Carleton UNIVERSITY

Canada's Capital University

GRADUATE LEGAL STUDIES CONFERENCE PROGRAMME 2021

CARLETON UNIVERSITY

THURSDAY, MAY 13TH, 2021

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The 14h 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

9:25a.m. to 9:30 a.m.	Opening Remarks over zoom
9:30 a.m. to 5:00 p.m.	Panels start
5:00p.m. to 6:00 p.m.	Conference Social

Morning Panels

9:30 a.m. to 10:45 a.m.	**In and Out of International Law: Rights, Resilience, and Resistance**
	Chair: Victoria Derbyshire (Carleton) Chika Maduakolam, *Revisiting Women's Rights as Human Rights: Analysis on the compliance of Canada with CEDAW on Gender-Based Violence* Kimiya Missaghi, *An exploration of how resilience combats oppression among minorities: A case study of the Baha'i underground university in Iran* Veronica Overlid, *Mobility as resistance – challenging international refugee law through "the migrant canvas" from Central America* Oana Stefanescu, *Uses and Abuses of External Case Law in the Practice of International Adjudicative Bodies: From Precedent-Following to Principled Decisions*
10:50 a.m. to 12:05 p.m.	**Climate change through the lens of law**
	Chair: Taryn Hepburn (Carleton) Andrew Costa, *A Leaf in the Vine: The Human Limits of Earth Jurisprudence* Joshua Bowman, *Marx's Metabolic Rift and the Prevention Principle of International Environmental Law* Steve Lorteau, *An Empiracal Analysis of Climate Utilitarianism and Climate Federalism* Mohamed Alikhani, *Finding a Space for the Development of Offshore Renewable Energy in Marine Areas in the Context of International Law and Marine Spatial Planning*

~Lunch Break~

Afternoon Panels

12:45 p.m. to 1:45p.m.	**Law's Failures and Futures**
	Chair: Tessa Penich (Carleton) Vanessa Di Feo, *The Business Judgement Rule: When Does "Keeping it Lean" Venture into Criminal Negligence?* Luc Bourgeois, *Pushing the First Domino: Feeing the Whales in Canada* Holly Wood, *Why Does Canadian Criminal Law Fail to Adequately Respond to Human Trafficking Offences?*
1:50 p.m. to 2:50 p.m.	**Contemporary Challenges in Constitutions and Democracy**
	Chair: Leah Wilson (Carleton) Kayne Rivers, *Water through the Wall* Miroslaw Michal Sadowski, *Limits of Democracy, Limits of Law: Between Central Europe and Hong Kong* Nicole Lokstadt, *A Crash-Course in Tree Care and Pruning: Indigenous and Treaty Rights in the Canadian Constitution*
2:55 p.m. to 3:55 p.m.	**Justice and the Judiciary**
	Chair: Shakira Spence (Carleton) Brendan Dell, *Try, Try Again: Canada's Challenge in Implementing a Safety Valve Bill for Mandatory Minimum Sentences* John Petrella, *Playing Doctor: Judging Judges' Analyses of Expert Evidence in Medical Malpractice Lawsuits* Brajesh Ranjan, *Delays in Access to Justice in North America – Is Judicialization of Litigation without Judicial Accountability Stymieing Reforms?*
4:00 p.m. to 5:00 p.m.	**Living and Loving in the Digital Age**
	Chair: Nicole Lee (Carleton) Alessia Zornetta, *Tackling Online Disinformation by Improving Transparency in Content Moderation Practices of Social Media Companies* Tessa Penich, *"We're being replaced by bloody robots!": Sex robots,* "real" womanhood, and the power of love Deborah Komarnisky, *The Reward-Centric Consumer: Governing Consumer Identity, Agency, and Brand Loyalty in the Retail Market*

Thank you for attending! Please join us for our post-conference social on Zoom.

SESSION #1

9:30 am – 10:45 am

In and Out of International Law: Rights, Resilience and Resistance
Session Chair: Victoria Derbyshire

Chika Maduakolam, York University
Revisiting Women's Rights as Human Rights: Analysis on the compliance of Canada with CEDAW on Gender-Based Violence

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Climate Change Through the Lens of Law

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PhD Candidate, Legal Studies
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Joshua Bowman, Carleton University
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Steve Lorteau, University of Toronto
LL.M Student
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Mohamed Alikhani, Dalhousie University
PhD Student, School of Law
Finding a Space for the Development of Offshore Renewable Energy in Marine Areas in the Context of International Law and Marine Spatial Planning

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Law's Failures and Futures
Session Chair: Tessa Penich

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LL.M Student
The Business Judgement Rule: When Does "Keeping it Lean" Venture into Criminal Negligence?

Luc Bourgeois, Dalhousie University
LL.M Student
Pushing the First Domino: Feeing the Whales in Canada

Holly Wood, Carleton
MA Candidate, Legal Studies
Why Does Canadian Criminal Law Fail to Adequately Respond to Human Trafficking Offences?

Session #4

1:50 pm to 2:50 pm

Contemporary Challenges in Constitutions and Democracy

Session Chair: Leah Wilson

Kayne Rivers, University of Waterloo
MA Candidate, Peace and Conflicts Program
Water through the Wall

Miroslaw Michal Sadowski, McGill University
DCL Candidate, Faculty of Law
Limits of Democracy, Limits of Law: Between Central Europe and Hong Kong

Nicole Lokstadt, McMaster University
A Crash-Course in Tree Care and Pruning: Indigenous and Treaty Rights in the Canadian Constitution

SESSION #5

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Justice and the Judiciary
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Brendan Dell, University of Guelph
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4:00 pm to 5:00 pm

Living and Loving in the Digital Age

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Alessia Zornetta, McGill University
LL.M Candidate, Faculty of Law
Tackling Online Disinformation by Improving Transparency in Content Moderation Practices of Social Media Companies

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Deborah Komarnisky, Carleton University
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PRESENTER ABSTRACTS

Mohamed Alikhani, Dalhousie University
PhD Student, School of Law

Finding a Space for the Development of Offshore Renewable Energy in Marine Areas in the Context of International Law and Marine Spatial Planning

Offshore renewable energy (ORE) can play an important role in ensuring states fulfill their international obligations to reduce greenhouse gases (GHG). ORE has also benefits for society by creating energy security and jobs. Most states have set specific targets to reduce GHG and one way to meet this target is by focusing on renewable energy. To play this role, coastal states should enact laws and policies that are consistent with their rights, entitlements and responsibilities under the international law of the sea. Placing offshore renewable energy in the marine areas may create some conflicts with the existing or planned human activities such as shipping and fishing and with ecosystem. Marine spatial planning (MSP), which is introduced for management of such activities and protection of the environment, should set clear objectives and policies for the development of ORE in the marine areas. This is necessary because public authorities must decide and grant permits for proposals made by developers in this sector and other competing sectors for the same marine space. MSP should contain policies that prioritize proposals for the development of ORE. A review of laws and policies in the selected states (Canada/in particular Nova Scotia, the UK and Denmark) shows that they have identified some objectives and policies for the zoning of ORE in the MSP. A comparative analysis of the objectives and policies among these states suggests commonalities and differences, which are based on their geographical, social, economic and environmental choices.

Luc Bourgeois, Dalhousie University
LL.M Student

Pushing the First Domino: Feeing the Whales in Canada

In 2019, the Canadian Parliament passed Bill S-203 (*Ending the Captivity of Whales and Dolphins Act)* to phase-out the captivity of cetaceans (i.e., whales, dolphins, and porpoises) for entertainment purposes. The Bill reflected scientific knowledge and, more importantly, signaled a shift in public attitudes relating to cetacean captivity. Undeniably, Bill S-203 raises many legal and normative questions.

Drawing on the capabilities approach, my presentation will explore the nature and impact of this Bill in the current Canadian political/legal landscape, as well as the newly introduced Bill S-218 (*Jane Goodall Act*) which would end the new captivity of elephants and great apes (including other similar nonhuman animals, if designated as such by the Governor in Council). I will suggest that the principles of the capabilities approach should guide the enactment and/or interpretation of laws pertaining to nonhuman animals.

Joshua Bowman, Carleton University
PhD Student, Legal Studies
Marx's Metabolic Rift and the Prevention Principle of International Environmental Law

The negative human impact on Earth's biosphere can not be overstated. As a global issue, this issue of continuing environmental degradation seems best suited for the frameworks and mechanisms already in place in the field international environmental law. In fact, since the formalization and institutionalization of international environmental law in the Stockholm Declaration of 1972, this issue has been addressed by a central principle – the prevention principle – which holds that states, who have a right to their natural resources, should prevent transboundary environmental harm. Using Marxist ecological theory, situated in Marxist international legal theory, I argue in this paper that the prevention principle can be understood as the legal adaptation to and attempt at the regulation of the metabolic rift, a concept used by Marx and elaborated on in recent works by Foster (2000) and Saito (2017), which is the alienation between humans and nature created by capitalist modes of production and resource extraction. Ultimately, I find that the prevention principle is a contradictory principle that does little to address the protection of the global biosphere.

Andrew Costa, Carleton University
PhD Candidate, Legal Studies
A Leaf in the Vine: The Human Limits of Earth Jurisprudence

National Governments and Environmental Justice Movements throughout the world have all sought new means on which to limit oncoming climate change. One such method is based on the conceptual innovations espoused among those writing on Earth Jurisprudence. Academic Scholarship in this area looks to understand humans' place in relational eco-centric earth communities. National Governments and Environmental Justice Movements build on these conceptual innovations to grant personhood rights to the natural world and its constitutive elements. While beneficial in some respects, Earth Jurisprudence scholars tend to overstate how decentered humanity is in their conceptual outlooks. This paper thus argues that granting personhood to the natural world anthropomorphizes its elements in ways that make it cognizable to humans alone. This is problematic because the means on which the natural world is rendered "human" are only granted legitimacy through state recognition in common law concepts such as rights. In contrast, diverse Indigenous legal traditions and ecological knowledges develop *in response* to the dynamics of the natural world. This paper argues that diverse Indigenous Nations thus determine their ever-changing place in nature through songs, legal traditions, oral histories, and governing protocols rather than forcibly placing the natural world in human conceptual legal constructs.

Brendan Dell, University of Guelph
MA Candidate, Criminology and Criminal Justice Policy
Try, Try Again: Canada's Challenge in Implementing a Safety Valve Bill for Mandatory Minimum Sentences

Canada has experienced a rapid increase in the number of offences carrying mandatory minimum sentences in recent years. A common critique of mandatory minimums is that they remove a judge's ability to craft fair sentences based on individual circumstances. This can disproportionately affect those already overrepresented in the criminal justice system, such as African Canadians and Indigenous peoples.

One method of circumventing this potential harm is to implement a "safety valve" which allows for some judicial discretion. This method would effectively allow judges to exercise their expertise in *not* applying mandatory minimums when doing so would be grossly disproportionate. Currently, Canada does not have a safety valve or any mechanism that allows exceptions to the application of mandatory minimums. However, since 2015, there have been five attempts by Canadian lawmakers to introduce this type of legislation.

By utilizing a multiple streams analysis (MSA), this paper explores why, despite multiple attempts, Canada has been unsuccessful in enacting a safety valve law. The MSA framework posits that policy change occurs when three streams – problem, politics, and policy – meet at critical times. This paper argues that despite multiple opportunities stemming from the politics and policy streams, Canada is lacking a catalyst driving the problem stream – a crisis or focusing event – that would ultimately spark a sense of saliency in, and pressure from, the Canadian public. I argue that it is this lack of external pressure that has prevented this issue from becoming a priority for the government's policy agenda.

Vanessa Di Feo, University of Toronto
LL.M Student
The Business Judgement Rule: When Does "Keeping it Lean" Venture into Criminal Negligence?

The Business Judgment Rule has many weaknesses as a rule of Canadian corporate law. Perhaps its greatest weakness, however, is that it provides senior officers with excessive latitude in their decision-making. Consequently, it perpetuates traditional measures of corporate success. This latitude has had fatal repercussions at long-term care homes across Canada. By putting the interests of the corporation first – rather than the health and safety needs of human stakeholders – Canadian long-term care homes failed to shield themselves from Covid-19. Staff were often left vulnerable at the frontlines of the pandemic with inadequate personal protective equipment and poor preparation to tackle the country's greatest health crisis of this lifetime. Because many long-term care homes valued money and time over people, senior officers often failed to take reasonable steps to avoid – or at least curb – this foreseeable virus. In doing so, they departed from the standard of care expected of them. As a result, numerous long-term care homes across Canada should be held liable for criminal negligence. The tragedies at these homes illustrate a significant void between corporate governance and criminal negligence. Looking to the future, absent legislative or judicial intervention, the best way to fill this void is to implement risk management strategies.

Deborah Komarnisky, Carleton University
PhD Candidate, Legal Studies
The Reward-Centric Consumer: Governing Consumer Identity, Agency, and Brand Loyalty in the Retail Market

Post-modern retail consumption is reward-centric. The scholarly literature shows that loyalty reward cards are used to reward and govern consumptive behaviour with points, advertisements and the promises of discounts, enticing further consumption and reinforcing consumer identity. Loyalty reward cards reflect a branded image of a retailer to consumers. The reward points, discounts and advertisements offered through a loyalty reward card are used as a way to govern and emotionally entice further consumption by consumers. Benefits set by retailer are provided in exchange for ongoing collection of consumer data. The rewards transform the capitalist retail market into a reward-centric retail market. Within the reward-centric retail market, loyalty rewards have a fictious value acting as an emotional status symbol for consumers and an incentive for future consumption. Loyalty card membership form a consumer consumption club which seduces consumer consumption with the fetish and desire of reward points accumulation within the form of reward-centric capitalism. The central research question I will consider is: how do loyalty reward cards not only track consumer consumption, but also frame consumer agency and identity by governing a desire for branded consumption, and the relationship between consumers and retailers, and between a community of consumers within reward-centric capitalism?

Nicole Lokstadt, McMaster University
A Crash-Course in Tree Care and Pruning: Indigenous and Treaty Rights in the Canadian Constitution

The current originalist approach to constitutional interpretation in matters of Indigenous and treaty rights is discriminatory and prevents meaningful reconciliation and justice. In my paper, I discuss John Borrows' argument for a living tree approach to the interpretation of Indigenous and treaty rights in the Canadian constitution, as described in "(Ab)Originalism and Canada's Constitution". However, while Borrows argues we must reject originalism but retain a conception of history, I argue that this understanding is too close to originalism to give Borrows the results he aims for. Depending on the history used, we run the risk of reinforcing the "paradigm paralysis" the Canadian government has existed within for the past century. I argue instead that we should be looking at the forest rather than a single living tree if we are to achieve meaningful Reconciliation between Indigenous and non-indigenous peoples in Canada. In other words, a living tree approach, which recognizes the pre-existence of Indigenous sovereignty, is better suited to dealing with current and past injustices, and will lead to overall better law.

Steve Lorteau, University of Toronto
LL.M Student
An Empiracal Analysis of Climate Utilitarianism and Climate Federalism

Constitutional and environmental lawyers have frequently debated the distribution of constitutional powers in environmental matters. On one side, proponents of unitarianism argue that unitary governments are more effective in avoiding collective action problems barriers and inter-jurisdictional carbon leakage. On the other, proponents of federalism insist that subnational variations in climate policy create opportunities for policy experimentation and overlapping climate change mitigation efforts. Yet, more often than not, the unitarianism versus federalism debate is predicated upon anecdotal evidence or conjecture. The present study seeks to overcome this shortcoming. This study used regression analyses to ascertain the effects of unitarianism and federalism (types of state) in regard to CO_2 emissions in a sample of over 178 states over 7 timepoints. Results suggest that federal states emit more CO_2 emissions. On an annual basis, federal states pollute on average between 5.353 and 10.576 more tons of CO_2 per capita than unitary states, or between 0.2856 and 0.6480 more tons of CO_2 per unit of gross domestic product (GDP). In contrast, federal and unitary states did not differ in regard to environmental treaty ratification speed, rule of law indicators, general environmental performance, economic structures, emission sources, and fossil fuel reliance. These findings highlight the importance of formal constitutional structures in understanding inter-state variations in CO_2 emissions. Moreover, they suggest that federalism may be a systemic limitation on the effectiveness of climate change mitigation efforts. This latter implication provides empirical support for proponents of unitary systems in the ongoing debate on environmental federalism.

Chika Maduakolam, York University
Revisiting Women's Rights as Human Rights: Analysis on the compliance of Canada with CEDAW on Gender-Based Violence

Charlotte Bunch (1990) asserts the importance of treating women's rights as human rights both in theory and practice. Several years later, there is still ongoing conversation on whether women's rights are indeed an "inalienable, integral and indivisible part of universal human rights" (UDHR), especially concerning gender-based violence. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) was implemented to promote and protect women's rights ensuring equality and non-discrimination of women under a human rights framework.
This paper will highlight the gender-based violence response from Canada in respect to the List of Issues the Committee on the Elimination of Discrimination against Women identified in 2016. In assessing the (non) implications of Canada's failure to respond and make substantive efforts to deal with violence against indigenous women and girls, the paper will look at Canada's inability to provide sufficient protection to vulnerable indigenous women and girls. Canada, in 2020, committed to releasing a National Action Plan (NAP) to end violence against indigenous women. There is a concern, however, by local human rights actors that the proposed robust NAP has not yet been implemented and the current NAP is not a suitable response to the issues concerning indigenous women.
The paper argues that CEDAW is limited in its ability to deal with the reality of gender-based violence against indigenous women in Canada. The paper will then consider the tension between CEDAW requirements and local gender justice in Canada.

Kimiya Missaghi, Carleton University
M.A Candidate, Legal Studies
An exploration of how resilience combats oppression among minorities: A case study of the Baha'i underground university in Iran

The story of violent oppression of the Baha'i community of Iran, the country's largest religious minority, shares significant patterns of minority oppression globally. Since its inception in the mid-19th century, the Baha'i community has been subject to a systematic mix of violent deprivation in forms of arbitrary jailing, torture, killing, economic deprivation, marginalization, and social stigmatization. One form of state sanctioned persecution that has been systemically implemented is prohibiting Baha'i students from attending university. The Baha'i community has responded to this injustice and formal exclusion by creating their own underground university known as the Baha'i Institute of Higher Education (BIHE), which is run by volunteer faculty and is internationally recognized. This approach of attaining knowledge as an act of resistance is very interesting for other groups in situations of oppression to think about how they're lives can be acts of resistance towards a better good.

A recent study conducted at Carleton University interviewing fifteen alumni from this underground university explored themes of resiliency, oppression, resistance, and education and seeks to advance discourse on overcoming oppression and systematic barriers among minority groups. This nonviolent approach to overcoming oppression and responding to violence brings questions of resiliency among the individual students and resiliency among an oppressed community. Mixed methodology including qualitative interviews, interdisciplinary comparative theoretical research and statistical analysis, were used to examine the nature of resilience of alumni of the Baha'i Institute for Higher Education.

Veronica Overlid, Carleton University
PhD Candidate, Legal Studies
Mobility as resistance – challenging international refugee law through "the migrant canvas" from Central America

Between 2018 and 2019, several "migrant caravans" moving from Central America towards the United States attracted vast political and media attention. Reaching an estimated 10,000 individuals in Mexico only in October 2018, these were relatively small compared to the around 400,000 people that yearly attempt to cross the Mexico-US border. Yet, by physically moving north, organizing in groups and refusing to abide by established (and legal) channels for movement, the migrant caravans challenged a number of core tensions in international refugee law, such as resisting containment in the Global South and constraints on mobility, complicating rigid categories related to reasons for moving and conventional ways of perceiving refugeehood.
Operating mostly as reactive rather than preventative, international refugee law rarely engages with issues of poverty and instability that lie at the root of most displacement. Increasingly militarized borders and inadequate development aid, coupled with US pressure upon Mexico to deport those moving north, leaves migrants contained in Central American states with fewer resources for providing protection. International organizations mandated to protect displaced people maintain the status quo, as they are forced to balance the needs of target groups with the largely unwelcoming

attitude of their donors, mostly states from the Global North. The individualist conception of a refugee in international refugee law, including the distinction between migrants and refugees, plays an important role in this regard, as it renders larger structures such as the social, economic and political context of displacement less visible.

In this proposed paper, while acknowledging the competing understandings of what this coordinated, large-scale movement is about, I inquire into how the various framings of the caravans challenged or reinforced individualist conceptions of a refugee as encompassed with the definitions in relevant international refugee law instruments such as the 1951 Refugee Convention and the Cartagena Declaration. I specifically aim to consider the responses by the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), the two main UN agencies working with people on the move, and ask how they mobilized and engaged with international refugee law's definition of a refugee when addressing this phenomenon, as well as the responses' implications for refugee protection.

John Petrella, McGill University
LL.M Candidate, Faculty of Law

Playing Doctor: Judging Judges' Analyses of Expert Evidence in Medical Malpractice Lawsuits

Doctors are sued for alleged medical malpractice approximately 2,000 times each year in Ontario. When medical malpractice cases reach trial, judges' lack of medical expertise requires that they receive assistance from medical experts to reach informed decisions. Accordingly, in both theory and practice, medical expert evidence dictates whether plaintiffs receive compensation for their injuries and whether physicians' competence is criticized publically. This paper assesses why, and how, judges decide to rely on some, rather than other, medical expert evidence through the lens of a Foucauldian Discourse Analysis. Specifically, this paper draws out common themes in the ways in which judges justify their decisions to accept the expert evidence or certain experts while rejecting and silencing competing expert evidence. The emergent themes, including judges' frequent reliance on inherently subjective markers of credibility, or lack thereof, demonstrates the ways in which judges employ rhetorical devices to constitute, and reconstitute, their institutional power in medical malpractice lawsuits. Accordingly, this paper seeks not only to understand how judges' reason when faced with conflicting medical expert evidence, but also to problematize the inherent power struggle that emerges between judge and medical experts in the adjudication of medical malpractice lawsuits and the implications that struggle has on the administration of justice.

Tessa Penich, Carleton University
MA Candidate, Legal Studies
"We're being replaced by bloody robots!": Sex robots, "real" womanhood, and the power of love

Representing part of my in-progress MA thesis, this paper critically analyzes feminist opposition to the development, sale, and use of sex robots. No longer the subject of science fiction, sex robots have seen a flurry of media and scholarly attention; the perceived threat of this technology has also inspired a radical feminist advocacy group, The Campaign Against Sex Robots. My thesis traces how discourses surrounding sex robots (re)produce or refuse dominant understandings of personhood, humanity, gender, sex, relationships, and intimacy. I use a feminist critical discourse analysis to examine anti-sex robot arguments for their underlying ideological assumptions. In this paper, I present the preliminary findings of my thesis research, focusing on how discourses of womanhood and love are mobilized by anti-sex robot advocates. First, I examine how 'real' womanhood is defined, understood, and 'defended' by anti-sex robot advocates, and explore how these arguments are linked to trans-exclusionary radical feminism through a fear of 'manufactured females' and the annihilation of 'real' women. Next, I trace how the ideals of love, mutuality, and relationality are mobilized in anti-sex robot arguments, asking what political work discourses of love do and what they might obfuscate or obscure. Drawing from sex-positive feminism, queer theory, and posthumanism, my work ultimately attempts to offer an alternative feminist response to sex robots. How feminist scholars engage with this technology *now* will impact the design, use, and social effects of sex robots in the future.

Brajesh Ranjan, McGill University
DCL, Faculty of Law
Delays in Access to Justice in North America – Is Judicialization of Litigation without Judicial Accountability Stymieing Reforms?

Access to civil justice is in a state of crisis in North America. Over the last fifty years, both Canada and the US have introduced a plethora of reforms to tackle court delays. The North American civil justice reform movement is largely predicated on the assumption that the self-serving machinations of litigants and lawyers are primarily to be blamed for delays. Accordingly, reform interventions have led to an almost complete judicialization of the litigation process by taking the control over litigation out of the hands of parties and vesting it in judges. This shift in control has been effected by granting judges wide procedural discretion in managing litigations. Yet, the move towards managerial judging has failed to reign in the problem of court delays.

My paper argues that the reliance of reforms primarily on judicial discretion to reign in the problem of delays, without more, has become their undoing. Under the law, judges are not bound to give reasons for managerial decisions. Further, the *final judgment rule*, the *harmless error rule* and the highly deferential *abuse of discretion* standard practically insulates managerial decisions from any meaningful appellate supervisions. The present doctrinal apparatus around managerial decisions therefore has allowed judges to abuse their discretion by choosing not to apply relevant rules introduced with the specific purpose of mitigating delays. By not creating an accountability framework within which judges must exercise their wide managerial powers, reform interventions have further entrenched the mischief of delays that they, in fact, intended to uproot.

Kayne Rivers, University of Waterloo
MA Candidate, Peace and Conflicts Program
Water through the Wall

Capitalism and Fascism may not be the same, but they do make for good bedfellows. Over the past four years President Donald Trump unknowingly or knowingly emboldened white supremacists and fascists through his rhetoric. Although during the Obama administrations or administrations prior this wouldn't have been unheard of, the new fervor that has inhabited the hearts of many, causing hatred and bigotry to run a muck must be watched carefully. President Donald Trump was not a fascist however, he opened the doors to the dormant forces of the North American political underbelly. In the future as we are seeing before our eyes, we will see white supremacists organized and reformed, all making them more palatable to the populous. As fascism becomes an ever-present threat we as citizens must be prepared to combat it not only in the streets when it is vulnerable but also in the worst case scenario; after fascism has taken a foothold in the governing structure. The aim of this paper is to look back at history and extrapolate nonviolent strategies of combating fascist ideology. This paper is not aimed to aid academics in their quest for knowledge or for casual purveyors trying to gain some trivial history facts to impress their liberal friends at socially distanced park get togethers. This paper is written to and researched to be used by the activist, the organizer, those who will not stand idle while fascism slowly creeps into normal political discourse.

Miroslaw Michal Sadowski, McGill University
DCL Candidate, Faculty of Law
Limits of Democracy, Limits of Law: Between Central Europe and Hong Kong

Moving further into the 21st century, Francis Fukuyama's words about the end of history and what seemed to confirm them, i.e. the 90s *Pax Americana*, feel a part of not only the past, but a past so distant that it literally is 'a foreign country'. The new era, the times of post-truth and fake news, is also a time of testing, perhaps even moving, the limits of democracy and the limits of law. The purpose of this paper is to critically analyse the testing of these limits on the selected cases of 'recent' democracies – the countries of Central Europe and the China's SAR of Hong Kong. In the first part of the paper the author reviews the theoretical concepts which he will use in the study, the notions of the rule of law and collective memory. The second part of the paper is devoted to a brief introduction of the examined cases, with a particular focus on these events which shaped their legal frameworks and political systems in such a way that they are more prone to experience issues with regards to the rule of law. In the third part of the paper the author investigates the threats to the rule of law in the particular cases of Poland, Hungary and Hong Kong, ultimately venturing to make predictions on whether or not limits of law will be pushed further in Central Europe and the SAR, or if the values of liberalism will prevail in the third decade of our century.

Oana Stefanescu, McGill University
D.C.L Candidate, Faculty of Law
Uses and Abuses of External Case Law in the Practice of International Adjudicative Bodies: From Precedent-Following to Principled Decisions

As external cases are becoming increasingly present in the legal reasoning of international courts and tribunals, diverging opinions soar with respect to the role and consequences of using these sources. By combining doctrinal inquiry with comparative case law analysis from a variety of different legal systems and jurisdictional regimes, this research seeks to answer following main questions: (i) What do we know or think we know about the practice? (ii) What is the practice telling us about the limits of the adjudicatory process?

Furthermore, it argues that the academic debate on the topic can be recentred around the principle to treat like cases alike, and different cases differently, rather than the concept of precedent. To this extent, it proposes an alternative understanding of the principle, i.e. as a feature inherent in adjudication, which acknowledges its bivalence and tries to avoid some of the problems ensuing from other accounts. This interpretation does not deny the relevance of system-based values and coordinates, but reconceptualizes them in an effort to rethink the law's boundaries and the part that adjudicators play in changing these boundaries, including by blurring the lines between what is law and what is fact. Ultimately, it is hoped that this work will capture the pervasive nature of the principle in a world of both shared and competing values, and that its conclusions will resonate with some of the intuitions that exist about the nature of adjudication as a system-crossing practice of law.

Holly Wood, Carleton University
MA Candidate, Legal Studies
Why Does Canadian Criminal Law Fail to Adequately Respond to Human Trafficking Offences?

My thesis is focused on identifying systemic barriers that prevent human trafficking victims from prosecuting their trafficker. Currently, there are a lot of legal barriers leading to the unsuccessful prosecution of human trafficking cases. My project's aim is to research the resources and support that can be provided to all those involved in the court process, so that prosecution is successful and appropriate rehabilitation and punishment options are implemented. Statistics tell us that there are on average 15,000 individuals trafficked in Canada each year; and this number represents only those who reported the crime. 65% of all Human Trafficking cases happen in Ontario. Recently, Ontario released a statistical report stating that 52% of all human trafficking cases in the Ontario court system do not end in prosecution for human trafficking offences outlined under the Criminal Code. 52% of cases end in lesser charges such as criminal harassment or mischief, plea deals, or full-out acquittal. These lesser charges often hold a maximum punishment of 6 months imprisonment. When you consider the fact that the court process is long, gruelling and traumatizing for a victim, these 6 months are up in the blink of an eye – and may even be served before a trafficker faces a judge. Victims of human trafficking need access to justice and should not have to live in fear. Most importantly, human traffickers should be held accountable for the crimes committed and penalized to the fullest – and most reasonable - extent of the law.

Alessia Zornetta, McGill University
LL.M Candidate, Faculty of Law
Tackling Online Disinformation by Improving Transparency in Content Moderation Practices of Social Media Companies

In recent years the world has observed the enormous impact that social media platforms have in shaping society and democracy. This impact, however, has often proved negative especially in light of the spread of disinformation, hate speech and political interference. Major networks such as Facebook, Twitter and YouTube moderate the content featured in their platforms and decide what should or not be allowed, according to so-called "community standards" and "terms of service" which users accept to comply with when registering. This practice has for long been criticized for its opacity and arbitrariness, which has led academics and regulators worldwide to suggest more stringent oversight and limitations.

I will address the current criticism over companies' insufficient efforts to address online disinformation and how companies are reacting to regulators' demands to limit the spread of the phenomenon, given its pervasive impact on society and real-life consequences. To do so, I will focus on the role of transparency mechanisms which were adopted by companies either voluntarily or to comply with regional legislation. However, I will claim that the current transparency mechanisms present major shortcomings that prevent a comprehensive comparison and evaluation of companies' actions and compliance with national and supranational regulations. By focusing on regulatory initiatives in different jurisdictions, this research will show how to improve transparency mechanisms through standardization and uniformity. Indeed, only with reliable and measurable data, regulators will have the necessary information to actively oversee social media platforms and introduce efficient regulation.

MESSAGE FROM THE ORGANIZER

On behalf of Mary McCluskey, *the 2021 Graduate Legal Studies Organizer*, I would like to extend my gratitude to a number of individuals and groups for making this year's conference another great success.

To the Graduate Legal Studies Association committee members, thank you for taking the time out of your schedules to assist with the planning and taking on tasks leading up to the conference. Without the generosity of your time and assistance, this conference would not be a success – thank you.

To the faculty at Carleton University, thank you for supporting this student-led conference for another year. A special thanks goes to Siobhan MacLean, the communications coordinator, who helped behind the scenes with the preparation and navigation of the conference. I greatly appreciate your time.

To the presenters, thank you once again for providing us with your research passions and rich ideas. I am 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, 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. I have enjoyed my role as organizer for the 14th annual legal studies conference, and I look forward to what next year's conference may bring.

Sincerely,

Mary McCluskey