
Contests in Security and Risk: Releasing the Legal Imagination

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Labor's & Right's Misfits: Women, Children and Migrant Sex Workers
Global Women Human Rights Framework in Local Context: A Case Study on Promoting Women's Participation in Rural Governance in Northern China

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While global expansion of capitalism has generated a series of struggles pertaining to women's lives across national boundaries, women activists around the world have also taken advantage of the global interconnectedness and the political space it offers to challenge old and new forms of gender inequality. The United Nations has become an important avenue where women activists develop their networks and a vehicle where women's problems are framed and reframed since the twentieth century. Its latest framework "women's rights are human rights" was popularized at the Fourth World Conference on Women at Beijing in 1995. Despite its successfulness in advancing women's rights, particularly centering the issue of violence against women, some scholars argue that the liberal conception of human rights and the assumption of universal lived experience across the world underlying the global framework do not speak to the actualities and lived experience of many women outside of the European and North American contexts.

To unfold the contestation and complexities of feminist politics in today's global era, scholars have called for studies that reveal the "local manifestation" of the global human rights framework. To answer their call, in this study, I examine the adoption of "women's rights are human rights" framework in a project promoting women's participation in rural governance in

Northern China. While previous studies have examined the travelling of global human rights framework in India, Russia, Africa, Malaysia, and Hong Kong, not much research attention have been paid on Mainland China. China offers an interesting and important case to interrogate this global human rights framework because of its model of women/state relationship and distinctive historical trajectory of women's activism. Unlike the western model where women were positioned in opposition to the state, efforts to advance women's status in China were mostly initiated by the state until late 1980s. As geopolitics of a context is important in influencing the successfulness of the global human rights framework, by attending to the adoption of global human rights framework in the context of China, I seek to contribute to scholarship that pertains to a more nuanced understanding of global and local feminists politics.

***Toil & Trouble:
 Exotic Dancers' Work and Risk***

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Feminist debates have produced various approaches in analyzing overlapping trends involving women's labor migration and the commercial sex sector often drawing the "battle lines" along the contested meanings of sexuality, exploitation, commodification, labor and autonomy. While many of these feminist contributions, do have a direct bearing on what legal approaches to take towards sex work and sex trafficking, a discussion of the "role of law" does not necessarily figure prominently many of these contributions and to a certain degree these theoretical and political engagements steer clear of a more or less already pre-framed legal debate and analyses tends to converge around legal form and state

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approaches, namely prohibition, regulation and decriminalization. In this paper I propose that focusing on sex work, in this case exotic dancing, as labor that is performed in Toronto by a predominantly female migrant work force requires a close inquiry into the global processes of labor restructuring alongside immigration policy, anti-trafficking law, sexual regulation and the sexual entertainment industry in Canada. Proceeding from a critique on the reliance on criminal law and police-led approaches to regulate sex work in which sex workers bear the brunt of policing and regulation, it builds on pro sex work feminist scholarship, which underscores how the “work” position remains under-theorized, and engages in a critique of pro sex work strategies, which fail to address the presence or even predominance of migrant workers in the adult entertainment industry in this case, exotic dancing in Toronto.

Conventional labor standards and categories of workers’ protection rarely ever include the commercial sex sector. While there is a history of collective and unionization effort within exotic dancing in Canada, the current industry practice of labeling exotic dance as “independent contracting” work, along with its police regulation as a licensed occupation in ‘adult entertainment’ partially explains the precariousness of most exotic dancers’ working status and work conditions. For temporary foreign workers and immigrants, this condition is even more pronounced.

I propose that one way to further explore the issue of workers’ rights in exotic dancing is by focusing on the risk/profit nexus in the exotic dancing business. The profits derived from sex work (migrant labor in general and undocumented migrant labor in particular) are, to a significant degree, facilitated by the market’s position “beyond” the ken or “outside” of regulation – in this case a combination of either the migrant exotic dancer’s invisibility/

illegality including the ambiguous legality of lap dancing and other forms of risqué entertainment offered in strip clubs. The emergence of new services apart from stripping and nude dancing in the late 1980s into the 1990s coincided with the recruitment of women from Eastern Europe, Latin America and Asia to engage in exotic dancing in Toronto. For many migrant women exotic dancers, the opportunity for paid work may initially present itself partly because the local work force finds the conditions of work and pay unacceptable, even deplorable. Agents of bar owners also go out of their way to recruit dancers outside Canada. For the migrant worker, taking on the job as an exotic dancer not only entails constantly walking a tightrope and assuming risks (e.g. performing services deemed illegal under city bylaws), but also accepting that exercising the option of whether or not to assume these risks is, by design, severely restricted, if not virtually impossible.

Reconceptualizing Child Participation: Rights, Realities and Relationships The Working Child and “Lost” Childhood

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In very clear terms the UN Convention on the Rights of the Child assures every child the right of participation. This right has been called a new social contract where children are active in the construction and the determination of their own lives, the lives of those around them and of the societies in which they live. In my research, I attempt to demonstrate the agency of children as social actors through a legal and policy recognition of their capacities. In particular, I look at how laws and policies (dis)engage the right of the child to participate in matters affecting them and then I will explore how we can structure the legal landscape to

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integrate participation in its normative framework.

Through an analysis of the legal and political structures of society, I suggest that the capacity of the child is not merely age calculated. Such classificatory marker only universalizes children, which often makes them lose their individual worth. It also restricts the kinds of activities and social spaces that children can access. With the language of “child labor”, the legal system has devised a universal framework based on prohibition and “removal”. It is believed that any type of work both harms children and deprives them of their childhood. A childhood maintaining work and economic participation goes against the norm of a happy, innocent and protected childhood. But as I argue, such framework undermines children, their capacities, realities and personhood. I attempt to show that a simplistic strategy of prohibition and removal may cause more harm to children proving the appropriate adage of throwing the baby out with the bath water. Wedged between the ideal of a healthy and normal childhood and the reality and necessity of child work, the millions of working children around the world are made to believe that somehow their “childhood” is “lost” which must be “rescued”.

I do not dispute the fact that there are situations of child work considered abusive and exploitative. Rather, what I attempt to show is that abuse and exploitation do not sufficiently describe the phenomenon of child work. Child work involves a whole gamut of contextualized circumstances and relationships: the decision to work is not only a child’s but also the family’s; the reasons for working are not necessarily confined to economics; the work environment is affected by internal and external factors; child workers may see their work and the circumstances surrounding it differently from an “outsider”; child workers do not necessarily dichotomize between work and education; and

many other circumstances that show the diversity of the lives of children, their families and the communities they live in.

In the end, the question really is, what does the law make of working children? If these children have been deprived of their childhood then their real lived experiences become inconsequential. The thrust then of the legal system is simply to “save” these children. The emerging perspectives, based both on childhood studies and children’s rights, help broaden our understanding of the reality of children and work. This means acknowledging that our definitions and evaluations of children and work are based on specific interests and assumptions; that child labor laws and policies are informed by dominant paradigms of children and childhood. Unfortunately, these dominant constructions detract us from the most important focus of this whole discourse, i.e. the child who is a real live human being. In the end, the objective of the law should not really be about saving children or removing them from work, rather it should be about respecting who the child is.

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Search, Seizure and Detention: Securitization Practices in Canada

The Charter and Security of the Person: What do the rights of the accused mean after R. v. Grant?

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This paper argues that the most critical issue in security and Canadian criminal law today is that the Supreme Court of Canada has made the rights of the accused muted. This is demonstrated by recent decisions from the Court such as *R. v. Grant* in which the accused's Charter rights were said to not have been breached even though he was arbitrarily stopped by police, as the crime was determined to be so serious that the breach was justified. While Charter rights are subject to limits, the reason behind allowing in evidence that was gathered as a result of an arbitrary search and seizure is hard to explain in Canadian society. The paper will demonstrate that the Canadian Charter of Rights and Freedoms was implemented to protect the rights of the accused and has recently been used as a device to weaken those same rights. Section 7 of the Charter guarantees 'security of the person' and Section 8 of the Charter protects against 'unreasonable search and seizure' yet the direction of the Court has been to allow in evidence that was gathered as a result of a breach of a Charter right due to the seriousness of the charges.

Security Certificates and The Special Advocate - An Irrational Approach to National Security

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This paper examines the current provisions of the Immigration and Refugee Protection Act, S.C. 2001, c.27, (the "Act"), Division 9, which create a special advocate regime where a "security certificate" has been issued pursuant to the Act and there is information involved that, if released, would endanger national security or the safety of any person. Based upon the regime, the special advocate is appointed to represent the interests of an individual detained under a security certificate at hearings where the detained individual and their counsel are excluded. The special advocate plays a role similar to that of counsel at these hearings but is limited by not being allowed to communicate with the detained individual after receiving sensitive information except as authorized by a judge. Thus, information is used against a detained individual without disclosure of the information.

The special advocate regime within the context of Security Certificates is examined in comparison to how sensitive information from a national security perspective is dealt with in the context of criminal proceedings, and how the information is treated differently in the two contexts, without a rational basis for the distinction.

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The Production of Knowledge and the Production of Risk
Revisiting Patent Harmonization using a Patent-Property Analogy

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There can be little question today that intellectual property assets are forms of “property.” The US Patent Act expressly declares that “patents shall have the attributes of personal property” and the Supreme Court acknowledges them as such. Historically, a property law has been considered as of local matter and not as the subject of international negotiation. Even in the age of globalization, courts have depended on the principle of private international law or conflict of laws to confront occurrent international issues, rather than calling for the harmonization of laws. However, unlike property, intellectual property was the central focus of harmonization discourse since 19th century. Harmonization of patent laws has been argued to be necessary to create the certainty of legal rights, enhance value of a patent, and cut legal fees. Then, what is the characteristic of patents that is different from other properties that gave rise to push for harmonization unlike other properties? In short, what is the rationale to argue the necessity of patent harmonization?

Each country might have different interests in the patent harmonization based on the varying degree of economic development, technological advancement, or industrial competitiveness. To balance these diverse interests while assuring the advantage of harmonization, this paper will divide harmonization into specific implementing measures for systematic and analytic research. And based on this analytic framework, we will investigate the *types of interests* of each country, *possibility or conditions* of

implementation for each possible measure. Here, from the traditional definition of property as ‘legal rights over a thing,’ one can adopt two approaches; *rights-based (TRIPS)* and *thing-based (European Patent)* approach. In addition to these two, we can consider *non-property* approach, focusing on the administrative process through which one obtains property rights over a patent (PPH, Tri-way). I believe these analytic arguments will contribute for the purpose of the conference exploring the law as the realm of justice and ethics in ‘new economics.’

The Risk of Assessing the Risk of Harm in Research Involving Humans

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This paper seeks clarify the current conceptual and methodological place of ‘risk’ in regulating research involving humans (RIH). The notion of risk occupies a central place in the conceptual framework of the current system of ethical governance in RIH. At the same time it is one of the most obscure concepts, since the methodology for the assessment of risk of harm to human subjects is based on a number of conflicting ethical principles. In particular, Research Ethics Boards (REBs) are required to assess research involving humans by applying utilitarian harm-benefit analysis while adhering to the deontological ‘no harm’ principle. The conflict is resolved within the REB by marginalizing the harm-benefit analysis and substituting it by a speculative and not based on evidence analysis of potential risks of harm, which also erodes the basis for applying the proportionality requirement to the assessment of risks in RIH. The most important consequence of this situation consists in the inability of REBs to provide empirical evidence of its positive contribution to the protection of human participants, and research ethics in general, whereas evidence of the costs of REB

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oversight is sufficiently clear and documented. Since the adoption of the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans in 1998, neither the Interagency Panel on Research Ethics nor REBs themselves have developed a methodology for performance assessment in terms of protecting human subjects, rather than in terms of recommended revisions, time of review, and the similar. Accordingly, the purpose of this paper is to examine the perplexities of risk analysis in research involving humans and to assess whether the concept of risk has any potential as a critical methodology for the analysis of governance in RH. Such methodology has been developed in the works of Luhmann (1993), Giddens (1990), and Beck (1992) within the theoretical frameworks of systems analysis, structuration theory, and risk society. I argue in this paper that a similar methodology should be adopted within the system of ethical governance in RH, since it is based on a more robust and socially grounded theory of risk than the one currently used by REBs.

Just Distribution of Health Resources for Chronically Ill Employees

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The purpose of this paper is to gauge how theories of distributive justice and chronically ill employees can together change insurance regimes. The importance insurance constrains have in constituting social life, the elements of governance it sometimes triggers and its equalizing function shall be underlined in parallel with the examination of distributive justice principles.

According to the World Health Organization, the threat posed by chronic diseases has reached a point of no return and now sits at the center of the political, economic, social and legal spheres. Numbers of chronically persons are

spiking in industrialized countries and will continue to grow at steady and fast pace. At the dawn of the 21st century, more than ever before legal questions need to be resolved as to what are the prerogatives of business units, their duties, and above all the rights and alternatives that the law offers to chronically ill employees.

Employment problematics are intrinsic to the insurability of chronically ill persons, as corporations are often primary insurers of their employees. Narrow insurance pooling systems have triggered the direct exclusion from coverage of chronically ill persons, reinforcing business units' and employers' power to make coverage scarce. This paper aims to reconcile the fundamental and almost irresolvable contradiction between society's need to establish equity in the provision of health care, and the insurance industry's need to safeguard its economic profitability and efficiency.

This paper will present a survey of distributive justice theories relevant to the distribution of health care, in hopes of synthesizing a more just employer-based insurance model, better suited to fulfilling the insurance needs of the chronically ill.

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Intelligence and Terrorism

Terrorism as Crime under International Law

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This paper deals with the most recent developments towards defining terrorism as an international offence. On February 16 2011, the Appeals Chamber of the Special Tribunal for Lebanon (STL) ruled that terrorism has become a crime according to the customary international law. The notable scholar Antonio Cassese, one of the judges sitting in the STL's Appeals Chamber, has previously expressed this idea. STL's decision has been disputed on various grounds. In this paper four major problems will be discussed. First of all, is there really customary international law, which introduces terrorism as a crime, or is it just unanimous "wishful thinking" of the judges sitting in the Appeals Chamber of STL? Second, could this decision affect the development of international criminal law in the field of terrorism or should it be considered as an isolated decision? Third, having in mind the existing normative chaos in defining terrorism (which is present on international as well as on domestic levels), is it possible in the forest of various definitions to find one, which would be suitable to represent all of them? At last, do we really need terrorism as a crime under international law? Within the last question a special focus will be given on whether criminalization of terrorism as an international offence could have a deterrence effect in reducing risk of future terrorist attacks.

Intelligence and the War on Terror

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In the ten years since the start of the War on Terror, the notion of "security" both domestically and internationally has been

drastically altered. Critics of these changes have argued that this ideological war is having a real life impact on civil liberties that we can no longer afford. The intelligence community has been specifically challenged in this regard. This paper will first consider historical approaches to confronting intelligence efforts and then examine how tactics pursued in the War on Terror should be addressed.

Domestic and international intelligence agencies no doubt play a large role in the War on Terror, but that role should not go unquestioned. Critical perceptions of these organizations are emerging, particularly in light of recent discoveries. In the United States, the Federal Bureau of Investigation and the New York Police Department have both been criticized for targeting religious and ethnic groups in so-called 'mapping' programs. The Federal Bureau of Investigation and the Central Intelligence Agency operate according to regulations, which are largely unreviewed by the legislature or the public. On top of everything, the intelligence budget has reached an all-time high. As the War on Terror matures, we must ask whether failing to raise objections against questionable intelligence techniques is really a patriotic commitment to security or a willingness to become a society of cheerful robots. We must also ask whether current strategies are actually in the interest of international cooperation. Historically, challenges to the intelligence regime have been somewhat successful. For example, in 1975 the Church Committee uncovered numerous abuses leading to the Watergate affair and instituted reforms accordingly. The time may be ripe for new efforts to bring the intelligence community in greater conformity with the goals of protecting civil liberties and promoting international relations.

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Constitutional Learning and the Regulation of Global Intelligence Agency Cooperation in Canada

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One of the defining features of post-9/11 anti-terrorism law and policy in Canada has been sustained judicial and Parliamentary tolerance for questionable security intelligence practices. Indeed, a hallmark of “securitizing” rhetoric in any field is the construction of zones of exceptionality within which statutory and even constitutional law have diminished force. The reduction of legal control may be attributed to the assumptions that ordinary rules offer little practical guidance in exceptional moments and/or that ordinary rules unduly interfere with the government’s asserted political obligation to preserve the “life of the nation”. In either event, we witness the emergence of an alternate, quasi-legal system characterized by heavy reliance on extraordinary measures and executive discretion. This narrative amply conveys the problems raised by post-9/11 security intelligence practices in Canada. We have witnessed extensive growth in the size and influence of domestic intelligence agencies as well as domestic agencies deep integration into global intelligence networks, whereby security intelligence is exchanged with non-traditional intelligence partners in relative autonomy from external oversight and review. As the experiences of Maher Arar, Ahmed El-Maati, Abdullah Almalki, Omar Khadr, Abdullah Khadr, Adil Charkaoui and others have amply demonstrated, Canada’s role in global intelligence gathering and sharing have led to serious human rights abuses, calling into question our commitment to autonomous legal values linked to human dignity and the rule of law.

The purpose of this presentation is to reflect on how Canadian courts have reacted to the executive’s invocation of exceptionality when reviewing the constitutionality of global security intelligence practices. I will focus in particular on how courts have interpreted and applied Charter provisions protecting the right to a fair trial when alleged terrorists are denied access to culpatory or exculpatory evidence during legal proceedings (e.g. security certificates, extradition hearings, criminal prosecutions, etc.). This issue strikes at the heart of reason and rationality, as courts here must perform the dual role of constraining (in accordance with standards of public reason) and administering (thereby rationalizing) executive discretion. I will suggest that courts have relied extensively on international and comparative human rights to construct innovative solutions to this dilemma. However, I will also argue that this kind of constitutional learning has helped courts to rationalize the extraordinary as much as to submit executive decision-making to standards of public reason.

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Environment, Natural Resources and Security for Whom?
Mineral Extraction in Conflict-Affected Countries: the Devolution of Security Provision to Transnational Corporations

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Joint ventures between governments and transnational corporations aimed at exploiting natural resources in conflict-affected countries are increasingly common. These partnerships are not strictly economic in nature, but also political and military to the extent that they take place in areas where security is not, or only minimally, provided by the state. In this presentation, I will illustrate how, in certain instances, private companies supply national armies with financial and technical support to insure the protection of their facilities (Pegg 2003), while in other cases, public authorities hire “privatized military firms” (Singer 2001) to defeat insurgent groups controlling access to natural resources. More specifically, I will argue that security provision by transnational corporations departs markedly from the classical Weberian definition of the modern state, according to which the state is the sole entity legitimately controlling the means of violence over its territory. In contrast, the privatization of security implies a new “spatialization of order” (Ferguson 2006), in which states share their prerogatives with private actors to selectively guarantee the physical protection of enclaves where natural resources are located. This paper will take the “joint institutions of extraction” (Snyder 2006) operating in Columbia and Sierra Leone for illustrative purposes. In Colombia, extractive industries have both directly financed the army and engaged private military companies to protect resource exploitation from the reach of

the guerrilla (Richani 2005). In Sierra Leone, mercenary firms hired by the government have enabled it to regain control of diamond mines, which were previously controlled by rebels (Reno 1997; Shawcross 2000). These two cases epitomize how economic alliances between foreign investors and governments amount to the (re-)privatization of the means of violence in states where a government is unable to assert its authority over local rivals (Reno 2001). Indeed, these states enter contractual relations with private firms to outsource their traditional functions of security provision.

Rationality, Risk and Security in the Global Extractive Industry: Points of View

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Environmental impact and political risk assessments for extractive industry are carried out from distinct, but often complementary, points of view – that of states and investors. This paper considers the perspective of another group: affected communities. Under certain conditions, affected communities may consider prevailing political instability, institutional incapacity, irregularity and corruption as determinative factors in their own risk assessments, notwithstanding the existence of favourable technical assessments completed by environmental and industry experts.

Using concrete examples of “anti-mining” conflicts in the Intag Valley and Lake Quimsacocha regions of Ecuador, the author shows how state authorities have criminalized local leaders (with charges of subversion and terrorism) for defending their communities from what they perceive to be unacceptably high social and environmental risks associated with large-scale mining projects. In these examples, local leaders’ commitment to long-term security and self-reliance for their community stands in direct opposition to state security interests. Given past negative experiences with extractive

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industry in Ecuador (especially in the Amazon oil producing region), many local communities accord a lesser degree of legitimacy to state-led risk assessments and company promises. When local communities demand an end to mining or oil development, they signal a lack of confidence in the capacity of the government and companies to deliver promised results without significant adverse impacts.

The possibility of simultaneous and incommensurable assessments of risk (derived from different points of view) has important implications for the overarching concept of security as it relates to extractive industry. From the point of view of investors, financial risk is partly tied to the willingness and ability of the state to maintain security. However, the promotion of short-term security for investors through so-called law and order mechanisms may, in fact, produce precisely the opposite effect (long-term insecurity) for local communities.

Environmental Regulations as Strategic Outcomes in an Open Economy

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This paper suggests a theoretical model of intergovernmental non-cooperative environmental regulations in an open economy. The model incorporates the two major factors in an international trade: the wake of trade liberalization across countries and growing environmental consciousness in either or both countries. To capture these characteristics, the model in this paper clearly distinguishes governments' and industries' roles: the former seek to maximize social welfare while the latter are profit-seekers. Governments set the level of environmental regulations, whereas industries

determine the level of capital invested both domestically and internationally. This paper is based on two general assumptions for profit-seeking industries: with more stringent domestic environmental regulation, industries have (1) less incentive to invest in their own countries, and (2) higher incentive to relocate their investments to other countries. Therefore, the government can indirectly affect the level of capital invested in the country by adjusting the level of environmental regulation. This paper proves the existence and uniqueness of the Nash equilibrium governmental regulation levels. Then it concludes that (1) free-trade movements can induce governments with lower environmental standards (developing countries) to strengthen regulations and governments with higher standards (developed countries) to reduce regulations and (2) a growing environmental consciousness in one country induces not only the government but also the trading partner to increase the stringency of environmental standards.

Climate Change and Indigenous Securitization in the Canadian Arctic

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The circumpolar Arctic is undergoing unprecedented ecological, economic, and political transformation. Anthropogenic climate change is interacting with economic and political phenomena that have emerged in the post-Cold War period to radically alter the region. The effects of climate change on the Arctic ecology, and the impacts for human life in the region, are occupying increasing amounts of research attention. For some actors, the concept of 'Arctic security' has emerged as a way of encompassing the most pressing policy questions attending this comprehensive transformation. Yet even an examination of the

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policies, public statements, research and advocacy of actors 'speaking' Arctic security suggests that there is no consensus – indeed, outright contradiction – among the different narratives of security for the region.

These competing conceptualizations can be understood not as objective analyses of conditions of (in)security in the Arctic, but as efforts to securitize issues that affect the interests of particular actors. Given the discursive power of security logic, and the extra-political authority that accrues to governments whenever states of emergency are invoked and issues successfully 'securitized', the struggle to define conditions of (in)security in the Arctic is central to the region's future. This paper examines one aspect of securitization in the Arctic, namely how 'Arctic security' has been conceptualized and articulated by indigenous actors in the Canadian North. It identifies dominant conceptions and patterns of security speech acts by indigenous peoples in the Canadian Arctic, and compares indigenous securitizations with the official Arctic security framework employed by the Government of Canada. The findings provide some insight into substate securitization processes in Canada, including the security priorities of the federal government and indigenous groups, respectively; the effectiveness and policy influence of indigenous security speech acts; and the nature of indigenous understandings of what constitutes 'security' in the Canadian Arctic.

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Non-State Actors and the Creation of International Law
The 'Public Conscience' and the Use of Nuclear Weapons: How the Laws of Armed Conflict Create Laws from the Will of the People

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The Martens Clause is one of the foundational principles of the laws of armed conflict. Devised and adopted in 1899, it proclaims that where the laws of war are silent on an issue, the principles of humanity and the dictates of the public conscience nonetheless remain operative to regulate the conduct of hostilities. But the Martens Clause is rarely considered to be anything more than a moral compass for the interpretation and development of the laws of armed conflict. It has not been vested with any active powers of enforcement as such, or so it seems. This author believes the Martens Clause has significant potential to actually create laws of armed conflict based on the will of the people, the public conscience, rather than on the policies of their governmental representatives, at least until such a time as State negotiate positive law for the issue in question. This paper will use the use of nuclear weapons as a paradigm example to fuel the discussion. Public opinion against the use of nuclear weapons is quite strong and clearly evident. Yet the voice of the people is not the driving force for change at the international level. If it was, then nuclear weapons would be clearly and unequivocally prohibited at this stage. However, the Martens Clause provides a solution: where the laws of armed conflict are silent on an issue (as they are regarding nuclear weapons) then the dictates of the public conscience shall regulate conduct during war. In this paper, the author will try to 'release the imagination of the law' by arguing that the will of the people can actually create laws to

regulate the conduct of hostilities in armed conflict and in fact these 'laws' may even be in existence at present to prohibit the use of nuclear weapons.

12 Angry Scientists: Third World Approaches to International Law and Pugwash Conferences

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Third World Approaches to International Law (TWAIL) movement of scholars was one of the first movements to expose the colonial foundations of International Law, and its use for domination of non- Western nations and people. This article compares TWAIL to Pugwash Conferences, a movement of scientists for the elimination of the threat of nuclear bomb and reduction of the danger of armed conflict. The aim is to update our understanding of how social movements by scientists navigate the terrains of science and politics, relate to the understanding of the role of a scientist in a society, engage with their objects of critique, and build their support. To do so, the paper proceeds in two parts: first, the paper provides for a sociological study of TWAIL. It explores the movement's epistemological foundations, the dynamics in relation to its research object-international law, its vision of the role of a scientist in a society, and TWAIL members' vision on the relationship between science, politics and law, broadly construed. Second, the paper provides for a comparative study of scientists' two movements - the Pugwash conferences and TWAIL. I argue that despite their emdeddedness in different disciplines and disperate normative concerns, these two movements have too many common traits to be overlooked, in particular, the transnational character of both movements, approach to their object of study as to a an object of dual use, and a similar mode of connecting with its supporters (TWAIL/Pugwash

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conferences) This part's objective is to discern the common and disparate patterns of development of these two movements, while the lateral aim is to envision the future development path of TWAIL, especially in regards to the prospect of its institutionalization and expansion.

From the theoretical point of view, the paper is grounded in the scholarship on social movements, including works by Charles Tilly, Sidney Tarrow, and Doug McAdam. From the methodological perspective, the paper is based on the study of the literature of TWAIL and Pugwash, in-depth informative interviews with TWAIL members, and a sociological observation of a TWAIL conference.

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Emergencies, Criminals and Security Regulations
Change and Continuity in Emergencies: a Theoretical Introduction

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The field of emergencies in public law is routinely concerned with the dialectic relation between abrupt, often revolutionary change and continuous, often conservative attempt to control it and contain its consequences. This paper describes the ways by which the dominant theoretical traditions in the field account for the relations between change and continuity in emergencies. In the extra-legal Lockean tradition it is expressed by the prince's prerogative power to act against the law in accidents, the historical cases of its post factum ratification and the people's right to revolt against its misuse. In the neo-Roman Machiavellian tradition it is expressed by the ability to create conservative mechanisms for the move back and forth between normal government for normal times and exceptional government for exceptional times. In the rule of law, legality tradition, it is expressed by a political fidelity to a legal distinction which is available for any exigency. In this tradition, emergencies are opportunities to reinvent, relive or make new sense of that forceful distinction. This paper is an introduction, recounting the available frameworks and their distinctive appeal. In my presentation I will illustrate the way they figure (and often collapse into each other) in debates about emergency powers. I will use two very different and historically detached examples: a winter 1827 congressional debate concerning the precedential dangers of providing relief to sufferers of a fire in Alexandria; and a fall 2011 academic panel in Harvard Law School concerning expansion of

presidential powers post 9/11. Almost 200 years apart and in a very different institutional context - but the question of the impact of emergency measures on the continuity of the legal and political system is debated on quite the same theoretical horizon.

Transnational Risk Regulation, Precaution and EU Criminal Law

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Risk regulation is on the agenda in all areas of law and increasingly so at the transnational level. For example, the Third Money Laundering Directive is based on risk for the identification, prevention and fight against dirty money and terrorist financing. This Directive (2005/60) is based on the market provision of Article 114 TFEU introduces the concept of risk regulation to the fight against dirty money and the financing of terrorism. This poses not only the question of the adequateness of such a combination (i.e. the combination of dirty money and the financing of terrorism in the same instrument) but also the governing function of 'risk' in the intersection between market integration and criminal law. The aim of this paper is also to touch upon the socially intriguing relationship between lawyer and client and the obligation to report suspicious money laundering transactions as part of the EU market regulation framework where the notion of risk constitutes the driving principle. In particular, this paper will investigate three concepts which currently play a significant constitutional role in the development of EU criminal law. In doing so, this paper seeks to demonstrate that the driving notions behind the EU's agenda in this area are risk, security and effectiveness concerns. The paper will thereafter try to give a systematic account of how these

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concepts are illustrated in EU law and in EU criminal law respectively. It will be argued that the EU's approach in this area leads to precautionary criminalization at the EU level. Specifically, this paper will look at the implications of the classic precautionary principle outside its traditional playing ground of the protection of the environment and apply it to the area of EU criminal law.

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Beyond Democracy***Avoiding Power in Collective Action***

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The paper explores the paradox that anarchist social movement organizations and spaces explicitly denounce power, and yet they remain trapped by a seemingly inexorable reproduction of relations of hierarchy. Participants in anarchist collective action recognize the trap of power. Explicit organizational practices, such as consensus decision-making, and implicit practices, like jargon and body language, function as attempts to escape these power dynamics. The paper explores insights from my experiences as a volunteer at a food sharing organization and my participation in Occupy Oakland and Occupy Cal, two sites of the Occupy movement. Building on a mixture of experiential learning and critical theory, I am interested in developing theoretical tools to observe and understand groups' power avoidance tactics. My experiences and critical reflection confirm theoretical insights about the connections between action and ethics. In trying to build a world we actually like, we are deeply engaged in normative questions about what that world should be. Resistance is thus both action and ethics, both fact and value. By enacting and performing their ethical commitments, anarchists carve spaces of justice into the existing world. Theorizing the practice of resistance pushes us to explore ethical commitments; theorizing the practice of anarchist resistance pushes us to explore ethics without presuming the legitimacy of state law.

Democracy: A Philosophical, Political, and Legal Trap, Eye-Catching, and Catch-All

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Based on a free philosophical, legal, and political approach, this paper aims at critically analyzing how *democracy* has become a harassing word or a leitmotiv around the world regardless of political regimes. Indeed, there is scarcely anybody who has not said anything about democracy yet. From Ancient Greece to our time, almost all philosophers, lawyers, and politicians have abundantly written and talked about or have even worshiped democracy. It may not be wrong if I say that to speak about democracy is a jurisprudential and political obsession touching all thinkers and politicians in the world. In short, democracy is a universal scripture that justifies all types of government through politico-legal verbiage.

Thus, I would like to show in this paper how democracy has become a philosophical, legal, and political trap, eye-catching, and catch-all whereby all dictators (from Lenin and Stalin to Sukarno by passing George W. Bush and Gaddafi, for example) and warlikers (e.g. Bush and Blair) have justified their cruelties and political murders. On the one hand, this paper analyzes some philosophical and legal propagandist ideas on democracy. On the other hand, it will show how the politicians and the Statesmen put into practice those ideas in order to ensure so-called "security" at both national and international levels in a context so-called "globalization" of democracy and security. In short, democracy has become universal.

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The Legitimization of Violence and International Law
The Sacred Profanity of International Law's Violence

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Modern public international law (PIL) orders, and produces, violence. Both PIL's protectionist (international human rights) and punitive (international criminal) modes of law were founded as responses to violence perpetrated by and against the statist order – civil and political rights violations against citizens and aggression against states during WWII.

Critical international legal scholars have observed that this structure perpetuates the rhetoric of individual rights in order to maintain the 19th-century jus publicum Europeum state system. PIL ordains certain forms of violence by repudiating others. It does so not with a single-minded animus toward the perpetration of violence, but with a view to creating spheres of jurisdiction defined (not only) by territorial boundaries, but also recently by identity politic formation, and the distinction between the 'secure' and the 'insecure'.

This paper interrogates the theological/secular dialectic in PIL's construction of legitimate and "illegitimate" violence. Specifically, we examine how the categories of torture and the child soldier mobilize the discourse of secularization to produce the distinction between barbaric and civilized violence. For example, torture, once an accepted way to extract earthly and divine truths, is now a marker of barbarism even as it remains an essential "intelligence" tool for states. Sovereignty is better understood as a secularized re-ordering – or resurrection – of the theological roots of torturous

ordeals. Rather than constituting a radical break with the divine, the move from theological to political jurisdiction has merged sacred truth with profane intelligence. Viewed in terms of 'securitization', the anti-torture and anti-child soldier legal regimes can be understood as producing both risky and non-risky individuals, where the resulting risky individuals are depoliticized. Where 'child' becomes mutually exclusive to 'legitimate combatant', the child who poses a military risk is depoliticized through his (fictional) legal protection. Conversely, whereas torture is categorically prohibited with respect to the domestic criminal and legitimate participants in war, today there are new opportunities for its exceptional application to the median category of the 'unlawful enemy combatant.' We examine the case of Omar Khadr in order to trace these various legal moves.

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Sovereignties, Securities and Post Colonial Identities
Iraqi Sovereignty Between the Constitution and U.S.-Iraqi Strategic Agreements

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In June 2004 the U.N.S.C. passed Resolution 1546, recognizing Iraq as a sovereign state. However, legal recognition by the international community does not suffice to define Iraqi sovereignty. Due to the on-going U.S. military presence in Iraq since 2003, public discourse appears to have failed to distinguish between Iraqi legal and political sovereignty, thus portraying it as an occupied state. My dissertation research aims to examine the clear gap between *de jure* sovereignty that is assumed when, for example, international treaties are signed between “sovereign” states, and the *de facto* or compromised sovereignty existing in many legally sovereign states that fail to meet many elements of a fully sovereign state. In particular, a legally sovereign state may be unable to adequately project power and claim a monopoly over national security and politics. Since the Spring 2010 elections, the Iraqi government has demonstrated a weakness in its capacity to effectively exercise political sovereignty. My research offers an all-encompassing and nuanced examination of Iraqi sovereignty which will be especially important after the withdrawal of U.S. troops by the end of December 2011, as Iraq needs to be able to effectively exercise its political and factual sovereignty.

The purpose of this dissertation is to thoroughly define, outline and clarify the nature of Iraqi sovereignty as traceable in four legal documents: 1) the Iraqi Constitution, as well as 2) the Status-of-Forces-Agreement (S.O.F.A.) and 3) Strategic Framework Agreement (S.F.A.), both strategic agreements ratified by Iraq and the

United States of America, in addition to 4) the Erbil Accord, a political agreement ratified by major Iraqi political blocs in late 2010. The two strategic agreements were ratified within a two-month span; the S.F.A. was ratified on 17 November 2008 and the S.O.F.A. on 1 January 2009, motivating Iraqi officials to push for not only full monopoly of Iraqi armed forces, but for jurisdiction over foreign troops on Iraqi soil, a very contentious issue. The ratification of these agreements also restricts the role of hired contractors by U.S. diplomats. This is particularly significant after the September 2007 Nisour Square Massacre of 17 Iraqi civilians by employees of Blackwater, a then private security company hired for diplomatic protection by the U.S. This event is examined in my research as a precursor and driving factor to the drafting of the U.S.-Iraqi S.F.A and S.O.F.A. that formally codify relations between the Government of Iraq and the United States for the first time since the 2003 invasion, and set the date for the withdrawal of U.S. troops from Iraq. For the purposes of my research, the Iraqi Constitution outlines the formal, legal nature of sovereignty, while the two strategic agreements provide much insight into *de facto* sovereignty, and the Erbil Accord provides a sound impression of current Iraqi political sovereignty. Examining the interaction between these documents is necessary to arrive at a more refined conception of Iraqi sovereignty.

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Religion and Securitization in Transitional and Post-conflict West Africa

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Many, including academics even in the 21st century liberal order have often seen religion as a perennial threat to stability. A Failure, to realize that religion represents an inherent character of a political life and an edifying block towards achieving social cohesion. As states secularist mentality abounds, traditional and new religious movements are disenfranchised of the public space. Thus, the evidential indifference to religion remained a characteristic of many countries especially in the developed world while notably West Africa, has benefited from a harmonized relationship between religion and the state. Corporation paradigm between states and religious movement have much been utilized in responding to post-conflict challenges of reconciliation, peace consolidation and political reform.

Until recently, states and other influential actors continues to manipulate the concept of security interest through the creation of legal regimes locally and on the international plane in pretext of curtailing what is today termed as religious extremism. Hence security sector reform abounds with encroaching powers. Such contemporary response has contributed immensely in the reversal of democratic gains in the West African province, a region once a witness and victim of ugly political upheavals and violent regimes.

In this piece, many probing issues will emerge such as: what have been the consequences of the securitization mentality on democratic transition of post-conflict West African states?

Has the current order of security and risk management contributed in the realization of human rights in these countries? What is the impact of securitization constructs in reshaping the political development of post-crisis West African Countries? Likewise this paper will primarily focus on Sierra Leone, Liberia, Guinea and Ivory Coast which are countries that had experience long periods of civil unrest and countries where rapid security sector reform is ongoing. This piece will indentify the challenges in the furtherance of religious and other human rights in this trend of conceptual manipulation of securitization and risk management, and how these challenges are surmounted.

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Indigenous Peoples and Transnational Securitization

Securing Reconciliation & Reducing Risk:
Comparing Unilateral and Bilateral Approaches
to Nation-to-Nation Relations

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This interdisciplinary panel engages with the larger themes of the conference - the dominant constructions and outcomes of securitization and risk management, and critical methodologies aimed at these topics - by comparing different approaches to how the Canadian state, at its various levels, secures reconciliation and resources in its 'nation-to-nation' relationships with Aboriginal peoples. A presentation by Michael (Mickey) Posluns sets the stage by arguing for a shift in thinking that recognizes Canadian law as transnational law in order to give effect to the desire of the Supreme Court of Canada, and others, to reconcile Aboriginal legal systems with the common law in a way that respects these

relations as being nation-to-nation rather than ignoring this aspect (as successive federal and provincial governments have done). Amar Bhatia's presentation builds on this transnational trajectory by reviewing prominent critical approaches to international law, especially from the Third World project, and arguing for the inclusion of Fourth World perspectives, including examples of Indigenous international legal advocacy and inter-National law. This need for recognition translates from the inter-state level to the intra-state level. For example, Shiri Pasternak's presentation describes the recognition of Aboriginal title in Canadian courts, the pecuniary and other risks that it presents to non-Indigenous proprietary interests, and how it has been met by strategies of denial, extinguishment, and criminalization, rather than an acceptance that only Aboriginal recognition can mitigate such proprietary risks and uncertainties. These strategies are further reflected in specific environmental contexts explored in the panel's other two papers. Tyler McCreary's presentation reviews the environmental impact assessment of the Enbridge Northern Gateway Pipeline and how the mapping associated with such assessments effectively promotes a strategy of reconciliation through erasure and dispossession. Patricia Hania's presentation addresses the crisis of water contamination for First Nations through the prism of devolution and water governance reform; this paper examines whether or not the participatory decision-making and co-management models associated with such reforms have increased First Nations' influence and control of the process towards the goal of water security. The panel will help illuminate the ongoing transnational securitization of reconciliation and resources between Indigenous peoples and Canada, the distribution of risk that accompanies this process, and the further recognition required to achieve true 'nation-to-nation' relations.

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New Approaches to Global Governance***Illuminating Silenced Voices on Sites of Global Governance: A Comparative Law Approach***

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This paper explores the role of comparative law in global governance. Its main argument is that a certain comparative law approach could be useful for addressing global problems as diverse as poverty, violation of human rights, (mis)use of development aid (and many others) on sites of global governance.

Although the broad picture of how we are governed still remains elusive today, law undoubtedly plays a crucial role, as part of a complex machinery, in reproducing and potentially countering global problems (David Kennedy, Boaventura de Sousa Santos). The reproduction of these problems is frequently related to the silencing of 'local' communities' visions of law and justice on sites of global governance.

The discipline of comparative law would be expected to provide insights on intercultural diversity and hence to foster alternative ways of thinking about normative complexities (Horatia Muir Watt). However, comparative legal discourse has often implicitly reinforced the illusion of the superiority of Western cultures instead of questioning it. Thus, it contributed to the stabilization of boundaries between the 'center' and the 'periphery' rather than fulfilling its potential of "cognitive transformations" (Gunther Frankenberg) through intercultural dialogue. Moreover, comparative legal discourse has often adhered to neutrality and perceived issues of global governance outside the area of its professional concern.

In the search of comparative law approaches useful for addressing global problems, this work

starts with an effort of bringing insights from global governance debates to comparative law. Firstly, it explores the genesis of comparative law's disinterest in governance issues and highlights the discipline's main concerns. Secondly, it explores the ways in which comparative legal discourse has reinforced ethnocentric ideas, but also shows that comparison has the remarkable potential of questioning one's own hidden preconceptions and recognize difference. It is precisely this 'critical comparisons' approach that has already been employed as a critique of Western hegemonic ambitions and has the potential of illuminating silenced voices on sites of global governance. Therefore, this work seeks to address the dual crisis of comparative law and of global governance, bringing insights from global governance debates to those of comparative law *and vice-versa*. This paper continues with two case studies for illustrating how a critical comparative law approach could help countering instead of reproducing global problems on sites of governance.

Global governance and sites of recognition

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Legal approaches to patterns of global governance often overlook the examination of what is classically defined as "private law" and also paper- over the normative values that underlie them. This is evidenced by the fact that "private" law is still to a great extent perceived as apolitical, neutral, and therefore disconnected from social justice issues. In the same vein, very little is said about the normative philosophical, or political values that underpin the various totalizing descriptive projects that attempt to grapple with the epistemological challenges that globalization processes have brought about for the legal field. Within this context, my research seeks to

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propose a new analytical framework, grounded in the philosophical and political notion of “recognition”. I will first examine the meaning of the concept of recognition by presenting the salient ideas the notion encapsulates. The paper then argues that “recognition” is at the heart of conflict of laws techniques. Following this examination of meaning, I will then apply the methodology proposed here to the specific question of the protection of the land and natural resources, occupied and used by indigenous populations.

My purpose is twofold. First, my research is a contribution to the broader debate on global governance, and seeks to cast a new light on the interactions between interlocking legal regimes by bringing into focus various “sites of recognition”. Secondly, I attempt to re-think the foundational principles of the conflict of laws field. Far from being a purely technical, esoteric, or isolated discipline, I show that the field is embedded in the ethos of pluralism, that it has a systematic dimension, and that it could accordingly be an effective tool for thinking anew about the interplay between law and justice, identity claims and social justice.

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Unity, Disunity & International Theory

Dilemmas in Mixing and Matching Legal Regimes: In Conflict, Unrest and Insecurity?

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This paper is part of a larger study that aims to examine the narrowing gap between humanitarian and human rights regimes of law in their application to contexts of international and non-international armed conflict, humanitarian and natural disaster and social and labour unrest contexts globally. For the presentation portion of the conference, I will focus on one case study that fleshes out some of justifications for use of force to end the regime of Ghaddafi in Libya under the framework of the military led operation, Unified Protector, the multi – national intervention, currently headed by the Canadians in Libya.

The argument is that the intervention in Libya demonstrates the dilemmas that emerge when humanitarian and human rights law, traditionally two distinct bodies of law, are intermingled to justify military action to intervene (in this case) in a non-international armed conflict.

The issues that will be raised include:

- 1) Does the existence non-international armed conflict trigger a situation that justified intervention by external actors, i.e. international military coalitions, special diplomatic missions and/or humanitarian response?
- 2) Is it acceptable for international military to use as part of its justification the violation of human rights to intervene and then switch to the regime of international humanitarian law for its operation?

- 3) What does it mean for the integrity of the two different regimes of law when initiating the intervention is based on human rights rationale, but then the method of conducting the intervention uses the standards of IHL to treat combatants and civilians?

The key differentiating factors of the two regimes of law in respect to treatment of persons are under the Human Rights regime that deals with the inherent rights of the person to be protected and under the Humanitarian regime that regulates the conduct of parties to an armed conflict. In their separate regimes IHRL and IHL uphold a high standard of compliance to protect individuals and conduct them with honour, however, when operational together in the field, a number of issues emerge. Some issues are seemingly in conflict and some that lead us to question their complementarily and conflict with each other.

The Risk at the Heart of Criminal Policy: the Revival of a Realist Epistemology?

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While central in the analysis of risk by social scientists (see i.a. TAYLOR-GOOBY & ZINN 2006: 14; BRUNET 2007: 26-30) the epistemological debate on the different approaches to risk has been largely absent from the legal scholarship addressing the legal regulation of risk (STEELE 2004). Traditionally, the epistemological debate crystallizes on the opposition between a realistic approach to risk - the risk exists regardless of strategies to identify and manage it - and a constructivist view of risk - the risk has no reality in itself, its identification and management contribute to its co-construction. Ulrich Beck, from his early writings (BECK 1986; 1999), but even more in

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his later works (BECK 2009), followed a third way, alternately described as a “weak constructivism” (LUPTON 1999: 35; STRYDOM 2002: 47) or a “pragmatic realism” (TULLOCH 2006: 132), which considers the danger resulting from risk as real, while insisting on the constructed dimension of risk identification through socially situated phenomena of perception (see in particular BECK 1999: 143; BECK 2009: 13). According to Beck, this hybrid perspective, which has also been strongly criticized (see MYTHEN 2004: 96-100) has many advantages. On the one hand, it reduces the relativistic temptation of the radical post-modern constructivism, while, and on the other hand, also keeping at bay the naïve simplicity of realistic approaches to risk. Over the past decade, the concept of risk entered vigorously the development and implementation of crime-fighting policies (O’MALLEY 1992; ERICSON & HAGGERTY 1997; MARY 2001; BRION 2003; CAUCHIES & CHANTRAINE 2006; CARTUYVELS 2008). This paper seeks to identify the epistemological assumptions underlying the use of risk in this specific field. The hypothesis to be developed is that approaching of the criminal phenomenon through the prism of risk leads to the revival of a strong realistic approach. Hence, crime tends to be perceived as a risk existing regardless of technical devices such as i.a. CCTV or DNA and their legal framework, designed to identify and manage it. Consequently, the fact that these devices firmly may contribute to the construction of what is considered as risks is strongly underestimated. In conclusion, far from leading to a reflexive approach that Beck associates with “late modernity”, the persistence of risk in the design of criminal policies turns out to be “hyper modern” in so far as it revives the project of a positivistic criminology which emerged in the late 19th century.

Unity and Pluralism in a Post National Order: The Rise and Fall of International Criminal Law

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Scholars are developing overarching theoretical frameworks to explain the relationship between unity, disunity and politicization of international law. My topic, using international criminal law (ICL) and its institutions as case studies and keeping with the theme of Globalization of Security Governance, explores’ ongoing debates between scholars who consider international law as unified (or constitutional) and others that visualize the post national space through pluralism. The underlying inquiry is whether ICL (and its institutions) affirm and transform the ongoing debates on unity and pluralism in public international law?

A central concern for public international lawyers is to determine how we are governed and regulated within the post national space. The drive to determine the landscape of the post national order is precipitated by the onslaught of globalization, the proliferation of international institutions and the creation of different sub fields of international law (with conflicting rules, judicial decisions and interpretations). Scholars are striving to identify possible mechanisms that may render accountable and or limit the powers of different actors within the subfields of international law. Moreover, drawing from domestic conceptions of law, there is a push to confer rights and duties to different stakeholders. A handful of scholars identify existing international treaties as clear evidence of unity (Fassbender, 2007; Macdonald & Johnston, 2005). Conversely, those in favour of pluralistic conceptions highlight the fragmentary nature of international law and international politics. Pluralists envision the post national space with multiple, and at

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times, competing legal orders that are loosely organized and governed by overarching rules. This approach views the international space as having multiple actors with multiple agendas on multiple sites of governance (Kirsch, 2010).

Furthermore, proponents of unity and pluralism cite ICL and its institutions as notable examples of their respective versions of unified or plural international law. ICL is hailed as one of the greatest achievements of international law in taming the raw powers of sovereign states and non-state actors. ICL pierces the veil of immunity by prosecuting state officials for the commission of international crimes. The realities, however, within the international criminal institutions are contrary to the assertions of those in favour of unity and pluralism. My hypothesis is that the legalization and institutionalization of ICL may affirm and transform both unity and pluralism in international law on the surface. However, a closer examination reveals the opposite, highlighting internal contradictions with the institutional framework, indeterminacy of the applicable laws, and institutional biases.

In this paper, I will focus on the celebrated process of legalization and institutionalization of ICL. I will then trace the development of these different processes to show the affirmative and transformative nature of ICL and illustrate the possibility of both unity and plurality within international law. The success of ICL's universal potentiality in limiting the powers of the sovereign, its agents and non-state actors will be highlighted by identifying the different drivers (for example international human rights law, social movements and others) and managers (for example United Nations/United Nations Security Council, States and others).

To counter this celebrated process, I will then turn to the institutions to illuminate the distinguishable regulatory and institutional characteristics as confirming the true political

and ambivalent nature of international law. These characteristics can be summarized as: (1) incoherent delineation of separation of powers within the institutions (as evidence of internal contradictions) (2) law making powers of the judges (underscoring the different institutional biases), and (3) various and uncontestable prosecutorial powers (as denoting indeterminacy).

For example, by exploring the law making powers of the judges of the International Criminal Tribunal for Former Yugoslavia and International Criminal Tribunal for Rwanda, this thesis will identify three general trends that support the above analysis by locating the political nature of international criminal institutions and the potential failure of ICL (illustrating the different institutional biases). These trends are: how judges conduct trials (the standards of admitting evidence); flexibility in judicial selection of law (based upon common law and/or civil law traditions); and expeditious trials. Moreover, the political nature of international criminal institutions is imbedded within the history of international law and international institutions dating back to the League of Nation.