THESES SURVEY
RECENSION DES THÈSES

I. Doctoral Theses/Thèses de doctorat

Ebow P. Bondzi-Simpson, *The International Regulation of Relationships between Transnational Corporations and Host States: Conceptual Analyses and an Inquiry into Attempts at Codification and Control*, University of Toronto

In this study, a juridical examination is made of the relationships between transnational corporations (TNCs) and host states, especially developing countries as hosts. It notes the positive contributions that TNCs make to host states and encourages this trend. But more especially, it notes the tensions that have existed between them and endeavours to provide legal responses that take into account the legitimate interests of these two main actors. A harmonization approach is adopted in developing the said responses.

Some of the specific subjects that have received attention, and for which responses have been provided, include: the scope of the right to renegotiate investment contracts; the conditions for reference of international investment disputes to international dispute settlement machinery; closing loop-holes on transfer pricing practices; providing more certain and uniform consumer and environmental protection standards, and restricting the grounds for nationalization of foreign property and assessing appropriate compensation therefor.

However, while the thesis attempts to develop some juridical responses to regnlate some of the inhospitable features of foreign direct investment, it must also be pointed out that the increasingly developing country hosts are seeking to attract foreign investors on reasonable terms. Indeed, many developing countries — as well as former socialist countries — are becoming market-oriented in their policies, either voluntarily or subject to domestic pressures or pressures from international business concerns or even from multilateral agencies such as the International Monetary Fund (IMF) or the International Bank for Reconstruction and Development (IBRD). All of these developments, however, are fully consistent with the harmonization approach adopted in the thesis.

This study is undertaken against the backdrop of international law and relations. Some important developments within which this study may be posited include the (supposed) challenges to certain (conventional) doctrines of international law such as nationalization and compensation; the concept of the new international economic order; the global-village view of the world today which demonstrates both the extent to which national actions have international

dimensions and the extent to which international intercourse has national impact; the promotion and protection of international investment; the increased importance of regional and multilateral institutions; and the development of codes of conduct and other international standards to regulate the activities of their addressees.

By the jurisprudence advanced — and the exercise in progressive development of international investment law that is undertaken — the thesis makes a contribution to the general theory of legal relationships between TNCs and host states. At the same time, a commitment is maintained to two principles: (i) the integrity of states (which includes safeguarding them against a mortgaging of their rights to or interests in the maximum possible degree of economic development and a recognition of and respect for their national objectives and systems); and (ii) the promotion of international intercourse (which in the international economic field includes promoting and protecting foreign investment).

The objective of this study, therefore, is not to revisit the controversy about the legal relationships between TNCs and host states but, rather, to contribute to the resolution of those controversies. This is done, first, by advocating that certain normative principles be established more firmly in the mainstream of international law, and second, by supporting the multilateral agencies — particularly the UN Commission and Centre on TNCs, the Multilateral Investment Guarantee Agency, and the International Centre for the Settlement of Investment Disputes — that seek to promote more harmonious arrangements in the matter of international investments.

Jean-Carol Boucher, *De la Commission de police du Québec au Comité de déontologie policière (Évolution du mandat)*, Université Laval

Résumé non disponible/no abstract available

André Braën, *Le droit maritime au Québec*, Institut de droit comparé, Université McGill

L'industrie maritime joue un rôle important dans l'économie québécoise. Ses entreprises sont nombreuses et variées. La présente étude porte sur l'identification du droit qui leur est applicable ainsi que des sources de ce droit. De par sa nature, le droit maritime se rattache en grande partie au système de droit privé. Lorsqu'un litige maritime naît au Québec, quelle place peut, au niveau de sa solution, prétendre y occuper le droit maritime et quels sont ses rapports avec le droit privé, notamment le droit civil ? L'identification des sources du droit applicable dans un tel cas est un processus complexe du fait de l'existence de deux facteurs particuliers, à savoir le fédéralisme et le bijuridisme. L'objet de cette thèse vise donc à l'élaboration du cadre théorique nécessaire à la fois pour repérer les sources du droit applicable et pour en dégager le contenu. Dans une

première partie, l'auteur fait ressortir le caractère diversifié des activités de l'industrie maritime. Puis, il analyse les sources historiques et actuelles du droit applicable aujourd'hui au Québec. À cet égard, il remet en question la pertinence d'appliquer les règles de la *common law* dans un litige maritime de droit privé au Québec. En particulier, il soulève le bien-fondé sur le plan juridique de l'approche adoptée par la Cour suprême du Canada qui, pour des raisons d'uniformisation du droit maritime au Canada, a conclu à l'application de ces règles. Dans la seconde partie, l'auteur analyse les règles qui ont traditionnellement composé le droit maritime. Il les met en relation avec celles du droit civil. Pour dégager le contenu des règles applicables lorsqu'elles dérivent du droit commun, l'auteur adopte une approche comparative entre le droit civil et la *common law*.

Kathy-Ann Brown, *The State of the Deep Seabed Beyond National Jurisdiction: Legal and Political Realities*, Osgoode Hall Law School

The primary issue of this thesis is the status of the deep seabed beyond the limits of national jurisdiction. The focus of the debate is on the legal significance of the common heritage of humankind. The discussion examines the status of this neologism as a general principle of international law and a rule of customary law. It also addresses the influence of other important concepts in the law of the sea in defining a universal regime to govern the abyssal plains. The focus is, however, part and parcel of a greater concern as to the use of traditional notions of freedom and justice in preserving existing power structures. It is clear that innovative yet realistic initiatives must be pursued to ensure a more just and stable interdependent international society.

The methodology used seeks to appropriate the wisdom of the past, and so repeatedly turns to history: the history of traditional concepts associated with the seabed; and the history of the freedoms asserted in relation to the seas and as regards the global *laissez-faire* economy. Principles of justice, equity and reasonableness provide the means for challenging the legitimacy of all rules of law, and are the criteria used to evaluate proposals for resolving the common heritage dispute.

The analysis highlights the value of the sources of international law as evidenced in the *realpolitik* in addition to the pronouncements of the World Court. Significantly, due regard is paid to the work of the Preparatory Commission on the Law of the Sea which is still attempting to iron out a universally acceptable regime in keeping with that proposed in Part XI of the *1982 Convention on the Law of the Sea*. An alternative to negotiation as the route to conflict resolution is litigation. As such, the merits of an appeal to the International Court of Justice are assessed. Additionally, what remains for the moment a largely hypothetical venture is pursued in further examining the possibility of a role for municipal courts in the preservation of the common heritage of humankind. The basic hope is that among the things common to humanity is a spirit of reasonableness, and that it is this which will govern the deep seabed.

Mary Condon, *Ideas and Regulatory Practiee: The Ontario Securities Commission: 1945-1978*, University of Toronto

This thesis uses the history of securities regulation in Ontario between 1945 and 1978 as a case study to explore two central issues: first, the role of ideas in regulation and second, the relationship between regulation and securities markets. The claims made about these two issues are the following. First, the regulatory process involves dispute over and negotiation of the siguificance and meaning of ideas. This negotiation is undertaken by actors, including organisations, regulators and individuals, interested in the outcome of regulatory deliberations. To fully understand the relationship between interests and regulatory outcomes, sensitivity to the influence of ideas on both the positions of interest groups and regulatory decision-inaking is required. Second, by creating understandings of how markets should operate and framing the set of opportunities and resources available to actors to participate in them, regulation constitutes markets.

These claims are elaborated in the following five ways: (1) close examination of interest group positions reveals that their apparent stability, consensus and consistent reasoning was much more complex and contingent than initially appeared; (2) ideas had a currency or an independent effect not reducible to specific interest positions; (3) the regulatory agency studied was actively engaged in both reinforcing the power of certain ideas and using them to achieve outcomes; (4) the interpretation of the same idea varied according to the form of rationality through which it was expressed. The main alternative forms of rationality examined are those of economics and law; (5) in making regulatory ideas work, the Ontario Securities Commission consistently favoured legal forms of rationality over market-oriented or economic ones.

Kathleen Glass, *Elderly Persons and Decision-Making in a Medieal Context: Challenging Canadian Law*, Institute of Comparative Law, McGill University

The subject of this thesis is the investigation and critical evaluation of how Canadian legal institutions approach substitute decision-making in the particular context of making medical choices for incompetent elderly persons. Underlying the inquiry is an acknowledgment of the right of competent persons to have their autonomy recognized and the duty to protect from harm those with reduced competence. Statutes, case law and custom are examined to determine how well they serve older persons when choices concerning medical treatment and participation in research protocols are required. The adequacy of current Canadian law relating to informed consent to medical treatment and competency assessment is evaluated in light of the special characteristics of elderly persons. Recent and proposed law reforms are examined for their appropriateness in addressing the questions of who should inake substitute decisions for incompetent persons and how these decisions should be made. The three foremost criteria used as the basis for making substitute decisions — best interest, substi-

tuted judgment and advance directives — are analyzed. A final proposal is made that would redefine the notion of a person's "interests," allowing us to view the criteria for substitute decision-making not as competing, but as complementary, the appropriateness of each varying with the situation in question. Ethical principles have been employed both as a critical framework for assessing the fairness and acceptability of particular laws and as complementary to these laws, since law by its nature can never be crafted to address adequately every question we may pose.

The statutes, case law and legal literature referenced in this thesis are up to date as of December 25, 1991.

Kazi Hamid, *Self-Determination and the Right to Resistance: The Case Study of Hawaii*, University of Ottawa

The thesis examines, first, the juridical nature of the right to self-determination as a human right, evolving primarily from the nationalist feelings of a group of people. Secondly, an examination has been undertaken in order to find out the basic reasons for a claim to the right to self-determination, out of which unequal treaty and forceful annexation have been argued to be the important elements in contemporary international conflicts. Third, an argument has been submitted that the right to self-determination and resistance are intertwined, and the right to resistance matures when all other negotiations for restoring the rights of a group of people fail. Fourth, the whole discussion of the right to self-determination and resistance is applied to Hawaii, which was annexed by the United States through a coercive and unequal treaty in 1894. Thus the thesis examines the validity of the said treaty and supports the idea that the native Hawaiians have a right to self-determination under international law, and that these people never gave up their right to remain independent as opposed to becoming a part of America. Finally, the thesis recommends some measures to be adopted in the process of regaining their stolen independence.

Dongdong Hnang, *Delimitation of Maritime Boundary between Vietnam and China in the Gulf of Tonkin*, University of Ottawa

The thesis tries to answer three questions: (1) What rules and principles of international law are applicable to the delimitation of the territorial seas, exclusive economic zone, and continental shelf in the Gulf of Tonkin? (2) Did the 1887 Sino-French Convention establish the maritime boundary between Vietnam and China in the Gulf of Tonkin? (3) What is the course of the single maritime boundary between Vietnam and China in the Gulf of Tonkin from the eastern point of Tra Co to the closing line of the Gulf? By applying the rules on maritime delimitation, a boundary line is finally drawn in the Gulf of Tonkin to illustrate the equitableness of the result. The hierarchical structure and normative character of the rules on maritime delimitation are also explored.

Maureen Irish, *The Harmonized System and Tariff Classification in Canada*, Institute of Comparative Law, McGill University

This thesis examines the principles of tariff classification in Canadian customs law. Tariff appeals prior to implementation of the Harmonized System in January 1988 are analyzed. The General Rules for Interpretation of the Harmonized System are then discussed. The thesis throughout is that interpretation should not be limited to physical characteristics such as material composition. The naming of goods requires a contextual approach to interpretation which also takes into account their use in application.

Marcel Lizée, *La responsabilité sociale de la société commerciale*, Université de Montréal

Résumé non disponible/no abstract available

Sheilah Martin, *Legal Controls on Human Reproduction in Canada: A History of Gender Biased Laws and the Promise of the Charter*, University of Toronto

The purpose of this thesis is to explore how gender biased laws on human reproduction have contributed to the social, sexual and reproductive subordination of women and to examine how the Canadian Charter of Rights and Freedoms provides the opportunity and mandate to accommodate the biological differences between men and women and to establish gender inclusive legal protections. I analyze certain past and present legal controls on human reproduction to illustrate the many ways in which sexist laws on human reproduction have contributed to women's second class citizenship and controlled women in the name of regulating reproduction. I also argue that for women to share in the full amplitude of the Charter's protections there must be a constitutionally recoguized right not to be forced to procreate.

Marko Pavliha, *Implied Terms of Voyage Charters*, Institute of Comparative Law, McGill University

This thesis is a comparative study of English, American, French, Canadian and Quebec law relative to the implied terms of voyage charterparties.

It addresses specifically the implied terms in the general law of contract demonstrating the similarity between the civil and common law systems as well as the need to convert the implied terms into rules of law not subject to exclusion by agreement. The latter proposal is also supported by the doctrine of frustration which has evolved from the notion of implied terms into a principle of law.

The thesis treats the implied undertakings of the shipowner which are to provide a seaworthy vessel, to go to the port of loading with reasonable despatch, to exercise reasonable care and to proceed without deviation.

In addition, it studies the implied undertakings of the charterer being, essentially, the obligation to nominate a safe port and/or berth, and the undertaking not to ship dangerous goods.

The thesis takes into account the impact of the transportation of goods under voyage charterparties upon the environment and suggests how this impact and its effect might be prevented by international law.

Finally, it is submitted that because implied terms have been and are part of the fundamental legal structure of the voyage charterparty in both common and civil law, they should become express rules of international law, not subject to exclusion by contract.

Martin Shain, *The Right of Employees to Participate in the Organization and Design of Work: A Legal and Social Analysis*, University of Toronto

The law of employment contributes significantly to poor mental health among employees through the enforcement of rules which permit minimal participation in the organization and design of work. Lack of participation, through its effect on employees' sense of efficacy and worthwhileness, contributes to major losses in efficiency, productivity and the ability of individuals to function as fully competent members of a democratic society.

Mental health losses are observed primarily when work is organized and designed in such ways that employees can have little or no influence over their day to day work and over their fate as it entwines with strategic decisions involving plant closures, reorganizations, downsizing, relocations and the like.

Particularly implicated in the defeat of employee mental health are those legal rules which assign to employers, as an implied term of the contract, the right to unilaterally govern the organization and design of work. Such rules characterize not only the common law of employment, but also collective bargaining and occupational health and safety law where ideology would lead us to believe that the fundamental imbalance introduced by the implied management rights theory had been redressed.

In conducting a detailed examination of the substance and origin of the relevant rules, it is found that the basic, legally contrived skew which they bring about in the employment relationship cannot be justified in a society that claims to value autonomy and democracy. Indeed, the democratic imperative requires that the exercise of managerial authority be conditional upon the input and influence of employees. This imperative lies at the heart of a proposed contractarian employment relationship described as *Division of Labour in Good Faith*. The legal incidents of this relationship are described in the framework of a draft statute called the *Participation at Work Act* which is to serve as the basis for dis-

cussion among key stakeholders in a proposed provincial *Dialogue on Participation*. The object of the proposed reform is to introduce a basic employee right to participate in the organization and design of work as a minimum standard for employment.

Peter Strahlendorf, *Evolutionary Jurisprudence: Darwinian Theory in Juridical Science*, University of Toronto

If the human mind was designed through Darwinian natural selection to be a highly and intrinsically structured solver of predictable problems of human existence — so as to promote the individual's own reproductive success — then we may ask whether there are any significant implications for legal philosophy which flow from this vision of human nature. It is argued that: 1) the pursuit of happiness; 2) the "self-evidence" of certain categories of phenomena as being "good"; 3) the ability of the individual to mentally abstract from personal sentiment so as to be objectively concerned for others' interests; 4) the ability to perceive certain categories of problems as structured according to the forms of justice (distributive, commutative, retributive and procedural); and 5) the possession of a "sense of justice" that recognizes distortions in the forms of justice — are all the result of design features of the human mind that function, ultimately, to promote individual reproductive success. It is proposed that these capacities, along with others, are the basic building blocks used to construct the forms of "social control." Law is a specialized form of "social control." As a type of biocultural adaptation, law functions to regulate the proximate pursuits of individuals and, ultimately, to regulate the pursuit of individual reproductive success. If this perspective is accepted, then we can ask, in different types of societies, whose reproductive interests are promoted through law, and whose reproductive interests *ought* to be promoted through law?

Diane Veilleux, *La représentation syndicale selon le Code du travail « Pouvoir et devoir de représentation »*, Université Laval

Résumé non disponible/no abstract available

II. Master Theses/Mémoires de maîtrise

Francis Abiew, *The Rights, Interest and Duties of Host Countries and International Oil Companies Under International Petroleum Agreements*, University of Alberta

Mary Adede, *The Impact of the Canadian Charter of Rights and Freedoms on Abortion Regulation*, University of Saskatchewan

Elizabeth A. Adjin-Tettey, *Abuse of Diplomatic Privileges and Immunities*, Queen's University

Mohammed Alem, *The Applicable Law to International Commercial Contracts: Harmonization Perspectives for Civil and Common Law*, Institute of Comparative Law, McGill University

El-Tayeb Markz Ali, *Some Aspccts of the Environmental Problems in the Sudan: A Legislative Analysis*, University of Saskatchewan

Kerry Allbeury, *Biotechnology and the Environment: Towards Internationalization in the Regulation of Deliberate Releases of Genetically Engineered Organisms*, University of Toronto

Paul O. Anyoti, *Law and Policy Governing Foreign Investment in Botswana*, Queen's University

Kenneth Armstrong, *Legitimating the Actions of the Ontario Securities Commission: The Evolution of Administrative Law*, University of Toronto

Wahyuni Bahar, *Coordination of Separate Communications Satellite Systems under the INTELSAT Agreements: Legal Analysis*, Institute of Air and Space Law, McGill University

Nancy Kathleen (Sam) Banks, *All I'm Asking For Is A Little Respect: Equality Rights and Same-Sex Spousal Benefits*, University of British Columbia

Daniel Martin Bellemare, *The Relevance of the Structure-Conduct-Performance Paradigm to Horizontal Merger Analysis under the Competition Act*, Institute of Comparative Law, McGill University

Claire Bernard, *La légitimité de la recherche médicale avec les enfants non doués de discernement*, Université de Montréal

Peter Bernhardt, *The Contempt Power of the Canadian House of Commons — The Case for Reform*, University of Ottawa

Thomas Bloeink, *International Mergers and Extraterritoriality (United States, Germany and the EEC)*, Institute of Comparative Law, McGill University

John Borrows, *A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government*, University of Toronto

Richard Bouchard, *"The Confession Role" — Conflicting Interests and Values*, Dalhousie University

Olivier Boyer, *Le silence et le contrat : approche comparée*, Institut de droit comparé, Université McGill

John Bozzo, *The Exclusion of Evidence under Section 24(2) of the Canadian Charter of Rights and Freedoms, University of Toronto*

François Brochu, Mécanisme de fonctionnement de la publicité des droits à la lumière du Projet de Code civil du Québec et rôle des principaux intervenants, Université Laval

Christian Brunelle, *L'application de la Charte canadienne des droits et libertés aux institutions gouvernementales*, Université d'Ottawa

Jean Buchanan, *Fisheries Management in the South Pacific*, Dalhousie University

Wayne Douglas Burns, *Thailand and International Law*, University of British Columbia

Mark Carter, *The Judicial Response to the Impoverishment of Divorced Women: Freedom and Constraint Represented by the "Pelech Trilogy"*, University of Saskatchewan

Eduardo Castillo, *Le commerce international des services : quelques éléments d'un cadre juridique multilatéral*, Université Laval

Lubomyr Chabursky, *A Critical Examination of the "Employment Equity Act"*, Institute of Comparative Law, McGill University

Juliette Champagne-Bennett, *L'état de droit, les droits de la personne et la conférence sur la sécurité et la coopération en Europe*, Université de Montréal

Deborah Chappel, *Adoption: Reassessment and New Alternatives*, University of Toronto

Michael Code, *A Comparative Study of the Impact of Constitutional Instruments on the American and Canadian Criminal Justice Systems: Procedure Governing Constitutional Hearings and Trial within a Reasonable Time*, University of Toronto

Alastair Collin, *Forests and International Law*, University of Toronto

Monica Cordovez Loucel, *Transfer of Technology to Latin America: The Development of Indigenous Technology as the Basis for Economic and Social Progress*, Institute of Comparative Law, McGill University

Neil Cummings, *Court-Ordered Obstetrical Interventions in Aids-Infected Pregnancy*, University of Toronto

Michel Déschênes, *Le cadre juridique applicable à l'intervention des pouvoirs publics, pour la protection de la santé et de la sécurité de la population lors d'un sinistre ou d'une crise grave*, Université Laval

Richard Desgagné, *La participation des États dans le commerce international : les contrats gouvernementaux en droit comparé et en droit international*, Institut de droit comparé, Université McGill

Boniface Diarra, *Les caractéristiques de la fraude et leurs impacts sur les garanties bancaires*, Université Laval

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Christine Gagnon, *Le contentieux de la copropriété divise en droit québécois : responsabilités, actions en justice et arbitrage*, Université Laval

Suzanne Gilbert, *L'utilisation thérapeutique des tissus foetaux: les enjeux éthiques et juridiques*, Université de Sherbrooke

Diane Girard, *Le modèle séchelte : un exemple d'autonomie gouvernementale autochtone à suivre?*, Université Laval

Nathalie Girard, *Le consentement du mineur doué de discernement en matière de soins et traitements médicaux ou chirurgicaux selon le droit civil québécois*, Université de Sherbrooke

Diane Goodman, *Children's Freedom from Sexual Exploitation: International Protection and Implementation*, University of Toronto

George Hacket, *Liberalization of Air Transport in the EEC and its Implications for Non-EEC European Countries*, Institute of Air and Space Law, McGill University

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Annemieke Holthuis, *The Emergencies Act, the Charter of Rights and Freedoms and International Law: The Protection of Human Rights in States of Emergency*, Institute of Comparative Law, McGill University

France Houle, *The Documentation Centre of the Immigration and Refugee Board: A Study of the Use of Documentary Evidence in the Determination of Claims for Refugee Status*, Queen's University

Marie-Josée Houle, *Le contrôle de l'activité médicale en centre hospitalier*, Université de Sherbrooke

John Hunt, *Kant and Freud on Freedom*, University of Toronto

Christian Huon, *La responsabilité des fabricants de matériel aéronautique en Europe*, Institut de droit aérien et spatial, Université McGill

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Perpetua Karanja, *The Relationship between the Legal Status of Women and Land Ownership Rights in Kenya: A Survey*, University of Toronto

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Virginia Lajeunesse, *Section 7 of the Charter and Administrative Procedures: Renewed Demand for Uniformity?*, University of Ottawa

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Michel Le Bel, *La doctrine constitutionnelle américaine de l'imprécision (« void-for-vagueness »): éléments constitutifs et fondements constitutionnels*, Université de Montréal

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Simon Ledoux, *L'influence du droit constitutionnel dans l'émergence et l'évolution du droit aux prestations de maternité, d'adoption et parentales au sein de la Loi sur l'assurance*, Université de Montréal

Brigitte Leduc, *Le régime juridique de la formation professionnelle des corporations régies par le Code des professions du Québec*, Université Laval

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Yunhai Liu, *Legal Framework for the International Transfer of Technology*, University of Ottawa

Dominique Lizotte, *La rédaction des lois en droit civil et en common law*, Institut de droit comparé, Université McGill

Lorraine Locas, *Problèmes soulevés par le VIH/SIDA en santé mentale au Québec et en Ontario*, Institut de droit comparé, Université McGill

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