Abstracts

The "post-Weinstein moment" has given rise to the #MeToo social media 'movement,' which has been firmly embraced by the vast majority of 'woke' intellectuals, including in the legal academy. Scholars who understand themselves to be progressive and leftist are contributing to the mainstream public discourse around celebrity sexual violence allegations. This discourse is markedly unnuanced. Accusatory, moralizing and punitive, it leaves little room for reflective inquiry into larger questions of structure and agency, guilt and shame, punishment and forgiveness, power and desire, reckoning and accountability. This paper considers how otherwise critical scholars (of law and other disciplines) have ceded the territory of sex and sexuality to liberals and conservatives in the context of #MeToo. It does so from the perspective of socialist feminist sex radicality, in an effort to unpack the political costs of this concession.

This intervention deploys the analytic frame of the "sex panic," introduced by Carole Vance in the 1980s. It rejects the mainstream claim that, in the context of #MeToo, "[o]ur conflict is not over sex, or with men in particular or in general, but over power."[1] In refocusing analysis on the sexual part of violence and harassment, I read media portrayals of #MeToo contributions as literary texts. These affective representations, I argue, follow a set of narrative tropes that inscribe questions of sexual desire and consent in binary terms. This makes them explicitly political texts. In other words, they function to read out the potential for more open-textured and nuanced analysis of the pleasure/danger dialectic.[2] My overarching claim is that these stories align with a neoliberal feminist political agenda for sexual culture in the twenty-first century.

#MeToo stories follow a structural script of atomized victimization, whereby the accretion of individual stories, *one by one*, is thought to help us "really hear[] women's voices." The idea seems to be that the mere existence of a critical mass of discrete #MeToo installations will work to shift the culture of male sexual entitlement. However, much like the script envisaged in recent campus sexual violence policy reform initiatives, #MeToo narrates a universe where sex is reduced to an initiator/respondent structure. Here, sex is seen as something that happens *to* women, and consent is understood as a bright line *fact* to be perceived through the 'yes means yes' affirmative consent model. This approach threatens to flatten out a whole range of sexual experience, desire and erotic possibility that could otherwise be open to women. The appropriate left political response would, I argue, seek to substantively reckon with the concept of sexual consent as a legal fiction. It would seek to articulate what is left unsaid – and rendered therefore somehow unsayable – about the danger/pleasure spectrum in the mainstream #MeToo narratives.

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[1] Melissa Gira Grant, "The Unsexy Truth About Harassment," *The New York Review of Books*, Dec. 8, 2017.

[2] *See* Carole S. Vance, *More Danger, More Pleasure: A Decade after the Barnard Sexuality Conference*, 38 N.Y.L. School L. Rev. 289 (1993).

Animal advocacy, particularly outside of the legal arena, has been largely populated by women, many of whom bring explicitly feminist, anti-racist, and intersectional lenses to their work. Legal advocacy for animals, however, has tended to adopt a more classical 'liberal legal' approach, avoiding strategies that are highly critical in the sense of challenging background assumptions and social hierarchies. This presentation will argue that animal legal advocacy is badly in need of a feminist jurisprudence—particularly respecting farmed animals whose exploitation is so often sexual and reproductive in nature. Feminist jurisprudence has sought to complicate background legal norms relating to such dualisms as public/private, family/market, force/consent, nature/culture, fact/method and sameness/difference, all of which continue to animate our legal understanding of the status and entitlements of farmed animals. This presentation will explore how a feminist lens can help us to better understand law's role in naturalizing intensified forms of farmed animal exploitation, and open up possibilities for more profound forms of animal advocacy and critique.

Sexual abuse and sexual harassment have long been endemic in the entertainment industry, especially Hollywood. In October of 2017, however, a New York Times exposé of Oscar-winning movie mogul Harvey Weinstein as a serial sexual abuser set off an avalanche of charges of abuse and sexual harassment against Weinstein and other powerful Hollywood figures. Whether the response signals a revolutionary shift of power from which there is "no going back," as some would have it, or perhaps a mere pendulum swing that will soon be quelled by a backlash, as others believe, it has important implications for our understanding of sexual harassment law.

Situating the #MeToo and #TimesUp movements within a broader history of feminist activism provides useful insights.

Developing Feminist Law in Mexico: The Feminist Campaign for Voluntary Motherhood (1971-1980), *Regina Larrea*

This paper focuses on a transformative moment in the development of second wave Feminism in Mexico. In the 1970s, feminists' campaigns to decriminalize abortion marked their very first attempt at legislative reform through the introduction of a bill in Congress in 1979. The fast turn to law was striking in light of Mexican feminists' initial oppositional stance towards the state, legislation, and political parties. The paper narrates how the turn to law occurred and analyses the way it transformed the feminist movement itself: its organizational structure, ideology, and relationship to formal political power. Though the legislative effort on abortion proved unsuccessful, these broader transformations inspired subsequent feminist legal projects and, ultimately, the proliferation of feminist ideas and actors in Mexico's governmental institutions and laws.

Brexit has been understood as an aberration, as a triumph of populism and nationalism, in conflict with the ethos of the Union. Brexit, however, should not be understood as a mere aberration, but instead as one position on continuum of exhausted thinking about EU and (transnational) law in general.

From the perspective of "pure" legal theory, Brexit is self-referential, resulting from the internal dynamics of the system. The discussion of the Brexit frames the debate in terms of formal participation in the system, whereas governance, and indeed the legal structure, should be understood as chaotic and hierarchical. The theory of integration is misleading in the context of a country joining or leaving a legal system like the EU. A retreat to sovereign power, like desire for a full participation in a system, can prove to be an illusion.

Feminist legal scholars' experience of the heterogeneity of time, seen through the multiple conflicting agendas within the feminist movement, makes us well equipped to fight authoritarianism. I argue that instead of interpreting our different goals and views on feminism as internal conflicts we might understand our heterogeneity as dealing with multiple times and places. To challenge Trumpism through time and place, expressed in our plurality, instead of searching for one united front.

Trumpism governs through "spatial time" with a twist. We are used to seeing time as the constantly changing component in the time and space pair. That time flies, that time is moving so fast, or going backward. Place is normally the enclosed, the defined and the material. Trumpism reverses the two, it sees time as fixed while place is the ever-changing element.

Instead of accepting an authoritarian view on time as homogeny we can insist on its heterogeneity.

My paper examines the diverse conceptions regarding "international governance" underlying private international law doctrine, and their relationship to the construction of the disciplinary identity as well as the actual operation of private international law. I am using the term *international governance*, on the one hand, so as to address something broader than (public) "international law" as either a body of law or a legal discipline, and, on the other hand, to underline the political impact of doctrinal choices made in the discourse of private international law. My definition of private international law, which encompasses not simply the conflict of laws but also the sister disciplines it has spun off, such as international commercial law, also focuses on the construction of a legal discipline, autonomous from both "international law" and "private law," with its own methodology, ideology and discourse.

The exploration of this autonomous discourse, as well as of the complex triangular relation it has arisen from, and has been subsequently nourishing, has occupied much of my work on the intellectual history and theory of private international law, since my doctoral dissertation at HLS. My paper constitutes a homecoming of sorts, as I seek to explore the imagery contained in a conceptual opposition originally employed by my doctoral supervisor, David Kennedy, with regard to the postwar international lawyers.[1] Kennedy contrasted "metropolitans" and "cosmopolitans," exemplified respectively by Hans Kelsen and John Jackson. In private international law, likewise, we could distinguish *metropolitans* who present an image of the world as based on sovereignty and same-level, formal structures emanating therein, and *cosmopolitans* who present a more fluid imagery, world systems governed by natural justice, the global market's invisible hand, transactional ethics, or the autopoetic desires of normative/discursive communities.

This distinction is but a starting point: there exists a variety of images and conceptions in both poles, while many would locate themselves in the middle, and some would claim not to identify themselves in this structure. A common point is that, whatever imagery of "the international" is presented in works of private international law, it tends to appear as a given: that is, private international law is presented as operating within fixed structures – or at least structures evolving in a more or less fixed manner – and not as a factor playing an important role in shaping or re-shaping such structures. This may appear counterintuitive. It can only be explained by considering both the actual impact of private international law doctrine on international governance and the needs and structures of doctrinal systems of private international law.

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[1] David Kennedy, "The International Style in Postwar Law and Policy", 1994 *Utah L. Rev.* 7.

The three most important trade initiatives since the beginning of the new millennium are the Doha development round, the Trans Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). The most recent attempt is the attempt of the EU and Canada to conclude the CETA agreement. While the Doha development round has remained incomplete, the fate of the last two initiatives remains uncertain. European Commission currently negotiates 16 other bilateral agreements.

From the perspective of the general public, these initiatives are becoming increasingly unpopular. The most frequently mentioned arguments are procedural and substantive. From the procedural perspective, the secretive trade talks without the presence of organized labor, independent health, food, and other experts, environmental organizations and other groups of civil society present a source of mistrust between authorities and public. From the substantive perspective, the controversial clauses, such as investor-state dispute mechanism, the clauses requiring liberalization of traditional public services, privatization and expansion of corporate rights present an equal source of concern among the public.

The crucial challenge ahead of the international trade arrangement, both multilateral and bilateral is whether these two sources of public anxiety, procedural and substantive, can be effectively addressed. From the answer to these two challenges, the future of international trade arrangement, as designed and developed in the last decades, largely depends.

The debate on the future of trade relations and on maintaining a transparent international legal framework requires deep reflection. The debate should go beyond an overly simplistic debate between the free traders and the protectionists. As some of the leading trade experts and legal scholars have argued, the goal of maximizing international trade is not a goal in itself. The main goal is to further develop an international legal framework, conducive of inclusive, balanced and sustainable economic, labor, social and environmental development.

Not all of the modern trade agreements lead to the good equilibrium. If trade agreements are not carefully crafted, they can create inherent conflicts instead of mutual benefits. The reason why in modern trade theory and practice there is more than one single outcome, but multiple outcomes with multiple possible equilibria, is that unlike in classical trade arrangements run by market forces and the invisible hand, the modern comparative advantages are based on knowledge-based economies and societies. These advantages are not inherited, but they are invented and constructed, often through the partnership between the public and private sectors.

The world trade regime should become capable of addressing three major concerns of the existing structural imbalances: 1) to incorporate the development friendly framework by enhanced rules of the SD&T and other development friendly clauses into the world trade regime; 2) to explicitly recognize that the fast developing countries are allowed to develop their own institutions and measures, even if unorthodox, and to develop their own economies and societies in more sustainable and inclusive ways; and 3) to explicitly recognize the legitimate need of the most developed countries to receive breathing space to restructure their industries in cases of protracting economic crisis or in cases of high levels of unemployment.

The new conceptual and practical approach would create more maneuvering room for restructuring, while at the international level prevent the individual countries to resort to “beggar thy neighbor” activities. The built-in mechanisms as well as the commonly agreed rules should also raise the global environmental, labor and social standards in the future. It should take into account the legitimate procedural and substantive concerns of the public in both developed and developing part of the world by creating more inclusive trade talks and by creating substantive rules tailored to the diverse development strategies of all the trade participants, based on their own comparative advantages.

Nigeria became independent since 1860s and since then adopted the mythology of the judge as part of the institutional heritage of colonialism. The Nigerian judge was constructed in the mythologized persona of the English judge. Nigeria has also strengthened the framework of rule of law by institutionalizing the mode of appointment of judges, their tenure and removal. The upshot of this institutionalization is to ensure that judges are appointed and removed by judicial institutions through rigorous due process and that the judiciary is insulated as much as possible from the interference and control of other branches of government. As a standard best practice, Nigeria has kept faith with this orthodoxy since 1960.

In the 1960 Independence Constitution, judge were appointed and removed in a manner that could secure their independence and incorruptibility. Under that constitution judges were appointed by Judicial Service Commission, a judicial body not controlled by the politicians. Judges could only be removed if they were indicted by a tribunal and confirmed by the Privy Council. In 1963 Republican Constitution, the position was somewhat weaker because the executive played and legislature played a role in removal. The President appointed judges without the recommendation of the Judicial Service Commission. The jurisdiction of the Privy Council was abrogated. Judges were removed by an address of the President endorsed by 2/3 majority of the legislature. This process may have established stronger political legitimacy for the appointment process but may have exposed the process to greater political determination. The latest constitution (1999 Constitution) restates the rigorous appointment procedures and tenure systems that insulate the judge from the welterweight of social expectations and norms. But recently the myth has shattered. Corruption in the Nigerian bench has become so virulent that Supreme Court judges are not defendants behind the bar. What has happened to shatter the myth of incorruptible judge? This paper explores the notion that the ideal of judges as wise and incorruptible (an ideal that is protected by strong legal institutions) has run into problem with the reality of Nigeria's political and social life, a reality that is captured by the widespread allegation of corruption and political partisanship against judges. My response to that problem is to suggest that the present widespread report of corruption in the judiciary is a demystification of the ideal of the judge as incorruptible and non-partisan and the revelation of the fragility of formal institutions that sustain the orthodox narrative of the judicial persona and the judicial craft.

My argument is that judges are human beings, embedded in human and social relations and therefore susceptible to the frailties of human goodness. Therefore we can only control judicial corruption by the same way we control other forms of corruption in human society. That is, not only through formal legal institutions but also through the grounding of formal regulative institutions in informal social institutions Corruption in the judiciary is a reality. Its solution lies in the social institutions, not just legal institutions.

A standard observation made in the literature on politics and constitutional law is that chief executives in various governments around the world have become more empowered relative to other governmental institutions. Unfortunately, while we know a lot about presidential empowerment, particularly in the US, we know less about how prime ministers (PMs) in parliamentary systems have become exceptionally powerful as well. In this paper I use the case study of the UK to start filling this gap in our comparative knowledge and derive more durable lessons on constitutional and administrative politics, law and design.

The paper tracks the techniques that UK PMs have used to increase their control over their administrations as well as their historical development in time, and finds resemblance between them and the tools operationalized by US presidents. Similarly to US Presidents, centralization, politicization, and credit claiming were important techniques that were deployed by PMs in their attempts to put their stamp on, and increase their hold of, the growing apparatus of the UK administrative state. Highlighting once more the parallels to US presidents, PMs also built on their institutional advantages as singular chiefs to significantly marginalize other institutions competing with them for control over the administrative state. The paper shows moreover that in this process of empowerment, PMs have specifically engaged with constitutional norms and conventions in ways that would justify their centralizing enterprise. Much like US presidents were able to position themselves as the focal point of governing arrangements albeit the more modest role they were likely supposed to have according to the original constitution, the case for UK PMs is rather similar. Gradually and with time, PMs were successfully able to "stretch" original constitutional understandings to accommodate the changes they were spearheading and legitimize further expansions of their powers over the administrative state. So much so that a reality of a relatively empowered "administrative PM" seems to be entrenched in the UK.

Despite these trends, the paper suggests that the resemblance between a presidential and a parliamentary system such as the UK is far from being full or complete. Although we live in a world where governing is indeed done more and more by chief executives, there are still important differences which complicate any straightforward claim of alleged "presidentialization." More specifically, PMs operated throughout the process *within* the model of parliamentary constitutional democracy and in accordance with rules governing the Westminster administrative state, rather than become explicitly presidential. Given the nature of a strong, impartial and permanent bureaucracy in Westminster, which does not exist in the US in the same way, PMs further faced various constraints and limiting conventions that served to challenge their attempt at domination. As a result, PMs might indeed be able to position themselves in an empowered position over the policy apparatus of the state; but that positioning would almost surely be informal and embedded, hence making their potential domination more structurally fragile than that of US presidents.

Arguably, the UK is currently at a point of relative PM weakness and the development of a "softer" version of an "administrative PM."

Finally, the paper abstracts away from the specifics of the US and UK cases to peer into larger questions about the role of chief executives in the modern policy state. It suggests, first, that contemporary debates should acknowledge a more pluralized understanding of the role of chief executives than is indicated by the parliamentary/presidential dichotomy, suggesting that both these systems could at different times come to resemble one another. Indeed, the US today is arguably "parliamentarized" given the rise of polarized parties in the US, which make presidential leadership more dependent on party-political elements. Second, it identifies the challenges that this reality of more pluralized conception of executives raise in terms of constitutional and administrative design, which revolve around of issues of accountability and tensions or tradeoff that this causes in between partisan or national leadership. The paper does not offer concrete remedies but conjectures that the way to solve them most likely lies in reforming either parties or the bureaucracy.

When the first draft of what became the 1935 Philippine Constitution was unveiled before the Constitutional Convention, Sorsogon Delegate Jose Reyes criticized it for having "no definite philosophy," because it contained both "the individualistic liberalism of the eighteenth and nineteenth century" while simultaneously "providing for vast extensions in the sphere of governmental functions." In turn, this ideological incoherence more generally characterized the hodge-podge that the Philippine legal system had become in the early 20th century. Impelled by various publics, both American and foreign, to conform colonial governance with the American democratic and liberal constitutional tradition, American colonial architects reformed the autocratic and inquisitorial features of Philippine law's Spanish civil law inheritance by introducing the rule of their own law. But the American source from which Philippine law drew was in great flux. Spanning 1898 to 1946, the American colonial period in the Philippine Islands coincided with the challenge to and the ultimate transformation of American law's classical legal paradigm by legal progressivism and later legal realism. And while it was the dominant classical legal theory that took hold in the Islands at the inception of American rule, the imperatives of colonial control and the civilizing mission operated to emasculate constitutional limits and engage their exceptions. Thus, the jurisprudence of the nightwatchman state facilitated the creation of an activist leviathan, which colonial progressives deployed towards initiatives that might otherwise have been thwarted in the US mainland. Subsequent developments in American legal theory only validated and reinforced the direction that the Philippine legal system was taking, and the 1935 Philippine Constitution preserved and elaborated upon colonial practice.

To tell this legal story, this paper examines the career and writings of two of the most important conduits of American law to the Islands, George Arthur Malcolm and Jose P. Laurel. Perhaps no single American has more greatly influenced Philippine law than Malcolm, who arrived in the Islands a fresh graduate of the University of Michigan Law School, worked his way up from a clerkship in the Department of Health to Associate Justice of the Philippine Supreme Court, and along the way, founded the first American-style law school in the Islands, the University of the Philippines (UP) College of Law, through which he helped mold the legal worldview of future Filipino leaders. Likewise, few Filipinos have impacted Philippine law more than Laurel. Malcolm's student at UP Law and the first Filipino JSD graduate from Yale University, Laurel held top jobs in all three branches of the Philippines' colonial, Commonwealth, occupation, and independent governments while teaching law at UP and authoring numerous law texts, including a Philippine Constitutional Law textbook with Malcolm. Using this American law teacher and his Filipino student as its narrative vehicles, this paper will glean the contours and content of Philippine legal theory, trace its intellectual genealogy, track its application to and incarnation in a colonial context that sought to balance individual rights protections while controlling and civilizing a subject population, and reflect upon its implications for the Philippine legal system.

Local autonomy – the power and right of municipalities to a certain degree of self-government - has been a key idea in the Colombian constitutional law and reform discourse at least of the past 30 years. The idea that local governments should be legally empowered "to elect their own government and administer the issues of their competence without the interference of other levels of government" was at the forefront of the discussion and national unease that lead to the enactment of a new Constitution in 1991. Most recently, the discussion on what "local autonomy" entails has been linked to the opposition of local communities to development projects led and planned by the central government, such as mines or oil dwells. These communities argue that the local governments' powers and rights that constitute their autonomy – such as having the right and obligation to regulate the uses of the soil in their territories and taking care of the environment – grant them a veto power over these projects. The central government, meanwhile, invokes its powers to regulate the economy and the extraction of natural resources to defend the execution of such projects.

This paper traces the ideological disputes and alliances around "local autonomy," the powers and right of local communities to self-government. It does so by exploring the history of the Colombian municipal regime and focusing on the two strategic historical moments referred above: First, today's local opposition to extractive projects planned by the central government, which has set the scenario for the ongoing political and legal contestation on what local autonomy entails in matters of economic development. These conflicts have been framed in a very legalistic rhetoric, in which local communities use and defend the powers of local governments strategically to oppose development projects led by the central government, who, in turn, invokes its powers derived from the Unitarian principle to defend the execution of such projects. Second and as a counterpoint, I also trace the ideological disputes and alliances and the political context of constitution drafting period that lead to the Colombian Constitution of 1991, in which both Unitarianism and local autonomy where enshrined as constitutional principles; and second, and that sets the ground for today's conflicts. Contrasting them allows me to dismantles the apparent "legal logic" and naturalness of both postures ("*pro*" and "*against*" local autonomy) in both historical moments, and unveil the contingent and political and policy decisions and struggles that lye behind the construction of general legal principles, such as local autonomy.

A Financial Infrastructure for Housing Integration: Fannie, Freddie & HUD's New Rule on Affirmatively Furthering Fair Housing, *Nadav Orian*

The U.S. housing market is characterized by a high and persistent level of segregation between white and minority households. As the Department of Housing and Urban Development (HUD) recently recognized, housing segregation denies many minority households access to "opportunity neighborhoods" with high quality education, transportation and employment. The key premise of this project is that the secondary market for mortgages has played a crucial role in the making of housing segregation and has an equally crucial role to play in its undoing. The key protagonists in the secondary mortgage market are Government State Enterprises (GSEs) like Fannie Mae and Freddie Mac that turn otherwise illiquid mortgages into highly liquid and desirable securities. The immediate context for this project is the new (2015) HUD rule on "affirmatively furthering fair housing" (AFFH). The rule lays out an ambitious program requiring all HUD grantees (local authorities, states, and housing authorities) to formulate plans on how they intend to pursue desegregation and improve conditions in racially concentrated areas of poverty (RCAPs). The Article argues that HUD's AFFH rule can be considerably strengthened by harnessing the secondary mortgage market as a source of funding for these new plans.

Parental leave law exists in a particularly dense node of relationships between the state, families, and the market. Resources and responsibilities are allocated by cultural norms as well as by law, with policy-makers attempting to shift incentives and disincentives to promote their vision of family and work life. A close look at the legal structure around parental leave reveals a rich site for research, as we find evidence of political perspectives on parenting roles and work life. I argue that there are two main, gendered and inextricable axes of distribution: who shoulders the burden, and who foots the bill for the labor of having and raising children. If childcare is a fundamental and inevitable type of social (re)production, it is crucial to analyze how the costs and benefits of such work are distributed, mapping carefully what they currently look like, as well as the normative ideas around what they should become.

I use the explanatory framework developed by Morton Horwitz's discussion of the instrumental reworking of legal categories in eighteenth and nineteenth centuries America that categorically developed water rights for economic development and contrast it to the fixed and rigid system of British colonial-era water rights in the Indus basin in present-day Pakistan. I compare the rigid colonial conceptualization of water for irrigation that holds the vast majority of those subjected to the legal structures created from that conceptualization tied to a low-resource economic base with limited options for capital formation and mobility of action. This extreme water poverty in one of the great river basins of the world is a tragedy, one that disables the majority from imagining and building a better life. In contrast, I look to people's actions as they played out in courts in the eighteenth and nineteenth century United States as they worked to develop new legal categories for the control and management of water resources in light of their instrumental conceptualization and attendant development of water law to serve changing social needs in light of their goal of economic development.

Pain has been the subject of recent reflections on the role of law in war: while some insist in ever more precise calculations of pain as loss as damages, others insist on marking the very limits of law in representing and mitigating pain. Calls for distribution appear as insensitive to pain when not directly accused of supporting warmongers. Talk of distribution is thrown into the pacific rhythms of peace, while pain is installed as an exception that must be isolated, (re-)signified and eliminated. Pain becomes then the "past" for a "future." To turn, to move past, to depart, we cannot demand going the whole distance but rather prioritize the fundamental: for foundation it is the trauma of pain that must be handled.

Against the grain of this conversation, I will contend the inescapability of distribution and the need to salvage pain from the humanitarian gaze in order to reestablish its social character and comparability to other types of evils. I will argue that through internal and external critique in the fields of law, economics and philosophy we have come to accept that there is no objective or neutral parameters that can allow for justification of actually existing distributions and therefore, 1) the question of what is a resource, that is, of what some people might use to get ahead from others or, the opposite, what are some people missing to get to the same point, 2) the question of how are resources distributed, that is, of what is the parameter that better explains the distribution, and 3) the question of whether the parameter can be justified, are open to revision and discussion. In this sense, what counts as pain, what we think can genuinely lead to trauma, what needs to be addressed and how, are political rather than merely technical or theoretical issues.

In this paper, I argue that the search by the UK and others for a new form of "engagement" in Africa, a euphemism for a new form of domination of Africa, is not new. Over the years, they have taken Africa through three forms of domination (political, economic, mental), and the new form that is being sought (electronic domination) will be the fourth, although this form is tricky and may not be as effective as the calculations portray.

It therefore behooves Africans, their leaders and policy-makers, to popularize these facts and to engage with them to ensure that the next form of engagement is not another form of domination, but a mutually beneficial relationship. There is a constant competition amongst the world's most powerful nations to assure their future dominance, and Africa must not allow herself to continue to be sold short in a selfish pageant competition of the world's most powerful.

This paper fits well with the conference aim to explore "law's fraught role in bridging the demands of ethical aspiration and practical politics". For, the practical demands of real politics, as powerful nations scheme to control the world, leads to the occupation of territories, but also the occupation of policy spaces, minds, and technology in ways that disable the capacity of law to lead and to create change.

This paper examines the transnational legal and ethical dimensions of corporate decision-making in company-community conflicts linked to the extractive industry; in doing so, I develop an heuristic called the *human rights zone*—a metaphorical decision-making space where the everyday demands of the corporate fiduciary duty morph under pressure, giving rise to ambivalence and uncertainty. In articulating the *human rights zone*, I draw on corporate law jurisprudence and academic literature concerned with the scope and demands of the fiduciary duties of loyalty and care. This discourse has sometimes employed spatial metaphors to capture the sense of a particular decision-making "zone" for fiduciaries—the most renown example being "*Revlonland*," a term originating in the Delaware Court of Chancery takeover jurisprudence. Such zones arise from a combination of endogenous and exogenous conditions facing the corporate entity and its decision makers. In the *human right zone*, especially compelling exogenous pressures, such as the imminent risk of conflict-driven violence or serious long-term harm to third parties (displacement, environmental harm, etc.) cause corporate decision makers to consider ethical perspectives that go beyond the conventional legal demands of fiduciary duties. Decision makers are compelled to consider that their lawful activities may have serious deleterious effects on some people, notwithstanding that the same activities might generate long run value for shareholders, and, on some criteria, a positive social impact. Moreover, they are compelled to consider that the unexceptional maxim to follow all local laws may, paradoxically, lead to unacceptable reputational and financial risks. *Moreover*, business decision makers in the *human rights zone* are compelled to take seriously the real risk of harm to people unconnected to the firm, whether or not a legal claim against the company arising from such harm has any chance of success, and whether or not adverse reputational effects are manageable. Managers and directors hope that they will never find themselves on such rocky ground; but with the increasing reach of global business, even good faith efforts to stay clear of such problems (through "CSR", *ex ante* human rights due diligence, voluntary performance standards, etc.) will sometimes fail or may even backfire. More troubling is the fact that there is often no bright line that demarcates this zone; in practice, decision-makers may be deep within it long before they become aware of the problem—in the worst cases, managers may find themselves stuck in what might feel like Hollywood quicksand.

This paper builds on fieldwork in one Chinese county and examines the relationships between law, economic development, and people's conceptions of legitimacy. In peri-urban areas, villagers whose land was to be expropriated for urban development conducted legal and illegal activities to get more compensation. Villagers whose land was not expropriated took advantage of the land's proximity to urban centers and became miniature developers themselves, which is prohibited by the law. As villagers negotiated with or contested local officials over urbanization surplus, they became richer yet more cynical toward the law and the state. The paper investigates this situation by exposing the structural inequalities law has created between rural and urban Chinese and between land developers and peri-urban villagers. These inequalities motivate peri-urban villagers to abuse and violate the law. Caught between widespread violations and the responsibility to enforce the law, local officials feel increasingly disillusioned by the state's rule-of-law talk.

Structuralism as a method of analysis played a major role in both Positivism, Realist critiques of Positivism, post-Realist reconstructive efforts and the critiques of reconstructive efforts. All of these involved combinations of setting up categories with normative force, exploring hierarchies and irreconcilable oppositions, mapping arguments and using charts and graphs. But what exactly is structuralism – what makes it so adaptable and what are its limits? How is structuralism different from intentionalism and textualism, the two main types of interpretation?

There are many loose definitions along the lines of "using the relationships between the elements of a text to determine the meaning of a text." In my presentation, I identify four main types of structuralist thought in law: Kelsenian structures of the legal system, Hohfeldian structures of rights, structuralism as used in public law adjudication, and structuralism in the interpretation of statutes. Separating these four types of structuralist argument allows us to see where structuralism is an explanatory tool, where is it an interpretive method for deciding cases, and where is it a rhetorical element without normative importance. These separations then allow us to have a better overview of structuralism evolving through so many 20th-century revolutions in legal theory.

In 1913, Wesley Newcomb Hohfeld published "The Relations between Law and Equity". In his paper, Hohfeld sketched out a startling picture of the legal system in which the process of adjudication laid bare the recurring conflict between two bodies of doctrine: common law and equity. The primary subject of Hohfeld's attack was the orthodoxy advanced by Dean C.C. Langdell and historian F.W. Maitland, on the place of equity in the legal system. Where orthodoxy claimed that there was no fundamental conflict between law and equity, Hohfeld responded that the relationship between them was sharply dialectical, sometimes cooperative but at other times clearly antagonistic. Where the orthodoxy regarded equitable rules as forming an addendum to the common law and as relegated into the peripheral branch of remedies, Hohfeld argued that equitable rules enacted primary rights that prevailed over primary rights at common law.

"Relations" is, therefore, an important paper: Walter Cook regarded it as among Hohfeld's most important contributions to analytical jurisprudence. The paper also contains in succinct form an historical and theoretical account of equity unsurpassed in the literature. The paper is also possibly the best introduction to equity in the literature and sets out Hohfeld's system of jural relations in the greatest detail, delineating a hierarchy of rights and detailing their interplay to an extent not found elsewhere. Yet, there is very little substantive commentary on "Relations". But it is a decidedly an idiosyncratic paper, with little commentary as far as I can ascertain.

I argue that this neglect has obscured two important features of Hohfeld's jural relations: that his jural relations are concerned with remedies to a greater degree than previously realized and that concern, in turn, reveals Hohfeld's strong predilection for legal positivism and (emerging) legal realism. Indeed, among the most interesting aspects of the paper is Hohfeld's insistence that the existence of primary duties "could be ascertained only by inference from the purely adjective juridical processes."

I will examine two unresolved issues that the fusion of law and equity in the mid-19th Century had left in its wake. The first was whether there was anything distinctive about equitable rules as opposed to common law rules. The second was determining precisely the relationship between common law and equity. I will then analyze the point of contention between Hohfeld's views and the orthodox position. Hohfeld's position cannot be fully understood without situating his paper in the context of the broader debate between Oliver Wendell Holmes and James Barr Ames on the distinctive character of equitable rules. Holmes regarded equitable doctrines as customs transplanted from continental and ecclesiastical practices which did not represent any "superior ethical standards" over common law. Ames argued that equitable orders, acting "in personam", gave effect to a more enlightened sense of justice. Hohfeld does not explicitly take sides on this debate, but his formal scheme clearly aligns his views with Holmes's. The jural relations denude the distinctive element of discretion in equitable adjudication, which has the suggestive implication that the legal system contains different sets of conflicting legal doctrines. My paper will explore the ideological implications of this idea, and examine how far it might have influenced the realists of the next decade.

In many ways, Duncan Kennedy and Ronald Dworkin represent two opposite poles in the American scene of legal theory at the end of the last century. The opposition has many different faces and phases: Ronald Dworkin was taken to be a champion of a theory of rights Dworkin is also associated with a certain theory of interpretation which holds that even in hard cases, the judges have a limited discretion at the least, while in other occasions he seemed -at the very least- to be advocating that in each case under consideration we have a right answer to the legal question under discussion. At other times, Dworkin sounded almost as if he was claiming there is truth and objectivity in legal reasoning, and that we can tell and differentiate between better and worse interpretations to the point of reaching the right interpretation to the question at hand. Furthermore, Dworkin understands law as a whole, and develops what he calls "the integrity of law", as if law was speaking to us in one unified voice. Dworkin believes in the possibility to make a distinction between what is law and what lies outside law. In general Dworkin holds what might appear a non-tragic image of values. He holds that if we think hard and deep enough, and in good faith, we can come to a certain settlement between competing values.

It might seem that Kennedy disagrees with Dworkin on each and every thesis. Kennedy appears to differ on all of the above: on the nature of law and legal reasoning, on the role of the rights discourse, on the relation of law to what is outside law (law and politics/ideology). As a result, the two scholars differ regarding the overall role of law in life and society.

If this the case, what do the two have in common?

This, in truth, is the aim of this paper: to put the two legal theorists alongside each other, rather than in opposition. This does not mean that I want to eliminate the differences; far from it. But I do wish to offer a few interpretations that would destabilize this image of unrelenting opposition. One way to do that is by a closer reading aimed at softening what appears to be rigid, harshly opposing positions held by each man, and rather to show that the gap is not wide is one can imagine. The other strategy would be to look for common themes, presuppositions, images of law, and sensibilities that both share either explicitly or implicitly. While making the comparison in this paper, I want to focus exactly on the arguments that are very often attributed to them and they themselves clearly deny to be making. Following that we can have a better sense as to what is the exact difference between the two thinkers.

My contribution seeks to make two interventions. First, I will argue that the question of faith and skepticism in legal reason is associated with the development of a specific method of legal reasoning: balancing. In one sense this is obvious. American legal thought heavily contested the notion that balancing could yield determinate answers and could provide a method to lawyers allowing to immunize legal reasoning from the threat of politicization. The debate steered First Amendment law away from a balancing approach and towards "categorization," a return to deductive argument. But the claim also holds in a different sense: the legal theoretical attacks of legal skeptics were that the seemingly "logical form" of argument in reality amounted to a form of balancing. In this story, balancing is synonymous with skepticism: it is subjective rather than objective, political rather than neutral, irrational rather than rational.

Secondly, I will argue that this phenomenon was transnational. All too often, the question of faith and skepticism in legal reasoning is associated with the American legal thought and American Legal Realism in particular. This association may suggest a form of American exceptionalism, where Unitedstatesean legal thought can claim a monopoly over skeptical moves in legal thought. I believe that the history of the debates surrounding proportionality demonstrate that this view is false: skepticism was as present in Germany as it was in the United States in the first half of the 20th century.

That leaves us with a crucial question: what sustains faith and/or skepticism in legal reason? The question emerges at the intersection of two very different dimensions of legal reasoning. One dimension is epistemological (is there a correct answer to legal questions)? The other concerns the motives of human action (what is the "real" motivation of this argument, underneath the surface)? When a core issue of public legal debate becomes doubt over the determinacy of legal reasoning *as well as* doubts over the motivations of the authors of legal arguments, faith in the rule of law can erode. This is what triggers the "average" faith and skepticism of legal cultures to evolve. But we shouldn't forget that a large part of this question remains hidden, under the surface: legal skepticism can and does thrive even when neither lawyers nor legal theory discuss it in public.

Revolutionary Movements and the Law in Latin America: Longing for Liberalism, *Helena Alviar*

In Latin America, radical movements have had a somewhat paradoxical relationship to law and legal institutions. Revolutionary projects -from Fidel Castro to the M-19 in Colombia, Chavez in Venezuela or Evo Morales in Bolivia- are enchanted by, and longing for, liberal legalism and the rule of law. In documents and statements, law is defined as something we need more of (since the elites understand themselves above or outside the law) and as the form through which the wealthy and powerful dominate the masses and should therefore be transformed in order to provide a fair structure to solve conflicts. What is paradoxical is that despite the influence of critical thinking in political and economic goals, critiques of liberalism or the rule of law have not permeated revolutionary ideologues thinking about legal institutions. The discrepancy may provide avenues to explain some failures and frustrations of radical movements around the region. This is a project in a very preliminary stage, so my presentation will aim to describe this paradox by providing examples from Cuba, Colombia, Venezuela and Bolivia.

While there are some studies on the relationship between constitutional change and social movements for the past decades in Latin America, there have been none that address the interactions between indigenous and black peoples, particularly in the Andean Region. By studying the constitution-making processes of Ecuador and Bolivia (2005-2009) during the governments of Rafael Correa and Evo Morales, I hope to shed some new light on how ethnic difference is negotiated and redeployed in a constitutional context. My presentation examines how major social movements, together and separately, shaped the constitutional norms that deal with racial and ethnic difference. By rooting the struggles of these groups into a long history of social mobilization in the region, I hope to provoke a rethinking of common assumptions in the study of these social and legal processes. I want to challenge dominant ideas that indigenous and black social mobilization is a result mainly of the emergence of multicultural politics starting in the 1980s. Ultimately, I will problematize the approaches to the study of these movements around particular ethnic and racial identities by exploring the role of gender at the intersection of their mobilization strategies.

In his 1919 lecture "Politics as a Vocation," Max Weber argued that political action requires a leap of faith – a decisive moment in which one acts in spite of uncertainty. For Weber, this required the politician to make ethical choices about how to understand and intervene in the world. The same is true for advocates seeking to achieve social change through law. In this presentation, I will interrogate the decisional junctures that advocates face when they work to translate social science evidence into laws and policies governing childhood. At each step of this process, advocates make choices about the problems they will pursue, the social science methods or disciplines they will draw upon, and the legal solutions they will advance. As Bernard Harcourt has written in the context of youth crime and public policy, "the decision to adopt a particular social science method, to draw the policy implications, and to choose a policy outcome necessarily involves significant ethical choices, choices that will shape the way we conceive of men and women, the way we develop as human subjects, and the shape and kinds of society we create." This presentation will focus on the role of social science evidence in the decades-long campaign by children's rights advocates in Canada to repeal the reasonable correction defense in the *Criminal Code*. This provision provides a limited defense for parents who use physical discipline or restraint against a child that poses no more than a "transitory and trifling" risk of harm.

In political and legal campaigns against the defense, children's rights advocates have relied on developmental psychology studies that show correlations between corporal punishment and poorer behavioral and psychological outcomes in children. In order to end or at least deter this harmful practice, advocates argue that criminal assault laws should apply equally to all people. Remarkably, in their decades of campaigning, children's rights advocates have rarely, if ever, addressed other bodies of social science evidence that understand child discipline in social rather than individual terms. Sociologists have shown, for example, that support for and use of corporal punishment is highly correlated with social and economic factors, including poverty and insufficient social supports. Other studies have shown that the inter-generational experience of physical discipline tends to be highly correlated with its continued use. By excluding these lines of social inquiry, children's rights advocates have been able to make criminal law reform seem like the ethical next step. I argue that if instead we situated child discipline within the larger political economy of childrearing, a very different, albeit more complex, reform agenda would emerge. Early home intervention supports for parents (especially female-headed households), a national daycare plan, increased social assistance rates for families, equitable child welfare funding for children living on reserves, and comprehensive food programs for public schools are among the measures that public health and education studies show empower children and their families. Legal realists have long illuminated the distributive politics of judging. As expert accounts of harm proliferate in contemporary law and policy, the work of illuminating the distributive consequences of social science claims is just as crucial.

"Happy New Dawn!" This is the phrase Kenyans used to express their joy when the Constitution of Kenya 2010 was passed on August 4th 2010 and later promulgated into law by the President on August 27th 2010. The then President of the United States, Barack Obama referred to is as the "New Moment of Promise." These two phrases encapsulate the spirit of the Kenyan people regarding the new socio-legal order as of August 2010. The proverbial new dawn symbolized a shift from a period in Kenya's constitutional history where the story about who Kenyans were and what they stood for was written and understood through colonial lenses to a period where Kenyans had rewritten their story in order to reflect their actual lived realities. The Constitution was born out of the need to ensure that all Kenyans would be part of the process of telling a different story about how they wanted to be organized. It was a people-driven process that entailed several stages of civic education, collection and collation of views. The Constitution of Kenya review process was a process like no other. It left no table unturned. From the structure of the state to the structure of the household. From the judiciary to the Executive. From Public Finance to Private Finance to Land to Health to water. The process interrogated every social, economic and political process. It questioned everything. It sought to overhaul everything.

After many years of intense negotiations among political parties, organs of civil society, religious groups, women's rights organizations, youth and other stakeholders, a new social compact was finally adopted and promulgated into law. This Constitution is the final product produced by the Government and ratified by the people following discussions, negotiations and legislative amendments that spanned from the 1990s to 2010. The Constitution is a negotiated document that is expected to mediate the diversities that exist in the Kenyan society. Because of this, like the Kenyan Constitution, it resembles a legal code. Despite the elaborate legal and institutional frameworks in Kenya's 2010 constitutional dispensation, implementation remains a challenge. Why is the "law in the books" so different from the "law in action?" This is the question this paper seeks to address. The paper argues that the quest for democracy and legal process in Kenya is characterized by multiple binary constructions that blur underlying questions and tensions that exist in the Kenyan context and which are further entrenched in the Constitution of Kenya 2010.

Can International Human Rights Law Survive the Rise of Artificial Intelligence?, *Anna Su*

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What is the impact of the rise of artificial intelligence on the fabric of international human rights law? The paper examines possible answers to this question through the lens of the major challenges and critiques posed against human rights, namely (1) its failure to address issues of inequality and the related issue of privileging of political and civil rights at the expense of economic and social rights; (2) its fixation on stigmatization instead of real mobilization; and (3) the fragility of the global rule of law and international institutions. No longer the subject matter of science fiction, artificial intelligence amplifies these challenges and yet also presents opportunities for addressing them. Undertaking this preliminary task of relating issues of international human rights with artificial intelligence puts two areas in an important dialogue in the pursuit of global justice. It also contributes to the project of how to regulate artificial intelligence.

The ability to distinguish between people in setting prices is often constrained by legal rules that aim to prevent discrimination. These legal requirements have developed focusing on human decision-making contexts, and so their effectiveness is challenged as pricing increasingly relies on intelligent algorithms that extract information from big data. In this article, we propose a framework that brings together existing legal requirements with the structure of algorithmic decision-making in order to identify tensions between old law and new methods and lay the ground for legal solutions. Focusing on the example of credit pricing, we confront the various steps of automated pricing with their legal opportunities and challenges. We argue that legal doctrine is ill-prepared to face the challenges posed by algorithmic decision-making in a big-data world. While automated pricing rules provide increased transparency, their complexity also limits the application of existing law. On the other hand, the transparency offered by automated prices creates new possibilities for more meaningful analysis of pricing outcomes, pushing the frontier of legal doctrine. This new reality does not only require an adaptation of an anachronistic set of rules, but also careful consideration of philosophical disagreements over the scope of discrimination law that now have practical and pressing relevance.

Entities such as Google, Facebook or Twitter, referred to here as online gatekeepers, are increasingly engaging, by virtue of the nature of the services they offer and their ability to control and oversee online activities, in balancing, interpreting and allocating rights or financial rewards, that is in performing functions of a public nature. Further, as misleading news and the proliferation of online hate speech demonstrate, online gatekeepers are reshaping the notion of a democratic environment in the 21st century. Making sense of the role of online gatekeepers in Western democracies has become an important task. Re-framing the blurred and evolving distinction between the public and the private in this sphere, and the notion of justice online, will serve as a first step to ground further theoretical inquiry.

As part of my SJD thesis, I am exploring various ways of conceptualising online platform infrastructure. My intuition is that a liberal political philosophy of online gatekeeper regulation can prove highly illuminating. My intention here is therefore to attempt the application of a contractualist methodology drawn from the moral and political philosophy of John Rawls and Thomas Scanlon amongst others, testing the extent to which it can make sense of the challenges raised by the growing power and significance of online gatekeepers.

I will thus apply such methodological tools to the understanding of platform infrastructure, and will contrast this understanding to a libertarian understanding, one which platforms arguably hold about themselves. In particular, I will be explore the divergent ways in which contractual arrangements between users and platforms such as Facebook, Google and Twitter, and the negotiation of standards of privacy and control over information, can be envisioned. While a number of puzzles are raised by the adoption of a liberal framework to an understanding of platforms, such an analysis will no doubt shed some light on future research avenues and help develop a coherent framework that can foster novel thinking about online gatekeepers and justice.

My belief is that a philosophical – moral and political - understanding of platforms can contribute to new foundations for the study of internet law and policy, especially at a time of political, social and cultural unrest where powerful private interests operate almost unbound, within and across territorial demarcations and in spheres of increasing political sensitivity.

In the last three decades, engineers developed techniques to manufacture more affordable and more efficient firearms. This made existing international, regional and domestic norms regulating the production process of firearms completely outdated. Technological advancement in the field of armaments including 3D printed guns, the use of techno-polymers and modular design in arms manufacturing techniques dramatically alters the gun industry and hence the current legal framework consisting of licensing, marking, record keeping requirement are not adequate anymore to control the spread of high-tech firearms.

This paper identifies the important moments of alteration in firearms production, the turn from craft production to mass production in the early nineteenth century when Eli Whitney introduced the interchangeable parts technique into the firearms production process and how regulation evolved to ensure the legality of firearms manufacturing. The rules and standards governing firearms production process fail to take into consideration innovative manufacturing techniques. This begs the need to rethink licensing, marking and record keeping as the only ways to control small arms proliferation dangers. Technological means of regulation ought to be adopted domestically and internationally to counter the illicit manufacturing and spread of high-tech firearms.

Organizing Committee

Doaa Abu Elyounes
Beatriz Botero
Elena Chachko
Jessica Eisen
Regina Larrea
Valentina Montoya
Nadav Orian
Carolina Silva-Portero

The Organizing Committee thanks all SJDs who in one way or another made this workshop possible!