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Compendium: Recent Graduate Student Dissertation and Thesis Abstracts

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COMPENDIUM: RECENT GRADUATE STUDENT DISSERTATION AND THESIS ABSTRACTS

D. JUR. DISSERTATIONS

LL.M. THESES

SENTENCING AND THE PREVENTION OF YOUTH CRIME: A MULTI-DISCIPLINARY, MULTI-INSTITUTIONAL APPROACH

BY SANJEEV ANAND, D. JUR.

This dissertation argues that effective youth crime prevention requires the reform of government youth justice policy. In order to determine which policies need reforming, what form they should take, and how they should be implemented, an interdisciplinary approach is taken.

Chapter One is a literature review of the material available on young offender sentencing and crime prevention. This review provides the reader with a context for the thesis and allows him or her to appreciate not only what has been done in the field but more importantly what contribution this dissertation makes to the subject area.

Chapter Two presents an historical account of changes in juvenile justice from its origins in the common law about 1300 to the present day. This historical analysis reveals a number of facts pertinent to modern day reformers, such as which forces have repeatedly influenced reform and are therefore likely to do so again, and which factors have become more prominent in the reform process of late.

Chapter Three reviews the latest research findings concerning youth crime prevention programs and philosophies that operate in or focus on the criminal justice system, the community, the family, the school, and the labour market. This knowledge is then used to assess the wisdom of the recent government initiatives in the youth crime prevention area and to ascertain what steps need to be taken to increase youth crime prevention effectiveness and knowledge. An important part of this chapter deals with an empirical analysis of different sentencing policies for young offenders.

In Chapter Four, one of the key topics addressed is the appropriate sentencing policy for young offenders and how it can be implemented. Through an analysis of the statutory provisions and case-law under Canada's current juvenile justice legislative regime, the appropriateness of applying certain sentencing principles to youths is re-assessed with a view to determining whether any of them can be supported by the legislation's statutory framework.

Finally, this dissertation ends with a summary of specific government recommendations dealing with young offender sentencing and youth crime prevention. The proposals made deal with both legislative and broader youth justice policy reform because truly effective youth crime prevention cannot be achieved through an exclusive focus on youth crime prevention programs within the criminal justice system and legislative amendment.

The key recommendations made in this dissertation address the fact that current government youth justice policy is not based on empirical evidence. Instead, Canadian juvenile justice policy is largely shaped by interest group lobbying and public opinion, much of which is uninformed. In fact, this dissertation reveals that, to date, relatively little is known about which programs truly work at preventing youth crime. As a result, effective youth crime prevention programs and policies have not been implemented.

TRANSFORMATION OF CANADIAN EQUALITY RIGHTS LAW

BY GWEN BRODSKY, D. JUR.

This dissertation evaluates Supreme Court of Canada jurisprudence under the section 15 equality rights guarantee of the *Canadian Charter of Rights and Freedoms*. The goal is to assess the openings for, and the impediments to, advancing the equality of disadvantaged groups.

The dissertation begins with an analysis of selected scholarly

challenges to rights, as a point of departure for developing a framework for inquiry which posits that certain conceptions of equality rights are inimical to the aspirations of disadvantaged groups, and which understands equality rights litigation in Canada as an important terrain of contestation about the meaning of equality itself.

The questions considered are: (1) What progress has been made in the ongoing struggle to displace formal equality thinking? (2) How have conceptual boundaries been disputed and manipulated so as to allow some equality claims to be recognized while others have been kept at bay? (3) What are the obstacles to forward movement in the jurisprudence? The principal focus is on the construction of "equality" and discrimination as concepts within equality rights doctrine.

The claim is that formal equality has been disrupted, but not displaced. The Supreme Court's equality jurisprudence contains vestiges of classical legal thought and the attendant values of nineteenth-century liberalism. The cases also indicate signs of a shift towards a conception of equality rights that is less hostile to groups, confirming that the view, held by some scholars, of Canadian courts as permanently locked into a United States Supreme Court 1905 *Lochner* mindset is inaccurate. But the transition is uneven and incomplete.

The social conservatism of some members of the Court, cloaked in the language of relevance and judicial deference, is one issue for equality rights theory. The more significant threat is the persistence of neutral treatment as the equality paradigm. The Court's attachment to the ideal of neutrality is in conflict with the goal of reducing disparities between groups because it requires blindness with respect to the very characteristics that are frequently associated with inequality.

Recent decisions of the Court provide fresh encouragement to the struggle to move equality jurisprudence forward.

FROM GUARDIANSHIP TO LONG-TERM LEGAL CARE: LAW AND CARING FOR THE ELDERLY

BY ISRAEL DORON, D. JUR.

In 1992, after long years of study and research, Ontario reformed its adult guardianship laws. The new legislation created a novel legal regime that provided legal substitute decisionmaking mechanisms for people who have lost their mental capacity. Ontario's guardianship law reform was triggered by various factors, including the aging of the Ontario population, changes in the political climate, and the awareness of the potential harm and mismanagement that was embedded in the

previous guardianship regime. Now that several years have passed and Ontario's law reform has been fully implemented, an evaluation is required. Has the legal reform made a difference in the lives of the elderly? Did it achieve the goals that were originally set forth? Are more steps or other changes still needed? In order to answer these questions, Ontario's law reform was examined in this study from different angles: political, historical, empirical, legal, and international.

The findings of this study point to a mixed result. In some respects, Ontario has made significant progress in safeguarding the values of personal autonomy and enabling the elderly to avoid guardianship by using advance directives. In other respects, Ontario has failed to address the need for broader long-term social, familial, and legal support for the elderly. This study argues that Ontario's substitute decisionmaking model is inadequate and ought to be replaced by a long-term legal care model. The latter integrates guardianship with the long-term care system, transforming legal care into a social service provided to all elderly.

GLOBAL LAW AND THE SOVEREIGN STATE: THE CASE OF EURO-GROUPINGS

BY SUZANNE E. GORDON, D. JUR.

Research on how the European Economic Interest Grouping (Euro-Grouping) came to have certain legal characteristics, and on Euro-Groupings in operation, proves useful in appreciating globalization's challenge that Europeans have already taken up, and others face: the management of the clash between state law and the informal legal regimes which drive the globalization process. The thesis sees Euro-Groupings as a state legal initiative for transnational business collaboration. As an institution of state law, the Euro-Grouping invites closer examination of the relationship between nation-state law and the dictates of an emerging "global law" in the new economy.

In the European Union (EU), a formal, conscious effort is being made to cast state law into the inter-state and transnational realm of the new economy. State law is central in the process, not just as sanction and source of European law, but also as the determinant of a new division of institutional powers between the transnational regime of the EU and the sovereign jurisdiction of member states. In the EU experience, state law and its transnational European form have mediated the globalization process, adjusting the sovereignty of states to the deterritorializing transnational norms of an emergent global legal order comprising both

formal and informal legal regimes. Any attempt to exclude state law from the discussions of globalization fails to take full account of the richer understanding of law and legal order achieved in the studies of legal pluralism, and discounts the experiences of the new economy described in the business and international relations literatures.

It is apparent how important formal law continues to be, even in the face of globalization. This point might easily be overlooked inasmuch as the Euro-Grouping is perhaps unique in its heavy reliance upon formal law. The thesis will demonstrate, however, that the import of formal law extends beyond the original establishment of the Euro-Groupings into their operation, impact, and usefulness as private actors. Even as Euro-Groupings go about their business as private actors, they continually confront the strictures of formal law, especially formal state law. Meant to respond to the dictates of the new economy, where it is generally believed that an informal legal order is paramount, these Euro-Groupings remain linked to the state based legal order that spawned them, and to the various formal national legal orders within which they also operate. The thesis raises the question of what it might actually take to create formal institutions which operate transnationally, demonstrating some of the variables that tied Euro-Groupings back into the nation state. Drawing attention to the role of the nation state in the new economy is important because so much rhetoric and academic analysis implies that the nation state will have little or no continuing role as globalization takes hold. In this sense, the thesis inserts a cautionary note into ongoing debates about globalization, specifically concerning how nation states mediate globalization.

Clearly, globalization has warranted interdisciplinary study. Even so, the research here finds that there is little exchange between theoretical and doctrinal inquiries in law and more pragmatic research undertaken in business and managerial studies. The barriers between different methodologies, terminology, and objectives of doctrinal and pragmatic realms of study need to be overcome so that global trends can be examined more fully in a synthesis of perspectives.

This thesis attempts such an interdisciplinary dialogue. In its broader understanding of law, the legal pluralist methodology encourages further examination of the transnational legal order operating in the new economy. It focuses attention on changing norms, behaviours, and practices, on the one hand, and the transformation of state legal structures, sovereignty, and territoriality on the other.

The thesis concludes that both good governance and governance for the public good requires a response from the state. In the European case, the member states pool sovereignty to establish a transnational

legal order. Their response has taken legal form, but it is always "political" in the conventional sense. As such, it leaves open the possibility, however, difficult or removed, for a debate about the public interest.

UNITARIAN THEORY OF STATUTORY INTERPRETATION

BY RANDY GRAHAM, D. JUR.

In a perfect world, no one would ever write about statutory interpretation. Statutory language would be clear and unambiguous. Judges would have no trouble applying statutory language to whatever cases managed to come their way. Lawyers would never argue about a statute's "plain meaning," and references to legislative intent would be abolished. Peace and harmony would prevail, and this dissertation would be absolutely pointless. Unfortunately, our world is far from perfect, and legislative language requires interpretation. To make matters worse, the growing number of theories concerning statutory construction simply adds to the confusion, leaving lawyers and judges wondering which of the available theories is best suited for any given interpretative problem.

The purpose of this dissertation is to develop a method of harmonizing the many discordant theories of statutory interpretation. For reasons that will become apparent, the method by which this purpose is pursued will be referred to as "the unitarian theory."

The unitarian theory is not the solution to all problems of construction. It can neither eliminate the need for statutory interpretation nor render prevailing theories of construction obsolete. At its most basic level, the unitarian theory is simply a method of deciding which of the various theories of construction is the most rational method of resolving particular problems of construction. The unitarian theory pursues this modest goal by: (a) exposing the implications of typical patterns of language used by legislative drafters; and, (b) linking these drafting patterns (and the problems that they cause) to interpretative theories that provide the best method of construing legislation that exhibits the relevant pattern. Drawing upon elements of originalism, dynamism, deconstruction, and critical legal studies, the unitarian theory attempts to explain which component of the competing interpretative theories is best suited for resolving particular problems of legislative language. Whether the problem arises as a result of vagueness, ambiguity, subtext or analogy, the unitarian theory recognizes the drafting practice that gave rise to the relevant problem and points the court toward the correct method of arriving at a solution.

In this manner, the unitarian theory attempts to unify several theories of construction, drawing upon their strengths while attempting to avoid their many pitfalls. By tying each of the relevant theories to specific problems of legislative language, the unitarian theory assists interpreters of statutes, helping judges choose the appropriate method of dealing with any problem of construction.

DOMESTIC DIMENSION OF THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW

BY PAUL OCHEJE, D. JUR.

Material and human poverty plagues approximately two-thirds of humankind, mostly citizens of the Third World, at the dawn of the new millennium. There are two dimensions to the problem: at the international level, the rigidities of the international system complicate the struggle of Third World states to eradicate or, at least, to reduce poverty; at the domestic level, the adoption of development policies that privilege economic growth over human welfare creates wealth and privilege for the few and poverty and misery for the many.

This thesis focuses on the domestic dimension of the problem through an examination of the United Nations' General Assembly Declaration on the Right to Development. The provisions of the Declaration are analyzed in light of the interface of poverty, human rights and development. The central argument is that poverty is a direct consequence of the discount of human rights in the development process. This thesis challenges the conventional wisdom that human rights and development are competing concerns, and critically examines some of the props regularly employed by Third World leaders to bolster that wisdom, such as cultural relativism and resource constraints.

This thesis proposes a conceptualization of development as a comprehensive and ongoing process of societal improvement (rather than just an economic growth target, important though that is in the process) which is predicated on respect for all of human rights. Such a process must be people-centred, participatory, inclusive/non-discriminatory, and sustainable. This thesis suggests that, given the entrenched nature of poverty in the Third World and the increasingly difficult international context of development in the new millennium, a convergence of domestic and international political will is required to effect this reorientation.

THE PLACE OF INTERNATIONAL SALE OF GOODS UNDER IRANIAN LAW: THEORY AND PRACTISE

BY MAJID YAZDANI, D. JUR.

This thesis takes a novel approach to the discussion of Iranian laws as they relate to commercial activities and the sale of goods on an international level by focusing on the interests of the foreign reader. As well, it examines the primary international laws regarding the sale and carriage of goods, with a view to informing domestic readers. This research examines sale of goods topics including carriage of goods, contract formation and dispute settlement. The introductory chapter aims to familiarize the readers with the Iranian legal system, and the terms employed throughout this research. It provides the basic ideology and the process of formation of Iranian law.

In general, under Iranian law, foreign trade is under the monopoly of the government. This rule is not absolute, however. In certain circumstances and in accordance with special regulations the government cedes control over the exports and imports of some materials to individuals and commercial companies. This thesis undertakes to analyse respective laws and rules under Iranian law as applied to international sale of goods. There is no specific law governing sale of goods under Iranian law. In principle, the law governing both domestic and international sale of goods are the provisions of Civil Code and Commercial Code. The Civil Code is the main source for all types of contacts, including sale of goods. It determines, for instance, the formation of contract, the liability of the parties and terms in a contract. A comprehensive research on the area of contract of sale of goods under Iranian law is presented. Throughout this dissertation various laws and regulations, both domestic and international regarding sale of goods, are examined. It is suggested that harmonization of Iranian domestic law with international law regarding sale of goods is a necessary step for removing unexpected obstacles and for clarifying obscure areas of law.

REFERENDUMS AND CONSTITUTIONAL AMENDMENT IN CANADA

BY NANCY COTE, LL.M.

This thesis examines the referendum and how it has become an important part of the process of constitutional amendment in Canada. Traditionally, constitutional amendment in Canada has been pursued within the process of executive federalism. Recent developments, however, including the adoption of referendum laws in Canada in the

early 1990s, recent experiences with referendums, and the precedent of the 1992 *Charlottetown Accord* referendum, have led to acceptance of the referendum as a legitimate device to be employed within the constitutional amendment process. A new populism evident in the Canadian population has contributed to support for the referendum device, acting as a catalyst influencing this movement towards a more inclusionary constitutional amendment process. The principles established in the *Secession Reference* and the federal government's *Clarity Act* have further solidified acceptance of the referendum within the constitutional amendment process. This thesis examines all of these developments and makes observations regarding the use of the referendum in the future. The principal conclusion is that the referendum's rise to prominence in recent years warrants optimism, because it reflects an ongoing constructive constitutional dialogue in Canada and constitutes positive constitutional renewal for Canada.

RULE OF LAW AND ABORIGINAL GOVERNMENT: THE CASE OF NUNAVUT

BY KELLY GALLAGHER-MACKAY, LL.M.

The juxtaposition of the rule of law with Aboriginal government highlights the impermeability of western legal institutions to demands originating outside the "mainstream" system. Three studies indicate wide scope for study of the role of western legal institutions in the context of aboriginal government. United by a common concern with the limits of the rule of law, local context and specific histories are a springboard to critical re-evaluation of common debates in mainstream law, including administrative, constitutional, and equality law.

Rule of law is associated with alien, positivistic, and statist assumptions which pervade our basic understanding of legality and government. Institutional arrangements of nineteenth-century Europe, explicitly accepted as contemporary blueprints, are *alien*. Law is *positivist* to the extent it relies on a claim to authority emanating outside a position of engagement in complex social struggles. Finally, it is *statist* in acceptance of *one* official potentially universal legal system. In practice, I predict that even within structures explicitly designed to increase Aboriginal control, these assumptions will have a narrowing effect on options for self-rule. Three case studies—current issues in Nunavut's emerging governance—illustrate the hypothesis.

First, I critically examine the relationship between co-management tribunals and the judiciary showing that judicial review

along imperial, scientific, and culture-blind lines has the potential to straightjacket Aboriginal participation, and marginalize community interests. Courts have not developed means to show deference to distinctive norms of decisionmaking in a self-government context. Second, at a far less formal level, I argue the authority of a single legal system is preserved through the perception that free-standing legal education—specifically geared to meet the needs of Inuit students—would fail to meet rigorous academic standards tailored to national not local needs. Finally, at the level of constitutional theory, I suggest analysis must delve beyond an imperial model in order to understand the territory's status in terms that reflect its origins in a movement for Aboriginal self-determination.

WTO'S IMPACT ON CHINA'S PERIODICAL MEDIA

BY YUNXIANG (SCOTT) GUAN, LL.M.

While the GATT/WTO system has proved its success by the history of international trade of the past fifty years, people are more and more concerned with the negative effects of free trade. Among the many concerns of people, cultural imperialism is one of the most sensitive. Facing the surging imports (especially from the United States) of cultural products, people of many countries are worried about loosing their own national cultural identity.

After a long march of negotiations ever since 1986, China finally reached into agreement on WTO accession with the U.S. in November, 1999 and European Union in May 2000. Most commentators believed that China would get its WTO membership later in 2000.

The purpose of my study is to make a comprehensive evaluation of the WTO's expected impact on China's legal system related to cultural industry with periodical media as a case study. By studying Canada's attempts to protect its domestic periodical industry, I will propose a means for China to improve on its own current system to make it WTO-compliant while effectively protecting its domestic periodical industry.

CONSENT, CONVERSATION, AND THE REGULATION OF POST-MORTEM ORGAN DONATION IN A MULTICULTURAL CANADA

BY MARIE ANDRÉE JACOB, LL.M.

In the context of an expanding concern about the urgency to increase the supply of transplantable organs in Canada, I want to

demonstrate how crucial the issue and legal safeguards of consent of donors and their families to post-mortem organ procurement in a multicultural society remain. In the first chapter of this thesis, I will start by putting into context the issue of consent to organ procurement on legal, ethical, and social levels. I will also explain why I think the concept of consent is important to examine, and then introduce the reader to my methods and to my theoretical frameworks. The latter will include a brief discussion of underlying themes, such as communicative ethics, ethnocultural diversity, and feminist bioethics perspectives. The second chapter will focus on a legal strategy that has been used in some jurisdictions in order to increase the supply of organs: presumed consent. I will examine its legal basis and ethical foundations, and will proceed to its critique, both on ethical and practical levels. I will also demonstrate why it would be inappropriate for Canadian society to change its law to implement presumed consent as a policy for organ procurement. In the third chapter, I will focus on the well-established standard of informed consent in the context of post-mortem organ procurement. I will start by explaining how the Canadian system of cadaveric organ procurement functions and will examine its weaknesses. I will then see how regulatory changes can incorporate a revised implementation of informed consent to post-mortem organ donation within Canadian law. In my conclusion, I argue that in spite of pressure to improve the Canadian post-mortem organ procurement system's efficiency, long-term solutions should prevail over rapid remedies. Therefore, changes in people's attitudes and in the systematic implementation of the law are better options than a change to the existing legal standards of consent.

MORAL PANIC, ORGANISED CRIME, AND THE THREAT TO CIVIL LIBERTIES IN IRELAND

BY SHANE KELLEHER, LL.M.

Veronica Guerin, a leading investigative journalist, was assassinated in Dublin in June, 1996. One month after this horrific event Ireland rushed to adopt reforms of the criminal justice system declared to be necessary to combat organised crime and drug traffickers. This thesis critically examines the aftermath of the Guerin assassination, looking closely at the reactions of the media, law enforcement, politicians, and wider Irish society. It is argued that the legislative response adopted by the government was hasty, ill-considered, and the product of of a moral panic, which was inspired by notions of "organised

crime," a "crime wave," and a "drugs crisis." This thesis demonstrates that these phenomena were largely unfounded, artificial issues used to further law-and-order agendas.

UNIVERSAL SOLIDARITY: RECOGNIZING MINORITY COMMUNITIES WITHIN THE CANADIAN LABOUR MOVEMENT

BY MUNDY MCLAUGHLIN, LL.M.

Solidarity is essential to a successful labour union movement. The labour union movement is the only vehicle through which workers can effectively improve their position *vis-à-vis* employers and governments. Solidarity is a belief that the whole is stronger than the individual. It requires workers to subvert their individual interests for the good of the whole. Yet, if individual workers do not feel that their identities and interests are recognized and respected within their unions, they will feel a qualified sense of solidarity. This thesis examines historical examples of how issues of gender, race, and ethnicity have been balanced with solidarity. It canvasses feminist, race, and political theory for insights into how union governance structures might be configured to enhance the participation of minority communities. Legal principles underlying the duty of fair representation are discussed and it is suggested that if internalized by unions, these principles can offer a mediating process for balancing the interests of all union members. In addition, jurisprudence on the duty of unions and employers to accommodate offers insights into how individual union members might come to recognize that respect for difference is for the good of the whole union, and not "special treatment." Finally, the actual political practices of unions are discussed, and compared to proposals that contemporary political theorists have made to address issues that arise from governing a heterogeneous community. Solidarity is viewed through the subjective interpretations of individual trade unionists, and the conclusion is reached that an approach which recognizes and respects individual identities and concerns will enhance solidarity and create a more effective trade union movement. This will only be achieved if union members see the interests of those other than themselves as the interests of the union as a whole.

TRANSNATIONAL CRIME AND SOVEREIGNTY: THE CASE OF COLUMBIA

BY JUAN RONDEROS, LL.M.

The drug trade creates a flow of illicit goods and profits across borders, fragmenting criminal activities across several jurisdictions. Unfortunately, responses from authorities in the affected countries are equally fragmented. The fact that these types of criminal activities have a transnational nature gives an advantage to criminals. One international response to transnational drug-related organized crime has been an attempt to homogenize law and legal systems around the world. However, sovereignty becomes a major obstacle for those who endorse the homogenization process because most countries still believe that law making and law enforcement constitute fundamental parts of the absolute power of the state to govern its own territory. An international consensus on how to approach these issues does not exist. This lack of international agreement has led to the exertion of pressure by powerful countries on less powerful ones for the adoption of specific regulations and policies. The United States, being one of the most powerful countries and aid-granting nations in the war against drugs, has been imposing, pressuring, and influencing policies, laws, and law enforcement agendas throughout the world.

This thesis examines whether the concept of sovereignty must be redefined in order to allow the intervention into foreign jurisdictions in the war against drugs. The case under examination is the international relations between the U.S. and Columbia. This thesis demonstrates that the United States' "war on drugs" policy has violated traditional notions of sovereignty by exerting pressure for the adoption and change of internal legislation on Columbia. In order to arrive at this conclusion, this thesis studies theories of sovereignty from international relations theories and the law. Theories that advocate the redefinition of sovereignty—such as the unbundling of territory—are reviewed. This thesis concludes that these theories disregard not only democracy, but also the legitimacy to create and enforce the law. While it is true that the globalization process is facilitating criminal activity, it is not so clear that this process is homogenizing the global community. This thesis argues that the nation-state still responds to a need of cultural differentiation reflected in the existence of different legal systems and laws.

THE EXPANSION OF DIRECTORS' LIABILITIES IN ONTARIO: DIRECTORS' ROLE IN SUSTAINING CORPORATE LEGITIMACY

BY NANCY SALERNO, LL.M.

There is abundant literature suggesting that directors' liability has expanded considerably in the second half of this century. The legal and corporate communities have expressed concerns that this expansion is detrimental to Canadian corporations' competitiveness, and thus the Canadian economy. The fear is that excessive liabilities will make it difficult to recruit competent board members, that it will lead to resignations during periods of financial difficulty, when a competent board is most needed, and that it will discourage moderate risk-taking which is required for corporations to flourish and expand.

This thesis documents the increase in Canadian directors' liability regulation over the past century. Focusing on Ontario, I show that the perceived notion of expanded liability held by the legal and corporate communities is not exaggerated. This thesis also gathers evidence of an actual increase in the likelihood that a director will be criminally or civilly liable for a corporation's failure to meet an obligation or fulfill a duty. These conclusions can perhaps pave the way for further study on the impact that the growing liabilities will have on Canadian directors, and corporations generally.

I go on to suggest that this increase in legal liabilities needs explaining, whether or not it has resulted in an actual increase in the number of cases actually commenced against directors, or an increase in the proportion of these which result in successful judgments and increasing damage awards. Notably, the rise of directors' liability has not been matched by comparable changes to the directors' legal role. While the potential liabilities imposed on directors have increased, the legal definition of their role has remained relatively constant for over a century. This inconsistency is interesting because while rising liability may suggest higher standards of conduct and heavier regulation, the legal role continues to suggest low standards and minimal involvement in corporate governance. Therefore, the second purpose of this thesis is to suggest possible explanations for this growing gap between directors' liability law, and the fairly undemanding definition of the director's role. I conclude that directors' liability is used as a policy tool to respond to concerns over the legitimacy of corporate power because it coheres with liberal conceptions of the corporation and neo-liberal assumptions that markets and particularly capital should be regulated as little as possible.