

Association for the Study of
**Law, Culture, and
the Humanities**

14th Annual Conference

March 11 & 12, 2011

Las Vegas, Nevada

boundaries and enemies

**Association for the Study of Law, Culture & The Humanities
14th Annual Conference, March 11 & 12, 2011
University of Nevada, Las Vegas,
William S. Boyd School of Law**

boundaries and enemies

Nations are imagined political communities . . . , which need boundaries, and enemies. Law is integral to the construction and maintenance of these boundaries, and the identification of enemies. . . . This part of the fiction [that imagines nations as communities] typically masks various forms of inequality, exclusion and exploitation.

-Nan Seuffert, *Jurisprudence of National Identity: Kaleidoscopes of Imperialism and Globalisation from Aotearoa New Zealand*

This conference was made possible by the generous support of the William S. Boyd School of Law at the University of Nevada, Las Vegas

Special thanks are owed to Dean John Valery White, for his immediate and unwavering support.

Thanks are also due to Daniel Boose and Eric Kerchner, Villanova University School of Law Class of 2012, for their work on the conference program, and Dean John Y. Gotanda, for the research support that made their labors remunerated.

Program Committee

Catherine Kellogg, Department of Political Science, *University of Alberta*

William MacNeil, *Griffith Law School*

Penelope Pether, *Villanova University School of Law*

Clifford J. Rosky, *S.J. Quinney College of Law, University of Utah*

Andrea Stone, Department of English Language and Literature, *Smith College*

Organizing Committee

Linda Meyer, **President**, Law, *Quinnipiac University*

Serena Mayeri, **Secretary**, Law and History, *University of Pennsylvania*

Susan Ayres, **Treasurer**, Law, *Texas Wesleyan University*

Austin Sarat, **Editor, Law, Culture and Humanities**, Law, Jurisprudence, and Social Thought,
Amherst College

Tucker Culbertson, **Webmaster**, Law and LGBT Studies, *Syracuse University*

Susan Heinzelman, **Listserv Moderator**, English and Women's Studies, *University of Texas*

Marinos Diamantides, Law, Birkbeck College, *University of London*

Leonard Feldman, Political Science, *Hunter College*

Catherine Kellogg, Political Science, *University of Alberta*

Desmond Manderson, Law, *McGill University*

Jennifer Mnookin, Law, *University of California - Los Angeles*

Serena Mayeri, Law and History, *University of Pennsylvania*

Francis J. Mootz III, Law, *University of Nevada, Las Vegas*

Paul Passavant, Political Science, *Hobart and William Smith Colleges*

Penelope Pether, Law, *Villanova University*

Ravit Reichman, English, *Brown University*

Local Arrangements

Francis J. Mootz III served as on-site coordinator and would like to express his thanks to Associate Dean Christine Smith; Director of Special Programs, Elaina Bhattacharyya; Director of Communications, Catherine Bacos; and Faculty Support Supervisor, Nettie Mann, for their hard work.

Prize Committees

Julian Mezey Dissertation Award:

Tucker Culbertson, Syracuse University College of Law

Tara Helfman, Syracuse University College of Law

Michelle McKinley, University of Oregon School of Law

James Boyd White Award:

Penelope Pether, Villanova University School of Law

Serena Mayeri, University of Pennsylvania Law School

Barry Wimpfheimer, Department of Religious Studies, Northwestern University

Plenary Address: Joseph Pugliese, "Anatomies of Torture: CIA Black Sites and Redacted Bodies"

Associate Professor Joseph Pugliese is Cultural Studies Discipline Leader in the Department of Media, Music, Communication and Cultural Studies, Macquarie University, Sydney, Australia.

He has published widely on bodies and technologies, race, ethnicity and whiteness, cultural studies of law, torture and state violence, and migration and refugee studies. His documentary, *Contemporary Colonialism and the Struggle for Aboriginal Self-Determination*, received a commendation in the United Nations Association of Australia Media Peace Award (1996). He

recently edited a collection of essays titled *Transmediterranean: Diasporas, Histories, Geopolitical Spaces* (Peter Lang), and his monograph *Biometrics: Bodies, Technologies, Biopolitics* (Routledge) has been nominated for the Surveillance Society Book Prize 2011.

CONTENTS

Schedule At-a-Glance	1
Sessions At-a-Glance	2
PROGRAM	
Friday, March 11, 2011	
Session 1: 8:30 – 10:15 a.m.	6
Session 2: 10:30 a.m. – 12:15 p.m.	11
Session 3: 2:00 – 3:45 p.m.	17
Session 4: 4:00 – 5:45 p.m.	24
Saturday, March 12, 2011	
Session 5: 8:30 – 10:15 a.m.	31
Session 6: 10:30 a.m. – 12:15 p.m.	38
Session 7: 1:45 – 3:30 p.m.	45
Session 8: 3:45 – 5:15 p.m.	50
Paper Abstracts	57
LCH 2010 Directory	122

SCHEDULE AT-A-GLANCE

Registration

Friday morning: TAM Alumni Center
Friday and Saturday: Law School Lobby

Breakfast and Welcome

Friday, 7:30 – 8:20 a.m.: TAM Alumni Center
Saturday, 8:00 – 8:30 a.m.: TAM Alumni Center

Lunch

Friday, 12:15 – 1:45 p.m.: TAM Alumni Center
Saturday, 12:15 – 1:30 p.m.: TAM Alumni Center

Panels (8:30 – 5:45 p.m.)

Friday and Saturday: Boyd School of Law

Coffee and Tea Service (8:30 a.m. – noon; 3:45 p.m. – 6:00 p.m.)

Friday and Saturday: Law Library Reading Room (3rd floor)

Book Display and Sales (8:30 a.m. – 6:00 p.m.)

Friday and Saturday: Law Library Atrium (3rd floor)

Plenary (6:15 p.m. – 7:15 p.m.)

Friday: Stan Fulton Building

Cocktail Reception, Awards (7:15 p.m. – 9:00 p.m.)

Friday: Stan Fulton Building

Wrap-Up and Brainstorming Session for 2012 Conference (5:30 p.m. – 6:00 p.m.)

Saturday: Thomas & Mack Moot Court Facility

Organizing Committee Business Meeting (6:45 p.m. – 8:30 p.m.)

Saturday: Gordon Biersch Restaurant, 3987 Paradise Road

SESSIONS AT-A-GLANCE

Association for the Study of Law, Culture & The Humanities
14th Annual Conference: March 11 & 12, 2011
University of Nevada, Las Vegas,
William S. Boyd School of Law

Friday, March 11, 2011

8:00 am – 8:20 am

Welcoming remarks
TAM Alumni Center

8:30 am – 10:15 am

- 1.1 Friends, Enemies, and the War on Terror (Thomas & Mack Moot Court Facility)
- 1.2 Prisons and Camps: (Extra) Legal Spaces and the Logics of Violence (Room 203)
- 1.3 [Session Cancelled]
- 1.4 Fighting Repression: Case Studies of Legal Challenges From the Recent Past (Room 105)
- 1.5 Pedagogies of Law, Culture, and Humanities (Room 106)
- 1.6 The Black Family: Can We Look Beyond Slavery, Jim Crow, and Modern Discrimination to Explain Its Instability? (Room 110)
- 1.7 Marking Space, Marking Time: Sovereignty and Orientalism (Room 117)
- 1.8 Times of Trial (TAM Board Room)
- 1.9 Law and Religion (Room 316)

10:30 am – 12:15 pm

- 2.1 Boundaries and enemies of 'Irish' Justice (Thomas & Mack Moot Court Facility)
- 2.2 To Kill a Mockingbird: Reflections on the Film (Room 203)
- 2.3 Law/Text/Culture (Room 101)
- 2.4 Border Fictions (Room 105)
- 2.5 Reimagining Law and Culture in the Digital Age (Room 106)
- 2.6 Codifying Families (Room 110)
- 2.7 Law and African American Cultural Productions (Room 117)
- 2.8 State Making (TAM Board Room)
- 2.9 Queer Sociolegal Histories and Narratives (Room 316)
- 2.10 Theorizing Method (Room 234)

12:15 pm – 1:45 pm

Lunch: Buffet provided at the TAM Alumni Center.

2:00 pm – 3:45 pm

- 3.1 Boundaries and Enemies Roundtable (Thomas & Mack Moot Court Facility)
- 3.2 Indignity, Race and the Nation State (Room 203)
- 3.3 Imagining Innocence and Experience (Room 101)
- 3.4 Corporate Forms (Room 105)
- 3.5 Human Rights as Articles of Faith (Room 106)
- 3.6 Myths of Origin, Origins of Myth (TAM Board Room)
- 3.7 Culture of Family Law (Room 117)
- 3.8 Supreme Boundaries: Managing Friends and Enemies at the U.S. Supreme Court (Room 112)
- 3.9 Author Meets Author: Law and Society Redefined and the Justice of Mercy—Pavlich and Meyer (Room 102)
- 3.10 Law and Emotion: Crossing the Bar (Room 316)
- 3.11 Rereading the Conflicts of the Present through Aristotle’s and Vico’s Idea of Community (Room 234)

4:00 pm – 5:45 pm

- 4.1 Boundaries and Enemies Panel (Thomas & Mack Moot Court Facility)
- 4.2 Liberalism, Neoliberalism and the Persistence of the Political (Room 203)
- 4.3 Liberal Theory and the Law (Room 101)
- 4.4 Speech, Censorship and the First Amendment (Room 105)
- 4.5 Memory, Slavery and Civil Rights (Room 106)
- 4.6 The Frontiers of Sexual Orientation Law (TAM Board Room)
- 4.7 Inevitability in Judicial Opinions (Room 117)
- 4.8 Bodies of Law (Room 112)
- 4.9 Rethinking National Boundaries and Borders (Room 102)
- 4.10 Doing Time: Allegories of Temporality in Legal Domains (Room 316)
- 4.11 Murder Prosecutions in the 18th, 20th, and 21st Century (Room 234)

6:00 pm – 6:15 pm

Shuttle Service to Stan Fulton Building

6:15 pm – 7:15 pm

Plenary: Stan Fulton Building

7:15 pm – 9:00 pm

Reception/Awards: Stan Fulton Building

Saturday, March 11, 2011

8:30 am – 10:15 am

- 5.1 Leaving Arizona: Human Smuggling, Border Walls, and SB 1070. How Arizona is leaving human rights behind and why the boycott of Arizona will not stop (Thomas & Mack Moot Court Facility)
- 5.2 Reimagining the Boundaries of Intellectual Property (Room 203)
- 5.3 Marriage, Family and Equality (Room 101)
- 5.4 Representing Law in Victorian Literature (Room 106)
- 5.5 Legacies of the Civil Rights Movement (Room 105)
- 5.6 [Session Cancelled]
- 5.7 Interrogating International and “Other” Tribunals (Room 110)
- 5.8 Crossing Borders (Room 112)
- 5.9 Good Girls (Bad Situations) (Room 117)
- 5.10 Food and Law: Where's the Beef? (Room 234)
- 5.11 Reading Justice and Mercy? (Room 316)

10:30 am – 12:15 pm

- 6.1 State of Political Discourse Roundtable (Thomas & Mack Moot Court Facility)
- 6.2 Food, Law and Culture (Room 203)
- 6.3 Custom Code and the Common Law (Room 101)
- 6.4 The Theater of Law (Room 220)
- 6.5 Forging of Identities and Citizenship (Room 105)
- 6.6 Law, Culture and Gender Mediating on the Magic of Professional Transformations (Room 106)
- 6.7 Legal Rhetorics of Domestic Violence (Room 110)
- 6.8 Rethinking the Enemies of Intellectual Property (Room 112)
- 6.9 Forging Justice in Spaces of Uncertainty (Room 117)
- 6.10 Property's Futures (Room 234)
- 6.11 Realizing Justice in Sentencing (Room 316)

12:15 pm – 1:35 pm

Lunch: Buffet provided at the TAM Alumni Center.

1:45 pm – 3:30 pm

- 7.1 Justice Between Fate and Chance (Thomas & Mack Moot Court Facility)
- 7.2 Conceptualizing Copyright (Room 203)
- 7.3 Speech Coercion and the Regulatory State (Room 101)
- 7.4 Thinking the Law with Roberto Esposito (Room 105)
- 7.5 Food, Law and Technology (Room 106)
- 7.6 Law, Literature, and the Arts on Both Sides of the Big Pond (Room 110)
- 7.7 The Power, Purchase, and Pragmatism of Modern Virtue (Room 112)
- 7.8 Freedom Bound (Room 117)
- 7.9 Alternative Forms of Family in Contemporary Film (Room 234)
- 7.10 Gender, Law and Literature (Room 316)

3:45 pm – 5:15 pm

- 8.1 20 Years of Law and Order (Thomas & Mack Moot Court Facility)
- 8.2 Derrida's The Beast and the Sovereign (Room 203)
- 8.3 Law in the Liberal Arts (Room 101)
- 8.4 On the Boundaries of Personhood: Thinking About Capacity (Room 105)
- 8.5 Inequalities in International Law (Room 106)
- 8.6 Crossing the Boundaries of Intellectual Property (Room 110)
- 8.7 Claiming the Shields (Room 112)
- 8.8 Shifting Lenses (Room 117)
- 8.9 Film on Trial (Room 234)
- 8.10 Law and the Sacred (Room 316)

5:30 pm – 6:00 pm

Wrap up and Planning: (Thomas & Mack Moot Court Facility)

Friday, March 11, 2011
8:30 am – 10:15 am
Thomas & Mack Moot Court Facility

1.1 Friends, Enemies, and the War on Terror

Chair: David H. Fisher
North Central College

Discussant: Heidi Matthews
Harvard Law School

Panelist: Cary Federman
Montclair State University
The Enemy Within and Without: Guantanamo and the Problem of Jurisprudence in the Age of Terror

Panelist: Samera Esmeir
University of California - Berkeley
Violent Enmity: From War to Armed Conflicts to Targets

Panelist: Heidi Matthews
Harvard Law School
Representations of Trauma: Sexual Violence in Berlin, 1945

Panelist: David H. Fisher
North Central College
Their Agon and Ours: Friend/enemy in ancient Athens and Carl Schmitt

Friday, March 11, 2011
8:30 am – 10:15 am
Room 203

1.2 Prisons and Camps: (Extra) Legal Spaces and the Logics of Violence

Chair: Jennifer L. Culbert
John's Hopkins University

Discussant: Jennifer L. Culbert
John's Hopkins University

Panelist: Keramet Reiter
University of California - Berkeley
Supermax Building and Criminal Constructing in California, 1980-2010

Panelist: Megan Wachspres
University of California - Berkeley
Colonial Camps in the British Empire

Panelist: Margarita Zaydman
University of California - Berkeley
Bad Education: Varlam Shalamov's Experience of the Gulag

Panelist: Jill Stauffer
Haverford College
The Experience of an Extreme Loneliness: Amery, Levinas, and Life After Torture and Internment

Friday, March 11, 2011
8:30 am – 10:15 am

1.3 Session Cancelled

Friday, March 11, 2011
8:30 am – 10:15 am
Room 105

1.4 Fighting Repression: Case Studies of Legal Challenges From the Recent Past

Chair: Lisa Silverman
University of Wisconsin-Milwaukee

Discussant: Lisa Silverman
University of Wisconsin-Milwaukee

Panelist: Jasmine Alinder
University of Wisconsin-Milwaukee
Underexposed: The Repression of Photography during the Wars in Afghanistan and Iraq

Panelist: Robert Smith
University of Wisconsin-Milwaukee
*Battling Racial Colonialism With Legal Activism: Transnational Linkages
Across the Human Rights Bar*

Panelist: Nancy Buenger
University of Wisconsin-Madison
Equitable Rights

Friday, March 11, 2011
8:30 am – 10:15 am
Room 106

1.5 Pedagogies of Law, Culture, and Humanities

Chair: Keith Rowley
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Keith Rowley
University of Nevada, Las Vegas – William S. Boyd School of Law
One Elle: Images of Law Students in American Popular Culture

Panelist: Eve Brown
Indiana University
*All the World's a Stage: A Proposal for Using Literature and Drama to Enhance
Legal Education*

Friday, March 11, 2011
8:30 am – 10:15 am
Room 110

1.6 The Black Family: Can We Look Beyond Slavery, Jim Crow, and Modern Discrimination to Explain Its Instability?

Chair: Reginald Leamon Robinson
Howard University School of Law

Discussant: John Kang
St. Thomas University School of Law

Panelist: Zanita Fenton
University of Miami School of Law
Slavery's Legacies for the White Family: Condoning Incest

Panelist: Reginald Leamon Robinson
Howard University School of Law
Dark Secrets: Can Obedience Training and Self Denial By Black Parents Also Explain The Failure, Anger, Joblessness, Hopelessness, Killing of Their Children That Destabilizes Families and Communities?

Panelist: Susan Bitensky
Michigan State University College of Law
Legalized Corporal Punishment of Children in United States

Panelist: Paul Finkelman
Albany Law School
Slave Law and the Limitations of Slave Families

Friday, March 11, 2011
8:30 am – 10:15 am
Room 117

1.7 Marking Space, Marking Time: Sovereignty and Orientalism

Chair: Monica Eppinger
St. Louis University School of Law

Discussant: Anders Walker
St. Louis University School of Law

Panelist: Monica Eppinger
St. Louis University School of Law
Securing the Population: Contemporary Sovereignty, Scarcity, and the Politics of Provision

Panelist: Eric Miller
Saint Louis University School of Law
Reparations' Republic: A Conservative Theory for the African American Reparations Movement

Panelist: Angela Banks
William & Mary School of Law
The Trouble with Treaties: Immigration and Judicial Review

Panelist: Nina Pillard
Georgetown University Law Center
(Re)inventing Work Law in a Transnational Context

Friday, March 11, 2011

8:30 am – 10:15 am

TAM Board Room

1.8 Times of Trial

Chair: Sylvia Schafer
University of Connecticut

Discussant: Sylvia Schafer
University of Connecticut

Panelist: Dan Filler
Drexel University School of Law
Transforming Moral Panic Into Rational Action

Panelist: William Griffith
George Washington University
Should the US establish an independent commission to investigate the high-level authorization of coercive interrogation techniques?

Panelist: Peter Bayer
University of Nevada, Las Vegas – William S. Boyd School of Law
Sacrifice and Sacred Honor: Why the U.S. Constitution is a Suicide Pact

Friday, March 11, 2011
8:30 am – 10:15 am
Room 316

1.9 Law and Religion

Chair: Mark Modak-Truran
Mississippi College School of Law

Discussant: Zachary Calo
Valparaiso University School of Law

Panelist: Peter Danchin
University of Maryland School of Law
Comparative and International Religious Freedom

Panelist: Mark Modak-Truran
Mississippi College School of Law
The New Religious Pluralism and Religious Freedom

Friday, March 11, 2011
10:30 am – 12:15 pm
Thomas & Mack Moot Court Facility

2.1 Boundaries and enemies of 'Irish' Justice

Chair: John Stannard
Queen's University of Belfast School of Law

Discussant: Chris Blakesley
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Dr. Niamh Howlin
Queen's University of Belfast School of Law
Boundaries of "Irish" Justice: Jury Trials in the Nineteenth Century

Panelist: Dr. Karen Brennan
Queen's University of Belfast School of Law
"Traditions of English Liberal Thought": The Boundaries of Justice and Irish Infanticide, 1922-1949

Panelist: Dr. Sarah Ramshaw
Queen's University of Belfast School of Law
To Serve and Protect? The Boundaries of 'Justice' and the Irish Diaspora in New York City, 1930-1932

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 203

2.2 To Kill a Mockingbird: Reflections on the Film

Chair: Linda Meyer
Quinnipiac University School of Law

Discussant: Jennifer Mnookin
UCLA School of Law

Panelist: Austin Sarat
Amherst College
Temporal Horizons: On the Possibilities of Law and Fatherhood in To Kill a Mockingbird

Panelist: Martha Umphrey
Amherst College
Temporal Horizons: On the Possibilities of Law and Fatherhood in To Kill a Mockingbird

Panelist: Sue Heinzelman
University of Texas at Austin School of Law
We don't have mockingbirds in Britain do we? Racism, Justice and the British Reception of To Kill a Mockingbird

Panelist: Ravit Reichman
Brown University
Dead Animals

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 101

2.3 Law/Text/Culture

Chair: Cary Federman
Montclair State University

Discussant: Cary Federman
Montclair State University

Panelist: Marilyn Terzic
McGill University
Grace v. Sheindlin: Constructions of Syndi-Court Justice

Panelist: Cynthia D. Bond
The John Marshall Law School
"We, The Judge(s)": Discourses of Legal Community in Reality Television

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 105

2.4 Border Fictions

Chair: Carla Spivack
Oklahoma City University School of Law

Discussant: Carla Spivack
Oklahoma City University School of Law

Panelist: Carla Spivack
Oklahoma City University School of Law
Immigrants Made of Ticky-Tacky: Contradictory Images of the Mexican Border in the Cable Show

Panelist: Brooke Hessler
Oklahoma City University School of Law
Virtual Enemies: Surveillance and Identification in Immigration-Issue Computer Games

Panelist: Christina Misner
Oklahoma City University School of Law
Illegal People: How Immigration Law

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 106

2.5 Reimagining Law and Culture in the Digital Age

Chair: Ngai Pindell
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Ayelet Oz
Harvard Law School
Re-thinking formality: The case of Wikipedia

Panelist: Alexandra Harrington
McGill University
Creating Communities

Panelist: Merima Bruncevic
Gothenberg University Department of Law
The “Original” and Its Legal Significance in a Digitised World

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 110

2.6 Codifying Families

Chair: Alice Hearst
Smith College

Discussant: Danaya C. Wright
Georgetown University Law Center

Panelist: Catherine A. Karayan
USC Gould School of Law
Adoptio vel Adrogatio: Using Roman Law and its Progeny to Reform American Adult Adoption Laws

Panelist: Anthony C. Infanti
University of Pittsburgh School of Law
Inequitable Administration: Documenting Family for Tax Purposes

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 117

2.7 Law and African American Cultural Productions

Chair: Carlton Copeland
University of Miami School of Law

Panelist: Nancy Marder
Chicago-Kent College of Law
In the Absence of Law and Justice

Panelist: Matthew Murrell
Georgetown University Law Center
This is Real Hip-Hop: Hip-Hop's Rejection of Paul Butler's Let's Get Free

Panelist: Brando Starkey
Equal Justice Society
Jim Crow and the Birth of Uncle Tom: Law's Impact on Black Culture

Friday, March 11, 2011
10:30 am – 12:15 pm
TAM Board Room

2.8 State Making

Discussant: Eric Sapp
Stanford University

Panelist: Jeffrey Thomas
UMKC School of Law
The Cultural Context for Rule of Law

Panelist: Howard Pashman
Northwestern University
Making Revolution Work: Law and Politics in New York, 1776-1783

Panelist: William Mercer
The University of Florida
Popular Sovereignty and Positivist Rights

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 316

2.9 Queer Sociolegal Histories and Narratives

Chair: Fatma E. Marouf
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: Tucker Culbertson
Syracuse University School of Law

Panelist: Craig Scott
San Francisco State University
Legal Scholars' Rhetoric of Rights and the Grassroots: California Gay Activism before 1975

Panelist: Marcia M. Gallo
University of Nevada, Las Vegas – Department of History
Hidden in Plain Sight: The Story of Catherine "Kitty" Genovese

Panelist: Marc Poirier
Seton Hall Law School
Hate Crimes and the Narrative of Community

Friday, March 11, 2011
10:30 am – 12:15 pm
Room 234

2.10 Theorizing Method

Chair: Megan Wachspress
University of California - Berkeley

Discussant: Megan Wachspress
University of California - Berkeley

Panelist: Jeffrey Johnson
Eastern Oregon University
Adjudication, Interpretation, & Law: An Explanatory Perspective

Panelist: David Watkins and Scott Lemieux
University of Dayton and University of St. Rose
How Not to Think About Democracy and Judicial Review

Panelist: Simone Glanert
University of Kent Law School
Method: Comparative Law's Quandary

Panelist: Desmond Manderson
McGill University
The Irony of Law and Literature

Friday, March 11, 2011
2:00 pm – 3:45 pm
Thomas & Mack Moot court Facility

3.1 Boundaries and Enemies Roundtable

Chair: Nan Seuffert
University of Waikato

Panelist: Ruthann Robson
University of New York School of Law – West Virginia University School of Law

Panelist: Jose Gabilondo
Florida International University College of Law

Panelist: Juliet Rogers
University of Melbourne

Panelist: Joseph Pugliese
Macquarie University

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 203

3.2 Indigenuity, Race and the Nation State

Chair: Nicholas Natividad
Arizona State University

Discussant: Benjamin Authers
University of Alberta

Panelist: Benjamin Authers
University of Alberta
“What it hasn’t meant before”: National Belonging and Rights in Joy Kogawa’s
Itsuka and **Emily Kato**

Panelist: Samiah Khan
Carleton University
Guilty Until Proven Innocent

Panelist: Cheryl Suzack
University of Toronto
From Martinez to Deegan: What is the Status of Indigenous Women's Rights?

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 101

3.3 Imagining Innocence and Experience

Chair: Lena Salaymeh
University of California - Berkeley

Discussant: Lena Salaymeh
University of California - Berkeley

Panelist: Lisa Kelly
Harvard Law School
The Innocence and Deviance of the Child at Law

Panelist: Shien-Hauh Leu
Virginia Polytechnic Institute
Pedophilia, Agency and Exploitable Subjects

Panelist: Joseph Fischel
Gender Coda: Nymphet Complexes and Pederastic Pedagogies

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 105

3.4 Corporate Forms

Chair: Anthony C. Infanti
University of Pittsburgh School of Law

Panelist: Nicolette Bruner Olson
University of Michigan
Creating a Corporate Self: The Formation of Legal Personhood in Dreiser's The Financier

Panelist: Michael Halberstam and Meili Steele
SUNY at Buffalo Law School and University of South Carolina
Sowing Discord

Panelist: Roque Saavedra
Virginia Polytechnic Institute
Exchange and Parsimony: The Foreclosure Machine and the Rhythms of the Law

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 106

3.5 Human Rights as Articles of Faith

Chair: Chris Blakesley
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: John Anderson
Mississippi College

Panelist: Eugene Garver
Saint John's University
Euthyphro Prosecutes a Human Rights Violation

Panelist: Barry Collins
University of East London School of Law
Human Rights, Faith and the Post-Political

Panelist: Zachary Calo
Valparaiso University School of Law
Human Rights Beyond Secularism: Islam, Law, and the Moral Constitution of Modernity

Friday, March 11, 2011
2:00 pm – 3:45 pm
TAM Board Room

3.6 Myths of Origin, Origins of Myth

Chair: David Fisher
North Central College

Discussant: David Fisher
North Central College

Panelist: Noa Ben-Asher
Pace Law School
Cover's Obligations as a Source of Law

Panelist: Linda Edwards
University of Nevada, Las Vegas – William S. Boyd School of Law
Walls, Wars, and the Myth of Redemptive Violence

Panelist: Stephen Pete and Angela Crocker
University of KwaZulu-Natal
Ancient rituals and their place in the modern world: Culture, masculinity and the killing of bulls

Panelist: Frederick Cowell
University of London, Birkbeck College
Derridian Foundational Violence and the Doctrine of State Secession in Africa

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 117

3.7 Culture of Family Law

Chair: Alice Hearst
Smith College

Panelist: Danaya Wright
Georgetown University Law Center
Shelley v. Westbrook: The Role of Public Patriarchy and the Best Interests Standard in Redefining the Private Sphere

Panelist: Alice Hearst
Smith College
Deciphering Culture in Custody Decisions

Panelist: Clifford Rosky
University of Utah School of Law
Don't Kiss, Don't Tell: Sexism, Homophobia, and the Construction of Sex

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 112

3.8 Supreme Boundaries: Managing Friends and Enemies at the U.S. Supreme Court

Chair: John C. Gooch
University of Texas—Dallas

Discussant: John C. Gooch
University of Texas—Dallas

Panelist: Jim Aune
Texas A&M
Justice Black's Rhetorical Jurisprudence

Panelist: Ryan Malphurs
Tara Trask and Associates
Navigating Boundaries of the Sacred and Profane: Analysis of Oral Arguments in Texas v. Johnson

Panelist: Elizabeth Thorpe
College of Brockport SUNY
In Black and White: Brown v Board of Education and American Identity

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 102

3.9 Author Meets Author: Law and Society Redefined and the Justice of Mercy—Pavlich and Meyer

Discussant: Linda Meyer
Quinnipiac University School of Law

Discussant: George Pavlich
University of Alberta

Panelist: Jennifer Culbert
Johns Hopkins University

Panelist: Mark Antaki
McGill University

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 316

3.10 Law and Emotion: Crossing the Bar

Chair: John Stannard
Queen's University of Belfast School of Law

Discussant: Sara Ramshaw
Queen's University of Belfast School of Law

- Panelist: Eimear Spain
University of Limerick School of Law
'Towards a General Defence of Reasonable Emotional Response'
- Panelist: Heather Conway
Queen's University of Belfast School of Law
'Passing "Judgement": Judicial Moralism, Inherited Wealth and the Parent-Child Bond'
- Panelist: Kathy Abrams and Hila Keren
University of California - Berkeley School of Law
How Legislation Facilitates Hope: California's Post-Conviction Remedy for Women Who Have Suffered Intimate Partner Violence'
- Panelist: Terry Maroney
Vanderbilt University Law School
'The Judicial Decision Costs of Emotional Repression'

Friday, March 11, 2011
2:00 pm – 3:45 pm
Room 234

3.11 Rereading the Conflicts of the Present Through Aristotle's and Vico's Idea of Community

- Chair: Silvia Niccolai
University of Cagliari
- Discussant: Francis J. Mootz III
University of Nevada, Las Vegas – William S. Boyd School of Law
- Panelist: Silvia Niccolai
University of Cagliari
The Aristotelian Idea of Community
- Panelist: Giorgio Repetto
University of Perugia
The Transformed Life
- Panelist: Gianluca Bascherini
First University of Rome
The Space of Emotions

Friday, March 11, 2011
4:00 pm – 5:45 pm
Thomas & Mack Moot Court Facility

4.1 Boundaries and Enemies Panel

Chair: Ruthann Robson
City University of New York School of Law; West Virginia University College of Law

Panelist: Jose Gabilondo
Florida International University College of Law
Barbarians at the Gate: How Academic Capitalism and the 'Accountability' Discourse Threaten Academic Freedom

Panelist: Penelope J. Pether
Villanova University School of Law
Strange Fruit: What Happened to the U.S. Doctrine of Precedent

Panelist: Juliet Rogers
University of Melbourne
Truth commissions and the subtle melody of testimony

Panelist: Nan Seuffert
University of Waikata
Mobility, Sexuality and Civilisation: Settlers, Strangers, Nomads and Gypsies in the Pacific to 1910

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 203

4.2 Liberalism, Neoliberalism and the Persistence of the Political

Chair: Jill Stauffer
Haverford College

Discussant: Jill Stauffer
Haverford College

Panelist: Andrew Dilts
University of Chicago
Liberal Ways of Punishment: Figures of Force, War, and Slavery in American Liberalism

Panelist: Paul Passavant
Hobart and William Smith Colleges
Policing and Post-Fordism: The Hostile Neoliberal State

Panelist: Leonard Feldman and Daniel Skinner
Hunter College and Capital University
Eminent Domain and the Rhetorical Construction of Sovereign Necessity

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 101

4.3 Liberal Theory and the Law

Chair: Elizabeth MacDowell
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: John Anderson
Mississippi College School of Law

Panelist: John Anderson
Mississippi College School of Law
On the Irrelevance of Truth to Justice: John Rawls's Pragmatism

Panelist: Roni Hirsch
University of California - Los Angeles
The Problem of the External in B. Spinoza's Totality of Immanence

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 105

4.4 Speech, Censorship and the First Amendment

Chair: Carlton Copeland
University of Miami School of Law

Discussant: Chapin Cimino
Drexel Univeristy

Panelist: Mark Strasser
Capital University Law School
Corn Dealers, Crowded Theaters, and the Incoherence of True Threat Jurisprudence

Panelist: Alan Mendenhall
Auburn University/Temple University
Holmes and Dissent

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 106

4.5 Memory, Slavery and Civil Rights

Chair: Bryan Wagner
University of California - Berkeley

Discussant: Bryan Wagner
University of California - Berkeley

Panelist: Mark Golub
Scripps College
Remembering Mass Resistance to School Desegregation

Panelist: Mai-Linh Hong
University of Virginia
'Get Your Ass-phalt Off My Ancestors!': Legal and Cultural Boundaries of Slave Cemeteries

Panelist: SpearIt
University of California - Berkeley
Criminal Punishment as Civil Ritual: Making Cultural Sense of Mass Incarceration

Friday, March 11, 2011
4:00 pm – 5:45 pm
TAM Board Room

4.6 The Frontiers of Sexual Orientation Law

Chair: Elizabeth M. Glazer
Hofstra University School of Law

Discussant: Heron Greenesmith
Family Equality Council

Panelist: Heron Greenesmith
Family Equality Council
Drawing Bisexuality Back into the Picture: How Bisexuality Fits into LGBT Legal Strategy 10 Years After Bisexual Erasure

Panelist: Michael Boucai
UCLA Law School
An Argument from Bisexuality for Same-Sex Marriage

Panelist: Ann Tweedy
Michigan State University College of Law
Polyamory as a Sexual Orientation

Panelist: Elizabeth M. Glazer
Hofstra University School of Law
Sexual Reorientation

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 117

4.7 Inevitability in Judicial Opinions

Chair: Linda L. Berger
Mercer University School of Law

Discussant: Jack Sammons
Mercer University School of Law

Panelist: Jack Sammons
Mercer University School of Law
Inevitability in Judicial Opinions Part I

Panelist: David Ritchie
Mercer University School of Law
Inevitability in Judicial Opinions Part II

Panelist: Linda L. Berger
Mercer University School of Law
Inevitability in Judicial Opinions Part III

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 112

4.8 Bodies of Law

Chair: Christopher Tomlins
University of California - Irvine School of Law

Discussant: Steven Macias
University of Oregon

Panelist: Steven Macias
University of Oregon
Law of the Men's Room

Panelist: Elizabeth Anker
Cornell University
Bodily Dignity and the Construct of Human Rights

Friday, March 11, 2011

4:00 pm – 5:45 pm

Room 102

4.9 Rethinking National Boundaries and Borders

Chair: Kathryn Heard
University of California - Berkeley

Discussant: David Louk
University of California - Berkeley

Panelist: David Louk
University of California - Berkeley
Rights Beyond Borders: The Nation as Imagined Community and the Problem of Global Ethical Obligations

Panelist: Kathryn Heard
University of California - Berkeley
Injuries, Boundaries, and Identities: Late Liberalism's Troubled Obligations during the War on Terror

Panelist: Ana Henderson
University of California - Berkeley
Identification Documents as The Border

Panelist: Zachary Manfredi
University of California - Berkeley
The Political Theory of Virtual Sovereigns: Legal Paradoxes of Free Speech and Citizenship in the World of Web 2.0

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 316

4.10 Doing Time: Allegories of Temporality in Legal Domains

Chair: Thomas P. Crocker
 University of South Carolina School of Law

Discussant: Thomas P. Crocker
 University of South Carolina School of Law

Panelist: Sarah Burgess
 University of San Francisco
 In the Time of Law: The Problem of Judgment in Legal Recognition

Panelist: Stuart J. Murray
 Ryerson University Burgess
 Incompatible Bodies of Law: Incarcerated and Mentally Ill

Panelist: Elizabeth Cohen
 Syracuse University Murray
 The Political Currency of Time in Immigration and Citizenship

Friday, March 11, 2011
4:00 pm – 5:45 pm
Room 234

4.11 Murder Prosecutions in the 18th, 20th, and 21st Century

Chair: Steven L. Winter
 Wayne State University Law School

Discussant: Steven L. Winter
 Wayne State University Law School

Panelist: David Caudill
 Villanova University School of Law
 Re-evaluating the Attorneys in “Native Son”: Max As Darrow And Buckley As Typical?

Panelist: John E. Stannard
Queen's University—Belfast
Godly Jealousy, Righteous Anger and Loss of Self-Control

Panelist: Andrea Stone
Smith College
'The Ignominious Cord': Executing the Enemy in 18th-Century African American Print

Saturday, March 12, 2011
8:30 am – 10:15 am
Thomas & Mack Moot Court Facility

5.1 Leaving Arizona: Human Smuggling, Border Walls, and SB 1070. How Arizona is leaving human rights behind and why the boycott of Arizona will not stop

Chair: Nicholas Daniel Natividad
Arizona State University

Panelist: Nicholas Daniel Natividad
Arizona State University
Violence to the spirit: border walls and the separation of people

Panelist: Gabriella Sanchez
Arizona State University
Re-assessing human smuggling operations along the Arizona Mexico Border

Panelist: Kishonna Gray
Arizona State University and UC Riverside
Public Response to SB 1070 as Moral Panic

Saturday, March 12, 2011
8:30 am – 10:15 am
Room 203

5.2 Reimagining the Boundaries of Intellectual Property

Chair: Peter K. Yu
Drake University Law School

Discussant: Mary LaFrance
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Irene Calboli
Marquette University Law School
GI Imagination and the Rethinking of IP Boundaries for Cultural Expression

Panelist: Shontavia Johnson
Drake University Law School
No Pictures Please: Mardi Gras Indians, Copyrights, and the Bounds of Cultural Expression

Panelist: Zahr Stauffer
The University of Virginia School of Law
The Ethics of Non-Fiction

Saturday, March 12, 2011
8:30 am – 10:15 am
Room 101

5.3 Marriage, Family and Equality

Chair: Serena Mayeri
The University of Pennsylvania School of Law

Discussant: Serena Mayeri
The University of Pennsylvania School of Law

Panelist: Cary C. Franklin
University of Texas—Austin School of Law
The Traditional Concept of Sex: Sex Roles and Title VII

Panelist: Melissa Murray
University of California - Berkeley School of Law Franklin
Rights and Regulation: What Perry v. Schwarzenegger Should Say

Panelist: Patricia Seith
Columbia Law School '98
A Credit History: Emancipating the Financial Identities of Married Women

Saturday, March 12, 2011

8:30 am – 10:15 am

Room 106

5.4 Representing Law in Victorian Literature

Chair: Eve Brown
Indiana University

Discussant: Eve Brown
Indiana University

Panelist: Sarah Abramowicz
Wayne State University Law School
Nature, Nurture, Narrative, Law: The Wellesley case, Oliver Twist, and the Victorian Anxiety about Parentage

Panelist: Sara Murphy
NYU/Gallatin
Sensational Justice: Representing Law in Mid-Victorian England

Panelist: Katherine Anne Gilbert
Drury University
The Boundaries of Character: Lawyers in Dr. Jekyll and Mr. Hyde

Panelist: Kate Sutherland
York University—Osgoode School of Law
Comparative Vampire Law: Law and Governance in Popular Vampire Fiction from Dracula to Twilight

Saturday, March 12, 2011
8:30 am – 10:15 am
Room 105

5.5 Legacies of the Civil Rights Movement

Chair: Dan Filler
Drexel University School of Law

Panelist: Jacob Kang-Brown
University of California - Irvine
Reconstructing Hate Crime Law: Racism, Abolition and the Thirteenth Amendment

Panelist: Kenneth Stahl
Chapman University School of Law Brown
The Community and the Zone: Competing Conceptions of Neighborhood Identity in Land Use Law

Panelist: Kirstine Taylor
University of Washington
Southern Exceptionalism or New South?: "White Trash" and the Politics of Southern Modernization, 1944-1969

Panelist: Bret Asbury
Drexel University Law School
Strategic Affirmative Action

Saturday, March 12, 2011
8:30 am – 10:15 am

5.6 Session Cancelled

Saturday, March 12, 2011
8:30 am – 10:15 am
Room 110

5.7 Interrogating International and “Other” Tribunals

Chair: John Strawson
University of East London

Discussant: Scott Johnson
Law Offices of the Los Angeles Alternate Public Defender

Panelist: Scott Johnson
Law Offices of the Los Angeles Alternate Public Defender
The Enemy? Ways of Viewing the Special Tribunal for Lebanon

Panelist: Theresa Phelps
American University—Washington College of Law Johnson
Prophetic Litigation: The Communicative and Symbolic Functions of International Tribunals

Panelist: John Strawson
University of East London
Waging Law: The Trials of Tony Blair

Panelist: Eric Sapp
Stanford University
Crisis Society and its Dialectic of Insecurity

Saturday, March 12, 2011
8:30 am – 10:15 am
Room 112

5.8 Crossing Borders

Chair: Debora Threedy
University of Utah, S.J. Quinney College of Law

Discussant: Debora Threedy
University of Utah, S.J. Quinney College of Law

Panelist: Lena Salaymeh
University of California - Berkeley
Historicizing Near Eastern Legal Culture

Panelist: Poornima Paidipaty
University of Chicago
"Not Measures buy a Man." Anthropology, Tribes and Contractual Space

Saturday, March 12, 2011

8:30 am – 10:15 am

Room 117

5.9 Good Girls (Bad Situations): Gender, Violence, and Recovery in Popular Music and Mass Media

Chair: Annette Houlihan
Murdoch University

Discussant: Annette Houlihan
Murdoch University

Panelist: Annette Houlihan
Murdoch University
Sisters Doing It Socio-Legally for Themselves: Legal Imaginations, Intimacy, Gender and Violence

Panelist: Sharon Raynor
Johnson C. Smith University
From Performative Pretty Faces to Powerful, Provocative Proclamations: Reading the Body as Text

Panelist: Harriette Richard
Johnson C. Smith University
Global Views of Healing and Renewal

Saturday, March 12, 2011
8:30 am – 10:15 am
Room 234

5.10 Food and Law: Where's the Beef?

Chair: Bret Birdsong
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: Bret Birdsong
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Bret Birdsong
University of Nevada, Las Vegas – William S. Boyd School of Law
Expanding the Values on the Food Law Table

Panelist: David Cassuto
Pace Law School
Owning What You Eat

Panelist: Sam Kalen
University of Wyoming College of Law
Making Food Part of Environmental Law

Saturday, March 12, 2011
8:30 am – 10:15 am
Room 316

5.11 Reading Justice and Mercy? The Literary and Legal Imaginations

Chair: Jonathan Rothchild
Loyola Marymount University

Discussant: Joan B. Gottschall
United States District Court Judge

Panelist: Jonathan Rothchild
Loyola Marymount University
Demanding Justice: Dante, Mercy, and Reconceptualizing Punishment

Panelist: Joan B. Gottschall
United States District Court
Just Desert: Accounting for Individual Differences in Judicial Deliberation

Panelist: Michael J. Kessler
Georgetown University\
Mercy, Law, and Higher Justice: Insights from The Merchant of Venice

Saturday, March 12, 2011
10:30 am-12:15 pm
Thomas & Mack Moot Court Facility

6.1 State of Political Discourse Roundtable

Chair: Steven L. Winter
Wayne State University Law School

Panelist: Steven L. Winter
Wayne State University Law School

Panelist: Marianne Constable
University of California - Berkeley Rhetoric Department

Panelist: Francis J. Mootz III
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: James A. Gardner
State University of New York at Buffalo School of Law

Saturday, March 12, 2011
10:30 am-12:15 pm
Room 203

6.2 Food, Law and Culture

Chair: Andrea Stone
Smith College

Panelist: Donna Byrne
William Mitchell College of Law
Culture, Technology, and Milk Drinking

Panelist: Charlene Elliott
University of Calgary
Governing Taste: Food Marketing, Inscription Devices and Children's Perspectives on Nutritional Regulation

Panelist: Andrea Freeman
California Western School of Law
Food Oppression

Panelist: Ernesto Hernandez-Lopez
Chapman University School of Law
LA's Food Truck Wars and Culture: between quality of life, unfair competition, and identity

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 101

6.3 Custom, Code and the Common Law

Chair: Elizabeth Sturgeon
Mount St. Mary's College

Panelist: Anne Sappington
Trinity College—Dublin
The Common Law Mind Abroad: Comparisons of English and Irish Legal Antiquity in the writings of Edmund Spenser and Sir John Davies

Panelist: Olga Soloveiva
University of Connecticut School of Law
Can Common Law Be Kafkaesque?

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 220

6.4 The Theater of Law

Chair: Keith Rowley
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: Jacky O'Connor
Boise State University

Panelist: Renee Newman Knake
Michigan State University College of Law
How Theater Illuminates the Law: Revisiting NAACP v. Button Through Music History

Panelist: Jacky O'Connor
Boise State University
"My, but you have an impressive judicial air!": Tennessee Williams Encodes the Law

Panelist: Mary LaFrance
University of Nevada, Las Vegas – William S. Boyd School of Law
The Disappearing Fourth Wall: Ethics, Law and Experiential Theatre

Panelist: Bradley Hays and Kenneth Aslakson
Union College
Popos and Soldiers in the Game: Multiple Nomoi in The Wire

Saturday, March 12, 2011

10:30 am – 12:15 pm

Room 105

6.5 Forging of Identities and Citizenship

Chair: Jennifer L. Ball
Clarkson University

Discussant: Jennifer L. Ball
Clarkson University

Panelist: Jennifer L. Ball
Clarkson University
Permeable 'Zones of Privacy': Griswold as both a conservative and liberal ruling of the US Supreme Court

Panelist: Jessica Lake
Melbourne Law School
Privacy, "pretty portraits" and patrolling the boundaries of the visible in late nineteenth/early twentieth century America

Panelist: Mary Ziegler
St. Louis University School of Law
Enemies, Collaborators, and Inventors

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 106

6.6 Law, Culture and Gender Mediating on the Magic of Professional Transformations

Chair: Christine Alice Corcos
Louisiana State University Law Center

Discussant: Christine Alice Corcos
Louisiana State University Law Center

Panelist: Christine Alice Corcos
Louisiana State University Law Center
Law, Magic, and the Glass Ceiling

Panelist: Jennifer L. Schulz
University of Manitoba School of Law
Magic and Mediation: Films' Transformative Women Mediators

Panelist: Peter Robson
University of Strathclyde
Theatre and Developing the study of Law and Popular Culture

Panelist: Natasha De Lange
University of Southern California
The Evolution of Professions for Women from Occupations for Women

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 110

6.7 Legal Rhetorics of Domestic Violence

Chair: Elizabeth C. Britt
Northeastern University

Discussant: Suzanne Enck-Wanzer
University of North Texas

Panelist: Elizabeth C. Britt
Northeastern University
Listen Before Speaking: A Rhetoric of Advocacy for Victims of Intimate Partner Abuse

Panelist: Jennifer Andrus
University of Utah
Reliable Speech, Unreliable Speakers: The Legal Infantilization of Female Victims of Domestic Violence

Panelist: Suzanne Enck-Wanzer
University of North Texas
Framing Domestic Violence Legally: Crime Metaphors in US Public Culture

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 112

6.8 Rethinking the Enemies of Intellectual Property

Chair: Peter K. Yu
Drake University Law School

Discussant: Peter K. Yu
Drake University Law School

Panelist: Steven A. Hetcher
Vanderbilt University Law School
Social Networks as Democratic Culture: Is Content Ownership the Optimal Paradigm?

Panelist: Llewellyn Joseph Gibbons
University of Toledo College of Law
We Have Met the Enemy, and It is the U.S.: Copyright Owners are Their Own Worst Enemy

Panelist: Liam S. O'Melinn
Ohio Northern University Pettit College of Law
The Relationship Between Copyright and Culture

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 117

6.9 Forging Justice in Spaces of Uncertainty

Chair: Rebecca Johnson
University of Victoria

Discussant: Marie-Claire Belleau
Universite Laval

Panelist: Rebecca Johnson
University of Victoria
Religion, Sexuality, and Longing in Tony Kushner's "Angels in America"

Panelist: Marie-Claire Belleau
Universite Laval
Minority Report: Judging the Space of Dissent

Panelist: Maria Aristodemou
University of London—Birkbeck School of Law
The Morning After the Death of God: Kant Avec Houellebecq

Panelist: Valerie Bouchard
McGill University
Apples, Mussels and Chardonnay: The Boundaries of Knowledge

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 234

6.10 Property's Futures

Chair: Ravit Reichman
Brown University

Discussant: Mark Roark
University of La Verne

Panelist: Eduardo Penalver
Cornell Law School
Land's Memory

Panelist: Nomi Stolzenberg
USC Law School
Ghosts of Property: Reshaping the Future by Rewriting the Past Through the Establishment of Facts on the Ground

Panelist: Rebecca Ryder Neipris
University of California - Berkeley School of Law
Terroir-ism

Panelist: Ravit Reichman
Brown University
All This Could Be Yours

Saturday, March 12, 2011
10:30 am – 12:15 pm
Room 316

6.11 Realizing Justice in Sentencing: Legality, Consistency, and the Purposes of Punishment

Chair: Meghan J. Ryan
SMU—Dedman School of Law

Discussant: Douglas A. Berman
Ohio State University—Moritz College of Law

Panelist: Meghan J. Ryan
SMU—Dedman School of Law
Total Retribution

Panelist: Shahram Dana
John Marshall Law School
Beyond Retroactivity to Realizing Justice: A Theory on the Principle of Legality in International Criminal Law Sentencing

Panelist: Jelani Jefferson Exum
University of Michigan Law School
Toward a Purpose-Focused Theory of Reasonableness for Federal Sentencing

Panelist: James Binnall
University of California - Irvine School of Law
Understanding Maineiacs: An Empirical Examination of Maine's Unique Approach to Felon Jury Service

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Thomas & Mack Moot Court Facility

7.1 Justice Between Fate and Chance

Chair: Andrea Stone
Smith College

Discussant: Nasser Hussain
Amherst College

Panelist: Marianne Constable
University of California - Berkeley
Speech and the Modern Place of Law

Panelist: Jennifer L. Culbert
Johns Hopkins University
Taking Place

Panelist: Juan Obarrio
Johns Hopkins University
Abandoned Law: Justice Predicated Upon Case and Place

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 203

7.2 Conceptualizing Copyright

Chair: Michael Halberstam
University at Buffalo Law School, SUNY

Discussant: Michael Halberstam
University at Buffalo Law School, SUNY

Panelist: John Tehranian
Chapman University School of Law
The IP of IP: Intellectual Property, Identity Politics and User Rights

Panelist: David Simon
Harvard Law School
A Memetic Account of Creativity

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 101

7.3 **Speech Coercion and the Regulatory State**

Chair: John Stannard
 Queen’s University of Belfast School of Law

Panelist: Ellen Moore Rigsby
 St. Mary’s College of California
 The Metaphor of Openness in the Net Neutrality Debate

Panelist: Jodi Short
 Georgetown University Law Center
 The Paranoid Style in Regulatory Reform

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 105

7.4 **Thinking the Law with Roberto Esposito**

Chair: Patrick Hanafin
 University of London, Birkbeck School of Law

Discussant: Patrick Hanafin
 University of London, Birkbeck School of Law

Panelist: Patrick Hanafin
 University of London, Birkbeck School of Law

Panelist: Timothy Campbell
 Cornell University

Panelist: Penelope Deutscher
 Northwestern University

Panelist: Julia Chryssostalis
 University of Westminster

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 106

7.5 Food Law and Technology

Chair: Tucker Culbertson
Syracuse University School of Law

Panelist: Jennifer Tai
Two Tales of Sacred Cows: Industrial Dairy Farms, Raw Milk, and the Tensions of Science and Public Participation

Panelist: Albert Lin
GMOs: Emerging Technology Past and Present, and Lessons for Other Emerging Technologies

Panelist: Rebecca Bratspies
Food, Technology and Hunger

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 110

7.6 Law, Literature, and the Arts on Both Sides of the Big Pond

Chair: Stephen R. Alton
Texas Wesleyan University School of Law

Discussant: Stephen R. Alton
Texas Wesleyan University School of Law

Panelist: Mark E. Burge
Texas Wesleyan University School of Law
We, the Muggles: On Wizardry and Legislative Process

Panelist: Sue Liemer
Southern Illinois University School of Law
On the Origins of Le Droit Moral: How Non-Economic Rights Came to Be Protected in French I.P. Law

Panelist: Stephen R. Alton
Texas Wesleyan University School of Law
The Game is Afoot!: The Significance of Gratuitous Transfers in the Sherlock Holmes Canon

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 112

7.7 The Power, Purchase, and Pragmatism of Modern Virtue

Chair: Chapin Cimino
Drexel University—Earl Mack School of Law

Discussant: Jennifer Baker
College of Charleston

Panelist: Chapin Cimino
Drexel University—Earl Mack School of Law
Citizenship, the Campus Community, and Competing Rights: An Aristotelian Analysis

Panelist: Ronald J. Colombo
Hofstra University School of Law
Virtue and Corporate Governance

Panelist: Mark D. White
College of Staten Island/CUNY
The Virtues of Hercules

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 117

7.8 Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865

Chair: David S. Tanenhaus
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: Ngai Pindell
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Walter Johnson
Harvard University

Panelist: Martha S. Jones
University of Michigan

Panelist: Penelope J. Pether
Villanova University School of Law

Panelist: Christopher Tomlins
University of California, Irvine School of Law

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 234

7.9 Alternative Forms of Family in Contemporary Film

Chair: Kim H. Pearson
Gonzaga University School of Law

Discussant: Joseph Fischel
University of Chicago

Panelist: Kim H. Pearson
Gonzaga University School of Law
Documenting LGBT Adoption and Race

Panelist: Mary Pat Truethart
Gonzaga University School of Law
Examining the Structural Forces and Ideological Norms Behind Alt-Family Films

Panelist: Diana Jane Young
Carleton University School of Law
Gender and Authenticity: Cross-Dressing in Popular Films

Saturday, March 12, 2011
1:45 pm – 3:30 pm
Room 316

7.10 Gender, Law and Literature: McFarland v. Stump in Law and in Literature

Chair: Debora Threedy
University of Utah—S.J. Quinney College of Law

Discussant: Clifford Rosky
University of Utah—S.J. Quinney College of Law

Panelist: Kristen Kalsem
University of Cincinnati College of Law

Panelist: Laura Kessler
University of Utah—S.J. Quinney College of Law

Panelist: Aden Ross
University of Utah—S.J. Quinney College of Law

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Thomas & Mack Moot Court Facility

8.1 20 Years of Law and Order

Chair: Chaya Halberstam
King's University College, University of Western Ontario

Chair: Ravit Reichman
Brown University

Panelist: William Carter Jr.
Temple Law School

Panelist: Jacky O'Connor
Boise State University

Panelist: Amy Adler
New York University Law School

Panelist: Roger Berkowitz
Bard College

Panelist: Annette Houlihan
Murdoch University School of Law

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 203

8.2 Jacques Derrida's The Beast and the Sovereign

Chair: Andrew Dilts
University of Chicago

Panelist: James Martel
San Francisco State University

Panelist: George Pavlich
University of Alberta

Panelist: Megan Wachspress
University of California - Berkeley

Panelist: Patrick McLane
University of Alberta

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 101

8.3 Law in the Liberal Arts

Chair: Matthew Anderson
University of New England

Panelist: Matthew Anderson
University of New England

Panelist: Cathrine Frank
University of New England

Panelist: William Rose
Albion College

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 105

8.4 On the Boundaries of Personhood: Thinking About Capacity

Chair: Elizabeth Adjin-Tettey
University of Victoria School of Law

Discussant: Elizabeth Adjin-Tettey
University of Victoria School of Law

Panelist: Elizabeth Adjin-Tettey
University of Victoria School of Law
Medical Paternalism and the Rights of Children and Parents Regarding Medical Decisions

Panelist: Freya Kodar
University of Victoria School of Law
Selective Justice: Invoking Crown Immunity in Historical Abuse Claims

Panelist: Elizabeth Emens
Columbia University
Framing Disability

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 106

8.5 Inequalities in International Law

Chair: Tayyab Mahmud
Seattle University School of Law

Panelist: Tayyab Mahmud
Seattle University School of Law

Panelist: Rachel Anderson
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Fatma E. Marouf
University of Nevada, Las Vegas – William S. Boyd School of Law

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 110

8.6 Crossing the Boundaries of Intellectual Property

Chair: Peter K. Yu
Drake University Law School

Panelist: Megan M. Carpenter
Texas Wesleyan University School of Law
Drawing a Line in the Sand: When a Curator Becomes a Creator

Panelist: Marketa Trimble
University of Nevada, Las Vegas – William S. Boyd School of Law
Cybertravel

Panelist: Peter K. Yu
Drake University Law School
Moral Rights 2.0

Discussant: Zahr Stauffer
The University of Virginia School of Law

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 112

8.7 Claiming the Shields: Law, Anthropology, and the Role of Storytelling in a NAGPRA Repatriation Case Study

Chair: Hilary A. Soderland
University of California - Berkeley Boalt School of Law

Panelist: Debora Threedy
University of Utah, S.J. Quinney School of Law

Panelist: Alexander Tallchief Skibine
University of Utah, S.J. Quinney School of Law

Panelist: Susan Benton Bruning
Southern Methodist University

Panelist: Gerald Torres
University of Texas—Austin School of Law

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 117

8.8 Shifting Lenses: Using Masculinities Theory to Inform Gendered Concepts of Race, Class and National Origin in Employment Discrimination and Immigration Law

Chair: Ann McGinley
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: Ann McGinley
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Ann McGinley
University of Nevada, Las Vegas – William S. Boyd School of Law
Ricci v. DeStefano: A Masculinities Analysis

Panelist: Leticia M. Saucedo
University of California, Davis School of Law
Border Crossing Stories and Masculinities

Panelist: Ray Tolentino
Georgetown University Law Center
Regulating Alterity Across Borders: Queer Sexuality and American Citizenship

Saturday, March 12, 2011

3:45 pm – 5:15 pm

Room 234

8.9 Film on Trial

Chair: Keith Rowley
University of Nevada, Las Vegas – William S. Boyd School of Law

Discussant: Keith Rowley
University of Nevada, Las Vegas – William S. Boyd School of Law

Panelist: Naomi Mezey
Georgetown University Law Center
Video Cannot Speak for Itself: Film, Summary Judgment & Visual Representation

Panelist: Leif Dahlberg
Kungliga Tekniska hogskolan
The effects of digital media technology on legal argumentation and rhetoric in the Swedish law court

Saturday, March 12, 2011
3:45 pm – 5:15 pm
Room 316

8.10 Law and the Sacred

Chair: Danaya C. Wright
 Georgetown University Law Center

Discussant: Dayana C. Wright
 Georgetown University Law Center

Panelist: Marc Roark
 University of La Verne
 *Property at Law's End -- Using Process-Laden and Property-Laden Concepts to
 protect Memory and Identity*

Panelist: Joseph Jenkins
 University of California - Irvine School of Law
 Intellectual Property and Political Theology

Panelist: Henrike Manuwald
 Albert-Ludwigs-Universität Freiburg
 Divine Law? The Trial of Jesus in Medieval Literary Texts

PAPER ABSTRACTS

1.1 Friends, Enemies, and the War on Terror

Cary Federman *The Enemy Within and Without: Guantanamo and the Problem of Jurisprudence in the Age of Terror*

Internment camps at Guantanamo represent the central meaning of the war on terror because it turns the administrative problem of holding prisoners of war into the prime ethical problem of war in modern times: the management of bodies not connected to states. The “war on terror” has produced a different set of strategies for the containment of prisoners of war and enemy combatants than we have previously seen, first, by removing prisoners of war and enemy combatants from any legal regime of protections afforded by both the U.S. Constitution and by international treaties, and second, by restructuring the conflict to an existential struggle between friends and enemies. It has created a new set of strategies to govern people best summed up by the phrase, biopower. The purpose of this paper is to describe this creation in law and philosophy. Coauthor: Dave Holmes, Professor of Nursing, University of Ottawa (dholmes@uottawa.ca)

Samera Esmeir *Violent Enmity: From War to Armed Conflicts to Targets*

War has undergone a number of transformations during the twentieth century. One such transformation has been juridical. An outcome of developments in international Humanitarian Law, this transformation consisted in the renaming of war as “armed conflict.” The paper traces this transformation in “violent enmity” and examines the constitutive force of the law, which engendered two opposite dynamics: First, it released the evaluation of “violent enmity” from the overdetermination of sovereignty by subjecting non-state parties to the laws of war, in their capacity as parties to “armed conflicts;” second, it evaluated all violence through the logic of “targeting” which in turn reenacted the centrality of sovereignty to the evaluation of all violent enmities. This dual move at once delivered “armed conflicts” away from classical warfare legalities, while at same time moving them closer via the mediation of “targets.” The result is an established symmetry between state and non-state violence, coupled with the triumph of state-violence.

Heidi Matthews *Representations of Trauma: Sexual Violence in Berlin, 1945*

Sixty-five years after the end of the Second World War, the mass sexual violence experienced by German women during the military defeat of the Third Reich – and its long-term consequences – remains largely inaccessible to German consciousness and outside historical memory. I posit that the dominant legal category deployed to demarcate the boundary between friend and enemy – the civilian/combatant distinction – has contributed to this lacuna of understanding. In light of new historical evidence about the extent of female civilian participation in Nazi atrocities, this paper traces how Berlin 1945 can help us unpack the costs and benefits incurred by analytical vehicles of meaning. It is part of a broader project inaugurated by an interdisciplinary panel at Harvard in September 2010 (“The Meaning of Trauma”), and continued by a photography initiative involving portraiture of elderly female survivors of 1945. The paper is intended as an accompaniment to the photography project.

The friend and enemy was a commonplace of ancient Athenian popular morality, although there is debate over meanings enemy (*polémios/ ekthrós*) and friend (*philos/hetairos*) in Athenian legal and political institutions. In his criticism of liberalism, Carl Schmitt also uses the friend/enemy distinction; as the basis for the political: “The specific political distinction to which political actions and motives can be reduced is that between friend (*Freund*) and enemy (*Feind*)” (Schmitt, 2007, 26). What can be learned from comparing these two different articulations of agon as the basis for political and legal life? Discussion contrasts Chantal Mouffe’s (Mouffe, 2005, 52) Schmittian influenced distinction between “antagonism” (relations between enemies) and “agonism” (adversary relations) with criticisms of adversarial legalism (Simon, 1998; Appelbaum, 1999) and Kagan, 2001) and a recent analysis of “hyperpolarized democracy” (Pildes, “Why The Center Does Not Hold,” 2010). While Mouffe’s aim (pluralized democracy) is important, comparing Athenian and Schmittian articulations of agon with ours (adversarial ideology, polarized politics) suggests the unstable and corrupting effects of thinking of opponents, legal or political, as enemies.

1.2 Prisons and Camps: (Extra) Legal Spaces and the Logics of Violence

Concrete, steel, artificial light, complete technological automation, near-complete sensory deprivation, and total isolation – these are the basic conditions of supermaximum security prisons in the United States. Supermaxes are prisons within prisons, imprisoning those who correctional administrators deem a threat to the general prison population. California designed and opened one of the first supermax prisons in the United States in 1989. This paper first explores the shifts in bureaucratic and legislative power that led up to California’s decision to build a supermax, examining how different actors in state government, from judges and prosecutors to legislators and correctional officers, maintained control over prisoners in California through shifting dynamics in punishment in the 1980s. The paper then explores the language correctional administrators, psychologists, and federal courts use to describe various attributes of supermax confinement, including the control over individual’s minds and bodies that the institution imposes.

This paper has two aims: The first is to synthesize historiographical accounts of concentration camps within the British Empire in four contexts: South Africa, 1899-1902; Malaya 1948-60; Kenya, 1952-1960; and Northern Ireland, 1964-1979. The second is to argue for the study of the concentration camp as an architectural and sociological phenomenon that is related to but distinct from the prison. Building from the continuity and disjuncture in both form and function amongst these temporally and geographically diverse architectures, this paper argues that such camps were not outlier atrocities but crystallizations of fundamental qualities of the British colonial project. These camps were distinctly “colonial” in that they forcibly refigured the relationship between a population defined by ethnicity or race and the space they occupied, relying upon and reinforcing the delegitimation of natives’ political and legal claims. This claim raises important questions about the relationship between such camps and their metropolitan homologues.

Margarita Zaydman

Bad Education: Varlam Shalamov's Experience of the Gulag

This paper has three aims. First, an overview Soviet penal institution of the gulag/GULag, beginning with a consideration of the etymology of the term as reflective of the ideological and structural peculiarities of this institution within a broader historical and geographical context. Second, a brief account of the tradition of gulag literature and its most famous representative, Aleksandr Solzhenitsyn. Third, a selective analysis of the technique and literary production of the groundbreaking writer Varlam Shalamov, who spent nearly 20 years in the gulag and whose name, though known in Russia, is little recognized in the West. In Solzhenitsyn's words: "Shalamov's experience in the camps was longer and more bitter than my own, and I respectfully confess that to him and not me was it given to touch those depths of bestiality and despair toward which life in the camps dragged us all."

1.3 Session Cancelled

1.4 Fighting Repression: Case Studies of Legal Challenges From the Recent Past

Jasmine Alinder

Underexposed: The Repression of Photography during the Wars in Afghanistan and Iraq

Explicit U.S. laws and policies enacted in the past twenty years have been designed to deny photographic access at times of war. This paper will argue that the wars in Afghanistan and Iraq have been the most highly censored in U.S. history in terms of photographic information at the same time that the small number photographs that have reached the public (particularly those that reveal acts of torture at the Abu Ghraib prison) have had an enormous impact on public attitudes and policy. The internet and digital technologies have encouraged a presumption of access and transparency, yet over the past 20 years, the U.S. government and military have stepped up their suppression of photographic access to war zones attempting to limit visual communication. This paper will examine the tension between attempts by individuals and organizations to circumvent these censorship laws, particularly with the Freedom of Information Act, and recent laws that have weakened the power of FOIA in order to keep photographs from public view.

Robert Smith

Battling Racial Colonialism With Legal Activism: Transnational Linkages Across the Human Rights Bar

In 1983, an elite group of civil rights and public interest attorneys from the United States forged an alliance with black South African lawyers in an effort to embolden legal challenges to Apartheid from within the country (S. Africa). Springing from the 1983 union, the collective focused their efforts on nurturing trial skills for black South African lawyers through the South African-based Black Lawyer's Association (BLA), and its Legal Education Centre (LEC), which served as the home of the trial advocacy program. Over the next two decades the LEC created yearly workshops that greatly enhanced the expertise of black South African lawyers. This development in the human rights bar was an important expression of cultural and political solidarity that garnered notable results as Apartheid fell. While the number of black South African lawyers remains small, key lawyers nurtured through these channels within the BLA's Legal Education Centre went on to serve in important government posts as the country embarked upon socio-political reconciliation and restructuring. This research charts the emergence of the transnational alliance and explores the programs created, which I argue dealt a blow to Apartheid as black South African lawyers developed more sophisticated legal challenges to the racially circumscribed system.

Nancy Buenger

Equitable Rights

Equity is virtually unknown today as a distinctive jurisdiction in the United States, but it has played a powerful and paradoxical role in American governance. An ancient legal concept elaborated by Roman canonists, equity is invoked when courts craft discretionary remedies according to the dictates of conscience rather than the law's letter. Americans have often decried equitable courts, which have facilitated imperial rule, involuntary servitude, criminalization of labor protests, and racial segregation. Yet Americans embrace the concept of equitable justice, understood as the administration of law in a manner that is fair, just, and tempered with mercy. Some of equity's most ardent champions have come from populations historically consigned to its jurisdiction, including indigenous peoples, African Americans, and women. This presentation will investigate equity's key role in the development of racial restrictive covenants and desegregation initiatives in early twentieth-century Chicago.

1.5 Pedagogies of Law, Culture, and Humanities

Keith Rowley

One Elle: Images of Law Students in American Popular Culture

From the very real Scott Turow (One L) to the decidedly unreal Elle Woods (Legally Blonde), law students populate books, movies, television, and even song. Who are these iconic law students? What is their background? Why did they decide to attend their law school? Has their experience affirmed that decision or called it into question? How well do they reflect typical law students of their time and today? Do they inspire others to pursue a legal education or discourage them? Do they inspire hope or instill despair about the future of the legal profession? With the aid of text excerpts and multimedia clips, we will explore how popular culture depicts, and has depicted, law students and how those depictions may affect who attends law school, why they do so, what they expect from legal education, and what society expects from them (and us).

Eve Brown

All the World's a Stage: A Proposal for Using Literature and Drama to Enhance Legal Education

What if Lady Macbeth was put on trial for conspiracy to commit murder? Or if Scarlett O'Hara were held accountable for multiple counts of intentional infliction of emotional distress, fraud, and child neglect? The author created and teaches a seminar in which pre-law students represent characters from classic literature in a semester-long mock litigation. Student work includes crafting pleadings on behalf of their fictional clients, taking witness depositions, collecting and analyzing literary evidence, preparing exhibits, and ultimately engaging in a public trial. This paper details the seminar and provides instruction in how to teach a similar course, including sample assignments, class sessions, and activities. The paper will also provide evidence of the pedagogical efficacy of using literature to improve students' understanding and appreciation for the study and practice of law.

1.6 The Black Family: Can We Look Beyond Slavery, Jim Crow, and Modern Discrimination to Explain Its Instability?

Zanita Fenton

Slavery's Legacies for the White Family: Condoning Incest

Oppression harms the oppressor as well as the oppressed. This acknowledgement is a philosophical one that has implications for psychic harms, social order, and personal integrity. The tangible destructive effects, such as an environment that conditions incest, are not usually part of this conversation. This is a direct result of the duality of the subject, incest, in that it is publicly condemned while ignored and consequently accepted. This is consistent with the framework in which modern-day white families bear the

destructive side effects of our collective history of slavery. By extension, all American families bear these destructive effects as the white family is the dominant cultural norm that models for all others. Scholars have explored some of the immediate and lingering effects of slavery on the black family; little has been done examining the destructive effects on the white family and, through the applicable model, on all families.

Reginald Robinson

Dark Secrets: Can Obedience Training and Self Denial By Black Parents Also Explain The Failure, Anger, Joblessness, Hopelessness, Killing of Their Children That Destabilizes Families and Communities?

Within the West African tradition, black slaves taught their children to know their place, which was violently enforced during slavery and Jim Crow. Ralph Ellison, writing about parenting practices during Jim Crow, observed unrepentantly and with a hint of his own self-deception that mothers particularly beat their children severely. That ugly admixture of violence and tenderness, or cruelty as love, has plagued the black community perhaps more than white racism and its violence ever could because in addition to violence, this “dark secret” depends on humiliation and manipulation, too. Hence, the “dark secret” saps a child’s life force, often leaving him – in the worse cases – angry, violent, diffident, distrusting, murderous, and haunted by a victim’s consciousness, and yet ever hopeful that real love will be visited upon him if a caregiver who literally cannot love him because, through self-denial and self-deception, she’s never received love either.

Susan Bitensky

Legalized Corporal Punishment of Children in United States

Legalized corporal punishment of children in the United States has antecedents in the rampant use of legalized corporal punishment on slaves in the antebellum South. One legacy of this history is that, although modern American children of all races can be subjected to legalized parental corporal punishment and some of these children also can be subjected to legalized school corporal punishment, it is Black children who receive the lion's share of this form of chastisement. Anecdotal evidence suggests that Black parents have traditionally relied upon corporal punishment more often than White parents; federal statistics show that public schools paddle Black students twice as much as White students. Original intent clearly supports such an interpretation: the abolitionists, appalled by legalized physical violence perpetrated upon slaves, also struggled mightily during the antebellum era to protect children, Black or White and free or enslaved, from the same oppression; and, the abolitionists' aspirations and values pervasively influenced the Thirteenth Amendment's drafters.

Paul Finkelman

Slave Law and the Limitations of Slave Families

Perhaps the most horrible aspect of American slavery was the status of slave families. At a functional level, slaves married and raised children. But these marriages had no status at law or within churches. Thus slave marriages existed solely at the sufferance of masters. Masters were always free to sell slaves and divide families. Spouses could be sold from each other and from their children. Children could be sent from their parents. For most slaves family security and stability was a dream, easily punctured by the reality of separation. Even when families remained intact, familial relations was always subject to the whims and needs of the master class. This paper, based on statutes, cases, legal theories, and social commentary, will explore the way the South -- from the 1640s to the 1860s -- shaped and undermined black families.

1.7 Marking Space, Marking Time: Sovereignty and Orientalism

Monica Eppinger

Securing the Population: Contemporary Sovereignty, Scarcity, and the Politics of Provision

Five years after passage of a new land code that simultaneously created private property in land and the sovereign property-holder, two striking events marked the emergence of a new form of sovereignty in post-Soviet Ukraine, both centered around state grain confiscation. One entailed confiscation of future shipments, the other, confrontation of famine caused by confiscations in the past. In this paper, I analyze these two events to examine relationships between provision, state, and subject. Drawing on evidence from fourteen months of anthropological fieldwork and analytically informed by performance theory, I argue that channels of circulation of grain – both material and discursive -- circumscribe domains of practice where subjectivity and sovereignty are being created. I conclude with specific claims about the interplay between sovereignty, security, and historiography that may be salient in other contexts marked by an imagined future of increasing scarcity and a past under collective reconstruction.

Eric Miller

Reparations' Republic: A Conservative Theory for the African American Reparations Movement

Reparations, and in particular, reparations for African Americans, are often represented as an extremist political response to the failures of integrationist politics. A central strain in African American endorsements of reparations is an exceptionalist argument that draws boundaries, and perhaps identifies enemies, based on group commonality generated by the shared stigma of being black or descended from slaves or suffering under slavery or Jim Crow. I argue that this understanding of reparations fails to account for its deep political conservatism. Instead (or in addition), reparations engages attempts to heal a fractured public memory by creating a space in which African Americans can participate in the constitution of the republic, its mythos and traditions. Put differently, if what matters (for conservatives) is sovereignty legitimated by public tradition, then the exclusion of African Americans from such tradition erases them from the body politic or discounts their democratic participation in it. Accordingly, conservatives interested in broad popular democracy should support certain types of reparations as based on mutual respect and political equality.

Angela Banks

The Trouble with Treaties: Immigration and Judicial Review

Human rights activists and international law scholars have called for U.S. judges to review challenges to deportation decisions based on human rights treaty obligations. They do so in the hope that greater judicial enforcement of U.S. human rights treaty obligations will create a more robust judicial role in monitoring deportation decisions and undermine the strength and legitimacy of the plenary power doctrine. Although the position of human rights activists has surface appeal, it fails to recognize that the very doctrines that would allow U.S. courts to review human rights treaty claims are the doctrines that require judicial deference to the political actors. Even if our courts were willing to adjudicate these treaty claims the judiciary's framing of immigration as a national sovereignty issue combined with the indeterminacy of the relevant treaty obligations would permit continued judicial deference. I conclude that greater judicial enforcement of human rights treaties in the United States will not enhance judicial monitoring of deportation decisions.

Nina Pillard

(Re)inventing Work Law in a Transnational Context

The proliferation of voluntary codes of conduct to establish labor standards in multinational firms' supply chains open sites for contestation of norms -- contests that cast light on the relationship between politics, cultural and law. Codes are acceptable to firms in part because they are merely "soft law," without the traditional enforcement "teeth" of domestic labor and employment law. But, as with early drafting of international human rights, codes' very softness opens up space for articulation of new and enhanced rights. Codes place unprecedented responsibility on multinational firms for workers whom the firms themselves do not employ and to whom the firm is typically not (yet) accountable under "hard" law. The paper considers both risks that codes' decoupling of norms from ordinary legal enforcement degrades law's power, and possibilities that codes' mobilized constituencies make them more vibrant and expansive than more ossified, domestic "hard" law.

1.8 Times of Trial

Dan Filler

Transforming Moral Panic Into Rational Action

In recent years, scholars have identified several instances of "moral panic" in which surges of social anxiety about particular high profile crimes lead to new and often problematic laws. These panics are marked by public fear that widely outstrips the extent of the problem, judged at least by empirical evidence. Although these panics pass -- sometimes quickly -- they leave a residue of law that can have highly damaging effects. Although scholars have done much to identify the problem, few have proposed ways of ameliorating it. This paper will attempt to bridge the gap between socio-legal accounts of law creation and a more future-looking approach which attempts to transform our understanding of past action into a prescription future policy. In particular, the paper will attempt to understand the varied possible approaches for maintaining, and advancing, empirically-based criminal policy solutions in the face of "irrational" public pressure.

William Griffith

Should the US establish an independent commission to investigate the high-level authorization of coercive interrogation techniques?

Prof. David Cole (Law, Georgetown) and others have argued strenuously that it is not only the legal obligation of the U.S. under international law, but it is in the long-term interest of our nation, to investigate publicly the recent high-level authorization of coercive interrogation techniques on high value detainees, arguable including torture. President Obama has so far refused to consider such an option, arguing that as a society we need to look forward and not backward. Who is in the right here, as a matter of national morality? Would an investigation shame wrongdoers and deter future resort to torture? Would it give them an opportunity to make their case? Would the likely adverse and divisive reaction make this not worthwhile?

Timothy Barouch

Defending Your Life: The Tragic Case of Lynne Stewart

This paper studies the case of Lynne Stewart, the attorney of Sheikh Omar Abdel-Rahman. Stewart was convicted of a multitude of crimes related to her conduct in relaying communication to and from Abdel-Rahman and his followers in Egypt. We first outline the history of Stewart's criminal case through her conviction and sentencing, and then focus on a specific text: Stewart's letter to Judge John G. Koeltl requesting leniency at her initial sentencing hearing. A close reading of Stewart's letter, informed by the genre of apologia, will lay bare the underappreciated but indispensable function of 'self-defense' for the lawyer-cum-defendant. Stewart's letter reveals how she could convince

herself to view her criminal conduct not merely as acceptable, but a necessary part of her professional obligation. The paper critiques Stewart's arguments for this vision of the 'lawyer for political outsiders,' and exposes its contradictions and its costs. Co-authored with Steven Lubet (not presenting).

Peter Bayer

Sacrifice and Sacred Honor: Why the U.S. Constitution is a Suicide Pact

Contrary to the old adage, I argue that the U.S. Constitution is a "suicide pact." By that I mean the guarantee of "fundamental fairness" under the Constitution's due process clauses comprises the irreducible essence of both the purpose and the legitimacy of American government. Accordingly, due process of law transcends and supersedes any other American societal concern, even national security and public safety. The so-called "Constitution of necessity" espoused by the George W. Bush presidency is wrong. In support, I argue that "due process" is deontological. Based on modern analysis and judicial decisions, due process' deontology is best understood not as Lockean where survival trumps all, but as Kantian where morality prevails. Due process now mirrors Kant's categorical imperatives, particularly the second formulation; that is, government cannot act in ways that treat persons "merely as means" or otherwise offends their essential dignity. In sum, fairness surpasses survival, and should.

1.9 Law and Religion

Peter Danchin

Comparative and International Religious Freedom

My paper will focus on comparative constitutional and international protection for the Free Exercise of Religion.

Mark Modak-Truran

The New Religious Pluralism and Religious Freedom

My paper will focus on explaining the relationship between law and religion in the West as a gradual pluralization of religion and focus on the effects of the new religious pluralism for interpreting the religion clauses of the First Amendment—The Religious Pluralization Story.

2.1 Boundaries and enemies of 'Irish' Justice

Dr. Niamh Howlin

Boundaries of "Irish" Justice: Jury Trials in the Nineteenth Century

How Irish was the Irish justice system of the nineteenth century? This paper will focus on establishing the boundaries of Irish justice by focusing on jury trials. It will also consider claims that Irish jurors were often partisan, favouring one side over another depending on religious, political, or social divides.

The Irish system of jury trial was modelled on the English one, but over the years adjustments had to be made to take account of the specific social, economic and political conditions prevailing in Ireland. The widening of the jury franchise in the 1870s, coupled with political agitation, augmented difficulties in securing convictions in criminal cases, and gave rise to a perception that Irish juries were easily corruptible, partisan and perverse.

What were the boundaries of Irish justice? Were Irish jurors subversive, politically-influenced, and morally suspect? And who were their enemies – the criminal defendants, the wealthy civil litigants, the lawyers, the judges or the legal system more generally?

Dr. Karen Brennan

“Traditions of English Liberal Thought”: The Boundaries of Justice and Irish Infanticide, 1922-1949

This paper will examine the criminal justice response to the crime of maternal infanticide during the first decades of Irish independence. Through an analysis of archival records the approach taken by the courts and the legislature to the typical infanticide offence, that involving the murder of an “illegitimate” infant after a concealed birth, will be examined. The question of what was considered to be a just response to this crime in the context of newly independent Ireland will be considered, and, in this regard, the extent to which the boundaries of the law were stretched to ensure the appropriate outcome will be assessed. As the Irish legislature ultimately adopted the English infanticide legislation of 1922, the question of whether the Irish approach to infanticide differed to that taken across the Irish Sea will be addressed. In particular, the extent to which the particular social, economic and religious context of the Free State produced unique features in the Irish response to unmarried women who murdered their infants will be explored.

Dr. Sarah Ramshaw

To Serve and Protect? The Boundaries of 'Justice' and the Irish Diaspora in New York City, 1930-1932

The boundaries of justice and the Irish diaspora are explored here through the findings of the Seabury Commission, headed by ex-Judge Samuel Seabury, which investigated allegations of corruption in the New York City (NYC) court system and police department in the early 1930s. Targets of this investigation included the city’s Irish-American Mayor, James Jimmy Walker (1926-1933), the Irish-dominated New York Police Department (NYPD) and the Irish-dominated Tammany Hall political machine, which controlled law and politics in NYC at the time. This paper examines the paradoxical approaches to law and justice by Walker, Tammany, and the NYPD and queries whether a distinction can be made between corruption as scripted illegality and justice as improvised legality. It explores the boundaries of justice through the history of discrimination and colonial domination in both Ireland and abroad and unpacks the relationship between law and the Irish diaspora in order to ascertain whether there is actually a uniquely Irish approach to justice.

2.2 To Kill a Mockingbird: Reflections on the Film

Austin Sarat and Martha Umphrey

Temporal Horizons: On the Possibilities of Law and Fatherhood in To Kill a Mockingbird

To Kill A Mockingbird is a classic of American cultural-legal studies, and it offers in Atticus Finch an iconic hero who, as Stephen Lubet suggests, is popular culture’s most important embodiment of lawyerly virtue.

As other scholars have noted, however, To Kill a Mockingbird is not just, or primarily, a law story. Rather, Scout Finch’s portrait of Atticus as a father is regarded by many as the key to the text’s cultural resonance. Told as a daughter’s memory of her father, her brother, and the town in which she grew up, the text frames the era’s conflicts over race, gender, and justice through the lens of Scout’s admiration for Atticus. From our perspective, however, it is the conjunction of lawyer and father that fuels To Kill a Mockingbird’s appeal and importance, and in this paper we argue that such a conjunction, particularly in its filmic incarnation, provides an opportunity to explore the role that fathers and fatherhood play in cultural imaginings of law and in exemplifying the various faces of law’s power. We argue that Atticus Finch is a father/lawyer committed to a particular vision of fatherhood and law, one in which both can transcend, if not transform, the context in which they exist, one in which orienting oneself to the

future takes precedence over controlling the present, one in which the temporal horizon of law and fatherhood is kept firmly in view. In the figure of Atticus, *To Kill a Mockingbird* suggests that law and fatherhood are powerful and yet limited in their power, that both exist in the present but are oriented toward an as yet unrealized future.

Sue Heinzelman

We don't have mockingbirds in Britain do we? Racism, Justice and the British Reception of To Kill a Mockingbird

As someone who was raised in Britain and who was living there when the film was released, I am curious about the reception it received in a country that believed it would never experience the kind of racism depicted in the novel. Movie after movie in the early 1960s still celebrated the heroism of British troops in WWII and the newspapers continued to report on the Holocaust as an event of unparalleled horror. How did a British audience, recovering from the trauma of the war and its inevitable xenophobia, respond to the images of racial hatred and injustice depicted in the film?

Ravit Reichman

Dead Animals

The line dividing human from animal—and the question of what it means to be a human animal—has become increasingly critical in the humanities, sciences and the law. This paper takes up the human-animal relationship as it emerges and is navigated in the film “*To Kill a Mockingbird*,” the very title of which suggests the precarious life at stake in the confluence of violence, human and animal life. The film’s treatments of responsibility, complicity, madness, ornamentality and instrumentality—the ways in which a being does or does not serve a purpose—come to be refracted through the problem of animal life, and I look to such refractions to posit a wider account of the work’s ethical purchase.

2.3 Law/Text/Culture

Marilyn Terzic

Grace v. Sheindlin: Constructions of Syndi-Court Justice

Television can have an impact on the formation and organization of viewers’ concepts. Thus, the more viewers can be engaged to think about the auditory and visual elements presented in a series, the more likely they are to experience changes in knowledge, attitudes, and behavior. To that end, this paper describes and explains how the producers of *Swift Justice* with Nancy Grace and Judge Judy have manipulated the information search and processing faculties of their audiences, and thus their understanding of the law and the legal system. Specifically, the production techniques and message design strategies used in these programs will be compared and contrasted to show how these courtroom spectacles have shaped viewers’ perceptions of the litigants, judges, and proceedings.

Cynthia D. Bond

“We, The Judge(s)”: Discourses of Legal Community in Reality Television

In this paper, I revisit Carol Clover’s influential argument in “*God Bless Juries!*” that popular cultural images of law consistently place the audience in the role of jury, drawing them into the “whodunit” aspect of legal narrative. Through this process, juries and audiences are conflated in a typically positive image of democracy. Yet popular media images of judges and judging are increasingly prevalent these days, particularly in reality television. This focus on judging is revealed not only in shows like “*Judge Judy*,” but also in competition shows like “*American Idol*” and “*Top Chef*,” and even “lifestyle”

shows like “The Real Housewives” franchise. What does this emphasis on judgment say about popular notions of shared, democratic decision-making? I consider whether this trend reflects a reduced expectation of democratic decision-making in the 2000s and how these images of judging may reflect popular attitudes about judges and juries in real courts.

2.4 Border Fictions

Carla Spivack

Immigrants Made of Ticky-Tacky: Contradictory Images of the Mexican Border in the Cable Show

Depictions of the Mexican border in the Showtime series *Weeds* simultaneously interrogate, placate and exacerbate American anxiety about the site. On the one hand, for example, it is a dangerously porous boundary line that allows for the passage of drugs and trafficked women into the United States; on the other, it offers a place where the disturbingly strong minded heroine can be placed firmly under macho male control. This paper shows how the contradictions in the show’s images of border crossing reflect Americans’ ambivalence about the border, and argues that these contradictory fictions about the border shape America’s national self image.

Brooke Hessler

Virtual Enemies: Surveillance and Identification in Immigration-Issue Computer Games

Applying principles of visual rhetoric analysis, this presentation examines the extent to which the image of immigrant-as-enemy is reinforced by computer-based gamesmanship—not merely through intentional stereotypes (e.g., Mexican drug dealers in “Border Patrol”), but through fundamental design structures that place the computer user in the perspective of on-looker or outsider even in games (such as *ICED: I Can End Deportation*) intended to generate empathy through role-playing. This relationship parallels such cyber-activist sites as The Border Fence Project that foster gamesmanship in possibly unintended ways.

Christina Misner

Illegal People: How Immigration Law

This panel will present several aspects of Federal immigration law that contribute to the dehumanization of the Mexican immigrant, such as constructions of the border, patrolling of the border through deputized citizen “militias, labeling and confusing and contradictory visa laws. Facts and stories from the border paint a contrasting, vivid picture of the typical Mexican immigrant - a picture that helps us remember that people are not illegal, and immigrants are the same as those who malign them.

2.5 Reimagining Law and Culture in the Digital Age

Ayelet Oz

Re-thinking formality: The case of Wikipedia

Following Weber, many legal scholars and sociologists have sharply differentiated between formal and non-formal social control, between bureaucratic and personal communication. But the process of formalization is more complex and multifaceted than that. Following a legal ethnography I conducted of the internal regulation of the online encyclopedia Wikipedia, I challenge the common understanding of formality by focusing on the ways in which lay contributors engage with legal rules and formal artifacts in their everyday communication. I focus on two aspects of the social life of formality: first, I discuss the ways in which lay contributors use black-letter law and formal arguments in their discussions with one another. Second, I look at the process in which distinctively formal artifacts such as pre-enforcement templates are created and debated within the radically open and inclusive environment of Wikipedia.

Alexandra Harrington

Creating Communities

The internet has given rise to a host of communities - from chat groups to blogs to social networking sites and beyond. This paper will examine the juxtaposition of law and culture in creating and governing these communities, as well as the actors and agents involved in this governance, and the potential interaction between internet communities and real life, for example the punishment of political dissidents who disseminate their views online. The paper will then examine in impact of actual occurrences on internet communities and vice versa. Ultimately, the goal of this paper is to discuss the creation of communities in cyberspace and the ramifications of these communities for society generally.

Merima Bruncevic

The “Original” and Its Legal Significance in a Digitised World

By moving art exhibitions away from physical spaces into virtual realms the dissemination of art is radically altered. The shift of format from physical to digital means that the significance the “Original” (as opposed to replica/copy) has had throughout art history gradually starts losing its meaning and significance. This opens up new ways of viewing and accessing art. In the virtual environment the spectator’s role also changes – the role of a passive “viewer” is substituted by an active “participator”. When it comes to virtual environments, what constitutes an image? To what extent is it an original? Who is the creator and what does that mean in terms of protection/enforcement of legal rights and obligations? Utilizing Deleuze’s writings on cinema and images the paper discusses the concept of the “Original” vis-à-vis the Cultural Commons in the digital realm and what role law plays in the creation and protection of the image.

2.6 Codifying Families

Catherine A. Karayan

Adoptio vel Adrogatio: Using Roman Law and its Progeny to Reform American Adult Adoption Laws

Adult adoption, like adoption during minority, has long been a useful tool for creating a parent-child relation in the United States. Recently, attempts have also been made to use adult adoption to confer family rights (e.g., intestate succession) and familial bonds to couples that cannot obtain these rights otherwise under state law through contract or marriage. These attempts have not always been successful. This paper explores American adult adoption and suggests that the reform of adult adoption laws can be informed by international and historic practices, in particular, the bifurcation of ancient Roman adult adoption into *adoptio* (where the adopted fell under the *patria potestas* of the *paterfamilias*) and *adrogatio* (where the adopted did not fall under the power of the *paterfamilias*).

Anthony C. Infanti

Inequitable Administration: Documenting Family for Tax Purposes

Family can bring us joy, and it can bring us grief. It can also bring us tax benefits and tax detriments. Often, as a means of ensuring compliance with provisions that turn on a family relationship, taxpayers are required to document their relationship with a family member. In this article, I examine these documentation requirements. At first, it appears that Congress and the IRS have only randomly imposed requirements on taxpayers to document family relationships. But, upon delving more deeply into these requirements, it becomes clear that a pattern emerges from the chaos. The government’s randomness is not really all that random, having been strongly influenced by endemic privilegings along a variety of axes of subordination—from class to race to gender to sexual orientation. This article advocates a more deliberative approach to documenting family for tax purposes—and one that does not invidiously discriminate among taxpayers.

2.7 Law and African American Cultural Productions

Nancy Marder

In the Absence of Law and Justice

Our legal system seems all-encompassing, and news stories reinforce that everyone can turn to law for justice. Unfortunately, we have become inured to the absence of law for those most in need.

I focus on three novels by three African-American women to show the absence, or diminution, of the legal system for marginalized characters. In Zora Neale Hurston's *Their Eyes Were Watching God*, the law reaches the right decision but for the wrong reasons. In Toni Morrison's *The Bluest Eye* and Gloria Naylor's *The Women of Brewster Place*, the law is notable for its absence.

This paper explores the ineffectiveness or absence of law in these novels, and the effect of justice denied: Janie, in *Their Eyes* turns to story-telling; Pecola, in *The Bluest Eye*, embraces madness; and the women, in *Brewster Place*, cling to dreams. These stories remind us that the legal system does not yet provide justice for all.

Matthew Murrell

This is Real Hip-Hop: Hip-Hop's Rejection of Paul Butler's Let's Get Free

Paul Butler's 2009 book, *Let's Get Free: A Hip-Hop Theory of Justice*, has received broad praise across the law and culture community. The book, one of the most widely available popular works on law and culture, seeks to create a theory of justice based upon hip-hop culture. Unfortunately, Butler's theory fails as a hip-hop theory of justice for two reasons. First, Butler fails to address hip-hop's black nationalist and revolutionary roots. As he focuses on pragmatic alternatives that use the existing system, the hip-hop artists he utilizes reject the legal mechanisms he embraces through revolutionary rhetoric (even if that advocacy is hyperbolic). Second, Butler adopts a vision of social control via modern surveillance technologies like ankle monitoring bracelets in lieu of more traditional corporeal forms of control like incarceration. Here again, hip-hop stands against Butler, aligning itself instead with theorists like Foucault in its rejection of modern social control technologies.

Brando Starkey

Jim Crow and the Birth of Uncle Tom: Law's Impact on Black Culture

Uncle Tom has grown into the most injurious pejorative that blacks can hurl at one another. That it occupies such a "lofty" status is due to segregation. During Jim Crow, law and legal institutions vehemently reflected America's racist priorities. All three branches of the federal government subordinated blacks. State and local governments, meanwhile, disfranchised blacks and required their segregation from mainstream life. The biggest reminder to blacks of their second-class citizenship was segregation. In response, many blacks realized the need to unify to repel the onslaught of Jim Crow. Some blacks, however, might either retreat from the daunting struggle or be co-opted by the majority and become double agents hindering the race's ability to fight American apartheid. To prevent potential turncoats, blacks needed to enforce loyalty. Many sketched the contours of acceptable behavior; that blacks must both resist their subordination and refuse enlisting for the opposition. Deserters would be denounced with the most opprobrious epithet of which blacks could conceive: Uncle Tom. This paper argues that law frequently steers and directs black culture and that it does is best seen through the community's use of Uncle Tom in the context of segregation.

2.8 State Making

Jeffrey Thomas

The Cultural Context for Rule of Law

This paper will review the literature on the relationship between culture and rule of law, and will begin to develop a framework for assessing the extent to which a country's culture promotes or advances the rule of law. It is hoped that cultural psychology will provide useful measures that can be analyzed, grouped and adapted to obtain some preliminary assessments that can be used to suggest possible scales or techniques to be explored in future research.

Howard Pashman

Making Revolution Work: Law and Politics in New York, 1776-1783

The central legal challenge of the American Revolution proved to be ending popular violence and building a stable state in its place. As royal authority dissolved, people took law into their own hands and enforced rough justice through physical assaults, public humiliation, and intimidation. In other rebellions, such behavior has triggered a bloody cycle of anger and revenge. And yet that bloodletting did not occur in the American Revolution. Americans contained popular aggression even at a time when the legal infrastructure for maintaining order had collapsed. This achievement invites us to reconsider the character of the Revolution as an orderly transition from colonial status to independence. Relying on legal records that no historian has used before, I analyze how a group of Americans made revolution work, how over seven years of war they restrained a popular uprising and redirected its unruly energy through the legal institutions of a fledgling state.

William Mercer

Popular Sovereignty and Positivist Rights

In the early American republic, rights were perceived as emanating from natural law, the common law tradition, positive law pronouncements of the federal and state constitutions, or an inchoate blend of sources. While a debate occurred regarding where rights derived their authority, this paper explores a larger question: why was this debate taking place? During this era, many people took extra-legal action to redress grievances, settle private scores, enforce community norms, or to abate nuisances instead of relying on the courts or governmental officials. At a fundamental level, these actions are evidence of a struggle over the proper role of the people in a system of government predicated on popular sovereignty. This paper posits that efforts to limit the sovereign powers of the people necessitated a re-conceptualization of rights away from a blend of foundations and toward a view of rights as derived solely from positive law enactments.

2.9 Queer Sociolegal Histories and Narratives

Craig Scott

Legal Scholars' Rhetoric of Rights and the Grassroots: California Gay Activism before 1975

In 1975 the California legislature repealed its sodomy laws, an early legislative victory which helped make California an important location for gay rights. Yet, before 1975, the gay rights movement in California was small and poorly organized. With few resources, a small number of activists began to translate ideas advanced by legal scholars to argue for change, using the rhetoric of rights to enlist support from a wide-range of organizations. This paper will trace how the rhetoric of rights for gays and lesbians -- both within gay writings and law journals -- were used by activists to push for legislative action, using the work of legal scholars and the language of court decisions like *Griswold v. Connecticut* to craft a political strategy. The paper challenges current historiography to weigh the influence of both grassroots activists and elite legal scholars in understanding how gay rights legislation came about.

Marcia M. Gallo

Hidden in Plain Sight: The Story of Catherine “Kitty” Genovese

My paper will explore the cultural impact of the story of Catherine “Kitty” Genovese, whose brutal death in 1964 in New York shocked The City, the nation, and the world. The senselessness of the crime was overshadowed almost immediately by reports that none of her neighbors came to her aid; Genovese was reconstructed as an international symbol of apathy, which necessitated the erasure of the unconventional truths of her life, such as her lesbianism. While her death inspired concrete technological changes (the “911” emergency notification system) and the development of a new subfield of psychology, it also provided impetus for the organization and growth of victims’ rights and anti-rape movements in the 1970s.

Marc Poirier

Hate Crimes and the Narrative of Community

This paper proposes that an essential aspect of hate crimes is the occasion they present for the narration of community. This narration occurs through police response, media, political response, and community organs organized at various levels of scale. The narration may well be plural, evidencing contested versions of community, stories directed at multiple publics. The paper will especially focus on some recent gay-related hate crimes; the 2009 enactment of the Matthew Shepard and James Byrd Jr. Hate Crime Prevention Act; and Moises Kaufman's two documentary dramas related to the Matthew Shepard murder, *The Laramie Project* and *Ten Years Later*.

2.10 Theorizing Method

Jeffrey Johnson

Adjudication, Interpretation, & Law: An Explanatory Perspective

When legal academics find themselves in a position of applauding, or condemning, a legal ruling they typically resort to legal theory as the foundation for their argument. The two most common theoretical literatures are jurisprudential debates about the nature of law (natural law, legal positivism, legal realism, and the like), or interpretive debates about how legal texts are to be read (original intent, constructive interpretation, critical legal theory, and countless others). I argue that both of these literatures constitute a series of “mischaracterized insights,” helpfully illuminate aspects of the nature of law, or the method of interpretation, but are articulated in ways that make them all too narrow, and artificially mutually exclusive.

I suggest that a more promising perspective is one of explanation. Judges must act, and their actions can helpfully be understood as their (legal) explanations of a myriad of data – written texts, precedent, empirical and social facts, contemporary normative attitudes, and many other things as well. They find themselves in positions more analogous to natural and social scientists, than literary critics, or philosophers of law. Such a view of adjudication raises two immediate questions. Is there a correct, or true, interpretation of all this data? And what are the standards for preferring one legal explanation to another? I defer on this first question, but argue that the common sense, and scientific, standard for superiority must be explanatory plausibility. Thus, laudatory support for a legal decision will amount to a judgment that the court’s explanation of the relevant legal data constituted the best legal explanation. And the denunciation of a decision can be seen as an argument that there is a better rival explanation, than the one proffered by the court. It should go without saying, though, that reasonable and honorable judges and academics may disagree about what the best explanation is.

David Watkins and Scott Lemieux

How Not to Think About Democracy and Judicial Review

Ian Shapiro's recent work on democracy and judicial review is a prominent example of a common but flawed approach that democratic and legal theorists often take when considering the democratic status of judicial review. Shapiro's methodology is to establish what the proper philosophical approach and scope judges exercising judicial review ought to be, and then sort the actual exercise of particular cases into the categories of "good" and "bad" judicial review. This paper will attempt to demonstrate the flaws of this approach, and point towards an alternative. The shortcomings of this approach will be made evident through a) a critical examination of the way in which Shapiro reads SCOTUS abortion jurisprudence to explicate his theory, and b) through a consideration of the assumption that underlie this theory—specifically, that the democratic status of judicial review depends on the good and proper behavior of judges. In the final section of this paper, we will point towards an alternative that draws on the insights of both agonistic democratic theorists and theorists of institutional design.

Simone Glanert

Method: Comparative Law's Quandar

It is hardly an exaggeration to think of method as a disciplinary hallmark. No discipline, it seems, can lay claim to intellectual respectability unless it features an accredited method. But comparative law is unusual in as much as it is commonly reduced to a method — and this, by comparativists themselves. In other terms, comparative law would be a strictly methodological endeavour. Indeed, the leading textbook in the field describes comparative law as a "heuristic method of legal science". Yet, method remains woefully untheorized. Now, does it do more than betray "science envy"? Can it effectively overcome situation (that of the law and that of the comparativist)? Is it in a position to offer epistemological guarantees of any kind? In sum, how, if at all, is it able to contribute to the credentialization of comparative law? Drawing principally on the work of Hans-Georg Gadamer, Jacques Derrida, and Paul Feyerabend, I seek to revisit method. Although I refer to comparative law, my text reaches beyond this field.

Desmond Manderson

The Irony of Law and Literature

The question of irony goes to the very heart of the experience of literature and is a subject which is both challenging and under-theorized in the field of "law and literature". Indeed, the question of what irony is and how we are to understand it highlights central problems in many of the interpretive models adopted by law and literature in recent years, and suggests alternative ways of constituting their relationship. This paper draws in particular on the work and history of Mikhail Bakhtin, the central figure in 20th century theories of the novel and literature and yet a scholar to whom, surprisingly, no attention has yet been paid within the field of law and the humanities. Armed with this new question and this new theoretical reference point, I wish to begin to rearticulate the relevance of literature for law and to suggest the lines of research that it invites.

3.1 Boundaries and Enemies Roundtable

3.2 Indigenuity, Race and the Nation State

Benjamin Authers

*"What it hasn't meant before": National Belonging and Rights in Joy Kogawa's *Itsuka* and *Emily Kato**

In **Reconfigurations** Alan Cairns argues that the Canadian Charter of Rights and Freedoms establishes a "pan-Canadian sense of self" through identification with a nationalised discourse of rights. This paper examines how rights are linked to citizenship,

and so to national belonging, in Joy Kogawa's novel **Itsuka** (1992) and its 2005 re-envisioning as **Emily Kato**. Both novels fictionalize the work of the Japanese Canadian community towards redress for WWII government policies and represent rights as enabling Japanese Canadians to figuratively re-enter Canadian society. However, while **Itsuka**'s conclusion gives literary affirmation to the constitutional model formed by the promise of rights, **Emily Kato** takes the same story and ends with a cautious, retrospective understanding of these possibilities. Kogawa's novels posit the pervasiveness of rights within Canadian culture, while also suggesting that it is in the future potentials, rather than lived experiences, of rights that the power of such national identifications lie.

Samiah Khan

Guilty Until Proven Innocent

"Guilty Until Proven Innocent" examines the relationship between Aboriginal communities in Canada and the affects of racist policing. The justice system aims to establish social and legal impartiality amongst societies regardless of their race or ethnicity. Racism is often the primary cause of unjust treatment experienced by Aboriginal people in Canada. Practices such as racist policing are often the result when the individuals who can eradicate and fundamentally change such issues in fact encompass stereotypes and unfair presumptions. The fundamental wrongdoings of the police by way of both direct and systemic discrimination, their effects on the Aboriginal community, and the increasing number of over-incarcerated Aboriginal and the role of governmental relations at both the federal and provincial levels. The possible ways in which effective policing can be heightened and its relationship to race and ethnicity in the criminal justice system will be discussed.

Cheryl Suzack

From Martinez to Deegan: What is the Status of Indigenous Women's Rights?

Debates concerning indigenous women's rights often frame these rights as secondary in importance to the sovereign rights of indigenous communities. Although scholars acknowledge the prevalence of gender injustice, they argue that injustice can only be addressed by examining the U.S. government's relationship to tribal governance and its failure to affirm tribal legal structures. By arguing for tribal law at the expense of gender justice, scholars perpetuate a sovereignty-versus-gender dichotomy that privileges the rights of indigenous communities at the expense of the rights of indigenous women. In this paper, I explore this dichotomy by shifting its terms from a focus on sovereignty versus gender, to a debate concerning liberal versus subaltern feminism. I examine two cases—*Santa Clara Pueblo v. Martinez* (1978) and *U.S. v. Deegan* (2010)—to situate a post-civil rights context within which to explore how indigenous women attempt to affirm their rights. I suggest that rather than undoing the dichotomy, the issue of indigenous women's rights needs to be recast through the paradigm of critical race feminism.

3.3 Imagining Innocence and Experience

Lisa Kelly

The Innocence and Deviance of the Child at Law

Contemporary legal thought exhibits a deep ambivalence about the child. Seemingly under threat from an array of online and offline sources, the child is understood as in need of greater protection on the one hand, yet also as deviant and dangerous, and warranting stricter punishment, on the other.

This contemporary ambivalence has roots in the historic transformation of the Western child from material producer to innocent consumer. Throughout the nineteenth and early twentieth centuries, the child, specifically the white child, was transformed from

economic producer to the object and subject of sentimental affection. Social and legal investment in childhood innocence made youthful deviance threatening to the emerging family-market and adult-child binaries.

My paper will examine how this ambivalence is manifested in contemporary legal understandings of the child at home, part of a larger project in which I will examine the child at home, at school, and in detention.

Shien-Hauh Leu

Pedophilia, Agency and Exploitable Subjects

Literature on pedophilia suggesting minors be considered autonomous sexual agents is supported by evidence that indicates a lack of psychological damage to minors as a result of consensual sexual encounters. This need not be construed, however, as an endorsement of pedophilia. Rather, the urgent question is to investigate what is truly being protected by injunctions against pedophilia. Since agency divides the adult and the minor subject, one might begin by questioning the substance of adult agency. To what extent does an adult register as a fully responsible subjective agent? A simple asymmetry of information in daily intercourse renders adults susceptible to influences and manipulations purporting to affect minors exclusively. Is the sharp dichotomy between adult and minor therefore a cloak and dagger strategy that ultimately legitimizes the exploitation of adult subjects by channeling responsibility and culpability to the putative bearer of agency?

Joseph Fischel

Gender Coda: Nymphet Complexes and Pederastic Pedagogies

This paper explores cinematic representations of intergenerational sexual relations, with particular attention to the ways problems of gendered power and queer sexuality are enmeshed or displaced by myopic juridical focus on age. I ask, what sort of sexual ethics can be enunciated, what kinds of sexual harm can be identified and resisted, if we displace consent, and displace legal prescription and proscription, from the center of analysis? I explicate cinematic and literary representations of intergenerational sexual relations, and the inflection of law in those relations, to concretize two arguments: first, our juridical concern with age difference is both a proxy for and disavowal of social, gender inequality; second, same-sex relations across age differences have a (not altogether) different set of complexities and dynamics than heterosexual relations, and that this difference is (not altogether) attributable to gender and the social capital made available by masculinity and manhood. The main texts considered are *Hard Candy* (dir. David Slade, 2005) and *Superbad* (dir. Greg Mottola, 2007).

3.4 Corporate Forms

Nicolette Bruner Olson

Creating a Corporate Self: The Formation of Legal Personhood in Dreiser's The Financier

By 1912, the rise of the corporation as the dominant form of business organization in the nation had prompted a reexamination of the doctrine of corporate personality, though its metaphysical core remained academic and rarely touched the popular imagination. Theodore Dreiser's novel *The Financier* offered a common-sense intervention in the debate over corporate personality. As the book progresses, Dreiser increasingly leads the reader to view "Cowperwood & Co." as Frank's shadow-self, something beyond the Frank Cowperwood introduced at the beginning of the novel and yet organic with that being. In a larger sense, *The Financier* advocates a middle ground between concession theory and real entity theory, a position that—in the words of one 1910 *Harvard Law Review* article with a similar perspective—depicted corporate personality as a "natural and spontaneous expression in figurative language of actual facts."

Sowing Discord

Campaign finance cases are generally too arcane to garner attention outside the professional political class. But the Supreme Court's decision in *Citizens United*, to eliminate most state and federal restrictions on corporate campaign spending ignited a nationwide political confrontation. This paper explores why *Citizens United* has become a lightning rod for political contests about the future of American democracy.

We read *Citizens United* as a bid to reignite the culture wars, and reestablish the alliance between cultural and economic conservatives ruptured during the Bush era, in a case that buoys the enemies of Hilary, an icon of conservative revulsion. In turn, the Court's defense of private rights against the government challenges basic liberal-progressive assumptions about democracy and domination by relying on reconstruction-era doctrine that treats corporations as "natural entities" constitutionally entitled to civil rights like any natural person. The Court harks back to highly controversial late 19th Century laissez-faire jurisprudence that infamously hijacked the 14th Amendment to shut down even the most rudimentary social reforms and economic regulations in the name of property rights and contractual freedom. Adding insult to injury, it undercut the hard-fought understanding -- elaborated over decades by the progressive academy and registered constitutionally in First Amendment law by Austin's "anti-distortion rationale" -- that equal citizenship and fundamental freedoms depend on tackling "soft domination" in what 19th Century liberals deemed the private, non-political realm.

The paper reads the principle of corporate personhood as a myth that occupies a special place in our political imaginary. The principle the Court presents as an ancestral command, is intimately tied to violent political struggles between labor and big business, between progressives and conservatives and marks a highly contested rhetorical terrain in the emergence of our modern Republic. Indeed, the ability of corporations to shape, control, and overpower individuals, groups, cities, regions, and even entire nation states, is a commonplace in American political history, as is the awareness how much capitalist institutions have contributed to the promotion of social welfare.

Even as the Court aggressively deployed this highly contested myth of corporate personhood as a legal device to place the corporation beyond the reach of a democratically elected Congress, it ironically declared unconstitutional any attempts by Congress to protect a "marketplace of political ideas" from capture by powerful private interests. By overturning its previous decision in *Austin*, the Court rejected in the strongest possible terms that government could have any constitutionally recognizable interest in preventing ordinary citizens' voices from being drowned out by corporate interests. The Court appeals throughout to conceptions of an "uninhibited marketplace of ideas," further underscoring its willful blindness to the effectiveness of symbolic forms to serve as vehicles for perpetuating power structures.

Exchange and Parsimony: The Foreclosure Machine and the Rhythms of the Law

The halt on the foreclosure machine that emerged from the ashes of the housing bubble/burst in September 2010 finds many explanations, but from a critical political economy perspective the annihilation of time is an integral component of the logic of capital. The interest of banks holding standing loans to execute mortgages and "purify" their books fueled the speeding up of legal procedures, but the law has its own rhythms. This paper is interested in exploring the connections and disconnections between the

demands of capitalism and the exercise of the law. Drawing from critical analysis of both capital and the law, this paper questions the apparent synchronicity between the legal institutions and the imperatives of fast capitalism. The legal realm appears as a virtual arm of capital, but as the crisis unfolds, the complexity of these systemic relations shows a problematic imperative deserving a closer look.

3.5 Human Rights as Articles of Faith

Eugene Garver

Euthyphro Prosecutes a Human Rights Violation

Socrates encounters Euthyphro as both are on their way to court, Socrates as a defendant against charges of blasphemy and Euthyphro as a prosecutor of his father for negligently causing the death of a slave. I want to investigate what happens if we were to follow the Euthyphro and recast human rights violations as violations of piety rather than justice. The responses will not be punishments for injustice but the removal of pollution, miasma. I think that piety and pollution supply a productive way for thinking about human rights crime and punishment. Euthyphro, though, is a very troubling model for the human rights prosecutor since he is an almost paradigmatically unattractive character. Reading the Euthyphro leads to appropriately troubling and ambivalent feelings about contemporary human rights prosecutions.

Eugene Garver

Barry Collins

Human Rights, Faith and the Post-Political

This paper will examine Human Rights as articles of faith. International human rights discourse often seems to rest on faith in the capacity of human rights instruments to provide an unquestionably moral solution to the most intractable political; Human rights can often appear to operate in a quasi-theological domain; to provide a normative repository that stands above the fractured political field. To this end, human rights discourse is often incorrectly associated with unassailable moral correctness. This allows human rights arguments to provide a moral (rather than a political) justification for military intervention; it also explains how human rights institutions are commonly established in post-conflict situations as unifying instruments to enable peace and reconciliation. In my paper, I wish to explore the idea that the contemporary theology of human rights is “post-political”, denying the political and contested nature of human rights. Instead, I will argue for a dualistic approach to human rights: one that abandons faith in the ability of human rights to provide an inherently moral answer to political problems, but which also holds faith in human rights as a space of political contestation.

Zachary Calo

Human Rights Beyond Secularism: Islam, Law, and the Moral Constitution of Modernity

This paper addresses the jurisprudential implications of the “return to the sacred” in Europe. It argues that the resurgence of Islam has revealed foundational problems with western legal theory, particularly as expressed in human rights law. Human rights law, which has assumed a dominant role in adjudicating the relationship between Islam and European public life, has failed to provide a model for incorporating religion into the moral life of late modern society. Rather than mediating the relationship between religion and liberal public life, human rights law has pushed religion to the margins of public moral meaning while exalting a politicized secularism in its place. As an alternative, this paper offers the idea of a post-secular jurisprudence that opens space within law for theological particularity. This post-secular jurisprudence would seek to reinvigorate European public life by drawing Islam into public moral discourse, rather than defining this discourse against Islam.

3.6 Myths of Origin, Origins of Myth

Noa Ben-Asher

Cover's Obligations as a Source of Law

Robert Cover's 1987 essay "Obligations: A Jewish Jurisprudence of the Social Order" considers the importance of founding myths for the rhetoric used in different legal systems. Cover contrasts the myth of Mount Sinai in Jewish law with the myth of social contract in current secular nation-states. Jewish law focuses on obligation whereas current modern legal orders emphasize individual rights. And while for Cover both myths are helpful, he claims to be personally more persuaded by the notion of obligation. This paper examines Cover's account of why Mount Sinai and a language of obligation are more appealing than their counterpart in rights discourse, and tests Cover's distinction between those two rhetorical postures in current moments of lawmaking.

Linda Edwards

Walls, Wars, and the Myth of Redemptive Violence

From the ancient Babylonian creation myth, the Enuma Elish, to today's Die Hard and Lethal Weapon, perhaps the most repeated story in human history is the Myth of Redemptive Violence. The story line seems almost second nature to us. An evil villain is wreaking havoc on innocent and helpless people. A brave hero fights the villain, facing great danger. Eventually, the hero kills the villain, thus restoring order. Watching the story unfold on the big screen can seem so satisfying. But behind the plot line lurks a dangerously seductive worldview, one that slips off the screen and into our national consciousness, starting wars and building walls along our borders. Only by unmasking the myth can we formulate a meaningful response to it and to the tragedies it creates. This presentation identifies the myth's two most insidious characteristics and proposes several more hopeful counter-myths.

Stephen Pete and Angela Crocker

Ancient rituals and their place in the modern world: Culture, masculinity and the killing of bulls

The origins of myth and ritual stretch back to Palaeolithic times. With the invention of agriculture, "first fruit" ceremonies were developed, which were designed to replenish the sacred energy of the earth. These ceremonies continue to the present day, one example being the annual Ukweshwama ceremony of the Zulu people in KwaZulu-Natal, South Africa. Part of this ceremony involves the ritual killing of a bull by young Zulu warriors with their bare hands. This has sparked much controversy and debate between those advocating animal rights on the one hand, and those seeking to defend ancient cultural practices on the other. This paper will examine the legal, political and philosophical positions adopted by the various protagonists in these debates and draw out the social meanings attached to the Ukweshwama first fruits festival. The implications of these debates within the context of South Africa's constitutional democracy will be analysed.

Frederick Cowel

Derridian foundational violence and the doctrine of State Secession in Africa

Derrida, alongside other post-modern philosophers, emphasises the role of violence in the foundation of a state's legal authority. Secession in post-colonial Africa was inevitably violent due to colonial era state boundaries being frozen during the independence process and subsequently preserved by international law. Democratic secession, following the ICJ's decision on Kosovo and the forthcoming South Sudanese independence referendum, is however emerging as a foundational norm of statehood and potentially, a human right, in the context of the right to self determination.

This paper explores the right to secession in the context of the 'violent foundation of laws authority' as described by Derrida. Increasingly the right to self determine is becoming a non-instrumental, democratic right rather than a legal imposition following a period of alegal foundational violence. Using contemporary African examples it is argued that violence plays a secondary role in the foundation of legal authority in secessionist states.

3.7 Culture of Family Law

Danaya Wright

Shelley v. Westbrook: The Role of Public Patriarchy and the Best Interests Standard in Redefining the Private Sphere

In this paper I explore the fascinating, and little-known, case in which the poet Percy Bysshe Shelley lost custody of his children. The case marks the beginning of a shift in English family law in which courts began to base custody determinations on whether a father is providing an immoral influence or educating his children to be socially dangerous (reformists, atheists). Although I have positioned the case within the larger narrative of child custody, guardianship, and family law reform in my other work, this piece takes a more direct law and literature angle. In particular, I am exploring Shelley's attitude toward childhood and patriarchy both from his own experiences as a child and the experiences of children around him. He was responsible for Lord Byron's illegitimate child and took an avid interest in the children and nephews of his close friend Leigh Hunt. He also wrote about children and childhood in his poetry. My argument is that Shelley's case redefined the nature of family law in 1817 because the Chancellor's fear of reform and revolution forced into legal channels the dangerous question of moral upbringing in the private sphere.

Alice Hearst

Deciphering Culture in Custody Decisions

The 'best interests of the child' standard in custody decisions leaves a great deal of discretion in the hands of family court judges. Increasingly, couples may be at odds in divorces because the spouses disagree on the cultural standards under which children should be raised, especially when tensions around racial, ethnic, nationality and religious have arisen. This paper looks at how family courts are beginning define and evaluate cultural claims in contested custody cases. It is particularly attentive to how both the voices of children and cultural communities are heard in this process.

Clifford Rosky

Don't Kiss, Don't Tell: Sexism, Homophobia, and the Construction of Sex

This project examines how gender influences the construction of sexist and homophobic norms about sex. To provide an empirical basis for the project, I have gathered a collection of approximately 600 judicial opinions in custody and visitation cases involving gay, lesbian, and heterosexual parents reported since the 1950s in the United States. Based on a comparative analysis of these opinions, I argue that lesbian mothers and heterosexual fathers enjoy more freedom to display affections, bathe with partners, and sleep with partners than heterosexual mothers and gay fathers do. The differential application of these intimacy norms can be explained by a complex interaction between sexism and homophobia that is based on a phallogocentric construction of sex.

3.8 Supreme Boundaries: Managing Friends and Enemies at the U.S. Supreme Court

Jim Aune

Justice Black's Rhetorical Jurisprudence

When Earl Warren joined the Supreme Court in 1953, he walked into Justice Hugo Black's office to ask for advice on how to write judicial opinions, since he had never served as a judge. Justice Black gave him a copy of Aristotle's *Rhetoric*, and said, Here's all you need to know. Black has often been criticized for his lack of educational credentials, his seemingly naive literalism in reading the First Amendment, and his supposed conservative shift towards the end of his career. Perhaps the most enduring friend/enemy distinction on the Supreme Court from the 20th century onward has been between textualism or originalism on the one side, and a doctrinal or more expansive reading of the Constitution on the other. The purpose of this paper is develop a defense of Black's rhetorical jurisprudence throughout his judicial career, especially on First Amendment issues, based on a reading of the corpus of his judicial opinions, his papers in the Library of Congress, and his personal library. Black represents a distinctive strain in textualist interpretation of the Constitution, emphasizing the specifically rhetorical and communicative function of the Supreme Court.

Ryan Malphurs

Navigating Boundaries of the Sacred and Profane: Analysis of Oral Arguments in Texas v. Johnson

Gregory Johnson, a member of the Revolutionary Communist Youth Brigade, protested the policies of the Reagan administration at City Hall during the 1984 Republican National Convention in Dallas, Texas by lighting a stolen American flag on fire and chanting anti-American slogans. Johnson was charged and convicted of violating Texas law that prohibits desecration of a venerated object, and so began the infamous Supreme Court case *Texas v. Johnson*.

This paper draws from previous research on Supreme Court oral arguments to consider justices' negotiation of boundaries between legal enemies: Texas and Johnson. Because the case invites intensely personal issues that separate parties, oral argument functions as a space where justices must navigate boundaries to carefully evaluate facts and arguments as well as explore potential resolutions to the case. My research considers both the level of interaction by the justices and their personal arguments to evaluate the justices' interaction within a tense and historically significant case.

Elizabeth Thorpe

In Black and White: Brown v Board of Education and American Identity

Fewer boundaries have had a more profound effect on American politics and law than the border between black and white. Since the Civil War, black Americans had been considered citizens, but had been barred (both officially and surreptitiously) from participating in many of the activities that Americans were most proud of, such as voting, attending quality schools, and access to business opportunities. This project is a rhetorical analysis *Brown v. Board of Education*, a pivotal moment in the shift of that boundary. In this paper, I use a close reading to consider the constitutive nature of the Court's opinion as it actively creates new definitions of American identity. I argue that the Supreme Court's decision in *Brown v. Board* specifically ignored the notion of citizenship in order to rhetorically constitute a specific version of America that would include both black and white citizens.

3.9 Author Meets Author: Law and Society Redefined and the Justice of Mercy—Pavlich and Meyer

George Pavlich

Law and Society Redefined (OUP Canada, 2010)

As a critical review of leading jurisprudential, social and political theories of law, this book – at one level – provides an accessible analysis of key ideas that have shaped the law and society field. At another level, however, *Law and Society Redefined* evaluates the effects of such theories for the overall shape of the field, and wades into an assessment of the contested contributions of more recent (poststructural, postcolonial, etc.) approaches. The book challenges conventional approaches that centre around purported beings like ‘law’ or ‘society’, opting instead to understand how these ‘become’, especially as promises of justice. One effect of such an approach is potentially to recast founding concepts in the law and society field.

Linda Ross Meyer

The Justice of Mercy (Michigan, 2010)

How can granting mercy be just if it gives a criminal less punishment than he ‘deserves’ and treats his case differently from others like it? This ancient question has become central to debates over truth and reconciliation commissions, alternative dispute resolution, and other new forms of restorative justice. The traditional response has been to marginalize mercy and to cast doubt on its ability to coexist with forms of legal justice.

Flipping the relationship between justice and mercy, this book argues that our rule-bound and harsh system of punishment is deeply flawed and that mercy should be, not the crazy woman in the attic of the law, but the lady of the house. This book articulates a theory of punishment with mercy and illustrates the implications of that theory with legal examples drawn from criminal law doctrine, pardons, mercy in military justice, and fictional narratives of punishment and mercy.

3.10 Law and Emotion: Crossing the Bar

Eimear Spain

‘Towards a General Defence of Reasonable Emotional Response’

One of the most important tasks facing the criminal lawyer is the need to reassess its fundamental doctrines in the light of advances in the modern understanding of emotions from the psychological viewpoint. Of particular importance is an exploration of the role of emotions in criminal behaviour and their consequential importance for criminal law defences. Given their common origin, it is arguable that the law should not differentiate between emotions, for example, fear and anger. The possibility of recognising a general defence of reasonable emotional response, encompassing all emotions and responses judged to be normatively acceptable should be considered. The potential scope of such a defence is broad, covering not only those covered by traditional defences such as provocation and self-defence, but also others such as those who commit ‘mercy killings’. This paper will consider the arguments for and against the recognition of such a defence in the modern law.

Heather Conway

‘Passing “Judgment”’: Judicial Moralism, Inherited Wealth and the Parent-Child Bond’

In English law, a statutory family provision system allows disinherited relatives to challenge a testator’s wishes on the basis of family or dependency ties to the deceased which transcend death. One such category of applicant is the adult child. This paper looks at such cases, and questions the extent to which judicial decision-making is influenced by prevailing social and cultural norms surrounding what might be described as a parent’s ‘moral responsibility’ to his or her children. It also questions whether judges are importing their own subjective views and feelings on the nature and quality of the parent-

child relationship. A key issue in such cases is whether and to what extent judges are straying beyond their proper role in passing judgment not only on the law, but also on the perceived rights and wrongs of the situation.

Hila Karen and Kathy Abrams

'How Legislation Facilitates Hope: California's Post-Conviction Remedy for Women Who Have Suffered Intimate Partner Violence'

Our paper discusses the role of law in fostering hope among incarcerated victims of intimate violence. In the past, the problems of such victims were largely ignored by the law, but following a vigorous campaign in California important reforms occurred: the law was amended to allow expert testimony; the killing of an abusive partner was recognised by the courts as self-defense; and legislation was passed allowing battered women convicted of killing their batterers to file for habeas corpus with evidence demonstrating how the battering and its effects led to the killing. There is a paradox here. Though the law originally contributed to the despair of these victims by its wilful blindness to their concerns, it also ultimately facilitated hope, by encouraging a capacity for imagining a different trajectory or future, and a sense of efficacy and resourcefulness necessary to develop means to that end.

Terry A Maroney

'The Judicial Decision Costs of Emotional Repression'

A strict cultural script commands that judges be 'emotionless'. Judges who acknowledge that they experience emotion when hearing cases quickly assert that they 'put it aside' and insulate their decision-making from its effects. Law thus regards emotional regulation as a critical judicial capacity. While judges, like all humans, do need to regulate their emotions, the simple command to 'put emotion aside' fails to acknowledge a diversity of regulation strategies. More importantly, it fails to acknowledge the differential effects of those strategies. Paradoxically, the sort of emotion regulation the script of judicial dispassion urges—repression—is the one most likely to create harmful decision costs. Paralleling behavioral law and economics scholarship, this paper draws on innovative research in affective psychology to demonstrate those costs. It argues that instead of repressing the experience and manifestation of emotion, judges instead should be encouraged to acknowledge and engage with them in a constructive way.

3.11 Rereading the Conflicts of the Present Through Aristotle's and Vico's Idea of Community

Silvia Niccolai

The Aristotelian Idea of Community

In the Aristotelian idea of community, distrust in the virtues of the logos – and not the existence of conflict – is what generates enmity and enemy alike. However, more juridico, controversy and reason stand out as a positive element of social integration, allowing the logos to deploy its narrative strength and enhancing the parties' cooperative abilities. Hence the suggestions that the Aristotelian idea of law as a practical science offers for diversity-related conflicts: avoiding a universalism now corroded by the paths of critical thought; and not deconstructing the meaning of social dialectics – and thus forcing it towards a crisis – as is done by analytic perspectives relying on abstract thought (which spread in comparative law with the passage from functionalist to structuralist orientations). To examine these suggestions in greater depth, we will discuss two central components of the Aristotelian idea of Community, cast in particular light by Giuliani: friendship (*philia*) and reminiscence. Coauthored with Francesco Cerrone.

Giorgio Repetto

The Transformed Life

“Those awaiting the visit of the parents’ guests, find their hearts beating with greater expectation than before Christmas. It is not due to the presents, but to a transformed life.” In exploring this passage from Adorno, I attempt to ponder the idea of law and community most suitable for reflecting homosexuals’ desire for a “transformed life.” While reactionary rhetoric concentrates on the classical arguments of perversity and jeopardy, many progressive currents focus on a rationalist, utilitarian, and measurable idea of freedom, which is made to coincide with the gradual erosion of repressive practises. To the contrary, a vision of law and community centred upon the constitutive and irreducible value of emotions must be able to grasp the potential for fairness that emerges in the dialectical and controversial dimension of recognition, because it is from the categorization of desires that the greatest risks of cultural normalization arise.

Gianluca Bascherini

The Space of Emotions

Drawing inspiration from a story firmly lodged in the collective memory (Mary Poppins), this presentation reflects on the generative opportunities, for the community, brought by the relationships – and conflicts – that revolve around domestic labour, now often a labour provided for pay by migrants, frequently women, and prevalently interpreted solely as a scenario of global exploitation. Aristotle’s *philia* – which is not fraternity, paternalism, pity, or complicity – offers a guide for decoding different possibilities of the master/servant relationship, and for avoiding the *aporia* (unwittingly suggested by the theses of “global care chains”) by which, if I am my domestic’s enemy, then my domestic is my enemy. The proposal is to think that the growing spread of paid domestic labour signals a new arrangement in the relationship between the domestic and public spheres, in which the *oikós* may be seen as generating relationships that qualify community ties.

4.1 Boundaries and Enemies Panel

José Gabilondo

Barbarians at the Gate: How Academic Capitalism and the ‘Accountability’ Discourse Threaten Academic Freedom

The old view that higher education was a public good has ruptured, exposing academe to challenges from both the New Right and liberals. Two challenges, in particular, matter: academic capitalism and populist notions of accountability. Together, these factors portend risk to the university.

The public good theory of education somewhat insulated universities – especially public ones – from market modes of organization, decision-making, and culture. As public monies for higher education decline, though, market primacy and educational consumerism take root in universities, including public ones. At the same time, a national accountability movement (and industry) have developed, charging that universities need more oversight from the state and from self-appointed watchdogs like the American Council of Trustees and Alumni. The accountability discourse tries to shift the locus of academic control over the classroom away from faculty and towards administrative or external constituencies.

My paper analyzes these trends and their implications.

Penelope Pether

Strange Fruit: What Happened to the U.S. Doctrine of Precedent

This paper gives an account of the final part of more or less a decade’s work, the first installment of which was published in 2004 in the *Stanford Law Review*, disinterring and writing a critical history of the material adjudicatory practices that saw the emergence of a distinctive U.S. doctrine of precedent, beginning in the first half of the twentieth

century and gathering speed after *Brown v. Board of Education*. The paper takes its (proximate) lead from the recent Guantánamo case, *Abdah v. Obama*. In that case, at the government's behest, a federal judge was forced to "disappear," rewrite, and then replace in significantly different form an opinion which, as historically the most critical steps in the emergence of a doctrine borne of "precedent fear" have done, involves the ancient prerogative writ of habeas corpus.

Juliet Rogers

Truth commissions and the subtle melody of testimony

Since the trial of Adolf Eichmann in Jerusalem 'narrative jurisprudence', has held the promise of catharsis and healing from mass trauma. Testimonials on pain and trauma have become a necessary component to access the truth of the past and enable catharsis in the present. As such testimony on trauma has become the stock-in-trade of truth forums in countries as distinct as South Africa, East Timor and Northern Ireland. Speech in these forums comes in the form of recounting the injuries to flesh, family and home. The witness must legitimate their experience through providing images of torture, rape, destruction and death. In this sense the form that the representation of the victim's injuries must take, in Jacques Lacan's terms is 'so reminiscent of property'. It is a speech which can be held in the hands, tasted on the tongue, felt on the skin of the audience to the trauma narrative. It is only on conditions of this impact that the traumatic experience secures authority as truth.

For the psychoanalyst and researcher of Holocaust testimony Dori Laub however 'It seems... that in addition to what is manifestly said, associated to, dreamt about and elaborated, there is another, a more subtle melody.' In this paper I will argue that the reduction of the speech of the trauma survivor to recounting only the most immediate and - in a psychoanalytic sense - 'exciting' violences disturbs possibilities of political and social recovery from mass trauma through discounting the very subtle melodies that accompany extraordinary pain.

Nan Seuffert

Mobility, Sexuality and Civilisation: Settlers, Strangers, Nomads and Gypsies in the Pacific to 1910

Settlers in British colonies, and settlement house workers in urban America in the nineteenth century, saw themselves as bringing civilisation to urban primitives, noble savages and savage immigrants. Civilisation in Europe and the colonies was often tied to land, the settlement of land, agriculture and cultivation. Nomads, gypsies, immigrants, itinerant labourers, tramps and other derogatorily defined mobile populations, were often constructed in relation to settlers, missionaries and explorers, who were associated with the civis, city, and civilisation. Yet settlers were themselves immigrants, explorers were often part of itinerant populations, and missionaries and colonial officials were mobile as well. This paper mines the archives of Intercolonial Conferences for relational constructions of mobile populations, civilisation and sexuality in the Pacific in the nineteenth century.

4.2 Liberalism, Neoliberalism and the Persistence of the Political

Andrew Dilts

Liberal Ways of Punishment: Figures of Force, War, and Slavery in American Liberalism

This paper examines the crisis of contemporary American punitive techniques through a theoretical reconsideration of several central figures of liberal theories of punishment. The traditional (and traditionally fraught) distinction between war and punishment is sustained in part only through forgetting or disavowing the punishment's foundation in the concepts of force, war, slavery in the liberal tradition. Through a contextualist reading of John Locke's political theory, I argue that this theoretical and rhetorical between punishment and war connection is most visible in the paradigmatic figures of criminality

that sit at the borders of these discourses. Far from being out of step with 17th century conceptions of criminality in England, Locke's persistent use of the "highwayman" and the "thief" reflects the presence of these figures in the popular imagination (as seen in popular ballads and theater centered on well-born aristocrats turned outlaws) and the Crown's increasing concern for them. As a foundational text in American liberal theory, Locke must be understood within this context, centered on the production of criminal subjectivity (as can be traced in the Second Treatise, the Essay Concerning Human Understanding, and the Essays on the Law of Nature) through the practice of punishment as an exercise of reason. For Locke, the link between the specter of banditry, the state of war, and the practice of slavery was explicit and central to the coherence of his political theory and his metaphysics. The contemporary American twin of this popular criminal figure, the felon, must likewise be understood in this light, as a direct descendent of chattel slavery, and as the target of 20th and 21st century regimes of state "warfare" that justify the use of force in troubling and racially disparate ways. What, to put it differently, do we learn about the "war on crime" and neo-liberal city, from the liberal ways of war and punishment that defined the city itself during the 17th century?

Paul Passavant

Policing and Post-Fordism: The Hostile Neoliberal State

The urban fiscal crisis of the 1970s was more than a simple transition from industrial production to the production of services and culture. It was also more than a crisis engendered through the loss of the middle class tax base to the suburbs and the loss of retail that followed the exodus of the middle class. It was a political crisis representing exhaustion and antipathy towards democratic struggles and democratic victories. The neoliberal response to the urban fiscal crisis, in which cities reconfigured urban space for tourists and visitors, as opposed to residents, was a political response. The design of urban space for affective production oriented to consumers relies upon processes of targeted depopulation and deterritorialization, on the one hand, and authoritarian modes of social control, on the other. Post-Fordist capitalism is fully subsumed within the contemporary city. Control of a city's brand is therefore part of the very fabric of urban life. In this respect, the highly violent, torturous, and militarized responses to political demonstrations, from the "Battle in Seattle" to more recent actions against demonstrators in Pittsburgh or Toronto, are exemplary of neoliberalism's hostility to democratic practices that threaten to disrupt the mega-events so necessary to a city's success in the global inter-urban competition for events, visitors, and niche-markets. The policing of protest in urban space today indicates a neoliberal state formation that is actively hostile to demonstrations of democratic strength.

Leonard Feldman and Daniel Skinner Passavant

Eminent Domain and the Rhetorical Construction of Sovereign Necessity

This paper examines the logic of necessity in eminent domain ("takings") cases in the United States. While much has been written about the changing meaning of "public use" as adjudicated by the courts less attention has been paid to the necessity justification. In part this is because the public use standard is an explicit part of the fifth amendment's takings clause that limits the exercise of eminent domain while necessity is part of the buried logic of sovereignty that grounds its exercise. This paper examines the rhetoric of necessity in the "Declarations of Necessity" and "Resolutions of Necessity" that accompany the seizure of private property as well as the tentative efforts by state and federal courts to judge necessity. We trace the necessity talk in eminent domain cases back to Justice Marshall's interpretation of the "necessary and proper" clause in *McCulloch v. Maryland*.

4.3 Liberal Theory and the Law

John Anderson

On the Irrelevance of Truth to Justice: John Rawls's Pragmatism

In Political Liberalism, Rawls argues political philosophy can avoid any claims to universal truth and the essential identity of persons.” Critics (including Joseph Raz, Jurgen Habermas, and many others) have argued that one cannot consistently avoid the question of its truth when recommending a conception of justice. I argue that these criticisms miss the mark by conflating Rawls's three phases of justification. In moving through the pro tanto, full individual, and full public justification phases, Rawls’s focus is either descriptive or ad hominem, but the question of the conception’s Truth never arises. It is dispensable. Thus, while there is nothing inconsistent with holding up a conception of justice as True (or False), Rawls asks why bother doing so when taking this extra step is unnecessary and would needlessly marginalize those who do not subscribe to it.

Roni Hirsch

The problem of the external in B. Spinoza's totality of immanence

I aim to show that 'conatus' (the effort to sustain being) works on all levels of Spinoza's system, from mechanics to psychology, politics and even metaphysics, to establish the very fact of limit and boundary, within the ultimate immanence of all being to substance. From a political point of view, using conatus to define the very thingness of a thing, be it human psychology or the public-thing, or res-publica, the biggest threats Spinoza identifies for the wellbeing of the state – tyranny, civil war and rebellion, which are typically defined as internal threats – are designated as that which is external. Taking into account his critique of isolationism, this becomes an extremely potent redefinition of interstate relations as the product of an extended internal, or immanent, force.

4.4 Speech, Censorship and the First Amendment

Mark Strasser

Corn Dealers, Crowded Theaters, and the Incoherence of True Threat Jurisprudence

J.S. Mill suggests that someone who shouts that corn dealers are starvers of the poor to an angry crowd when outside of a corn dealer’s home may justly be punished. O. W. Holmes similarly suggests that one who falsely shouts fire in a crowded theater is subject to sanction. A number of competing rationales might be offered to support the position offered by Mill and Holmes. Regrettably, the Court’s failure to prioritize or even identify the competing rationales underlying when harm-producing speech may be punished has led it to offer an incoherent true threat jurisprudence that has the potential to eviscerate First Amendment protections.

Alan Mendenhall

Holmes and Dissent

Holmes saw the dissent as a mechanism by which to advance and preserve arguments and as a pageant for wordplay. Dissents, for Holmes, occupied an interstitial space between law and non-law. The thought and theory of pragmatism allowed him to recreate the dissent as a stage for performative text, a place where signs and syntax could mimic the environment of the particular time and place and in so doing become, or strive to become, law. The language of Holmes’s dissents was acrobatic. It acted and reacted and called attention to itself. The more provocative and aesthetic the language, the more likely it was for future judges and commentators to return to that dissent to reconsider Holmes’s argument—the more likely, that is, that non-law might become law. In this sense, language itself is not only a vehicle for law but also law itself. Is it not surprising that the most memorable judicial opinions are language games, that poets and other literati influence our Supreme Court justices? The prose of Benjamin Cardozo, Holmes’s poetic successor on the Supreme Court, echoes that of Matthew Arnold, and Cardozo stands as “the best writer of nineteenth century prose to sit on the Supreme Court in the twentieth century,” or perhaps more profoundly as “The Literary Judge.” “The beauty of his

language,” Arthur L. Corbin muses of Cardozo, “made it the perfect expression of his thought.” The pragmatist judge Richard Posner calls Holmes and Cardozo rhetoricians and poets, perhaps because the good judicial opinion is a cousin of the good poem. And today Justice Antonin Scalia has, as Tushnet points out, “perfected the ‘opinion as attack ad’ rhetoric, offering quotable criticisms that writers of op ed pieces can incorporate into their work without saying anything new.” In short, the function of language is pivotal to the function of law, and judges like Holmes who realize this symbiotic relationship can harness the one to advance the other.

4.5 Memory, Slavery and Civil Rights

Mark Golub

Remembering Mass Resistance to School Desegregation

Popular memory of the Civil Rights Movement is the terrain upon which contemporary racial ideology is contested. Reasonable people may disagree about the extent of the movement’s success or its normative implications for current policy, but the wrongness of state-mandated segregation is not open to dispute. Rather, competing interests lay claim to the meaning and symbolism of desegregation as a producer of contemporary racial common sense. How we remember past civil rights struggle thus bears serious consequences for contemporary challenges to (or legitimization of) conditions of racial inequality. This paper takes issue with two predominant memorializations of school desegregation, in which massive resistance is either spectacularized as a uniquely southern transgression or omitted altogether. Drawing from recent historical work on the long civil rights movement and the myth of southern exceptionalism, I argue that both narratives work to minimize the national, systemic, and constitutive nature of racial subordination in American politics.

Mai-Linh Hong

‘Get Your Ass-phalt Off My Ancestors!’: Legal and Cultural Boundaries of Slave Cemeteries

In Richmond, Virginia, part of the historic Burial Ground for Negroes (c. 1750-1816) might lie under a parking lot at Virginia Commonwealth University. The controversy over its recognition has heightened racial tensions and produced a much-reviled lawsuit over the site’s boundaries. Although property and land use laws afford special treatment to recognized burial spaces, making them off-limits to many uses, efforts to demarcate and preserve slave cemeteries are often passionately contested. By analyzing case law, critical theory, and the colorful rhetoric surrounding such controversies, I examine why slave and non-slave burial grounds are treated differently in law and society. I argue conditions of slavery and anti-literacy statutes prevented slave cemeteries from being marked and maintained in legally cognizable ways, resulting in legal ‘abandonment.’ Incomplete (and often unwritten) records, continuing interracial animosity, and other historical and cultural factors also hinder attempts to ‘reclaim’ slave cemeteries as sites of remembrance and redress.

SpearIt

Criminal Punishment as Civil Ritual: Making Cultural Sense of Mass Incarceration

This Article argues for legal punishment in the United States as a civil ritual. Here, the term “civil” has two meanings: on one hand it refers to the notion of “civil religion” and the ideas that have informed attitudes toward criminal law and punishment practices; it also references the Civil Rights era of the 1960s, whose cultural aftershocks may have catalyzed a renaissance in ritual punishment that persists to the present. Such a feverous spike in punishment has not been seen since the era of lynching, whose own pitch burned following the abolition of chattel slavery. Mass imprisonment may thus reflect the

political and social reactions to the Civil Rights era. The Article develops this proposition by explaining how this cultural reaction played out legally in the criminal justice system—how political and public wrath expressed itself through the mechanics of ritual—the way lynching did for a previous age.

4.6 The Frontiers of Sexual Orientation Law

Heron Greenesmith *Drawing Bisexuality Back into the Picture: How Bisexuality Fits into LGBT Legal Strategy 10 Years After Bisexual Erasure*

Written on the tenth anniversary of Kenji Yoshino's seminal piece, Heron Greenesmith's article begins from the position that bisexuality is invisible in legal culture and poses two hypotheses for this invisibility. First, while Yoshino's analysis retains viability when analogized to the legal context, Greenesmith proposes that bisexuality is inherently invisible to the law, beyond the reach of deliberate erasure. That is, where sexuality is at issue, plaintiffs are presumed monosexual, and must either declare their own bisexuality or have it found for them. Second, Greenesmith argues that where bisexuality is legally relevant it has been erased within the legal culture because it is complicated—because it muddles legal arguments that depend upon the binary of sexuality. Greenesmith uses the suspect class analysis to show how bisexuality complicates legal arguments, and proposes two solutions through which bisexuality can be introduced into the Equal Protection analysis without compromising sexual orientation's suspect classification.

Ann Tweedy *Polyamory as a Sexual Orientation*

This article examines, from a theoretical standpoint, the possibility of expanding the definition of sexual orientation in employment discrimination statutes to include other disfavored sexual preferences, specifically polyamory. It first looks at the fact that the current definition of sexual orientation is very narrow, being limited to orientations based on the sex of those to whom one is attracted, and explores some of the conceptual and functional problems with the current definition. Next the possibility of adding polyamory to current statutory definitions of sexual orientation is considered, including examinations of whether polyamory is a sufficiently embedded identity to be considered a sexual orientation and the degree of discrimination that polyamorists face. After concluding that expanding current statutory definitions of sexual orientation to include polyamory would be reasonable, the article looks at some of the complications to making such a move.

Michael Boucai *An Argument from Bisexuality for Same-Sex Marriage*

Imagining an argument for same-sex marriage from the distinct perspective of a bisexual plaintiff, Boucai's paper will offer several friendly amendments to Kenji Yoshino's characterization of pro-gay and anti-gay interests in stabilizing sexual orientation.

Elizabeth M. Glazer *Sexual Reorientation*

Bisexuals have been invisible for at least ten years. Ten years ago, Kenji Yoshino wrote about the “epistemic contract of bisexual erasure,” the tacit agreement between both homosexuals and heterosexuals to erase bisexuals. Though legal scholarship has addressed bisexuality only in rare moments, Yoshino’s epistemic contract of erasure answered Ruth Colker’s earlier call for a “bi jurisprudence” and explained why the “vast and vastly unacknowledged wall between heterosexual and homosexual identities” that Naomi Mezey identified has been so “vigilantly maintained.” While the tenth anniversary of the publication of Yoshino’s article is reason enough to revisit the topic of bisexual erasure, this Article revisits the topic in light of the recent storm of same-sex marriage litigation.

Lately, it seems more homosexuals than heterosexuals are erasing bisexuals, and more overtly than at the time Yoshino identified the phenomenon of bisexual erasure. Because the fight for same-sex marriage recognition is a fight to fit into the guarded category of marriage, members of same-sex relationships and their advocates have an interest in fitting into a stable sexual orientation category, which bisexuality is not. This Article, at the very least, hopes to make the bisexual slightly less invisible from legal scholarship at a time when the threat of bisexuality, and the erasure of bisexuals, seem to have intensified. More ambitiously, this Article introduces terminology that serves as a first step toward making bisexuals - along with other individuals along the continuum of sexual orientation who are even more invisible than bisexuals - visible.

This new terminology distinguishes between an individual's "general orientation" and an individual's "specific orientation." An individual's general orientation is the sex toward which the individual is attracted as a general matter. An individual's specific orientation is the sex of the individual's chosen partner. In many cases the two orientations are identical, but for bisexuals who partner with only one person the two orientations necessarily differ. While introducing new words will not solve the problem of bisexual invisibility, it might allow those who have struggled with asserting their bisexual orientations - those who were in a relationship with a member of the opposite sex and later wished to partner with a member of the same sex (or vice-versa) - to do so without having to recant their previous relationships. This terminology describes an individual's sexual orientation with reference to her status as well as her conduct. It also describes her sexual orientation individually as well as relationally. Moreover, in addition to ameliorating the problem of bisexual invisibility, distinguishing between individuals' specific and general orientations will help to debunk commonly believed myths about bisexuals, bridge the gap between diametrically opposed sides of the stalemated same-sex marriage debate, and clarify the purpose of the LGBT rights movement by broadening the concept of sexual orientation.

4.7 Inevitability in Judicial Opinions

Jack Sammons

Inevitability in Judicial Opinions Part I

"Inevitability" is a common criterion for good art among art critics and a common description by artists of what they seek in their art. This "inevitability" is not inevitable in the sense of being predictable, predetermined, or providential. In fact, it is quite the opposite. For what is "inevitable" is perceived as such only in the revealing of it either in the performance or the creative act. We will briefly explore this idea in poetry, prose, and music, and especially within the compositions of Beethoven. Beethoven is a good choice because describing his later work as a search for the "inevitable" creates a revealing tension with the common understanding of Beethoven as romantic genius. The suggestion then arises that there may be something "inevitable" in this sense in the legal conversation both broadly considered and as manifested in good judicial opinions when considered as a form of literature or art.

David Ritchie

Inevitability in Judicial Opinions Part II

In a beginning exploration of this possibility of uncovering inevitability in judicial opinions, we will turn first to the questions of what an approach to law as having "inevitability" would look like and, given this, what would this "inevitability" be about, that is, what would it be uncovering. In addressing both questions, and drawing generally upon Husserl, Heidegger, Merleau-Ponty, and others, we will suggest that the legal conversation and the judicial opinion are both forms of a social phenomenological investigation of a social identity. In other words, what "inevitability" uncovers in law is who we are in the resolution of a dispute that has raised anxieties about who we are.

Linda L. Berger

Inevitability in Judicial Opinions Part III

If there are inevitabilities in the law comparable to those in works of art, what is needed next are examples of this “inevitability” and this approach to law as a social phenomenology. For this, we will explore what one would search for in a judge and in an opinion in using this criterion, as an art critic might, as a measure of good law. For example, a judge who approached law in the manner that Beethoven approached music would have a certain form of humility before the materials of the law and the “negative capabilities,” in Keats’s terms, needed to let the “inevitability” of the law speak itself. We will display this in one or more opinions.

4.8 Bodies of Law

Steven Macias

Law of the Men’s Room

Long before Senator Craig was caught soliciting sex in an airport restroom, gay men were taking advantage of social spaces—like public toilets and locker rooms—for the unique mix of public and private opportunities they presented. For this reason, there is also a long history of policing these locales, and prosecuting those who violate the socially approved modes of behavior within their confines. The taboo against the expression of sexual interest is especially strong where heterosexual men are literally exposed. Nevertheless, these sites of male exposure reinforce heterosexual masculinity through both conscious and unconscious demonstrations of non-interest in that exposure. These public spaces at once reinforce heterosexual identity yet remain highly vulnerable to homosexual intrusion. Because these locations present contradictory understandings of privacy and sexuality, legal actors have had a difficult time coming to terms with how the law should apply in these quasi-public sites of male identity.

Elizabeth Anker

Bodily Dignity and the Construct of Human Rights

This paper analyzes and interrogates how the expectation of human dignity lends coherence to liberal articulations of human rights. While human rights norms work to protect the human body from injury and harm, the standard of dignity, I argue, also contributes to an idealized, purified conception of human embodiment. Moreover, dignity as a standard is consolidated by images of violated and broken bodies. As such, this paper considers how the premium on dignity smuggles in an array of foreclosures and exclusions. In contrast, I maintain that a formulation of human rights that instead “takes embodiment seriously” might better remedy those inequities, and I develop a phenomenological account of social justice as a means of evading and surmounting many of the impasses that current trouble dominant discourses of human rights.

4.9 Rethinking National Boundaries and Borders

David Louk

Rights Beyond Borders: The Nation as Imagined Community and the Problem of Global Ethical Obligations

This paper addresses the role of the nation as imagined community in instigating, constituting, and sustaining strong ethical obligations among citizens in cases of political, civil, and social rights. In recent decades we have observed widespread growth in support of human rights and individual entitlements backed by institutional arrangements at the national level. While many political theorists have argued for and against extending these commitments across borders internationally, I question whether the attempt to broaden such ethical obligations globally may undermine the very support for these obligations,

often taken for granted, at the domestic level. Many aspects of ethical obligations at the domestic level are essentially irrational yet sustainable through the myth of the nation-state as contingent community. Insofar as universal ethical obligations highlight the morally arbitrary nature of national sentiments, the push toward these duties may result in a countervailing political movement against these rights in the domestic case.

Kathryn Heard

Injuries, Boundaries, and Identities: Late Liberalism's Troubled Obligations during the War on Terror

Taking the foiled bombing of Times Square as its departure, this paper critiques liberalism's usefulness as an organizing principle. I argue that when threatened with harm, the establishment of discrete identities emerges as a rhetorical tool through which liberal states and their representatives mount defenses. Caught between universalism in their principles and particularism in their practices, endangered states emerge as ideologically bound to expansive notions of inalienable rights even as they impose fixed cultural identities onto their constituents in order to delimit who may claim such rights. This tension compels Western states not only to open their borders and recognize those desiring entry as inherently worthy of admittance, but also to mark such persons as potentially dangerous to their continued existence. To move past this impasse, I forge an understanding of Western states and their subjects that privileges their intrinsic vulnerability and recognizes personal interconnectivity as their new social structure.

Ana Henderson

Identification Documents as The Border

In an era when immigration is understood as an invasion, physical borders between nations have diminished meaning in distinguishing citizens from non-citizens. Thus, when such borders are believed to be ineffective at preventing non-members' entrance, and when race is disallowed as an overt indicator of membership, the State employs other seemingly "neutral" methods to identify members and their recourse to certain rights and services. I contend that new laws requiring documentary proof of citizenship are supplanting reliance on physical borders to separate non-members from members: identification documentation is becoming "the border." In making this case, I will discuss three examples: (1) the REAL ID Act requiring states to include immigration status on ID cards, (2) the Deficit Reduction Act requiring individuals to prove citizenship in order to obtain public medical care benefits, and (3) state laws requiring individuals to prove their citizenship in order to register to vote.

Zachary Manfredi

The Political Theory of Virtual Sovereigns: Legal Paradoxes of Free Speech and Citizenship in the World of Web 2.0

This paper investigates the relationship between limitations on free speech and legal protections of citizenship in the light of the problems the Internet poses for jurisdictional norms. Many scholars initially envisioned the Internet as a borderless realm independent of speech-restricting laws of territorial-sovereigns. However, the rise of nation specific top-level domains, French hate-crimes litigation against Yahoo!, and Chinese censorship evince the power of national authorities to regulate Internet content. In light of these developments, Jack Goldsmith and Tim Wu critique the limitations of a "transnational Internet." I contest their hypothesis by drawing on insights from Michel Foucault, Carl Schmitt, and Bruce Ackerman to analyze how the Internet might extend protections of democratic citizenship to non-nationals. In particular, I examine cases of political dissent in Greece and Iran by citizens of those states using Internet technologies located in Western democracies to challenge the authority of their states to restrict speech.

4.10 Doing Time: Allegories of Temporality in Legal Domains

Sarah Burgess

In the Time of Law: The Problem of Judgment in Legal Recognition

In contemporary accounts of recognition--ones that mine the concept for its ontological and ethical implications--legal recognition becomes the exception. Authors posit that there is something different about the contours of recognition when practiced in and by law. This paper begins to address the absence of a theoretical consideration of this difference. It argues that legal recognition entails a form of judgment that betrays a temporal paradox: recognition serves as the ontological condition for legal judgment about who or what is to be recognized. In this temporal paradox, the power of law itself is called into question. Displaced, law exposes its discursive limits and opens itself to a critique that complicates the scene in which recognition takes place. To make this argument, I investigate the parliamentary debates surrounding the United Kingdom's 2004 Gender Recognition Act in order to draw out the implications of recognition for human rights discourses.

Stuart J. Murray

Incompatible Bodies of Law: Incarcerated and Mentally Ill

This paper is based on research conducted in the psychiatric Secure Treatment Unit of a medium-security Canadian prison. I examine the conflicts that arise when the Mental Health Act meets the Ministry of Correctional Services Act, and patient-prisoners are caught between temporalities of care and incarceration. While the Mental Health Act guarantees equal care for all citizens, including prisoners, this is a practical impossibility because the paramilitary laws that regulate correctional institutions supervene all others within the institution's walls. In Agamben's terms, the prison becomes its own state of exception, a zone of indistinction justified by the threat to public security. Within these walls, bodies are doubled: "patients" according to one law, "inmates" according to the other. But these bodies are doubled again, through the incommensurable temporalities of healthcare and mental illness, on the one hand, and of the inmate who "serves time," on the other.

Elizabeth Cohen

The Political Currency of Time in Immigration and Citizenship

Jus soli and jus sanguinis have been the traditional starting points for any discussion of birthright and state sponsored citizenship. Inextricably linked to any discussion of how citizenship is bestowed, achieved, or acquired, is a third element: that of time. This paper will analyze how specific dates in history, and durations of measured time serve a significant role in determining whether an individual or group will be considered citizens. The paper will consider topics ranging from the starting point of Anglo American citizenship law, Calvin's Case (in which people born before the union of the English and Scottish thrones were distinguished from those born afterwards) to the assumption of tacit consent at the moment of constitutional conventions, to amnesties granting legal status to people living in a country during specific time periods.

4.11 Murder Prosecutions in the 18th, 20th, and 21st Century

David Caudill

Re-evaluating the Attorneys in "Native Son": Max As Darrow And Buckley As Typical?

Is Richard Wright's cautionary tale for American Society a cautionary tale for lawyers? I want to re-visit the scholarship on the ethics of Max and Buckley, including (i) Wright's image of Clarence Darrow to construct Max as an emotional and ideological advocate, and (ii) the image of Buckley as over-the-top in terms of prosecutorial misconduct, in light of the recent NAS Report condemning prosecutorial misuse of forensic

identification techniques. What would a good criminal defense attorney in Max's shoes, or a good prosecutor in Buckley's shoes, do today in the trial of a contemporary Bigger Thomas?

John E. Stannard

Godly Jealousy, Righteous Anger and Loss of Self-Control

The focus of this paper is the perceived boundary between 'good' and 'bad' emotions, and the way in which it is reflected in the common law defence of loss of self-control in cases of murder. Jealousy and anger are now often seen in negative terms, but this contrasts with an older notion seen in the Bible and other literature, whereby such emotions can be both righteous and justified. Similarly, modern English law no longer allows the defendant in a murder case to rely on loss of self-control triggered by sexual infidelity, in contrast to the traditional doctrine where the finding of a wife in adultery was one of the few factors, short of a physical attack, that would allow the defence to be raised. The paper seeks to explore the parallels between these two developments, the aim being to cast light on the broader relationship between emotion and criminal culpability.

Andrea Stone

'The Ignominious Cord': Executing the Enemy in 18th-Century African American Print

The 1797 "Address of Abraham Johnstone, A Black Man, Who Was Hanged at Woodbury...New Jersey" implicitly questions the distinction between 'enemy' and 'criminal,' which the new government was meant to secure; it fashions the narrator as simultaneously both and neither. From the confines of prison on the eve of his execution for murder, Johnstone hybridizes the popular print genres of the execution sermon and criminal's dying words and casts the republic as a (necro)political order — its subjects as much in bondage as when under imperial governance. More than a critique of republican ideals and an exhortation undermining U.S. institutions of government, law, and slavery, Johnstone's work is also — if not more — a project of construction, of community and self-creation, just as he is about to die. The paper explores the relation between print representations of wrongful prosecution, actual execution, and the project of belonging and becoming.

5.1 Leaving Arizona: Human Smuggling, Border Walls, and SB 1070. How Arizona is leaving human rights behind and why the boycott of Arizona will not stop

Nicholas Daniel Natividad

Violence to the spirit: border walls and the separation of people

On June 12, 1987 United States President Ronald Reagan gave a speech at the Brandenburg Gate in West Berlin, Germany. The speech was aimed to bring attention to the divisive nature of the Berlin Wall. President Reagan's speech referenced the human rights violations the wall created for all humans who have the "right to travel." He described how the checkpoints, armed guards, barbed wire, and closed gates questioned "freedom for all mankind" and therefore the wall is a clear indication of "the will of a totalitarian state." On October 26, 2006 United States President George W. Bush signed the Secure Fence Act approving construction of a 700-mile border fence to be built along the U.S.-Mexico border. Bush stated during the signing "the bill will help protect the American people...we are the modernizing the southern border of the U.S." This presentation examines the racialized history of U.S. immigration laws and its relation to current political ideological propaganda and justification for border walls, immigration laws, and imprisonment of undocumented workers in Arizona. It seeks to uncover how Arizona has become a racist and totalitarian state.

Gabriella Sanchez

Re-assessing human smuggling operations along the Arizona Mexico Border

Murderers, rapists; scam artists; high-ranking members of organized crime organizations. The persona of the human smuggler has been constructed into that of a criminal. While criminal and violent acts during undocumented border crossings do take place, the empirical work on the operations of human smugglers along the US Mexico Border that would allow to document their incidence is minimal at best. This presentation argues changes on immigration policy have impacted the community-based services smugglers used to provide, hence the changes on the structure of smuggling organizations. Immigration policy and legislation have played a role in the disruption of the local mechanisms that allowed for undocumented migrant transit, initially under the control of local families in some migrant generating communities. This disruption led to the development of highly specialized smuggling activities along border regions – as well as new challenges, including having to deal with surveillance, militarization, and a pervasive anti-immigrant sentiment. This essay looks at some preliminary findings on the operation of human smugglers in Phoenix, Arizona, one of the main points of distribution of undocumented immigrants in the U.S.

Kishonna Gray

Public Response to SB 1070 as Moral Panic

Co-author: Arifa E. Raza, University of California Riverside

On April 23, 2010, Arizona Governor Jan Brewer signed into law a controversial piece of legislation in an effort to tackle the issue of illegal immigration. Many individuals made their thoughts public about the bill with comments posted on internet news sites in the days leading up to its passage. It was immediately evident that the public outcry was exaggerated hinting at a moral panic. Employing a qualitative media analysis, this research note examines the elements of moral panic and how the themes emerging from comments posted on internet articles fit within moral panic. Specifically, we collected comments from articles that were published online by the Arizona Republic, Arizona Daily Star, and the New York Times between April 14th and April 23rd. This time frame represents the day that the bill was introduced until it was signed into law. We did not examine the content of the articles, just the comments posted in response to the article. The few articles generated thousands of comments as we identified over 3,000. We then randomly sampled 300 comments in order to assess whether the themes associated with the articles reflected moral panic.

5.2 Reimagining the Boundaries of Intellectual Property

Irene Calboli

GI Imagination and the Rethinking of IP Boundaries for Cultural Expression

Shontavia Johnson

No Pictures Please: Mardi Gras Indians, Copyrights, and the Bounds of Cultural Expression

Zahr Stauffer

The Ethics of Non-Fiction

This project concerns the epistemic nature of non-fiction writing, and the implications for legal regulation of such works. I turn to copyright and advertising law to try to answer the question: should the law deal with non-fiction writing as art, or truth, or both? Copyright treats nonfiction differently from fiction: protection is “thinner” for non-fiction, the more closely it tracks actual events. A line of cases shows that the law strives to prevent overprotection of accounts of historical importance, for example, to ensure that future authors will be able to offer other accounts of the same events. In other words, copyright on some level distinguishes “truth” from “art.” From Burrow-Giles through the recent *Mannion v. Coors*, copyright case law reflects that distinction by stressing that the more artistic choices an author makes in the creation of a work, the greater the likelihood that copyright protection will attach. Yet choices that lead to heightened artistic aspects to the

work might in theory diminish the work's status as unvarnished "truth." Indeed, in the recent controversy surrounding James Frey's fictionalized memoir, *A Million Little Pieces*, the author was publicly excoriated on the Oprah television program, and subjected to a class action lawsuit, for having invented many of the details of the account he published under the label of non-fiction. Some details were more substantive than others, and ranged from whether he had actually suffered and recovered from substance addiction to the extent described, to whether he had been arrested and served time in prison in the manner described. But other details were more minor, such as Frey's having gotten the color of prison inmates' uniforms wrong. The matter was settled out of court, but the complaint is instructive: it suggests that various causes of action sounding in tort and common law fraud can conceivably attach to works of non-fiction, based on the contents and form of the work, and based on the sorts of claims publishers and authors make about a work. Turning to advertising law, I examine theories of materiality, typicality, and substantiation to investigate the status of non-fiction on a theoretical level. What do, and what should, consumers expect when they purchase a work of non-fiction? Should the label "non-fiction" determine the legal standards to which the work is held, and if so, might we expect fewer works to be labeled thus, just as, inversely, after *Campbell v. Acuff-Rose*, more works could be labeled "parody" so as to benefit from parody-friendly copyright jurisprudence?

5.3 Marriage, Family and Equality

Cary C. Franklin

The Traditional Concept of Sex: Sex Roles and Title VII

When courts exclude various forms of sex-related discrimination from coverage under Title VII, they often justify the exclusion by reference to history. Courts assert that the legislators who enacted Title VII conceived of "sex" in narrow, biological terms and that contemporary plaintiffs seeking protection against discrimination based on factors such as breastfeeding or sexual orientation are broadening the definition of sex in a way that would have been inconceivable in the 1960s. My paper challenges this historical narrative. Because work, sex and family roles were so intertwined at the time Title VII was enacted, legislators—as well as the media and the women who filed early sex discrimination claims—viewed the statute as a significant intervention in social, sexual, and domestic life. Thus, I argue that fidelity to the past in the context of Title VII does not mandate the narrow definition of sex courts often adopt in the present.

Melissa Murray

Rights and Regulation: What Perry v. Schwarzenegger Should Say

In *Perry v. Schwarzenegger*, U.S. District Judge Vaughn Walker struck down California's Proposition 8 as an unconstitutional violation of the right to marry. Most expect that *Perry* will reach the Supreme Court. This Essay contends that the Supreme Court's decision in *Perry* (or a similar case) should go beyond determining whether the marriage right includes the right to same-sex marriage, and instead should clarify the nature of the marriage right. Marriage is not solely about access to an institution, but rather about access to an institution that, along with criminal law, has been totalizing as a tool for state discipline of sex and sexuality. Taking seriously *Loving v. Virginia*'s mandate for "the freedom to marry, or not marry," this Essay argues that *Perry* should go beyond the question of marriage equality to affirmatively identify and preserve a space for sex and sexuality beyond the regulatory reach of the state.

Patricia Seith

A Credit History: Emancipating the Financial Identities of Married Women

When U.S. Representative Geraldine Ferraro took office, she applied for an Eastern Airlines credit card for her travel to Washington D.C. Despite years working as an attorney, election to Congress, and even assignment to the House Aviation Subcommittee, Eastern Airlines denied her application because of insufficient credit

history. Representative Ferraro discovered that by marrying, she forfeited her financial identity and was still a feme covert in the marketplace. Feminist advocates fought for and achieved a “right” to a credit history – credit bureaus must maintain separate credit histories for married women. Yet, even though having a financial identity was a necessary precursor to women’s market participation, this reform has received little attention in the narrative of the second women’s movement. This Article posits that the emancipation of women’s financial identities from their husbands marks a critical turning point in history in which women were enabled to participate “uncovered” in the marketplace.

5.4 Representing Law in Victorian Literature

Sarah Abramowicz *Nature, Nurture, Narrative, Law: The Wellesley case, Oliver Twist, and the Victorian Anxiety about Parentage*

The success of Charles Dickens’s *Oliver Twist* heralded the popularity in Victorian England of a new type of novel that traced the experience of displaced child protagonists as they found their place in the world by working out their relationships with a series of parents and parent-figures. At the same time, the newly prominent field of English child custody law began to articulate why and how parentage matters for a developing child. An examination of one of the first highly publicized English child custody disputes, *Wellesley v. Beaufort*, will bring out some of the concerns about childhood and parentage at work in *Oliver Twist*, and in so doing will assess why stories of children and parents became prominent in the Victorian age, and why the novelistic versions of these stories so often intertwined attention to childhood experience with attention to law.

Sara Murphy *Sensational Justice: Representing Law in Mid-Victorian England*

In this paper I want to investigate some of the relations between law and Victorian “sensation,” intending by this latter term both the subgenre of fiction and the well-publicized legal proceedings that those fictions frequently riffed on, repeated, referred to and fictionalized. What I want to argue is that an exploration of at least some legal and literary sensations provides intriguing insight into the place of law in an era of legal reform. While M.E. Braddon’s *Lady Audley’s Secret* (1862) and the popular support for Arthur Orton in the Tichborne case not long thereafter both interrogate law’s capacity to organize and define identity—and do so precisely in a way that interrogates the law as positivist system—they also suggest that “sensations” incur remarkably different ideological and political investments. Taken together these two instances, one fictional, one consisting in a pair of lengthy trials, form a kind of constellation through which become perceptible not only dimensions of the popular mediation of law in nineteenth-century England but broader questions about the relations between popular sentiment, identity, and power.

Katherine Anne Gilbert *The Boundaries of Character: Lawyers in Dr. Jekyll and Mr. Hyde*

This paper considers lawyers in *Dr. Jekyll and Mr. Hyde*, a novel narrated by a solicitor. Lawyers emerge in later nineteenth-century English novels as boundary crossers, figures who continually move between state institutions that implement the law, and the individual or family in need of legal guidance. Shunned because his understanding of the inaccessible legal system makes him an extension of the system and thus suspect, he is also needed because it is this very knowledge that guides the family in working through legal dilemmas. Here I theorize “character” as an ethical and literary concept. Both, I suggest, depend upon boundary crossing: movement between private domestic spaces

and public and institutional domains. Stevenson draws our attention to these splits by making character division literal: enemies Jekyll (Doctor of Law) and Hyde help us to see that as Victorians slid into the twenty-first century, understandings of the “self” became increasingly fractured.

5.5 Legacies of the Civil Rights Movement

Jacob Daniel Kang-Brown

Reconstructing Hate Crime Law: Racism, Abolition and the Thirteenth Amendment

Recall before the U.S. civil war, when the Frederick Douglass described the ripening “fruit of abolition” which haunted slave-owners. Still today, however, abolition has not removed the structures of the slave-owner’s power, and the “badges of slavery” (Harlan, Civil Rights Cases) remain long after emancipation. In the words of Justice Douglas in 1968, continued racism appeared as “a spectacle of slavery unwilling to die.” This essay departs from the Thirteenth Amendment and Federal Hate Crime statutes in order to reflect on abolition and liberal regulation of racism in the law. The politics of race, present in both radical reconstruction and contemporary hate crime law enforcement against street gangs in Los Angeles, gives rise to questions about the nature of freedom implied by abolition. The conclusion takes Alain Badiou’s schematic definition of freedom from and develops a political agenda based in the abolition, not mere criminalization, of racism.

Kenneth Stahl

The Community and the Zone: Competing Conceptions of Neighborhood Identity in Land Use

This paper uses a framework developed in the 1920’s by the Chicago School of Urban Sociology to examine a key paradox in modern American land use law. Current doctrine treats urban neighborhoods as malleable objects of government power while simultaneously treating suburban neighborhoods as inviolable. According to the Chicago school, the modern city had transformed urban neighborhoods from insular ethnic communities into porous, infinitely manipulable “zones.” While the Chicago school writers considered this a laudable trend because it would spur assimilation among the growing immigrant population, they also lamented the decline of moral authority represented by the ethnic neighborhood. Thus, they sought to revive the notion of “community” in the pastoral settings of the suburb. Modern law reflects this duality. Courts use the rhetoric of assimilation to deny urban neighborhoods any entitlement to protect their character, while legitimizing suburban autonomy by associating the suburb with the values of community.

Kirstine Taylor

Southern Exceptionalism or New South?: “White Trash” and the Politics of Southern Modernization, 1944-1969

Recent scholarship in race and American Political Development has emphasized the emergence, in the post-World War II decades, of the “New South”—which came to signify a newly politically moderate, modern, and racially progressive Sunbelt region. Concurrently, critical race scholarship has labored to expose the myth of “southern exceptionalism,” or the notion that the South is a uniquely racist region in an otherwise progressive nation. This presents a dilemma: how did the myths of southern exceptionalism and the New South come to exist simultaneously, and what does their co-existence say about the state of contemporary racial politics? Drawing on primary documents and historical work, I use the concept of “racial time” to trace the emergence of the New South. Specifically, I track the uneven white entrance into southern modernity through the diverging southern identities of “white trash” and white moderates in relation

to the postwar values of modernism and racial progress. In so doing, I seek to not only explain the prevalence of two seemingly incongruent myths that continue to hold sway today, but also to explain their relation to the enduring prevalence of white racial innocence.

Bret Asbury

Strategic Affirmative Action

The constitutional aspiration that all citizens be treated equally—that is, without regard to genetic characteristics—has long posed a challenge to advocates of affirmative action programs, which, in their most basic form, advocate privileging underrepresented categories of citizens—particularly women and people of color—in the context of admission to, and hiring within, selective institutions and organizations. Though steadfast principles of non-discrimination on the basis of gender or race have emerged as a cultural norm, the desire to privilege women and people of color in certain selective processes persists. The justifications for such privileging have been numerous, but those currently most prevalent tend to focus on either righting past wrongs (that is, combating past discrimination against women or minorities by presently privileging them) or promoting diversity, which has been recognized by the Supreme Court as a legitimate government interest. Nonetheless, resistance to affirmative action programs remains pronounced and, from the standpoint of both basic notions of fairness and the Constitution, at least to some extent justified.

This article argues that contemporary affirmative action efforts aimed at including women and people of color in selective settings are best understood as neither altruistic endeavors designed to right past wrongs nor merely promoting diversity for diversity’s sake, but rather as the rational response to prevailing market forces. Though the underlying reasons are debatable and problematic to many, it is clear that in contemporary society a non-diverse student body or workforce can, and often does, have a negative impact on a given institution or organization. The current marketplace demands diversity within all selective settings, and an institution or organization lacking a reasonably diverse membership will suffer as a result. Accepting that the inclusion of once-excluded and currently underrepresented populations is now strategically advantageous—and hence part of any institution’s primary objective of promoting its best interest—affirmative action programs no longer raise many of the constitutional concerns they once did.

The recognition that enhancing diversity is imperative for strategic reasons requires institutions and organizations to factor in genetic characteristics in shaping their membership in order to promote their best interest. Building on this observation, this article argues that the promotion of diversity via affirmative action programs should no longer be viewed in the main as crudely (and possibly unconstitutionally) advantaging certain groups over others, but rather as a manifestation of a rational, market-based effort aimed at securing strategic advantage.

5.6 Session Cancelled

5.7 Interrogating International and “Other” Tribunals

Eric Sapp

Crisis Society and Its Dialectic of Insecurity

A crisis society is not necessarily a society IN crisis. Rather, a society OF crisis is characterized by the tendency to utilize perceived crises for the stabilization of its order. Still, it may be said that any security apparatus is based on an underlying terrain of insecurity and that, often, it serves to produce more of this being-otherwise-than-secure. Does such a regime of insecurity render the society of crisis fundamentally unstable? How can law, dependent as it is on virtual realities of force as much as it is on ideals of

justice, provide a nonviolent way out of the crisis society? A critique of the U.S. Supreme Court's recent Humanitarian Law Project decision will bring into sharper focus the counterproductivity of the ideology of counterterrorism, a key part of the contemporary insecurity regime.

John Strawson

Waging Law: The Trials of Tony Blair

The publication of Tony Blair's memoirs (*A Journey* 2010) in the summer of 2010 renewed media accusations that he was a "war criminal" for leading an "illegal" war in Iraq in 2003. Within sections of the British press the view that the Iraq war was illegal is taken as a given from which follows the conclusion that Tony Blair must have criminal responsibility for it. This paper will seek to interrogate the character of this discourse and in particular focus on the emergence of a popular version of international law. This will be framed within the problematic of the results of postmodernism which has transformed all values into relative values which has seen decomposition of ideology, ethics and especially in Europe, religion. Edward Said warned that postmodernism would "transport [intellectuals] into the country of the blue; an astonishing sense of weightlessness with regard to the gravity of history" (*Culture and Imperialism*, 1993) I will argue that this process has seeped into popular discourses and that the attachment to international law is an attempt to find an apparently solid basis to judge the actions of politicians against the fragility of ideology, politics or ethics. Through a textual analysis of journalists, and readers letters I will seek to show how the almost obsessive assertion of this popular legality marks a new moment our understanding of law as part of culture.

Scott Johnson

The Enemy? Ways of Viewing the Special Tribunal for Lebanon

Located in a quiet suburb of The Hague, the Special Tribunal for Lebanon's mandate is to prosecute those responsible for the assassination of former Lebanese Prime Minister Rafiq Hariri and 22 others in 2005. It was created by an agreement between the Republic of Lebanon and the United Nations. As the first international criminal tribunal created to prosecute the crime of terrorism, how will it fulfill its mandate of justice while not causing a civil war in Lebanon? Is the STL a legitimate institution? How is it viewed by different audiences in Beirut and beyond? What will be its legacy to international law? These questions are central to our understanding the direction of 21st century international justice.

Theresa Phelps

Prophetic Litigation: The Communicative and Symbolic Functions of International Tribunals

The last decade of the twentieth century marked a critical milestone for women: the international legal community had, finally, prosecuted rape as a war crime in trials at the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for Yugoslavia (ICTY), and in the Special Court for Sierra Leone.

I take a position counter to some feminist activists who believe that we should be grateful that rape is being prosecuted at all. I argue that in the trials against sexual violence against women, we are or should be engaged in "prophetic litigation"; the international tribunals, both the ad hoc ones for Rwanda, the former Yugoslavia, and Sierra Leone, and the new International Criminal Court, function in important symbolic and communicative ways. These trials are not just about punishing perpetrators; they are also about redefining the meaning of rape in wartime.

Jill Stauffer

The Experience of an Extreme Loneliness: Amery, Levinas, and Life After Torture and Internment

The following question has been much discussed in recent years: What place does forgiveness have in law, and what role can it play in political reconciliation after mass violence? The question persists due to the proliferating reasons we have to doubt that the form of the traditional legal trial can do justice to survivors' needs for testimony and reparation. Less attention has been devoted to the positive role resentment might play in reconciliation. Some theorists of forgiveness do argue that a person who feels no resentment, who forgives too easily, probably lacks self-respect. And yet discussions of reconciliation tend to valorize forgiveness and excoriate resentment. I'll take that as a background as I revisit Jean Amery's classic defense of resentment (and its complicated relationship with Nietzsche's ressentiment) with a view to theorizing what forgiveness in politics can be, what role resentment should play, and whether the demands of these two responses to violation necessarily contradict each other.

5.8 Crossing Borders

Lena Salaymeh

Historicizing Near Eastern Legal Culture

In both Jewish and Islamic legal studies, history is based on internal, 'orthodox' conceptualizations of law that identify certain texts as 'classical.' Scholars in both fields characterize particular generations of jurists as orthodox, their legal opinions as canonical, and all preceding or subsequent legal activity as inferior or derivative. In this paper, I argue that this problematic legal historiography is based on three interrelated misconceptions. First, I propose replacing the reification of religion that is prevalent in these fields with a historical and contextual understanding of societies. Second, I suggest that legal anthropological insights can broaden the definition of law used by scholars in both fields. Third, I advocate that a critical philosophy of historiography illuminates the limitations of linear, transcendental conceptualizations of historical change. Historicity destabilizes how these legal communities perceive their received legal traditions, illustrating that law is as muddled as culture - regardless of confessional identity.

Poornima Paidipaty

"Not measures but a man:" Anthropology, Tribes and Contractual Space

In the nineteenth century, large numbers of tribal workers were recruited from Chota Nagpur as indentured labourers for the tea plantations of Assam. Indenture was exacerbated by tribal indebtedness and the loss of agricultural land, spurred on by new colonial agrarian policies and military campaigns. And yet, 19th century claims about tribal "primitivity" were structured by the assumption that tribes—as the anachronistic remnants of an earlier moment in historical time—were unable to track and understand the effects of time itself. This paper will examine the formation of anthropology as a discipline, deployed along the internal frontiers of colonial conquest, and its entanglement in the manipulation of terrain and the juridical definition of aboriginal space. The paper will examine how contractual space, and its exception—the Scheduled District—both impacted race science in the subcontinent and the defined the zones of exclusion formed by colonial boundaries of conquest and pacification.

5.9 Good Girls (Bad Situations): Gender, Violence and Recovery in Popular Music and Mass Media

Annette Houlihan

Sisters Doing It Socio-Legally for Themselves: Legal Imaginations, Intimacy, Gender and Violence

Music videos are abundant with sexualised images of women, however these scenes also contain messages which speak to female empowerment, racial identity, belonging, displacement, and friendship. Music provides an outlet for women to speak, but also provides more fluid and complex contemporary socio-cultural discourses about relationships. Music videos also document the intricate negotiations women face when navigating legal responses to abusive relationships, which are often masculine, heterosexist and Eurocentric. Music may be a terrain for all women to challenge mainstream feminist ideals about intimate partner abuse, as well as highlighting the complex issues for reporting abusive partners within a wider context of the law's violence. This paper will examine how more complex representations of women challenge the restrictive socio-legal engagements with gendered violence and how these images increase dialogues about the law's role in reducing intimate partner abuse.

Sharon Raynor

From Performative Pretty Faces to Powerful, Provocative Proclamations: Reading the Body as Text

This paper will explore the paradox of silence and in/visibility with the hate, misuse/abuse, and neglect of the black/brown female body. Words, perception and images projected by/about women intersect with the person/personae and identity portrayed by those women who are conflicted between their personal identities and their performance identity. To answer the questions: who voices the conflict for the individual when the justice system does not and how provocative is this silence, whether it's chosen or inflicted upon them by others, examples will be drawn from the corrective rapes/murders of lesbian soccer players in South Africa, domestic sexual assaults and murders in Guatemala, the serial murders of black women in rural North Carolina to the domestic assault on pop music superstar Rihanna in order to completely examine how the hyper-sexualized images of women is not only a global phenomenon but is also profoundly fragmenting to their personal identities.

Harriette Richard

Global Views of Healing and Renewal

The silence of Rihanna, the music of Mary J and the distant nature of teenage rape victims are a few examples of the coping mechanisms grown from domestic abuse, partner violence and other types of physical or psychological violence against women. This section will explore those mechanisms (social support, disengagement, yoga, distancing, loneliness, etc.) used by women of various nationalities and ethnicities around the world consciously and subconsciously. It will explore the impact those mechanisms have on the individual and society and how those symptoms are a result of individual and societal pressures.

5.10 Food and Law: Where's the Beef?

Bret Birdsong

Expanding the Values on the Food Law Table

Food Law as reflected in traditional legal scholarship reflects a traditional and narrow set of values. These values stem from two basic facts about the role of food in 20th century America -- first, food's emergence as one of the largest sectors of the consumer economy, and, second, the growth and consolidation of food production into a fully industrialized system. In the context of these emergent facts, food law came to reflect values of progressive-era government intervention to correct market dysfunctions (e.g., food safety

laws) and commercial and regulatory rules to promote commodification of food production (e.g., Farm Bill subsidies). It also came to reflect many of the warts of those paradigms, too, including agency capture, and the crafting of legal rules that cement the hold on power of major producers. But food is so much more than that -- and so should be food law. This paper will explore how food choices (both individual and collective) ripple throughout our many faceted and increasingly globalized world, with an emphasis on environmental, health, political, and health consequences of the modern food system. It argues that the enterprise for legal scholars should be to explore the interlinking web of law and food, taking into account the wide array of values that food and food production systems implicate, and suggest improvements that can help to transform the system into one that is more balanced, just, and sane.

David Cassuto

Owning What You Eat

Industrial agriculture has refashioned animal husbandry into a mechanized process that ignores historic methods of human/nonhuman animal interaction as well as ethical mores. Factory farms – cloaked in the mantle of efficiency – have become deeply entrenched despite clear evidence of their unsustainability. This intractability results from a flaw inherent in the role of efficiency in society. Not only is efficiency an amoral concept that has nevertheless risen to the status of moral good, but those who lionize it routinely exclude externalities from their calculus. Consequently, using efficiency as an ethical barometer is flawed both hermeneutically and practically.

It should never have acquired a normative aspect and it should never have been defined to exclude externalities. The upshot of this double mistake is that the prevailing mode of human/animal interaction is unsustainable (inefficient) and ethically bankrupt. This paper offers some thoughts on how to reframe that interaction and the legal system that enables it.

Sam Kalen

Making Food Part of Environmental Law

Many external factors are forcing an ever-growing dialogue about the “substance” or essence of environmental law. For years, scholars have debated, essentially among themselves, the question of what is environmental law. And today, the academy must confront whether the traditional understanding of “environmental law” reflects the evolving nature of “environmental law” in practice. The threat posed by rising greenhouse gas emissions already has forced environmental law scholars and practitioners to become acutely interested in energy policy and law, to the point that “environmental law” now encompasses energy—at least writ large. New law reviews, for instance, combine energy and environment, and the same is becoming true for centers and institutes in schools across the nation. But as the lens of environmental law expands to focus on energy, it generally still remains myopic. Indeed, any modern conversation about environmental law must embrace, to a much greater degree than it has so far, the world’s population increase, changing demographics (for the first time, the majority of the population now live in urban centers), and rising affluence and cultural change (including eating habits), each of which dramatically affects GHG emissions, environmental policies as well as energy use and/or development.

One common thread that ties each of these areas together is the almost complete disassociation of people from place. This is transformation that is product, in part, of the modern-day agricultural and food system that facilitates population increase, changing demographics and rising affluence and cultural change. This paper explores how our environmental policies have contributed to this unintended consequence, by encouraging policies that remove people from place, and how our agricultural and food system too has promoted this transformation, often with little appreciation for the external environmental

effects. The paper concludes by explaining how agricultural and food policies must become topics within environmental programs, and why our present approach to environmental law, including our limitations on creative state and local programs, requires critical re-examination.

5.11 Reading Justice and Mercy? The Literary and Legal Imaginations

Jonathan Rothchild

Demanding Justice: Dante, Mercy, and Reconceptualizing Punishment

Jonathan Rothchild contends that legal considerations of punishment would benefit from literary, philosophical, and theological reflections on the meaning of justice, mercy, and human dignity. Rothchild begins with a close reading of Dante's *Inferno*. Though Dante is sometimes read as envisioning an implacable and deterministic justice, Rothchild argues that the text provides a nuanced perspective on individual desert and the meaning of divine justice through its allegory and Scriptural themes. Rothchild contrasts these ideas with the principally proceduralist approach that informs many contemporary views of punishment. Engaging the work of philosopher Paul Ricoeur and theologian Margaret Farley, Rothchild argues that punishment must reflect the mediation between the particulars of the individual offender (and not solely the gravity of the offense), universal claims about justice and fairness, and the values of the community. Though mercy remains an extrajudicial entity, a place for mercy does not destabilize social and legal order.

Joan B. Gottschall

Just Desert: Accounting for Individual Differences in Judicial Deliberation

Judge Joan Gottschall will discuss the confusion of mercy/empathy/compassion with a kind of justice which really looks closely at the factual differences between cases. In contrast to much federal law and its emphasis on equality in sentencing, she argues that judicial evaluation must attend more carefully to individual persons and their actual blameworthiness. Gottschall juxtaposes the characters of the Duke and Angelo in Shakespeare's *Measure for Measure*. Whereas the latter represents a blind obedience to the law (as well as the duplicitous implementation of it), the former embodies a wider conception of justice that integrates social concerns (in this case, the pleas of Mariana and Isabella to spare Angelo's life) in arriving at a judicious judgment. Gottschall then connects the insights of the text with the work of current legal theorists, who defend desert as distinct from, but related to mercy.

Michael J. Kessler

Mercy, Law, and Higher Justice: Insights from The Merchant of Venice

The *Merchant of Venice* is often thought to represent the triumph of the Christian idea of mercy operating in the law over Hebraic formulaic justice through the letter of the law, thereby continuing an old idea of Christian supersessionism. Yet the true loser, Kessler argues, is the Venetian law, diminished as an earthly and dull instrument in the face of divine mercy. Portia, in disguise, outwits Shylock's literal demand for satisfaction of his contract, by pointing to a higher justice--mercy--that is on her account beyond the force of temporal power. Mercy is above this sceptered sway of the dread and fear of kings. As such, mercy called from the heavens, is too pure for application in legal proceedings and Portia and Shylock's debate recreates a 'two kingdoms' approach to justice, relegating mercy beyond the grasp of the strict court of Venice.

6.1 State of Political Discourse Roundtable

6.2 Food, Law and Culture

Charlene Elliott

Governing taste: Food marketing, inscription devices and children's perspectives on nutritional regulation

The childhood obesity epidemic has prompted various regulatory measures when it comes to food marketing to children—from the industry-driven *Children's Food and Beverage Advertising Initiative* and San Francisco's attempt to eliminate toys from McDonald's Happy Meals, to the World Health Organization's (2010) *Set of Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children*. Yet the governance of taste operates in more common (and portable) places and spaces, and this paper will examine the various inscription devices on children's packaged foods, as well as their significance to children's perspectives on nutrition. "Taste" in child-oriented packaged food is regulated in various ways, from nutrition facts tables and front-of-pack claims to package appeals and iconography. I will detail how a dueling set of inscription devices characterizing these products—one around health, the other around fun—complicates children's theories of health and nutrition.

Andrea Freeman

Food Oppression

Food oppression arises where a lack of true choice in what we eat conflicts with the political and social fallacy of personal choice that drives the American ideology of individual, merit-based achievement. In the context of food, meritocracy translates into a system that blames the sick for their illnesses and disregards the reality of lack of access to healthy foods and lifestyles confronted by many low-income communities of color. Government policies such as subsidies and regulatory breaks to food industry giants reflect collusion that inflicts and sustains food oppression along race and class lines, without meaningful legal recourse.

New evidence suggests that the food industry knowingly exploits physical reactions centered in the brain that compel hyper-consumption of sugar, fat and salt. This consumption leads to grave health problems, including diabetes, obesity, and heart disease, all of which are disproportionately present in communities of color. So far, the government has resisted breaking its ties with the food industry to regulate the production and marketing of dangerously unhealthy foods, and courts have refused to treat food like tobacco to find liability in product liability cases. With the salience of new literature revealing the deleterious effects of certain foods and the complicity of the food industry, however, the media may now be posed to lead a successful movement to compel accountability from both the government and the industry. This paper analyzes the potential influence of recent contributions to public awareness and suggests reform that will both acknowledge and reduce food oppression.

Ernesto Hernandez-Lopez

LA's Food Truck Wars and Culture: between quality of life, unfair competition, and identity

This paper examines the legal and cultural contexts behind Los Angeles' regulation of food trucks, including taco trucks, i.e loncheros, and recent food trucks selling fusion and gourmet options. Regulation forces argue that vendors unfairly compete with restaurants, congest sidewalks and streets, are unsanitary, and diminish urban quality of life. Anti-ordinance forces argue that vendors provide affordable and quality food, rejuvenate public space, fairly compete with size and open-air limitations, and represent migrant and hybrid cuisines. This presentation argues that food truck debates represent heated contests about food, local culture, business practices, and identity. Legal narratives emphasize

police power, statutory construction, unfair competition, health and sanitation, and individual rights. The paper examines East LA's "Taco Truck War" of 2008, current West LA contests, and national food truck fervor. It concludes that the simple act of buying or selling street food comes with a large plate of competing cultural values.

6.3 Custom, Code, and the Common Law

Anne Sappington *The Common Law Mind Abroad: Comparisons of English and Irish Legal Antiquity in the writings of Edmund Spenser and Sir John Davies*

This paper focuses on the writings of two early modern English bureaucrats in Ireland: Edmund Spenser and Sir John Davies. In it, I analyze the antiquarian interests in Irish brehon law and English common law shared by Spenser's *Veue of the Present State of Ireland* and Davies's *First Report and True Cause Why Ireland was Never Entirely Subdued*. I argue that this preoccupation allowed both men not only to consider the potential of English common law as an instrument of "civilization" in Ireland but also to test the social merits of common law against the potential benefits of brehon law. Finally, I propose that both men used their comparisons of the English and Irish legal systems to assess common law's relationship with both ancient English custom and natural law.

Olga Soloveiva *Can Common Law Be Kafkaesque?*

"The Trial" is an inexact translation of the German "Der Prozess," literally "procedure". This famous novel written by an insurance lawyer is nothing other than a narration of judicial procedure in Roman law. The eerie nature of Kafka's narrative results from its bureaucratic nakedness: as if the Rules of Judicial Procedure were going forward on their own without any actual cause of action. Joseph K's adventures on the way to his demise are expressly external to the unfolding of the set of rules, which he follows as blindly and abstractly as his own name (reminiscent of textbook exercises) suggests. I ask a hypothetical question: what would Kafka's narrative have looked like if the legal pattern informing it were based on common law? This hypothetical rewriting of Kafka's novel is a device that foregrounds the major narrative differences between the Roman and Common Law and their cultural and political implications.

6.4 The Theater of Law

Jacky O'Connor *"My, but you have an impressive judicial air!": Tennessee Williams Encodes the Law*

When Stanley Kowalski announces that in "Louisiana we have the Napoleonic code according to which what belongs to the wife belongs to the husband and vice versa," he invokes state law in the first of a series of challenges to his wife's sister Blanche DuBois. The dramatic struggle that plays out in a French Quarter apartment in *A Streetcar Named Desire* ends with Stanley expelling Blanche from the premises, backed by yet another Louisiana code, one that empowers him to commit a relative to the state mental institution. Unlike fellow Southerner William Faulkner, however, Williams would appear to have scant knowledge of or interest in the law, the codes tested or tried in his drama more likely social or cultural than legal. But an explication of *Streetcar* alongside the examination of select Southern civil and criminal statutes demonstrates that the play's conflict is equal parts poetic and political.

Renee Newman Knake *How Theater Illuminates the Law: Revisiting NAACP v. Button Through Music History*

This paper explores ways that art—in particular drama and the theater—illuminates the law by examining the lessons Sandra Seaton's play *Music History* offers to the contemporary audience about the Supreme Court's decision in *NAACP v. Button*, a case decided in 1963, the same year the play is set. The *Button* case established for the first

time that the NAACP's assistance to individuals in the enforcement of constitutional and civil rights is protected by the First Amendment. Seaton's Music History inspires and cultivates our capacity to appreciate Button's significance by connecting us to the humanizing story of Etta and Walter, revealing circumstances where law fails, and ultimately demanding that as we remember the music history we not forget the legal history of the civil rights era.

Mary LaFrance

The Disappearing Fourth Wall: Ethics, Law and Experiential Theatre

The cutting edge of experiential theatre blurs the lines between performer and audience. Both the performer and the audience are vulnerable. A single audience member may be alone with a performer, who may engage in verbal abuse or other provocative or shocking behavior, including touching. The performer may invite similar conduct from the participant. Typically the participant does not know in advance what will take place, and does not sign a waiver. While the performer has a script or a set of instructions, the performer knows nothing about the mental or emotional state of the participant, and thus undertakes some personal risk as well. Some audience members have reported anger, hurt feelings, and/or a sense of violation or betrayal. In one instance, a performer was pursued by a stalker as a result of a particularly intimate production. My article explores the ethical and legal issues raised by such boundary crossings.

Bradley Hays

Popos and Soldiers in the Game: Multiple Nomoi in The Wire

Robert Cover suggests that law can serve as a bridge between the world-that-is and the worlds-that-might-be. Law is more than government sanctioned norms, it is also alternative norms embraced by a discrete community, which governs their actions in pursuit of the good society. Law, then, is not just an institutional construction enforced by state violence, it is what communities believe and the corresponding way they structure their behavior. In this paper, we argue that the acclaimed HBO series, *The Wire*, portrays multiple nomoi outside of the positive, black-letter law. The respective socio-legal, normative universes are formed for distinct purposes but interact and structure the development of one another. We further argue that while the various communities in *The Wire* foster their own socio-legal, normative universes, these nomoi are in keeping with narratives constitutive of their particular version of the American dream. (Co-author: Kenneth Aslakson)

6.5 Forging of Identities and Citizenship

Jennifer Ball

Permeable 'Zones of Privacy': Griswold as both a conservative and liberal ruling of the US Supreme Court

Due to the rise of consumer culture, a new normative of non-procreative sexuality, and shifting gender norms the legal boundaries of normative behavior were in need of revision less the laws covering such matters be viewed as dead letters. *Griswold v. Connecticut* has been interpreted as both a liberal and conservative ruling. This paper argues it was both at once: intended to be conservative by granting privacy to married couples, it held the seeds of liberalism in its rationale for protecting this privacy. The ruling's concept of privacy deprivileged a rigid understanding of normative citizenship as procreative reproduction of the state. Thus the ruling helped to redefine normative citizenship as the reproduction of the state through the consumptive-productive framework of American consumer culture. In other words, *Griswold* rendered the boundaries of normative behavior as permeable rather than fixed.

Jessica Lake:

Privacy, “pretty portraits” and patrolling the boundaries of the visible in late nineteenth/early twentieth century America

The breaking down of the boundaries of the visible that occurred in the nineteenth century through the development and proliferation of various optical technologies necessitated a doctrine of law able to reinscribe what could and could not be seen and by whom: privacy. Other legal instruments already existed to patrol the limits of the person (assault/battery), real property (trespass) and the fruits of one’s creativity (copyright), but photography and cinema threatened to parade one’s “form and features” to the world. The “likeness” of an individual could be lifted with relative ease from its possessor and rendered with uncanny precision upon material. This fracturing of the subject into transportable, reproducible objects threatened the leakage and deterioration of identity, especially for women. At the same time, however, the ‘right to privacy’, by attempting to replace the crumbling boundaries of visual culture with legal restrictions, fostered a radical doctrine of quasi-property, according to women the ability to profit from their own public visibility.

Mary Zeigler

Enemies, Collaborators, and Inventors

Was *Roe v. Wade* a mistake? Many responding to this question rely on a particular historical account of advocacy group responses immediately after the decision. *Roe* is thought to have foreclosed any compromise, ensuring that competing groups would not listen to or work with one another. However, conventional historical accounts are flawed, because they assume that advocacy groups were merely enemies, viewing *Roe* as an asset or an obstacle. Instead, organizations also saw *Roe* as a political tool: a way of winning sought-after female or fundamentalist Christian recruits or of framing debate. In the political arena, organizations proposed competing interpretations of the decision, often listening to and borrowing from one another. This debate ultimately produced an important consensus: in political circles, *Roe* became what it is today—a decision about women’s rights.

6.6 Law, Culture and Gender: Mediating on the Magic of Professional Transformations

Christine Alice Corcos

Law, Magic, and the Glass Ceiling

Several other scholars and I have already pointed out a number of analogies between the practices of law and magic. I am now continuing that examination by looking at the boundaries and enemies faced by women professionals in both fields. Their portrayal in popular culture and their real life status reveal that in spite of decades of progress they still encounter limits to their ambition. How do they address these limits? In 2009, women made up thirty-one percent of the legal profession, and about 5 percent of professional magicians. This paper offers some observations that may explain the discrepancies in an organized way

Jennifer L. Schulz

Magic and Mediation: Films’ Transformative Women Mediators

Films reveal a mediation style that can be described as magical. Three women mediators in three different films will be examined and their magical approaches to mediation will be exposed. This approach to mediation, revealed in a Law and Film approach to three popular movies, is analogous to the transformative approach to mediation promulgated by Bush and Folger, but is also different in important respects. There is something extra-special, extraordinary, or even other-worldly about film’s women mediators and their ability to help others resolve their conflicts. One may even ask, are these women mediators good witches? Women mediators in three separate films appear to use magic, and just like transformative mediators, are successful in transforming the parties’ conflict interaction.

Peter Robson

Theatre and Developing the study of Law and Popular Culture

Coverage of legal themes within drama has not featured in academic discourse in the field of law and popular culture. This paper looks at the impact of theatre on these other areas. It traces the theatrical sources of a number of significant films on law and justice and seeks to provide a tentative taxonomy of theatre-based films as well as a guide to those works of “legal theatre” which have not been adapted for the screen. It examines the theatre-film work within the framework of adaptation theory encountered in literature/film discussions. This paper takes the opportunity to look in some detail at the theatrical roots of four major courtroom dramas – *Inherit the Wind*; *Witness for the Prosecution*, *A Few Good Men* and *Nuts*. It is hoped that this study will provide a stimulus for other scholars to consider different aspects of the relationship between film and the older art form.

Natasha De Lange

The Evolution of Professions for Women from Occupations for Women

The chief responsibility of the middle class 1950s woman was to endeavor to be, in both appearance and comportment, the perfect housewife. By the time young girls reached school-going age, much of what was to be their routine as an adult had already been modeled to them, and so the foundations for the perpetuation of this social arrangement had been laid. How has the changing nature of women's roles through World War II and since the publication of *The Feminine Mystique* manifested in modern times? The shift in focus from appearance to substance is an interesting one and is central to this discussion. In analyzing an interview with a female medical doctor who met Eleanor Roosevelt when she was invited to the interviewee's high school for a dinner engagement (during the period), this paper examines the development of female professional identity.

6.7 Legal Rhetorics of Domestic Violence

Elizabeth C. Britt

Listen Before Speaking: A Rhetoric of Advocacy for Victims of Intimate Partner Abuse

Feminist legal scholars such as Elizabeth M. Schneider have comprehensively documented the challenges women in abusive relationships face when they encounter the legal system. With little understanding of the dynamics of intimate partner abuse, legal actors (such as attorneys, judges, and juries) frequently ignore women's own sense of the dangers posed by abusers and rely overly much on legal solutions such as restraining orders. These problems are compounded in a system based on male standards of reasonable behavior. This paper theorizes a model of advocacy based on Krista Ratcliffe's notion of rhetorical listening, which requires attending not only to what a person says, i.e., the person's claims, but to the cultural logics that underpin those claims. Drawing on ethnographic research with a domestic violence training program for law students, the paper illustrates how rhetorical listening is an essential precursor to speaking effectively for those on law's margins.

Jennifer Andrus

Reliable Speech, Unreliable Speakers: The Legal Infantilization of Female Victims of Domestic Violence

In the US law of evidence, the hearsay rule excludes reported speech in third-party testimony. There are, however, many exceptions to the hearsay rule that permit the repetition of some kinds of utterances. This paper investigates the development of the hearsay principle in US Supreme Court cases in which the speech of either children or adult women is used as evidence. In particular, I analyze the ramifications of using precedents involving children's speech to measure and evaluate the speech of adult women who have been victims of domestic violence (DV). I suggest that when this is

done, the DV victim is infantilized, situated as an unreliable witness, and conceived of as an individual with abridged civil agency. This discursive act authorizes the legal institution to make decisions for the DV victim and reifies her, in legal precedent, as unable to speak for herself.

Suzanne Enck-Wanzer *Framing Domestic Violence Legally: Crime Metaphors in US Public Culture*

Social vocabularies regarding domestic violence often reinforce dominant disparities around the axes of gender, race, and class. This paper is situated within a broader research project analyzing characterizations of domestic violence in the news, Hollywood movies, and Violence Against Women Act debates since 1990. Ultimately, this paper explicates how metaphors rooted in criminality guide contemporary understandings of domestic abuse. Informed largely by feminist jurisprudence scholarship (e.g., Elizabeth Schneider), this paper reads crime metaphors as reinforcing troubling narratives of neoliberalism. Configured as such, domestic violence is situated as identifiable (physical) acts against particular women (primarily wives) for which particular men (typically men marked as deviant) are held accountable. Framed in this way, abusive men take center-stage, but are themselves removed from structures of masculinity and nationalism through their raced and classed criminality.

6.8 Rethinking the Enemies of Intellectual Property

Steven A. Hetcher *Facebook and the Push for Norms of Anonymity*

Llewellyn Joseph Gibbons

We Have Met the Enemy, and It Is the U.S.: Copyright Owners are Their Own Worst Enemy

Liam S. O'Melinn *The Relationship between Copyright and Culture*

6.9 Forging Justice in Spaces of Uncertainty

Rebecca Johnson *Religion, Sexuality, and Longing in Tony Kushner's "Angels in America"*

In this paper, I will explore the weaving together of sexuality and religion in the HBO version of Kushner's play "Angels in America". The film, with its eclectic collection of (primarily gay male and straight woman) Jewish and Mormon protagonists, weaves a complicated tapestry in which we can see the playing out of desire – desire that is sexual, religious, and, indeed, political. But here I want to slip from the language of desire to the language of 'longing'. In this paper, I will reflect on what the film can help us see about sexual and religious diversity, by focusing on the role and the place of 'longing' -- of longing for something just out of reach (a lost lover, health, a relation with god, political power, family, friends, justice).

Marie-Claire Belleau *Minority Report: Judging the Space of Dissent*

In this article, we explore the relationship between gender, judging, and the place of judicial dissent through the cinematographic treatment of the film *Minority Report*. We draw parallels between the structure of the judicial system and the main characters and events of the film to better understand how the idea of 'dissent' is represented and gendered. (coauthored with Valerie Bouchard)

Maria Aristodemou

The Morning After the Death of God: Kant Avec Houellebecq

This paper will examine how law and literature have responded to the so-called death of God and what, in their different ways, they have tried to put in its place. In the manner of Lacan's Kant Avec Sade, the paper will juxtapose Kant's legal philosophy with French literature's contemporary *enfant terrible*, Michel Houellebecq. The paper will explore whether Kant's pure formal law can fill the endemic lack in the subject and in the symbolic order, or whether, as Houellebecq insists, the trouble is, it's just not enough to live according to the rules. What are the consequences of this ideational decline, better known in contemporary parlance as depression, for the legal subject? And are these consequences the same or different for subjects on different sides of Lacan's formula of sexuation?

Valerie Bouchard

Apples, Mussels and Chardonnay: The Boundaries of Knowledge

The organisation of knowledge is not a purely technical operation of indexation, but constructs the knowledge itself. Every researcher is caught in a Babel library that structures, limits and formulates the boundaries of what can be known. The index is the architectural plan of knowledge, the social design of our knowledge. In this paper, sharing examples from research into law-and-film discourses in French, I explore the spaces of uncertainty and possibility opened up by the integration of this knowledge into our habits of research and reflection.

6.10 Property's Futures

Eduardo Penalver

Land's Memory

Changes that human beings make to the land have a tendency to remain in place until they are affirmatively removed. This inertial quality of land uses has both a physical and a human dimension. Reinforcing land's physical memory is the oft-noted temporal dimension to human beings' psychological attachment to property. The inertial power of individual land uses is powerfully reinforced by their collective interdependence. Once in place, land uses presuppose and reinforce one another in ways that make it difficult to undo one piece without affecting many others. The interplay of these physical, psychological and social components of land's memory yields a powerful path-dependence in land use. These processes of attachment and path dependence are particularly pronounced when the land use in question is religious, and so disputes over religious sites take on a unique ferocity. In this paper, I will discuss the phenomenon of land's memory and its manifestation in disputes over religious sites through the case study of the bitter and bloody struggle over the site of the Babri Masjid, in Ayodhya, India.

Nomi Stolzenberg

Ghosts of Property: Reshaping the Future by Rewriting the Past Through the Establishment of Facts on the Ground

Creating Facts on the Ground is the ultimate presentist act. Like other forms of presentism, the creation of facts on the ground rewrites history - and in doing so, reshapes the future. By virtue of their supposed irregularity, facts on the ground constitute a state of exception with a temporal as well as a spatial dimension; states of exception are by definition temporary and extra-temporal. But if, as the theorists of political theology tell us, the temporary state of exception/emergency is itself permanent, then the distinction between the temporary and the permanent itself collapses, as do the conventional

distinctions between property and sovereignty, and the lines separating the future from the present and the past. This paper examines the complex temporality of property that emerges through an analysis of facts on the ground, where the origins of title are lost in the mists of history and the ghosts of property continue to haunt the present and the future.

Rebecca Ryder Neipris *Terroir-ism*

Identity is rooted in the land. We are what we eat, some say. If not identity itself, what we eat, drink, and wear--what we consume--at least identifies one of us from another. Hence the worldwide fight for the right to recognition. The sound of this war whispers through French vineyards and Ethiopian coffee forests, echoes around cheese caves and cacao tree groves, beats in the bleating of shorn sheep and the whirl of silkworms and the eventual clicking of the needles and the thrumming of the looms. The fronts on which this battle is fought are as encompassing as the issues with which it is fraught: cultural, ethnic, legal, national, religious, and so on. My discussion will explore the assumptions and implications writ large of specific struggles over geographical indications.

Ravit Reichman *All This Could Be Yours*

The idea of inheritance represents a promise and an expectation—the expectation that one will acquire property in the future and that its present owner, in bequeathing this property, will die. This paper approaches inheritance as simultaneously a process and a work of fiction, and reads the fictions of inheritance in both legal opinions and in Virginia Woolf’s 1928 novel *Orlando*. Woolf wrote *Orlando* for her friend Vita Sackville-West, intending it as a consolation for her friend’s loss of her ancestral home that, as a woman, Sackville-West could not inherit. This paper asks how *Orlando* functions as a literary enactment of inheritance, what alternatives it offers to the narrative of disinheritance experienced by those who fall outside the law, and whether the novel’s form ultimately amounts to a legal fiction.

6.11 Realizing Justice in Sentencing: Legality, Consistency, and the Purposes of Punishment

Meghan J. Ryan *Total Retribution*

Some courts have recently expanded the bounds of retributivism beyond the basic tenets of the theory as traditionally analyzed by legal scholars. These courts’ actions raise the question of whether courts should take into account the more remote harms of an offender’s criminal conduct in determining that offender’s desert and sentence. This Article takes a first look at this neglected issue of the role that more remote harms should play in sentencing, suggests some benefits of accounting for such harms, and examines some possible unspoken reasons that courts have historically failed to account for these harms in sentencing. The Article concludes that, while there may be reasons why specific categories of these more remote harms should not be considered in sentencing, more of these harms should be taken into account so long as they are proximately caused by the offender’s criminal conduct.

Shahram Dana *Beyond Retroactivity to Realizing Justice: A Theory on the Principle of Legality in International Criminal Law Sentencing*

Only the innocent deserve the benefits of the principle of legality. This assertion offends our notions of justice. It would be unacceptable for a legal system to institutionalize such an approach. Yet, international law appears to be resigned to this view, if not openly embracing it. Although a fundamental principle of criminal law, *nulla poena sine lege* receives little attention in international criminal justice. Under-theorization of *nulla poena* stalls its maturation in international law, keeps dormant its contribution to justice, and

challenges the legitimacy of international prosecutions. This Article develops the normative content of nulla poena under international law; evaluates the statutes and sentencing jurisprudence of international courts; and advances a theory for nulla poena in international justice. I argue for an understanding of nulla poena that goes beyond its caricature as a principle of negative rights to one that captures its positive justice function, including just distribution of punishment.

Jelani Jefferson Exum

Toward a Purpose-Focused Theory of Reasonableness for Federal Sentencing

This Work-In-Progress argues that the “reasonableness” standard of review for federal sentences can never be meaningful unless and until a guiding purpose is given to the federal sentencing process. In the 2005 decision *United States v. Booker*, the Supreme Court rendered the Federal Sentencing Guidelines advisory and instructed circuit courts to review sentences for “unreasonableness”. Circuit courts now take a variety of inconsistent approaches in determining whether sentences are reasonable. This Work discusses the inherent problem of reasonableness when applied to sentencing, and suggests approaches to infuse meaning into reasonableness review through a purpose-focused approach. Many possible purposes are found in the §3553(a) sentencing factors, yet very little consistent meaning has been given to those factors. The Work will set forth an approach (or approaches) to purpose-focused sentencing that will allow a system requiring the individualization of sentences to retain meaningful sentencing uniformity.

James Binnall

Understanding Maineacs: An Empirical Examination of Maine’s Unique Approach to Felon Jury Service

Currently, forty-nine states and the federal government statutorily restrict a convicted felon’s opportunity to serve as a juror in a criminal or civil matter. Uniformly justified as protective measures, felon jury exclusion statutes lock convicted felons out of the venire because they purportedly threaten the probity of the jury or are inherently biased against the government. Yet, Maine employs no record-based juror eligibility requirements. Instead, Maine allows those with a felony criminal record to decide both civil and criminal matters. Thus, Maine’s adjudicative process is unlike that in any other jurisdiction in the United States.

Using original qualitative data, this paper examines the practical and theoretical implications of Maine’s decidedly progressive stance on convicted felons’ jury eligibility. Specifically, through in-depth semi-structured interviews with jurors and various members of Maine’s court system, this paper explores 1) whether the absence of record-based juror eligibility requirements jeopardizes the actual or perceived integrity of the adjudicative process and 2) whether allowing convicted felons to take part in jury service influences the participants’ general attitudes and opinions about rehabilitation and reintegration. The goal of this project is to provide policymakers, for the first time, empirical data centering on the potential risks and rewards of allowing convicted felons to serve as jurors.

7.1 Justice Between Fate and Chance

Marianne Constable

Speech and the Modern Place of Law

What is the place of law and justice after the death of God? In the past (and perhaps still for some) “God” was the transcendental name of Justice that guaranteed the law. But as Peter Fitzpatrick puts it, modern law “can no longer resolve the divide between its determinate existence and its responsiveness by way of a transcendental reference, by way of divine right.” For Fitzpatrick, law in modernity “is” the very unsettled settling or deciding that God used to guarantee. “It is in the necessity yet impossibility of such

settlement [the settlement in normative terms of the existential divide between a determinate positioning and a responding to what is beyond position] that law is iteratively impelled into existence,” he writes.

This paper explores what one might consider law’s “iterative existence.” It argues that speech grants a place or world to law. As happenings or events susceptible to going wrong, speech acts bind us to a world that is neither accurate nor moral. In this world, positive or human or enacted law, as exemplified by particular areas of US law, both struggles to control speech and fails to have the final word even as it depends on speech. Modern law then is not so much indebted to morality or to natural or divine law, as it is to speech. The indebtedness of law to speech (that in some respects lies beyond it) is the bond or obligation of law; such a bond is called “justice.” On this ground are made what we commonly recognize as “claims of law” - whether those claims be against law or on law’s behalf, whether as demands or as obligations, whether by or on behalf of law or of its addressees.

Juan Obarrio

Abandoned Law: Justice Predicated Upon Case and Place

This essay explores an ontology of the law, as well as the laws of ontology. Martin Heidegger and Jean-Luc Nancy have explored the withdrawal of Being as the fundamental (non-original) historical origin of Occident. Yet, what does this history, understood as abandonment, signify for non-Western or, specifically postcolonial, spaces?

If abandonment carries within itself the memory-trace of a certain ban, then what if abandonment as a mode of being is linked to an experience of the force of law, of its terrors and its violence? We are always abandoned to a certain law: a law without foundation, or the forgetting of Being. Yet what happens when law itself is in abandonment, and what when law itself has been forgotten, or banned?

Moreover, justice as abandonment is predicated upon the question of a case, hence, always on contingency and the accidental, of an unsettling relation between particulars and universals, unfolding in local places. If jurisdiction is always predicated upon the local and the singular case, what is the outcome of this de-colonization of fate, this post-metaphysical retreat of Being, for the political history of a postcolony? How does jurisdiction unfold and find a place as justice in the derelict locales of a postcolony, where precisely “locality” itself is the battle ground of different jurisdictions in search of a case?

Jennifer L. Culbert

Taking Place: Judgment and Justice

In this essay, I explore how the power of society threatens to become the sole or unlimited frame of reference for knowing the law—or determining what to do in modern discussions of judgment. Specifically, I show how judgment is presented as a kind of process or procedure that can be fully described (even if we have not yet done so) in “social” terms. Something about judgment eludes us in these descriptions, however. I suggest that what eludes us is the relationship between judgment and justice.

To illustrate my thesis I turn to a short story by Jorge Luis Borges. “The Lottery in Babylon” tells the tale of how a game of chance comes to decide the fates of the inhabitants of an ancient city. “The Lottery in Babylon” may thus be read to illustrate the (modern sociological) view that judgment is nothing more than the means by which punishments and rewards are distributed in a man-made system that endows selected attributes with exaggerated significance. However, a key feature of the Lottery in the story is overlooked by this interpretation. The inhabitants of Babylon are moved to embrace the Lottery by chance, a force that comes from outside of a system that is

purposely set up to create and contain it. Yet, despite the Babylonians' best efforts, chance eludes them. It permeates the system but its presence is never assured. I propose that justice is similarly related to judgment. Justice moves us to judge, and we establish a system to secure its presence when we act. However, the presence of justice is not produced or guaranteed by any of the steps we take to secure its appearance. On the contrary, the gesture with which we attempt to fix what moves us to judge negates what we seek to affirm.

I conclude the essay by suggesting we experiment with a description of judgment as a practice of doing justice. I define "doing justice" as bringing justice to light. To bring justice to light is emphatically not to make justice appear. If justice is a responsiveness that is presupposed by any demand or call for recognition, reparation, or even revenge, to bring justice to light is to clear a space for this responsiveness to take place. While we routinely judge in this manner, we tend to characterize what we do in other terms, terms that obscure how we experience decisions by emphasizing how we make them.

7.2 Conceptualizing Copyright

John Tehranian

The IP of IP: Intellectual Property, Identity Politics and User Rights

This paper proposal stems from chapter in my forthcoming book, *Infringement Nation*, which is being published by Oxford University Press in February, 2011.

Intellectual property jurisprudence increasingly informs the way in which social order is maintained in the twenty-first century. By enforcing the inviolate recitation of certain modes of cultural production, copyright laws can play a critical role in perpetuating the social values of the dominant class. This paper examines the selective protection granted to cultural production under the guise of copyright as a means of assessing the role of intellectual property law in shaping social relations, molding identities, enforcing dominant values and controlling expressive rights.

Using examples from both ostensibly neutral procedural and substantive rules in copyright and from regulations of patriotic symbols (Old Glory), religious homilies (The Serenity Prayer), international sporting events (the Olympic Games) and folk songs (Kookaburra), we examine how copyright holders can impact the formation and development of nationalistic, spiritual, sexual, racial and gender-based identities. As such, I apply critical theory and the lessons of intersectionality to an area of growing importance in the digital age—one that governs the monopolization and control of cultural symbols.

As I argue, the battle over copyright protection often represents a battle over identity politics and personhood interests and a clash between the hegemonic power of cultural reproduction and the subversive effects of semiotic disobedience. Through both procedural rules and substantive doctrines, our intellectual property laws can use registration requirements and aesthetic judgments to achieve something much broader than merely 'progress of the arts.' Indeed, by consecrating meaning and value, patrolling cultural hierarchy and regulating the semiotic signposts of our society, intellectual property transcends its small corner of the legal universe and plays a fundamental role in shaping social structures and regulating individual behavior as part of a broader hegemonic project.

Recent literature in copyright law has attacked the traditional theory that economic incentives motivate people to create. Although the onslaught of criticism has come from different directions, it all shares a similar goal: to move copyright law in a direction that reflects actual creative processes and motivations. This Article adds to and diverts from these accounts, arguing that creativity may be a product of memes: units of information, analogous to genes, that replicate by human imitation.

A memetic theory of creativity focuses on the replicating units of culture—memes—as the reference point for thinking about creativity. Under this view, the creator is a brain with limited space, where memes compete for occupancy. Like other views, memetics takes account of environmental and biological factors responsible for creativity, such as nonmonetary motivations and the creator’s upbringing. But the memetic account of creativity is different from these theories in one important way: it uses memes to explain the driving force of culture and creativity. Thus, memetic theory explores nonmonetary motivations of creation, but views them as subsets of memes.

Because the memetic account of creativity differs in explanation, so too does it differ in policy recommendations. This is where the memetic account of creativity most explicitly diverges from some other theories. The idea that replicators play a role in cultural creation suggests, among other things, that moral rights should be discarded; that copyright’s originality requirement should be heightened; and that various rights contained in the Copyright Act should be loosened.

7.3 Speech, Coercion and the Regulatory State

Last year’s announcement by FCC Chairman Julius Genachowski that wireless and broadband services should be covered by net neutrality rules has led to a debate about the efficacy of such regulation. The FCC has stated it will not seek to use the heaviest mode of regulation available under common carrier rules, but there is an interest in asserting government jurisdiction over the medium of the Internet. This paper proposes to examine how “free” the FCC’s version of net neutrality is in terms of the reach of government regulation to protect access and the dampening effect some argue it will have on commerce. If the FCC levels access to the Internet regardless of medium, this has the potential to give the Internet some First Amendment protection through the conception of access. The metaphor of open access becomes useful here to complicate those familiar metaphors of “money” and “freedom.”

The U.S. administrative state has been involved in a decades-long regulatory reform project encompassing both a shift away from what have been characterized as “command-and-control” approaches to regulation and toward approaches that are more market-oriented, managerial, participatory and self-regulatory in their orientation. Through a content analysis of the nearly 1,400 law review articles that comprise the legal critique of regulation between 1980 and 2005, I show that the most salient critiques of regulation concern neither its cost nor its inefficiency, as many have assumed. Instead, they express deep-seated anxieties about the fundamentally coercive nature of administrative government. In addition, I demonstrate that “voluntary” or “self-regulation” approaches that enlist regulated entities and citizens to perform core governmental functions like standard-setting, monitoring and enforcement emerged from the reform debate with particular prominence. Using both statistical and interpretive inference, I argue that self-regulation is the product of a pervasive anxiety about state

coercion. I conclude by suggesting that framing the problem of regulation as a problem of state coercion distorts the dialogue about regulatory solutions, and I call for a more explicit engagement with state coercion discourse in order to move beyond it or to address any real concerns it raises.

7.4 Thinking About the Law with Roberto Esposito

7.5 Food, Law and Technology

Jennifer Tai *Two Tales of Sacred Cows: Industrial Dairy Farms, Raw Milk, and the Tensions of Science and Public Participation*

Legal issues regarding the production of food are becoming more visible during the transformation of our agricultural production system to one involving technology and industrialization. This paper will examine two types of legal conflicts: one involving the regulation of confined animal feeding operation, or CAFOs, and another involving the legalization of sales of raw milk. In particular, I explore the ways in which citizens and public interest groups participate in these legal conflicts – from regulatory and permitting comments to litigation – focusing on the tensions between discussions of values and discussions of scientific evidence. I tentatively argue that currently existing legal frameworks, which are mainly limited to scientific participation, are insufficient to accommodate the range of concerns raised by citizens, and suggest a more holistic framing of food and agriculture-related legal disputes.

Albert Lin *GMOs: Emerging Technology Past and Present, and Lessons for Other Emerging Technologies*

This chapter is part of a book project that argues for reorienting how our legal institutions handle emerging technologies such as nanotechnology and synthetic biology. Recognizing that such technologies can be transformative in positive, negative, and unexpected ways, the book will advocate a more precautionary and participatory approach to their development and regulation.

The GMO chapter presents our experience with GMOs as a useful case study for societal management of emerging technologies. I discuss the Coordinated Framework, as well as the Asilomar conference and other developments leading up to the Framework, and I recommend product labeling, postmarket monitoring, and other reforms to the current regulation of GM crops. In contrast to GM crops, which are commercially well-established, the first applications for GM animals for human consumption present an opportunity for conducting the widespread public discussion and debate that was lacking when GE crops were introduced. Finally, the chapter considers more general lessons to be gleaned from our experience with GMOs: that initial policies for managing technologies can have lasting influence, that researchers and industry often have disproportionate influence on those policies as a result, that policies to manage technological risk too often result from legislative inertia, and that public trust is crucial for acceptance of a technology.

7.6 Law, Literature, and the Arts on Both Sides of the Big Pond

Mark E. Burge *We, the Muggles: On Wizardry and Legislative Process*

In the Harry Potter books, J.K. Rowling has fashioned a world where things do not go well for wizards when non-magical “Muggles” learn of the wizards’ existence. Magical power apparently cannot ultimately defeat a hostile and much larger non-magical population. This proudly British fantasy literature explains a uniquely American legal and political phenomenon—innate hostility to substantive and procedural complexity in the

legislative process. The American concept of law deriving its ultimate legitimacy from “We, the People” tends toward opposition to a specialist ruling class whose product and process are unfathomable to the public at large. While our world and its problems are not easily simplified, I suggest that, despite the temptation to do otherwise, it behooves lawmakers to tend toward transparency and simplicity as normative goals.

Sue Liemer

On the Origins of Le Droit Moral: How Non-Economic Rights Came to Be Protected in French I.P. Law

The playwrights of the Comédie Française during the ancien regime had a key role in the development of French intellectual property law and the droit moral, in particular. These dramatists complied with a strict regulatory scheme and a social double-bind, and came to expect certain treatment in return for their compliance. A generation after the French Revolution, ordinary court decisions about contracts and wills recognize the interests protected by le droit moral, showing how accepted these expectations and interests already were in the society. Thus, the rules regulating the Comédie Française before the French Revolution helped le droit moral develop long before the usually-credited 19th century German Romanticists.

Stephen R. Alton

The Game is Afoot!: The Significance of Gratuitous Transfers in the Sherlock Holmes Canon

This paper presents a recently discovered and previously unpublished manuscript written by John H. Watson, M.D., and edited by Professor Stephen Alton. Dr. Watson’s manuscript records an extensive conversation that took place between the good doctor and his great friend, the renowned consulting detective Mr. Sherlock Holmes, regarding issues of gratuitous transfers of property—issues involving inheritances, wills, and trusts—that have arisen in some of the great cases solved by Mr. Holmes. This felicitous discovery confirms something that the editor has long known: these gratuitous transfer issues permeate many of these adventures. Indeed, the action in a given case often occurs because of the desire of the wrong-doer to come into an inheritance, a bequest, or the present possession of an estate in land more quickly—perhaps by dispatching the intervening heir, beneficiary, or life tenant.

7.7 The Power, Purchase, and Pragmatism of Modern Virtue

Chapin Cimino

Citizenship, the Campus Community, and Competing Rights: An Aristotelian Analysis

Not since feudal times have we thought that landowners may condition citizenship rights of those residing on the land to adherence to the landowner’s preferences. Landowners may control how their property is used, but usually such control does not implicate citizenship. However, under the otherwise-mundane First Amendment “limited public forum” doctrine, it does. A public university may, by virtue of its status as a landowner, condition official campus recognition (and thus citizenship) of student groups on adherence to university policy. The result is that, when a university policy absolutely privileges non-discrimination, the citizenship of student religious groups can be at stake. This is a problem if citizenship on campus matters. The recent Supreme Court case of *CLS v. Hastings* illustrates the problem, and my paper offers a new way to think about its resolution. The paper sets out an Aristotelian means-ends rubric to apply when nondiscrimination rights clash with expressive association rights on campus. The means-ends rubric takes better account of both the right to be free from discrimination (a “means” of campus citizenship) and the right of expressive association of student groups (an “end” of campus citizenship) than does current First Amendment jurisprudence.

Ronald J. Colombo

Virtue and Corporate Governance

Many have advanced the argument that greater virtue on the part of market participants would have prevented (or at least mitigated) a host of ills – from scandals such as Enron and WorldCom, to even the financial crisis of just last year. Although law is not particularly good at fostering virtue, law can help establish conditions that maximize the efforts of individuals to make themselves virtuous. As currently understood and interpreted, corporate law fails to do this. Moreover, corporate law undermines the ability of corporate decision makers to grow in, and act upon, virtue. Via the adoption of a broader conceptualization of the shareholders’ “best interests” (a concept central to modern corporate law), corporate law could empower corporate directors and officers to act upon inclinations of virtue – and, as such, simultaneously promote the development of virtue in corporate America.

Mark D. White

The Virtues of Hercules

Many scholars have written about the character traits that are required of a responsible judge, such as the optimal balance between humility and courage, and sound judgment in making decisions that are not determined by written law. This paper will examine Ronald Dworkin's conception of the ideal judge, as represented by his hypothetical Hercules, in this framework. In particular, Dworkin's jurisprudence requires a judge to maintain the integrity and character of the law, but does it require a parallel integrity and character of the judge him- or herself?

7.8 Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865

7.9 Alternative Forms of Family in Contemporary Film

Kim H. Pearson

Documenting LGBT Adoption and Race

LGBT documentaries about adoption and parenting often serve an important advocacy purpose. To combat stereotypes that support social and structural barriers to parenting equality, many documentaries are built on the premise that LGBT families are just like straight families. One of the tools used to demonstrate similarity to other parenting experiences is race. Transracial adoption, a common choice for LGBT couples, is framed as a surprising obstacle to achieving wholeness and family unity. In documentaries about LGBT families, parents remark that they thought orientation would be problematic, but it turns out that race is the obstacle. I interrogate the way in which orientation is framed as something which can be transcended in the drive towards family unity, but that race is more troubled and never fully transcended in the way LGBT parenting documentaries imagine that orientation can be. I will show clips from the documentary films, *Daddy & Papa*, *Off and Running*, *Wo Ai Ni Mommy*, and *We are Dad* to demonstrate the role that transracial conflict plays in normalizing orientation.

Mary Pat Truethart

Examining the Structural Forces and Ideological Norms Behind Alt-Family Films

My segment of the panel will: 1) explain the role of filmmakers, editors, screenwriters, actors, and others in creating – or excluding – what we as viewers see on the screen; 2) evaluate specific cinematic portrayals of unconventional families; and 3) suggest methods to incorporate visual representations of family into course materials that enhance teaching and learning about legal issues.

Historically there have been numerous cases where individuals have been subjected to legal sanctions for assuming the identity of the opposite sex. Such cases suggest that it may be difficult to distinguish between the idea of gender performance as the self-conscious projection of an image designed to deceive others, performance as determinative of gender, and performance as essential to agency. The concern that so-called cross-dressers deceive another individual or society at large through such performance seems to assume an authentic “self”, determined by relatively immutable physical characteristics, which one then chooses to conceal from the world. In Billy Wilder’s 1959 film, *Some Like it Hot*, the men who impersonate women as a means of survival trouble the concept of gender as authentic identity, particularly as played against the “real” woman played by Marilyn Monroe - an iconic figure of femininity which seems itself to be an assumed identity.

7.10 Gender, Law and Literature: McFarland v. Stump in Law and in Literature

8.1 20 Years of Law and Order

8.2 Jacques Derrida’s *The Beast and the Sovereign*

8.3 Law in the Liberal Arts

8.4 On the Boundaries of Personhood: Thinking About Capacity

Frequently, a child’s or parent’s refusal of medical treatment is inherently suspect, even where s/he is deemed capable of consenting to medical intervention. The paper examines conceptualizations of childhood, capacity, the “good life” and how they underlie limitations on the right to refuse medical intervention in Canadian case law. The paper asks in particular whether these conceptualizations justify authorizing medical intervention despite a child’s objections, particularly in light of the social construction of adulthood

In the last two decades, Canadian courts and legislatures have been faced with many historical abuse claims as survivors sought redress. While there have been a number of developments that assist survivors in their claims, a recent British Columbia class action settlement raises a number of issues for historical abuse litigants. The Woodlands School Settlement Agreement excluded historical abuse claims arising before August 1, 1974 - the commencement date of British Columbia’s Crown Proceedings Act - effectively splitting the claimant class. The invocation of Crown immunity appears to be yet another strategy for avoiding liability for the victimization of children placed in vulnerable situations pursuant to state action and because of their marginalized status. This paper explores the rationale behind this strategy, the frequency of its use, and its effect on survivors of historical abuse, asking in particular whether it further marginalizes claimants from particular backgrounds.

Elizabeth Emens

Framing Disability

Popular and high art continue to depict disability as tragic or as comic. Resentment and suspicion of the ADA's benefits persists. Scholars criticize the courts' narrowing of the ADA, but such narrowing is unsurprising when the law seems out of step with common sense. This paper tries to think creatively about ways to bring attitudes into step with law. In particular, the paper focuses on moments when people make decisions that implicate their future relation to disability. For example, how does law frame decisions to engage in prenatal testing, to obtain a drivers license, or to enter the military? The paper considers what tools we might use to frame those decisions in ways that begin to shift attitudes to disability away from the tragic or comic and into the forms of living in between.

8.5 Inequalities in International Law

8.6 Crossing the Boundaries of Intellectual Property

Megan M. Carpenter

Drawing a Line in the Sand: When a Curator Becomes a Creator

Marketa Trimble

Cybertravel

Peter K. Yu

Moral Rights 2.0

8.7 Claiming the Shields: Law, Anthropology, and the Role of Storytelling in a NAGPRA Repatriation Case Study

8.8 Shifting Lenses: Using Masculinities Theory to Inform Gendered Concepts of Race, Class and National Origin in Employment Discrimination and Immigration Law

Ann McGinley

Ricci v. DeStefano: A Masculinities Analysis

Ann McGinley will discuss how masculinities studies, combined with feminist legal theory, and other social sciences can shed new light on employment discrimination law. She will use Ricci v. DeStefano to illustrate her point. While most see Ricci as purely a race discrimination case, there are important gender and class issues that masculinity theory can expose. This example focuses on masculinity studies and relationships among men, but illustrates that without understanding these relationships and the subordinate position that women occupy as a result of these relationships, feminist and masculinities theorists will continue to live and work in separate silos.

Leticia M. Saucedo

Border Crossing Stories and Masculinities

Immigration law, race-neutral on its face, is viewed by critics as having deep racial and national-origin-based effects. Thus far, however, the critical analysis of immigration law has not gone far beyond the race/ethnicity paradigm as a prism through which to identify its detrimental and disproportionate effects. Masculinities theory allows us to identify the particularly gendered responses to restrictions in immigration law that many argue are directed at particular populations, most recently Mexicans and Central Americans. Using a set of interviewees' border crossing stories I explore how masculinity theories explain the dynamics between law and behavior in the immigration context and show how masculinities studies can provide insight into how migrants respond to restrictive immigration laws.

Ray Tolentino

Regulating Alterity Across Borders: Queer Sexuality and American Citizenship

In my working paper, I intend to contribute to a growing body of academic scholarship interrogating and critiquing the juridical landscape of US immigration law from critical race and queer theory perspectives. Existing legal scholarship has explored the extent to which US law inequitably regulates both immigration and sexuality to the unfortunate disadvantage of GLBTQ immigrants. My paper will explore how US laws on immigration, race, and sexuality concurrently reproduce historically colonialist and racist mentalities that position non-heterosexual immigrants (with a focus on Filipino immigrants) as figures on the fringe who threaten the “purity and stability” of the American national body politic. Specifically, my paper discusses the alienating mechanics of the American legal regime’s (re)construction of a heteronormative nationalism with a particular focus on the story of Donita Ganzon, a male-to-female transgendered individual whose 2004 application for her husband to become a legal permanent resident of the US was denied.

8.9 Film on Trial

Naomi Mezey

Video Cannot Speak for Itself: Film, Summary Judgment & Visual Representation

Leif Dahlberg

The effects of digital media technology on legal argumentation and rhetoric in the Swedish law court

8.10 Law and the Sacred

Marc Roark

Property at Law's End -- Using Process-Laden and Property-Laden Concepts to protect Memory and Identity

Sacred spaces are significant cultural, religious or historical locations, which may challenge understandings of how sacredness coexists with our Constitutional or proprietary expectations. Certain spaces produce cultural memories and identity which the law protects through both process-laden and property-laden concepts. Recognizing sacred space invokes consensus building, which is facilitated by the political process. Oftentimes the process of consensus building leads to the implication of property-laden concepts as the primary protector of sacred memory and identity. These property concepts include using title to exclude as well as de-marketizing places and things to protect their sacredness.

This essay demonstrates that these process-laden and property-laden approaches can be seen in Congressional Action leading to the *Salazar v. Buono* dispute, as well as other areas involving sacred space. This essay builds the framework for describing how legal processes and rules relating to property translate into areas where sacred space is not protected by law.

Joseph Jenkins

Intellectual Property and Political Theology

This article considers the copyright, as well as fair-use limits on private control, in the context of political theology. It recalls that one of the earliest English law precedents concerning copyright, Henry VIII’s Proclamation of 16 November 1538, was concerned with the political sovereign’s control and censorship of writings on religion, rather than with private rights regarding authored texts. The relevant author here was the Author of all things, and what was being protected was the sovereign’s role as His exclusive spokesman. Twentieth-century advocacy for maximal copyrights, which increasingly appeals to metaphysical notions, such as post mortem copyright term extensions as a kind

of reverent piety for departed genius—what Paul Saint-Amour (2003) calls the “emerging grief-culture of copyright”—, may be understood, with reference to copyright’s past, as consolidation of sovereignty by politico-theological means. Advocacy for fair use, and for the crucial value of tradition as common property, is doomed to defeat unless it can bring into focus these broader stakes.

Henrike Manuwald

Divine Law? The Trial of Jesus in Medieval Literary Texts

In the “Saxon Mirror”, German customary law appears as divine in the sense that it is based on God’s justice. Is this idea relevant for narrative texts where ‘God’ himself is put on trial? In several German verse narratives from the thirteenth and fourteenth centuries the scene of Jesus before Pilate has been partly adapted to German customary law, and Pilate, consequently with less decision-making authority, is presented as an exemplary judge. Since the texts then struggle to explain the – in Christian perspective – unjust verdict, the introduction of updated legal traits calls for an explanation beyond the tendency to modernize biblical narratives: the paper shows that the medieval German narratives aim at presenting a positive view of contemporary legal proceedings. Thus, the texts not only make use of single traits of German customary law, but even present a concept of a legal system based on the notion of divine law.

LCH 2011 Directory

Sarah Abramowicz	sabramowicz@wayne.edu	5.4
Kathy Abrams	krabrams@law.berkeley.edu	3.10
Elizabeth Adjin-Tettey	eadjinte@uvic.ca	8.4
Amy Adler	amy.adler@nyu.edu	8.1
Jasmine Alinder	jalinder@uwm.edu	1.4
Stephen Alton	salton@law.txwes.edu	7.6
John Anderson	jpanders@mc.edu	3.5, 4.3
Matthew Anderson	manderson@une.edu	8.3
Rachel Anderson	Rachel.anderson@unlv.edu	8.5
Jennifer Andrus	j.andrus@utah.edu	6.7
Elizabeth Anker	anker@cornell.edu	4.8
Mark Antaki	Mark.Antaki@mcgill.ca	3.9
Maria Aristodemou	m.aristodemou@bbk.ac.uk	6.9
Bret Asbury	bda24@drexel.edu	5.5
Kenneth Aslakson	aslaksok@union.edu	6.4
Jim Aune	jaaune@gmail.com	3.8
Bendamin Authers	authers@ualberta.ca	3.2
Jennifer Baker	bakerja@cofc.edu	7.7
Jennifer Ball	jball@clarkson.edu	6.5
Angelia Banks	ambank@wm.edu	1.7
Gianluca Bascherini	gianlucabascherini@gmail.com	3.11
Peter Bayer	peter.bayer@unlv.edu	1.8
Marie-Claire Belleau	Marie-Claire.Belleau@fd.ulaval.ca	6.9
Noa Ben-Asher	nbenasher@law.pace.edu	3.6
Linda Berger	berger_ll@law.mercer.edu	4.7
Roger Berkowitz	berkowitz@bard.edu	8.1
Douglas Berman	berman.43@osu.edu	6.11
James Binnall	jbinnall@uci.edu	6.11
Bret Birdsong	bret.birdsong@unlv.edu	5.10
Susan Bitensky	bitensky@law.msu.edu	1.6
Chris Blakesley	chris.blakesley@unlv.edu	2.1, 3.5
Cynthia Bond	7bond@jmls.edu	2.3
Michael Boucai	boucai@gmail.com	4.6
Valerie Bouchard	valerie.bouchard@fd.ulaval.ca	6.9
Dr. Karen Brennan	k.brennan@qub.ac.uk	2.1
Elizabeth Britt	e.britt@neu.edu	6.7
Eva Brown	evebrown@indiana.edu	1.5, 5.4
Merima Bruncevic	merima.bruncevic@law.gu.se	2.5
Susan Benton Bruning	sbruning@smu.edu	8.7
Nancy Buenger	nbuenger@wisc.edu	1.4
Mark E. Burge	mburge@law.txwes.edu	7.6
Sarah Burgess	sburgess@usfca.edu	4.10
Donna Byrne	donna.byrne@wmitchell.edu	6.2
Irene Calboli	irene.calboli@marquette.edu	5.2
Zachary Calo	zacharycalo@gmail.com	1.9, 3.5
Timothy Campbell	tcc9@cornell.edu	7.4
Megan M. Carpenter	mcarpenter@law.txwes.edu	8.6
William Carter	william.carter@temple.edu	8.1
David Cassuto	dcassuto@law.pace.edu	5.10
David Caudill	Caudill@law.villanova.edu	4.11
Julia Chrissyostalis	J.Chrissyostalis@wmin.ac.uk	7.4
Chapin Cimino	chapin.cimino@drexel.edu	4.4, 7.7
Elizabeth Cohen	efcohen@maxwell.syr.edu	4.10

Barry Collins	b.collins@uel.ac.uk	3.5
Ronald J. Colombo	Ronald.Colombo@hofstra.edu	7.7
Marianne Constable	constable@berkeley.edu	6.1, 7.1
Heather Conway	h.conway@qub.ac.uk	3.10
Carlton Copeland	ccopeland@law.miami.edu	2.7, 4.4
Christine Alice Corcos	christine.corcos@law.lsu.edu	6.6
Frederick Cowell	fascowell@googlemail.com	3.6
Angela Crocker	crockera@ukzn.ac.za	3.6
Thomas P. Crocker	crocketp@law.sc.edu	4.10
Jennifer Culbert	jculbert@jhu.edu	1.2, 3.9, 7.1
Tucker Culbertson	tbculber@law.syr.edu	2.9, 7.5
Leif Dahlberg	dahlberg@csc.kth.se	8.9
Shahram Dana	sdana@jmls.edu	6.11
Peter G. Danchin	pdanchin@law.umaryland.edu	1.9
Natasha De Lange	natasha.delange@gmail.com	6.6
Penelope Deutscher	p-deutscher@northwestern.edu	7.4
Andrew Dilts	dilts@uchicago.edu	4.2, 8.2
Linda Edwards	linda.edwards@unlv.edu	3.6
Charlene Elliott	charlene.elliott@ucalgary.ca	6.2
Elizabeth Emens	eemens@law.columbia.edu	8.4
Suzanne Enck-Wanzer	senckwanzer@unt.edu	6.7
Monica Eppinger	meppinge@slu.edu	1.7
Samera Esmeir	samera@berkeley.edu	1.1
Jelani Jefferson Exum	exum@umich.edu	6.11
Cary Federman	federmanc@mail.montclair.edu	1.1, 2.3
Leonard Feldman	lfeldman@hunter.cuny.edu	4.2
Zanita Fenton	zfenton@law.umiami.edu	1.6
Dan Filler	dmf55@drexel.edu	1.8, 5.5
Paul Finkelman	paul.finkelman@albanylaw.edu	1.6
Joseph Fischel	jjfischel@gmail.com	3.3, 7.10
David Fisher	dhfisher@noctrl.edu	1.1, 3.6
Cathrine Frank	cfrank@une.edu	8.3
Cary C. Franklin	Cfranklin@law.utexas.edu	5.3
Andrea Freeman	afreeman@cwsl.edu	6.2
José Gabilondo	gabilond@fiu.edu	3.1, 4.1
Marcia M. Gallo	Marcia.gallo@unlv.edu	2.9
James A. Gardner	jgard@buffalo.edu	6.1
Eugene Garver	egarver@csbsju.edu	3.5
Llewellyn Joseph Gibbons	Llew.Gibbons2@utoledo.edu	6.8
Katherine Gilbert	kgilbert@drury.edu	5.4
Simone Glanert	s.glanert@kent.ac.uk	2.10
Elizabeth Glazer	elizabeth.glazer@hofstra.edu	4.6
Mark Golub	mgolub@scrippscollege.edu	4.5
John Gooch	john.gooch@utdallas.edu	3.8
Joan B. Gottschall	Joan_Gottschall@ilnd.uscourts.gov	5.11
Kishonna Gray	klgray@asu.edu	5.1
Heron Greensmith	heron.greensmith@familyequality.org	4.6
William Griffith	wbg@gwu.edu	1.8
Chaya Halberstam	chaya.halberstam@uwo.ca	3.4, 8.1
Michael Halberstam	mhalbers@buffalo.edu	7.2
Patrick Hanafin	p.hanafin@bbk.ac.uk	7.4
Alexandra Harrington	alexandra.harrington@mail.mcgill.ca	2.5
Bradley Hays	haysb@union.edu	6.4
Kathryn Heard	kathryn.heard@berkeley.edu	4.9
Alice Hearst	ahearst@smith.edu	2.6, 3.7
Susan Heinzelman	sheinz@mail.utexas.edu	2.2

Ana Henderson	ahenderson@law.berkeley.edu	4.9
Ernesto Hernández-López	ehernand@chapman.edu	6.2
Brooke Hessler	bhessler@okcu.edu	2.4
Steven A. Hetcher	steven.hetcher@Law.Vanderbilt.Edu	6.8
Roni Hirsch	ronihirsch@yahoo.co.uk	4.3
Mai-Linh Hong	mkh9b@virginia.edu	4.5
Annette Houlihan	a.houlihan@murdoch.edu.au	5.9, 8.1
Dr Níamh Howlin	n.howlin@qub.ac.uk	2.1
Nasser Hussain	nhussain@amherst.edu	7.1
Anthony Infanti	infanti@pitt.edu	2.6, 3.4
Joseph Jenkins	j.jenkins@uci.edu	8.10
Jeffery Johnson	jjohnson@eou.edu	2.10
Rebecca Johnson	rjohnson@uvic.ca	6.9
Scott Johnson	sjohnson1414@cs.com	5.7
Shontavia Johnson	shontavia.jackson@gmail.com	5.2
Walter Johnson	johnson2@fas.harvard.edu	7.8
Martha S. Jones	msjonz@umich.edu	7.8
Sam Kalen	skalen@uwoyo.edu	5.10
Kristin Kalsem	kristin.kalsem@uc.edu	7.11
John Kang	jkang@stu.edu	1.6
Jacob Kang-Brown	j.kangbrown@uci.edu	5.5
Catherine Karayan	catherine.karayan.2011@lawmail.usc.edu	2.6
Lisa Kelly	lkelly@sjd.law.harvard.edu	3.3
Hila Keren	hila.keren@gmail.com	3.10
Laura Kessler	laura.kessler@law.utah.edu	7.11
Michael Kessler	mjk62@georgetown.edu	5.11
Samiah Khan	skhan19@connect.carleton.ca	3.2
Renee Knake	rk@law.msu.edu	6.4
Freya Kodar	fkodar@uvic.ca	8.4
Mary LaFrance	mary.lafrance@unlv.edu	5.2, 6.4
Jessica Lake	j.lake@pgrad.unimelb.edu.au	6.5
Scott Lemieux	slemieux02@gmail.com	2.10
Shien-Hauh Leu	sleu@vt.edu	3.3
Sue Liemer	sliemer@law.siu.edu	7.6
Albert Lin	aclin@ucdavis.edu	7.5
David Louk	dlouk@berkeley.edu	4.9
Elizabeth MacDowell	elizabeth.macdowell@unlv.edu	4.3
Steven Macias	smacias@uoregon.edu	4.8
Tayyab Mahmud	mahmud@seattleu.edu	8.5
Ryan Malphurs	rmalphurs@gmail.com	3.8
Desmond Manderson	desmond.manderson@mcgill.ca	2.10
Zachary Manfredi	zachary.manfredi@gmail.com	4.9
Henrike Manuwald	henrike.manuwald@germanistik.uni-freiburg.de	8.10
Nancy Marder	nmarder@kentlaw.edu	2.7
Terry A Maroney	terry.maroney@law.vanderbilt.edu	3.10
Fatma E. Marouf	fatma.marouf@unlv.edu	2.9, 8.5
Heidi Matthews	hmatthews@sjd.law.harvard.edu	1.1
Serena Mayeri	smayeri@law.upenn.edu	5.3
Ann McGinley	ann.mcginley@unlv.edu	8.8
Patrick McLane	mclane@ualberta.ca	8.2
Allen Mendenhall	allenporte@yahoo.com	4.4
William Mercer	williamdm@studentlegalservices.ufl.edu	2.8
Linda Meyer	linda.meyer@quinnipiac.edu	2.2, 3.9
Naomi Mezey	mezeyn@law.georgetown.edu	8.9
Eric Miller	emille33@slu.edu	1.7
Christina Misner	cmisner@okcu.edu	2.4

Jennifer Mnookin	MNOOKIN@law.ucla.edu	2.2
Mark C. Modak-Truran	mmodak@mc.edu	1.9
Francis Mootz	Jay.Mootz@unlv.edu	3.11, 6.1
Sara Murphy	sem2@nyu.edu	5.4
Melissa Murray	mmurray@law.berkeley.edu	5.3
Stuart Murray	sjmurray@ryerson.ca	4.10
Matthew Murrell	madmadmerl@gmail.com	2.7
Nicholas Natividad	nicholas.natividad@asu.edu	3.2, 5.1
Rebecca Neipris	rrn@berkeley.edu	6.10
Silvia Niccolai	niccolai@unica.it	3.11
Juan Obarrio	jobarrio@gmail.com	7.1
Jacky O'Connor	joconnor@boisestate.edu	6.4, 8.1
Nicolette Brunner Olson	nbruner@umich.edu	3.4
Liam S. O'Melinn	L-omelinn@onu.edu	6.8
Ayelet Oz	aoz@sjd.law.harvard.edu	2.5
Poornima Paidipaty	paidipaty@uchicago.edu	5.8
Howard Pashman	h-pashman@law.northwestern.edu	2.8
Paul Passavant	passavant@hws.edu	4.2
George Pavlich	Gpavlich@ualberta.ca	3.9, 8.2
Kim Pearson	kpearson@lawschool.gonzaga	7.10
Eduardo Peñalver	eduardo-penalver@lawschool.cornell.edu	6.10
Stephen Pete	pete@ukzn.ac.za	3.6
Penelope Pether	pether@law.villanova.edu	4.1, 7.8
Teresa Phelps	tphelps@wcl.american.edu	5.7
Nina Pillard	pillardn@law.georgetown.edu	1.7
Ngai Pindell	ngai.pindell@unlv.edu	2.5, 7.8
Marc Poirier	marc.poirier@shu.edu	2.9
Joseph Pugliese	Joseph.Pugliese@mq.edu.au	3.1
Sara Ramshaw	s.ramshaw@qub.ac.uk	2.1, 3.10
Sharon Raynor	sraynor@jcsu.edu	5.9
Ravit Reichman	Ravit_Reichman@Brown.edu	2.2, 6.10, 8.1
Keramet Reiter	keramet@berkeley.edu	1.2
Giorgio Repetto	giorgiorepetto@yahoo.it	3.11
Harriette Richard	hrichard@jcsu.edu	5.9
Ellen Rigsby	erigsby@stmarys-ca.edu	7.3
David Ritchie	Ritchie_d@lawmercerc.edu	4.7
Marc Roark	mroark@laverne.edu	6.10, 8.10
Reginald Robinson	light_warrior@verizon.net	1.6
Peter Robson	peter.robson@strath.ac.uk	6.6
Ruthanne Robson	robson@mail.law.cuny.edu	3.1, 4.1
Juliet Rogers	julietr@unimelb.edu.au	3.1, 4.1
William Rose	wrose@albion.edu	8.3
Clifford Rosky	clifford.rosky@law.utah.edu	3.7, 7.11
Aden Ross	adenross@aol.com	7.11
Jonathan Rothchild	jrothchild@lmu.edu	5.11
Keith Rowley	keith.rowley@unlv.edu	1.5, 6.4, 8.9
Meghan Ryan	meghanryan@smu.edu	6.11
Roque Saavedra	saavedra@vt.edu	3.4
Lena Salaymeh	lenas@berkeley.edu	3.3, 5.8
Jack Sammons	jlsjr@aol.com	4.7
Gabriella Sanchez	gsanch1@asu.edu	5.1
Eric Sapp	ecsapp@stanford.edu	2.8, 5.7
Anne Sappington	sappina@tcd.ie	6.3
Austin Sarat	adsarat@amherst.edu	2.2
Leticia Saucedo	lmsaucedo@ucdavis.edu	8.8
Sylvia Schafer	sylvia.schafer@uconn.edu	1.8

Jennifer Schulz	j_schulz@umanitoba.ca	6.6
Craig Scott	craigscottsf@gmail.com	2.9
Patricia Seith	pseith@yahoo.com	5.3
Nan Seuffert	NAN@waikato.ac.nz	3.1, 4.1
Jodi Short	jls272@law.georgetown.edu	7.3
Lisa Silverman	silverld@uwm.edu	1.4
David Simon	davidalansimon@gmail.com	7.2
Alex Skibine	skibinea@law.utah.edu	8.7
Daniel Skinner	dskinner@capital.edu	4.2
Robert Smith	smithrs@uwm.edu	1.4
Hilary Soderland	hsoderland@cantab.net	8.7
Olga Solovieva	olenkaso@gmail.com	6.3
Eimear Spain	Eimear.Spain@ul.ie	3.10
SpearIt	spearit@slu.edu	4.5
Carla Spivack	cspivack@okcu.edu	2.4
John E. Stannard	j.stannard@qub.ac.uk	2.1, 3.10, 4.11, 7.3
Kenneth Stahl	kstahl@chapman.edu	5.5
Brando Starkey	brandosimeostarkey@gmail.com	2.7
Jill Stauffer	jstauffe@haverford.edu	1.2, 4.2
Zahr Stauffer	zss2f@virginia.edu	5.2, 8.6
John Strawson	john.strawson@btinternet.com	5.7
Meili Steele	steelem@sc.edu	3.4
Nomi Stolzenberg	nstolzen@law.usc.edu	6.10
Andrea Stone	astone@smith.edu	4.11, 6.2, 7.1
Mark Strasse	mstrasser@law.capital.edu	4.4
Elizabeth Sturgeon	esturgeon@msmc.la.edu	6.3
Kate Sutherland	kates@yorku.ca	5.4
Cheryl Suzack	cheryl.suzack@utoronto.ca	3.2
Stephanie Tai	tai2@wisc.edu	7.5
David Tanenhaus	david.tanenhaus@unlv.edu	7.8
Kirstine Taylor	kst@u.washington.edu	5.5
John Tehranian	jtehranian@chapman.edu	7.2
Marilyn Terzic	mte@sympatico.ca	2.3
Jeffrey Thomas	thomasje@umkc.edu	2.8
Elizabeth Thorpe	elizabeththorpe@gmail.com	3.8
Debora Threedy	debora.threedy@law.utah.edu	5.8, 7.11, 8.7
Ray Tolentino	rpt3@law.georgetown.edu	8.8
Christopher Tomlins	ctomlins@law.uci.edu	4.8, 7.8
Gerald Torres	gtorres@law.utexas.edu	8.7
Marketa Trimble	marketa.trimble@unlv.edu	8.6
Mary Pat Truethart	mtreuthart@lawschool.gonzaga.edu	7.10
Ann Tweedy	tweedy@law.msu.edu	4.6
Martha Umphrey	mumphrey@amherst.edu	2.2
Megan Wachspress	megancw@berkeley.edu	1.2, 2.10, 8.2
Bryan Wagner	bwagner@berkeley.edu	4.5
Anders Walker	awalke16@slu.edu	1.7
David Watkins	djw172@gmail.com	2.10
Mark White	profmdwhite@hotmail.com	7.7
Steven Winter	swinter@wayne.edu	4.11, 6.1
Danaya Wright	wrightdc@law.ufl.edu	2.6, 3.7, 8.10
Diana Young	Diana_Young@carleton.ca	7.10
Peter Yu	peter_yu@msn.com	5.2, 6.8, 8.6
Margarita Zaydman	mzaydman@gmail.com	1.2
Mary Ziegler	mary.r.zigler@gmail.com	6.5