Acevedo, John  
University of Chicago / History  
acevedo.johnf@gmail.com  

WIP: “The 17th Century Americanization of the Common Law”  

This article asserts that the Americanization of the Common Law began as soon as colonists reached North America. Using criminal law in Massachusetts Bay as a case study the article examines the variations to the law that were implemented as criminal trials began. The area of criminal law is illustrative as it could have been easily implemented in its entirety by the colonists present, many of whom had legal education. Unlike property or equity principles, which require more sophisticated courts, common law criminal law could have been implemented. This suggests that the deviation from the law was deliberate on the part of the colonists and represents an attempt to alter the law for their own ends. In the first decade after settlement the colonists in Massachusetts Bay ostensibly applied the common law. However, in this period the law was implemented with much less rigor than in England. For example, death was never imposed for any property crime no matter how great the value of the item involved. The article asserts that the deviation was the result of religious beliefs of the puritans, which emphasized mercy and love as well as their persecution in England as religious dissenters which created a desire to alter the law. These desires came to fruition at the end of the decade when they created their own legal code, which codified many of the alterations in the Common Law that were already in place. This deviance in application of the Common Law represents the initial Americanization of English Law as colonists sought to adapt older legal principles to fit their beliefs and environment.

Atapattu, Sumudu  
University of Wisconsin-Madison / Law  
saatapattu@wisc.edu  

Atkinson, Evelyn  
University of Chicago / History  
ematkinson@uchicago.edu  


My research focuses on the development of the law of informed consent in the first decades of the twentieth century. The seminal cases establishing the right to bodily integrity in the medical context and the rule that doctors could not operate without their patients’ consent were brought by women who had been subjected to unwanted operations at the hands of their doctors. I look at several of these women’s cases in detail and discuss the social and legal context in which their claims to be the ultimate decision-makers about their bodies were recognized by the state courts. I also explore the development of the medical profession during this period and the conflict between traditional conceptions of the doctor-patient relationship and emerging ideas about women’s status as rights-bearing individuals.
Baker, Kimberly  
University of Northern Iowa / Sociology, Criminology, Anthropology  
kimberly.baker@uni.edu

WIP: “Fixing Bad Citizens: Therapeutic Interventions in Reality Television”

For a while I have been looking at addiction as it is presented in reality television shows. At this point, I am interested in expanding this project to consider other kinds of deviant groups presented in therapeutically-oriented reality television shows, including eating disorders, obesity, and various kinds of hoarding. Drawing from Foucault’s and Rose’s work on governmentality, I am particularly interested in looking at the ways these shows offer lessons on what it means to be a good citizen through efforts to rehabilitate deviants. I look at the dynamics between the targeted bad citizens and their friends as families as well as their interactions with the experts selected for the shows. In addition, I’m especially interested in investigating the ways that race, class, and gender inequalities are reproduced in the messages about citizenship.

Bens, Jonas  
University of Wisconsin / Law and Anthropology  
jbens@wisc.edu

Boni-Saenz, Alexander  
Chicago-Kent College of Law  
abonisae@kentlaw.iit.edu

WIP: “Sexuality and Incapacity”

Sexuality is an important aspect of the human experience, and incapacity presents special problems for its legal regulation. Traditional legal doctrines prohibit the sexual activities of those who lack legal capacity, and those individuals or institutions that facilitate these activities could be subject to criminal or tort liability. Is this justified based on an evaluation of psychological capacities of the subject, a principle of harm, or some other basis? This work-in-progress dissects the concept of legal capacity, examining the role that it plays in the legal regulation of sexuality. In the process, it will explore how decision-making around sexuality might be legally regulated and negotiated, including the role of prohibitions, contextual analysis, sexual advance directives, and supported decision-making.

Borchert, Jay  
University of Michigan/CSLS Berkeley / Sociology  
borjay@umich.edu


American prisons, as contemporary forms of governance, are the result of historical state-building processes. Since Reconstruction, state departments of corrections have been granted a remarkable level of authority and autonomy to shape conditions of confinement, thus governing citizens through incarceration. Congress has engaged directly with the operation of these institutions only once in our history, with the 2003 passage of the Prison Rape Elimination Act (PREA). PREA and its Standards of 2012 challenged the correctional orthodoxy and praxis of both individuals and institutions and resulted in a new
understanding of “good corrections” within the penal field. The 10-year episode of contention surrounding PREA signals a new focus on prisons as sites of intense social and political negotiation and conflict, making PREA a unique case of change, worthy of empirical and theoretical examination. I start by establishing how and why prisons have been understood historically as legitimate (and nearly untouchable) forms of governance within our prison jurisprudence and by our social and political institutions and their discourse. I then ask what changed with PREA and how and why this change happened. Qualitative interviews with key incumbents and challengers from the field of corrections, the government, politicians, and prisoner advocacy groups illuminate these change processes. The work seeks to directly extend Fligstein and McAdams’ theory of strategic action fields to account for under-theorized processes of political, social, and cultural change in state-level monopolies such as prisons. In so doing I find salient civilizing processes (Elias, Pratt) regarding the legitimate shape of punishment, which positioned correctional challengers to gain the upper-hand in redefining good corrections and thus reshaping the orthodoxy and praxis of the American prison into a new pragmatic form.

Brito, Tonya
University of Wisconsin-Madison / Law
tlbrito@wisc.edu

Research Methods: “Navigating the Courthouse: Negotiating Social Identities While Conducting Focused Ethnography” [Co-presenting with Garrett Grainger, UW-Madison / Sociology]

All social scientists are situated in overlapping social structures and endowed with historically specific cultural frameworks. The experiences and sense making associated with our socio-cultural position shape the assumptions, expectations, schemas, and motivations that academics apply to their research. Hence, social scientific knowledge does not reflect unbiased, objective accounts of the social world. Instead, such knowledge is mediated by the cognitive filters associated with the researcher’s social location. This presentation describes the methods that members of a diverse research team used to negotiate their various social identities while conducting courthouse observations and interviews. More specifically, the discussion will highlight how researchers conceptualized their positionality within the courthouse, negotiated their positionality with actors in the courthouse, and influenced future interviews with obligors.

Chiarello, Liz
Saint Louis University / Sociology and Anthropology
chiarello@slu.edu

WIP: “The ‘Deserving Patient’: Interactional and Institutional Influences on Frontline Decision-Making”

Recent political conflicts in healthcare have drawn attention to the moral grounds of professional decision-making, especially whether healthcare providers should use personal moral beliefs or “conscience” to make decisions about patient care. Law has legitimated rights of conscientious refusal in some states while eschewing them in others. What is less clear is how healthcare providers make such decisions and the extent to which perceived patient characteristics shape care provision. By drawing together sociological and socio-legal theories of discretion, institutions, and professions, this study helps explain how pharmacists interpret, construct, enact, and ignore sets of institutional messages in daily
practice. Specifically, I ask: how do pharmacists’ perceptions of clients affect their willingness to provide ethically controversial healthcare and to what extent are those perceptions guided by larger cultural constructions of moral worth? I address these questions with original qualitative data consisting of face-to-face interviews with 95 pharmacists across four states selected to represent different state-level laws regarding pharmacists’ professional decision making. My central findings highlight how pharmacists rely on patients’ behavior and characteristics, as well as broader cultural messages, to indicate patients’ moral worth as they construct them as “deserving” or “undeserving” of care. I show that pharmacists construct patients’ deservingness by relying on a set of social cues including drug type, behavior and appearance, perceptions of the provider, the patient’s circumstances, and perceived construction of the pharmacist by the patient. By understanding the dynamics of decision-making in professional work, we can ultimately understand how self-regulating professional fields operate and how they reproduce and interrupt social inequality.

Conti, Joe
University of Wisconsin-Madison / Sociology
jconti@ssc.wisc.edu

WIP: “Varieties of International Legal Authority”

Since the end of the Cold War there has been a proliferation of international courts and tribunals. What explains the move to law in international affairs? And, how authoritative are the proliferating forms of law? To address these questions, this project examines the legal authority of four legal institutions of global jurisdiction: the dispute settlement body of the World Trade Organization, the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and the International Criminal Court (ICC). These courts share the characteristics of being permanent, exercising universal jurisdiction, and employing permanent judges that produce effectively binding rulings. There are also important differences between these courts, most notably the law that they administer, the issues that they consider, the processes by which matters are placed before the courts, and the conditions under which states are subject to their determinations. The two-stage analytic strategy begins with historical description of the pathways culminating in the construction of the courts, identifying variation between the courts in terms of the politics of formal institutional design, core values, influential institutional entrepreneurs, and relationships to powerful countries. The second step involves a multiple method examination of the authority wielded by the courts. Interviews with well-placed actors possessing direct knowledge of the courts will provide qualitative insights about the courts and also support the construction of empirical indicators for use in a small-n analysis of the “pathways” to legal authority. "Pathway" variables include measures of legal investments by states and private actors; state support and opposition; jurisdictional and legal overlap, among others. Outcome indicators include compliance, formal consent to jurisdiction, practical operation of case law and others. Together, these steps provide answers to the question of why and through what mechanisms international courts acquire and exercise legal authority.
Dau-Schmidt, Kenneth
Indiana University-Bloomington / Law
kdauscm@indiana.edu

WIP:  “Employment Law 2.0: Regulating the Employment Relationship in the Information Age”

Improvements in information technology yield a doubling in the processing capacity of computers every 8-12 years. This exponential growth in the capabilities of our information technology has already resulted in the transformation of our methods of production from integrated and domestic to out-sourced and global, and promises even more fundamental changes in the employment relationship in the years to come. This paper will examine the recent and likely future changes in the employment relationship that have resulted from the information technology revolution, and discuss how the nation state can meaningfully regulate a relationship unmoored from it’s traditional industrial organization. Legal questions to be examined include: who is an employee and who is their employer in the new information age, how do we help encourage the development of careers and employment related benefits in a disaggregated labor market, and how do we address the growing disparity in bargaining power between employees and employers.

Professional Interest / Informal after-dinner discussion: "Memoirs of a Research Dean: The Care & Feeding of Untenured Faculty"

Depenbusch, Brooke
University of Minnesota / History
depen003@umn.edu


When local welfare administrators removed a family of thirteen from Los Angeles in 1947, one social worker suggested that “future historians” would understand the family's removal to be an “adumbration of the 'hard times' of the 1930s”. Indeed, this family was simply one among countless others who faced removal because they had requested general relief in a state where they had made their home but failed to establish legal settlement. Indeed, during the Great Depression the staggering number of removals generated a firestorm of debate as states like New York and California collectively removed over a hundred thousand American citizens from their territory. Despite this outcry, the prevalence of removal persisted into the postwar era. The enduring occurrence and legality of removal was neither an aberrant nor inconsequential phenomenon throughout the first half of the twentieth century. This paper will explore these removals, their relationship to law, and their stubborn persistence in the first half of the twentieth century. The persistent occurrence of these twentieth century removals fails to fit tidily within dominant narratives explaining the emergence and entrenchment of the American welfare state. Nevertheless, despite historians’ neglect, the history of settlement and removal laws stands compellingly at the intersection of historiography on citizenship, political economy, and social provision, as well as law’s imbrication in the three.

Dias, Vitor Martins
Indiana University / Law
vmdias@indiana.edu
Ela, Nate
University of Wisconsin-Madison / Sociology
nela@wisc.edu

WIP: “Cultivating a Commons? Urban Farming and the Possibilities of Property”

I’m currently doing dissertation research that aims to understand how people seeking access to land for urban farming and gardening also seek (and sometimes manage) to rework the rules and norms that govern urban land use. I’m particularly interested in 1) comparing how and why this has happened at different points in time, and 2) how it might (and might not) make sense to conceptualize it as a process of commoning -- i.e. the creation of institutions and organizations to use and govern urban land as a common productive resource. Chicago is my primary field site, and I’m combining archival and ethnographic methods to trace and compare how Chicagoans have organized to gain and retain access to unused land on which to grow food during several periods between the 1890s and the present. For the contemporary period, this has involved doing collaborative research with and for food policy organizations in Chicago. Another part of the project traces a genealogy of 17th-19th Century social thinking and experimentation concerning the commons, urban farming, and social welfare programs. I will provide a brief overview of the project, and present a few issues and questions that have come up during my research.

Erlanger, Howie
University of Wisconsin-Madison / Law and Sociology
hserlang@wisc.edu

Professional Interest / Informal after-dinner discussion: “Bringing Law & Society into the Classroom: Pedagogical Approaches and Considerations”

Farid, Cynthia
University of Wisconsin-Madison / Law
farid@wisc.edu

Faucon, Casey
University of Wisconsin-Madison / Law
faucon@wisc.edu

WIP: “Find Me Somebody to Love: Mail-Order Brides and Re-Negotiating Romance over the World Wide Web”

The term “Mail Order Bride” is shorthand some people use meaning marrying a foreign wife. Filipinas are famous for their beauty, devotion to family, and traditional values. Hundreds of thousands of men lucky to be married to Asian women agree that having an Asian wife is one of the greatest blessings. Russian [w]omen and Ukrainian [w]omen are considered by many to be the most beautiful women in the world. Many men who venture over to Eastern Europe quickly find a gorgeous lady to marry. And why not?? Russian and Ukrainian [l]adies are sincere and interested in you as a person first and foremost. . . . Due to their upbringing Russian ladies are taught to look for different characteristics than many Western ladies. What characteristics?? A Russian women looks for maturity and stability in a man. She also looks for a man who is serious about his life and loving with her. Therefore mature men can marry Russian women up to 20 years younger. If you type “mail order bride” into a Google search, you will be bombarded with websites promising true love with a gorgeous foreign
woman. Each “marriage agency,” via their online presence, increasingly turns to the Internet as the first contact with potential consumers, i.e., lonely Western men seeking a foreign bride. The use of the Internet has turned the once historically respected practice of marrying men during periods of colonization where a shortage of women resulted into a practice resembling more of a purchase of a commodity, wherein users can filter through searches of women based on age, height, weight, hair color, nationality, languages spoken, and other such standard, objective criteria, and can scroll through an overwhelming number of profile pictures of women posing suggestively. Although the model now mirrors that similar to online dating websites, the perception of meeting a potential mate via match.com or eharmony.com verses iheartasianwomen.com, for example, is starkly different because of the public perceptions of mail order brides and the men who “purchase” them. The seeming commodification of the foreign bride industry through the use of the Internet website model has further engrained the now-negative stereotypes about mail order brides, making the practice a rallying cry for Western feminists as a form of trafficking or sex slavery, a marriage arrangement wholly unpalatable to a woman’s concept of equality. The men are abusive, looking for someone that they can isolate and dominate, men who are otherwise considered “unworthy” in the eyes of an American woman, so the story goes. The foreign women are either victims of traffic or abuse, duped by their youth and innocence by the promise of true love and a better life in the United States, barred by their language and seclusion from escaping abuse, or, from the complete opposite view, are conniving women seeking to enter the country by using their sexuality and love to get lonely and desperate Western men to marry and sponsor their permanent resident applications. A recent work-in-progress by Professor Marcia Zug suggests that, despite these negative stereotypes which can play out in reality, mail order brides fill a necessary “marriage gap” in the United States due to both the decline in marriage in general and the rapid rate by which American women are outpacing their male counterparts. A way to solve the “marriage crisis,” she argues, is to look to the use of mail order brides as a solution. Her work also sets out the statistical evidence and case studies in an attempt to counter the negative perceptions about mail order brides and the men who marry them. Although men claim they do not want a “feminist” many of the women that they choose are successful in their home countries as doctors and scientists. In fact, Zug argues that using mail order brides as a marriage model is pro-feminine, allowing women from undeveloped countries to have more options in their immediate marriage pool and empowering them in their choice of mate. Although staying within the domestic sphere without working outside of the home may seem unappealing to an American woman, who has worked so hard to gain a place in public civil society, such a life is a “dream come true” for other women who have had to work in factories and fields their entire lives for wages. On a larger scale, although it seems like men are “purchasing” their wives: one comment posted to an article about a successful mail order bride marriage stated that a man “just bought himself a $20,000 pet,” the marriage bargain is, in fact, more upfront in these exchanges and a woman’s sexual and domestic services have a more defined monetary value, which, she argues, can be more empowering than in the situation of an American woman who is taught that such services should be supplied for free as a part of her status as the altruistic woman in the relationship. How can the social and cultural perceptions of the mail order bride practice, which has been outlawed in some “export” countries as degrading to their national image (such as Cambodia), change to reflect and perhaps encourage the practice as the savior of traditional marriage in the United States? Part of that process is to change the law and the manner in which such women are conditionally and then permanently granted residency in the United States. After a two-year marriage “waiting period” (or shorter if the spouse can show battery or cruelty), the husband or the wife can petition for permanent residency status. Although the relative laws have been amended numerous times to protect the rights of foreign women while at the
same time protecting against fraud, the standards that INS uses to determine the viability of a marriage often resemble “traditional” marriage roles and almost encourage these women to play into these domesticated and sexualized stereotypes in order to be considered a wife and gain permanent residency: the presence of children or whether the women uses birth control (available sexually) or whether they commingle funds or support each other financially (financially dependent on the husband), to name a few. Changing these legal standards that mandate how such “mail order brides” should behave in order to have a “good faith” marriage can inform the actions and perceptions of these women about what is acceptable, creating more space for negotiation and equal bargaining.

Findley, Keith  
University of Wisconsin-Madison / Law  

WIP: “Implementing the Lessons from Wrongful Convictions: Pathways to Eyewitness Identification Reform”

Learning about the flaws in the criminal justice system that have produced wrongful convictions has progressed at a dramatic pace in the past 25 years, since the first innocent individuals were exonerated by postconviction DNA testing in 1989. Application of that knowledge to improving the criminal justice system, however, has lagged far behind. The current stasis thus demands inquiry into what approaches (if any) can be and have been effective at translating the growing body of knowledge about wrongful convictions into criminal justice system reforms. This article attempts to address that question, focusing in particular on the example of eyewitness identification reforms. The article considers various approaches to reform that have been attempted in a variety of jurisdictions, and compares the relative effectiveness of these various approaches in these jurisdictions. It identifies several different approaches aligned on two different dimensions. Along one dimension the analysis focuses on the source of the impetus for reform – legislatures, courts, law enforcement itself, or no one. Along the second, overlapping dimension, it analyzes the nature of the push for reform, identifying several dominant approaches. Those approaches include, first, “command and control,” or “top down” directives. Second, some states have instead sought incremental reform premised on police buy-in. In these states, reform efforts have focused on training and persuasion, hoping to get individual law enforcement agencies to adopt the best practices by choice. Third, some states, to varying degrees, have attempted a middle path, which draws on emerging theories about New Governance, and in particular Democratic Experimentalism. This article examines these various approaches, with new data drawn from a few exemplar states, to identify features of successful eyewitness identification reform efforts.

Fu, Bo-Shone  
University of Wisconsin-Madison / Law  

WIP: “The Legal Transplant from U.S. to Taiwan: Take Workplace Sexual Harassment Law as an Example”

In the country where a law originates, it is typically societal development that triggers the enactment of the law. In contrast, when a law is transplanted to another country, it is the law that often contributes to societal change. At the same time, the new country, in implementing the transplanted law, will reshape the transplanted law with its own domestic
culture and norms. Just like planting a seed in an alien soil, the taste of the fruit will mix with local flavors, and the resulting product will not be the same. It is the purpose of this thesis to examine the interpretation, implementation and enforcement of Taiwan’s Gender Equality Law that was adopted almost verbatim from U.S. law, and to explore how the law’s development reflects the influence of Taiwan’s culture and social norms. This comparison vividly illustrates the extent to which Taiwan’s sexual harassment law was transplanted directly from U.S. law. Taiwan’s law adopts almost verbatim from U.S. court decisions the very comprehensive definition of the types of physical and verbal conducts that constitute sexual harassment under its anti-discrimination law. In addition, Taiwan’s law, like the U.S. law, relies on victim complaints, and involves the employer in the early stages of the investigation of the complaint. Both systems provide for the early involvement of a government agency (although this involvement is not absolutely required by the Taiwan statute), and both laws provide an opportunity for independent review by the judicial branch. But, as explained in these chapters, there are significant differences in the mechanisms adopted by Taiwan for the implementation of its sexual harassment provisions. These mechanisms were necessary to fit implementation and enforcement of the new law into Taiwan’s own local enforcement system. The result is that the roles assigned to the employer, to the government agencies at the central and local level, and to the judiciary are somewhat different than in the U.S., and these differences affect the transformative promise of Taiwan’s adoption of the U.S. rules prohibiting sexual harassment in the workplace. Chapter 4 analyses how these differences in the mechanisms adopted for implementation and enforcement have affected outcome. One major difference is that Taiwan, by adopting a definition of prohibited behavior not from the text of U.S. statutory law, but from its most current case decisions, bypassed the evolutionary steps taken in the U.S., as both the administrators and the courts began to understand the adverse impact of workplace harassment on women’s employment. This evolutionary development in the U.S. took over four decades. The time taken to move from a simple rule of non-discrimination against women, to the more subtle understanding of discrimination reflected in the development of rules against workplace harassment, allowed time in the U.S. for a dramatic change to have occurred in the social attitudes of employers and employees about the role of women at work. As discussed in this chapter, Taiwan’s adoption of the broader understanding meant that there was an immediate gap between the transformative purposes of the new rule and the public understanding of what the new law required. The main goal of chapter 4 is to explore what different mechanisms Taiwan might adapt that would be more effective in achieving the law’s objectives, while still respecting the different legal cultures of the two countries. As this chapter explains, it will be critical that any new mechanisms build on the local culture’s traditional practices for resolving workplace disputes. At the same time, there could be an enhanced role for worker participation that would not violate traditional mores. The thesis ends with an analysis in Chapter 5 as to how each of the institutions given a role in the implementation of the Gender Equality in Employment Act has performed, it is hoped that this analysis will better pinpoint the changes that are still needed if real change is to occur.

Garriott, William  
Drake University / Law, Politics & Society  
william.garriott@drake.edu  

Law and Society / Informal after-dinner Discussion: “Doing Law and Society in Undergraduate Contexts”
Research Methods: “What is Focused Ethnography?”
[Co-presenting with David J. Pate, Jr., University of Wisconsin-Milwaukee / Social Work]

In contrast to the long-term, immersive techniques of “conventional” ethnography, focused ethnography emphasizes targeted, intensive data collection in highly specific contexts (Knoblauch 2005). By situating data collection around structured events and interactions, focused ethnography can capture the variegated discursive frames and cultural beliefs that actors in a particular institutional context draw upon in addressing an identified problem (Higginbottom et al 2013). We present an example of focused ethnography by describing our use of this method in research that examines how different legal assistance models shape access to civil justice in the context of child support enforcement proceedings, specifically civil contempt hearings. We compare child support enforcement hearings in two counties in Wisconsin and Illinois, selected because each state utilizes a distinct model of interest: the provision of full representation and the provision of legal assistance short of full representation. We schedule multiple, sequential site visits in each county. During data collection, two researchers conduct observations of the same proceeding using a standardized instrument. Through focused ethnography, we gain insight into the narratives and litigation moves that litigants and legal professional deploy as they navigate through civil proceedings. The comparative nature of the study allows us to evaluate contrasting models of legal assistance by identifying divergences in discursive frames and processes of negotiation by county. We use this work as a springboard to discuss the advantages and limitations of focused ethnography.

Research Methods: “Navigating the Courthouse: Negotiating Social Identities While Conducting Focused Ethnography” [Co-presenting with Tonya Brito, UW-Madison / Law]

All social scientists are situated in overlapping social structures and endowed with historically specific cultural frameworks. The experiences and sense making associated with our socio-cultural position shape the assumptions, expectations, schemas, and motivations that academics apply to their research. Hence, social scientific knowledge does not reflect unbiased, objective accounts of the social world. Instead, such knowledge is mediated by the cognitive filters associated with the researcher’s social location. This presentation describes the methods that members of a diverse research team used to negotiate their various social identities while conducting courthouse observations and interviews. More specifically, the discussion will highlight how researchers conceptualized their positionality within the courthouse, negotiated their positionality with actors in the courthouse, and influenced future interviews with obligors.
Grunewald, Ralph  
University of Wisconsin-Madison / CompLit/Center for Law, Society, Justice  
grunewald@wisc.edu

WIP: “Constructing and Deconstructing Guilt in the Modern Law-Literature Discourse”

Guilt both in law and fiction are textual properties. The uncovering of hundreds of wrongful convictions in the last decade shows that the legal process has a narrative agenda that is reminiscent of the law in Kafka’s “The Trial”, a law that is attracted to guilt where there is none. In my paper I will explore the intersection between fiction and fact in the legal and literary discourse and how contemporary writers like Ferdinand von Schirach, Ariel Dorfman, or Bernhard Schlink (two of them lawyers, just like Kafka) deconstruct individual and collective accountability. I will argue that law filters out the human condition in its search for the “truth” and as a factor influencing guilt. Fiction, however, has stressed the crucial importance of the human condition for achieving justice, even on the pragmatic level of the trial. I will discuss the widths of the gap between the human condition and the law’s agenda and what it is that law must learn from literature but also to which degree literature must consider the law.

Gupta, Arpita  
University of Wisconsin-Madison / Law  
gupta52@wisc.edu

Research Methods: “Emotional Labor & Interviewing”

The interview is a complex activity. I’d like to discuss the power dynamics of the interview process and the connected emotional labor, drawing on examples from my own research which often uses open-ended interviews. By exploring the shifts of power and the emotional labor demands in the qualitative, open-ended interview, I’d like to explore how power shifts and how emotions within the interview, themselves, can become important data. My hope is that a greater awareness of the shifts in interviewer / interviewee power and emotional labor in the interview context might help us, as researchers, to better understand the nuances of our data, providing us with more information about our interviewees and the research topics.

Hendley, Kathryn  
University of Wisconsin-Madison / Law and Political Science  
khendley@wisc.edu

Holdren, Nate  
Indiana University / Law  
nateholdren@gmail.com


My research traces changes in U.S. injury law and injury culture from the late 1890s through
the early 1930s. I argue that workmen’s compensation legislation passed in the 1910s helped create new forms of inequality. These laws valued women’s injuries less than men’s injuries and helped create medicalized employment discrimination against people with disabilities. Compensation legislation replaced a court-based system of injury law with an insurance-based administrative system. Under the old system, many injuries were uncompensated. Under the new system, employers had to pay a portion of the financial costs of every employee injury. Employers responded by trying to control those costs by hiring physicians to conduct medical examinations. These examinations were designed to screen out people with physical disabilities and medical conditions that might raise employers’ costs in the event of employee injury. Furthermore, compensation laws encouraged what I call the moral thinning of injury, changing how injury was defined as a problem. Injury was no longer understood as a matter of morality or injustice, but as a matter of lost income, a definition of injury that ignored much of human meaning of injury. These changes occurred against the backdrop of what I call the rise of insurance as a worldview in the late 19th century. This worldview treated people as commodities and treated employee injury as an amoral matter of financial security, a problem to be solved by monetary payments. Compensation laws brought the insurance worldview into employers’ hiring decisions, bringing about a re-organization of employment practices. I analyze these changes across a range of institutions using sources including trial records, published legal decisions and treatises, business records, and the records and publications of trade associations and conferences, medical associations and conferences, state commissions, and unions.

Hu, Yingying
University of Wisconsin-Madison / Law
yhu63@wisc.edu

WIP: “Transforming Shanghai into an International Financial Center: Mechanism and Benefits”

Is it wise for China to build Shanghai into an International Financial Center (IFC)? After carrying on a detailed cost-benefit analysis, this paper answers this question in the affirmative. This conclusion would also be concomitant with China’s long-term goals of playing a central role in international commerce and finance, and of making RMB as the primary international reserve currency. In 2009, China’s State Council formally stated its intention to establish Shanghai as an IFC. Four years later, China’s economic reform strategy explicitly supports its decision to build Shanghai into an IFC. However, the reasons behind this decision have not been expressed clearly. Based on the policies stated during the recent Third Plenary Session of the 18th Communist Party of China Central Committee—specifically, “Economic Reform” and “Let the Market Play a Decisive Role”—this paper aims to analyze the costs and benefits of building Shanghai into an IFC. Additionally, by analyzing the multifaceted natures of the four existing IFCs, namely London, New York, Hong Kong and Singapore, this paper critically appraises China’s efforts to create an IFC in Shanghai. It is inevitable for China to open its financial markets for it to play a bigger role in global commerce and finance. However, resistance from some State-Owned Enterprises is preventing the Chinese economy from moving in this direction. For example, on one hand, State-Owned Enterprises can easily borrow money from banks at low rates. But, on the other hand, due to the absence of a sophisticated capital market, private sector businesses have difficulty acquiring loans. Thus, even though Chinese private entrepreneurs might have promising ideas, many leave China for the United States to find better financing opportunities. The paper argues that developing Shanghai into an IFC would serve to accelerate domestic financial reform, establish a sophisticated capital market, and improve
the overall economic condition of China. Lastly, I offer concrete suggestions as to how China can turn Shanghai into a successful IFC.

Huneeus, Alexandra
University of Wisconsin-Madison / Law
huneeus@wisc.edu

Professional Interest / Informal after-dinner discussion: “Drafting Successful NSF Grant Proposals”

Hutchison, Camden
University of Wisconsin-Madison / History
chutchison@wisc.edu

Jew, Victor
University of Wisconsin-Madison / Asian American Studies
vjew@wisc.edu


From 1882 to 1943, the United States administered a system of immigration restriction that targeted Chinese migration. Known as Chinese Exclusion, it affected the lives of Chinese who wished entry (or re-entry) into the U.S. by filtering migration flows through harsh interrogation procedures and denying naturalization to Chinese immigrants living in the United States. A parallel set of laws affected all other forms of Asian migration by using the rubric of “aliens ineligible for citizenship.” As this legal system matured in the twentieth century, an unexpected demographic event occurred: a cohort of U.S. born and U.S. educated Chinese Americans emerged to take roles of new civic leadership in various Chinatowns. Naturalized by birth, they were thus eligible to enter the legal profession and some became attorneys specializing in immigration law. What social and professional dilemmas did these new attorneys face? How did they mediate Exclusion and Asian restriction on behalf of their clients? What did it mean to lawyer an immigration system that could affect them (and their families) intimately at the same time that it defined their professional identities? Drawing upon recently opened manuscript collections left behind by some of these attorneys, this paper will explore these questions and recover details of lawyering under conditions that signaled larger institutional, political, and racial duress.

Kahn, Walker
University of Wisconsin-Madison / Sociology
wnkahns@ssc.wisc.edu

Kaiser, Joshua
Northwestern University / Sociology and Law
joshauwa@northwestern.edu


Penologists have engaged in their own imprisonment binge, writing furiously on mass incarceration and “expressive” punishment while overlooking less visible penal practices.
Penology is thus organized in a hierarchy of knowledge, with most inquiry focused on imprisonment, rare recollections of other formal sentences (death, fine, probation), and barely any notice of the least prominent but most prevalent form of punishment: hidden sentences. “Hidden sentences” are all punishments imposed by law as a direct result of criminal status, but not as part of any “official,” judge-issued sentence. They consist of restrictions on current “offenders’ rights” alongside legal “collateral consequences” (though both terms obscure the purposive, punitive reality of hidden sentences), affecting almost 1 in 3 American adults and impacting them far longer than do formal sentences, yet, scholars and policymakers, the public, and even legal professionals remain woefully ignorant of its full extent and effects. I address this oversight using statistical insights alongside historical investigation of federal and state legislative histories, case law, and media coverage. Mass imprisonment in the United States is often described as increasingly punitive and explained as expressive retribution and fear-driven incapacitation, but different explanations are required if the vast majority of the penal system is hidden from the public, political, and legal eye. Instead, the rise of hidden sentences in the latter half of the twentieth century sometimes tracked incarceration trends but more often operated on different logics, those consistent with hiddenness. Although this empirical analysis is yet incomplete, my analysis of hiddenness thus far suggests that the U.S. penal system is in fact directed at a single purpose of punishment, the only purpose that political elites are unlikely to question, the only one that not only requires no publicity but actually thrives on the predominantly hidden nature of the system: the creation and reification of privilege.

Kim, Sung Eun (Summer)
University of Illinois / Law
kimse@illinois.edu

WIP: “Managing Regulatory Blindspots - A Case Study of Leveraged Loans”

Leveraged loans, or loans made to borrowers typically rated BB or lower, are the plat-du-jour on the menu of post-crisis corporate financing options. Leveraged loan issuances in the United States and abroad have reached new peaks in the post-crisis period approaching two trillion dollars in loans made. This leveraged loan frenzy can be largely explained by market participants’ search for yield and credit in the low interest rate environment. Leveraged loans offer higher returns as compensation for the higher levels of risks associated with the low-credit-rated borrower. The heightened risks of leveraged lending have both entity- and system-level implications, and share common characteristics with triggers of past crises. Therefore, an examination of the ability of regulators and participants to effectively monitor and manage such elevated risks of leveraged lending offers a test of how much has been learned from past and recent crises and preparedness toward future crises. This Article examines leveraged loan regulation against current leveraged lending practices to identify where progress has been made and where gaps remain. The Article identifies the key blindspots of leveraged loan regulation and suggests a specific regulatory design to manage such blindspots by applying the new regulatory infrastructure offered by the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Kindo, Sandeep
University of Wisconsin / Languages and Cultures of Asia
kindo@wisc.edu
Kirkland, Anna
University of Michigan / Women's Studies
akirklan@umich.edu

WIP: “Vaccine Injuries in Court”

I am completing a book manuscript on the law and politics of vaccine injury compensation. I could talk about chapters on the vaccine court and how its dispute processing works, how vaccines are political and legal objects, how the vaccine court decided the autism cases (finding that autism is not a vaccine injury), how the vaccine court fits in with other alternative court schemes and what it means to design a court to answer these kinds of problems in law, medicine, and science.

Professional Interest: “From ‘Revise and Resubmit’ to Acceptance”

Klingele, Cecelia
University of Wisconsin-Madison / Law
cecelia.klingele@wisc.edu

WIP: “Beyond Control: Reframing Sentencing and Correctional Reform”

Sensibilities about punishment can change quickly. After nearly 40 years of ever more severe penal policies, the punitive sentiment that fueled the growth of mass incarceration appears to be softening. Across the country, prison growth has slowed, and in some places has even reversed. Many new policies and legally-authorized practices that have enabled this change; the most prominent of these are connected to the Justice Reinvestment Initiative (JRI), a public-private partnership that has provided states with technical assistance in implementing “evidence based practices” designed to reduce prison populations and their associated fiscal and human costs. While well-intentioned, and by some measures successful, many of the practices JRI promotes uneasily straddle the border between benign attempts to make correctional policies more human, and control-focused aspects of the New Penology. Because these new practices are being implemented without sufficient attention to the ways in which they might be abused, they threaten to perpetuate a penology of the “other” that reinforces the institutional and psychological constructs that have enabled mass incarceration. This Article describes the unintended ways in which these tools of reform threaten to undermine sustained decarceration, and calls on scholars, legislators, and correctional officials to develop a more holistic framework for implementing new laws and policies that consciously promote rehabilitation over control. Such reframing has the potential to promote deeper reform, retaining accountability for those who commit crime without reducing them to mere “data points,” and simultaneously challenging the foundations of the carceral state.

Lauris, Élida
Centro de Estudos Sociais (CES), Universidade de Coimbra
University of Wisconsin / Global Legal Studies
elidalauris@gmail.com elidasantos@ces.uc.pt

Leachman, Gwendolyn
University of Wisconsin-Madison / Law
gleachman@wisc.edu
Lee, Meggan J.
University of Illinois Urbana Champaign / Sociology
megganjlee@gmail.com


The “myth of the black rapist” has plagued the United States since emancipation (Douglass 1988; Davis 1983; Lawson and Kirkland 1999; Lott 1992, 1999) and has contributed to a broad misconception held by white communities that black men are inherently sexually aggressive, dangerous, and criminal. This “great myth” that came about post-civil war, persistently influences the ways in which black men are historically, disproportionately criminalized for rape crimes, particularly against white women. In order to examine the relationship between the ideology of the “myth of the black rapist” and the hypothesized implications of this phenomenon, this study analyzes data from the 2004, *Executions in the United States, 1608-2002: The ESPY File* to answer the following question; (1) In considering U.S. history, is there racial bias in execution practices for crimes involving sexual assault or rape? (2) Throughout different time periods in history, namely prior to emancipation, post-civil war and post-civil rights movement of 1965, do racial biases, if any, remain constant or is there variation based on the particular historical moment? (3) If racial bias does exist, is it limited to states that are synonymous with an embedded history of slavery? The study employs a series of logistic models using a sample size of 7,189 of state and federal executions through the history of the United States. Preliminary findings show that there is a clear racial bias in practices of executions for the crime of rape on black men compared to all other races finding significantly that black men are two and a half times more likely than white men to be executed for crimes involving rape and attempted rape.

Liu, Sida
University of Wisconsin-Madison / Sociology
sidaliu@ssc.wisc.edu


In the global legal services market, China has some of the youngest law firms, but also some of the largest. In the past decade, several Chinese corporate law firms have grown into mega-law firms with thousands of lawyers in a large number of domestic and overseas offices. This study uses the case of Chinese law firms to develop an ecological theory of organizational growth. We argue that law firms exist and interact in an ecological system consisting of other law firms. These firms compete not only for business and legal talents, but also for more symbolic things such as size, areas of practice, number of offices, overseas offices, etc. In their competition for market advantage, Chinese law firms have developed four different models of growth according to their ecological positions and patterns of interaction, namely, global generalists, elite boutiques, local coalitions, and the nouveau riche. In this process, some firms become “big but brittle,” whereas others remain “small but beautiful.”


Since the law and society movement in the 1960s, the sociology of law in the United States has been dominated by a power/inequality approach. Based on a sociological distinction between the forms and substances of law, this essay outlines a “powerless approach” to the
sociology of law as a theoretical alternative to the mainstream power/inequality approach. Following Simmel and the Chicago School of sociology, this new approach analyzes the legal system not by its power relations and patterns of inequality, but by its social forms, or the structures and processes that constitute the legal system's spatial outlook and temporality. Taking a radical stance on power, this essay is not only a retrospective call for social theory in law and society research, but also a progressive effort to move beyond the U.S.-centric sociolegal scholarship and to develop new social science tools that explain a larger variety of legal phenomena across the world.

Longo, Gina  
University of Wisconsin-Madison / Sociology  
glongo@wisc.edu

Mansfield, Marsha M.  
University of Wisconsin-Madison / Law  
mmmansfield@wisc.edu

WIP: “Measuring Success For Litigants Without Lawyers In Family Court”

This talk will address the results of a study of self-represented litigants who utilized the services of the University of Wisconsin Law School’s Family Court Clinic, comparing the types of cases and outcomes of those who sought the Clinic’s services with those who did not have legal representation.

Marcus, Nancy  
Indiana Tech Law School  
ncmarcus@indianatech.edu

WIP: “The Bi Bridge: Moving Beyond Bisexual Erasure in LGBT Rights Litigation”

Yale Law Professor Kenji Yoshino wrote a seminal article in 2000 dissecting the phenomenon of “bi erasure” in the LGBT movement. A handful of other legal scholars have similarly noted the disconnect between a high percentage of bisexuals within the LGBT community and their comparative invisibility in the litigation and legal discourse surrounding LGBT rights. My scholarship will continue this examination of bi erasure in the context of recent LGBT rights litigation, including and beyond same-sex marriage litigation. I will reveal a systemic erasure of bisexuals in the briefings and opinions produced in same-sex marriage litigation, documenting an absence of any mention of bisexuals by courts in cases when the briefings have set the tone of mentioning “gay and lesbian” rights, “gay marriage,” or “same-sex marriage,” in language that completely omits reference to bisexuals. After documenting the absence of bisexuals in litigation, I will discuss anecdotal evidence of incidents in which LGBT rights lawyers have made conscious strategic decisions to engage in bisexual erasure. I will then examine both the causes of bi erasure and the consequences. I will contrast the harms caused by bi erasure with ways in which the inclusion of bisexuals in the language of LGBT rights litigation might actually benefit the movement in strategic ways. I will illuminate, for instance, how bisexuals reveal critical relationships between gender and sexual orientation and flaws in strict dichotomies in legal analysis, which could facilitate achieving greater constitutional protections against discrimination. Finally, I will explore ways in which bisexual lawyers, academics, activists and scholars could work together to build bridges between bisexuals and the broader LGBT community to further our common goals of obtaining equal liberty protections under the law.
Marder, Nancy
Chicago-Kent College of Law
nmarder@kentlaw.iit.edu

WIP: “Jurors and Social Media: Is a Fair Trial Still Possible?”

Slowly but surely the constitutional guarantee of a fair trial is being eroded as social media invades the jury room. Essential evidentiary rules control what jurors can learn about a case and what they can say about it during a trial. In just a decade, the rapid growth of easy online communication has threatened to dissolve the careful walls we have built around the jury. The key question is whether courts can now persuade jurors to resist the siren call of online communication when they serve as jurors. We cannot ignore this problem. Having jurors refrain from using the Internet and social media while they serve as jurors is likely to grow harder in the years ahead and will require taking what I call a “process view” of a juror’s education. It recognizes that every stage at which the court interacts with jurors creates an opportunity to educate them. From start to finish – from jury summons to jury verdict – there are opportunities for the court to educate jurors about the need to avoid online communication about the trial. The education of a juror begins with the jury summons and ends when the jury announces its verdict and the judge polls the jury and dismisses it. If the summons and dismissal constitute the two end-points, there are several points of interaction between court and juror throughout the process including the jury orientation video, voir dire, the oath, jury instructions, juror questions, and the polling of jurors. Each stage provides an opportunity for the judge to educate jurors about their need to refrain from using the Internet and social media to communicate about the trial. A process view will ensure that “uninformed jurors” will become informed jurors who understand the need to refrain from online communication about the trial. However, a process view will not reach “recalcitrant jurors,” who have no intention of following the prohibition. The best hope for dealing with recalcitrant jurors is for judges and lawyers to find new ways to identify and remove them during voir dire. We may also need new ways to help juries become self-policing. This paper explores what it means to take a process view of a juror’s education in order to protect a defendant’s constitutional right to a fair trial.

Marshall, Anna-Maria
University of Illinois Urbana Champaign / Sociology
amarshill@illinois.edu

Research Methods: “Big Data and Legal Consciousness”

I am just starting a project, in collaboration with an agricultural engineer, studying barriers to the adoption of new technologies among farmers. One of the factors we are studying is the role of legal and policy institutions in farming communities – their communications networks, farmers’ attitudes toward these institutions, and their ongoing relationships with the state. While we are planning to conduct focus groups and circulate surveys, we are also collecting social media and other kinds of “big data” to capture networks of communication between farmers and legal institutions. We hope to use this data to understand the creation of legal consciousness in farming communities. This is entirely new to me, and I’ve only just begun to conceptualize the theoretical and empirical issues.

Meili, Stephen
University of Minnesota / Law
WIP: "Detention of Asylum-Seekers in the U.S. and the U.K."

My current research is a study of comparative approaches to the detention of asylum-seekers in the U.S. and the U.K. My research focuses on two questions: First, how those approaches may be influenced by public opinion toward refugees, as well as the way in which refugees are portrayed by the media and politicians; and second, whether legal challenges to such detention based on human rights norms have had a greater impact in the U.K. than in the U.S., where human rights law is far less prevalent. Both the U.S. and the U.K. have drastically increased the rate of incarceration of non-citizens for immigration-related offenses over the past decade, even though the offenses with which the non-citizens have been charged are civil, rather than criminal (i.e., being present in the country without proper documentation). In certain respects, however, such as the detention of asylum-seekers, the policies in the two countries differ considerably: The U.K. detains asylum-seekers far more readily than does the U.S. But, of course, the simple number of asylum-seekers detained tells only part of the story. The more intriguing question is the comparative duration and conditions of that detention. While the U.K.'s detention policy may affect a larger portion of asylum-seekers than in the U.S., the contours of that policy and its impact on the individual asylum-seeker may be on a par with the U.S. These are some of the empirical questions my research will analyze. One possible explanation for this discrepancy is the greater hostility toward asylum-seekers in the U.K., both within the media and the public generally. In the U.K., asylum-seekers have long been demonized by certain politicians and the media, particularly the tabloids. In the U.S., on the other hand, asylum-seekers are generally spared animus from politicians and the media. The term "bogus asylum-seeker" is not part of common U.S. parlance as it is in the U.K. Most of the public and media hostility towards immigrants in the U.S. is directed at undocumented persons generally, rather than asylum-seekers in particular. Thus, an intriguing question with respect to comparative detention practices is the interplay between media coverage, public opinion and public policy in the two countries. How much does one of these factors affect the others? As those scholars who have addressed this vexing question in other contexts would attest, there is no easy answer. The second question I am exploring is whether legal challenges to detention practices are any more successful in domestic courts the U.K. than the U.S. because of the former country's greater reliance on human rights treaties in its jurisprudence on refugees. My research will also focus on the extent to which lawyers in each country have attempted to utilize international human rights treaties in order to challenge the detention of refugees and the success of such efforts. This part of my research will engage with the literature on human rights treaty effectiveness, offering evidence of circumstances under which such treaties can help or hurt refugees who are challenging their detention by receiving states.

Mitch
University of Wisconsin-Madison / Law
mitch@wisc.edu

WIP: "Is Rental Housing a Human Right?"

While the eviction process is similar from state to state, seemingly small variations in the process determine whether and to what extent a renter has a right to housing. This work in progress research paper examines the statutory eviction process in several states and relates the qualitative experiences of practitioners in different eviction courts. Finally, empirical eviction case data is compared to determine which details of the eviction process
correlate with increased numbers of evictions.

Mitchell, Thomas
University of Wisconsin-Madison / Law
tmitchell@wisc.edu

WIP: “Exit From Common Ownership: An International Comparative Perspective”

I am conducting international comparative research on how property owners may exit from owning real property under some forms of common ownership. The countries include Canada, England, Scotland, Trinidad and Tobago, and the United States. The research is motivated by my work on exit from tenancy-in-common ownership in the United States under default rules which in many cases have left poor and minority property owners stripped of their land as well as the real estate wealth associated with such property ownership. The preliminary research I have conducted on partition law of tenancy-in-common ownership in a few of the countries I have studied demonstrates that partition law has developed very differently in some important ways in the countries which have recognized this form of ownership. For example, England abolished the tenancy in common form of ownership altogether in its classic form in 1925 under the Law of Property Act. Scotland reformed its law of partition in the early 1970s out of concern that partition sales conducted by public auction were stripping property owners of wealth. Judges in Scotland now permit property ordered sold by a court in a partition action to be sold by a real estate broker in the same manner in which the real estate broker markets other properties in his or her portfolio. In certain provinces in Canada, there are independent land use laws which constrain the ability of courts to order a partition by division, a physical partition of the property. I hope to discover whether there are aspects of state law, governing exit from common ownership in the United States that could be useful in potential reform initiatives in some other countries and whether there are aspects of the law governing exit from common ownership in other countries that may useful with respect to potential initiatives to further reform the law of exit from common ownership in the United States.


I have done substantial policy work in successfully reforming an aspect of property law that had long been considerable incapable of being reformed due to its complexity and to the fact that the consensus was that there would be little support for reform in this area of law because the negatively impacted property owners were or are poor and minorities. Several states have now enacted the model statute I was principally responsible for drafting into law. In some important ways, my law and society scholarship was an important component of the effort to reform this area of law. To this end, my scholarship revealed how poor and minority property owners were impacted by the property laws I studied which was quite different from the impression one would get of how property law in this area works from reading case law, traditional legal scholarship on the topic, and from the leading property treatises and textbooks. However, while such scholarship served an important role in advancing the reform effort, it was quite insufficient to the reform effort by itself. In actualizing the reform, I learned the importance of working with the media. I also learned the importance of networking with many organizations that have a long record of working with poor and minority landowners in the trenches and of networking with members of elite legal organizations who are in the position to add needed muscle and political support to the
reform effort. In my experience, however, some institutions that have a strong law and society identify provide inadequate incentives to enable law and society scholars to leverage their law and scholarship so that the scholarship can be used to develop policy and reform the law and promote social justice. One of the main problems in my experience is that these institutions provide a lot of incentives for faculty to develop law and society scholarship but very few incentives or support for those who want to translate their law and society scholarship into policy reform to promote social justice.

Myrick, Amy  
Northwestern University / Sociology and Law  
amyrick@nlaw.northwestern.edu


This paper deals with popular advocacy to amend the U.S. Constitution in the Progressive Era, 1900 to 1925, and a later “Conservative” amendment period from 1960 to 1995. I argue that Progressive norms about text – that it should be narrow and precise – clashed with Progressives’ substantive commitment to broad social change, contributing to the demise of their constitutional movement. I explain how this conflict emerged around 1920 in response to the Supreme Court’s increasingly narrow Commerce Clause jurisprudence, and show how Conservatives of the time developed an opposing norm about text that valued textual ambiguity as part of an idea set that also included constitutional veneration and opposition to Article V change. These pairings of textual norms and substantive commitments reversed later in the century, in response to the Warren Court. At that time, latter-day conservatives – not progressives – began seeking federal amendment, but the idea set now linked textual literalism and constitutional veneration to support for formal constitutional change. Unlike for the Progressives, this combination sustained a vital constitutional movement that continues in the present.

Nesvet, Matthew  
University of California, Davis / Cultural Anthropology  
nesvet@ucdavis.edu


South Africa’s gold and platinum mines have emerged as key sites of politico-economic struggle in post-apartheid South Africa. Though not always successful, the apartheid regime did much to confine anti-apartheid resistance to the townships it forcefully removed African, Indian and mixed persons to. Now, in the post-apartheid period gold and platinum mines have emerged as key sites of resistance to the ANC’s neoliberal order and the bargain it struck with white capital at the end of the cold war that produced this order. The future of the country and its mineral wealth – its largest source of GDP – is being worked out, in large part, at its mines, where workers and capital each struggle to capture wealth and power and shape South Africa’s future. Amidst this conflict, mines have been closed, mineworkers have been laid off, and the country’s mineral production has consequently decreased. Yet high world mineral prices coinciding with closed or under-producing mines and the thousands of mineworkers that these closures have left unemployed have given rise to “illegal” mining, especially in the mining belt northwest of Johannesburg. Outlaw miners, who media, prosecutors, and company officials call “illegal”, constitute a significant site of South Africa’s
criminal imaginary and an important source of labor, capital, and crime in its mineral-based economy. These miners’ stories contribute to how South African publics reimagine crime and measure national progress in the post-apartheid period. These stories also offer a richly textured portrayal of how “crime” and “labor” are imbricated in the South African and global economy. My paper discusses how political economy in post-apartheid South Africa, and the postcolony more generally, shapes the imagination and practice of “labor”, “crime” and “property”, complicating the standard account of what illegal mining is and what its origins are.

Nice, Julie  
University of San Francisco / Law  
jnice@usfca.edu  

WIP: “The Price of No Rights”

This paper extends my project of examining how law systemically discriminates against poor people, moving the focus beyond constitutional doctrine and into the realm of jurisprudence. I explore how and why the U.S. serves as the quintessential example of a society fully accepting of the enormous price paid by those who have no rights. Also, I consider the reproduction of the neoliberal turn in some purportedly progressive scholarship (e.g., New Governance and Consumerist approaches). Finally, I examine whether New Legal Realism is up to the challenge of disrupting the neoliberal turn.

Ohnesorge, John  
University of Wisconsin-Madison / Law  
jkohnesorge@wisc.edu  

Commenting on Keynote Address  

Olubiyi, Victoria  
University of Wisconsin-Madison / Educational Leadership & Policy Analysis  
ovolubiyi@wisc.edu  

WIP: “Examining Homeless Education in England: A Look at the Impact of Homelessness in the Community and School”

About 2.5 million people are estimated to live in homelessness in the United States (FAS.org, 2009) and up to 3 million are considered homeless in Europe (Red de Apoyo a la Integracion Sociolaboral (RAIS) 2010). Furthermore, the UK is said to have one of the highest levels of homelessness in Europe with more than 4 people per 1,000 estimated to be homeless (Homeless Pages, 2004). In addition, homelessness is not limited to adults but to children as well (Miller, 2011). This therefore makes homelessness a detrimental factor that impacts the academic achievement of children, making them the most vulnerable and at-risk students (Bowman & Popp, 2013).

Although I will be discussing the impact of the education of homeless students within the context of England, the purpose of this paper is to introduce recommendations that will be productive and effective in generating positive student outcomes in any educational setting including the US educational context.

Owens, B. Robert  
University of Chicago / Sociology
I am working on a proposal for a dissertation that examines judicial decisions on political asylum law in the federal courts of Canada, US and Mexico: why do formally similar questions of law get decided differently in different cultural contexts? The court hierarchies in each country, and the similar language that each of them has written into law for the protection of refugees, means that case comparisons are possible at several levels of analysis. My proposal is in dialogue with the literature on judicial decision making and judicial behavior, but I also pitch it more generally as a contribution to the sociology of knowledge. Analyzing judicial decisions on political asylum allows us to address the basic question, “how does cultural context affect inference and judgment?” with more closely controlled comparisons than if often possible with the data employed by sociologists of knowledge.

Pate, David J., Jr.
University of Wisconsin-Milwaukee / Social Work
pated@uwm.edu

Research Methods: “What is Focused Ethnography?”
[Co-presenting with Daanika Gordon, University of Wisconsin-Madison / Sociology]

In contrast to the long-term, immersive techniques of “conventional” ethnography, focused ethnography emphasizes targeted, intensive data collection in highly specific contexts (Knoblauch 2005). By situating data collection around structured events and interactions, focused ethnography can capture the variegated discursive frames and cultural beliefs that actors in a particular institutional context draw upon in addressing an identified problem (Higginbottom et al 2013). We present an example of focused ethnography by describing our use of this method in research that examines how different legal assistance models shape access to civil justice in the context of child support enforcement proceedings, specifically civil contempt hearings. We compare child support enforcement hearings in two counties in Wisconsin and Illinois, selected because each state utilizes a distinct model of interest: the provision of full representation and the provision of legal assistance short of full representation. We schedule multiple, sequential site visits in each county. During data collection, two researchers conduct observations of the same proceeding using a standardized instrument. Through focused ethnography, we gain insight into the narratives and litigation moves that litigants and legal professional deploy as they navigate through civil proceedings. The comparative nature of the study allows us to evaluate contrasting models of legal assistance by identifying divergences in discursive frames and processes of negotiation by county. We use this work as a springboard to discuss the advantages and limitations of focused ethnography.

Quintanilla, Victor
Indiana University Maurer School of Law
vdq@indiana.edu


Fairness is a foundational concept of American jurisprudence. Yet when evaluating
our system of civil procedure, debate surrounds how to reconcile the competing ends of our civil justice system. While scholars agree that our civil justice system must vindicate rights, deter wrongful conduct, respect human dignity, and enhance social welfare and efficiency, scholars disagree on how best to reconcile these ends. These dueling ends are forged into Rule 1 of the Federal Rules of Civil Procedure, which serves as the interpretive lens for all other rules of federal civil procedure. Rule 1 provides that the Federal Rules of Civil Procedure should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding. Doubtless, these ends are in tension. Fair procedures entail cost. Fair procedures require delay. These procedural tradeoffs underlie much of the tension, indeterminacy, and flexibility within our civil justice system. Although this tension has engendered considerable-and at times spirited-debate, a crucial question remains: how would members of the public strike these tradeoffs; how would the lay public, for example, strike tradeoffs between procedural fairness and cost?

Consistent with the themes of the inaugural Conference on Psychology and Lawyering, this Article draws on the field of social psychology and harness social-psychological methods to investigate these questions. First, we examine, specifically, whether the public is willing to pay to upgrade from procedural unfairness to procedural fairness. Relatedly, we examine the public's maximum willingness to pay to enhance procedural fairness. Next, we examine whether the public is willing to accept payments to downgrade from fair process to unfair process. Stated another way, is the public willing to sell off and exchange the procedural justice afforded to them? Thus, we examine the public's minimum willingness to accept to descend from procedural justice to procedural injustice. Last, we examine whether these willingness-to-pay and willingness-to-accept values vary with the underlying interests at stake. In this way, and joining in the collective efforts of those who seek to coalesce the field of psychology and lawyering, we illustrate how Law & Social Psychology, a form of naturalized legal inquiry, can be harnessed to cast new light on vexing problems to benefit courts, procedural regulators, and legal professionals.

Procedural justice measures subjective perceptions and evaluations about the fairness and legitimacy of procedures. This research has demonstrated that the public cares deeply about the fairness of the process by which decisions are made, independent from considerations about outcomes. While the harvest of procedural justice research is truly vast, this research has yet to intertwine with a second body of psychological research on taboo tradeoffs. Taboo tradeoffs and the problem of constitutive incommensurability have been examined, within the field of experimental moral psychology, by Tetlock, Baron, and colleagues. These social psychologists have examined how sacred and protected values affect decision making and result in taboo tradeoffs. Mainly, when members of the public are presented with proposed exchanges that involve sacred values—such as loved ones, God, justice, human beings—for money, the public experiences sharp cognitive, affective, and behavioral resistance. The public has marked difficulty commodifying these sacred values into market-pricing terms. While people may be willing to pay to protect these sacred values, the public sharply resists commodifying, selling, and exchanging sacred values. In this Article, we connect these two bodies of research and investigate whether psychological science on taboo tradeoffs casts new light on how the public experiences tradeoffs between procedural justice and cost.
Reilly, Kimberley
University of Wisconsin-Green Bay / Democracy & Justice Studies / History
reillyk@uwgb.edu

WIP: “Transformations in the Doctrine of Necessaries, 1870-1920”

My research focuses on doctrine of necessaries. The common law recognized a married woman’s power to act as her husband’s agent in acquiring the goods and services owed to her by marriage. Thus courts presumed that a wife had the authority to extend her husband’s credit to tradesmen and other third parties, and generally held the husband accountable for those debts if he had not otherwise forbidden his wife to trade on his account. On the face of it, the doctrine of necessaries enforced husbands’ obligations to provide economic support to wives and other dependents. At the same time, courts understood the wife’s power of agency under the doctrine to be a requisite aspect of her functional role as a worker within the economy of her husband’s home. As one English jurist explained in an leading case from 1838, “a wife would be of little use to her husband in their domestic arrangements if she could not order such things as are proper for the use of a house and for her own use without the interference of her husband. The law, therefore, presumes that she does this by her husband’s authority.” By the late nineteenth century, however, the household was less frequently understood as a locus of economic production, and the common law rationale for the wife’s agency as a “representative of her lord” had been destabilized. Wives’ power to trade on their husbands’ credit in a burgeoning consumer economy took on new meaning, as jurists struggled to reconcile wives’ entitlement to economic support and access to the household purse with fears about their susceptibility to the “seductive wiles” of unscrupulous merchants. My research shows how transformations in the doctrine of necessaries reveal deeper shifts in the respective entitlements of husbands and wives in a modern marital order.

Ron-El, Yaniv
University of Chicago / Sociology
yanivr@uchicago.edu

WIP: “Israel Bankers’ Trial: Economic Crimes in Political-economic Transformation”

In Progress Description: In this research I examine a criminal affair and its legal handling, trying to assess the role played by the rule of law in transitions to capitalism. During the early 1980s the three major banks in Israel participated collaboratively in their own shares manipulation in the market. Though it had some illegal aspects, this policy was well known to the general population and to the authorities. It ended with a catastrophic stock crisis and the State spent huge sums of money to rescue the banks and alleviate the economic loss of the share holders. It can be understood, retrospectively, on the background of the political-economic transition that Israel had undergone since the late 1970s from a state-centered economy to a free-market one. Several legal proceedings occurred following this affair, including two investigation committees, and eventually, following public criticism, criminal proceedings against the banks’ managers. Though in the District Court the bankers were charged, in the appeal in the Supreme Court they were partially acquitted and their imprisonment punishment was repealed. I examine these legal proceeding from a perspective of transitional justice in order to probe how the legal system, and particularly the judiciary, both adapts itself to political-economic transformation and is conducive to a successful transition.
Roy, Denise  
William Mitchell College of Law  
denise.roy@wmitchell.edu

WIP: “The Role of Lawyers in Democracy – the Relationship among Law, Justice and Democracy”

U.S. lawyers purport to promote democracy in various ways, such as through rule-of-law projects in emerging democracies, through bar association initiatives to provide democracy education in the U.S. and even through assistance to clients in designing and navigating decision-making processes (for instance, in corporate governance). Lawyers also purport to promote democracy through their work representing clients in their paid and pro bono work, such as in civil rights and election law cases. Yet lawyers are generally not well educated about the nature and meaning of democracy, including the relationship of democracy to the more familiar concepts of law and justice. Moreover, lawyers are not generally trained to bring democratic principles to bear in their work, including their work forming and maintaining relationships with clients. One concern underlying this article, and related work, is that lawyers may actually undermine democracy, even if unintentionally, if they do not have a clearer understanding of the nature of democracy and its relationship to law and justice. The primary focus of this article is an exploration of the relationship among law, justice and democracy. Tentatively, the article concludes that justice is not the end of law (although certainly law can and should be used as a tool of justice), that law and justice are at some level inherently in conflict and that therefore democracy is critical to the just conception and application of law as well as the just representation of clients. The theoretical exploration has practical implications for how lawyers practice law, specifically for how they conceive of and conduct their relationship with their clients as well as how they understand the impact of their work on democratization. It also has practical implications for how lawyers as a group understand, and should understand, their professional project.

Savelsberg, Joachim  
University of Minnesota / Sociology  
savel001@umn.edu

WIP: “Memorial Normativity and the Culture of Human Rights Law”

Collective memories carry and they generate norms (Durkheim, Shils). Simultaneously, norms shape memories (Olick et al ; Savelsberg/King 2011). It is thus meaningful to speak of memorial normativity: normativity that is entailed in and generated by memories and that simultaneously regulates memories. Building on such conceptual exploration, the paper shows how memorial normativity constitutes and shapes different dimensions of legal cultures. An illustration is provided for the culture of international human rights law. The paper shows how memorial normativity is simultaneously a driving force of the expansion of international human rights law or, in the words of political scientist Kathryn Sikkink, of the “justice cascade,” and a source of nation specific patterns.
Schmidt, Christopher W.
Chicago-Kent College of Law & American Bar Foundation
cschmidt@kentlaw.edu

This is a book project that uses a dramatic case study to examine constitutional change happens in modern American society. The Sit-Ins tells the story of how an inspired, student-led protest movement, the lunch counter sit-in demonstrations against racial discrimination that swept across the South in 1960, sparked a national debate over the meaning of the Constitution’s requirement that all Americans receive the equal protection of the laws. This debate took place across society and its governing institutions. Civil rights lawyers transformed the students’ raw, morally-infused claimed right to nondiscriminatory treatment into the formal language required for a constitutional litigation campaign. Defenders of racial segregation pressed their own starkly different vision of the Constitution. The justices of the U.S. Supreme Court struggled to reconcile their sympathy for the students’ cause with their skepticism toward whether the courts were the proper institution to recognize the students’ claim. Executive branch lawyers crafted and members of Congress debated and eventually passed the Civil Rights Act of 1964, landmark legislation that recognized the right African American students had claimed for themselves five years earlier when they sat down at “whites only” lunch counters.

Schmidt, Patrick
Macalester College / Political Science
schmidtp@macalester.edu

Sharafi, Mitra
University of Wisconsin-Madison / Law
sharafi@wisc.edu

Shaw, Ari
Northwestern University / Political Science
amshaw@u.northwestern.edu

WIP: “Claiming International Rights: Rights-Based Mobilization and LGBT Activism in Colombia”

This paper draws on a qualitative study of gay rights in Colombia to examine activists’ strategic use of international human rights legal norms and institutions in advancing domestic policy goals. It pays particular attention to the use of the regional Inter-American human rights system to analyze how and when activists use international law in their campaigns. Colombian gay rights activists invoke international norms in political and legal forums at both domestic and international levels. This paper maps the strategies of rights-based mobilization used and traces how changes in domestic resources and international opportunity structure shape the form of international rights claiming observed. As activists increase their mobilization capacity and take advantage of international openings, they are able to employ a dynamic, multilevel strategy of rights-based mobilization that both contests the international normative understanding around gay rights and same-sex marriage, and applies these norms in domestic legal and political advocacy. This paper forms part of a larger dissertation project examining the strategic use of international human rights legal frameworks by domestic activists in
Colombia and Kenya. The dissertation asks when and how domestic activists invoke international human rights law, and under what conditions such strategic internationalization advances their domestic policy goals.

Sidel, Mark  
University of Wisconsin-Madison / Law  
sidel@wisc.edu

Silva, Lahny  
Indiana University McKinney School of Law  
lrsilva@iupui.edu

WIP: “Collateral Consequences, Reentry, and Housing: A Socio-Legal Dilemma”

This paper focuses on collateral consequences in housing, more specifically public housing. Looking at both statutory and regulatory disqualifications based on criminal convictions, this paper seeks to provide solutions to ex-offenders seeking stable and safe housing so as to successfully reintegrate back into society. This paper primarily offers suggestions to HUD and PHA regulations and procedures regarding felon exclusions. The paper also looks to the Fair Housing Act for possible claims to bring in the event of housing exclusions.

Stutsman, Thomas  
University of Wisconsin-Madison / Sociology  
stutsman@wisc.edu

WIP: “Remedying Wrongful Convictions in an Authoritarian State”

There has been a veritable cascade of scholarship on wrongful convictions in the United States in recent years. Yet comparative work on the topic is generally limited to Western democracies with robust rule of law and deeply institutionalized traditions of judicial independence. Although the majority of the world’s population lives under a non-democratic regime, little research has addressed wrongful convictions in the distinctive political and institutional context of non-democratic states. My research builds on an empirical analysis of hundreds of wrongful convictions in China to analyze wrongful convictions in a resilient, globally influential single-party state. In particular, I focus on how the political and institutional context shapes procedures to remedy wrongful convictions. I argue that wrongful convictions have the power to erode public confidence in the criminal justice system and the degree to which the public perceives criminal justice institutions as legitimate in all types of political systems. But in authoritarian states--where there is generally weak rule of law, little judicial independence, and few institutions such as juries to diffuse responsibility for miscarriages of justice--wrongful convictions are particularly delegitimizing and engender major political costs. In single-party states, wrongful convictions reflect negatively not only on individual criminal justice actors and the criminal justice system more generally, but also on the ruling party that effectively controls the criminal justice system in practice. Consequently, the politically destabilizing effects of exonerations and the imperative for authoritarian regimes to maintain political legitimacy contributes to the inability of legal institutions in authoritarian states to effectively identify and remedy wrongful convictions.
Su, Lillian Hsiao-Ling  
University of Wisconsin-Madison / Anthropology  
hsu8@wisc.edu  


Xinyang Market, the well-known “fake market” in downtown Shanghai, attracts overseas tourists with a wide variety of counterfeit commodities in its 1,000 shops. Eighty miles south, Haining China Leather Market houses thousands of local enterprises, many of which position themselves to compete internationally through the creation of homegrown brands. The story of these two markets highlights growing conflicts over Intellectual Property Rights (IPR)-involving the nation-state, the global marketplace and international regulatory bodies—that have emerged in the years since the rise of China as a global manufacturing and trading powerhouse. China’s trademark law was enacted in 1982; however, its institutionalization has done little to curb infringements. The concept of private ownership embedded in IPR contrasts with vaguely defined local property relations. While Chinese culture calls for intensive reciprocity, the implementation of IPR has not only made intellectual property a new form of property to be owned, but also sought to set the boundary for local property relations. This paper examines how a legal consciousness of property in the two markets is socioculturally constructed by focusing on three aspects of market actors’ understandings—trademark law, ideas as property, and property in general. My findings, based on two years of ethnographic research in the two markets, suggest that business owners, sales staff, and trademark law enforcers are faced with two legalities, one global and the other local. With the sporadic and inconsistent enforcement of trademark law in both markets, legitimate trademark owners, shopkeepers, and sales staff have developed a negotiated legal consciousness of property by contesting the use of tangible and intellectual properties. To survive the enforcement of trademark law on the one hand, and to observe local property practices on the other, they adroitly shift among complying with, avoiding, and violating the competing normative orders, a process of which I call “walk the law”.

Sweet, Jameson R  
University of Minnesota / History  
swee0261@umn.edu  


Over one hundred treaties between the U.S. government and Indian tribes included provisions of land, most notably the creation of a reservation in Minnesota exclusively for Dakota “mixed-bloods,” meaning people of mixed Indian and non-Indian ancestry. These treaties created mixed-blood as a distinct legal and racial category, but did not abrogate their status as Indians, allowing them to respond to colonialism in unique ways and to occupy dual legal and racial categories. Through the lens of mixed-blood Dakota Indian participation in the Minnesota Territorial Legislature, my work, which combines critical Indigenous studies and legal history, uses citizenship to place complex, overlapping dynamics of Indian law and race within a single frame. These included varying understandings of mixed-blood legal rights, simultaneous changes in identity and racial perceptions, the citizenship rights and notions of nationhood attached to these statuses, and the experiences of mixed-blood Indians in negotiating these changing terms over time. My
focus is on the five mixed-blood Dakota men and five white men with mixed-blood Dakota families who served in the Territorial legislature and the Minnesota Constitutional Convention between 1849 and 1858. On several occasions, the legislature debated mixed-blood citizenship, the disposition of mixed-blood land, and whether mixed-bloods should be allowed to serve in the militia, but the most significant debates came when the men elected to the Constitutional Convention met to draw up a state constitution. Simultaneously, a group of Dakota composed largely of mixed-bloods, elected officers, proclaimed themselves the Hazelwood Republic, and drew up their own constitution, which appealed for U.S. citizenship en masse. The leaders of Hazelwood also petitioned the Convention to permit “civilized” mixed-bloods to become citizens of the new state. Their ploy worked, the original state constitution included separate means by which mixed-bloods could gain citizenship in the state.

Taeuber, Stacy
University of Wisconsin-Madison / Law
stacy.taeuber@wisc.edu

Trautner, Mary Nell
University at Buffalo, SUNY / Sociology
trautner@buffalo.edu

Professional Interest / Informal after-dinner discussion: “Dissertation Grant Writing”

Trubek, David M.
University of Wisconsin-Madison & Harvard / Law
dmtrubek@wisc.edu

Keynote Address: “Birth, Death and Resurrection: The Remarkable Life of Law and Development”

Abstract: Noting that 2014 is the 40th anniversary of the publication of Scholars in Self-Estrangement, the author looks at the field of law and development during these four decades. In a preliminary report, he reviews the critique outlined in Scholars and the claim that its publication killed the field it was designed to save. While acknowledging that the field had lost momentum by 1980 he argues that the decline occurred not because of the article but because the field lost the support of development agencies before it could establish a secure place in the academy. Noting that the field revived in the late 1980s-early 1990s, he observes that conditions for law and development scholarship are much better today and there is a proliferation of research much of which has avoided errors pointed to in Scholars. This proliferation has enriched the field but at the price of fragmentation: the field has split into a number of “sub-disciplines” that do not always communicate with one another. The article scans the field in the 21st Century, noting the influence of new ideas about development which stress experimentation and local variation in policy. These, combined with a better understanding of the embeddedness of local legal systems and the limits of legal transplants demands more attention to local context and variation. Looking to the future, the author concludes that if law and development is to produce useable knowledge the separate aspects of the field should be better integrated, more attention paid to local variation and context in law and policy, research capacity in the Global South enhanced, and North-South communication improved.
WIP: “Beyond Public Interest Law”

There is a spurt of academic scholarship discussing where we are today in public interest law. These include the first textbook on the subject by Chen and Cummings, reflective analyses by pioneers Deborah Rhode and me, and critiques by younger scholars. Adding to the literature is “After the J.D.” a series of reports studying the careers of thousands of recent law school graduates over a ten year period including extensive documentation of public interest law careers. The availability of so much material provides an opportunity to examine where public interest practice might be going in the future.

Three key elements of public interest practice are redefined in this contemporary analysis. First the field is defined broadly to include for profit firms that provide public interest work, investigative government lawyers, and non-profit law firms ideologically on the right. This is a distinct change from the old debates of what counted as public interest where individual legal services, for profit firms, public employees, and corporate lawyers doing pro bono were sometimes viewed as outside the public interest penumbra. A second element is the ample definition of what the activities might qualify. Law reform litigation is no longer the singular qualification for inclusion but rather multi-approaches including lobbying, community education and individual representation is considered the norm. Finally, the existence of possibility of a public interest law career is taken for granted and in fact examined just like a corporate law job in the After the JD study. The commentators however also note the low salaries, paucity of jobs and funding constraints of public interest careers.

These redefined characteristics give us insights into new public interest work that are emerging. One career track is based on knowledge and contacts in a specialized field. Lawyers in medical-legal partnerships for example can be seen as primarily health lawyers and can move between different health law jobs ranging from legal service to corporate to pro bono. Another longstanding example of the importance of specialization are consumer lawyers who work together though some are in plaintiff firms and others work in legal service organizations. A second track can be seen in global pro bono. As corporate law firms all over the world are seeking clients, global businesses are looking lawyers who understand corporate social responsibility. These law firms are linking with public interest groups in the US and throughout the world to demonstrate their knowledge of social concerns. This interaction provides opportunities for lawyers within the corporate firms and those based in public interest sites to work together.

WIP: “Ohio Senate Bill 5 and the Prospects for the Union Community Organizing Approach”

Ohio Senate Bill 5 was an attempt to limit collective bargaining rights for public employees. Opponents of SB 5 argued that its passage would affect social services to the detriment of communities. These groups were concerned that communities would suffer from reductions in fire, police, educational and other public services. Calling themselves “We Are Ohio,” a broad based social movement emerged to repeal the law. Unions reached out to grass roots community organizations to create alliances that are broader than traditional labor union
locals. This paper explores how We Are Ohio became a social movement to overturn Senate Bill 5. Through interviews with union locals and We are Ohio members, we examine how grass roots organizing led to the repeal of Senate Bill 5 by building solidarity among diverse community members.

Wang, Zhizhou (Leo)
University of Wisconsin-Madison / Law
zwang74@wisc.edu

WIP: “Bankruptcy Lawyers in China: Opportunities, Challenges and Responsive Strategies”

Background and Research Questions: The concept of “law” does not stay in the words and texts that are printed either in paper or digital form. The laws are “living” because the written statutes are applied by legal professionals, because they affect the parties and are affected by the parties to which the laws apply. Therefore, in order to fully learn how the legal system is working “lively”, one must examine and understand the players of and relevant parties to the legal system. This paper is built on such a belief and bears the task to examine and understand the Chinese bankruptcy lawyers working in the country’s relatively incipient system of corporate bankruptcy. More specifically, it attempts to depict and explain the changing roles of Chinese bankruptcy lawyers, identify and interpret the opportunities and challenges they confront, reveal and analyze the lawyers’ responsive strategies, and draw implications on the nation’s corporate bankruptcy system based on the study of its most important professional participants. Long before it became the second largest economy in the world, China already made commitment to constructing a market economy and a tailored legal system. By restructuring its economy and reforming its legal system for more than three decades, a robust market emerged and the economic-related law-makings mushroomed in China. The national bankruptcy legislations paralleled the dynamics of the economic growth and the attempt to restore the order of law in China. In 1986 the PRC passed its first enterprise bankruptcy law (“EBL”) since 1949 as a vital part of its ambitious plan of reforming the outdated system of state-owned enterprises (the “SOEs”), and replaced the 1986 EBL with another brand-new legislation on corporate bankruptcy in 2006. Certainly, the role of lawyers in the legislative dynamic changed as the policy-makers decided to vest more power to the judiciary as well as the legal profession to deal with increasingly complicated and influential problems caused by financial distress and business failure. Such an institutional and structural change is remarkably characterized by what I call the “professional-central model” adopted by the 2006 EBL, in contrast to the “state-dominate model” which underlay the 1986 EBL. The legislative success in 2006 aimed to end an era during which the bankruptcy law was accused of being easily manipulated by the state power, particularly the local governments. Waving the banners of professionalism, independence and marketism, the 2006 EBL put the professional agencies and professionals in the front tier and soon witnessed increasing participation and involvement of legal professionals in bankruptcy cases. Has a new era for Chinese bankruptcy lawyers started? Will the ambition and foresight of the legislators be successfully and effectively translated into a booming market of corporate bankruptcy in China and thus lead to the rise of a “bankruptcy bar”? Is lawyers the only beneficial of the institutional change, and what is the relationship between the legal profession and other professions in the evolving system? If the prosperity of a corporate bankruptcy market and the rise of the bankruptcy bar does not really emerge as expected, what factors have compromised the bankruptcy lawyers’ motivations and interest to make further investment in the corporate bankruptcy business? And how have those lawyers been responding to the challenges and would that finally result in a sea change to the status quo of the Chinese corporate bankruptcy system? If not, what is
the future for the corporate bankruptcy system and practice in China?

Research Methodology: This paper attempts to answer all these questions, empirical and normative ones, or at least find a meaningful way to approach these puzzles. Although the corporate bankruptcy system and practice has received increasingly attention from the bankruptcy scholars and researchers of Chinese law, few of them paid sufficient attention to the role change and dynamics of practice of bankruptcy professionals in China. Because of the lack of solid and reliable data, I spent four months in China, seeking empirical data that finally underlie the findings and conclusions of this paper. The data and information used in this paper, on which my conclusions and suggestions rest, were collected through a set of semi-structure interviews conducted with 48 respondents in China from September 2013 to January 2014. 12 interviews were conducted in Beijing, the capital of China. 22 interviews with 24 respondents were conducted in Shanghai and several of its neighboring cities that are located in Zhejiang and Jiangsu. Another 11 interviews with 12 respondents were conducted in Shenzhen and other three cities in Guangdong Province. The respondents can be divided into two categories based on their occupations: (1) legal practitioners claiming themselves to be “bankruptcy lawyers” or at least claiming to dedicate most of their work time in corporate bankruptcy matters. (2) judges that sits in bankruptcy law panels (heyi ting) or bankruptcy law divisions (shenpan ting). Most of my bankruptcy lawyer respondents were partners or associates of the law firms that had national or regional reputation for corporate bankruptcy practice, or themselves were recognized as leading lawyers in this field of practice. For the bankruptcy judge respondents, interview requests were sent to all three levels of courts (i.e., the district court, the intermediate court and the high court) within a provincial region, with exception applied where the district-level courts generally did not take bankruptcy cases (e.g., Shenzhen). In fact, for each provincial region involved in this study (i.e., Beijing, Shanghai, Zhejiang, Jiangsu and Guangdong), I have interviewed bankruptcy-judge-respondents from all three levels of courts. All interviews for this study were conducted face-to-face in the place selected by the respondent. In most of the cases the interviews were conducted in the respondents’ offices, with a few exceptions where the respondents preferred a café or restaurant. None of the interviews lasted more than three hours, most of them lasted for approximately two hours and were conducted in places designated by the interviewees.

Findings and Conclusions:

(1) role change and the lawyers’ leading role under the 2006 EBL: Chinese lawyers’ greater and more active participation in the corporate bankruptcy practice echoed the market-oriented economic reform of China as well as the impact led by the globalization process. The 1986 EBL was largely a policy tool to reform the clumsy and inefficient SOE system, it degenerated further in 1990s to a legal puppet of the state activism that aimed to restructure and optimize the state sector. Serving as outside counsel to or at most a single member of the so called “liquidation commission”, lawyers in most cases under the 1986 EBL were only legal cadres commanded by state bureaucrats. The 2006 EBL, however, adopted the “professional-central model” under which the lawyers and another two kinds of professionals were granted a triology privilege in the practice of bankruptcy administration (i.e., serve as administrator in bankruptcy cases). Inspired by the institutional change and probably benefited from a variety of factors, the lawyers had become probably the biggest winner and seemed to have dominated the business of bankruptcy administration. The lawyers’ success of capturing the leading position in the corporate bankruptcy practice could be understood and explained by the “social closure” model under the market approach (Abel, 1986, 1989) that interprets the process of professionalization. The 2006 EBL significantly complicated and enriched the corporate bankruptcy system of China and socially closed the arena of bankruptcy administration in the favor of those admitted to the Accredited Bankruptcy Administrator Roll (“ABAR”). The competitive advantage of the
lawyers compared to another two accredited professions may also be understood by
drawing on the jurisdictional conflict theory (Abbott, 1986).

(2) Opportunities and Challenges: The 2006 EBL constituted a “big push” for the
professional project of the Chinese bankruptcy lawyers. It had not only significantly
broadened the access to a new filed of practice, but also, thank to the effect of “social
closure”, offered great benefits, e.g., obvious advantage in business promotion, valuable
opportunities of building professional reputation and a battle field requiring teamwork, to
the lawyers and law firm that captured slots in the ABAR. In spite of the initial excitement
for a seemingly new era, however, I argue that the “professional plan” for the Chinese
bankruptcy practitioners is no more than a cripple one: the statutory mandate that the
judiciary regulates and supervises the bankruptcy administration service and other
constrains has largely excluded effective control exercised by the lawyers themselves over
the “production of/by the producers”. Considering other factors (e.g., legal education that
prepares bankruptcy lawyers), it would still be too early to look for the rise of a “bankruptcy
bar” in China. What is worse, the market of corporate bankruptcy, due to various reasons
that rooted in the Chinese business society and its bureaucratic apparatus, has been
shrinking even before the new act passed and has yet showed any sign of rebound. The
complexity of the bankruptcy proceeding, which is featured by the act’s chapter of
reorganization, the great number of affected or interested parties and the usually great
economic and political stakes involved in corporate bankruptcies, the Chinese bankruptcy
lawyers have to be exposed not only to the low-level profitability and to huge risk of political
liability.

(3) Responsive Strategies: It is my finding that, despite all of the challenges and
difficulties, few bankruptcy lawyers planned to completely quit the business, particularly
those who have obtained slots on the ABAR and thus possess the candidacy of bankruptcy
administrator. I find that the Chinese bankruptcy lawyers in general have adopted three
strategies to survive the challenges. The first is to limit the investment and cost in the
practice of corporate bankruptcies; the second is to increase the demand for the legal
service in corporate bankruptcies; the last one is to seek alliance with the state and thus
earn support and assistance from the bureaucrats in bankruptcy proceedings.

Ward, Amanda
University of Wisconsin-Madison / Sociology
anward2@wisc.edu

WIP: “Putting it All Back Together: How Female Offenders Manage Jail Reentry”

I would like to share my preliminary analysis of my dissertation data. This qualitative
research project examines the experiences of women exiting jail. Over the past two years, I
have been conducting ethnographic interviews with female offenders exiting jail and the
institutional actors surrounding them. I am currently in the final stages of following a
diverse group of 30 women experiencing jail reentry. I conducted two formal, sit down
interviews with each of these women. The first interview took place prior to their release
from jail. We discussed their life circumstances, living situations prior to incarceration, and
plans for release. The second interview took place 3-6 months after their release and
focused on their current life circumstances and experiences since their exit from jail.
Between these interviews, I supplement this formal data with informal, biweekly updates
about their progress and analysis of public case record data associated with their cases. I
also completed 30 interviews with institutional actors these women identify as important to
their reentry process, including probation agents who oversee female offenders exiting jail
and reentry counselors within the jail. Utilizing the theoretical framework of social
structural symbolic interactionism, I will discuss how women exiting jail create meaning and exercise agency within the structural constraints associated with their status as female offenders, their individual social locations and the criminal justice system more widely. My research addresses the following questions. First, what meaning does incarceration and subsequent reentry hold for women? Second, how do women navigate reentry from jail? Third, how do institutional actors in the criminal justice system understand jail reentry?

Wodda, Aimee  
University of Illinois at Chicago / Criminology, Law & Justice  
awodda2@uic.edu

WIP: “What Did We Get When We Got Sex?: Title VII and the Interpretation of Congressional Intent”

The 1983/1984 Ulane discrimination cases brought under Title VII provide the opportunity to examine how two courts very differently approached the concepts of sex and gender when interpreting the statute’s prohibition of discrimination based on sex. Because trans issues revolve around gender identity, queer theorists as well as some feminist legal scholars argue that litigation surrounding trans issues challenges the gender binary and allows for the creation of law that moves beyond the binary to encompass the idea that sex and gender are both socially constructed, thus allowing for the loosening of strict gender boundaries that tend to oppress both women and trans persons. The idea that gender is socially constructed (Butler, 1990) preceded the idea that sex, too, could be a social construction as well (Fausto-Sterling, 1992) and a rethinking of what constitutes “sex” lies at the heart of this project.

Wong, Jia-Hui Stefanie  
University of Wisconsin-Madison / Educational Policy Studies and Curriculum & Instruction  
jwong8@wisc.edu


Drawing on experiences from a multi-year qualitative research project on access to justice in child support enforcement cases, this presentation will explore issues related to gaining access to research sites and participants in multiple counties in two midwestern states. Topics addressed will include strategies to overcome challenges in observing public court hearings, obtaining copies of case file records, recruiting participants, and building and maintaining relationships with judges, clerks, and other court personnel.

Zhou, Yao  
University of Wisconsin-Madison / Law  
zhou82@wisc.edu