



Commission  
on Legal  
Pluralism



**International Conference of the Commission on Legal Pluralism**  
in collaboration with the University of Ottawa, Chair on Legal Diversity and Indigenous Peoples  
and the Human Rights Center, co-sponsored by Syracuse University, Maxwell School of  
Citizenship and Public Affairs

*Citizenship, Legal Pluralism and Governance in the Age of  
Globalization*

**Location:** University of Ottawa, Ottawa, Canada

**Dates:** 22-24 August 2018

## **Panels**

### ***1. Between Hegemony and Resistance: The Twists and Turns of Environmental Democratization in America***

*Panel Coordinators:* Patricia Urteaga and Cecilia Roa

*Presenters:* Patricia Urteaga, Cecilia Roa, Yenny Vega, Armando Guevara

In the last decades, together with the rise of extractive industries in America we have witnessed the use of multiple mechanisms for participation in decision-making processes regarding extractivism. On one hand, these mechanisms usually point to the local necessity of keeping some control upon the consequences of global extractivism in local environments. On the other hand, experiences abound on the institutionalization and the cooptation of these mechanisms to guarantee hegemonic development of extractive projects. Some researchers warned these mechanisms respond to what is called multicultural neoliberalism (Assies 2000, Hale 2002), while others see them as potentially liberating (Santos 1995, Allier 2004).

In this panel, we explore so-called “participation” mechanisms that are being used in Latin America and North America, such as the prior consultation, popular consultation, land development plans, public audiences, town hall meetings, and mechanisms through which extractive projects are scrutinized from the perspective of environmental democratization. The goal is to analyze, whether and in what ways these mechanisms contribute to effective environmental democratization and to identify those factors that influence the outcomes.

## **2. *Citizenship and Customary Law in Africa***

*Panel Coordinator:* Enyinna S. Nwauche

As Africa urbanizes, diversifies, and is increasingly a part of the globalized world, it is important to interrogate the relationship between citizenship rights and sub-national identity constructs such as customary law, which has developed on the premise of recognizing the normative orders of communities organized by consanguinity. Citizenship and its liberal entitlements such as the freedom of association and movement suggest a change to the immutability of customary law as personal law and new ways of thinking about membership of communities— and even of the nature of communities. How are we to identify communities in our postmodern world? Should we recognize the normative orders of communities organized around social facts other than consanguinity? What would these facts be? Would diaspora, faith, language and geographical contiguity qualify? Can citizens appropriate and/or opt out of their customary law similar to the way transnational law recognizes the change of domicile? Can the relationship between citizenship and customary law enable us to rethink customary law from being essentially immutable, traditional and patriarchal to a living law reflecting notions of equality, community, equity, fairness, rights and responsibilities for all those who feel obligated to it.

This panel welcomes case studies, comments and reflection on the broad themes sketched above within the domains of faith; language; inheritance; marriage; chieftaincy; kinship; property; identity; and indigeneity as examples.

## **3. *Decentralised Governance and Legal Pluralism***

*Panel Coordinator:* PP Balan

Justice is crucial for good governance. A functioning justice system is not only an indicator of development but it is also an outcome. Access to justice is not only central to the realization of constitutionally guaranteed rights, but also to broader goals of development and poverty reduction. Denying disputants access to justice has led to a mushrooming of parallel justice systems, such as religious courts, revolutionary councils, etc. People’s preferences for using such non-state, at times even anti-state, systems may reflect more a weakness of the formal

justice system than satisfaction with the informal justice systems— this choice is based on the availability and accessibility rather than quality of the goods/services provided. Non-state informal systems also have their problems with accessibility, impartiality, independence and accountability. As with the formal system, poverty and powerlessness limit access to such systems. It is imbued with social norms and values of the dominant patriarchal culture that perpetuates discrimination against women, marginalized groups and the poor.

Legal Pluralism is taken from a legal-anthropological or sociological point of view. This is the most obvious theoretical framework to interpret the broad variety of approaches to achieving justice outside the conventional state-administered systems. In a decentralized government, all formal and informal justice systems should be brought under one umbrella for ensuring cost effectiveness, acceptance and accessibility. Papers are invited on specific areas of best practices of democratization of justice delivery and also on how traditional justice delivery systems are linked with formal practices.

#### **4. *Governing Plural Societies: Religiously and Culturally Sensitive (In)justice***

*Panel Coordinator:* Federica Sona

In the contemporary socio-legal arena, the discourse on access to justice is characterized by a dichotomy. Whilst state legal systems may increasingly promote ADR mechanisms (in some specific areas of law) and carefully consult religious/cultural experts in legal proceedings; concern and anxiety are voiced when groups engage in “customized and privatized” (informal) justice processes. Complex dynamics indeed emerge at the intersection between state laws and religious/cultural-compliant legal orders.

- Given the relevance of the phenomenon on a global-glocal scale, the panel aims to
- Ascertain various models of ad hoc religiously/culturally sensitive approaches to justice;
- Identify the legal/social actors and give voice to the parties’ needs, claims, expectations and power relations;
- Investigate the relationships between state and non-state actors, as well as amongst religious/cultural-compliant alternative fora;
- Examine the advantages and disadvantages of personal laws and competing/concurrent/parallel/separate/alternative/facilitative procedures in the accommodation or “exceptionalisation” of religious/ethnic groups;
- Explore the effects of the (violation of) rights descending from the culturalization-religiosification of citizenship in the domestic, international and transnational scenario;
- Discuss whether official authorities should further outsource justice mechanisms and favor personal agency, or, at the opposite, whether alternative fora and cultural/ religious experts are to be made redundant;
- Compare different models of (in)effective intercultural dialogues, as enacted by ethnic/religious/migrant communities and/or official legal systems.

Papers addressing these issues and related themes are welcomed.

## 5. *Indigenous Law and State Law in Canada: Is Cooperative Legal Pluralism Possible?*

*Panel Coordinator:* Ghislain Otis

*Presenters:* Ghislain Otis, Val Napoleon, Mylène Jaccoud, Sébastien Grammond, Jennifer Corrin

In Canada, indigenous and non-indigenous laws have long coexisted and interacted without any general system of coordination. Generally, this has been due to the state's indifference or hostility toward indigenous laws. Today, however, the recognition of indigenous legal traditions and systems is increasingly described in political, legal and academic discourse as a necessary step towards some degree of decolonisation. Knowledge about indigenous legal systems and about viable models for a new relationship between such systems and state law remains underdeveloped. This panel will present the results of ongoing collaborative research conducted jointly by indigenous and non-indigenous experts on some indigenous legal traditions in Canada and on new cooperative approaches to the management of legal pluralism. It will also include reference to comparative research on the South Pacific experience.

The papers will present methodological innovations for the ascertainment of indigenous laws; the current state of some indigenous legal systems in areas such as family law, justice and land law; and the development of mechanisms for a more effective dialogue between indigenous and western laws.

## 6. *Plural Governance and Legal Pluralism in War-Torn Societies*

*Panel Coordinator:* Markus Weilenmann

When it comes to matters of legal pluralism and plural governance, many legal anthropological and ethno-political enquiries challenge state centric approaches by insisting on the limited capacities of the political central power to penetrate the social, legal and political relationships in society. Rightly, they point to the unintended consequences that hierarchical normative and political orderings may provoke in society as processes of power formation do not usually automatically lead to the dissolution of former legal regulations, but rather to a regrouping of formerly valid and often convoluted concepts of order and disorder. Frequent therefore are political and legal struggles over the validity and legitimacy of imposed frameworks.

However, there is a striking risk that such authority and power related approaches lose sight of the traumatic consequences, such as ethnic clashes, widespread massacres, torture or other cruel forms of ill-treatment, which might negatively impact the community living together possibly damage societal relationships for generations, regardless of who the offenders are. Deep-rooting social mistrust, close nexuses between political rumors, uncontrolled fears and paranoid interpretations quickly lead to an almost complete deterioration of social cohesion. The Great Lakes Region in Central-East Africa— especially the ongoing and multi-layered wars in the Central African Republic, in Eastern DRC or South Sudan as well as the renewed political and legal decomposition of Burundi— provide good examples for the persistence and the impact and

manipulation of such problematic and highly common psychic profiles. In war-torn societies, legal pluralism and plural governance express existential problems of social cohesion; and they might become important triggers for new and traumatic life experiences, which are often related to remembered but unsolved crises in the past.

This panel addresses such questions and focuses on how legal pluralism and plural governance in war-torn societies may shape issues of political legitimacy and the strengthening or weakening of political institutions. Welcomed are also papers which address the promulgation of extremely narrow containers of identity in order to cash on experiences of the traumatizing past. A further issue concerns the promotion of human rights by competing actor groups in highly fragmented and often violent communities.

## **7. *Legal Pluralism and Indigenous Perspectives***

*Panel Coordinator:* Christine Zuni Cruz

*Presenters:* Christine Zuni Cruz, Christine Black, and Val Napoleon

In dialogue, this panel will explore the existence of foundational indigenous legal tradition, its current interaction with dominant nation-state legal tradition, and the shadow cast by each on the other. The “shadow” can be analyzed at an institutional or organizational, a personal, or a collective level. Indigenous peoples possess a legal tradition that is foundational to an indigenous identity. It is rooted in oral tradition and narratives, land, language, and philosophy. Nation state laws typically emerge from a different legal tradition. If not outright hostile to the indigenous legal tradition, nation states are, for the most part, indifferent, and lack a frame to grasp the indigenous legal tradition. To function, as well as to preserve their identity, legal tradition, and lands, indigenous peoples must interact, adapt, conform to, and in some instances, adopt the dominant legal tradition. When legal pluralism exists but is unrecognized or where existing diverse legal traditions are treated unequally, this challenges the maintenance of a living indigenous legal tradition. The ability to simultaneously represent, describe, and pass on law within a vibrant indigenous knowledge frame is essential. What is the impact of this rigid interaction of dominant legal tradition with the foundational legal tradition of indigenous peoples? What are the shadows of law cast by each on the other? How do indigenous peoples perceive this shadowing effect and in what creative ways are they responding?

## **8. *Legal Pluralism and the Practice of Human Rights***

*Panel Coordinator:* Giselle Corradi

The relationship between human rights and legal pluralism can and has been investigated from different angles. A common entry point to this field is to examine the connection between legal pluralism and human rights *law*. These studies analyse the links between international standards and the substantive or procedural norms of non-state legal orders, reflecting on areas of tension

and overlap. In addition, these studies enquire into the effects of particular state policies on non-state law and disputing forums in terms of advancing or constraining the protection and implementation of human rights. This panel adopts another perspective, focusing on the interplay between legal pluralism and human rights *practice*. The panel is concerned with how the social life of human rights, i.e. the ways in which human rights are mobilised in concrete struggles, informs and is informed by multiple registers of law. The panel welcomes papers exploring how human rights discourse and practice acquire meaning in contexts of legal pluralism, and in turn influence interactions that are subject to regulation by more than one body of law.

Papers may address questions such as: how are practices and discourses on human rights influenced by plural legal orders? How are plural legal orders in turn shaped by ideas of human rights? What are the consequences thereof?

## **9. *Legal Pluralism as an Answer to International Law's Lack of Legitimacy***

*Panel Coordinator:* Vincent Dalpé

*Presenters:* Vincent Dalpé, Cassandra Steer, Pierre-Alexandre Cardinal and Olivier Barsalou

International law is intrinsically pluralistic. Its normative corpus is intended to rule the world's different states and peoples. As such, these rules are intended to find their echo throughout the world's various cultures. They are intended to appeal to a number of values common to most nations, gaining sufficient legitimacy for men to comply with its injunctions. However, international law is unfortunately known for the gap between its aspirations and reality. Its injunctions have a poor record of compliance. And this is especially the case in countries of the global south, where values and legal traditions may operate on the basis of different paradigms. In such cases, it seems, international law fails to find its echo. Its message, which is largely derived from Eurocentric thought, fails to resonate with foreign cultures and to establish itself as truly legitimate on the global scale. While international law's poor record of compliance may be attributed to a number of different factors, we assert that this cultural divide plays a key role in this issue. This panel will argue that legal pluralism can inform our understanding of international law so as to improve its legitimacy on the global scale. From different perspectives, we will claim that legal pluralism, which to this date remains marginal in international legal scholarship, comports a number of answers to international law's recurrent lack of legitimacy. The discussion will begin with the contentious project of international criminal law, and will subsequently move to international adjudication.

## **10. *Legal Status and Identity***

*Panel Coordinator:* Jennifer Corrin

Where different rights and obligations are conferred on different members of society by law the

'qualifications' for membership of a particular group are obviously important. Unfortunately, guidance does not always exist and, where it does, it is not always clear. Where more than one legal system applies to the situation in question, the position may be even more complex, as different legal systems may determine the question in different ways. Belonging may be regarded, for example, as a matter of descent, domicile or of allegiance to a philosophy. What appears on its face to be a simple question of definition, on further examination, is exposed as a matter of some complexity, typical of the issues thrown up by legal pluralism. Is identity a question of self-selection or something to be determined by the state or by individual sub-groups? What happens when legal status and cultural identity are misaligned? May an individual belong to more than one group? The political relevance of being an 'insider' or an 'outsider' and increases in migration, displacement and statelessness makes answers to these questions all the more pressing.

This Panel invites papers which touch on how membership of different communities or groups are determined, whether by a legal system or any another means. Papers may also deal with any of the related questions that arise in connection with this problem, such as broader choice of law issues.

## ***11. Livelihood, Indigenous People's Rights to Forest and Social Inclusion: Generating and Practicing Sustainability Science to Support the Delivery of Sustainable Development Goals***

*Panel Coordinators:* Helmi and Shyama Prasad Rout

The life system on earth consists of eco and social systems that influence the division of scientific fields into the natural and social sciences. Both systems are interacting with each other and creating complex problems of sustainable development. These complex problems arise from driving forces within the social system that consist of economic, institutional, social and cultural issues. They operate in the context of property rights, laws, and trade incentives. In a number of cases the outcome of such complex interactions has been the exclusion of indigenous people and the decline in their livelihood. Given the complexities and interdisciplinary nature of sustainable development problems innovative solutions cannot be formulated based on natural or social science separately. There have been failures in responding to sustainable development problems significantly in the past partly due to the inability to bridge social and natural sciences in generating integrated knowledge and formulating innovative solutions to sustainable development problems. Efforts to respond to this failure require the development of a new science discipline that is called sustainability science. There is a need to generate and practice sustainability science in order to promote social inclusion; an improvement in livelihood for poor and marginalized groups; and indigenous peoples' right to forest.

In this context, this panel posted the following questions: what are the important conceptual bases to bridge the social and natural sciences to produce knowledge and innovative solutions to sustainable development problems? What will be the framework to generate sustainability science (especially those related to livelihood improvement, indigenous people rights to forest, and social inclusion)? How would the sustainability science be effectively implemented in the

field (at community level) in the context of delivering SDGs? Researchers and practitioners are invited to share the results of their works and experiences in order to help advance sustainability science to support the delivery of Sustainable Development Goals.

## ***12. Natural Resource Conservation: Customary Tribal Law and State Law in Afro-Asian Nations***

*Panel Coordinator:* Premananda Panda

*Presenters:* Bidyut Ranjan Sarangi, Giri Rao, Harapriya Samantaraya, Prabeer K Satpathy, R. N. Pati, Premananda Panda

Different nations have introduced natural resource conservation laws at different points in time. In certain federal nations, a few constitutional mandates empowered the state government and the central governments to 'manage' these natural resources. However, in response to the agitations and contestations raised from non-governmental and grassroots organizations, the concerned nations have administered amendments. The traditional concept of property of the commons and sharing of resources by indigenous ethnic groups across generations have not been understood. As a result, the imposition of national law has often been perceived as an instrument of exploitation, which generates conflict between the state and its societies. Thus these interest groups and the state fight over issues of conservation and the use of resources such as water, forest and land. This often poses challenges to the constitutional rights of people such as PESA and FRA of India and Common law and indigenous customary law of South Africa. Unequal negotiation in the matter of natural resource conservation and use puts indigenous communities at the receiving ends, which paves the way for resource exploitation.

With a changing global economy, many nations have invited global players and faced challenges based on issues related to the use and conservation of natural resources. This situation has grown in the post liberal economy, in which the state takes the role of a mediator between its citizens and the corporate houses interested in resources exploitation. The state's tendency to favor these corporate houses over other interests leads to marginalization of the natives, begetting crises of political instability and resource scarcity.

## ***13. New Theoretical Developments in Legal Pluralism***

*Panel Coordinators:* Melanie G. Wiber and Keebet von Benda-Beckmann

This panel will explore how legal pluralism theory is engaging with or challenging other theoretical developments from law and/or the social sciences. The organizers welcome papers on any theoretical influences that flow into legal pluralism, or ideas from legal pluralism that have influenced/challenged other strands of social theory.

Papers may be theoretical, methodological or both. Theoretical contributions or challenges may come from (but not be restricted to):

- 1) theoretical constructs such as Global Legal Pluralism, Actor Network Theory, Risk

- Society and cosmopolitanism, rational choice, ecological resilience/socio-ecological systems, or theories pertaining to gender, development, or property; and
- 2) themes or social issues such as globalization, (de)construction of the state, natural resource management, neoliberalism, soft law and market regulation, international and transnational law including religious law, conflict resolution, aboriginal and post-conflict reconciliation, migration and refugee analysis and more.

Methodological problems may include temporal, spatial and scalar issues such as the interaction of legal and quasi-legal systems across territorial borders, as well as power, and the challenges of participatory action research. Other methodological issues may relate to the question of the end goal of legal pluralism research – can our work contribute to state policy and institutional design, or do instrumental approaches only strengthen technocratic solutions that enhance the power of one legal system against another?

The aim of the panel is to query the relevance of numerous theoretical developments to understanding legal pluralism, and/or to assess how legal pluralism is challenging other theoretical models. Panel papers may be included in a proposed special issue for the Journal of Legal Pluralism.

#### ***14. Legal Pluralism, Religion, and Gender***

*Panel Coordinator:* Mengia Hong Tschalär and Latif Tas

*Presenters:* Mengia H. Tschalär, Latif Tas, Nadjé Al-Ali and Gopika Solanki

Justice systems around the world are not immune to racial, gender, sexual, and economic stereotyping. Therefore, litigants placed at the margin of society often draw on legal authorities that are not a part of the formal legal system. The potential, however, that non-state law and practice hold for the protection of gender justice in the area of the family is a contentious issue. All too often, the relation between informal law – and especially religion-based law – and gender justice is reduced to one of conflict between misogynist values/practices and the classic liberal tradition of equality. The continuing controversy has thus been long on polemic and ideological positions but often short on facts. As a result, we know very little about the importance of community leaders, religious officials, social workers, and women’s rights activists in women’s everyday struggles for gender justice in the area of family law. This panel invites scholars and researchers from all disciplines who examine processes by which ideas around religion and women’s and human rights are interpreted in a variety of socio-legal settings and in a manner that make it relevant to everyday life of local communities.

#### ***15. Pluralism in Governance: Global Challenges, Failures and Success Stories of Traditional Leadership coexisting with Modern Governance Systems***

*Panel Coordinator:* Christa Rautenbach

Traditional leadership and authority is an institution found in many African jurisdictions, which coexists, and often conflicts with a governance system based on Western values and principles. Traditional leadership is an institution that governs and rules traditional communities within designated areas. It is grounded in the belief that the power of a traditional leader to rule was from time immemorial informed and maintained by the ancestors. The general viewpoint is that traditional leadership does not fall within the modern understanding of 'government' but it definitely shares some of its features: it is an organized form of ruling; there is a group of people being ruled; a territory; independence from mainstream government; and a legal system.

In spite of commonalities between the 'governing' conducted by traditional and modern 'governments' co-existing in one legal order, there are important differences between how modern and traditional governments conduct their business. A modern government generally accepts the constitution of a country as supreme law binding and directing all organs of state, adherence to the rule of law, and separation between the three arms of government; the legislative, the executive and an independent judiciary. In contrast, a traditional leader's reign is guided by living customary law. He embodies the executive, the legislative and the judiciary. His position is usually acquired through the operation of the rules of kinship, and he is rarely elected by the people in his community.

The plurality of governance systems in one legal order certainly has its challenges and there are many stories to be told. The aim of this panel is thus to map out the complicated, varied and ever-developing specifics of how traditional leadership functions in the wider democratic society, or more specifically how traditional authority fits into the decentralized governance structures of global jurisdictions.

## ***16. Science and Technology Studies and Legal Pluralism***

*Panel Coordinators:* Bertram Turner and Melanie Wiber

While science and the law are often mutually reinforced in the West, scientific and technological change is currently challenging legal orders and legal institutions on a broad front. New non-governmental institutions are increasingly involved in regulatory processes. Yet normative processes have their own inherent logics and materiality, which together with the social, political, religious and economic issues provide both strong resistance and some vulnerabilities to technocratic change. This panel aims to further explore the concept of Legal Pluralism (LP) as an analytical tool in the field of Science and Technology Studies (STS). Currently, the study of law and STS (L-STS) concentrates primarily on the law of the state and institutions of global governance. A more sophisticated look at complex legal configurations is needed. The panel seeks empirical and theoretical contributions as to the ways that law, science, and technology intersect in plural legal configurations and how they are linked with processes of law production at various scales. Differentiated global spaces are interconnected through law and science and technology co-production, as when mutually reinforcing technology and law are exported into the developing world. New models of order in health, food safety, energy, security,

environmental sustainability, communication and transport rely heavily on western science and technology as well as on imported legal concepts in the setup of global standards.

We invite topics across a broad range of interests: Development; land, ocean and water management; food safety; security and territorial control; risk; policing, forensics; mapping (zoning, urban deregulation); technologies of knowledge transfer, knowledge co-production; quantification and data indexing; taxonomies and legal measurement; technical assistance and more.

### ***17. Secularism and the Modern State: Interrogations of Legal Pluralism in Anthropology and Political Theory***

*Panel Coordinator:* Haris A. Durrani

*Presenters:* Haris A. Durrani, Aisha Ghani, and Sam O'Hana

John Griffiths characterized “strong legal pluralism” by the existence of multiple, symmetric fields of law within a society, where law is not only that made explicitly by the state. In this arrangement, the law of the state does not overpower but rather holds equal footing with other kinds of law. Griffiths wrote that this strong legal pluralism empirically describes every society. Others, such as Brian Tamanaha, have argued that, if law is any kind of reglementary regime across social spheres, then any definition of law becomes meaningless.

This panel applies social and political theory, anthropology, and philosophy to assess the extent to which strong legal pluralism empirically describes particular societies. What is the foundation of the claim that state law is equal to that of other reglementary regimes, how has this been stratified historically in colonial locations, and what are its political consequences for religious, ethnic, and other minorities today? Are the lives of individuals more grievable in particular legal contexts? With a view to Timothy Mitchell’s concept of “State as Effect” and Talal Asad’s work on asymmetries of power in liberalism and secularism, how do power and justice intersect at the state/society boundary, and do “States of Exception” apply uniformly across legal spheres? How does scrutinizing asymmetries of power, operating through the subtle, pervasive character of the modern state, complicate traditional formulations of strong legal pluralism? Ultimately, can socio-political and citizen-oriented inquiries into legal pluralism advance the way we (academics, lawyers, policymakers, laypersons) understand “law”?

### ***18. Supply-Chain Legal Pluralism: New Approaches to Citizenship and Governance in Neoliberal Extractive Economies***

*Panel Coordinator:* Bertram Turner

This panel foregrounds the variety and intertwining of legal components that inform the performance of global supply chains. As neoliberal manifestations of global modernity supply chains (commodity, global value, traceability chains, global production networks, etc.) connect

resource extraction in the global south with consumption in the global north, they constitute channels through which goods are translated into commodities. Law is one component in the construction of supply chains. In addressing the role of law, the contributions to the panel will shed light on the ways in which components of plural legal configurations at various scales coalesce with specific chain normativity and other supply chain constituents. The aim of this panel is to shed light on the complexities of normative entanglements that are only cursorily addressed in conventional analyses of supply-chain normativity. Scholars of legal pluralism go beyond these conventional approaches in two respects. First, they include components other than law into the analysis inherent in supply-chain legal pluralism. For instance, technology may also exercise normative power and increase the legal complexity in supply-chains. Second, they address how this supply-chain normativity interacts with the plural legal environment in which supply-chain activities are embedded. Cross-border chain governance and the emergence of global citizenship of responsible, ethical consumers are central topics that are currently debated in this respect. Producers in the global south and consumers in the global north are connected with one another throughout the supply-chain and both take effect on the plural legal chain configuration to which they are attached.

Topics of interest with respect to global supply-chain legal pluralism:

- Access to natural resources, land grabbing, dispossession, property rights
- Mining and other forms of resource extraction
- Corporate social responsibility
- Fair trade and certifications
- Labour standards and Ethical consumerism
- Global citizenship
- Human Rights

**19. *Women Challenging Patriarchy within and across Legal Cultures***

Panel Coordinator: *Kimberly Inksater*

The panel will examine women's multiple legal identities and how their different identities, which cut across cultures and culturally-specific legal mechanisms, are used by women's organizations or women's rights' champions to challenge culturally-embedded forms of patriarchy. Because law is culturally constructed and both law and culture have the potential to evolve, the panel seeks to examine successful examples of how the law has been used to challenge and change discriminatory norms or practices within a culture (e.g. a religious, customary, indigenous, parallel, community-based, or dominant (state) legal culture).

The Just Governance Group will present the results of a global exploratory study currently being prepared for International IDEA and UN Women that assesses how courts apply constitutional provisions to address clashes between gender equality and culturally-rooted laws and practices.

In addition, the group invites academics and practitioners to present and discuss papers addressing questions such as:

- Vernacularization:<sup>1</sup> How do women challenge patriarchal traditions and practices within a community-based, customary or religious system by strategically invoking international human rights norms?
- Evidence of change: How has law (legislation, litigation or alternative justice mechanisms) changed patriarchal behavior and empowered women?
- Gender-based violence: Are legal mechanisms (culturally-based, national, regional or international) the most appropriate mechanism to end gender-based violence?

## **20. *Law, Distortion and Traditional Authorities in South Africa***

*Panel coordinator:* Thiyane Duda

*Presenters:* Aninka Claassens; Monica De Souza Louw; Thiyane Duda, Janine Ubink

This Panel will discuss a phalanx of Bills that is currently being processed by the South African Parliament related to traditional leadership. It will discuss widespread rural resistance to the Bills and related recent laws. The papers will discuss that the controversy generated by the bills derives from the fact that they embed apartheid distortions of customary law. Opposition to the bills does not imply opposition to customary law. On the contrary, the rural people who speak out against them in public hearings often make explicit how the laws and bills foster the patriarchal and autocratic power relations of the Bantustan era. Time and again they reference the inclusive and consensual nature of customary law as the standard against which they reject the provisions of the laws, and the problems they have reinforced and, in some instances, elicited. Related to this point is the fact that opposition to the laws is built, in many places, on decades of resistance to the impact of the colonial and apartheid policies and laws that went before them. Rural resistance to dispossession and indirect rule took many forms, which resulted in forms of property and identity that contradict the apartheid vision of neatly abutting ‘tribes’ existing in a separate legal sphere where landownership is not allowed and the court system is segregated from the rest of South Africa.

## **21. *Colonization, Imperialism and Socio-Legal Policy Changes***

*Panel coordinator:* Farrukh Hakeem

This panel addresses the colonial/imperial enterprise and its affect on the educational, economic, and legal establishment of the subject populations. It will focus on the following aspects: the policy to invade and occupy the subject populations; the educational policies in the colonies with reference to changes to education that were instituted by the colonial administrators. Of particular interest is the process for making changes to the language and method of education to suit the colonial administrators. In the case of India, the 1835 Minutes on Education led to the abandonment of the vernacular languages (Arabic, Persian, and Sanskrit) in favor of English.

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<sup>1</sup> Levitt, P. and Merry, S. (2009) Vernacularization on the ground: local uses of global women’s rights in Peru, China, India and the United States. *Global Networks*, vol. 9, n. 4 (pp. 441-461).

The economic changes that were instituted were those making it easier for the colonial administrators to extract wealth and natural resources from their colonies. New laws were promulgated to enable the colonial powers to get preferential treatment in marketing their goods in the colonies. The legal changes that were instituted were such that the indigenous laws were superseded by the colonial laws. After the Indian Mutiny in 1857, the laws were further changed to usher in the law of the colonial authorities. The indigenous criminal laws were the first to be replaced by new codes. The changes in the realm of property and the legal policies and administrative apparatus was set up to govern the subject peoples and enforce a system of colonial difference. This panel invites papers that examine, among others, the social, economic, political, legal, and educational predicates of the colonial/imperial enterprise.

## **22. *Invisible Outsiders Inside Canada: Stateless Persons in Canada***

*Panel coordinator:* Jamie Chai Yun Liew

*Presenters:* Jocelyn Kane, Y.Y. Chen; Marcelo Saavedra-Vargas, Jamie Chai Yun Liew

A complex web of legal and extralegal forces have given rise to a stateless population in Canada, while at the same time denying the population's factual existence. This panel will explore the understudied issue of statelessness in Canada in four different ways. First, the panel will discuss how stateless persons are made invisible given that government and administrative bodies in Canada do not collect data or report on their interactions with stateless persons. Second, the panel will present findings from a qualitative study on stateless persons' belonging in Canada, exploring how politics of inclusion and exclusion are lived and resisted. Third, while Canada is invested in a process of reconciliation with indigenous communities, the panel will discuss how indigenous persons in Canada have been rendered stateless and possible ways in which the issue of citizenship could enter the reconciliation discourse and process. Finally, the panel will present a study on how one legal barrier has prevented stateless persons from obtaining permanent residence status and citizenship in Canada, and how this legal doctrine (the doctrine of exhaustion of remedies) has been misinterpreted and misapplied in the context of statelessness; how it violates Canada's international legal obligations towards stateless persons; and how it is unduly restricting the definition of stateless in Canada.

## **23. *Science-Based Policymaking in Legally Plural Landscapes of the Global South***

*Panel coordinator:* James S. Krueger

Much has been made of the failure to incorporate natural and environmental science into the policymaking process in places like the U.S. There is indeed a growing crisis in science authority that goes beyond the U.S. debate about climate change and alternate facts and includes also the issues of rising complexity in knowledge and, concomitantly, increased contestation over science's authority to make decisions with distributional consequences. Yet the narrative of science-in-crisis does not fit as well with the policy landscape of the Global South. In general,

natural science is greatly respected by national policymakers and tends to dominate decision-making in agencies dealing with health, natural resources, agriculture, and the environment (among many others). This follows in part the post-colonial dynamic: experts with Western credentials wield tremendous clout in government and have a special role to play in achieving higher levels of economic development. Science authority meets resistance instead in its application on the ground through a fragmented regulatory process that includes things like stakeholder consultation, co-management of resources, environmental impact assessment, and negotiated enforcement of rules. Legal pluralism and citizen participation in decision-making have produced interesting fractures in science authority, while not yet undermining its source in global development discourse.

With this in mind, the panel invites papers that consider how science negotiates legally plural contexts in the Global South. Where does science authority fit in, and how has it adapted to an increasingly fragmented policymaking process? What kinds of misunderstandings, disappointments, and failures of science have occurred, unremarked? What kinds of ambiguities have been created by these misunderstandings and failures? How have ambiguities in science impacted policy and how have ambiguities been exploited by various interest groups? Wither science-based policy, if science knowledge is indeed compromised by its inevitable mixing with political power?

#### ***24. The role of pluralist governance in the definition and Implementation of Aboriginal Title and indigenous territorial governance***

*Panel coordinators:* Nicole Schabus / René Kuppe

In case law jurisdictions it is generally assumed that Aboriginal Title or indigenous land rights are sui generis and not based primarily on property rights of the dominant state legal system. The international frame for indigenous rights also implies that indigenous land rights to be recognized by the state are to be based on the traditional forms of property or possession of Indigenous Peoples or indigenous laws (e.g.: Article 26 UN Declaration on the Rights of Indigenous Peoples). This panel proposes to look at case studies regarding the role the indigenous legal traditions and property systems of Indigenous Peoples play when it comes to securing their land rights. Court decisions and administrative arrangements for the determination of the content and geographic extent of land rights will be analyzed and evaluated in light of indigenous and international legal standards. Finally, this will lead to an overarching theoretical debate, on how recognition of indigenous land rights constitutes a special form of legal pluralism and special forms of pluralist governance over lands and resources. The intention is to focus on common law countries, but we are also ready to invite contributions from Latin America and Asia.

#### ***25. Filial piety, care-giving, and migrant workers: a critical legal pluralist perspective***

*Panel coordinator:* Andre Laliberté

*Presenters:* Andre Laliberté, H  l  ne Piquet, Alexandre Syvrais-Gallant

In our panel we look into the situation of servitude experienced by care-givers in societies of Confucian heritage, to shed light into the contradictions inherent to societies that have emphasised the centrality of family-based mutual obligations over the principles of justice and fairness embodied theoretically in legal-formal modern states. We look into a variety of societies, some of which wherein the education system promoted Confucian traditional values based on the centrality of the family and respect to patriarchy decades ago, and others wherein the public discourse seeks to rehabilitate Confucian tradition of deference to authority and filial piety obligations after years of attempts to eradicate it. In societies with regimes of rule of law such as South Korea, Taiwan, and Hong Kong, the evocation of these traditional values embedded in popular beliefs and customs often raise obstacles to the implementation of norms embedded in national labor and migration laws. The evocation of the sanctity of the family puts migrant live-in care-givers in conditions of extreme vulnerability and raises obstacles to the states' actors who want to address abuses against workers. In China, the efforts by the Communist Party to rehabilitate Confucian values serves to push a policy that outsources long-term care to the household, and thereby creates condition that make care-givers vulnerable to the demands of their employers and labor brokers. Our panel will look at the attempts of civil society organizations and legal scholars to address these issues.

## **26. *Gender, Religious Divorce and Comparative Law***

*Panel coordinator:* Pascale Fournier

*Presenters:* Pascale Fournier, Lisa Fishbayn Joffe, Yael C.B. Machtinger, Jabeur Fathally

This panel brings together academics from around the globe to engage with current trends in religious divorce in different geographic/national, religious, and legal contexts. The panelists will look at multilayered approaches to religious divorce based on significant and diverse primary research. This session will also explore what happens when individuals are at a crossroads between state and non-state legal orders, examining the role of legal pluralism in religious divorce.

## **27. *Indigenous Peoples' Rights Struggles in the Americas: Perspectives on Legal Pluralities and Violence***

*Panel coordinator:* Rachel Sieder, Viviane Weitzner

This panel examines the struggles of indigenous peoples in Mexico, Guatemala, Colombia and Canada to secure justice and security, and ensure the justiciability of their constitutional and international collective rights to autonomy and individual human rights in contexts marked by continuums of racialized dispossession and violence. Situating our enquiries within an analysis

of complex legal pluralities and multiple intersecting forms of structural, racial and gender violence, panel participants analyze the consequences of rights recognition for indigenous peoples in the Americas after multicultural neoliberalism. Particular attention will be paid to their engagements with dominant legal frames, including redefinitions of gendered and racial violence through intersectional perspectives, and contestations over the very nature of law itself. With case studies spanning from South to North America, we examine also what an “Americas” scope to analysis adds to the theory and practice of legal pluralities in rights struggles.

**28. *Author Meets Reader Panel, for the book “Access to Justice and Human Security: Cultural Contradiction in Rural South Africa”, written by Sindiso Mnisi Weeks***

*Panel coordinator:* Sindiso Mnisi Weeks

For most people in rural South Africa, traditional justice mechanisms provide the only feasible means to legal solutions to conflict. These mechanisms are popularly associated with restorative justice, reconciliation and harmony. Yet, this ethnographic study grounded in the political economy of rural South Africa reveals how historical conditions and contemporary pressures have resulted in a degree of human insecurity that has strained these mechanisms’ ability to deliver the high normative ideals with which they are notionally linked. The book provides a vision for access to justice in rural South Africa that takes seriously the volatile human conditions – poverty, gendered social relations, delicate social trust, and plausibility of violent self-help – of ordinary people and traditional authorities alike. The author proposes a cooperative governance model that maximises the resources and capacity of both traditional and state justice apparatus for delivering legal and social justice that meets rural people’s basic human needs. This interdisciplinary book, to be published in December 2017 as part of the Cultural Diversity and Law series formerly under Ashgate and now under Routledge, builds on the rich legacy of work on legal pluralism that pertains to forum shopping and access to justice through traditional justice mechanisms.

**29. *The governance of contemporary plural kinship frameworks***

*Panel Coordinator:* Federica Sona

*Presenters:* Vladimiro Zagrebelsky, Ilaria Bertini, Alice Margaria, and Federica Sona

Against the backdrop of cultural transitions, the concept of ‘family’ significantly changed and new kinship realities emerged in recent history. On account of scientific progress and people (forced) migration, family circles have been widened and alternative parenting models have become increasingly common. Facing this progressive pluralization of kinship frameworks, state and non-state socio-legal actors are repeatedly called upon to adjust governance schemes to current familial changes. Focusing on Europe, the proposed panel intends to explore multi-folded methods of kinship creation outside conventional legal, social, and religious models. Endorsing these concurrent viewpoints, a variety of potential “familial governing entities” is

investigated. Adopting historical and philosophical perspectives, the focus is placed upon nature, which becomes the main argument supporting/contrasting new types of family in ethical, political, juridical, biological and anthropological battles. Accordingly, the universality and timelessness of “the family institute” is questioned by various social actors. When embracing the legal actors’ point of view, European domestic judiciary behaves as crucial player in regulating a social reality imposing itself on existing normative schemes. The primacy of the traditional nuclear family is therefore progressively demolished by valuing lived experiences of involved individuals. Customary and religious mechanisms also stretch the boundaries of “legitimate” kinship ties. More specifically, at the crossroads of Islamic religious provisions and Muslim cultural practices, old-new family constellations and patterns of filiation emerge amid migrant Muslim communities, whilst challenging national legal provisions. The panel shall thus question whether fresh models are needed in governance processes of contemporary family life.

### ***30. National State Building and Legal Pluralism***

*Panel Coordinator:* Iuliia Sushkova

*Presenters:* Sushkova Iu.N., Mokshin N.F., Tomsinov V.A., Zagrebin A.E.

The panel covers the historical experience of Russia, from the Russian Empire, to the USSR, to the post-Soviet area. The complexity of the theory, methodology and practice of national state-building opens new issues, including the possibility and necessity to constantly consider ethnic, religious, socio-cultural, and legal specifics of nations. The Russian Empire has developed significant experience in the regulation and adaptation of multiple aboriginal ethnicities. The USSR had a unique territorial political structure, which was taken as a basis for the modern Russian Federation. The Russian state in all its historical phases considered customary law of different ethnicities in its official legal system.

The panel will cover legal traditions of the Russian Doukhobors who migrated to Canada from the Russian Empire at the end of the 19th century with the support of L.N. Tolstoy. Russian Doukhobors still maintain their ethnic identity and preserve many aspects of traditional Russian culture. Their struggle for acceptance of the community in the Canadian society, is an extraordinary example of success of legal, political, religious and cultural pluralism.