Twenty-First Annual Meeting of the
Association for the Study of Law, Culture and the Humanities (ASLCH)
2018

Georgetown Law
March 16-17, 2018

PROGRAMME
(Full Version with Abstracts)
March 12, 2018

I. OVERVIEW
II. OVERVIEW of PANELS and SPEAKERS
III. TIMETABLE by PANEL NUMBER
IV. PROGRAMME
V. ABSTRACTS by PANEL NUMBER
I. OVERVIEW

Address:
Georgetown University Law Center, 600 New Jersey Ave NW, Washington, DC 20001.

FRIDAY March 16, 2018

8:30-9:15 am  Registration (Hotung Atrium)
9:15 - 10:45  Panel A
11:00-12:30  Panel B
12:30 - 2:00 pm Lunch
2:00 - 3:30  Panel C
3:45-5:15  Panel D
5:30 - 7:00  Reception in Honour of James Boyd White and the 45th Anniversary of The Legal Imagination & Prize Announcements

SATURDAY March 17, 2018

9:00 - 10:45 am  Panel E
11:00 - 12:30  Panel F
12:30 - 1:45 pm Lunch
1:45 - 3:15  Panel G
3:30 - 5:00  Panel H

BOOK EXHIBIT in Hotung Atrium
We would like to thank our hosts at Georgetown Law, Naomi Mezey and Blair Middleton, for their generous hospitality and outstanding support.

Lunch on both days and drinks & hors d’oeuvre at the reception in honour of James Boyd White on Friday evening will be provided.

Coffee, tea, drinks and light snacks will also be freely available during the day.
LOCATIONS

● Hotung Building

  ○ Hotung Atrium: Registration, Meals, Reception and Book Exhibit

  ○ Subpanels take place in
    i:    Hotung 2000
    ii:   Hotung 1000
    iii:  Hotung 5013
    iv:   Hotung 5020
    v:    Hotung 5021
    vi:   Hotung 6005
    vii:  Hotung 6006

● McDonough Hall

  ○ Subpanels take place in
    viii: McDonough 344
    ix:   McDonough 492
    x::   McDonough 588

  Rooms are assigned by subpanels.
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<th>Day</th>
<th>Time</th>
<th>Room</th>
<th>No</th>
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<td>The Formation of Legal Orders: Historical Jurisprudences</td>
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<td>Subaltern Sovereignty: Official Languages, Aboriginality and Tribal Law</td>
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<td>Interdisciplinary Perspectives on Religious Women's Subjectivity and Agency</td>
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<td>The Rhetorical Practices of Art and Law</td>
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<td>The Fictions and Realities of Interpellation</td>
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<td>Author Meets Readers: A Book Panel on Anne Dailey's Law and the Unconscious: A Psychoanalytic Perspective</td>
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<td>The Corporation in US Literature and Law</td>
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<td>Author Meets Readers: Stacy Douglas' Curating Community: Museums, Constitutionalism, and the Taming of the Political</td>
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<td>Populism, Reason, and Un-Reason</td>
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<td>The Return of the Sex Wars: Regulating Pleasure and Danger in Erotic Life</td>
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<td>Gossip! Satire! Filth! Illegal words in Early America</td>
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<td>Rethinking Law's Transformative Power</td>
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<td>New Challenges for the 21st Century Copyright Lawyer</td>
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<td>Decolonial Reading Practices: War, Indigeneity, Death</td>
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<td>Roundtable: Economic Justice for Aging Rhythm &amp; Blues Singers: The Urgent Need of a New Strategy in the Era of Digital Music Distribution</td>
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<td>Borders and Boundaries: Claims Within and Outside the State</td>
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NB: Panel numbers are not always in a sequential order.
They are for identification purpose only.
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H = Hotung
MD = McDonough

Rooms are assigned by subpanels:
i: Hotung 2000
ii: Hotung 1000
iii: Hotung 5013
iv: Hotung 5020
v: Hotung 5021
vi: Hotung 6005
vii: Hotung 6006
viii: McDonough 344
ix: McDonough 492
x:: McDonough 588
IV. PROGRAMME

Friday, March 16, 2018

8:30-9:15 am Registration (Hotung Atrium)

A. 9:15-10:45 am

i. Decolonial Reading Practices: War, Indigeneity, Death (Panel no.: 73)
Room: Hotung 2000
Chair: Jill Stauffer (Haverford College)
   1. Martel, James (San Francisco State University) "Decolonizing the Dead: How Corpses Help the Living Resist Subjugation"
   2. Stauffer, Jill (Haverford College) "Temporal Lapse and Temporal Privilege: Is it Possible to Decolonize a Perceptual Tradition?"
   3. Walker, James (De Paul University) "Towards a Decolonizing Paradigm of Conflict Analysis"

ii. The Collapse of Character in Life, Law and Literature (Panel no. 2)
Room: Hotung 1000
Chair: Christ, Birte (University of Giessen, Germany)
   1. McCarthy, Eugene (University of Illinois, Springfield) “Strategic Ubiquity: David Foster Wallace’s Critique of Big Pharma and the Opioid Crisis in Infinite Jest”
   2. Frank, Cathrine (University of New England) “Anthony Trollope and the Law of Libel: Contesting Character in the Courts, the Press, and the Novel"
   3. Wilder, Molly (Georgetown University) “The Remains of the Legal Profession: The Forgotten Character of Miss Kenton”

iii. Interrogating Authoritative Representations (Panel no.: 22)
Room: Hotung 5013
Chair: Bonneau, Sonya (Georgetown University)
   1. Falletti, Elena (Carlo Cattaneo University) “The representation of punishment in the medieval frescoes of the Last Judgment”
iv. Narrative Accounts of Legal Temporality: Chopin, Hardy and Fred Korematsu Speaks Up (Panel no. 11)
Room: Hotung 5020
Chair: Ganz, Melissa (Marquette University)
1. So, Christine (Georgetown University) “Returning to Korematsu v. United States: Time in the Narrative of Redress”
2. Mariano, Trinyan (Florida State University) “Statutes of Repose and the Politics of Temporality in Kate Chopin’s At Fault”
3. Sargent, Neil (Carleton University) “Legal Temporalities in Hardy’s Wessex: A Study in Contrasting Juridico-Political”

v. From 17th Century London Insurance to Hobby Lobby: the Making of Corporations in Early and Late Capitalisms (Panel no. 9)
Room: Hotung 5021
Chair: Mueller, Stefanie (Free University Berlin)
1. Eby, Clare (University of Connecticut) “Hobby Lobby, The Reluctant Fundamentalist, and Capitalist Fundamentalism”

vi. Problematic Categories: Citizen and Refugee (Panel no.: 40)
Room: Hotung 6005
Chair: Naimou, Angela (Clemson University)
1. Tan, Meral (Carleton University) “Citizenship at the Intersection of Childhood and Political Violence: Omar Khadr’s Case”
2. Overmier, Kimberly N (University of South Carolina) “Inventing the Modern Refugee: The Debates of the U.N.’s 1951 Convention on Refugees”

vii. Legacies of the Past: Apologies and Memorialisation (Panel no. 46)
Room: Hotung 6006
Chair: Ramshaw, Sara (University of Victoria)
1. McAlinden, Anne-Marie (Queen’s University, Belfast) “Apologies in the Aftermath of Historical Child Abuse in Ireland”
2. Conway, Heather (Queen’s University, Belfast) “Memoralising Victims of Historic Institutional Abuse in Ireland: Private and Public Narratives”

ix. Colonial and Postcolonial of Incorporations of Race and Land (Panel no. 10)
Room: McDonough 492
Chair: Ross, Sara (Osgoode Hall Law School)
3. Penick, Alyssa (University of Michigan) “From Disestablishment to Dartmouth College: Religious Disestablishment and the Conceptualization of Private Corporations in the Early Republic”

x. Morality and Justice in the Neoliberal Economy (Panel no. 5)
Room: McDonough 588
Chair: Varsava, Nina (Stanford University)
   1. Fox Krauss, Sam (University of Texas, Austin) “The Moral Market”
   2. Feola, Michael (Lafayette University) “Infinite Debt and Neoliberal Justice”
   3. Herian, Robert (The Open University, UK) “Blockchain for [no] good: technology, regulation and the ethics of political economy”

B. 11:00-12:30 am

i. Democracy and Punishment (Panel no. 76)
Room: Hotung 2000
Chair: Meyer, Linda (Quinnipiac Law School)
   1. LaChance, Daniel (Emory University) “Empathy for the Executioner: Democratic Distrust, Sentimental Narratives, and the Early Twentieth Century Consolidation of the Modern Killing State”
   2. Dichter, Thomas (Amherst College) "Captivity without Coercion: Thomas Mott Osborne, Prisoner-Reformers, and the Fantasy of the Democratic Prison"
   3. Sarat, Austin; Malague, John; De Los Santos, Lakeisha; Pedersen, Katherine; Quasim, Noor; Seymour, Logan; Wishloff, Sarah (Amherst College) “When the Death Penalty Goes Public: Referendum, Initiative and the Fate of Capital Punishment”

ii. Aesthetic and Land Use (Panel no. 74)
Room: Hotung 1000
Chair: Brady, Molly (University of Virginia)
   1. Soucek, Brian (UC Davis) “Aesthetic Judgment in Law: The Case of Land Use”
   2. Byrne, Peter (Georgetown) “Historic Preservation Narratives”
   3. Brady, Molly (University of Virginia) “Residential Mobility and Aesthetic Variation”
iii. Legal Materiality: Improvisation, Natura, Specter (Panel no. 56)
Room: Hotung 5013
Chair: Kendall, Sara (University of Kent)
1. Ramshaw, Sara (University of Victoria) “The Materiality of (Real) Time: Law as Improvisation”
2. Reyna, Zach (University of Tyumen, Russia) “Making matter meaningful?: Words, Worlds, and Preambles, or How Law Matters”

iv. Legal Narratives That Move (Panel no. 13)
Room: Hotung 5020
Chair: El-Sawy, Amany (Alexandria University)
1. Maziarka, Kristen (UC Irvine) “‘You’re the captain of your own ship’: Narratives of responsibility and reform in lifer parole hearings”
2. Grunewald, Ralph (University of Wisconsin, Madison) “Presenting Stories, Determining Facts: Inquisitorial Narratives and the Case of the Missing and Reappearing Farmer”

v. The Corporation in US Literature and Law (Panel no. 65)
Room: Hotung 5021
Chair: Mueller, Stefanie (Free University Berlin)
2. Jaros, Peter (Franklin and Marshall College) “The Corporate Forms of Melville’s Confidence-Man”
3. Bruner, Nicolette (Western Kentucky University, USA) “Assemblages, Androids, and Artificial Intelligence: Reconsidering the Personhood of Systems”

vi. Care and Incarceration (Panel no. 4)
Room: Hotung 6005
Chair: Triola, Anthony Michael (UC Irvine)
1. Webb, Thomas (Lancaster University) “Lay Justice and Discharge from Compulsory Mental Health Care”
2. Berk, Christopher (University of Virginia) “Custody, Community Control, and Participatory Democracy”
vii. Author Meets Readers: Stacy Douglas' Curating Community: Museums, Constitutionalism, and the Taming of the Political (Panel no. 66)
Room: Hotung 6006
Author: Douglas, Stacy (Carleton University)
Readers:
1. Antaki, Mark (McGill University)
2. Culbert, Jennifer (John Hopkins University)
3. Kaisary, Philip (Carleton University)

viii. Rhetorical Framings of Sexuality and Patriarchy (Panel no. 21)
Room: McDonough 344
Chair: Drakopoulou, Maria (University of Kent)
2. Abrams, Jamie (Georgetown University) “Critiquing the Crisis Framing of Modern Sexual Assault Responses”

ix. Confronting Fascism (Panel no. 49)
Room: McDonough 492
Chair: Denman, Derek (Max Planck Institute for the Study of Religious and Ethnic Diversity)
1. Denman, Derek (Max Planck Institute for the Study of Religious and Ethnic Diversity) “Walls Within: Rebordering & the Neo-Fascist Urbanism of ‘Operation Safe City’”
2. Venkataramani, Chitra (National University of Singapore) “Cartographic Anxieties of the Indian State”
4. Forster-Smith, Chris (Johns Hopkins University) “Toward the Abolition of Indebted Democracy”
5. Valerie Ann Johnson (Bennett College) “A Fearful Militancy of Women: Black, Radical, Queer, Transgender Women Respond to White Supremacy and Fascism”

x. The Politics of Religion and Secularism: Historical and Contemporary Perspectives (Panel no. 6)
Room: McDonough 588
Chair: Eby, Clare (University of Connecticut)
1. Fox, Robert P. (Tufts University) “Building A Wall Around The City Upon A Hill: America’s First Travel Ban In Its Puritan Context”
3. Modak-Truran, Mark.-C. (Mississippi College School of Law) “A Post-Secular Understanding of Religious Freedom and the Culture Wars”

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12:30 -2:00 pm Lunch
Hotung Atrium

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C. 2:00-3:30 pm

i. Author Meets Readers: Anat Rosenberg’s Liberalizing Contracts: Nineteenth Century Promises Through Literature, Law and History (Routledge, Discourses of Law Series, 2018) (Panel no. 45)
Room: Hotung 2000
Author: Rosenberg, Anat (Interdisciplinary Center (IDC) Herzliya)
Readers:
1. Bigelow, Gordon (Gordon Bigelow, Rhodes College)
2. Blumenthal, Susanna (University of Minnesota)
3. MacNeil, William (Southern Cross University School of Law and Justice)
4. Tucker, Irene (UC Irvine)

Room: Hotung 1000
Organiser and Moderation: Stahl, Matt (Univ. of Western Ontario)
Participants:
1. Arewa, Funmi (UC Irvine)
2. Begle, Howell, Attorney in Law
3. Stahl, Matt (University of Western Ontario)
4. Mann, Larisa (Temple University)
iii. Legal Times: Velocities and Interruptions (Panel no. 12)
Room: Hotung 5013
Chair: Kendall, Sara (University of Kent)
1. Jackson, Jack (Whitman College) “Constitutional Time in the Political Thought of Martin Luther King, Jr.”
2. Conklin, William E. (University of Windsor) “Two Interruptions in Legal Time”
3. Aguiar e Silva, Joana (University of Minho) “Justice and the Scent of Time”

iv. LAW/POETRY: The Poet Lawyer and Poets on Law (Panel no. 14)
Room: Hotung 5020
Chair: Khan, Almas (Georgetown & Univ. of Virginia)
1. Khan, Almas (Georgetown & Univ. of Virginia) “Testimonies of Law and Literature: Charles Reznikoff’s Fused Poetic-Legal Practices”
3. Sutherland, Kate (Osgoode Law School) “Subverting Law Through Poetry: The Documentary Poetics of Muriel Rukeyser, M. NourbeSe Philip & Soraya Peerbaye”
4. Stanford, Michael (Arizona State University) “Short stakes, long spokes: Poets on legal concepts”

v. Law's Persons (Panel no. 71)
Room: Hotung 5021
Chair: Rampell, Palmer (Yale University)
1. Rampell, Palmer (Yale University) “The Blindnesses of Love and Law: Or the Novel of Interracial Marriage”
2. Siraganian, Lisa (Southern Methodist Univ.) “Contemporary Literature v. Hobby Lobby”
3. Watson, Rachel (Howard Univ.) ““Blood taken from his veins”: Self-Incrimination and the Limits of Personhood”

vi. Indigenous Complications of the National (Panel no. 36)
Room: Hotung 6005
Chair: Gutierrez, Paul (Brown University)
3. Harris, Mark (University of British Columbia) “Riot, sedition and terror: neoliberal responses to the Indigenous presence in the nation”
vii. Rethinking Law’s Transformative Power (Panel no. 70)
Room: Hotung 6006
Chair and Discussant: Khan, Ummni (Carleton University)

1. Douglas, Stacy (Carleton University) "Law’s Transformative Power: Ideology, Utopia, and Donald Trump"
2. Kaisary, Philip (Carleton University) "To Break Our Chains and Form a Free People": Race, Nation, and Haiti’s Imperial Constitution of 1805

viii. States, Bodies and Sensuous Law (Panel. No. 62)
Room: McDonough 344
Chair: Hamilton, Sheryl (Carleton University)

1. Nadeau, Chantal (University of Illinois, Urbana-Champaigne) ““When law touched us, we died.” On touching, queerness and regulation of queer bodies”
3. Hamilton, Sheryl (Carleton University) ““AIDS is a hurt that can be touched:” Hands, touch and communicable disease in dreams of hygienic containment”

ix. Borders and Boundaries: Claims Within and Outside the State (Panel. No. 77)
Room: McDonough 492
Chair: Golden, Audrey J. (Coe College)

1. Golden, Audrey J. (Coe College) “Occupation and Désocupation through Literary Revolution: Évelyne Trouillot’s Memory at Bay and the Creation of a Reimagined Haiti”
2. Moore, Alexandra Schultheis (Binghamton University SUNY) “Across the Threshold of Detectability at Guantanamo and Beyond: Viewing Structures of Harm and Precarious Subjects through the Work of Edmund Clark and Debi Cornwall”
3. Naimou, Angela (Clemson University) “Refugee Timespaces and the Speculative Fictions of the Refugee”
4. Reichman, Ravit (Brown University) “Property’s Political Distance: Ownership & Ideology in the Occupied Territories”

x. Political Life Beyond Work, Withdrawal and Exhaustion (Panel no.: 79)
Room: McDonough 588
Chair: Parsley, Connal (Kent Law School)

1. Siegel, Nica (Yale University) “Legal Thresholds of Exhaustion”
2. Parsley, Connal (Kent Law School) “Thinking the Political Authority of the Artist: The neoliberal situation”
D. 3:45-5:15 pm

i. Roundtable: Of Ethos: Law and Humanities Scholarship (Panel no. 44)
Room: Hotung 2000
Organisers: Drakopoulou, Maria and Connal Parsley (University of Kent)
Participants:
1. Antaki, Mark (McGill University) (Chair)
2. Culbert, Jennifer (John Hopkins University)
3. Drakopoulou, Maria (University of Kent)
4. Kendall, Sara (University of Kent)
5. MacNeil, William (Southern Cross University)
6. Martel, James (San Francisco State University)
7. Parsley, Connal (University of Kent)
8. Umphrey, Martha (Amherst College)

ii. Perversions, Contortions and Deformations: Cultural Codifications of Violence in/by Law
(Panel no. 52)
Room: Hotung 1000
Chair: Chamberlin, Christopher (UC Irvine)
1. Chamberlin, Christopher (UC Irvine) “Structures March in the South: Law and the Sublation of Racial Power”
4. Brittner, Irina (Osnabrück University) “Blurring the Boundaries of Legitimacy and Illegitimacy: Marlon James’ Conceptualization of Violence in A Brief History of Seven Killings”

iii. Author Meets Readers: A Book Panel on Anne Dailey’s Law and the Unconscious: A Psychoanalytic Perspective (Panel no. 64)
Room: Hotung 5013
Chair: Blumenthal, Susanna (University of Minnesota)
Author: Dailey, Anne (University of Connecticut)
Readers:
1. Brooks, Peter (Princeton University)
2. Reichman, Ravit (Brown University)
3. Stolzenberg, Nomi (University of Southern California)

iv. Populism, Reason, and Un-Reason (Panel no. 67)
Room: Hotung 5020
Chair: Winter, Steven L. (Wayne State University)
1. Cochran, Patricia (University of Victoria) “Common sense against populism: developing criteria for reflective and accountable invocation of “common sense” in law and politics”
2. Carter, Lief (Colorado College) “Ethology, Trumpism And Populist Theory”
3. Winter, Steven L. (Wayne State University) “Neoliberal and Populist Reason”

v. The History and Theory of Legal Emotions (Panel no. 47)
Room: Hotung 5021
Chair: Temple, Kathryn (Georgetown University)
1. Geng, Penelope (Macalester College) “Lady Macbeth and the Poetics of Remorse”

vi. International Criminal Law: Political Dimensions (Panel no. 3)
Room: Hotung 6005
Chair: Torrens, Shannon Maree (University of Sydney)
1. Bocchese, Marco (Northwestern University) “International Justice’s Political Problem: Surveying the International Criminal Court at the United Nations Headquarters”
2. Uwazuruike, Allwell (Lancashire Law School) “The Withdrawal of African States from the ICC: Positive strides towards complete regional governance or backward steps towards authoritarianism and non-accountability?”
3. Torrens, Shannon Maree (University of Sydney) “Reconciliation and Lessons Learned in Hybrid Justice: The Creation of a South Sudan Court”
4. Mtwazi, Candice (University of Kent) “Unpacking the extent of Human Trafficking and Modern Slavery: The stripping of ‘self’ and the loss of identity”

vii. Postcolonial Identities in Shifting Jurisdictions (Panel no. 19)
Room: Hotung 6006
Chair: Schick-Chen, Agnes (University of Vienna)
1. Kim, Juman (University of Pennsylvania) “Time, Place, and Identity: Reflections on the Zainichi’s postcolonial melancholia”
3. Takasaki, Masako (Chuo University) “Cultural Consideration for Minorities in International Tribunal: Focused on the Moiwana Village Case of the Inter-American Court of Human Rights”

viii. The Return of the Sex Wars: Regulating Pleasure and Danger in Erotic Life (Panel no. 68)
Room: McDonough 344
Chair: Kaisary, Philip (Carleton University)
1. Cossman, Brenda (University of Toronto) “Sex Wars 2.0”
2. Del Gobbo, Daniel (University of Toronto) “The Return of the Sex Wars: Toward a Feminist Politics of Campus Peer Sexual Violence”
3. Ketterling, Jean (Carleton University) “Press Start to Submit: Violence, Pleasure, and Masochism in Video Games”
4. Khan, Ummni (Carleton University) “Rape Fantasies: The Erotics of Resistance and Reluctance”

ix. Subaltern Sovereignty: Official Languages, Aboriginality and Tribal Law (Panel no. 57)
Room: McDonough 492
Chair: Rule, Elizabeth (Brown Univ./George Washington University)
2. Tanner, Susan (Carnegie Mellon University) “Speaking for Oneself: a Comparative Linguistic Analysis of Navajo and US Supreme Court Opinions”

x. Pasts of the Present Politics (Panel no. 35)
Room: McDonough 588
Chair: Fox, Robert P. (Tufts University)
3. Thomas, Brook (UC Irvine) “Reconstructing Portraits in the Politics of Johnson’s Impeachment 150 Years Later”
5:30-7:00 pm

Reception

in Honour of James Boyd White on

the 45th Anniversary of The Legal Imagination,

and Prize Announcements

Hotung Atrium

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Saturday, March 17, 2018

E. 9:00-10:45 am

i. Prometheus, Divorce, Artificial Life: The Elusive Agency of Law in Film (Panel no.: 16)
   Chair: Parsley, Connal (University of Kent)
   Room: Hotung 2000
   1. MacNeil, William (Southern Cross University) “Promethean Longing: Ridley Scott’s Speculative Legalism”
   2. Abramson, Leslie (American Bar Foundation / Loyola University Chicago) “Evidence to the Contrary: Matrimony & Legal Interventionism in Silent Divorce Comedies”
   3. Young, Diana (Carleton University) “Subjectivity, Repetition, the Unexpected: Artificial Life in Science Fiction Films”

ii. The Fictions and Realities of Interpellation (Panel no.: 63)
   Room: Hotung 1000
   Chair: Martel, James (San Francisco State University)
   1. Brady, Jonjo (University of Kent) “The Truman Show – Interpellated”
   2. Cufar, Kristina (European University Institute) “Performativities of Disappearing Bodies…”
   3. Diones, Alexander (University of California, Los Angeles) “Two Regimes of Possibility”

iii. The Formation of Legal Orders: Historical Jurisprudences (Panel no.: 33)
   Room: Hotung 5013
   Chair: Lerner, Pablo (Ramat Gan Law School)
   2. Barr-Klouman, Agnes (University of Ottawa) “Creating Free Space: Appropriation and Partition in International Law”
   3. Taylor, Luke (University of Toronto) “Constituting Family and Employment in Nineteenth-Century English Legal Thought”

iv. Law in Literature, Literature in Law (Panel no.: 37)
   Room: Hotung 5020
   Chair: Raff, Sarah (Pomona College)
2. Lee, Haiyan (Stanford University) “Society Must Be Defended: Chinese spy thrillers and the enchantment of Arcana Imperii”
3. Jalova, Melicent (Mindanao State University - Iligan Institute of Technology) “Overseas Filipino Workers (OFW) real-life stories of war, hope, and love”
4. Lemire-Garlic, Nicole (Temple University) “Police Brutality Narratives in African-American Film”

v. Elements of Judging: Interpretation, Reason, Technique (Panel no.: 31)
Room: Hotung 5021
Chair: Varsava, Nina (Stanford University)
1. Rudolph, Duane (Peking University School of Transnational Law) On Moral Outrage in Judicial Opinions”
2. Li, Ke (City University of New York) “Frames and Schemas in Judging: Divorce Law Practice in Trial Courts in Reform China”
4. Smejkalova, Terezie (Masaryk University) “Interpretation as a ritualistic veil in courts' law-making”

vi. Seeing / Race (Panel no.: 28)
Room: Hotung 6005
Chair: Allo, Awol (University of Keele)
1. Campbell, Mary (University of Tennessee School of Art) and Jewel, Lucy (University of Tennessee College of Law) “Dredged and Submerged: Law, Race, and Visual Imagery”
2. El-Sawy, Amany (Alexandria University) “The (In)visibility of Black Female Pain in Robbie McCauley’s Sally’s Rape”
3. Perry, Twila L (Rutgers University School of Law) “Prince: Music, Race, and the Visualization of Social Justice”

vii. Public Memory: Monument, Performance and Hybrid Virtualities (Panel no.: 7)
Room: Hotung 6006
Chair: Reichman, Ravit (Brown University)
1. Ricciardi, Laura (State University of New York) “Legislating Memory: Accommodating Contestations of Public Monuments”
3. Ross, Sara (Osgoode Hall Law School) “Exploiting the Language of Urban Law and its Dual Role: Understanding and Managing Mixed Virtual/Physical Affinity Spaces in the City”

viii. Gendered Discourses in Law (Panel no.: 18)
Room: McDonough 344
Chair: Abrams, Jamie (Georgetown University)
1. Dannreuther, Anna (Columbia Law School) “Up-Skirting As Cultural Malaise: Rethinking Legal Remedies for a Cultural Disorder”
2. Weare, Siobhan (Lancaster Law School) “Forced-to-penetrate cases, cultural constructions of masculinities and femininities, and legal reform within England and Wales”

Room: McDonough 492
Chair: Whitaker, Amy (New York University)
1. LaFrance, Mary (University of Nevada, Las Vegas) “Collaborative Creation and Copyright Failure”
2. Whitaker, Amy (New York University) "Shared Value Over Fair Use"
3. Dominicé, Antoinette Maget (Ludwig-Maximilians-Universität, Munich) and Haux, Dario H. (University of Lucerne) "Digital Cultural Heritage in the 21st Century: Are we creating a long-lasting legacy or an instable transience?"

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F. 11:00- 12:30 am

i. Legal Optics (Panel no.: 53)
Room: Hotung 2000
Chair: Umphrey, Martha (Amherst College)
1. Umphrey, Martha (Amherst College) “Eyes in the Skies”
3. Culbert, Jennifer (Johns Hopkins University) “The Farce of Law”
ii. Legal Imaginaries in Film, Literature and Television (Panel no.: 17)  
Room: Hotung 1000  
Chair: Suzack, Cheryl (University of Toronto)  
1. Schick-Chen, Agnes (University of Vienna) “Explanatory Justice in Late Transition: retrying the past in contemporary feature and documentary film”  
2. Rutkowska, Urszula (Brown University) “Writing the Drone: Legal Codification in Contemporary Literature”  
3. Louis, Anja (Sheffield Hallam University) “She who laughs last: gender humour in Los misterios de Laura/The Mysteries of Laura”

iii. Legal Experience, Experiencing Law: Theory, Technology, Authority (Panel no.: 34)  
Room: Hotung 5013  
Chair: Herian, Robert (The Open University)  
1. Michel, Agustina Ramón “The Authority of Law: meanings and (dis)obedience in Argentina”  
2. McManus, Matthew (York University) “Law, Technology, and Difference”  
3. Macias, Steven J (Southern Illinois University) “John Dewey’s Legal Philosophy”

iv. Punishment, Reason and Responsibility (Panel no.: 32)  
Room: Hotung 5020  
Chair: Dichter, Thomas (Amherst College)  
3. Triola, Anthony Michael (UC Irvine) “Criminological Theory as a Reconstitution of Authority”

v. Legal Cultures (Panel no.: 41)  
Room: Hotung 5021  
Chair: Shoemaker, Karl (University of Wisconsin)  
1. Lerner, Pablo (Ramat Gan Law School) “Italy to Israel: Prof. Guido Tedeschi and the formation of a legal culture”  
2. Farah, Paolo Davide (West Virginia University) “Law and Culture: Judicial Independence and Professionalism in the Chinese Legal System”  
vi. Law’s Bond with Slavery (Panel no.: 29)
Room: Hotung 6005
Chair: Perry, Twila (Rutgers University School of Law)
2. Guha-Majumdar, Jishnu (Johns Hopkins University) “Between Person and Property: Antebellum Abolitionism and Regimes of Personhood”
3. Allo, Awol (University of Keele) “From Slave-Owners to Founding Fathers: Performative Genealogies in the Chicago Eight Conspiracy Trial”

vii. Urban Margins: Citizenship and Publics (Panel no.: 8)
Room: Hotung 6006
Chair: Badillo, David (City University of New York)
1. Yasin, Tauheeda (George Mason University/Northern Virginia Community College) “The "new poorhouse": issues in legal indigence and quality-of-life infractions”
2. Bardelli, Tommaso (Yale University) “Uses and Experiences of the Law at the Urban Margins”

viii. Informing Reform: Women, Care, Reproduction (Panel no.: 23)
Room: McDonough 344
Chair: Weare, Siobhan (Lancaster University)
1. Toscano, Vicki (Nova Southeastern University) “Natural Mothers: The Rhetoric of Abortion Law”
2. Barzilay, Arianne Renan (University of Haifa) “Constitutional Caregiving”

ix. The Rhetorical Practices of Art and Law (Panel no.: 61)
Room: McDonough 492
Chair: Bonneau, Sonya G. (Georgetown University Law Centre)
1. van Haaften-Schick, Lauren (Cornell University) “Publishing Conceptual Art: Seth Siegelaub’s Economy of Intellectual Property and Books”
2. Harrison, Nate (Tufts University) “Appropriation Art, Labor, and the Law: From an Aesthetics of Administration to an Administration of Aesthetics”
3. Bonneau, Sonya G. (Georgetown University Law Centre) “Artistic Expression: Free Speech or All Talk?”
G. 1:45-3:15 pm

i. Trumpism, Cosmopolitanism, Identity and Equality: Theorizing the New Political Space
(Panel no.: 54)
Room: Hotung 2000
Chair: Seidman, Louis M. (Georgetown University)
1. Tsai, Robert (American University Washington College of Law) “Trumpism’s Dilemmas”
2. Godwin, Samantha (Yale Law School) “Moral Universalism and Identarianism”
3. Dhillon, Sital (Sheffield Hallam University) “Human Rights in the Age of Austerity”

(Panel no.: 50)
Room: Hotung 1000
Chair: Raff, Sarah (Pomona College)
1. Ganz, Melissa J. (Marquette University) “Physiognomy and Criminality in Oliver Twist”
2. Raff, Sarah (Pomona College) “The Author as Guardian and Testator in Dickens’s Late Novels”
3. Abramowicz, Sarah (Wayne State University Law School) “From Chancery to Contract: Bleak House, Great Expectations, and the origins of family law exceptionalism”

iii. Ethics of Care In and Outside of Law: Adolescents, Animals and Corpses
(Panel no.: 1)
Room: Hotung 5013
Chair: Martel, James (San Francisco State University)
2. Reyna, Zach (University of Tyumen) “Of Corpses and Kin: Rethinking a Legal Theory of Care with Polynices’ Corpse”
3. Lloyd, Chris (Oxford Brookes University) “There is nothing outside the sext”
iv. Legal Frictions: Democracy, Populism, Technology and Post-politics
(Panel. No. 25)
Room: Hotung 5020
Chair: Strawson, John (University of East London)
2. Hendrianto, Stefanus (Boston College) “Constitutionalism and the New Global Populism: A Legal-Philosophical Investigation”

v. Interdisciplinary Perspectives on Religious Women's Subjectivity and Agency
(Panel no.: 60)
Room: Hotung 5021
Chair: Bateman, Eliza (McGill University)
1. Monforte, Tanya (McGill University) “The Shield of Choice”
3. Bateman, Eliza (McGill University) “Navigating the Forbidden: applying a feminist lens to the narratives of lesbian Orthodox women and the conflict between religious and sexual identity”

vi. Seeing Difference (Panel no.: 78)
Room: Hotung 6005
Chair: Norris, Luke P. (Cardozo Law School)
1. Boucai, Michael (SUNY Buffalo Law School) “Codifying the Closet: Law and Homosexuality in Modern Britain”
3. Tait, Allison (University of Richmond School of Law) “Keeping Up Appearances”

vii. Reading Law’s Processes and Practices (Panel no.: 42)
Room: Hotung 6006
Chair: Kang, Hyo Yoon (University of Kent)
1. Marder, Nancy S. (Chicago-Kent College of Law) “Courts, Power, and the Public: Cameras in the UK Supreme Court”
viii. Gossip! Satire! Filth! Illegal words in Early America (Panel no.: 69)
Room: McDonough 344
Chair: Mercer, William D. (University of Tennessee)
2. Olbertson, Kristin A. (Alma College) “‘Monster of Monsters’: Gender, Satire, & Libel Law in 18th-Century Massachusetts”

ix. New Challenges for the 21st Century Copyright Lawyer (Panel no.: 72)
Room: McDonough 492
Chair: Maget, Antoinette (Ludwig-Maximilian-University Munich)
1. Carugno, Giovanna (University of Campania) “Preservation of Knowledge or Protection of Copyright? The Case of Digitized Books and Archival Goods”
2. Borroni, Andrea (University of Campania) “The Protection of Digital Cartoon and Videogame Characters”
3. Falletti, Elena (Carlo Cattaneo University) “Freedom of Art, Copyright, and Censorship: A comparative law perspective”

x. Roundtable: Content and Criteria of Dignity in Two Landmark Cases: Tennessee v. Lane and Lobato v. Colorado (Panel no.: 48)
Room: MacDonough 588
Chair: Espinoza, Manuel Luis (University of Colorado at Denver)
Participants: Right to Learn (R2L) Undergraduate Research Collective, led by Espinoza, Manuel Luis (Univ. of Colorado at Denver) with R2L Research Associates: Howard, Arliss; Isaac, Raquel; Lhungay, Tamara; Luna, Monica; Seidel, Valencia; Silva, Frida; Soto-Valenzuela, Tania; Ulibarri, Diego; Velasco, Maria; Wong, Mandy

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H. 3:30-5:00 pm

i. Law’s Transcriptions (Panel no.: 59)
Room: Hotung 2000
Chair: Painter, Genevieve (Concordia University)
1. Pavlich, George (University of Alberta) “Making Social Lives Legible to Law”
2. Unger, Matt (Concordia University) “Inscribed in Flesh: Accusation and the body”
3. Antaki, Mark (McGill Law School) & Popovici, Alexandra (University of Sherbrooke) “Délivrer le droit”

ii. Legal Education in Popular Culture: Law School Stories (Panel no.: 51)
Room: Hotung 1000
Chair: Ledwon, Lenora (St. Thomas University School of Law)
1. Corcos, Christine (Louisiana State University Law Center) “What We Talk About When We talk About Law Schools: Deconstructing meaning in pop culture mentions about legal education”
2. Ledwon, Lenora (St. Thomas University School of Law) “‘How To Get Away With Murder’ in Law School: Power, desire, and professional identity formation”

iii. Practice of Law in Theatre, Musical Improvisation and Literature (Panel no.: 15)
Room: Hotung 5021
Chair: Ramshaw, Sara (University of Victoria)
1. Stepanikova, Marketa (Masaryk University) “Legal Theatre”
2. Malanik, Michal (Masaryk University) “Interpretation of Law and Music; Methodological Path to Improvisation”
3. Lopez, Michael Brandon (Attorney) “Law’s Anatomy: Existentialism, Literature, and Practice”

iv. Tools and Techniques of Collective Struggle (Panel no.: 27)
Room: Hotung 5020
Chair: Petersen, Amanda M. (UC Irvine)
2. Blalock, Corinne (Duke University) “Anti-Collectivity and the Withering of Class Action”
3. Badillo, David A (City University of New York) “Cesar Chavez vs. MALDEF: Historicizing Latino civil rights theory and practice”
V. ABSTRACTS By Panel Number

1

Ethics of Care In and Outside of Law: Adolescents, Animals and Corpses
Room: Hotung 5013


Legal systems around the world have recently experienced a peculiar loosening of jurisprudential categories. Notions of legal object and legal subject, of person and property, have been shaken by the emergence or intensification of concerns over animal life and well-being. The “animal question”, as it is referred to in the Humanities, has made its way into a variety of policy initiatives, including constitutional reforms and seemingly sweeping reforms of property law, all unified by a common and loose objective related to the fate of “animals”. This paper proposes a critical reading of this transversal reformist wave, as a specific example of ideological capture and processing of revolutionary impulses within liberal constitutionalist legal systems. It argues more specifically that the academic and professional field of “animal ethics” exerts a hegemonic influence on these legislative trends. The main effect of this influence on the rhetoric, structure and means of legal change concerning animals lies in the message that those legal reforms are indeed about animals – as objects of concern, care, and exploitation. The general trend of animal-welfarist initiatives, as guided by a specifically organized discourse about “animal ethics”, thus occupy the whole spectrum of legal projects about the future of animals as objects, and shield from critical conversations the liberal foundations of animal presence in society, and their effect of the fate and welfare of humans. Reading various rationales for reform as ideological structures, and highlighting their roots in liberalism, will underscore again the impossibility of animal liberation within political liberalism, once we assimilate the notion that animal liberation is about humans.

2. Reyna, Zach (University of Tyumen) “Of Corpses and Kin: Rethinking a Legal Theory of Care with Polynices’ Corpse”

Over the past several decades, feminist legal theorists have developed a nuanced account of an “ethic of care.” Focusing on traditionally feminized virtues like care, attentiveness, and responsiveness, these theorists have demonstrated how dominant legal theories almost wholly ignore these virtues as virtues. In this paper, I show how Sophocles’ _Antigone_ not only contributes to the ongoing project of articulating a legal theory of care, but more crucially moves beyond the oppositional logic and essentialism that continues to haunt many legal theories of care. Rather than hold us to the “oppositional logic” of masculine justice and feminine care, Sophocles I show offers an alternative “compositional account of law” by subjecting his readers/watchers to attend to the lively material (de)composition of Polyncies’s
corpse, the vultures and dogs which devour his/its rotting flesh, the altar of Apollo infected by his/its organs carried by birds of augury, the guards hurrying up-wind to escape the stench, and a sister's mounting of corpse to pour forth dust. Yet while Sophocles literally refuses to bury this alternative “compositional account of law,” it is rarely acknowledged by most interpreters of the play. Most interpreters read the play as a conflict between Creon’s positive law and Antigone’s appeal to the laws of the gods or natural law. This misses, however, Antigone’s peculiar second formulation of the law. Antigone offers this account of law on her death-march to her tomb, invoking not just the rhetoric of kinship, hearth gods, family, and care, but also the active vitality of Polynices’s corpse, challenging dominant Western perspectives that associate materiality with passive femininity. I show how this alternative account of law—or “compositional account of law”--is crucial not only to understand the play, but in helping articulate a feminist legal theory of care capable of resisting attempts to fit it into an oppositional structure that ultimately legitimates care’s eventual sublimation into state law.

3. Lloyd, Chris (Oxford Brookes University) “There is nothing outside the sext”

The proposed paper has, at its core, a concern with the failure of current sexual offences legislation to adequately account for the technological developments which are driving the so-called ‘time-bomb’ of adolescent sexting. Namely, the relevant legislation in England and Wales pays no regard whatsoever to the ubiquitous mobile phone. But with mobile phones driving adolescent sexting to a national (and global) epidemic, these devices must be reckoned with, given that law is an important element within the protection of the vulnerable and the promotion of sexual exploration on the 21st century digital playing field. As foretold by J.G. Ballard: ‘Sexual intercourse can no longer be regarded as a personal and isolated activity, but is seen to be a vector in a public complex involving automobile styling, politics and mass communications.’ As it stands, the paradox of sexting is that a legally competent adolescent can consent to sexual intercourse but they cannot consent to being photographed in a sexual manner. Moreover those who create and share such an image, most likely to occur via a mobile phone, are deemed in the eyes of the law to be a child pornographer, even if their actions are executed with the full consent of the picture’s subject. The paper seeks to show how Maurizio Ferraris’ seminal work Where are you? An ontology of the cell phone – a treatise heavily influenced by the thought of Jacques Derrida – can shed light on the quintessential device of our contemporary world. Ferraris’ work elucidates the mobile phone’s role, its uses, and its philosophical importance within our always connected world. Using his social ontology of ‘weak textualism,’ which offers a correction to Derrida’s famous maxim ‘il n’y a pas de hors-texte,’ Ferraris’ work will be shown to offer an understanding of what the mobile phone does with regards to its users ‘writing’ their social world. This important ontological reflection will then be used to argue that the significance of the mobile phone in the ‘writing’ the modern world must be acknowledged by the legal systems which deem it the case that consensual adolescent sexting is an act of child pornography.
David Foster Wallace’s novel Infinite Jest is monolithic, challenging, and to many readers just plain perplexing. Adding to the text’s seeming inaccessibility are the 388 endnotes that comprise the novel’s final 100 pages. Critics have called the endnotes unnecessary “cruft” that only further complicate the text. My paper challenges this common criticism of Wallace’s endnotes, arguing instead that they serve as the analytical key to Infinite Jest. The endnotes reveal the novel to be a prescient critique of the pharmaceutical industry and the legal mechanisms is has exploited in assuming a dangerous socio-legal position. Infinite Jest is at its core concerned with American “addiction,” and the endnotes reveal that the source of this addiction lies in the real-world pharmaceutical companies and patented medicines that Wallace details in his endnotes—and only in his endnotes. While the novel addresses alcoholism, recreational drug use, and America’s addiction to “entertainment,” the endnotes detail the specific legal devices relating to intellectual property, marketing, and prescription-only status that pharmaceutical companies deploy in their reckless quest for profit. Specifically, Wallace’s endnotes implicate the legal methods that narcotic analgesic distribution companies use to fuel the opioid crisis. These companies use the marketing ploy of “strategic ubiquity” to create constant awareness of (and fear about) the diseases their drugs treat; Wallace’s endnotes do the same within his narrative, embedding Big Pharma everywhere beneath the text such that the reader cannot escape the industry’s presence. Infinite Jest, written in 1996 at the onset of the opioid crisis, implicates the pharmaceutical industry for its role in capturing the legal apparatus in an effort to use “cures” to foster disease.

What can one do when the slow growth of reputation is derailed not by a failure of personal vigilance or other intrinsic flaw, but by insult, rumor, accusation, or slander? What happens, for example, when gossip becomes libel? Anthony Trollope addressed these questions throughout his oeuvre, and particularly in his novels of the 1870s, in which libel assumes a thematic interest not visible in other Victorian novels. This paper will suggest that the serial nature of Trollope’s fiction, specifically the idea that a character’s reputation can follow him or her into a subsequent novel, heightened the importance of character for Trollope. Further, Trollope’s lifelong personal engagement with and commentary on the press focused his attention on its ability to constrain or undermine the kind of individual “regulation and control” Samuel Smiles enjoined readers of Character (1871) to exercise when crafting their reputations. More
dismayed by liberties of the press than worried about restrictions on its freedom, Trollope’s novels explore its negative effect on English national character through its impact on the private character of its subjects. While this paper will focus on Phineas Finn (1869) and Phineas Redux (1874), Trollope’s case opens onto a broader discussion of the Victorians’ unending fascination with character as an ethical, legal, and narratological construct. Formed, deformed, reformed through a continual series of negotiations between the courts, the novel, and in Trollope’s case especially, the press, “character” reaches into the discourses of self-representation, self-possession, and privacy that remain contested today. By bringing the novel together with legislation regarding freedom of the press, records of libel cases brought against editors, and commentary in the press itself, a focus on libel highlights the intimate relationship between writing and reputation—characters and Character—in the Victorians’ literary and legal imagination and in our own.

3. Wilder, Molly (Georgetown University) “The Remains of the Legal Profession: The Forgotten Character of Miss Kenton”

Stevens, the butler protagonist of Kazuo Ishiguro’s The Remains of the Day represents, for the world of domestic service, the stereotypical gun-for-hire. He is completely deferential to the interests and ethical judgments of his master; both he and his master end up regretting their actions. In contrast, P.G. Wodehouse’s butler, Jeeves, paternalistically directs his master’s life as he thinks is best; his master remains ethically stunted. Several legal ethicists, including prominently Rob Atkinson and David Luban, have taken Stevens and Jeeves to represent two unethical extremes of how lawyers relate to their clients, blind deference and overbearing paternalism, and criticized both. But both have ignored a third fictional model of domestic service: Miss Kenton, the housekeeper in The Remains of the Day. In this paper, I argue that the character of Miss Kenton provides a better ethical exemplar for the legal profession than either Stevens or Jeeves and represents a middle way between deference and paternalism. In both her ethical successes and failures, she demonstrates how one might combine respect for others’ judgment with strong autonomous judgment and reveals how important friendship and community—values often ignored by legal ethicists—are to an individual’s ability to act ethically. While she does not live the happiest or most ethical life for which one might hope, she provides a realistic model of ethical response we might fruitfully apply to legal ethics.

3

International Criminal Law: Political Dimensions (Panel no. 3)
Room: Hotung 6005

1. Bocchese, Marco (Northwestern University) “International Justice’s Political Problem: Surveying the International Criminal Court at the United Nations Headquarters”
International courts do not operate in a political vacuum, and the ICC is no exception to the rule. For many observers, politics does not simply surround the ICC, but it is constitutive of it. That said, scholars too often take common critiques of the ICC at face value, confusing personal opinions for accepted wisdom. As a result, one is led to believe that many—if not the majority of—foreign policy elites interacting with the Court have negative images thereof. But is the ICC really biased against African states, neglecting atrocities committed elsewhere? Or do state representatives see the ICC as a neocolonial tool employed in the furtherance of a Western political agenda? When looking for someone to blame for the modest results the Court has thus far achieved, do they hold the ICC Chief Prosecutor as the most responsible? These questions too often become assumptions in the literature, and as such they are never duly investigated. This Article investigates foreign policy elites’ images of a judicial organization whose decisions reportedly have extra-legal effects and employs an original methodology combining a survey of diplomats posted to the UN Headquarters in NYC with thirty-seven structured interviews. Study results show that, according to state representatives, the ICC currently faces problems that are mostly exogenous to it. Surprisingly, foreign policy elites blame political interference with the Court’s core functions for its caseload and scarce state cooperation. This Article concludes by setting forth several policy implications aimed at improving working relations with state authorities and enhancing state cooperation with ICC investigations and prosecutions, the foremost being the necessity to review—and possibly terminate—the UN Security Council’s role in ICC operations.

2. Uwazuruike, Allwell (Lancashire Law School) “The Withdrawal of African States from the ICC: Positive strides towards complete regional governance or backward steps towards authoritarianism and non-accountability?”

With the withdrawal, in 2016, of 3 African states from the ICC the discourse took an interesting twist. African states, or at least some of them, had now shown their resolve to part ways with the ICC and, by implication, focus on further enthroning regional control and governance through an improved continental justice system. A range of views have been expressed over the years on the allegations of bias by some African states and the continued membership of the ICC. While there may be a split on the merits of the allegations of bias, academic analysts have generally not opposed African states’ membership of the ICC nor been particularly optimistic about the prospects of an African criminal court. There is also a degree of ambivalence on whether there are positives to be taken from African states’ withdrawal from the ICC. This paper examines the recent developments within the ICC and analyses whether these could be viewed from the positive (or, at least, alternative) spectrum of the AU’s spirited march towards regional sovereignty or entirely negatively from the point of view of African Heads-of- State seeking to enthrone an era of authoritarianism and non-accountability.

3. Torrens, Shannon Maree (University of Sydney) “Reconciliation and Lessons Learned in Hybrid Justice: The Creation of a South Sudan Court”
This paper looks at reconciliation across a range of hybrid courts, including the Sierra Leone (SCSL) and Extraordinary Chambers in the Courts of Cambodia (ECCC) and analyses how this objective has been implemented over time by these courts in light of the practical operations of the courts and the response to these mechanisms in the respective post conflict societies. For example, with respect to the ECCC, the court was established years after the commission of the crimes, when the accused and victims were already of an advanced age. This paper discusses why justice has taken so long to manifest in Cambodia and why it was more easily expedited with respect to Sierra Leone. In focusing on reconciliation this paper discusses what reconciliation means generally, what it means for a post conflict community and what it means in the context of the creation of hybrid courts. Through assessing the effect of these hybrid courts on the populations of post conflict communities and their reconciliation, this paper looks at the potential creation of the South Sudan hybrid court in light of the lessons learned at the ECCC and SCSL. This paper discusses and then compares the political, legal and cultural situations in the three different contexts of Sierra Leone, Cambodia and South Sudan and in doing so analyses how they are distinct but also comparable situations on various levels, in addition to responding to how the creation of a South Sudan court would interact with other current responses to the commission of international crime.

4. Mtwazi, Candice (University of Kent) “Unpacking the extent of Human Trafficking and Modern Slavery: The stripping of ‘self’ and the loss of identity”

Despite concerted efforts to combat human trafficking, we continue to see exponential growth in the trade of human beings, one which rivals historical understandings of slavery. Sexual exploitation is at the forefront of the industry in spite of the repeated similarities in the entrapment and manipulation of victims. VOT (victims of trafficking) and modern slaves lose their identity and ‘self’ through the emotional and mental manipulation of exploiters, as well as the stripping of their identity evident through documents that change their names, their dates of birth and other such identifiers. Whilst the industry booms, there is a failure to see this growth in the intersectionality of the actions and English law; very few cases make it to prosecution and for those that do, require a lot from the victims - who additionally face re-traumatisation. There is stunted attention within law and policy-making, whereby victims are recognised through the National Referral Mechanism (NRM) but are still left vulnerable after the process of identification. The NRM does not afford them sustainable support and/or protection from their exploiters and from further exploitation, and this contributes to the understanding of re-exploitation. The interconnectedness of human trafficking and modern slavery is undeniable to the knowledgeable person, but it remains outside fields of visibility for those unaware of the industry but more worryingly so, the exploited victims themselves. There is also evidence of an ‘othering’ of that which the ignorant mind cannot understand, with misconceptions of what constitutes smuggling, clandestine actions and/or trafficking - all of which can contribute to inaction. This othering extends to any involvement in recognising such crimes within the community, reporting the crimes, understanding cultural differences and appreciating the drivers and link between migration and eventual exploitation. Nonetheless, this presentation will expose the workings of trafficking and modern slavery and what drives it to succeed, the
indicators of the industry within the community, the identification of 'self'; by the victim and the perceptions of the observer. It will touch upon the positionality and role of the law in this industry and how re-traumatisation remains a perpetual threat to victims, during and after recognition by authorities. It will touch upon the positionality and role of the law in this industry and how re-traumatisation remains a perpetual threat to victims, during and after recognition by authorities. It will touch upon prescriptive solutions for victims that allow them to become victors by considering all the burdens they face, including immigration status and the socio-economic and/or cultural issues that rendered them vulnerable to begin with. It will focus on the English Legal System and the work ‘first responders’ do and the legal challenges they encounter in providing VOT sustainable support.

4
Care and Incarceration
Room: Hotung 6005

1. Webb, Thomas (Lancaster University) “Lay Justice and Discharge from Compulsory Mental Health Care”

In the United Kingdom the primary legislation governing compulsory mental health care is the Mental Health Act 1983. The Act is currently the subject of an independent legislative reform review. One of the areas the review will consider is ‘the balance of safeguards available to patients.’ Though it is not mentioned specifically in the Review’s terms of reference, it is anticipated that one safeguard to be considered is s.23, which establishes, inter alia, the basis for Hospital Managers to discharge a person from compulsory care against medical advice. It is a quirk of the development of the s.23 power that Hospital Managers in this context are ordinarily lay individuals specially appointed to exercise the s.23 power, and not the administrative managers of the hospital. The genealogy of the s.23 power dates from the early 1800s and, while the locus of the power has changed, one of its persistent features has been the culture of involving lay people in its exercise. It can be distinguished in this regard from more modern innovations, such as the professionally dominated Mental Health Tribunal first introduced under the Mental Health Act 1959. Although the historical record suggests that for much of this time lay involvement was uncontroversial, since the early 1990s there has been a sustained call for the abolition of s.23 and thus the removal of lay people from this aspect of compulsory care decision-making. In view of this, the paper assesses the value which lay involvement can bring to compulsory mental health care, especially as a means to bring community-derived legitimacy to the system, and to regulate the potentially normatively insular professional community. It does so by considering the applicability of the arguments regarding cultures of lay justice elsewhere in legal thought and practice.

2. Berk, Christopher (University of Virginia) “Custody, Community Control, and Participatory Democracy”
A number of scholars have turned to the War on Poverty to understand the causes and consequences of the 'punitive turn' in U.S. democratic politics in the early 1970s. An overlooked dimension of the rich, troubled intellectual history of participatory democracy that runs through that period is the extension of the idea of community control to custodial institutions like prisons and mental hospitals. Those participatory experiments, I argue, highlight the complex role organizations can play in making -- and re-making -- civic competence. Moreover, the failures of those projects can help us understand the limits and possibilities of custodial politics today. Community control was at best an ameliorative, not transformative, political strategy. Inmate participation was more shaped by, than shaped, the beliefs, institutional dynamics, and problem solving tendencies of the institutions of which they were part. Principle among these shaping forces was the tendency to bound 'incapacity' and its correlates, to locate its causes and solutions in the people who are experiencing them, and to interpret it in terms that do not require adjustment by those on the outside.

5
Morality and Justice in the Neoliberal Economy
Room: McDonough 588

1. Fox Krauss, Sam (University of Texas, Austin) “The Moral Market”

People sometimes behave immorally. When they do, you have at least a defeasible reason to stop them. Circumstances will dictate whether you should, and if so, the best method: you might try to convince them that what they are doing is immoral; you might explain the social cost of their behavior; you could ask them nicely, or threaten them. Or, you could pay them.

In this paper I address the following question: should we pay people to cease immoral behavior? I answer: yes, sometimes. I argue that under certain conditions we ought to encourage what I’ll call the moral market, on which people buy and sell the cessation of immoral behavior. The positive argument for the facilitation of the moral market has two main premises. First, facilitating exchanges on the moral market would increase economic efficiency. Second, paying for the cessation of immoral behavior would bring about a moral improvement. I argue that while there are good reasons for imposing limits to the moral market, in particular, in instances of market failure, even with some restrictions there is room for robust exchange.

The paper proceeds in the following way. First, I use the example of a vegetarian to motivate the project, and articulate the positive argument for the creation of a moral market. Second, I refine the proposal, and introduce limits to the moral market, especially in the case of market failure. Third, I consider several arguments in the literature on the limits of the market and argue that, even if arguments succeed against a market in, say, organs, these arguments don’t succeed against the moral market. Fourth, I suggest a way forward.

2. Feola, Michael (Lafayette University) “Infinite Debt and Neoliberal Justice”
The essay interrogates how the practice of justice is increasingly negotiated through forms of debt. And certainly, it is not new to associate justice with indebtedness. In the most popular sense, criminal reformers of the classical age construed the criminal as one who violated the social compact and thus ‘owed a debt’ to society. And, in a more philosophically nuanced sense, Friedrich Nietzsche famously argued that moral culpability has come to be figured through economistic terms. To wrong someone is ultimately to owe them a debt in need of recompense.

Where many scholars have unpacked the philosophical underpinnings of a debt-centered approach to justice, this essay will consider this framework through a more empirically-rich framework: the increasing turn to inmate debt as a core feature of the neoliberal prison state. At nearly every turn, defendants are subjected to fees (external to the financial penalties levied as punishment) that follow them after incarceration. And increasingly, these debts constrain possibilities for social reintegration after release. The core question of the essay is neither the broad philosophical linkage of debt and justice – nor is it the empirical question of tracking these strategies of ‘prisoner-funded justice’. Rather, the essay will negotiate these registers to interrogate how these initiatives reflect a broader theme of neoliberal societies: to govern subjects through regimes of debt that carry (inadequately-theorized) forms of power. Ultimately, the paper will complicate some trends in the literature. Where some have theorized these debt structures through a Foucaultian lens, I will propose that such a move too easily misses broader punitive commitments of the neoliberal incarceration state. Ultimately, such debts enact an indefinite temporal extension of punishment, and thus an infinitization of guilt.

3. Herian, Robert (The Open University, UK) “Blockchain for [no] good: technology, regulation and the ethics of political economy”

As the distributed architecture underpinning the Bitcoin anarcho-capitalist project, blockchain entered the imagination and the vocabulary of many people only very recently. Yet it has in a short space of time become synonymous with solutions to many of the world’s problems. From provenance to preventing electoral fraud to decentralizing power, blockchain is the latest vision of a force for good to have captured the thoughts and actions of entrepreneurs, global corporations and governments the world over. Blockchain might indeed offer a unique opportunity to shift the nature and culture of transparency and trust both within and beyond the digital world, but this is not the whole story. As a “revolutionary” and “disruptive” technology many tech evangelists consider blockchain the “new internet”, with the potential to effect global socioeconomic and cultural change for the better. But as a largely unregulated globalizing phenomenon contained within the boundaries of capitalist logic it is set to impact the lives of billions of people in ways that may not benefit all but instead simply line the pockets of a few elites. “Blockchain for good” is a new tune that many are now dancing to, but what is this mantra actually saying and how “good” can blockchain really be? To address these questions and test some of the claims surrounding blockchain, this paper casts a critical eye over the technology and narratives that proclaim it to be the great enabler of trust, transparency and social justice for our times.
It likely comes as a surprise that Executive Order 13769, approved by President Trump to deny entry to nationals from seven predominantly-Muslim countries, was not the first “travel ban” focused on religious beliefs in American history. More surprising, however, is that it was the Puritans of Massachusetts Bay, themselves victims of religious persecution, who first enacted such a faith-based immigration restriction.

In 1637, the Massachusetts General Court approved an order that “none should be received to inhabit within [the colony] but such as should be allowed by some of the magistrates” with only those who subscribed to the orthodox beliefs endorsed by (most of) the colony’s ministers granted entry. What is perhaps most interesting about the Puritan “travel ban” – and what has received little critical attention – is how it was one of several measures approved at the 1637 session to “keep off,” as then-Governor Winthrop wrote, “whatsoever doth appear to tend to [our] damage.” In addition to setting a deadline for the trial of renegade minister John Wheelwright that would end in banishment for him and his “Antinomian” followers (including sister-in-law, Anne Hutchinson), the Court also approved an “expedition” against the Pequot nation in what would be the first state-sanctioned genocide in the country’s history.

A review of various writings from the period – from Winthrop’s public panegyrics and private journals to the fiery sermons of Thomas Shepard, the “Steve Bannon” of the Puritan cause – shows how the Puritans consistently saw immigrants, religious dissidents, and native peoples as a unified force of Satan’s party bent on destroying the New Eden. Particularly interesting is how Puritan theocrats, though no longer a persecuted minority, nevertheless still needed the “real possibility of an enemy,” as Carl Schmitt observed generally, to determine the “sphere of the political.” Similarities to the coming-to-power of the alt-right with Trump’s election will also be considered.

This paper is part of a larger project that interrogates how contemporary political philosophers and legal actors use discourses of reason to regulate the public life of religion in late secular liberalism. In this project, I argue that such language, first, compromises the agency of devout citizens to contribute meaningfully to the law- and policy-making apparatuses of democratic governments and, second, undermines the value placed upon public piety by religions and their practitioners. By tracing the powerful force of reason through philosophical and legal sources, I
endeavor to not only elucidate how political and ethical agency can be recovered for devout citizens, but also how the concept itself can be rehabilitated and redeployed as a tool for doing so. I conclude by considering whether a liminal legal space exists within which religious individuals can use reason as a means through which to push back against secular conceptions regarding the proper public pursuit of “the good.”
This paper continues this line of research by interrogating how the language of economic rationality – as present in two on-going cases, Washington v Arlene’s Flowers and Masterpiece Cakeshop v Colorado Civil Rights Commission – affords faithful individuals the ability to articulate a mind-body coherence that traditional First Amendment jurisprudence does not. The presence and persuasiveness of this coherence, I argue, has prompted courts to carve out a protected space for religious expression within the economic marketplace (see, for example, Burwell v Hobby Lobby). Yet by linking religious practices to capitalist endeavors, religions and their practitioners have been transformed into fungible commodities – the effect of which is to negate the differences in spiritual commitments that persist among religious individuals and to promulgate within the law a specific set of Evangelical values. By connecting critiques of economic rationality to contemporary Supreme Court jurisprudence, this paper aims to elucidate the effects that neoliberal interpretations of faith have on both religious identity and democratic values.

3. Modak-Truran, Mark.-C. (Mississippi College School of Law) “A Post-Secular Understanding of Religious Freedom and the Culture Wars”

Debates about protecting religious freedom have become sharply divided by the contemporary culture wars relating to LGBTQ rights, abortion, and teaching evolution. On the one hand, many liberals view the legal protection of religious freedom as legalizing discrimination against the LGBTQ community and as denying access to birth control and abortion. On the other hand, many conservatives view protecting religious freedom as nothing new. For example, as in Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, they claim that the Free Exercise Clause should protect the right of photographers, bakers, and caterers to refuse providing services for same sex weddings on religious grounds.
To unpack and critique these perspectives, this paper will identify three ways of looking at these conflicts. First, there is some truth to the claim that many conservative advocates of religious liberty are motivated by anti-LGBTQ sentiments. The second way of looking at the culture wars is to identify when the claims to religious liberty conflict with claims of equality and to determine which has priority. Finally, conservative resistance to LGBTQ rights can be viewed as part of a longer history of conservative resistance to societal changes, and this resistance becomes problematic when it attempts to shape the law to protect and promote a particular understanding of Christianity in violation of the Establishment Clause.
In closing, I will argue the contemporary conflicts between religious liberty and LGBTQ rights signal the need for a post-secular understanding of religious liberty. In a post-secular society, participants recognize that the classification of things as religious and secular is contested and that religious liberty must be balanced against equality and other liberties. The goal should be
to maximize the coexistence of divergent classifications of the secular and the religious but with minimal impact on others liberty and equality.

7

Public Memory: Monument, Performance and Hybrid Virtualities
Room: Hotung 6006

1. Ricciardi, Laura (State University of New York) “Legislating Memory: Accommodating Contestations of Public Monuments”

A monument is a physical, visual representation of the past. It is predicated on the expectation that the monument will endure—both physically and symbolically. Erected by the state, monuments become representations of presumed public memory, icons that maintain political order. What happens when collective memory is elusive? When constructing a new monument, who should decide what it will be, where it will go, and what it will attempt to signify? Is it possible to manage multiple meanings? What are the rules for confronting existing monuments and renegotiating their meaning in the public space?

This paper will argue that the legal and policy frameworks for constructing and maintaining public monuments must be understood in light of the role monuments play in the formation and renegotiation of public memory. Part I will outline four ways of conceptualizing the function of monuments, examining their relevant, if often conflicting, theoretical underpinnings. Part II will consider the role of the state in building, sanctioning, and maintaining public monuments. Part III will examine the current legal and policy frameworks for building and maintaining public monuments, with a focus on the First Amendment implications of monument building and rebuilding. Part IV will explore potential legislative revisions and other solutions that accommodate the public contestation of public monuments.


On April 16th in 2014, the Sewol (a 6,825-ton car ferry) sank below the waves en route from Incheon to Jeju Island, South Korea. More than 300 passengers died and the whole nation mourned. Many Korean citizens soon demanded a thorough investigation and far-reaching reforms, condemning the long-standing collusive ties between businesses and regulators and the overall failure of government. The bereaved families took the lead. At first, the tragedy seemed to create a fertile ground for building a unified voice nationwide, but that agreeing mood did not last too long. This paper examines ethical, aesthetical, and political challenges in responding to the Sewol disaster by exploring three distinct genres: philosophy, political theory, and multi-disciplinary choreographic performance. First, I take Jill Stauffer’s conception of ethical loneliness to be a useful theoretical tool with which to understand how those bereaved families have fallen into a particular condition of loneliness. Second, my own theoretical
The construct of democratic frustration helps elaborate on the agonistic and antagonistic character of democratic politics, in which those bereaved families cannot but expose themselves to mutual hostility, contempt, and impudence. Third, by reflecting upon SaltSoul, a multi-disciplinary dance performance on tragedy and loss recently staged in Philadelphia (http://saltsouldance.com/), I finally aim to further explain how we can better attend to and embrace our recurring feelings of loss and despair via aesthetic experience of recrudescence and recovery.

3. Ross, Sara (Osgoode Hall Law School) “Exploiting the Language of Urban Law and its Dual Role: Understanding and Managing Mixed Virtual/Physical Affinity Spaces in the City”

Our physical urban social spaces are increasingly shaped by our engagement with virtual networks and communities. Mixed virtual and affinity spaces provide a dynamic environment where community interaction occurs both online and offline in a fluid manner where the virtual can serve to interact, mirror, supplement or replace physical attendance or engagement within a space. An understanding of the geography of these spaces is especially necessary as new legal challenges arise not only within the virtual context of the hate speech that can proliferate in these networks, but also where this speech is translated into physical actions that strategically engage with urban laws shaping the use of space and access to property in the city. The recent example of displacement campaigns orchestrated through online spaces like the 4chan/pol board, which organized to manipulate the language of fire safety regulations in order to target DIY (Do-It-Yourself) spaces in cities across North America, show how effective understanding and management of these acts must be supplemented by an understanding of the virtual component where these attacks originated. The building code vigilantism attacks that resulted also provide an example of the dual role that urban law can carry as both a shield, where fire safety regulations exist to regulate physically unsafe spaces, but also as a sword where the language and structure of fire safety regulations can be manipulated to target the spaces frequented by marginalized groups in the city.

8
Urban Margins: Citizenship and Publics
Room: Hotung 6006

1. Yasin, Tauheeda (George Mason University/Northern Virginia Community College) “The "new poorhouse": issues in legal indigence and quality-of-life infractions”

Following the Department of Justice’s investigation into Ferguson, Missouri after the death of Michael Brown in 2014, a culture of predatory justice came into the public view. Stories of citation quotas and frivolous ticketing highlighted reasons for a culture of mistrust between the
police departments and residents. In Ferguson and locations throughout the U.S., the public has become increasingly aware of the use of fines and fees by municipalities as a mechanism to fund government, in lieu of raising taxes. In what many have called a return to the 19th-century debtors’ prison model, increasingly people have faced incarceration over the inability to pay municipal fines and fees and cyclical debt owed as a result of payment plans for justice-related costs such as probation and parole. These practices all mark contributive factors to the problem of mass incarceration in the U.S.

Despite the Supreme Court’s prohibition against jailing the indigent, the practice persists in several municipalities throughout the U.S. Focusing specifically on “quality-of-life” infractions evident in municipalities like Pagedale, Missouri, where residents have been fined for mismatched blinds, barbecuing in their front yards, and having sagging pants, this paper critically traces the legal policy mechanisms of legal indigency and fine/fee citations to the larger project of poverty wrangling and racialized respectability politics. Using the institution of the poorhouse and the cultural modes and mechanisms that created the institution via the 1601 Elizabethan Poor Laws, I critically view fossilized socio-political structures that have continued to subsist as a catchall system for the nation’s poorest. I argue that ticketing and incarceration for quality-of-life infractions acts as one of the latest iterations of “the new poorhouse”.

2. Bardelli, Tommaso (Yale University) “Uses and Experiences of the Law at the Urban Margins”

The fraught relations between poor subjects and state institutions in the United States are at the center of a vast literature spanning across the social sciences. Individuals suffering from the concurrent stigmas of class and race face agencies tasked with management, control, and discipline of their subjects; they experience public and legal authority primarily through routine interactions with this “punitive face” of the State (Soss and Weaver, 2016). Scholars have investigated the effects of such interactions: they have measured their impact on socio-economic outcomes, analyzed encounters with bureaucrats as “sites of cultural and symbolic production” (Auyero, 2012); they have showed how legal authorities can produce categories that legitimize repression and extraordinary supervision (Dilts, 2014; Stuart, 2015).

In my paper -- based on a long-term ethnographic field project in New Haven, Connecticut (January 2016 – June 2017) -- I put forward an original framework to interpret the relations between poor subjects and legal institutions: I construct my object of analysis as the interaction between a bureaucratic “field of power” (Bourdieu, 1986) and poor subjects participating in exchanges of goods and services for everyday survival. I argue, first, that the effects of state action can be evaluated in terms of impact on the actors’ survival networks. I reconstruct how entanglements with legal institutions affect the ability of poor subjects to participate in moral practices involving exchanges of goods and services. Secondly, I claim that actors “everyday experiences of the law” (Sarat & Kearns, 1994) are also to be interpreted in the context of their engagements in the local subsistence economy.

At last year’s conference, I presented the first part of my forthcoming book. In that Part, I argued that the rise of right-wing nationalism has revealed an irony in the longstanding leftist critique that cities have been overtaken by “neo-liberalism.” According to the critique, globalization has made cities hostages to the marketplace. Cities are no longer places of authentic civic activity but vehicles for the delivery of consumer services. But today, as the backlash to globalization has taken the form of a virulent right-wing nationalism, many urbanists are touting cities openness to diversity and change as a bulwark against nationalism. Cities’ openness, however, is itself a consequence of neoliberalism. In other words, it is in part because the norms of the marketplace are so embedded in urban life that cities are diverse and tolerant. Urban citizenship is generally extended to all who participate in the economic life of the city. But in touting cities’ openness, leftists may be unwittingly championing all the baggage of neoliberalism they long lamented. Although cities are open to all who participate in their economic life, by implication those who lack the means to participate in that economic life are so much less of a citizen.

In the Part I hope to present, I argue that the dichotomy between nationalism and liberalism that the current political environment appears to represent is not inevitable. That dichotomy arises out of a distinction between the public sphere of national civic identity represented by the state and the private sphere of the market represented by the city. But the city is also “public” in another sense. The city has traditionally been a place for the spontaneous meeting of strangers. When we talk about “public” space, that’s what we really mean. In this sense, “public” means not the closed sphere of national civic identity, but the opposite, it means openness. This openness, while not nationalist, is not liberal either because it arises not from the city’s captivity to market logic but from the very nature of urban space to throw people together. In fact, when urban space falls prey to market logic, it becomes closed. The idea of the city as a public sphere thus may allow us to navigate between liberalism and nationalism.

9
From 17th Century London Insurance to Hobby Lobby: the Making of Corporations in Early and Late Capitalisms
Room: Hotung 5021

1. Eby, Clare (University of Connecticut) “Hobby Lobby, The Reluctant Fundamentalist, and Capitalist Fundamentalism”

With its disarmingly honest narrator who leaves Wall Street to return to Pakistan—where he may or may not be promoting anti-American activism-- Mohsin Hamid’s The Reluctant Fundamentalist (2007) toys with readers’ assumptions about fundamentalism. Most strikingly, the novel insinuates that capitalism is the US’s distinctive form of fundamentalism. I briefly discuss what it means to describe capitalism as fundamentalist (for instance, devotees see it as
inerrant and universally applicable; support their beliefs with highly selective readings of revered texts; and favor Manichean interpretations that disregard cultural or historical differences). I then show how the legal fiction of corporate personhood sustains capitalist fundamentalism in Burwell v. Hobby Lobby (2014), which in effect grants religious rights to corporations.

Hobby Lobby’s counsel maintained that the Affordable Care Act mandate to provide contraceptive coverage violated owners’ religious beliefs. In the majority opinion, Samuel Alito justifies the counterintuitive notion that a corporation itself, apart from its human owners, has constitutionally protected religious beliefs by invoking the aggregate theory of corporate personhood associated with Santa Clara County v. Southern Pacific Railroad (1886). But as I argue, Alito also draws piecemeal from two other legal theories of corporate personhood (the concession and real entity theories) and in doing so, reveals the incoherence of his argument. Fundamentalism is nothing if not highly selective. Returning briefly to The Reluctant Fundamentalist, I examine how capitalism defines a corporation in terms of its owners while ignoring employees. The irrelevance of a worker’s religious views or right to health care is an unstated assumption in Hobby Lobby, as well, as Ruth Bader Ginsburg illuminates in her dissent. Ginsburg stresses that employees do not necessarily practice the faith of their employers, and also that religious-based criteria are forbidden in employment decisions. Through bringing together the novel and Supreme Court decision, my goal is to show how constitutional protection of religious rights to corporate persons imperils the rights of actual human persons.


When political theorists study law, they tend to focus on public law, and give far less attention to private law. This is curious, given how important private law regimes—tort, contract, property, etc.—are in structuring how we live together. This project develops a political theory of one understudied area of private law: insurance law. Insurance has come to provide one of the most important methods by which we answer the fundamental question of political theory: “How ought we to live together?” Insurance therefore warrants more serious study by political theorists and legal theorists. This paper lays the groundwork for that project, by turning to the origins of insurance law as it developed in the context of early fire and marine insurance in seventeenth century London. I show how the first private fire insurance schemes articulated novel conceptions of solidarity and distributive justice, and sought to distinguish risk-shifting (exemplified in marine insurance) from risk-pooling (exemplified in fire insurance). It was only in the context of the risk-pooling—and its institutionalizations in the earliest mutual insurance companies—that the type of legal arrangement that is properly described as insurance first appeared. This logic of private insurance eventually spread to govern ever-more spheres of modern life until, with the rise of “social insurance,” it became central to the functioning of the modern state.

Much of the debate over the failures of post-apartheid land jurisprudence in South Africa is underwritten by a tragic consensus: there was the desire for a democratic post-apartheid, but neoliberalism rushed in and tainted, limited, and redirected this desire in ways that undermined the possibility of something called the post-apartheid. I decenter this analysis by arguing that neoliberalism was actively used to sustain the racial logic of apartheid in the domain of land well before it was recast as a (ostensibly necessary) mechanism of transition. With this in mind, I turn to an earlier period, the late 60’s through early 80’s, focusing on the privatisation of agriculture and, most specifically, the decision to allow private investments in certain of the Bantustans. I argue, with archival evidence from the Mayibuye ANC archives, that the apartheid government linked what they called deracialization to deregulation in order to re-translate and formalize their already-existing policy of neglect of the bantustans as a withdrawal of the state for the purposes of making room for economic freedom under late apartheid, inviting limited international investment, softening their international image, and muting political protest in one gesture, at least for a time. The paper highlights, therefore, a proximity between the thanatopolitics of apartheid and the withdrawal of sovereignty that neoliberalism posits as its ethical mandate and draws out what that proximity tells us about the production of race in contexts well beyond South Africa.


This paper re-assesses the U.S. Supreme Court’s 1819 decision in Dartmouth College v. Woodward not as precedent for the rise of liberal capitalism and the modern corporation, but as continuation of an imperial project committed to promoting corporate forms as a primary institution for the colonization of land. Situating 19th century debates over corporations and charters in the longer settler colonial history of the U.S., I consider how long-running concerns over colonial self-governance from Britain, on the one hand, and the continued dispossession of Native land, on the other hand, shaped the transmutation of charter into contract in Dartmouth. I foreground these histories through an important precedent for Dartmouth, the Supreme Court’s 1810 decision in Fletcher v. Peck, that involved a massive corporate speculation controversy over Native land and marked the first employment of the Contract Clause. The broad question I explore is whether the rise of the contract in the nineteenth century can also be legally traced through its prominent use as a distinct and sustained justificatory rationale for the colonization of Native land stretching from English settlement of America through the Early
Republic of the U.S. The argument I advance is that contract became understood as a less politically and legally ambiguous concept than charter from which English settlers could both break apart from British control and advance the imperial project on American terms. Dartmouth should, I contend, be considered as a developing chapter in this longer history.

3. Penick, Alyssa (University of Michigan) “From Disestablishment to Dartmouth College: Religious Disestablishment and the Conceptualization of Private Corporations in the Early Republic”

My paper argues that the established church in colonial Virginia and its uncertain standing after disestablishment served as the Court’s basis for defining private corporations. By integrating the legal and religious history of the early United States, this work demonstrates the overlooked connection between disestablishment and the rise of corporations. The Anglican Church was legally established in colonial Virginia. Anglican parishes carried out a wide range of religious and civic duties. Parishes oversaw worship, levied taxes, administered poor relief, and surveyed private property. Scholars of colonial America have failed to acknowledge that parishes were de facto corporations. Parishes could sue and be sued, and they bought and sold property. They accrued significant wealth, including lands, buildings, and slaves. Virginia disestablished the Church of England in 1786, which sparked a divisive battle over parish resources. The legislature initially vested former Anglican parish property in the Episcopal Church, but sixteen years later passed a law authorizing counties to seize and sell church property. The US Supreme Court waded into this dispute in Terrett v. Taylor, 13 U.S. 43 (1815). In Terrett, a county sought to seize parish lands. The Marshall court reviewed the history of the established church in Virginia and the state’s disestablishmentarian legislation. The Court determined that the county could not seize church property because the parish was a private corporation and thus shielded from state interference. This decision articulated a new distinction between private and public corporations, which then provided a central premise for the court’s decision in the seminal case of Dartmouth College v. Woodward, 17 U.S. 518 (1819). Only by recognizing the corporate nature of the colonial Anglican parish and its contested status during disestablishment can we fully understand the Court’s formulation of public and private corporations in Dartmouth College.

11
Narrative Accounts of Legal Temporality: Chopin, Hardy and Fred Korematsu Speaks Up
Room: Hotung 5020

1. So, Christine (Georgetown University) “Returning to Korematsu v. United States: Time in the Narrative of Redress”
Forty years after Fred Korematsu’s conviction for avoiding the “evacuation” of Japanese Americans during WWII, the courts granted a writ of coram nobis to Korematsu, agreeing that the government had withheld evidence suggesting that the internment of Japanese Americans was unnecessary. Such a judgement, however, does not change the primary argument of Korematsu v. United States, that military necessity may at times outweigh the rights of some citizens, despite its effect on Fred Korematsu individually. This paper focuses on the return to, and efforts to rectify, a moment of injustice, as it appears legally, in the 1984 petition for the writ of coram nobis, and culturally, in recent publications about Fred Korematsu, specifically a just published children’s book, Fred Korematsu Speaks Up. The two genres of law and literature illustrate starkly different approaches to the notion of redress and of time itself, as differentiated by the genres themselves of law and literature. What we see about redress in the legal context is the difficulty of naming “injustice” broadly, or “unfairness,” or “race,” or “stereotyped,” or “segregated” in a particular moment in time, a particular letter, a specific edit, or the deleting of a certain sentence, rather than the racism of the executive order. Laura Atkins and Stan Yogi, alternately, in Fred Korematsu Speaks Up, define keywords like “race,” “stereotype,” and “segregate” in the margins of a text that is filled with poetry, photographs, newspaper caricatures, timelines, and illustrations. Rather than returning to a particular moment, they come back to definitions themselves, asking their readers, for example, in a bubble question, “Why do you think discrimination happens?”, the authors offer a different kind of rewriting than was possible in Korematsu’s eventual victory.

2. Mariano, Trinyan (Florida State University) “Statutes of Repose and the Politics of Temporality in Kate Chopin’s At Fault”

I argue that Kate Chopin’s little-studied plantation novel, At Fault (1890), is rightly understood as part of the debate over reparations for slavery. Contrary to the typical critical treatment of this novel that reads it as consonant with her famous second novel, The Awakening (1899), I suggest that Chopin uses plantation fiction to construct an economic, legal, and ethical foundation designed to enable the new generation of the southern plantation class to erase the lingering weight of inherited responsibility for slavery. Chopin borrows from then-newly coalescing tort law doctrines limiting accountability for injury to others, key among them, the statutes of repose (also called statutes of limitation) that were designed to extinguish claims after a defined period of time. In tort, as a system that redistributes wealth, such statutes have in mind not only the repose of wrongdoers, but of society generally, and emphasize the need to create stability in economic relations that could be disrupted by unsettled historical injustice. Chopin stages the conflict between justice and repose by situating her novel between two literary genres, the plantation romance and the realist novel, that each embed different principles of liability, fault, and repair. At Fault draws both from the conservative, pastoral, nostalgia-driven plantation romance that was wildly popular at the time as well as from the forward-looking, urban, industrial milieu of realism. Thus, while the plantation romance centers around marriage as a privileged trope figuring north-south reconciliation, At Fault inverts the plantation romance to present a framework for separation. Divorce, then, and not marriage, is
the figure through which Chopin imagines an economic and social future for the South unburdened by responsibility for sins of the past.

3. Sargent, Neil (Carleton University) “Legal Temporalities in Hardy’s Wessex: A Study in Contrasting Juridico-Political”

In chapter V of Part II of Return of the Native Hardy’s narrator observes that time on Egdon is measured differently on different parts of the heath. The polyphony of time’s measure on Egdon heath is reflective of what John Barrell (1998) refers to as the subjective local geographies of Hardy’s Wessex villagers, whose sense of place, space and identity are in large part formed out of their immediate local experience, an experience that contrasts profoundly with that of Hardy’s metropolitan urban readers. In this paper, I want to extend Barrell’s dialogic examination of overlapping spatialities within Hardy’s fiction to a consideration of the constitutive role of temporality in the construction of distinct legal subjectivities. For most of Hardy’s readers, the time of the law, the temporal flux in which law’s archetypical ‘reasonableman’ fictionally exists, is directionally oriented towards the future. The present points towards the future, and away from the past. Time can be measured, calculated, and predicted. Time is thus lived forward in imagination; and in legal theory at least, the capacity to foresee the future is considered the measure of legal rationality. But for many of Hardy’s villagers, time is not experienced in this way. Time imposes its grip on the pastoral village folk through the hand of tradition or of custom rather than through the interpellation of an imagined future. The village folk thus live in a kind of unchanging, a-temporal world, in which time is experienced as cyclical, and the future is not clearly separated from the past. The paper argues that this disjuncture between contrasting ways of experiencing time afflicts many of Hardy’s protagonists, and accounts for the curious passivity of a character such as Giles Winterborn in The Woodlanders, who is unable to reconcile the inner conflict he experiences between the normative demands of the marketplace, on the one hand, and his sense of moral obligation to his neighbours in the village community, on the other.

12
Legal Times: Velocities and Interruptions
Room: Hotung 5013

1. Jackson, Jack (Whitman College) “Constitutional Time in the Political Thought of Martin Luther King, Jr.”

Martin Luther King Jr.’s political thought grapples with the intersecting questions and concepts of law, justice, history, race, membership, empire, political action, and faith. All of these are bound together in King’s thinking on time; we might say that temporality is at the heart of his political theory. My paper explores the complexity of King’s thought and the challenges it raises for the political present. King’s advocacy for a politics of “urgency” and accelerated political
action contrasts with the temporalities of the U.S. Constitution—speed is the antithesis of the constitutional temporality valorized in the Federalist Papers. King thus compels us to rethink and reimagine constitutional time in the United States. Standing next to (and perhaps in some tension with) his call to recognize “the fierce urgency of now” is a commitment to an extended duration of political struggle. A Christian teleology sustains the long march. Politics requires faith for King and it begs the question of what sustains action absent a faith (and this could be theological or secular) in progress and emancipation, a pressing question in a moment marked by both renewed political insurgency and the faltering of teleological narratives.

2. Conklin, William E. (University of Windsor) “Two Interruptions in Legal Time”

This Paper examines the importance of time in understanding the identity and binding character of law. The Paper claims that a special sense of time has been adopted in Anglo-American legal theory. This sense of time has been structured into distinct phases or periods, each unconnected with the next. Structured time can be measured on a calendar or clock. The key feature of structured time is its presupposed birth on a critical date. A written Constitution, treaty or Proclamation exemplifies such a critical date. So too, the critical date is manifested by settler contact or the date of sovereignty, both of which figure in Canadian constitutional law. Aside from the critical date, structured time also begins with the posit of values. The critical date and the posit of values initiates the written legal language. The language is written in that it involves reflection, deliberation and a decisionism in legal consciousness. The two forms of the birth of the written legal language, described as Originalism and the Living Present, provide the referent for the justification of a rule in such a language.

Structured time manifests an interruption in two ways. First, Originalism and the Living Present demarcate an historical rupture between a ‘pre-legal’ or ‘primitive’ legal order on the one hand and an alleged modern legal order on the other. Legal ‘development’ associated with a modern legal order. Second, an interruption in structured time emerges from the experience of time immanent in the constitution of meaning. A collective memory exemplifies such an immanent sense of time.

3. Aguiar e Silva, Joana (University of Minho) “Justice and the Scent of Time”

Time and justice have been forever intertwined, and with increasing ambiguity. A justice that lingers is a usual symptom of injustice. Delay occurs because the agents of justice often lack the time to accomplish justice in due time. When they finally reach a pronouncement, they often denounce the haste and the urgency of a mechanized decision and, consequently, a doubly unjust one.

The distinctive acceleration of our times leads us to reflect on the effects of time - or timelessness / dyschronicity / de-narrativization - on the accomplishment of human justice. Evoking Proust and Arendt, Byung-Chul Han points to the absolute value attached to the vita activa as largely responsible for the present temporal crisis, with the degradation of the persona into an animal laborans. Calling out for the urgency of revitalizing the vita contemplativa, as a
theoria, or as an art of judgment that requires a praxis of delay, the author stresses the need for time to recover such experience of delay and the scent of its aroma.

Our reflection is in the sense to understand the legal reasoning, the judicial decision, as an integral part of this art of judgment that demands contemplative linger. Advances in artificial intelligence have allowed for the recent creation of a software capable of judging lawsuits with a minimum margin of divergence from judgments made by physical courts. The Romans understood the Law as ars boni et aequa. The present time of haste distorts this nature, overriding the historical, narrative and even procedural dimensions of judicial pragmatism. That is to say, trampling its true humanistic and relational dimension.

13
Legal Narratives That Move
Room: Hotung 5020

1. Maziarka, Kristen (UC Irvine) "‘You’re the captain of your own ship’: Narratives of responsibility and reform in lifer parole hearings"

Research frequently focuses on the “front-end” of sentencing, when the judge imparts some length of incarceration as punishment for a crime. However, of equal importance is the process by which inmates leave prison (for those who are required to be supervised on parole). Parole boards hold a great deal of discretionary power in deciding how long that “20 years to life” really is – and if denied, the inmate may have to wait several years, or even a decade, before they are considered again. With this pressure to gain parole, inmates face an intimidating setting that they often spend months preparing for by writing letters, preparing their statements, and discussing the case with their lawyers. The hearing becomes a place where they have the opportunity to craft their own narrative about their crime, reform, and plans upon release. On the other hand, the parole board also has the job of crafting a narrative: they need to characterize the prisoner as worthy of parole or not based on the risk they pose. In this paper, I examine both institutional (model) narratives and the individual narratives of inmates as they meet within the parole hearing. By using the analytic framework of Critical Narrative Analysis (Souto-Manning, 2013; 2014; Van Dijk, 1993), I situate the individual, micro-level narratives of inmates within larger institutional narratives that hold much more power in this setting. Drawing from a larger sample of California lifer parole hearing transcripts from 2012-2014, I present representative case studies for three forms of narrative interaction that are important in parole hearings: resistance to institutional narratives, conformity to institutional narratives, and inability to address institutional narratives. Finally, I discuss the importance of understanding narratives in the parole hearing setting, and outline potential lines of inquiry that this analysis has brought up.
Narratology has developed a strong foothold in the American legal discourse, mainly because of the adversarial structure of the trial system, which relies on a contest of narratives to develop the factual truth of a case. Inquisitorial criminal justice systems lack the same narrative attention on the practical and scholarly level. For instance, in German criminal law, storytelling is based on the presumption that criminal procedure is not so much interested in the presentation rather than an objective determination of the facts. Although most criminal justice systems distinguish between the story, evidence, and the law, the inquisitorial might be as prone as the adversarial to disregarding narrative as an element that influences a case. In my paper, I will argue that this blind spot can lead to wrongful convictions in an otherwise truth-oriented system that stresses impartial fact-finding. Despite the many legal safeguards against wrongful convictions, narrativization falls outside of judicial scrutiny. A heightened awareness of narrativization would improve the accuracy of the system. To make that point, I will first introduce and explain the inquisitorial narrative blueprint as it exists in Germany. I will then critically analyze that blueprint by discussing the development of the narrative of one of the best known wrongful convictions in Germany. Based on an examination of the complete case files I can show where the idea of inquisitorial fact finding was lost and personal imagination turned into legal imagination. The “narrative desire” to explain the sudden disappearance of a farmer led police, prosecutors and judges to imagine a story which ended in the conviction of four (probably) innocent people. My paper will conclude with a critical discussion of the role of narrative in inquisitorial and adversarial criminal justice systems.


“Taken together,” Nan Goodman proposes, “legal and literary narratives can illuminate the way the culture constructs itself through narrative.” I restore the case of The Queen v. Dudley and Stephens to the sensational status it had in 1884 and juxtapose it with popular adventure novels of the same decade to reframe it as an important episode in a larger cultural narrative about the form and fortunes of a hegemonic, late-Victorian, imperial masculinity.

On the one hand, the case functioned ritually to impose and affirm a community conscience in which the rule of law itself became a kind of cultural fiction for condemning the necessity defense as unmanly and unEnglish. Meanwhile, the Gothic strain foregrounded in legal narratives about Dudley and Stephens emerges as an important subtext in the adventure novels. On the other hand, if we begin with the novels, we see how much the criminal case against Dudley and Stephens owes to constructions of masculinity popularized in novels by Robert Louis Stevenson, H. Rider Haggard, and others.

I suggest that readers identified with the bold heroes of the adventure novels to escape the moral ambiguities of late-Victorian civilization at home and abroad. My analysis builds on the work of Patrick Brantlinger and Bradley Deane, but by juxtaposing the novels with the trial, I not only dramatize the tension between the swashbuckling adventure story and its Gothic
subtext or English hero and cannibal Other. I also explore how the divide between murder and necessity grows out of an opposition between civilized and savage. As I demonstrate, the law and the literature worked together to reinforce distinctions between these categories for a world where they were breaking down.

14
LAW/POETRY: The Poet Lawyer and Poets on Law
Room: Hotung 5020

1. Khan, Almas (Georgetown & Univ. of Virginia) "Testimonies of Law and Literature: Charles Reznikoff’s Fused Poetic-Legal Practices"

Within the field of law and literature, poetry has been subjected to less scholarly scrutiny than other genres, with the first anthology compiling poetry of the law being published in 2010. At first glance, this relative scholarly lacuna appears understandable; poetry is often perceived as the most personal and emotional literary genre whereas quintessential legal texts like judicial opinions are commonly associated with the depersonalized, rational voice of the law. Recently, however, scholars inspired by James Boyd White’s 1983 essay “The Judicial Opinion and the Poem: Ways of Reading, Ways of Life” have increasingly been theorizing the relationship between these two seemingly disparate discursive modes. This ostensibly new upsurge in interest actually has historical roots dating back to at least modernism, with the Objectivist poet Charles Reznikoff’s oeuvre exemplifying the synergies and tensions between poetic and legal discourse and forms. Reznikoff, an NYU Law graduate, began conceiving of his searing anti-epic of America, Testimony (published fully in 1979), while compiling entries for the legal encyclopedia Corpus Juris. Deriving his poems from judicial opinions, Reznikoff also started to theorize how poetry and law were more congruous than generally believed, most notably in their attunement to the value of individual words. My presentation will concentrate on traumatic and metatextual moments in Testimony to analyze how Reznikoff’s poetry envisages the practical and quotidian in the aesthetic (and vice versa), thus instigating a productive reconceptualization of the relationship between poetry and law, and of what it means to be a literary and legal professional.


The objectivist poet Charles Reznikoff saw his artistic role as analogous to the witness testifying at trial, whose testimony is restricted to what he observed, not what he “felt.” According to Reznikoff, the poet does not thereby eschew emotion, but “expresses his feelings indirectly by his selection of his subject-matter.” Reznikoff’s two-volume verse work Testimony: The United States, 1885-1915: Recitative, based on records of hundreds of cases archived in the National Reporter System, is the poet’s witness to multiple voices contained within a
master narrative of the nation’s legal system. The work’s subtitle, Recitative, suggests the poet’s intent to present to readers a rhythmically free vocalization of this authoritative narrative of justice in all its complexity and failure. Starting from Adam Smith’s notion of the judicious spectator, I propose to discuss the ways in which Reznikoff mines these archives of the nation’s legal system to present to the reader the poet’s own record of the promise and denial of justice, a counternarrative to the ideals of the Constitution and a testament to the realities of inequality of class, race, and gender.

3. Sutherland, Kate (Osgoode Law School) “Subverting Law Through Poetry: The Documentary Poetics of Muriel Rukeyser, M. NourbeSe Philip & Soraya Peerbaye”

In her poem cycle “The Book of the Dead” (1938), Muriel Rukeyser documented the Hawks Nest Tunnel tragedy, a 1930s industrial disaster in which nearly 800 workers died and many more were incapacitated by illness after contracting silicosis while boring a tunnel through a West Virginia mountain. Though the dangers of breathing silica dust were well known, no precautions were taken to protect workers. Corporate greed led to negligence led to worker deaths and illness. Legal recourse was sought but to little avail. Few workers or families received any compensation, for those that did the amount was paltry, and it came at the cost of suppression of their story in that the terms of settlement included surrender of all case records. Subsequent Congressional hearings into the dangers of silicosis raised some national awareness, but Congress declined to act on recommendations to improve worker safety.

In composing “The Book of the Dead,” Rukeyser employed then innovative documentary techniques, for example, incorporating testimony into the poems drawn from the Congressional hearings and from local media reports of the negligence cases. In so doing, not only did she preserve details of the story that might otherwise have been lost, she used law against itself, employing its own texts to highlight how it props up power and is implicated in the oppression of workers and other marginalized groups.

In this paper, I explore Rukeyser’s “The Book of the Dead” alongside more recent examples including M. NourbeSe Philip’s Zong! (2008) and Soraya Peerbaye’s Tell (2015) to consider the power of documentary poetics to critique and subvert law.

4. Stanford, Michael (Arizona State University) “Short stakes, long spokes: Poets on legal concepts”

As David Kader and I note in the introduction to our 2010 anthology, Poetry of the Law from Chaucer to the Present, law-and- literature scholarship has focused overwhelmingly on fiction and drama while largely neglecting nondramatic poetry. Seven years on, little has changed. Thus, for example, the otherwise stimulating and important collection New Directions in Law and Literature (OUP 2017) has hardly a word to say about the many works in which poets from the Middle Ages on have commented on the law.

This paper focuses on the way in which three significant modern poets-- Edgar Lee Masters, William Empson, and William Meredith-- illuminate particular legal doctrines and concepts. In “Butch’ Weldy,” Masters offers a damning implicit critique of the fellow-servant rule of the
early twentieth century. In “Legal Fiction,” with its stunning opening line-- “Law makes long spokes of the short stakes of men”-- Empson plays with property law, satirically extrapolating the concept of fee simple to offer a mordant picture of the mind’s operations. William Meredith’s dramatic monologue “Negligence,” skirting the edge of satire with its portrait of a personal injury lawyer, winds up delivering an unexpected and humane defense of the eponymous legal concept. Alternately indignant, whimsical, and sympathetic, the three poems chart a suggestive spectrum of poetic responses to the underlying principles of the law.

15

Practice of Law in Theatre, Musical Improvisation and Literature
Room: Hotung 5021

1. Stepanikova, Marketa (Masaryk University) “Legal Theatre”

Despite the fact that the field of Law and Theatre has become more discussed in the past years, research in this area remains mainly theoretical. Thus, I decided to make an experimental production of legal theatre. My aim in this educational and theatrical experiment was to decide if the special legal theatre can and should exist and for which audience can such theatre be interesting and beneficial.

I formed a Theatrical Society at the Faculty of Law in Brno, Czech Republic in November 2015 and we started a rehearsal process immediately. Nevertheless, the first premiere finally took place in February 2017. In my paper, I will analyze this particular experience of legal theatre in the way of the case study and I want to introduce possible advantages and disadvantages of this method. A case study approach will be used to allow an audience of this paper to see and critically assess all advantages and disadvantages of Legal Theatre on an example of one particular production, directly accessible on Internet, instead of theoretical debating some abstract and only imaginary notion of some generic production without any particular direct possibility of feedback.

My text will consist of two parts: theoretical and practical. First, the role of theatre in legal education will be introduced. Different traditions of combination of law and theatre will be discussed, namely verbatim theatre and Boal’s Theatre of the Oppressed. In this part, I will also propose several adjustment of these methods for the purpose of Legal Theatre. In the second part, practical experience with the production will be analyzed. Most important aspects of the production as dramaturgical changes of the play and scenographical specifics of Legal Theatre production will be highlighted. In the end, recommendations based on our experience with Legal Theatre will be summarized.

2. Malanik, Michal (Masaryk University) “Interpretation of Law and Music; Methodological Path to Improvisation”
This paper analytically compares interpretive processes in law and in music, with special focus on their contemporary methodologies. Although this topic is quite unusual, the paper serves merely as an invitation to much larger field of study, thus only basic concepts of both disciplines are discussed in it. It aims on proving that there is enough theoretically described and practically identifiable similarities between interpretive processes in law and music that there indeed exist a reason for thorough studies focusing on these seemingly very different areas of human activity.

The paper, being written by a legal theoretician as well as practising pianist, aims on comparing the processes the interpreter of law or music respectively goes through from the first moment of perceiving law or music to its final performance. As the nature of interpretation varies with the particular field the interpreter works in law or music, moreover which theoretical concept she deems fit to use, and in compliance with various internal and external factors that are always present and determine the final performance, the paper presents the theoretical nature of improvisation and shows the relations between interpretation and improvisation in both music and law on theoretical basis.

By this interdisciplinary comparative analysis this paper brings to mind that there is much the law has in common with the performative arts, and that music can help even the legal theory by borrowing some of its patterns.

3. Lopez, Michael Brandon (Attorney) “Law's Anatomy: Existentialism, Literature, and Practice”

In Fear and Trembling, the eponymous progenitor of existentialism, Søren Kierkegaard, employs an exegetical (and literary) rendering of the story of Abraham and Isaac. Beginning with Abraham's request to God for a son--a prayer that is answered, God's subsequent demand that Abraham sacrifice his only son, and Abraham and Isaac's journey to Mount Moriah, Kierkegaard explores, through a series of different narratives that examine the dimensions of law, ethics, faith, morality, and the love a parent feels for a child--the legal/ethical and personal choice that Abraham faces as a result of God's command.

Similarly, in Anatomy of a Murder, John Voelker utilized his experience as a defense attorney in a sensational murder trial that took place in Big Bay, Michigan, to craft a well-wrought novel that is arguably one of the great literary (and cinematic) renderings of law of the twentieth century, and is often used to discuss legal practice and substantive law, including, for example, evidence and professional ethics.

Using these literary works, this paper argues that all of law, and a lawyer's practice in it, exists within an existential tension that is inherently literary and a choice. Or as one court aptly noted, "[w]hat is impossible is not to choose. I can always choose, but I must also realize that, if I decide not to choose, that still constitutes a choice." Krieger v. Wesco Fin. Corp., 30 A.3d 54, 58 (Del. Ch. 2011) quoting Jean-Paul Sartre, EXISTENTIALISM IS A HUMANISM. This paper further argues that both Kierkegaard and Voelker successfully integrate three strands that are the foundations of law--law as an existential endeavor; law as a form of literary imagining (and work); and the inherent tensions that manifest themselves in legal practice (and the choices that the law requires)--into their respective literary works.
1. MacNeil, William (Southern Cross University) “Promethean Longing: Ridley Scott's Speculative Legalism”

With its dazzling opening sequence of a primaeval Earth fully flourishing long before man's appearance, Ridley’s Scott’s Prometheus vouchsafes its viewer a (primal?) scene of what speculative materialist, Quentin Meillassoux, might call ‘the ancestral’. Only, here, the ancestry cinematically sketched for the audience is anything but speculative—at least in the ‘materialist’, or, more popularly, realist sense. Fantasy, rather than realism, prevails in this opening shot; and fantasy of the worst sort of ‘70s New Age, ‘chariot of the gods’ sort, as the film focalises for its viewers a vision of intergalactic panspermia with an alien super- being sacrificing himself (christologically?) for the dissemination of his vitalist DNA. Bad theology for a bad movie? That might be the glib dismissal of some, but not this viewer. While sensitive to the many flaws of Prometheus—and its successor, Covenant—I will argue in this paper that Scott’s much anticipated return to the Alien saga speculates materially, indeed realistically, on the nature of creation, evolution and the ‘missing link’ between the two, all the while articulating a new natural law that re-poses the question of origins. In so doing, the film discloses the real promethean longing animating its story-line: that is, for nothing less than a speculative legalism.

2. Abramson, Leslie (American Bar Foundation / Loyola University Chicago) “Evidence to the Contrary: Matrimony & Legal Interventionism in Silent Divorce Comedies”

Passing continual judgment on the legal system, silent cinema often focused on how processes of the law interceded in domestic cultural order. This paper will examine three silent divorce comedies incriminating the law as a central agent in instigating and facilitating the couple’s disunion. Why Mrs. Jones Got a Divorce (1900) references fingerprint identification as a new legal evidentiary technique critical to precipitating marital uncoupling. During this Edison film, a wife discovers that her husband has embraced the cook when she spots flour handprints on his jacket. The evidence of infidelity instantly motivates the wife to take transformative physical and, according to the film’s title, legal action against her spouse. The law proves more expressly interventionary in Max Wants a Divorce (1917). The comedy begins with just-married Max receiving a Chicago lawyer’s letter stating that he will inherit $3 million if he “remain[s] a bachelor.” Max's ensuing bedlam-causing efforts to establish grounds for divorce based on infidelity are ultimately rendered useless when he receives the lawyer’s correction: the inheritance is contingent upon his renunciation of bachelorhood. This film incriminates the law as an institution bringing discord to the institution of marriage; the legal system incites the romantic couple to contravene marital “law,” codifies male spousal fantasy by essentially decreeing unfaithfulness as a condition of adhering to the literal letter of the law, and creates
cultural chaos. Getting Evidence (1906) burlesques the scheme of gathering cinematographic evidence for divorce proceedings when a wrong-headedly suspicious husband hires a film camera-wielding detective to tail his wife. Taken together, these films engage issues of evidence as truthful testimony—specifically, visual evidence’s arbitrary relationship to authenticity. Insofar as intoxication with visual documentation rather than the spouse foregrounds the detriments of establishing actionable legal evidence, these silent divorce comedies implicate the law’s own alluring capacity for unfaithfulness to a more perfect union.

3. Young, Diana (Carleton University) “Subjectivity, Repetition, the Unexpected: Artificial Life in Science Fiction Films”

In this paper I will consider science fiction films and television series that feature artificial life forms. I argue that the treatment of artificial life in these examples of popular art offer an illustration of some theorists’ attenuated concept of agency. Judith Butler, for example, suggests that it is only through the reproduction of norms that the subject becomes intelligible, and is thus able to act in the world. However, novelty is still a possibility as norms can be reproduced in unexpected ways. For Butler, this possibility exists in part because the norm always leaves a remainder—the unknowable that nonetheless is capable of producing effects. On the other hand, for Actor Network Theorists such as Bruno Latour and Jane Bennet, agency is only possible through association with assemblages of human and non-human actants—disrupting the distinction between subject and object. The networks comprising these assemblages are so complex that outcomes of actions are often difficult to predict. Does this element of unpredictability affirm individual agency, or merely provide its semblance?

HBO’s Westworld, SYFY’s Battlestar Galactica and Duncan Jones’ film Moon (2009) all deal with these themes of repetition, agency and unpredictability through the plot device of artificial life forms that, despite their programming, contain an element of apparent randomness. This element of randomness not only produces unexpected outcomes but might also be an indicator of consciousness. The question for both artificial and human subjects is whether either is capable of overcoming its programming, and what the concept of agency really means.
complement former research on and explain for still existing deficits in the practice of transitional justice. In consideration of both the scientific debate on the role of law and judiciary in the course of overcoming past injustice and the filmic preference for courtroom drama, the paper focuses on a selection of more recent approaches to landmark cases of judicial solutions to crimes exceeding the legal imaginary. It proposes to understand these retakes as attempts to raising and resolving the question of ‘why’ in the context of well-known trials that originally were set up in reality and perpetuated on screen to establish the ‘who’ had done ‘what’ to ‘whom’ and ‘how’ in times of war and repression. It claims that the re-evaluation of cases and trials in terms of their explanatory quality aimed at contributing to a more comprehensive understanding of motivations and limitations of all parties involved is at the core of transgenerational processes of restoring justice.

2. Rutkowska, Urszula (Brown University) “Writing the Drone: Legal Codification in Contemporary Literature”

In this paper, I intend to consider how the drone and the complex debate surrounding its legalization have been represented in contemporary fiction. By first turning to the work done by Solmaz Sharif in Look, her most recent collection of poetry, I hope to think about how the drone has been tacitly accepted as an integral facet of contemporary warfare. Sharif reflects on what happens when a word that has its roots in the Dictionary of Military and Associated Terms enters public discourse despite having no legal justification, and the way in which the violence associated with drone warfare is normalized. I am particularly invested in exploring the differences between linguistic codification and legality by comparing the various ways in which the drone is discussed in contemporary war fiction.

Drone warfare is anything but normal. The bodies of civilians are reduced to markers that do not allow for differentiation, like a “red tracksuit” or some “unidentified fingers,” explains Sharif. And yet, in part because remote warfare happens at such great a distance, the personification of the drone victim might still only be possible in fiction. As the United States sought to “win the war first, and work out the meanings afterward,” there is a lot left to figure out when it comes to the legality of America’s tactics in the War on Terror. Consequently, I hope to argue that the presence of the drone in contemporary war fiction answers an important question: is the drone part of an officially declared war, and, is it therefore subject to the humanitarian guidelines established by the Geneva Convention?

3. Louis, Anja (Sheffield Hallam University) “She who laughs last: gender humour in Los misterios de Laura/The Mysteries of Laura”

Spanish police procedurals are a relatively recent occurrence in Spanish TV history and first became popular during the Transition from dictatorship to democracy (1975-1982). More recent still is the genre of TV crime comedies such as Los misterios de Laura/The Mysteries of Laura (2009-2014), a wonderfully light-hearted series with Spanish humour at its best.
Women have always been the butt of jokes, but the notion that women can produce humour is a new phenomenon. This paper examines how humour is gendered through a close reading exercise of paradigmatic scenes and episodes. It focusses on gender stereotypes, humour production and appreciation, and analyses how the comedy genre parodies received notions of law enforcement officers in a post-modern Spain. It is theoretically grounded in humour theories (relief, superiority, incongruence, and benign violation) and explores the gendered use of humour in one of the most successful Spanish police procedurals in recent history. Humour is explored on four different levels: a) story-telling, creating a narrative that is peppered with comedic interpretations and situations, b) character development, c) parodying the mystery genre, and d) as part of office politics. This paper thus sheds light on the function of humour in a conservative workplace such as the Spanish National Police around social taboos, social criticism, and defence against social prejudice.

18
Gendered Discourses in Law
Room: McDonough 344

1. Dannreuther, Anna (Columbia Law School) “Up-Skirting As Cultural Malaise: Rethinking Legal Remedies for a Cultural Disorder”

Up-skirting—taking a photo up a woman’s skirt without her consent—is a legal wrong in search of a home. New Zealand has criminalized it and the UK is on the brink of making it a sexual offense. In contrast, courts in the United States have permitted it variously on First Amendment grounds, where there was no reasonable expectation of privacy, and where the alleged victims were not ‘partially nude’.

Proposed and existing criminal legislation in New Zealand, the US and UK intends to recognize the harms of up-skirting and avoid the difficulties plaintiffs have faced in fashioning claims. This paper uses historiography and comparative law to argue that criminalizing up-skirting without deeper reflection on the nature of this conduct over-simplifies the issue and may lead some (notably law-makers) to conclude that the matter is resolved, to the detriment of victims and society at large.

This paper will first review existing legal frameworks regulating up-skirting in the US, UK, and New Zealand. Secondly, it will consider the history of those laws, many of which are rooted in historic notions of voyeurism and obscenity. Third, it will analyze the complex cultural matrix within which up-skirting is situated (including the history of underwear and resultant fetishes). Finally, using feminist legal theory, I argue that in a new world where gender equality has established a beachhead, up-skirting may symbolize a last-ditch attempt by the established order to maintain the old status quo.

2. Weare, Siobhan (Lancaster Law School) “Forced-to-penetrate cases, cultural constructions of masculinities and femininities, and legal reform within England and Wales”
Currently the law in England and Wales does not recognise the female perpetrator – male victim of rape paradigm. Such cases, where a man is forced-to- penetrate, with his penis and without his consent, a woman’s vagina, anus or mouth, are instead prosecuted under the offences of ‘sexual assault’ or ‘causing a person to engage in sexual activity without consent’. Both of these offences are less serious, attracting shorter sentences, within the legal framework. This paper will present quantitative and qualitative findings from the first empirical study in the UK on forced-to- penetrate cases. In particular, it will focus upon the strategies used by women in compelling penetration, and the emotional harms experienced by men following this. In presenting these findings, the paper will argue that forced-to- penetrate cases present challenges to cultural constructions of masculinities and femininities, exploring this in the context of discourses around heterosexuality and sexual violence. The paper will also explore the implications of the research findings and the challenges that forced-to- penetrate cases pose to gender and sexuality discourses in relation to potential reform of the existing legal definition of rape within England and Wales. When considering law reform, the approaches taken to this issue in other jurisdictions will be considered, including in states within the USA and Australia.

19
Postcolonial Identities in Shifting Jurisdictions
Room: Hotung 6006

1. Kim, Juman (University of Pennsylvania) “Time, Place, and Identity: Reflections on the Zainichi’s postcolonial melancholia”

Zainichi [在日], which means residing in Japan, refers almost entirely to the group of ethnic Koreans living in Japan. By the time Japan was defeated by the Allied Powers in 1945, there were over two million ethnic Koreans in Japan. About two thirds of them were repatriated as the war ended, but one third remained for various reasons. Meanwhile, Japan promptly amended the Election Law, so the formerly colonized subjects were excluded in the first General Election. According to the Alien Registration Ordinance (1947) and finally the San Francisco Peace Treaty (1953), those ethnic Koreans were bereft of the status of Japanese nationals and were recognized as foreigners with Chōsen nationality. The Zainichi are these remaining colonial subjects who stayed in the former metropole under a postcolonial rule. In this paper, I argue that out of this specific mode of relation to the political world does arise a particular form of postcolonial melancholia. Unlike mourning, melancholia can be seen as reaction to a loss of something that is a more ideal kind. Building upon Freud, Koselleck, Derrida, among others, I claim that Zainichi’s melancholia shows its phantasmatic capacity to keep their political belonging alive as an lost object. This postcolonial melancholia helps the Zainichi people to negotiate (and not to negotiate) with the unfavorable political world. In so doing, they can at least continuously wish what they are not allowed to hope for. Last section of
the paper looks into Pachinko, Min Jin Lee’s latest novel, recounting and illustrating the particular spatiotemporality found in the experience of Korean Japanese.


Through an examination of the legal status of the Samaritan community in the Occupied Palestinian Territories, one of the most ancient and smallest communities in the world, this paper makes a counterintuitive claim. It suggests that legal pluralism under conditions of occupation may be understood as an enabling tool towards achieving self-determination and emancipation. This paper thus intervenes in existing literature on self-determination, sovereignty, legal consciousness, and legal pluralism. It challenges the dominant analysis of self-determination in International Human Rights Law (IHRL) and proposes that under limited conditions where national self-determination is denied, legal pluralism might provide an avenue to gain some degree of autonomy.

My paper proceeds in three parts. In the first part, I show how, although, scholars considered national self-determination as a precondition for the enjoyment of all other human rights, I uncover the case of the Samaritans who counter-intuitively have achieved a very particular form of self-determination that does not answer to the prerequisite of national self-determination. The second part of the paper engages with the literature on self-determination, legal pluralism and legal consciousness. This section challenges some of its assumptions by demonstrating the complicated ways in which legal subjects may reject or remain inert towards the national self-determination project, and instead achieve self-determination and autonomy by remaining embedded in existing, plural state structures. In the last part of the paper I focus on civil and criminal legal cases from multiple judicial systems (Israeli and Palestinian) to demonstrate how the Samaritans, as a minority community, strategically employ their historical, social, and geographical location to access rights. In conclusion, this paper will suggests that when certain populations are entrapped in a web of overlapping legal authority, this entrapment may become a way of emancipation through the cracks. The potential of a pluralistic legal landscape for this particular group shows how the promotion of rights and justice can be achieved through creative manipulation of a web of overlapping governance systems.

3. Takasaki, Masako (Chuo University) “Cultural Consideration for Minorities in International Tribunal: Focused on the Moiwana Village Case of the Inter-American Court of Human Rights”

Traditionally, the necessity of cultural consideration was not much taken into account in international courts. There seemed to be a concern that "culture" will not become familiar with reasonable legal judgment, or if the court makes judgments on cultural factors, Pandora’s box will be opened. However, international courts are changing to show understanding of culture in recent years. Particularly, the case law of the Inter-American Court of Human Rights tends to emphasize cultural background when judging human rights abuse.
Above all, the Moiwana Community case ruling not only takes into consideration the special relationship between the tribal people and the land, but also the significance of customary funerals to calm the ancestral anger spirit. Furthermore, the concept of ‘spiritual damage’, serious damage related to relationship with the nature of human beings and the dead, advocated by Judge Cançado Trindade in the separate opinion, is rich in implications for exploring the way of cultural consideration. The judge insisted that international law, especially the international human rights law, must not indifferent to the spiritually caused illness.

In making such cultural considerations, various international documents can be legal grounds. For example, Convention concerning the Protection of the world Cultural and Natural Heritage (1972), Vienna Declaration and Action Plan (1993), Convention for the Safeguarding of the Intangible Cultural Heritage (2003), Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) and Freiburg Declaration (2007).

It can not be denied that there are difficulties in conducting cultural consideration. Yet, in the case that the cultural background closely relates to the essential part of the controversy, cultural consideration is possible to raise persuasive power as a judgment and lead to ultimate resolution of the conflict.

21

Rhetorical Framings of Sexuality and Patriarchy
Room: McDonough 344


In March of 2016, a case of sexual misconduct unfolded at George Mason University in which a student alleged that her sexual partner (another student) ignored her use of a “safeword” during a BDSM scene. The accused, who was later expelled, appealed the case on the grounds that BDSM should be recognizable before the law, specifically under the precedent of sexual freedom established by Lawrence v. Texas in 2003. Dismissing the value of BDSM as a legally protected sexual expression, the federal court argued that BDSM is without an attendant “fundamental liberty” under the Due Process Clause of the Fourteenth Amendment, ruling instead that the state has the constitutional right to criminalize practices of sexual kink and that the university’s policy of sexual misconduct does not include BDSM. While most of the fall-out discourse has addressed the case as a problem of legal (mis)recognition, this paper is more concerned with the deployment of Lawrence v. Texas as a rhetorical and legal argument from which to make a case for kink. Drawing upon queer legal theory and rhetorical studies scholarship, I conclude that, while positioned as the ethical threshold through which all other forms of (non-normative) sexual practices should pass, Lawrence v. Texas serves as a rhetorical limit in legal argument, particularly in its treatment of the domain of sexuality as coterminous with the expressability of consent. My argument aims to do two things: to show how the rhetorical configuration of the “safeword” reveals a chaos—and rupture—in legal framings of
consent and secondly, to demonstrate the ways in which Lawrence v. Texas performs an impasse in law’s imaginary concerning issues of sex.

2. Abrams, Jamie (Georgetown University) “Critiquing the Crisis Framing of Modern Sexual Assault Responses”

This paper critiques the rhetorical crisis framing of rape and sexual assault responses, as applied to campus sexual assault victims. It tracks the history of the rape crisis framing arising from the anti-rape movement within the feminist movement. It concludes that its modern usage bears critical reflection. It risks essentializing sexual assault, resurrecting troublesome legal relics, and limiting the scope of law reform responses. This paper explores the linguistic roots of the word crisis and the range of modern interpretations in its usage. It presents three critiques. (1) The “identification critique” reveals how campus sexual assault victims may not universally connect to an opaque crisis framing. Crisis language denotes urgency, decisiveness, judgment, and action leading to closure. These descriptions are problematic when mapped on to the lived experiences of campus sexual assault victims where victims are more likely to have known their assailant, where the crime is more likely to have occurred at a known residence or location, and where the victims themselves are less likely to define the incident as “rape.” This “identification critique” can facilitate under-reporting and compromise inclusive reporting. (2) The “scope critique” reveals how the crisis framing implicitly creates macro and micro temporal limitations in framing rape on the public agenda. While crisis language invokes an urgent call to action, which is to be applauded, this language of systemic crisis also risks blurring the long history of sexual assault and erasing a legacy of inaction in countless institutional and political/social settings. It suggests a beginning and an end. It suggests that closure is attainable, when ongoing monitoring, responsiveness, and engagement are critically necessary. (3) The distortion critique reveals how the crisis framing can unintentionally limit the legal response to sexual assault and also implicitly resurrect troublesome legal relics, such as shortened SOLs and evidentiary hurdles.


Critical race feminism is a vital and appropriate framework for unpacking the ways in which citizenship transmission laws (CTLs), Title 8, United States Code, Section 1401 (et seq.), create a white heteropatriarchal right to philander, rape, and sexually exploit. Under CTLs, children of female citizens born abroad are automatically endowed with citizenship; whereas, male citizens who “sire” offspring abroad must consciously elect to bestow citizenship on their children through a relatively arduous “legitimation” process, 8 U.S.C. § 1409, known as transmission to the “nullius filius.” Although seemingly innocent at first blush, and explained by the problems of declaring male lineage, short of DNA testing, this distinction in the transference of citizenship along gender lines quintessentially reflects gender differentiated norms that privilege male
philandering and structurally support the creation of vulnerability for purposes of sexual exploitation.
Contrary to the traditional view of subordination as solely a deviation from the liberal legal ideal, this paper recasts the role of law as historically central to and complicit in upholding white heteropatriarchal supremacy and the simultaneous creation of vulnerable bodies for purposes of exploitation. Using a more robust intersectional inquiry and analysis, dedicated to social equality and full human flourishing as a priori, I unpack citizenship as an exemplification of the role of law as historically central to and complicit in upholding racial, gender, class, and sexual orientation hierarchies. Using the trope of citizenship, more specifically CTLs, I map the historical use of citizenship to create, sustain, and perpetuate vulnerability for purposes of both labor and sexual exploitation. A classic example is Dred Scott, where the denial of citizenship also meant a denial of access to courts and/or any other forms of law enforcement or legal protection, leaving anyone of African descent vulnerable to unbridled sexual and labor exploitation.

Section 1409 creates a license to philander free from the responsibilities of parenthood. Through Section 1409, Congress is regulating the sexual practices of women by saddling them with the responsibilities of parenthood, while simultaneously, allowing males to engage freely in unencumbered sexual conduct abroad. The hypocrisies of Section 1409 stand in direct contrast to cases involving the reproductive rights of women. Moreover, the Congressional intent behind CTLs is to disenfranchise the nullius filius and their mothers in order to ward against their becoming wards of the state and more importantly, accessing state power and protection. The burdens placed on citizen fathers who want to claim their foreign children can only be explained by Congress actively discouraging such legitimation.

22

Interrogating Authoritative Representations
Room: Hotung 5013

1. Falletti, Elena (Carlo Cattaneo University) “The representation of punishment in the medieval frescoes of the Last Judgment”

Before the Reformation, Europe shared Catholic religion and followed its artistic teaching. Churches and cathedrals were decorated with frescoes and stained glass windows to instruct illiterate believers both with Gospel and Apocalypse narrative. Indeed, the central point of the frescoes normally was the representation of the Last Judgment. It had a formal structure: it is placed on the wall above or in front of the altar, so that it could be seen by all the people gathered in the building and domine them. During that time, secular law followed canon law and the task of such art masterpieces was also to teach the people concepts like the sense of right and wrong, and what the consequences of human acts were in the afterlife. From small mountain churches to chapels owned by noble gentry, to large cathedrals, these frescoes followed a similar pattern: at the lower left corner there were the souls of the dead who came
to judgment, on the top left there were the saved, while the upper right corner there were the souls of the desperate convicts descending into the bowels of hell, situated on the lower right. In the centre of the painted wall, a giant figure of Jesus Christ, while above all of them angels and saints glorified the divine justice.

The aim of this proposal is to compare significant examples of Last Judgement frescoes, in order to analyse how the symbols of judgment, the representation of punishment and how fear was inflicted have changed form the Middle Ages to the Renaissance and what their influences is nowadays on cultural interpretation of law and justice.


In the Greek polis, archons held the ultimate authority and power to command the archive. These custodians collected and ordered material into an ideal configuration to articulate a singular, totalizing representation of the world. Law and museums are such custodians. Both institutions derive their power, and speak the law, by referencing the archive they alone configure. But what occurs when both archives collide at the site of the museum? In this paper, I draw on the work of Jacques Derrida and Cornelia Vissmann to critically interrogate museum representations of law’s criminal artefacts. By examining an exhibition on international criminal trials, I explore how the museum attempts to re-affirm law’s interpretation of the past. However, the collision of both law’s and museum’s claim to knowledge produces inadvertent effects that undermines the archival power maintained by both institutions. As such, in this paper I argue that the museum can be a site that simultaneously projects and interrupts the museum’s and law’s singular and definitive account of the past, exposing the mythical foundations that underpin both institutions.
Images of woman as “Mother” abound. Abortion is controversial, at least in part, because this practice contradicts the common rhetoric of mothering as woman’s “natural” telos. Promoting stories of women who came to regret their abortions and who suffered emotional harm from it became a popular technique for pro-life forces in the U.S. Little did it matter that these stories were ad hoc and anecdotal and scientific studies show that most women feel no such regret and even experience relief after abortion. This rhetoric, echoing as it did the entrenched view of the woman as mother, took off in the popular imagination and found its way into abortion jurisprudence. This belief was propelled to center stage in the Supreme Court case, Gonzales v. Carhart, which allowed the federal government to ban a certain type of abortion procedure partly because, the majority claimed, this ban protects women from the inevitable regret many feel after procuring an abortion. This woman-protective rationale was relied on by the Court even though this claim was admittedly based on no reliable evidence. Instead the evidence that women must regret abortion came from the Justices’ own beliefs regarding, “the bond of love the mother has for her child” (550 U.S. 124, 159). Woman must be harmed by abortion, it is reasoned, because it destroys her natural instincts to mother. Following this case, many states have created regulations on abortion that accept, at their base, this view of women. This talk will demonstrate the reliance on this gender essentialist rhetoric in abortion law. At the same time, it will be argued that it is only in refuting this woman-protective rationale embedded in gender essentialist rhetoric as the basis for abortion regulations that we will be able to find a better path for laws touching on abortion and reproduction more broadly.

2. Barzilay, Arianne Renan (University of Haifa) “Constitutional Caregiving”

It is a pillar of feminist legal scholarship that law undervalues care. This article argues that such undervaluation neglects a rich history of feminist activism, which should inform Constitutional interpretation. Scholars have long argued that law undervalues care in the context of the family and of the market. Some have argued for greater public support for those who conduct care-work. Others have posited the state’s obligation to support caretaking in a liberal society. This article contributes to the discussion, by arguing for a historically grounded Constitutional aspiration of supporting care-work based on feminist activism. Legal historians have argued that Constitutional rights consciousness can transform received meanings of constitutional text when challenged by the legitimate aspirations of the public. They put forth a methodology that looks at aspirations developed from the ground-up, and argue such aspirations can inform Constitutional meaning. Feminists concerned with gender equality and women’s rights are increasingly looking beyond Court-centered decisions to
understand rights consciousness as a system of cultural meanings that shapes aspirations. This expands the lens with which we look at the history of women’s Constitutional activism towards investigating rights claims made in social movements that target legislatures, executive and administrative bodies, and courts, and towards considering complex narratives of the goals, voices, long origins and continuous remaking of the Constitution. Following these traditions, the article suggests that one can read recent accounts of feminist legal histories as shaping constitutional meaning. Particularly, looking at U.S. Social and Labor feminism, in the period between the Progressive and Civil Rights era, points to an ongoing feminist concern with the state’s responsibility toward caregiving and caregivers. The article argues that this agenda can be read as constituting a constitutional aspiration. Once acknowledged, this aspiration should inform Constitutional interpretation.

3. Gan-Or, Nofar Yakovi (Columbia Law School) "To be Continued: Assisted Reproductive Technologies and Postmortem Grandparenthood"

The development of new reproductive technologies constantly challenges the relation between law and reproduction. In the past two decades, postmortem reproduction (PMR) has brought this tension to the fore. PMR encompasses an area of scenarios where conception is achieved through the use of gametes or preembryos after the death of at least one genetic parent. Drawing on the Israeli experience of attempting to regulate the use of PMR by bereaved parents of deceased men—sometimes called Postmortem Grandparenthood (PMG)—this paper considers how PMR challenges existing notions about reproduction, loss, and familism. By analyzing existing case law, this paper explores PMG first as a legal phenomenon: as an exercise of property claims in the sperm, as an exercise of the right to grandparenthood, or as an exercise of parental authority. It then moves to explore PMG as a sociocultural phenomenon: as an act of mourning and commemoration. This exploration shows how such encounter between law and reproduction raises concerns that go beyond the interests of its direct stakeholders. These broad concerns, such as the normalization of PMG as a bereavement practice and the limits of the law in regulating emotionally laden areas of life, should inform the debate over the legalization of PMR, which had been largely focused on the bioethical concerns it gives rise to. The analysis of PMR offered in this paper, as a reproductive site where the legal and sociocultural meanings of death and procreation intersect, is a necessary step towards developing the desirable legal apparatus for its regulation.

24

Intellectual Property Problems: Copyright, Heritage, Tradition
Room: McDonough 492

1. LaFrance, Mary (University of Nevada, Las Vegas) “Collaborative Creation and Copyright Failure"
Anglo-American copyright law has long struggled to address the rights of creative collaborators. The legal concept of authorship is ill-defined, and its ambiguity becomes clear when a creative work owes its origins to the efforts of more than one person. The failure of copyright law to recognize collaborative authorship is especially problematic in music and the theatre, where the legal conceit of the romantic author stands in stark contrast to the collaborative manner in which works are often created. In the case of theatre, collaborative creation was common in Shakespeare’s time, and even though this tradition continues through the present day, it is largely ignored by copyright law.

In the late nineteenth century, several cases laid the groundwork for the difficulties that courts face today in recognizing collaborative authorship. A number of these early cases involved theatrical works. Tracing legal developments from that time to the present reveals that courts and lawmakers often devalue the creative contributions of performers, dramaturgs directors, and others who are not traditionally considered to be authors. In contemporary theatre, this legal void is sometimes filled by ad hoc negotiations between producers and creative participants. More recently, labor unions have entered the fray. These piecemeal solutions, however, cannot take the place of reforming copyright’s concept of joint authorship.

2. Whitaker, Amy (New York University) “Shared Value Over Fair Use”

Copyright and fair use, while broadly structured to support and protect artists, have become increasingly inflexible binaries. The test for fair use includes sliding scale categories but is, in the final analysis, expressed as an answer to a yes or no question. This legal framework can be made more flexible by the economic analysis of fractional ownership. The reality of cultural production is that it is often collaborative. In the recently iconic case of Cariou v. Prince, in fact both artists have a claim to what, in a game-theory analysis, would be called their “added value.” If either party were subtracted entirely from the situation, the final work of art would not exist. This paper investigates how economic analysis can complement copyright law—in practice, in negotiated rather than litigated outcomes, and in our thinking about balancing what artists receive financially and contribute artistically. This paper takes Richard Prince—including Cariou v. Prince and his Instagram series—as a central case study, while also drawing on other copyright cases, including Shepard Fairey. Although the notion of shared value creation becomes quickly abstract or philosophical—all artists arguably stand on the shoulders of others and sui generis creation is largely a fiction—it is also true that economic analysis would provide alternative resolutions and broader choices. The black-and-white binary of fair use can give way to the larger realities of shared value creation, rather than the more limited idea of the singular artistic breakthrough and its sanctioned reuse.

3. Dominicé, Antoinette Maget (Ludwig-Maximilians-Universität, Munich) and Haux, Dario H. (University of Lucerne) “Digital Cultural Heritage in the 21st Century: Are we creating a long-lasting legacy or an instable transience?”

Humanity is creating an unprecedented, diverse amount of cultural data: the Digital Cultural Heritage (DCH). Content production is relentless. Although the UNESCO and national cultural
institutions declare ‘the digital sphere’ to be an adequate preservation method, digital safeguarding projects are still in an early stage of development. Taking Yehuda Elkana’s question ‘Are we equipped enough?’ in a new context, we can better understand the relevance of multidisciplinary approaches to DCH sustainability. Society is currently not sufficiently equipped to preserve DCH. We propose that the law should not keep itself out of the digital cultural sphere. The present provides an apt opportunity for law reform, which can confront accusations that legal science is purely reactive. The traditional cultural heritage and intellectual property law systems must redefine their roles and reference centers in light of the digital sphere. A successful legal framework will need to provide for technical interoperability, as well as detailing how the powers between public authorities and private actors in the digital society are to be allocate. Our communication/paper/talk will canvas the different issues that this legal framework will need to address. One pressing issue relates to the fact that many public servers are located in the United States, meaning that the United States possesses the DCH of many foreign countries. Other issues include the development of a new generation of hackers that declare themselves as digital artists, as well as the fact that the intangible cultural goods of the Internet occupy novel dimensions. The 2003 UNESCO Charter on the preservation of digital heritage endeavored to make a very selective first step in the right direction. A marathon may lie ahead. Nevertheless, we too, should put on our shoes and embark on that same path.


The protection of folklore has emerged in the past few years in several forums, especially in academic and international institutions. However until now no one had created the border protection for Folklore as such.

There are several problems which need to be solved in this area. The most important one is “what is folklore?” Many scholars and legal acts have already tried to define this term. A well recognizable definition was proposed by UNESCO and WIPO who adopted the Model Provisions for The National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions. According to this Model Provisions folklore should be defined as artistic heritage and be part of the sui generis intellectual property. But what should be pointed out is that WIPO has not finished working on the legal project for the regulation of folklore.

The main problem is how to regulate folklore as such, especially when we need to treat it as a part of culture, history and heritage. There are already many positions trying to locate it as part of traditional knowledge (WIPO), things which can be copyrighted (TRIPS), part of IP law as such or even moral or commercial law.

The issue which is not receiving attention is trying to look for protection according to human rights or treating folklore as part of the public domain. This kind of regulation probably does not fit into the economic perspective of using folklore.

The object of this presentation is to answer the question whether there really is a possibility to find sufficient legal protection for folklore.
One strategy recently employed by Silicon Valley-based technology platform companies such as Uber and Airbnb has been to portray duly-elected democratic governments as obstacles to socioeconomic progress and, paradoxically, to the will of the people. Companies have argued that they, more than most elected officials, accurately represent what most of the people want, charging politicians with being in the pocket of special interests and ignorant about the promise of new technology. It is well-known that these companies have taken advantage of loopholes to evade regulations that hinder their growth; some scholars have written about how firms have employed this tactic in evading or simply ignoring laws they see as outdated and unwarranted, a practice known as regulatory arbitrage. But little focus has been given to the strategic and rhetorical vilification of elected officials and the democratic process more broadly that is often used as a justification for regulatory arbitrage. Using democratic theory I will interrogate these firms’ rhetorical claims, first putting them in the historical context of past critiques of democratic institutions and processes. However, given the technological advancements rapidly emerging from Silicon Valley, there is a generational tinge to the companies’ arguments that may be something new. These firms paint themselves as embodying the interests and preferences of a younger generation of “digital natives,” and democracy as almost intrinsically backward-looking and outdated. Drawing on political theories of time, including the work of Sheldon Wolin, Jurgen Habermas, Talcott Parsons and John Dewey, I will consider this aspect of the firms’ arguments as well.

2. Hendrianto, Stefanus (Boston College) “Constitutionalism and the New Global Populism: A Legal-Philosophical Investigation”

In recent years, the populist mobilization and democratic decline have weighed heavily on the mind of the proponent of liberal democracy. Many legal scholars and political scientists explicitly or implicitly agree that populism is a threat to liberal democratic constitutionalism. In general, some scholars have suggested two kinds of responses to the threat posed by populism. The first response is to use courts or another constitutional form of resistance against populist pressures. The second antidote is to make socioeconomic equality and protection against the economic forces of globalization central to the constitutional design or to increase popular participation in political decision making. Nevertheless, much less clear is the assessment on the source of decay within liberal democratic constitutionalism. This paper will focus on two issues that become the root of crisis within liberal democratic constitutionalism. First, the limits of what Charles Taylor calls as the modern moral order. Taylor
argues that the modern moral order arises from within the “immanent frame,” in which autonomous persons as collective agents can create their state and church, and, governed by their own laws. The modern moral order, which rejects the previously higher moral principles, has contributed to the rise of the populist movement, as the citizens demand more openness to the “transcendent frame.” Second, relying on Alexis Tocqueville as the guide, this paper argues liberal democratic constitutionalism has produced a despotic form of equality, in which docile and alienated citizens look upward to the powerful state rather than outward toward their neighbors for their nourishment. They are free to think as they wish but seldom listened to, which make them privately resentful. The scope of investigation of this paper will include the rise of populism in the United States, Western & Eastern Europe, Turkey, Thailand, Philippines, and Indonesia.


In this paper, I will explore the relation between rights discourse and the political. In particular, I wish to examine the ideological role of human rights discourse in the development of the populist “anti-political” movements that have developed in recent years in many countries, many of which combine a reaction to globalisation with new forms of xenophobia and racism. On first examination, it might seem that human rights discourse stands as a bulwark against such developments. However, I will suggest that, on the contrary, the growth of human rights into something akin to a global political theology is ideologically linked to the emergence of “anti-political” political formations. The ubiquity of human rights as a global normative system has made it difficult to argue “against” human rights, as this often tends to indicate a disregard for the values of humanism. However, international human rights discourse, seeming to provide an unquestionable normative solution to the most intractable political dilemmas, can also has the effect of denying the space of “normal” political contestation. Indeed, human rights discourse can often appear to operate in a quasi-theological domain; In this sense, human rights discourse provides a normative repository that stands above the fractured political field. To this end, human rights discourse is often incorrectly associated with unassailable moral correctness. As we have seen in recent examples, this allows human rights arguments to stand in for seemingly opposed political positions. In some cases, for example, human rights discourse provides a moral (rather than a political) justification for military intervention; At the same time, it also explains how human rights institutions are commonly established in post-conflict situations as unifying instruments to enable peace and reconciliation. In this 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. I will argue that this post-political conception of human rights denies the possibility of a space of political contestation, replacing this with a discourse of unquestionable moral norms. 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.
Tools and Techniques of Collective Struggle
Room: Hotung 5020


My paper analyzes and compares the ideology and rhetorical strategies of critical race theory, as articulated in Kimberlé Crenshaw’s, “Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law” and her Introduction to Critical Race Theory: The Key Writings that Formed the Movement, with those of Black Nationalism (1960s – 1970s). In concentrating on the ideological and the rhetorical, my aim is to examine the ways in which these intellectual formations define and represent their movements, articulate the issues, and position themselves with respect to legal discourse (academic and narratives of equality and democracy) and the legal system (its institutions, structures, laws). Both Black nationalism and CRT have political aspects to them that implicate the legal system. Black nationalism is an umbrella term referencing “a body of social thought, attitudes, and actions ranging from the simplest expressions of ethnocentrism and racial solidarity to [more] comprehensive and sophisticated ideologies”[1] that found expression in activist movements in America in the 1960s. While the Civil Rights movement remains an important archetype of social activism and litigation strategies, less attention has been given to black nationalist movements. Yet when seeking to identify viable strategies to address inequities, it is worth considering protest groups of the past in formulating present approaches. Critical Race Theory emerged in the 1980s. It is the product of intellectual formations that seek to clarify, intervene, and disrupt dominant discourses by reading phenomena in a way that foregrounds race as well as highlighting how intersecting –isms, identities, positions, and characteristics operate to disadvantage groups.

My project seeks to discern commonalities in the language of resistance deployed by both CRT and Black nationalism and identify effective ways of countering racial subordination.

2. Blalock, Corinne (Duke University) “Anti-Collectivity and the Withering of Class Action”

While constitutional politics and critical scholarship have been focused on more traditional civil rights issues, some of neoliberalism’s most resounding victories have been made quietly in the area of legal procedure. This paper focuses on just one of those developments: the withering of class action. The modern class action mechanism was created during the civil rights era to allow discriminated populations to join their voices together in order to be heard. More recently, class actions have been used primarily by consumers to challenge the wrongdoings of corporations and to enforce laws that protect societal welfare/interests (antitrust, among others). Through judicially created requirements like ascertainability and the increasing deference to arbitration clauses, the courts have begun to dismantle their use. Centered on a close reading of American Express v. Italian Colors (2013), this paper examines recent changes
in class action jurisprudence as part of a larger trend of what Wendy Brown has termed ‘anti-collectivity jurisprudence’—a jurisprudence that privileges the individual over the collective, and the corporation over the individual.

3. Badillo, David A (City University of New York) “Cesar Chavez vs. MALDEF: Historicizing Latino civil rights theory and practice”

This paper will compare Mexican American/Chicano/Latino civil rights approaches, distilling the legal aspect of Cesar Chavez and the United Farm Workers as both a labor and social movement. In addition to strikes and boycotts, legal tactics included pursuing (and defending against) local injunctions, civil and criminal lawsuits, and state legislation, which required not only savvy legal representation (in Jerome Cohen), but a willingness to forego concrete legal gains in favor of sparking a larger Chicano movement. By contrast, the Mexican American Legal Defense and Educational Fund (MALDEF), after taking narrow, local approaches to litigation in its early years in bridging the late 1960s and early 1970s, subsequently developed a strong presence through federal litigation efforts. These included victories in what proved to be key civil rights cases in labor rights, as well as education, voting rights, and immigrant advocacy. These resulted in often dramatic legal remedies for Mexican Americans. MALDEF’s legislative partnership was crucial in the extension and expansion of the 1975 Voting Rights Act to broaden Latino legal access throughout many states in the Southwest and Midwest. The histories these twin struggles were not always as inseparable and mutually dependent as Chavez insisted publicly and privately. After the 1965 Delano standoff and the UFW’s increasingly violent relations with both growers and the International Brotherhood of Teamsters in grape and lettuce farms and ranches, the importance of litigation widened. The mid-1970s marked the rise, among many other constitutional and statutory areas, of legal challenges based on enforcement of Title VII of the 1964 Civil Rights Act. MALDEF lawyers uniquely represented both native-born Mexicans and, later, unauthorized Latinos. The sociolegal struggles of MALDEF—absent Chavez’s social movement emphasis—has persisted to the present. The farmworkers, meanwhile, have long ceased to symbolize the Chicano/Mexican American lucha, embedded in movement philosophy.

28
Seeing / Race
Room: Hotung 6005

1. Campbell, Mary (University of Tennessee School of Art) and Jewel, Lucy (University of Tennessee College of Law) “Dredged and Submerged: Law, Race, and Visual Imagery”

We propose to present our work on law and visual imagery. Our topic fits broadly within the Law, Culture, and Humanities theme because we interrogate the longstanding opposition between law and art history, or, more broadly, image history. Law is often seen as a rule-based ordering system that is founded upon reason whereas images are relegated to the realm of the
ornamental, with little connection to public policy and political economy. Our project theorizes, however, that the visual and the legal are intertwined in complex ways that have not yet been recognized or articulated. The visual, in the form of both art and photography, has the ability to persuasively reify cultural norms, in much the same way that formal law does. We argue that visual images, operating apart from but also in tandem with law, can dredge up concepts to the surface and invite transformation and liberation. In this era, we have a lot to say about how visual rhetoric works as a potential engine of resistance, reform, and change. Visual culture takes on attributes of the common law in ways that can either oppress or liberate. When raised to the surface, images can compel compliance with the existing social order. Or, in the hands of resisters, images can be rhetorically used to advocate for transformation. Because of their powerful affective qualities, images can foment resistance and change. Images persuade in a way that formal law and legal process does not. However, when images become submerged, truth is obscured and social control is effected in a much more variegated way. Below the surface, injustice becomes impossible to target.

For instance, in the late 19th century and early 20th century, postcard photographs of celebratory lynchings, circulated via the U.S. postal service, legitimized white supremacy’s unspeakable, murderous violence. These images functioned similarly to a common-law process, canonizing precedent that authorized future terror. By the 1940s, after public celebrations of lynching came to be viewed as uncouth, the terroristic message was transmitted via silence and submersion. The story was now told by the bodies that went missing. In 1954, under the control of the African American press, images of Emmett Till’s dredged-up corpse propelled passion that helped fuel the civil rights movement. Photographs of Till’s body (along with other images of violence upon African American bodies) were raised to the surface at a moment in U.S. jurisprudential history where law actively sought to shut down the roots and branches of racial oppression. However, by the beginning of the 1970s, these terrifying and fearful images of death and maiming became submerged again. The submersion occurred through the use of abstract rhetoric (i.e., the Southern Strategy) that focused on ostensibly neutral principles like urban crime, welfare entitlements, individual rights, and private choice. With this submersion, U.S. jurisprudence turned away from progressive, active, and collective remedies and moved toward the much more passive approach that informs our law today.

2. El-Sawy, Amany (Alexandria University) “The (In)visibility of Black Female Pain in Robbie McCauley’s Sally’s Rape”

The invisibility of black female pain has long been something people of African descent have had to grapple with. Saidiya Hartman locates this lack of intelligibility and its origins in the slave system and we continue to see the ramifications of insensitivity to black pain in present day events such as the 2005 tragedy of Hurricane Katrina in New Orleans, LA, the brutal raping of women in places like the Democratic Republic of Congo, and the continual blind eye that Western media turns in relation to missing, killed, or abused people of color. Denying the historical abuse and pain visited upon the black female body causes the wound to fester. This is precisely what is seen in early pieces about the black female body which are rife with dehumanizing rhetoric about black women. Robbie McCauley’s Sally’s Rape is very significant
in the effort to make black women’s pain more visible. It overcomes the cultural structures that would deem black female pain insignificant. This is why visibility in reference to the historical lack of acknowledgement of black female pain is essential in the effort to deal with the open wound in the black female body politic. Thus, this paper attempts to bring to the fore the black female pain which has been often dismissed, ignored and constituted an open wound in the black female body politic. McCauley’s Sally’s Rape brings attention to black female pain, and it offers a historical context for the onslaught of the devaluation of black female pain in the West. Additionally, it exhumes the pained black female body and places it in a contemporary context in order to address the ongoing impact of the historical wounds endured by black women.

3. Perry, Twila L (Rutgers University School of Law) “Prince: Music, Race, and the Visualization of Social Justice”

The musical icon Prince Rogers Nelson, known worldwide simply as Prince, has often been described as an artist who transcended barriers of musical genre, gender identity and race. However, the context of race has received much less attention than the contexts of music and gender and discussions of Prince in the media have seldom emphasized his identity as an African-American. This presentation will examine ways in which Prince used his music lyrics, his performances and, indeed, his own body as a canvass to invoke images that expressed his concerns about racial and other social injustices.

The focus of the presentation is on Prince’s widely-publicized and bitter dispute in the 1990’s with Warner Brothers over his record contract. During that time, Prince engaged in actions which took his battle beyond the confines of traditional legal doctrines, publicly connecting his personal battle to issues of past and continuing relevance to African-Americans. What Prince did was to invoke three compelling images of injustice. First, in both lyrics and interviews, he drew an analogy between record contracts and slavery. Second, he changed his name to a visually compelling unpronounceable symbol. Third, he appeared in public and performed with the word “SLAVE” scrawled across his cheek. By invoking images of economic exploitation, the loss of names and the physical brutality of slavery, Prince translated into visual terms racial and other social and economic justice issues that continue to be subjects of scholarship, including critical legal scholarship addressing the intersection of race and the law with issues of hierarchy and economic and cultural power.

The presentation is drawn from my article, “Conscious and Strategic Representations of Race: Prince, Music, Black Lives and Race Scholarship,” which is forthcoming in the USC Interdisciplinary Law Journal.

Following the passage of the Fugitive Slave Act of 1850, Ralph Waldo Emerson turned bitterly on its architect, Daniel Webster, the charismatic Massachusetts senator, orator, and Supreme Court advocate whom he had once celebrated as “the representative of the American Continent” and the “one eminent American of our time, whom we could produce as a finished work of Nature.” Fully embracing the abolitionist cause for the first time, Emerson denounced his erstwhile hero as a fallen angel whose misguided and self-serving efforts to preserve the Union led him to become “the head of the slavery party in this country.” After Webster’s death in 1852, Emerson at once commemorated him as “the completest man” and lamented that he had “written upon Nature’s grandest brow, For Sale.” My paper will read Emerson’s agonized response to Webster’s apostasy as a dialectic between natural and positive law more broadly. I will argue that in Emerson’s addresses on the Fugitive Slave Act, the failure of Webster, long celebrated as the “Defender of the Constitution,” to live up to his natural grandeur reflects the failure of the antebellum Constitution itself to unite positive law with natural or “higher” law. In championing the Fugitive Slave Act, Webster became in Emerson’s eyes the incarnation of legal positivism and the absolute antithesis of the new hero with whom Emerson would eventually replace him, John Brown.

2. **Guha-Majumdar, Jishnu (Johns Hopkins University) “Between Person and Property: Antebellum Abolitionism and Regimes of Personhood”**

This paper conceptualizes abolitionism in terms of its challenge to “regimes of personhood” that intertwine with systems of captivity like chattel slavery. What might abolitionism, the clash with institutions that reduce personality to property, have to tell us about personality, the self, and/or personhood? The paper reads antebellum abolitionists like Angelina Grimké and Frederick Douglass alongside slavery apologists’ defense of the institution’s regime of personhood. Specifically, it analyzes the abolitionists response to slavery’s conflation of person and property, their use of the animalized category of the “brute,” and their reassertion of a revised notion of persons against the apologists’ own conceptions. As this abolitionist challenge often espouses human self-possession, the paper uses a discussion of Lockean “possessive individualism” to explore this strategy. What are the stakes and limits of this appropriation? Do these abolitionists adopt the traditional enlightenment line on self-possession or does the situation of mass captivity lead them to diverge from it? I argue that these abolitionists critically drew on Enlightenment ideas about self-possession but refashioned them for the urgent political demands of challenging chattel slavery, articulating a different, more capacious understanding of personhood in the process.

3. **Allo, Awol (University of Keele) “From Slave-Owners to Founding Fathers: Performative Genealogies in the Chicago Eight Conspiracy Trial”**
In this paper, I look at one of America’s most memorable courtroom spectacles of resistance. Drawing on Foucault’s historico-political critique of sovereignty, I seek to investigate the extent to which liberationist counter-history can be deployed as a conceptual tool for problematizing and reconfiguring the instituted grid of intelligibility, and the terms of voice and visibility. By analysing some of the most disruptive scenes from the 1969 trial of Bobby Seale (part of the Chicago Eight Conspiracy Trial), I argue that Seale’s deployment of a counter-historical knowledge of enslavement and servitude reveals the discursive and visible practices of American sovereignty as strategic instrument used to conceal racial inequality and secure a relationship of domination. I will further argue that as a strategic weapon capable of tapping contradictions, incongruities, and points of tension within the system, counter-history opens up a disclosure space that both uses and critiques juridical presuppositions to unmask and disclose the war (often biological) that determines the question of who lives or dies and who thrives or survives.

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Elements of Judging: Interpretation, Reason, Technique
Room: Hotung 5021

1. Rudolph, Duane (Peking University School of Transnational Law) On Moral Outrage in Judicial Opinions"

This presentation addresses two questions that have been largely overlooked in the legal literature on moral outrage. The first question is somewhat descriptive: What exactly do courts mean when they express moral outrage? In other words, what is the hermeneutic content of judicial expressions of moral outrage, and why is it useful to understand such content at this point in time? The second question is normative: once we understand the hermeneutic content of moral outrage and its bearing on this particular moment, should judges express moral outrage in their opinions? Drawing from legal hermeneutical theories, this paper examines American case law in which judges express and reject expressions of moral outrage to provide a framework for approaching judicial outrage. The paper argues that judges should express moral outrage when faced with constituencies whose voice has historically been—or is at risk of being—muted.

2. Li, Ke (City University of New York) “Frames and Schemas in Judging: Divorce Law Practice in Trial Courts in Reform China"

Sociolegal scholars often portray trial judges as street-level bureaucrats, rational careerists, and in the context of illiberal states, political tools of overbearing regimes. This study takes a different approach by exploring an understudied aspect of judging: the courts’ enactment of frames in disputation and litigation. Using archival and observational data retrieved from People’s Tribunals, the lowest level of trial courts in contemporary China, this study compares and contrasts the frames judges adopt in two distinct contexts of divorce litigation: written
rulings and courtroom interactions. Drawing on the concept of “frame” (i.e., schemas of interpretation through which institutions and individuals make sense of lived experiences, and, in turn, form sensible lines of action), I address the questions of how and why some schemas find the way into formal judicial writing but not into actual speech conducted by judges in face-to-face meetings with litigants, and vice versa. Moreover, by identifying the overlap as well as disjunction in the frames uttered by judges and litigants in courtroom interactions, I show how some schemas resonate with the court system while others fall on deaf ears. Together, the two lines of inquiry indicate that class and gender—the schemas that informed and inspired divorce law practice in the Mao era—nowadays carry little currency among Chinese judges. In seeking new fronts in dispute resolution, moneyed solutions and interpersonal violence have emerged as the key organizing frameworks whereby individuals and the court system come to terms with increasingly volatile marriages in the reform era. This study concludes with a discussion of the theoretical implications of applying cultural concepts, such as frames, schemas, and fields, in the studies of courts in China and beyond.


In this paper I take up the problem of the precedential value of plurality opinions. Focusing on dual-majority cases—where one judicial majority agreed regarding legal test, theory, or principle and a different majority agreed regarding judgment—I argue for a dissent-friendly model of precedent. On my dissent-friendly approach, dissenting opinions constitute binding precedent in dual-majority cases. Many courts, including the U.S. Supreme Court on multiple occasions, have taken the dissent-friendly approach to following dual-majority decisions as precedent. However, these courts have not explained in satisfactory detail why they chose to count dissents in the precedent calculus rather than adopting an alternative method. Moreover, other courts, along with the majority of commentators, instead take it as self-evident that dissenting opinions cannot establish binding law. So not only are opinions on the matter divided, but productive dialogue between them has been limited. I begin this paper by defining plurality and dual-majority decisions, examining why and when we might expect a dual-majority case, and explaining why we should care about plurality decisions and their precedential value. I then defend the dissent-friendly method for following dual-majority decisions, while comparing that method to alternatives. I argue that the very reasons commentators have offered for excluding dissents actually push in the opposite direction. Moreover, the values underlying stare decisis—including predictability and equality—would seem to push in favor of the inclusion of dissents, as would the value of principled and conceptually coherent decision-making. The dissent-friendly view of precedent takes seriously principled alignment among judges in plurality decisions, whereas alternative views make nothing of it.

4. Smejkalova, Terezie (Masaryk University) “Interpretation as a ritualistic veil in courts’ law-making”
Continental legal systems are quite wary, if not outright derogatory, when it comes to acknowledging that courts would actively engage in any law-making. Description of the courts' role is usually centred on their part in the application of law, one that allows for recognising their authoritative role in interpretation of law, but one that denies their active role in the process of making law.

Yet there are studies (Lasser 1994-1995, 2003) that show that even a court such as the French Cour the Cassation whose decisions are formulated as simple syllogistic applications of legal rules that do not allow or require detailed description of the interpretative processes that the court might have gone through before pronouncing such a simple sentence of a decision, engage in sometimes complicated interpretive processes, ones that are not dissimilar to active creation of law. Other continental legal systems, such as the German or Czech one, require certain level of justification, including interpretation of applied provisions, but the required depth of such justification often quite differs from what is expected in common law systems. Moreover, there are theoreticians (Knapp 1995) who point out that a legal rule (or, in a more typical continental terminology, a legal norm) is only an end product of interpretation of a text of legal regulation, which would mean that a law becomes law only when interpreted.

To avoid sheer subjectivism in interpretation, legal theory provides the interpreters with “methods” (Savigny), yet those methods, when looked into more closely, rather overlap with one another and still provide quite a lot of semantic space in which the interpreter may move. These methods of interpretation are consistently taught, and their usage, often reduced to the level of simple labels, is being reinforced throughout the process of legal education to the extent that they may be analysed in terms of their ritualistic presence in justifications of judicial decisions.

In this respect, this paper will tackle interpretation of law as a ritualistic veil behind which the reader-interpreter introduces her own experience and knowledge into the law and thus creates law.

32

Punishment, Reason and Responsibility
Room: Hotung 5020


To the surprise of some of his critics, Jacques Derrida devoted one of his last works (Rogues: Two Essays on Reason) to “saving the honor of reason,” concluding with a full-throated embrace of “reasonableness,” the “responsibility of reason,” and what he referred to as “a rational deconstruction.” Although the discussion ran the gamut of the concepts and areas that concerned him over the years (the gift, hospitality, religion, biopolitics, among others), its primary and concluding example was the rationality of law: “[T]he rational would certainly have to do with the just and sometimes with the justness or exactitude of juridical and calculative
reason . . . but it would also strive, across transactions and aporias, for justice” (emphasis original).

In this paper, I discuss the prominence of law in Derrida’s later thought and his re-evaluation of reason by relating them to the seminar he gave on the death penalty shortly before writing the essays in Rogues. In that seminar, Derrida suggests that any invocation of reasons for killing another – even reasons given by a murderer, however perverse or unjustifiable – “virtually . . . appeals to a code of law,” just because reasons of necessity “enter into the symbolic order” of language and meaning. Beyond the “rationality of law” itself, law’s exemplarity for the question of reason writ large would thus stem from the fact that law explicitly conjoins lethal force with linguistic acts under the sign of “reason.”


This paper examines the temporality of criminal responsibility and punishment by reading an illustrative criminal case alongside Alfred North Whitehead’s process ontology. The trial of Ahmad al-Faqi al-Mahdi at the International Criminal Court offers an image of multiple temporalities at work in an institutional process of responsibility ascription, and Whitehead provides a uniquely comprehensive expression of the deep texture of becoming. Through this encounter, and particularly through an engagement with Whitehead’s “theory of feelings,” I seek to forge a preliminary account of criminal law as a mode of process—that is, as a mode of becoming-real ("concrescence") that combines multiple antecedent processes and creative possibility together into distinctive, and constantly perishing, generative unities. As a result, I reconsider what it means to bear legal responsibility in the present and future for a past event, and how contemporary practices of ascribing criminal responsibility—including formalized accounts of a perpetrator’s identity—depend on potentially problematic temporal and ontological presuppositions. Through this critique, I envision more future-oriented and interruptible processes of responsibility ascription.

3. Triola, Anthony Michael (UC Irvine) “Criminological Theory as a Reconstitution of Authority”

Although criminology has become a field of diverse theoretical posturing, many of its paradigms and resultant policy positions have their historical roots in two streams of thought: biological positivism and classical “rationalist” perspectives. Drawing off the ideas espoused by Michel Foucault in Discipline and Punish and earlier Herbert Marcuse in Eros and Civilization, this paper will assess the historical progression of criminology as a disciplinary entity. It will trace the extent to which the logic of ordering and domination endemic to biological and rational choice theories remains intact in more contemporary paradigms such as social bond theory, control theory, social disorganization theories and social learning theories. Marcuse’s idea of surplus repression and Foucault’s ideas regarding disciplinary studies as means of technical control of the population will be applied to an analysis of how many popular contemporary
micro-level criminological theories, in their very logic, reflect tendencies towards repression, categorization and objectification.

33

The Formation of Legal Orders: Historical Jurisprudences
Room: Hotung 5013

1. Schmidt, Katharina Isabel (Princeton University) “‘Gaps in the Law’: German Jurists between Statutory Absolutism and Unlimited Interpretation, 1794-1949”

My dissertation traces the history of two distinctive legal utopias in modern German intellectual life: the dream of a complete, all-encompassing, and “gapless” system of law, on the one hand; and the ideal of an open-ended, flexible, and responsive corpus of law on the other. I propose to examine the interaction between these two utopias through the notion of “gaps” in the law—arguably the point at which they are connected.

The first chapter of my dissertation will explore the discovery of the “gap” problem in early modern Prussia by reference to the infamous Miller Arnold Case as well as the Prussian General Code of 1794. The second chapter will then deal with the development of the “gap”-problem over the course of the nineteenth century, exploring the diverging legal theories of Savigny, Stahl, and Gierke. Chapters three and four flesh out the growing acceptance of the role of judges in filling “gaps” in the law leading up to the turn of the century—in the context of Germany’s African colonies and as a consequence of the modernist Free Law intervention.

While chapter five addresses the concept of a “legal fiction” in public international law, as a kind of counterpart to the “gap”-problem, chapter six examines the way in which National Socialist jurists appropriated nineteenth and early twentieth century “gap”-discourse in order to justify and implement “völkisch” objectives. In my conclusion I look at post-war attempts on the part of German jurists to create a constitutional system in which “gaps” are recognized, but in which limits are also placed on who can fill them and how.

2. Barr-Klouman, Agnes (University of Ottawa) “Creating Free Space: Appropriation and Partition in International Law”

Departing from the assumption that an ongoing intellectual and artistic reflection on and of justice in transition manifesting in contemporary productions of feature and documentary film dedicated to stories dating back as far as to the aftermath of WWII are proof to uncompleted processes of coming to terms with the past, the paper introduces the idea of explanatory justice to identify and explore one aspect related to truth finding and restoration that might complement former research on and explain for still existing deficits in the practice of transitional justice. In consideration of both the scientific debate on the role of law and judiciary in the course of overcoming past injustice and the filmic preference for courtroom drama, the paper focuses on a selection of more recent approaches to landmark cases of judicial solutions to crimes exceeding the legal imaginary. It proposes to understand these retakes as attempts to
raising and resolving the question of ‘why’ in the context of well-known trials that originally were set up in reality and perpetuated on screen to establish the ‘who’ had done ‘what’ to ‘whom’ and ‘how’ in times of war and repression. It claims that the re-evaluation of cases and trials in terms of their explanatory quality aimed at contributing to a more comprehensive understanding of motivations and limitations of all parties involved is at the core of transgenerational processes of restoring justice.

3. Taylor, Luke (University of Toronto) "Constituting Family and Employment in Nineteenth-Century English Legal Thought"

This paper is an historical study of the intellectual and textual development of the modern legal categories of Family Law and Employment Law. Through close analysis of eighteenth- and nineteenth-century legal treatises, the paper shows how English legal consciousness of the period moved away from Blackstone’s household-based model of family and economic relations, towards a disaggregated (and gendered) conception of work and family life, with Family Law and Employment Law forming two distinct fields. The first part of the paper suggests that the transition from the law of master and servant to Employment Law occurred by an increasing tendency in legal thought to treat employment relations as contractual; accordingly, over the nineteenth-century, jurists gradually excised those relations from the law of the household (“domestic relations”, as it came to be known) and re-situated them under the capacious banner of Contract. Particular attention is given to the influence of French and German legal thought on this process. In contrast, the second part of the paper shows that the law of husband and wife was increasingly conceptualized in terms of status, not contract; this view of marriage in turn formed part of a broader taxonomical re-ordering culminating in the establishment of Family Law. This paper builds on existing research by presenting these two intellectual shifts as part of a broad single movement, in contrast to existing scholarship that has tended to consider these shifts from specifically family- or employment-based perspectives.

34
Legal Experience, Experiencing Law: Theory, Technology, Authority
Room: Hotung 5013

1. Michel, Agustina Ramón “The Authority of Law: meanings and (dis)obedience in Argentina”

My objective is to, based on the interpretative tradition, understand the meanings of the authority of law in Argentina through a philosophical-cultural analysis of its conceptual conditions, and a theoretical-empirical research on the forms, beliefs and motivations behind (lack of) law compliance as a primary manifestation of the authority of law. The main general questions I address is: What meanings does the authority of law have in Argentina, where an intense and symbolic (some would say) attachment to the law together with a perception of
pervasive non-compliance coexist in a “paradoxical way”? To answer this question in this presentation, and as part of a PhD project, I try to describe and interpret the forms, motivations and beliefs behind citizen (dis)obedience in these cases (Traffic rules; Tax evasion; Copyright and other intellectual property laws; Child maintenance obligations after divorce).

2. McManus, Matthew (York University) “Law, Technology, and Difference”

My presentation is intended to make a theoretical contribution to the field of socio-legal studies. I will be developing a framework through which to analyze how law, and legal institutions, reify and manage the production of social differences. Drawing on the work of Heidegger and Marcuse I will argue that neo-liberal law operates according to a technical ideology which reifies social and individual differences. From the standpoint of legal technocrats, these differentiations reflect actual distinctions across the body politic. To put it in more theoretical language, the metaphysics of “thinghood” paradoxically leads legal technocrats to engender homogeneity through the production of difference. These differentiated identities are taken as actually existent social problems for law to manage through the application of techniques of disciple and regulation, rather than a production of law’s various operations.

3. Macias, Steven J (Southern Illinois University) “John Dewey’s Legal Philosophy”

The relationship between John Dewey’s thought and the field of jurisprudence is an underexplored topic in the literature. This is surprising given that Dewey contributed to legal thought consistently, if not frequently, throughout his career. Although some of Dewey’s contemporaries wrote scholarly articles about his contributions to the legal field, “Dewey & Law” is a notable gap in both the modern philosophical and legal scholarship. The scholarly treatments that do exist can also be divided into two groups—those that focus on law and democracy and those that focus on the logic of judicial reasoning. Neither topic, I think, gets at the heart of Dewey’s primary insight into law, which is the fundamental jurisprudential question, “What is law?” For Dewey, law was a unique type of human experience. I explore that claim through three primary sources—Dewey’s own writings on law, the scholarly writings of Dewey’s contemporaries within the legal academy, and the surviving unexamined materials from Dewey’s co-taught Columbia course, Logical and Ethical Problems of the Law.
In the Brexit discourse, Britain was occupied by the European Union. It became a captured nation under the sway of foreign powers. Brexit will liberate the nation and return it to its sovereign position. In common with other nationalist narratives in the 21st century the sense of the threat to nation is a common theme. Such threats are variously posed by untrustworthy elites, immigrants, globalization and multi-culturalism. Britain, the old Imperial power is transformed into an oppressed victim yearning to be free. However, British nationalism was constituted at the high point of Empire. It was forged through the forced occupation and exploitation of millions of people over a vast territory. Britain became Britain not through liberating itself but through ruling its dominions. This paper will argue that the significance of Edward Said’s command that we root our analysis of events and discourses within the ‘gravity of history’ has acquired a new significance. It will reflect on the way in which the recourse to a type of anti-colonial rhetoric has become a powerful mythic construct that at one the same time mobilizes images of imagined strength and of experienced weakness. In a grotesque manner, it mimics genuine struggles for freedom from the colonial.


This paper explores the political, philosophical, and theological writings of John Locke and shows how they helped to lay the foundations for the American conception of religious liberty embodied in the First Amendment. Locke sharply criticized the authoritarian religious and political order of Restoration England. In opposition to this regime, he developed a powerful theory of human beings as rational creatures who were entitled to think for themselves and to pursue their own happiness within the bounds of natural law. He then used this view to give a new account of political and religious life. To promote their happiness in this world, rational individuals would agree to give up some of their natural freedom and to form a civil society to protect their natural rights. By contrast, they would not surrender any of their religious freedom, for they could reasonably hope to attain eternal happiness only if they used their minds to seek the truth about God and his will. For Locke, the most basic precepts of religion could be known by the light of nature and reason, while others were matters of faith. On the Lockean view, both church and state should be founded on the consent of free and equal individuals and should respect their nature as rational beings. After exploring Locke’s theory, the paper sketches some of the ways that it contributed to the eighteenth-century American view of religious freedom. Finally, the paper explores the implications of this view for some current controversies, such as whether religious liberty gives bakers, florists, and others who provide wedding-related goods and services the right to an exemption from state civil rights laws that require them to serve same-sex couples in the same way as opposite-sex couples.

3. Thomas, Brook (UC Irvine) “Reconstructing Portraits in the Politics of Johnson’s Impeachment 150 Years Later”

Many urging consideration of impeachment today hope that new “profiles in courage” will emerge to join those JFK narrated in his Pulitzer-Prize-winning book: sketches of senators,
who, at personal cost, chose principle, patriotism and rule by law over partisan politics. Republicans, it is hoped, will have the courage, if sufficient evidence of legal wrong-doing exists, to cast aside partisanship and vote to impeach and to convict. But those looking for profiles in courage forget that Kennedy, relying on selective evidence, lionizes Edmund Ross for delivering the decisive vote to keep Andrew Johnson from conviction on trumped up charges by fellow Republicans. They also seem unaware that Kennedy’s account relies on some of the “alternative facts” that Thomas Dixon employs in narrating Johnson’s trial in THE CLANSMAN. Indeed, needing southern support for a planned presidential bid, Kennedy, like Dixon, was politically motivated to defend Johnson and discredit Radical Reconstruction as a partisan violation of the law.

Kennedy’s, Dixon’s, and other popular accounts contribute to the view that politics is a distortion of properly legal considerations of impeachment. But the founding fathers most likely gave the House of Representatives the authority to impeach and the Senate, not the Supreme Court, the authority to try because they felt that removing the president from office should involve both political and legal considerations. Supreme Court Justice Joseph Story felt that senators were better equipped than judges to try “the political offences” involved with impeachment. Until, for political reasons, constitutional scholar George Ticknor Curtis supported Johnson, he insisted that “a cause for removal of office may exist, where no offence against positive law has been committed,” including “immorality, imbecility, or maladministration.” My talk is aimed at re-examining the relation between politics and law in impeachment.

36
Indigenous Complications of the National
Room: Hotung 6005


The Ojibwe of Fort William First Nation made headlines in early 2017 when news of the first non-Indigenous person’s enrollment as a full legal member of the First Nation spread across Canada. For many members of the public, this event cast into light the legal nuances of First Nations belonging and brought renewed attention to the complexities of legal Indian “Status” as defined by the Indian Act of 1876. In this paper, I posit that for those at Fort William and throughout the larger indigenous community, this historic event marked a defining moment in the exertion of First Nations sovereignty and self-determination. By accepting individuals who are active contributors to the community but possess no indigenous ancestry into the legal and political body of the Fort William First Nation, the indigenous government exercised their sovereignty by upholding traditional forms of Anishinaabe relationship, demonstrating the ways in which traditional ways can serve the interests of contemporary indigenous nations, and by explicitly bucking colonialist methods for defining indigenous peoples. I furthermore suggest
that this case study showcases decolonization as a means to effectively address modern indigenous legal issues. As a whole, the work being carried out at Fort William First Nation symbolizes a departure from settler-state regulations of indigenous nations and a move away from the colonialisim impositions of nuclear family structures, patriarchal systems of descent, and blood-based community belonging. The methods deployed by Fort William First Nation- from its non-indigenous inclusive band citizenship law to larger challenges to Indian Status- all showcase how, in the words of Fort William First Nation band member Damien Lee, “It is families that renew the nation, not band offices or federal legislation.” This paper explores this legal initiative, and ponders its meaning for the settler-state and the possibilities this case study has sparked among other First Nations.


Under Canadian federal law, if a man holding Indian status married a non-Indian woman, his wife gained status and their children were status Indians, whereas if an Indian woman married a non-Indian man, neither she nor her children were entitled to status. In 1985, the federal government amended the Indian Act in a manner that conferred an advantage to those who traced their Indian status along the male line. In 2009 and 2015, landmark judgments in McIvor (BC) and Descheneaux (QC) declared the rules in violation of the Charter’s gender equality guarantees. In overturning the Indian Act’s rules on status, the courts relied on a history widely accepted, before and since, by the government and scholars alike, according to which the impetus behind the Indian Act amendments was an effort by the government to reconcile an inherent conflict between individual rights to gender equality and collective rights to Indigenous self-governance. But, as this paper shows through analysis of newly declassified Cabinet and Indian Affairs documents, an intrinsically political process, not an inherent rights conflict, framed these principles as dichotomous and opposed to one another. Constitutional rights discourses became a tool for a colonial government to divide and rule Indigenous polities. Contrary to the received wisdom about infighting among Indigenous people about an intrinsic rights conflict, the consistent driver of reforms to the Indian Act has been the federal government’s refusal to recognize inherent Indigenous sovereignty and its desire to limit spending on status Indians, in service of a project to construct and preserve Canadian sovereignty.

3. Harris, Mark (University of British Columbia) “Riot, sedition and terror: neoliberal responses to the Indigenous presence in the nation”

In recent times there has been a growing assertion of Indigenous rights globally, through the language of international instruments such as the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP), the belated recognition of Indigenous presence in constitutions throughout Latin America and successful litigation in jurisdictions in nations such as Canada and Australia. The consequence of these developments has been the move by governments and corporations to frame such emerging and recognized rights as a threat to the nation.
Obviously this is not a new development. The work of Nasser Hussain on the nature of martial law and the declared state of emergency in colonial India (and also in the global contemporary moment) is but one instance of the manner in which legal interventions are deployed to justify the violence of the law against subaltern or Indigenous populations. In the current moment the presence of Indigenous peoples has variously been presented as a question that goes to ensuring national security or to the greater economic good of the populace. Drawing from the recent work by Pasternak, Simpson and Coulthard this paper considers the strategies that have deployed to secure the infrastructure for the flow of capital against the claims of Indigenous communities. In turn the paper then considers the emergence of the Idle no More movement, the Standing Rock protestors and the Water Protectors in British Columbia as moments which embody forms of resistance against the violence of the settler-colonial State.

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Law in Literature, Literature in Law
Room: Hotung 5020


Louise Erdrich’s The Round House opens with violent crime. The horrific circumstances of Geraldine Coutts’s brutal rape are intertwined in her son Joe’s ‘coming of age’ story. The anxieties standard for a bildungsroman are compounded by Joe’s inability to insure his mother’s welfare and are then amplified by the racial motivation behind her attack. Situated in North Dakota at the edge of the Ojibwa (Chippewa) tribe’s reservation, the titular round house itself was once a place of religious ceremonies and celebrations. The fact that Geraldine is accosted in, or near, this edifice heightens the egregious nature her physical abuse and attempted murder. The defilement of this sacred space is intensified by the foul motivations of Linden Lark, whose convoluted concept of love blends racist attitudes with greed and feelings of betrayal. The location of the round house causes federal, state, and tribal jurisdictions to overlap in the criminal investigation. As Joe slowly embarks upon his own quest to discover Geraldine’s attacker, he encounters an additional form of law, spiritual law, enacted by the wendigo of Ojibwa folklore. As these competing forms of law unfold, Joe unearths longstanding legal conflicts: in particular, clashes over land rights and tribal membership to the foreground. Ultimately, the spiritual law that seems to be a minor note becomes the system of justice that attains supremacy at the close of the novel.

2. Lee, Haiyan (Stanford University) “Society Must Be Defended: Chinese spy thrillers and the enchantment of Arcana Imperii”

Modern detective fiction flourished briefly in China in the first half of the 20th century. Once the Communist Party came to power in 1949, the genre was deemed a misfit and banned. The spy
thriller, however, was given a space to thrive, contributing significantly to the small oeuvre of “red classics” as well as hand-copied underground novels during the socialist period. In the new millennium, the genre has undergone a renaissance and cornered a large share of the entertainment market in the form of bestsellers, primetime television dramas, and blockbuster films. Detective fiction, by contrast, has returned but remained a marginal concern.

In this paper, I argue that the enduring salience of the spy thriller has everything to do with the Maoist ideology of “permanent revolution,” the national-security state that emerged out of socialist state-building and the geopolitics of the Cold War, and China’s recent bid for world power status. Espionage fiction posits a state perpetually at war with shadowy, conspiratorial internal and external enemies and showcases its corps of technocrats and secret agents defending the country through iron discipline, professional brilliance, Machiavellian intelligence, debonair panache, and self-abnegating patriotism. The genre enchants the state as an autonomous power replete with arcana imperii, and elevates the reason of state as the locus of the just and the sublime. It is the romance of the state par excellence.

By comparing Chinese spy thrillers to their Western counterparts (particularly the James Bond franchise), I reflect on the problem of freedom vis-à-vis the imperative of national security, I also raise questions about the moral status of secrecy, the cognitive-aesthetic appeal of duplicity and suspicion, the relationship between justice and loyalty, and the moral foundations of statism.

3. Jalova, Melicent (Mindanao State University - Iligan Institute of Technology) "Overseas Filipino Workers (OFW) real-life stories of war, hope, and love"

Since lived experiences of war are raw and interesting materials for narrative construction, I am going to pursue a narrative analysis of the lived experiences of three participants while they were in the hands of ISIS in Sirte, Libya. Propp (1968) relates narratology as the study of how an individual negotiates and incorporates mediated enunciations into an understandable narrative. Narratives are constructed through written or spoken language and any other media. The analysis of narrative structure, or narratology (Onega and Lande, 1996), usually begins with the question: In what sense can the structure of the narrative be analyzed? This study is deepening the problems and issues expressed in many studies conducted by the policy makers in the Philippines on why OFWs continue to work in countries which are not safe to work. The problem that I will be pursuing in this study embraces not only the understanding of the lived experiences of the study’s participants, but also the evolution of a methodological procedure for such an understanding.

Thus, I will be asking the following questions:

A. What narrative text can evolve from the lived experiences of the participants while they were held captives by ISIS in Sirte, Libya?

B. What useful methodological procedure can be evolved in understanding the lived experiences of the participants during those times?

The promise of good life did not happen to these participants. Instead they were drawn into a nightmare that are latched in their lives forever. How their lives had been constrained by the terrorists and the strategies that they used to resist, challenge, and subvert these constraints
are important and interesting topics in articulating the lived experiences of the participants in this study.

4. Lemire-Garlic, Nicole (Temple University) “Police Brutality Narratives in African-American Film”

Stories of police violence against African-Americans and failed justice systems pervade modern news media, from the recent killings of Michael Brown in Ferguson to Oscar Grant in Oakland, and beyond. Polls of African-American and White Americans reveal “deep-rooted racial divisions in the public’s view of law enforcement and the criminal justice system.” This division is not only reflected in the news media, but persists in fictional stories told by African-Americans for African-Americans. Through narrative analysis, humanities scholars have long studied the presence of narrative structure and meanings in written and visual texts. By charting the abstract, orientation, complicating action, resolution, coda, and evaluation of films produced, written, or directed by African-Americans, this paper will unearth narratives that give in-depth insights into the perception of police violence. The paper will analyze five films released over the past 25+ years: Do the Right Thing (1989); Boyz N The Hood (1991); Training Day (2001); Fruitvale Station (2013); and Selma (2014).

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Problematic Categories: Citizen and Refugee
Room: Hotung 6005

1. Tan, Meral (Carleton University) “Citizenship at the Intersection of Childhood and Political Violence: Omar Khadr’s Case”

This paper examines the complex relation between citizenship, childhood, and political violence by focusing on the case of a former child soldier and Guantanamo inmate Omar Khadr. The paper will analyze the frames through which Khadr has been made “grievable” and “ungrievable” by the official Canadian narrative within the last fifteen years. The Western hegemonic discourse regarding child soldiering constitutes underage combatants as victims rather than perpetrators. Irrespective of citizenship and race, this discourse views childhood as a natural and universal category that is not compatible with political violence. Omar Khadr, however, was not given this privilege of being a minor. His childhood and citizenship have been contested by the Canadian officials. Based on this dilemma, this paper will try to address the following questions: How did the official Canadian language constitute Omar Khadr? What is the interplay between different frames that constitute Omar Khadr as a victim and grievable on the one hand, and a perpetrator, i.e. ungrievable on the other? How did Khadr’s life start to matter, become grievable? I will engage in a critical discourse analysis and conduct a media research. My major analytical tool will be Judith Butler’s conceptualization of “precarious lives” (2004).
2. Overmier, Kimberly N (University of South Carolina) “Inventing the Modern Refugee: The Debates of the U.N.’s 1951 Convention on Refugees”

Few of the representatives involved in drafting the United Nations’ 1951 Convention Relating to the Status of Refugees could have imagined the long-ranging impact the document would have in shaping policies and lives in the decades following its passage. This paper analyzes the committee debates responsible for shaping the 1951 Convention and identifies key arguments circumscribing current dilemmas and limiting the “refugee” as a political identity. The failure to update or change much of the Convention since 1951 has relegated the situation of the refugee to the confines of definitions and concerns contracted in an entirely different political era. Exploring these conditions is critical to understanding the rhetorical parameters within which current debates function. This paper delves into the definition of the refugee in the convention as it emerged over the course of several drafts, the Secretariat (International Refugee Organization) draft, state drafts, and the Ad Hoc Committee’s work, and examines how these drafts were debated by the Conference of Plenipotentiaries. Clashes over sovereignty, identity, and the boundaries of human rights characterizes the debates, as does a persistent questioning of what the United Nations’ purpose and role should be in regards to the refugee. Irial Glynn notes that the definition of a refugee became a point of great debate during the ad hoc committee meetings, with the United States expressing concern, “that a general definition without specific parameters would be a ‘blank cheque’ [sic] and would ‘undertake obligations towards future refugees, the origin and number of which would be unknown” (138). This concern highlights a key question in the debates: is hospitality a limited gift or an ongoing responsibility? This paper’s rhetorical historical analysis offers insight into how the refugee elicited a number of challenges to Western political and philosophical thought that continues to confound a modern address of the issue.

41
Legal Cultures
Room: Hotung 5021

1. Lerner, Pablo (Ramat Gan Law School) “Italy to Israel: Prof. Guido Tedeschi and the formation of a legal culture”

Guido (Gad) Tedeschi was an Italian law professor who as a result of the racist laws enacted during the period of fascism in Italy, emigrated to Palestine in 1938. After the opening of the Law Faculty in the Hebrew University in 1949 he became a major figure there. Through research, teaching and particularly mentoring and encouraging his best students, he contributed to the development of the Israeli private law. Tedeschi’s case offers a basis for discussing seminal questions regarding legal transplants, and the way a so called mixed legal jurisdiction is built up.
Through his academic work Tedeschi, introduced a continental law approach to a legal culture based until then upon Ottoman and English law. Whilst in other mixed jurisdictions such as Quebec, Louisiana, Puerto Rico, or South Africa the merger was a consequence of territorial annexation or colonial conquest, the Israel mixed legal character was the result of the cultural influence of a group of immigrants intent on building a new national legal culture. Tedeschi (as other Israeli founding fathers) was certainly at the crossroad of Israeli law in his formative period, and his contribution was significant in giving to Israeli law some of its particularities. The paper will also deal with the differences between Tedeschi and other Jewish law professors who had escaped from Europe and found places in law schools in UK, USA or South America. These émigrés, or at least some of them, made important academic contributions in their host countries but they hardly carried out a legal transplant, as Tedeschi made in Israel.

It is true that today Tedeschi’s influence has dwindled and modern Israeli law has advanced in other directions. Particularly, Israeli scholarship is now clearly American influenced and quite alien to the continental tradition. Nevertheless discussing the role Tedeschi played in the formative years of Israeli law, may add a particular angle for understanding the relationship between law and culture, the way law is imported, and the importance of legal education in the development of a legal tradition.

2. Farah, Paolo Davide (West Virginia University) “Law and Culture: Judicial Independence and Professionalism in the Chinese Legal System”

This article is concerned with two highly-interrelated trends affecting Chinese judiciary. The first is the problem of judicial independence (司法独立, Sīfá dùlí) of judges and courts - both considered as individuals and its entirety - and the second is China’s struggle towards a greater professionalization of the judicial function (司法专业, Sīfá zhūányè). In order to fully understand those ongoing developments an historical, cultural and comparative perspective will be adopted. The first part of the article will be briefly dedicated to trace the historical and cultural origins of the concept of judicial independence in general, by taking into account both the international provision and the difficulty of gaining a shared notion that could be used both in Western and NonWestern legal cultures. The second part will be dedicated to the growing awareness of the necessity of judicial independence in China, more specifically – both at a national and supranational-Asian level. The attention will be focused on the so-called Beijing Principles and to the great difference between law in books and law in action. In the following part the concept of a “judicial independence with Chinese characteristics” will be assessed. In particular, we will identify and outline three models to conceive and understand this notion. Then the article will proceed by examining the Chinese current safeguards to judicial independence, in relation to the appointing procedures, duration of the office, mobility and funding of courts. Lastly – as a conclusion – it will be investigated the role and the complex influence of the Chinese Communist Party. In particular – by distinguishing between “purely political cases” and the others - it will be argued that some of the CCP policies actually have the objective to enhance, rather than impede, the independence and authority of the court, and help them to achieve other important social goals.

International negotiation is one of the key processes in shaping the contours of a country’s obligations under international law, yet it has not been a common subject of legal research. Often, there is a stark disparity in the delegation sizes of official negotiators from developed (large teams including international lawyers) and developing (small teams, often without any legal experts) countries. This apparent lack of legal expertise among developing country negotiators and resulting asymmetry in negotiating positions between developed and developing countries has motivated me to delve into a deeper study of the systemic issues behind this.

In India, there is a clear absence of lawyers or legal expertise within core international negotiating teams, with bureaucrats and diplomats traditionally being the mainstays during international negotiations. In an increasingly globalized world, with rapid developments in the jurisprudence of specialized international legal regimes, what does this kind of negotiating practice say about India’s engagement with international law? This paper will construct an empirical study to explore the role of lawyers (or lack thereof) in shaping India’s negotiating position under the international climate (United Nations Framework Convention on Climate Change, hereinafter ‘UNFCCC’) and trade (World Trade Organization, hereinafter ‘WTO’) regimes. The paper will combine interview data and archival resources to determine who has represented India during these negotiations and the specific role of legal actors and/or epistemic communities. Tracing these negotiations over two decades (1995-2015), this paper will examine the parallels, convergences and/or divergences in India’s negotiating teams and strategies under the two legal regimes. Blending elements of multilateral diplomacy, international law and Law and Society, this paper will attempt to illustrate the politics, history and legal culture informing India’s negotiating strategy and engagement with the international climate and trade regimes. In doing so, it will aim to develop an authoritative account of how India negotiates its obligations under the two legal regimes, especially as it evolves into one of the world’s largest emerging economies.

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Reading Law’s Processes and Practices
Room: Hotung 6006

1. Marder, Nancy S. (Chicago-Kent College of Law) “Courts, Power, and the Public: Cameras in the UK Supreme Court”

Courts are essential to a democracy because they resolve disputes in public proceedings that reassure citizens that justice has been done. However, as members of the public read less and watch more and as technology provides unobtrusive cameras and live-streaming, the pressure
is greater than ever to allow cameras in the courtroom to educate citizens about the workings of courts. But on the other side, judges and some legal scholars worry that in the name of transparency trials involving difficult issues will be turned into reality shows for everyone’s entertainment. They worry that neither justice nor citizens’ rights will be served by potentially self-serving media outlets that focus on increasing their viewership and bottom line. With these critical and diametrically opposed views in mind, this paper presents early findings from the first empirical study of how cameras are used in the UK Supreme Court. The UK Supreme Court is one of a number of courts to permit cameras in the courtroom. This paper will provide a snapshot of who speaks during oral argument, for how long, and in what ways their language is accessible or inaccessible to the layperson. In the United States, the U.S. Supreme Court has been adamant about not permitting cameras in the courtroom during oral argument. The Justices worry about oral arguments being turned into sound bites or entertainment, with viewers focused on gaffes rather than substantive arguments. The debate about cameras in the courtroom is raging in the United States and United Kingdom and both countries can learn from each other’s experiences. Cameras in the UK Supreme Court provide an important vehicle by which to understand the ways in which the public can learn about the justice system through images, as well as the trade-offs cameras entail.


Most histories of crime and justice in England centre on the judicial activities of the higher courts—the Old Bailey in London or the Assize courts in the rest of the country. This is perhaps unsurprising: not only have such courts left voluminous records for the historian to study, but they also dealt with the most serious offences and alone possessed the authority to pass the most serious sentence—the death penalty. However, the historical focus on these courts is disproportionate: most of those who experienced the law in the eighteenth-century—and for that matter, today—did so not at these higher courts but at the summary level. Justice at the summary level was administered in a manner fundamentally different to that dispensed at the higher courts. At this level, the justice of the peace, acting in effect as both judge and jury, was the central figure. The vast majority of the English population in the eighteenth-century, then, would have formed their opinions on the law based on their interactions with these central figures. Magisterial record-keeping practices and poor record survival, however, has made studying the summary process, and the role of the justice of the peace, exceedingly challenging: estimates suggest that only eighteenth such notebooks exist for eighteenth-century England, for example. This paper will focus on one of these ‘justicing’ journals—that of James Kettilby, a justice of the peace for the London borough of Southwark who was active between 1772 and his death in 1786. Approaching Kettilby’s unpublished and previously unexamined notebook both quantitatively and qualitatively, this paper will reveal the range of offences that came before Kettilby and the manner in which he adjudicated such offences. Particular attention will be paid to Kettilby’s gendered approach to the law as well as
his highly selective use of summary imprisonment for those he conceived of as especially ‘deserving’ of punishment. This examination of Kettily's notebooks allows us insight not only into how the law operated at the summary level, but also into Londoners' relationship with the law, and more widely, into social relations in eighteenth-century London and their regulation.


What does reading legislation ethnographically involve? If ethnographic work offers “a theoretically sophisticated antidote to the excesses of theory” (Riles 2006:1), how might an account of frustration, confusion, and incomprehension illuminate the meanings and workings of the U.S.A. P.A.T.R.I.O.T. Act?

“USA PATRIOT Act” is an acronym for the purpose asserted in the Act’s full name – “Uniting and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism”. And with the double naming, the logic of branding and marketing evident in an acronym that masks itself, the obfuscations and confusions of reading this highly important piece of legislation begin.

In this paper, I offer an account of the experience of reading this Act. Alongside this explicitly textual/affective account of reading, I ask how the Act participates in post-9/11 worlding.

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Roundtable: Of Ethos: Law and Humanities Scholarship
Room: Hotung 2000

Organisers: Maria Drakopoulou and Connal Parsley (University of Kent)

Participants:
- Antaki, Mark (McGill University)
- Culbert, Jennifer (John Hopkins University)
- Drakopoulou, Maria (University of Kent)
- Kendall, Sara (University of Kent)
- MacNeil, William (Southern Cross University)
- Martel, James (San Francisco State University)
- Parsley, Connal (University of Kent)
- Umphrey, Martha (Amherst College)

How might the term ‘ethos’ be relevant to studies in law and the humanities? Ethos today is a term deployed widely across humanities disciplines, with diverse usages, senses, and resonances. As in Aristotle, it might describe an individual's ethical character, formed by an education and way of life. For Quintilian, ethos was a mode of persuasive speech relying on the nature or character of the speaker for its efficacy—and modern scholars of trials, debates on public reason, and narrative interpretation have repurposed this rhetorical sense of ethos to very different ends. For Heidegger, and many of his interpreters, ethos breaks free of functional
aims to acquire ontological significance as “the dwelling of man, his sojourn in the midst of all that is”, and yet “something we have yet to learn”. More concretely to the praxis of scholarship, Michel Foucault deployed the notion of a philosophical ethos to signal a distinctive “attitude of modernity”—a permanent critique and creation of ourselves and of our historical era; a “consciousness of ourselves” posed against the plurality of humanisms used to justify a particular “conception of man”.

What is ethos, to law and humanities scholars? Without prejudging this question by attaching it to any of the above lineages, this panel will provide a forum for exploring what meaning or use ethos might have for work in law and the humanities today. Is the ethos of the law and humanities scholar one of critique, or something else? Is ethos helpfully different from ideas about the “goal”, “aim” or “project” of scholarship, as a way of articulating what is important about law and humanities? Is ethos a worthwhile object of study, or something to do with scholarly subjectivity—or more a mood, an atmosphere? What senses of ethos matter in law and the humanities today?

45
Room: Hotung 2000

Author: Rosenberg, Anat (Interdisciplinary Center (IDC) Herzliya)

Readers:
- Bigelow, Gordon (Gordon Bigelow, Rhodes College)
- Blumenthal, Susanna (University of Minnesota)
- MacNeil, William (Southern Cross University School of Law and Justice)
- Tucker, Irene (UC Irvine)

The panel will engage Liberalizing Contracts. In the book, Anat Rosenberg examines nineteenth-century liberal thought in England, as developed through, and as it developed, the concept of contract, understood as the formal legal category of binding agreement, and the relations and human practices at which it gestured, most basically that of promise, most broadly the capitalist market order. She does so by placing canonical realist novels in conversation with legal-historical knowledge about Victorian contracts. Rosenberg argues that current understandings of the liberal effort in contracts need reconstructing from both ends of Henry Maine’s famed aphorism, which described a historical progress “from status to contract.” On the side of contract, historical accounts of its liberal content have been oscillating between atomism and social-collective approaches, missing out on forms of relationality in Victorian liberal conceptualizations of contracts which the book establishes in their complexity, richness, and wavering appeal. On the side of status, the expectation of a move “from status” has led to a split along the liberal-radical fault line among those assessing liberalism’s historical commitment.
to promote mobility and equality. The split misses out on the possibility that liberalism functioned as a historical reinterpretation of statuses – particularly gender and class – rather than either an effort of their elimination or preservation. As Rosenberg shows, that reinterpretation effectively secured, yet also altered, gender and class hierarchies. There is no teleology to such an account.

46
Legacies of the Past: Apologies and Memorialisation
Room: Hotung 6006

The proposed panel seeks to explore the various public and state responses to dealing with the legacy of past abuses, including the political and legal considerations which are central to the adequate public recognition and acknowledgement of wrongdoing. Across contemporary Western democracies, these can include, for example, responses to historical social and political violence, serious human rights abuses, or public scandals or atrocities such as institutional child abuse.

As part of discourses on transitional and restorative justice, there are a range of mechanisms which are thought to be central to official responses to dealing with the legacy of the past, including ‘truth’ recovery and compensation. Two of the lesser-explored cultural dimensions of securing ‘justice’ for victims, public accountability and commemorating the past, are apology and memorialisation.

The proposed panel is currently comprised of two papers on apologies; and memorialisation. However, we would welcome other papers on issues broadly related to dealing with the past including reparations, truth recovery, restorative justice, prosecutions, public inquiries/truth commissions in a range of contexts.

1. McAlinden, Anne-Marie (Queen’s University, Belfast) “Apologies in the Aftermath of Historical Child Abuse in Ireland”

This paper examines the historical and cultural politics of public and state discourses around apologies in the aftermath of high profile cases of institutional child abuse in Ireland (Northern Ireland and the Republic of Ireland). This includes those surrounding the recent publication of the Report of the Inquiry into Historical Institutional Abuse and the ongoing Commission into Mother and Baby Homes (and Magdalene Laundries). Such cases have been surrounded by a series of public apologies, by the Church and the State, to victims, the ‘faithful’ and society more broadly in terms of their historical and long standing failures to adequately deal with allegations of abuse.

However, the scripting, choreography and performance of a public apology emerges as an extremely fragile and complex gesture which has to balance the acknowledgement of the suffering of victims with the potential public admission of wrongdoing and possible legal consequences. In this vein, often apologies are conceptualised and articulated through the lens
of the past, justifying abusive actions with reference to past norms and social conventions of the time. This paper draws on empirical data from an ESRC funded study on ‘Apologies’ which aims to examine the role and importance of apology in coming to terms with the past abuses. Utilising primary research in the form of public surveys and interviews with key stakeholders, and the text of some public apologies, it explores the cultural and political negotiation of narratives about the past and what makes a ‘legitimate’ apology in the context of institutional child abuse.

2. Conway, Heather (Queen’s University, Belfast) “Memoralising Victims of Historic Institutional Abuse in Ireland: Private and Public Narratives”

While the issue of institutional abuse has resonated internationally, Ireland has had a succession of such cases involving members of Catholic religious orders. Those involving unmarried mothers are especially well-known - from the infamous ‘Magdalen Laundries’, to the recent discovery of 800 bodies of women and their babies in a septic tank in Tuam, Co Galway (the site was next to a former home for unmarried mothers and their children). Victims of such abuses historically suffered an additional shame, stigma and trauma beyond direct wrongdoing in that their identity and status as victims was not recognised by the Church or the State or by Irish society more widely. While this institutional wrong-doing has now been widely acknowledged, and apologies issued its victims, the final stage in the process is incomplete. Calls have been made for a lasting memorial to victims of such abuses, to act as a form of emotional reparation for women who endured decades of disenfranchised grief as they secretly mourned the death of a child whose very existence was deemed socially unacceptable. Other mechanisms fall short- for example, the commemoration of victims and the memorialisation of victimhood through truth commissions creates a ‘fictional’ narrative without any real locus as a site for remembering victims in the broadest sense, including secondary and tertiary as well as primary victims and living as well as deceased victims. Focusing on recent events in Tuam, this paper ultimately explores the need for a permanent public memorial which recognises the legacy of institutional child abuse. In doing so, it argues that the private aspects of memorials (providing a locus for disenfranchised grief, marking relationships between the living and the dead, ‘compensating’ for the absence of a funeral) are just as important as the public symbolism for victims of institutional abuse.

47
The History and Theory of Legal Emotions
Room: Hotung 5021
Moderator: Temple, Kathryn (Georgetown University)

What kinds of emotions and emotional intensities are now and were in the past associated with the law, and (as the expression “legal emotions” implies) what kinds of emotions (and intensities) are (or were) regulated by the law? How can we draw on theories of emotion and
practices associated with the history of emotion to help us understand legal emotions? What methods might we use to understand the emotions of the past…and the present? This panel seeks to offer some responses to these questions, ranging across time periods from Early Modern England to contemporary America.

1. Geng, Penelope (Macalester College) “Lady Macbeth and the Poetics of Remorse”

Certain legal emotions such as remorse, regret, and shame are deeply scripted and the histories of these legal emotions are beginning to take shape in formal academic study. My paper will discuss the performance of one particular legal emotion—remorse—and the ways Shakespeare’s Macbeth challenges the then-standard script for the “truthful” expression of remorse. I compare Lady Macbeth’s sleepwalking scene to other representations of the awakened conscience in English domestic tragedies. Additionally, I place these dramatic scenes alongside a curious semi-legal document that I found in a lawyer’s commonplace book that explains the “correct” performance of remorse. By comparing these texts, I hope to shed light on both Shakespeare’s habit of borrowing from popular legal and religious genres and his development of the poetics of remorse.

In the lawyer’s commonplace book, the speaker (presumably the magistrate) instructs the prisoner to perform his or her “sorrowes” to the community so that the “beholders” may judge the authenticity of that emotion. While many characters in English domestic tragedies do just that, Lady Macbeth—famously—reveals her remorse while in a “most fast sleep.” Shakespeare’s decision to re-write the traditional poetics of remorse certainly makes for gripping drama. But it also, I argue, poses a challenge to the law’s very concept of remorse. Her remorse is not performed for the moral satisfaction of the community. Instead, it is an involuntary expression that occurs in a private, domestic space. In the centuries that follow, how does the play’s association of authentic remorse with sleep and the private sphere come to influence cultural and even juridical understanding of remorse? How does that scene, a product of a particular historical and literary moment, still structure our present-day expectations about the accused’s repentance? These are some of the questions that I will explore through a close reading of the play and relevant cultural documents.


Almost 50 years ago, the U.S. Supreme Court radically altered the landscape of public interactions between the police and citizens with its decision in Terry v. Ohio. In that decision, the Court asserts that the intrusion of a brief stop is not burdensome on the citizen when an officer has reasonable articulable suspicion to believe that criminal activity is afoot. The Court went further and authorized a patdown or frisk for officer safety. The Court has gone down two paths with its frisk jurisprudence – first the Court has extended the right to frisk in every case that has come before in, and second that Court has limited the nature of the frisk to patting with flat hands. What the Terry Court and every Court since has failed to assess is why and how a frisk is a significant invasion of privacy. This paper will use the developing theories
around law and emotion to critically evaluate what a Terry frisk feels like on the body of a suspect, particularly a black suspect who carries on his body the original sin of slavery and deprivation of bodily integrity that came with slavery. Using the developing scholarship on the synaesthesia of law, this paper will address how the words of Terry and its progeny feel when applied to the body of a suspect – for both the detention and the frisk -- and how that feeling may explain the recurring example of citizen resistance to and flight from Terry stops.


In his lone dissenting opinion in the landmark Snyder v. Phelps Supreme Court case, Associate Justice Samuel Alito raised concerns with the level of legal protections offered to “vicious verbal assaults.” The Unite the Right Rally in Charlottesville, VA, some six years after Alito’s opinion, has renewed questions about whether the First Amendment should sanction the intentional infliction of emotional distress. When, on August 11th, 2017, members of the so-called “Alt-Right” descended upon the campus of the University of Virginia, they brought with them a premeditated affective assault through sounds intending to shock and profoundly unsettle their target audience. They chanted “Jews will not replace us!” and the Nazi slogan “Blood and Soil!” in deep, resonant voices, alongside renditions of the Civil War battle cry, the “Rebel Yell.” The violence was not only emotional but also physical, as various individuals attacked counter-protesters with torches, fists, and pepper spray, all under the watchful gaze of local police departments.

In this paper, I will detail my findings conducted through ethnographic research prior to, during, and after the Unite the Right Rally in Charlottesville, VA. I will incorporate throughout theories on affect and power by Judith Butler and Brian Massumi, alongside important ethnographic work on sound and violence by Suzanne Cusick, Martin Daughtry, and Steve Goodman. I do so to analyze the institutional and affective dimension of sound in protest, and the ways in which First Amendment jurisprudence has failed to fully grapple with the emotional qualities stemming from the freedom of expression. These legal emotions are important to consider in the present moment, as the Unite the Right Rally serves as a marker of an increasingly hostile public sphere—from Charlottesville to D.C., from UVA to UC Berkeley—that profoundly challenges conceptions of ‘speech’ and its legal boundaries.

48
Roundtable: Content and Criteria of Dignity in Two Landmark Cases: Tennessee v. Lane and Lobato v. Colorado
Room: McDonough 588

Participants: Right to Learn (R2L) Undergraduate Research Collective, led by Espinoza, Manuel Luis (Univ. of Colorado at Denver) with the R2L Research Associates:
The concept of dignity occupies an important place in philosophy, law, and religion, but it has not been adequately explored in education. In response to this inattention, the Right to Learn Undergraduate Research Collective, led by Dr. Manuel Espinoza, has undertaken the task of fusing the scholarship on dignity to the empirical research on education in classrooms. To generate research of potential social relevance, we must understand its contemporary usage in the field of law.

In this panel, we will present the results of an inquiry into the meaning and use of “dignity” and its equivalent expressions in four landmark cases: Tennessee v. Lane (2004); U.S. v. Windsor (2013); Lobato v. Colorado (2014); and Obergefell v. Hodges (2015). The overarching reason for studying the content and criteria of dignity in this way is to write an argument for education as a fundamental right under the Colorado constitution. Presently, the supreme courts of eight states—AR, CA, CT, NJ, NY, NC, WA, WY—have ruled that education is a fundamental right under their own constitutions. In contrast, the Colorado constitution’s anemic “education clause” (Art. IX, Sec. 2) holds that the duty of the General Assembly is “to provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state.” Historically, this mandate has been construed by courts and policy-makers as a search for the bare minimum a child needs to grow. Given current educational struggles—e.g., the persistence of racial inequalities in the provision of opportunities to learn, the disregard for the lives of unauthorized immigrant students—the time is ripe for the substantive link between dignity and education to be made clear if we are to apply these understandings in the educational futures of youth in public schools.

49
Confronting Fascism
Room: McDonough 492

The global resurgence of fascism in the US, India, UK, Germany, and elsewhere poses urgent questions for our understanding of fascism and its relationship to law and society. Liberal individualist and rationalistic approaches to politics and law have demonstrated a consistent inability to understand the rise and persistence of fascism. This panel seeks to speak across
disciplines about the theoretical and practical challenges of confronting fascism. Expanding our understanding of fascism to multiple temporal and spatial scales, the panel asks how fascism approaches seeing, knowing, and controlling the political. What are the embodied politics of fascism? In particular, what roles do affect, desire, rhythm, and speed play in the formation of fascist political subjectivity. What drives fascist anxieties around mapping and borders? What is the relationship between ongoing legacies of racism and colonialism, the neoliberal erosion of democracy, and the rise of neo-fascism? Finally, what role can the law play in anti-fascist politics when the “rule of law” and “free speech” are invoked as defenses of fascism?

1. Denman, Derek (Max Planck Institute for the Study of Religious and Ethnic Diversity)
   “Walls Within: Rebordering & the Neo-Fascist Urbanism of ‘Operation Safe City’”

In September 2017 US Immigrations and Customs Enforcement (ICE) carried out “Operation Safe City,” in which it arrested 498 people in Baltimore, Chicago, Denver, Los Angeles, New York, Philadelphia, Portland, San Jose, Washington, D.C., and the state of Massachusetts. The operation was openly described by ICE as an act of retaliation against sanctuary cities, communities that have resisted the expansion of ICE authority and fought legal battles against xenophobic immigration policies. In this confrontation between the “Safe City” and sanctuary cities, competing visions of urban life come into conflict. Whereas sanctuary cities affirm the conviviality and democratic encounters of urban life, the “Safe City” seeks to impose a vision of urban space defined by police power and the control of mobility. This paper examines the “Safe City” as a neo-fascist model of urban life in which a militarized logic of “safety” works to criminalize migration and enforce white supremacy. The imaginative geography of the “Safe City” weaves together the punitive “law and order” politics of governing cities with the politics of spectacular cruelty more readily seen in the insistence upon constructing a border wall. Within the “Safe City,” the boundaries of political community, drawn through the exercise of paramilitary force, are constantly moving or being suspended without notice. The paper further argues that “Operation Safe City” embodies an expanding process of “rebordering,” that is, an exercise of territorial control in spaces distant from physical borders (Graham, 2014, p. 93). By transposing militarized power and ideas of racialized citizenship from national boundaries to urban spaces, the “Safe City” rescales the control of bodies and populations within neo-fascist politics.
2. Venkataramani, Chitra (National University of Singapore) “Cartographic Anxieties of the Indian State”

In early 2016, following an attack on an Indian Air force base, the government released the first draft of the highly contentious Geospatial Information Regulation Bill. The bill sought to secure the nation against future threats by introducing new controls over publicly available cartographic information. Blocking or blurring “sensitive areas” is not a new proposition—world over, countries have adopted different policies in relation to this problem. However, in this Geospatial Bill, the Indian government combined its anxieties about attacks with two other cartographic concerns that operate at different scales: This bill would introduce strict regulations on the representation of India as a geo-body, rendering anyone who published a map of India with the “wrong” borders a criminal. Secondly, it sought to regulate the publication of geographic content at the micro, individual scale. In its current avatar, it requires that even the most mundane tasks involving locational data, such as sending a cab driver one’s location, go through a clearance process. While the bill has not reappeared since it was last debated in 2016, this paper examines the ways in which anxieties about controlling data work across different scales. Much of the criticism against the Geospatial Bill has focused on its ignorance of how map data circulates, inconvenience to users and to digital enterprise through its forms of control that work more with analogue rather than digital data. In this paper, I argue that as much as this bill leans towards the analogue, it also displays a paradoxical canniness towards digital data especially in relation to its control of individual users who use maps for political action. In doing so, I seek to place this bill within a broader context of the ways in which the
Indian government has moved towards silencing environmental and political activism in the country.


This paper examines the philosophical use of questionnaires and reports by the Comité de Vigilance des Intellectuels Antifascistes [CVIA], comprised of radical republicans, socialists, and communists, to resist fascist colonization of 1930s French society, focusing on the pamphlet Fascism and Peasants [FP] in particular. Anonymously authored by Georges Canguilhem, famously influential as a philosopher and historian of science, reading FP suggests he also provided a model of philosophically oriented political resistance for later generations. For FP, fascism spreads even among those it threatens, like peasants, because it avoids adopting any one political principle while simultaneously presenting itself as their salvation. Resistance strategies must, then, begin by recognizing the priority of vital needs and experiences over the demands of social regulations. Marxist orthodoxy claimed that the peasant class would be destroyed in the industrialization leading to revolution. To Canguilhem, I argue, this led Marxists to treat peasants as errors for not conforming to their proclaimed knowledge about history; and their resulting disinterest and antipathy gave peasants reason to embrace fascism’s false promises to protect their lives and land. Treating Marxism as method not dogma, the questionnaire at the basis of FP investigated peasants’ experiences and opinions about their lives and work, other classes, banks, industry, and government. The report, then, summarizes their material situation and proposes a radical politics that supports peasants in their lives, but which they will also understand to be necessary. The questionnaire itself, I argue, is part of this politics because it provokes consciousness about: 1) fascism’s use of agricultural laws and policies to undermine the value of peasant work and 2) the plight shared by peasants, the proletariat, and civil servants as workers. Asserting work as the basis of human community, this politics demands respect for people’s freedom to figure out how to make a living.

4. Forster-Smith, Chris (Johns Hopkins University) “Toward the Abolition of Indebted Democracy”

This paper seeks to explicate the ways in which political technologies of debt working at the heart of contemporary neoliberalism are eroding fundamental democratic values, institutions, modes of citizenship and forms of struggle, and argues that this constitutes a dire threat to the unfinished project of democracy in America. Drawing on thinkers in the Black radical tradition as well as contemporary critical theories of debt, the paper argues that the moral discourse of debt and the material infrastructure of the debt economy, which have been central to the neoliberal turn in the U.S., have contributed significantly to the racial project of maintaining America as what Joel Olson terms a “white democracy” in the post-civil rights era. To support this claim, the paper shows how techniques of indebted control have worked to erode a more pluralistic vision of democracy and to foment a violent turn toward neo-fascism and white supremacy in two different political temporalities: the slow time of the everyday life citizen, and
the emergency temporality of the debt crisis. The paper argues that on the register of slow time, making ends meet in the neoliberal debt economy captures and privatizes the time necessary for active participation in public life and democratic processes. This slow time of democratic erosion may rapidly give way to the emergency temporality of the debt crisis in which democratic rule is legally suspended to make way for a pure executive power to unilaterally reinstate conditions of indebted control through the imposition of austerity and structural adjustment. The paper theorizes these intertwined anti-democratic powers of debt through an examination of emergency management and the bankruptcies of Detroit and Puerto Rico.

5. Valerie Ann Johnson (Bennett College) “A Fearful Militancy of Women: Black, Radical, Queer, Transgender Women Respond to White Supremacy and Fascism”

From Black Lives Matter to social justice activism expressed in speculative science fiction, young Black women are following in the footsteps of Black women intellectuals and activists of the 20th Century. While many Black feminist scholars are familiar with the work of Eslanda Goode Robeson, Shirley Graham DuBois, Ella Baker, and Claudia Jones few outside this academic network are familiar with the work of these incredible women; work that was both local and global in scope and impact.

Often in recounting the history of Black radical intellectuals Eslanda Goode Robeson and Shirley Graham DuBois are overshadowed by their more famous husbands, Claudia Jones dismissed because of her affiliation with the Communist Party and Ella Baker’s organizing glossed over despite the fact that these women were potent fighters against oppressions like fascism, racism, sexism, capitalism, and classism. Long before legal scholar and critical race theorist, Kimberlé Crenshaw aptly coined the term intersectionality to provide a lens for understanding the interlocking nature of oppressions, Robeson, DuBois, Baker and Jones understood, from their positionality as Black women, that white supremacy and fascism were interconnected and threatened a true democratic state.

This paper is an analysis of the work done by these four women as it relates to the various types of protests currently being engaged in by social justice activists from within the Black community. This examination will identify how racism and colonialism abrogate the application of democracy and explicate some of the ways by which neo-fascism is a growing threat in US society, especially to people of color. Support for this analysis will come from various sources: scholarly texts, literary analyses, ethnographies, historiographies, and social media.

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Domains of Law in the Nineteenth-Century Novel: Crime, Family, Contract, Evidence
Room: Hotung 1000

This panel considers how the novel engaged with developments in the shifting legal landscape of the nineteenth century. As the law came to grips with new ways of deciphering persons,
taking care of children, promoting personal freedom, and conveying truths—all areas in which
the novel has always claimed special expertise—novelists responded by fictionalizing legal
problems and by adapting legal developments for their own artistic purposes. Of course, law
and literature did not march in lock-step, and moments of anachronism can illuminate important
gaps or excesses in the new legal order. Our talks accordingly explore the novel’s investments
not just in legal innovations but in prior legal regimes: in doctrines on their way out, in
standards officially superseded but still inflecting current practices, in procedures that operate
in a context in which their original justifications make little sense. Throughout, we aim to define
how the novel reimagines past legal changes but also forecasts change to come.

Charles Dickens, with his special interest in law and his unsurpassed capacity for representing
the institutions of his time, is a focal point for each paper. Given by scholars highly attuned to
literary form, our talks track Dickens’s career from his early novel, Oliver Twist (1837-39),
through his last, unfinished novel, The Mystery of Edwin Drood (1870), by way of some of his
best-known works: Bleak House (1853), A Tale of Two Cities (1859), Great Expectations
(1861), and Our Mutual Friend (1864-65). In the course of examining Dickens’s developing
ideas about crime, child custody, guardianship, wills, trusts, and testimony, as well as Dickens’s
connections to other important nineteenth-century novelists, we argue for the distinctive
contributions that the novel genre—and the realist novel in particular—can make to the study of
law.

1. Ganz, Melissa J. (Marquette University) “Physiognomy and Criminality in Oliver Twist”

Early in Charles Dickens’s Oliver Twist, shortly after making his way to London, the eponymous
hero is wrongfully arrested for stealing a handkerchief from Mr. Brownlow’s pocket. After
witnessing Oliver’s near conviction at the hands of the aptly named Judge Fang, Mr. Brownlow
takes the frightened boy back to his house. Upon learning Oliver’s identity, Mr. Brownlow
inquires why the boy told the magistrate that his surname was “White.” Oliver promptly denies
having made such a statement. “This sounded so like a falsehood,” the narrator explains, “that
the old gentleman looked somewhat sternly in Oliver’s face. [But] [i]t was impossible to doubt
him; there was truth in every one of its thin and sharpened lineaments.” This is not the only
time that Oliver’s upright countenance comes to his aid. Later on, when Oliver is wrongly
implicated in another robbery, the kind-hearted Rose Maylie immediately deduces his good
character from his innocent appearance. The criminals in the novel, by contrast, have hideous
features that reflect their dark dispositions. The miserly Fagin, who heads the gang of thieves
that implicates Oliver, is “vile and repulsive in appearance”; the robber and murderer Bill Sikes
likewise has a “broad heavy countenance … and two scowling eyes.” As these examples
suggest, Dickens routinely draws upon the nascent “science” of physiognomy—the practice of
deducing inner character from outer (particularly facial) appearance. Scholars have largely
overlooked this motif. Yet it bears close examination, as it forms an important part of Dickens’s
analysis of the origins of morality and the causes of criminality. Dickens’s use of physiognomy, I
will argue, seems to stand in tension with his emphasis on social and environmental
determinants of crime: individuals, in this view, appear to be inherently and immutably either
good or evil. Yet, while innate disposition plays a role in criminality, Dickens shows, it is
Dickens published Bleak House (1853) just as English legal treatises first began to focus on child custody law, which originated in the Court of Chancery’s regulation of guardianships and only in the nineteenth century was extended to regulate parents themselves. With the establishment of the Court of Divorce and Matrimonial Causes in 1857, child custody moved beyond the specialized domain of Chancery and became part of the newly coalescing field of family law.

Thus Bleak House, with its story of child wards under Chancery-regulated guardianship, would seem well positioned to illuminate the emerging law of parent and child. But what it shows best is the obfuscation and displacement of modern family law even as it first came into view. Bleak House presents custody law only as part of an already fossilized feudal hierarchy. Less than a decade later, in his 1861 Great Expectations, Dickens would use another story of guardianship to present the alternative to Chancery, and to the feudal regime of old, that had taken hold of the Victorian legal imagination: the rise of Contract.

In both Bleak House and Great Expectations, an autobiographical narrator recalls a childhood encounter with a lawyer who extends an offer of guardianship by an unnamed benefactor. With the shift from Bleak House to Great Expectations, and from Chancery to Contract, Dickens deploys the form of autobiographical narrative to play out both the promise and the impossibility of self-authorship held out by Contract law, which claimed to have replaced feudal hierarchy with a more fluid society in which identity was a matter of free individual choice. This required relegating the law of parent and child to the margins of legal concern, positioning legal attention to the developing child as exceptional and as irrelevant to the new world of contractual choice.

3. Abramowicz, Sarah (Wayne State University Law School) “From Chancery to Contract: Bleak House, Great Expectations, and the origins of family law exceptionalism”

Just before his execution by guillotine on the last page of A Tale of Two Cities, Sidney Carton has a “prophetic” vision of “the lives for which I lay down my life,” those of Lucy and Charles Darnay, who will be “peaceful, useful, prosperous and happy” together in future years. This scene resembles many others in Dickens’s later novels in which one person, often on the point of death, confers a spouse upon another. In this case, it is not a marriage per se that Sidney Carton makes possible by dying in Charles Darnay’s place but rather the continuation of a union.
that will henceforth enclose a “sanctuary” for his memory in the hearts of the spouses and their descendants. Like its counterparts in other Dickens novels, Sidney Carton’s vision is centrally about Dickens’s readers, about the influence the novel and its author will continue to exert after the novel’s last page has been turned.

The idea that one of the novel’s jobs is to orchestrate marriages for readers derives, I argue, from a long literary tradition that imagines novelists as legal guardians of ward-like readers. Dickens inscribed himself in this tradition in Bleak House, where John Jarndyce the guardian represents the novelist. But Dickens was also attracted to another picture of the matchmaking novelist, one in which the author appears as a testator who, upon dying, bequeaths the reader to a spouse. In the second half of his career, Dickens’s portraits of the author hesitate between two legal roles—that of guardian, whose task it is to represent and carry out the will of others, and that of testator, who recruits representatives to do his will. This paper explores how such hesitations convey Dickens’s evolving views concerning the novelist’s relation to his readership.


In Chavez v. Martinez, where a police officer interrogated a badly wounded—blinded and partially paralyzed—suspect undergoing treatment in the emergency room, Justice Kennedy evoked the ancient doctrine of “dying declarations,” which provides an exception to the exclusion of hearsay evidence in the case of words spoken where “the expectation of almost immediate death will remove all temptation to falsehood.” In a context once marked by the fear of eternal damnation, the brink of death was considered to produce the truth. One can find in the Ordinary of Newgate’s Accounts—containing confessions from those about to be hung at Tyburn—material that may both confirm and throw some doubt on the unconstrained truth of the dying declaration. But here I am especially concerned with deathbed scenes in the nineteenth-century novel as moments of the transmission of truth—or sometimes a kind of cosmic lie. Examples will be drawn from Balzac, Dickens, Collins, and Dostoevsky.

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Legal Education in Popular Culture: Law School Stories
Room: Hotung 1000

What do popular culture stories tell us about law school? In a time when legal education is perceived to be in crisis, why are most law school stories still set in elite schools (ignoring the vast majority of law students)? How does the increasing diversity of characters in law school stories (more women and minority law students and professors) affect the stories? Is legal education the road to enlightenment and development (as in the bildungsroman) or the road to ruin? This panel will explore stories about legal education in films (Legally Blonde, The Paper Chase), television (How to Get Away With Murder), and novels (the legal thrillers of John Grisham), to consider popular culture critiques of law school as well as explicit (and implicit) messages about access to power and privilege.
Films, television, and novels tell us very specific stories about law schools that tend to replicate and reinforce both general notions about law school rankings and about legal education. In most movies, tv shows, and novels mention the Ivy League law schools because they represent the first step toward guaranteed achievement in a legal career. Harvard Law School shines as the premier U.S. law school, representing a student’s ticket to success. The charming but initially clueless Elle Woods in Legally Blonde selects HLS, as do the ambitious and somewhat ruthless Mark Watson of Soul Man and the ultimately disillusioned James T. Hart of The Paper Chase. The idealistic Marshall Eriksen of How I Met Your Mother and Edmund Walker of Body Heat both attend Columbia Law. Attendance at state schools instantly signifies either lesser ambition or lesser intelligence. Consider the hapless and murderous Ned Racine of Body Heat, who attends Florida State, and the students of The Socratic Method, some of whom are ethically challenged, who labor through 3 years at a fictional 4th tier California law school. Similarly, a number of novels use HLS as a background for an examination of legal academia or related issues. The suggestion is that because of its pre-eminence, HLS has a particular importance for U.S. legal education and culture. Audiences, even if they don’t admit it, take their cues from popular culture with regard to their evaluation of the competence and skill of attorneys. The choice of alma mater for fictional attorneys says something important about these characters. That writers often select Ivy League schools rather than state schools or fictional schools, therefore, sends strong signals about the ambition, intelligence, skill, and trustworthiness of attorney characters, as surely as do other characteristics and plot points of the stories.

2. Ledwon, Lenora (St. Thomas University School of Law) “’How To Get Away With Murder’ in Law School: Power, desire, and professional identity formation”

How does popular culture help us imagine our professional identities as law professors and law students? What are the pleasures of consuming an over-the- top television melodrama about legal education? During law school, a student begins the process of acquiring a professional identity. The process can be fraught with anxiety and dissonance for all students, and particularly for non-traditional students, minorities and women. This process of imagining a professional identity includes consuming popular culture stories about legal education, such as the Emmy-award- winning television series, How to Get Away With Murder. The show features Viola Davis as superstar law professor Annalise Keating, teaching a diverse group of law students at an elite law school in her criminal law class and her legal clinic. Her teaching methods (reinforced by the narrative structure of the show and the flow of television storytelling) seem designed to address the recent criticism from the Best Practices Report that, “Most law schools are not committed to preparing students for practice.” Professor Keating always wins (at least in the first season), but case preparation for her students includes lying,

1. Corcos, Christine (Louisiana State University Law Center) “What We Talk About When We talk About Law Schools: Deconstructing meaning in pop culture mentions about legal education”
stealing, seducing, and even killing. This instrumentalist approach to legal education proposes ultra-competence as the goal of legal education. Personal and professional identities commingle in an unhealthy way, and students fight bitterly over the symbol (a small statue of justice) rather than for the idea of justice. Yet, the pleasures of the text include the fact that Professor Keating is both the object of desire and a desiring subject. As one of her young, female, African American students says about Professor Keating, “I want to be her.”

3. Papke, David R. (Marquette University Law School) "John Grisham’s Critique of Legal Education"

John Grisham has published over thirty legal thrillers and reigns as the undisputed king of that popular genre. Starting with A Time A to Kill (1989), his first legal thriller, and continuing through The Rooster Bar (2017), his most recent work, Grisham has included portrayals of disenchanted law students and law professors as well as negative images of legal education in his fiction. In general, he is much more prepared to indict legal education than he is to praise it. The character Rudy Baylor in Grisham’s The Rainmaker (1995) might be allowed to speak for Grisham. He is a student at the Memphis State Law School at the beginning of the novel. He cynically dubs his Elder Law course “Geezer Law” and says his other law school courses are “equally as useless.” According to Baylor, his law professors “are teaching because they can’t function in the real world,” and law school as a whole “is nothing but three years of wasted stress.” What explains Grisham’s pronounced disapproval of legal education? To what extent do his criticisms, shallow as they might be, deserve consideration?

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Perversions, Contortions and Deformations: Cultural Codifications of Violence in/by Law
Room: Hotung 1000

Law’s relation to violence has always attracted scholars of Law and Culture. One of the central theoretical paradoxes that seems to have preoccupied scholars then and now is law’s twofold connection to violence, a connection which Jacques Derrida describes in “Force of Law” as “the homogeneity of law and violence, violence as the exercise of law, and law as the exercise of violence.” This culmination of thinking law as violence stems partly from the inevitable inconsistencies any comprehensive theory of law is confronted with when accounting for law’s source of legitimacy.

Social and cultural manifestations of violence cite this paradox in their elusiveness with regard to clear theoretical, ethical, or political classifications. While this elusiveness echoes the conceptual boundaries of existing law -- and invites the questioning of what law is and can be -- it also forestalls political and legal action. Yet, over the course of the 2010’s, the Black Lives Matter movement or the hitherto unseen ascendency of the prison-industrial complex bear witness to the frequent recourse to violence as legal means of coercing subjects into compliance. In light of this tension between law’s escalating investment in violent means on the
one hand and its inability to reflect on this investment on the other hand, a continued exploration of the relation between law and violence seems crucial. This panel seeks to analyze material, as well as fictional, manifestations of violence within the larger context of racist and imperialist politics, and in their historical and contemporary appearances. It offers readings of violence that are informed by multiple theoretical approaches, but are aligned in their endeavor to examine violence through the lens of law as a system of prescriptions. Systems of prescriptions that this panel will deal with are institutionalized positive law, the laws of developing sexual identities, and the laws of storytelling.

1. Chamberlin, Christopher (UC Irvine) “Structures March in the South: Law and the Sublation of Racial Power”

This paper will introduce the law as a fundamental concept of Jacques Lacan’s structural theory of power, and will expand this theorization to analyze the containment and administration of modern racial power. While “law” in the psychoanalytic context is typically associated with the superego, the symbolic, or the paternal ban on incest, I argue that Lacan initiated a more radical understanding of this notion after 1968, triggered by his sustained engagement with Marx and a shift in attention from clinical individuals to social collectives. In turning this corner, Lacan reintroduced the law as the algorithm of an historical structure: the mode through which a society mediates the lack of a sexual relation and administers sexual enjoyment. This paper will consider how this psychoanalytic account augments work in critical race and ethnic studies that limit their legal analyses to an ideology critique of racial policies and jurisprudence, and that thereby dehistoricize racial power while leaving questions about the political ontology of the law unasked. In the second half of this paper, I will thus direct this Lacanian framework toward the historiography of slavery and the ethical concerns of contemporary black studies, particularly through a reading of the moral statutes that governed the conduct and managerial practices of slaveholders in the nineteenth-century Southern United States. I will inquire how the discipline and restriction of “free persons” sustained the system of racial power and managed the structural contradiction between liberal equality and black slavery. My contention: racial violence is irreducible to the governmentality of bare life, but pivots on a paradoxical logic of law that suspends racial power to defend it against its own ontological crisis.


This paper examines the so-called “self-lynching” and “felony lynching” arrests in the Black Lives Matter demonstrations. It offers an analysis of antiblack policing that facilitates these arrests throughout slavery’s longue durée through two frames. First, it examines the “lynching” arrests through a complex of perversion of the Law that naturalizes operations of violence. In doing so, it amplifies what Hortense Spillers has explained as a “perversion of juridical power.” Following Spillers, the black subject is in a position of both repudiation and necessity in order to maintain practices of policing to justify law’s application. The paper argues that black social death drives the primary perversion in the libidinal economy throughout slavery’s long durée
from the production of the imagined “lynch laws,” in the making of its corresponding anti-lynch laws, to the present day arrests. In these different iterations of policing and arrest, the black subject must always be confined to the most marginal spaces of the imaginary as they are continuously perceived as a “threat” across time, space, and human relations. Secondly, it considers the serious implications of the uncanniness to these arrests. In its uncanny return, the black subject falls as a remainder animating not only the possible juridico-legal conditions disseminating various police practices; it also signals a political ontology of violence that appears to have no limit. The complex of perversion rehearses an “uncanniness” then as neither peculiar nor unusual in time. Rather, it underscores the inevitable return of the eternal captive as familiarly strange, but never estranged from the familiar and larger afterlife of racial slavery and regimes of violence. A desirable outcome of this paper would be to discuss the singularity of such an uncanny disruption in the historical arch of antiblack violence, and to speculate the (im)possible modes of “defense” within the complex of antiblack policing.


The theme of this paper is traumatic testimony and its constant reappearance in various forms as a new kind of haunting. The paper explores traumatic testimony through digital technology and social media platforms, which “exceed” the law. I will examine social media as a space to collect and catalog testimony of sexual assault and sexual violence which have not made it into courtrooms. I especially consider the archives compiled on Twitter and other platforms using hashtags to mark testimony and contribution to a largely silenced and uncatalogued record. The most recent example can be seen with the #MeToo movement. These repressed or ignored narratives emerge through our digital platforms, a return of the repressed, a specter of failed justice. This online confessional movement speaks to the violence of retelling traumatic experience and testimony, and the violence of a system which continues to fail. The second part of this paper will be on the New Dimensions in Testimony Project which consists of interactive holograms of genocide survivor testimony. The hologram testimony project paradoxically tries to preserve human presence but instead turns the human into an object. I will be exploring the objectification of the human as a kind of violence, while these living survivors exist as both themselves as well as a holographic technologized self.

4. Brittner, Irina (Osnabrück University) “Blurring the Boundaries of Legitimacy and Illegitimacy: Marlon James’ Conceptualization of Violence in A Brief History of Seven Killings”

Violence plays a key role in Marlon James’ critically acclaimed Caribbean novel A Brief History of Seven Killings (2014). My close reading of representations of violence in the novel analyzes how violence is a device structuring the novel both thematically and formally. Thematically, James presents violence not, as one might expect, primarily as an effect, generating spectacle, but rather as a commodity that is shared, exchanged, accrued, and dispersed. By positing violence as the ultimate outcome of political and economic accumulation, the novel criticizes the
collusion between capitalism and (inter)national imperial policies in the U.S. With this conceptualization of violence, A Brief History of Seven Killings participates in a larger critical discourse deconstructing notions of legal violence as morally legitimate. The novel deliberately blurs the boundaries between institutionally legitimized or ‘public’ violence and the illegitimate use of violence for private ends, and ultimately levels both in their claims to absolute authority. The novel’s quest for complicating a thinking of violence along the dichotomous lines of legitimate/illegitimate or legal/illegal on the thematic level is echoed by its formal complexity. I show that the novel’s formal characteristics, e.g. its poly-vocal structure, its use of the vernacular and its coverage of a long span of narrative time, also serve to negotiate questions of legitimacy and violence with respect to the novel’s own generic norms and the violence inherent in imposing a narrative order. In this way, A Brief History of Seven Killings discusses the political potential of artistic expression against the backdrop of art’s implication in structures of violence.

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Legal Optics
Room: Hotung 2000

In this session we explore legal optics; that is, the logics and ludics of spectatorship that arise in a variety of legal relations, spaces, and affects. Mezey’s paper addresses the relationship between acts of violence and visual spectacle in video clips of police shootings, drone strike videos, and sexual assault videos. Umphrey’s paper takes up questions concerning the putative logic of the drone’s gaze and affects that both drive and disrupt it. Culbert’s paper explores the role of spectacle/theatre, tragedy, irony, and laughter in the trial of Adolf Eichmann. In each, there is a shared concern with the ways spectators negotiate mediated confrontations with violence, both legal and non-legal.

1. Umphrey, Martha (Amherst College) “Eyes in the Skies”

The technology of the drone seduces us into imagining a unitary spectator, fused with the lens of the camera, fully constituted by an aggressive visual relation to the object of its gaze. In this paper I offer a reading of the 2015 film Eye in the Sky (dir. Gavin Hood) that pluralizes the drone’s gaze and explores the possibility that a variety of affects, emerging out of both bureaucratic farce and submerged sentimentality, can disrupt (without fully dislodging) the drone’s violent logic. Ultimately I ask, what politics of mourning can be articulated from of this unstable drone logic, this scramble of rules and judgments and loss of life?

We have never lived so fully enveloped in visuality, and yet we mostly have not learned to read our environment or to absorb the techniques of reading that the visual invites and requires. In this paper I consider three different “scenes of violence”—videos of police shootings, images of drone strikes, and clips of sexual assault—to think about the relationship between violence and visual spectacle. These images are fragments of private trauma and publically available as popular consumption. They are narrative fragments because they don’t tell a whole story, but they are also fragments of many different kinds of narratives—historical, racial, sexual, literary, and legal. I read these images for the meanings they generate as both legal facts and cultural artifacts. As legal facts, these visual fragments are factual premises in legal disputes, contested evidence, and political advocacy. As cultural artifacts, they are sites of affective engagement with the body, pain, death, spectacle, desire, and sources of reflection on inequality, legal violence, on law as product and producer of racial knowledge, as social meaning, as the always too late and inadequate arbiter of injury.

3. Culbert, Jennifer (Johns Hopkins University) “The Farce of Law”

A farce is generally defined as a broad satire or comedy that uses “improbable situations, physical humor, and silliness to entertain.” In contemporary usage, however, a farce is something more specific, namely it is something that is supposed to be serious but has turned ridiculous. The website from which this definition of “farce” is taken (vocabulary.com), provides an example: “If a defendant is not treated fairly, his lawyer might say that the trial is a farce.” In Hannah Arendt’s account of the trial of Adolf Eichmann, the defendant is treated fairly but the trial still risks becoming a farce. Famously, however, Arendt is one of the few people to find any humor in the situation. Indeed, her laughter at the process that was staged in Jerusalem continues to cause controversy. This paper examines Arendt’s representation of the Eichmann trial and the storm that followed. In light of Jacques Derrida’s analysis of the unstable relation between law and justice in “Force of Law,” the paper considers how a trial is more than a matter of following rules but is also a matter of doing what is right. In Arendt’s own discussion of the risk this departure from law entails, she refers to the trial as a play and contrasts it with a spectacle. The paper takes up her discussion of the difference between these two kinds of performances to revisit the issues raised by Eichmann in Jerusalem and Arendt’s critics to explore the play between obligation and freedom that characterizes judgment, the dangers this play chances, and the cost of laughing at the turns play takes.

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Trumpism, Cosmopolitanism, Identity and Equality: Theorizing the New Political Space
Room: Hotung 2000

Chair/Discussant: Seidman, Louis M. (Georgetown University)

This panel intends to address themes arising out of the strife of the post-2016 new political space: from Trump, Brexit and Le Pen, to the cosmopolitan reactions from parts of Europe and
those skeptical of so-called "identity politics." What does equality, identity, and political discourse mean today? How do ostensibly leftwing nationalist and separatist movements relate to rightwing nationalism and nativism? What is the appropriate response, normatively and practically to Trumpism and other brands of nativism and authoritarian populism, and how are these phenomena best understood?

In this panel, Robert L. Tsai offers an analysis of the structure of white identitarian Trumpism and its exploitation of liberal institutions to undermine liberalism. Samantha Godwin provides an account of the normative positions implicit in identitarianism and a critique of both rightwing and leftwing identitarianism from a moral universalist perspective. Sital Dhillon considers challenges posed by the politics of austerity, Trump, Brexit and the Alt-Right to the universalist conception of human rights. Robert E. Koulish evaluates social and economic drivers behind the ethno-nationalist identity politics of Trumpism and the criminalization of migration.

1. Tsai, Robert (American University Washington College of Law) “Trumpism’s Dilemmas”

How will Trumpism fare after its first year in power? While there are many factors beyond any movement’s control, a number of internal tensions must be managed for the movement to build on its victories. The racist and non-racist features of Trumpism are grounded in a project of cultural restoration. Several ideological fault lines are worth studying. One tension lies between racial identity and ethics-based governance. White identitarianism contains a strong dose of ethical governance—the idea that those who should rule are white people who exemplify the best “white values.” This springs from a racialized form of civic republicanism as well as evangelical Christianity.

A second point of contention is between anti-statism and hyper-nationalism. Some insist that radical localism (control of local politicians, county sheriffs, rural regions, non-governmental organizations) offers the best means of self-organization. Others are convinced that national institutions are necessary to purify the polity and wrestle control of the economy from global elites. Which mechanisms will be most effective for defeating liberalism, stemming globalism, and toppling multicultural governance?

A third tension is between authenticity—critical to white identitarianism and solidarity among the working poor—and a strategic devaluation of the truth. Relativism is useful for destabilizing existing power relations but can impede cultural formation.

A fourth clash of values arises from the movement’s exploitation of liberal constitutional values (free speech, religious freedom, equality) to organize and discredit liberalism, which is at odds with its followers’ abiding skepticism of those very liberal constitutional values. A certain ambiguity has helped recruiting. But something will have to give: either more people will come to see the value of liberal values or they will have to make a more open repudiation of those values.

2. Godwin, Samantha (Yale Law School) “Moral Universalism and Identarianism”

In the aftermath of the 2016 U.S. election, there have been inchoate calls to move beyond “identity politics” followed by sharp reactions to them. “Identity politics” is so contested a term
it may be used purely derisively for narcissistic self-expression (Lilla) or taken to include nearly all movements for social equality (Franke). This paper aims to clarify the stakes of this debate through disentangling the injustices motivating left “identity politics” from the normative theories implicit in identitarian responses – some of which are in tension with broader agendas of liberal universalism and cosmopolitanism.

To illustrate what is distinctive about identitarian politics, consider two accounts of the wrongs of racism. On one account, racism is objectionable for its failure to treat individuals with equal concern and respect, to treat their morally arbitrary, un-chosen characteristics as if they confer different degrees of moral worth, and to fail to apply universal moral standards. On a second account, racism is objectionable because it entails one racial group dominating another racial group, denying the subordinated group self-determination, independence, and culturally distinct flourishing. Both accounts oppose racism, but the first frames its objections in terms of a universalizable demand for equality between persons, whereas the second frames the objection in terms of the identity-specific interests of the subordinated group.

This paper argues should reject the conception of “identity politics” as including all political claims concerning inequalities and injustices determined by or correlated with identity groups. “Identity politics” it is better understood more narrowly as positions that hold identity group membership as performing its own moral work. Such positions are most prevalent on the ethno-nationalist right but also found in the political left.

Left-identitarianism may appeal to the need to remedy inter-group injustices. However, by treating the relative statuses of identity groups as decisive for evaluating individuals’ claims for recognition and distribution it implies an indefensible position that different standards apply to different people according to characteristics they are not responsible for.

3. Dhillon, Sital (Sheffield Hallam University) “Human Rights in the Age of Austerity”

Human rights are closely interwoven with the concept of Universality. The widespread optimism at the end of the late 20th century, which saw the fall of the Berlin wall; the Velvet Revolution in Czechoslovakia; and the introduction of protective human rights safeguards at global, regional and national levels, all led many to believe that human rights had moved to the centre stage of cultural and political life. However, the global depression of the early 21st Century and the resulting politics of Austerity; the rise of the Alt right ; the election of Donald Trump in the United States; BREXIT in the UK; and the introduction of counter terrorism measures in response to the spread of global terrorism; have all brought the most serious challenges to the established framework of human rights since the end of the Second World War. Even, the bedrock of Universality, is under threat, and this paper explores the current state in which human rights can [and cannot] be said to be Universal, with reference to cultural, political and economic factors.

Over the past couple of years, migration control and its merger with crime control have been studied through the lens of “crimmigration”. Whereas particular state responses vary, the social control strategies they share include the criminalization and securitization of people of color. State policies criminalize migrants and categorize them as threats to national security, which unleash exceptional extra-constitutional powers against them. The paper will expand the focus on crime and immigration to include the ethno-nationalist and populist assertions of identity, race and sovereignty. And, in doing so, also shed a critical light upon the use of the crimmigration concept itself. It will examine how migration and state responses to it have helped drive and in turn have been driven by economic uncertainty and populist politics in the United States in the age of Trump. Fears of the “other” has been a driving force in the election of Donald Trump and has implications for a ethno-nationalist turn in US national identity. Recent U.S. responses to migration have included building walls and fences. Responses also include beefed up border policing at the U.S. Mexico border, as well as internal border controls within the U.S. Military and surveillance technologies have also been integrated into migration control strategies, with plans for National Guard in the United States, and state of the art surveillance in the U.S..

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Legal Materiality: Improvisation, Natura, Specter
Room: Hotung 5013

This panel advances a view of legal materiality as an oscillating process of meaning-making between intangible ideas and tangible bodies and things. Materiality is understood as different techniques and practices through which law comes to matter. Sara Ramshaw offers an understanding of legal materiality as a temporal duration which transcends real-time improvisation. Zach Reyna considers Aquinas’ concept of Natura which avoids the dichotomous trappings of a materialist or rational reductionism. Hyo Yoon Kang examines the change of law’s medium from text to image to digital data in the context of patent law and asks how it affects the meaning and operations of law.

1. Ramshaw, Sara (University of Victoria) “The Materiality of (Real) Time: Law as Improvisation”

Be it in music or life, improvisation is most often characterised by real-time performance. This is even the case in the emerging interdisciplinary field of Critical Studies in Improvisation (CSI), which, despite acknowledging that “there is far more to improvisation than meets the ear,” holds tight to the necessary real-time-ness of improvisation. Elsewhere, I have written of the paradoxical nature of real-time performance, that is, performative immediacy, in both music and law as theorised through the writings of French philosopher, Jacques Derrida (1930 – 2004). Here, I return briefly to that discussion. However, my primary aim of this paper is a more
extensive analysis of (real-) timeliness based on the work of another French philosopher, Henri Bergson (1859 – 1941), who, along with Nietzsche, has been lauded as one of the most influential contributors to the philosophical reconsideration of time. Applying Bergson’s concept of “duration” to law, its materiality is explored and new avenues for a more creative conception of justice offered.

2. Reyna, Zach (University of Tyumen, Russia) “Making matter meaningful?: Words, Worlds, and Preambles, or How Law Matters”

This paper argues that jurisprudence is a crucial—yet often neglected—space for exploring the relationship between matter and meaning. It does this by turning to the legal theory of Thomas Aquinas. In contrast, recent attempts to study law and materiality have nearly unanimously focused on law in its legal positivist dimensions. For these accounts, law is defined as a sphere of social reality distinguished in its logic and goals from economics, politics, etc. The goal of these legal materialist enquiries has thus been to investigate the physical objects, things, and texts “of law” which law is said to deal with, constitute, and be mediated by. I argue that this view of law as a disembodied social sphere of meaning-making assumes too readily what law is, as well as more crucially obscures one of jurisprudence’s most fundamental tasks: disclosing and maintaining the bond between matter and meaning, or accounting for how matter comes to matter. Aquinas’s natural law thinking offers an alternative approach. Aquinas does not distinguish between meaning and matter, social and natural. For Aquinas, law is the fundamental activity whereby matter becomes meaningful or reveals its meaningfulness. Of course, for Aquinas human beings are not the only actors who participate in this activity of law. God too participates, as well as an actor Aquinas gives the name Natura (nature). This distinction marks Aquinas sharp divide from social constructionists who see meaning as a product of human activity and interpretation. Yet rather than seek to avoid this Thomistic claim, I show how it coincides with many recent theorizations of matter (New Materialism, OOO, etc). However, while Aquinas resists the tendency to dislocate matter and meaning and reduce meaning-making to terms of a social hermeneutic practice, he also resists the seemingly facile claims of some recent “New Materialist” scholars to just “let the object speak.” The paper concludes with a comparative case study of the constitutional preambles of the US, Ireland, and Nepal. Preambles, I argue, continue to testify to the fundamental matter-meaning bonding that law strives to enact and disclose, as well as make us aware of its oppressive and at times essentialist aspects.


Where and what is the law in a digital network? Does the meaning of a law change with the change of medium? This paper problematizes the effects of digital mediation on the relationship between legal epistemology and ontology by analysing computer-oriented representational practices in patent law. The international patent law system is based on an enormous digital networked and physical infrastructure, which has transformed patent documents from text
inscribed on paper to digital images and data. The effects are that words are dissolved into digital codes, and documents into electronic signs. For analysing these phenomena, I think with works that have explored the intersection of material aesthetics, digital media and mathematical semiotics: Matthew Kirschenbaum’s work on textuality and forensic materiality, Johanna Drucker’s work on material semiotics and her concept of diagrammatic writing, and Brian Rotman’s analysis of digital computing in relation to semiotics of alphabetic and numeric inscriptions. The digitization of patents as a legal form raises issues of law’s visibility (relating to search, retrieval and storage), legibility (relating to sensorial perception and experience, as well as reader’s reception and interpretation), and instrumentality (relating to questions about ease of navigation, manœuvrevability, comparison, and translation).

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Subaltern Sovereignty: Official Languages, Aboriginality and Tribal Law
Room: McDonough 492

This panel examines the rhetorical, cultural and legal positionality of three groups that operate on the periphery of mainstream law and politics. It asks how these groups are defined by their nation’s hegemonic legal and political systems, how they define themselves and how those definitions may conflict. The three presentations on this panel each analyze arguments within and about different populations: Australian “Aboriginality,” the Navajo Nation, and non-English speaking communities. Common questions being asked across the panel include: how do legal arguments and definitions create classes of “outsiders” or “others” and what rhetorical effect do these definitions have within a dominant or “insider” discourse? How might legal arguments reflect or constitute community values? How might communities who engage in “outsider” discourse make their voice heard within dominant legal and political discourse communities?


This paper will advance a rhetorical approach to law informed by the ancient Greek sophists and expressive public sphere theory by examining American laws recognizing English as the “official” language or limiting the use of non-English languages in government activities. The judiciary has declared prohibitions on the use of languages other than English unconstitutional under the First Amendment and the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution, as well as under state constitutional provisions. Despite the virtual uniformity of such judicial rulings holding Official English laws unconstitutional, however, the laws continue to be advocated, introduced, and passed. I will particularly examine the vagueness argument sometimes advanced in striking down Official English laws, that prohibitory language laws are void for vagueness because language variation, change, and influence—including the extensive lexical, morphological, and syntactic borrowings English makes from other languages—makes it impossible to define the English
language with sufficient clarity and distinctness to satisfy due process concerns. This problem is often reflected in the fact that the laws themselves try to account for linguistic borrowing. I will argue that the identity function such laws continue to play despite being legally void, and the social, cultural, and historical nature of language which is the source of that voidness, demonstrates the value of a sophisticated understanding of audience and meaning in legal discourse.

2. Tanner, Susan (Carnegie Mellon University) “Speaking for Oneself: a Comparative Linguistic Analysis of Navajo and US Supreme Court Opinions”

Legal discursive accessibility is a noted concern among legal and rhetorical scholars. Lawyers, judges and lawmakers are often criticized for a reliance on oblique verbiage and exclusive language that can serve to distance laypeople from legal documents and proceedings. Further, court proceedings can seem an hermetic realm that does not allow for individual experiences or stories. This can be especially vexing for those who come before the court but may not fully understand court proceedings or rulings. A critical question that rhetorical scholars must address is the extent to which rhetorical choices in legal documents serve to exclude certain voices and views from the law. This presentation examines published legal opinions from the prospective of linguistic accessibility and community identity. It looks at a corpus of hundreds of opinions from two Supreme Court jurisdictions - U.S. Federal and Navajo - to compare linguistic complexity. It surveys these texts to analyze the extent to which the courts are serving the public through their speech. It does so through an analysis of syntactic complexity and legal and technocratic jargon, using digital tools developed to measure complexity and obscurity. Finally, it uses digital tools to highlight community building through common vocabulary and examines words unique to the Navajo corpus in an attempt to understand subtle variations in genre between the two corpora.


In December 1992, former Australian Prime Minister Paul Keating delivered his now-famous Redfern Park Address, pleading with Australians for fairer treatment of its Indigenous peoples. 25 years on, the speech has since been voted by Australians as the greatest in its history, and even third in the world (only King’s “I have a dream” and Jesus’ Sermon on the Mount” were voted greater). However, despite its popularity, and with the benefit of 25 years’ hindsight, what appears most glaring is how startlingly little the plight of Indigenous Australians has changed, and how little the Australian Government has done to remedy it. With this context in mind, this paper considers the definition of “Aboriginality” as is currently in effect in Australian law. By analyzing each part of the three-part definition in turn, I suggest that the current definition is problematic, the consequences of which inhibit land and social justice outcomes for Indigenous Australians. A new definition is needed; one which greater accords with the shifting cultural needs of Indigenous Australians, and one that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples.
This panel aims to explore the related questions of how law is transcribed and of how law works as a mode of transcription. The idea is to engage with law as a set of writing practices that seek to render intelligible, to simplify (or complexify), to make things amenable to re-writing. Accordingly, the panel concerns itself with the techniques by which law translates complex idioms of wider contexts into narrowed formulations legible to is ratios and practices. It examines the transcriptions of different fields, contexts and texts.

1. Pavlich, George (University of Alberta) “Making Social Lives Legible to Law”

When hailed into existence by criminal accusations, legal persons confront procedures that demand particular kinds of responses. Those responses shape the sort of beings they may become, and contour law’s imagined responsibilities. This paper examines technologies of legal transcription through archived examples of criminal accusations that narrow the complexity of everyday discourses to those of criminal responsibility. The ensuing translations have profound effects on what emerges as responsible for what, and suggests new ways to understand the power of accusation. It will also reflect on possibilities for conceiving of responsibility beyond criminal justice.

2. Unger, Matt (Concordia University) “Inscribed in Flesh: Accusation and the body”

In speaking of legal transcriptions, the body is another signifier that requires translation in order for it to be legible to law. This paper will examine the phenomenology of accusation as it pertains to the experience of the body in law. Historically, as our perspectives of fault have moved from an external experience of sin, transgression against the sovereign, towards the disciplining of self through biopolitics, accusation's embodiment is also transformed. From the markings and tattoos that have become signatory of the experience of incarceration to the stigmatized self in society after accusation, I investigate the aftermath of accusation. Specifically, I ask what is left of the criminally accused subject/individual once discourses/interpellations of accusation no longer utter criminalizations? Does accusation ever leave the body? What technologies remain in accusation’s wake?

3. Antaki, Mark (McGill Law School) & Popovici, Alexandra (University of Sherbrooke) “Délivrer le droit”

Our paper will focus on the transcription of “law” into ‘books” by way of the specific example of legal dictionaries and a broader engagement with the recently published Décrire le droit... et le
This panel explores various discourses that deal with the complex interplay of religion, subjectivity, and agency as it relates to women. The panelists examine how state-made law in different contexts deals with problem of religious conceptions of differentiated and stable gender roles that potentially leads to gender inequality and constrained sexuality mediated through the categories of agency and choice. Different feminist theories are then used to problematize the way agency gets framed in the public, academic and legal debates. The panelists, all with experience working in law, address various problems for the legal field, including the creation of binaries for imagining agency, relational ontology and choice, and the primacy of state-law as a normative order. These problems are addressed through interdisciplinary approaches using feminist jurisprudence, critical theory and personal narratives.

1. Monforte, Tanya (McGill University) “The Shield of Choice”

States are legally required to challenge and transform norms that promote rigid and prescribed gender roles according to international human rights law. However, when those norms are based in religion, liberal legal regulations become contradictory and unstable. Contradictions that arise from the dual obligations of protection of religious freedom and the promotion of women’s equality are more than legal problems of conflicting rights. These are difficult legal problems because they lay bare the complexities and contradictions in legal assumptions about agency and rationality.

This paper explores how the CEDAW committee has historically approached unequal treatment of women rooted in religious norms or practices and the ways agency is differently constructed along a public/private binary of religion and choice. The argument is that the UN's approach to women's rights has focused particular attention to states that incorporate Shari'a into state-law while leaving discriminatory religious practices in secular states comparatively untouched. However, this distinction paradoxically does not turn cleanly on the basis of protecting women's agency. The paper addresses when choices women make are counted and when they are discounted.

2. Iavarone-Turcotte, Anne (McGill University) “Minority Cultural Practices and the 'Agency Dilemma': Insights from the Feminist Literature”

For several decades now, debates about multiculturalism have called attention to minority cultural practices that have the potential to oppress women, such as Islamic veiling,
arranged/forced marriages or Female Genital Mutilation. Discussions about the relationship between women and such practices tend to be framed as a question of choice. That is, either one assumes that the practices are imposed on women against their will (or chosen after a process of internalization of oppression), or one posits that women choose the practices freely, for a range of reasons that others should respect. But this framework creates a dilemma: as one might wish to both recognize and celebrate women’s agency while not discounting those women whose options continue to be constrained by external factors. Serene Khader calls this the ‘agency dilemma’. In the last few years, feminists have developed a more nuanced understanding of agency and autonomy. Some point to the connection between autonomy and relationships, either good or bad (Relational Autonomy). Others point to the fact that choice is always dependent on context (Adaptive Preferences, Nancy Hirschmann’s ‘social construction’ of the choosing subject). Can these theoretical developments provide a way out of the ‘agency dilemma’? This presentation will explore their potential to do so. Ultimately, I will argue that a version of the theory of Adaptive Preferences – inspired from but not limited to the work of Serene Khader – offers the most promising avenues for thinking constructively about women’s relationship to potentially oppressive cultural practices.

3. Bateman, Eliza (McGill University) “Navigating the Forbidden: applying a feminist lens to the narratives of lesbian Orthodox women and the conflict between religious and sexual identity”

This paper explores some limits and successes of applying a feminist method to identity and faith choices made by religious women. A feminist approach in legal research involves the investigation of personal narratives, identifying patriarchal power structures that limit female agency, contextual reasoning that transforms personal stories into political statements and consciousness-raising, to understand and challenge structures of oppression. The aim of a feminist method here is to give voice to those lesbian women in ultra-Orthodox Jewish communities who attempt to reconcile their sexual personhood with their religious faith, which forbids recognition of their sexuality and which strictly limits social and political roles for women.

These narratives are ‘outsider stories’ from perspective of the religious community because of the normative force exercised by religious law to hide, disavow and devalue queer sexuality. However, these narratives are also ‘outsider stories’ from the perspective of feminist theory. The women in these stories choose to remain within their faith communities, even after recognizing their lesbian identity, and understanding the risks of coming out. A secular feminist approach argues that minority sexual/gender identities deserve to be fully expressed and respected, and that heteronormative cultures and the patriarchy are responsible for unequal justice outcomes. However; for these lesbian Jewish women, hetero-gendered norms are an integral part of their religious faith, as is the operation of the patriarchy as a legal and customary force. This paper thus interrogates whether a feminist approach could recognise these choices as enabling female agency and promoting justice outcomes for a marginalised group of women. It concludes that there is real value to analyzing the experiences of these
women through a feminist lens. This approach gives primacy to the lived experience of women who make difficult choices to recognise their sexual identity and argue for that identity, within the confines of their religious faith.

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The Rhetorical Practices of Art and Law
Room: McDonough 492

Art historical narratives, told through images, often intersect with law in a linear time lapse, with law following an art historical or cultural shift and eventually responding. Yet the accumulation of art history’s narrative legacies, the implementation and critique of the legal ‘medium’ in art since Conceptualism, and greater awareness of law’s cultural participation on the other, have resulted in more complicated intersections. Law and art now meet in recursive networks of influence and dialogue, in the context of ever-shifting social dynamics, technologies, cultural politics, and stakeholders.

Despite these deep cross-currents, legal histories and doctrinal concerns have rarely been engaged within discourses of art. When taken up as theoretical ‘tool-kits’ and as comparative lenses, however, they can yield surprising insights into the ways in which paradigm shifts or controversies in art have in fact been symptomatic of broader socio-legal and political conditions.

This panel will explore examples of artistic practices that have intersected with copyright or free speech law and their respective socio-political norms and economies, in ways that challenge the available rhetoric in both fields of art and law. Moreover, this panel aims to reveal the extent of this interdependence, leading us to question the degree to which art has ever been truly ‘beyond’ or ‘outside’ law or legal norms, while at the same time considering how cultural debate and artistic practice invoke issues that law cannot yet account for. The examples addressed here, implicating topics like notions of democratic art and culture and theories of intellectual labor, and the legal versus artistic assignment of ownership and authorship, often expose contradictions or upend prevailing assumptions on both ends, with unanticipated consequences, leading us to ask further, what else might art and law reveal about one another?

1. van Haaften-Schick, Lauren (Cornell University) “Publishing Conceptual Art: Seth Siegelaub’s Economy of Intellectual Property and Books”

One of Conceptual Art’s most influential attempts at “democratizing” art was the “catalog-exhibition,” wherein, as art dealer Seth Siegelaub described, the “primary information” of the work resided in a widely circulating publication, reducing its gallery display to “secondary” status, thus upending the hierarchy between rarified art object and its documentation. Fundamental contradictions have been identified in Siegelaub’s rhetoric and method, for despite his supposed eschewal of the commercial art market, the promotion of
artists and the sale of art was instead accelerated via this “quick, cheap, and easy” production mode. Further complications arise if we flip our lens to consider these “catalog-exhibitions” as publications first, rather than inverted exhibitions, and attend to the politics of intellectual property in the publishing of Conceptual art. This approach requires an expansive view of the ‘paperwork’ defining Conceptualism’s “dematerialized” and “administrative” aesthetic: printed ephemera and artists’ certificates of authenticity, but also publishing contracts and copyright registrations. Although he sought to trouble inequities in the art industry and traditional terms for the “ownership and authorship” of art, Siegelaub’s publishing contracts, correspondence, and administrative records reveal that he in fact followed and reproduced many of the inegalitarian norms of the publishing industry. Most surprising is Siegelaub’s registering his own copyright over the work of artists he “exhibited,” claiming a degree of propriety that some protested against. Yet Conceptualism’s emphasis on the “idea” of a work over its manifestation in any fixed or tangible form also raises the question of whether copyright ownership was a relevant concern for these artists. In this light, does Siegelaub’s imposed invention of a copyright claim (where otherwise there may be none) confirm that his business was indeed “the production of more commodities to sell”? And how does framing Siegelaub as publisher first, and dealer second, either counter or further complicate the negative assessments of his commercial activities, for although Siegelaub never entirely rejected the art market, he rooted his business and philosophy in its historically more egalitarian sister-trade: the economy of books.

2. Harrison, Nate (Tufts University) “Appropriation Art, Labor, and the Law: From an Aesthetics of Administration to an Administration of Aesthetics”

In his formative assessment of Conceptual Art, Benjamin Buchloh describes an “aesthetics of administration” that characterized much of avant-garde artistic practice from the late-1960s until the mid-1970s. By then, Conceptual Art’s radical attenuation of aesthetic visibility per se had given way to a re-embrace of traditional artistic forms: the return of the figure and the object, as well as the sensuous and the seductive. If Conceptual Art’s dry Readymade strategies sought to extend Duchamp’s destabilization of representation as such, then postmodern appropriation art foregrounded copying as a way to not only to interrogate the politics of signification but also to reintroduce the pleasure of looking. Despite this transformation, this essay argues that an aesthetics of administration has remained as a feature in post-conceptual appropriation practices from the Pictures Generation up to the present. To make such a claim, Conceptual Art’s approach to artistic labor is contextualized within broader developments in the West’s post-industrial economies at the end of the twentieth century, culminating in discourses of “creative industries” and “cognitive labor.” Administration, understood as a non-artistic activity involving the collection and management of information, is set in relation to contemporary cultural production and its reliance on data manipulation, algorithms and remix techniques. Today, copying as a component of administration is both a rote and creative gesture, with the distinction between the two being rather blurry.
It is when the new transformation of data (in music sampling, appropriation collage, and the even the screen capture of Instagram—as in the current copyright debacle involving artist Richard Prince) comes into conflict with the traditional economic aspects of cultural production (i.e., copyright) that not only is “authorship” in general questioned, but also the very notion of what constitutes an act of artistic labor. As more and more of contemporary life is carried out through tasks in front of screen interfaces, are we all aesthetic administrators? How should we reconcile administrative and intellectual labor in the production of art as it complicates the “hard work” eternally associated with honing artistic craft, and accompanying copyright protections?

3. Bonneau, Sonya G. (Georgetown University Law Centre) “Artistic Expression: Free Speech or All Talk?”

Artistic freedom has long served as an emblem of free speech and American democracy, and First Amendment law articulates its commitment to art repeatedly. Courts have traditionally emphasized a democratic distribution of this right by rejecting considerations of artistic quality. In this vein, the Supreme Court has broadly incorporated visual expression into the highest tier of protected speech, allowing for the unrestricted sale of illegal dogfight films and video games offering a virtual world for performing gruesome acts of violence cast as ethnic cleansing. Yet in 2017, basic assumptions about artistic freedom were challenged in art museums. The Guggenheim museum pulled three pieces from an exhibition of contemporary Chinese art, including a video of chained pit bulls. An abstract painting by a white artist, of the murdered body of Emmett Till, drew protests of exploitation. Artist Sam Durant and the Walker Art Center agreed to dismantle and destroy (later changed to bury) an outdoor sculpture representing the gallows used by the U.S. government in a mass execution of Dakota men, after protests by Native Americans. These controversies raise complex questions variously implicating historical injustices, cultural identity, property, and narrative authority; and they reveal artistic expression mediated by institutional frameworks. None of this is accounted for by law’s absolutist narrative of artistic freedom, or by the concept of art censorship, which conjures a bare schematic of totalitarian regimes with officially-sanctioned suppression. In First Amendment discourse, cultural democracy is seemingly achieved by avoiding aesthetic discrimination and by accepting unintelligible meaning as speech. But the law’s mantle of neutrality and cramped veneration of art should instead be questioned for its occlusions and reductions of meaning. This paper offers a revisionist account of the powerful legal narrative of artistic freedom to better understand its more compromised reality for artists.

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States, Bodies and Sensuous Law
Room: McDonough 344

Touch is a fundamental medium for the expression, experience and contestation of social values and hierarchies (Classen)
Whose bodies are legible to law and when? Who can touch with legal impunity? Whose touch contaminates, individual bodies and bodies politic alike? How do ruptures in the sensate get written onto particular subjects, and not onto others? This panel takes up the question of how and with what effects the state regulates the ‘touch’ of certain subjects, citizens, and outsiders with whom it is, itself, in contact. Law’s touching is always both public and intimate, always a site for the playing out of corporeal and corporealized anxieties. Yet too often law and touch are taken to intersect primarily at the site of the criminal law alone. This panel draws upon queer theory and approaches to law and the senses to explore three stages for legal-regulatory performance: social justice reparations, immigration and employment law, and public health governance.

1. Nadeau, Chantal (University of Illinois, Urbana-Champaigne) “‘When law touched us, we died.’ On touching, queerness and regulation of queer bodies"

Queerness is not here yet. Queerness is ideality. Put another way, we are not yet queer. We may never touch queerness, but we can feel it as the warm illumination of a horizon imbued with potentiality.

José E. Munoz. Cruising Utopia

This paper seeks to rethink the relationship between touching and seeing in our approach to legal recognition. Taking as a point of departure the recent wave of state and official “We are sorry” mediated performances across North America, I question how recent reparative public justice evocations have the potential to reframe our understanding of public apologies, including how law touches queers.

In order to do so, I analyze how the latest trend by various cities, police corps and federal governments to issue public apologies and pardons to their LGBT citizens (Pulse Bar shooting in Orlando, Florida; the Sex Garage Riots in Montreal, Canada; and the Turing’s Law in the UK) is less about seeing/recognizing the injured body than about acknowledging that the legal apparatus has deployed the human touching resources to taunt, probe, and invite queer bodies to be touched in order to be denied to touch. Growing interest in recent legal and political studies deciphers democratic environments as public things (Thomas Lemke 2015; Bonnie Honig 2017). This paper asks what happens when touching in public as a public thing becomes the modus operandi for legal interventions. I contend that touching in public provides the means for law to “touch” and “touch up” the queer bodies that dare to “touch”. In this paper, I then move away from a conceptual framework that privileges the opticon/panopticon as a way to regulate or make heard the queer body (via the question of political visibility for instance), to rather engage with the tactility of queerness as legal tool.

Erotic services, the exchange of cash for erotic touch and/or simulated affection, have been at the centre of a number of controversies involving corporate and governmental intervention over the last decade in the US and Canada. For example, Liberal then-Immigration Minister Judy Sgro’s “strippergate” scandal (2004), the banning of “erotic services” (2009) and “adult services” (2010) on Craigslist; the Supreme Court of Canada’s Bedford ruling (2013) and the subsequent passing of the Protection of Communities and Exploited Persons Act (C-36) by the Harper government (2014); the FBI raid and closure of MyRedBook.com offices in California (2014); the Homeland Security raid and closure of Rentboy.com offices in New York City (2015); the decision by American Express, Visa, and Mastercard to block the use of their credit cards to pay for individual ads on sex worker-friendly websites like Backpage.com (2015); and changes made by Immigration Refugee and Citizenship Canada at the behest of Conservative then-Immigration Minister Jason Kenney who instructed IRCC to reject applications for temporary foreign worker visas sponsored by employers in the “sex trade” (explicitly naming strip clubs, escort services, and massage parlours) (2012). This was followed by a ban of those on open work visas and student visas from working in the “sex trade” (2013).

This paper will investigate the way rhetorical framings of gender, migration, and worker exploitation have been mobilized by the Canadian government and anti-sex trafficking organizations to frame commercial erotic touch as dangerous, always exploitative, and in need of remedy and regulation. The uneven regulation of erotic services in Canada—the adult film industry where the visual stands in for touch is never named as a prohibited employer for temporary foreign workers, and erotic touch is the only condition set on the type of work that foreign nationals may engage, yet all sex work-related employment that is illegal for foreign workers is legal for permanent residents and Canadian citizens—will be my starting point.

3. Hamilton, Sheryl (Carleton University) “‘AIDS is a hurt that can be touched:’ Hands, touch and communicable disease in dreams of hygienic containment”

In the contemporary visual culture of public health, hands are dirty. From handwashing posters re-instructing us in how to engage (properly) in an almost unconscious quotidian behaviour; to hand sanitizer advertisements portraying the hand as monstrous; to prohibitions on the social touching of hands during flu season, we are invited to see, know and most importantly, feel, our hands as both contaminated and contaminating. In this paper, I am particularly interested in the ways in which touch, more particularly ritual social touching, is rendered not only as a vector in the spread of communicable disease, but also as a dangerous medium of contagion.

I want to compare and contrast the contemporary visual culture of dirty hands to a different historical moment and social context where a visual culture of hands, disease and social touching also proliferated. In the late 1980s until the late 1990s, public health poster ad advertising campaigns targeting the control of HIV/AIDS frequently turned to the hands. Hands hold each other in affection; they reach out to ‘lend a hand’ in community; they ball up into a fist or extend a middle finger to fight against disease; they wear condoms, digits doubling as penises; and they communicate encouragement, literally, in American sign language. In short, the visual culture of public health is positing that people with AIDS have ‘clean hands.’ But it’s never that simple.
As Bashford and Hooker (2002) remind us, contagion, in its unknowability and uncontrollability invites systems of control, hence the huge public health apparatus touching on every level of conduct. In this paper, I draw upon theoretical resources from law and touch scholarship and from the governance and health literature to explore the ways in which hygienic governance and disease states interact to produce hands as moral media, figure dangerous and safe touching, and write subjects as dirty and clean.

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The Fictions and Realities of Interpellation
Room: Hotung 1000

This panel examines the multifaceted concerns pertaining to legal, political, economic and everyday fears and anxieties generated by the narratives anticipating catastrophes on all fronts. Departing from James Martel’s conception of misinterpellation – a subversion inherent to the process of becoming-subject – our papers engage with the subversive potentials already at work in these apocalyptic narratives. The papers examine an array of fictional threats and fears inviting dystopian realities, for example: the constant possibility of total devastation preached by securitization, the ubiquitous predictions of inevitable economic crisis, the demonization of life and enjoyment by the prophets of personal success and the incessant portrayal of the world as a ‘dangerous place’ for human individuals in media. Fears and anxieties thus produced and reproduced seem to bind realities and fictions, erasing any distinction between them and thus influencing normativity on all levels – be it transnational, international, national; legal, economic, academic, social, personal... these norms, hopelessly entangled and interconnected, interpellate and intimidate subjects in their constant expectation of disaster. Each of the papers in this panel engages with a different layer of interpellation as intimidation – internalization of countless fictitious fears as real – in an attempt to locate the subversive potentials already at work in these processes. Locating thus several instances of possible insurgent rearticulations, this panel proposes that we need not to discover novel modes of resistance but rather focus on the resistances already taking place across the board.

1. Brady, Jonjo (University of Kent) "‘The Truman Show’ – Interpellated"

This paper aims to situate the 1998 American satirical science fiction film, ‘The Truman Show’, as an archetypal example of an Interpellated Subject. By initially using Althusser’s account of interpellation – of always already becoming a subject through ideology – we might begin to deconstruct how this ambiguous and seemingly inevitable process produces a unwittingly compliant subject, who believes themselves to be fully self-actualised and autonomously formed. For this is quite literally the case for our protagonist, Truman, who believes himself to be an average resident at the seaside town of Seahaven Island, but who’s entire life has taken place within a giant arcological dome in Hollywood built for an audience to enjoy the life of a relatable everyman. Through the orchestrated creation of Truman’s ‘aquaphobia’ in early
adolescence to the consistent broadcasting of the ‘dangers of traveling’ throughout his life, Truman is interpellated into the happy-go-lucky workerbee of this fictitious town and, by allying Adorno, Horkheimer and Gauntlett’s contribution to interpellation via Media, we might begin to see how the audience too is interpellated as they watch Truman’s everyday adventures. As Gauntlett aptly suggests, “interpellation occurs when a person connects with a media text: when we enjoy a magazine or TV show, for example, this uncritical consumption means that the text has interpellated us into a certain set of assumptions, and caused us to tacitly accept a particular approach to the world”.

Lastly, by harnessing James Martel’s (weak)ontological conception of misinterpellation, we can point to the places where the structurally imposed normalcy of Truman’s world begin to break down. When sense becomes nonsense and the subject (mis)hears the call in order to escape his metaphorical and literal cage. But for what? For the ‘real’ world?’

2. Cufar, Kristina (European University Institute) “Performativities of Disappearing Bodies…”

This paper investigates the troublesome relations between the narratives about procrastination, material bodies and their fictional erasure. As the most exclusive forms of legal positivism propose and many critical voices affirm, law is based on a fiction, on a contradiction within a contradiction; the demonization of life as procrastination, likewise, is a normative ordering resting on fictitious grounds. How do such normative fictions sustain themselves as reality? To engage with this question, Althusser’s account of interpellation is (ab)used as a starting point. Althusser famously illustrates the circular moment producing subjects and ideology on the familiar example of the Christian God (the Subject, the State) and God’s reliance on the interpellated subjects. But, to complicate this illustration: in certain versions of Christianity there is also a liminal quasi-subject mediating between the Subject and subjects – Virgin Mary. Virgin Mary – less than God and more than a saint – is celebrated less for her meek and affirmative personality than for her bodily achievements: a body of papal dogmas is referring to the physical integrity of God’s designer-baby, a subject created and groomed to become the mother of God. The papal dogma of Mary’s assumption, dating to mid-20th century, illustrates that the virginal mother must physically disappear – through a speech act of a legitimate fiction – in order to reign as the Queen of Heaven. Virgin Mary is simultaneously comforting and guilt-provoking, a human and non, an inspiration and frustration for the interpellated subjects. Building upon James Martel’s subversive reading of interpellation (misinterpellation), this paper attempts to unearth such liminal, material yet absent, virginal yet maternal, subjects annihilated and constructed through the enforced and dogmatized techniques for achieving self-discipline and to locate their subversive potentials.

3. Diones, Alexander (University of California, Los Angeles) “Two Regimes of Possibility”

This paper examines the semantic instability of possibility by tracing the relationship between two contrary modalities of political thought that are differently indexed to the word. First is security apparatus that takes “possibility” as its guiding fear: even beyond probability, the goal
of securitization is to govern in anticipation of catastrophic threats that are beyond simple calculable risk analysis. It’s well known that this regime of governing probability beyond risk undermines judicial and judicious norms. Though expressed in various languages, a number of scholars have shown that this is ultimately an attempt to settle the question by constructing—in advance—the possible threat. Second is an opposing tendency of possibility as a regulatory idea for emancipatory politics. This often presents itself as an absolute—hence abstract—openness to the other as a prerequisite for some future state of affairs. While these two political attitudes present themselves as exclusive of one another, this paper will argue against such a facile distinction. Working alongside James Martel’s antiontological conception of misinterpellation, I argue that any concrete articulation of democratic possibility would require the calculation of the incalculable being first attempted by the extrajudicial security state.


In the aftermath of the global financial crisis (GFC), Mervyn King, the then Governor of the Bank of England, now a professor at the LSE and New York University, adopting the concept of radical uncertainty in the domain of economic studies, argues that a new crisis is inevitable unless the continuing global disequilibrium is tackled through fundamental banking reforms. Radical uncertainty, this paper argues, which challenges some of the essential concepts in economic studies, e.g., utility and probability, reveals the indeterminacy of the economic belief, one that stands firmly on the belief of science and determinacy. This paper presents a collection of economic thinking that challenges the “scientific” formulas since the GFC, and connects the collection with the critique of science (Feyerbend, for example). James Martel’s reading of interpellation, this paper demonstrates, offers the framework to understand the ritual belief in science and scientific formulas. With the economic formulas been challenged, this paper endeavors to push King’s argument of fundamental banking reforms further by reflecting on misinterpellation in economic activities and the financial system.

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Author Meets Readers: A Book Panel on Anne Dailey’s Law and the Unconscious: A Psychoanalytic Perspective
Room: Hotung 5013

In Law and the Unconscious: A Psychoanalytic Perspective (Yale Press, 2017), author Anne Dailey argues for the vital relevance of contemporary psychoanalysis to law. Our legal system is predicated on the idea that people act rationally and of their own free will. Yet this presumption of rationality fails to explain the many puzzles that arise in law and addressed in this book: Why would an individual confess to a crime she did not commit? What motivates an individual to enter into a prenuptial agreement against his own interest? Why should we prohibit incestuous
sexual relations between consenting adults? Why would a victim of domestic violence stay with her abuser? What prevents an individual from changing when confronted with evidence of her own racial bias? Contemporary psychoanalysis draws our attention to the hidden, conflicted, wishful, sometimes self-destructive aspects of our inner selves that can produce inexplicable decision making and irrational behavior. In Law and the Unconscious, we discover how the gap between the lived reality of subjective experience and the law’s false portrait of the human mind can lead to ineffective, unrealistic and unjust legal rules and outcomes. At the crossroads of psychology and the law, Law and the Unconscious challenges basic legal assumptions about the autonomous, rational actor, offering a nuanced and humane perspective that furthers our legal system’s highest ideals of individual fairness and systemic justice.

This panel brings together an interdisciplinary group of scholars who will critically engage with Law and the Unconscious from a variety of perspectives, speaking to the implications of this work from the standpoints of law, literature, and the history of psychoanalysis.

Author: Dailey, Anne (University of Connecticut)

Readers:
- Blumenthal, Susanna (University of Minnesota) (Chair)
- Brooks, Peter (Princeton University)
- Reichman, Ravit (Brown University)
- Stolzenberg, Nomi (University of Southern California)

The Corporation in US Literature and Law
Room: Hotung 5021

In recent years, exciting new scholarship has broadened our understanding of the legal and literary responses to the figure of the corporation in American and British culture. This panel brings together scholars whose work on the corporation in law and literature aims to further expand this field of research. The papers cover historical periods from the early republic to the twenty-first century, and establish a dialogue between novels, poems, legal sources, as well as visual material. The focus of the panel is on the corporation’s inherent plurality: the tension between its group-nature and its legal individuality. The panelists ask how fictional and factual narratives respond to this tension, how they manage the sometimes unruly multitudinousness of the corporate body, and what associations and kinships they establish in the process. They also explore the implications for our contemporary definitions of personhood in different discourses, such as law, technology, and poetry. In this way, the papers suggest ways in which the study of corporations in law and literature overlaps with and contributes to other areas of research, such as posthumanism and collective agency.
During the Jacksonian era, the trope of the “soulless corporation” was a staple of anti-monopoly discourse. The president’s campaign against the rechartering of the Second Bank of the United States, moreover, made it one of the central symbols in its narrative of the conflict as an epic struggle between the common man and the “moneyed” interests. In James Fenimore Cooper’s *The Bravo* (1831), the “soulless corporation” has secretly succeeded in taking over the republic of Venice. Cooper’s romance has often been interpreted as a warning to Americans in this regard. In this paper, I argue that Cooper’s story is complicated by the fact that there is a structural kinship between the corporation and the republican body politic that is implicitly criticized by Cooper’s portrait of “the masses” in *The Bravo*. Central to this connection is the emergence of private corporation law against the background of a long history of public uses, as well as the collective, aggregate nature of the corporation. A threatening multitudinousness therefore not only characterizes the democratic crowds in Cooper’s novel, but also the corporation in contemporary legal and political discourse. By exploring this nexus, I suggest, we can gain a better understanding of the degree to which the corporation was not yet established as an instrument of private enterprise, but still closely tied to the idea of the public and the commonwealth.

2. Jaros, Peter (Franklin and Marshall College) “The Corporate Forms of Melville’s *Confidence-Man*”

From Ishmael and Queequeg’s “joint stock company of two” in *Moby-Dick* to the “miscellaneous company” gathered on board the Fidèle in *The Confidence-Man*, Melville’s fiction often lingers on corporate collectivity. *The Confidence-Man* is particularly dense with such figures: from the World’s Charity to the Black Rapids Coal Company; from the “cosmopolitan and confident tide” of the Mississippi’s waters to the serially-constituted title character. Rather than treat the chartered corporation as on its own, the novel asks us to consider together bodies that take their forms from the law, from mechanical contrivance, and from natural processes. This paper attends particularly to Melville’s comparison of human collectives to the waters of a river, a trope in philosophical and legal discourse stretching from Heraclitus and Aristotle to Hugo Grotius, Blackstone, and beyond. Unlike most of his predecessors, Melville uses the Heraclitean figure of the river to imagine a corporate entity produced by perpetual succession but lacking the unity that contemporaneous legal writers attributed to the corporation. In doing so, Melville’s novel suggests unfamiliar ways of imagining the promise and peril of corporate collectivity.

3. Bruner, Nicolette (Western Kentucky University, USA) “Assemblages, Androids, and Artificial Intelligence: Reconsidering the Personhood of Systems”

Since the rise of the corporation as the preeminent form of enterprise organization in the US, the existence and nature of corporate personhood has cycled in and out of public
consciousness. To many, the doctrine seems uncanny, enabling a sort of Frankenstein’s monster that renders its component individuals into nothing more than interchangeable parts. In this view, the monstrousness of the corporation comes from its dilution; composed of too many individuals, it is unable to truly empathize at all, resulting inevitably in an exploitative rapaciousness. In this talk, I use the Rosen Association and its android creations in Philip K. Dick’s 1968 novel Do Androids Dream of Electric Sheep? to engage with a larger question about how literature and law imagine systemic personhood. Although each human body is itself a system, composed of human and nonhuman cells alike, artificially-created systems—from Dick’s replicants to Waymo’s self-driving cars—inspire much of the same dread and suspicion that often greets the artificial person of the corporation. Drawing upon Christopher Stone’s argument for the personhood of ecosystems and posthumanistic scholarship on agency and assemblages, I argue that Dick’s novel forces a reexamination of the nature of personhood itself, one that imagines the corporate person as part of a larger project of personhood through unification.


One central intertext for Timothy Donnelly’s 2010 poem “The Cloud Corporation” is William Wordsworth’s “I Wandered Lonely as a Cloud.” Building on Stefanie Mueller’s reading of Donnelly’s poem as a complex negotiation of natural and corporate personhood at the historical juncture of the landmark decision in Citizens United, I argue in this talk that Donnelly not only makes a timely intervention into our thinking about legal and natural persons, but also into twenty-first-century poetry’s employment of the lyric first-person speaker – the lyric person, or the “lyric I.” Donnelly works with the plurality of the person that already haunts Wordsworth’s poem, and in analogy to embracing an idea of natural personhood that is plural and corporate, he plays with Wordsworth’s natural imagery in order to subscribe to a plural concept of the lyric person. Donnelly, in other words, uses Wordsworth’s and the Supreme Court’s re/negotiations of personhood not only to think about the natural person in late capitalist ways, but also to construct the twenty-first-century “lyric I” as plural. This legal-lyrical meta-reflection on personhood, which gives up the romantic claim on the singular unified “I” and its interiority that finds expression in lyric poetry, marks Donnelly’s work as self-consciously “post-lyric.” Poetry and the law share an interest in defining and constructing “persons,” and this desire to define and construct is an area in which thinking across poetry and law can be highly productive.

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Author Meets Readers: Stacy Douglas’ Curating Community: Museums, Constitutionalism, and the Taming of the Political
Room: Hotung 6006
This panel will discuss the recently published book *Curating Community: Museums, Constitutionalism, and the Taming of the Political* (University of Michigan Press, 2017).

Author: Douglas, Stacy (Carleton University)

Readers:
- Antaki, Mark (McGill University)
- Culbert, Jennifer (John Hopkins University)
- Kaisary, Philip (Carleton University)

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*Populism, Reason, and Un-Reason*
Room: Hotung 5020

For the last quarter century, the ascendency of democracy as an unquestioned horizon shared by all advanced Western societies seemed clear. But the globalization of commerce, finance, communication, and capital and population flows has put destructive pressure on liberal democracies. The populist, reactionary politics of Brexit and the Trump campaign are only the most startling effects of a broader disaffection that has been brewing within liberal polities. On the populist right, we have seen the rise of the National Front in France, the UK Independence Party, the Northern League in Italy, Dansk Folkeparti, the Sweden Democrats, the Finns Party (previously the “True Finns”), the Dutch Party for Freedom, the Belgium Vlaams Belang (“Flemish Interest”) Party, Alternative für Deutschland, the Freedom Party of Austria, and Golden Dawn in Greece. On the populist left, we have seen the emergence of the Indignados in Spain followed by the electoral successes of Podemos, Syriza in Greece, and the Five Star Movement in Italy—as well as significant support for the campaigns of Bernie Sanders in the United States and Jeremy Corbyn’s Labour in the UK. At the same time, working democracies in the East and on the borders of Europe have succumbed to the nostalgic authoritarianism of such parties as Fidesz in Hungary, Law & Justice in Poland, and Justice and Development (AKP) in Turkey.

This panel explores the nature of populist reason. Does it represent an atavistic or reactionary phenomenon—a form of un-reason—reflecting more primitive forms of human social behavior, an ambiguous claim that universalizes particular experiences in a deeply normative and exclusionary way, or a distinctive social and political dynamic in reaction to contemporary globalist pressures and circumstances?

1. Cochran, Patricia (University of Victoria) “Common sense against populism: developing criteria for reflective and accountable invocation of “common sense” in law and politics”
Many contemporary debates about justice and democracy take place in a context shaped by the general populist notion that the interests and self-government of “the people” are threatened by the power and illegitimate authority of “experts” and insiders. Among the many challenges posed by this political context are discourses that delineate “the people” in a way that reproduces unjust hierarchies including racism and colonialism.

“Common sense,” and its invocation in political and legal judgment, plays a confounding role in this context. Claims about the value and legitimacy of common sense are important to the populist idiom, and have shaped democratic politics in complex ways. Like populism, “common sense” has an ambiguous and contested relationship with justice and democracy. It often purports to universalize particular experiences in a deeply normative way, and contains within it knowledge claims and political values grounded in power relations. We are pressed to answer the question: “common to whom”?

I share the views of critics who work to identify and critique the oppressive content of common sense claims. However, I also think that “common sense” can be more than the label for an artifact of ideological hegemony. Indeed, I argue that common sense also has democratic, egalitarian and community-sustaining components when it is understood as part of the practice of judgment. Invoked with care, “common sense” has the potential to generate an obligation to reflectively attend to the daily life experiences of particular communities, and to justify their inclusion or exclusion with respect to particular normative claims.

Thus, faced with forms of populism and other discourses that undermine democracy and practices of judgment, I argue that critical theorists and citizens should engage with, rather than reject outright, “common sense” as a rhetorical strategy, and as part of critically reflective and politically accountable judgment.

2. Carter, Lief (Colorado College) “Ethology, Trumpism And Populist Theory”

Populist theory starts with an all-too familiar pattern, one anticipated as far back as Socrates in Plato’s Republic: Over time, democratic regimes become chaotic and anarchic. When they do, the populace installs strong leaders to restore its sense of stability and safety. The pattern may describe recent developments in Turkey, Poland, Hungary, and, most recently, China, where President Xi has declined to name his successor in office. The electoral-college presidential victory of Donald Trump in 2016 was for many reasons a “black swan event,” but that this politically incompetent and mentally abnormal candidate won any votes calls for a rethinking of populist theory.

Specifically, my remarks will suggest that a robust framework for understanding Trump, and populism more generally, should be rooted in the field of ethology. Humans are an advanced form of higher primate and their basic forms of political and social organization tend to follow those of gorillas, chimpanzees, and, though to a lesser extent, bonobos. “Strongmen”—kings and tsars and dictators and popes and other religious rulers—form the default form of political and social leadership. Polynesian leaders to this day are, as a rule, exceptionally fat. Sumo wrestling embodies all the symbols of “big man” competition for dominance. Bumping off Saddam Hussein in Iraq but not replacing him with a strongman, led to chaos in the region. Donald Trump’s large size and yellow hair caricatures the ape “silverback” leader, but I will
describe the many ways in which Trump’s behavior mirror observed silverback behaviors. For example, silverbacks roar and may make false charges and short lunges when under stress. Trump’s many “false charges and short lunges” are verbal rather than physical, but anyone following Trump and his campaign can easily see how he fits the silverback ape leadership pattern.

3. Winter, Steven L. (Wayne State University) “Neoliberal and Populist Reason”

The reactionary politics of Brexit and Trump are the most prominent manifestations of a broader disaffection within liberal democracies. Populist parties on the right and left reflect a disillusionment with entrenched political elites and a backlash against rapid and destabilizing social, technological, and demographic changes. Populism is the fearful and fearsome reaction to a globalizing neoliberal world.

Neoliberal reason is a virulent strain of instrumental rationality that rationalizes all aspects of social life—politics, journalism, education, the formation of intimate relationships—and makes them subject to governance through measurement and mechanisms of accountability. At the same time, it privatizes responsibility to presumptively rational, preference-maximizing individuals who are expected to organize every aspect of their lives—health care, education, (again) the formation of intimate relationships—on market principles. Its consequences include the hollowing out of politics by neoliberal forms of governance; the atomization and privatization of the social world in societies organized as consumer markets; and alienation from the public sphere and the political classes.

Populist reason is the reaction of those whose claims are heterogeneous to the logic of the system. Because these demands are also heterogeneous in the sense that they differ from one another in their particularity, they can be linked together as equivalents only through rhetorical means. This is what gives populist movements their internal logic, distinctive shape and political dynamic. The empty signifiers of populist campaigns (e.g., Brexit’s “take back control” or Trump’s “make America great again”) and the us-versus-them resentment of political and cosmopolitan elites reflects the alienation, powerlessness, and disaffection of voters who feel reduced to widgets in an increasingly unnavigable system not of their choosing.

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The Return of the Sex Wars: Regulating Pleasure and Danger in Erotic Life
Room: McDonough 344

Is sexuality primarily the site of danger and oppression for minority groups? Or, can sexuality be a site of pleasure and liberation despite, or even because of, that danger? Contrasting views about the roles of pleasure and danger in determining the content of sexuality in many areas of social life – prostitution / sexwork, pornography, sexual violence, S / M – have continued to divide feminist and queer scholars since these debates reached their apex in the so-called “sex wars” of the 1980s. This panel will trace the ongoing reflection and transformation of this
debate – what we call the “return of the sex wars” – in contemporary political efforts to regulate sexual intimacies, gender expressions, and non-normative identities through targeted law and policy reforms. By eschewing the often fixed and total commitments to ideology that characterize the “return of the sex wars,” the panel seeks to engage in a more complex, multilevel conversation about how the legal system should respond to the dynamics of pleasure and danger in sexuality so as to expand the imaginative capacity and transformative reach of equality-seeking groups.

1. Cossman, Brenda (University of Toronto) “Sex Wars 2.0”

My paper seeks to explore the ways in which the current sex wars – what I call Sex Wars 2.0 – tracks themes around sexuality, consent and law that figured in the early sex wars. Whereas two decades ago the debates largely focused around pornography, today’s contestations are polarized around sex work, sexting, sexual harassment and sexual assault. I explore the ways in which these current debates over a broad range of sexual practices are effectively reproducing the earlier sex wars with all of their unproductive hostilities and standoffs. I also begin to explore how the legal issues at stake in the SexWars 2.0 might be approached differently? What alternative modes of regulation might be imagined to better capture the complexities of sexuality, agency and law? While building from the pro-sex side of the earlier sex wars, it seeks to develop a more nuanced analysis of sexuality, consent and legal regulation.

2. Del Gobbo, Daniel (University of Toronto) “The Return of the Sex Wars: Toward a Feminist Politics of Campus Peer Sexual Violence”

As the media continues to shine a light on the problem of campus peer sexual violence in Canada, feminists have been drawn into contested conversations about the roles of agency and coercion in determining students’ erotic lives. This paper focuses on the use of consensual dispute resolution in campus peer sexual violence policy. The main sticking point appears to be whether consensual processes should be offered as an alternative to adjudication at the complainants' request, or whether gendered power dynamics mean that these processes should be unavailable to complainants despite their request. This paper argues that feminists should embrace these contradictions through a more plural approach to policy. Nearly everyone who works on this issue agrees on one thing: schools should take a "complainant-centered" approach to justice. This means that complainants should be able to access any form of dispute resolution under law, whether adjudicative or consensual, that accords with their personal definition of justice. Empowering complainants in this way does not mean that feminists should be willfully blind to the reality of gender inequality in which sexual domination plays a crucial part. Yet acknowledging this reality should not require feminists to overdetermine the role of power imbalance in producing complainants' desires. Schools should revise their policies to ensure they provide complainants with a range of dispute resolution options that are administered responsibly.
3. Ketterling, Jean (Carleton University) “Press Start to Submit: Violence, Pleasure, and Masochism in Video Games”

Feminist game critic Anita Sarkeesian has argued that because “games are interactive and players move beyond being a voyeur to being a participant, [games present] a unique and more detrimental position vis-à-vis the depiction of female characters”. She argues that this results in players “collaborating with developers” in committing violence against female characters. This assumption that games, like porn, are somehow different and more potent than other media betrays the slippage of pro-censorship, anti-pornography radical feminist rhetoric and strategy towards applications in freshly contested arenas, including video games. Despite efforts by some law-makers, attempts to further regulate violence in video games have yet to be successful in Canada or the USA. However, the ongoing efforts of activists in this area often precludes non-normative readings of immersive and interactive violence in the public discourse.

In this presentation, I will use alternative interpretations of violence in video games that draw on games studies scholars who use kink-informed theoretical lenses to understand the relationship between player and developer/game. I will examine two torture scenes from the game Grand Theft Auto V, and argue that they may be experienced as pleasurable male submission and masochism, despite risk of danger or oppression. Through enthusiastic submission, play produces a player who becomes capable or “strong enough” to “bear the pain and enjoy the pleasures of surrender” to the game (Crane-Seeber 2016). This simultaneously helps construct the category of Gamer, the player who is able to “play the game right”. Finally, I will ask whether this approach can offer reparative readings of games where the ‘return of the Sex Wars’ has been more obviously apparent (Galbraith 2016). Through a brief discussion of rape-play games, I will explore whether we can expand the imaginative capacity of feminist game critics to produce reparative readings of interactive sexual violence in games.

4. Khan, Ummni (Carleton University) “Rape Fantasies: The Erotics of Resistance and Reluctance”

How do scenes featuring resistance and reluctance to sexual aggression register as erotic? This presentation engages with interpretive practices of popular fictional scenes that signify rape, sexual coercion and forceful seduction from political, semiotic and embodied standpoints. In standard feminist media theory, the familiar “rape culture” critique insists that such scenes are pernicious anti-social influences, particularly when the recipient/victim of the sexual advances is represented as surrendering to their suitor/violator because of overwhelming passion. Such critics suggest that scenes eroticizing coercion contribute, on some level, to the occurrence of material acts of sexual violence. Positioning pleasure and anti-respectability as my orientations, this presentation will deconstruct the feminist media interpretations, while offering alternative reparative readings. I will begin by tracking how current ‘rape culture’ critiques of mainstream representation track and reproduce the anti-porn arguments of the 1980s, carrying with them the same essentialist, literalist, anti-pleasure and cultivation assumptions about meaning and causation. I will then turn to alternative readings that draw on rape fantasy research, BDSM
theory and carnal hermeneutics to argue that such representations can be understood as a form of clandestine quotidian kink. My theory of “clandestine quotidian kink” posits that the pleasures of dominance, submission, sadism and masochism are not only found in, and need not only be consigned to, official BDSM spaces or identities. Rather, we can understand mainstream scenes of sexual coercion as a source of pleasure, and a form of surreptitious kink, which hides in plain sight.

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Gossip! Satire! Filth! Illegal words in Early America
Room: McDonough 344

Current political battles over “alternative facts” and “truthiness” recall a much longer history in the United States of censuring gossip, punishing libel and sedition, and curbing salaciousness. Words and their meaning—opposing parties agreed—are important. But, the time, place, and impact of utterances have been deeply contested. Where better than Washington, DC, to explore the implication of illegal words in American history?
This panel’s three original papers—dealing with the 17th-century, the 18th-century and the 19th-century—reveal that in the era before the incorporation of the First Amendment in the 1920s, free speech was influenced by private actors and cultural practices. They also reveal that it influenced patterns of governance and activated the anxieties of ordinary men and women about that governance. Session papers are organized chronologically. In “The Politics of Gossip in 17th century Virginia,” Christine Eisel draws on county records to describe how gossip was used to contest and enhance public authority. Kristin A. Olbertson’s paper, “‘Monster of Monsters’: Gender, Satire, & Libel Law in 18th-Century Massachusetts,” uses a pamphlet to examine the gender implication of political satire a century later, and raises valuable questions about the real objective of libel law. William Davenport Mercer and Joel E. Black’s paper, “‘Working Blue’: Stand-Up Comedy and Free Speech in 19th-Century Vaudeville and Burlesque,” uses descriptions of live acts and banned words to examine the impact of profit-making on speech regulation after the Civil War. Like Eisel and Olbertson, Mercer and Black also suggest that laws governing speech were not just the stuff of legislatures and courts—and capitalism—but also emerged from ordinary people and their everyday ordeals.


In this paper, I argue that early Virginia legal and political leaders recognized gossip as both necessary and problematic. English culture defined women’s gossip, in particular, as trivial and irresponsible, yet by 1662, Virginia’s colonial assemblymen, or burgesses, came to find women’s gossip so powerful and dangerous to the patriarchal establishment that laws meant to curtail such behavior were strengthened in ways that departed from the English cultural ideal of coverture. Despite this reaction at the colonial level, the local county courts acted in varying
ways in response to gossip. The more intimate relations and immediate concerns within a smaller community at the local level could trump the interests of leaders at the colonial level. This paper spotlights men and women from all strata of society who, via their gossip, both challenged and enhanced elite men’s efforts to create and maintain their authority and their vision of an orderly society. Gossips’ words gained the attention of county court justices and had the power to expose their targets’ true character and subject them to public humiliation. In many of these cases, their gossip was either the crime itself or was an important factor in the outcome of other cases. Within the county records, presentments of gossips, the nature of their words, and the punishment that gossips received reveal the ways in which speech challenged the efforts of each county’s leaders to create and maintain order, and help explain why those leaders responded as they did. Englishmen considered women’s gossip disorderly, even dangerous, because it threatened their efforts to maintain order. At the same time, they treated gossips as useful tools for community control.

2. Olbertson, Kristin A. (Alma College) “‘Monster of Monsters’: Gender, Satire, & Libel Law in 18th-Century Massachusetts”

Political satire was slow to take off in eighteenth-century Massachusetts. Although the colonial government had ceased press censorship by the 1720s, few printers took advantage of their relative freedom until the mid-1750s. Then, however, one satirical pamphlet about a proposed excise tax—titled “Monster of Monsters”—gained an audience never before seen, and inaugurated a new era of political satire which flourished in the following decades. Ironically, this pamphlet’s success was probably largely due to the arrest of its publisher and the notoriety that ensued. The authorities had to know that a prosecution would not only be fruitless—it was laughably easy to avoid conviction for libel under contemporary legal rules—but would only increase public interest in the offending publication. So why did they make this ill-advised attempt to squash what was, in the end, not even an especially clever or well-written political satire?

Historians have noted that the pamphlet’s thinly veiled caricatures of legislators revealed the substance and procedure of legislative debates rather more clearly than authorities wished. While the assembly published its journal, it sometimes kept certain proceedings secret. Moreover, “Monster of Monsters” was partly derived from English satirical pamphlets, which had proven devastating to the Walpole government in the 1730s, and presumably could do the same in Massachusetts.

Yet where “Monster” deviated from its predecessors, and where its true threat lay, I argue, was in its representation of legislators as women—irrational, ill-governed women with an unnatural, even lascivious interest in the titular monster (representing the tax). As a satire on politics, it is mediocre—but as a satire on gender, it would have been devastating to any man identifying as, or aspiring to be, a polite gentleman. In 1754, satirizing masculinity brought criminal prosecution.

Such a delicate duck
I never did see
She was too damned particular
She never suited me

I took her out one night for a walk,
We indulged in all sort of pleasantry and talk,
We came to a potato patch, she wouldn’t go across
The potatoes had eyes and she didn’t wear drawers.

19th century comic Johnny Forbes working “blue”

Comedy, like law, registers most meaningfully when it reflects its social context. When Lenny Bruce blurted out obscenity, George Carlin enlisted the seven dirty words you can’t say on television, and Richard Pryor chronicled racial violence they also made legal arguments about the limits of protected speech. But, this “blue” or filthy comedy, which blossomed in the late-twentieth century, has a much older history. It might be understood as an extension of the self-censorship after the Civil War, where legal meaning unfurled not just in rulings and law making, but also on vaudeville and burlesque stages, where the commercialization of theater linked profitability to speech decades before Citizens United formalized the connection. Comedy historians locates the roots of American comedy in the efforts of entrepreneurs like Tony Pastor, Benjamin Keith to Edward Albee to transform desultory mid-nineteenth century “Honky Tonks” and whisky dens into lavish, profitable, family friendly spaces. The regulation of speech was at the center of this transition. Backstage bills banned sexual, religious, or profane language. Contracts barred words, like ‘liar,’ ‘slob,’ ‘son-of-a-gun,’ ‘sucker,’ ‘damn’ from their performances, and mandated residential managers pre-clear acts. The seemingly raunchier burlesque stage underwent its own sanitization by the early-twentieth century, when “smutty dialogue,” “bare legs,” and “vulgar jokes” were barred. In each forum, comics tested the boundaries of what language would earn applause or censure; in the process they made decisions guided not by courts, but by audiences and theater owners—decision that were drawn from everyday life.

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Rethinking Law’s Transformative Power
Room: Hotung 6006

1. Douglas, Stacy (Carleton University) "Law’s Transformative Power: Ideology, Utopia, and Donald Trump"
Many theories of law’s transformative potential turn on the role of the symbolic. In these formulations, law’s presumed power rests in its ability to reflect a better image of the subject and its surrounding environment. This paper considers the role of the image in Drucilla Cornell’s theory of law, which she derives from Kant, and pairs it with Fredric Jameson’s contention that such abstractions merely function to re-inscribe the authors' own social and historical aesthetic context. What is missed in theories that draw from, re-assert, and therefore perpetuate contemporary aesthetic assumptions about the individual and its presumed centrality in legal transformation? I contend that Cornell’s work can be helpfully paired with that of Jameson’s to consider the possibilities and limitations of theories of transformation that hinge on symbolic projection, and that this juxtaposition offers some insights when analysing the recent election of Donald Trump as the 45th President of the USA and his famous claim to “make America great again”.

2. Kaisary, Philip (Carleton University) “To Break Our Chains and Form a Free People”: Race, Nation, and Haiti’s Imperial Constitution of 1805

On May 20, 1805, Jean-Jacques Dessalines, a former slave who had become the hero of Haitian independence and Haiti’s first head of state, promulgated the Imperial Constitution of Haiti. It was the first constitution of independent Haiti and only the second modern constitution adopted in the Americas outside the United States. This paper will analyze how Dessalines' 1805 Constitution harnessed the concepts of race and nation to the project of constructing a state premised on the human right to freedom from enslavement. Reading this neglected constitutional document as a literary-political text, this paper will advance the argument that at the heart of Dessalines' project of imagining and building a new nation state and a socio-political community resided a faith in the capacity of law to perform an act of de-reification, or, in Colin Dayan’s phrasing, “an epistemological conversion.” It is thus suggested that this case study provides insights for rethinking law and constitutionalism’s relation to attempts at radical social transformation.


Using the concept of necropower, or the mobilization and prioritization of the state’s power to kill based on state borders, I analyze the contested physical and rhetorical space of law as prompted by the counter narrative of Black Lives Matter. A once-criticized set of judicial decisions in the case of Bayless v. United States presciently rejects the normative framework that presumes the guilt of people of color. The Bayless decisions serve as case studies of an attempt to challenge a master narrative of purported ordinary operation of law in a zone presumed to be circumscribed by criminal behavior. Read together with Justice Sotomayor’s dissenting opinion in Utah v. Strieff, the decisions suggest a need for evidentiary doctrine to create a space of presumed innocence that encompasses otherwise excluded subjects in the framework of constitutional protections, such as the Fourth Amendment right to be free from unreasonable searches and seizures.
Recent scholarship in law and humanities turns away from the promise of liberal personhood: in the face of contemporary realities like global warming, mass incarceration, and police brutality, the person often seems like a category that has lost its interpretive use, if it ever had any to begin with. Essays in the recent New Directions in Law and Literature imagine, in the words of one contributor, moving “beyond the ideal of personhood” to the analyses of populations and masses. And yet, personhood still haunts the imaginations of contemporary law and literature alike. A series of recent Supreme Court decisions imagines corporations as persons, while the rights of people of color are systematically denied by the police force. But rights to personhood still remain the legal framework under which marginalized groups stake claims to recognition and under which the state’s surveillance power is curtailed. What accounts for personhood’s intractability within the legal and literary imagination, and how should we understand it? Is personhood a means of exerting power over marginalized groups, or does it have redemptive, emancipatory aspects? How have writers prefigured, imagined, or repudiated developments in legal personhood? To approach these questions, this panel takes as its focus the twentieth century, an arguably unprecedented moment for the scale and scope of the legal redefinition of the concept of the person. We interpret these questions through literary texts because literature, like law, is allegedly for, by, and about persons, even as both also define what it means to be a person. This panel brings together three scholars who each imagine the cultural construction of the person within different types of law: privacy law, corporate law, and criminal law.

1. Rampell, Palmer (Yale University) “The Blindnesses of Love and Law: Or the Novel of Interracial Marriage”

“In the final decision, I just went with my heart and the person I found my forever with”—Rachel Lindsay, The Bachelorette, 2017.

What does it mean to call marriage a right of personal privacy? In formulating abortion as a right to privacy, Roe v. Wade (1973) cites Loving v. Virginia (1967) as a precedent that tied privacy to reproduction and sexuality by way of marriage. But Loving v. Virginia (1967) makes no mention of the word privacy; Loving declares interracial marriage as a right protected by the equal protection clause of the Fourteenth Amendment. Roe thus reframed the holding of Loving as rooted in privacy. There is a crucial difference between saying (as Roe seemed to imply by citing Loving) that interracial marriage means you can marry whomever you want, and saying (as Loving might suggest) that interracial marriage means you can marry someone of another race. And the difference is that the former would disclaim racial identity altogether, while the latter would frame marriage specifically as a right to cross racial boundaries. This paper argues that we can better understand the discrepancy between Roe and Loving by
reflecting on literary representations of interracial marriage—by Lillian Ross, Chester Himes, Frank Yerby, and Barbara Chase-Riboud. These authors manifest a similar tension between individual self-definition and group belonging. They sometimes frame interracial marriage as a radically personal choice, freed from social constraint—a right of self-definition. But they also worry that interracial marriage was a form of assimilation and even of white social control. Together, these cases and novels track the tensions and shifts in postwar liberalism’s imagination of the right to marry: how our imaginations of personal self-definition and identity intertwine with racial membership. We want to believe that love, like law, could be blind to personal identity—and yet we often find that both are peeking beneath the blindfold.

2. Siraganian, Lisa (Southern Methodist Univ.) “Contemporary Literature v. Hobby Lobby”

“A corporation has convictions as a person has mechanical parts,” writes Jena Osman in her poem, “The Beautiful Life of Persona Ficta” (2014). This talk explores the analogies and fictions of corporate personhood as articulated in both recent jurisprudence and contemporary writing. Offered as a brief on the side of poems like Osman’s, Siraganian envisions a mock trial in which contemporary writing opposes the controversial case of Burwell v. Hobby Lobby Stores (2014). In that landmark decision, the Court ultimately protected the religious liberty and free exercise rights of private corporations like Hobby Lobby Stores. At the heart of the Court’s deliberation—both pro and con—were competing, still unresolved claims about the corporations’ form, claims either legitimating or disallowing First Amendment-type arguments. On the opposing side appears a range of contemporary, experimental literary texts—including poetry, novels, and short stories—that take up the issue of corporate beliefs, and more often, the underlying corporate framework enabling those beliefs. In arguing on behalf of contemporary literature (whose role in the legal arena is typically reduced to an ineffectual appendage in the “Law and Literature” subdiscipline), Siraganian explores how and why literary texts do a better job than jurisprudential ones in teasing out the contradictions of corporate personhood. In the context of issues in Hobby Lobby, writing such as George Saunders’s “In Persuasion Nation,” Richard Power’s Gain, and Osman’s Corporate Relations pinpoint the problems with corporate (religious) belief, largely because such texts think speculatively and formally about the contours and function of the corporate person as such. Through its oppositional drama, Siraganian’s talk helps close the gap between the legal understanding of business institutions and the cultural imagining of those legal fictions—a gap epitomized by the OWS sign, “I’ll believe corporations are persons when Texas executes one.”

3. Watson, Rachel (Howard Univ.) ““Blood taken from his veins”: Self-Incrimination and the Limits of Personhood”

In Holt v. United States (1910), Justice Holmes established a formal distinction between the evidence of the voice and the evidence of the body, marking the Supreme Court’s adoption of the Fifth Amendment as a privilege regarding testimonial evidence only. But by the 1950s, developments in police procedure, crossed with due process decisions of the Warren Court, provoked new deliberations on doctrinally held Cartesian distinctions between the mind and
the body: that is, between registers according to which a legal person may be taken by the police as a voluntary source of their own “evidence.” In Rochin v California (1952), Justices Black and Douglas extended the privilege of the Fifth Amendment by invoking the bodily boundaries implied by the Fourth, to include: “words taken from his lips, capsules taken from his stomach, blood taken from his veins.” But 13 years later, in Schmerber v. California (1966), Justice Brennan would again limit the scope of the Fifth Amendment protection to “testimonial evidence,” explicitly excluding all forms of “physical” evidence from the protection against self-incrimination: blood, fingerprints, voice and handwriting samples, and standing in a line-up. The decision split the Court 5-4, with each dissent (including that of Chief Justice Warren) citing due process concerns raised by allowing the forcible extraction of evidence from the body as excluded from the right to protection from self-incrimination.

This paper considers the stakes of such juridical distinctions in the context of how American writers dramatized resonant relations of power between the state and the individual throughout a period that put intense pressure on the limits of police power and the integrity of the body: that of de jure and de facto racial segregation. Texts to be considered include Richard Wright’s The Man Who Lived Underground (1941), William Faulkner’s Requiem for a Nun (1950), and Harper Lee’s To Kill a Mockingbird (1960).

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New Challenges for the 21st Century Copyright Lawyer
Room: McDonough 492

Immaterial assets are becoming more and more relevant in the economic context and their impact on global trade and commerce is now widely analyzed by the legal literature. This however does not mean that the topic of copyright is only discussed in terms of legal issues concerning multinational groups. In parallel to these highly economic issues, the analysis on copyright has been extended to and enriched by new dimensions and nuances that had not been considered before. Among these, it is possible to enumerate the human rights issues, the protection of the knowledge contained in perishable vessels, and the exploitation of niche products that have now become part of the pop art.

Therefore, Giovanna Carugno will examine the legal implications of the conservation of old manuscripts in the light of digitalization processes which allow for the preservation of knowledge. Andrea Borroni will analyse the pop culture that has been developed out of the digital world, from digitalized characters of videogames to iconic cartoons. Their commercial use has only seldom discussed in legal terms from the merchandising of products in their likeness through their transposition to other media (see, for instance, the recent series of movies inspired by Marvel comics). In his paper, the author will discuss these issues from a legal standpoint. Finally, Elena Falletti will look at copyright from a different angle. Can copyright be used for censorship?

Copyright and its extension are perceived differently on the two sides of the Atlantic Ocean. On the one hand, in America the First Amendment to the Constitution strongly affects the outcome
of the debate; while on the other, in Europe there many approaches which may lead to different results.

1. Carugno, Giovanna (University of Campania) “Preservation of Knowledge or Protection of Copyright? The Case of Digitized Books and Archival Goods”

The preservation of the knowledge contained in fragile books and manuscripts has been made easier by the recent advances in technology, because nowadays the digitalization of these particular kinds of cultural goods has become easier and easier. This is demonstrated among other things, for instance, by the various projects undertaken by cultural institutions, mainly libraries and archives, and private organizations aimed at scanning old documents to preserve them for the future generations. While this is certainly a good practice because it increases access to knowledge at the same time protecting these books or items which no longer need to be physically consulted, as far as the legal scholars are concerned this creates problems in terms of the protection of copyright, not because these texts are copyrighted themselves but because there digitalization may be. This paper analyzes the clash between the need to preserve knowledge and its dissemination vis-à-vis the need to protect copyright and discusses its legal implications through a comparative perspective, taking into consideration the main solutions which the various legal systems have come up.

2. Borroni, Andrea (University of Campania) “The Protection of Digital Cartoon and Videogame Characters”

With the recent rise in the importance of the game culture and the fact that some cartoons have not only have entered the mainstream but become staples of modern pop culture, as demonstrated for instance by the universal recognition of “The Simpsons” characters or Supermario, it has become more and more important for copyright holders to be able to protect their creations from unauthorized use. Other examples of the extreme economic relevance of these characters includes the multimillion dollars franchisees linked to Harry Potter’s universe, Marvel’s and DC Comics Superheroes. This paper aims to discuss these issues analyzing how the traditional instruments through which copyright holders can protect their rights can be adapted to tackle these new challenges, also exacerbated by the technological evolutions that have made it easier to dilution and distorted uses of these iconic characters.

3. Falletti, Elena (Carlo Cattaneo University) “Freedom of Art, Copyright, and Censorship: A comparative law perspective”

The aim of this presentation is to investigate how copyright can be used as a censorship tool of artistic freedom expression in its various forms, such as in the field of figurative art, comics, cinema, music and so on. The relevant aspect of the comparative question concerns first and foremost the different sensitivity that exists between the United States and Europe. On the one hand, in the United States, the freedom of expression tends to be always protected under the First Amendment shield. On the other hand, the protection of human dignity is the focus of the
legal protection under the European perspective, especially regarding the EU Member States, bound by article no. 1 of the Charter of Fundamental Rights of the European Union, which establishes that human dignity is inviolable. In this context, copyright plays a decisive role, especially when used by third parties (such as social networking platforms) to block content that is perceived as inappropriate. Paradoxically, copyright is used beyond its legal function, i.e. to grant legal protection to patrimonial interests, and in some legal systems even moral ones, of its holder. This paper intends to offer an in-depth analysis under the light of comparative methodology of recent national and international case law.

**73**
Decolonial Reading Practices: War, Indigeneity, Death
Room: Hotung 2000

This panel takes up decolonial reading practice as a frame for looking at current formations of state power, focusing on just war theory, indigenous land claims, and state killings.

1. Martel, James (San Francisco State University) "Decolonizing the Dead: How Corpses Help the Living Resist Subjugation"

In this paper, I will be discussing how when the colonizing state kills, even as it demonstrates its power over life, it abdicates its power over the dead. Working from Walter Benjamin’s idea that dead bodies, in their rotting materiality, better resist projections of state sovereignty (what he calls “mythic violence”) than the living, I see those murdered bodies as themselves helping the living to counter the projections by which they are normally controlled. The idea of the state seeking to colonize the living and the dead alike can be seen in the work of Fanon in terms of the way he argues that colonization fabricates reality itself including the very bodies that it seeks to control, living and dead alike (including his idea that the undead can be deployed as a way to control the living). It can also be understood via the work of Louis Althusser whose notion of interpellation (whereby the state gives us our identity) can also be seen as a form of colonization. In both cases, I will try to show how the dead better resist these colonizing acts than the living and further how the dead aid the living in their own resistance. I will also look at this question by turning to literature, considering the role of the dead in resisting colonization in the work of Assia Djebar and Arundhati Roy.

2. Stauffer, Jill (Haverford College) "Temporal Lapse and Temporal Privilege: Is it Possible to Decolonize a Perceptual Tradition?"

Building on work presented last year on colonial law’s relation to indigenous land claims, this paper looks at a structure of temporal lapse that runs through the legal argumentation, reconciliatory language, and everyday life of settler colonial subjects, with a focus on how perceptual traditions may train us to accept human-made conditions as given by nature or
otherwise beyond challenge. The paper discusses what constitutes a good or a bad ruling in land claims cases such as Delgamuukw v. British Columbia, and calls on writing by indigenous scholars and continental philosophers to show what may be negative and positive about a structure of lapse—with a view to gesturing toward how what is taken to be true or settled may be unseated by changed habits of thinking, perceiving, and reading. Last year’s paper focused mainly on the language and logic of legal rulings. This year I’m interested in tracing how settlement gets lived as an unquestioned reality by white settlers, and how different accounts of temporality and of storytelling might open that reality to questioning and to the possibility of radical transformation.

3. Walker, James (De Paul University) "Towards a Decolonizing Paradigm of Conflict Analysis"

Western narratives of postcolonial conflicts tend to manifest a colonial logic in their dehumanizing categorization of the individuals living within those conflicts. This colonial logic is present not only in the characterizations of specific conflicts, but also in the predominant approach taken to providing normative analyses of how Western states should engage with the people living within these conflicts, namely, Just War Theory. This paper provides a critical analysis of the coloniality of Just War Theory, in particular as it is manifested in its current “liberal-humanitarian” version. From the Western liberal-humanitarian position of radical privilege one is incapable of grasping the nature of the oppression of those the liberal-humanitarian paradigm intends to “liberate,” and thus, is not in a position to provide an authoritative prescription for the alleviation of their “oppression.” Indeed, its very perspective of analysis reinforces the colonial project of “dehumanization” and further entrenches the Eurocentric power structures of coloniality. This failure is based upon an inability to grasp the nature of the power relations that affect those who are in a position of radical oppression: it misses the lived reality of war for those occupying a more vulnerable position in relation to the violence and power structures that are constitutive of war. The nature of power as it affects individuals within these sorts of oppressive situations must be grasped at the level of the lived-experiences one has of finding oneself embedded within the complex and shifting matrices of power relations which form the backdrop to their daily lives. In other words, its analyses must not only be phenomenological, but, in particular, a phenomenology of the “oppressed,” giving rise to counter-narratives that not only challenge the dominant narratives in the liberal-humanitarian tradition, but also can begin to deconstruct the colonial logic presupposed by those dominant narratives.

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Aesthetic and Land Use
Room: Hotung 1000
This panel brings together one philosopher of art with two land use scholars to discuss the constitutional and policy implications of state actors imposing their aesthetic judgments within the context of blight determinations, historic preservation, and other zoning/land use regulations.

1. Soucek, Brian (UC Davis) “Aesthetic Judgment in Law: The Case of Land Use”

Brian Soucek’s paper, Aesthetic Judgment in Law: The Case of Land Use, situates the pervasive use of aesthetic regulation in the land use context within the law’s larger engagement with aesthetic values and artistic categories, in fields ranging from tax and tariff law to intellectual property, and from government funding decisions to obscenity trials.

2. Byrne, Peter (Georgetown) “Historic Preservation Narratives”

Peter Byrne’s presentation, Historic Preservation Narratives, will seek to clarify and evaluate the meanings conveyed to urban residents from the structures saved and adapted through historic preservation laws. Articulation of what preservation contributes to urban living has become urgent as law and economics scholars have increasingly attacked such laws for the costs that they allegedly impose on new development.

3. Brady, Molly (University of Virginia) “Residential Mobility and Aesthetic Variation”

Molly Brady’s talk, Residential Mobility and Aesthetic Variation, argues that aesthetic judgment in land use is less problematic than in other areas of law, both because states have, in practice, reduced its use through constitutional provisions and court decisions that provide explicit, non-aesthetic definitions of blight, and because land use regulations leave opportunities for voice and exit that aesthetic judgments elsewhere in law do not allow.

Room: Hotung 1000

R&B artists like Ruth Brown, Big Joe Williams, The Clovers, and Little Jimmy Scott worked under exploitive contracts. In most cases not even the exploitive terms of the contracts were fulfilled: most performers were routinely denied royalty accounting and payments, and, as a result, missed out on pension credit and healthcare eligibility. Despite decades of efforts toward economic justice under the banner of “royalty reform,” involving mainstream pop stars, politicians, and civil rights activists, royalty accounting departments remain negligent, amounts owing go unpaid, and pension and healthcare remain out of reach. Original recordings continue
to circulate and generate profit for media corporation as surviving performers and their families and heirs remain uncompensated, even penurious.

Today, as licensing fees outpace sales royalties, aging artists and their families are even further behind the eight ball. Original contracts of the 1950s and 60s are silent on licensing income, and companies interpret that silence as a grant of rights and will likely continue to do so unless a precedent commands otherwise. Until then, artists (or their successors) remain dependent on costly individual claims or powerful individual advocates for license payments.

This roundtable will feature a presentation by Howell Begle, the attorney who has spearheaded the legal side of royalty reform since 1984. Begle’s presentation (co-authored with Dr. Matt Stahl, University of Western Ontario) will outline royalty reform’s career and shortcomings and the challenges posed by old contracts in new conditions with the aim of developing new strategies to pursue this economic justice problem into the digital realm.

Begle’s presentation will be followed by comments from two respondents, Funmi Arewa, professor of law at UC Irvine, and Catherine Fisk, Barbara Nachtrieb Armstrong Professor of law at UC Berkeley, who will moderate the roundtable.

- Arewa, Funmi (UC Irvine)
- Begle, Howell, Attorney in Law
- Stahl, Matt (University of Western Ontario) (Panel Organiser)
- Mann, Larisa (Temple University)

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Democracy and Punishment
Room: Hotung 2000

Chair: Meyer, Linda (Quinnipiac Law School)

This panel will explore the question of whether there are modes of punishment that are incompatible with democracy, whether democracy fosters severity in punishment, and whether thinking about punishment invites us to rethink the meaning of democratic politics.

1. LaChance, Daniel (Emory University) “Empathy for the Executioner: Democratic Distrust, Sentimental Narratives, and the Early Twentieth Century Consolidation of the Modern Killing State”

The lynching epidemic of the late nineteenth century, some scholars have argued, was a response to anxiety about government that increasingly seemed less democratic. “Countless lynchings began and ended with jailhouse raids...not because the law was ‘too slow,’” Jacqueline Goldsby writes, but because “lynch mobs—like millions of other Americans—distrusted judicial and political administrations.” They “sought to counter the effects of living under centralized systems of power that were increasingly deaf to the needs of
individuals and blind to the concerns of the community.” This paper argues that a similar kind of anxiety shaped the early twentieth century history of capital punishment. As executions moved into the belly of centralized prisons and became private, bureaucratic affairs, they had to the potential to become the touchtone of the kind of modern judicial and political administration that Goldsby describes. They did not, however, because journalists worked to humanize prison workers—those wardens, chaplains, guards, and executioners who now carried out in private a violence that was formerly a public, democratic spectacle. Some prison workers themselves cultivated public personas. One of the more curious developments of the early twentieth century history of the death penalty was the introduction of the “loyal opposition” into public discussions about the death penalty, those former wardens or chaplains who wrote memoirs and produced radio and eventually television programs in which they openly discussed their discomfort with state killing. Critically examining representations of state actors involved in capital punishment by journalists and the state actors themselves (often by comparing them to representations of state actors in pro-lynching discourse), this paper argues that empathetic identification for the workers of the killing state works to maintain its democratic legitimacy. The paper concludes that democracy does not inevitably foster severity in punishment; it does so when a majority identifies with those citizens who act on behalf of “the people” in meting out lawful, punitive violence.

2. Dichter, Thomas (Amherst College) "Captivity without Coercion: Thomas Mott Osborne, Prisoner-Reformers, and the Fantasy of the Democratic Prison"

Prior to assuming his duties as chairman of the New York State Commission on Prison Reform in 1913, philanthropist Thomas Mott Osborne spent a week incarcerated at Auburn Penitentiary as prisoner “Tom Brown.” The temporary prison stay was a well publicized stunt to mark the beginning of Osborne’s tenure, which he subsequently described in his 1914 book Within Prison Walls. But Osborne not only wanted to bring public scrutiny into the prison—he aimed to import the values and practices of democratic public life as well. Progressive era reformers sought to foster civic participation within the prison, aiming to recreate elements of the “free world” that would not only make imprisonment more humane, but better prepare prisoners to return as members of society. Osborne took this line of reasoning as far as he could in creating the “Mutual Welfare League” in Auburn Penitentiary in 1913. The Mutual Welfare League was a structure of prisoner self-government that included prisoner-run disciplinary tribunals and inmate guards. “The state will patrol the walls,” Osborne explained to the prisoners at Auburn, “but inside the walls it is up to you.” The project reflected both a Progressive-era zeal for new rehabilitative techniques and a concomitant fantasy that spaces of incarceration could be managed democratically, by the consent of the governed.

In this paper, I will read Osborne’s Within Prison Walls as part of a larger Progressive-era genre of “prisoner-reformer” literature. While most such texts were the works of convicts-turned-reformers, Osborne joins books like Donald Lowrie’s My Life in Prison (1912) and Kate Richards O’Hare’s In Prison (1921) in appealing to a popular desire to narrow the gap between captive and captor. If the ideal prison system was to be based on the will of the imprisoned, who better to advise reform efforts than those who had experienced incarceration
themselves? Thus, prisoner-reformer narratives like Osborne’s aimed not only to scandalize, educate, or entertain, but to provide a democratic basis for prison management.

3. Sarat, Austin; Malague, John; De Los Santos, Lakeisha; Pedersen, Katherine; Quasim, Noor; Seymour, Logan; Wishloff, Sarah (Amherst College) “When the Death Penalty Goes Public: Referendum, Initiative and the Fate of Capital Punishment”

This paper considers what happens when the death penalty is put on the ballot. It reviews the history of referenda/initiatives concerning capital punishment from the start of the 20th century to the present. That history reveals the role that referenda/initiative have played in struggles against and within governmental institutions. In addition, we find that abolitionists seldom prevail in those electoral contests. We consider the implications of these findings for the prospects that the death penalty could be ended democratically.

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Borders and Boundaries: Claims Within and Outside the State
Room: McDonough 492

What kinds of legal and literary claims can be made both within and outside the geographic and juridical boundaries of the state? And how do we define the borders within which claims to property ownership, refugee rights, physical/bodily security, and national memory can be asserted, created, and reinscribed? This panel considers how borders and boundaries—and the spaces between them—give rise to juridical as well as extra-legal claims produced through works of literary fiction, film, and visual culture. The panel raises questions about histories of oppression and settler colonialism in Israel/Palestine, the “timespaces” occupied and shaped by Iraqi refugees and Iraqi fiction, the confines of incarceration at Guantánamo as drawn both by the security state as well as by visual artists, and, finally, modes of literary resistance to the boundaries of the nation delineated through invasions and occupations of Haiti in the twentieth and twenty-first centuries.

1. Golden, Audrey J. (Coe College) “Occupation and Désocupation through Literary Revolution: Évelyne Trouillot’s Memory at Bay and the Creation of a Reimagined Haiti”

The year 2015 marked a centennial of sorts in Haiti—100 years since the U.S. invasion and occupation of the country. In the imperial Western imagination, Haiti has become a nation-state defined by a need for occupation—first invasion and occupation by colonial France, later by U.S. military forces in the twentieth and twenty-first centuries, and at times, concurrently, by U.S.-backed dictatorships. In this palimpsestic space of occupation, as Edwidge Danticat observes of Haiti, “our désocupation is yet to come.” This paper considers the ways in which literature and visual art might enable such a désocupation. Looking specifically at Évelyne
Trouillot’s novel Memory at Bay (2015) [La memoire aux abois (2010)] and works of visual art from the Post-Duvalier Period, I explore how imaginative texts recast various moments of occupation to challenge the colonial and neocolonial boundaries of the nation-state. In Memory at Bay, one of Trouillot’s narrators declares, “But for her own peace of mind, she has to return to that narrative. To reconstruct it, tell it to herself, without straying into sentimental or romantic discussions. And, most important, in an orderly way.” Expanding on this idea, I suggest how language and images that enliven Haiti’s history of resistance and revolution enable the recuperation of a nation free from the rhetoric of occupation.

2. Moore, Alexandra Schultheis (Binghamton University SUNY) “Across the Threshold of Detectability at Guantanamo and Beyond: Viewing Structures of Harm and Precarious Subjects through the Work of Edmund Clark and Debi Cornwall”

Enforced disappearance and torture, two techniques central to the US-led war on terror, derive power from their trespass of the ostensible boundaries between public and private protected by normative human rights law. In pursuit of what Puar recently terms a "racializing biopolitical logic of security," one which I argue is also profoundly gendered, the state demonstrates its extraordinary capacity to regulate the public sphere (disappearance, censorship) and the individual captive (e.g., torture to reveal an ostensible "inner" truth). This paper analyzes Edmund Clark and Debi Cornwall’s respective artistic responses to Guantanamo for the ways they, too, blur the public/private divide, not to resurrect a liberal subject of human rights who has regained the right to privacy but to uncover the structures of abuse perpetrated on feminized, racialized captives. Indeed neither artist depicts detainees at all. Rather, the artists’ focus on public/private spaces and narratives reformulate the gendered terms spectatorship that inform incarceration and abuse as well as that secure the spectator's safe distance from that abuse. Drawing on feminist theories of the relationship of privacy to political spaces, I argue that Clark and Cornwall destabilize those distances and their guarantees, thereby rendering the violence committed in the name of security at once proximate, disturbing, and indefensible.

3. Naimou, Angela (Clemson University) “Refugee Timespaces and the Speculative Fictions of the Refugee”

The term refugee names one who flees a past threat of persecution to seek a space of protection: but what promises in name to be a single, urgent, and temporary search for refuge is almost never experienced or conceptualized this way. In both refugee legal claims and literary writing by refugees, times and spaces bend, collide, converge, or interfere with each other in ways that deserve more scholarly attention. This paper aims to conceptualize forms of refugee timespaces as they are experienced by refugees through material practices and as they are re-figured by writers and artists through literary and artistic forms. My goal is to bring together humanities and social science scholarship to think about the critical challenges of mass displacement. It will outline actual refugee situations of the internally displaced camps in Iraq as well as Iraqi nationals in the US in detention under deportation orders who fear persecution if
they were to be returned. I then turn to the literary work of rising Iraqi writer Hassan Blasim to ask how his fiction gives shape to the complexities of refugee futurity.

4. Reichman, Ravit (Brown University) “Property’s Political Distance: Ownership & Ideology in the Occupied Territories”

How does property distance us from the harm we do? In posing this question, this paper connects two instances of ideology and oppression through the regime of property. Its focus is on Israeli settlements in the Palestinian territories, which I approach through several legal opinions on the legitimacy of these settlements, and also through the recent documentary The Settlers (2016, dir. Shimon Dotan). The rhetoric of law and rights in the cases and the film suggests that the language of property makes it possible—in imagination as in politics law—to uncouple nationalism or institutional oppression from the rights of owners. Put simply, while some settlers see themselves in ideological terms, many more view themselves as, quite simply, owners who seek convenient, affordable lives and, more trenchantly, who deserve them. The language around these claims for ordinary ownership bears uncanny traces to the history of racially restrictive covenants in the United States, and particularly the rhetoric of the white home improvement associations that policed and supported them. In connecting these very different contexts, the paper proposes that histories of oppression might be linked through their property claims, which in turn invite us to imagine property’s role in settler colonialism as a matter not only of law but also of rhetoric, imagination, and psychology.

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Seeing Difference
Room: Hotung 6005

Privacy and even secrecy have long marked cultural and legal ideas about sexuality and intimate relationships. No wonder, then, that visibility, the capacity to be seen, figures so prominently in the projects collected on this panel. Focusing on Britain in the modern period, Michael Boucai’s paper describes law’s role in what Eve Kosofsky Sedgwick called “the defining structure of gay oppression” in our time: “the closet.” Clifford Rosky’s paper on “antigay curriculum laws” illuminates one way in which the law of the closet persists to this day, and it makes a strong case for such measures’ unconstitutionality. Sarah Swan’s work addresses a form of relationship that, though often quite public, has been long beneath legal cognizance: friendship. Her paper on Farwell v. Keaton explores how visibility and invisibility, legal and otherwise, informed a landmark decision recognizing a limited duty of care among friends. Finally, looking to that most public and most private of legal institutions—the marital family—Allison Tait’s paper, “Keeping Up Appearances,” reveals how transgressions against the rule of spousal monogamy have been penalized to different degrees depending, in large part, on their flagrancy.
1. Boucai, Michael (SUNY Buffalo Law School) “Codifying the Closet: Law and Homosexuality in Modern Britain”

“The closet” is a defining feature of modern homosexual experience. As demonstrated at length in a separate paper, the essential referents of the closet metaphor have coexisted, in some individuals’ lives, since the late-nineteenth century: a homosexual identity; repressed same-sex desire; strategies of conscious suppression; the double life; the mask of heterosexuality; the open secret; and “closet consciousness”—a sense that all five of the preceding phenomena are linked biographically and ideologically. Against this background, “Codifying the Closet” shows how legal norms, developed over more than four centuries, shaped the regime of the closet. It emphasizes two aspects of the legal order that, in very different ways, shaped individual and cultural practices: a prohibition of homosexual conduct whose enforcement, on the whole, grew more aggressive over time and whose scope broadened in ways that move unmistakably from act-based toward identity-based sexuality; and a rhetoric that cast sex between men as the “unspeakable” sin, the “unmentionable” vice, the ‘crime not fit to be named,” the offense “so detestable that the law ... blushes to name it.”


Unlike familial relationships, friendships are typically legally invisible. Individuals in an extremely close personal relationship are frequently treated as legal strangers. However, friendship surfaces as legally salient in at least one legal doctrine, the tort duty to rescue. This project explores how legal visibility and invisibility operated upon multiple axes to inform the landmark decision of Farwell v. Keaton. There the court imposed a limited duty to rescue on a defendant who had not sought medical care nor alerted anyone to the unconscious state of his injured friend. Part of the court’s reasoning turned on the fact that the defendant had rendered his friend invisible to others by leaving him in the backseat of his car and not informing anyone about his condition. In issuing its decision, the court used this invisibility to push friendship into a legally visible category. Ironically, though, the court’s unusual focus on friendship eclipsed other possibilities for a more generalized duty to rescue. I consider how visibility and invisibility were taken up in this case, and then transported throughout duty-to-rescue cases more broadly.

3. Tait, Allison (University of Richmond School of Law) “Keeping Up Appearances”

To a great extent, marriage law has focused on the visual form of a marriage rather than its substance, encouraging relationships that “keep up appearances” and penalizing those that don’t. This paper analyzes and compares the different legal views and treatment of polygamy, bigamy, and adultery—as they were constructed in the period following the American Civil War and as they were prosecuted and penalized in the generations to follow. Polygamy has been seen to violate deeply embedded socio-cultural mores by publicly rejecting the normative face of marriage and it has been penalized accordingly. Both bigamy and adultery diverge from polygamy in that they do not challenge the normative face of marriage; instead both crimes are
products of secrecy. Bigamy and adultery carefully maintain the image of the happy, married couple while subverting it quietly outside of view. Consequently, they have been viewed as lesser offenses, prosecuted at different rates, and characterized as creating different and lesser harms than polygamy. One goal of the paper is to analyze how all these crimes are both characterized and constructed in legal discourse, underscoring that visible conformity to conventional marriage is key. A second goal is to explore what marriage should look like—or, rather, to suggest that marriage law should not care about the appearance of a marriage. Instead it should be concerned with true harm, whether physical or economic.

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Political Life Beyond Work, Withdrawal and Exhaustion
Room: McDonough 588

1. Siegel, Nica (Yale University) “Legal Thresholds of Exhaustion”

What is law’s relation to the sustenance of life? Following Foucault’s well-known reading of shifts in sovereignty from the right to take life to the mandate to foster it, legal scholars have debated the possibility of so-called affirmative biopolitics: given that life is a fragile and finite phenomenon, how can we protect it without instantiating a juridical, autoimmune logic that might also threaten it from within? This paper proceeds orthogonally from these debates by insisting on law’s role in constructing the very logics by which we understand life to be a scare, exhaustible resource, something in need of protection and regulation. Starting with Marx’s famous assertion that “bloody regulation” was drawn into being in the wake of capitalism’s drive to maximize worker production without tipping over into permanent exhaustion, moving through Anson Rabinbach’s claim that the “thermodynamic logic of the exhaustible body” underlies the production of liberal legality, and sparring with Ranciere’s account of the possibilities of emancipation from the confines of capitalist legality performed by the worker-poet who disrupts the confines of power by producing goods all day and art all night, freeing himself to the precise extent that he can go without respite or sleep, I argue that shifting accounts of exhaustion and the exhaustible body, as embedded in and constituted by shifts in jurisprudence, can help us understand, among other things, a contemporary figure to which biopolitical law offers, thus far, no remedy: the burnout—inexhaustible, without injunction, and deeply at risk.

2. Parsley, Connal (Kent Law School) “Thinking the Political Authority of the Artist: The neoliberal situation”

In his account of the neoliberals’ transformation of the category of “work”, Michel Foucault famously highlights that the worker, in neoliberalism, ceases to be “one of two partners in the process of exchange” and becomes “an entrepreneur of himself”; assuming all of work’s risk along with all of its reward. Today, after the introduction of economic thinking into all areas of
political life—and the socialization of risk and privatization of reward—it has never been clearer how the intimacy between the neoliberal entrepreneur-worker and her work also forms the 'surface of contact between the individual and the power exercised upon' her. What is the positive political potential of this parlous situation? Drawing on the often-remarked instance of the artist as the neoliberal entrepreneur par excellence, this paper will argue that today, precisely by virtue of its intimacy with subjecting political power, the artist may be a figure capable of re-vivifying the experience of authority that Hannah Arendt deemed to have been completely lost. Comparing this positioning of the neoliberal artist with its apparent opposite, the artist’s exclusion from Plato’s Republic, I will suggest that the excluded artist is a constitutive figure in accounts of political authority—but that its inclusion threatens to transform that political tradition.