MALCOLM BRUCE THORBURN

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PROFESSIONAL HISTORY

University of Toronto, Toronto, Canada, 2013-
- Associate Professor of Law (tenured), 2013-
- Associate of Trinity College, 2014-

University of Oxford, Oxford, UK, 2011-2012
- Robert S. Campbell Visiting Fellow, Magdalen College
- Visiting Research Fellow, Centre for Criminology

Ludwig-Maximilans-Universität, Munich, Germany, 2011
- Visiting Research Fellow, Institut für die gesamten Strafrechtswissenschaften, Rechtsphilosophie und Rechtsinformatik

Centre de recherche sociologique sur le droit et les institutions pénales (CESDIP), Paris, France, 2011
- Visiting Research Fellow

Australian National University, Canberra, Australia, 2008
- Visiting Fellow, John Fleming Centre for the Advancement of Legal Research

Queen's University, Kingston, Canada, 2003-2013
- Canada Research Chair in Crime, Security and Constitutionalism, 2010-2013
- Associate Professor of Law (tenured), Faculty of Law, 2010-2013
- Member, Surveillance Studies Centre, 2010-2013
- Assistant Professor of Law, Faculty of Law, 2003-2010

Columbia Law School, New York, USA, 2001-2003
- Associate-in-Law (Teaching Fellow)

École Nationale de la Magistrature (French National Institute for Judicial Education), New York, USA, 2002
- Lecturer on criminal law in the common law world

Supreme Court of Canada, Ottawa, Canada, 2000-2001

- Clerk to the Hon. Justice Louis LeBel

Cleary Gottlieb Steen & Hamilton, New York, USA and Paris, France, 1999, 2000
- Summary Associate

EDUCATION

Columbia Law School, J.S.D., 2010
- Thesis: 'The Constitution of Criminal Law: Justifications, Powers, and Authority'
  - Supervisor: George Fletcher
  - Dissertation committee members: Jeremy Waldron & Kent Greenawalt
  - External examiner: Daniel Richman
- Social Sciences and Humanities Research Council of Canada Fellow ($15,000/year, declined)

Columbia Law School, LL.M., 2003
- Social Sciences and Humanities Research Council of Canada Fellow ($15,000/year)
- Heffernan Fellow

Faculty of Law, University of Toronto, J.D., 2000
- W.P.M. Kennedy Silver Medal (for ranking second overall)
- Dean Cecil A. Wright Key (for extracurricular academic achievement)
- Langford Rowell Prize (for ranking first in first year)
- Law Society of Upper Canada Award for Academic Excellence
- McCarthy Tétrault Scholarship for Academic Excellence
- Patricia Myhal Scholarship in Legal Writing
- Bora Laskin Prize in Constitutional Law
- Michael John Eccles Prize in Criminal Law
- Norman Levy Prize in Jurisprudence

University of Pennsylvania, M.A., Philosophy, 1997
- Full Tuition Waiver and Graduate Scholarship

Trinity College, University of Toronto, B.A. (Hons), Philosophy, 1993
- Canada Scholarship (C$8,000)
- J. W. Billes University of Toronto Entrance Scholarship (full tuition for four years)
- University of Toronto National Book Award
- George Kennedy Scholarship in Philosophy
- John A. Jessup Memorial Prize in Philosophy
- William Francis Kingston Award for Academic Excellence

GRANTS AND AWARDS

Social Sciences and Humanities Research Council of Canada (SSHRC) Connections Grant, $12,611, for workshop on the Jurisprudence of Justice Louis LeBel, 2014

Foundation for Legal Research Grant, $5,000, for project on the criminal law jurisprudence of Justice Louis LeBel, 2014

Honorary Member of Senior Common Room, Magdalen College, Oxford, 2013-2020

Connaught Research Grant, University of Toronto, C$20,000, 2013

Canada Research Chair (Tier 2) in Constitutionalism, Crime and Security, Queen's University, C$500,000 over first five-year term, 2010

Conference Grants (for Conference on Criminalization), 2010
- Law Foundation of Ontario C$20,055
- Faculty of Law, Queen's University C$3,500
- Nathanson Centre on Transnational Human Rights, Crime, and Security C$2,000

Social Sciences and Humanities Research Council of Canada (SSHRC) Standard Research Grant for project entitled 'The Fiduciary Constitution of the Rule of Law' for C$95,000 over three years (co-applicant with Evan Fox-Decent (McGill University) and Evan Criddle (University of Syracuse)), 2009

Borden Ladner Gervais LLP Research Fellowship of C$12,000 for project entitled 'Police Powers and the Rule of Law: New Challenges in the Age of Privatization,' 2009

Visiting Fellowship, Fleming Centre for the Advancement of Legal Research, Australian National University, 2008 (A$3,000)

Queen's University Advisory Research Committee Research Grant, 2005 (C$2,000)

See also: Grants and Awards listed under "Education" above

PUBLICATIONS

Books and Edited Collections:

Dyzenhaus, D and Thorburn, M eds, (2016) The Philosophical Foundations of Constitutional Law, Oxford University Press

Newman, D, and Thorburn, M, eds, (2015) The Dignity of Law: The Legacy of Justice Louis LeBel, LexisNexis/Supreme Court Law Review 70: i-383

Aiken, S, Lyon, D, and Thorburn, M, eds, (2015) Crimmigration, Surveillance and 'Security Threats': A Multidisciplinary Dialogue, Queen's Law Journal 40: i-164

In progress:

Thorburn, M, The Constitution of Criminal Law: Justifications, Powers and Authority

Journal Articles and Essays:

Thorburn, M, (2015) 'Judgment, Communication and Coercion: What's Wrong with Private Prisons?' in Critical Analysis of Law 2: 234-243

Thorburn, M, (2015) 'Justice LeBel on Excuses and the Question of Standing,' Supreme Court Law Review 70: 357-383

Newman, D, and Thorburn, M, (2015) 'Introduction' in Supreme Court Law Review 70: 357-383

Aiken, S, Lyon, D, and Thorburn, M, (2015) 'Introduction,' Queen's Law Journal 39: i-xi

Thorburn, M (2013) 'Calling Antony Duff to Account,' Criminal Law and Philosophy, Online First: 1-15

Thorburn, M (2011) 'The Constitution of Criminal Law,' Criminal Law and Philosophy, 5: 259-276

Thorburn, M (2010) 'Reinventing the Night-watchman State?,' University of Toronto Law Journal 60: 425-443

Thorburn, M (2009) 'Accountability and Proportionality in Youth Criminal Justice,' Criminal Law Quarterly 55: 304-322

Thorburn, M (2008) 'Justifications, Powers, and Authority,' Yale Law Journal 117: 1070-1130

Thorburn, M and Manson, A (2007) 'The Recent Sentencing Debate: Convergence in Outcomes, Divergence in Reasoning,' New Criminal Law Review 10: 278-301

Thorburn, M (2005) 'The Impossible Dreams and Modest Reality of Restorative Justice,' Queen's Law Journal 30: 863-882

Trebilcock, M, Daniels, R and Thorburn, M (2000), 'Government by Voucher,' Boston University Law Review 80: 205-232

In Progress:

Thorburn, M, and Senini, C, 'The Criminal Regulation of Movement in Early Modern England' (working paper)

Thorburn, M, 'Locating the Presumption of Innocence,' (working paper)

Thorburn, M, 'Form and Function in Criminal Law,' (working paper)

Book Chapters:

Thorburn, M, 'Proportionality' (2016) in Dyzenhaus, D, and Thorburn, M, eds, The Philosophical Foundations of Constitutional Law, Oxford University Press

Dyzenhaus, D, and Thorburn, M, (2016) 'Introduction' in The Philosophical Foundations of Constitutional Law, Oxford University Press

Thorburn, M, (2015) 'Justice LeBel on Excuses and the Question of Standing,' in Newman, D, and Thorburn, M, eds, The Dignity of Law: The Legacy of Justice Louis LeBel, LexisNexis
- This is a reprint of the article of the same name in the Supreme Court Law Review

Newman, D, and Thorburn, M, (2015) 'Introduction' in Newman, D, and Thorburn, M, eds, The Dignity of Law: The Legacy of Justice Louis LeBel, LexisNexis
- This is a reprint of the article of the same name in the Supreme Court Law Review

Thorburn, M (2014) 'The Radical Orthodoxy of Hart's *Punishment and Responsibility*' in Dubber, M, ed, Foundational Texts in Modern Criminal Law, Oxford University Press

Thorburn, M (2012) 'Proportionate Sentencing and the Rule of Law,' in Zedner, L and Roberts, J, eds, Principles and Values in Criminal Law and Criminal Justice: Essays in Honour of Andrew Ashworth CBE QC FBA, Oxford University Press

Thorburn, M (2011) 'Criminal Law as Public Law,' in Duff, R A and Green, S, eds, Philosophical Foundations of Criminal Law, Oxford University Press

Thorburn, M (2011) 'Identification, Surveillance and Profiling: On the Uses and Abuses of Citizen Data,' in Dennis, I and Sullivan, G R, eds, Seeking Security: Pre-empting the Commission of Criminal Harms, Hart Publishing

Thorburn, M (2011) 'Constitutionalism and the Limits of the Criminal Law,' in Duff, R A, Farmer, L, Marshall, S, Renzo, M and Tadros, V, eds, The Structures of Criminal Law, Oxford University Press

Thorburn, M (2011) 'Two Conceptions of Equality Before the (Criminal) Law,' in Tanguay-Renaud, F, and Stribopoulos, J, eds, <u>Rethinking Criminal Law Theory</u>, Hart Publishing
- Portuguese translation forthcoming in <u>Brazilian Journal of Philosophy</u>
- Turkish translation forthcoming

In Progress:

Thorburn, M, 'What is War? What is a Crime? What's the Difference?' in Frowe, H and Parry, J eds, <u>Legitimate Authority and Political Violence</u> (proceedings of the Oxford Centre for the Study of the Ethics and Law of Armed Conflict (ELAC))

Thorburn, M, 'Police Powers and the Constitution,' in DuBois-Pedain, A, and Ulväng, M, eds, <u>Criminal Law and the State</u>, Cambridge University Press

Thorburn, M, 'Intellectual Disability and Criminal Responsibility,' (work in progress)

Short Book Contributions:

Thorburn, M (2009) 'Decision Rules and Conduct Rules: A Liberal Criminal Law Cannot be Reduced to these two Types of Rules,' in Robinson, P, Garvey, S and Ferzan, K, eds, <u>Criminal Law Conversations</u>, Oxford University Press, pp. 22-24

Thorburn, M (2009) 'Why Only the State May Decide When Sanctions are Appropriate,' in Robinson, P, Garvey, S and Ferzan, K, eds, <u>Criminal Law Conversations</u>, Oxford University Press, pp. 140-142

PRESENTATIONS

'What is War? What is a Crime? What's the Difference?'
- Oxford University Centre for Ethics and Law of Armed Conflict Annual Workshop, Stockholm, Sweden (28-30 August 2015)

'Police Powers and the Constitution'
- Workshop on The Role of the State in Criminal Justice, University of Uppsala, Sweden (24-25 July 2015)

'Intellectual Disability and Criminal Guilt'
- Workshop on transnational criminal law, Humboldt University, Berlin, Germany (5-6 June 2015)

'Proportionality in Constitutional Law Theory'
- New Voices in Legal Theory Workshop, Los Angeles, USA (27-28 March 2015)

- Mid-Career Legal Scholars Workshop, University of Toronto, Canada (23-24 October 2014)
- Workshop on the Philosophical Foundations of Constitutional Law, University of Toronto, Canada (10-11 May 2014)

'What Abortion Law can Teach Criminal Law Theory'
- Workshop on Abortion Law in Transnational Context, University of Toronto, Canada (10 November 2014)

'Does Law Matter?'
- Workshop on Alon Harel's Why Law Matters, Rutgers University, Newark, USA (25 October 2014)

'State Legitimacy in the Criminal Law'
- Workshop on the Jurisprudence of Justice Louis LeBel, University of Toronto, Canada (17-18 October 2014)

'New Foundations for Comparative Criminal Law'
- Workshop on Comparative Criminal Law, University of Zürich, Switzerland (13-14 December 2013)

'Crimmigration in Early Modern England'
- Workshop on Crime, Immigration and Surveillance, Queen's University, Kingston, Canada (7-8 November 2013)

'Criminal Law and the State'
- Workshop on the Role of the State in Criminal Law, University of Cambridge, UK (7-9 July 2013)

'The Radical Orthodoxy of H.L.A. Hart's *Punishment and Responsibility*'
- NYU Criminal Law Theory Workshop, New York, USA (25 November 2013)
- Workshop on the Foundations of Modern Criminal Law, Faculty of Law, University of Toronto, Canada (19-21 April 2013)

'Form and Function in Criminal Law'
- Workshop on Criminalizing and Criminalized States, Osgoode Hall Law School, Toronto, Canada (9-10 November 2012)

'Preventive Justice'
- Invited Discussant, University of Minnesota Law School, Minneapolis, USA (21-22 September 2012)

'Locating the Presumption of Innocence'
- Faculty Workshop, Université Laval, Québec, Canada (15 April, 2013)
- Faculty Workshop, University of Warwick, UK (12 January 2012)

- Conference on the Presumption of Innocence, University of Aberdeen, UK, (25 February 2012)
- Law Faculty Seminar, University of Uppsala, Sweden, (10 April 2012)
- 'Tuesday Group' Jurisprudence Seminar, University of Oxford, UK (15 May 2012)
- Criminal Law Discussion Group, University of Oxford, UK (16 May 2012)

'The Ends of Harm'
- Commentator in Author-Meets-Critics Panel discussing Victor Tadros's book The Ends of Harm, Jurisprudence Discussion Group, University of Oxford, UK (7 June 2012)

'Proportionate Sentencing and the Rule of Law'
- All Souls Criminology Seminar, All Souls College, University of Oxford, UK, (27 October 2011)
- Political Philosophy Workshop, University of York, UK, (12 December 2011)

'Identification and Surveillance: On the Uses and Abuses of Citizen Data'
- Conference on 'Police, Sécurité et Citoyenneté,' École Normale Supérieure, Paris, France (17 May 2011)
- Conference on 'Seeking Security: Pre-empting the Commission of Criminal Harms' at the Centre for Criminal Law, University College London, UK (2-3 September 2010)

'Two Conceptions of Equality Before the (Criminal) Law'
- Canadian Perspectives in the Philosophy of Criminal Law Conference, Osgoode Hall Law School, Toronto, Canada (10-12 September 2010)

'Criminal Law as Public Law'
- Faculty Workshop, Faculty of Law, University of Toronto, Canada (28 February 2011)
- Workshop on Fiduciary Aspects of Public Law, Faculty of Law, McGill University, Montreal, Canada (2 June 2010)
- Faculty Workshop, Cornell Law School, Ithaca, USA (13 November 2009)
- Faculty Workshop, Brooklyn Law School, USA (19 October 2009)
- Faculty Workshop, University of Syracuse College of Law, USA (13 October 2009)
- Conference on the Philosophical Foundations of Criminal Law, Rutgers School of Law, Newark, USA (25-26 September 2009)

'Constitutionalism and the Limits of the Criminal Law'
- Conference on Criminalization, University of Stirling, UK (19-20 March 2010)

- Conference on Criminalization, University of Glasgow, UK (10-11 September 2009)

'Reinventing the Night-watchman State?'
- Symposium in Honor of Michael Trebilcock, Faculty of Law, University of Toronto, Canada (1-2 October 2009)

'Accountability and Proportionality in Youth Criminal Justice'
- National Judicial Institute of Canada Conference, Toronto, Canada (25-27 February 2009)

'The Constitution of Criminal Law'
- Young Canadian Legal Scholars Conference, Queen's University Faculty of Law, Kingston, Canada (23 January 2009)
- Conference on Criminal Law in Times of Emergency, Hebrew University of Jerusalem, Israel (21-22 May 2008)
- Oxford University Jurisprudence Discussion Group, Oxford, UK (1 May 2008)

'Three Models of Criminal Law: Deterrence, Answerability and the Rule of Law'
- Faculty Workshop, Australian National University College of Law, Canberra, Australia (11 December 2008)

'The Moral Responsibilities of Criminal Justice Officials'
- Invited commentator, Osgoode Hall Law School and York University Department of Philosophy, Toronto, Canada (24 October 2008)

'The Reasonable'
- Discussant at Law and Philosophy Conference co-sponsored by the institutes for law and philosophy of Rutgers University, the University of San Diego and the University of Illinois, held in Manchester, USA (2-3 November 2007)

'Justifications, Powers, and Authority'
- Special Workshop on the Foundations of Criminal Law at the XXIII World Congress of the International Association for Legal and Social Philosophy (IVR), Krakow, Poland (3-4 August 2007)

'The Judicial Role in Criminal Sentencing'
- Young Canadian Legal Scholars Conference, McGill University Faculty of Law, Montreal, Canada (26 January 2007)

'Police Powers and State Authorization'
- Canadian Section of the International Association for Legal and Social Philosophy (IVR), York University, Toronto, Canada (2 June 2006)
- Canadian Association of Law Teachers Annual Conference, Vancouver, Canada (22-23 June 2005)

'The Gist of Justifications'
- Faculty Workshop, Faculty of Law, McGill University, Montreal, Canada (February 2003)
- Faculty Workshop, Faculty of Law, University of Toronto, Toronto, Canada (January 2003)
- Faculty Workshop, Faculty of Law, Queen's University, Kingston, Canada (November 2002)
- Faculty Workshop, Fordham Law School, New York, USA (November 2002)

Forthcoming:

'Personhood, Rights and Criminal Responsibility', Seminar on 'Criminal Law's Person,' University of York, UK (7-8 December 2015)

TEACHING

J.D. Courses

- Criminal Law (2003-present)
- Evidence (2012-present)
- Crime, Fault and Responsibility (Criminal Law Theory Seminar) (2005-2010)
- Jurisprudence (2004-2010)
- Tort Law (2003-2004)

Other Lectures

- 'The Criminal Justice System: How it Works and How it Doesn't' (Toronto) 2013
- 'Philosophical Foundations of Criminal Responsibility' (University of Oxford) 2012
- 'Introduction to Legal Theory' (Lecture to First Year Law Class) 2007, 2009
- 'Legal Scholarship: Writing for Publication' (LL.M. Seminar) 2004, 2009
- 'Clerkships: How to get them and Why' 2005, 2006, 2007
- 'Criminal Law Professor Debate' 2007, 2008, 2010

Graduate Supervision

- Terry Skolnik, J.S.D. thesis on the indirect criminalization of homelessness, supervisor (2014-)
- Jennifer Quaid, Ph.D. thesis on corporate criminal responsibility co-supervised with Paul Miller (2009-)
- Nooral Ahmed, LL.M. thesis on the use of police informants (2011-2013)
- Jeremy Deman, LL.M. graduate research paper entitled 'Self-Representation at International Criminal Tribunals' (2009)

- Zhiyun Wu, LL.M. thesis entitled 'Examining Good Character as a Mitigating Factor in Sentencing' (2007-08)

Graduate Committee Membership

- Patrick Derby, Ph.D. thesis (sociology) entitled 'Governing Automobility in the Age of Information: Automated Surveillance and the Policing of Roads' (2010-2013)

Graduate Thesis Examination Committee Membership

- Ken Nickel, Ph.D. thesis (philosophy, University of Western Ontario) entitled 'Trusting to a Fault: Criminal Negligence and Faith Healing Deaths' (2015)
- Sagi Peari, J.S.D. thesis (law, Toronto) entitled 'The Choice-Based Perspective of Choice-of-Law' (2013)
- Hugo Choquette, LL.M. thesis (law, Queen's) entitled 'Translating the Constitution Act 1867' (2009)
- Rob Regan, LL.M. thesis (law, Queen's) entitled 'Sovereign Immunity and the Lost Ships of Canada's Historic Merchant Fleet' (2006)

J.D. Independent Study Project Supervision

- Malcolm Savage, 'Proportionate Sentencing and the Justification of Criminal Law Coercion' (2010)
- Lauren Wihak, 'Responsibility and Wrongdoing in Criminal Law Theory' (2007)
- Jonathan Burton-Macleod, 'A Sociological Jurisprudence of Public Health' (2006)

Other Supervision

- Coach, Queen's University Criminal Law (Gale) Moot Court Team, (2003-2004)
- Practice Judge for Queen's University Laskin, Wilson, Gale, Hicks Morley, Sopinka and Vis Moot Court Teams, (2003-2010)

ACADEMIC SERVICE

Journal Editing

- Editorial Board Member, Law and Philosophy (2009-present)
- Editorial Board Member, Criminal Law and Philosophy (2010-present)
- Associate Editor, New Criminal Law Review (2008-present)
- Senior Editor (French), University of Toronto Faculty of Law Review (1999-2000)=

Book Refereeing

- Oxford University Press

- University of California Press
- McGill-Queen's University Press

Journal Refereeing

- Legal Theory
- Law and Philosophy
- Ratio Juris
- Criminal Law and Philosophy
- New Criminal Law Review
- Journal of Historical Sociology
- University of Toronto Law Journal
- Osgoode Hall Law Journal
- McGill Law Journal
- Les Cahiers de Droit
- University of British Columbia Law Review
- Queen's Law Journal
- Canadian Bar Review
- Ottawa Law Review
- Manitoba Law Journal

Other Refereeing

- Israel Science Foundation Grants Program referee
- Social Sciences and Humanities Research Council of Canada (SSHRC) Standard Research Grants Program referee
- Tenure and renewal referee at University of Ottawa Faculty of Law, University of Saskatchewan Faculty of Law and Osgoode Hall Law School

Conference Organizing

- Co-Organizer (with Dwight Newman), Workshop on the Legacy of Justice Louis LeBel (November 2014)
- Co-Organizer (with David Dyzenhaus), Workshop on The Philosophical Foundations of Constitutional Law (May 2014)
- Co-organizer (with Sharry Aiken and David Lyon), Workshop on Surveillance, Criminal Law and Immigration (November 2013)
- Co-organizer (with Antony Duff), International Workshop on Criminalization, Queen's University (September 2010)
- Organizer, The Legal and Political Philosophy of Immanuel Kant: a Symposium Celebrating Arthur Risptein's Force Freedom: Kant's Legal and Political Philosophy, Queen's University (October 2008)

University Committees

University of Toronto
- Chair, Academic Appeals Committee (2014-)
- Advisory Board Member, David Asper Centre for Constitutional Studies (2013-)
- Library and Technology Committee (2013-)
- Mooting and Advocacy Committee (2013-)
- Environmental Sustainability Working Group (2013-)

Queen's University
- Chair, Faculty of Law Visitors Committee (2003-2011)
- Member, Principal's Advisory Committee on the Renewal of the Dean, Faculty of Law (2009-2010)
- Member, Faculty of Law Committee on Institutional Vision (2009-2010)
- Chair, Moot Court Review Committee (2004-2005)
- Senator, Queen's University Senate (2004-2007) (elected)
- Member, Senate Appointments Committee (2004-2007)

Reading Groups

- Member, Canada-US Criminal Law Theory Skype Reading Group (2014-)
- Member, Toronto-Oxford-Tel Aviv Legal Theory Skype Reading Group (2014-)
- Member, University of Toronto Legal Theory Reading Group (2013-)
- Member, University of Toronto Criminal Law Reading Group (2013-2014)
- Member, Tuesday Legal Theory Group, University of Oxford (2011-2012)
- Member, Saturday Club, Queen's University (2011-2013)
- Co-Organizer, Queen's Faculty of Law Legal Theory Reading Group (2009-2011)
- Member, Queen's University Political Theory Reading Group (2003-2011)

LANGUAGES

- English (native)
- French (fluent)
- German (intermediate written and spoken)
- Attic Greek (reading knowledge)