

PREFACE**PREJUDICE AND THE LAW****Tanya Oberoi***

It is a truth universally acknowledged... that defining “prejudice” is a highly contextual and laborious task.¹ As I grappled with this challenge while writing the preface for the GLSA Research Series, I couldn't help but wonder what Jane Austen would think about us using her work, *Pride and Prejudice*, as an inspiration for the 16th Annual McGill Graduate Law Conference and this journal. Her wit and humour, so evident in her novels and letters, lead me to believe that she would have been delighted to see her beloved novel become the subject of an academic conference for law graduates. But what was her understanding of the term “prejudice” when she chose it for the title of her book?

Jane’s first draft of *Pride and Prejudice* was titled *First Impressions* and was rejected by publishers in 1797. Although it is believed that the text of the initial draft was edited before the novel was published in 1813, one can still see a connection between the two titles. Did Jane, then, believe there was a correlation between prejudice and first impressions? Set in 19th Century rural England, *Pride and Prejudice* follows the story of the Bennet family and centers around the burgeoning relationship between Elizabeth Bennet, the second daughter of a modest country gentleman and Fitzwilliam Darcy, a wealthy aristocrat.² While some argue that *Pride*

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¹ See Chris G Sibley & Fiona Kate Barlow, “An Introduction to the Psychology of Prejudice” in Chris G Sibley & Fiona Kate Barlow, eds, *The Cambridge Handbook of the Psychology of Prejudice* Cambridge Handbooks in Psychology (Cambridge: Cambridge University Press, 2016) 3.

² “Pride and Prejudice | Summary, Characters, Author, Book, Movie, Quotes, & Facts | Britannica”, online: <<https://www.britannica.com/topic/Pride-and-Prejudice>>.

and Prejudice's plot is mainly about the “business of getting the Bennet girls married,”³ the novel’s story is much more nuanced than that. The book is an intricate web of moral concerns and social attitudes in the backdrop of political and economic challenges gripping Britain at the time of the novel’s publication.⁴ Through the endearing, dynamic, and satirical story of the Bennet sisters and those around them, Jane skillfully explores the role of women within the family and society in *Pride and Prejudice*.⁵ All the while, “pride” and “prejudice” form the central dilemma of the novel: the primary characters, Elizabeth and Darcy, are put through circumstances that force them to confront their moral shortcomings and rise above them. As Zimmerman argues, Elizabeth and Darcy, “although touched by pride and prejudice, overcome the limitations imposed by these qualities and become equal to the moral challenges presented to them.”⁶ The growth of the primary characters is juxtaposed with the failure of the secondary characters to overcome their moral and social inadequacies and rise above the faults of pride and prejudice, which provides the story with depth and richness.⁷

According to Jones and Tanner, the title *First Impressions* reflects the heart’s “immediate and intuitive response”—in other words, love at first sight.⁸ Scholars have argued that Jane changed the novel’s title to *Pride and Prejudice* after the success of her first book, *Sense and Sensibility*, which followed the “formula of antithesis and alliteration for the title.”⁹ It is believed that she chose the new title inspired by Fanny Burney’s novel *Cecilia*, in which the characters suffer and ultimately overcome their miseries due to the traits of pride and

³ See Reuben Brower, “Light and Bright and Sparkling: Irony and Fiction in *Pride and Prejudice*,” in *The Fields of Light: An Experiment in Critical Reading* (New York: Oxford University Press, 1951). As quoted by Walter E. Anderson, “Plot, Character, Speech, and Place in *Pride and Prejudice*” (1975) 30:3 *Nineteenth-Century Fiction* 367–382.

⁴ Walters Nicholas, “Why did Austen Change the Title from *First Impressions* to *Pride and Prejudice*?” (2014) <https://www.coursehero.com/file/42326033/WALTERS-KO20pdf/>.

⁵ Judith Lowder Newton, “‘Pride and Prejudice’: Power, Fantasy, and Subversion in Jane Austen” (1978) 4:1 *Feminist Studies* 27–42.

⁶ Everett Zimmerman, “Pride and Prejudice in *Pride and Prejudice*” (1968) 23:1 *Nineteenth-Century Fiction* 64–73.

⁷ Here I refer to the characters of Collins, Charlotte, Lydia, and Wickham. See Mordecai Marcus, “A Major Thematic Pattern in *Pride and Prejudice*” (1961) 16:3 *Nineteenth-Century Fiction* 274–279.

⁸ Vivien Jones and Tony Tanner, “Introduction” in Jane Austen, *Pride and Prejudice*, (Penguin Classics, 2006).

⁹ Robert C. Fox, “Elizabeth Bennet: Prejudice or Vanity?” (1962) 17:2 *Nineteenth-Century Fiction* 185–187.

prejudice.¹⁰ Unfortunately, no copies of Jane's initial writings exist for us to know how extensively she revised *First Impressions* so that it would appear as *Pride and Prejudice* in its present form.¹¹ However, as Schorer argues, it is clear from the earlier title that Jane was concerned with telling a story that reflected the treacherousness of first impressions and how the "true life of the feelings rests on their education."¹² Jane's writing explores the humanness of forming opinions and how these formations evolve when new knowledge becomes available. This concept coincides with the exploration of prejudice this journal undertakes.

Taking inspiration from Jane and other scholarly works, I believe that prejudice could embody three characteristics. Firstly, prejudice can arise from *prejudgment*. By prejudgment, I mean a first impression that one may form based on reasons not supported by fact or evidence. This view is supported by Allport, whose definition of "negative" prejudice as "thinking ill of others without sufficient warrant" is widely quoted in literature.¹³ According to Allport, prejudice could also be "positive" and described as thinking in favour of others without a sufficient cause.¹⁴ In common usage, however, prejudice is viewed as a negative trait and is not often used to signify a positive belief.

Prejudgments can take multiple pathways that lead to prejudicial opinions. Newman has explored three types of prejudgments in this context: (1) false empirical judgments (for example, the belief that Jews are obsessed with money), (2) prejudgments that are morally correct and true but are not based on sufficient evidence (for example, the view that Klansmen are evil people without enough information regarding their opinions or activities), and (3) prejudgments that are normative and objectionable (for example, the opinion that black people

¹⁰ *Ibid.* Also see Mark Schorer, "Pride Unprejudiced" (1956) 18:1 *The Kenyon Review* 72–91.

¹¹ "How 'First Impressions' became 'Pride and Prejudice'...", online: *Jane Austen's House* <<https://janeaustens.house/online-exhibition/the-making-of-pride-and-prejudice/the-making-of-pride-and-prejudice-3/>>.

¹² Mark Schorer, "Pride Unprejudiced" (1956) 18:1 *The Kenyon Review* 72–91.

¹³ Gordon W Allport, *The nature of prejudice*, *The nature of prejudice* (Oxford, England: Addison-Wesley, 1954).

¹⁴ Jay Newman, "Prejudice as Prejudgment" (1979) 90:1 *Ethics* 47–57.

are often associated with crime and white people should not mix with them).¹⁵ Newman's analysis can be regarded as an oversimplification of prejudicial views because reality is often more complex than such "neat" scenarios. However, he is successful in highlighting the different ways in which prejudice can manifest – through an incorrect fact (Jews are obsessed with money) or through an incorrect deduction (white people should keep away from all black people) based on a somewhat accurate fact (high crime rates are associated with specific black neighbourhoods in the US).

Newman further explores this link in his discussion of what I identify as prejudice's second characteristic: *ignorance*. Ignorance can result in opinions that are (1) empirical errors, or (2) invalid inferences from facts to values.¹⁶ In simple terms, ignorance or lack of knowledge can cause people to have a prejudicial opinion based on a wrong fact, i.e., an empirical error. It may be possible to overcome such an error by emphasizing the correct facts. An invalid inference or a mistaken conclusion, on the other hand, is much more challenging to combat. This is because it is not easy to identify how value conclusions follow factual premises, i.e., the mechanism of how people infer values from facts. This challenging task is what authors in this edition of the journal undertake by addressing prejudice in several facets of the law.

Thirdly, prejudice may manifest as *bias*. Here, I refer to bias as an opinion formulated based on "heuristics," i.e., prior experiences and knowledge, rather than an analysis of new information.¹⁷ Such bias can be conscious or unconscious, depending on the individual formulating the prejudicial view. Dowsett, who has explored the topic of bias in judicial decisions as a former judge of the Australian Federal Court, firmly believes that all human beings are fallible to prejudice.¹⁸ This makes sense because we base many of our opinions on

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ See Steve Dale, "Heuristics and biases: The science of decision-making" (2015) 32:2 Business Information Review 93–99.

¹⁸ JA Dowsett, "Prejudice – the judicial virus" (2010) 42:1 Australian Journal of Forensic Sciences 37–48.

the knowledge we gain from our environment, upbringing, and education.¹⁹ Dowsett is also correct in pointing out that while we may be unable to eliminate our biases, we can consciously censor them.²⁰

One may note that both prejudgment and bias are based on previous knowledge. How does bias differ from prejudgment, then? While I've described three separate characteristics of prejudice, they are not mutually exclusive in their effect. Analysis of a real-life example of an objectionable opinion may conclude that prejudice emerges from all three elements: prejudgment, ignorance, and bias. What necessarily differentiates prejudgment from bias is the degree of knowledge involved in the decision-making process: prejudicial prejudgment may emerge from little or wrong knowledge. In contrast, bias may be based on knowledge of a different issue or circumstance than the one to which the biased opinion is being applied. A biased individual may believe in a one-size-fits-all approach and apply knowledge regarding situation A to situation B, while an individual forming a prejudgment may base it on no knowledge or a wrong inference. However, the purpose of describing these elements is not to categorize prejudice into various kinds, but to understand its existence and to address its ill effects. As such, any exercise of compartmentalizing prejudice in these characteristics must be approached cautiously.

Further, mere knowledge of a stereotype may not cause a person to be prejudiced. This is because prejudice is a personal belief, as opposed to stereotypes that is often learned and accepted without applying cognitive skills. Armour explores this difference between stereotype and prejudice by taking the example of a 3-year-old child who looks at a black woman and automatically assumes that she is a maid.²¹ Armour describes prejudice as “derogatory personal

¹⁹ See Heidi M Hurd & Michael S Moore, “Punishing Hatred and Prejudice 2004 Stanford Law Review Symposium: Punishment and Its Purposes” (2003) 56:5 Stan L Rev 1081–1146.

²⁰ Dowsett, *supra* note 19.

²¹ Jody Armour, “Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit” (1995) 83 Calif L Rev 733.

beliefs” that are negative stereotypes endorsed and accepted by people.²² This explanation is pertinent in highlighting that prejudice requires a conscious effort or “application of mind” to accept the stereotype. As such, in analogy, a person can consciously renounce a stereotyped response to avoid being prejudiced.

So, how can the law overcome prejudice? The answer may depend on one’s view of the law’s societal role. For instance, some scholars believe that laws cannot influence prejudice because it is an “inner attitude.” Therefore, legal orders can only address prejudice when it leads to an “overt” result, such as discrimination.²³ In contrast, several scholars, including the ones who have contributed to this journal, identify the law’s role in promoting social change,²⁴ and attribute the power to create and change public opinion to the law.²⁵ As Maslow argues,

The enactment of a law is often the signal for a reappraisal of past thinking and past behaviour, and the replacement of attitudes and conduct based on unthinking conformance to outmoded patterns.²⁶

When used efficiently, the law can be one of the best techniques of social control to overcome prejudice. Enacting enforceable legislation that addresses prejudice can alter public opinion with durable and meaningful results. In this edition of the research series, authors explore prejudice in various avenues and discuss how law and legislation can affect and are affected by prejudice.

Chamberland skillfully undertakes such exploration by examining the link between law, technology, and prejudice in his article, *Technological Prejudice: Demonstrating the Ontological Challenge of Building a Critical Theory of Artificial Legal Intelligence*. Here, Chamberland views technology as a social phenomenon and stresses the role of critical theory

²² *Ibid.*

²³ Marta Hodasz, Manfred Nowak & Constanze Pritz, “The Overcoming of Prejudice in the Legal Order” in Anton Pelinka, Karin Bischof & Karin Stögner, ed, *Handbook of Prejudice*, (Amherst, NY: Cambria Press, 2009) 375.

²⁴ Alfred McClung Lee and Norman D. Humphrey, *Race Riot* (New York: Dryden Press, 1943). Roscoe Pound, *The Task of Law* (Lancaster, Pa.: Franklin and Marshall College, 1944).

²⁵ A.V. Dicey, *Lectures on the Relations Between Law and Public Opinion in England During the Nineteenth Century* (2nd ed. London: Macmillan, 1941)

²⁶ Will Maslow, “Prejudice, Discrimination, and the Law” (1951) 275:1 *THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE* 9–17.

in analyzing the social implications of artificial legal intelligence. His use of the lens of critical legal studies is ingenious in discussing artificial intelligence's potential for prejudice. He views prejudice as bias by exploring the realms of "algorithmic bias" and "automation bias." By considering how such bias is relative to human beings when it seeps into artificial legal intelligence, Chamberland takes steps toward building a comprehensive theory on the topic.

Titled as a prophecy, *The Future of Legal Education Will be Queer* by **Dry** addresses the prejudice in legal education and advocates for "queer" approaches to teaching law. Dry is successful in challenging the dominant heteronormative structure of legal education by exploring her own experiences in law school. This personal narrative is brilliant in pushing the readers to recognize the constriction of legal studies in including LGBTQ+ perspectives, theories, and critiques on how law schools prepare students for a legal career. Her analysis, however, is not restricted to making legal education LGBTQ+ friendly: she advocates for legal education that celebrates the individual and brings out their strengths rather than suppressing their unique characteristics to produce lawyers on a conveyor belt.

In *Law and Prejudice – Does Family Law Work for the Whole Family*, **Groszewski** proficiently analyzes how prejudice affects court orders on childcare arrangements for separated parents. Through a detailed scrutiny of the Children Act 1989 of England and Wales, Groszewski effectively highlights the impact of childcare on single mothers. She considers the prejudice prevalent in family law that automatically categorizes women as caregivers who are always capable of putting their lives on hold for their children. At the same time, no such sacrifice is expected from the fathers in most heteronormative relationships. She advocates for conscious efforts by the courts to allocate parenting duties evenly to overcome such prejudice.

Iannario takes an interesting approach to prejudice in *Dual Citizenship Among Diaspora Communities: Social Ties or Economic and Political Resources*: she argues that national identity can replace distinctions based on social class, religion, and race. As such, the

shackles of prejudice may be broken in the name of national unity. However, prejudice creeps back into view when one considers the different norms countries have to grant citizenship after birth to diaspora communities. Iannario tactfully captures the reasons behind such national practices, as well as equality-related concerns about dual citizenship of the diaspora communities. Her discussion of the cultural and political backgrounds of Italy, Russia, and Israel, in conjunction with rules relating to citizenship, highlights the relationship between law and society and the prejudice that is a part of it.

Lefebvre in « *Décartographier* » *la probation : l'imaginaire libéral de la loi en tant que projet d'exclusion de la neurodiversité* considers the prejudice neurodivergent offenders face when they are put on probation. He remarkably examines the criminal justice system to highlight the notions that blame the offender for repeated law-breaking. Lefebvre's scrutiny of such prevalent prejudices and the lack of support for offenders with mental issues and disabilities is significant in painting the picture of a never-ending cycle of crime and punishment. He proficiently argues that rules relating to probation are aimed at controlling the accused rather than propagating justice and reformation, which he demonstrates through an innovative and cogent analysis of theory and case law.

In *Les préjugés envers les personnes mineures comme frein à l'action climatique: quand les enfants ne sont plus insouciantes*, **Lepage** adeptly discusses prejudice related to minors' rights, particularly in relation to a healthy environment. She analyzes children's social and legal status and their ability to advocate and act against climate change. In doing so, she considers minors' autonomy and prejudices that inhibit them from enforcing and enjoying the climate-related rights they are entitled to. Lepage's solution-oriented approach to this issue and careful consideration of legal instruments, such as the Convention of the Rights of the Child, highlight prejudice and assumptions made about children's rights, which lawmakers often overlook.

Mankah proficiently explores the prejudice against African constitutional principles and their perceived “subordination” to the legal systems of the Global North in *Pride and Prejudice in African Constitutional Law: Cohesion or Exclusion from Global North Narratives*. She achieves this analysis by employing a unique methodology: she uses characters from *Pride and Prejudice* to symbolize nations from the Global North and Africa. This innovative “Law and Literature” approach allows her to scrutinize constitutional law through the lens of critical legal studies while keeping the reader engaged throughout the article. Such an approach is apt for bringing forward her argument that incorporating Global North narratives in constitutional law causes prejudice against African political and cultural realities. Mankah effectively highlights the impact of colonialism on African constitutions, mimicking Global North principles, and ties her intricate analysis together by considering prejudice and history in a new light.

In *Unpacking the Power of Legal Definition: Changing the Legal Narrative Around Sex Trafficking and Sex Work in Canada*, **Wood** brilliantly analyzes prejudice related to sex work and trafficking in Canada through a sociological lens. By scrutinizing laws and statistics, Wood discusses the social and moral narratives that surround sex work and sex trafficking, the relation between the two, and the prejudices prevalent among the two spheres. She argues for greater education and public involvement to break the stigma surrounding victims of sexual abuse. Her push for the reconstruction of societal and legal norms and call for further research successfully paints a clear picture of how prejudice negatively affects vulnerable groups in society.

Lantz ingeniously discusses prejudice, social justice, and the right to health in her article, “*Mind the Gap: Toussaint and the Reception of International Human Rights Law in Canada*.” By assessing the implementation of international human rights obligations at the domestic level, Lantz recognizes the prejudice irregular migrants face in receiving emergency

or essential healthcare. Through her detailed analysis of the case of Ms. Nell Toussaint, Lantz highlights the domestic implementation gap in Canada's international treaty and convention obligations. Her articulate critique of the case's treatment by Canadian law and courts is significant in painting a picture of prejudice that often slips through the cracks due to compliance-related challenges in international law.

An analysis of the articles in this edition of the Research Series sheds light on the social connotations of prejudice and its effect on diverse groups. As you peruse the journal, you will notice that the concept of prejudice can be approached from various angles, each essential for a comprehensive understanding. Amid this exploration, the law emerges as a paradox: it can serve as a tool to combat prejudice when wielded adeptly, yet it can also inadvertently lead to prejudicial attitudes.

Such a thought-provoking analysis of law and prejudice would have been impossible without the contribution of the authors whose articles form a part of this journal. I am immensely grateful to Émile Chamberland, Marie Dry, Sarah Groszewski, Mafo Ndibe Mankah, Holly Wood, Karinne Lantz, Eleonora Iannario, Gabriel Lefebvre, and Caroline Lepage for the dedication, time, and effort they put into revising their work. I am indebted for their patience with the editorial process and their trust in the journal. Publishing this journal would not have been possible without their collaboration, cooperation, and support.

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I extend my heartfelt thanks to the journal's co-editors, Isabella Spano, Chit Leung, and Chintan Nirala, for their help with the article revisions. Their dedication has been pivotal in bringing the journal to fruition. I am especially grateful to Isabella for her hard work and collaboration and for penning the journal's *Epilogue*. Titled *Law as Prejudice: Codifying the Other*, Isabella brilliantly explores the prejudice Indigenous Peoples have faced at the hands of the Canadian settlers. Her intriguing analysis of law as prejudice is a befitting conclusion to the journal.

Lastly, I thank those without whom Law and Prejudice would not exist. I am incredibly grateful to Sandrine Ampleman-Tremblay, my predecessor as Vice-President (Academic) of the GLSA. I lovingly call her "Our Dear Leader" because she has graciously guided me in this journal's publication process, as well as through the many challenges I faced during my term as VP Academic. I learned so much from her effortless leadership of the 15th Annual Conference and the corresponding Research Series. Additionally, this dedication would be incomplete without acknowledging the two people who were instrumental in developing the theme of *Law and Prejudice*: my roommates, Julia Genberg and Elsa di Paola. I will never forget the Sunday morning we were huddled around our kitchen table, brainstorming movie names to come up with the conference theme. Like it was the most obvious thing in the world, these two incredibly innovative individuals pointed to the posters of Jane Austen and Darcy that I had put up in our living room. And just like that, *Law and Prejudice* was born.