

Compendium: Recent Graduate Student Dissertation and Thesis Abstracts

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COMPENDIUM: RECENT GRADUATE STUDENT DISSERTATION AND THESIS ABSTRACTS

D.JUR. DISSERTATION

Equitable Utilization in the Blue Nile River Sub-Basin:
Context, Problems, and Prospects Yosef Yacob

LL.M. THESES

Gender, Social Reproduction, and the Canadian Welfare State:
Assessing the Recent Changes to the Maternity
and Parental Leave Benefits Regime Gillian Calder

Cost Shifting in Health Care: a Pilot Study Explores the Relationships
Between Cost Shifting, Repetitive Strain Injury,
the Workplace Safety and Insurance Board of Ontario,
and Publicly Funded Health Care Brian Murphy

No Longer Nascent: the Material Retardation Standard
of Injury in Antidumping Law Narayanan Prakash

Corruption in Transition—A Political Economy Interpretation:
the Case of Romaniã Adrian Savin

Locating Blame: Legal Responses to Parents
Who Kill Their Children Tanya Scarbach

EQUITABLE UTILIZATION IN THE BLUE NILE RIVER SUB- BASIN: CONTEXT, PROBLEMS, AND PROSPECTS

BY YOSEF YACOB, D.JUR.

The goal of this study is to facilitate negotiations for a comprehensive agreement for the equitable and peaceful utilization of the waters of the Blue Nile Sub-basin by contributing to the understanding of conditions, which impede negotiations. The central argument is that the status quo or a “no agreement” alternative is viewed by Egypt as the lower riparian’s best alternative to a negotiated agreement with Ethiopia, thereby making negotiations unnecessary.

In the context of international rivers, disputes generally revolve around issues concerning property rights arising from state sovereignty; reciprocal rights and obligations arising from negotiated agreements which between the sub-basin states; and principles of “equitable use” and collective obligations of the sub-basin states. The study examines factors which constitute property rights and equitable rights in light of the factors for reasonable and “equitable” use set out in Article V of the Helsinki Rules.

These factors include the hydro-geography of the Blue Nile Sub-basin (geography, drainage area, the hydrology, and the climate); past, existing and planned uses of the waters of the sub-basin; the population dependent on the waters of the sub-basin; water supply and demand in the sub-basin; present and future water requirements of each basin riparian; socio-economic needs of each sub-basin riparian; alternative means of satisfying economic and social needs and comparative costs; avoidance of waste; the degree to which the needs of the sub-basin state can be satisfied without causing harm; and the practicability of compensation to co-riparians to adjust conflict among uses.

The study also reviews efforts to achieve agreement and reciprocal rights and obligations by focusing on the riparians’ disposition towards negotiations and the “legal regime” of the Sub-basin. Finally, it explores issues concerning collective obligations of sub-basin riparians; international water resources law; principles and decisions applicable to consumptive uses of international rivers; collaboration-based approaches which have been put forward to achieve equitable utilization; and options for peaceful settlement. The study concludes by examining barriers, identifying inter-basin consensus as a critical factor to achieve equitable utilization and proposes consensus building to facilitate a permanent agreement.

GENDER, SOCIAL REPRODUCTION, AND THE CANADIAN WELFARE STATE: ASSESSING THE RECENT CHANGES TO THE MATERNITY AND PARENTAL LEAVE BENEFITS REGIME

BY GILLIAN CALDER, LL.M.

On 31 December 2000 the federal government extended the length of the period for which benefits during maternity and parental leave would be paid in Canada. This thesis examines the federal government’s decision and asserts that the move to lengthen the benefit period has had a contradictory effect on women attempting to balance the competing rhythms and demands of negotiating their productive and reproductive lives. By extending the length of the benefit period the government appeared to be offering an equality-enhancing change. However, by

continuing to deliver the benefit under the provisions of the *Employment Insurance Act*, an Act with onerous eligibility requirements, the availability of these benefits is for many Canadians and women in particular, an illusion. This thesis addresses the issue of the gendered implication of the recent changes and poses two questions: how it is that the regime has come to be attached to unemployment insurance; and why, given the current macro-economic context, the benefit period is being extended now. A theoretical model that examines the contradiction between production and social reproduction in a capitalist economy is employed to demonstrate how the extension of benefits is part of a response to a crisis in social reproduction caused by competing demands on women's labour.

**COST SHIFTING IN HEALTH CARE: A PILOT STUDY
EXPLORES THE RELATIONSHIPS BETWEEN COST SHIFTING,
REPETITIVE STRAIN INJURY, THE WORKPLACE SAFETY
AND INSURANCE BOARD OF ONTARIO, AND PUBLICLY
FUNDED HEALTH CARE**

BY BRIAN MURPHY, LL.M.

Cost shifting in health care occurs when one of the participants, whether public or private, attempts to shift the burden of the health care cost to another participant. Overuse-related injuries, often referred to as repetitive strain injuries, may occur during work or leisure and present an opportunity to cost shift. A survey was designed to identify potential cost-shifting activities involving overuse types of injuries affecting the upper limbs. A sample size of 100 family physicians was randomly chosen from a sampling frame composed of number of communities in Ontario. A total of 56 physicians agreed to participate and completed the questionnaire. Respondents identified some 384 known or suspected cases of work-related injury. Respondents indicated that 208.5 of the 384 cases were billed to public publicly funded health care and not to workers' compensation. Selected variables showed statistically significant correlations suggestive of cost-shifting activities. Further study is required to clarify the extent and dollar value of cost-shifting activity both provincially and nationally.

**NO LONGER NASCENT: THE MATERIAL RETARDATION
STANDARD OF INJURY IN ANTIDUMPING LAW**

BY NARAYANAN PRAKASH, LL.M.

Antidumping measures have become the favoured trade remedy mechanism for members of the World Trade Organization (WTO). From being the exclusive preserve of a few rich countries, this exception to the

principle of free trade has transformed into a universal tool now also used extensively by developing countries. In this context, this thesis examines the third form of injury to industry, on a demonstration of which a domestic industry that has not been established may obtain protection from dumped imports in the form of antidumping measures. This thesis finds that 'material retardation to the establishment of domestic industry' is a relatively understudied standard of injury, despite the fact that at the outset it would seem that situations for the application of the standard would arise at least occasionally in developing economies.

This thesis therefore undertakes the exercise of describing and analyzing the material retardation standard in terms of its evolution, usage and the future course of action in light of the lack of any elaboration of the standard under the WTO Agreements. The thesis finds that quite contrary to the antidumping system as a whole, the material retardation standard may have some economic justification in terms of 'profit-shifting' and 'comparative advantage.' Further, the thesis finds that around the world the standard has hardly been used, though there are some indications of developing countries commencing to invoke it. In light of this, the thesis examines the principles currently adopted by antidumping authorities in investigating an allegation of material retardation, and finds that these do not address its unique circumstances. To preclude the possibility of abuse of the standard and to provide guidance to developing economies that are likely to increasingly invoke the standard, the thesis explores options for an elaboration of the standard. Negotiations among WTO members would ultimately determine the scope of the standard.

CORRUPTION IN TRANSITION—A POLITICAL ECONOMY INTERPRETATION: THE CASE OF ROMANIA

BY ADRIAN SAVIN, LL.M.

The fall of communism in Eastern Europe and the former Soviet Union generated much optimism both in the countries of the region, and in the established democracies, about the emergence of democratic systems of government and the development of solid market economies in the region. Despite some successes, the future looks rather bleak for some of the countries that undertook the path of democracy and adopted market economic policies. This is the result of an unexpected surge in crime and corruption throughout the former communist countries. These two negative developments have affected the transition to democracy and capitalist market economies so profoundly that, in some countries, the influence of crime and corruption has completely overcome the process, hijacking it for the benefit of minority vested interests. This thesis endeavors to explain this

negative evolution and to offer solutions from a political economy perspective, taking as a subject of study the former communist country of Romania.

The thesis is structured in three major chapters. Chapter one outlines the research problem, the research methodology and the analytical approach adopted in this study. The research problem lays out the broad dimension and impact of the phenomenon of corruption on the population, the country and its influence on the developing system of governance during the post-communist years. The methodology explores the necessity of adopting a political economy analytic perspective, as opposed to other approaches, which have proven less capable of fully describing the phenomenon. The 'discussion' section offers a unique conception of corruption and details the most important components that may be integrated under a political economy analysis.

Chapter two analyzes the phenomenon of corruption in the former communist bloc. The chapter begins with an argument for studying the transitional aspects of corruption in the post-communist environment, on the basis of an understanding of the prevailing political structure and systemic corruption of the communist era, which influenced the post communist state and its conditions. The discussion progresses to an examination of the peculiarities of systemic corruption in the case of Romania, and concludes with an exploration of the unique features of the country's evolving political and economic structure, the development of which paralleled the change in regime, with a focus on the dynamics of the emergent corruption.

Chapter three discusses the economics of transitional corruption, and the interplay between corruption and consequent institutional responses to it, as revealed from a political economy perspective. A set of concrete cases are presented to corroborate the theoretical contentions. In addition, the analysis lays out the possibilities and limitations of anti-corruption efforts.

The conclusion sums up the main contentions of the thesis, in an attempt to anticipate the future evolution of Romania's political and economic institutions as a parallel to the evolution of the phenomenon of corruption in the country.

LOCATING BLAME: LEGAL RESPONSES TO PARENTS WHO KILL THEIR CHILDREN

BY TANYA SCARBACH, LL.M.

This thesis examines Canadian cases of infanticide and manslaughter of child by parent from 1985 to the present. The main

question asked is whether the infanticide provision of the *Criminal Code* ought to be abolished.

The first chapter explores feminist legal thought and jurisprudence, comparing various formal and substantive equality models with a justice model of equality. The author determines that a justice model of equality is preferable because it avoids the androcentric premise of the other models. Because some men are disadvantaged in the criminal justice system, making women equal to men within that system would not necessarily be an improvement for women or an achievement of justice.

The second chapter explores the social uses and misuses of psychiatry and psychology, particularly in relation to women, while the third chapter analyses the merger of psychiatry and the law. The author identifies the tendency of both disciplines to locate blame within the individual, and to thereby reinforce one another. Psychiatry and law operate together to reinforce the status quo, not only in relation to gender, but also in relation to class, race, and disability.

The fourth chapter is a study of the law of infanticide which outlines the history of the provision, the psychiatric evidence that supports it, its deficiencies, and various feminist responses to it. The author concludes that the infanticide provision should be abolished because it offends the fundamental principles of criminal law and is based on a biased view of women that perpetuates a vision of them as irresponsible and helplessly driven by their biology.

Chapter Five examines manslaughter cases involving parents who have killed their children. The cases show that women are treated more harshly when convicted of manslaughter than infanticide. However, this finding does not necessarily mean that if the infanticide provision is abolished women who would have obtained the benefit of that provision will be treated more harshly under the manslaughter provision, if all of the mitigating factors remain the same.