

Compendium: Recent Graduate Student Dissertation and Thesis Abstracts

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Recent Graduate Student Dissertation and Thesis Abstracts

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A. GM FOOD LABELS: IS IT THE NEED TO KNOW OR THE RIGHT TO KNOW – LABEL WHAT AND WHY?, BY STAN F. BENDA¹

The debate on the mandatory labelling of genetically modified food (GMF) pivots on two justifications: the seemingly imperious right to know (RTK) and the seemingly paternalistic need to know (NTK). Of these two approaches, which is more efficient and rational?

The premise of the controversy—the identification and management of risk—has bifurcated into two risk analysis schools. The science school operates on actual risk inherent in the product, to wit: food; it engages the NTK. The social school operates on perceived risk from transcendental considerations associated with the process, to wit: recombinant deoxyribonucleic acid technology (rDNA); it engages the RTK. These polarities mesh with the main sociological risk culture groups defined by Wildavsky, and may be suggestive of the virulence of the debate.

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The social school considers food culture and values when determining risk, and manages that determination via the precautionary principle (PP), with a view to “prove it is safe.” Multi-lateral environmental agreements (MEAs) such as the Cartagena Protocol manifest this approach to GMF. The science school considers the physical realities arising from botany and breeding (*e.g.*, allergen proteins). The school then manages the actual risks arising from those realities using cost-benefit analysis aiming for an outcome of “no evidence of harm.” This is the approach followed by the World Trade Organization (WTO).

The GMF labelling debate typically eschews any in-depth analysis of botany, agriculture, and economics. Consequently, the debate has operated without the knowledge that cross-species breeding barriers were overcome before rDNA; and under misconceptions concerning botany, agricultural production and breeding processes, and the nature and processing of food. The resulting question for GMF labels now becomes: label what, and why?

The RTK is thus infinite, fluid, and labile, and resonates with many in the democratic polity. Yet, with such traits, RTK is as much a device for dirigisme as for risk management, with the attendant consumption of societal resources. The RTK advocates caution. The NTK provides principled focus by addressing actual risk from food crops in the context of all breeding techniques and food production and processing systems. NTK bespeaks innovation, and innovation can beget societal resilience.

B. TRANSNATIONAL DOMESTIC LABOUR REGULATION: USING DOMESTIC DISCLOSURE REGULATION TO INFLUENCE FOREIGN LABOUR PRACTICES, BY DAVID J. DOOREY²

An important tool in the arsenal of “decentred” regulation, including reflexive law, is corporate information disclosure. In theory, disclosure regulation can have important normative influence on corporate behaviour, because it acts like a “risk virus” injected into the corporate decision-making matrix that companies will seek to manage and control. The challenge for regulators is to identify the scope of disclosure that will cause corporate responses of the sort desired by the state.

This dissertation considers the potential role of disclosure regulation as a tool

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for influencing labour practices beyond the borders of the regulating state and, in particular, within the vast global supply chains of multinational corporations. The emergence of a new activist movement concerned with supply chain labour practices has elevated the risk to brand-based companies of being associated with abusive labour conditions. That risk might be exploited by disclosure regulation that aims to “encourage” companies to pay greater attention to the conditions of work under which their products are produced. But this legal strategy is controversial and wrought with dangers; it can intrude on domestic labour policies and leave workers worse off than before.

The goal of the regulation must be foremost the empowerment of the workers and their organizations in those states and the indigenous and emerging global social movements who assist them. Drawing on a qualitative examination of two major apparel corporations—Nike and Levi-Strauss—that have slowly embraced supply chain transparency, this dissertation presents an argument that mandatory factory disclosure could make a useful contribution to this goal of reducing labour abuses within global supply chains.

C. EXECUTIVE BRANCH JUSTICE: CANADA’S “OFFICIAL COURTS,”
BY S. RONALD ELLIS, QC

This dissertation’s subject is the myriad of judicial, adjudicative functions assigned by Canadian statutes to persons who are not judges and to institutions that are not courts. Taken together, these persons and institutions are now commonly said to comprise an “administrative justice system.” It is a justice system with a pervasive, major influence on the life of all Canadians; the justice system to which the majority of Canadians must look for the recognition or vindication of their rights; the only justice system most people are likely to encounter. It is a system of tribunals which routinely make life-altering rights decisions in a broad range of contexts, and which are as capable as courts of inflicting injustice; a system that is as much a part of our rights regime, and as much a child of the rule of law, as is our traditional judicial system.

The dissertation demonstrates through the public record that, with the exception of the system in the Province of Quebec, Canada’s administrative justice system, as traditionally and as currently structured and administered, is in fact a shameful pretence of a justice system; one for which the most appropriate label is not “administrative justice” but the oxymoron label “executive branch justice”; a system of Dicey’s “official courts” come to life; a system that is egregiously

abused and neglected by the politicians and bureaucrats, and whose design and operation is shamefully blind to the principles of justice; a system in dire need of transformative structural reform.

The dissertation addresses the system's record of justice-tainted institutional failures and its theoretical, legal and structural deficiencies; posits the elements of a theory of administrative justice on which to base transformative reform; and proposes a plan of reform and restructuring.

D. THE EFFICACY OF THE ISRAELI LEGAL SYSTEM IN PROTECTING AND FULFILLING NAQAB BEDOUIN LAND RIGHTS, BY NASSER VICTOR REGO

The thesis is a critical legal study of Israeli land law and policy as it has been applied to the Palestinian Arab Bedouin citizens of the Naqab (Negev) since 1948 until present. Through research, case studies, interviews and discussions the thesis gauges the efficacy of using the Israeli legal system to protect and fulfil Naqab Bedouin land rights. The thesis shows that although the legal system has achieved civil liberties successes, it has not been able to deliver, and at times in a colonial fashion has worked against, justice on the bigger issue of land rights for indigenous Palestinian citizens. The thesis calls for law to not be blind obedience to formal, impersonal rules or to the directives of ethnocratic government, but to allow for a humanistic immersion in its texts, one where the dignity of "the other" is recognized, providing the space for affirmative action, intergenerational justice and restitution.