

Call for Papers

**Toward Critical Mass:
The Second Annual Graduate Student Conference of
The Toronto Group for the Study of International, Transnational, and Comparative Law**

9-11 January 2009

The Toronto Group for the Study of International, Transnational, and Comparative Law is pleased to announce its second annual graduate student conference. The principal aim of the Group's inaugural conference was to provide a forum for critical inquiry and collaborative discussion. Building upon its closing panel, in which we posed the question "what is to be done?", our second annual conference is intended to drive this newly created forum towards a sharper, more systematic understanding of how legal norms and institutions influence – and are, in turn, influenced by – entrenched or emerging political and economic structures. Panels will be chaired by legal scholars from the University of Toronto Faculty of Law and Osgoode Hall Law School, York University. Confirmed keynote speakers include Andrew Arato, Dorothy Hirshon Professor in Political and Social Theory at the New School for Social Research, and Jean Cohen, Senior Professor of Political Thought at Columbia University.

We invite papers relating to themes broached in one or more of the seven streams detailed below. While the conference's objective is to facilitate engagement with issues arising from these and related areas of legal scholarship, submissions from graduate students in disciplines other than law are also highly encouraged.

For further details, please see <http://torontogroup.wordpress.com/>.

Submissions Procedure

Please submit an abstract of no more than 400 words, specifying the stream(s) for which you would like to be considered, as well as a brief biographical statement, including information regarding your current academic affiliations and general research interests, by Monday 27 October 2008. Authors of all submissions will be notified by Monday 10 November 2008. Those interested in organizing a panel are urged to contact the organizing committee as early as possible. Submission materials and general inquiries should be addressed to torontogroup2009@gmail.com.

Organizing Committee

Amaya Alvez – Ph.D. Candidate, Osgoode Hall Law School, York University
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Irina Ceric – Ph.D. Candidate, Osgoode Hall Law School, York University
Michael Fakhri – S.J.D. Candidate, University of Toronto Faculty of Law
Derek McKee – S.J.D. Candidate, University of Toronto Faculty of Law
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Streams

1) *Is There a Progressive Constitutionalism?*

What do constitutions offer to those seeking progressive societal change? Constitutions that hold themselves out as the guarantee and embodiment of freedom, equality, and self-government have always been subject to criticism that they in fact entrench the problematic status quo. Constitutions have been used to prevent progressive social reform, from the striking down of New Deal labour laws in the 1920s through to the stifling of campaign finance restrictions, affirmative action and school integration programmes in the last few years. Many highly contested political decisions have been taken out of the hands of ordinary people, and placed in the hands of judges, who are seen as the guarantors of the constitutional order. The nature and content of fundamental human rights is, it seems, something that the ordinary political energy of the people cannot be trusted with. From another perspective, constitutional protection of human rights allows judges to act as a vanguard of social change, which can be seen in progressive decisions in relation to sexual freedom and same-sex marriage. Further, recently in Latin America, social movements, indigenous peoples, and other groups traditionally excluded from constitutional affairs have been playing varying roles in the constitution-making enterprise. These types of “participatory” endeavour challenge the traditional Western approach to constitution-making – a constitution drafted by experts whose legitimacy rests not in the process that resulted in its adoption but on the kind of rights and institutions that it establishes. What is the critical legal response to constitutionalism? Are constitutions a “hollow hope” in the search for progressive goals, as Rosenberg proposed? Should we be seeking to take our constitutions away from the courts and letting popular constitutional sentiment determine their meaning, as suggested by Tushnet and Waldron? Should we be empowering ordinary political energy to flow through the use of referenda or popular initiatives? Is “weak form” judicial review the appropriate balance between judicial oversight and democratic legitimacy?

Contact Amaya Alvez (AmayaAlvezMarin@osgoode.yorku.ca) for further information.

2) *The Future of Critical Legal Studies*

The future of critical legal studies (CLS) is supposedly gloomy: “Like a meteor the Crits appeared, shone brightly for a short time and have gone” (M.D.A. Freeman, *Lloyd’s Introduction to Jurisprudence*, 7th ed. (London: Sweet & Maxwell, 2001) at 1055). Yet legal articles and books that take a critical perspective on law abound, drawing on a wide array of social theorists, philosophers, and political thinkers. This shows that the CLS movement may have fragmented, but critical legal analysis is still going strong. But does this diversity of critical approaches prevent such approaches from achieving a critical mass that might rival the dominant legal approaches, exemplified by Posner’s economic analysis and Dworkin’s liberalism? This stream seeks contributions that attempt to show the way forward for critical legal analysis. Is there a need for a “movement”, and do the disparate approaches in use today contain enough common ground to base such movement on? Which concepts and which thinkers provide fruitful and relevant philosophical and social theoretical springboards? Is mainstream jurisprudence of any use to critical legal analysis, or vice-versa? Is a reconstructive “legal liberalism” the new CLS in increasingly neo-liberal states, or are Leftist approaches still theoretically and politically viable?

Contact Mark Bennett (mj.bennett@utoronto.ca) for further information.

3) *Law, Empire, Imperialism*

Public international law has come under increasing fire for its inability to effectively intervene against, or resist co-optation by, the proponents of the so-called “War on Terror”. Whether characterized as “Empire’s Law” (Bartholomew) or negated by the apparent rise of a “Lawless World” (Sands), the future of cosmopolitan international law appears to hinge on its continued resilience in the context of a global order shaped by the US imperial project. At the same time, domestic economies and legal systems, particularly those of developing and transitional states, continue to be the subjects of intervention by a transnational Rule of Law promotion industry, reviving the legal imperialism accounts attached to previous law and development movements. Papers and panels addressing these themes will seek to illuminate the often-hidden role of law and lawyers in current conceptions of imperialism, Empire and/or hegemony. How is law implicated in on-going debates about the US as an imperial power? What are the links between critical approaches to international law (e.g. post-colonial legal theory, NAIL, TMAIL) and historical and emerging conceptions of legal imperialism? Can lawyers and legal scholars engage in legal *anti-imperialism*?

Contact Irina Ceric (ceric@yorku.ca) for further information.

4) *After Globalization and Its Discontents*

To date, international economic law has struggled to establish frameworks that incorporate the complexity and interconnectedness of international life. This is exemplified in the trouble scholars have in linking fields (e.g. “trade and environment” or “finance and human rights”). Many proceed with assumptions of what a particular field of law constitutes and aim to balance or reconcile different fields; others’ starting assumption is that the world is interconnected and consider law only as a response to this phenomenon. This stream is intended to explore how legal analysis in international economic law can be developed to better understand how the world is interconnected. How might we establish ways of thinking of connecting fields of study? What are the blind-spots and limitations of the “linkage” debate? Which laws and institutions are often taken for granted as being necessary and which laws and institutions are we ignoring that might be affecting international economics? How and to what effect are laws and institutions characterizing a particular type of global market?

Contact Michael Fakhri (michael.fakhri@utoronto.ca) for further information.

5) *Fragmentation and Pluralism*

Since the mid-twentieth century, public international law has increasingly been fragmented into specialized regimes such as those dealing with trade, labour, the sea, human rights or war crimes. These multilateral treaties and international organizations are sometimes inclined to play by their own rules. This fragmentation of international law is accompanied by the proliferation of informal or non-state regulatory processes – from transgovernmental networking to commercial arbitration (developing a new *lex mercatoria*) to invocations of a “global civil society”. What is the significance of this legal fragmentation? Is it a problem, and if so, can law solve it? Is constitutionalism an answer? Is there hope of developing a new “international law of conflicts”? Can theories of legal pluralism, developed at the societal level, help us to understand law at a global level? If so, how should such theories conceive of “law” (as distinct from normativity in general) or the idea of a “legal system”? What are the politics of such a global legal pluralism? Does the battle against state legal centralism

have any relevance once our perspective has shifted to the global scale? Is legal pluralism a first step toward radical democracy, or does it mean abandoning law in favour of functionalist, technocratic domination?

Contact Derek McKee (derek.mckee@utoronto.ca) for further information.

6) *Performativity and Programme: International Legal Theory between Post-Structuralism and Neo-Marxism*

International legal theorists working within the Leftist and critical traditions frequently confess to being at a loss when confronted with the tension between discourse analysis and political economy. On the one hand, the post-structuralist assault on “binary regimes” continues unabated, with its advocates routinely insisting that class-based analyses of international legal structures are incapable of capturing the multifariousness of a world in which self-standing identities have given way to rhizomatic flows and commercial and communicative networks taken up the mantle of internationalism. On the other hand, neo-Marxist critiques of late modern capitalism consistently target the tongue-in-cheek smugness of the putatively emancipatory repudiation of “grand narratives”, dismissing calls for an international law that would respond to the “interstitial” demands of a decentered “multitude” as symptoms of self-deception or collaborationism. Papers and panels in this stream will grapple with the roots and ramifications of this tension, canvassing proposals for its overcoming and exploring the mechanisms through which it compounds many of international legal theory’s most deeply entrenched antinomies. Is it possible to conceive of a mode of theorizing international law that would allow us to engage with questions of distribution without leaving us open to charges of determinism? Might we be able to shed light upon the elaboration, dissemination, and transfiguration of international legal norms without stripping ourselves of our appreciation of the force of ideology? How are we to marry Marx to Foucault (or Foucault to Marx) without falling prey to the kinds of platitudes that have recently found a new home in Hardt and Negri? And where is the place of the legal form – and legal formalism – in all of this?

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7) *Transitional Justice: Justice on Whose Terms?*

Transitional justice is now an established field of legal study. The “truth v. justice” debates (Rotberg & Thompson) have generally moved toward “peace v. justice” debates, for example with respect to the International Criminal Court’s warrants for the leaders of the Lords Resistance Army in northern Uganda. The ICC’s focus is on African nations, while the US, China and other major perpetrators of mass human rights violations are not signatories to the Rome Statute. Calls for retributive justice and calls for restorative justice are not equitably made. Meanwhile, constitutional drafting by Western consultants in places such as Iraq forms part of a veritable industry that has arisen to “assist” in achieving and maintaining the rule of law in transitional justice contexts. But do transitional justice scholars produce practical solutions to the very real problems faced by countries emerging from periods of mass human rights violations? In particular, how can peace and justice be achieved without some trade-offs? What is the connection, if any, between transitional justice and constitutionalism? Can transitional justice mechanisms avoid playing a neo-colonial role in emerging democracies? What can law legitimately offer to those seeking transitional justice?

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