

# WORKING GROUP ON LAW, CULTURE & THE HUMANITIES

Wake Forest University School of Law

March 12 - 14, 1999

## PROGRAM

### Organizing Committee

Austin Sarat, Chair  
Anita Allen  
Jack Balkin  
Wendy Brown  
Nahum Chandler  
Marianne Constable  
Hendrik Hartog  
Michael Perry  
Avi Soifer  
Robin West

# LAW, CULTURE & THE HUMANITIES

## *1999 Program*

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**Friday, March 12, 1999**

9:00 - 9:30 a.m.

**Welcome**

**Auditorium/1312**

Robert Walsh	Dean, School of Law Wake Forest University
Richard C. Schneider Jr.	Wake Forest University
Austin Sarat	Amherst College

10:00 a.m. - 12:00 p.m.

**Moral Obligations and Legal Practices**

**Room 1310**

Chair/Discussant	R. George Wright	Samford University
	William A. Edmundson	Georgia State University <i>The Social Enforcement of Morality</i>
	Mark R. Discher	Ottawa University <i>Human Rights?</i>
	Inakshi Chaturvedi	<i>Law, Morality and Environmental Pollution</i>
	Craig L. Carr	Portland State University <i>Liberalism and the Enforcement of Morals</i>

**Creating Constitutional Meaning**

**Room 1309**

Chair	Jack Balkin	Yale University
	Reva Siegel	Yale Law School

**Gendered Identities, Embodied Selves:  
Literary and Cultural Perspectives**

**Room 1308**

Chair/Discussant	Laura Korobkin	Boston University
	Stefanie Pintoff	New York University <i>The Woman Witness: Constituting Reform Through Legal Narrative in "The Woman in White"</i>
	Marian Staats	Loyola University-Chicago <i>Revising the Social Imaginary: Outlaw Bodies and the Production of Sexual Citizenship in Contemporary American Literature and Film</i>
	Susan Sage Heinzelman	University of Texas <i>Fictionalizing the Law, Legalizing the Novel: Institutional Narratives and Gender in Enlightenment England</i>
	Caroline Levine	Rutgers University <i>The Law v. The Literary Critics: Corruptible Readers and the Logic of Censorship in the Trial of Lady Chatterley's Lover</i>

**Race & Law**

**Room 1319**

Chair/Discussant	Ariela J. Gross	University of Southern California
	Karen M. Woods	University of Minnesota <i>'This Legalized Contempt of Color': Lydia Maria Child and Repeal of the Massachu- setts Intermarriage Ban</i>
	Nancy Marder	University of Southern California <i>False Claims of Jury Nullification: How the Press Plays the "Race Card"</i>
	Jami Anderson	University of Central Arkansas <i>Placing Blame in a Racist Society</i>



**Religious Language in American Public Discourse      Room 1309**

Chair/Discussant	Michael Perry	Wake Forest University
	Kyle Fedler	University of Virginia <i>The Danger of Stealth Language</i>
	Elizabeth Carpenter	University of Virginia <i>Religion and Liberalism's Public Reason: An Insufficient Concord</i>
	Mark Douglas	University of Virginia <i>Liberalism and the Problems of Religious Public Intellectuals</i>

**Confronting Death      Room 1308**

Chair	Martha Umphrey	Amherst College
	Melissa Ryan	University of Arizona <i>Civil Bodies: Legal Language and the Ritual of Sacrifice</i>
	Shai Lavi	University of California, Berkeley <i>The Right-to-Die and the Problem of Pain</i>
	Jeffrey L. Johnson	Eastern Oregon University <i>Contingent Realities and State Administered Death: The Constitutional Case Against Capital Punishment</i>
	Jennifer L. Culbert	Arizona State University <i>Reflections on the Syringe: The Spectacle of Capital Punishment at the End of the Century</i>

**Responding to Technological Innovation:  
From Print to Cyberspace**

**Room 1319**

Chair/Discussant	Jack Balkin	Yale University
	A. Michael Froomkin	University of Miami <i>Towards a Critical Theory of Cyberspace</i>
	Andrew Franta	Johns Hopkins University <i>The Art of Printing and the Law of Libel</i>
	Michael Hancher	University of Minnesota <i>Blackstone and Electronic Text</i>

4:00 - 4:30 p.m.      **Break**

4:30 - 6:15 p.m.

**At the Limits of Law: Persons and Other Beings**

**Room 1309**

Chair/Discussant	Hendrik Hartog	Princeton University
	Simon Cushing	University of Central Arkansas <i>Speciesism, Personhood and Preference</i>
	Kayhan Parsi	American Medical Association <i>Metaphorical Imagination: The Legal and Moral Status of Embryos and Fetuses in Four Common Law Countries</i>
	Paul Simmons	University of Louisville <i>Religious Liberty and Abortion Policy</i>

**Science At The Bar**

**Room 1308**

Chair	Sarah Jain	University of California at Santa Cruz
	Sarah Jain	University of California at Santa Cruz <i>Sentience &amp; Slavery: The Struggle over the Short-Handled Hoe</i>
	William Nelson	University of California, Berkeley <i>Dangerous Inquiries: Lawyer Management of Scientific Research in the Tobacco Industry</i>
	Joseph Dumit	Massachusetts Institute of Technology <i>Biology is Elsewhere: Cutting-Edge Law, New Social Movements, and Illnesses You Have to Fight to Get</i>
Discussant	Jennifer Mnookin	University of Virginia Law School

**Legal Prefigurations and Rhetorical Constraints  
in Human Rights Controversies**

**Room 1302**

Chair/Discussant	John L. Lucaites	Indiana University
	Marouf Hasian, Jr.	University of Utah <i>International Law, Colonial Desires, and the Promotion of the Human Genome Diversity Project</i>
	Geoffrey D. Klinger	Hanover College <i>Unalarming Advance: The Supreme Court and the Edification of Interpretation</i>
	William Lewis	Drake University <i>Confronting Constitutional Evil: Korematsu's Tragic Eloquence</i>

**Marriage, Murder and Mayhem:  
Novel Dissolutions of Legal Discourse**

**Room 1319**

Chair	Laura Korobkin	Boston University
	Laura Korobkin	Boston University <i>At the Bar of Your Judgment: The Erosion of Evidentiary Assumptions in Charles Brockden Brown's <u>'Wieland'</u></i>
	Laura Johnson	Boston University <i>Metaphor and the Law: Edith Wharton and the Question of Contract</i>
	Lisa Rodensky	Wellesley College <i>'He'll Swing in Six Days': Acts, Intents, and the Accessory Before the Fact in <u>Oliver Twist</u></i>

**Interpretive Practices and Possibilities**

**Room 1301**

Chair/Discussant	John T. Valauri	Northern Kentucky University
	Daphne Barak-Erez	Tel Aviv University <i>The Delusion of Symmetric Rights</i>
	Ron Shapira	Tel Aviv University <i>The Delusion of Symmetric Rights</i>
	Patrick J. Kelley	Southern Illinois University <i>Objective Interpretation and Objective Meaning in Holmes and Dickerson</i>
	Jackson H. Mugerwa	University of Saskatchewan <i>Lifting the Veil: Dworkin and the Interpretive Hydra</i>

6:30 - 7:30 p.m.

**Reception**

**IS Building**



## **Saturday, March 13, 1999**

8:30 - 10:00 a.m.

### **Civil Rights and the State: The Intersection of Law, Vision, and Power** **Room 1310**

Chair	Liann Tsoukas	Carnegie-Mellon University
	Barbara Phillips Sullivan	University of Mississippi <i>The Fire This Time: The San Francisco Fire Department and Visions of Justice</i>
	Emilye Crosby	State University of New York (SUNY) <i>"We Won Our Rights? Law and Local Movement"</i>
Discussant	Vanessa Davis	Southwestern University

### **Construing Justice II: Recent Contributions to the Cultural Psychology of the Trial** **Room 1309**

Chair	Philip N. Meyer	Vermont Law School
	Philip N. Meyer	Vermont Law School <i>Story Structure in Closing Arguments</i>
	Christina Olson Spiesel	Yale University <i>Law, Art, and the Language of Flowers, Part I</i>
	Neal R. Feigenson	Quinnipiac College of Law <i>How Mock Jurors Think About a Medical Malpractice Case</i>

**Ships Passing in the Dark –Racial Dialogue  
in the United States**

**Room 1301**

Chair	Dirk Philipsen	Virginia State University
	Dirk Philipsen	Virginia State University <i>Racial Dialogue and the Investment in Whiteness</i>
	Renee Hill	Virginia State University <i>The Dynamics of African American Participation in Black/White Dialogue</i>
	Susan Scovill	Housing Opportunities Made Equal <i>Leading Horses to Water...But Will They Ever Drink It? Talking about Race in the Context of Fair Housing Education</i>

**Gendered Acts and Actors in Legal  
Thought and Practice**

**Room 1308**

Chair/Discussant	Anita Allen-Castellitto	University of Pennsylvania
	Joshua Price	Center for Alternative Sentencing and Employment Services <i>Violence Against Prostitutes and a Re-Evaluation of the Counterpublic Sphere</i>
	Ann Kibbey	University of Colorado <i>The Plaintiff's Perspective on Discrimination Laws</i>
	Allen D. Boyer	New York Stock Exchange <i>Feminism, Puritanism, and the Common Law: Anne Coke Stubbes and Sir Edward Coke</i>

**Religious Tradition and Legal Meaning  
in the Hebrew Bible and Jewish Law**

**Room 1319**

Chair/Discussant	Avi Soifer	Boston College
	Bernard M. Levinson	University of Minnesota <i>The Problematics of Textual Authority in Ancient Israelite Law</i>
	Sheldon H. Nahmod	Chicago-Kent College of Law <i>The Duty to Rescue and the Meta-Narrative of Jewish Law</i>

**Revisiting and Revising Canonical Texts**

**Room 1302**

Chair/Discussant	Hendrik Hartog	Princeton University
	Sue W. Farquhar	Virginia Polytechnic Institute & State University <i>Renaissance Law and Literature: Montaigne's "Of Experience"</i>
	Robert Willman	Mississippi State University <i>Whig Apologetic or Tory Humanism?: The Rhetorical World of Blackstone's Law Lectures</i>
	Susan Newhart Elliott	University of Dayton <i>Sir Walter Scott's "Lord of the Isles"</i>

10:00 - 10:30 a.m.      **Break**

10:30 a.m. - 12:30 p.m.

**Imagining the Law in Popular Culture**

**Room 1302**

Chair/Discussant	Austin Sarat	Amherst College
	Richard K. Sherwin	New York Law School <i>A Jurisprudence of Tragic Constructivism: Krzysztof Kieslowski's Red</i>
	Salah el Moncef	Universite De Nantes <i>Lecter Knows Worst: Marginal Value(s) and the Law of Series in Thomas Harris's "The Silence of the Lambs"</i>
	Kenneth L. Schneyer	Johnson & Wales University <i>Constitutional Interpretation In Popular Culture</i>
	Jessica Silbey	University of Michigan <i>Truth Tales and Trial Films</i>

**The Constitution of Citizenship**

**Room 1310**

Chair/Discussant	Marianne Constable	University of California, Berkeley
	Eileen Scully	Princeton University <i>Bargaining With The State From Afar: Colonial Courtrooms And American Citizenship In Treaty Port China, 1844- 1944</i>
	Larry Zacharias	University of Massachusetts <i>Citizenship and Agrarian Values in the Shadow of the Metropolis</i>
	Kif Augustine-Adams	Brigham Young University <i>Marriage as Exile: Citizenship Rules and Women's Exclusion</i>

**Women's Voices, Women's Lives**

**Room 1309**

Chair	Suzanne Reynolds	Wake Forest University
	Lenora Ledwon	St. Thomas University <i>Women's Diaries and Hearsay: Gender, Selfhood and the Trustworthiness of Narrative Structure</i>
	Lynne A. Greenberg	City University New York <i>Subordination &amp; Silence: The Legal Status of the Early Modern English Women</i>
	Margaret Valentine Turano	St. John's Law School <i>Despondency, Despair and the Married Women's Property Laws</i>

**The History and Theory of the First Amendment**

**Room 1308**

Chair	Steven Heyman	Chicago-Kent College of Law
	Steven Heyman	Chicago-Kent College of Law <i>The Transformation of American Free Speech Theory</i>
	Michael Kent Curtis	Wake Forest University <i>The Popular Free Speech Tradition Before the Civil War</i>
	Susan Brison	Dartmouth College <i>Relational Autonomy and Hate Speech</i>
Discussant	David Rabban	University of Texas

**Cultural Values, Concealed Practices  
and Legal Protections**

**Room 1301**

Chair/Discussant	Julie Peters	Columbia University
	Sarah Harding	Chicago-Kent College of Law <i>Collective Secrecy and Cultural Rights</i>
	Jan Hoffman French	Duke University <i>Rewards of Resistance: Legal Rights, Collective Memory, and Identity Among Indians and Descendants of Fugitive Slaves in Post-Dictatorship Brazil</i>
	Jonathan Kahn	Bard College <i>From Spirit to Psyche: The Emergence of Invasion of Privacy as a Medical Harm</i>
	Béla Szabados	University of Regina <i>Hypocrisy and Self-Deception</i>
	Eldon Soifer	University of Regina <i>Hypocrisy and Self-Deception</i>

**Justice as Transcendental? Responses to Balkin**

**Room 1319**

Chair/Discussant	Francis J. Mootz III	Western New England College
	Angela Harris	University of California at Berkeley
	Jack Balkin	Yale University
	George Taylor	University of Pittsburgh

**12:30 - 2:00 p.m. Lunch**

**IS Building**

2:00 - 4:00 p.m.

**Anxiety, Contest and Hostility: Purity, Pluralism and Possibility in American Culture** **Room 1310**

Chair/Discussant	Susan Silbey	Wellesley College
	David H. Fisher	North Central College <i>Reconsidering Philosophy of Law</i>
	Robert Justin Lipkin	Widener University <i>Down with Flags, Statues, and Monuments: Cultural Memory in a Deliberative Culture</i>
	Sara Manaugh	University of California, Berkeley <i>Law as Latter-Day Jeremiad</i>

**Love's Labors: Women, Dependency and Equality - Author-Meets-Readers** **Room 1301**

Chair	Robin West	Georgetown University Law Center
	Martha Fineman	Columbia University
	Eva Feder Kittay	State University of New York
	Mary Lyndon Shanley	Vassar College
	Anita Silvers	San Francisco State University

**Humanistic Perspectives and Legal Practices**

**Room 1302**

Chair/Discussant	Jackson H. Mugerwa	University of Saskatchewan
	John C. Day	University of California, Berkeley <i>Rhetorical Epochs of Supreme Court Jurisprudential Change</i>
	Robert E. Tucker	California State University, Long Beach <i>Rhetorical Epochs of Supreme Court Jurisprudential Change</i>
	Patricia Ewick	Clark University <i>Stories, Structures and Social Theory: Narratives of Law and Science</i>
	Susan Silbey	Wellesley College <i>Stories, Structures and Social Theory: Narratives of Law and Science</i>
	Alicia M. Renfroe	University of Tennessee-Knoxville <i>Gifts for Gifts Back Again: Bargaining and the Individual in William Dean Howells's "A Hazard of New Fortunes"</i>
	Adam Thurschwell	Cleveland-Marshall College of Law <i>Philosophical Ideal and Professional Ethic: Reflections on the Aristotelian Revival in the Legal Academy</i>



**Procedure and Performance**

**Room 1309**

Chair	Eugene Garver	Saint John's University
	Roger Berkowitz	University of California, Berkeley <i>"Not Guilty" - Millennial Speculations on Legal Defense From Queen Fredegond to Bill Clinton</i>
	Karl Shoemaker	University of California, Berkeley <i>Legal Procedure After the Abolition of the Divine Ordeal</i>
	Lawrence Douglas	Amherst College <i>Rivka Yoseleskwa on the Stand: The Structure of Legality and the Construction of Heroic Memory at the Eichmann Trial</i>
	Julie Peters	Columbia University <i>Law and Performance, Law as Performance</i>

**Taking and Avoiding Responsibility:  
Philosophical and Legal Perspectives**

**Room 1308**

Chair/Discussant	Natalie Brender	Wesleyan University
	Frederick Dolan	University of California <i>Nietzsche on Law &amp; Culture</i>
	Leonard V. Kaplan	University of Wisconsin-Madison <i>Metaphysics of Responsibility From Agency to Institution</i>
	William L. Torry	West Virginia University <i>The 'Cultural Defenses': Clearing Away Confusions</i>
	Robert Hallborg, Jr.	Legal Aid Bureau of Buffalo <i>The Necessity Defense and Justice</i>

**Setting Standards: Legal Norms and the  
Shaping of Public Boundaries**

**Room 1319**

Chair/Discussant	Marianne Constable	University of California, Berkeley
	Jennifer Mnookin	University of Virginia Law School <i>Constituting Knowledge: Experts, Proof, and Legal Evidence in the American Courtroom, 1860-1910</i>
	Judith Lynn Failer	Indiana University <i>The Unofficial Law of Civil Commitment</i>
	Paul Schiff Berman	University of Connecticut <i>Assessing America's Abiding Legal Faith</i>

4:00 - 4:30 p.m.      **Break**

4:30 - 6:15 p.m.

**Plenary: Reading Texts/Reading Traditions**

**Auditorium**

Chair	Richard Schneider	Wake Forest University
	Phyllis Trible	Wake Forest University
	Robert Gordon	Yale Law School
	James Boyd White	University of Michigan

6:30 - 7:00 p.m.      **Cocktails**      **Green Room**

7:00 p.m.      **Conference Dinner**      **Magnolia Room**

Introduce Speaker	Edwin G. Wilson	Senior Vice President Wake Forest University
Speaker	Maya Angelou	Reynolds Professor of American Studies Wake Forest University

## Sunday, March 14, 1999

8:30 - 10:30 a.m.

### Pragmatism and Rhetoric

### Room 1319

Chair	Eileen A. Scallen	University of California, San Francisco
	Eileen A. Scallen	University of California, San Francisco <i>Speaking Pro Bono Publico (On Behalf of The Public Good): The Value of Ethical Criticism of Legal Rhetoric</i>
	Steven Mailloux	University of California, Irvine <i>Rhetorical Pragmatism in Legal Practice and Theory</i>
	James Arnt Aune	Texas A&M University <i>From Corax to Coase: What Posner's View of Rhetoric Can and Can't Account For</i>

### In the Beginning: Revolution, Founding and Remembering

### Room 1310

Chair/Discussant	Linda Przybyszewski	University of Cincinnati
	Bernadette Meyler	University of California, Irvine <i>The Theater of Revolution from James I to Kant</i>
	John T. Valauri	Northern Kentucky University <i>As Time Goes By: Hermeneutics and Framers' Intent</i>
	Jill Stauffer	University of California, Berkeley <i>Responsibility For The Other, For What Has Not Begun In Me, Is Responsibility.</i>
	Alan Hyde	Rutgers University <i>Our Homosocial Constitution: Sexuality and Visualization in the Early Republic</i>

**Humanistic Perspectives and Public Policy:  
Case Studies**

**Room 1309**

Chair/Discussant	Anita Allen-Castellitto	University of Pennsylvania
	Phyllis E. Bernard	Oklahoma City University <i>"Soul in Alternative Dispute Resolution" or "Exploring the Possibility that White Men Can Jump"</i>
	Jennifer Greene	University of Texas at Austin <i>Juvenile Justice and the "School Shootings": Can Justice Really be Served?</i>
	Leigh Bienen	Northwestern University <i>The Diction of Incest Statutes</i>

**Universalist Visions, Human Rights and  
the Problem of Difference: The Case of Modern France**

**Room 1308**

Chair	Sylvia Schafer	University of Wisconsin, Milwaukee
	Sylvia Schafer	University of Wisconsin, Milwaukee <i>Illness Has No Fatherland: The Foreigner, the Law of Humanity, and the Limits of Medical Hospitality in Modern France</i>
	Joshua Cole	University of Georgia <i>Foreigners in Frenchmen: Republican Citizenship and the Problem of Algeria in Nineteenth Century France</i>
	Alice Bullard	Georgia Institute of Technology <i>Race, Patriarchy and the Right to Speak in French New Caledonia</i>

10:30 - 11:00 a.m. Break

11:00 a.m. - 12:00 p.m.

Auditorium/1312

**Conference Conclusion & Discussion of the Future of the  
Working Group on Law, Culture & Humanities**