



EMORY
LAW

insights

SUMMER 2014

INTERNATIONAL AND COMPARATIVE LAW

Children v. the Court

Barbara Woodhouse's comparative study of children's law



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"Our position was that striking down the Affordable Care Act would be a major setback to children's access to affordable, quality care."

—Barbara Bennett Woodhouse,
L.Q.C. Lamar Professor of Law
and director, Child Rights Project



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About Emory Law Insights

Emory Law Insights is published twice a year by Emory University School of Law to highlight faculty scholarly research. It is produced by the Office of Marketing and Communications. Please direct questions to communications@law.emory.edu.

Cover illustration, Chris Silas Neal; editor, Lisa Ashmore; design, Winnie Hulme; contributing writers, Lisa Ashmore and Martha Nolan McKenzie

The Evolution of Children's Rights in the United States



Barbara Bennett Woodhouse

L.Q.C. Lamar Professor of Law
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Diploma Superiore, Università per Stranieri, 1965
BS, State University of New York, 1980
JD, Columbia Law School, 1983

Scholarly interests: children's rights, family law, constitutional law

Deciding the constitutionality of the Affordable Care Act was one of the biggest questions considered by the US Supreme Court in a decade. Did the legislation fall under Congress's power to tax, or to regulate commerce? How would states pay for it? And how would it affect health care and insurance corporations?

Emory Law Professor Barbara Bennett Woodhouse, however, viewed the issue through a different lens: How would it harm children, especially the estimated eight million who had no health insurance? Through the Child Rights Project, which Woodhouse directs, Emory Law students wrote an amicus brief.

"The challenges to the Affordable Care Act had garnered great attention, but few had focused on the implications for children," Woodhouse says. "Our position was that striking down the Affordable Care Act would be a major setback to children's access to affordable, quality care."

The Child Rights Project focuses on Supreme Court cases with child law issues. Other project briefs have challenged how the Defense of Marriage Act affects children of gay and lesbian parents and a closely watched adoption case that turned on the Indian Child Welfare Act. Prior to arriving at Emory, Woodhouse also submitted an important challenge to imposing the death penalty upon juveniles.

"It's a great experience for students who can really get their teeth into something and feel like what they're doing is part of the real world and has an impact," Woodhouse says. "I also feel that it's a very effective way of getting the voices of children in front of decision makers."

In her own writing, Woodhouse's research, listening skills, and eye for detail flood the page.

"The research is crystal clear that putting kids in jail does not prevent crime; in fact it leads to more crime."

Excerpt: Religion and Children's Rights, in *Religion and Human Rights*

[Although Italy is a secular state, a law dating back to the Mussolini era requires that the crucifix be displayed in every public school classroom. A small panel of the European Court of Human Rights concluded this was a form of religious indoctrination in violation of the European Charter of Human Rights. The aftermath of this decision illustrates the complex roles played by history, tradition, evolving norms, and children's voices in the European jurisprudence of children's rights, Woodhouse says.]

In April and May of 2010, a year after the decision in Lautsi was announced, I was doing field work in Italy on the ecology of childhood. Crucifixes still adorned the walls of every classroom I visited. All the teachers I asked said the crucifix would never come down because it was such an integral part of Italian culture. A court decision could not change this reality. School children would continue to study in classrooms with crosses, continue to go on school trips to visit the cathedrals of Rome and Florence and continue to study Italy's great works of art because these religious symbols, places and images were integral to the nation's history and tradition.

The teachers were proved right. The Italian government, joined by many other states, sought reconsideration of the Lautsi decision by the Court sitting as a Grand Chamber. On March 18, 2011, an expanded bench of 17 judges issued a decision upholding the display of the crucifix in Italian schools. The Grand Chamber rejected several of the arguments offered by Italy, e.g., that the crucifix is not a religious symbol and that display of a passive symbol does not implicate religious freedom in schooling because it is not part of the didactic program. However, the Chamber found that no consensus existed in the many countries that are states parties to the European Convention on Human Rights as to whether display of religious symbols transgressed the ECHR. In the absence of consensus, states must be given a greater margin of appreciation in deciding the role of such symbols in the school setting. While states must practice religious tolerance and respect religious pluralism, the law did not impose a requirement of secularism or of absolute neutrality with respect to religion and, indeed, certain contracting states retained official state religions. Each case must be judged within the context of the history and tradition of the country.

The Grand Chamber held that the display of the crucifix in Italian schools, taken in historical and cultural context, did not constitute a form of indoctrination that failed to respect parents' or children's religious and philosophical convictions. The decision emphasized that no evidence had been

offered to substantiate the coercive effects on the Lautsi children, or any other children, of the display of the crucifix. In addition, the government had offered evidence that Italy had adopted a strong pluralistic policy, protecting the display by students of religious symbols of all different religions, permitting the wearing of Muslim headscarves and protecting the observance in schools of minority religious holidays. In this larger context, it could not be said that the display of the crucifix and relative predominance of Christian symbols and traditions in the Italian school environment crossed the line into indoctrination.

Two judges dissented and several others offered concurring opinions, illustrating the high seriousness and strong passions evoked by questions of religion and its place in education. Judge Giovanni Bonello issued a passionate defense of tradition. "A European court should not be called upon to bankrupt centuries of European tradition. No court, certainly not this Court, should rob the Italians of part of their cultural personality. I believe that before joining any crusade to demonise the crucifix, we should start by placing the presence of that emblem in Italian schools in its rightful historical perspective. For many centuries, virtually the only education in Italy was provided by the Church, its religious orders and organizations—and very few besides. Many, if not most schools, colleges, universities and other institutes of learning in Italy had been founded, funded, or run by the Church, its members or its offshoots. The milestones of history turned education and Christianity into almost interchangeable notions, and because of this, the age-old presence of the crucifix in Italian schools should come as no shock or surprise. In fact, its absence would have come as a surprise and a shock.... Now, a court in a glass box a thousand kilometers away has been engaged to veto overnight what has survived countless generations. The Court has been asked to be an accomplice in a major act of cultural vandalism. I believe William Faulkner went to the core of the issue: the past is never dead. In fact it is not even past. Like it or not, the perfumes and the stench of history will always be with you."

In spite of its nuanced attention to cultural context, unfortunately, the majority opinion of the Grand Chamber downplays and virtually dismisses the experiences of pupils. [As discussed earlier, in a section on child development], children's experiences should be at the center of our analysis. While evidence was not offered in the Lautsi case of the actual impact of display of the crucifix, future challengers and defenders of the law will have to offer empirical evidence on this issue. Does children's

(continued on following page)

actual experience reflect the traditions of tolerance and pluralism that Judge Bonello celebrates? Do children in Italy perceive that all religions are respected? A time may come when the context will change so radically that the Lautsi decision becomes an historical artifact. I can imagine that increasing pluralism and tolerance may neutralize objection to display of the crucifix because real educational pluralism is so firmly entrenched. I can also imagine a situation in which increasing divisions between competing religious sects and ethnic groups sharpen

the controversy over display of religious symbols in Italian schools. In preparing for the future, we should begin now, by asking the children of Italy what they think about when they see the crucifix—Muslim and Hindu children as well as Buddhist, Jewish and Christian children—since they are the ones who will inherit and need to resolve these tensions between human rights and religious tradition.

—from Religion and Children's Rights, in *Religion and Human Rights* (John Witte Jr. & M. Christian Green, eds., 2011)

In *Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate* (Princeton University Press, 2008), she often introduces a critical issue with a quote from a child that puts a broken system into high relief.

Woodhouse's path to legal scholarship was unusual.

"I had been a nursery school teacher, I had been a foster parent, and I was an adoptive parent—so I found the law having to do with families and children particularly attractive," Woodhouse says.

At 35, she was the oldest student in her class at Columbia University School of Law and was in her second year when Columbia offered its first child advocacy clinic, which solidified her interest in child law. After graduation, Woodhouse clerked for US Supreme Court Justice Sandra Day O'Connor.

"I had been a nursery school teacher, I had been a foster parent, and I was an adoptive parent—so I found the law having to do with families and children particularly attractive."

She joined Emory Law in 2009 as L.Q.C. Lamar Chair in Law after co-founding the University of Pennsylvania's Center for Children's Policy Practice and Research and founding the Levin College of Law's Center on Children and Families at the University of Florida.

Much of Woodhouse's comparative study involves Italy and the US. She's fluent in Italian and earned her diploma superiore from the Università per Stranieri di Perugia. She finds the Italian system more sympathetic and effective for children who come under the courts' care, either through abuse by others or their own criminal behavior.

In America when she tells people her area is children's rights, "Many will respond, 'Oh like children divorcing their parents?'" she says. "Because we do not have the structure and framework of the UN Convention on the Rights of the Child, we tend to trivialize and marginalize children's rights. Actually, there is a large and growing body of domestic and international law devoted to children's rights." (The United States and Somalia are the only two UN member countries that haven't ratified the original Convention.)

"Up until 2005, we were among the very few countries putting juveniles to death for crimes that were committed before they were 18," she says. *Roper v. Simmons* changed that, and *Graham v. Florida* ended the practice of juveniles receiving life sentences without parole.

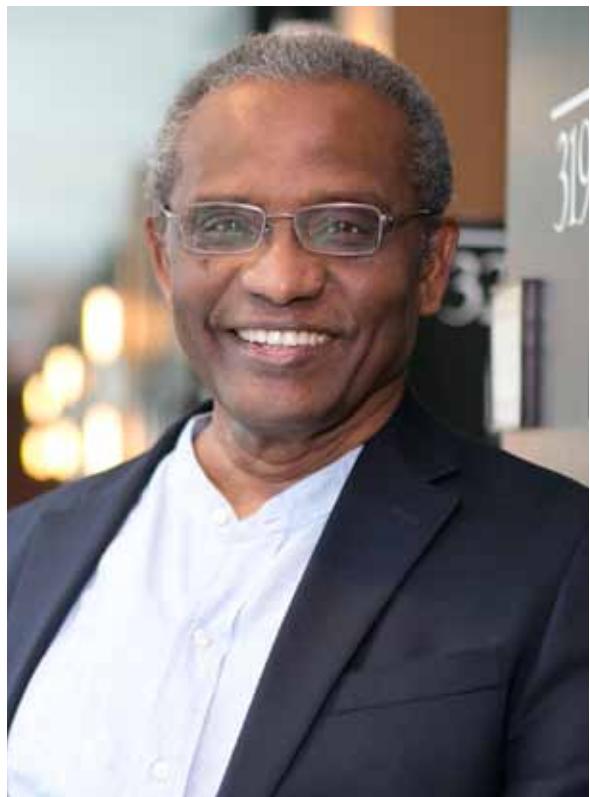
Also, US states' treatment of minors varies widely. In Georgia, lawmakers recently came close to privatizing the state's foster care system, something Woodhouse characterizes as "a race to the bottom." Beyond the emphasis on cost cutting, "it undermines the sense of moral and social commitment—a real investment in all of our children."

The contrast in Italy is almost a small-town approach where communities take responsibility for minors in the legal system. There's an assumption that if a child acts criminally, there's likely an internal cause, she says. "There is a legal provision placing the burden on the state to show that the juvenile's behavior was not the result of immaturity or poor childhood environment," she says. No matter what, a child's education doesn't stop or suffer and there is an emphasis on reentering society.

"The research is crystal clear that putting kids in jail does not prevent crime; in fact it leads to more crime," Woodhouse says. "And we know this just as well as the Italians." Yet, the US system emphasizes the punitive nature of justice even

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An-Na'im Asks, “What is an American Muslim?”



Abdullahi Ahmed An-Na'im

Charles Howard Candler Professor of Law

Director, Center for International and Comparative Law

LLB, University of Khartoum, 1970

LLB, University of Cambridge, 1973

PhD, University of Edinburgh, 1976

Scholarly interests: human rights, comparative law, Islamic law

Since the September 11 attacks on the United States, being a Muslim in America is undeniably harder. From 2010 to 2013, seven states passed legislation to outlaw Sharia, despite the fact the Islamic code applies to Muslims only, and Muslims, like all Americans, are ultimately subject to state and federal law.

In his book, *What is an American Muslim? Embracing Faith and Citizenship*, published this year by Oxford University Press, Charles Howard Candler Professor of Law Abdullahi Ahmed An-Na'im argues that Islam is protected by the establishment clause like all other religions, but also that when a state attempts to enforce Sharia as law, it robs Muslims of freely practicing their faith.

“As a Muslim I need the state to be secular,” he says. “Because when it is secular I can be more honest—when I do something I will do it because I believe it is my duty to do so and I choose to, not because I am afraid of the state.”

The US courts’ long history of interpreting religious issues makes it possible to be both a devout Muslim and a fully engaged American citizen, An-Na'im says.

“In this country there is a wealth of tradition of how to negotiate these questions,” he says. “Other traditions have had to negotiate similar issues and that became the pool of experience that Muslims can draw upon.”

Islam is the second largest religion in the world, with 1.6 billion adherents who represent the majority population in 49 countries. In 2011, there were 2.75 million Muslims living in the US, according to Pew Research Center. In his book, An-Na'im works to counter the idea that American Muslims are a monolithic bloc whose religious practice dominates their public and civic lives. In America, the Muslim population is very diverse—including black, white, and Asian citizens who came to the US from many different

“As a Muslim I need the state to be secular. Because when it is secular I can be more honest—when I do something I will do it because I believe it is my duty to do so and I choose to, not because I am afraid of the state.”

Excerpt: What is an American Muslim? Embracing Faith and Citizenship

To begin, I think we should question our assumptions and preconceived notions of what it means to be a Muslim. Let's make a practice of examining more carefully whatever is presented as the (in categorical singular terms) Islamic position on any issue, such as the exclusion of women from the main area of worship in mosques or the denial of equality between men and women in family relations. Typically, we take for granted the "accepted" positions that we have held unthinkingly for years. Instead we must learn to ask ourselves: What are the bases of that position?...

Every possible understanding of Sharia is always a human interpretation, and never divine as such. While the Quran and Sunna (Hadith) are the divine sources of Islam according to Muslim belief (which I personally share), the meaning and implementation of these sources for everyday life are always the product of human interpretation and action in a specific historical context. It is simply impossible to know and apply Sharia in this life except through the agency of human beings. Any view of Sharia known to Muslims today, even if unanimously agreed upon, necessarily emerged out of the opinions of human beings about the meaning of the Quran and Sunna, as accepted by many generations of Muslims and the practice of their communities. In other words, the opinions of Muslim scholars became established as binding Sharia norms through the consensus of believers over many centuries, not by the spontaneous decree of a ruler or will of a single group of scholars....

It is simply not possible for any human being or institution to adjudicate among competing views, or to decide by majority vote, on the religious truth or fallacy of any view. A parliament or congress can make "secular" state law, but it cannot establish the Islamic binding authority of a principle or norm. There is no act or moment when any principle or rule becomes established as Islamic....

The problem today may be that present-day Muslims do not appreciate the human nature of the earlier process and tend to mystify it beyond the possibility of human reconsideration. I agree that contesting established interpretations of Sharia is a serious matter that should not be undertaken lightly, but it is equally problematic to fail to do so when it is necessary. Worrying about misleading oneself or others is a valid concern of honest piety, but it only means that Muslims should try their best to verify the validity and relevance of the sources they are relying on, and the reasonableness and viability of the interpretations they are proposing. We are responsible for trying our best, not for getting the

"correct" answer, which human beings can't know for certain in any case. That is why Muslim scholars said that knowledge of Sharia is always "suppositional" (zaniy); it is what any Muslim, after careful consideration and reflection, supposes to be true. If generations of Muslims agree, a consensus emerges over one view or another, and it then becomes part of the tradition. But an interpretation is not binding for any Muslim until he or she accepts it as such....

If the Islamic norm-setting process is to continue to take place by consensus, as has always been the case among Muslims (and I see no alternative to this), then how should that process work today? Who is entitled to participate in such debates, and what value is to be attributed to various views? Since there is no agreed-upon procedure or prior determination of such matters, those who self-identify as Muslim should just express their views, and others who also self-identify as Muslims should debate those views and decide for themselves whether to accept or reject them. There is simply no valid way of vetting who is or is not a Muslim, and no way of telling which is the correct or wrong view on any issue, except through debate and free acceptance or rejection among all those who self-identify as Muslims....

To conclude, an American Muslim is a citizen of the United States who happens to be a Muslim, as she or he may happen to be a Christian, Jew, Hindu, or an adherent of any religion or belief. This is not to imply a hierarchy of political identity over religious faith, but simply a matter of context. There is no competition or incompatibility between religious identity and citizenship, like being American and Muslim or Muslim and American, as the context indicates. If the context is religious, then the person may be a Muslim (or of other religion or belief) who happens to be a citizen of the United States. There is only interdependence and mutual support between religion and citizenship, especially in the United States through centuries of constitutional jurisprudence and politics of the First Amendment. Asserting my American citizenship entitles and enables me to exercise my religious self-determination as a Muslim, which in turn leads me to uphold the values of justice and equality on which my citizenship must be founded. This is also an integral part of my religious right and an obligation to "enjoin what is right and combat what is wrong," noted earlier. For that I am calling on all American Muslims to embrace faith and citizenship.

—from *What is an American Muslim? Embracing Faith and Citizenship* (Oxford University Press 2014)

countries and cultures. Just as with Catholic or Mormon Americans, their faith is one dimension, albeit an important one, of their citizenship.

Shortly after Oklahoma's 2010 law banning Sharia was struck down by the Tenth US Circuit Court of Appeals, An-Na'im spoke at Saint Louis University School of Law on the issue.

"The term Sharia does not occur in the Quran at all in the meaning that we use it today," he told the audience. "In fact, the term Sharia does not exist in Muslim sources for the first 300 years of Islam," he said. And when governments attempt to enforce it as law, it is no longer religion.

"The principle ceases to be Sharia by its enactment into statutory law. It becomes something else," he says.

While a student at the University of Khartoum, An-Na'im met Mahmoud Mohammed Taha, a man he has referred to as his moral father.

"He enabled me to understand the Quran differently," An-Na'im says.

"When we understand the whole Quran in the context of the twentieth century, we see that the question of the equality of women is obvious, and you cannot morally defend inequality or morally defend violation of freedom of religion," An-Na'im says.

An-Na'im was raised in a Muslim country and once believed that Sharia could be administered by the state. But he also saw how extremism could warp religion. In 1985, Taha was convicted of heresy and sedition for distributing a pamphlet protesting the imposition of Sharia in Sudan by then president Jaafar al-Nimeiri. Ten days later, after refusing to recant, the 76-year-old was hanged.

"What I have come to understand and think more recently over the past 10 to 15 years is that whatever the content of Sharia, it is for Muslims to live in their societies but not for the state to enforce," he says. "No matter how humane or civilized we think the content of that religious code is, religion is for people to observe in their private lives outside the state." An-Na'im led Human Rights Watch/Africa from 1993 to 1995.

"I see no contradiction whatsoever between being a Muslim and being a human rights advocate," he says. He sees Sharia's evolution as not unlike the gradual adoption of the 1948 Universal Declaration of Human Rights. "[It is] a minimum standard of decency and simple human dignity that all human societies must abide by. But when you get to what are the rights and what do they mean, generally you get disagreement," he says.

One such disagreement is what constitutes

cruel and inhuman punishment. While all members of the European Union do not allow the death penalty, it took decades for some countries to arrive there, An-Na'im says. In the United States, the death penalty is considered a valid punishment for certain crimes, even though some states have abolished it.

"It shows America and Europe can disagree about what is a human right," An-Na'im says. "By the same token, other parts of the world may have other disagreements about what human rights are in other fields."

"I am not a relativist in the sense that I say we should let every society decide for itself," he says. "But rather my point is about consensus building. I call for accepting disagreements like those as something that is normal among human society, and engaging in the negotiating process so you can come to agreement."

An-Na'im says he and other Muslims seek to interpret Sharia from within the Islamic tradition, "not so that the state can enforce it, but to reform it so that Muslims can live it in a way that is also consistent with human rights."

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Books

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Muslims and Global Justice (University of Pennsylvania Press 2011)

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African Constitutionalism and the Role of Islam (University of Pennsylvania Press 2006)

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Unraveling Misconceptions About Chinese Jurisprudence



Teemu Ruskola

Professor of Law

AB, Stanford University, 1990

Inter-University Program for Chinese Language
Studies, 1992

JD, Yale Law School, 1995

AM, Stanford University, 1999

Scholarly interests: Chinese law, comparative law, contracts, corporations, international legal history and theory

When Teemu Ruskola tells people he works on Chinese law, he is often met with an incredulous response such as, “There’s no such thing!” These opinions made the Emory law professor even more curious about questions regarding who gets to decide what law is and who has it. What is at stake in asking these questions? And why is China historically associated with lawlessness and Oriental despotism, while the United States regards itself as a paradigm of the rule of law?

“If you want to think seriously about law and its significance in the modern world, you have to look at China,” Ruskola says. “If you want to think theoretically about any major Western discourse, whether it be politics, law, or economics, you have to think comparatively, even to understand and be aware of the categories that we use in our thinking.”

Ruskola delved into these issues in his latest book, *Legal Orientalism: China, the United States, and Modern Law* (Harvard University Press 2013), a comparative study about ideas of law—along with its principles, formation, and effect. Indeed, the first Western observers of China were 16th-century Jesuit missionaries. These well-educated visitors had an extremely positive view of China and its legal system. The negative image didn’t become widespread until 18th- and 19th-century traders—neither well-educated nor particularly cultured—began to complain of China’s lawlessness.

Ruskola also looked at the effect the negative views of China’s legal system have had on the US legal order. For example, after encouraging Chinese immigration when cheap labor was needed to build the railroads, the US did an

“If you want to think seriously about law and its significance in the modern world, you have to look at China.”

Excerpt: Legal Orientalism: China, the United States, and Modern Law

While the sheer volume of law in China today is awe-inspiring, it is equally critical to appreciate how much China has been able to do without law. Even if legal institutions have colonized much of China, they have not colonized all of it. It is an axiom of contemporary Law and Development discourse, and of institutional economics more generally, that economic growth demands well-defined property rights enforceable at law: only they can provide the security and predictability that make long-term investment possible and worthwhile. Remarkably, the PRC did not promulgate its first Property Law until 2007—almost thirty years into the era of economic and legal reforms, during which time China experienced economic growth unrivaled by any other economy on the planet. While the homo economicus of the US variety is always also a homo juridicus—operating within the logics of property and contract—it is evidently entirely possible to be a modern nonlegal Chinese economic subject without thereby becoming simply a lawless subject of Oriental despotism. Just as formal law—and, more specifically, a US-style system of rule-of-law—is not the only way of articulating social and political subjectivity, it is not the sole effective means of channeling material resources either.

For all of law's strides, significant aspects of Chinese life remain outside of law altogether. Obviously there are many kinds of social activity in the United States as well that are arenas of private activity, beyond direct state regulation. In China, however, some aspects of life take place outside law in a more radical sense, seemingly existing beyond the binary code of legal versus illegal altogether. It is a key index of the modern state's ultimately boundless will-to-power that it insists on characterizing everything within its jurisdiction as either legal or illegal. Any conceivable activity must fall into one category or the other, as law simply does not recognize anything beyond its reach. In China, in contrast, there appears to be a third category outside this binary—considerable areas of activity that seem best characterized as unlegal, or perhaps nonlegal or extralegal, rather than either legal or illegal.

There is no question that much of Chinese economic life, for example, does fit under the category legal—it takes place in legally recognized markets. Similarly, there are numerous economic activities that are unequivocally illegal—they occur in legally proscribed black markets. However, there are also various kinds of gray markets and many other activities that apparently have not (yet) been the object of legal contemplation at all. Until, and unless, the state passes legislation that addresses them, such activities seem destined to remain unlegal—neither

illegal nor simply tolerated by law (which would make them in fact legal) but outside law's scope altogether.

Consider, for example, the so-called “individual households” (个体户). This was a legal category designed specifically to legitimate the operation of family businesses early in the reform period. Since other forms of private enterprise had not yet been recognized, evidently family businesses were meant to be limited to what the legal term designated—households. A household might presumably include non-kin as well, in light of the elastic kinship practices we have considered, but in a socialist understanding it would certainly seem to exclude the employment of wage labor. However, family businesses soon began hiring outside help. Although such practices were widespread and not authorized by law, it would not be useful to characterize them as simply illegal. Rather, they are better seen as taking place in a social and economic space that was illegal—outside the law unless and until the law took note of them. Indeed, ultimately a set of interim regulations were promulgated, stating that an “individual household” was permitted to hire up to five “apprentices” and two “assistants.” It was only at that point that the (limited) use of wage labor in family businesses became a matter of legal determination, one way or another.

A (Western) legal theorist might view the notion of the unlegal as a misunderstanding of law at best and a pathology at worst, given that it is in the DNA of the modern state to pronounce on the legality of all human activity under its purview. Nevertheless, the simple fact that the Chinese economy has experienced extraordinary growth for decades without the blessing of a Property Law suggests that legal theorists may have something of significance to learn from China. Effectively, the US Law and Development orthodoxy's response to this has been a shrug—a variation on the academic Witticism, “It may work in practice, but it'll never work in theory.” That otherwise sophisticated scholars' first impulse is to blame China for not complying with their conjectures is striking....

On a more fundamental level, we must consider: Why is it that even within the academic field of comparative law the study of Chinese law ultimately provides only comparative, rather than absolute, legal knowledge?

Why couldn't the study of China generate primary knowledge—theory itself—rather than merely secondary data to confirm or disprove theories developed elsewhere?

—from *Legal Orientalism: China, the United States, and Modern Law* (Harvard University Press, 2013)

about-face by enacting a series of Chinese exclusion laws in the late 19th century. The Chinese challenged the laws under the US Constitution, but the US Supreme Court upheld them on the theory that the federal government possesses a “plenary power” to exclude immigrants, a kind of discretionary authority unconstrained by the Constitution. Paradoxically, Ruskola says, the desire to keep subjects of “Oriental despotism” outside the United States resulted in the establishment of a kind of legal despotism *inside* the United States.

Ruskola was drawn to study China early on, leaving Finland to study East Asian Studies at Stanford University. “I have always wanted to explore other ways of thinking, and China seemed the perfect subject, the opposite of Finland in my college freshman eyes,” he says. “In many ways, China is the significant civilizational ‘other,’ the opposite of the liberal, modern West.”

“My project cuts across many disciplinary lines, both inside and outside of law. It draws on history and postcolonial studies, for example, and Emory has great intellectual resources in both.”

After graduating, he spent two years in Taiwan learning Mandarin—the sixth language he studied—and then attended Yale Law School. He practiced with Cleary Gottlieb Steen & Hamilton in New York and Hong Kong and then returned to Stanford to get a graduate degree in East Asian Studies. Prior to joining Emory, he was professor of law at American University in Washington, DC.

He was drawn to Emory by its strength in legal history, comparative law, and legal theory. “My project cuts across many disciplinary lines, both inside and outside of law,” says Ruskola. “It draws on history and postcolonial studies, for example, and Emory has great intellectual resources in both. The law school in particular is a place that has a long-standing tradition of taking interdisciplinary and cross-cultural study of law seriously, especially in its humanistic aspects.”

In addition to his responsibilities at Emory, Ruskola is an affiliated faculty member of the Finnish Centre for Chinese Law and Legal Culture, where he helps run two Chinese labor law-related projects funded by the Academy of Finland and hosted by the Law Faculty of the University of Helsinki.

This fall, Ruskola will leave for a year-long fellowship with the Institute for Advanced Study in Princeton, NJ, where he will research his next book, *China, For Example: China and the Making of Modern International Law*. The fellowship is a particular honor, as it will be Ruskola’s second at the institute.

Ruskola’s new book will focus on the history of the introduction of Western international law in China, looking at the process both from a historical and theoretical perspective and considering its implications for international law and politics today.

“I want us to have a more informed scholarly debate about the legal, political, and geopolitical status of China, historically as well as today,” says Ruskola. “China matters, and people do care about it—especially as its economic might grows—yet so much of the public and even academic discourse about China is misinformed at best and outright ignorant at worst.”

SELECTED PUBLICATIONS

Books

Legal Orientalism: China, the United States, and Modern Law (Harvard University Press 2013)

Book Chapters

China and the Making of Modern International Law, in *Oxford Handbook on International Legal Theory* (Florian Hoffman & Anne Orford, eds., forthcoming 2015)

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Articles

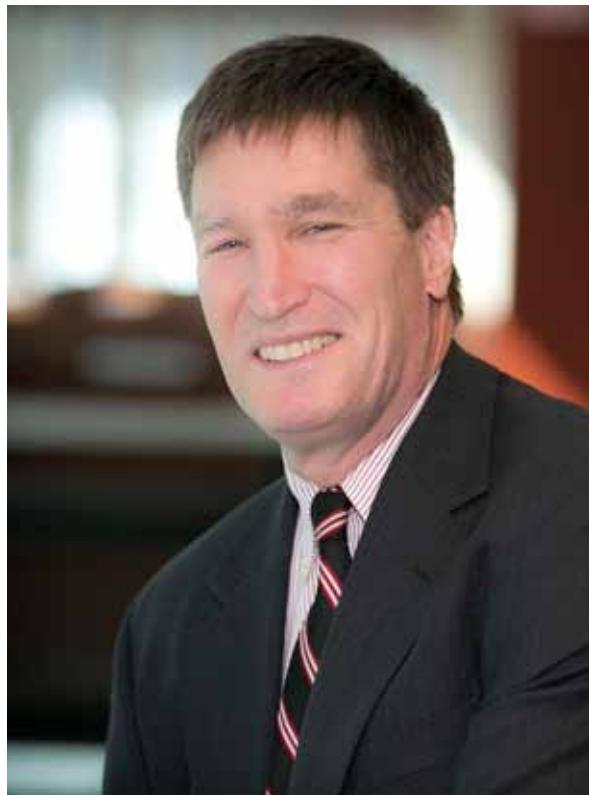
What Is a Corporation? Liberal, Confucian, and Socialist Theories of Enterprise Organization, 37 *Seattle University Law Review* 637 (2014)

The World According to Orientalism, 7 *Journal of Comparative Law* 1 (2013)

Where Is Asia? When Is Asia? Theorizing Comparative Law and International Law, 43 *UC Davis Law Review* 102 (2011)

Raping Like a State, 57 *UCLA Law Review* 1477 (2010)

Pursuing Justice in Context



Paul J. Zwier II

Professor of Law

Director, Center for Advocacy and Dispute Resolution

BA, Calvin College, 1976
JD, Pepperdine University, 1979
LLM, Temple University, 1981

Scholarly interests: trial techniques, torts, evidence, international dispute resolution

Paul Zwier was sitting in a police station in Liberia when a bruised and burned young woman from an outlying village was brought in. When he asked police what had happened, he was told a friend had brought her to the station by motorbike to report she had been assaulted. Zwier was stunned by the policeman's response. "He said he couldn't pay for the gas to get out to the woman's community to investigate, so there was nothing he could do," he recalls.

The incident was a striking moment for Professor Zwier, who studies how peace with justice gets worked out, especially in countries where atrocities have occurred. Liberia was just coming out of a civil war, and rape and sexual assault were rampant. He was working with dispute resolution experts from The Carter Center, and until the police station experience, his sights were set on building Liberian lawyers' trial advocacy and evidence-gathering skills. He had done similar work elsewhere in Africa and in Latin America.

"My focus was to train advocates in those countries to be confident and skillful within their legal systems," he says. He partnered with in-country lawyers and judges. Through simulations and role-playing, the rule of law developed—especially where judges could participate in advocating on victims' behalf, and thereby better understand the importance of treating these cases seriously.

The assault victim's plight convinced Zwier that when working to establish a rule of law to formalize definitions of equality to protect women, children, and minorities, one must take into account actual conditions. What resources are available, and what cultural beliefs and traditions surround a particular issue? How is the local magistrate or tribal chief likely to see the

"Whether in a hut before a local chief or before the Supreme Court, being an advocate for a client in the fullest sense of the word, by understanding the client's plight and then seeking justice—it is still what being a lawyer is all about."

Excerpt: Principled Negotiation and Mediation in the International Arena: Talking with Evil

December 20, 2008. Ramallah, West Bank. The deadline for the ending of the Gaza cease-fire is fast approaching. I am sitting next to Rafiq Husseini, a senior executive with the Palestine Liberation Organization (PLO), and can sense his frustration. We were late for our meeting, having just arrived from Syria after a harrowing trip through Jordan. The room's fluorescent lighting makes us all squint. It's a little stuffy and you can smell the faint odor that comes with all-day travel in a small taxi. My companions, Hrair Balian, The Carter Center's director of Peace and Dispute Resolution Programs, and Robert Pastor, President [Jimmy] Carter's former national security director for Latin America, are engaged in last-minute shuttle diplomacy on behalf of The Carter Center. They had previously accompanied President Carter in recent trips to Lebanon, to Syria where they talked with President Assad, and also to Hamas. They are carrying messages they hope will lead to an extension of the cease-fire in Gaza, while President Carter goes back to the United States to try to get the ear of the pre-inauguration Obama administration to help put pressure on parties to extend the cease-fire. If everyone could just communicate with each other, it might still be possible to break the deadlock on Gaza, and the parties could return to the bigger question of the two-state solution.

The US ambassador to Israel, Richard Cunningham, has been less than interested in The Carter Center's (TCC's) efforts at shuttle diplomacy. The Bush II foreign policy refuses to talk to terrorists. The United States officially agrees with Israel that it is counterproductive for Israel to talk to Hamas before Hamas agrees to recognize Israel's right to exist, and the United States and Israel have declared that Hamas is a terrorist organization. The United States has also given Israel carte blanche to decide what it needs to do to secure itself. And besides, the United States doesn't talk to people it has declared "evil."

Balian and Pastor's efforts, however, are not directed at the Bush administration. They are trying for a quick bargain for peace between Hamas and the PLO, assuming that one of the main obstacles to extending the cease-fire between Hamas in Gaza and Israel is the inability of the Palestinians to speak with a unified voice. The Palestinian people are essentially without a say in what is about to happen in Gaza, while their elites quarrel about who is in charge.

Husseini, confidant of Mamoud Abbas, president of the PLO, speaks on his behalf. Husseini is deeply skeptical of Balian and Pastor's message. Balian and Pastor are carrying a message that Hamas—at least its leader, Kahlid Mishal—is interested in settling differences with the PLO and sharing power, leaving

it to the PLO to speak for the Palestinians regarding the two-state solution. Mishal offers that if Hamas could administer the state in Gaza and the West Bank, Mamoud Abbas could speak with authority on behalf of the Palestinians to the Israelis.

On behalf of Hamas, Mishal seems willing to try again to shut down the rockets all together, if the Israelis will deliver on their promises to increase the number of trucks allowed into Gaza to the number agreed to in June 2008. Hamas feels that it had been only a week late in its promise to shut off the rockets being fired from Gaza, and that when Israel refused to allow in trucks, it has had no option but to encourage the building of underground tunnels. This has led to its justification and tacit support for the more radical groups in Gaza to continue the rocket launchings. If Israel will let in sufficient trucks, Hamas will promise to work again to shut down the rockets. Hamas is even willing to compromise on issues of prisoner exchange, if that would help. Finally, Balian and Pastor reiterate Hamas's position reached in negotiations with President Carter—that Hamas will not stand in the way of the Palestinians' recognizing Israel, if a two-state solution is implemented and the Palestinians vote to recognize Israel. If the cease-fire could be extended and the two sides could cooperate in monitoring the border, the two-state solution negotiations could proceed.

Bewildered, Husseini questions us. "Isn't The Carter Center's delegation being naive regarding Hamas? Hamas is not acting in good faith. It proved that by not showing up in Egypt in November 2008 after agreeing to a meeting there." In Husseini's opinion, Hamas is simply trying to buy time to arm itself and take over as the authority for the Palestinians all together. "Didn't Hamas try to assassinate Mamoud Abbas this past summer? Haven't they continued to send rockets into Israel? Why would they do that if they were acting in good faith?"...

December 21, 2008. The cease-fire ends and the rest, as they say, is history. More than 1,300 Palestinians are killed; 13 Israelis are killed; 4,000 buildings are totally destroyed; 20,000 buildings are partially destroyed; thousands of Palestinians are homeless. As a witness to the last-minute diplomacy, all that followed seems so unnecessary to me. It could have been prevented if the United States had been open to dialogue with the enemy and willing to facilitate communication between the parties. Then, in 2012, the cycle of violence and distrust repeats itself all over again.

—from *Principled Negotiation and Mediation in the International Arena: Talking with Evil*, (Cambridge University Press 2013)

matter—are they likely to see the case as a private family matter, or view spouse abuse as a matter of a man's right in how he treats his property?

Procedural hurdles that may keep the victim from receiving justice must also be considered. For example, formalizing rape as a punishable crime won't likely result in justice if a rape victim can't get to a hospital to be examined; if the medical examiner won't show up in court to testify; and if the victim won't appear in court when all the witnesses have finally been assembled, because by that point the victim has had to return to his or her life.

"My experience in Liberia led me to a more nuanced approach," Zwier says. "It inspired me to think about how to look for alternative dispute resolution mechanisms while waiting for the rule of law structures to get implemented and actualized. I focus now more on the in-between time—the steps that need to be taken to get from the starting point to a formalized rule of law."

In his recent book *Principled Negotiation on an International Stage: Talking with Evil* (Cambridge University Press 2013), Zwier examines that approach.

For example, in Liberia the community traditionally gathers in a "palava hut" to decide disputes. Rather than imposing an outside system of justice, Zwier advocates helping villages reclaim that tradition, but with paralegal training to encourage the chief to take more responsibility to protect women's and children's rights.

Rather than just rail against the powers that be, Zwier finds it more effective to create access to justice by developing the people within existing institutions. The primary challenge, especially in post-conflict societies, is respectful partnership, he says.

"There are flaws with such a system, but it might produce some immediate results and teach some values in the meantime," he says.

At the crux of all his work is advocacy for the underdog—women, children, and minorities. Rather than just rail against the powers that be, Zwier finds it more effective to create access to justice by developing the people within existing institutions. The primary challenge, especially in post-conflict societies, is respectful partnership, he says. Without understanding and empathy, one

can easily do more harm than good.

Zwier is former director of public education for the National Institute for Trial Advocacy. In concert with NITA and Lawyers Without Borders, he has worked with International Criminal Tribunals in the former Yugoslavia and Rwanda, as well as the International Criminal Court. He helped design and conduct advocacy training through the Central and East European Law Institute, the Hong Kong Supreme Court, and the Legal Services Program of Micronesia.

"My experience in Liberia led me to a more nuanced approach. It inspired me to think about how to look for alternative dispute resolution mechanisms while waiting for the rule of law structures to get implemented and actualized."

Zwier joined Emory in 2003, drawn partly by the university's close connection with The Carter Center. "The rule of law development work they do is a wonderful match for my interests and skills," he says. "I couldn't think of a better opportunity." He is a founding partner in the Mexican Institute for Trial Advocacy, and helped the Universidad Panamericana in Mexico City develop an LLM in advocacy.

He also helped develop Emory Law's new Master in Comparative Law Partnership for graduate law students from Shanghai's Jiao Tong University. He helped train prosecutors for the Shanghai Stock Exchange and also arbitrators who appear before the Shanghai and Beijing Arbitration Association.

Another draw for Zwier was Emory Law's commitment to trial advocacy; every student is required to take the course. Zwier teaches trial advocacy, torts, and evidence, and his goal is to instill a passion to serve the underserved.

"I hope to inspire students to realize the opportunity they have to really make a difference," he says. "Whether in a hut before a local chief or before the Supreme Court, being an advocate for a client in the fullest sense of the word, by understanding the client's plight and then seeking justice—it is still what being a lawyer is all about."

Please see following page for a list of Professor Zwier's selected publications.

Woodhouse

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when children are victims. Often when a child is harmed, more funds go toward incarceration for the violator than therapy for the child.

Woodhouse's current work builds on Urie Brofenbrenner's ecological systems theory as it pertains to child development.

"It's a way to see children in the context of their families, their communities, and larger structures like the economy or health care system," she says. "You have the child in the center, and they inhabit families, neighborhoods, schools, peer groups, and religious communities—all of which affect them."

"These systems can either enhance their capacity for growth or be very detrimental," she continues, "in the same way that creatures can thrive or be endangered because of changes to the ecology."

SELECTED PUBLICATIONS

Books

The Ecology of Childhood: Building a World Fit for Children (New York University Press, forthcoming 2016)

Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate (Princeton University Press 2008)

Book Chapters

Intercountry Adoption in Italy and the United States: Divergent Perspectives on Privatization, Race and Subsidiarity, in *Adoption in Comparative Perspective* (Maria Donata Panforte, ed., forthcoming 2015)

Zwier

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SELECTED PUBLICATIONS

Books

Fact Investigation: A Practical Guide (2nd ed., NITA, forthcoming 2014)

Effective Expert Testimony (3rd ed., NITA 2014) (with David M. Malone)

Torts: Cases, Problems, and Exercises (4th ed., LexisNexis 2013) (with Russell L. Weaver, John H. Bauman, John T. Cross, Andrew R. Klein & Edward C. Martin)

Legal Strategy (NITA 2005)

Teaching Legal Strategy (NITA 2005) (with Deanne C. Siemer & Frank D. Rothschild)

Advanced Negotiation and Mediation Theory and Practice (NITA 2005) (with Thomas F. Guernsey)

Religion and Children's Rights in *Religion and Human Rights* (John Witte Jr. & M. Christian Green, eds., 2012)

The Family Supportive Nature of the UN Convention on the Rights of the Child, in *The UN Convention on the Rights of the Child: An Analysis of Treaty Provisions and Implications of US Ratification* (Jonathan Todres, Mark E. Wojcik & Cris R. Revaz, eds., 2006)

Amicus Briefs to the US Supreme Court

Windsor v. United States, *Adoptive Couple v. Baby Girl Lofton v. Florida Department of Children and Families*, *Roper v. Simmons*

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Individualism and Early Childhood in the US: How Culture and Tradition Have Impeded Evidence-Based Reform, 8 *Journal of Korean Law* 97 (2008)

Recent Scholarship



Ahdieh



Blank



Dudziak



Fineman



Holbrook

Robert Ahdieh

Vice Dean and Professor of Law

Articles

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Imperfect Alternatives: Networks, Salience, and Institutional Design in Financial Crisis, 79 *Cincinnati Law Review* 527 (2010)

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Laurie Blank

Clinical Professor of Law

Articles

Belligerent Targeting and the Invalidity of a Least Harmful Means Rule, 89 *Naval War College International Law Studies* 536 (2013) (with Geoffrey Corn, Christopher Jenks & Eric Talbot Jensen)

Extending Positive Identification from Persons to Places: Terrorism, Armed Conflict and the Identification of Military Objectives, 2013 *Utah Law Review* 1227 (2013)

Losing the Forest for the Trees: Syria, Law and the Pragmatics of Conflict Recognition, 46 *Vanderbilt Journal of Transnational Law* 693 (2013) (with Geoffrey Corn)

International Law and Cyber Threats from Non-State Actors, 89 *Naval War College International Law Studies* 406 (2013) (reprinted in Israel Yearbook on Human Rights, Vol. 43, Yoram Dinstein & Fania Domb, eds., 2013)

After "Top Gun": How Drone Strikes Impact the Law of War, 33 *University of Pennsylvania Journal of International Law* 675 (2012)

Mary Dudziak

Asa Griggs Candler Professor of Law

Books

Going to War: An American History (Oxford University Press, under contract)

War-Time: An Idea, Its History, Its Consequences (hardcover, paperback, Oxford University Press, 2012, 2013)

Book Chapters

Targeted Killings and Secret Law: Drones and the Atrophy of Political Restraints on the War Power, in *Drones and the Future of Armed Conflict: Ethical, Legal and Strategic Implications* (David Cortwright, ed., 2014)

Articles

Law, Power, and 'Rumors of War': Robert Jackson Confronts Law and Security After Nuremberg, 60 *Buffalo Law Review* 367 (2012)

Martha Albertson Fineman

Robert W. Woodruff Professor of Law

Books

Vulnerability: Reflections on a New Ethical Foundation for Law and Politics (Ashgate 2013) (with Anna Grear)

Transcending the Boundaries of Law: Generations of Feminism and Legal Theory (Routledge 2010)

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The Vulnerable Subject and the Responsive State, 60 *Emory Law Journal* 261 (2010)

Timothy Holbrook

Associate Dean and Professor of Law

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Is the Supreme Court Poised to Assess the Extraterritorial Scope of US Patent Law?, *European Intellectual Property Review* (forthcoming 2014)

INTERNATIONAL AND COMPARATIVE LAW

Recent Scholarship



Nash



Perry



Price



van der Vyver

Territoriality and Tangibility after Transocean, 61 *Emory Law Journal* 1087 (2012)

The Potential Extraterritorial Consequences of Akamai, 26 *Emory International Law Review* 499 (2012)

Should Foreign Patent Law Matter?, 34 *Campbell Law Review* 581 (2012)

Jonathan Nash

Professor of Law

Book Chapters

The Curious Landscape of the Extraterritoriality of US Environmental Laws, in *Beyond Territoriality: Transnational Legal Authority In An Age Of Globalization* (Gunther Handl, Joachim Zekoll & Peer Zumbansen, eds., 2012)

Michael J. Perry

Robert W. Woodruff Professor of Law

Books

Human Rights in the Constitutional Law of the United States (Cambridge University Press 2013)

Book Chapters

Same-Sex Marriage, the Right to Religious and Moral Freedom, and the Catholic Church, in *Learning: Essays on Sexual Diversity and the Catholic Church* (J. Patrick Hornbeck II & Michael Norko, eds., 2013)

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Human Rights, in *The Routledge Companion to Theism* (Charles Taliaferro, Victoria S. Harrison & Stewart Goetz, eds., 2012)

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Polly Price

Professor of Law

Book Chapters

Jus Soli and Statelessness: A Comparative Perspective in the Americas, in *Citizenship in Question* (Benjamin Lawrence & Jacqueline Stevens, eds., forthcoming 2015)

Teaching Comparative Legal History: Latin American Legal Systems, in *Teaching Legal History* (Robert M. Jarvis, ed., forthcoming 2014)

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Stateless in the United States: Current Reality and a Future Prediction, 46 *Vanderbilt Journal of Transnational Law* 443 (2013)

Johan van der Vyver

I.T. Cohen Professor of International Law and Human Rights

Books

Implementation of International Law in the United States (Peter Lang Publishers 2010)

Book Chapters

The Right to Self-Determination of Religious Communities, in *Religion and Human Rights: An Introduction* (John Witte Jr. & M. Christian Green, eds., 2011)

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Prosecuting the Crime of Aggression in the International Criminal Court, 1 *University of Miami National Security and Armed Conflict Law Review* 1 (2011)

Prosecuting the President of Sudan: A Dispute between the African Union and the International Criminal Court, 11 *African Human Rights Law Journal* 683 (2011)

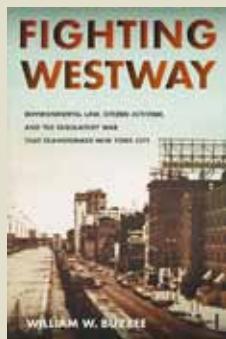
Regulating Group-Related Rivalries in Highly Polarized Communities, 4 *Air and Space Power Journal—Africa and Francophone* 4 (2013)

Selected Faculty Authors

William W. Buzbee

Professor of Law

Fighting Westway: Environmental Law, Citizen Activism, and the Regulatory War That Transformed New York City
(Cornell University Press 2014)

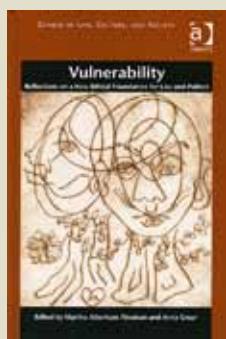


From 1971 to 1985, battles raged over Westway, a multibillion-dollar highway, development, and park project slated for placement in New York City. It would have projected far into the Hudson River, including a massive new landfill extending several miles along Manhattan's Lower West Side. The most expensive highway project ever proposed, Westway also provoked one of the highest stakes legal battles of its day. In *Fighting Westway*, Buzbee reveals how environmentalists, citizens, their lawyers, and a growing opposition coalition, despite enormous resource disparities, were able to defeat this project supported by presidents, senators, governors, and mayors, much of the business community, and most unions. Although Westway's defeat has been derided as lacking justification, Westway's critics raised substantial and ultimately decisive objections. They questioned claimed project benefits and advocated trading federal Westway dollars for mass transit improvements. They also exposed illegally disregarded environmental risks.

Martha Albertson Fineman

Robert W. Woodruff Professor of Law

Vulnerability: Reflections on a New Ethical Foundation for Law and Politics
(Ashgate 2013) (with Anna Gearar)

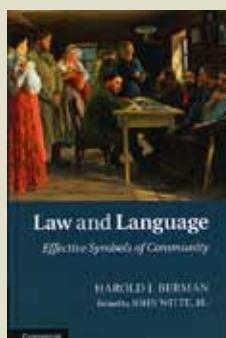


Fineman's earlier work developed a theory of inevitable and derivative dependencies as a way of problematizing the core assumptions underlying the "autonomous" subject of liberal law and politics in the context of US equality discourse. Her "vulnerability thesis" represents the evolution of that earlier work and situates human vulnerability as a critical heuristic for exploring alternative legal and political foundations. This book draws together major British and American scholars who present different perspectives on the concept of vulnerability and Fineman's "vulnerability thesis." The contributors include scholars who have thought about vulnerability in different ways and contexts prior to encountering Fineman's work, as well as those for whom Fineman's work provided an introduction to thinking through a vulnerability lens. This collection demonstrates the broad and intellectually exciting potential of vulnerability as a theoretical foundation for legal and political engagements with a range of urgent contemporary challenges.

John Witte Jr.

Jonas Robitscher Professor of Law and Alonzo L. McDonald Distinguished Professor

Law and Language: Effective Symbols of Community
(Cambridge University Press 2013)



Completed in 1964, Harold J. Berman's long-lost tract shows how properly negotiated, translated, and formalized legal language is essential to fostering peace and understanding within local and international communities. Exemplifying interdisciplinary and comparative legal scholarship long before they were fashionable, *Law and Language* is a fascinating prequel to Berman's monumental *Law and Revolution* series. It also anticipates many of the main themes of the modern movements of law, language, and ethics. In his Introduction, Witte, a student and colleague of Berman, contextualizes the text within the development of Berman's legal thought and in the evolution of interdisciplinary legal studies. He has also pieced together some of the missing sections from Berman's other early writings and provided notes and critical apparatus throughout. An Afterword by Professor Emeritus of Law Tibor Várady, another student and colleague of Berman, illustrates via modern cases the wisdom and utility of Berman's theories of law, language, and community.



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"Because the US does not have the structure and framework of the UN Convention on the Rights of the Child, we tend to trivialize and marginalize children's rights."

—Barbara Bennett Woodhouse, L.Q.C. Lamar Professor of Law and director, Child Rights Project