling for contextual sentencing of Aboriginal offenders.

Restorative justice principles fall to the wayside, as prison remains the preeminent vehicle for denouncing wrongful behaviour within the mainstream imaginary. We posit that by privileging retributive denouncement over Aboriginal community-based sanctions, the Criminal Justice System will continue to entrench the disadvantaged position of Aboriginals.

Bryan Hogeveen (University of Alberta)

Finding light in so much darkness*: Violence, Youth and (masculine) Subjectivities

Violence is tragically interwoven into the daily experience of many of Canada’s Aboriginal young people. Interrogating how Aboriginal people’s lives become saturated with violence allows us to think critically about not only the structural conditions (i.e. colonialism) that are manifested in his abusive behaviour, but the subjective meaning of violence. Investigations of violent lives expose the social processes and structural conditions intrinsic to violent ontologies. Perhaps most important, these experiences are also instructive for what they reveals about exiting a violent ontology. Shaking the dark cloud of violence is grueling. These stories reveals how a violent self is situated within an ethos of intertwining structural and micro conditions that are folded into the individual and manifested in violence.
Sarah Marsden

Whose Protection? Assessing recent developments in the regulation of foreign workers in Canada

Over the past 10 years, there has been a marked increase in the proportion of foreign nationals entering Canada who are entering on the basis of temporary work permits rather as compared to those entering as permanent residents. This “temporization” of Canada’s work force raises serious concerns with regard to the protection of migrant workers, and a recent House of Commons report indicates that employers are flouting employment standards by underpaying foreign workers, compelling them to work overtime, preventing access to medical care, impeding the mobility of foreign workers, and holding foreign workers’ passports. Human Resources and Social Development Canada plays an essential role in facilitating the movement of workers into Canada, primarily through the issuance of Labour Market Opinions, often required for employers to hire foreign workers. In 2009, Human Resources and Skills Development Canada initiated a “voluntary” compliance monitoring procedure for employers. Because Human Resources and Skills Development Canada can supply or withhold Labour Market Opinions, it can effectively sanction employers who are seeking to employ foreign workers, and as such this policy has the potential to protect foreign workers through ensuring employer compliance with labour standards. Drawing on existing legal and policy documents this paper will assess the impact of the voluntary compliance procedure on foreign workers, including protection from substandard working conditions.

Mary-Elizabeth Dill (York University)

Constructing and Contesting Boundaries: Filipina Live-in Caregivers and Acts of Citizenship

This paper builds upon those scholarly conversations that have explored both the structural processes that contour and the lived experiences that define temporary migrants and refugees in Canada. Utilizing Engin Isin’s notion of ‘acts of citizenship’, I explore the ways in which the resistance strategies of Filipina Live-in Caregivers in Canada - whether those be tactful or habitual – unsettle dominant notions of citizenship as deployed through official discourses and academic theorizing. Taking the new Canadian Citizenship Study Guide (November 2009) and the related public briefings of Jason Kenney, Minister of Citizenship, Immigration and Multiculturalism, as my starting points, I tease out and historicize the victim/abuser binary through which the citizen-subject and foreign-other are discursively situated. I then consider the ways in which this central binary and its diverse effects are complicated by the resistance strategies of Filipina Live-in Caregivers. By acting and reacting politically, Filipina Live-in Caregivers have made it difficult for state forces to depoliticize debates in and around refugee and immigration policy through the deployment of this binary. The implications of this unsettling are then explored insofar as they relate to larger questions of theorizing citizenship and resistance.

Graciela Flores Mendez (York University)

Alien/ation: Race, Citizenship, and the Construction of the Mexican ‘Illegal Alien’

The purpose of this paper is to examine im/migration and citizenship discourse in the United States as it pertains to the racialization of the Mexican ‘illegal alien.’ In order to trace how the legal category ‘illegal alien’ has become racialized code for ‘Mexican criminal,’ this paper examines the national “official story” in two time frames. Through an exploration of the United States’ colonization of Mexico in 1848 and the emergence of the ‘illegal alien’ classification in immigration law, I
examine the influence of racialized thinking in conceptualizations of citizenship in the United States. Contemporary immigration and citizenship discourse is then examined through an inquiry of the multiple sites that create and enforce the racialization of the ‘illegal alien.’ This examination of im/migration and citizenship discourse will emphasize the role of law in sustaining the relationship between Mexican racialized identity and ‘illegality.’ I conclude that citizenship status and racialization have maintained an interlocked relationship for Mexican migrants since 1848, and that the racialized ‘illegal alien’ category in law sustains the dehumanization and *alienation* of migrants in the United States.
ACCESS TO / FREEDOM OF INFORMATION III
ACCÈS À L’INFORMATION

Chair: Kevin Walby (Carleton University)

Willem de Lint & Reem Bahdi (University of Windsor)

National Security Information Access Brokering

Canadian policy regarding information disclosure on sensitive security issues is discernible from disclosures in court cases and ATI releases. We investigate this by framing the back-drop against which modern information control practices are played out: media, shifting bureaucratic structures, and documentary protocols. We then identify strategies adopted by national security agencies to secure information exclusivity while simultaneously implementing institutional changes purporting to respond to concerns over an unqualified and unchecked information regime. These include centralizing the information flow and silencing the documentary record. These strategies are buttressed, in turn, by discourses of exceptionalism and risk, quests to elicit trust, the validation of loyalties, and the thwarting of official oversight. These aim to consolidate agency control over information access and justify agency discretion to constitute actionable information. We note that while national security agencies play these mechanisms they also generate diametric opportunities for push-back from the margins. Finally, we contextualize discretion and accountability in information control against the larger sociological frame of networked agents finessing institutional and ideological resources in support of exclusionary systems.

Justin Piché (Carleton University)

(Un)mapping Penal Expansion in Canada: A Note on Method and the Policing of Criminological Knowledge

In this paper, I detail my attempts to (un)map the construction of new adult penal institutions across Canada through a search of published online content, as well as informal and formal information requests with the thirteen provincial-territorial prison authorities as well as their federal counterpart (CSC). Throughout the paper, I describe the techniques I used to broker access to the criminological knowledge I sought to obtain and the techniques of opacity deployed by government officials to limit what I could know about recent and on-going penal expansion in their respective jurisdictions. Based on the experience gained from this experiment, I consider the broader implications for prison and ATI researchers concerning knowledge generation, as well as for those individuals living in a Canada – a ‘democratic’ society – who, at the very least, wish to know about important governmental policies and practices that shape their lives.

David McKie (CBC News Investigative Unit and Carleton University)

Access Denied: The Right to Know in an Era of Government Secrecy

We live in an age when governments of all levels and of all political stripes claim greater transparency, meanwhile they use the facade of openness to protect secretive information practices. Journalists seeking to get a comment from a cabinet minister or top-level bureaucrat are often directed to pre-packaged media lines and web content that camouflages untidy details that might paint a department, or more importantly its minister, in an unflattering light. ATI method represents a means of circumventing this packaging, but the system is paralyzed by delays that often preclude attempts to get closer to the truth. This chapter is based on my attempts to cover the listeria-tainted meat scandal that killed 22 people, many of them elderly. Use of ATI method to get to the bottom of what happened, and how the Canadian Food Inspection Agency responded during the country’s largest food recall in history, have been thwarted by secrecy and suggestions of political control. One could argue that this sad narrative is simply the function of a hyper-sensitive government whose reign may be short-lived. Perhaps. But remember, this government, as many governments do, came to power vowing to open up government. How ironic, then, that Harper’s administration is being criticized for being unaccountable. Governments of all levels and of all political stripes have been taken to task for their lack of support for more liberal freedom-of-information laws. The object of the chapter is not to argue that investigative journalism is impossible under such conditions. Rather, the goal is to suggest that as journalists we must work harder to extract information through other means such as the robust cultivation of sources, a more careful reading of public documents such as regulations and policies, and use those sources as cues to obtain more precise information using ATI method. When our attempts to probe more deeply are stymied, we must tell our listeners, readers and viewers how the release of that information allows them to hold their government accountable.