PHILOSOPHY & LEGAL THEORY COLLABORATIVE

2025 Law and Society Association Meeting Philosophy & Legal Theory CRN 17 Program

May 22 – May 25, 2025

Hyatt Regency
151 E Wacker Dr,
Chicago, IL 60601

Thursday, May 22, 2025:

Challenges to Legal Positivism

Thu, 5/22: 8:00 AM - 9:45 AM
3895
Paper Session
Thursday, 8-9:45am

East Tower
Room: Grand Suite 5
Even though the debate on legal positivism is old, it is still not settled. The central tenets of positivism are still widely embraced and widely criticized as well. In this session some central assumptions are scrutinized. The sharp divide between morality and law is challenged by pointing out that if taken to ist extreme it leads to 'legal nihilism' while an augmented version of the indeterminicy thesis is leveled against it from a legal realist perspective. International law meanwhile poses a challenge because it is unclear where its legitimacy derives from. The notion of sovereignty is discusses in relation to the limits on state courts' exercise of personal jurisdiction.
View Abstract 3895

Chair/Discussant

Fanni Gyurko, Centre for Socio Legal Studies, Faculty of Law, University Of Oxford - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Social or Political Theory and the Law

Secondary Keyword

Courts, Trials, Litigation, and Civil Procedure

Presentations

Rethinking the Concept of Legitimacy of International Law: Legitimacy without Right to Rule and Duty to Obey

Proposal

This study aims to rethink the concept of legitimacy and present the characteristic concept of legitimacy of international law. The scope of legitimacy has recently been extended. Nevertheless, legitimacy has not been fully considered. Indeed, some studies have attempted to evaluate authorities in the international or non-state realm while retaining the common logic, namely the right to rule and the duty to obey, inherent in legitimacy. Previous research on the legitimacy of international law has accepted this framework.
However, this study argues that we cannot assume that the common logic of legitimacy fit with international law. First, because there is no group of officials who exercise and enforce international law to govern, it is misleading to include the logic of the right to rule in the legitimacy of international law. Second, as no philosophical conception can morally justify the duty to obey international law, it is self-destructive that the legitimacy of international law includes the duty to obey.
This study proposes that we should focus on the relationship between international law and the practical reasoning. To elaborate, we should highlight that international law is the reason for action and is invoked to justify and ground the actions of its subjects.
From this, we can derive two logics of the legitimacy of international law. The first is the right to permission. International law affects our practical reasoning. They may be against our autonomy as agents. Therefore, for a more fruitful discussion, we should consider the problem as permission rather than governance. In other words, the question of legitimacy partially concerns whether we can entrust our decisions to them. The second logic is the right to justification. As mentioned earlier, international law is invoked to justify and ground actions. This is the capacity we must possess as agents. Therefore, to be legitimate, international law must be able to justify the actions of its subjects.

Presenter

Koga Ueda, Doshisha University - Contact Me

The Realist Objection to the Idea of Law-Application

Proposal

Since the American legal realists of the beginning of the twentieth century put forth their critique of legal formalism, the idea that judges are law-appliers has fallen into such disrepute that nobody today seems willing to defend it. Moreover, the most frequent realist objection against the idea of law-application typically comes in the form of the "indeterminacy thesis." According to this thesis, it is often (if not always) the case that judicial decisions are underdetermined by the formal doctrinal legal materials. Though the indeterminacy thesis also entails a claim about causal determination (i.e., the realists thought that legal reasons were often or always causally ineffective in producing the outcome of cases), in its most interesting interpretation the thesis is first and foremost a claim about the insufficiency of legal reasons for justifying one unique outcome.

In this paper, I want to defend three claims. First, that the indeterminacy thesis, in any of its forms, is not the only objection that legal realism and its successors have leveled against the idea of law-application. For the realists, even if the law were utterly clear and determinate in a particular case,

deciding against a legal rule might be justified if the judge's sensitivity to the facts of the case leads him to think that such a solution is fair. A formalism in the sense of an excessive concern with the strict application of rules distracts us, according to some realists, from what really matters-i.e., the particularities (the substance) of the case at hand. Second, that it is indeed this latter objection that is the most serious one that legal realism poses to formalism. And third, that even when we have added this objection to the realist challenge, (a certain interpretation of) the notion of law-application is indeed compatible with both the law being indeterminate, and a context-sensitive approach to judicial decision making.

Presenter

Jorge Cortés-Monroy, Jurisprudence and Social Policy, UC Berkeley - Contact Me

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Which Sovereignty in Personal Jurisdiction?

Proposal

It's been the song that never ends-the debate over whether the limits on state courts' exercise of personal jurisdiction are grounded in states' sovereignty or individuals' liberty. Practitioners and scholars alike have been subjected to this tune for years, and it's not clear that anyone is better off for it. Singing along has been irresistible, though, as the Supreme Court especially has wavered unsteadily between the two justifications.

This Article seeks to find a way forward by clarifying the concept of sovereignty that the Court so often invokes without specificity. Not only is sovereignty distinct from related concepts like comity, but personal jurisdiction doctrine would benefit from differentiating external sovereignty-referring to relations between sovereigns-from internal sovereignty-referring to relations between a sovereign and those subject to its authority. By then considering what the reach of state courts' personal jurisdiction would be if it were truly limited by all aspects of sovereignty, this Article proposes that such a position is untenable. Accepting sovereignty, and especially external sovereignty or interstate federalism, as the controlling limit on personal jurisdiction would require dismantling the way this doctrine has operated for decades, disregarding the established relevance of the Due Process Clause to personal jurisdiction, and shoehorning the doctrine into an ill-fitting framework. A better approach would be to recognize that states' internal sovereignty and individuals' liberty are the relevant sources of limitations on personal jurisdiction, and that they are effectively two sides of the same coin. As such, we can abandon sovereignty talk in most instances and appropriately focus personal jurisdiction doctrine on parties' liberty interests.

Presenter

Haley Anderson, Jurisprudence and Social Policy, UC Berkeley - Contact Me

Law, Science and Ontology

Thu, 5/22: 10:00 AM - 11:45 AM
3899
Paper Session
Thursday, 10-11:45am

East Tower
Room: Randolph 3
New developments in science and metaphysics challenge traditional legal concepts. As novel ways of understanding the world gain traction, new questions are asked of legal theory. We may question for instance whether only humans can be rights bearing subjects or how desirable centralized bureaucracy is when viewed from the perspective of scientific practice. In this panel, probing questions are asked about legal theory from the standpoint of various state of the art scientific and ontological theories.
View Abstract 3899

Chair/Discussant

Alex Reiss Sorokin, Princeton University / Institute for Advanced Study - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Technology, Innovation, Artificial Intelligence, Robots, Science, and the Law

Secondary Keyword

Social or Political Theory and the Law

Presentations

Beyond the Value-Free Ideal: Science, Law, and the Science of Law

Proposal

This paper draws an analogy between the value-free ideal (VFI) found in the domains of science and law. In science, the past few decades have borne witness to a paradigm shift in the field: with proponents of VFI now finding themselves in the minority position. In contrast, despite similar arguments being made within the legal domain, the past few decades have seen the continued rise of originalism and textualism as the dominant approach to legal interpretation and jurisprudence: in part under the guise of judicial impartiality. This paper argues that appreciating the similarities

between these misplaced ideals is not only of epistemic and moral importance, but can open up new conceptual space within debates about the proper role of values within the practices of science and law.

Section I details the, now familiar, claim in philosophy of science that the practices of science neither are, nor should be, value-free. Section II sets up a parallel story in law: arguing that the ideal of value-free, impartial, justice systems is not only a chimera, but may also be counter-productive to achieving its desired ends. Section III then pauses to highlight the points of overlap and connection between VFI in science and law, and draws out a number of general lessons. Finally, Section IV puts forward several structural similarities between law and science, which leads us to argue that law and jurisprudence, rather than moral and political philosophy, may be more fertile ground for philosophers of science to grapple with the proper role of values within science.

Presenter

Eric Scarffe, Florida International University - Contact Me

Constitutional Technocracy

Proposal

Small-d democracy, defined as governance according to the will of the people, is thought to go along with a standard set of big-D Democratic institutions: representative legislatures, regular elections, egalitarian norms, and strong individual rights. Likewise, small-t technocracy, defined as governance according to science, is currently thought to go along with a given set of big-T Technocratic institutions: centralized governance, expert administration, welfarist redistribution, and, in many existing Technocracies, weak (or no) individual rights. My forthcoming book, Constitutional Technocracy, argues that this set of supposedly Technocratic institutions is importantly anti-scientific and thus anti-technocratic. Centralized administration is not how you science! Instead, science is a diffuse and iterative process of constant experimentation, which resembles liberal democracy far more than it resembles centralized bureaucracy. My book first defends technocratic jurisprudence as the best (and, indeed, as an importantly inescapable) test of legal legitimacy. But the book argues that true technocracy requires diffusion of sovereignty among multiple governing institutions and even among the polity as a whole, in order to empower the iterative experimentation that is core to scientific methods. That said, diffuse sovereignty is hard to distinguish from anarchy. But when diffuse sovereignty is understood technocratically, objective truth provides a backstop to liberty. In constitutional technocracy, diffuse sovereignty gives rise not to anarchy but rather to dialectical democracy, empowering emergence of objectively better laws. Finally, the book argues that the American constitutional order is already characterized by diffuse sovereignty. Governing power under the American Constitution is not divided hierarchically. Instead, federalism, separation of powers, and individual rights all serve to diffuse sovereignty, empowering perpetual experiments of human governance.

Presenter

Abigail Moncrieff, Cleveland-Marshall College of Law - Contact Me

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Speculating on a Realistic Utopia: Object-Oriented Ontology's Potential in Animal Rights Discourse

Proposal

A paradoxical trajectory marks modern philosophical thought. The Enlightenment's pursuit of objective reality, through its creation of an aggressive anthropocentric subject, ultimately led to its complete negation, resulting in contemporary theoretical instability. Against this backdrop emerges Object-Oriented Ontology (OOO), a branch of Speculative Realism, offering a radical reconceptualization of reality that challenges traditional anthropocentric hierarchies. At its core, OOO proposes a fundamental repositioning of all entities, from animals and humans to institutions and abstract concepts, as autonomous beings possessing their own realities and primitive forms of perception. By positioning itself as "non-modern" rather than pre-modern, OOO rejects the foundational divide between human and non-human, between thought and world, potentially opening new pathways for understanding animal rights within legal and political theory. Methodologically, the investigation centers on OOO's distinctive framework for defining and situating "animals" within jurisprudential contexts while carefully distinguishing it from Actor-Network Theory. Although these approaches share superficial similarities, they differ in fundamental aspects. Critical analysis extends to the theoretical and practical implications of adopting an OOO perspective on animal status and rights, alongside examining broader implications for societal conceptualization. Beyond mere theoretical exposition, crucial questions emerge regarding human responsibility and the risk of political disengagement under an OOO framework. Such examination illuminates both the transformative potential and inherent limitations of applying OOO's ontological insights to governance and rights theory. This investigation aims to advance contemporary discussions about the philosophical foundations of animal rights.

Presenter

Ecem Çoban Bilici, Bahçeşehir University - Contact Me

The Turn to Process: American Legal, Political, and Economic Thought, 1870 - 1970

Thu, 5/22: 12:45 PM - 2:30 PM
0322
Author Meets Reader (AMR) Session
Thursday, 12:45-2:30pm

East Tower
Room: Michigan 3
This is an interdisciplinary author-meets-reader session on Kunal Parker' book, The Turn to Process: American Legal, Political, and Economic Thought, 1870 - 1970 (Cambridge University Press, 2024). The book describes how, between 1870 and 1970, under the pressure of antifoundational historical critique, American legal, political, and economic thought went from being oriented around truths, ends and foundations to being oriented around methods, processes, and techniques. The book discusses the implications of this transformation for understandings of law, democracy, and markets. The panel will be interdisciplinary, bringing together its participants constitutional theory, legal history, legal anthropology and political science.
View Abstract 322

Author

Kunal Parker, University of Miami School of Law - Contact Me

Chair

Ajay Mehrotra, Northwestern U. & American Bar Foundation - Contact Me

Reader(s)

Marianne Constable, University of California, Berkeley - Contact Me
Jon Goldberg-Hiller, University of Hawai`i - Contact Me
Annelise Riles, Northwestern University - Contact Me

Punishment for the Greater Good: Retributivism vs. Consequentialism

Thu, 5/22: 2:45 PM - 4:30 PM
1338
Author Meets Reader (AMR) Session
Thursday, 2:45-4:30pm

East Tower
Room: Grand G
With over ten million people incarcerated throughout the world, we urgently need to answer the question of whether incarceration is morally justified. A distinguished panel of commentators will discuss the book "Punishment for the Greater Good" (Oxford University Press, 2024) with author Adam Kolber. The book presents a limited defense of anti-retributivist, consequentialist punishment and discusses the prospects for carceral abolition.

For more details (discount code: ALAUTHC4), see:
https://global.oup.com/academic/product/punishment-for-the-greater-good-9780197672778

For a short, animated book teaser, see: https://www.youtube.com/watch?v=8jzzERXbbCo
View Abstract 1338

Author

Adam Kolber, Brooklyn Law School - Contact Me

Chair

Stephen Galoob, University of Tulsa - Contact Me

Reader(s)

Russell Christopher, University of Tulsa - Contact Me
Ken Levy, LSU Law School - Contact Me
Jordan Wallace Wolf, University of Arkansas - Contact Me

Friday, May 23, 2025:

Novel Approaches in the Theory of Criminal Law

Fri, 5/23: 8:00 AM - 9:45 AM
3903
Paper Session
Friday, 8-9:45am

East Tower
Room: Grand Suite 5
Perhaps more than any other area in law, criminal law is in need of constant justification because it causes harm in response to harm caused previously. Judgments in criminal law are therefore always controversial and punishment cannot be meted out without as explicit basis in law. We will look at three situation which test the limits of criminal law, self defense in which innocent bystanders become victims, unrepentant defendants and large scale massacres with a political motive.
View Abstract 3903

Chair/Discussant

Marianna Iovenko, University of Waterloo - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Criminal Justice and Criminal Procedure

Presentations

Building on Experience: Leveraging International Precedents to Mitigate Potential Pitfalls in Establishing a Special Tribunal for October 7th Perpetrators

Proposal

Following the tragic events of October 7, 2023, when thousands of Hamas militants invaded Israel and massacred over 1,200 civilians, Israeli forces captured many of those responsible, both within Israeli territory and during ground operations in Gaza. Among the detainees were individuals who directly participated in the attacks, as well as those involved in orchestrating them from Gaza. In response, Israel announced its intention to bring these perpetrators to trial.

This article examines the legal challenges surrounding the prosecution of those implicated in the October 7th massacre. In November 2023, Israel's Ministry of Justice considered the possibility of establishing a specialized tribunal for these trials. Currently, several legislative proposals are under development to create a fair and appropriate legal framework.

Key issues include determining whether the trials should be held in domestic courts, military courts, or a specialized tribunal, and whether they should be conducted under existing Israeli law, international criminal law, or newly developed legislation. The application of the death penalty is also under consideration, further complicating the legal landscape.

In addition to substantive legal questions, the article explores procedural challenges, such as the standard of proof, evidence rules, and the rights of detainees to legal representation. A central concern is ensuring the trials are perceived as legitimate and not as "show trials." Drawing from historical precedents and relevant legal scholarship, the article aims to propose a balanced approach that upholds justice while ensuring procedural fairness for all involved.

Presenter

Yaara Mordecai, Yale Law School - Contact Me

Self-Defense and Collateral Harm

Proposal

This paper presents a novel solution to the problem of collateral harm in otherwise justified self-defense. The consensus account based on the Doctrine of Double Effect finds the defensive force justified against both the targeted aggressor and innocent collateral victims. The principal alternative account maintains the former justified and the latter unjustified. This paper argues that neither are justified and both accounts are incorrect. The self-defender's force against innocents transforms the initial aggressor's unjustified force against the self-defender into justified force. While there are limitations on an initial aggressor becoming justified against the initial self-defender, they only prevent the initial aggressor from becoming justified in self-defense. They do not prevent, as here, the initial aggressor from becoming justified against the initial self-defender in others-defense. Therefore, against the initial aggressor's now justified defense of others force in aid of the innocents, the self-defender's force against the initial aggressor is now unjustified.

Presenter

Russell Christopher, University of Tulsa - Contact Me

Defiance and Control: Challenges to Authority in the Modern State

Fri, 5/23: 10:00 AM - 11:45 AM
3101
Paper Session
Friday, 10-11:45am

East Tower
Room: Grand Suite 5
This panel explores challenges to the legal and political authority of the modern state and states' efforts to control these challenges. Does the state have legitimate control over marginalized and mistreated groups? What is the appropriate scope of state authority in responding to defiance-particularly when these acts of defiance are contested by members of the state itself? Two papers examine the question of defiance through the lens of social activism-the creation of "free zones" in the Black Lives Matter protests and the rejection of collectivist narratives by indigenous activists. Two papers focus on states' attempt to manage protests, specifically analyzing the relationships between police and protestors. The final paper examines problematic patterns of authority and control in the state prison system.
View Abstract 3101

Chair

Charlotte Thomas-Hébert, Aalborg University - Contact Me

Discussant

Candice Delmas, Northeastern University - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Social or Political Theory and the Law

Presentations

Defiance and Radical Political Change

Proposal

It is difficult to imagine radical political change. There is no shortage of critiques of existing authority such as police or prison, but offering up a developed vision for what could take their place is far more challenging. This essay argues that defiance has a distinctive epistemic benefit in helping us develop such visions, as it is by enacting an alternative to authority in the present that we can experiment with our political vision and iterate upon it. Defiance has been overlooked as an object of political analysis in favour of related concepts such as anger or protest. But what distinguishes defiance is that it is essentially enactive - to defy authority is to embody a challenge against it through one's refusal to obey, thereby forcing the authority to either respond or to legitimise the challenge through its silence.

To demonstrate my claim, I will examine the vision of police abolitionism enacted through the Capital Hill Autonomous Zone (CHAZ) as part of the 2020 Black Lives Matters protests. In developing a full theory of police abolitionism, theory alone can only take us so far; we need to practically experiment with alternatives. But we are extremely limited in our ability to explore such alternatives whilst operating within the present strictures of state authority. Accordingly, it is by defying that authority that we open up a space in which we can experiment with our political vision, allowing us to both test our practical details and to experience how these alternate modes of living might feel. CHAZ had some clear successes, such as its community policing force which successfully de-escalated multiple violent scenarios, but it also had clear failures, seen in its inability to deal with a string of shootings. But it was through this process of defiant experimentation that police abolitionists were able to refine and re-assess the details of their proposed vision of the future.

Presenter

Julian Sheldon, University of Toronto Department of Philosophy - Contact Me

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Distrusting Officers in Prison Reform

Proposal

Prisons in the US, which are rife with violence (including at the hands of personnel), fail to provide the "safe and humane environment" they purport and are required to provide. As criminologists and sociologists have observed, prison conditions are shaped in large part by officers' conduct and treatment of the people in their custody. Meanwhile, incarceration law and policy experts have documented the recent erosion of prisoner rights. Prison reformers thus generally identify two key components of any meaningful prison reform: more rules governing official conduct and more rights for incarcerated people. Yet even in prisons that have sought to lead the way in these two areas, such as in California, progress has failed to materialize. In this paper, I argue that we need a philosophical analysis, informed by criminology, political theory, and social epistemology, to properly diagnose, and calibrate responses to, the prison's failures. For part of prison reforms' failure stems from a misunderstanding of how prison works as an institution. According to the common view, the prison's dysfunctions result from deficient rules and prison officers' rule-flouting, and can be fixed with better rules, more prisoner rights, and enhanced official accountability. This perspective misses officeholders' substantial discretionary power in deciding what rules apply in the situation and how to enforce them. Prison officers' exercise of discretionary judgment is guided by an "us versus them" mentality and a profound distrust of incarcerated people, that are instilled during training and pervade the prison occupational culture. What is more, incarcerated people's credibility deficits extend beyond the prison walls and are reinforced by credibility excesses on the part of prison officers. The prison occupational culture and the unjust testimonial dynamics that support it suggest the need to distrust prison officers in reform efforts and instead to empower incarcerated people.

Presenter

Candice Delmas, Northeastern University - Contact Me

Policing Violent Protests

Proposal

Police Response to Violent Protests
Avia Pasternak

Recent debates in political philosophy have begun to pay attention to the question of the permissibility of such uncivil protesting in democratic states. Many voices in that literature suggest that the resort to some uncivil protesting, especially against racial injustices and police brutality against racial minorities can be a permissible strategy, even if it involves direct confrontation with the police and property damage. If these accounts are correct, and if it is the case that uncivil protesting can be a permissible route of action, then an immediate question that follows up is – how should the police respond to such uncivil protesting?
So far, the few debates in philosophy on protest policing have not addressed the question of how police should respond to uncivil protests that include attacks on police officers and widespread damage to property, such as those in Ferguson 2014. This paper takes up this task, analyzing the normative considerations that should guide the police response to confrontational uncivil protests. It rejects the view that police officers have a duty to retreat when they are facing justified protestors

and defends the claim that police have a duty to respond in force to uncivil protestors even if the protest is justified. This is because uncivil protestors have a particularly hard time being able to control the protest and ensuring it does not end up inflicting excessive violence. Given these concerns, police have a duty to assist the protestors in in controlling the protest. This means that police ought not deploy a model of "total control", where they seek to entirely suffocate the protest by all means. Rather, they should engage in a model of controlled engagement, where they merely aim to contain and the violence and channel it away from more impermissible forms of harm.

Presenter

Avia Pasternak, University of Maryland - Contact Me

Republican Protest Policing

Proposal

Protest policing can be understood as an exercise of social control in response to collective actors that pursue goals through mobilization and contention. The practice is often a subject of controversy, with a range of views about whether and to what extent protest should be subject to social control in more-or-less democratic societies. This includes conservative or authoritarian perspectives that support a progressive expansion of the formal and informal powers of police over protest, such that the scope for mobilization and contention is drastically curtailed. It also includes socialist and abolitionist perspectives that support a gradual reduction of these powers, such that the state has less or no capacity to interfere with political protest. This controversy can be illustrated through polarized responses to instances of protest policing in public discourse, with police criticized for being too lenient or too harsh in their actions. This paper sets out a normative perspective on protest policing that builds upon republican foundations. It aims to ensure that citizens are protected against vertical forms of arbitrary interference from the state and horizontal forms of arbitrary interference from each other. This deceptively simple aspiration shapes the republican model of protest policing, in the sense that the dual goals of policing in this context should be to (a) facilitate the capacity of citizens to mobilize against the threat of vertical forms of domination and (b) protect citizens against the threat of horizontal forms of domination that arise in the course of protest. The upshot is a perspective that resists a conservate or authoritarian curtailment of political contention, without embracing the abolitionist claim that police should have no role in facilitating protest.

Presenter

William Smith, The Chinese University of Hong Kong - Contact Me

To Become and Destroy: Subjectification, Violence, and Culpability

Fri, 5/23: 12:45 PM - 2:30 PM
2578
Paper Session
Friday, 12:45-2:30pm

East Tower
Room: Grand A
Law, although often seen as a means of countering violence and injustice, regularly constitutes the very site where they are produced, contested, and justified. From medical testimony to international crimes, tax code, and border violence, this panel examines various legal constructions - of punishment, of genocide as a form of destruction, of juridical categories of culpability and injury, and of (queer and disabled) subjects.

As we critique these legal dynamics of becoming and destroying, we ask: How does law become a constitutive element of processes of (self-)discipline and racialization? What are the entanglements between law and (neo)liberal and racial capitalist forms of governance? What narratives around violence and resistance are fostered in the legal sphere and what horizons of possibility are staked out?
View Abstract 2578

Chair/Discussant

Christopher Tomlins, University of California, Berkeley - Contact Me

CRN

12 - Critical Research on Race and the Law
17 - Philosophy and Legal Theory
27 - Punishment and Society

Primary Keyword

Crime, Victimization, and Violence

Secondary Keyword

Social or Political Theory and the Law

Presentations

Dual Logics in Genocide

Proposal

This paper will trace the broader epistemological tension between legal and political studies of genocide and the definitional debates that have plagued such cases. Several instances of mass violence have been subject to categorical disagreements over their ontological status as "genocide" within the interdisciplinary field of genocide studies. On the one hand, political violence scholarship has long distinguished the underlying logic of genocide from other manifestations of mass violence-

while most violence is coercive, in which perpetrators seek to alter some undesirable behavior of the targeted segment of a population, genocide instead follows a distinctly terminal logic. On the other hand, the legal construction of genocide provides that genocide may potentially target only "part" of a protected group (the crime's mens rea) and/or may destroy the group through non-lethal methods of destruction (the enumerated actus rei). Using the legal construction of genocide as our entry point, this paper argues that several of the definitionally contested cases are actually examples of a dual logic of genocide, in which perpetrators seek to terminate some members of a national, ethnic, racial, or religious group (a terminal logic) while also intentionally allowing for the survival of some members of the very same group, such that the genocidal violence necessarily communicates some message concerning undesirable group behavior to the surviving members of the group (a coercive logic).

Presenter

Anthony Ghaly, UC Berkeley - Contact Me

Medicalizing Police Violence

Proposal

In Medicalizing Police Violence, I argue that police defendants, their attorneys, allied medical expert witnesses in excessive force litigation leverage medical science's distinctive epistemic authority to challenge common sense and well-established legal constructions of two foundational legal concepts: causation and reasonableness. Medical experts often, and unsurprisingly, figure centrally in excessive force litigation, as parties often dispute the medical facts of a case. Expert witnesses, then, ostensibly offer scientifically valid medical knowledge that aids courts and juries in resolving these disputes. For example, in cases where a person died while being restrained by police, parties often disagree about whether the police restraint caused asphyxia or related fatal physiological effects. While, or perhaps because, this role of medical expert testimony is reasonable on its face, it remains largely uninterrogated in legal scholarship.

Methodologically, this Article analyzes an original database compiled from trial court documents and medical research papers from litigation involving in-custody deaths where medical experts testify on behalf of police defendants. I conduct a mixed method study, combining a quantitative analysis of a randomized sample of all in-custody death cases at which a medical expert testified with a finer-grained analysis of a purposive sample composed of cases in which scientific evidence is challenged under Rule 702 of the Federal Rules of Evidence and Daubert v. Merrell Dow Pharmaceuticals (1993). I use this data to ask: How does medical evidence shape legal disputes and outcomes in excessive force cases? Is such evidence being used appropriately in these cases? Is the evidence medical experts offer sufficiently scientifically grounded? Are legal conclusions adequately supported by the relevant medical evidence?

Presenter

Anna Zaret - Contact Me

On Own (Culpable) Conduct: The European Court of Human Rights' shifting frames of culpability and injury in contexts of border violence

Proposal

In "On Own (Culpable) Conduct: The European Court of Human Rights' shifting frames of culpability and injury in contexts of border violence", Rahel Fischer will examine the interpretive techniques and rhetorical practices of legal actors to shift categories of culpability and injury in the context of border violence, reading these practices along the productive lens of the literature on police killings in the United States. In particular, this article illustrates, through a close reading of the 2019 judgment NT and DT v. Spain, that establishes the doctrine of 'own culpable conduct' as the prevailing interpretation of collective expulsion at the borders of the European Union, several of the legal techniques that structure the (im)possibility of registering the (enforced) disappearance of persons on the move. It is argued that these legal techniques produce a double disappearance through self-referentiality: the disappearance in the legal text as the impossibility of appearing in the archive, and a material disappearance in the context of border violence. Drawing on Saidiya Hartman's 'Venus in Two Acts' (2008) and Walter Benjamin's 'Critique of Violence' (1921), this article demonstrates that to be(-come) a subject within the terms of this verdict is to take responsibility for a violence that precedes the border crosser as well as the act of border transgression, and whose operation is occluded by the subject who comes to attribute the violence they suffer to their own acts. The dilemma of registration arises not only from the act of accumulated silences of recorded material dictated by the sparse documentation of the crime scene of a disappearance. It also functions through the deliberate legal displacement of culpability and injury that characterises both the legal techniques of racism and what Judith Butler has termed "white paranoia."

Presenter

Anna Rahel Fischer, University of California - Berkeley Jurisprudence and Social Policy program - Contact Me

Tax, Transfer, and Imputed Income

Proposal

"Tax, Transfer, and Imputed Income" discusses a fundamental discrepancy between the treatment of imputed income for tax and transfer purposes. On the transfer side, imputed income within families is treated as real income, which justifies a reduction in benefits. But on the tax side, the same income is treated as private, within a realm that the Internal Revenue Service neither can nor should measure. I argue that this discrepancy in the treatment of imputed income reveals the nature of the tax system not as a social contract between the government and individuals but rather as a

contract between government and family units. This difference creates different legal subjects for tax and transfer purposes and gives normative weight and the force of public law to private ordering choices.

Presenter

Sarah DiMagno, University of California, Berkeley / Jurisprudence and Social Policy Program - Contact Me

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"Save Our Children": LGBT Law, Fantasy, and the Figurative Child

Proposal

From the time of the Cold War, American legal regulation of queer sexual and gendered behavior has been organized quite centrally around the figure of the child: the child at risk, the child to be protected, the child to be raised, the child on which social order depends. Drawing on a range of archival materials, including newspaper clippings, activist communications, and legal opinions, I contend that queer activists, allies, and adversaries have cathected in the image of the child anxieties around personal dependency, social transformation, and the uncertainty of the future. That is, as a matter of fantasy--in the Freudian sense of an imaginary fulfillment of a wish--the child figure, more than referring to any real, living children, has been deployed in legal and political discourse to resolve subconscious anxieties triggered by the social destabilization wrought by queer sexuality. That figure, to various degrees and in various dimensions from mid-century to present, has served to produce and reproduce what I term, drawing on Foucault, the docile queer body: a self-disciplining body that, but for that single identifier that is their gender or sexual nonconformity, assimilates easily into existing normative and legal frameworks without challenge.

Presenter

Sid Schlafman, University of California, Berkeley - Contact Me

Understanding Law and Emotion Through Theory, Literature and History

Fri, 5/23: 12:45 PM - 2:30 PM
3748
Paper Session
Friday, 12:45-2:30pm

East Tower
Room: Grand B

This panel examines the relationship between law and emotion through its vast interdisciplinary discourse. Papers will be presented highlighting the importance of the tools of stories and theatre to our understanding of law. These then raise bigger questions of law's fit with the ideas of nature, reason and irrationality and ultimately to emotion.
View Abstract 3748

Chair/Discussant

Renata Grossi, University of Technology Sydney - Contact Me

CRN

17 - Philosophy and Legal Theory
27 - Punishment and Society
42 - Law and Emotion

Primary Keyword

Emotions

Presentations

Emotionalizing Naturalistic Jurisprudence

Proposal

The call for legal philosophy to be naturalized rests on a skepticism (of a variable range) toward intuition's epistemic authority in answering questions about law's nature. For instance, it has been pointed out that armchair intuition is vulnerable to cognitive, cultural and other forms of bias; that intuition can only ever manage to capture limited, perspective-bound aspects of a concept rather than its necessary and sufficient elements; and that even widely-accepted intuitions must be overturned if empirically disproved. Although these discussions largely draw on arguments within the broader epistemological debates on the reliability of intuition, they nevertheless leave out an important discursive aspect; one which can otherwise further strengthen their naturalizing attempts. The neglect is this: these discussions do not consider- much less take seriously- how emotion's epistemological salience bears on intuition's epistemic properties. Such a gap within the naturalistic program seems surprising in the light of psychological and neuro-scientific findings of how emotion informs intuition, and when considering the methodological insights that such a point of view can beget. First, the role of emotion brings to fore the question of whether the distinction between (a) ordinary, 'gut feeling' intuitions and (b) 'special,' rational intuitions deemed capable of supplying knowledge about truths, is merely one of degree rather than kind. Secondly, if naturalistic jurisprudence- via experimental jurisprudence- seeks to conduct evidence-based investigations into the nature of our intuitions on various jurisprudential theories and concepts, then a 'constructive-naturalist' understanding of emotion that is both somatically-grounded and guided by meaning derived from past experience can provide new tools and 'data' to render more transparent intuition's explanatory black box.

Presenter

Stephanie Chng, Yale Law School - Contact Me

Legend-Made Law

Proposal

Law and stories have a long history of cross-fertilization. US law's global fame for example, owes a great deal to emblematic cases involving a plot, a dramatic ending and a famous character, e.g. Rosa Parks, Clarence E. Gideon, Jane Roe…. Although some of these stories may have been slightly embellished over time, all share a common feature: they are true.
Fictions are a different matter. Unlike true stories they are not expected to make the law but at best, to change the extent of its application, e.g. when a defendant invents remorse or mitigating circumstances to obtain the leniency of the court.
But there are exceptions. Pure fictions sometimes produce law, notably when, following a peculiar process of collective appropriation, they are eventually acknowledged as true stories.
The purpose of this paper is to provide concrete examples of such "legend-made law" and to discuss the conditions that are typically associated with their occurrence.

Presenter

Karim Medjad, CNAM - Contact Me

Legislative Theatre - Using Theatre as a Tool for Policy-Making

Proposal

I will present my current research on the Legislative Theatre (LT) approach from the legal perspective. LT can be considered an innovative, playful, inclusive, and critical approach to policymaking based on the use of theatrical tools designed by A. Boal and adapted by the method's practitioners. As rooted in the thought of P. Freire it also focuses on the marginalised and excluded groups or communities for whom more "traditional" democratic and participatory processes are often not available.

I will focus on the LT as a participatory practice offering a remedy to (at least) some of the malfunctions of popular participation methods. However, the links between law, sought through LT, and politics, in the legal theory are not as obvious as they might seem. Theatre for the Legislator(s) might be equally interesting as wine or tree. This can be true if we insist on thinking about the law as a positivistic, black letter, "in books" phenomenon. But, if we think about law wider, e.g., as a social fact, a system, we utterly realize that LT has, potentially, a lot to offer. We are linking it clearly with a socio-legal perspective. In times of rising authoritarian tendencies, partisan politics, and increasing polarization all resulting in oppression and marginalization of the various groups the need for methods that will allow the oppressed to express their claims. LT apart from enabling such expression allows the process to fit into different types of participation (social, public,

political) while aiming to avoid the "non-participation" as understood by S. Arnstein. I will argue that this flexibility of the process is linked with the embodied character of the process referring apart from the cognitive aspects to the body and emotions can in certain contexts be more accurate and engaging - leading to better, more (lay)informed and accurate claims or input for decision-makers. I will also present some successful examples of LT around the globe.

Presenter

Bartłomiej Bodziński-Guzik, Jagiellonian Universit in Krakow - Contact Me

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The Case for Legal Modernism: Early 20th Century Irrationalism and Jurisprudence

Proposal

To what extent can law and normativity be seen as spheres guided by rational reasons? This question becomes crucial during periods marked by a crisis of faith in human reason, such as the early 20th century. This epoch witnessed a profound shift in European literature and philosophy, which, following the discoveries of thinkers like Freud, embraced irrationalism as part of the broader modernist movement. However, while modernism's manifestations in literature and the arts are well-researched topics, its influence on legal sciences has remained underexplored-often overshadowed by the later association of modernism with Critical Legal Studies. This paper analyzes how modernism's core irrational beliefs shaped the works of legal scholars Eugen Ehrlich and Leon Petrażycki. The author argues that Ehrlich's and Petrażycki's thought, reflecting the broader early-20th-century Zeitgeist, sought to redefine law through the lens of the irrational by questioning traditional legal assumptions of stable egos and rational will. In doing so, both Ehrlich and Petrażycki pioneered a modernist jurisprudence rooted in psychological and sociological perspectives, laying the groundwork for later developments in legal thought. This essay situates their theories within the context of European post-Romanticism and challenges to positivism, ultimately highlighting the role of early-20th-century irrationalism in the development of legal sciences.

Presenter

Wojciech Engelking, University of Warsaw - Contact Me

Weber, Madison and Akers in Court: How Formal Rational Decision-Making, Due Process and Social Structure Social Learning Exacerbate The Weaknesses Associated With Deterrence-Based Policy in the Criminal Courts

Proposal

Sectors of the criminal justice system have bureaucratized to an extent that their management has replaced the values for which they were created (Feely & Simon, 1980). Previous research suggests that internal actor perceptions change as courthouse personnel increases (Smith et al., 2022). I discuss the impact of formal rational thinking in consideration of social learning concepts to discuss its impact on deterrence initiatives in our criminal justice system. I also contextualize this dialectic under the umbrella of due process and other constitutional impediments to deterrence. In depth interviews (n=32) provide data that comment on this tension. The results suggest that state judges' perceptions recognize the danger that assembly-line justice poses to the aspiration of deterrence and suggests support for an answer that lies in moving away from traditional deterrence on to other paradigms involving the Courts as a caretaker for the health of defendants rather than a punitive agent.

Presenter

Sven Smith, Stetson University - Contact Me

Philosophical Perspectives on Law and Politics

Fri, 5/23: 2:45 PM - 4:30 PM
3898
Paper Session
Friday, 2:45-4:30pm

East Tower
Room: Grand Suite 5
The relationship between law and politics belongs to those perennial topics discussed in the philosophy of law. This panel gives an overview of research on the topic by looking at four cases where the legal and the political intersect. The judiciary must always interpret the law from within a certain political situation and that will influence judicial interpretation. On the other hand the judiciary may itself play a part in politics and through its interpretation influence political discourse.
View Abstract 3898

Chair/Discussant

Emma Lezberg, Harvard University - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Social or Political Theory and the Law

Secondary Keyword

Courts, Trials, Litigation, and Civil Procedure

Presentations

Exclusionary Expressive Conduct

Proposal

The First Amendment has become one of the most effective weapons in the conservative movement's legal assault on progressive public policy and the regulatory state. While the First Amendment safeguards speech, expressive association, and religious belief, exclusionary conduct is earning constitutional protection across doctrinal areas. This safe harbor has been made possible by judicial bias in the creation and application of the tests that apply to each discrete claim, and in the abandonment of objective elemental safeguards.

This Article is the first to examine the inconsistency with which the Supreme Court has responded to expressive conduct claims in each doctrinal area through both a historical and contemporary lens. Sometimes the Court changes, ignores, or abandons the applicable underlying test-with little or no explanation-to support a conservative outcome. Other times the Court purports to apply a well-worn test but deploys inconsistent procedural or interpretative maneuvers to reach a conservative result, like assuming an issue without deciding or taking implicit judicial notice of facts. One consistent theme across doctrinal areas is the Court's selective use of deference-in evaluating claimants' assertions regarding the expressive nature of their exclusionary conduct, the expressive nature of an association's exclusionary policies, or the burden that compliance with civil rights laws would impose on their asserted associational message or religious exercise.

The First Amendment should not be so easily manipulable as a tool for judges to handpick winners and losers based on favored or disfavored views. In the past, the Court laid the groundwork for an objective, evidence-based approach for assessing the expressive nature of conduct, the burden of compelled inclusion on an association's exclusionary interests, and the burden legal compliance would impose on religious exercise. Lower court judges should revive this analytical tradition.

Presenter

Luke Boso, Southwestern Law School - Contact Me

The Politics of Procedural Rule Interpretation

Proposal

It is no secret that Courts can be used to bring about political and policy changes. Howard Gillman demonstrated that the Republican party used federal courts during the antebellum era to "promote and entrench a policy of economic nationalism during a time when that agenda was vulnerable to electoral politics." Keith Whittington advanced a theory for judicial review to explain that politicians might support the court exercising power when their independent power to make political change is limited in the electoral world. Paul Frymer showed how and why politicians empowered the federal courts with enforcement power during the civil rights movement related to

labor union cases.

However, little literature has been evaluating the micro-foundations of how exactly the court is obtaining more power and how they are using the power to make social changes. One exception might be the recent article that examined the hidden but powerful nature of the federal courts' usage of civil procedure for political ends (Hershkoff & Norris 2023).

Thus, vast existing literature has assumed, sometimes implicitly, that litigation is an undividable method or means to effect political and social changes. However, the true power of the judiciary lies in its control over technical questions, such as determining which cases have standing and establishing the standards for ruling in favor of a party. That is why Felix Frankfurter famously wrote that "under the guise of seemingly dry jurisdictional and procedural problems, majestic and subtle issues of great moment to the political life of the country are concealed."

With that, this paper explores whether and how federal civil procedural rules function as political tools. Consistent with political science literature, this paper treats courts as political institutions that make policy changes. The paper also evaluates the question: how do procedural rules affect substantive claims or rights and the legal system?

Presenter

Haodi Dong, Princeton University - Contact Me

Theorizing Rule of Law in Divided Societies: Contributions from Law and Social Movements

Proposal

Despite extensive scholarship on and development initiatives promoting rule of law in divided societies – whether amidst ongoing ethnic tensions, political transition, or post-conflict reconstruction – scholars and practitioners have rarely ventured into clearly defining rule of law in these contexts. As such, the goal to "promote rule of law" is ill-defined and the conditions that make rule of law possible are not rigorously understood. This paper forms part of a broader research agenda to conceptualize rule of law in divided societies, with a focus on situations with one or more marginalized minorities. Specifically, this paper refines a proposed concept of rule of law by adapting law and social movement frameworks. Applying concepts from law and social movements to cases such as the Urdu-speaking minority of Bangladesh and the Rohingya minority in Myanmar helps to illustrate how key components of a definition of rule of law – purpose, content, and context – can be understood and how they interrelate.

For instance, applications of law and social movement theory to situations where marginalized minorities advocate for the enforcement of their constitutional rights and equality under the law can illuminate the interconnected, reflexive dynamics of the law's purpose, content, and context in a particular place. As marginalized groups leverage conditions within context, such as elite divisions and legal stock in which to frame their demands for rights, these groups can enhance law's purpose

and content in ways meant to achieve the rule of law ideal for a divided society.

These insights offer both conceptual and methodological contributions to rule of law theory. Conceptually, the paper proposes that substantive definitions of rule of law grounded in norms of nondiscrimination, autonomy, and restraint on abuse of power are more suitable for divided societies. Methodologically, applying law and social movement frameworks helps to refine the theory.

Presenter

Katherine Southwick, Center for Justice and Accountability - Contact Me

Malevolent Legalities: Discriminatology and the Specters of Scalia

Fri, 5/23: 4:45 PM - 6:30 PM
0946
Author Meets Reader (AMR) Session
Friday, 4:45-6:30pm

East Tower
Room: Michigan 2
This Author Meets Reader panel examines and provide critical commentary on the main arguments of "Malevolent Legalities: Discriminatology and the Specters of Scalia" by Kevin S. Jobe. Malevolent Legalities draws upon archival research conducted at the Scalia Papers in explaining the emergence of the Supreme Court's "colorblind" jurisprudence in SFFA v. Harvard (2023). The book argues that Scalia's textualist-originalism makes it lawful for discrimination to be performed through the text, and explicitly seeks to prevent progress by enacting a regime of "static law." The book develops a unique methodology for scrutinizing discrimination claims called discriminatology, understood as the pragmatic, performative and temporal analysis of how discriminatory speech-acts are performed through the text in "bad faith", and thus persist over time.
View Abstract 946

Author

Kevin Jobe, University of Texas Rio Grande Valley - Contact Me

Chair

Eleftheria Papadaki, Harvard Law School - Contact Me

Reader(s)

Sheldon Lyke, Loyola University Chicago School of Law - Contact Me
Danny Marrero, University of Texas Rio Grande Valley - Contact Me
Eleftheria Papadaki, Harvard Law School - Contact Me

Saturday, May 24, 2025:

Philosophy of the State and Human Rights

Sat, 5/24: 8:00 AM - 9:45 AM
3900
Paper Session
Saturday, 8-9:45am

East Tower
Room: Grand Suite 1
While there is a lot of discussion on topics like the decentering the state or the withdrawal of the state, the state is still a central actor in law. Both from a theoretical and a practical perspective, these times call for a reconsideration of the role of the state, its guarantee of human rights and its duty to protect the vulnerable. In these four contributions, the relationship between the state and its citizens is in focus. The papers discuss the role of the state from an internationalist perspective, through a Rawlsian liberal one to a vision of the state in consociational democracy.
View Abstract 3900

Chair

Felipe Yamin, Yale Law School - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Constitutional Law and Constitutionalism

Presentations

Liberal Theories of Justice Need Socioeconomic Rights

Proposal

In John Rawls's A Theory of Justice, the theoretical distinction between civil and political rights and socio-economic rights is clear, with the former taking precedence over the latter (1999, 55). The same distinction is made in Amartya Sen's work (2009). Liberal theories of justice can conceive of the role of socioeconomic rights' in promoting a certain form of equality through an equal access to civil rights and liberties but remain vague about how they interact. Therefore, this paper seeks to overcome the way in which socio-economic rights have traditionally been separated from civil and political rights first at the theoretical level and, second, at the institutional level, whether within the legal apparatus or public policies.

As part of a larger project, this paper therefore contributes to a normative defense of socio-economic rights as a necessary condition for the enjoyment of other civil and political rights, especially in the contemporary context of growing inequalities. Limited, in scope, to the contemporary liberal theories of justice, it argues that socio-economic rights are not only compatible with civil and political rights, but also a necessary condition for their enjoyment. The main argument for this claim is that socioeconomic rights enable liberal democracies to fulfill their commitments to a liberal conception of equality. The paper will examine how socio-economic rights serve the same egalitarian goals as civil and political liberties by providing the conditions for the realization of civil and political rights. Thus, it will suggest that liberal theories of justice's commitments to civil and political rights offer some grounds in favor of a stronger account of socio-economic rights, in theory and through implementation, to support the full normative force of civil and political rights. This supports the idea that social rights are interdependent not only with each other, but also with civil and political rights.

Presenter

Alexandre Petitclerc, Université de Montréal - Contact Me

Sharing the State: How Factions Use the Law to Divide Institutions Among Them

Proposal

This paper analyzes how law solves conflicts among factions. Consociational democratic theory postulates that deeply divided societies, with heterogonous groups, can achieve stability and peace when the governing elites engage in power-sharing agreements that ensure coexistence within the state. This literature, however, has little to say about the role of law in those agreements; it needs a legal theory. The paper studies the role of law in those instances, insisting that the law's symbolic and expressive function is fundamental to the stability of the agreement. The legal form is a secure place of imagination, fixing and communicating the future in ways other informal means cannot do. However, the use of law by elites is not without problems: it challenges our view of how legal rules shape state power and brings about inflexible institutions, closing them to other actors different from the governing factions. I address these uses and risks using examples from two divided societies, Colombia and South Africa.

Presenter

Felipe Yamin, Yale Law School - Contact Me

Vulnerable Subjects and the State's Obligation to Prevent Corruption: Insights from the Inter-American System

Proposal

Theoretical developments concerning the link between combating corruption and human rights have affirmed that States are obligated to prevent corruption. This obligation stems from their duty to respect (not hinder the enjoyment of rights), protect (adopt measures to prevent third-party interference), promote, and guarantee human rights (which involves the adoption of positive measures). Failure to fulfill this duty, whether by action or omission, may result in international responsibility.
The Inter-American system has done a great job advancing along this path that emphasizes the obligation of States to adopt preventive measures, particularly through the 2019 Commission report "Corruption and Human Rights: Inter-American Standards." The InterAmerican Court has developed this obligation to prevent corruption through the obligation to make reparations for human rights violations (e.g., Viteri Ungaretti vs. Ecuador). Full reparation of the victims is one of the pillars of the Inter-American System.
While the obligations to provide access to justice and reparation are based on and addressed to the victim, the obligation to adopt preventive measures, either directly through the recognition of the obligations to respect, protect and guarantee human rights, or indirectly, through guarantees of non-repetition, cannot be addressed to and have as its raison d'être (neither exclusively nor principally) the victim, but must address the condition of the vulnerable subject, since its objective is to reduce as far as possible the risk that individuals will suffer harm in the exercise of their rights as a result of corruption.

Presenter

David Garcia, Universidad Carlos III de Madrid - Contact Me

The Origins of Legal Concepts

Sat, 5/24: 10:00 AM - 11:45 AM
3901
Paper Session
Saturday, 10-11:45am

East Tower

Room: Roosevelt 1B
Legal concepts are rooted in our presuppositions on the human will on social morality and on our ability to ascertain facts. In this panel the origin of legal concepts and relations between these concepts are traced by using philosophical legal analysis. An exploration of the concepts that lawyers take for granted displays their implicit metaphysical heritage. Topics explored are the correspondence between actus reus and mens rea, recogition, the notions of promise and consent and the relation between Dworkinian dignity and Hegelian 'sittlichkeit'.
View Abstract 3901

Chair/Discussant

Maria Di Maggio, University of Bari - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Social or Political Theory and the Law

Secondary Keyword

Ethics, Bioethics, and the Law

Presentations

Consenting, Promising, and the Epistemic Conditions for Normative Powers

Proposal

There are a variety of ways in which people purport to change the moral situation simply by their will. Assuming that the right validity conditions are met, someone who consents can, by that consent, remove a duty that would otherwise morally bind another. Likewise, someone who promises can, by that promise, assume a duty towards another, when they had no duty otherwise. Authoritative commands are often thought to work similarly: absent the command being issued, there would be no duty, but by issuing the command, a morally valid authority can create, or active a duty to follow that command.

There is something at least a little mysterious about how these moral transformations work. If each normative powers' ability to accomplish its moral transformation is grounded in the will of the person exercising the power alone, then if the intended recipient of that power is unaware it was exercised, perhaps due to a failure to communicate successfully, has the intended moral transformation taken place? A frequent answer is that some normative powers have "uptake" conditions. Many think that a promise is only effective at binding the promisor to their new duty if the promisee receives and accepts the promise – though consent is more frequently thought to take effect without the consentee needing to be aware of the consenter's will.

There is, I propose, a general problem: if a person exercising a normative powers can modify the duties or rights of the person who they address, even if that addressee has not become aware of this option being exercised, then even if the addressee acts consistent with the updated normative situation, they do not do so in response to the addressor's moral authority. If the addressee's rights and duties are grounded by their own understanding of them, this risks moral subjectivism. I propose to resolve this by arguing for a criteria for relevant epistemic-access sensitive objective moral reasons.

Presenter

Samantha Godwin, Yale Law School - Contact Me

International Recognition Law, the Person of the State, and Moral Recognition Theory

Proposal

This paper asks what moral theories about recognition can contribute to the understanding of international legal practices such as state recognition. At the heart of international recognition is the idea that states can be thought of as moral persons writ large – a fiction that underpins the otherwise changing quality of populations, regimes, or territories. Normative theorists argue recognition is a deceptively simple moment of speech or engagement that reflects larger patterns of power and agency (Eisenberg, 2009; Markell, 2003; Tully, 2000). Glen Coulthard's Red Skin, White Masks (2014), for instance, shows how recognition can also be used to preserve unequal distributions of power. This makes it important to scrutinize such practices for their potential to reinforce global inequality. Yet insights from moral recognition theory are poorly integrated in state recognition studies, which tend to focus on legal and political conventions over the question of normative soundness. The anthropomorphism that animates state recognition reflects both the inheritance of international law that leading authorities such as Crawford (2007) outlines, and the aspirations of internationalism as an ordering system (Tourme-Jouannet, 2013; D'Aspremont, 2015). Yet scholars suggest its statist and status-quo orientation tends to reproduce an imbalanced and conflict-prone internationalism (Fabry, 2010; Grant 2015; Visoka, Newman & Doyle, 2020; Agné, 2013; Bartelson, 2016). This paper contributes to debates on state recognition law by drawing on normative theory since the 1990s (Charles Taylor, 1992; Will Kymlicka, 1995; Axel Honneth, 1992). The goal is to explore what is being achieved by framing the state as the kind of personality that can be the subject of recognition and the ways in which this doctrine may contribute to the stagnation of international law on the topic.

Presenter

Catherine Frost, McMaster University - Contact Me

Is the Correspondence Relation Normative or Descriptive?

Proposal

Correspondence is a relation that obtains between mens rea and actus reus-a relation that, in general, is necessary for justifiable attributions of criminal liability. Theorists have disagreed about the right way to characterize the correspondence relation. Those who subscribe to orthodox theories of correspondence have supposed that correspondence is a descriptive relation: a relation that obtains just in case certain descriptive facts obtain. But recent work on correspondence by Gabe Mendlow (2020) and Alex Sarch (2015) raises the possibility that correspondence might instead be a normative relation: a relation that obtains just in case certain normative facts obtain.

In this paper, I argue that descriptive theories of correspondence are more promising, because normative theories struggle to explain all we would want a theory of correspondence to be able to explain.

My argument unfurls in three stages. First, I argue that if correspondence is a normative relation, it will have to depend on moral, rather than legal, normative facts. The second and third stages tackle particular kinds of normative theory. At the second stage, I consider Mendlow's suggestion that correspondence obtains just in case an actus reus is wrongful in virtue of mens rea. I argue that the theory is explanatorily deficient because it cannot explain how correspondence can obtain even when performance of an actus reus is not morally wrong. At the third stage, I consider Sarch's suggestion that correspondence depends on whether an actus reus is blameworthy in virtue of mens rea. I argue that the theory is explanatorily deficient because it cannot explain how correspondence can obtain even when the performance of an actus reus is morally excused.

My argument leaves open the possibility that some other kind of moral normative fact might ground correspondence. However, I believe my argument does enough to recommend pursuit of a descriptive theory.

Presenter

Elise Sugarman, Stanford University - Contact Me

On the Teleological Nature of Legal Principles

Proposal

In this paper I claim that the nature of legal principles is necessarily associated with the fulfillment of valuable goals. Such connection is an implication of the association between legal principles and what Alexy defines as "ideal oughts". As a result, there is a structural connection between legal principles and the realization of the projectable state of affairs attached to these ideals. This means that principles-based reasoning is inherently teleological. Under this framework, the application of legal principles requires justifying the most appropriate means to promote the valuable states of affairs they express, with the proportionality test serving as the methodological device designed to rationally guide this prospective reasoning. However, it remains unclear whether this connection

renders principles theory-particularly Robert Alexy's version-incompatible with its assumed deontological dimension, thereby undermining its ability to ensure the trump-character of fundamental rights. Addressing this dilemma requires justifying how it is feasible to construct a non-instrumentalist norm theory that is teleological in nature. If such a theory is attainable, it could also play a crucial role in preserving a structural or qualitative distinction between rules and principles, for this distinction would not be exclusively based on the identification of two different reasoning approaches (backward and forward-looking), but rather on the notion that these reasoning forms are inherently associated with two different kinds of norms.

Presenter

Fernando Leal, FGV Law School Rio de Janeiro - Contact Me

CRN17 Philosophy and Legal Theory Business Meeting

Sat, 5/24: 11:45 AM - 12:45 PM
3871
Business Meeting
Saturday, 11:45-12:45

East Tower
Room: Grand J
View Abstract 3871

CRN

17 - Philosophy and Legal Theory

Sociolegal Fictions

Sat, 5/24: 2:45 PM - 4:30 PM
1223
Paper Session
Saturday, 2:45-4:30pm

East Tower
Room: Grand J
Legal fictions, or the apparently untrue propositions that law takes to be true to advance particular judgments or ends, have long been objects of critique for some legal and sociolegal legal scholars. By contrast, this panel explores what might be called the "sociolegal fictions" or constructs that are sometimes used to establish the reality of sociolegal facts, truths or knowledge.
View Abstract 1223

Chair/Discussant

Kristin Bumiller, Amherst College - Contact Me

CRN

16 - Language and Law
17 - Philosophy and Legal Theory
28 - New Legal Realism

Primary Keyword

Social or Political Theory and the Law

Secondary Keyword

Language, Linguistics

Presentations

"A Beaut Racket:" Fictions of International Law

Proposal

In his "plea for new international laws"-a plea not for new laws but for new ways of speaking about and imagining law-Gerry Simpson writes that "international law is itself a form, a prose that we find we have spoken all our lives." He argues that this form has become calcified, weighed down by its own tired metaphors and false promises: "Does anyone really believe in 'the scourge of war' (the UN Charter) or the 'mosaic of humanity' threatened by war crimes (the Rome Statute)?" Skepticism about international law and frustration with its failures is a dominant theme of literature about international courts and their worlds: these novels reflect a shift from reading law-as-literature to imagining literature-as-law. Shirley Hazzard's Great Fire regards international law as a "beaut racket"; Katie Kitamura's Intimacies paints a bleak portrait of The Hague; Andre Dao's Anam is narrated by a disaffected international immigration lawyer. Rejecting a redemptive vision of law as a way of resolving, amending, or undoing harms, these novels reflect a broader shift in how international law is perceived and mobilized--no longer as a framework for remediation, but rather as a way of exposing the impossibility of undoing the harm done.

Presenter

Linda Kinstler, Harvard University - Contact Me

Black Women and Personhood: Bodies Under Scrutiny

Proposal

This paper focuses on the relationship between blackness, gender, and citizenship in the United States by reflecting on the ways Black women as subjects, as well as their bodies, have been situated

within the law. I focus on the philosophical concept of personhood and the ways that race and gender intersect to diminish equality and liberty for Black women. This paper draws from a micro-archive of examples within the law, policy, and public sphere to craft a narrative of how Black women have worked within and outside of the court to define their own subjectivity. I begin with Alice Jones Rhinelander's disrobing in the judge's chambers as evidence of biological blackness and proof that her white socialite husband knowingly married a Black woman. I place Alice's experiences into conversation with two other cases that positioned Black women and their bodies under scrutiny in the court room and public sphere. Mapp v. Ohio (1961) is a landmark SCOTUS search and seizure case that involved Dollree Mapp, a single Black mother whose resistance to aggressive policing cast her as manly. Crumsey v. Justice Knights of the Ku Klux Klan (1981) involves five elderly Black women who were shot by a Ku Klux Klan member while walking down the street. These women were not seen as women worthy of protection, as their white counterparts have historically experienced gender-based protections. The Black women litigants received positive verdicts. While the verdicts are vindicating, they do not account for the public representation of Black women as nonpersons who are unworthy of physical, emotional, and legal protections. I conclude by analyzing the Black Mammy Monument the Daughters of the Confederacy petitioned Congress to build as a public memorial in Washington, D.C. and juxtapose that petition with the Harriet Tubman "Shadow of a Face" monument erected in New Jersey as an example of vindication beyond the courts producing a counter-narrative of personhood in ways the law failed.

Presenter

Simone Drake, Ohio State University - Contact Me

Explain Yourself: The Fiction of AI and Human Explainability

Proposal

Can AI machines explain themselves? Can we?
The emerging field of AI explainability seeks ways to make AI "decisions" explainable to human users. Some scholars have argued that AI explainability is impossible in principle because second generation AI do not operate according to general rules, and thus cannot be explained through generalizations. But how different are second-generation AI machines from humans? Are human decisions rule-governed? Turning to the writings of Asimov, the paper seeks to explore the challenge of distinguishing between human and machine explainability.

Presenter

Shai Lavi, Tel Aviv University - Contact Me

Kafka, Weber, and Bureaucracy

Proposal

Kafka's prescient understanding of the experience of bureaucracy in his fictional "The Castle" (written in 1921) contrasts with Max Weber's "ideal-typical" presentation of bureaucracy in "Economy and Society," published around the same time. While Weber distinguishes home-life from office or bureau, Kafka appears to capture a now-increasingly common, post-pandemic situation in the United States, when he writes of the character K. "Nowhere else had [he] ever seen one's official position and one's life so intertwined as they were here, so intertwined that it sometimes seemed as though office and life had switched places." Reflecting on Kafka's fiction and "Office Writings" leads one to wonder as to the ways that supposedly different kinds of writing offer or create particular sociolegal insights and realities.

Intended for panel "Sociolegal Fictions" 1223

Presenter

Marianne Constable, University of California, Berkeley - Contact Me

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Reflections on Photographs: A Case of Sociolegal Fiction

Proposal

Inspired by the circumstances of the composition and publication of Hannah Arendt's controversial essay "Reflections on Little Rock" (1959), this paper explores how images, in particular photographs, are used to establish the reality of sociolegal facts, truths or knowledge. The status of photographs as witnesses of historical events, their capacity to capture and establish facts as well as their use as evidence to validate claims about the past, has been (and continues to be) a topic of intense debate. Photographs appear to (re)present reality objectively, showing what is there – the "obvious facts," as it were. However, a photograph necessarily excludes what is not contained in its frame. In addition, what is included may be arranged or composed, like the features of a girl's expression, so as not to betray thoughts and feelings, or to imply false ones. In brief, what appears in a photograph is there to be seen; nevertheless, it is not self-evident how we should look to see what is before our eyes, particularly when we may have good reason to suspect that what appears also reveals what cannot or will not be shown by the artist. In fact, what appears may be able to appear only by virtue of what withdraws or remains hidden. Arendt insists on this last point, and so her "Reflections on Little Rock," as myopic as they may be, illuminate one manner in which socio-legal facts are fictioned.

Presenter

Jennifer Culbert, Johns Hopkins University - Contact Me

he Role of Courts and Lawyers in Troubled Times

Sat, 5/24: 2:45 PM - 4:30 PM
3902

Paper Session
Saturday, 2:45-4:30pm

East Tower
Room: Grand Suite 2A
In changing political and legal landscapes the role of courts, lawyers and theur decision making procedures come under increased scrutiny. The five contributions in this panel highlight the tensions between politicization and the work of the legal professionals. Papers discuss among others the question how the courts relate to the populist movement, whether the single opinion assumption is tenable and the empirical question how ideological preferences are displayed in the exercise of judicial power.
View Abstract 3902

Chair/Discussant

Georgia Litle, University of Oklahoma - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Legal Actors: Judges & Judging

Secondary Keyword

Constitutional Law and Constitutionalism

Presentations

Against the Single Opinion Assumption for Plurality Precedent Decisions

Proposal

U.S. courts have precedential obligations to follow relevant decisions by higher courts.
A decision's holding-how it obligates future courts-is understood to require majority support by the deciding panel of judges. However, there are many deep theoretical disagreements about holdings, which get even thornier when legal decisions are made by multi-member courts whose members cannot agree to a written majority opinion explaining the decision made, only the judgment of winning and losing parties. Such decisions are plurality decisions.

Many important U.S. Supreme Court decisions have been plurality decisions, on such topics as free speech (Memoirs v. Massachusetts), abortion rights (Planned Parenthood v. Casey), and capital punishment (Furman v. Georgia). Such decisions have been treated as precedential, as having holdings, despite deep theoretical and practical disagreement over what those holdings might be. Scholars and practitioners question whether it is possible to find majority agreement on a holding among judges who couldn't even agree on a majority opinion.

In this paper, I draw attention to an obstacle to answering this question. I name the Single Opinion Assumption, that the holding of a decision must come from only one outcome-supportive opinion. I argue the Assumption combines with the majority support requirement to undermine the plausibility of plurality holdings. I use an under-recognized aspect of Arthur Goodhart's 1930 theory of holding as proof of concept that the Assumption can be dropped without jeopardizing the requirement of majoritarian support. I then consider a core criticism of Goodhart's approach and close by sketching out an intuitive method that avoids this criticism.

Presenter

Amber Kavka-Warren, UCLA Philosophy - Contact Me

Populist Primacy

Proposal

The Roberts Court is demolishing much of the modern Supreme Court's legacy. Critics and scholars have claimed that this project is wholly political, under the sway of conservative forces. It is incontrovertible the current Court is sweeping away much of the legacy of the past 70 years of lawmaking. But is this undertaking entirely destructive and fundamentally lawless, or is the Roberts Court advancing some alternative theory?
This Article demonstrates that the Roberts Court does have an alternative theory: centralize power in the actors and institutions deemed the most directly accountable to the rank-and-file constituency. This Article calls this principle 'populist primacy'. Populist primacy inverts the traditional guiding values of modern constitutionalism: defense of vulnerable groups and ensuring appropriate balance and moderation in the distribution of power, particularly to constrain dominant majorities and privileged elites. Instead populist primacy empowers society's dominant groups.
Identifying this alternate theory revolutionizes our understanding of the current bench's impact on American democracy and governance. The Court threatens to 'ratchet' existing inequalities and power allocations and eliminate opportunities for debate and opposition. This raises serious problems from the perspective of prevalent democratic theories, including civic republicanism, deliberative democracy, and other theories concerned with domination. Populist primacy is a particular threat to subaltern groups, such as racial minorities, women, LBTQIA+ persons, and the working class.

Presenter

Jacob Eisler, Florida State College of Law - Contact Me

The Fabric of Legal Truth: Understanding Legal Propositions and Facts

Proposal

Some legal theorists who defend legal objectivity i.e., the view that there are correct answers about what the law is in terms of (i) its general rules and (ii) what these general rules require in particular legal cases, offer an analysis of legal truths that are at least fixed independently of what legal officials may believe and reflect our ordinary legal practices. Other legal theorists yet maintain that given that legal facts are arguably conceived as both conventional and normative, it is problematic to analyse legal facts as if they were judgement-independent. I contend that while legal facts are characteristically understood as determined by or consisting of social facts, its content may itself be independent of the beliefs and attitudes of those who created them insofar as (a) they are about a real property (legal or illegal) holding of a particular action and (b) these legal properties exist as properties of "thin" objects such that very little is required for their existence and yet their existence does not depend on what officials believe or think, strictly speaking. Instead, they depend on the action of officials.

Presenter

Francis Nyamekeh, University of Minnesota, Twin Cities - Contact Me

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Towards a Restorative Approach to Legal Ethics

Proposal

This paper explores the complex relationship between legal ethics and restorative justice. It is commonly observed that there exists a "crisis in professionalism" among U.S. and Canadian lawyers today. One of the persistent concerns is that legal ethics rules and the "standard conception" of professional responsibility that underpins them, the neutral partisan, fail to strike the correct balance between client interests and the public interest. Building on this idea, this paper explores the possibility of reorienting legal ethics around restorative justice as the moral foundation of a more relational and public interest-minded approach to the lawyer's role in society. The paper asks three questions: (1) What might a restorative approach to legal ethics look like? (2) What are the benefits and drawbacks of taking a restorative approach to legal ethics from lawyer, client, and community perspectives? (3) How should a restorative approach to legal ethics be professionally regulated and enforced?

The paper begins by canvassing the experiences of justice system stakeholders – victims, offenders, lawyers, facilitators, and community members – as represented in criminal law cases and the extensive empirical literature on restorative justice to identify the relational principles that should guide lawyers' conduct. Next, the paper translates these concepts into legal ethics terms, grounding ideas about interdependence, community, and mutual responsibility into a list of guidelines that can be scaled upwards and applied through revisions to legal ethics rules. Ultimately, the paper argues that restorative justice can offer more than just an alternative path for lawyers in criminal law settings, but instead support a relational principle-based approach to legal ethics within communities and across systems that can raise the moral consciousness of lawyers, facilitate collaboration, promote social justice, and redefine the role of lawyers as change agents.

Presenter

Daniel Del Gobbo, University of Windsor Faculty of Law - Contact Me

Questioning Protection at Territorial and Other Borders: The State, Race, Gender and Sexuality

Sat, 5/24: 4:45 PM - 6:30 PM
3746
Paper Session
Saturday, 4:45-6:30pm

East Tower
Room: Grand I
Law and emotions research attends to borders involving state territoriality, race, gender, and sexuality, as well as bias, intuition, shame, and trust. In asylum claims, how decision-makers recognize their biases toward members of gender- and sexuality-based minorities is examined. For decision-makers, queer asylum seekers can be recognized as sexual citizens. But claimants say that this requires overcoming decision-makers' intuition and enacting a white sexuality. Securing health benefits for the Global South also involves definitions of who counts: framed by human rights and shame. Finally, qualitative investigation into police legitimacy explores the over-policing of racialized citizens and failures in the response to a mass shooting. Within and across urban and rural contexts, mistrust and confidence in the police co-exist.
View Abstract 3746

Chair/Discussant

Senthorun Raj, Manchester Metropolitan University - Contact Me

CRN

17 - Philosophy and Legal Theory
23 - International Law and Politics
42 - Law and Emotion

Primary Keyword

Emotions

Secondary Keyword

Citizenship

Presentations

Feeling Queer, Feeling Real: Affective Economies of Truth in Queer Asylum Politics

Proposal

This presentation aims to analyse the role of affect in the credibility assessment process in queer asylum claims. Drawing on decolonial feminist, queer and affect theory, through 27 semi-structured interviews with caseworkers, it explores how sexual truth, in the Greek asylum apparatus, is not only discursively but simultaneously affectively produced: On the one hand, the assessment focuses on applicants' 'emotional journey', which, according to authorities' normative expectations, needs to comply with a rather linear, from-oppression-to-liberation, affective trajectory. On the other hand, not only applicants' emotions constitute the main field of inquiry but also, as caseworkers accounts portray, decision-makers tend to base their assessments on what they describe as 'intuition', 'instinct' and 'atmosphere of the interview'. By examining the interplay of affective and sexual citizenship, this study seeks to analyse how access to asylum and rights is mediated by affective control of who is considered the 'good' sexual citizen. Last, apart from the exclusionary politics of emotions in homonationalist, assimilative border regimes, this presentation discusses affect's transformative possibilities in legal decision-making: Reflecting on queerness as affect, through those failed, unspeakable queer performances, that have been rendered non-credible by the affective rules of spoken sexual truth, this presentation aims to call into question epistemically violent, white-centred definitions of 'genuine' queerness. Through this critique it seeks to open up norms of recognizability towards new possibilities that do not conform with homonationalist discourses in sexual politics.

Presenter

Sophia Zisakou, Lund University, Sociology of Law - Contact Me

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Framing and Taming Prejudice? Narratives and Strategies in Dealing with SOGIESC Asylum Cases based (and Beyond)

Proposal

Scholars underlined how decision-making in asylum claims based on sexual orientation and gender identity (SOGI) is unfair because affected by biases and stereotypes. This paper responds to the questions: d decision-makers reflect and identify their own biases and prejudices? Are there any strategies they adopt in this regard?

The aim of this paper is twofold. First, it seeks to answer these questions departing from the analysis of themes emerging from interviews with decision-makers. Two main themes are discussed: prejudice, i.e. decision-makers' narrative(s) on the challenges faced in SOGI claims – and strategies, i.e. tactics and methods that decision-makers (attempt to) adopt in this regard. This paper sheds light on if and how decision-makers recognize and acknowledge prejudice and bias when dealing with SOGI claims, and how they manage it in the assessment and decision-making stages. It illustrates the extent to which decision-makers filter these emotions, how they impact on the relationship between asylum-seekers and decision-makers, and what effects these emotions and strategies produce on

credibility assessment.

The second aim of this paper goes beyond SOGI, to assess whether the findings of this investigation can be applied to asylum claims more generally. As asylum has become a heavily politicized issue, it becomes crucial to assess the effects that a (potential) prejudice of credibility can have on the examination of an asylum application; how such prejudice is identified and dealt with by decision-makers, and how these dynamics eventually play out.
The paper will present preliminary findings of semi-structured interviews and participatory observations carried out with asylum caseworkers and judges in Italy. It will also include an autoethnographic account of the Author as an asylum practitioner in this field, to discuss if and how decision-makers "frame and tame" prejudice.

Presenter

Denise Venturi, KU Leuven - Contact Me

Police Legitimacy Amid Police Failure: How Residents Navigate Trust in Police After Crisis

Proposal

As crises of police legitimacy, two recent events have significantly reshaped public discussions about police and public safety in Nova Scotia, Canada. The first came with the release of the Halifax Street Checks Report in 2019, which revealed that Black residents of Halifax, the province's largest urban center, experienced street checks at six times the rate of white residents. The second involved the largest mass shooting event in Canadian history. In April 2020, a man took the lives of 22 people, while impersonating a police officer, in one of the most rural parts of the province. In the aftermath of these events, Halifax police issued a public apology to African Nova Scotians and banned the practice of street checks; a Mass Casualty Commission was also struck to hold the police accountable for their failures in response to the mass shooting. This paper examines how urban and rural residents of Nova Scotia are coming to terms with police (in)action following these events. For some residents, these events justified their lack of trust in the police, while others attempt to qualify their continued confidence in the police in paradoxical or contradictory ways. Our research demonstrates the complex and unsettled relationships residents often have with the police, especially when police legitimacy is called into question.

Presenter

Timothy Bryan, University of Toronto - Contact Me

Non-Presenting Co-Author

Anita Lam, York University - Contact Me

Social Hierarchies in Catastrophic Times: International Law, Critique and Structural Change

Sat, 5/24: 4:45 PM - 6:30 PM
3064
Paper Session
Saturday, 4:45-6:30pm

East Tower
Room: Grand F
How should legal scholars articulate critique in catastrophic times? Should critical voices tone it down, when faced with deteriorating social conditions, growing inequality, protracted violence, planetary collapse, authoritarianism, and xenophobia? Or, are they more urgently needed than ever? Critical scholarship has long warned of the limits of international law, and its complicity with structures and relations of domination. Yet, contemporary catastrophes have led to its revitalisation as a language of both expert counsel and political demand, drowning out calls for structural change for the sake of realism and stability. Focusing on questions of nature, economy, and borders, this panel explores the potential of international law to be used in pursuit of emancipatory politics and much-needed structural change.
View Abstract 3064

Chair

Tor Krever, University of Cambridge - Contact Me

Discussant

Vasuki Nesiah, The Gallatin School, NYU - Contact Me

CRN

17 - Philosophy and Legal Theory
23 - International Law and Politics
55 - Law and Political Economy

Primary Keyword

Class and Inequality

Secondary Keyword

Environment, Natural Resources, Energy, Sustainability, Water, and Climate Change

Presentations

Global Starvation Governance and International Law

Proposal

This paper invites readers to examine the intricacies of starvation governance. In doing so, it hopes to show how contemporary starvation governance has made a deliberate effort to obscure the intentionality of mass starvation by foregrounding the term 'famine'. Consequently, famine has been redefined as a technical term to describe a material condition, devoid of history and politics. As a result, the term 'famine' is now misleadingly associated with the suffering of a community from prolonged hunger due to misfortune, rather than as a consequence of oppression, dispossession, alienation, or genocidal intent. By sanitising famine from starvation-that is, from the act of creating the material and social conditions of famine-contemporary global starvation governance has regressed from the understanding of famine put forth by eminent famine theorist and Nobel laureate Amartya Sen, as well as from that articulated by the World Food Summit in 1974, which understood famine as a result of alien and colonial domination, foreign occupation, racial discrimination, apartheid, and neo-colonialism, activated, or made worse by political, economic, or ecological crises.

Presenter

Lys Kulamadayil, Geneva Graduate Institute - Contact Me

Indigeneity, Caste and Environmental Law in India

Proposal

The paper offers a critical analysis of the intersections of indigeneity, caste, and environmental law, focusing on the lived experiences of marginalized communities in India. It will explore how environmental laws, while ostensibly designed to protect natural resources, often fail to consider the intricate socio-cultural and historical contexts of indigenous and lower-caste communities. I will examine the ways in which environmental governance, particularly through forest laws and conservation policies, reinforces caste hierarchies and erases indigenous claims to land and resources. I provide a grounded critique of the legal frameworks for their colonial legacies and the continued marginalization of these communities in decision-making processes, exposing the ways in which environmental regulations prioritize state and corporate interests over local and marginalized populations. By centering indigenous epistemologies and the rights of marginalized groups, I argue for a reimagining of environmental law that is more inclusive, anti-caste,equitable, and responsive to the socio-political realities of marginalized communities in India.

Presenter

Arpitha Kodiveri, Vassar College - Contact Me

International Law's Offer to the Informal Waste Economy

Proposal

This paper asks, 'What can international law offer the informal waste economy in the way of emancipation?' It uses an empirical study of waste pickers and sustainable development in South Africa as a starting point for a discussion that will expand to include the emancipatory possibilities offered by other international law narratives such as extended producer responsibility (EPR).

South African waste pickers work in a waste management regime shaped by sustainable development, a concept that has been translated from international law to national and local government law. Sustainable development promises improved economic, social and environmental conditions. However, a study conducted in Johannesburg has shown that it is difficult to achieve sustainable development waste pickers who collect and sell recyclables for a living. Sustainable development in fact works to solidify the vulnerable socio-economic position of waste pickers and maintain the waste management status quo. The concept promises but does not deliver.

Globally, there is a call for an EPR levy on the fashion industry to deal with the environmental crisis caused by fashion waste in developing countries. However, EPR raises difficult to answer questions around measurement, distribution, and accountability in efforts to cope with the negative effects of fashion waste on the environment. These efforts should include investment in the work of fashion upcyclers in Accra who work hard to eke out a meagre living while protecting the environment in a country that imports 15 million pieces of 'second-hand clothing' each week with a waste management regime ill-equipped to manage its waste burden.

Given the experience of waste pickers in South Africa and fashion upcyclers in Ghana, it is unclear how international law might provide any justice for informal economic actors without a rethink of the relationship between dominant environmental narratives and the regimes shaped by them.

Presenter

Allison Lindner, Faculty of Laws, University College London - Contact Me

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On the sidelines: an international rule of law in the United Nations?

Proposal

Does the rule of law have an emancipatory potential in the UN system? This paper shows why the struggle for a rule of international law that prioritizes sovereign equality and could thus have served as a site of emancipatory potential for less powerful states failed within the UN. I argue that an often overlooked but crucial factor is the fact that the UN Secretariat could not operationalize a notion of an international rule of law in the same way in which it operationalized its rule of law assistance within states. The paper traces efforts and counterefforts to center the international rule of law as a concept for the UN system across three key moments. First, I show how the UN was intentionally set up as a more political organization than its predecessor. An amendment that sought to insert the term "rule of law" into the UN Charter failed, and the Charter text deliberately speaks of "justice and international law". I then trace the efforts of newly independent states from the 1960s throughout the 1990s to establish the primacy of international law over politics. This includes,

crucially, the negotiation history of the Friendly Relations Declaration, which refers in its preamble to "the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations". The negotiation history shows that several states advanced an understanding of the rule of law emphasizing sovereign equality, an understanding that was further advanced by the Non-Aligned Movement's efforts in creating momentum for a "UN Decade of International Law" in 1989. While the UN Decade was declared for the 1990s, parallel developments in the field of rule of assistance eclipsed this understanding of an international rule of law. The paper closes with a look at contemporary developments: following the 2012 Declaration on the Rule of Law, member states' persistent disagreements as to a definition of the rule of law, its use in prominent policy documents declined.

Presenter

Hannah Birkenkoetter, ITAM (Mexico) - Contact Me

Weaker States Resisting Inequalities in International Law

Proposal

International law has been criticized as a hegemonic project. However, power as domination requires putting in place structures, that can also be the key to emancipation. (Haugaard, 2012). I conjecture that ambivalence of the structures of international law also sow the seeds for resistance. I aim to go beyond current literature on the engagement of smaller states in international law like path dependency and rational bargains to understand how small states exercise their agency in international legal spaces. How did weaker states mobilize international law?
I study the nuclear regime as a prototype of an international regime with inequalities. The central treaty of this regime, the nuclear non-proliferation regime creates two legal categories among states – the nuclear haves and the have-nots. I use critical discourse analysis as a method to study key developments over time and across different fora to show how weaker states have used these spaces to develop counter-hegemonic framings within the unequal nuclear regime. I look at the submissions and arguments by smaller states in the Nuclear Tests Cases, the Legality of the Threat or Use of Nuclear Weapons, and the Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament at the International Court of Justice; and developments at the UN General Assembly and key nuclear review conferences to show how weaker states have used these spaces to develop counter-hegemonic framings within the unequal nuclear regime. I argue that despite hegemonic influence, discursive openings within international law allow smaller states to bring in more meaningful equality by the creative use of central concepts such as sovereign equality.
I conclude with a critical look at the extent to which such framings have moved the needle on reducing inequality, and the consequent space for the tactics of resistance within international law, if at all.

Presenter

Praggya Surana, IHEID (Geneva Graduate Institute of International and Development Studies) - Contact Me

US Foreign Policy, Hyper-legality, and the Tools of Totalitarianism

Sat, 5/24: 4:45 PM - 6:30 PM
1722
Paper Session
Saturday, 4:45-6:30pm

East Tower
Room: Grand G
US anti-terror and foreign policy provisions often appear to be highly bureaucratic, "rational" in the Weberian sense, and even magnanimous in their orientation (e.g. aiding another country's development). However, the appearance of legality and economic development (e.g.) in foreign policy measures can mask undemocratic power dynamics and aims, including forms of imperialism. This interdisciplinary panel will examine how foreign policy (including migration and anti-terror policy) can be both hyper-legal and yet extra-constitutional in important ways. Authors reflect on how forms of bureaucracy and spectacular manifestations of legality obscure the degree to which sovereign powers are discretionary, undemocratic, and totalitarian and/or imperial in some sense. In effect, these involve the "tools of totalitarianism" per Hannah Arendt.
View Abstract 1722

Chair/Discussant

Leonard Feldman, Hunter College and Graduate Center, CUNY - Contact Me

CRN

17 - Philosophy and Legal Theory
23 - International Law and Politics

Primary Keyword

Social or Political Theory and the Law

Secondary Keyword

Colonialism, Post-Colonialism, and Decolonialism

Presentations

Enforced Disappearances: The Continuing Relevance of the Postville Raid

Proposal

In the aftermath of the Postville Raid of 2008, several interlocuters noted the irony that Guatemalan individuals had fled their country due to a fear of being disappeared, only to be disappeared by the US government when the raid was executed. Some could argue that the raid was an example of spectacular "hyper-legality" and therefore, the opposite of disappearance
as meat-processing workers were rounded up, given no meaningful adjudication, jailed, then detained, and then deported. Lengthy reports, investigations, surveillance, and legal preparations preceding this devastating raid were all evidence of hyper-legality. However, the fact that workers were first charged under anti-terror provisions meant that the adjudication process was extra-constitutional allowing arbitrary arrests, secrecy, concentration of power, and the legal abandonment of individuals who had not committed a moral violation to certain harm.

While the raid could be viewed as an extraordinary event, the details of this operation indicate systemic issues from human rights abuses to child labor, wage theft, harassment and coercion, and sexual assault. The term disappearance is not strictly analogous to the sorts of enforced disappearance found in dictatorships across the globe. But nor is it simply the denial of legal personhood or temporary inconvenience of arbitrary confinement. Those caught up in anti-terror policing are exposed to the brutality of US militarized forces just as much as they can become victim to security forces upon their coerced arrival in the country from which they fled. In effect, the "disappearance" is a transnational one that involves the violation of non-refoulement and as Hannah Arendt would argue, the complicity of the liberal representative sending state with the more or less dictatorial receiving state. At the same time, the raid serves as a spectacular performance of state power, conveying legitimacy and order.

Presenter

Kathleen Arnold, DePaul University - Contact Me

Immigration "Harms" as an Effect of Law

Proposal

Law and legal enforcement draw critical legitimacy from their purported problem solving and harm mitigation functions. With migration law and administration however law reifies fictional harms to natives-like economic loss, wage decreases, or competition for scarce public goods. Is this use of law compatible with "rule of law" or constitutional norms? If not, how can the exposure of the bad faith use of legality and legal administration in the immigration context be deployed to undermine immigration restriction and anti immigrant violence?

Presenter

Daniel Morales, University of Houston Law Center - Contact Me

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Recalled to Life: The Ethics of Care in a Careless World, 1980-1989

Proposal

"It is immensely moving," Max Weber writes, "when a mature man…is aware of a responsibility for the consequences of his conduct and really feels such responsibility with heart and soul. He then acts by following an ethic of responsibility and somewhere he reaches the point where he says: 'Here I stand; I can do no other.'" In the 1980s, hundreds of thousands of Iranians went to war in a "sacred defense" of the Islamic Revolution, staking their lives on an indeterminate idea. The decision to go to war is at once deeply personal and impersonal: in "duty," responsibility is subordinated to the state's political strategies. Or rather, the decision to go to war is extra-constitutional, yet is subsumed by rational-legal order. Is war then the apotheosis of rational-legal order or a sign of its extra-constitutional beginnings? This paper examines Murteza Avini's Chronicles of Victory, a documentary broadcast on state-run television that narrated the unfolding war. The documentary enlisted the citizen-soldier into a divine comedy: from the purgatory of the rational-legal order, the citizen-soldier took flight towards the higher calling. This paper argues that Chronicles revealed the anarchy of political responsibility on the warfront, foreshadowing how an ethic of responsibility against "duty" animated Iran's political history. It reflects on the contested, open-ended relation between geo-political and personal responsibility.

Presenter

Naveed Mansoori, University of Arkansas - Contact Me

The Human Rights Impact of Laws Criminalizing Terrorist Support and Incitement

Proposal

What has been the human rights impact of domestic laws criminalizing support for and incitement of terrorism? Following the September 11th attacks, in an effort to strengthen the global anti-terrorism legal regime, the United States and the United Nations urged countries to pass domestic laws criminalizing material and non-material support for terrorism, including public expressions of support for or incitement of terrorism. In response, many countries adopted new domestic laws criminalizing support for and incitement of terrorism. Scholars and practitioners have debated the impact of these laws on civil liberties and human rights. However, no study has yet provided a systematic, empirical examination of the content of domestic anti-terrorism laws and their human rights implications. This paper provides such an analysis. I argue that governments perceiving greater domestic political threats to their power adopted expansive definitions of support for and incitement of terrorism to enhance their ability to target groups associated with the political opposition, leading to increased government repression and human rights violations. Using original data on the content of domestic anti-terrorism laws worldwide (1945-2022), I analyze the adoption of expansive definitions of terrorist support and incitement and assess the human rights consequences of these laws.

Presenter

Jessica Stanton, Temple University - Contact Me

Sunday, May 25, 2025:

New Vulnerabilities and Emerging Rights: Trends and Challenges.

Sun, 5/25: 8:00 AM - 9:45 AM
2895
Roundtable Session
Sunday 8-9:45am

East Tower
Room: Randolph 1B
The rise of new social, environmental, and informational vulnerabilities is prompting a reconsideration of human rights frameworks. This roundtable will explore whether these 'new' challenges justify the recognition and advocacy of 'emerging' rights. Addressing the needs of modern, open, and inclusive societies requires examining the legal and conceptual foundations of these rights, as well as expanding traditional rights to better respond to contemporary issues. The discussion will focus on whether these new risks and vulnerabilities justify advocacy for rights such as the right to truthful information, the rights of nature, the rights of climate migrants, or the right to be free from corruption, and examine its limitations.
View Abstract 2895

Chair

Digno José Montalván Zambrano, University Carlos III de Madrid - Contact Me

Participant(s)

David Garcia, Universidad Carlos III de Madrid - Contact Me
Rubén García-Higuera, Centro de Estudios Políticos y Constitucionales - Contact Me
Digno José Montalván Zambrano, University Carlos III de Madrid - Contact Me
M. Carmen Perez, Universidad Carlos III de Madrid UC3M - Contact Me

Theory and Ethnography of Legal Form

Sun, 5/25: 8:00 AM - 9:45 AM
0493
Paper Session
Sunday 8-9:45am

East Tower
Room: Michigan 1B
Legal anthropologists have provided numerous ethnographic insights into the everyday workings of law. Yet these accounts rarely theoretically address the law's formal distinctiveness, relying instead on an undertheorized separation between "law" and "society." This panel proposes to address this issue by drawing on the work of Soviet jurist Evgeny Pashukanis, whose writings on legal form as a historically specific expression of social relations have recently garnered renewed interest among legal theorists. By fostering dialogue between anthropologists and legal theorists, we seek to advance empirical and theoretical understanding of law as a distinct socio-cultural phenomenon. Participants will offer interdisciplinary perspectives on how legal form is reproduced and contested across different contexts.
View Abstract 493

Chair

Matthew Canfield, Law Faculty, Leiden University - Contact Me

Discussant

Deepa Das Acevedo, Emory University - Contact Me

CRN

03 - Ethnography, Law & Society
17 - Philosophy and Legal Theory
55 - Law and Political Economy

Primary Keyword

Social or Political Theory and the Law

Secondary Keyword

Ethnography

Presentations

Interactional Order and Resistance of Legal Form in Experimental Moot Court

Proposal

This paper, based on an ethnography of an experimental moot court, connects the theoretical notion of legal form developed by Evgeniy Pashukanis to the particularities of an interactional order we can observe in legal procedure. "Regular" moot courts are competitions that simulate a real court environment and allow students to practice addressing judges and presenting legal positions in fictitious cases. Moot courts are prestigious and highly regulated competitive events that produce a professional culture often criticized for being conformist and uncritical of the social stakes of legal practice. The experimental moot court, held at Vrije Universiteit Amsterdam, is designed to disrupt the image of law and the legal profession reproduced in regular moot courts by putting students in a situation where they cannot win or lose and offering participants an opportunity to experiment with performance, roles, and arguments. However, in my observations even in a setting free from competitive pressures, trained legal professionals consistently reverted to the formal structures of legal interactional order.

Building on Pashukanis's theory of legal form as a relation between formally equal legal subjects abstracted from real social relations, this paper shows how this relation is interactionally reproduced in the legal procedure frame and creates a socially recognizable chronotopic boundary between legal and non-legal matters. Furthermore, even in a scenario of the experimental moot court explicitly inviting participants to critically reimagine procedural conventions, trained legal professionals resist challenges to the legal form, pushing non-legal concerns to other interactional frames. Drawing on ethnographic observations of moot court performances and reflection sessions, I demonstrate how interactionally understood legal form gets reproduced even in spaces designed to subvert it.

Presenter

Grigory Gorbun, University of Chicago - Contact Me

Law and Ideology after Critical Legal Studies

Proposal

Critical Legal Studies used the concept of ideology to understand adjudication in terms of oppressive social relations, such as capitalism, patriarchy, racial supremacy. However, wanting to avoid traditional critiques of ideology-for example, instrumentalism, economism, ideology's truth value, and so forth-CLS ultimately settled on a relatively toothless concept of ideology, one incapable of explaining why the law tends to favor dominant groups. This paper will criticize the CLS model of ideology, finding the shortcoming in what I will call its *representationalism*. Using commodity-form theories of law and society, from Marx, Lukács, and Pashukanis, this paper will offer an alternative theory of the relationship between law and ideology, which I will identify as a kind of *expressivism*. All thinkers recognized both the important role that capitalism's commodity structure plays in ideology and shared an idea of either social or legal form. Capitalism's commodity structure forms the backdrop for the practical orientation of the legal form while its "fetish character" is the source for the basic vocabulary-the forms of thought-for interpreting and adjudicating the law, in both its formalist and functionalist versions. Pashukanis identifies the modern, "bourgeois" legal form as a historically specific way of regulating social relations, which he

derives from capitalism's commodity structure. Practically, not just ideologically, this concept of law is grounded in individual autonomy and responsibility. In terms of legal interpretation and adjudication, formalism and functionalism are both derived from the uncertain status of moral language generated by capitalism's commodity structure and their similar, "inverted" order of explanation, from individual to social.

Presenter

Matthew Dimick, University at Buffalo School of Law - Contact Me

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Terrorism as Tort: On Legal Form and the Anthropology of Imperialism

Proposal

This paper examines the antinomies of litigation in U.S. courts that treat "international terrorism" as a form of tort (civil wrong). Terrorism lawsuits were originally envisioned as a way to build popular support for U.S. foreign policy goals but have taken on a life of their own to the occasional irritation of policymakers, as litigants have pursued major corporations with at best attenuated connections to alleged terrorist organizations but whose assets are a more tempting target. More fundamentally, the translation of political violence – often of a transnational character – into the legal form of tort raises a number of conceptual and practical challenges. An ethnographic analysis of the legal form of terrorism torts leads to several conceptual implications.

For anthropology, which has long invoked but often undertheorized categories such as colonialism and empire, this paper argues for the relevance of the theoretical tradition of imperialism (Hobson, Luxemburg, Lenin, Amin, etc.) as a dynamic of inter-state competition and transnational subjugation structured by capitalist relations. An attentiveness to law and political economy drawing from thinking on imperialism can be a useful means for legal anthropologists to bring ethnographic data on doctrinal objects to bear in a multiscalar analysis.

For Marxist legal theory, this paper calls attention to the significance of tort as a fundamental category of law under capitalism. Pashukanis' influential account treats contract law as paradigmatic of the legal form of bourgeois law, attracting criticism for a focus on the sphere of circulation over that of production. Regardless of the merit of such critiques, tort is significant precisely because it crosses the divide between circulation and production. Attention to terrorism torts in particular also complements and revises important recent trends that have focused on governments as parties in contract law.

Presenter

Darryl Li, University of Chicago - Contact Me

Feminist and Subaltern Critiques

Sun, 5/25: 10:00 AM - 11:45 AM
3896
Paper Session
Sunday, 10-11:45am

East Tower
Room: Grand Suite 5
The history of law teaches us that legal assumptions from the past can be very tenacious and influence current legal arrangements. Historical research, comparative research, and research into dissenting opinions of the US Supreme Court can further aid us to take a more active stance vis a vis conservative legal conceptions. However, looking to the past should be complemented by looking at the future. The papers in this panel feature innovative research methods and theories that open up spaces to explore novel perspectives on identity, intersectionality and representation.
View Abstract 3896

Chair/Discussant

Shih-An Wang, Graduate School of Law, Kobe University, Japan - Contact Me

CRN

17 - Philosophy and Legal Theory

Primary Keyword

Constitutional Law and Constitutionalism

Presentations

Bolivar Echeverria's translation of Walter Benjamin and the Baroque Modernity of Law in Latin America

Proposal

In Carlos Antonio Aguirre Rojas's 2010 preface to Bolivar Echeverría's Siete aproximaciones a Walter Benjamin, both Walter Benjamin and Bolivar Echeverría are identified as marginal figures, or hors la loi. Despite Echeverría's lesser emphasis on legal matters than Benjamin, his work reflects a broader Latin American leftist skepticism toward legal thought, often seen as bourgeois and a form of false consciousness. This view contrasts with the active use of legal discourse by progressive movements in Latin America during times of dictatorship, where Human Rights were mobilized for social justice.
Echeverría, who is largely unknown outside Latin America, was a key figure in translating Benjamin's works into Spanish, significantly influencing critical thought in the region. His intellectual journey included participation in the New Left in Germany and the 1968 student movement in Mexico.

While figures like José Revueltas engaged directly in political action, Echeverría retreated to theoretical exploration, aligning more closely with Benjamin's political work.
His translations and interpretations of Benjamin revived Marxist discourse during neoliberalism in the 1990s and were crucial in framing contemporary leftist thought in Latin America. Echeverría's concept of "baroque modernity" offers a lens through which to understand Latin American legal history, challenging the dominant Eurocentric narratives of modernization. He posits that various "ethe," or ways of living within capitalism, coexist, allowing for the possibility of non-capitalist forms of existence.
This framework encourages a reevaluation of legal practices in the region, suggesting that local customs and resistances offer alternative paths to understanding legality beyond mere compliance with global capitalist norms. Echeverría's integration of Benjamin's critiques of progress serves as a foundation for rethinking the relationship between law and society in contemporary Latin America.

Presenter

Miguel Rábago Dorbecker, Centro de Investigaciones y Docencia Economcias - Contact Me

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Intrasectionality: The Social Virtues of Analogical Thinking in European and North American Law.

Proposal

Kimberlé Crenshaw coined the notion of intersectionality, with a view to better understanding the dynamics of discrimination when several factors are at work. However, it is perfectly possible for an individual to be in a minority in one context (e.g. the workplace) yet not be in a minority in another (e.g. the family). A minority may also attack another for the very thing that constitutes it, usually in the vain hope of redemption or acceptance by the majority group. The notion of intersectionality makes it possible to think in terms of complexity, but less so in terms of contradiction.

In social interaction, histories of domination inevitably collide. To better understand this process, we need to think about the transitivity of human experience, which I call intrasectionality. Drawing on the work of Karen Barad, my paper begins with the observation that 'the other' constitutes our own material (biographical, legal, linguistic, corporeal, psychological, economic, etc.) and explores how this embodied presence affects us, particularly in the field of law.

Judges often use criteria that are far removed from the case in question in order to highlight the discrimination more clearly. Their reasoning is more analogical than comparative: they are less concerned with the criterion of discrimination than with the process of stereotyping people. In the United States, gender was first protected on the basis of race. More recently, sexual orientation has, in turn, been recognized on the basis of gender. In European Union law, the protection of health has made it possible to protect against discrimination on the grounds of disability, while disability has enabled the protection against temporary incapacity due to illness or accident. I'll show that this has led to a vision of the law based on solidarity, which does not erase moral conflicts, but rather strives to create a virtuous circle between situations that are unique but in resonance with each other.

Presenter

Bruno Perreau, MIT - Contact Me

Slavery's Constitutional Endurance

Proposal

This article offers a novel theory of "states' rights" as a constitutional euphemism for a state right to racially enslave and subjugate. Far from being an occasional counterargument to racial equality endeavors, the states' rights argument-which this article calls the "antebellum states' right principle"-is responsible for the constitutional entrenchment of racialized slavery from the founding to the present. This article documents the constitutional birth of the principle and charts its development in antebellum America. It identifies important subprinciples that augment it, like the unidirectionality subprinciple, which subordinates states' right to resist enslavement to states' right to racially enslave, and the federal force subprinciple, which endorses the use of national power to advance the right to racially enslave. It then examines the principle's constitutional contraction and expansions after the Civil War, demonstrating how the principle occasioned two waves of re-enslavement between Reconstruction and contemporary times.

This article makes two original interventions. First, it reconceptualizes how scholars should view the states' rights argument. The topic of states' rights federalism has produced a massive amount of legal scholarship with widely divergent views; legions of academics extol the concept while scores of others reject it. However, legal scholarship has exhibited a vast underappreciation of the breadth and depth of the states' rights argument in American constitutional law. Second, this article is the first to connect the states' rights argument and the Thirteenth Amendment. While many scholars know about the historical use of the Thirteenth Amendment's so-called "punishment clause" to reinstitute racialized enslavement, the states' rights piece of the story has hitherto been untold. This article establishes the antebellum states' rights principle as the engine of racialized enslavement under the amendment's loophole.

Presenter

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"Demosprudence Through Dissent" and the Contemporary Roberts Court

Proposal

This paper applies Lani Guinier's theory of "demosprudence through dissent," which illuminates how Supreme Court justices can use legal rulings, especially dissents, to speak directly to the public

about the role of the Supreme Court and its legitimacy in the U.S. political system, to recent powerful dissents written by Justices Sonia Sotomayor, Elena Kagan and Kentanji Brown Jackson. I highlight recent cases/dissents involving the following areas as useful examples of "demosprudence through dissent": racism in the criminal justice system; the modern administrative state and the ability of the federal government to enact regulations; abortion rights, reproductive freedom, and bodily autonomy; gun rights and expansive interpretations of the Second Amendment; presidential immunity; voting rights, election law, the power of state legislatures to govern federal elections; LGBTQ rights in places of public accommodation; and affirmative action in higher education.

Presenter

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