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COMPENDIUM:
RECENT GRADUATE STUDENT DISSERTATION AND THESIS ABSTRACTS

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From the late 1950s to the late 1970s, many countries in Asia and Africa gained political independence. Having achieved decolonization and sovereignty, these newly independent countries turned their attention towards achieving economic independence. Among other things, they challenged the international law rules on the protection of foreign investments, particularly customary international law rules on the responsibility of States for injuries to the property of aliens. With the active encouragement and support of Latin American countries, which had long adhered to the Calvo Doctrine, they demanded a comprehensive reassessment of North-South economic relations. This agitation by the newly independent countries for redistributing global wealth reached its climax in 1974 when the United Nations General Assembly passed a resolution calling for a “New International Economic Order” (NIEO). The ink on the NIEO resolution had hardly dried when the North began a relentless and sustained campaign to discredit it and to neutralize its impact on the global economy. In the opinion of the overwhelming majority of developed countries, the NIEO was nothing more than a political programme—a grand manifesto for a social democratic system of world economic order.

The NIEO paradigm has run its course without accomplishing its core objective of redistributing global wealth. This is also the case with the Calvo Doctrine. The demise of the NIEO paradigm represents a major setback to the aspirations of developing countries for economic advancement. Developing countries, including the Calvo Doctrine States of Latin America and the transition economies, particularly in Eastern Europe, have embraced the “globalization” paradigm or the new global economic order. This globalization paradigm emphasizes the integration of the global economy. Thus, the new global economic order or globalization is described with such phrases as “interconnected world” or “interdependent world.” With respect to foreign investment, it emphasizes the liberalization of the legal regime of foreign investment both at the national and international level. Accordingly, developing countries, including Latin American countries and transition economies, have reversed their policies on foreign investment protection and promotion. These countries have embraced the liberalization of the legal regime of foreign investment by revising their national laws on foreign investments and enacting new ones. At the international level, they have entered into...
an overwhelming number of Bilateral Investment Treaties (BITs), Regional Investment Treaties (RITs), Multilateral Investment Treaties (MITs), Free Trade Agreements (FRAs), Foreign Investment Protection and Promotion Agreements (FIPAs) and other international legal instruments for the protection and promotion of foreign investment. These investment treaties embody a catalogue of investor protection measures including the investor-State dispute mechanisms (ISDM).

The proponents of globalization have argued that the liberalization of the legal regime of foreign investment is fundamental to the achievement of economic progress by developing and transition economies. Since its proponents tout the new global economic order or globalization as a catalyst for universal economic development, particularly the economic development of developing and transition economies, scholars of international economic law, economists and political scientists in general have pursued the veracity or otherwise of this assertion from different scholarly perspectives. Against the backdrop of international arbitration of State contracts, this dissertation examines the benefits, if any, of the new global economic order to developing countries and transition economies with particular focus on applicable substantive law issues in international arbitration of State contracts. Upon the critical examination of the benefits of foreign investment liberalization to developing and transition economic with particular focus on applicable substantive law issues in international investment disputes, the picture that emerges is not as rosy as that asserted by the proponents of the global economic order. For example the doctrine of indirect expropriation in contemporary international arbitration of State contracts is potential legal landmine that can stifle the economic development of developing and transition economies. In the light of these problems, this thesis makes some suggestions for changes in the legal regime of foreign investment. These changes are very fundamental if developing and transition economies are to realize the economic benefits of globalization or the new global economic order. It is also very important that these problems be addressed because they can lead to another wave of nationalist backlash given that a policy reversal is always possible in a changing world order.

THE SACRIFICE OF THE GUILTY: THE IMPORTANCE OF NARRATIVE RESONANCE IN UNDERSTANDING CRIMINAL JUSTICE AND MEDIA RESPONSES TO ABERRANT OFFENDERS

By CATHERINE O'SULLIVAN, PH.D.

In this thesis I undertake a case study of the Canadian serial killer Karla Homolka and how she was represented by both the criminal justice
system and by the media. She and her partner Paul Bernardo killed three young women, and sexually assaulted a fourth. In exchange for her testimony against her ex-husband Homolka received an extraordinarily lenient sentence. The case therefore provides an opportunity to discuss the thorny question of differential treatment for women in the criminal justice system. Two theories have been developed within traditional and feminist criminology to answer this question, namely chivalry and sexism.

However when applied to the Homolka case neither theory adequately explains the complex legal and social reaction to Homolka. In order to provide an alternative explanation for the differential treatment Homolka received, I examine how she was represented by the media and by the criminal justice system, and suggest why one narrative (Homolka as monster) succeeded and the other (Homolka as victim) failed. Drawing from the theory of sacrificeability as outlined by Rene Girard, I found that if an offender/offence is of such a nature to precipitate or aggravate an already existing social crisis, then the offender must be either reintegrated into society or expelled from it.

Reintegration and expulsion are designed to contain an aberrant offender and thereby appease the fears of societal collapse that she and/or her crimes referenced. However, while the monster narrative ultimately won the media/public battle over how to best make sense of an contain Homolka, I further argue that the closure the Homolka as monster narrative sought to impose is not as permanent or definitive as it seemed. This insight was also derived from Girard. I support this claim with reference to the British case of Myra Hindley. I then propose an alternative means of responding to aberrant offenders outside of the confines of the scapegoat mechanism. This alternative requires situating the offender and/or their crimes in a societal context and accepting the offender’s humanity.

THE OTHER INVISIBLE HAND OF MARKETS: THE MARKET POWER OF SOCIAL NETWORKS, SELLER AND BUYER POWER AND COMPETITION LAW

BY ALBERTO SALAZAR VALLE, PH.D.

This dissertation discusses the role of competition law in dealing with problems of seller and buyer power. It is argued that social and business networks and groups may constitute a new source of seller and buyer power and hereby competition law and policy should regulate this network power. Following an interdisciplinary perspective, this argument is elaborated as follows.

Neoclassical and institutional law and economics paradigms of
seller and buyer power have largely overlooked network and group power. While sensitive to the broader institutional environment of market power and market competition, progressive institutional analyses drawing on American old institutional economics and German Ordoliberalism have not developed a clear account of the power of social networks and groups and the effects of these latter on seller and buyer power.

Departing from these views, it is claimed that abusive practices associated with buyer and seller power derive not only from overt strategic behaviour under conditions of market share concentration but also from group connections or membership and networks. Individual sellers and buyers may elicit their market power from their embeddedness in business networks and groups. These latter may facilitate sellers and buyers engaging in exclusion, exploitation and anti-competitive coordination to the detriment of unconnected sellers and buyers.

This harms downstream and upstream as well as short and long-term competition. Moreover, as networks and groups are socially constructed in terms of race, class, gender and ethnic differences and sustained by elites, buyer and seller power associated with group connections also reflects such differences and such elite control. A group or network of sellers and buyers may exclude, exploit and coordinate their actions against sellers and buyers associated with racial minorities, powerless ethnic groups, low-income groups and women. This further re-structures the market power of sellers and buyers, distorts market competition, misallocates business opportunities and widens social inequalities. Despite these socio-economic findings, modern competition laws do not fully capture these market power problems associated with social networks and groups. The review of selected current competition legislation of four countries namely Canada, Germany, Japan and South Africa indicates that there is an important regulatory gap in relation to seller and buyer power embedded in networks and groups.

To respond to this regulatory gap, it is necessary to incorporate the market power of social networks and groups into competition law. Several important competition policies have been suggested to regulate seller and buyer power embedded in networks and groups. On the one hand, competition law should curb the anticompetitive effects of the network embeddedness. There is a need to re-conceptualize the notion of buyer power and collective dominance in terms of network power. Through this rethinking, network power gains visibility and relevance that in turn compel competition law to devise competition rules that tackle network power underlying seller and buyer power. On the other hand, competition law should also promote the pro-competitive effects of network embeddedness. In this respect competition law should promote the development of
networks and groups of small sellers and buyers in order to facilitate countervailing power and long-term sound competition. This in turn will create an environment conducive to competition of networks and groups for business, discourse and governance opportunities. Procedural politicization of competition law making and enforcement may result from such network competition. Competition law ought to provide procedural rules in order to facilitate and control this unavoidable politicization of competition rules.

This view poses important challenges to mainstream competition law. This latter is inadequate to deal with the anti- and pro-competitive effects of the market power of social networks and groups. This is largely due to the neoclassical conception of market power upon which mainstream competition law is premised. It is thus an imperative to build a new competition law framework that is capable of accommodating the power of networks and groups and providing effective regulatory solutions. To this end, it is claimed that competition law should relax economic imperialistic definitions of market power and adopt open-ended objectives and open-ended qualifications of seller and buyer power.

WHEN CULTURE MEETS TRADE: TV PROGRAMMING TRADE UNDER THE WTO REGIME

BY XUE YAN, PH.D.

This dissertation looks at how the WTO (the World Trade Organization) can adequately address cultural concerns arising from international cultural trade using TV programming sector as a platform. Drawing on international human rights law, it argues that culture should be understood as a context-oriented concept rather than a content-oriented notion. After a detailed review of relevant provisions of WTO agreements and the decisions of its adjudicating bodies, it notes that the current WTO system does not accommodate cultural concerns such as protecting national culture as well as it should, if the contested and transforming nature of culture is being fully appreciated as international human rights law suggests. Given the apparent merit of consistencies across different areas of international law, and the dual nature of cultural goods and services, this dissertation explores various options of the WTO to take up the challenge, and proposes that a General Agreement on Trade in Culture (GATC) be adopted by the WTO regime.
THE IDEA OF PUBLIC JOINT-AUTHORSHIP IN COPYRIGHT
BY LOIR ZEMER, PH.D.

In a world of intellectual achievers whose creations are safeguarded by robust regimes of rights exclusion, the public is collectively isolated from a deprived of recognition of its social and cultural contribution to the process of creating intellectual properties. In this Thesis, I argue that copyrighted entities represent authorial collectivity. I advocate the authorial role of the public in the process of copyright creation. This role has been largely ignored an taken for granted. I take the temerity to develop an argument suggesting a property right for the public in every copyrighted enterprise.

This Thesis is about copyright theory. In its 8 Chapters it presents a model of public authorship. The discussion is founded upon the argument that a copyright work is a joint enterprise of the public and the author. Every copyright work depends on and is reflective of the decisive authorial contribution the public makes to the formation of authorial and artistic materials. The author's exposure to and consumption of cultural and social elements is what makes the copyright creation successful. These elements are nurtured and stimulated by the public and constitute an integral part of the public's collective identity. Copyright works should therefore, not be regarded as exclusive private property. Since copyright works profit form a significant public contribution, both public and authors should own them under a joint title.

COMMON LAW ABORIGINAL KNOWLEDGE PROTECTION RIGHTS: RECOGNIZING THE RIGHTS OF ABORIGINAL PEOPLES IN CANADA TO PROHIBIT THE USE AND DISSEMINATION OF ELEMENTS OF THEIR KNOWLEDGE
BY Michael David Halewood, D.Jur.

In Canada, under certain conditions, aboriginal peoples enjoy collectively held rights, recognized in common law, to preclude others from using, reproducing, and disseminating their knowledge. Common law aboriginal knowledge protection rights can be defined by either (1) the "integral to distinctive culture" test, as established by the Supreme Court in Van der Peet, or (2) the doctrine of continuity. Pursuant to the former, aboriginal peoples' knowledge protection-related practices, traditions, and customs that are "integral to their distinctive culture" are enforceable in common law courts across the country and constitutionally enshrined pursuant to section 35(1) of the Constitution Act, 1982. Pursuant to the doctrine of continuity, aboriginal communities would enjoy rights created
by aboriginal laws and rights-creating customs that have continued, unextinguished, since the acquisition of Crown sovereignty. Those rights would also be enforceable in common law courts and would be constitutionally enshrined pursuant to section 35(1) under some circumstances.

Aboriginal knowledge protection rights defined through either means would vest collectively in aboriginal peoples or nations per se and be subject to their internal regulation, advantages that are generally not available under existing intellectual property laws.

Canadian courts’ current reliance on the “integral to a distinctive culture” test should not preclude recognition of the doctrine of continuity to define aboriginal rights; there are four arguments to reconcile the concurrent use of both.

Assuming the Canadian government will recognize aboriginal legislative jurisdiction (and aboriginal adjudicative jurisdiction and courts) the author analyzes the enforceability of knowledge protection rights created pursuant to that jurisdiction. Aboriginal courts could assume jurisdiction over some cases, but probably not those involving unauthorized “takings” by non-resident, non-aboriginals, outside aboriginal territories—perhaps the most important scenario to be able to address. When aboriginal courts would have jurisdiction, their judgments would likely be enforced by provincial courts across Canada.

Common law aboriginal knowledge protection rights provide aboriginal complainants with a hitherto unexploited cause of action; they can also be “mined” for elements to be included in future sui generis statutory laws and introduced into international negotiations concerning protections for traditional knowledge.

PARENT EDUCATION PROGRAMS IN FAMILY LAW COURTS: PERILS AND POTENTIAL

By Shelley Kierstead, D.Jur.

There is ongoing debate in current family law discourse about how the state can best achieve the goal of promoting less conflict-laden decision making in child-related matters while allowing separated parents to exercise parental autonomy. Specifically, there is disagreement about whether formal or informal dispute resolution processes can most appropriately achieve this goal.

In this dissertation, I argue that court-connected parent education programs have the potential to bridge this apparent “divide” between informal and formal dispute resolution mechanisms. Drawing on theoretical discussions about “empowerment” and “informed consent” in
the mediation context, my thesis is that within a system that involves different dispute resolution alternatives, it is essential that participants are able to provide truly informed consent to whichever of the options they choose. Further, within such a system, the role of legal information and legal advice for consumers is critical. I explore the phenomenon of unrepresented family law litigants, and the importance of providing them with access to legal information.

The work involves a combination of doctrinal and statistical analysis. After reviewing literature outlining current debates about family law dispute resolution processes, I examine socio-political motivations for the integration of parent education into the family law system. I then consider doctrinal limits on state interference with parental autonomy in the context of private custody disputes, and how these limits impact attendance policies for court-connected parent education programs. A review follows of data collected from a court-connected parent education program titled the Parent Information Program (PIP). Data were collected from court file reviews of a sample of PIP participants along with a control group of non-PIP participant files. PIP participants also provided feedback on their views about program facilitation and content.

After combining the doctrinal and empirical analyses to canvass questions about the most appropriate types of parent education program content and implementation policies, the dissertation concludes with the argument that such programs can play an important role in assisting parents to work their way through the separation process in an informed, autonomous manner that serves their children’s best interests.

THE JUDICIAL TREATMENT OF GENDERED DISABILITY DISCRIMINATION

By Fiona Sampson, D.Jur.

This thesis analyzes the judicial treatment of gendered disability discrimination in Canada. The goal of this analysis is to develop an improved understanding of the judicial treatment of these claims so that equality rights law can be used more successfully to advance the rights of disabled women in the future. Through a comparative analysis of judicial decisions relating to the equality claims of disabled women, non-disabled women, and disabled persons, I assess the difference that gendered disability makes to the Court’s treatment of the equality claims of disabled women. This thesis demonstrates the lack of judicial consciousness relating to gendered disability discrimination, and the need to increase the weight accorded the rights of disabled women in equality analyses, so as to improve the balancing of what are often competing rights and interests.
within these claims, and provide for increased fairness and justice.

REPARATION AS NARRATIVE RESISTANCE: DISPLACING ORIENTALISM AND RECODING HARM FOR CHINESE WOMEN OF THE EXCLUSION ERA

BY SANDRA CHU, LL.M.

This paper examines the issue of harm within the specific historical context of Canadian immigration legislation that was directed towards Chinese migrants from 1885 to 1947. During this period, the Canadian government restricted Chinese immigration in the form of a Head Tax imposed on all Chinese entering Canada (1885-1923) and subsequently through the outright exclusion of Chinese immigration (1923-1947). The prohibitive Head Tax barred the majority of Chinese women from immigrating to Canada during this period, resulting in a “bachelor society” of Chinese men in Canada and correspondingly, wives and single mothers in China. The subsequent period of exclusion resulted in the forced separation of Chinese women from their partners in Canada, a period characterized by extreme hardship given the ongoing civil war and accompanying famine in China. While Chinese women were obviously subject to both direct and indirect forms of legislated discrimination, few scholars or legal insiders have addressed the possibility for, and content of, legal redress.

Those who paid the Head Tax ultimately challenged the exclusionary immigration legislation in a class action in which women were noticeably absent, an absence that was not accidental. Because law has been constructed to accommodate the needs of atomistic, autonomous individuals, separation is not seen as harm, a fact that is made all the more acceptable in the case of Chinese women by the fact that separation was imposed upon Orientalized Others. The tropes that were constructed to dehumanize, and correspondingly “de-legalize” Chinese women justified and rendered invisible any harms perpetrated. Moreover, the intersectional nature of Chinese women’s particular experience with Canadian immigration legislation is left unexamined, given the ease with which the Chinese Immigration Acts can be characterized as driven solely by racial discrimination. This paper considers the particular injuries suffered by Chinese women of the Exclusion era, and canvasses feminist legal theory and the reparations literature to explore the possibilities in legal redress.
This thesis is generally concerned with the ways in which International Human Rights Institutions (IHIs) influence the human rights campaigns of civil society groups (CSGs) within Sierra Leone. It attempts to tease out the more subtle ways, other than via securing direct state compliance, in which IHIs norms and processes can penetrate into the domestic sphere, and can therefore become quite useful to the work of the CSGs that seek to foster socio-legal change within those states. This thesis objective was achieved largely by analyzing the case study of the activities of the eight CSGs that operated in Sierra Leone from 1996 to 2004. The various human rights campaigns embarked on by these CSGs were examined in order to determine the nature and extent of the deployment and utility of IHIs norms and processes within such campaigns. This thesis basically adopts a constructivist approach to the issue of the effectiveness of IHIs. Nevertheless, an examination of the approaches adopted by the theoretical approaches that form part of the broad “rationalist” school to the issue of the effectiveness of IHIs forms a substantial part of the thesis, and sets the stage for the adoption in the thesis of constructivism as the preferred explanatory model. These rationalist theories are also examined to see whether they can provide a sufficient explanation for the kinds of influence observed in the case of the Sierra Leonean CSGs dealt with in the case study. The broad theoretical conclusion that is reached in the thesis is that because it pays much greater attention to the important role that norms, ideas, values and knowledge can play in assessing the effectiveness of IHIs, the broad constructivist approach (which includes quasi-constructivism) is much better suited to the task of explaining the domestic impact that IHIs can have within states. As the Sierra Leonean CSGs that have been studied have worked mostly with norms, ideas and knowledge, have not tended to function in the context of direct compliance with IHIs dictates, and have tended not to stress or exert any appreciable measure of coercive power, constructivism (broadly defined) is certainly much better at explaining the impact that IHIs norms and processes have had on their work than the other competing, if sometimes complimentary, schools of thought on IHIs.
INTERNATIONAL TRADE IMPLICATIONS OF ECOLABELLING SCHEMES IN THE SUSTAINABLE FISHERIES SECTOR
BY CHRISTINE ELIZABETH LEBLANC, LL.M.

My dissertation begins by exploring the UNCLOS regime, the 1995 Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fisheries, Fisheries Management Organizations and other measures that control marine living resources. I discuss whether these measures are sufficient to promote global sustainable fisheries. In my second chapter, I explore the feasibility of ecolabelling schemes as a way to compensate for the inadequate legal regime governing global fisheries. I explain how the Marine Stewardship Council (MSC) certifies a fishery as “well-managed and sustainably harvested” and I critically assess the first five fisheries certified by the MSC. In my last chapter, I examine the potential international trade difficulties that may hamper the operations of the MSC. I analyze the MSC ecolabelling scheme under current international trade rules and point out that clarification is needed regarding the applicability of the TBT Agreement to non-product-related process and production methods.

LEGAL CULTURES IN CONFLICT: ABORIGINAL GOVERNANCE AND THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS
BY KIRSTEN MANLEY-CASIMIR, LL.M.

This thesis explores the appropriateness of applying the Canadian Charter of Rights and Freedoms to Aboriginal governments exercising inherent governance rights. The author argues that the Charter may not be the appropriate mechanism to protect individual rights against Aboriginal governments due to the divergence in First Nations cultural values and those underlying the Charter. The author further argues that the constitutional provisions relating to Aboriginal governance rights can be interpreted in a way that does not bring Aboriginal governments exercising such rights within the purview of the Charter. The author concludes by suggesting possible alternative structures to ensure the democratic accountability of Aboriginal governments in the event that the Charter does not apply.
TOWARDS INTERNATIONAL DEMOCRACY: DESIGNING INTERNATIONAL DEMOCRACY THROUGH NATIONAL GLOBAL ASSEMBLIES

BY HASSAN EL. MENYAWI, LL.M.

The current structure of the international legal system is state-centric. An outflow of the international system's state-centrism is that it separates national populations from one another, preventing them from communicating directly with one another. In this thesis, this separation is referred to as a "bifurcation." To allow national populations to lift the bifurcation, and allow national populations to communicate directly with one another, I call for the implementation of the international democracy.

Recently, there has been discussion in the scholarship about how to implement international democracy. However, these discussions have been mired in what Michael Barkun calls a "false analogy" in which the nation-state becomes the metaphor for the international level. Instead of suggesting institutions that would properly serve the needs of the international level, international democracy is often modeled after the state. Consider the most typical yet unrealistic recommendation of implementing a world government. The goal of this thesis is to design an alternative democratic institution that does not fall prey to this "false analogy."

Before commencing with the institutional design of international democracy, the thesis first determines what the design goals are, namely to establish a democratic international institution that would (1) preserve the cultural autonomy of nations; and (2) lift the bifurcation that separates national populations from one another. The thesis then turns its attention to seeking a model of democracy that would likely address these design goals. The thesis concludes that the general model that possesses the greatest potential to address these design goals, while also generally providing inspiration toward the design of the international democracy, is Jurgen Habermas' public deliberation model.

After selecting the public deliberation model, the thesis commences its design of an international democratic institution called the "National Global Assembly" (National Global Assemblies) (NGA). The thesis proposes establishing an NGA in each nation-state. Each NGA creates international law(s) for the nation where it is located. In the NGA, there are representatives from all nations of the world. Each representative serves two nations—the nation she is from and another. And so, to become a representative a person is expected to win an election that links both nations. In other words, the eligible voters of both nations elect a single candidate to represent their mutual needs in the NGA. In greater depth, I
will explore framework questions concerning NGAS’ voting processes, notably: how representatives are elected; who votes; how the winner is determined; how many times there are votes; and how many nations are represented in a given NGA. The thesis will also explore how the NGA preserves national autonomy, while also eliminating the bifurcation.

A CONSTRUCTIVIST ANALYSIS OF THE IMPACT OF INTERNATIONAL HUMAN RIGHTS NORMS: THE CASE OF WOMEN’S RIGHTS UNDER ISLAMIC LAW IN IRAN

By Shadi Mokhtari, LL.M.

This study suggests that contrary to the assumptions underlying the skepticism found in mainstream theories which equate the effectiveness of international law with its enforcement through coercive means or with measurements of strict notions of compliance, the impact of international law can be more accurately located in analysis that highlights the interplay between international legal norms, domestic identity and norm constructions, consciousness and ultimately, the behavior of key actors. By looking beyond a top-down enforcement model and notions of strict compliance, the study links reforms of the Islamic Republic’s codification of Shari’a that bring Iran’s laws closer to the standards prescribed under international law to actor’s consciousness of international human rights norms. In this manner, the research provides insight into the more nuanced ways in which public international law can matter, even in domestic settings widely considered averse to international human rights norms. At the same time that it makes use of a constructivist framework, the study also attempts to contribute to the constructivist literature by (1) focusing on the ways in which international human rights norms are deployed at the domestic level, (2) providing greater empirical support for a number of theoretical assertions posited by constructivists and (3) applying constructivist theory to a complex non-Western case.

R. V. CORBETT AND THE SEARCH FOR A BETTER UNDERSTANDING OF DISCRETIONARY POWER IN EVIDENCE LAW: A THESIS IN THREE JUDGMENTS

By Peter Sankoff, LL.M.

This thesis considers the use of discretion to decide upon admissibility of evidence in a criminal proceeding. Focusing upon the Supreme Court of Canada’s decision in R. v. Corbett, [1988] 1 S.C.R. 670, it considers the benefits and drawbacks of utilizing discretion as opposed to a fixed rule of admission. The author concludes that courts have paid
little attention to what it actually means to "exercise discretion" and have failed to consider whether they intend this tool to simply provide room to deal with unforeseen fact scenarios, or to allow judges "free choice" to apply any theoretical model they choose to the issue. While discretion and flexibility are necessary components of a sound model of evidentiary admissibility, the current approach unwisely abandons predictability without ensuring that discretion is exercised in a principled manner. The results are inconsistency, injustice and a failure to address the underlying issue in a coherent manner.

INDUSTRIAL DEMOCRACY AND INDUSTRIAL LEGALITY IN CANADA: A CRITIQUE OF COMMUNITARIAN CORPORATE LAW

BY ADRIAN A. SMITH, LL.M.

Labour law and corporate law interact in intriguing ways that scholars in both sub-disciplines have yet to fully explore—or, for some, even acknowledge. A few even contend that it is altogether unworthy of study. The exploration of this interaction underlies the discussion herein, occurring within the specific context of the debates surrounding "industrial democracy." Whether one believes that, in colloquial terms, industrial democracy's "time has come," or, because of intervening structural factors, its time will never be, the intensely and profoundly contentious nature of the notion invites (not occludes) rigorous scrutiny. Thus, the analysis goes forward on this basis.

The thesis interrogates the latest take on industrial democracy—characterized as "employee participation in corporate governance"—advocated by Communitarian corporate law academics in both Canada and the United States. Both the Communitarian adherence to stakeholder theory of the corporation as well as their proposal to expand the fiduciary duty of corporate directors and their agents receive primary attention. After locating industrial democratic schemes within a model of ideal types in chapter one, the thesis develops two lines of critique. First, the second chapter develops a critique of Communitarian scholarship based on the close relationship to both democratic elite theory and earlier forms of "progressive" corporate law.

Second, the thesis offers a critique based on the form of legality, namely industrial legality, contained in Communitarian scholarship. The third chapter argues that, while Communitarian scholarship seeks to correct the outdated nature of the content of corporate law, it does so at the expense of a full critique of liberal law's form. The relationship between corporate law and labour law (among other areas), and the link between
liberal law and capitalist relations overall, are fundamental to a complete depiction of industrial legality. Organized around a modified form of industrial legality, this third chapter endeavours to clear the way for future research aimed at re-articulating the framework for studying the regulation of labour and corporate power in the twenty-first century.

THE LEGALITY OF THE CLARITY ACT AND BILL 99 IN LIGHT OF THE SECESSION REFERENCE

BY PETER SPILIOTOPoulos, LL.M.

This Master of Laws thesis will assess the constitutional merit of the conflicting statutes that have arisen in response to the Secession Reference, and the legal doctrines that purport to sustain them. With respect to the Clarity Act, a three part analysis will be undertaken in an effort to determine if the Act is intra vires section 91 of the Constitution Act, 1867 and section 44 of the Constitution Act, 1982; contrary to the unwritten constitutional pillars; or, in violation of the international law doctrine of “total frustration.” (See Graphs 2 and 7, pages (ii) and (vii)).

With respect to Bill 99, a three part examination will be undertaken in an effort to determine if the provincial enactment in intra vires section 92 of the Constitution Act, 1867 and section 45 of the Constitution Act, 1982; consistent with the unwritten constitutional pillars; or, where relevant, incompatible with international law (especially boundaries and borders). (See Graphs 3 and 8, pages (iii) and (viii)).

Throughout the work, sections 91 and 92 of the Constitution Act, 1867 and sections 44 and 45 of the Constitution Act, 1982, will be examined vis-à-vis two potentially conflicting purposes behind the Clarity Act and Bill 99, those being the regulation of the “framework of internal secession,” and the governance of “internal self determination,” (with the former falling within the competence of Parliament and the latter being a provincial right.” (See Graphs 4, 5, 6, 7, and 8 pages (iv), (v), (vii), and (viii)).

The writer concludes that the Clarity Act is a valid enactment of Parliament, primarily by way of the residual POGG authority in section 91 of the Constitution Act, 1867, but also, alternatively, by way of the federal amending right in section 44 of the Constitution Act, 1982. Despite the reservations of the writer, even the contentious section 1(4), which rules out negotiations upon the asking of certain question in a provincial referendum, would likely be upheld by the judiciary because it complies with the directive of clarity enunciated by the Supreme Court in the Secession Reference.

The writer goes on to state that large parts of Bill 99 are valid pursuant to the provincial right of “internal self-determination.” However,
certain of the provincial enactment’s most crucial sections, including 3, 4, and 13, are unconstitutional because they fall outside of the legislative authority of Quebec (that exists by way of section 92(13) of the Constitution Act, 1867 and section 45 of the Constitution Act, 1982).

Meanwhile, section 9 of Bill 99, suggesting that (without consent) Quebec’s boundaries and borders would remain unchanged upon secession, is only valid if Quebec remains a province of Canada. In the end, section 3 of the Constitution Act, 1871, section 43 of the Constitution Act, 1982, the unwritten constitutional pillars and international law, rule out the idea that upon a “legal” secession Quebec would be entitled to leave Canada with its borders intact. Instead, the above noted sections/doctrines may be relied upon by Quebec to ask for its entire territory, but equally, may be rebuked by Parliament during the give and take of negotiating a new border for Quebec (in the event of the break up of Canada).

SEX WORK AND CONSENT

This thesis engages the debate over the possibility of consent within sex work. The first chapter links the mode of regulation to the freedom and control of sex workers, then, through a critical review of Canadian case law and legislation, discusses the assumptions underlying the Supreme Court’s decision to uphold the laws criminalizing the solicitation of sex work. It follows with a discussion of sexual assault law reform, which is used to illustrate feminism’s pragmatic approach to consent in another context. The second chapter furthers the sexual assault example to contrast liberalism and radical feminism, the predominant theories of sex work and consent. Liberalism makes no connection between sex work and sexual assault, and argues that sex work is entirely unproblematic work; radical feminism suggests that sex work, like sexual assault, is inherently violent, and that sex workers are victims, not workers. The third chapter, drawing on sex workers’ perspectives, identifies the problems with the agent/victim dichotomy of liberalism and radical feminism. The liberal presumption of equality between sex worker and customer leaves existing hierarchies intact, while the radical feminist parallel between sex work and rape precludes the use of pragmatic measures, like decriminalization, not as a panacea, but as a means to sex workers achieving greater agency.