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“Culture, Law and Social Movements 2.0”

In Progress Description: This Article is the first to explore the interaction between cultural endeavors, social movements and law in the age of Web 2.0. Web 2.0 technologies such as blogs, wikis, Facebook, and You Tube are increasingly used for socially organizing and mobilizing traditionally marginalized groups. Art, music and culture continue to play a critical role in connecting people, communicating strategies, framing messages and refashioning narratives to help advance distributive justice for the poor and excluded. Web 2.0 mediums now enable artistic expression to connect individuals and groups, and to transmit and reframe messages between formerly disconnected and geographically isolated communities. The interaction between these Web 2.0 technologies and artistic, musical or cultural endeavors also has unique implications, not only for what law is used to facilitate social movements, but also for how law facilitates social movements. Specifically, this Article will explore how low-income immigrant cultures in the U.S. have used, and are using, cultural heritage, music and art to promote greater distributive justice and human rights for low-income immigrants in the U.S. This Article will explore how communities, activists and community organizers deploy culture to frame advocacy strategies and use Web 2.0 technologies to disseminate these cultural frames or narratives. Further, it will explore how this use of arts and culture influences which laws are employed to advance social movements. Contemporary debates about law and social movements have primarily focused on the effect of law and litigation on social movements. This Article suggests that the interaction between culture, law and social movements 2.0 may impact the type of laws employed to facilitate social movements; this dynamic may shift the focus of law and organizing from traditional impact- or cause-litigation towards a more expansive set of legal strategies, including more private law mechanisms. These developments may mean that law has different effects on social movements than those effects previously considered in the law and social movements literature.

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“Lost in Translation: When Race and Ethnicity Go Global. The Case of Afro-Colombian Mobilization”

In Progress Description: This paper analyzes the exchange between domestic and international actors in processes of transnational mobilization. Based on a case study of transnational mobilization involving issues of race and ethnicity, the paper analyzes how racial and ethnic claims travel and change from domestic to global contexts. While most of the literature on transnational mobilization emphasizes the role of networks of activism, this paper explores how the content of the agendas of local activists is translated and adjusted from a domestic context to the global sphere. The article explains both the similarities and the differences between the local enactment of racial and ethnic identities of Afro-Colombians and the way those identities are mobilized at the international level by social organizations and by the Colombian State. Drawing on interviews with leaders of social organizations, State actors and activists as well as on press coverage and official documents, the analysis maps transnational networks and their agendas arguing that racial and ethnic meanings are transformed in the transnational exchange. Moreover, the paper demonstrates that such transformation and translation shape racial and ethnic politics at the domestic level. To that extent, the case study speaks about the transformation of politics and law in the context of globalization, comparing racial and ethnic frames in human rights and social mobilization.
Jasmine Alinder (University of Wisconsin-Milwaukee: History)
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“The Right to Representation: Photography, War, and Censorship in the Wake of 9/11”

In Progress Description: The right to representation is a core democratic principle commonly associated with the vote. But that right has also become allied with the presumed liberties associated with visual representation. Photography acts as a key site for the expression of self and nation, and as such has become intrinsic to the articulation of a right to visual freedom. Yet that visual freedom, so often taken for granted, has been denied at numerous historical moments, particularly during wartime. Over the past twenty years, the U.S. government and military have stepped up the suppression of photographic access to arenas of war attempting to limit visual communication and reverse the tide of photographic representation that characterized earlier conflicts including World War II and Vietnam. My project argues that the wars in Afghanistan and Iraq are the most photographically censored in U.S. History.

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Panel Chair: Sustainable Futures

Elif Babul (Stanford University: Anthropology)
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“Harmonizing Governance: EU Accession and Human Rights Standards in Turkey”

In Progress Description: This paper situates human rights training programs for state officials and government workers in Turkey within the larger framework of “good governance,” which underlies the public administration reforms undertaken for the country’s ongoing accession to the European Union (EU). A period of the reorganization of the governmental field through capacity-building and professionalization, this “harmonization process” is marked by a corpus of terms related to professionalism – such as expertise and rationalization – becoming increasingly relevant for public administration. Through socialization processes (such as human rights trainings) security forces, members of the judiciary, healthcare providers and other state officials learn to become experts by acquiring specific repertoires and occupational habits (Brenneis 1994, Carr 2010). The explicit purpose of these efforts is to transform public administration from a realm that produces hierarchy to a systematic apparatus that produces service, by installing a specific model through which the state officials should relate to citizens, to their profession, and to each other. This model requires that the state officials cooperate with each other towards producing service, and that they relate to citizens not as paternalistic supervisors of pastoral care, but as professional, indifferent service providers. Although this form of relationship is delineated as one that should be devoid of emotions and politics, human rights training programs end up promoting individual initiative, personal discretion, conscience and care in order to address the difficulties that are broached by the state functionaries, emanating from their everyday governmental practices.
Liza Barry-Kessler (University of Wisconsin-Milwaukee: Information Studies)
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“Making and Queering a Feminist Critique of the Exclusion of Recipes from U.S. Copyright Law”

In Progress Description: Under U.S. copyright law the so-called “useful arts,” including crafts such as knitting, fashion designs, and recipes, are specifically excluded from protection. My work focuses on critiquing the exclusion of recipes from copyright protection through lenses of feminist and critical theory. Current scholarship on this exclusion has focused on the role of craft-community specific social norms in constructing intellectual property, argued that full copyright protection for recipes is needed to protect innovators from the social norm of online piracy, or made straightforward feminist critiques of the exclusion of recipes from copyright protection. Still others have argued that recipes are denied copyright protection because they are not “appropriately creative” as required by the male-constructed law. Although I find the arguments that the exclusion of recipes from copyright protection is facially sexist to be persuasive, I also believe that recipe writers benefit from many of the same circumstances as the fashion industry, described by scholars as “the piracy paradox.” I am in the early stages of developing this critique and looking for possible legal or regulatory mechanisms that address these concerns without moving recipes under what I consider the excessive protections used by movies and music, for example.

Felice Batlan (Chicago-Kent: Law)
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“Rethinking the Legal Profession”

Research Method Description: Law and Society scholars have produced a rich body of scholarship regarding the legal profession both in the U.S. and abroad. Yet an unstated assumption in much of this work understands the legal profession to mean lawyers. My own work argues that the legal profession consists of a wide-range of legal providers including legal secretaries, paralegals, and social workers. When we expand the definition of legal profession, a host of rich questions arise including what it means to practice law, what and who constitutes a professional, and how issues of race, gender and class affect our definition of who is a member of the legal profession. My talk will use examples from my own work which include my empirical research on legal secretaries in large law firms and a historic study of the role of social workers as free legal aid providers. Yet, in order to conduct such studies new research methods are needed as one must transcend traditional legal sources and legal authority in order to reconceptualize the legal profession.

Anya Bernstein (University of Chicago: Law)
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“Evaluating Evaluation in Government Databases”

In Progress Description: Our laws give individuals a limited right to check information that government databases hold about them. The point is to make governments accountable and limit the effects of information collection on individuals. But this conception of information doesn't take into account the real ramifications of institutional knowledge production: government databases not only store information about us but are used to evaluate us and make predictions about our future behavior. In a project that seeks to make social scientific studies of institutional knowledge production and psychological information assessment speak to the legal regimes surrounding government databases, I explore how evaluations stored and distributed in database form differ from evaluations that reveal their origins and grounding, and how the social effects of such evaluations exceed the individual effects the law acknowledges. This piece will be my job talk when I go on the legal academic market this fall. I am currently a Bigelow Fellow at the University of Chicago Law School.
Lisa Biggs (Northwestern University: Performance Studies)  
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“They Pink Dress Ain’t Done Shit: Performing Queer Activism in a Women’s Gulf Coast Prison”

In Progress Description: Since the 1980s, women have been the fastest growing segment of the U.S. prison population, but they remain largely invisible in public discourse about crime, punishment and incarceration. In this paper I consider how a live, theatrical performance by the Anahita Women’s Prison Drama Club in 2011 addressed popular and legal representations of queer women’s criminality. In 2010, the administrators of this Gulf Coast, maximum-security, prison facility imposed a new punishment upon the women confined there. Prisoners who dressed in “too masculine a fashion” were stripped of their uniforms and forced to wear an outlandish pink dress. In response, the prisoners’ Drama Club devised an original theatre/dance piece to critique these efforts to repress, isolate, shame and punish queer women of color and their communities – their families, partners, friends, co-workers and allies. My paper considers the power of dress or attire as a political sign system within law enforcement contexts. Using black feminist and performance studies theories, it draws preliminary conclusions about how the Anahita women prisoners utilized performance to confront bigotry and express their desire for the establishment of an inclusive community.

Marc Jonathan Blitz (Oklahoma City University: Law)  
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“Law, Neuroscience, and Society”

Law & Society Description: Increasingly, legal scholars, judges, and lawyers are attending to what neuroscientists and empirical psychologists are learning about human thought processes – and their biological basis. They are asking, for example, whether (1) the light that neuroscience and empirical psychology are shedding on the human mind should lead the legal system to abandon certain “folk psychology” assumption underlying criminal law, the law of evidence, health law, or other areas of law – and replace them with more scientifically-informed accounts of how humans engage in moral thinking, or process information; (2) technologies of neuroscience – like fMRI scans and EEG readings – are an acceptable form of evidence for courts to consider (e.g., as evidence of a person’s honesty or state of mind); and (3) about whether neuroscience-enabled technologies, such as memory dampening or cognitive enhancement, should be subject to legal regulation. Drawing on my teaching of Law & Neuroscience over the past two years, and my own scholarship on issues at the intersection of law, psychology, and neuroscience, my presentation will address these issues – and look at how such work can add to the work that other kinds of empirical research on human behavior (e.g., by political scientists and sociologists) already contributes to the legal systems’ understanding of behavior regulated by law.

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“Denying Rights: The Continuing Criminalization of Consensual, Same-Sex Sexual Activity: A Law and Society Perspective on U.S. Prisons”

In 2003 the Supreme Court of the United States, in the case of Lawrence v. Texas, ruled as unconstitutional a law barring consensual, non-commercial, private sexual behaviors between individuals of the same sex. Since Lawrence, prisons and courts have used expertise and doctrine to thwart attempts to extend Lawrence to prisoners and prisoners in multifarious ways. I ask why, and then how, prisons, as arms of the state, continue to criminalize consensual sexual activity between prisoners. Each State Department of Corrections and The Federal Bureau of Prisons claim, despite Lawrence, that consensual sex between prisoners is a criminal act and punish prisoners for engaging in it. Prisons punish consensual sexuality between prisoners in two ways. Through strategic classification during initial intake processes, prison officials identify prisoners as potentially sexual, and relegate them to protective custody; an area void of prison resources
such as education, employment, and substance abuse treatment. Secondly, prison employees are trained to watch for prisoners engaging in sexual behavior and then to bring charges to bear upon them that result in a range of moderate to severe punitive sanctions. These punitive classifications and sanctions are persistent and durable and may limit prisoner's ability to return successfully to society. Thus, the claim that Lawrence has ended decades of persistent state-sponsored criminalization of sexuality and sexual identity can be called into question.

Focusing on why prisons maintain the rules, the variance in sanctions across institutions, and why courts deny challenges to this correctional orthodoxy and praxis; I expect to find significant interaction between the jurisprudential doctrine of due deference and the correctional claim of significant penological interest as foundational to this practice. Manifest and latent motivations for these punitive frameworks are expected to be rooted in public health concerns, morality, the maintenance of a strict prison environment, administrative confusion and ambiguity about sexuality, disgust for homosexual relations, and hetero-normative patriarchal, military tradition within prison administrations. These motivations act jointly as barriers to reconsidering a less punitive environment for sexual identity and consensual sexual behavior in U.S. prisons as within contemporary cultural attitudes about homosexuality and the expanding landscape of rights for LGBT citizens.

Suzanne Borland (University of Illinois Springfield: Legal Studies)
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“Illinois Judges: Who Are They and How Do They See Themselves?”

This presentation will discuss the results of a 2012 survey of all current Illinois Appellate Court and Circuit Court (trial) judges. The survey was a replication of one administered in 1980 and 1981, and included questions about the judges’ background, their workload, and their perceptions of their role and function. This project is noteworthy because of the high response rate (60%) we garnered. We submit that our careful planning and groundwork encouraged most judges to complete the survey. Through our initial analysis of descriptive statistics, we’ve noticed some interesting demographic qualities among responding judges. For example, current judges are significantly different from judges sitting in the early 1980s, especially with regard to gender and religion. We were also surprised by the career paths by which most judges reached the bench. Our preliminary analysis of survey responses about the personal qualities valued by judges, their views of the responsibilities of judges, and the statements about law and the role of judges has similarly yielded interesting insight into how judges see themselves and their jobs, and what principles they value most.

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Program Co-chair, Discussion Leader and Presenter

“Officer Krupke and Clues: Creative Digital Media Assignments for Law and Society Undergrads” (Co-presented with Ralph Grunewald and David Macasaet)

Digital literacy – the ability to understand, evaluate, and manipulate information in multiple formats – has been recognized as a 21st century priority. Yet faculty often lack experience in the development and implementation of digital media assignments. This session will offer ideas for new media projects geared to law and society undergrads, as well as a discussion of the challenges and potential of digital pedagogy. Projects include student documentaries from the award-winning course “Gee, Officer Krupke: The Diverse Roles of the Players in the Juvenile Justice System,” and a collaboratively developed Internet site for “Clues: A History of Criminal Evidence.”

Tricia Bushnell (University of Wisconsin-Madison: Law)
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Participant
In Progress Description: Increasing amounts of potentially personally identifiable data is produced online by users at an astounding rate. Some of this type of information includes online searching results, and online tracking information from cookies and other tools. While there are standards for anonymized information within traditional research models that include human subjects in the United States, such as HIPAA (Health Insurance Portability and Accountability Act of 1996) and traditional statistical studies through IRBs, no current model properly protects all of the potentially personally identifiable information we are constantly producing online. A great deal of the concern over online information privacy comes from the assumption that the information shared is generally anonymous. However, several controversies have demonstrated that researchers can indeed determine who an individual is from a large data set that has been assumed to contain only anonymous data. In 2006, the first rumblings of deanonmyzing online information was seen through the ability of a New York Times reporter to determine the identify of a specific AOL search user (“A Face Is Exposed for AOL Searcher No. 4417749,” N.Y. Times, August 6, 2006). But identifying seemingly anonymous individuals can also be accomplished on a larger scale. The more recent controversy regarding Facebook friends shows that it is relatively easy for researchers – and the general public – to use information pulled together from different sources to either identify people for the first time or to deanyonimize information. (Marc Parry, “Harvard Researchers Accused of Breaching Students' Privacy,” CHRONICLE OF HIGHER EDUCATION, July 10, 2011). Recently it was reported that bloggers who use Google Analytics may be individually identified through their ID information, potentially risking the anonymity of bloggers. The concern about the ability to identify online users follows the increased concern about this issue in the medical and public health literature about identification in health databases. Health information data is increasingly integrated from multiple labs into open-access translational research information systems (OTRIS) to allow for a large scope of datasets to reanalyze existing studies and to analyze data in new ways. The ways that medical information can remain anonymous can help to inform models for online data privacy. Our paper builds on the insight of Paul Ohn, “Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization,” 57 UCLA L. REV. 1708 (2010), where he discusses the failure of anonymization efforts to preclude reidentification through multiple varied techniques. He suggests that “Data can be either useful or perfectly anonymous but never both.” (1704). Through the standards used in public health's balancing of use of data through standards set under HIPAA, we suggest a sliding scale model as a means to standardize the types information collected that can be put back together, based on the potential usefulness to both the individual providing the information and the public.

Amy Cohen (Ohio State University: Law)
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“From Farm to Fork: The Politics of Supermarkets in West Bengal”

In Progress Description: This paper examines the highly contentious legal and political conflicts that have broken out in India in response to efforts to reorganize agricultural supply chains from fragmented networks of small farmers, brokers, and traders, which end in the local, noisy, crowded bazaar, to more centrally organized and highly concentrated corporate supply chains, which end in the modern, air conditioned, highly standardized supermarket. It explores how supermarkets’ push to transform agricultural supply chain stands to change not only practices of consumption but also practices of production and distribution and the organization of land and labor. It considers a hotly debated regulatory question: whether the state government should allow corporate entities to contract directly with farmers. Contract farming, currently illegal in several Indian states, replaces spot commodity markets with flexible forms of vertical coordination. At present, contract farming is being heavily promoted in India by the central Indian government as well as the U.S. government, Indian conglomerates and multinational corporations; for them, capital concentration is a desirable, even public, good. In this paper, I...
analyze the consequences that the legalization of contract farming may have under specific social and economic conditions. I argue that contract farming is about producing new configurations of market power, standardization, and control as much as producing greater social efficiencies. Based on five months of fieldwork in West Bengal, the paper thus examines the kinds of legal and regulatory shifts that happen when markets are rescaled from local or regional to transnational regimes.

Robin Conley (Marshall University: Sociology & Anthropology)
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“Facing Death: Language, Rationality and Empathy in Jurors’ Death Penalty Decisions”

In Progress Description: This research probes how jurors make the ultimate decision about whether another human being should live or die. Drawing on ethnographic and qualitative linguistic methods, this work explores the means through which language helps to make death penalty decisions possible – how specific linguistic choices mediate and restrict jurors’, attorneys’, and judges' actions and experiences while serving in and reflecting on capital trials. By focusing on how language can both facilitate and stymie empathic encounters, the research addresses a conflict inherent to death penalty trials: jurors literally facing defendants during trial and then having to distort, diminish, or negate these interactions in order to sentence those same defendants to death. My research reveals that democratic legal ideologies of rational, dispassionate decision-making – conveyed in the form of authoritative legal language – play a significant role in negotiating these moral conflicts and thus in facilitating death sentences.

Simanti Dasgupta (University of Dayton: Anthropology)
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“The Unstoppables: Sex Work Rights and the Anti-Trafficking Discourse in Sonagachhi, India”

In Progress Description: This research is designed to explore the politics underlying the emergence of the sex work discourse in contemporary India, which is embedded strictly within the language of rights and laws rather than humble social recognition. One of the main objectives of this study is to understand how the new rights discourse detaches itself from the stigma of the “prostitute” narrative in order to claim legal recognition of sex work from the Indian State. In studying a grassroots sex workers’ organization, named Durbar Mahila Samanwaya Samiti (DMSC) in Calcutta and their movement to gain legal recognition for their profession, my aim is to understand the nature of legal transactions in the margins of society. I specifically focus on DMSC’s opposition to the revisions proposed to the Immoral Traffic Prevention Act (ITPA) by the Department of Women and Child Welfare of the Government of India. Interestingly, the revisions were proposed after the U.S. State Department anti-trafficking initiative, the Victim of Trafficking and Violence Protection Act, downgraded India to the Tier 2 Watch List in 2006. DMSC is demanding the repeal of the ITPA altogether because it conflates trafficking and sex work, both of which under this existing Act are indictable crimes. Overall, this research attempts to show how national laws and international goals of ending trafficking and prostitution to establish the ‘good society’ often contradict the lived everyday experiences and aspirations of those they wish to transform. The other dimension of the work is to highlight how such struggles for legal recognition cannot be separated from the present circuit of global capital, which is linked closely to the ethical standing of the nation-states as determined by imperial powers.

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“New Zealand’s Criminal Justice System”

In Progress Description: My research looks at the development of the criminal justice system in New Zealand, with a particular focus on the police, the prosecutors, and the court system in that country, and how New Zealand’s system evolved from the British criminal justice system. This research is based on fieldwork in New Zealand undertaken last summer – including bibliographic research, court observations, and interviews with peace officers and prosecutors. I start by
comparing how the roles of the police and the prosecutors are the same or different in New Zealand and in the United States, including a comparison of their gun laws. Then I analyze how New Zealand’s criminal justice system initially mirrored the system in Great Britain, but then certain elements gradually changed and eventually diverged over the years. I will provide some assessments on how these differences in the New Zealand system are actually a reflection of the unique social structure and community relations in New Zealand.

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“Why Ratify?: Reservations, Institutional Changes, and Commitment to Human Rights Treaties”

In Progress Description: This is a paper I am working on with Dr. Moonhawk Kim and Cody Eldredge, both of UC Boulder.

Scholars have long analyzed the causes of states’ ratification of human rights treaties. Existing arguments point to a variety of factors that influence state ratification decisions, but they tend to take the characteristics of the institutions as a given at a particular point in time and test how states behave based on those static characteristics. In this paper, we propose and test a contrasting argument that emphasizes how states change their behavior over time depending on how the institutions actually evolve and function. We argue that while many states may believe they could benefit from the constraints imposed by human rights treaties, only those with little or no risk of noncompliance will commit initially when treaty constraints may appear on paper to be strict and inflexible. States with poorer prospects for compliance will likely avoid the sovereignty costs associated with joining an institution that may punish them before they are able to actually improve their domestic practices. These states may wish to be constrained, but will be more likely to ratify only after they have observed increased flexibility in how the institution actually functions. To test this theory about the effects of institutional flexibility on state behavior, we use data on any reservations states made to the treaty at the time of commitment. Our preliminary analysis examining state behavior as relates to the Convention against Torture provides support for our theory. We find that states with poorer initial prospects for compliance tend to join the CAT when flexibility is high and thereafter take advantage of the institution’s constraints to improve their human rights practices.

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“Medellin v. Texas: Creating Meaning in the Treaty Clause”

In Progress Description: In 2004, the International Court of Justice (ICJ) found that the U.S. violated the Vienna Convention on Consular Relations by not informing 54 Mexican nationals in custody of their right to contact their embassy. Later, in 2008, Medellin v. Texas reached the U.S. Supreme Court, which decided that it would not follow the decision of the ICJ. While the Supreme Court did not directly deny the applicability of rulings of the ICJ, this decision placed blame for not following the ruling largely on the legislative branch of the U.S. government. The Supreme Court concluded that the article of the UN Charter that addresses the effect of ICJ decisions is not self-executing, and therefore it was up to the Congress to make a law that would enforce the treaty provision. I use this case to explore the meaning of the Treaty Clause. In this section of my dissertation, concerning coordinate construction and the meaning of the Treaty Clause, I explore how the judiciary creates meaning in the Treaty Clause. I also ask what this means in the domestic and international arenas. I attempt to answer these questions through the use of content analysis of a variety of court documents.

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Plenary Panel Comments and Panel Chair: Social Movements
“Property Relations and the (Re-)Emergence of Urban Farming Regimes in Chicago”

In Progress Description: The legal realist Robert Hale noted that since someone who has food isn’t obliged to give it to a man who doesn’t, “it is the law that coerces [the latter] into wage-work under penalty of starvation “unless he can produce food.” Hale concluded that for the landless, producing food generally isn’t an option. My dissertation will examine the causes and consequences of regimes that create exceptions to this rule – moments when people create institutions and property relations that give urban residents access to land on which they can grow food. In preliminary archival and ethnographic fieldwork in Chicago, I will study historic urban farming regimes and the currently-emerging urban farming sector. After the Panics of 1893 and 1907, and during the world wars and the depression, people temporarily renegotiated the rules that regulate who may grow food on public and private urban land. By comparing these regimes with each other and with the present, I hope to understand how current moves to re-regulate urban space might reflect similar temporary adaptive responses to shock, or, perhaps, prefigure a deeper transformation of how people live, labor, and use space in U.S. cities.

“The Diagnostic Value of Confessions in Shaken Baby Syndrome Cases”

In Progress Description: In recent years, the medico-legal hypothesis underlying Shaken Baby Syndrome (SBS) and related forms of abusive head trauma in children has come under increasing scientific and legal challenge. Because solid scientific evidence is sparse (and difficult to obtain), confessions by alleged perpetrators have played an important role in proving abusive head trauma, and in research purporting to validate the hypothesis and establish a diagnostic link between various medical signs and abuse. Relying on the assumption that confessions present reliable evidence of a criminal act, many observational studies have simply assumed abusive head trauma based on caregivers’ confessions. Over the past two decades, however, mounting evidence has emerged that false confessions are fairly common – even for the most serious crimes. And the conditions in alleged infant abuse cases may be particularly likely to induce false confessions. Yet no one has analyzed the reliability of these confessions in light of the significant social science research that has emerged on the nature and frequency of false confessions in other contexts. This research project proposes to fill that void by assessing the reliability of confessions in SBS cases.

“I Paid My Debt, but Can’t Pay My Rent: The Devastating Consequences of a Conviction on Employment”

In Progress Description: The consequences of a criminal conviction range from the sensible to the insane. My research focuses on the exclusionary policies that deny criminal record holders the dignity of employment. It also seeks partnerships to eliminate these policies. One in four adults has a criminal record. That is a problem. Being unemployable for life due to that record exacerbates the problem for both the individual and society. Recently, the Equal Employment Opportunity Commission affirmed that an absolute bar to employment based on an individual's criminal record is unlawful under the Civil Rights Act. The EEOC’s guidelines come as two things are on the rise: the number of incarcerated adults and the use of background checks. Because lack of employment opportunities punishes people and society in perpetuity, my research focuses on dismantling employment barriers. When employment barriers are removed, the results are dramatic. Communities are safer, employers
benefit, recidivism declines. Dismantling the barriers will occur when people know their rights, employers know the law, and policy makers know the effect of their decisions. My research now seeks to identify the most efficient partnerships between law schools, potential employers, and policy makers to educate each on the issue and to dismantle the barriers. I welcome the opportunity to discuss my research on potential partnerships at your conference.

Stephen P. Gasteyer (Michigan State University: Sociology)
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“Restricting SWAPs: Citizen Participation in Community Disaster Preparedness Pre and Post 9-11”

In Progress Description: The amendments to the 1996 reauthorization of the Safe Drinking Water Act provided a clear mandate for government to facilitate the availability of information on the quality and vulnerability of drinking water to residents. This legislation, clearly drawing from the environmental right-to-know movement, contained the underlying hypothesis that if government facilitated the availability of information, this would provide the cornerstone for local level citizen action to sustainably protect drinking water quality. In the wake of the terrorist acts of 9-11, the 2002 Public Health Security and Bioterrorism Preparedness and Response Act (the Bioterrorism Act) instructed the Department of Homeland Security and the Environmental Protection Agency to work in a coordinated effort with state primacy agencies to restrict access to critical parts of this information. Building on the community disaster and public preparedness literature, the author uses content analysis of the legislation and interviews with key informants around community water supply protection in the Delta regional states to investigate how these laws have been implemented. He finds that access to information varies, in some cases significantly, by state. The author concludes that the processes of new federalism and devolution ensure that state ideology and culture determine access to information and thus community disaster preparedness.

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“The World is Yours: Economic Growth, Racial Inequality, and a Sustainable Future”

In Progress Description: In summary, “The World is Yours” asks as poet Haki Madhubuti asked 25 years ago: “Who owns the earth?” It is a difficult question. But, in the 21st century, the United States is facing dual challenges related to economic growth. While the focus continues to be on seeking an economy that will produce the expected mandatory increases in Gross Domestic Product (GDP), the evidence on climate change, ecological destruction, population growth, and other sustainable measurements, suggests strongly that the current economic practices that dominate human activity on the planet, are dangerous and promote an unsustainable world. Thus, the first challenge is how can a nation, the U.S., maintain economic growth yet also begin to dramatically alter its ecological impact upon the nation and the world’s ecosystems? However, the question of economic growth and sustainability, also presents another pressing question: even if the U.S. and other western nations actually pursue a more sustainable path that emphasizes sustainable growth and not economic growth at great costs, how will it address economic inequality along racial lines that has historically divided the nation even during times of solid economic growth? In other words, in a transition to less economic growth and less consumption, how will inequality be addressed as well? One answer, to both of these complex challenges, according to some observers, is a concept growing in popularity and attention known as “degrowth.” In French economist Serge Latouche’s 2009 book, Farewell to Growth, Latouche discusses “degrowth” in great detail, but he also explains how racial bias (and bias in general) in the world today has no place in a post-GDP world that embraces the principles outlined in “degrowth” or, as he calls it, décroissance. Latouche writes in Farewell to Growth that “we resist, and must resist all forms of racism and discrimination (skin color, sex, religion, ethnicity?),” biases he insist are “all too common in the West today.” Latouche’s ideas are important for considering “degrowth” because racial bias and the historical problems presented by that bias, in the United States, continues despite efforts to address it in a significant manner. The World is Yours discusses, “degrowth,” economic growth, and racial inequality, seeking to not only provide a better understanding of the recent social, legal, and political meaning of these
terms, but also the difficulties presented by these ideas today in a world increasingly committed to economic growth even at the expense of human existence. How can a new economic paradigm be pursued that is more sustainable? Will African-Americans accept “degrowth” if the U.S. begins to implement a real sustainable agenda that addresses racial inequality? What governmental policy areas are capable of actually addressing the issue of economic growth and racial inequality? These are just a few of the questions presented by the rise of the “degrowth” movement around the world from the perspective of those historically left out of the discussions regarding global economic policy. However, “décroissance” or “degrowth,” the “political slogan” or “banner” that seeks to challenge “growth” or “development” (at least, the continued path of development) does present an interesting opportunity for all who are interested in a future that is more sustainable. Legal scholars, advocates, activists, economists, social scientists, scientists, cultural workers and many others have taken great interests in a new (yet quite established) mode of thinking on the issue of economic growth and equality. The World is Yours will attempt to organize this debate and the path forward in reconciling these competing issues.

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“Information Seeking in Voir Dire: Could Limiting or Modifying Juror Questioning Reduce the Racial Disparities Observed in Jury Selection?”

In Progress Description: (with Barbara O’Brien) As part of our research for the North Carolina Racial Justice Act litigation, we found a large, consistent disparity (about 2.4 to 1) in the relative rates at which prosecutors in capital trials struck black eligible jurors and eligible jurors of other races. This disparity persisted even after we controlled for frequently proffered race-neutral explanations for strikes (e.g., reservations about the death penalty, prior criminal history), suggesting that the Batson Court’s prohibition on the consideration of race in jury selection has not been completely effective. We are seeking a National Science Foundation grant to continue our analysis of the voir dire transcripts to better understand the process that produces strike disparities in order to offer more theoretically developed reform proposals. We propose to focus on the questioning process to document not only whether disparate questioning between black and other potential jurors occurs (something already well-established), but how it occurs.

Ralph Grunewald (UW-Madison: Center for Law, Society and Justice/Comparative Literature)  
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Panel Chair: Criminal Justice, and Presenter:  

“Officer Krupke and Clues: Creative Digital Media Assignments for Law and Society Undergrads” (Co-presented with Nancy Buenger and David Macasaet)  

Digital literacy – the ability to understand, evaluate, and manipulate information in multiple formats – has been recognized as a 21st century priority. Yet faculty often lack experience in the development and implementation of digital media assignments. This session will offer ideas for new media projects geared to law and society undergrads, as well as a discussion of the challenges and potential of digital pedagogy. Projects include student documentaries from the award-winning course “Gee, Officer Krupke: The Diverse Roles of the Players in the Juvenile Justice System,” and a collaboratively developed Internet site for “Clues: A History of Criminal Evidence.”

Barbara Hayler (University of Illinois Springfield: Criminal Justice)  
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Panel Chair: Transnational
Annie Hill (University of Minnesota, Twin Cities: Communication Studies)
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Participant

Elizabeth Hoffmann (Purdue University: Sociology)
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Panel Chair: Engendering Law

Thaddeus Hoffmeister (University of Dayton: Law)
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“Juror Privacy in the Digital Age”

Today, jurors are increasingly subject to scrutiny and investigation both inside and outside the courtroom. This has led some to call for greater privacy protections for jurors. This presentation examines the current state of privacy rights of jurors. This presentation also explores the steps courts can take to safeguard the privacy of jurors to include a discussion on the use of anonymous juries.

Pam Hollenhorst (University of Wisconsin-Madison: Institute for Legal Studies)
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Coordinator

Robert Glenn Howard (University of Wisconsin-Madison: Communication Arts)
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Chair: Digital Pedagogy

Trevor Hoppe (University of Michigan: Sociology & Women’s Studies)
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“Matching Local Newspaper Reports with Public Data to Systematically Analyze Trial Court Proceedings”

Research Method Description: Despite a longstanding interest in the courtroom as a contested space – both in the literal, legal sense and in the discursive, linguistic sense – few methods have been identified to assist scholars in systematically analyzing trial court proceedings. This paper proposes a novel method for identifying and analyzing criminal trial court cases, in this case focusing on the application of Michigan’s felony statute requiring HIV-positive individuals disclose their HIV-status before having sex. After obtaining deidentified public records of prosecutions from The Michigan State Police, I attempted to identify these cases using matched local newspaper reports. Once identified, I then requested their corresponding court transcripts. Because of obvious privacy concerns, I took extra precautions including deidentification and encryption to ensure my records were secure. This research design was reviewed by the University of Michigan’s Institutional Review Board and determined to be exempt from review. Using this method, I was able to identify 31 out of 55 (56%) known convictions, facilitating the compilation of what may be the first systematic collection of trial court transcripts for a particular state statute. These data are immensely useful for understanding how the law works in practice and how legal actors frame HIV disclosure as a crime. Both advantages and limitations to this method will be discussed.
Alexandra Huneeus (University of Wisconsin-Madison: Law)
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“The Role of the International Judge in Public Law Litigation”

Professional Interest Description: International judges have begun ordering reform of government institutions as a remedy for individual rights claims. The world’s two main regional human rights courts, in particular, have independently developed systems for handling cases that demand reform of government institutions. For example, the Inter-American Court of Human Rights, based in San Jose, Costa Rica, has taken on the practice of regularly issuing complex injunctive orders requiring reform of government institutions such as prisons and judiciaries. Mandating institutional reform from abroad might at first appear a quixotic task. The problems that hound judges at the national level – lack of enforcement mechanisms; lack of buy-in from the targeted parties; lack of knowledge about the local institution and its internal politics; concern about the legitimacy of the court – are magnified at the supra-national level. Indeed, the regional rights courts have had limited success in implementation of their orders. The practice is nonetheless growing. It deserves our attention because it has social and political impact; because it is shaping the development of the regional systems; and because it will give us a new perspective on reform litigation at the national level.

Victor Jew (University of Wisconsin-Madison: Asian American Studies Program)
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“Law’s Legibilities, Society’s Alterities: The Legal Governance of Race and Deviance”

In Progress Description: Law and society’s intersections often take cultural forms and this happens most constitutively when the law makes “legible” those social communities and circumstances marked as “Other(ed).” This paper will examine one form of law’s legibilizing: its way of making socially intelligible what seems racially perplexing and morally incommensurable. Drawing upon research in primary sources at a number of archival depositories, this paper will study examples of how the law attempts to define and make “legible” such “illegible” or shifting social situations as racialization and criminalization. This essay will explore these themes by examining the day-to-day records of state entities that administered the following sites of governance: 1) Chinese Exclusion (a racially discriminatory immigration regime), 2) Japanese American internment, and 3) criminal insanity in early twentieth century Wisconsin. Examining three different sites will allow comparison of the different ways that administrative entities invent “order” and create grids of legibility that narrate identities for communities and individuals that were popularly construed as socially incomprehensible and thus, “dangerous.” This paper will seek to identify institutional and discursive regularities in the legibilizing project and then contrast these state efforts with alternative or “counter legibilizings” performed by those deemed legally and socially confusing.

Gwen Jordan (University of Illinois Springfield: Legal Studies)
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“Teaching Law and Society Online: A Massive Open Online Course (MOOC) Experiment on the Sesquicentennial of the Emancipation Proclamation”

A MOOC is an online course that offers free and open registration, a publicly shared curriculum, and open-ended outcomes to an international audience. MOOCs integrate social networking, accessible online resources, and are facilitated by leading practitioners in the field of study but also build on the engagement of learners who self-organize their participation according to learning goals, prior knowledge and skills, and common interests. Over the past decade there has been a major movement toward MOOCs. In the summer of 2010, University of Illinois Springfield launched what was then the largest MOOC, engaging more than 2,600 participants in 70 different countries and generating more than a dozen articles in the Chronicle of Higher Education and other publications. The course focused on the ideology, technology, and operations of a MOOC. Since then, Stanford University and MIT have made major commitments
to launch MOOCs focused on topics in engineering. UIS plans to launch the first law and society focused MOOC in the spring of 2013.

The MOOC will build on the University’s resources and expertise in Abraham Lincoln, government and political science. It will draw heavily from The Third Wepner Symposium on the Lincoln Legacy and Contemporary Scholarship, “Emancipation: What Came Before, How It Worked, and What Followed,” being held in the fall 2012. The symposium and the subsequent MOOC will focus on the politics, doctrines, practices and legacies of emancipation in the United States and of systems earlier than that of the United States.

My presentation for the Midwest Law and Society Retreat will discuss the challenges and strategies of putting together a law and society focused MOOC. Most importantly, it will seek to engage in the audience in a debate over the merits, benefits, challenges and potential negative consequences of attempting such an endeavor.

Joshua Kaiser (Northwestern University: Sociology)
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“The Hidden Sentence: Rethinking Offenders’ Rights and ‘Collateral Consequences’ Punishment”

In Progress Description: Scholars and policymakers have long recognized the “collateral consequences” of criminal convictions. Yet, the few sanctions recognized in common knowledge barely begin to describe the full range of post-sentence punishments. Worse, we remain largely ignorant of the extra-criminal sanctions during sentences – and the two literatures even remain separate from one another. Together, these sanctions comprise the hidden sentence: punishment legally imposed as a direct result of a conviction but not part of an “official,” judicially articulated sentence – the largely unknown, unconsidered deprivation of rights to which the law subjects offenders, and that takes place during or after a visible sentence. And for most offenders, it is the part of their punishment that matters most. The first purpose of this article is to make the hidden sentence more transparent through a brief overview of rights lost after conviction. Next, I address the inadequate popularized term, “collateral consequences.” The hidden sentence is not “collateral,” and continuing to designate it so encourages opacity. Similarly, calling it merely a “consequence” relies on a narrow misrepresentation of “punishment.” It is irrelevant whether offenders should lose these rights; if they do, each purpose of criminal punishment supports revealing such penalties in public dialogue and judicial sentencing.

Tanya Karwaki (University of Washington: Law)
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“Medical Tourism: Grades Are Due”

In Progress Description: Medical tourism is a growing industry with the potential to impact health care systems in developed, emerging, and developing countries, increasing the globalization of health care. Sufficient data are lacking on who is traveling for what health care services, the outcome of these services, the patient perspective, and the impact of medical tourism on the home and destination countries. My research examines Australia and Japan, as examples of countries demonstrating a recent interest in medical tourism, and India and Thailand, as examples of early national entrants into medical tourism. Based on these examples, I recommend primary quantitative data collection regarding current medical tourism practices and secondary qualitative data collection regarding the major drivers for patients and nations pursuing medical tourism. These data will permit targeted interventions aimed at achieving specific policy goals, such as mitigating or reversing any trend indicating degradation of a national health care system accessible to national residents lacking the resources or desire to embark on medical tourism for their health needs.
Nicole Kaufman (University of Wisconsin-Madison: Sociology)
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“Reconstruction of the Gender-same/Gender-different Distinction in Programming for Formerly Incarcerated Women”

In Progress Description: It is now widely understood that “the community” must carry the burden of prisoner reentry: the re-incorporation of formerly incarcerated people into social life after their release in the U.S. The state has devolved community corrections services to non-state, community-based organizations, and opened competition for grants to faith-based organizations. Aside from evaluations of programs on the basis of recidivism rates, researchers know little about what actually happens in community-based programs geared toward returning prisoners, especially in how messages about belonging and rights are delivered in gendered ways when ex-prisoners are remade into potential citizens, or how women are treated as inviting targets for this moral work. I will share results from research on ways that organizations and policy-makers construct formerly incarcerated women through policies, funding streams, missions, and actual on-the-ground programs. I use data from two Southern Wisconsin counties with the most formerly incarcerated people returning after release from state prisons each year (Dane and Milwaukee): documents (administrative and organizational records), interviews I have conducted with organizational staff, and observations I have made of programming and community events. Based on literature on feminist penology and criminology and feminist studies of the welfare state, I expected that organizations’ work would fall along the distinction of gender-same and gender-different philosophies and practices. Gender-sameness is an approach that sees men and women as having equal worth, views men as normative citizens free of gender, sees citizenship based in the public sphere, and ignores men and women’s differences, family, and kin and romantic relationships. The alternative gender-difference approach offers an ideal for citizenship valuing relationships, stressing women’s participation in the family, and seeing women’s citizenship as an expression of caring. I observe that this expectation does not hold up in how services are actually responding to the presence of formerly incarcerated women in Southern Wisconsin. These organizations have different and gendered visions for women ex-prisoners as citizens, but they do not fall clearly into this framework. Rather, I discuss that organizational work falls along a religious-to-secular spectrum, with gender embedded within religious approach. I particularly discuss distinctions between more loosely religiously inspired organizations and those expecting a religious commitment from adherents. I discuss structural reasons why the prisoner reentry field may be constructed differently in this setting compared with settings where the gender-same/gender-different paradigm was envisioned, resulting in what I observe as a distinctive set of gender philosophies and practices for criminalized women. I seek to reconstruct gender theory in this case and welcome input.

Patrick Keenan (University of Illinois: Law)
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Participant

Rick Keyser (University of Wisconsin-Madison: Legal Studies)
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“Property Law and Civil Society: Courts, Conflicts, and Procedure in Champagne, France, 1150-1300”

This paper will examine the role of ecclesiastical courts in twelfth and thirteenth-century Champagne as providers of voluntary jurisdiction for property contracts and disputes and will challenge the importance of centralizing bureaucracies in the growth of law and courts.

Heinz Klug (University of Wisconsin-Madison: Law)
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Panel Chair: Human Rights
Jeff Kosbie (Northwestern University: Law and Sociology)
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“Disability and Medical Claims in HIV/AIDS and Transgender Discrimination Litigation”

In Progress Description: In the 1980s, as they responded to HIV/AIDS, LGBT legal organizations relied heavily on disability law. In the process, they avoided extensive discussion of the social meaning of sexuality and its role in producing the epidemic. Similarly, in more recent decades, these same organizations have used medical narratives of transgender identity in arguing that discrimination against transgender people is sex discrimination. These medical narratives avoid claims about the meaning of trans identity and gender identity expression. This paper compares these strategic uses of disability law and medical narratives. In both cases, LGBT legal organizations made seemingly non-identitarian claims for strategic reasons. Through this comparison, the paper addresses the role of legal organizations in processes of law and social change. This paper is part of my broader dissertation comparing strategies of four LGBT legal organizations. The comparison I will address in this paper was suggested during a presentation of my preliminary analysis of HIV/AIDS cases. I hope to have an early working draft of this paper by the time of the retreat.

Ada-Maria Kuskowski (University of Wisconsin-Madison: Legal History)
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“The Formation of the Medieval Legal Practitioner”

This paper will examine how people active in medieval French courts, but without a university education in law, actively tried to shape a group of practitioners to to think, speak, and perform within a legal framework.

Erik Larson and Patrick Schmidt (Macalester College: Sociology)
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“The Second Generation of The Law and Society Reader”

Law & Society Description: Erik Larson and Patrick Schmidt are at work editing the second Law and Society Reader, which has been commissioned by the LSA (which receives the royalties). The first version was edited by Rick Abel and contained articles from the LSR through 1990. Their volume is due to the publisher (NYU Press) in October 2012, and they would like to use this occasion to get feedback and engage in discussion surrounding the opening/introductory chapter. This chapter frames the question: where have we come as a field in this “second generation” of scholarship published in LSR?

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Discussion Leader

Chih-Ming Liang (University of Wisconsin-Madison: Law)
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“A Genealogy of Governance”

In Progress Description: I would like to present the first substantive chapter of my SJD dissertation titled “Law, Governance, and Patient Safety,” which attempts to explore the interaction between law, governance, and healthcare system, and it selects the patient safety
movement in the U.S. as a case study. It is widely recognized that the discussion on governance is now ubiquitous in social sciences and legal scholarship. However, it is equally well-known that just like democracy, justice, and accountability, governance is easily one of the most elastic concepts known to human knowledge. The first chapter, titled “A Genealogy of Governance,” plans to conduct a literature review of the interdisciplinary discussion on governance. By doing so, the author hopes to point out that it is very easy for scholars on governance, in particular those left-leaning ones, to forget its deep neoliberal root. As a result, many easily accept governance as a progressive social transformation which promises a more efficient, transparent, and participatory democracy. This view is dangerous in that it deprives the critical edge of the governance literature. In particular, it diverts the energy of legal scholars on governance away from exploring the relationship between the governance literature and the traditional administrative and constitutional jurisprudence, which might help us develop doctrinal and jurisprudential principles that could be applied by the court in pursuing the normative ideals of governance.

Raizel Liebler (John Marshall: Law)
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“Nonsensitive in Isolation, Sensitive in Aggregation: The Importance of Data Granularity for Privacy” (Keidra Chaney, Raizel Liebler & Clarissa Simon)
[See abstract listed under Chaney]

Michael Light (Pennsylvania State University: Sociology)
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“Immigrants and Outlaws: The Salience of Citizenship in Criminal Courts”

In Progress Description: Although a large body of research exists on the association between immigration and crime, the relationship between immigration, citizenship and criminal punishment has received far less attention. As such, several fundamental questions remain about how the U.S. sanctions noncitizens and whether citizenship is a marker of stratification in U.S. courts. Are citizens treated differently than noncitizens – both legal and undocumented – in criminal courts? Has the association between citizenship and sentencing remained stable over time? And is the oft-cited finding that Hispanics are punished more harshly than whites confounded by the association between Hispanic ethnicity and citizenship status? This research uses several years of data from U.S. federal courts to answer these and related questions. Results indicate that citizenship status is consequential for sentencing outcomes – indeed more powerful than race or ethnicity – and that noncitizens receive harsher punishment at sentencing. In addition, the citizenship effect is amplified for nonwhites, and accounting for citizenship status attenuates sentencing disparities between whites and Hispanics. These findings align with theories of law and social control that emphasize the perils of being on the social periphery of society, and they have implications for debates concerning state social control and the salience of citizenship in modern times.

Sida Liu (University of Wisconsin-Madison: Sociology)
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Panel Chair: On Law Online

Jamie Longazel (University of Dayton: Sociology, Anthropology, and Social Work)
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“Beware of Notarios: Advocacy, Lay Lawyering, and Governance”

In Progress Description: The U.S. Department of Justice recently rolled out a Recognition & Accreditation program designed to combat “notario fraud” – an offense committed when a non-lawyer unlawfully poses as an attorney and provides legal advice to unsuspecting immigrants. The program provides non-attorney advocates with the opportunity to apply for accreditation and thus the ability to represent migrants in immigration court. In a previous study examining this topic, I explored the role played by governmental and professional organizations (e.g., Bureau of
Consumer Protection, American Bar Association) in teaching immigrants to protect themselves from notario fraud. I found here that the discourse employed by the anti-notario fraud apparatus had the effect of teaching migrants to become “better” neoliberal citizens. They were encouraged to consume carefully, to be aware of “threatening” notarios, and to embrace the American dream. This discourse, in effect, diverted attention away from the structural patterns that are responsible for migrant and notario vulnerability. In this presentation, I will present early findings from the second stage of this research, which entails conducting interviews with Accredited Representatives in order to determine the efficacy of the DOJ’s lay lawyer program and whether such modes of governance apparent in the first stage of my research are also visible on the ground.

Maureen Lowry-Fritz (Northern Illinois University: Political Science)
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“Hope Springs Eternal: Court-Initiated Social Reform in the Development of Special Education Policy”

In Progress Description: In this paper, I apply Gerald Rosenberg’s judicial policy-making framework to the development of special education policy in the U.S. I suggest that the special education litigation presents a case in which just two of Rosenberg’s three constraints are overcome, and three of the four enabling conditions are present. As such, this case serves to illustrate an instance in which the courts did, indeed, produce significant social reform, without first overcoming all three of Rosenberg’s constraints.

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Discussion Leader

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“Officer Krupke and Clues: Creative Digital Media Assignments for Law and Society Undergrads” (Co-presented with Nancy Buenger and Ralph Grunewald)

Digital literacy – the ability to understand, evaluate, and manipulate information in multiple formats – has been recognized as a 21st century priority. Yet faculty often lack experience in the development and implementation of digital media assignments. This session will offer ideas for new media projects geared to law and society undergrads, as well as a discussion of the challenges and potential of digital pedagogy. Projects include student documentaries from the award-winning course “Gee, Officer Krupke: The Diverse Roles of the Players in the Juvenile Justice System,” and a collaboratively developed Internet site for “Clues: A History of Criminal Evidence.”

Stewart Macaulay (University of Wisconsin-Madison: Law)
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Participant

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“An Iconic Jury Trial in Illinois: The First Criminal Trial of Rod Blagojevich”

In Progress Description: Former Illinois Governor Rod Blagojevich was tried in federal district court in Illinois for the selling of President Barack Obama’s former U.S. Senate seat, among other charges. The first jury trial resulted in a hung jury on all but one charge. I will argue that this first jury trial achieved iconic status in Illinois and the U.S. One question this paper will examine is what is required for a jury trial to achieve “iconic” status? This paper will suggest several indicia, including the renown of the central figure, the extent of the media coverage, whether the trial has become part of everyday conversations, whether the trial has become fodder for late-night talk
show hosts, and nowadays, whether the trial has become a topic in the blogosphere. Iconic jury trials also teach lessons about the jury, and the first trial of Blagojevich is no exception. The case taught important lessons about the role of the hold-out juror, the role of the foreperson, the role of post-verdict interviews by the media, and the traditional role of the jury verdict as a protection of the defendant against the formidable powers of the government.

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Plenary Breakout, Discussion Leader & Panel Chair: Cultural Representation

Jonathan Marshall (Carthage College: Political Science)
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“One Texas, Two Systems: Indigent Defense in Dallas and Tarrant Counties”

In Progress Description: Are court systems that have appointed counsel for indigent defense different from court systems that have public defender's offices? Scholars of law and society, sociology, and political science have argued that they are on a number of dimensions, including sentencing outcomes, prosecutor behavior, courthouse culture, efficiency in processing cases (measured either in time or money), and the nature of the disposition process. Yet appointed counsel and public defenders typically do their work in very different environments, making any systematic comparison between the two subject to all sorts of confounds. This research compares the appointed counsel system of Tarrant County with the public defender system of Dallas County because their proximity, demographic and cultural similarity, and shared legal framework eliminate many of those confounds. A structured, focused comparison of drug offense cases (which are more routine and less politically salient than, for example, violent felony cases) in the two counties will allow us to isolate the effects that different systems of indigent defense have on the criminal justice process.

Nicole Martinez (University of Chicago: Comparative Human Development)
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“Criminal Responsibility and Mental Illness in the Era of Neuroscience”

In Progress Description: The attitudes of the public (and legal professionals’ perceptions of the public’s attitudes) towards the mentally ill play a significant role in how policy is shaped and enforced in the field of criminal and mental health law. However, the negative social meanings attached to mental illness and the mentally ill have often worked as barriers to changes in policy that might serve to improve the treatment of mental illness and ensure that far fewer people with severe mental illness are incarcerated. There has been promising research from the fields of neuroscience, as well as psychology and the social sciences, that suggests more humane and effective ways to provide treatment and even reduce the burden of mental illness. I am concerned with the question of how the proliferation of recent neuroscientific research and concepts are being interpreted by the legal profession and the public. In particular, I am interested in how particularly in how mutually constitutive discourses regarding the mind, the will and personhood in the fields of law, neuroscientific information, and popular culture serve to construct concepts of responsibility. There has been a great deal of debate among legal scholars around the extent to which applications of neuroscientific research to the criminal justice system may alter popular concepts of responsibility in a manner that leads to major transformations in how legal standards of responsibility are constructed and understood. New findings concerning the biological correlates of behavior are thought to have the potential to change attitudes towards mental illness and affect popular perceptions of when and to what extent mentally ill persons are responsible for their actions. As some legal scholars phrase the issue, the ability to identify the role of specific brain structures and chemicals that “cause” people to act in certain ways will lead to a new era of “the brain made me do it” excuses for behavior that undermine the ability to assign responsibility, and therefore punishment, for behavior. There is also a powerful moralizing discourse within American culture relating to personal responsibility – good citizens are people who take personal responsibility for their position and the things that happen in their life. The moral component of
this framework means that when people are perceived as not taking appropriate responsibility for their actions, that lack of responsibility is seen as justifying punishment rather than social support or therapeutic intervention. This moralizing discourse on personal responsibility comes into tension with models of behavior that point to both neurochemical and social determinants of behavior. For example, in therapeutic situations, a mentally ill person may learn a biological model of his or her own behavior that would seem to minimize their sense of blame or even agency for their actions, while at the same time being trained to have sufficient sense of agency and responsibility to be able to do the things deemed necessary for recovery, such as taking medication and following the rules of social service agencies. Moreover, many people with mental illness have internalized the societal expectation that in order to be a person of worth and value in society, they must accept personal responsibility for their actions. I am interested in researching how people who, on a daily basis, apply neurochemical, legal and therapeutic models of behavior to mentally ill persons, particularly in the criminal justice system, frame and employ concepts of responsibility to the actions of mentally ill people. I combine discussion of the legal, folk and neurochemical models of behavior with interviews and of legal and mental health professionals, as well as people with mental illness.

Michael Massoglia (University of Wisconsin-Madison: Sociology)
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Panel Chair: Border Negotiations

Elizabeth Mertz (University of Wisconsin & American Bar Foundation: Law and Anthropology)
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Participant

Meghan Morris (University of Chicago: Anthropology)
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“Property and Land Claims in Colombia”

This project focuses on the making and adjudication of claims to property in land by internally displaced people in Colombia. Colombia is home to one of the largest internally displaced populations in the world, totaling approximately five million people. Forced from their land by a combination of the armed conflict, commercial agricultural expansion, extractive industry, and narcotrafficking, many of Colombia’s displaced follow a route from rural to urban areas, fleeing rural farms and moving to expanding slums on urban peripheries, colloquially known as invasiones. In 2011, the Colombian government initiated a rural land restitution program as part of its transitional justice process; this land restitution process is designed both to return these expropriated or abandoned rural lands to the displaced and to grant formal title to the lands. A significant number of Colombia’s displaced population living in urban centers, however, are unable or unwilling to return to the rural areas from which they were displaced, either due to the passage of time or the continued conditions of insecurity in those areas. While these displaced persons may be filing claims for rural land restitution – some simply hoping for compensation for the land they lost – many are simultaneously attempting to negotiate claims to property in urban slums, where property arrangements are often informal and unstable, and intraurban (re)displacement due to criminal activity or municipal megaprojects is common. My research follows the movement of displaced people from the rural areas of the region of Urabá, in northwest Colombia, to the city of Medellín, tracking their claims to land and property through the many and often overlapping jurisdictions in which they are filed. In this process of tracking, I place particular emphasis on the relationship of property to security, which is a determining factor for the success of both rural and urban land claims. I also focus on the role that race and ethnicity play in the making and adjudication of land claims, as well as the ways that the characteristics of rural and urban landscapes (such as cropping patterns and soil types) determine the kinds of property rules that are created.
Steven Munch (Northwestern University: Law and Sociology)  
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“The Transformation of the Corporation, from Serving Public Objectives to Enriching Private Interests”  

In Progress Description: The corporation in the early United States was very different than that seen today. The vast majority of the corporate charters in the nation’s early history were granted for publicly oriented ventures like turnpikes and utilities; less than 5% went to general business corporations (Hurst 1970). Many believed that the corporate form offered too many advantages and privileges for it to be used by mere “selfish” or “private” enterprises. By contrast, today, the corporate form is used for an incredible variety of business ventures, most of which are free from special obligations to or expectations from the public. I am interested in this broad shift in the understanding and use of the corporation. I am now starting research on how different political and social forces (e.g. interest groups, regulatory races) helped facilitate the shift by shaping corporate law and policy.

Amy Myrick (Northwestern University: Law and Sociology)  
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“Why do 20th Century U.S. Social Movements Try to Amendment the Constitution (or Not)?”  

In Progress Description: My dissertation aims to produce a causal theory of why four major 20th century U.S. movements either sought or did not seek federal constitutional amendment as a route to their goals. I cover the Progressive movement, Civil Rights movement, Feminist movement in the 1960s-70s, and post-Reagan Conservative movement. I focus on amendment attempts (of which there are many), not just successful amendments (there are few.) There are distinct patterns in each movement’s use or non-use of the strategy. I plan to look at organization features, framing techniques, and group culture as possible determinants, as well as external events such as Supreme Court decisions and political opportunities. I am now about to defend. By September I will have collected some data. Using government documents I will construct a dataset to show patterns over time in the number and content of amendment proposals. I will then use archival sources to elaborate on why movements did or did not seek amendment. I’d like to present at that stage of the research, although I am not now sure what the issue will be.

Jesse Nasta (Northwestern University: History)  
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“In a State of Slavery, In a State of Freedom: African American Mobilities, Legal Culture, and Personal Status on Slavery’s Western Border, 1803-1865”  

Examining everyday legal disputes surrounding black mobility in the slaveholding city of St. Louis and its three adjacent Illinois counties, this dissertation examines the relationship between state jurisdiction, mobility, and African American personal status on slavery’s northwestern border during the six decades before and during the Civil War. How these legal disputes – ranging from freedom suits to fugitive slave trials to disputes among whites over slave escapes, slave hiring, and slave sales – transformed St. Louis and Illinois into opposing slave and free territories is this dissertation's central question. In exploring this question, the dissertation explains how these local, everyday legal disputes gradually gave meaning to the legal categories of “slave” and “free” states and enslaved and free individuals. In doing so, it will trace the tense, mutually constitutive relationship between everyday social practices of black mobility, both forced and voluntary, and the formal laws, legal processes, and legal institutions that together determined whether Illinois – and the African Americans who lived, worked, and traveled across its borders – were slave or free. Perhaps more than any other social practice, African American movement sparked conflict between masters and those they transported as slaves, between free blacks and local legal officials, and among whites who hired and sold African Americans, opening the question of which African Americans held which status and where. More than federal ordinances, state statutes, and appellate court rulings – what most historians assume to be “the law” – it was these local, everyday legal conflicts that gradually gave meaning to the legal categories of slave and free states and enslaved and free individuals.
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“Information Seeking in *Voir Dire*: Could Limiting or Modifying Juror Questioning Reduce the Racial Disparities Observed in Jury Selection?”

In Progress Description: (with Catherine Grosso) As part of our research for the North Carolina Racial Justice Act litigation, we found a large, consistent disparity (about 2.4 to 1) in the relative rates at which prosecutors in capital trials struck black eligible jurors and eligible jurors of other races. This disparity persisted even after we controlled for frequently proffered race-neutral explanations for strikes (e.g., reservations about the death penalty, prior criminal history), suggesting that the Batson Court’s prohibition on the consideration of race in jury selection has not been completely effective. We are seeking a National Science Foundation grant to continue our analysis of the *voir dire* transcripts to better understand the process that produces strike disparities in order to offer more theoretically developed reform proposals. We propose to focus on the questioning process to document not only whether disparate questioning between black and other potential jurors occurs (something already well-established), but how it occurs.

**Michelle Phelps** (Princeton University: Sociology)
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“Understanding a Liminal Institution: The Development of Mass Probation in Michigan”

In Progress Description: Over the past decade, sociologists have generated a large literature on the rise of mass incarceration. However, increases in the number of probationers under community supervision have been even larger in terms of absolute growth – the U.S. currently supervises 3 times as many probationers as state and federal prisoners – and yet we have little socio-legal research on the importance of this institution. This expansion of probation is particularly surprising because probation was one of the crucial elements of the “rehabilitative ideal,” the guiding ideology undergirding punishment before the punitive turn. Thus, the expansion of probation, a relatively lenient, inclusive sanction, during the largest prison expansion in recent history, presents an interesting puzzle for scholars. This paper examines the rise of probation in one state – Michigan – documenting how and why probation continued to be the predominant form of penal control during the prison boom. More theoretically, the paper contributes to scholars’ understanding of the “variegated” nature of punishment, exploring how narratives of rehabilitation, punishment, and fiscal costs were uniquely refracted through the framing and practices of probation.

**Victor Quintanilla** (Indiana University: Law)
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“Different Voices: A Gender Difference When Reasoning about the Letter Versus Spirit of the Law”

In Progress Description: Carol Gilligan famously expressed the view that, in some situations, women and men speak in different voices and reason differently about the law. This talk sheds light on gender differences in legal decision-making and supports the view that, when solving some legal problems, women and men may speak with different voices. I shall discuss my recent online study conducted on the American public. Participants were asked whether rules were violated in three scenarios that pitted the “letter of the law” against the “spirit of the law.” In each scenario, a decision finding a rule violation was aligned with the letter, but was inconsistent with the spirit of the law. The study revealed a statistically significant effect of gender on legal decision-making. On balance, male participants sided with the letter and female participants sided with the spirit of the law across scenarios. A letter-to-spirit scale was fashioned, and women scored much higher on the spirit side of that scale then men. Moreover, women and men exhibited differences in the kinds of extra evidence that they would have liked to decide the scenarios. Women tended to prefer evidence related to the spirit of the rule, while men preferred evidence related to the letter of the rule. Even so, both women and men agreed that the protagonists committed little to no harm, and neither women nor men tended to impose punishment on the protagonist.
Mark Richards (Grand Valley State University: Political Science)

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“The Challenges of Internet Defamation in the U.S. and China”

In Progress Description: (Coauthor: Yi Zhao) With the rise of social media, the challenges of Internet defamation appear to be very similar in the U.S. and China: Damaging rumors spring daily onto the net on a global scale, but the laws in these countries have lagged. The challenges facing the two countries are fundamentally different. New York Times v. Sullivan subordinated reputation to free expression, although Dun & Bradstreet did protect private individuals. In Snyder v. Phelps (2011), which involved the Westboro Baptist Church, the Court reserved the question of harm to reputation due to Internet postings. In China, the right to reputation has been extolled in the past twenty years as fundamental to human dignity while freedom of expression was intentionally overlooked. Due to the opaqueness of its politics, moreover, rumors enjoy a much larger market in China than in the U.S. As a result, the two countries face different issues when dealing with Internet defamation. For the U.S. the key issue is how to sustain free expression while protecting reputation and privacy. For China, the issue is how to maintain its emphasis on the right to reputation while redefining its boundary by bringing in freedom of expression.

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“How Does Law Enable or Constrain the State in Shaping Individual Health Behaviors?”

In Progress Description: I am motivated to ask this question because of the changing nature of how law shapes governmental involvement in individual and population-level health. While this subject is of pressing policy concern, and tied up with substantive normative quandaries, at its root, it hinges upon jurisprudential questions about the nature of individual rights and the scope for social regulation. For much of its history, this country has implemented its public health goals through two primary mechanisms: by building infrastructure and by treating individuals or controlling individual behavior. Infrastructure building included such efforts as improving sanitation, providing clean water, and abating common sources of disease, such as stagnant water in malaria or yellow-fever prone areas. Treatment and control efforts focused on limiting the spread of communicable diseases through such interventions as voluntary (or involuntary) vaccination and quarantine. Each development in public health activity was accompanied by a corresponding change in state legal power over persons and places. Due, in large part, to the success of past public health efforts, along with improved housing and nutrition, communicable disease has receded significantly, though not disappeared, as a public health threat. In its absence, chronic diseases, many of which have strong social and behavioral determinants, have increased in prevalence. Accordingly, they have become an increasing focus of local, state and federal public health officials, as well as public and private sector insurers and employers. Such concerns relate to conditions such as diabetes, high blood pressure, heart disease, cancer and the various disease sequelae of health related states such as smoking, inactivity or obesity. The concerns regarding chronic conditions relate both to the individual health consequences of these ailments, and the social costs they impose. Thus, increasingly, the focus of public health has been on has been on changing individual behavior to advance population-level goals. Although such actions on the part of state and federal governments are not without precedent (consider the early 20th century eugenics movement or efforts dating back to the First World War efforts to prevent venereal disease among soldiers), the degree of concern now expressed about the individual and social consequences of health behaviors is unprecedented. Increasingly, non-state actors such as employers and insurers are implementing public health type activities. Much of this activity goes under the rubric of wellness. These interventions are designed to improve individual heath as well as contain healthcare costs. Such interventions have the potential to be even more invasive than public sector activity. For that reason, a comprehensive account of how the state can shape health behavior must include some consideration of how the state’s regulation (or lack thereof) of non-state actors impinges on individual health choices.
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Panel Chair: Law Makers

**Boaventura de Sousa Santos** (Universities of Wisconsin, Coimbra, and Warwick: Law and Sociology)  
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**Patrick Schmidt** and **Erik Larson** (Macalester College: Political Science and Sociology)  
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“The Second Generation of *The Law and Society Reader*”

Law & Society Description: Erik Larson and Patrick Schmidt are at work editing the second *Law and Society Reader*, which has been commissioned by the LSA (which receives the royalties). The first version was edited by Rick Abel and contained articles from the LSR through 1990. Their volume is due to the publisher (NYU Press) in October 2012, and they would like to use this occasion to get feedback and engage in discussion surrounding the opening/introductory chapter. This chapter frames the question: where have we come as a field in this “second generation” of scholarship published in LSR?

**Mitra Sharafi** (University of Wisconsin-Madison: Law)  
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**Karl Shoemaker** (University of Wisconsin-Madison: Legal History, Law and Society)  
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“The Devil at Law”

This paper will examine the role of technical medieval legal procedure in explaining from a lawyerly point of view some of the central tenants of medieval Christianity, especially the Atonement.

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Panel Chair: Collateral Consequences

**Clarissa Simon** (Northwestern University: Education and Social Policy)  
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“The Devil at Law”

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“Nonsensitive in Isolation, Sensitive in Aggregation: The Importance of Data Granularity for Privacy” (Keidra Chaney, Raizel Liebler & Clarissa Simon) [See abstract listed under Chaney]

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Panel Chair: Judicial Policy and Courthouse Culture
“Legal Challenges and Policy Consequences: Framing Creationism and School Prayer”

In Progress Description: Social movement framing in the legal setting has consequences beyond the courtroom, unfortunately little is known about how legal framing matter after a specific legal challenge is finally adjudicated. This paper begins to fill that lacuna by examining the extra-legal consequences of legal framing that was done around the issues of creationism/intelligent design and school prayer/bible reading. These battles have played out over the last 80 and 50 years, respectively, in the legal system with movements on both sides turning to the courts to challenge or defend actions by local school boards and state legislatures. Movements engaged in the legal arena are constantly working to frame their movements in a way that will be salient to the court and bring a successful decision, these frames have had unintended consequences outside of the legal arena. Using comparative historical case studies I highlight the consequences that these legal frames have had on policy adoption following each precedent setting court case. My findings suggest a framing/policy feedback loop exists for movements that enjoy the support of committed policy makers as well as broad-based public support. Policymakers interested in these two cases often rely on social movement framing from the previous court case, even when those frames were unsuccessful, in constructing subsequent legislation.

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Keynote Speaker, Discussion Leader & Panel Chair: Health Care

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Discussion Leader and Panel Chair: Sexuality

Felicity Turner (Indiana University: Legal History)
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“Insiders and Outsiders: Infanticide and Local Legal Processes in the Nineteenth-Century U.S.”

In Progress Description: This outline of a chapter-in-progress will use cases of infanticide to illustrate how the local legal system functioned in the nineteenth-century United States. Drawing on specific examples from the Northeast, the Midwest, and the South, I argue that “insiders” – people who were well-known within their local communities – generally fared better when confronted with a charge of infanticide than “outsiders,” those who were strangers or new to the community. This logic also extended to witnesses with the merits of testimony and evidence presented by experts evaluated according to the reputation and credibility of each individual witness, rather than simply his or her status as a woman or a slave, for example, within the community. The dynamic between insiders and outsiders also explained regional similarities in outcomes of cases. While it seems obvious that strangers were more easily identified and alienated in small, rural communities in both the Midwest and South, for instance, the anonymity of cities in the Northeast often meant that women accused of infanticide found themselves without friends or family at a time when they were sorely needed. While scholarship in U.S. legal history has acknowledged the importance of the dynamic between insiders and outsiders, the relationship has not been fully explored. The insights of law and society scholarship, in which this dynamic has been more fully interrogated, should open up new avenues for my work to fruitfully investigate.
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Panel Chair: Courts and Conflict in the Middle Ages

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Panel Chair: Defining Legal Status

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“The Challenges of Internet Defamation in the U.S. and China”

In Progress Description: (Coauthor: Mark Richards) With the rise of social media, the challenges of Internet defamation appear to be very similar in the U.S. and China: Damaging rumors spring daily onto the net on a global scale, but the laws in these countries have lagged. The challenges facing the two countries are fundamentally different. New York Times v. Sullivan subordinated reputation to free expression, although Dun & Bradstreet did protect private individuals. In Snyder v. Phelps (2011), which involved the Westboro Baptist Church, the Court reserved the question of harm to reputation due to Internet postings. In China, the right to reputation has been extolled in the past twenty years as fundamental to human dignity while freedom of expression was intentionally overlooked. Due to the opaqueness of its politics, moreover, rumors enjoy a much larger market in China than in the U.S. As a result, the two countries face different issues when dealing with Internet defamation. For the U.S. the key issue is how to sustain free expression while protecting reputation and privacy. For China, the issue is how to maintain its emphasis on the right to reputation while redefining its boundary by bringing in freedom of expression.