Carleton University

Department of Law and Legal Studies

ONLINE 17th ANNUAL GRADUATE LEGAL STUDIES CONFERENCE

Conversations and Solutions Surrounding National and Global Challenges

May 29, 2024 || 9:00 AM EST

ACKNOWLEDGEMENTS

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SPECIAL THANKS

Heather Crooks
Dr. Meg Gaucher
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ZOOM LINK DETAILS:

Topic: GLSA Conference

Join Zoom Meeting: https://carleton-ca.zoom.us/j/92516398255

The 17th Annual Carleton Legal Studies Graduate Conference

Land Acknowledgment

The organizers and supporters of this conference acknowledge that the land in which we gather today is the traditional and unceded territory of the Algonquin nation. The Canadian state laid claim to these territories through violent systems of colonization that resulted and continue to result in the dispossession, marginalization, and impoverishment of Algonquin people and the overexploitation of land and waters within their territory. We extend our ongoing solidarity to the Algonquin nation with our words, actions, time, skills, and resources.

CONFERENCE PROCEEDINGS

9:00 am 9:30am	• Land Acknowledgment • Departmental Welcome Speech

Panel 1
Chair: Heather Gill-Frerking

9:30am – 11:00am	**Taryn Hepburn** – Infectious Punishment: Considering how carceral "alternatives" become carceral in BC's youth justice system.
	Danica Nardi-Lamadeleine – Not My Justice: Analyzing the Operation of Section 11(d) of the Canadian Charter of Rights and Freedoms in Sexual Assault Trials
	Alexis Keizer – Do You Know Your Rights? Levels of Legal Literacy in the Canadian Population
	Celdric Payomo – Demystification of Canadian Queen Exceptionalism: Racialized Queers' Access to Justice

Panel 2
Chair: Andrea McKenzie-Howell

11:15am – 12:30pm	**Mohammed Jahirul Islam** – Coloniality, Decoloniality and Subalternity: A Debate with Anbal Quijano, Walter Mignolo, and David Arnold
	Brandon Tehsenrehtanion Montour – Resurging to Reconcile: Peacemaking in Kahnawà:ke through Haudenosaunee Law
	Heather Gill-Frerking – Is Canada Meeting Its Global Responsibility to the Protection of Cultural Heritage in the Face of Climate Change?

Lunch Break
12:30 – 1:15pm

AFTERNOON PANELS

Panel 3:
Chair: Sylva Sheridan

1:15 – 2:30pm	**Andrea McKenzie-Howell** – Current Reparations and Advocacy in the Caribbean
	Mahan Ashouri – Assessing the Economic Sanctions Regimes on International Arbitration as a Barrier to Sustainable Development Goals

Panel 4:
Chair: Janakan Muthukumar

2:45 – 4:00pm	**Azar Mahmoudi –** A Taxonomy of Anti-Corruption Clauses in Transnational Petroleum Contracts
	Sunitha Bisan Bisan Singh – Feminizing Carbon Markets for Just Transitions
	Soorya Belandra – Algorithmic Bias and Its Impact on Transitional Justice

SESSION #1
9:30 am – 11:00 am

Taryn Hepburn
PhD Candidate | Carleton University Department of Law and Legal Studies
Infectious Punishment: Considering how carceral "alternatives" become carceral in BC's youth justice system.

Danica Nardi-Lamadeleine
MA Student | Carleton University Department of Law and Legal Studies
Not My Justice: Analyzing the Operation of Section 11(d) of the Canadian Charter of Rights and Freedoms in Sexual Assault Trials

Alexis Keizer
MA Student | Carleton University Department of Law and Legal Studies
Do You Know Your Rights? - Levels of Legal Literacy in the Canadian Population

Celdric Payomo
MA Student | Carleton University Department of Law and Legal Studies
Demystification of Canadian Queer Exceptionalism: Racialized Queers' Access to Justice

SESSION #2
11:15 am to 12:30 pm

Mohammed Jahirul Islam
PhD Student | Carleton University Department of Law and Legal Studies
Coloniality, Decoloniality, and Subalternity: A Debate with Anibal Quijano, Walter Mignolo, and David Arnold

Brandon Tehsenréhtanion Montour
SJD Candidate | University of Toronto
Resurging to Reconcile: Peacemaking in Kahnawà:ke through Haudenosaunee Law

Heather Gill-Frerking
PhD Student | Carleton University Department of Law and Legal Studies
Is Canada Meeting Its Global Responsibility to the Protection of Cultural Heritage in the Face of Climate Change?

SESSION #3
1:15 pm – 2:30 pm

Andrea McKenzie-Howell
PhD Student | Carleton University Department of Law and Legal Studies
Current Reparations Movements and Advocacy in the Caribbean

Mahan Ashouri
DCL Student | McGill University Faculty of Law
Assessing the Effects of Economic Sanctions Regimes on International Arbitration as a Barrier to Sustainable Development Goals

Session #4
2:45 pm to 4:00 pm

Azar Mahmoudi
DCL Candidate | McGill University Faculty of Law
A Taxonomy of Anti-Corruption Clauses in Transnational Petroleum Contracts

Sunitha Bisan Bisan Singh
PhD Student | Carleton University Department of Law and Legal Studies
Feminizing Carbon Markets for Just Transitions

Soorya Balendra
L.L.M. Candidate | McGill University Faculty of Law
Algorithmic Bias and Its Impact on Transitional Justice

Presenter Abstracts

Taryn Hepburn
PhD Candidate | Carleton University Department of Law and Legal Studies
Infectious Punishment: Considering how carceral "alternatives" become carceral in BC's youth justice system.

The introduction of the *Youth Criminal Justice Act* in 2002 brought with it a swath of recommendations focused on avoiding the use of incarceration whenever possible, including the use of extrajudicial measures to avoid formal justice from the start. The Ministry of Children and Families in British Columbia took up this project, in part, by relying on "alternative" programs". In Northern British Columbia, in particular, this meant shifting from relying on Prince George Youth Custody Centre (PGYCC) to two of these "alternatives," a local substance abuse treatment centre and a camp targeting delinquent young men. In Foucault's *Discipline and Punish* (1995), he illustrates how discipline permeated past the walls of the prison and into society as a whole, noting that it is all connected like an archipelago. I argue that the presence and the pressure exerted by the custody centre on the alternatives makes punishment behave like Foucault expected discipline to. Punishment becomes infectious and makes the "alternative" programs behave more like the prison. Using archival data and interviews, I conduct a thematic analysis of the behaviours and logic models of each space (PGYCC, the camp, and the treatment centre) to demonstrate how punishment becomes embedded in the models of those programs expected to be non-carceral. This project poses that the infectious nature of punishment through these programs demonstrates: 1) it is not discipline alone the circulates and permeates out of the prison, and 2) this movement of punishment forces all the spaces, including PGYCC, to become more carceral.

Danica Nardi-Lamadeleine
MA Student | Carleton University Department of Law and Legal Studies
Not My Justice: Analyzing the Operation of Section 11(d) of the Canadian Charter of Rights and Freedoms in Sexual Assault Trials

Sexual violence is a rampant issue that affects millions of individuals around the world, and especially women. This presentation will explore the work that Section 11(d) of the *Canadian Charter of Rights and Freedoms* does in the sexual assault trial in Canada. After I locate how Section 11(d), the presumption of innocence, operates in the criminal trial, I argue that because legal procedures and technologies (Foucault, 1973; Foucault, 2012) are not designed, nor capable, of contending with the nature of sexual violence (Smart, 1989; Gotell, 2002), they end up hurting and failing survivors, and in turn, act as obstacles in the quest for judicial justice/conviction. While I seek to discuss the logical fallacies of due-process and how law cannot meaningfully grapple with sexual violence, I do not suggest a removal of the presumption of innocence from our human rights-based frameworks, nor do I suggest a suspension of them in sexual assault cases. In fact, it is by making the acknowledgment of how important Section 11(d) is as a legal right, that brings us to a conversation about how we must interrogate what "justice" means beyond conviction, since the Criminal Justice System is not consistently securing these. How might we re-imagine *justice* beyond the current carceral imaginaries? How can we center survivors of sexual violence in this conversation, while appreciating complexity and difference? I approach this work as an anti-carceral, 3rd-4th wave feminist, and prison abolitionist. This presentation will grapple with difficult topics in hopes of inspiring thoughtful reflection.

Alexis Keizer
MA Student | Carleton University Department of Law and Legal Studies
Do You Know Your Rights? - Levels of Legal Literacy in the Canadian Population

We live in a "law-thick world" (Hadfield, 2010). Everything we do is governed by at least one law. This in turn has created countless pages of legislation that can often be thick with legal jargon. While providing clarity for the courts, it has created a society that relies on the lay person to somehow know what they are talking about in terms of the law. However, this can affect the levels of legal literacy. Legal literacy is defined in this research as "...mastering legal discourse at a level that is necessary for conducting a meaningful and active life in a world saturated with a legal crime" (Rozani & Mordechay, 2015).

There has been extensive research to show that there is concern over citizens' legal literacy (Pleasence et al., 2017 as cited in Balmer et al., 2024). Yet to improve society's level of legal literacy, we must understand the level at which we are currently at. In this preliminary study I intend to gather data that gauges the understanding of legal literacy in the Canadian public. The proposed plan is to have an online and in person data collection section to try and collect data on members of the public that may not have access to the internet. This research is designed to serve as the stepping stone for a much larger research project that tests different systems to teach and improve legal literacy in the general public with the aim of having an international component to improve understanding of people's rights.

Celdric Payomo
MA Student | Carleton University Department of Law and Legal Studies
Demystification of Canadian Queer Exceptionalism:
Racialized Queers' Access to Justice

Canada configures itself as a queer haven through its promotion of robust LGBTQ+-specific rights and exceptional treatment of the community. Key moments within Canadian queer history elicited paradigm shifts in how queerness is constituted within the national social body. State-administered mechanisms have increasingly empowered the community to realize fulfilled lives. A marked departure from the group's former era of intense regulation and criminalization.

This research project interrogates contemporary Canadian queer exceptionalism and investigate whether recent socio-legal developments afforded to the community conform to the ongoing racialization in the country. The inquiry will be framed within the language of access to justice as it is an underlying principle that have progressed throughout Canadian queer history. Through the law's emancipatory potential, LGBTQ+ persons are gradually recognized and protected within social, economic, and political domains. The paper argues that the progress and development within the LGBTQ+ community do not translate evenly and manifest through different access to justice experiences between white gays and mainstream queers.

Historical materials from the Toronto's ArQuives are operationalized to elucidate the terms and conditions of queer inclusion within Canada. Contributions from the project seek to unsettle prevailing queer mythologies that centralize the narratives of white gays to construct a monolithic representation of LGBTQ+ history. It will provide a medium for racialized queer voices to share their stories which are predominantly silenced within mainstream historical accounts of the LGBTQ+ community.

Mohammed Islam
PhD Student | Carleton University Department of Law and Legal Studies
Coloniality, Decoloniality, and Subalternity: A Debate with Anibal Quijano, Walter Mignolo, and David Arnold

In this article, I focus on Anibal Quijano and Walter Mignolo and, on the other hand, South Asian postcolonial subaltern scholar David Arnold's contributions to the prisoners' resistance through critical engagement with the concepts of coloniality, decoloniality, and subalternity. The study investigates the correlation between colonial legacy theories, power dynamics, and resistance in colonial and postcolonial societies, focusing on prison resistance. My argument centers on the notion that Quijano and Mignolo's theory can illuminate the relationship between the coloniality of power, historical racial dynamics within Western modernity, and the interplay of religion and ethnicity with racism. However, David Arnold's insights offer a more reasonable explanation for resistance, particularly within religious-caste societies. In terms of reasons, firstly, David Arnold explores the impact of caste, religion, and spirituality on prisoner resistance in India, including anticolonial movements and rebellions, beyond European concepts. Furthermore, Arnold's rejection of the Foucauldian postmodernist and poststructuralist debates from a postcolonial theoretical lens underscores the inadequacy of Eurocentric concepts such as the "docile body" in understanding resistance. Examining their theories in the context of prison resistance seeks to deepen our understanding of decolonial thought and its relevance to contemporary socio-political struggles in Latin America and South Asia.

Additionally, the study critically analyses the responses elicited by these reparations initiatives to date within local contexts across the Caribbean as well as on the international arena, highlighting both the support and resistance encountered. By an examination of these dynamics, the larger objective of the inquiry is to shed light on the complexities involved in the struggle for reparative justice and the implications such efforts hold for the region's socio-economic development and its place globally.

Brandon Tehsenréhtanion Montour
SJD Candidate | University of Toronto
Resurging to Reconcile: Peacemaking in Kahnawà:ke through Haudenosaunee Law

Kahnawà:ke[1] is a divided community where different groups and institutions claim to be the representative voice for the people. At the same time however, our laws, customs, and traditions are premised on peaceful coexistence and harmony. Unity and the concept of the Good Mind are key principles of Haudenosaunee law and are reflected in a number of sources, from our songs, ceremonies, stories, and meta-narratives. If these principles of unity and the Good Mind animate – and are foundational to – Haudenosaunee law, then why is there a disconnect between these principles of law and the Kanien'kehá:ka of Kahnawà:ke? This paper suggests that colonial interventions in Kahnawà:ke throughout the nineteenth century have transformed our community and have caused us to adopt a militant posture towards the state. In doing so, we have also turned on ourselves and strayed further away from our laws and ways of knowing. Through the resurgence and adherence to fundamental principles of Haudenosaunee law, Kanien'kehá:ka communities can overcome internal divisions while simultaneously promoting reconciliation with the Canadian State. This paper examines the colonial interventions in Kahnawà:ke that have

[1] The Kanien'kehá:ka of Kahnawà:ke belong to the Mohawk nation, which is one of the six nations that united to form the Haudenosaunee Confederacy. I am a citizen of the Mohawk nation and the Confederacy.

transformed our relationship with the State and ourselves, and looks to the recent Superior Court of Québec decision of *R v Montour* to highlight ways in which we can all move forward in a way that is informed by our ancestral laws and practices.

Heather Gill-Frerking
PhD Student | Carleton University Department of Law and Legal Studies
Is Canada Meeting Its Global Responsibility to the Protection of Cultural Heritage in the Face of Climate Change?

There are polite disagreements as to whether cultural heritage is a global asset or a national asset. The various legal instruments, policies, and guidance mechanisms usually require implementation in some form, sometimes requiring national legislation.

Canada professes a commitment to protecting national cultural heritage, whether tangible examples such as buildings or archaeological sites, or intangible, such as cultural traditions. Canada also speaks of commitment to addressing issues related to climate change. It might be logical, then, to think that Canada would create policies and legislation that specifically addressed the impacts of climate change on Canadian tangible and intangible cultural heritage.

This paper will discuss the benefits and limitations of Canadian cultural heritage protection policies in relation to global climate change. The paper will also consider whether Canada is addressing and meeting global responsibilities for the protection of cultural heritage affected by long-term and rapid climate change.

Andrea McKenzie-Howell
PhD Student | Carleton University Department of Law and Legal Studies
Current Reparations Movements and Advocacy in the Caribbean

Recent decolonization efforts in the Caribbean reflect a corpus of initiatives aiming at achieving greater autonomy and asserting regional identities. These initiatives underscore the ongoing struggle against the lasting impacts of colonial rule, setting the stage for a focused examination of reparations initiatives in the Caribbean, which seeks to address historical injustices through policy measures and other compensatory mechanisms.

This study examines the contemporary landscape of reparations movements within the Caribbean, with specific focus on the advocacy efforts spearheaded by the Caribbean Community (CARICOM) Reparations Commission. As calls for reparative justice for the historical injustices of slavery and colonialism gain momentum globally, Caribbean nations have emerged as pivotal voices advocating for compensation and restitution from former colonial powers.
This paper provides an overview of the principal demands articulated by these movements which include financial compensation, debt relief and policy reforms aimed at rectifying the enduring socio-economic disparities rooted in colonial exploitation. The strategies employed by these movements encompass legal approaches, public awareness campaigns and diplomatic engagements with former colonizer nations.

Mahan Ashouri
DCL Student | McGill University Faculty of Law
Assessing the Effects of Economic Sanctions Regimes on International Arbitration as a Barrier to Sustainable Development Goals

The outlawing of wars of aggression in the Charter of the United Nations (U.N.) and the introduction of international sanctions as an alternative measure to warfare was conceived as a fundamental transition in approach toward global conflict and international relationships. This paradigm shift signified the use of economic means for altering the behavior of international law offenders and enabled a variety of international actors, such as the U.N. Security Council, the European Union, and individual states to design and implement their own sanctions programs. Despite the effort to expand this non-military approach to resolving conflicts, the frequent use of economic sanctions regimes has raised concerns and criticism regarding their unintended adverse effects on civilians, the environment, and the global economy, especially when their effectiveness and success rate have been statistically proved to be much lower than anticipated. This presentation begins with the fact that although 193 U.N. member states adopted the 17 Sustainable Development Goals (SDGs) in 2015 as a universal call to, *inter alia*, protect the planet, ensure peace and prosperity, and end poverty, the negative consequences of economic sanctions on their recipient nations have violated all the SDGs, from number 1 to number 17, and have prevented sanctioned countries from integrating into the SDG solutions. More specifically, sanctions regimes violate SDG goals number 8 and 16 when sanctions provisions interrupt private transnational actors' access to justice via resorting to international arbitration. The focus of this presentation, thus, will be on the impacts of sanctions on arbitration system and the broader implications for achieving the Sustainable Development Goals.

Azar Mahmoudi
DCL Candidate | McGill University Faculty of Law
A Taxonomy of Anti-Corruption Clauses in Transnational Petroleum Contracts

In a world where corruption persists in spite of global anti-corruption efforts and legal frameworks, this paper looks at how Transnational Corporations (TNCs) can lead the fight against corrupt practices. With growing operations in different territories, TNCs can establish internal governance frameworks that align with anti-corruption standards, while demonstrating their commitment to combatting corruption across borders through their employees, agents, and projects. The holistic anti-corruption approach employed by TNCs includes both traditional and innovative mechanisms. This paper specifically focuses on a recent corporate innovation: contractual anti-corruption clauses, designed as an additional due diligence tool for contracting parties. The main purpose of these clauses is to mitigate the potential risks of corruption that are likely to arise among contractors, third parties, intermediaries, and sub-agents. Despite the increasing prevalence and endorsement of anti-corruption clauses in different jurisdictions, such as the United Kingdom and the United States of America, their in-depth examination remains limited. Through the analysis of 1,164 transnational petroleum contracts, this Paper categorizes anti-corruption clauses into two general types: (1) direct clauses, specifically intended for anti-corruption, and (2) indirect clauses, not originally designed for anti-corruption. The paper further describes their distinct characteristics and sub-categories. The paper argues that, while direct clauses clearly commit parties to anti-corruption standards, indirect anti-corruption clauses enable parties to enforce anti-corruption commitments in the absence of direct clauses. Recognizing their potential to drive normative shifts towards enhanced anti-corruption measures, the paper introduces a standard clause, encompassing both direct and indirect types, to be adopted as an industry standard practice in contracts.

Sunitha Bisan Bisan Singh
PhD Student | Carleton University Department of Law and Legal Studies
Feminizing Carbon Markets for Just Transitions

Can carbon markets be gender inclusive? The carbon market is acknowledged as one of the key enablers for addressing climate challenges. The United Nations Framework Convention on Climate Change (UNFCCC) Paris Agreement promotes such financing mechanisms to address the climate challenges we are facing. However, climate financing impacts the lives and livelihoods of grassroots communities in many ways. The paper discusses the gender challenges within climate finance frameworks that seem to perpetuate gender-based inequalities due to a lack of inclusiveness, accountability, and transparency. This dilemma highlights the reality that the mainstreaming of gender remains problematic and illusory within climate financing. This paper focuses on the W+ Standard developed by Women Organizing for Change in Agriculture and Natural Resource Management (WOCAN) to address the lack of financial support for women's work by commodifying women's empowerment to tap into the opportunities of the carbon markets. = The paper attempts to discuss from an intersectional lens what are the challenges arising from the commodification of women's empowerment. Here, I seek to argue that this commodification approach is a site of resistance where women at the frontlines are using the market to address institutional and societal barriers that restrict their empowerment.

Soorya Balendra
L.L.M. Candidate | McGill University Faculty of Law
Algorithmic Bias and Its Impact on Transitional Justice

Platforms carry out its content moderation governance from two ways: manual (human) and automated. However, contemporary content moderation frameworks of the private platforms primarily rely on the Artificial Intelligence (AI) – Algorithmic content moderation, creates discriminatory moderation of content. While major platforms like Microsoft, Facebook, Twitter, and Google have endeavoured to globalize their operations, a substantial imbalance and disparity persist in the process of content moderation worldwide. This discrepancy arises from several factors, including limited financial incentives, insufficient language training, power asymmetry debates between governments and private entities, and technical limitations. This study approaches this existing problem, from a lens of the post-conflict states, which are going through a transitional justice pace. This research endeavours to address a critical gap in the existing literature by conducting an examination of two case studies from the Global South: Sri Lanka and Myanmar. These nations, sharing analogous political histories and confronting fragile democratic landscapes, diverse cultures, multi-religious contexts, post- conflict situations, and transitional justice processes, have experienced the impact of discriminatory platform content moderation. Through a meticulous analysis of these cases, this study aims to elucidate the ramifications of discriminative content moderation on the states navigating the challenges in the post-war context, particularly through transitional justice processes.

MESSAGE FROM THE ORGANIZERS

To the faculty at Carleton University, thank you for supporting this student-led conference for another year. A special thanks goes to the Administrative team at the Department of Law and Legal Studies for your support. We greatly appreciate your time.

To the presenters, thank you once again for providing us with your research passions and rich ideas. We are grateful for your attendance and ability to keep student-led conferences a success. Graduate student conferences are essential in being able to connect with other peers and academics and learn from one another. Hope you all consider presenting again next year.

To Carleton University, the GSA, and the Department of Law and Legal Studies, once again we thank you for your continued support and funding opportunities to keep the graduate conference success.

We have enjoyed being a part of another successful annual graduate legal studies conference, and we look forward to what next year's conference may bring.