A. THE SILENT INJUSTICE IN WRONGFUL CONVICTIONS: IS RACE A FACTOR IN CONVICTING THE INNOCENT?,
BY ANDREA ANDERSON, PH.D.

The research concentrates on the phenomenon of wrongful convictions and the socio-legal context in which it operates. Within this study, the research investigates the race-crime dynamic. The connection between race and crime is made visible by the fact that racialized and Aboriginal people are over-represented, compared to the population, in every stage of the North American criminal justice system. While racial discrimination in the criminal justice system is, to say the least, morally troubling, the prospect of incarcerating an innocent person is unthinkable. What happens when these two phenomena coincide? Since the 1983 Nova Scotia Court of Appeal decision in *R v Marshall* and the subsequent public inquiry, the role of systemic racism in wrongful conviction cases in Canada has gone unexplored.
Situated in the writings of Critical Race Theory, this research examines what has been included within the concept of miscarriages of justice. It questions where the experiences of racialized and Aboriginal people are in the narratives and reports on the wrongfully convicted in Canada. Certainly, race and racism are not entirely absent from the discourse. In the United States, for example, some attention has been given to the subject with discussions showing that racial disparities found elsewhere in the criminal justice system also appear in the conviction of the innocent. However, when exploring the mainstream discourse in Canada on wrongful convictions and how to prevent them, the racialized and Aboriginal experiences are relatively ignored. When racial discrimination exists in cases of wrongful convictions, it is not documented and, in turn, it is denied. One explanation is that the same systemic barriers that racialized and Aboriginal defendants encounter in the criminal justice system also exist when addressing race as a factor in wrongful convictions. Another reason is that Canadian lawyers have failed to engage in racial litigation, and the judiciary has resisted adoption of critical race approaches when invited to do so. In the end, the need to rethink the current cause and approaches to the study of wrongful convictions is paramount.

B. UNITED NATIONS CONSTITUTIONAL ASSISTANCE: A TWAIL PERSPECTIVE, BY VIJAYASHRI SRIPATI, PH.D.

This study shines the scholarly spotlight on United Nations Constitutional Assistance (UNCA) essentially a largely uncharted field to interrogate its deeper implications. It concerns itself with the purposes served by UNCA and analyses it through the “Policy Institution”/“established practice” concept using the purposive analysis method drawn from Ralph Wilde’s work *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away.* It explores UNCA from the Third World Approaches to International Law (TWAIL) perspective.

By analyzing UNCA as a “policy institution” and interrogating its official purposes, this dissertation analyzes this theme broadly. It does this through analyzing data including primarily United Nations (UN) documents and interviewing UN officials and activists involved in UN-assisted constitution-making processes. Offered both in the post-conflict and development-assistance contexts, UNCA essentially plays out in the more impoverished and politically weaker sections of the globe, that is, Least Developed Countries (LDCs). This study analyzes how the UN’s standard setting about how a constitution should be

written and what it should broadly contain impact constitution making and constitutional outcomes in these countries. On a general level, it concerns ways in which liberal paternalism and the dominant conception of human rights marked by the pursuit of neo-liberal economic principles shapes UNCA.

C. STRENGTHENING THE STAKEHOLDER PRINCIPLE: THE PATH OF CORPORATE LAW, BY PALLADAM VASUDEV, PH.D.

The stakeholder principle has been an important element in the corporate governance debate over the last several decades. In the recent past, the issue has been framed by the idiom of shareholder primacy versus the interests of non-shareholder groups, and the debate has generally leaned in favour of shareholder primacy with significant support from corporate theorists belonging to the law-and-economics stream. Recent events warrant revisiting the theoretical foundations of business corporations which are, arguably, the most important economic vehicle in the contemporary world. Corporate scandals inspired by the shareholder-value mantra, instability in share prices, runaway executive pay, and the pressures unleashed by globalization are some factors underscoring the need to revisit the theory underpinning business corporations.

This doctoral thesis examines the framework of corporate law to find the position assigned for non-shareholder groups. It points out that non-shareholder groups, in particular creditors and employees, have traditionally received consideration in corporate law and this trend strengthened with the introduction of stakeholder statutes in several American jurisdictions in the 1980s. A more recent evidence of the trend is found in the adoption of "enlightened shareholder value" in the UK Companies Act 2006. The thesis also explores empirical evidence which points towards unmistakable and overwhelming recognition of the stakeholder principle by most major corporations in the US, UK, and Canada. Considering past experience and the needs of the foreseeable future, a proposal is made for strengthening the stakeholder model by developing non-adversarial and interdisciplinary forums to deal with intra-corporate disputes.

D. RESOLUTION OF THE INDO-BANGLADESH WATER DISPUTE: DOES INTERNATIONAL LAW WORK?, BY ZAGLUL HAIDER

The findings of this study reveal that the "reasonable and equitable utilization" of international watercourses is the governing principle of international water law. It has been recognized as an established principle of customary international law in all important codifications of this area. It recognizes the principles of limited sovereignty, shared natural resources, equitable utilization, no significant harm,
reasonableness, optimum utilization, sustainable development, notification, data sharing, and finally peaceful settlement. I argue in this study that in light of international law, India's unilateral construction of structures at the upstream of the international rivers and India's attempt to interlink common international rivers, which has disastrous consequences for Bangladesh, are illegal. A number of factors, such as international law's intrinsic inability to be enforced on the strong states like India, Indian realist policy (power politics), economic and military power to carry out this policy, and India's strategic partnership with the US (which endorsed power politics) are responsible for India's non-compliance with international law regarding the utilization of common water and environmental resources with Bangladesh. In other words, India's lack of respect for international law has derived from its hegemony.

I further argue that a third-party settlement is the best strategy to resolve the disputes, because during the last thirty-seven years (1972-2009) bilateralism proved self-defeating for Bangladesh. India's uninterrupted violation of the bilateral treaty regarding the apportionment of the Ganges water and construction of the Tipaimukh hydraulic dam turns bilateralism into unilateralism. In the name of bilateralism India breaches the existing treaty unilaterally. As a consequence, bilateralism with India acts as a zero-sum game for Bangladesh. It fails to create a "win-win" situation for both of the countries. In effect, bilateralism has become a principal obstacle for the settlement of the Indo-Bangladesh water and environmental disputes. In the context of the failure of bilateralism, a third-party settlement may be considered as the best alternative strategy for Bangladesh to make the dispute settlement process a win-win situation. A third-party settlement or a multilateral agreement is not only the most common method, but it is also seen by many as an ideal method for a just and effective settlement.

Third-party settlement is a democratic process and works well among the democratic states. Third-party mediation is chosen here as an effective method on the grounds that first, it is a compelling international law, and secondly, South Asia experienced third-party settlements on several occasions with very effective and fruitful results. The Indus' water dispute between India and Pakistan was successfully resolved with an accord in 1960 by the active mediation of the World Bank. Again the Tashkent Agreement brokered by the then USSR, successfully concluded the Indo-Pakistan war in 1965 over the Kashmir issue. The settlement of the India-Pakistan land boundary disputes by the Rann of Kutch Arbitration of 1965 is another important example of a third party settlement in South Asia. Finally, I suggest that the United Nations, or the World Bank or global super power the US (acceptable to both India and Bangladesh) can be a suitable third-party mediator.
E. FROM LEGAL REFORM TO LEGAL EMPOWERMENT, THE CHANGING FACES OF LAW AND DEVELOPMENT, BY TRACEY M. POWELL

Despite a significant presence of development agencies in developing countries such as Jamaica, the projects they embark on—particularly legal reform projects—do not seem to have a direct effect on development. In an effort to determine why it is that legal reform work does not achieve increased development, this thesis uses the three moments of law and development, as described by David M. Trubek in his book the *New Law and Economic Development: A Critical Appraisal*, to analyse two legal reform projects undertaken in Jamaica. The two projects analysed are the Canadian International Development Agency's Jamaica Justice System Reform Project (2006-2007) and the Social Conflict and Legal Reform Project (1999-2005). The analysis of these two projects supports the final conclusion that there is in fact no direct correlation between law and development but rather that law is merely ancillary to development.