# 2018 Midwest Law and Society Retreat Abstracts
# Participant List with Abstracts

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"Bounded Universalism: Toward a Theory of Legal Relativism"

The rise of cultural studies of law in the fields of legal anthropology and legal history have demonstrated that law and culture are deeply intertwined. Building off of these studies and the core beliefs of legal realism this paper asserts that a relativist understanding of law is a more accurate picture of the way legal systems work. Relativism not only indicates variations across cultures, but within a given culture over time. This relativism permeates all aspects of the law including substantive law, procedures, and rights. Providing an example in each of these areas I demonstrate that morality is not only contingent on culture, but that culture changes over time so that law must change with culture. Legal relativism does mean that conceptions of law that fix law to a given point (such as originalism) or argue for universalism principles of law (such as natural law) must be abandoned. However, it does not mean that law is without morality, but rather that the morality that guides law is bounded by the society that defines morality while creating law. Every legal system conceptualizes itself as universal, but it must remain a bounded universalism.

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Moderator: 1B, Corruption, Governance and Industry

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"From Decarceration to E-Carceration"

Over the past decade the issue of mass incarceration has captured the attention of many, as the U.S. has come to hold the sole distinction of incarcerating more people than any other country in the world. Such attention has help to drive a new shift toward exploring decarceration. This developing movement has garnered support within a wide range of political and social sectors, from critics of deplorable prison conditions, to pretrial justice advocates concerned with the disadvantages faced by people struggling with poverty in

money bail systems, to fiscal conservatives alarmed by the steep financial costs of over-criminalization. In this move toward decarceration, digital surveillance strategies and devices have been presented as viable solutions to the problem of mass incarceration. These technologies, that shape the digital corrections surveillance continuum, from its entry point with predictive analytics software, to its community manifestations through electronic anklet tracking monitors, and computerized probation and parole reporting kiosks, are promoted as moderate penal sanctions that are more humane and efficient forms of correctional rehabilitation. They enable decarceration, albeit with enhanced surveillance in the community as the compromise. This paper questions whether current digital surveillance methods should be considered adequate measures to address the harms associated with mass incarceration. The paper ultimately concludes that while the use of surveillance technology may help temporarily reduce the number of people within public and private prisons, it likely will fail to the resolve, and may exacerbate, one of the greatest harms of mass incarceration: the maintenance of subordinated groups.

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"Environmental Justice and Climate Change: Case Study of the Maldives"

The total submergence of small island states due to sea level rise associated with climate change raises several legal issues such as those relating to statehood and nationality. It also raises issues relating to the right to self-determination of the people and the whole range of rights that would be at jeopardy as a result of states disappearing. This presentation will discuss the rights of people that are at risk, whether migration on masse is an option and if so, the responsibility of the international community to facilitate this within a framework of environmental justice. Climate change raises profound justice issues – those who contributed most to the problem are not those who will be affected most by its consequences. At the same time, these people badly need to "develop." What does development mean in the context of climate change? What does the social pillar of sustainable development mean for the people of small island states? How do their vulnerabilities intersect? What is the role of government? This presentation seeks to flesh out some of these intersections through a case study of the Maldives.

Panelist: 6A, Roundtable: Law and Society Scholarship and the Global South

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"The People's Bridge: Popular Sovereignty and the Charles River Bridge Case"

This working paper examines the "free bridge" controversy in Boston in the 1820s-30s, which arose from a popular movement to limit the monopoly power of local bridge corporations in the name of popular sovereignty and ensuring widespread access to the

market. The state regulation that resulted from this movement prompted one of the most famous early legal cases on state-corporate relations, Charles River Bridge v. Warren Bridge (1836), which solidified corporations' ability to claim federal protection under the Contract Clause of the Constitution and helped lay the foundation for the legal doctrine of constitutional corporate personhood. The received wisdom is that this case was simply a fight between two corporations in which the Supreme Court, for political and policy reasons, denied the property and contract rights of the older corporation in favor of allowing the state to promote economic and technological advancement by chartering the newer corporation. However, this paper argues that this case was primarily a debate over the nature of the corporation: whether the people were sovereign over the corporations that they, via the legislature, had created for the purpose of achieving internal improvements; or whether such corporations could shield themselves from public accountability by claiming constitutional rights. By allowing "internal improvement" corporations like bridges, turnpikes, and railroads to claim constitutional rights under the Contract Clause, the Court endorsed a vision of the corporation not as an agent of the public but as a private, rights-bearing entity whose interests were potentially opposed to the public welfare.

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Moderator: Panel 3A, Women, Rights and Participation

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"Protection from Prosecution: Privilege and Illicit Substance Use in Reality TV"

Popular criticisms of the war on drugs have focused primarily on the consequences for poor communities and communities of color, but there has been less attention to the ways that white, middle class and wealthy users have been protected from these consequences. Working within the legal consciousness framework, I argue that this exceptionalism is supported by popular media. Using data from a qualitative content analysis of reality television shows like Intervention and Celebrity Rehab, I find that these shows feature predominantly white, middle class and wealthy users who bypass the criminal justice system to enter expensive private treatment programs. In the few instances where law enforcement officers are involved, these encounters are treated as regrettable and the shows actively support alternative sentences. At the same time, the fact that these shows rarely depict poor people or people of color, subtly indicates that not all people are entitled to expensive private treatments. While reality television does not affect public policy directly, it does affect how lay audiences think about substance use and social responses. Reality television shows focusing on substance use contribute a dualistic legal consciousness in which white, middle class people deserve treatment while poor people and people of color deserve criminal justice interventions.

Moderator: Panel 5A, Courts and Justice

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"Holistic Justice: The Promise and Challenges of the Detroit Street Outreach Court"

The Detroit Street Outreach Court is a collaborative partnership among activists, social service agencies, religious institutions, legal aid, state entities, and judges within the 36th District of Detroit. Homeless clients are introduced to the problem-solving court via local service providers and, if eligible, they can significantly reduce fines owed to the city for parking violations and other minor infractions. This presentation engages data compiled from qualitative interviews with community partners and participant observation to explore the promise that this unique, collaborative court holds for holistic justice in Detroit. The presentation also highlights the challenges and barriers to achieving a truly community-based and inclusive model of justice in the context of both profound racial and socio-economic inequality and the adversarial and often punitive court system and structure.

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"Property in Sociological Vacuum: Lawyering for Social Change in Racial Covenant Cases"

Socio-legal scholars have presented a mixed portrait of the relationship between U.S. cause lawyering and social change. The paradigmatic cause lawyers of the mid-twentieth century NAACP are celebrated for winning landmark civil-rights decisions but criticized for over-reliance on legal tools and for failing to achieve comprehensive on-the-ground social change. For such critics, Shelley v. Kraemer (1948) is often cited as a prime example. While Shelley rendered racially restrictive covenants ("RRCs") unenforceable, the following two decades saw continuing and, in many metropolitan areas, intensifying residential segregation. This article follows the constitutive tradition in law-and-society scholarship by looking beyond the immediate, measurable social impacts of civil-rights litigation. Specifically, I examine how the lawyers in RRC cases clashed over a powerful misconception of property, wherein owners have absolute dominion over purely private rights. This view was characterized by an influential 1945 commentator as "property in a sociological vacuum." Drawing on archival and secondary research, I show that the lawyers who litigated RRCs engaged in a heated debate over the vacuum view and that this debate spanned legal and other public discourses in the decades leading up to and following from Shelley.

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"Both Parties Bidding: Ohio Civil Rights Act and Evolving Concept of Equal Citizenship"

This paper (which I am writing with University of Cincinnati at Blue Ash History Professor Matthew Norman) explores the legislative adoption and judicial implementation of Ohio's 1884 civil rights statute, passed in immediate and direct response to the U.S. Supreme Court's ruling the previous fall in the Civil Rights Cases. Professor Norman and I argue that the adoption of this statute, which has received scant attention in either the historical or legal literature, is significant for numerous reasons, including the window it provides into the politics of race in Ohio in the years after the collapse of reconstruction efforts at the federal level as well as the light it shines on contending contemporary understandings of the ultimate objectives of those efforts. The statute's subsequent judicial interpretation, which unfolded in dozens of cases stretching over nearly seven decades, in turn reflects the evolving attitudes and practices in the state concerning civil rights prior to the Supreme Court's decision in Brown v. Board of Education.

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"Opposition as Influence: American Indian Opposition to Federal Legislation"

The prevailing narrative in Indian country is that Congress cannot enact Indian-related legislation over the opposition of American Indians. This widely-accepted proposition is an empirical question rather than an assumption not subject to examination. This article contributes to a growing body of empirical research in federal Indian law by empirically evaluating this dominant narrative. I use descriptive methods to investigate Indian-related bills opposed by Indians introduced in five congressional sessions from 1981 to 2007. In particular, I examine statutes enacted over Indian opposition. The evidence provides some support for the hypothesis that Congress cannot enact Indian-related legislation over Indian opposition. More importantly, my research reveals that opposition to legislation operates in more complex ways than either this hypothesis or the existing interest group literature suggest. Unlike previous interest group studies, which emphasize opposition to prevent policies from being enacted, this study indicates that groups use opposition in more sophisticated ways to influence the legislative process and achieve their policy goals. In particular, my data demonstrate how American Indians use opposition to alter the content of specific bills. These results suggest that scholars need to unpack the idea of opposition to understand better how groups use opposition to legislation as a way to influence the legislative process. This article contributes to this endeavor by showing how interest groups use opposition to influence the content of specific bills as well as to ensure that certain bills do not pass. As a result, it increases existing understandings about how groups wield political power to prevent Congress from enacting legislation.

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Moderator: Panel 6C, International Law, Litigation and Sustainability

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"Roma Rights and Racial Reconstruction: A Transatlantic Comparison"

This paper compares the European Union's policies for integrating the Roma minority (1993-2013) with U.S. federal laws for racial equality during Reconstruction (1863-1877). In particular, the paper examines how minority rights became a condition of EU accession for post-Communist Eastern Europe, as well as of statehood for the Western territories and readmission into the Union for the Southern states. While the comparison is both transatlantic and diachronic, the U.S. and EU share enough similarities to render the comparison meaningful. Further, this comparison sheds light on whether conditions of statehood and accession can lift up the minority policies for existing members of a federalist system.

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"Outsiders, Attrition and Flight from Law: Mediating Role of Social Isolation and Discrimination"

The North American legal profession has traditionally excluded outsiders via entry barriers and other social closure mechanisms. Although many of these obstacles have eroded over time, formal and informal barriers maintain the ongoing professional dominance of white men from privileged social backgrounds. One of the most important mechanisms that perpetuates the dominance of white men within the private law firm sector today is the elevated attrition of outsider groups. Analyzing national survey data on a cohort of recent law graduates in Canada, I find that racial/ethnic minority and LGBT lawyers are more likely than white and heterosexual/cis-gender lawyers to express intentions to leave their jobs. The data also show that spending time with law firm partners reduces the odds of expressing mobility intentions, while having racial/ethnic minority mentors and experiencing discrimination increase these odds. These findings point to ways in which social isolation and discrimination play key roles in shaping and maintaining the entrenched social hierarchies of the legal profession.

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"I Came to Look for My Rights: Social Problems, Legal Aid, Obstacles to Justice in the Brazilian Amazon"

How do poor citizens seek legal representation and navigate the legal system in Brazil? This is an important question, because legal aid is insufficient and the majority of Brazilians cannot afford legal services. This paper addresses this issue by examining a persistent social problem that has followed urbanization in the Brazilian Amazon. Arguably, social and spatial segregation are characteristics of Brazil's cities and judicial system. The Belém Metropolitan Region (BMR), for instance, has an urban population of approximately two million inhabitants. Fifty percent of them reside in areas identified as subnormal agglomerations. At the same time, the BMR has approximately 145 public defenders to attend to needy citizens. Furthermore, the inadequate infrastructure that serves disadvantaged neighborhoods in the BMR, combined with a heavy rainfall season, exposes more than half million people to flood hazard and displacement. These are longstanding social problems for impoverished individuals who have their rights violated by the state's actions in governing common goods and providing access to justice. Given the dispositions of ordinary disputants in society, interview data reveal that they lack the necessary forms of capital to reach lawyers and settle conflicts. Consequently, even when poor claimants exercise agency and find an attorney, they struggle to find legal relief. Therefore, this work contributes to the literature on urbanization, law and society, and inequality in a Latin American region that has endured decades of social and spatial segregation.

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"How Do IMF Lending Programs Affect Human Rights?"

How do International Monetary Fund (IMF) lending programs impact borrowing countries' protection of human rights? Using multi-stage selection models, previous scholarly literature has found a negative relationship between the length of participation in IMF lending programs and government respect for physical integrity rights. In order to better examine the causal effect of governments' participation in IMF lending programs on their physical integrity rights practices, I employ (1) an instrumental variables analysis, (2) a difference-in-differences approach, and (3) Ordinary Least Squares with matched data. In doing so, I analyze annual IMF lending data from 120 low- and middle-income countries from 1972 to 2007 along with a recently-developed dataset on physical integrity rights that takes into account changes over time in how researchers have measured government respect for physical integrity rights.

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Moderator: Panel 2C, Courts, Dispute Settlement and Justice

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"The Role of Turkish Constitutional Court in the Judicial System of Turkey"

I will discuss the Turkish Constitutional Court's role in protecting and insuring the rights of people since Turkey currently has faced and faces serious human rights violations. After July 15, 2016 failed coup attempt, the Turkish Constitutional Court's position as to the parliamentary Bills which are against the Constitution of Turkey and rule of law.

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Moderator: Panel 4B, Legal Consciousness and Media

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"Making the Prisoners' Rights Movement for Women"

When mass incarceration first took shape, American women launched the women's liberation movement of the 1970s. Across the country, women demanded equality. They wrestled for equality at home, at school, and in the workplace. Incarcerated women were a part of the women's movement, and they ruminated over how to apply its ideals to their lives in prison. In this paper, I argue that prison activism in women's prisons in the late twentieth century must be understood within the context of the late-twentieth century women's rights movement. This paper examines two connected components of that movement by focusing on women's prisons in Michigan. First, prisoners incorporated ideas of gender equality into their demands for prison reform. Second, attorneys used their interpretation of the Constitution to combat gender-based discrimination in prison. In the 1970s, it was easy for incarcerated male and female relatives to keep in touch with each other after they were sent to separate prisons. Incarcerated women learned that the men had work-pass programs with decent wages, college courses, and an updated law library. These conversations led incarcerated women to realize that they were getting unequal treatment from because of their gender, and they sought to rectify this by forming alliances with attorneys and activists. At the same time women were being swept into the carceral state, women were breaking into the American bar en masse. Attorneys viewed the unequal treatment of incarcerated women as a civil rights violation, and they sought remedies in federal courts. Drawing on archival material and oral history interviews that I conducted, this paper demonstrates how the women's movement of the late twentieth century influenced prison activism.

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"Decolonizing Administrative Action: Judicial Review and the Travails of the Bangladesh Supreme Court"

This paper will discuss the origins and adaptations of judicial review of administrative action in Bangladesh in the context of adjudicative practices related to judicial independence. The Supreme Court wields significant power in the constitutional order of Bangladesh. In some instances, it has gone above and beyond the conventional scheme of the separation of powers by actively participating in governance. The steady expansion of judicial authority in Bangladesh since democratization in the nineties is in line with the generally accepted thesis that new or empowered courts often emerge as strong constitutional guardians. The Supreme Court of Bangladesh has vociferously defended its institutional independence. To this end, it has frequently resorted to judicial review to check both executive and legislative powers. The Supreme Court has also made significant strides in the realm of public interest litigation (PIL) and the adjudication of claims based on infringements of individual rights. In so doing, it has opened channels of democratic participation for the civil society. Its ability to do so has reinforced the need to preserve its autonomy more than ever before. The paper will argue that the Supreme Court has been moving toward a decolonized and context-specific approach to judicial review. The story of the evolution of public law in Bangladesh is tied heavily to its' founding history and the struggle for judicial independence and empowerment. Judicial review in Bangladesh has developed in the context of [and as a response to some of the challenges associated with] regime change, thus operating in a highly complex environment. The paper, therefore, focuses on independence and institutional-capacity building cases involving the judiciary to exemplify one of the key forces that influenced the development of Bangladesh's post-colonial, or rather decolonized, public law jurisprudence.

Facilitator: 6A, Roundtable: Law and Society Scholarship and the Global South

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Moderator: 4C, Criminal Law and Sentencing

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"A Human Right to Science?"

Law and Society scholarship stands to make extraordinary contributions to analyses of a human right that has been largely overlooked: the right to enjoy the benefits of scientific progress. This human right will likely receive significant attention when the UN Committee on Economic, Social and Cultural Rights publishes a General Comment on the right to science in 2019. The present study assesses research on defining this human right, indicators of this human right, and then employs comparative methods to determine what social, economic, and political factors lead to country-level differences in the human right to science.

Moderator: Panel 2A, Legal Innovation, Legal Realism

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Panelist: 4D, Roundtable: Teaching Inter-Disciplinary Legal Studies Courses and Legal Texts

Faculty from the University of Chicago's Law, Letters, and Society program, Northwestern University's Legal Studies program, and University of Wisconsin Green Bay's Democracy and Justice Studies program will describe their experiences teaching interdisciplinary legal studies courses and legal texts.

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"Law Policies and Programs on One University Campus: 1972-2017 Case Study"

Universities require students, faculty, and staff to learn about the systems implemented at their schools to address sexual assault and sexual harassment. However, the current systems are relatively new and continue to change. In my study, I investigate how the governance of sexual assault and harassment has changed from 1972 through 2017 at one large, public, Midwestern university. Title IX of the Educational Amendments of 1972 has become central to the regulation of campus sexual assault and harassment. Therefore, my research uses 1972 as a starting point for data collection. I analyze diverse data sources with a particular emphasis on campus newspaper articles and documentation from current and former campus organizations and offices (e.g. Dean of Students, Title IX office, and the violence prevention unit). In addition, I will conduct interviews with a purposive sample of key individuals. My study compares the actions that the university administration has taken over the past 40 years with student-driven responses to sexual assault (e.g. free nighttime transportation and bystander intervention trainings, compared to "Take Back the Night" marches). Preliminary findings indicate that efforts to address sexual assault in the 1970s and early 1980s were community-driven, often by local, non-university affiliated women's groups. Since the mid-1980s, however, numerous student organizations and administrative

committees have been founded to address sexual violence as a problem specific to the university. Policies to address sexual violence have shifted from local government (1970s-1980s) to the university (1990s-onwards). Ultimately, the changing governance of sexual assault and harassment illustrates upheavals in both gender politics and university systems.

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"The Unwary Criminal: Deception, Dignity, and Duty in Wrongful Conviction Cases"

False admissions of guilt or facts by a suspect are a factor in more than 10% of all wrongful convictions. In such cases, police use coercion, deceit, often both to induce a confession. Barring exceptional circumstances, police can falsely claim that witnesses identified the suspect, that a suspect failed a polygraph test or was incriminated by someone else. While law generally abhors falsehood and penalizes those who commit fraud, perjury, or misrepresent facts, courts by and large sanction deceptive police behavior and hold that "the mere fact of deceit [will not] defeat a prosecution" because the "unwary criminal" does not need protection (U.S. v. Russell). Police deception, as I will argue, produces false confessions, violates a suspect's dignity and should not have a place in police work. My argumentation will connect comparative with philosophical and then dogmatic elements: First, I will discuss the differences between American and European system, using the German as a reference point. German criminal procedure prohibits any kind of subterfuge from the side of the state. The foundation of that law can be traced back to an idea of dignity rooted in Immanuel Kant's philosophy. Dignity creates a general duty to truthfulness requiring that a suspect remain a subject with personhood at all times. Lies and deception disregard this understanding of dignity. American Courts have used dignity with a similar understanding in a few cases, but dignity has not reached the level of doctrine yet. It has, however, the potential to do so. My conclusion will tie the three approaches together and demonstrate that dignity could become a concept that protects suspects, strengthens the idea of personhood, eventually leading to a more truthful criminal justice system.

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"The Consequences of Growing Supervision in an Era of De-Incarceration"

My dissertation draws attention to the growth in the number of people under parole supervision in the United States, as well as the rise of parole revocation as an important driver of mass incarceration. Although the topic has received less scholarly attention than mass incarceration, I argue that our parole system is equally as important to understanding the unprecedented growth in the number of people behind bars in the U.S. As the country was swiftly becoming the world's leader in the number of people it incarcerated, the number of people under supervision, as well as the amount of money spent on parole, also increased. Individuals who had violated the conditions of their parole made up 18% of

people re-entering prisons in 1980; over two decades later this number had reached nearly 37%. My project asks: how do parole officers assist people on parole during the process of reentry from prison into society and what role do algorithmic tools and the possibility of a parole revocation have in this process? To that end, I study the decision-making of parole officers who oversee people's reentry from prison, as well as officers' growing reliance on algorithmic prediction tools to aid them in their work. I am currently collecting data for the first project phase. The study design for this phase relies on conducting 60 interviews drawn from a random sample of parole officers in three Midwest counties. Interview questions seek to elicit officers' perspectives on supervising people after their incarceration and the decisions they navigate in light of parole rules, procedures, and norms.

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"Old New Property"

Do legal entitlements age? If so, how? Is it possible to construct a theory of retrenchment that captures how rights change over time? This Article explores these questions by analyzing how both Medicaid and SNAP (food stamps) function as entitlements in an era of polarized politics. In the face of rickety constitutional doctrine yet resilient statutory and administrative regimes, opponents to the safety net in the Trump Administration and Congress continue to experiment with a range of strategies to roll back entitlements to medical and food assistance. Attorneys are challenging these retrenchment efforts using an array of legal theories including ones grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments and the Take Care Clause. Furthermore, cash assistance (the Temporary Assistance to Needy Families program) retains some features of entitlement status, including constitutional limitations on federal and state action, despite Congress expressly repealing its entitlement status. By mapping the instability in the doctrine, this Article offers an unconventional analysis of recent efforts to fundamentally change safety net programs—one grounded in the shifting landscape of American public law.

Panelist: 4D, Roundtable: Teaching Inter-Disciplinary Legal Studies Courses and Legal Texts

Faculty from the University of Chicago's Law, Letters, and Society program, Northwestern University's Legal Studies program, and University of Wisconsin Green Bay's Democracy and Justice Studies program will describe their experiences teaching interdisciplinary legal studies courses and legal texts.

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"Representative Bureaucracy and Procedural Justice in Mediation"

Organizations have incorporated dispute resolution and specifically mediation into conflict management systems to facilitate procedural and organizational justice. High levels of perceived procedural and organizational justice correlate strongly with employee satisfaction, employee citizenship behaviors, and other desirable outcomes. The Equal Employment Opportunity Commission has required that federal agencies provide voluntary dispute resolution to address workplace discrimination complaints. Representative bureaucracy theory proposes that satisfaction with a process will increase with more balanced levels of demographic representation. However, no research to date has addressed representative bureaucracy in the context of an organization's use of mediation or dispute resolution for employment conflict. This paper explores the effect demographic representation of mediators has on employee complainants' perceptions of procedural and distributive justice in the context of the U.S. Postal Service REDRESS Program. Complainants' exit surveys on perceptions of procedural and distributive justice were analyzed for relative fluctuations observed when a mediator's race or gender matched the nature of the complaint or purview as race discrimination, sex discrimination, or sexual harassment. Results support representative bureaucracy theory as to complainants who filed sexual harassment claims, they reported higher perceptions of procedural and organizational justice when their cases were facilitated by female mediators. Findings were not statistically significant for female mediators addressing sexual discrimination claims. African-American mediators, however, received significantly lower satisfaction scores than their counterparts when addressing racial discrimination claims.

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"Espionage Act I WI during WWI: Political Identity, Legal Consciousness and Electing the Unelectable"

This presentation will bring together the socio-legal theories of political mobilization and legal consciousness by exploring a fascinating, yet seldom remembered, historical case. My paper examines public reaction to the Berger Controversy, a national dispute that sparked emotional outcries from people across the country. Although elected from Wisconsin's Southeastern district in 1918, the House of Representatives refused to seat Victor Berger, citing charges under the Espionage Act for his anti-war editorials. The nation took notice. Letters were written; editorials were published; people mobilized both for and against seating Berger. This presentation explores contemporary sociological issues by drawing on rich, qualitative analysis of archival materials and by bringing together two vital areas of scholarship that are rarely in conversation: legal consciousness and political identity. The existing literature on legal consciousness seldom considers political affiliation. Seldom, if at all, does it consider the role of law in people's political choices, or the importance of politics in the way that people think about the law. Politics and political identity are often bracketed in the pursuit of understanding the "everyday life." This project offers us a unique opportunity to look at the intersection of law and politics by looking at this historic, but forgotten, controversy. Although dealing with events from a century ago, such questions and controversy are relevant today.

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"The Constitutional Courts of South Africa and Zimbabwe: A Contextual Analysis"

This paper is a contextual analysis of the Constitutional Courts of South Africa and Zimbabwe. Both Courts are founded on almost identical constitutional provisions, but have proceeded on markedly different jurisprudential trajectories. Whilst the South African Court is celebrated for delivering on the "promise" of judicial review, the Zimbabwean Court is generally viewed as a captured institution, subject to the whims of the executive.

This understanding of courts as a binary between those enabling of and those constraining against executive and legislative power risks generalizing and falsely homogenizing the process by which courts claim and exercise power. It also fails to account for the reasons why courts, even those in authoritarian regimes, remain productive sites of human rights enforcement. This also has the adverse effect of unduly crediting written law as the sole source of judicial power without accounting for contextual influences which enable or constrain the exercise of that power.

This paper investigates judicial exercise of power in two countries in which different operating contexts resulted in markedly distinct approaches to judicial review in spite of largely similar constitutional frameworks. It posits that such a contextual approach allows for more accurate understandings of claims and use of judicial power which can inform efforts to enhance constitutionalism and rule of law beyond pedantic efforts at effecting constitutional transplants.

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Moderator: 3B, Human Rights and Justice

Panelist: 6A, Roundtable: Law and Society Scholarship and the Global South

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"Leading the Second Wave of Judicial Review: A Socio-Historical Analysis of China's Constitutional Court"

At the start-point of the post-WWII global spread of constitutional review, China as the triumphant allied country first established the constitutional court by the 1946 constitution. In July 1948, China formally instituted a constitutional court of Kelsenian model (*Council of*

*the Grand Justices*) into the Chinese national politics. In January 1949, it rolled out two constitutional interpretations to declare its judicial review power. By that time, both Italy and Germany, the two leading protagonists in the "second wave of judicial review" (Ginsburg, 2008) were still muddling through the early institutionalization process of their constitutional courts. Judging this in any sense, it at a minimum meant China's one major constitutional achievement. Despite that the Germans stole the thunder quickly afterwards, the Constitutional court originated from a turbulent mainland China has been functioning well up to today in Taiwan. However, the history of China's constitutional court has never been aptly accredited. In this paper, the author hopes to discuss the China's constitutional court from a socio-historical perspective and contextualize China's constitutional development in the middle of the twentieth century.

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"Citizenship and Civil Procedure: The Decline of Social Protection in Foreclosure"

Consumer debt markets (unlike markets in corporate securities) are inherently intertwined with and bounded by the rights of everyday people. As markets for consumer debt have increased in size and liquidity, corporate actors have intervened in the rights of citizens attached to market-traded debt to achieve pecuniary or policy goals. The collapse of the mortgage market in 2007 revealed a structure that could not accommodate the civil and property rights of homeowners. Fraud and wholesale forgery were found to be standard practices. In Illinois, the nation's largest foreclosure services company was found to regularly commit illegal evictions by force, before the foreclosure process had concluded. While scholarship has analyzed the structural forces that led to the subprime mortgage crisis and legal scholarship has documented systematic abuses of civil procedure and property rights during crisis-era foreclosures, little is known about the history of these problems or the structures that generated them. In this article, I show that the erosion of homeowner's rights and social protections did not begin during the foreclosure crisis, but were instead integral and necessary to the financialization of mortgage lending during the 1990s. Analyzing foreclosures in Cook County, Illinois, between 1992 and 2011, I argue that (1) the duration of the foreclosure process constitutes a social right protecting members of the community from market forces, (2) that this right is secured through the civil rights of property owners during the judicial foreclosure process, and (3) that the project of financializing and deregulating the mortgage market directly reduced the rights of homeowners.

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"Institutional Design of Islamic Review in Pakistan: Problematizing the Divide Between Shariat Courts and Their 'Secular' Counterparts"

Special Shariat Courts with powers of Islamic review – including the Federal Shariat Court ("FSC") and its appellate branch, the Shariat Appellate Bench of the Supreme Court ("SAB") –have operated parallel to the "mainstream" constitutional courts in Pakistan for almost four decades. In global comparison, these Shariat Courts are truly distinctive. There is no other contemporary example of a parallel court system invested with the "exclusive" power to judge whether existing laws, even those enacted by popularly elected parliaments, are repugnant to Islamic injunctions, and to render ineffective laws held to be repugnant. Yet, these Courts remain mostly understudied and mired in deep controversy. They have attracted much acrimonious criticism from different sides of the ideological spectrum that view these Courts as either not Islamizing the law sufficiently or as thwarting the liberal agenda of constitutionalism. Despite the Courts' record of generating an arguably modernist Islamic jurisprudence over time, the legitimacy deficit of the Shariat Courts has not abated. Valid as the many critiques are of the Shariat Courts, they eschew any methodical thinking about how the Shariat Courts are positioned within the judicial system as a whole, and how this larger institutional structure mediates the relationship between the Shariat Courts and the co-existing constitutional courts that exercise general powers of constitutional and judicial review, including the apex Supreme Court. The question of institutional design is especially germane in the case of Pakistan's Shariat Courts because of their "hybrid" nature. There are two important elements of this hybrid design. First, these Courts have a system of mixed composition in that they are composed of both "secular" judges and ulema or Islamic scholars. The second element of the hybrid design is that the appellate forum of the SAB is formally part of the Supreme Court itself, so that sitting justices of the Supreme Court are periodically assigned to the SAB by the Chief Justice of the Supreme Court and may continue to sit on regular benches while also being members of the SAB. These two elements of the hybrid design of the Shariat Courts – the "mixed composition" of the FSC and the SAB, and the "fusion" of the FSC's jurisdiction with the Supreme Court through the SAB – intuitively raise questions about how this institutional arrangement impacts the Shariat Courts' decision-making, and what, if any, effect it has on balancing Islamization with democratic constitutional principles. This paper seeks to problematize the sharp binary between the Shariat Courts and the "secular" Supreme Court that exists in both the literature and the broader political discourse in Pakistan. Based on a qualitative review of constitutionally salient cases of Islamic review, the paper makes two central arguments that cut against the grain: firstly, that there is a good deal of harmonization between the Shariat Courts and their "secular" counterparts in judicial outcomes relating to constitutional rights; and secondly, that the hybrid design of the Shariat Courts is the primary explanatory factor for this harmonization trend.

Panelist: 6A, Roundtable: Law and Society Scholarship and the Global South

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"Factors Driving Revocation of Community Supervision"

I will report on the early stages of a collaboration with the Bureau of Youth Services of the Wisconsin Department of Children and Families study the ways in which juvenile court orders affect the families of justice system-involved youth. While large bodies of research have examined environmental drivers of delinquency, and have tried to assess the effectiveness of various programmatic interventions for delinquent youth, very little research has examined the ways in which court orders themselves may interfere with the process of desistance in delinquent young people. Most studies begin with the assumption that the "problem" to be solved in a delinquency case is the child or the family, not the manner of the governmental intervention. Nevertheless, the criminal justice system has a long history of interventions that cause as much or more harm than they solve. I hope to add to the literature on youth desistance from crime by examining the ways in which specific aspects of court orders affect family and youth functioning, both positively and negatively.

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"Lawyers, Nationalist Movements and Post-Colonial Constitutionalism"

Abstract

Moderator: 4A Comparative Constitutional Courts

Panelist: 6A, Roundtable: Law and Society Scholarship and the Global South

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Plenary Session: "Ups and Downs of Collaboration"

Larrea Marccise, Regina
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"Rape Law Reform in Mexico City (1971-1997)"

This paper uses the lens of rape law reform (1971-2012) to provide a history of the Mexican feminist movement and its emerging and evolving involvement in legal reform and the state. The paper is divided into two main parts. The first part is a doctrinal exercise

analyzing the rule criminalizing rape in the Mexican Federal Criminal Code at two moments in time, the original and the current text. I use a number of "feminist parameters"—such as a broad definition of means of penetration and the explicit provision of marital rape—to demonstrate that the rule indeed evolved in a feminist direction. This conclusion opens the historical question that is the subject of the second part: how was the law of rape revised, and what role, if any, did feminists play in its transformation? The second part tackles this question by connecting the social history of the movement with the legislative history of rape law for the same period. I study the movement's social and legal activism, including their theories around rape and their analysis of the failures of the Mexican legal system. Through this narrative, the Article shows that the feminist movement transformed from a spontaneous and horizontal movement to an organized network in both civil society and state institutions. I conclude that the movement's organizational transformations—partly motivated by their will to influence the law—enabled the movement to incorporate its agenda into Mexican criminal law. In this sense, the two are inextricably linked: the movement changed to influence the law, and the movement was able to influence the law because it transformed itself. In this sense, the institutionalization and professionalization of the feminist movement appear to have been necessary in achieving rape law reform.

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"Law and Mobilization in the Movement for Black Lives"

This study explores how law and legal institutions have shaped protest mobilization in Black Lives Matter. Black Lives Matter activists have drawn deeply from understandings of institutional racism, connecting racial injustice to structural forces which permeate not only the criminal justice system, but also public education, public benefits, and the workplace. Yet what this movement has predominantly become known for is resistance to individual acts of police violence—and the legal system's response to that violence. Drawing on a database of Black Lives Matter protests (2014-2017), this project investigates which issues have mobilized the largest and most frequent protest demonstrations, and whether those issues being protested fit with the movement's rhetorical focus on institutional racism. The results from this study show that Black Lives Matter mobilization has been largely reactive to: police shootings; failures to prosecute the officers involved; and jury decisions to acquit those officers. Drawing on sociological research on social movements, I argue that the reactive organizing strategy used in Black Lives Matter has become a dominant feature of contemporary protest mobilization more generally. Yet such reactive strategies often reorient protest agendas around goals that are fundamentally inadequate for addressing structural inequality. I argue that BLM protests reacting to police misconduct divert attention from structural resolutions toward punitive measures to curb individual misfeasance—presenting significant challenges for the movement's goal of dismantling institutional racism.

Moderator: 5C, Democracy, Equality and Non-Discrimination

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"They Don't Help You Here:" Revictimization in Obtaining an Order of Protection in Domestic Violence Court"

While there have been persistent increases in rates of incarceration in the United States over the last three decades, advocates for criminal justice reforms continue to work towards lowering incarceration rates. The specialty or problem solving court paradigm, broadly initiated by judges, has emerged as an alternative to criminal court to reduce the likelihood of incarceration for some groups of defendants. The purpose of these courts is to divert qualifying individuals away from criminal courts and into a specialty court, where their case can be tried using a rehabilitation lens, therefore including social services in individual cases. Domestic violence courts are an important subset of specialty courts, offering a victim-centered alternative to the traditional criminal court setting. Domestic violence courts attempt to bring together the combined expertise of court actors (judges, lawyers, and social workers) to provide more enduring and less stigmatizing solutions to domestic violence problems. This study uses participant and non-participant observation data from Cook County Domestic Violence Court and in-depth key informant interviews examines the gendered racialized nature of the emergency order of protection process. Preliminary findings suggest that domestic violence court is not victim centered in practice and that racist rhetorical undertones operate in the court. Court actors engage in rhetoric regarding instability, misconduct, and hypersexuality at the intersections of race, class, and gender. These preliminary findings offer further questions substantively, theoretically, and methodologically that call for more in-depth inquiry and analysis.

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Moderator: 1A, Legal History, Colonialism

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"Institutionalizing People's Justice: The Birth of People's Republic of China's Judiciary"

China now has a complete set of judicial structure; yet, Chinese society does not respect its judiciary – generally speaking - to the same extent as people do in Taiwan, Japan, or the US. My paper provides an answer to this question from an institutional perspective. By a careful reading of historical newspapers, my paper argues that the judiciary in People's Republic of China was built upon a specific revolutionary legacy – the populist policy. During the Chinese Civil War (1945–1949), the Communist Party of China (the Party) mobilized the masses on a massive scale through its land reform campaign. In the middle of the campaign,

the masses' conventions, with the literal name "struggle sessions," adopted clear adjudicating functions. The Party then institutionalized People's Tribunals to provide legitimacy to, and control the proceedings, of the populist trials. When People's Republic of China was founded in 1949, it inherited standing courts, which embodied generations' efforts of legal modernization with the "west" as the model. That judiciary proved itself to be disfavored by the Chinese government fairly quickly. Continuous and intensive campaigns from 1950 to 1953 all worked toward one goal: to make standing courts like People's Tribunals. This process redefined Chinese judiciary. In spite of the tremendous changes and improvement Chinese judiciary managed to add onto itself after Mao's era, the institutional foundation is still constraining how big of a role the judiciary would be able to play in Chinese political and social life. This paper is part of a larger dissertation project, which is a comparative study of the transformation of judicial institutions in Taiwan and China in the context of regime changes in the mid twentieth-century.

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"Access to Justice: Domestic Violence Victims in Family Court"

This paper examines the results of a grant that funded legal representation for victims of domestic violence in their family law matters over a one-year period in a mid-sized Wisconsin city. My paper discusses the outcome for these litigants in comparison to outcomes reached by other domestic violence victims who were similarly involved in the family law process but who were unrepresented. The paper examines the outcomes, economically, procedurally, and substantively for the litigants and the attorneys who handled the cases, and discusses the implications for future research.

Moderator: 3D, Social Protection and Social Justice

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"Juvenile Justice for Adults: Age, Power and Responsibility in a Progressive Era Juvenile Court"

Emergent at the turn of the twentieth century, juvenile courts shaped the lives of both children and adults in the United States. As social scientists, lawmakers, judges, and probation officers endeavored to eliminate the causes of juvenile delinquency, they defined parents' failure to control their offspring and care for them as major contributing factors to children's waywardness. They also sought to correct other adult persons for fostering children's illegal or immoral behavior. To police the people they perceived of as the "real culprits," juvenile justice proponents promoted legislation that shifted the criminal liability for illegal action from children to adults. Newly-enacted contributory laws, also known as adult delinquency laws, allowed to charge any person with contributing to the delinquency

of minors. This paper, which examines adult cases tried at the Denver Juvenile Court in the early twentieth century, argues that as juvenile courts subjected parents and other adults to rigid standards of liability for the actions of children, they provided children with opportunity to determine the fates of adults and influence judicial decisions. Court officials attempted to enlist children to police the adults around them, turning the young into informal law enforcers: moral guardians of their communities and prosecutors of all wrongdoers. In so doing, juvenile courts reformulated the power relations between children and adults, placing increased power in the hands of children. This paper shows that as children had to decide whether to cooperate with the court or shield adults from prosecution, they learned to navigate, even manipulate, a system that claimed to protect them.

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"What Hollywood, USA, Teaches the World (Incorrectly and Correctly) about Juries"

This paper examines several American jury films and what they teach the world about American juries. For the most part, they teach lessons that do not comport with American juries in practice. One commonality is that these films include a hold-out juror, even though hold-out jurors are an infrequent occurrence on actual juries. Another lesson these jury films teach is that hold-out jurors seek the truth or justice by pursuing an independent investigation during or after the trial. On actual juries, jurors might be interested in what happens to their case on appeal, but they do not typically seek truth or justice through independent investigation. Finally, in the most famous American jury film, "12 Angry Men," the hold-out juror manages not only to hold out initially, but also to persuade eleven other jurors to change their votes. Most hold-out jurors do not manage to turn around the entire jury. Yet, popular American television shows have embraced this paradigm and conveyed it to a new generation of viewers. This paper considers what effects Hollywood's focus on the hold-out juror might have on Americans' perception of their jury system, as well as on those in other countries who are contemplating the adoption of a traditional jury system. Finally, this paper examines hard-to-find foreign versions of "12 Angry Men," including remakes of the film from China, Russia, Lebanon, India, Germany, Spain, and Japan, as a way of exploring the appeal of this film in other countries and what it teaches viewers about the jury even in countries that do not have a jury system.

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Moderator: 1D, Social Movements

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"A Call to Prosecute Pharmaceutical Industry Crime as Organized Crime"

This article demonstrates that U.S. drug companies operate in the same manner as organized criminal syndicates akin to the mafia and argues that the government should accordingly prosecute pharmaceutical industry crime under the Racketeering Influenced and Criminal Organizations Act (RICO). Recent legislation invites companies to engage in criminal fraud related to the testing, advertising, and sale of prescription drugs. Drug company executives routinely place ineffective and dangerous prescription drugs on the market through a pattern of clinical and publication bias, misleading direct-to-consumer advertising, and the detailing of doctors to prescribe a drug for unapproved uses. As a result, prescription drugs are the leading cause of accidental death in the U.S. However, pharmaceutical executives face few criminal sanctions for the fraud in which they engage. Instead, drug companies pay criminal fines and enter deferred-prosecution agreements with the government. The government's recognition that these companies, executives, and doctors are engaging in organized crime would stem the rising tide of corruption. RICO would allow the government to charge members of these criminal enterprises for the predicate offenses of mail fraud, wire fraud, bribery, and honest services fraud. A RICO conviction carries up to a 20-year prison sentence and a mandatory forfeiture of assets. These sanctions will force executives to think twice before misrepresenting clinical trial data and bribing doctors to prescribe drugs. It will also dissuade doctors from accepting kickbacks and may even cause politicians to reconsider Big Pharma campaign contributions, as RICO would likewise subject them to prosecution as members of the criminal enterprise.

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Moderator: 6B, Punishment, Prisons and Incarceration

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Moderator: 1C, Access to Justice

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"Defining Obstetric Violence"

The violation of pregnant women's rights by medical and law enforcement personnel has gained an increasing amount of attention both in the popular press and in academic literature. Obstetric violence has even been included in amendments to the constitutions of countries such as Venezuela. However, the term "obstetric violence" remains poorly

defined. Two types of argument have been made to create a definition. Some authors have started from lists of theoretical premises and then tried to find cases that meet them. Others focus on case-studies of obstetric violence that explore one or more types of violation rather than a general definition. The goal of this work is to create a broad typology supported by theory combining both the theoretical and case-study approach.

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"Diversion, Co-option and Corruption: The US Police Reform Industrial Complex"

In times of popular outrage and public calls to change how criminal justice agencies operate, activists, municipal leaders and lawmakers, and scholars, often call for federal oversight and intervention. With the Sessions Justice Department's Civil Rights Division declining to litigate unconstitutional pattern and practice violations with state and local police agencies using the 'Section 14141' power Congress authorized in 1994, calls to restore Federal intervention over troubled police departments have grown. "Diversion, Co-Option, and Corruption: the U.S. Police Reform Industrial Complex" gives an account of the police reform industry that has emerged with Federal court oversight of local and state police agencies via Section 14141 litigation and Federal court-supervised consent decree agreements. The paper draws on an original dataset of all 14141 reforms and a year of fieldwork in a city undergoing Federal court-supervised police reform to describe how private profit and political motives have combined to mute the effects of actually existing police reforms, creating an industry that helps police and city leaders thwart, divert, co-opt, and corrupt attempts to bring systemic change to policing practices and policies.

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"The Grenfell Tower Fire: A Case Study in Inequality"
On June 14, 2017 a large high-rise apartment building in West London called Grenfell Tower caught fire leaving over 70 people dead. Seemingly an accident, the fire was caused by a faulty freezer-refrigerator located on the fourth floor of the twenty-four-story apartment building. The tower was located in the Royal Borough of Kensington and Chelsea, one of the most affluent neighborhoods in the United Kingdom. In contrast to its surroundings, tenants were mostly working class, immigrants, and people of color. In 2016 Grenfell Tower was renovated with new cladding, giving the building a modern appearance. The cladding used for the renovation failed fire safety standards and was ultimately the reason for the spread of the fire. Leading up to the disaster tenants filed numerous complaints of fire hazards, but these complains were largely ignored by the building's management company, Chelsea Tenants Management (KCTMO). This paper aims to use the Grenfell Tower fire as a case study in social inequality. Specifically, understanding social inequality through Göran Therborn's (2015) typology that includes vital, existential, and resource inequality. Laws, such as the 'Right to Buy' and 'Right to Manage' are linked to the Grenfell Tower fire, how

they have lead to increased privatization of social housing and a subsequent housing shortage. Furthermore, global data on burn injury rates is used to demonstrate the concentration of burn injuries in low-income and minoritized communities, like that of Grenfell Tower.

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"Common Law Islands in Civil Law Oceans"

What explains attempts by a number of civil law jurisdictions - Dubai and Abu Dhabi, member emirates of the federal UAE, Qatar, Khazakstan, Rwanda, South Sudan and Honduras to turn to operating part, or all, of their legal systems under newly established common law frameworks - moving away from their traditional civil law systems. In some instances, these common law frameworks operate independently to the national civil law courts, using English as the language for laws and court procedures. France recently announced plans to create a bilingual tribunal, staffed with lawyers and judges competent in common law. Does variation within the regime type or integration within existing legal professional frameworks explain the success or failure of the prototype common law islands in attracting investment. Can the attempts to created common law hubs be explained by a belief that it would increase trade with third countries? If so, what were these beliefs based upon? Brexit and the impending departure of the United Kingdom from the EU adds to the importance of understanding this common law- civil law puzzle for two reasons. Lawyers across Europe tend to look to London for legal innovation and use the English common law system to "import" legal solutions as English law judgments are recognized across the EU. Brexit may have two separate effects on London as a legal center. First, the promotion of common law links may become increasingly important for Britain post-Brexit as it seeks to rebuild an independent trade policy beyond the EU. Conversely, for EU countries looking to attract financial services investment the willingness and ability to adjudicate on English law may be seen as an asset.

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"Blockchain Governance: Trust, Power, and the Distributive Effects of Disruptive Innovation"

Will innovative ICTs lead to the proliferation of new forms of governance? In this paper, I use the emergence of blockchain technologies to explore how states and non-state actors respond to disruptive technological change. I argue that blockchains enable new forms of governance by creating a new means of generating trust, drastically reducing the need for intermediaries in online interaction. Through case studies of land registries, digital ID systems, and cryptocurrencies (e.g. Bitcoin), I show that the key to understanding these blockchain ecosystems is how they shape the generation and distribution of trust. Power in

these ecosystems derives from the ability to make decisions about when to trust who with what information. Projects which make use of the blockchain's unique properties to democratize these choices will correspondingly decentralize power. By contrast, those projects which restrict trust choices to a small core of entities remain centralized, and therefore have a limited effect on the character of governance. Though projects which truly decentralize trust are potentially transformative, I suggest they are also less likely to gain widespread adoption. This implies that even ICTs with exceptionally disruptive potential are unlikely to lead to the proliferation of substantially decentralized forms of governance.

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"From Civil Rights to Social Policy: The Political Development of Family and Medical Leave Policy in the US (Civil Rights and Social Policy)"

Previous scholarship on the intersection of civil rights and social policy has focused on the removal of discriminatory barriers in social policy and the rise of welfare backlash as a result of the civil rights era. This paper explores a new dimension of that intersection: the influence of the civil rights policy regime on the creation of new social policies. Introducing the idea of a civil rights policy regime as an explanatory variable in the political development of American social policy, I apply this framework to understand the case of family and medical leave. I show that the development of these policies in the United States was intricately linked to civil rights legislation and jurisprudence. The civil rights policy regime that formed in the 1960s created new policy tools for maternity leave advocates and shaped the ensuing policy process and, ultimately, the timing and policy design of family and medical leave policy. Specifically, the civil rights policy regime was crucial to the passage of policies which conceive of leave broadly (combining maternity leave with parental leave, caregiving leave, and medical leave). This analysis demonstrates how the civil rights policy regime can influence policy outcomes which go beyond non-discrimination and affirmative action to include substantive redistributive benefits.

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Panelist: 4D, Roundtable: Teaching Inter-Disciplinary Legal Studies Courses and Legal Texts

Faculty from the University of Chicago's Law, Letters, and Society program, Northwestern University's Legal Studies program, and University of Wisconsin Green Bay's Democracy and Justice Studies program will describe their experiences teaching interdisciplinary legal studies courses and legal texts.

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"Jury Decision Making in Federal Death Penalty Trials"

This project uses a novel dataset of over 200 federal capital murder verdict forms to investigate what capital jurors find significant in deciding whether to impose a sentence of life imprisonment or death upon someone they have convicted of capital murder. These special verdict forms list each aggravating and mitigating factor at issue in the case. For the latter, jurors are asked to record the number of jurors who deem a particular mitigating factor to have been proven. Notably, consistent with the expansive legal status of capital mitigating evidence, jurors may also write in their own mitigating factors. This paper focuses on the 68 cases in the dataset in which jurors wrote in additional mitigating factors, exploring the types of issues jurors apparently deemed important enough to assert, as well as what these "write-ins" might tell us about the reasoning underlying their final verdicts.

Moderator: 2B, Women and Violence

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"Victory as Resource: A New Perspective on Social Movements"

What is the measure of success for a social movement? Although generations of scholars have tried to answer this question, productive answers remain elusive. Scholars locate fatal flaws in the most prominent of movements and declare them failures; others find overlooked achievements in seemingly inconsequential movements and declare them successes. Answers to a question that appears so fundamental to explaining the significance of social movements ultimately reveal more about the priorities of scholars than about social movements themselves. The question of social movement success, one is tempted to conclude, is an analytical dead end. We argue that social movement success should remain an essential category of analysis. But its value for social movement scholarship comes less from assessing outcomes of a given movement and more from considering the ways in which movement actors mobilize around their own conceptions of movement success. We consider movement success as a resource, a strategic frame that activists use to attract, unite, and energize fellow participants and outside allies. A mark of a fully mobilized movement, we argue, is the ability of movement participants to deploy a spectrum of "victory frames" that capture the diverse values and goals of activists and then to strategically navigate between these frames. Considered as a tool of movement mobilization, victory is pluralistic and dynamic. To demonstrate how victory frames can add to our understanding of social movements, we use as a case study the American civil rights protests of the 1960s.

Scheppele, Kim Lane
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Keynote Address: "In the Ruins of Constitutional Government"

Around the world, democratic citizenries are electing leaders who proceed to dismantle previously existing constitutional constraints on the power of the executive. From Hungary and Poland, to Venezuela and Ecuador, to Turkey and Russia, and perhaps even to the United States, democratically elected leaders are eschewing checks and balances and rejecting independent judiciaries, media and civil society. These new autocratic leaders appear wildly popular and are often reelected. Why have democratically elected leaders with autocratic aspirations appeared across such a wide array of democratic governments at once? How have they undermined constitutional government and yet claimed democratic legitimacy? And what can be done to restore the promise of constitutionalism?

Discussant: 4A, Comparative Constitutional Courts

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"Victory as Resource: A New Perspective on Social Movements"

What is the measure of success for a social movement? Although generations of scholars have tried to answer this question, productive answers remain elusive. Scholars locate fatal flaws in the most prominent of movements and declare them failures; others find overlooked achievements in seemingly inconsequential movements and declare them successes. Answers to a question that appears so fundamental to explaining the significance of social movements ultimately reveal more about the priorities of scholars than about social movements themselves. The question of social movement success, one is tempted to conclude, is an analytical dead end. We argue that social movement success should remain an essential category of analysis. But its value for social movement scholarship comes less from assessing outcomes of a given movement and more from considering the ways in which movement actors mobilize around their own conceptions of movement success. We consider movement success as a resource, a strategic frame that activists use to attract, unite, and energize fellow participants and outside allies. A mark of a fully mobilized movement, we argue, is the ability of movement participants to deploy a spectrum of "victory frames" that capture the diverse values and goals of activists and then to strategically navigate between these frames. Considered as a tool of movement mobilization, victory is pluralistic and dynamic. To demonstrate how victory frames can add to our understanding of social movements, we use as a case study the American civil rights protests of the 1960s.

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Moderator: 5B, Civil Rights and Minority Rights

Shakeshaft, Emma

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"Modern Day Debtors' Prisons in WI"

On any given day in Milwaukee County, between 20-50 individuals are sitting in custody solely because they have failed to pay a fine, fee, forfeiture, or other monetary payment required as a result of a municipal ordinance violation. State and local courts throughout Wisconsin have attempted to increase funding by using aggressive tactics to collect unpaid fines and fees for low level municipal violations. Courts have gone so far as to order the arrest and jailing of people who fall behind on their payments, without affording hearings to determine an individual's ability to pay or offering alternatives to payment. As with many areas of the justice system, those who are impacted the most by these unconstitutional practices are under-resourced people of color. This is a two-year legal practice-based project with the ACLU of Wisconsin, funded through the Equal Justice Works fellowship program. The project challenges modern-day debtors' prisons throughout Wisconsin by urging courts to pursue more rational and equitable approaches to criminal justice debt. We argue that this form of incarceration violates the protections afforded under the U.S. Constitution. The project aims to implement constitutional court procedures and legal advocacy through 1) coalition-building 2) attorney training and pro-bono opportunities 3) community outreach and education 4) impact litigation and 5) data collection and evaluation. This presentation will focus on the development of data collection instruments and the beginning stages of data collection that will determine the extent of this unconstitutional practice in Wisconsin. I will also discuss the data collection instruments we will use to evaluate racial disparities, which we believe courts may find persuasive.

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"Democracy, Federalism and the Guarantee Clause"

As redistricting technology and gets increasingly sophisticated, a political party that controls the redistricting process may be able to ensure that the party wins a much higher percentage of legislative and congressional districts than its percentage of votes. At its most extreme, a party can maintain control of a legislature or of a state congressional delegation even while receiving less than half of the votes. At the same time, fights over voter eligibility and ID requirements have increasingly become part of the political landscape, with Democrats generally advocating for easier access to the ballot and Republicans advocating for more restrictive regulations that, in many cases, have predictable disproportionate effects on likely Democratic voters. When Congress or federal courts have been willing to interfere with these state redistricting and voting processes, it is generally because they believe that individual voters' federal constitutional rights are being intolerably violated. And when they have pulled back, it has been largely out of deference to state autonomy. But this focus on individual voters and state autonomy ignores some important "spillover" concerns – that is, ways in which extreme partisan gerrymandering and voter suppression

might distort the national political character and the relationships between states. Highly gerrymandered state legislatures, for example, could call a constitutional convention and ratify constitutional amendments without widespread popular support. Theories of democracy and federalism suggest that states depend on each other's internal democratic functioning. The Guarantee Clause offers a constitutional underpinning to focus on these interdependencies, as this article will explore.

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Moderator: 5A, Courts and Justice

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"Women Making Constitutions: The Case of Bolivia"

Bolivia is an ethnically and racially divided country where politics have been shaped and dominated by male mestizo elites using western liberal ideas of law and democracy. Women have been absent from constitutional discourse and subjected to systematic exclusion from the domains where constitutions and laws are written. In 2006, a constitutional reform process started in Bolivia "from below" paving the way for a new constitutional order. The emergence of this constitutional process reflects the challenge of accommodating distinct and conflictive interests under the paradigm of ethnic and racial equality. In this paper, I analyze how indigenous women participated in the dynamics of constitutional change in Bolivia in the 2000s. I explore the factors that enabled women to create spaces for their political participation at the intersection of class, ethnicity, and gender. Following an introductory section on the emergence of ethnic politics in Bolivia, I examine the participation of indigenous women vis-à-vis liberal agendas of gender equality. The premise of my paper is to explore how ethnic and gender identities are continuously evolving in a constant and fluid process of political negotiation.

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"Citing Slavery"

The law of slavery is still good law. Even in the twenty-first century, American judges and lawyers continue to cite case law developed in disputes involving enslaved people. These cases provide fundamental law for a wide variety of subject areas. Judges cite slavery to explicate the law of contracts, property, evidence, civil procedure, criminal procedure, statutory interpretation, torts, and many other fields. For the most part, judges cite these cases without acknowledging that the cases grew out of and contributed to the maintenance

of American slavery. I contrast this relatively unacknowledged citation of slavery with the increasing interest in the legacy of slavery in other realms of American life. From the renaming of buildings to the removal of statutes and flags, Americans have increasingly confronted slavery's memory. The legal profession, however, seems to have avoided this confrontation. My work will both catalog the varied uses of slave law by contemporary American judges and litigants and explore the implications of this citation for the law, the profession, and the public.

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"A Corrosive Attitude in Flint, MI, and Beyond: When Corporation Flush Lives Down the Drain in Pursuit of Profit"

Water. Science indicates that water is vital to all forms of life on the planet Earth. Despite water being an essential building block and a needed source for life to continue, estimates indicate 884 million people across the globe lack the basic access to clean water. In a series of events over several years beginning in 2011, thousands of people in Flint, Michigan were subjected to drinking water with dangerously high lead levels. Corrosive water from the Flint River in untreated old lead pipes caused lead to leach into the drinking water system. Despite complaints from residents regarding hair loss, rashes, and other ailments, city and state officials kept saying the water was safe to drink and use. Additionally, just two months after the city switched over to the Flint River, eighty-seven cases of Legionnaires' Disease were diagnosed, with ten cases being fatal. To this day, the city of Flint still struggles with water safety and affordability. A week after the State granted the Nestle Waters North America a permit to withdraw more local ground water for private use, the State announced it was ending its bottled water supply to Flint. This paper seeks to first address the extent to which the State and corporations are responsible in ensuring fulfillment of the right to clean water. Secondly, the moral and business justifications of Nestle for the "Great Lakes" State's continuing struggle to obtain affordable and clean drinking water. Thirdly, the legal avenues and remedies available to those in Michigan impacted by a lack of clean and affordable water.

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"Plurality and Persistent Injustice across Northern WI's Rural Lawscape"

This paper critically evaluates the "persistent injustice" (Wandler 2015) experienced across rural communities in northern Wisconsin. Specifically, it considers the jurisdictional

contexts and jurisprudential differences that both complicate and mitigate this injustice, and that likewise shape rural individuals' conceptualizations of, access to, and expectations for state and/or tribal courts. This is a project—and a paper—in progress, representing one stage of a three-year, ethnographic study of legal advocacy, in/equity, and rights mobilization across northern Minnesota and Wisconsin. As scholars have documented, the "rural lawscape" (Pruitt 2014) tends to be marked by isolation; precarious employment; dispersed social services; a lack of anonymity; and what are often powerfully pervasive gendered and moral discourses around work, fairness, and self-sufficiency. In a sense reflecting these trends, this paper highlights how diverse northern Wisconsin community members are vulnerable to such factors, as well as how these "ordinary people" themselves produce and influence legal systems of practice and signification (Silbey 2005). It also complicates the workings of the rural lawscape by attending to the ways in which a complex political and socioeconomic context still remains largely abstracted from, and even diminished by, more prevailing local discourses and engagements around identity, relationships, and rural space. Documenting what might be termed "rural legal consciousness," this paper evidences how these processes are differently but expertly understood by low-income community members, judicial decision-makers, and advocates across northern Wisconsin and uniquely manifest in the often porous interface between formal legal procedure and everyday interaction.

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"The Emerging Social Justice Practice Architecture"

Lawyers' resistance to the Trump administration has brought lawyers to the nation's attention as defenders of justice. "Let the lawyers through" was heard at airports across the country when individuals from Muslim countries were banned. The litigation was led by public interest organizations such as the ACLU with support from immigration law scholars and law students – many affiliated with immigrant rights clinics. The "me to" movement is another social justice campaign generating lawyer activism. The rise in social justice practices builds on decades of work: the expanded range of practice structures, law schools retooling with diverse students and a restricted legal job market, and the rise of an integrated advocacy model in public interest law firms. We look at several new organizations and projects: Community Activism Law Alliance (CALA) a Chicago-based organization that links legal services with activist NGOs; Time's Up, a national network based at the National Women's Law Center that connects sexual harassment clients with experienced lawyers; Law for Black Lives Matter a national network supporting lawyers for Black communities; and networked law practices models for solo practice and nonprofit law firms. Their characteristics include efficient use of financial and human resources, expanded multidimentional strategies, emphasis on diversity and identity, and commitment to access across rural and urban locations. These new practices face challenges. Technology helps but may dampen passion and lead to inequality in access. The struggle for a viable sustainable scalable business plan continues. And lawyers must deal with the tension between animating critical legal theories and legal liberalism.

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"Confrontation or Collaboration: Lawyers, Local Bureaucrats, and the Politics in Corporate Bankruptcy Lawyering in China"

The new Chinese Enterprise Bankruptcy Law enacted in 2006 has caused a stir in the corporate bankruptcy field of China. Entrusting private professionals to administer bankruptcy cases, the Chinese lawmakers aimed to tear down the domination of local bureaucrats in the bankruptcy regime and the new law unavoidably caused tension between bankruptcy practitioners and local state officials. Surveying the post-2006 corporate bankruptcy practice in China, in this study I examine the interactions between lawyers and local bureaucrats in the field of corporate bankruptcy and attempt to connect my findings to the existing theories on the relationship between the legal profession and the state power. Based on archival data and in-depth interviews with bankruptcy lawyers, judges and government officials, I find, in practice, conscious collaboration and cooperation at times overwhelm the institutionally-created tension between lawyers and bureaucrats. Professional expertise and state power, in the nascent but fast-growing field of corporate bankruptcy, have danced together and well. This finding contributes to the existing theory on two aspects: First, it effectively challenges the proposition that the growing privilege and independence of the legal profession would necessarily give birth to the lawyers' challenge to the state power. Second, it strengthens the argument that active exchanges of social resources and capitals may occur in the crossroad of law practice and state regulation, but supplements the existing literature with some desirable consequence resulted from the lawyer-state collaboration.

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"Transnational Public-Private Partnership in WTO Litigation"

My dissertation investigates an under-researched area – the way that transnational public-private partnerships operate in lawsuits before the World Trade Organization. Multinational corporations have been an important force in integrating emerging countries into the world economy via operations outsourcing and are often subject to trade barriers when shipping products made in emerging countries back to developed countries. Taking an actor-oriented approach, my dissertation employs triangulation research methods –

including interview, content analysis, and descriptive statistical analysis – to explore how transnational coalitions between foreign-headquartered/owned multinational corporations and emerging countries motivate the initiation of WTO cases. Specifically, the project examines the transnational coalition phenomenon pertaining to six emerging countries: Argentina, Mexico, Brazil, India, Indonesia, and Turkey. In the "borderless world" of our era, transnational partnership in trade litigation arise as a result of the global supply chain, the obscure political allegiance and nationality that companies identify with, and the increasing dependence and conflict across borders. With a focus on the effects of transnational coalitions on the WTO jurisprudence and the dynamics between national and international legal orders, my dissertation seeks to extend the Law & Society approach to existing WTO literature, thereby contributing to both socio-legal studies as well as international law.

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"LGBTQ Child Welfare and the Limits of Non-Discrimination"

Existing legal frameworks that address the treatment of LGBTQ youth in the child welfare system are currently in flux. The stakes are high given that LGBTQ youth are overrepresented in the child welfare system and face many obstacles that undermine their well being both inside and outside of the system. This Article maps out existing models of LGBTQ child welfare and explores their tensions and limitations. As described, historically LGBTQ youth in the child welfare system were not recognized. They were either criminalized or the child welfare system attempted to change their sexual orientations and gender identities to conform to traditional norms of sex, sexuality, and gender. Two decades ago, a new model of LGBTQ child welfare emerged in several states that offered anti-discrimination protections to LGBTQ youth inside the system. Today, we see the early stages of a new wave of LGBTQ child welfare towards affirmative recognition. Under this regime, the state must do more than protect LGBTQ youth from anti-LGBTQ discrimination. Rather, it has an affirmative duty to provide LGBTQ youth with supportive home environments that embrace and support the development of their sexual orientations and gender identities. This Article critically evaluates the evolution of these legal frameworks and discusses the limits of nonrecognition and nondiscrimination as organizing principles of LGBTQ child welfare. It further builds the normative case for affirmative recognition as the main organizing principle of LGBTQ child welfare.

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"Carceral State Crime: Contextualizing and Measuring Police Crime in an Era of Hyper-Punishment"

In his 1988 presidential address to the American Society of Criminology, Chambliss called for a criminology of state crime. Like white collar crime, for most of the 20th century

criminologists ignored studying state crime. However, since Chambliss's address a number of scholars have answered his call, including criminologists who have theorized and/or empirically investigated police abuse of power as a form of state crime. The extant literature though does not conceptualize police crime within the wider carceral state. In light of the unprecedented growth and changing character of modern US punishment, I argue that policing is qualitatively different in the carceral state era than prior policing and punishment eras in two respects. First, in the carceral state era, new policing practices have emerged in which police violence has gained renewed prominence (e.g., police militarization, aggressive patrol, hyper-surveillance). Secondly, the development of legalized accountability mechanisms have emerged alongside a legalized impunity framework that enables and authorizes police violence. Legalized accountability mechanisms are effectively neutralized by the law that immunizes officers from punishment. Further, the means to measure such crime is undermined, since the government doesn't track such crime. To measure what I term "carceral state crime," I employ a social harms perspective and draw on Jupp et al. (1999) "features of invisible crimes" typology. I then argue that the same criminal offender categories applied to traditional street crime (e.g., first-time offender, career offender) should be applied to study dangerous carceral state actors such as rogue police officers and propose relevant criminology and punishment theories to examine such crime.

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"Integrating Corporate Social Responsibility and Sustainability in the International Seabed"

As the only international organization that has the authority to enact and enforce regulations for activities in the international seabed (Area), the International Seabed Authority (ISA) is currently developing the Mining Code and has reached a number of exploration contracts with member States and firms sponsored by member States. However, due to the economic, environmental, social and technical challenges, mining in the Area is a high-risk activity. It requires equitable sharing of benefits derived from the Area, effective protection of the marine environment and of human health and safety, and fully integrated participation of developing countries.

There are trends in the linkage between corporate social responsibility (CSR) and sustainability for addressing social and environmental concerns on the global arena. Although entities that intend to conduct seabed mining can be regarded as the trigger of environmental and biological changes, they are generally equipped with capacities to solve relevant problems. Contractors have been collaborating with the ISA to organize workshops on technical and environmental issues, providing training programs for personal from developing countries, and launching initiatives in local communities of the sponsoring States.

Based on practices of existing contractors, this article explores the role of corporations in sustainable development of the Area. It demonstrates the contract-based system, including

current status of contracts, rights and responsibilities of contractors, and a parallel system for benefit-sharing. It also provides some suggestions on the integration of CSR and sustainability pertaining to the Area. The implications include a CSR framework that could be adopted by the negotiating mandate for marine biodiversity in areas beyond national jurisdiction.