Abstracts

Day 1
Thursday, 8 July 2010

Panel 1: Disciplines of Empire

Vik Kanwar
Assistant Professor and Editor-in-Chief of the JGLR, Jindal Global Law School, Delhi

From the Standard of Civilization to the Standardization of Indicators: Methods, Phases and Spaces of Global Governance
(Leiden Journal of International Law; Special Foucault Issue forthcoming)

Over the past two decades, at least two bodies of international scholarship have modeled their methods and concerns on the work of Michel Foucault. First, historians and scholars of international law (e.g. Koskenniemi, Anghie, and Gong) have written various "archaeologies" and "genealogies" on 19th and 20th century notions of "civilization" drawing in part upon Foucault's major books on the human sciences. Second, an interdisciplinary literature has emerged on "global governmentality" applying some of Foucault’s later ideas to international actors and institutions. In this paper, I will look at how each school of thought constructs an epistemic regime covering a particular period. More specifically, I will compare two phases of "standardization": the "standard of civilization" evolved within the European Public Law and (2) the modern method of indicators and benchmarking in global governance or governmentality. I will also ask certain questions on the relationships between the two epistemic regimes:

• "How are the two related and should they be characterized as a continuity or break?"
• Can we identify a "clean" break or are the edges ragged? Can a Foucauldian method account for complex continuities and anachronisms (such as the creation of the International Standards Organization in the first period or Huntington’s clash of civilization thesis in the second?).
• Finally, how does each account contribute to or complicate theories of the state and public international law?
Peter Odhiambo
PhD Candidate, Griffith Law School, Brisbane

Confronting the International Law Principle of Territorial Integrity through a Critical Look at the ‘Fictitious’ Borders of the South

The states of the “South” emerged from European territorial divisions imposed during the age of colonialism. The creation of territorial borders in the colonies that subsequently became states was modelled on the European idea of statehood. Border making was “the result of the spread of a model of territorial statehood and state-centred political economy from Western Europe into the rest of the world.” The territorial borders assigned to the colonies were not a reflection of pre-colonial political rule. This paper argues that state boundaries in the “South” are imaginary. Focusing on Africa, it asserts that in the indigenous mind-set [in Africa], pre-colonial borders are not obsolete. This is demonstrated with reference to instances of unrest and conflict in Africa, such as the post-election crises in Kenya; the Ethiopian-Eritrean border war; the horn of Africa border conflicts; and the long-running conflicts in Sudan and the Democratic Republic of Congo.

John Agnew states that “when the territoriality of the state is debated by international relations theorists, the discussion is overwhelmingly in terms of the persistence or obsolescence of the territorial state as an unchanging entity rather than in terms of its significance and meaning in different historical-geographical circumstances.” In the Western model of the state, territorial jurisdiction is determined by the constitution of the state – citizenship based nationality. This paper demonstrates that the manner in which this model was applied to Africa is flawed. Territoriality in Africa was determined by the nationality of the coloniser. Thus Kenya was a British colony whilst neighbouring Somalia was Italian. This determination of territoriality led to members of the same ‘territorial political rule’ – Somalis residing in and being citizens of separate states. By expressing its arguments in the context of territoriality in Africa, this paper is influenced by Agnew’s assertion that even though “political rule is territorial, territoriality does not necessarily entail the practices of total mutual exclusion which dominant understandings of the modern territorial state attribute to it.”

This paper subsequently asserts that states and territoriality in Africa must be considered within the meaning of their ‘historical-geographical circumstances.’ Such a consideration establishes the fictitiousness of the post-colonial borders. This paper will affirm that the prevailing rule of law in the conduct of international relations can be

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successful in the ‘South’ only if considered within the context of the ‘territorial political rule’ within the meaning of the ‘historical-geographical circumstances.’

Catriona Drew
Lecturer, School of Law, SOAS, London

*Self-determination goes South: Ethnic Cleansing in Historical Perspective*

[Abstract, TBC]

Panel 2: Technologies of Law

Yoriko Otomo
PhD Candidate, Melbourne Law School

*Air-Conditioned Nation: The Promise of Life in a Post-Millennium Age*

We are waiting for development. To be precise, we await the unfolding of the promise of progress over time: a human time marked by infinite acceleration sustained by infinite production. The coming of this promise is foretold by the cold and quickened air of buildings funded by foreign capital. In these buildings suits and fast shoes may be worn, computers used without fear of overheating, and missions carried out by the pool.

This paper touches on various aspects of the UN Secretary-General’s report, ‘Keeping the Promise: a Forward-Looking Review to Promote an Agreed Action Agenda to Achieve the Millennium Development Goals by 2015’. I argue that its denaturation of human life through ‘technological acceleration interventions’ is in constant tension with the fetid heat of the South, which threatens (has always threatened) to decompose the time and bodies of the sovereign state.

Olivia Barr
PhD Candidate & Senior Fellow, Melbourne Law School

*Death in Antarctica: Accounting for Lawfulness in the Polar South*

The history of Antarctica begins in the imaginary as a counter-balance to the weight of the north. In the slow move from terra australis incognita to the contemporary naming of Antarctica, the counter-balance remains. For with an etymology of anti and arktos, Antarctica was named in opposition to its north. Today, Antarctica is governed by a treaty and trumpeted as a site of exemplary international co-operation in the name of science and environmental preservation, yet it still remains subject to numerous territorial claims which converge at the south pole. Located at the south pole and at the site of this convergence is the Amundsen-Scott research station. Consisting of several isolated buildings, the American-run scientific research station appears to be located
simultaneously in different territorial claims. As an added complication, the station moves. Each year, the station moves closer to the south pole as the ice on which it is built moves in its seasonal patterns. In time, the buildings of the station are likely to move between different territorial claims.

In 2000, an Australian astrophysicist died in one of the buildings at this research station in unusual circumstances. A New Zealand coroner undertook a lengthy, ultimately unsatisfactory, coronial investigation. In communion with a characterisation of the South as lawless, the coroner identified this death as having occurred in a “jurisdictional void”. Developing a narrative of this particular death, burial and reburial, the juridical marking of Antarctica as a place of lawlessness is both explored and challenged. At this most southerly place, how might we account for lawfulness? Moving slowly, this paper engages jurisdiction as a technique of legal communication in order to offer some thoughts on ways in which we might be able to think of the polar south - and the concept of the South more generally - as a site of multiple forms of lawfulness.

This paper emanates from a central chapter of my doctoral thesis. My thesis notices the presence of multiple forms of lawfulness; including common law, indigenous jurisdictions and the laws of the dead and focuses on Anglo-Australian common law and its techniques of engagement with other forms of lawfulness. By paying attention to how common law moves, it becomes possible to develop an account of how common law encounters and communicates with other forms of lawfulness. From this account, it is suggested that we might be able to develop a minor jurisprudence of movement and think through how to move in the presence of these multiple forms. My thesis revolves around an engagement with concepts of jurisdiction and movement and develops through several vignettes, which includes this particular narrative of a death in Antarctica. Although my research is not directly concerned with questions of the international, an interest in empire and relations between forms of lawfulness renders questions of the South particularly relevant.

Fleur Johns
Senior Lecturer, Sydney Law School

Marginal Notes: Death, Disaster and Infra-legality in International Law

International law – international humanitarian law in particular – is intensely concerned with dead bodies encountered amid violence: their sanctity, their incendiary properties, and their significance for families, communities, and nations. In circumstances of natural disaster, international law retains some of these concerns. In the latter context, however, international law’s governing dispositions tend to take a rather different turn. When cast as waste-products of natural disaster, dead bodies induce norms and institutions concerned overwhelmingly with the accumulation, verification and flow of data. International law as disaster management emphasises the separation of the living from the dead and the leaching from bodies of inexpert, unmanageable meanings. Through prompt and professional management, the dead body is to be made doubly dead in international law; neither public nor private.
This paper presents a close reading of literature surrounding international organisations’ ‘management’ of dead bodies in disaster situations, alongside manuals concerned with the handling of the dead in conflict settings. Through this, the paper explores how and what the massified dead bodies of disaster – most commonly bodies identified with the South - are made to mean in and for international law. It studies the particular combination of governmental techniques cultivated within the international legal field at sites of mass death. By focusing on international legal texts concerned with death en masse, this paper demonstrates the importance of the infra-legal for international law: that is, that which international law casts as beneath legal notice and, at the same time, always within international law's estimation.

This paper presents new, ongoing research which is to be forthcoming in a book: *Teeming Voids – The Non-legal in International Law.*

**Featured Session**

**Judith Grbich**
Adjunct Associate Professor, Griffith Law School & Research Associate, Institute of Postcolonial Studies, School of Social and Political Sciences, University of Melbourne.

**The South, International Law and the pleasures of the Apocalyptic Sublime**

Jurisdictional questions in international law have traditionally been traced to the treaties of Westphalia and Tordesillas, and their effects described in a Eurocentric patterning of North and South relations of dominance and colonization, of nation building and economic expansion. When Hugo Grotius wrote his essay in 1642 *On the Origins of the American races* his picturing of the peoples of ‘America’, of ‘the South’ and ‘the Austral Continent’ was part of a European discourse in which spiritual knowledges and practices were uncontained by the heroes of monarchical theology or pontal donations. Reformation theologies had created people with a different sense of interiority. Grotius was contesting the growing body of literature which positioned the people of America as part of the lost tribes of Israel, a scholarly debate persisting from the 13th century in which the Tartars of Central Asia were claimed as one of the lost Jewish tribes. Grotius argued the Americans had come from Norway, via Iceland and Greenland. He was part of an Anglo-Dutch community in which philo-judaic scholarship was generating an alternative spirtual and jurisdictional grounding for international law, international relations and the justifications of rule. Within what might be termed an apocalyptic sublime the regions of the South became the places where the spiritual pleasures of a union with a Mosaic God, and the terrors of the ‘end of days’ on earth could be contemplated. In 16th and 17th century millenarianism the finding of the lost Jews and their conversion to Christianity signaled the time, within the timings of biblical Revelation, when Judgment Day would arrive. The world and all earthly life on it would end. How the peoples and lands of the South in the east and the west were pictured within this frame of pleasure and dread changed in the particularities of 18th and 19th century colonization, but this enabling frame of jurisdictional potentiality continued as
more modern practices of colonial rule, of developmental orders of 20th century political life, and the recurrence in 21st century politics of the regulation of financial crises.

Day 2
Friday, 9 July 2010

Guest Speaker – Video Conference

Julieta Lemaitre Ripoll
Director of Centro de Investigaciones Socio-Jurídicas –CIJUS-, Universidad de los Andes, Bogotá, Colombia.


[Abstract, TBC]

Panel 3: Rights and Relations

Deborah Whitehall
PhD Candidate, Melbourne Law School.

Southern Situations, Worldliness and 'Her' Right to Have Rights in International Law

This paper uses Hannah Arendt’s idea of ‘worldliness’ and its anti-thesis, ‘worldlessness’, ‘unworldly’ or ‘world alienation’ to critique the construction of the third world/south and the problem of women’s security as a particular issue for the ‘south’ of international law. The first part of the paper will propose that worldliness offers an alternative cartography to the north/south paradigm that brings into question the construction of the ‘South’ as the geographical location of human want or deprivation. The second part of the paper will explore the possibilities of this critique through a reading of women’s security, and the archetype of the ‘third world woman’ as a ‘southern situation’. The paper will consider whether the concept of ‘worldliness’ might shift the responsibility for ‘southern situations’ so that the problems of the ‘south’ become joint, or global problems or situations, and the task of their resolution, similarly shared.

Rather than underscoring the division of the world into binaries: north/south; first/third worlds; western/oriental; and the complementary binary of woman/man; and first world and third world women, Hannah Arendt’s idea of worldlessness explains the expropriation of certain peoples as a loss of a ‘worldly’ or ‘common’ experience. The emergence of ‘rightlessness’ as a category of human experience exemplifies the loss of a worldly space for political engagement. It arises not because the world is organised along geographical binaries (west/east; north/south) but rather because there is ‘no
longer any ‘uncivilised’ spot on the earth, because whether we like it or not we have really started to live in One World.’ The concept of a global situation of rightlessness looks beyond the problem of geography and resists the possibility of multiple, differently orientated worlds that anchor the particular projects of international law. In this respect, Hannah Arendt’s idea of worldliness offers an alternative to Edward Said’s understanding of ‘worldliness’. Her challenge to international law and international humanitarian projects is to think less about stratifying the experiences of the ‘world’ (into here/there; ourself/Other; north/south) and more about how the challenges of human rights reflect a global situation and integration of a global space.

The issue of women’s security in conflict zones locates the problem of rightlessness in the ‘South’ of international law. The UN Secretary General’s 2009 report on the implementation of resolution 1325 (2000) exemplifies the geographical significance of this issue so that the South and in particular, its Third World women, become the site of rightlessness and the site for colonisation by humanitarian efforts. Hannah Arendt’s concept of rightlessness as a global situation challenges the implicit demarcation between the ‘southern’ woman and her northern counterparts in the Secretary General’s report. Worldly constructions of women’s peace and security issues resist this binary and provide a method for re-thinking their significance for international humanitarianism. In particularly, a ‘worldly’ approach to women’s security offers a method to reconceptualise the spaces of South as a situation of global concern.

Oishik Sircar
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Liberal Seductions: Re/presentations of the Postcolonial Queer in International Human Rights Law

This paper looks at the politics around the assemblages and deployments of International Human Rights Law to address the rights of Queer people at select spaces (not locations) in the postcolony – India, Egypt, Iran, Nigeria, UK and USA. UK and USA feature in the list because the ‘postcolony’ in this context is being deployed as a political imagination of a space, rather than a captive a priori geographical location. There is of course a temporal dimension to the spaces that this paper will travel to: which is ‘post-September 11’. The purpose for delineating this temporal register is to emphasize how after 2001, ‘human rights’, liberalism's most potent aphrodisiac, has seduced a certain aesthetics of constituting and representing the postcolonial queer as ‘desiring’ subjects who deserve as rights “measures of benevolence that are afforded by liberal discourses of multicultural tolerance and diversity”, effecting a transformation of queer subjects “from being figures of death to becoming tied to ideas of life and productivity” (Puar 2007). Such assemblages tie the queer subject of human rights inescapably to race and the nation-state resulting in a sophisticated deployment of racialized politics that create spectacles of emancipation (promised by international human rights law) which has the capacity to effect erasures of alternative historical repertoires of postcolonial queer practices and performance. This is what Joseph Massad has termed “the Gay
“International” – an agenda that universalizes a white gay identity discourse, incited primarily by international human rights law and organizations (Massad 2002). The racial technology that facilitates international human rights law’s modes of representation and response to the violations that the queer postcolonial faces is what Jasbir Puar has called “Homonationalism” – where homosexual solidarity based on human rights starts getting predicated on nationalist and racial terms.

**Part I** of this paper will map the linear progression of universalized “LGBT” rights within the discourse of international human rights law – from the success of *Toonen* to the politics surrounding the Brazilian resolution at the UN HRC, the 2009 UNGA Resolution on human rights, sexual orientation and gender identity, and the impact of the *Lawrence* judgment on LGBT rights worldwide; and the aesthetised forms of representing the postcolonial queer’s location in the “imaginary waiting room of history” (Chakrabarty 2000) in Amnesty International, Human Rights Watch and the International Gay and Lesbian Human Rights Commission reports and action alerts.

In **Part II**, the paper will use a Foucaultian governmentality framework to offer a “counter-topographic” (Katz 2004) peregrination through the postcolony of queerly disruptive events at the India Day Parade at Madison Square, NYC, the Queen-52 sailing on the Nile in Cairo, ‘Outrage!’ founder Peter Tatchell’s “Queer Fatwa” on the streets of London and its ramifications in Iran and Nigeria on allegations regarding state sanctioned persecution of queer people, and the extensive reference to the ‘Yogyakarta Principles’ and *Lawrence* by the Delhi High Court to decriminalize sodomy in India – to capture the moments of subversion and conformity that the sexual subaltern (Kapur 2005) negotiates through her everyday and ordinary practices of resistance, solidarity and insurgency, which militate against the seductive force of international human rights law’s universalizing tactics of sexual racialization.

**Ruth Buchanan**  
Professor, Osgoode Hall Law School, Toronto

*Making the Law Work for Everyone? Property Rights as a Legal Empowerment Strategy*  
[Abstract, TBC]

**Featured Session**

**Kevin Murray**  
Adjunct Professor, School of Art, RMIT University

*Where North meets South: The Promise of Transnational Law as a Platform for Creative Collaborations*

Most paths between North and South are limited to one-way traffic. On the downward path, North sends developmental assistance South, and on the upward path South aspires to the riches of North. On what basis might we imagine a two-way collaboration between North and South? This paper considers the recent innovations in legal
instruments that seek an equitable platform on which North and South might work together. It focuses on a current challenge within UNESCO to lay the ground for creative collaborations between North and South, particularly in the relations between designers and artisans.