# COLLECTION OF ABSTRACTS

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OPENING KEYNOTE (OCTOBER 16TH, 10:00-10:45)

Michael TREBILCOCK (Toronto): Between Trade and Development: The Future of the World Trade System

Abstract: The presentation traces the role of developing countries in the GATT/WTO trading regime, and the changing legal framework for their participation. It then maps onto this framework evolving schools of thought amongst development economists on strategies for economic development. Professor Trebilcock goes on to argue that the paralysis in the current Doha Round of the WTO, paralleled by the dramatic proliferation of Preferential Trade Agreements, requires some fundamental rethinking of the orientation of the multilateral (WTO) trading system, in particular the need to be more accommodating of Plurilateral Agreements amongst sub-sets of members that are open to subsequent accession by other members, primarily on a conditional MFN basis.

INTERNATIONAL HUMAN RIGHTS LAW (October 16th, 11:00-12:15)

Jennifer ORANGE (Toronto): Human Rights Museums as International Norm Entrepreneurs

Abstract: In a surprising turn of events, museums have taken an entrepreneurial role in cultivating the legal attributes of the international human rights project. Over the last 25 years, museums on six continents have become presented both human rights histories and contemporary violations of international human rights law. Through their exhibitions, programs and changes to collections management priorities, they are offering interpretations of human rights law to their visitors. Dozens of museums are explicitly working to improve compliance with existing positive law and to provide deeper nuance to interpretation of human rights norms in ways that we normally associate with states, United Nations agencies and human rights NGOs. What’s more, these museums are setting their own standards through highly organized communities of practice and directing their members to work for the realization of human rights at home and abroad.

This paper will (1) review the transition from museums as “cabinet of curiosities” to museums as servants of the public interest, (2) investigate the community of practice that museums have formed to advance human rights, (3) identify museums as agents in the generation of shared understandings concerning human rights norms, and (4) propose museums as entrepreneurs that are bolstering a practice of legality.

There are dozens, if not hundreds, of museums around the world that are engaged in human rights projects. A museum in Vietnam works to eliminate discrimination against single mothers. A museum in Malawi runs a community HIV/AIDS prevention program that focuses on de-stigmatizing conversations about sex, and a British museum campaigns against modern forms of child labour and human trafficking in identified states. While museums address the wide spectrum of human rights, museum discourse most often focuses on the prohibition against discrimination. I argue that museums are leveraging their competitive advantages to change the attitudes of their visitors in a way that positively affects behaviours, thereby aiming to change social norms as “norm entrepreneurs”.

In Gil Scott-Heron’s iconic 1970 poem, “The Revolution Will Not Be Televised,” he wrote about the need to “change your mind before you change the way you live and the way you move.” In
my view, museums are using their expertise to change discriminatory attitudes in order to improve compliance with established legal norms and influence the interpretation and evolution of international human rights law. In a way, museums are stepping up where legal and political institutions have failed.

Using the “community of practice” framework first created by Jean Lave and Etienne Wenger, I will argue that museums are developing professional goals and standards for their work in a community of practice driven by a desire to improve the realization of human rights. Outside groups interact with this museum community (and sometimes become members of it), such as civil society groups, NGOs, governmental ministries of culture and education, UN agencies, such as UNESCO and UNICEF, and even judicial bodies such as truth and reconciliation commissions. Using a constructionist model of identity formation through shared understandings, I will examine how the human rights museum community of practice is affecting identities, goals and norms relating to human rights for both state and non-state actors.

These human rights identities, goals and norms are subsequently informing international legal norms and practices. I will rely on Lon Fuller’s criteria for legality and Jutta Brunnée and Stephen J. Toope’s interactionalist account of international law formation to argue that museums are working to promote the legitimacy of international human rights law by ensuring a consistency between social norms and the international human rights norms. In this way, museums are entrepreneurial agents in a cycle of legal norm evolution.

**Anna SU (Toronto): Power, Principle and the Promotion of Global Religious Freedom**

**Abstract:** Recent developments on the deteriorating state of global religious freedom present a case for a fresh evaluation of the existing international legal machinery to protect and advance its cause. The right to 'freedom of religion or belief,' as enshrined in the UDHR and the ICCPR, forms an important part of the pantheon of human rights, which are the subject of international protection. The machinery however does not only encompass the various UN councils or committees that focus on this issue but also other approaches taken through domestic and regional processes. This paper focuses on the phenomenon of third-party religious freedom promotion by certain Western entities such as the United States, Canada, Italy and the European Union and evaluates their policies vis-à-vis the advancement of international human rights. While it does not discount multilateral approaches, third-party religious freedom promotion has a predominantly unilateral character. As a result, it is not without critics, both inside the promoting countries and abroad. I look at three major criticisms in the literature to this approach and evaluate possible responses to each.

**TU Kai (Tsinghua): The Ethnic Autonomous Administration: An In-Between Case**

**Abstract:** Professor Tu’s presentation explores the history of the establishment of the Xiang Xi Hmong Autonomous Prefecture, an ethnic autonomous administrative division in Hunan province. He will highlight some significant characteristics of the Chinese institution of ethnic regional autonomy, which fundamentally departs from both the Austrian Marxist and liberal-nationalist prescriptions for solving the so-called national question. The Chinese design involves neither a leftist “ethnic cultural autonomy”, nor a rightist “devolved government.” Instead, it
appreciates the cultural psychology of ethnic groups, but also addresses issues beyond cultural affairs. The institution has administrative boundaries like any devolved government, but the ethnic group that forms the majority of the region's population cannot monopolize the local government. Local government cannot become a “nationalized” apparatus dominated by cadres and intellectuals of a particular ethnic minority. The Xiang Xi Tujia-Hmong Autonomous Prefecture is a legal arrangement that balances the interests of all the resident groups, thus providing the possibility of a true “people’s government.” The Tujia case does not represent a universal solution inasmuch as the characteristics of China’s ethnic autonomous regions vary. However, it may still enrich our understanding of the history behind the Chinese institution of ethnic autonomy and contribute to contemporary debates in both academic and political arenas.

HISTORY AND THEORY OF INTERNATIONAL LAW I (OCTOBER 16\textsuperscript{th}, 2:15-3:45)

Douglas SANDERSON (Toronto): Indigenous Inter-National Relations during the Pre and Early Contact Periods

Abstract: In the centuries before European contact, Indigenous nations in what is now called North America developed a complex system of legal and diplomatic relations, entering into treaty alliances with neighboring nations to create empires of political and military domination. On the East coast, the backbone of inter-national relations was a set of diplomatic procedures known as wampum diplomacy. It was into this continent of empires that the first settler people stepped. Contrary to popular belief, the early and middle encounter period was dominated by Indigenous, not European, diplomatic protocols and procedures. In this presentation, Professor Sanderson will describe the contours of wampum diplomacy and will display replica wampum belts to demonstrate the reach and staying power of wampum diplomacy in the early and middle encounter periods.

LI Zhaojie: The Impact of International Law on the Transformation of China’s Perception of the World: A Lesson from History

Abstract: Any nation’s attitude towards international law results from that nation’s world-outlook. In this respect, China is no exception. But what makes the Chinese case distinct from others is its unique historical experience. The legacies of history shape the present perspectives. We human beings make our own history not, as just as we please, but only "under circumstances directly encountered, given, and transmitted from the past." But, in no country does history seem to be playing a role as decisively as in China.

If one takes a brief look at modern Chinese history, he or she may find it a history of a broad spectrum of earth-shaking and kaleidoscopic changes in the modern-nation-building process. In the space of one and a half centuries, China was reduced from a “Middle Kingdom” at the center of the universe to a semi-colonial society at the hands of foreign imperialism; then it emerged as an independent republic and eventually became a major world power. Concomitant with such great changes was the radical and yet fundamental transformation of the Chinese perception of world
order from the Sino-centric one based on Confucianism into modern Chinese nationalism embracing the idea of sovereign equality and independence.

An often-asked question is what the *leitmotif* is that cuts broadly across the process of such transformation. As observed by a distinguished historian, it is certainly not a passive response to the onslaught of the West, but an active struggle of the Chinese to meet the foreign and domestic challenges in an effort to rejuvenate and transform their country from an outdated Confucian universal empire to a modern nation-state, with a rightful place in the family of nations. This author fully agrees with this observation. Along the line of this thinking, the formation and development of the Chinese attitude towards international law is therefore a reflection, from a legal perspective, of this process of historical transformation.

**HISTORY AND THEORY OF INTERNATIONAL LAW II (OCTOBER 16th, 4:00-5:30)**

**Tony CARTY (HKU): Historiography and History of International Law**

**Abstract:** Professor Carty’s presentation will draw on his Hong Kong RGC Project, which is on the history of western international law, its impact on the Qing Dynasty, its role in its collapse, and the consequences there of in East Asia until the present. Part of the background is the very controversial CCP historiography of the “century of Chinese humiliation”. This has produced a Western historiography (e.g. Odd Arne Westad, Julia Lovell and Frank Dikittor) in opposition – that the Chinese inflicted more misery on themselves than they suffered from outside, that they even brought the outside affliction upon themselves.

The fundamental challenge which Professor Carty and his colleagues wish to offer is to argue from the standpoint of the present – i.e. writing history from our own context. The orthodox history of international law from the late 19th century to the present needs to be reconfigured if we are to find normative language to grapple with how contemporary East Asia feels about the past 150 years. Standards have to be recognized as latent in this history, which show that the Imperial aggressions of the time were unacceptable also by the standards of that time. The inter-temporal rule of international law, conceived by Max Huber in the late 1920s, is not enough. It actually functions in the present as a device for evasion of the past. The Cairo Declaration (1943) itself called for a massive reversal of history. The continued restlessness of relations, especially between China, Korea and Japan, point to a general public uneasiness with the standard international law narrative. The narrative will be reconsidered in *The Sino–Japanese War (1894-5)* and the Inter-temporal Rule of International Law with respect to the Legality of War, and *The Sino-French War and the Clash of World Order Visions of International Law and the Tributary System* – from quite alternative perspectives.

**XU Bijun (HKU) and Tony CARTY (HKU): The Sino-Japanese War (1894-5) and the Inter-temporal Rule of International Law with respect to the Legality of War**

**Abstract:** Taking the example of the Sino-Japanese War – drawing on both the narrative from the Japanese perspective and internal Japanese primary sources – we will distinguish the arguments the Japanese used publically with the Chinese and the Koreans, intended of course for the wider
diplomatic community, from the internal policy making intentions. The former appear quite elaborate, even abstruse, legal arguments, usually based upon treaty interpretation, or issues of fact, about which reasonable parties, especially third parties, could disagree. This type of public argument gives rise easily to the doctrine that a war could be justifiable on both sides. However, the secret record reveals quite clearly that the war was a premeditated plan of aggressive aggrandizement. This is not only what the Cairo Declaration wished to reverse, but also what remains in the East Asian public memory till this day. There remains the task for international law to revisit the distinction which not merely Grotius but most classical writers understood to be a distinction between justifiable grounds for war and pretexts for what were adventures of state aggrandizement, i.e. outright aggression, as wrong in the 19th century as in any other.

ZHANG Xiaoshi (HKU): *The Sino-French War and the Clash of World Order Visions of International Law and the Tributary System*

**Abstract:** The clash between French and Chinese civilization in what is now North Vietnam in the years leading up to the war of 1884-1885 marks a further stage in the disintegration of classical China. However, this case study is not simply critical of the hegemonic, universalist pretensions of the "civilizing" Jules Ferry, as leader of the French Government. It also, and especially, focuses on the ultimate failure of the Chinese Imperial Bureaucracy to rise to the challenges of the unavoidably changing international situation. While there were currents within that bureaucracy which did understand the challenge and could possibly have met it, the predominant Chinese response to the challenge of change was simply a failure of any adaptation to circumstances that were overwhelming. As a cultural construction, Imperial China proceeded to collapse under further repeated failures to manage the changing international environment - with consequences until this day. The question remains what role could China, with its remaining cultural resources, also play in the necessary reconfiguration of an international law appropriate to the present East Asian international context.

Li CHEN (History, Toronto): *Power and Politics of Universalizing International Law in pre-1840 Sino-Western Relations*

**Abstract:** Professor Chen will examine the historical processes and forces that helped to represent the modern regime of (Western) international law as legally governing all the countries in the world, including late Imperial China. The history of the Sino-Western encounters in the three centuries prior to the First Opium War of 1839-42 demonstrates both the power of this universalizing discourse of international law and the difficulties and perils of promoting it in the name of equal and universal justice at a time when Western colonial powers also tried to deny China and various other non-Western countries full sovereignty and equal rights under international law. The conflictual nature of this discourse caused a lot of tensions and problems for the Western empire builders in the eighteenth and early nineteenth centuries, while sowing the seed of serious skepticism among modern Chinese jurist and commentators about the universality, efficacy, and equity of the modern system of international law and justice.
INTERNATIONAL ECONOMIC LAW (OCTOBER 17TH, 9:00-10:30)

GAO Simin (Tsinghua): Chasing Shadows in Different Worlds: Shadow Banking and Financial Regulation in US and China

Abstract: Four years have passed since the G20 Leaders tolled the bell to the shadow banking system in the 2010 Seoul Summit. However, the war against the shadow banking has not ended. Instead, it has just begun to spread around the world, and there is still a long way for international organizations to go to have an effective regulatory framework meaningful for different countries. The long journey begins with the first step, which may be the comparative study of shadow banking in different jurisdictions. The U.S. and China can be typical examples for case studies of shadow banking in advanced markets and emerging markets, respectively. Shadow banking differs between the U.S. and China on many points: for e.g. legal definitions, scopes, risks, legal origins and regulations. The study of these differences can provide international organizations with the insight necessary to make effective policy recommendations reflecting the reality in different worlds. Shadow banking varies in the U.S. and China; however, they have a similar purpose – to create credit beyond the heavy regulated section. This can be viewed via the lens of Theory of Money and Credit and also the Endogenous Money Supply Theory. Such findings would inspire the regulators to solve shadow banking problems from the monetary perspective, instead of just an institutional perspective.

Robert WAI (Osgoode): Normal Trade Law

Abstract: In the pre-WTO era, the concept of Normal Trade was used in a variety of ways including to explore international trade relations possible among states with diverse forms of domestic markets. The WTO era of international trade regulation was founded on new assumptions about the normal scope and depth of potentially liberalized international trade, together with new expectations about the role that law would play in the definition and conduct of such normal trade relations. Almost immediately after its institution, expectations for this new order of normal trade law centered around the WTO faded. This presentation uses the concept of Normal Trade Law to explore several ways in which we see a changed understanding about what is normal trade law. These include (a) a policy shift that undermines the primacy of open trade as the shared objective of normal trade and shifts to a more contested discussion in which open trade is only one objective among a variety of other economic and social policy concerns for trade law; (b) an associated shift in legal reasoning in trade law from formalism towards a form of post-realist legal reasoning involving pragmatic balancing, proceduralization, and reference to other legal regimes; (c) a renewed emphasis on bilateralism, regionalism and variable geometries, rather than comprehensive multilateralism; (d) pluralism with respect to the relevant legal regimes that are considered trade law; and (e) the prominence of mixed orders of trade law like the investment treaty regime or the regulation of trade remedies. International trade remains ordered by norms, but the contemporary order is one in which WTO law plays a more circumscribed role vis-à-vis other forms of law as well as vis-à-vis more traditional forms of politics in international economic relations.
Stepan WOOD (Osgoode): The Interactive Dynamics of Transnational Law: Transnational Business Governance Interactions and Transnational Legal Theory

Abstract: Scholars of transnational law have long recognized that the dispersion of rule-making authority and the resulting overlaps and conflicts among legal institutions and rules are among the central problems of transnational law. The possibility for such overlaps and conflicts has increased in recent decades as transnational rule systems have proliferated in many domains of human endeavour. Conflict, convergence, cooperation and competition among legal systems have fascinated transnational legal theorists for decades. Legal pluralism, conflict of laws, interlegality, and international regulatory competition are just a few of the concepts scholars have employed to make sense of these interactions. Legal scholars bring different—often sharply divergent—theoretical, methodological and normative approaches to bear on the subject. They study different aspects of these interactions, often in tentative, fragmentary ways. Some emphasize description or explanation, others evaluation or prescription. What is missing from the scholarly literature is a common conceptual framework to enable many of these perspectives on transnational legal interactions to speak to one another—a framework that might allow scholars to explore which perspectives might generate more fruitful insights into which aspects of the phenomenon.

In this presentation, Professor Wood offers such an overarching framework. The framework focuses on the regulation of business, but is applicable to other domains of transnational law. Grounded broadly in a regulatory governance perspective, the framework allows scholars to explore the myriad ways in which transnational rule systems interact with each other and with official national and international legal systems, examine the effects of these interactions on regulatory capacity, outputs, outcomes and impacts, and investigate how interactions can be structured and steered to foster desirable effects. The framework is situated in relation to contemporary developments in transnational legal theory, in an attempt to catalyze further efforts to incorporate these interactive dynamics into theories of transnational law.

The discussion is structured as follows. In Part 1, Professor Wood introduces the phenomenon of transnational business governance interactions (TBGI) and shows why it is worthy of attention. In Part 2, he considers how contemporary transnational legal theory addresses TBGI. In Part 3, he presents the framework for analyzing TBGI. Reduced to its essentials, the framework allows scholars to examine six dimensions of interaction across six components of regulatory governance. It is intended to facilitate meaningful comparison not just of research results, but also of the potential of different theoretical and methodological approaches to generate useful insights into various dimensions of the phenomenon of transnational business governance interactions. In view of the complexity and varying scale of the phenomenon, no single theoretical or methodological approach is likely to prove satisfactory for all purposes. Rather, one of the goals is to foster theoretical and methodological experimentation with a view to exploring which combinations offer more or less analytical purchase, for what purposes. To this end, in Part 4, Professor Wood reflects on the conceptual and empirical contributions made through the discussion, and in Part 5 he offers conclusions and directions for future research.

INTERNATIONAL HEALTH LAW (10:45-12:00)
Trudo LEMMENS (Toronto): The European Pharmaceutical Data Transparency Saga: The Construction of Legal Norms in an International Trade Context

Abstract: There is an increased recognition of the need for drug regulatory agencies to share data submitted in the context of drug approval with the scientific community and civil society more generally. But how much information should be provided, and what kind of restrictions can be imposed on the use of that data, is still the subject of heated debate. In various public fora, the pharmaceutical industry has expressed support for some of the transparency measures (such as clinical trials registration and—fairly limited—results reporting). But it has at the same time also moved aggressively to create regulatory and legal barriers to data sharing. Developments at the European level are particularly instructive of how industry tries to change the legal and political contours of the debate. I will particularly focus on recent initiatives of the European Medicines Agency that can be connected to industry's attempt to create new legal norms surrounding clinical trials data, including through the use of human rights and trade secret discourses. Developments at the political level are also instructive of industry's attempt to change the European Medicine's Agency's general focus. The European developments will be connected to Canadian initiatives in the context of drug regulation and with discussions at the international level regarding the expansion of trade secret protection.

Yahong LI (HKU): The Effect of Compulsory Licensing on Public Health Inventions

Abstract: Professor Li will discuss the compulsory licensing of pharmaceutical inventions in the framework of the TRIPS agreement, particularly under the Doha Declaration, its practical applications, public debates, and its effect on public health inventions. The presentation calls for a balanced approach towards the role of compulsory licensing in safeguarding health and life in poor countries and promoting public health related inventions.

Mariana Prado (Toronto): Institutional Bypasses in the International Sphere: The Global Health Fund and the WHO

Abstract: Just like surgeons grafting new pathways around blocked arteries in coronary bypasses, global governors are increasingly responding to clogged international institutions by creating new ones rather than reforming existing structures. They are creating “institutional bypasses”. This paper develops the concept of institutional bypass, explores its analytic helpfulness for mapping regime changes, and applies it to the analysis of institutional reform in four domains of global governance (i.e., environment, global health, innovation and trade). This framework helps identify common strategic features of global governance reforms across sectors. For example, the field of intellectual property has witnessed a centralization of governance structures with the TRIPs Agreements under the WTO, whereas the field of global health has observed the opposite, a massive decentralization of initiatives and multiplication of public-private partnerships with specific purposes. While these observable differences have thus far incentivized scholars to compartmentalize knowledge – proposing distinct theoretical frameworks to analyze each sector – the concept of institutional bypass represents a unifying lens that allows the identification of commonalities across substantive domains. With this understanding, the paper concludes by drawing lessons about when institutional bypasses may work, when they do not, and how they should be implemented should global governors choose to pursue them.
INTERNATIONAL LAW: RIGHTS AND POLITICS (1:00-2:30)

Patrick MACKLEM (Toronto): *International Law at Work*

**Abstract:** Professor Macklem’s presentation will be based off of a chapter in his forthcoming book entitled *The Sovereignty of Human Rights*. It advances a theory of international human rights that defines their nature and purpose in terms of their capacity to promote a just international legal order. It argues that the mission of international human rights law is to mitigate the adverse effects of how international law deploys sovereignty as a legal entitlement to structure global political and economic realities into an international legal order. It contrasts this legal conception of international human rights with dominant moral conceptions that treat human rights as protecting universal features of what it means to be a human being. The chapter also takes issue with dominant political conceptions of international human rights, which focus on the function or role that human rights play in global political discourse. It demonstrates that human rights traditionally thought to lie at the margins of international human rights law – minority rights, indigenous rights, the right of self-determination, social rights, labour rights, and the right to development – are central to the normative architecture of the field.

There are two dominant ways of accounting for labour rights in international law. The first holds that international labour rights are necessary to advance the goals of domestic labour law. The second approach sees labour rights as specific instantiations or derivative of more general human rights, which in turn speak to and protect universal features of our common humanity. Whereas the first approach claims that international protection is necessary to ensure domestic protection, the second claims the inverse, namely, that domestic protection is necessary to ensure international protection. Both approaches capture important truths about relationship between domestic and international protection of labour rights. However, both fail to grasp the legal significance of international labour rights. The first wrongly presupposes the existence of an international economic order comprised of nationally bounded economies primarily dedicated to the mass production of goods and services, and falters in the face of allegations of protectionism. The second approach fails to provide a persuasive account that the actual content of international labour rights relates to universal features of what it means to be human. Both miss the true normative significance of international labour rights, which lies in their capacity to monitor the justice of the structure and operation of the international legal order.

Obiora OKAFOR (Osgoode): *International Human Rights Fact-Finding: A Critical Third World Perspective*

**Abstract:** The main goal is to systematically interrogate and assess international human rights fact-finding (IHRFF) as a form of praxis, and to do so from a critical third world approaches to international law (TWAIL) perspective. To what extent (if at all) does IHRFF suffer from certain of the problematic features of general international law that have been identified and analysed by TWAIL scholars? For example, to what extent (if at all) does IHRFF suffer from a witting or unwitting adherence to the heaven/hell dichotomy, captivation by the Western gaze, the one-way traffic paradigm, the monolithic stigmatization of third world cultures, capture by global power
formations or matrixes, the utilization of colonialist ethnographic methods, etc.? What, if any, are the implications for IHRFF of it being afflicted by any of these identified problems? And in the circumstances, what does a reasonably acceptable form of IHRFF look like? Effort will be made to demonstrate the arguments made in the presentation through the analysis of actual examples of IHRFF.

**Darryl ROBINSON (Queen's): Inescapable Dyads: Why the ICC Cannot Win**

**Abstract:** The International Criminal Court (ICC) is surrounded by controversies and criticisms. Rather than engaging in any particular controversy, Professor Robinson will survey the discourse at a more panoramic level, highlighting some patterns in the arguments about the ICC. He will show that many plausible criticisms reflect underlying inescapable dyads. For any position that Court may conceivably take, one or more powerful criticisms can inevitably be advanced. The point is not reducible to “you can’t please everyone”: contradictory expectations for the Court emerge from the same communities, and the same powerful terms (“political”, “legitimacy”, “interests of victims”) are recruited for opposite meanings. Awareness of these patterns can (1) provide a typology to help situate and appreciate arguments, (2) reveal the deeper complexity of the problems, and (3) help us to evaluate and improve upon the arguments.