Constructions of autonomy: Parents, children and forced marriage (1239) Forced marriage has become one of the most prominent issues in the discourse on "tradition-based violence" against women and girl-children. Referring to "harmful traditional practices", feminist authors such as the late Susan Moller Okin have warned that multiculturalist policies may endanger the fragile status of women as equal and implicitly legitimize violence against and the subordination of female members of cultural(ized) minority groups. The aim of this presentation is to analyse the debate by focusing on the constructions of families and family members, their rights and relations in recent theoretical analyses and policy proposals. The basis for this endeavour will be a concept of equality, which is founded on a principle of (sexual) autonomy. Autonomy is defined via its conditions, such as an adequate range of options and the (relative) absence of force and manipulation. The concept will be applied not only to the issue of forced marriage, which has to be defined in relation to various facets of arranged marriage. Moreover, the concept of marriage as such will have to be scrutinized as a cultural construction that is situated squarely on the interface of private and public interests and where the (gendered and heterosexist) norms of living as a "couple" are being negotiated. This strategy of culturalizing the mainstream shall help to transcend a simplistic opposition of culture and autonomy in (feminist) critiques of multiculturalism and to adequately theorize gender equality at the intersection of several vectors of power, such as age, ethnicity, or nationality.

: The Gender Gap: An Empirical Approach to the Growing Female Bar in Germany (3341) The paper presents he findings of a recent empirical study that has analyzed the historical development of the female Bar and its current structure in Germany. It focuses on three categories: What impact has gender on the legal practice of lawyers, how is entry into the profession and qualification influenced by gender and what are the differences of the economic situation of male and female lawyers in Germany.

: The Concept of Deliberative Democracy and Governance in Precarious States Like Afghanistan ( ) In this paper I want to explore that through the precarious state of Afghanistan elements of a deliberative democratisation are identifiable. Through a case study about the constitution of public spheres in Afghanistan with cultural activists, it is possible to show that there are deliberation processes about the legitimization of the Shari'a in the new constitution and through the new media law. The Shari'a is not the only source of legitimization for human rights and social norms in Afghanistan and the religious conception of rights can be compatible with modern Western conceptions. In my main theses I will present that there are tests of translation between secular and religious citizens, which is visible in the artscene in Afghanistan. Is that an attempt to a new reflexive structure in the religious consciousness of the citizens, through the deliberation of democratic norms and values?

Fragmentation ofInternational Law and Indigenous Peoples' Claim to Self-Determination ( ) This essay will engage with concepts of global legal pluralism in the context of debates over transnational law and governance, which examine the situation of societal fragmentation at both domestic and international level. It contrasts these theories with alternate approaches offered by critical and post-colonial legal theorists. In particular, it observes the view of fragmentation as interplay among different communicative systems, which operate in a heterarchical [instead of a hierarchical] order, in contrast with persisting asymmetry among different systems or communicative networks. I examine the consequences of those conflicts mindful of the narratives and claims of those actors who are neither states nor interstate entities; in particular the context of indigenous peoples' claims to permanent sovereignty over their lands and resources, which conflict with transnational corporate interests in the same territory. I examine the conflict, as well as interplay of multiple narratives emerging out of the realities that [allegedly] exist independently from the mainstream or 'official' international and state law. Indigenous peoples face transnational corporate firms, which are not regulated through international law, but mostly through self-regulation or voluntary codes of corporate conduct. In this situation, states have been unable or unwilling to adopt regulation mechanisms that would address corporate social responsibility.

: IRC Lay Participation in Law Conference Events ( ) IRC Lay Participation newsletter listing sessions and organizational meeting

: Global Anticorruption Policy: A New Better Law or Constructing Social Problem. The Polish case (1115) Corruption is still one of the most important issues in Polish public debate. But is the immense interest in this topic, manifested especially by politicians and media, an effect of increasing intensity of this phenomenon? Is corruption really more frequent because of social and economic transformation which undergoes Poland? Sociological research and official data, contrary to what we could expect, do not give clear answers to these questions. At the same time in this hot atmosphere of discussions about corruption, in recent years have appeared many new institutions and solutions which aim was reducing presumed or real scale of this phenomenon. Most of them have been worked out under the influence and in accordance to the set of patterns promoted by international organizations such as World Bank, International Monetary Fund, United Nations or European Union. Hereby I would like to put the question, if these recommendations and solutions produce in fact specific and effective legal solution. This is because I believe that the main outcome of this global pressure on struggling corruption is not even a set of perfect anticorruption mechanisms, but a peculiar discourse, which paradoxically lowers prestige and effectiveness of anticorruption means. I would like to present my conclusions basing on the research made for purposes of my doctoral dissertation.

Ritual Bodily violence and the Production of socio-legal resistance among the Ejaghams of Southwest Cameroon ( ) Various scholars have uncritically hailed the role of law as a vector of social change against female circumcision. However, few writers have meaningfully considered the interplay between the institutionalisation of criminal sanctions against this violent ritual and bodily mutilation practice as a top-down approach and how it can instead backlash thereby producing socio-legal resistance as the case of the Ejaghams in Southwest Cameroon seems to suggest. On the basis of ethnographic data, I argue that a conspiracy between statecentric and other socio-legal factors embedded in both the social structure of the community and in the language of the anti-female circumcision advocacy campaigns have rather connived to fuel resistance to the ritual practices. I will further demonstrate how the national legal vacuum within which these procedures take place in Cameroon despite some positive strides has subsequently disempowered both the local community activists and leaders alike. The overall effect has been a "stalemate" marked by simultaneous acceptance and contestation of the anti-female circumcision campaign messages and difficulties in the evaluation of success among stakeholders. I propose a dialogic model based on community consensus as the way forward. Key words: female circumcision, ritual, criminal sanctions, socio-cultural factors, social change.

Abe Masaki **& Shiro Kashimura: Citizens' Experience of Utilizing Third-Party Advice Providers for Resolving Everyday Disputes in Contemporary Japan** (1106) In Japan, there are various professionals, governmental organs, non-governmental organizations which provide citizens involved in disputes with advice about how to process the disputes. Lawyers occupy only a small part of the whole universe of those third-party advice providers. In most cases, advice is provided by non-lawyers with no charge or only a small amount of charge. Based on a national survey conducted in 2006, we examine how Japanese citizens who utilized those third-party advice providers evaluate them and why it is so.

Adler Daniel **: Justice without the Rule of Law: Lessons from Industrial Relations in Cambodia** (2427) A significant proportion of the worlds work is done in contexts where the rule of law is absent or severely lacking. This paper describes one such context; that of contemporary Cambodia. Based on the literature and two case studies involving recent attempts at industrial relations reform the authors find that there are opportunities to embed labour markets in regulatory frames, even at the periphery of the global economy. In such contexts, however, it is suggested that orthodox models of legal and judicial reform, which focus on drafting better laws and building capacity in judicial and administrative institutions for their enforcement may not be the most effective way forward. Rather, the Cambodian experience suggests that the following were crucial in moving towards better protection of workers' rights: 1. understanding the limitations of law as an instrument for attainment of rights absent independent and accessible judicial institutions; 2. confronting the formidable political and other barriers to the establishment of such institutions (and being open to alternative strategies); 3. recalling that law can have a powerful normative force, even without direct enforcement; 4. engaging with the way in which rights are attained through processes of social contest; and 5. supporting (interim) institutional forums for such contests to be played out in ways which maximize the potential for the disadvantaged to take part and tap in to the legitimating power of the law. Even adopting these strategies, however, it is noted that results have been uneven. In particular the poorest and most vulnerable workers are observed to have difficulty in extracting responsiveness from the sorts of systems described.

Adler Michael **and Richard Whitecross:Can self-representation in tribunals be made to work?** (1307) In an earlier paper , one of us criticised the UK Government's proposals for the reform of tribunals, which were set out in its White Paper on Transforming Public Services: Complaints, Redress and Tribunals , for their opposition to representation at tribunals. Although the White Paper accepts that 'some people will always need a lot of help, perhaps because of learning difficulties or physical disability or language problems' and that 'others will need some degree of help until tribunals are successfully made more responsive', it aims to create a situation where individuals who are in dispute with the state and/or taking a case to a tribunal will be able to present their case without the help of a representative. In contrast to this view, it was argued that, since it was unlikely that such a state of affairs could be achieved ─ while the law remains as complex as it currently is ─ in the short or medium term, representation ─ by a lawyer or, more appropriately in the majority of cases, by an expert lay representative ─ was still required and that resources for this would have to be found. The effects of representation on tribunal outcomes are well-established. In research conducted for the Lord Chancellor's Department in the late 1980s , Hazel and Yvette Genn established that having a representative (although not necessarily a legal representative) increased the probability that litigants would be successful from 30% to 48% in Social Security Appeal Tribunals, from 20% to 38% in Immigration Hearings, from 20% to 35% in Mental Health Review Tribunals and from 30% to 48% in Industrial Tribunals where the employer was unrepresented. The White Paper notes that notes that the UK spends about £200m per annum through legal aid on representation at tribunals (mainly on asylum and immigration, mental health and welfare benefits cases) and thinks that this is about right. It argues that the extent to which individuals can and should be represented at public expense depends on the nature, complexity and seriousness of their case, what needs to be done and the individual's own capabilities, and asserts that full-scale legal representation at the taxpayer's expense in every administrative dispute or tribunal case would be 'disproportionate and unreasonable' . It is hard to take exception to this general statement and there clearly is a case for looking at the way in which public expenditure on legal representation is used in a more flexible way. Thus, for example, having proposed the establishment of a two-tier Tribunals Service, in which appeals to the second-tier or Upper Tribunal will require leave and be restricted to points of law, there is a strong case for arguing that representation, by a lawyer or a lay expert, should be available to everyone who appeals to a second-tier tribunal and wishes to avail themselves of it. That said, we have now come to the conclusion that the position that we previously adopted, and that was outlined above, was mistaken and is in need of revision. The issue is not so much the complexity of the law as the mode of dispute resolution that tribunals should adopt. In order to develop this argument, we first describe two contrasting modes of dispute resolution, i.e. those adopted by the civil courts and by ombudsmen , noting that representation is essential in most court cases but irrelevant in most ombudsman procedures. We then describe the mode of dispute resolution adopted by tribunals, compare it with that adopted by courts and ombudsmen, and consider the implications of this comparison for representation. Finally, we consider how the mode of dispute resolution adopted by tribunals would need to change for the unrepresented litigant not to be at a disadvantage.

Agrawal Arnim **& Uttara Bhansali: Emerging Demographic Dynamics, Globalization and Migration:Socio-Legal Aspects of Human Rights** (1538) Due to Various factors, there has been a steep decline in the next population growth in the developed world. As per world population council data, the Replacement Fertility Rate (RFR) has reached to a panic-raising figure of 1.5 in many developed countries e.g. Italy, Japan and Scandinavian countries. Most of the North block countries will reach this dreaded figure within one decade with some sole exceptions like USA (thanks to the much hated and debated immigration). Similarly the median age in developing countries is nearing 50 years and very soon it would be on the wrong side of fifties. Italy has already reached a median age of 58 years. However, the citizenship related laws of developed countries treat migrant workers as economic refugees and hence at many places these workers are denied fundamental rights such as maintaining their families at their workplaces, meeting their cultural and religious needs. In most developed countries the family members of the working member are denied resident visa. His dependants are denied the legal equality for pursuing higher studies as in case of family members of the citizens of the developed world. Besides this, migration often hits women most. Women and children are often left in home countries to fend themselves. This is "feminization of deprivation" caused due to economic strengths and needs of developed countries but inflicted on the people of poorer countries. The Constitution of WTO contains no clause on social on social protection apart from a vague reference in the preamble to the relations between the easing of restriction on trade, full employment and migrant workers. So far UN system has failed in protecting human rights of migrant workers and their family members as envisaged in International Covenant on Economic, Social and Cultural Rights (ICESCR). The proposed paper intends to highlight the socio-legal aspects of the problem of human rights of migrant workers in developed countries and looks for possible remedies and solutions.

Agrawal Arvind Kumar **: Globalization, Migration, Law and Multiculturalism:A Socio-legal Perspective** (1538) In the era of Globalization, a new philosophy and ethics of economy, polity and culture is emerging. According to a report

by UN University of Globalization of Human Rights, globalization moves money, people and ideas around the world with astonishing speed. Migration of workers across the borders of countries is a vital feature of this process of globalization. With migration it is not the people only but their culture also comes with them. Thus a new scenario of multiculturalism is emerging. The 'circumstances of multiculturalism' shall have to face Ghettoization, ethnic consolidation and majority/minority clashes. Already a debate on clashes of civilization has begun. There shall be raging conflict between 'essentialism' v/s 'universalism'. This paper intends to review briefly major perspectives on multiculturalism, especially, in the wake of Brian Barry's famous work on "Culture and Equality" and subsequent debate on the related aspects of laws on migrants and theory and praxis. The socio-legal perspective of legal construction from the point of view of Constitutionalism, nation-state and citizenship and how laws in certain instances like France, Germany and Canada have curbed migrants' rights and evolution of a multicultural society would be highlighted in this paper.

Aharonson Ely **: Lost in Translation? Reading Racism through the Interpretive Frame of Hate Crime Jurisprudence** (4521) Since the 1980s, various manifestations of racism started to be tackled through a novel legal framework, hate crime legislation. Compared with previous mechanisms through which racist violence had been addressed throughout American history, the form, functions, meanings, and effects that define this legal framework signal a reconfigured image of the relation between state and racism. However, this development emerges within a socio-political setting which is still marked by acute racial disparities and by persisting forms of institutional racism. In this paper, I explore the ideological functions played by hate crime jurisprudence in contemporary American culture by focusing on one feature of criminal law: its operation as an interpretive frame through which social experiences and their political implications are construed. Criminal law provides a structured discursive terrain wherein certain aspects of social relations are illuminated while others are obscured. Essentially, within this doctrinal frame, social pathologies are understood to derive from the decisions and actions of an individual transgressor rather than from the broader social, political, and cultural conditions which shaped his behavior. Hence, the undercurrents produced by reconstructing the sources and consequences of racist behavior within this frame should be scrutinized. I will particularly focus on deciphering how (a) the interplay between agency and structure, and (b) the relation between state and racism, are signified within this frame. This inquiry revisits hate crime as a paradigmatic site of the concurrent transformative and stabilizing tendencies which characterize the political organization of racial relations in early 21st century America.

Ahmed Tawhida **:The Impact of EU law on Minority Rights: Exploiting Existing Treaty Provisions** (1125) The EU is perceived as having little to offer for the protection of minority rights. This paper challenges that perception. Through the example of minority linguistic rights, it explores the potential of the EU's existing legal framework to affect minority rights. The fact that the EU excludes minority languages from its official language policy at the EU level is a recurring aspect of existing scholarship and a key premise for negative conclusions about the EU's protection of minority linguistic rights. However, minority linguistic rights (as found within international law) do not see the use of minority languages at an official level as the only means of protecting minority languages. This paper examines whether, and if so, how, EU law does or could contribute to (other elements of) the protection of minority linguistic rights.

Akbas Kasim **: A Frame for the Features of Legal Profession in Turkey** (2138) In this presentation, the legal professions in Turkey will be revised. Since legal professionals get the dominant legal culture in law faculties; some facts about law schools in Turkey will be overviewed. Then the legal professions, which the law school graduates may enter, will be mentioned. And then working circumstances and social status of each legal profession will be investigated. Meanwhile the conditions of entering to the each profession will be touched.

Ali Farrar Salim **: Responding to the 'Human Rights' Discourse 'Islamically: In Search of a 'Humane' Dialogue** (2416) Abstract: "Responding to the 'Human Rights' Discourse 'Islamically': In Search of a 'Humane' dialogue." In a previous article (see: "Revelation, Philosophy and International Human Rights: Reconciling the Irreconcilable?" (2005) 13 IIUMLJ 259), I questioned the attempts made by some authors from within the Muslim community to "reconcile" the Shari^ah with "International Human Rights" within the existing epistemological and organizational framework of the UN. It was submitted that their arguments subordinated the Shari^ah to philosophical postulates which would run counter to most "Islamic" and "Islamist" thought, with the exception of the Mu^tazilah who, apart from a brief embrace with the ^Abbasid Caliphate, have been unable historically to dominate Muslim opinion. It was suggested that Muslims must look at their own tradition, beyond the confines and concepts formulated by bodies in which they have played little part, and to re-negotiate their international relationships on a more equal footing. In this paper, I look in detail at alternative models through which Muslim states and their representatives might be better able to build new international relationships and secure enduring "cultural living space." It looks first at existing attempts, namely the 1990 "Cairo Declaration on Human Rights in Islam." This was drafted by the member states of the Organisation of Islamic Conference (the OIC) and was a response, through their own organizational framework, to the challenges posed by "International Human Rights Law." This paper examines the substance of the Declaration and assesses its success, if any, in addressing the concerns of the populations of its member states as well those of "western" nations. The second part of this paper is more speculative and relies upon historical precedents from within Islamic history. It focuses, in particular, on the Treaty of Hudaybiyah enacted by the Prophet himself, and the treaties entered into by the Ottoman Sultans. It attempts to draw lessons from their practices of international relations and to project them into the current debate with "Human Rights." The paper will suggest (tentatively) that these precedents indicate that Muslim and non-Muslim states are better advised to sign multiple bilateral treaties, or multilateral single issue treaties, rather than multilateral agreements that purport to have universal application for all time. From the perspective of non-Muslim states, I will argue it is far more likely that the content of such a treaty will be enforceable and enforced in Muslim states – a concern that continues to pre-occupy many western states on the UN. From the perspective of Muslim states, I will also argue that such an approach would address their particular local needs and concerns without sacrificing economic and political ties with the West - an issue which has come to the forefront with the rise to power of Hamas in the Palestinian territories. In order for us to reach this stage, however, there needs to be a concerted effort to engage both Muslim and non-Muslim academics in comparative discourses and to establish joint Institutes in Comparative Studies in which neither side has any controlling influence. Through this mechanism, we might be able to begin to unlock the cultural doors that continue to separate us and to dispel some of the mutual prejudices that continue to cloud our judgments.

Alkon Cynthia **, Plea Bargaining: Are we importing a bad idea to troubled criminal justice systems?** (4202) Over 90% of all criminal cases in the United States are resolved through plea bargaining. This form of case resolution was previously unknown in most of the countries of the former Soviet Union and the former Yugoslavia. Changing criminal procedure codes in many of these countries increasingly include some form of plea bargaining. This paper will critically analyze the increased use of plea

bargaining focusing on three countries: Moldova, Georgia, and Bosnia and Herzegovina. This paper will also discuss international aid given, particularly by the United States, to encourage the development of plea bargaining and give specific recommendations for legal assistance providers.

Almond Paul **; Public Perceptions of Actual and Proposed Legal Responses in Work-Related Fatality Cases** (1212) Work-related fatality cases pose serious problems for systems of workplace health and safety regulation as they involve serious harms, and impact significantly upon public risk perceptions. A series of high-profile failed manslaughter prosecutions have prompted a movement towards legal reform to create a new 'corporate manslaughter' offence. While the perception that there is a high level of public concern about these cases has been cited as a justification for reform of the law, no detailed empirical evidence of public opinion on this issue exists. This paper discusses the findings of a qualitative empirical study that aimed to interrogate the key trends within, and factors determining, public perceptions of the nature of these cases and the appropriate legal responses to them, via an interview methodology. The data gathered demonstrated that there are high levels of underlying public concern over work-related fatality cases as a general issue, but specific attitudes are by no means universal. In addition, the relative seriousness of specific cases tended to vary according to several factors, including the number of fatalities involved, the perceived salience of the case to the respondent, the underlying political and moral values of the respondent; and the victim's identity. The paper demonstrates the pressing need for further empirical research in this area.

Al-Ramahi Aseel **:Wasta-Corruption Or Networking in the Jordanian Arbitration Process** (4414) This paper aims to describe the tribal history of Jordan and how wasta as mediation was used among the Bedouins. It also outlines the present face of wasta and the Jordanian government's efforts to eliminate wasta as corruption. The paper identifies the differences between east and west in relation to commercial expectations and concludes that incorporation of wasta in the international commercial arbitration process is a viable solution in order to achieve maximum satisfaction of both Jordanian and western parties. I will examine the effect of wasta on the commercial arbitration scene in Amman, Jordan. "Wasta" means, literally, an act of mediation or intercession. As well as the act of mediation/intercession, it also denotes the person who mediates/intercedes. Historically, this intermediary role has been associated with prevention of retaliation in inter-personal or inter-group conflict. The more modern face of wasta is intercessory wasta that involves a protagonist intervening on behalf of a client to obtain an advantage for the client. The Jordanian society is based on tribal traditions and the tribes in Jordan have a long history of dispute resolution involving wasta that is still practiced today. When examining the arbitration scene in Amman, there is, at first, a sense of acceptance to the strictly legal western traditions and an "open arms" welcoming of the whole processes. However, it seems that, once the surface is scratched slightly, the rosy picture is not a true representation of the actual situation. The expectations of many of the Jordanian lawyers and their clients are quiet different from their western counterparts. This gap in expectations is what seems to frustrate the two sides when they meet in the arbitration processes. Cultural differences and the long present hierarchies of the colonial world engender a generalised suspicion towards western parties on the part of the Jordanian parties. Somehow, such conflict brings with it feelings of colonisation, victimisation and inferiority especially in a country like Jordan, which shares borders with many of the politically volatile countries in the region. There is sometimes a feeling of revenge. International commercial arbitration finds itself at the very centre of conflicting understandings and historic bitterness engendered in a colonial context. This situation is compounded by the contrast between western commercial interests' quest for certainty and predictability of outcomes and the Arabs' focus on sustaining relations and a culture of seeking pragmatic solutions to conflict. The wasta system is very much part of the Jordanian society's fabric and its examination is necessary to the understanding of the disputing culture of the country. By taking the best features of wasta and incorporating them into the arbitration process, the satisfaction of the Arab players is increased. Thus, achieving a more efficient and effective dispute resolution system that also fulfils western parties' expectations. It is simply recognising the differences between the two sides and designing a dispute resolution system that will maximise both sides' positives and resolve some of the tensions between East and West.

Andersen Stine **: Responsive Enforcement - A Holistic Approach to Community Dialogue** (1114) This paper attempts to develop a conceptual approach to the general EC Treaty infringement procedure in terms of responsive enforcement. The purpose of the conceptualisation is to enable a discussion of enforcement without being confined to matters of power and/or compliance ability and to give an explanation for the Commission's responsive interaction with non-compliant states. The particular type of dialogue is explained by means of three intertwined factors: (i) the discrepancy between the Community's legal and de facto authority, (ii) the nature of the normative framework and (iii) the institutional design of the infringement procedure. It will be explored how the Treaty relies on the Commission to engage in a politically responsive dialogue without undermining the rule of law. The Commission's function is twofold. One is to facilitate a process by which Community law is determined; the other is to insist on normative boundaries to Member State aberration. Although the Commission may be thought of as a strategic player, the considerations guiding its approach towards the Member States are argued to be those of diplomacy and appropriateness.

Andrei Andrea **: The Structure of the International Anti-Doping Regime in the Framework of Global Administrative Law** (1228) Globalization has promoted an increase in direct administration by international agencies, private or public organizations, and other forms of cooperative administrative arrangements. Global administrative law takes hereby a closer look on mechanisms, principles and practices that affect the governance of these global administrative bodies. The International Olympic Committee as a non-governmental umbrella organization in the Olympic Movement created the World-Anti-Doping-Agency as an independent non-governmental association with the task to promote, coordinate, and monitor at the international level the fight against doping. WADA is "the global agency" of the sports world in charge of harmonizing the rules worldwide by releasing a World-Anti-Doping-Code, international standards and best practice recommendation. It is placed at the centre of the international anti-doping-regime, but only one of many institutions within the private / hybrid-private-public system that makes rules, investigates violations and adjudicates them in a "Sports Court" (CAS), supposedly without much governmental influence. But governments demonstrated an interest to defeat doping by signing international declarations and recently a treaty under the auspices of UNESCO. The anti-doping-regime involves administrative actions such as rule-making, administrative adjudication and other forms of regulatory administrative decisions and management, resembling quasi-legislative, -executive and -judicial powers. These administrative bodies are connected on a contractual relation, but perform a public role. As a result one may wonder how these governing bodies involved in the international anti-doping-regime relate to each other and how far general administrative values, such as fairness, accuracy and efficiency are or should be implemented, in the framework of global administrative law.

Apreotesei Alina Ioana **: The Victims of the Crimes under the Jurisdiction of the International Criminal Court** (2433) This article's goal is to draw attention mainly on the status and role of the victim within the jurisdiction of International Criminal Court. In the history of international law, the victim was often seen as a witness. The ICC managed to change that fact and for the first time in the history of international law, the victim can participate in a criminal trial in his or her own name. The victim became more than a witness. This article will follow the role of the victim as an independent participant in a criminal trial. A short introduction of the first permanent international criminal court is provided. The article will focus on the definition of the victim, the protection during the trial, the participation and access to justice and the reparation regime. Finally a few conclusions are taken into account.

Ariza Libardo José **: We Are Indians Too: Anthropological Knowledge, Indigenous Subjectivity, and Constitutional Adjudication** (3108) Since the beginning of the 90s, indigenous people have become an important, symbolic population for the Latin-American legal and political regimens. This situation is rather astonishing. For centuries, being an "Indian" was synonymous of primitivism and savagery and the legal politics designed for them were written with the white ink of assimilation. Now, due to the favourable legal and political context for indigenous identity, peasants and other rural populations want to be and become Indians. This process of ethnic re-emergence has created the immediate need for legal operators to construct a strategy of constitutional adjudication that controls those processes, while at the same time helps to produce and reproduce such a valuable population. It is a specific form of bio-legality in which legal forms are designed to produce, reproduce and control a specific population. This paper analyses the constitutional creation of the indigenous legal subjectivity in Colombia from the perspective of legal-knowledge regimens. In this process, the anthropological knowledge blends with constitutional adjudication to create a regime that defines who can be regarded as an "authentic Indian" and, at the same time, excludes those populations that do not fit the regimen's discourse about indigenousness.

Armour John **, Simon Deakin, Priya Lele & Mathias Siems: How Legal Rules Evolve: Evidence from a Cross-Country Comparison** (2214) Much attention has been devoted in recent literature to the claim that a country's 'legal origin' may make a difference to its pattern of financial development and more generally to its economic growth path. Proponents of this view assert that the 'family' within which a country's legal system originated—be it common law, or one of the varieties of civil law—has a significant impact upon the quality of its legal protection of shareholders, which in turn impacts upon economic growth, through the channel of firms' access to external finance. Complementary studies of creditors' rights and labour regulation have buttressed the core claim that different legal families have different dynamic properties. Specifically, common law systems are thought to be better able to respond to the changing needs of a market economy than are civilian systems. This literature has, however, largely been based upon cross-sectional studies of the quality of corporate, insolvency and labour law at particular points in the late 1990s. In this paper, we report preliminary findings based on newly constructed indices which track legal change over time in the areas of shareholder, creditor and worker protection. The indices cover five systems for the period 1970-2005: three 'parent' systems, the UK, France and Germany; the world's most developed economy, the US; and its largest democracy, India. The results cast doubt on the legal origin hypothesis in so far as they show that civil law systems have seen substantial increases in shareholder protection over the period in question, and cannot be accurately characterised as less shareholder-friendly than common law ones. The results also show that the pattern of change differs depending on the area which is being examined, with creditor rights and labour rights, for example, demonstrating much more divergence and heterogeneity than shareholder rights. The results for labour rights are more consistent with the legal origin claim than in the other two cases, but this overall result conceals significant diversity within the two 'legal families', with different countries relying on different institutional mechanisms to regulate labour.

Arold Nina- Louisa **: The legal culture of the European Court of Human Rights** (4139) This paper summarizes the findings of a study on the legal culture of the European Court of Human Rights. Special attention is given to the question of how individual legal, vocational, historical and other experiences of the judges have an impact on their voting behavior. Starting from the debate on convergence and divergence of law, it is legitimate to expect that these formative differences in individual experiences of the judges should matter. Surprisingly, the results gained through interviews, field study and empirical analysis of judgments show that their diversities in background are no hinder to convergence inside the Court. Especially, it is not the mentalités of the judges that creates problems to the coming together of differences. Instead, it is in fact the mentalités of judges that promotes convergence through pushing specific ideals and fostering homogeneity.

Arthurs Harry W **: The Art of the Possible: Evasion, Enforcement and Compliance in the field of Labour Standards** (1402) This paper comprises chapter nine of Fairness at Work: Federal Labour Standards for the 21st Century - a recent report to the Canadian federal government. It analyzes the extent of non compliance with labour standards legislation, and its structural, institutional, substantive and processual causes and cures. The full report and supporting research studies are available online at: http://www.fls-ntf.gc.ca

Aschke Manfred **: Religion and Secular Law in the Distributed Order of Modern Society** (2428) This contribution deals with the question if a societal primacy of religion is compatible with the functional differentiation of modern society. The theoretical concept of functional differentiation tends to suppose an equilibrium and an equivalence of particular subsystems. Empirically there are more clues to suppose disequilibrium, disproportionality and even discrepancy. The question is then how modern society can guarantee its integration. This contribution suggests a concept of distributed order by autonomous evolution and co-evolution of particular subsystems, a concept which may also help to understand the specific dynamics and learning capacity of modern society. The central thesis is: Modern society is characterised by distributed order. Modern society therefore needs weak mechanisms of integration which respect and protect the autonomous evolution of particular subsystems. The core concept of western Constitutions consists of a set of weak integration mechanisms, like fundamental human rights and balance of power, which aim at minimizing the disequilibrium of subsystems instead of maximizing the equilibrium of social order. This will be the theoretical background to discuss the role of religion and secular law in modern society.

Astor Hilary **& Helen Rhoades: Hybrid professionals? - Fashioning Family Lawyers and Moulding Mediators** (2423) Ten years after the introduction of shared parenting legislation, the Australian government ushered in a package of reforms in July 2006 which have created yet another new approach to dealing with post-separation disputes over children. These developments involve a de-centring of the legal profession and an increased emphasis on non-adversarial dispute resolution processes. Ironically, this impetus has resulted in legislative changes which are not particularly 'child focused', in as much as they favour the use of presumptions about children's best interests. The key elements of the 2006 reforms are a new legislative framework

for parenting arrangements which privileges equal or substantially equal time with both parents, and a new mandatory mediation requirement for parents who wish to apply for parenting orders. The two limbs come together through provisions which require family mediators to raise the idea of equal time arrangements with parents and give mediators the power to police parents' engagement with the dispute resolution process. Fathers' groups, whose lobbying lead to the recent changes, blamed the legal profession for the failure of the 1990s shared parenting reforms. The latest changes are in stronger terms ('equal' rather than 'shared') and the primary burden for achieving their normative agenda has been placed on mediators rather than lawyers. At the same time, however, the government's policy rhetoric has made it clear that lawyers need to develop a more child focused approach to working with clients in family law matters. This paper draws on interview data collected for a study of inter-professional practices in the family law system to explore the meaning of these policy shifts for lawyers and mediators. The paper focuses in particular on the meaning of these changes for mediators' neutrality and lawyers' advocacy role, including when they work with or act for victims of family violence.

Aviram Amitai **: Bias Arbitrage** (2137) The production of law – including the choice of a law's subject matter, the timing of its enactment and the manner in which it is publicized and perceived by the public – is significantly driven by an extra-legal market in which politicians and private parties compete over the opportunity to engage in bias arbitrage. Bias arbitrage is the extraction of private benefits through actions that identify and mitigate discrepancies between objective risks and the public's perception of the same risks. Politicians arbitrage these discrepancies by enacting laws that address the misperceived risk and contain a "placebo effect" – a counter-bias that attempts to offset the pre-existing misperception. If successful, politicians are able to take credit for the change in perceived risk, while social welfare is enhanced by the elimination of deadweight loss caused by risk misperception. However, politicians must compete with private parties such as insurers and the media, who can engage in bias arbitrage using extra-legal means. This article analyzes methods in which parties engage in bias arbitrage and the effect of interaction between potential bias arbitrageurs on the production of law.

Aviram Amitai **: Counter-cyclical Enforcement of Corporate Law** (2137) Corporate and securities laws are seen to mitigate corporate fraud by manipulating the incentives of agents: presenting corporate agents with a probability of being caught and punished if they commit fraud. This article suggests that the same laws also affect corporate fraud in a significant but unappreciated manner, by manipulating the perceptions of the principals: affecting the principals' efforts in monitoring the agents by making them perceive the risk of fraud as more or less likely. Due to several cognitive biases discussed in this article, principals misperceive the risk of fraud by their agents in a cyclical manner: they under-estimate the likelihood of fraud during booms and over-estimate it following busts. As a result, they insufficiently police the agents during booms and excessively do so during busts. Conspicuous law enforcement triggers cognitive biases that could be thoughtfully used to counter the public's cyclical bias. But political pressures that prosecutors face, as well as their failure to consider law enforcement's effect on principals' perceptions, result in enforcement that is itself cyclical and may exacerbate the biased perception of the risk of fraud. Monetary policy is analogous in requiring counter-cyclical government intervention, and central banks have successfully stepped up to the task despite facing similar pressure not to intervene counter-cyclically. This article concludes by examining whether institutional safeguards that free central banks to operate counter-cyclically can be adapted to the context of corporate fraud.

B Christoph **. Graber: Developing Legal Safeguards for Traditional Cultural Expressions: Collisions of Archaic and Modern Patterns of Social Organisation** (2341) With regard to developing legal safeguards for Traditional Cultural Expressions (TCE) at the international level there are many contradictions: One that is particularly interesting for lawyers trying to apply modern copyright instruments to protect TCE is a collision between modern and archaic perceptions of TCE: Copyright based approaches presuppose that TCE are "works of art or literature". Anthropologists, however, point to the fact that TCE fulfil ritual or indicative functions which are not comparable to the western concept of autonomous modern art underpinning the copyright definition of the protected "work". The paper wants to offer a closer look at some collisions between particular knowledge forms and principles of organisation of tribal societies and modern law. In a first step, reasons for such conflicts are explored and, in a second step, human rights are introduced as collision norms.

Bakker Laurens **: Threat or Right? Dayak Indigeneity as a Source of Law in East Kalimantan** (4208) The beginning of the twenty-first century was characterized in West and Central Kalimantan by severe riots, wars according to some, between indigenous Dayaks and migrant Madurese, resulting in hundreds of casualties and tens of thousands of displaced people. Dayak representatives stressed Dayak indigeneity in Kalimantan, and the righteous grounds to their "retaking" of land and resources. Peace was maintained in East Kalimantan, but the rise to prominence of Dayak in other provinces did not go unnoticed there. In the following years, East Kalimantan Dayak steadily worked on a social organization among ethnic lines. Unlike in West and Central Kalimantan, Dayak influence in East Kalimantan takes place through dialogue albeit supported by suggestions to ethnic violence when deemed necessary. In this paper I discuss the manners in which Dayak indigeneity is used as a source of rights from which "law" and legitimacy can be derived. Legitimacy, for Dayak representatives, is a subtle and hard to obtain quality, as it needs to be gained not only with the government but also with the Dayak communities. Rivalry between representatives, narratives of authenticity, and strategic inter-ethnic alliances are essential but frequently contested aspects of the political constellation of Dayak leaders.

Baldassi: Cindy L. **: Embryo Donation & the Concept of Adoption: Women's Perspectives?** (4112) A review of embryo donation, the concept of adoption and gendered ideas about genes

Barbero Iker **: Citizenship and immigration: socio-legal expressions as alternatives** (4111) International migrations are one of the main reasons for cultural diversification (linguistic, religious…) in the contemporary European Union. The legal field is not unconnected to this multiplicity. New normative structures arise to regulate many of the socio-legal relations (family, educative or power matters), and coexist, or sometimes, they even clashes with the official State Law and the rule of law. However, the objective of this paper is to show how certain citizenship expressions, seen from a legal pluralistic perspective, suppose a real alternative to the situation of exclusion that a considerable amount of the population suffer because of their condition of foreigners. This circumstance denies then the access to many of the privileges granted by the national citizenship, as many authors point out, an institution in decadence. The text will refer to those political and normative actions that purchase "presence", or substantive citizenship, to immigrants in order to adapt to the new necessities of the global context. Such practices, do not only open alternative ways for political, normative or social inclusion, but also suppose a heavy argument for the necessary redefinition of the subjects of citizenship rights in the 21st century.

Barnett Larry D. **: The Roots of Law** (2410) This Article rests on the macrosociological thesis that (i) the concepts and doctrines used in law are determined by the properties of society and that (ii) these properties are produced by large-scale forces. The thesis thus maintains that the content of law is not shaped by the persons who serve as legislators, judges, and executive-branch policymakers; such individuals are merely the vehicles by which societal conditions mold law. To illustrate, the Article examines shifts in law in the United States on a number of subjects, including law setting the age of majority and law regulating access to abortion, and it links these shifts to changes in specific aspects of U.S. society. Data from the 1960 census on the forty-eight coterminous states are analyzed with logistic regression to identify systemlevel properties distinguishing states that liberalized their law on abortion between 1967 and 1972 (i.e., before Roe v. Wade) from states that did not. The regression analysis, in conjunction with time-series data for the nation as a whole, suggests that the liberalization by states and by Roe of lawimposed restrictions on abortion was associated mainly with increases in school enrollment and educational level among young women. This Article advances the premise that long-term growth in the quantity of knowledge broadly affected the American social system and its law, and ascribes the rising prevalence and longer duration of education among women—as antecedents of the liberalization of law on abortion—primarily to the expansion of knowledge.

Barrett Kathleen **: Corrupted Courts: A Cross-National Perceptual Analysis of Judicial Corruption** (2116) This paper examines the factors that influence perceptions of judicial corruption. A statistical analysis using data from such sources as Transparency International, the World Bank, and Freedom House demonstrates that aspects of accountability (the ability to remove judges) and transparency (freedom of the press) are only weakly related to perceptions of judicial corruption. A systematic country comparison shows that the structure of the judicial system explains variations in perceived judicial corruption.

Barrett Kathleen **: Collaboration versus Confrontation: Constitutional Courts Under the Influence of the European Court of Justice** (2422) National constitutional courts and legislatures in post-communist countries can choose to be cooperative, where the institutions work together to promote the rule of law, or confrontational, sparring to achieve a political end. This relationship becomes more complex in the shadow of the European Court of Justice. This paper will argue that the national constitutional courts and legislatures choose between the two behaviors based on a broadly strategic cost/benefit analysis that includes, and may even prioritize, factors other than policy. A methodology for this study is presented as well as limited preliminary results based on the methodological design.

Barron Richard **Parker: A Proposal for a Reformed and Strenghtened United Nations Security Council** (2121) Twenty seats on the proposed new United Nations Security Council would be based on neutral criteria of population and economic size. Four additional nations would be elected by the General Assembly for terms of two years. Multiple seats for individual nations would be allowed. The veto would be abolished. Abolishing the veto would be made palatable to the current five permanent members by amending the United Nations Charter so that Security Council resolutions would not be legally binding on United Nations member states. Unless this fundamental change is made, the five current permanent members will not give up their veto power for fear of loss of sovereignty. Critics will say that this change would reduce the Security Council to a debating society, but in a reformed Council, the current five permanent members could not stop debate by using or threatening to use their veto. Voting in a reformed Security Council would more clearly reflect the real balance of power and opinion in the world. What the Council lost in legal authority, it would gain in social and political authority. One sort of power would be substituted for another. The legitimacy and thus the effectiveness and usefulness of the Security Council would be increased.

Barron Parker Richard **: Why Has It Been So Difficult To Develop An Internal Legal Culture In Japan?** (4214) Why has it been so difficult for Japan to develop what Lawrence Friedman called an "internal legal culture", an autonomous group of legal professionals. Recent scholarship focuses on the deliberate policy decisions made by the Japanese government over many decades to frustrate the rise of an independent bar and judiciary. I argue that background characteristics of Japanese culture must also be part of a full explanation. The dense web of social relationships and the power of social roles in Japanese society makes law less necessary and less attractive as a means of ordering society. In addition, Japanese civilization, compared with Western European or American civilization, places a relatively low value on language. There is no tradition of political rhetoric in Japan. There is no analogue in Japan to the extraordinary reification of language in Western philosophy, from Plato to Kant's philosophical idealism. From the Japanese point of view, language (law) is an inefficient, awkward way of coordinating human behavior. It is not surprising that discretionary administration by a powerful bureaucracy has been preferred to publicly published law interpreted by an independent judiciary.

Barskanmaz Cengiz **: "Rasse" or Race in German Law? A Manifesto for a German Critical Race Theory** (2216)

Barskanmaz Cengiz **: The Headscarf in the Postcolonial Legal Condition** (1434)

Baumle Amanda **/ D'Laine Compton: Legislating the Family: The Effect of State Family Laws on the Presence of Children in Same-Sex Households** (2129) In 2006, various conservative groups in the United States announced an initiative to pass laws prohibiting the adoption of children by gay male and lesbian couples. In support of such legislation, they contend that children need both a male and female role model in order to develop properly; being raised in same-sex families is not considered to be in a child's "best interest." Currently, five states have laws that restrict adoption by same-sex couples and/or single individuals, two states prohibit fostering by same-sex couples, and six states prohibit surrogacy agreements. Given these proposed and existing laws, one would expect that the shape of gay male and lesbian families would be affected by legal forces. Faced with legal animus or outright legal prohibitions on adoption, fostering, or surrogacy, gay men and lesbians could be deterred from family formation. In this article, we use 2000 U.S. Census data to assess the validity of this assumption by examining the effect of current family laws and regulations on the presence of children in same-sex unmarried partner households. In doing so, we seek to ascertain the manner in which gay men and lesbians understand and use (or avoid) the law in family matters. Our findings suggest that these laws perhaps have less of an effect on the presence of children in same-sex families than one might expect.

Baxter Hugh **: Habermas, Democracy, and the "Postnational Constellation"** (1533) By 1992, in his book Between Facts and Norms, Jürgen Habermas had developed a comprehensive "discourse theory of law and democracy." Although the domain of that theory was not entirely clear, Habermas's analysis seemed geared primarily to the nation-state. Since then,

however, Habermas has expanded his inquiry to consider economic globalization and the development of political organizations beyond the nation-state (primarily the EU, but also the UN). Habermas now speaks of the need to recast the Kantian "cosmopolitan" project as a "constitutionalization of international law" for a "post-national constellation." This paper investigates these developments in Habermas's thinking. My focus will be on the following difficulty: Habermas argues that the democratic project in this post-national constellation requires us to push beyond the nation-state. But at the same time, the resources Habermas's discourse theory identifies as essential to democracy – a "vibrant" civil society, an undistorted public sphere linked to political decisionmaking institutions, and a common political culture – are lacking beyond the national level.

Benda-Beckmann Franz von **: On the transnationalisation of ideas about law** (1217)
One important aspect of the globalisation of law is the transnationalisation and glocalisation of approaches to conceptual understandings of what "law" is (what is law? Can there be legal pluralism?) and methodological and theoretical assumptions and approaches to the social significance of law in societies. As recent discussions in the Law and Society Association (see Law and Society Review Vol. 37, 2003) and in the circle of comparative lawyers (Twining 2005) show, these processes of how and with what success ideas about law travel is very much on the agenda and a number of epistemic communities are engaged in their transnationalisation. "Law and society as law and development", as Garth wrote in 2003. I focus on the transnationalisation and glocalisation of the "anthropology of law" in the context of the academic cooperation between Indonesia and the Netherlands and on the diffusion of the notion of legal pluralism through the IUAES Commission of Legal Pluralism. These processes are only a part of the wider transnationalisation of theoretical approaches to law, and may seem insignificant if compared with law and society scholarship or analytical jurisprudence. But those familiar with Asimov's Foundation and Empire series may observe that while when looking at export of Euro-American law, and and possibly at a particular US American style of law and society scholarship we are indeed looking at "empire", the more subversive message of the anthropology of law may have fostered the "foundation" at the edges of empire.

Benda-Beckmann Keebet von **: Religion, Juridification and Dispute Management** (2416)
This paper will discuss some of the theoretical reasons why religion has largely been absent in analyses of the role of law in a globalising world, and more specifically of the expansion of mechanisms of dispute management under processes of globalisation. The paper will discuss some of the contradictions and paradoxes that emerge out of different perspectives on globalisation. A number of theoretical strands will be discussed in conjunction: debates about alternative dispute resolution, debates about the increasing importance of religion, and the debate about increasing juridification. It will be argued that the reluctance to take religion into account and a general tendency to see religion primarily as a source of conflict has led to a skewed view on developments in dispute management and juridification.

Benedet Janine **& Isabel Grant: Hearing the Sexual Assault Claims of Women with Mental Disabilities - Evidentiary and Procedural Issues** (4511) In this paper, we examine whether existing evidentiary and procedural rules in the Canadian criminal trial process disadvantage women with mental disabilities in ways that are specific to the intersection of discrimination on the grounds of sex and disability. We analyze the case law through the supposed tension in feminist theory between the need to protect women from violence and the goal of promoting their sexual autonomy; and the tension in critical disability scholarship between biomedical and social models of disability. We consider the relationship of disability to assessments of credibility; the use of third party records and sexual history evidence. We note the ways in which women with mental disabilities are "infantilized" and competing stereotypes of their asexuality and hypersexuality are used to deny them justice when they complain of sexual assault.

Berghahn Sabine **& Maria Wersig: Legal and social dimensions of the male breadwinner model in Germany** (4538) German women find it more difficult than men to establish financial independence through the labour market or social (security) benefits and are more often dependent on the income of the husband or partner. The structural inequalities between women and men in welfare state regimes are described by empirical scholars as a result of the male-breadwinner model. It`s legal basis is the strict division of the public and private sphere, founded by alimony law and the protection of marriage as a constitutional value und right. This paper aims to identify the elements of the male-breadwinner model within the German legal system. Although regulations appear to be sex- neutral in terms of their wording, their gendered impact is the financial dependence of women on men, because their personal entitlements to social security benefits are inadequate and alimony is given priority to means-tested benefits. This raises questions concerning equality law and efficient strategies for change.

Berghahn Sabine **& Petra Rostock: Conflicting neutrality? Regulations concerning the Muslim headscarf in German federal states and other European countries** (1434) By Sabine Berghahn and Petra Rostock, VEIL-project

Bergling Per **: Rule of Law in Development and State Building** (4204) Development agencies, international financial institutions, UN peace-building missions, and a range of other international actors promote "Rule of Law Reforms" as a means to advance a variety of development goals, ranging from poverty eradication to peace and security. The rule of law (including substantive elements of the concepts such as human rights) is also considered an end in itself. This paper shows that this variety in definitions and visions has mixed blessings: It makes it possible for national policy makers to choose between competing models, and thus to retain a degree of local "ownership", but also carries the risk that the rule of law concept becomes vague, overburdened, and perhaps abused. The variations in understanding and invocation of the concept also produce significant differences in regard to implementation strategies and tools.

Bergman Anna- Karin **: A Norm Perspective on Sustainable Development** (2236) The working paper deals with the importance of the societal system and its functinal areas in a regulation process.

Bergoglio María Inés **: Understanding Judicialisation in Latin America: tracking the changes in legal culture** (4309)
In the last decades the conceptions of law and its role in society have been steadily changing under the combined influence of three processes of change which have brought a profound restructuring within social relations: democratization, modernization and globalization. This paper puts forward the hypothesis that the main changes which these processes have brought about in Latin American legal cultures include the following: a) greater emphasis on individual rights; b) increasing social appreciation of legality; c) emergence of an instrumental conception of law; and d) stronger presence of conceptions of law which are typical of Common Law countries. In the first

section of this article we shall revise these changes on external legal culture, integrating recent research findings within this field. In the second section, we shall show the impact of these processes in the way that lawyers conceive the role of law in society, reviewing the web pages of 43 firms, each including over 50 lawyers, located in Argentina, Brazil or Mexico. The discourse analysis of these firms reveals new ways of understanding the role of lawyers in relation to their clients or to the State. The strength of these transformations indicates the increasing importance of Common Law cultural models.

Bergoglio María Inés **: Increasing Inequality in the Legal Profession in Latin America** (3206) The article analyzes recent changes in the legal profession in Latin America, showing how inequality is deepening among lawyers. Increasing stratification of the population, the emergence of big law firms and new forms of professional practice are the sources of these growing inequalities. Reviewing results of empirical research in different countries of the region, the article depicts the trend to stratification in the profession and its regional scope. From this perspective, the styles of work typical of different professional strata are described. The meaning of these trends is discussed in connection to changes in regional legal culture. Please note that the present version is in Spanish -

Berry III William W **.: Federal Sentencing After Booker** (4520) The nature and degree of discretion accorded to a judge in determining the sentence of a convicted criminal offender bears directly on the coherence and the legitimacy of any criminal justice system. The United States federal criminal sentencing system has, at various points in time over the past century, employed schemes that have approached either the one extreme of unfettered judicial discretion or the other extreme of highly restricted judicial discretion. In January, 2005, the United States Supreme Court held in United States v. Booker that the mandatory federal sentencing guidelines, the source of the strict restriction on judicial discretion for the twenty years prior, were no longer mandatory, but merely advisory. This article considers the effect of the Booker decision on judicial discretion. First, it briefly describes the historical shift in federal sentencing policy from broad judicial discretion to a system of mandatory guidelines which significantly restrict judicial discretion. Then, this article examines the text and the background of 18 U.S.C. §3553, the statutory provision that implements the sentencing guidelines and provides an overview of how the sentencing guidelines worked in practice before Booker. After reviewing the Supreme Court's recent Apprendi line of cases, this article explains the Court's holding in Booker, and outlines the two principal and antithetical responses to the Booker decision concerning its effect on judicial discretion. It then assesses the degree to which the Supreme Court's decision United States v. Rita, decided in June 2007, adopts aspects of each approach. Given the history of federal judicial discretion and the recent Supreme Court jurisprudence on that issue, this article argues that neither approach can result in a coherent sentencing scheme unless it establishes a framework by which to choose between or prioritize the goals of sentencing articulated by Congress in §3553(a)(2). Finally, this article considers the application of Booker by the district courts, and from this data, suggests a new framework for implementing judicial discretion alongside the sentencing guidelines.

Beyer Judith N **.: Imagining the state in rural Kyrgyzstan: How perceptions of the state influence customary law in the Kyrgyz aksakal courts** (4412)

Birdsall Andrea **: Judicial Intervention Coming of Age? The Creation of the International Criminal Court** (2420) This paper analyses the creation of the International Criminal Court (ICC) as the latest attempt to institutionalise the enforcement of international human rights laws. It also explores the US opposition to the Court. The analysis is primarily based on the English School of IR and its central focus on the conflict between order and justice. The creation of the ICC revealed this conflict in a concrete way: states' sovereign right to exercise national jurisdiction was challenged in favour of creating an international judicial mechanism. The ICC aims to combine order and justice with the goal of permanently incorporating enforcement of justice norms into the international order. A number of innovations and compromises were incorporated into the Statute to arrive at an agreement acceptable to a large number of states. However, the Court is not accepted by all states: the US actively opposes the ICC and has launched a number of counter-attacks aimed at undermining the effective functioning of the Court. This paper starts with an outline of the background to the ICC's creation and a discussion of the main issues arising from the negotiations, which were mainly based on concerns for state sovereignty. The paper briefly analyses US opposition to the Court which is based on concerns for maintaining the existing international order in which the US has a unique and predominant position. This paper also examines whether long-term US opposition has the potential to seriously hamper the ICC's contribution towards the creation of a more just order.

Blankenburg Erhard **: Legal indicators** (4412) Judicial indicator comparisons: budgets of justice, crime and convictions, civil and administrative litigation The more the European Union has to fight for its democratic legitimacy, the more it resorts to the 'rule of law' as a common standard of membership. Indicator comparisons of the chain of institutions in criminal justice as well as civil and administrative courts show, however, that fulfillment of these standards varies even among the established members. Comparing six West European and five post-communist systems of justice renders a portrait of quite distinctive legal cultures. The comparison of legal indicators for West European gives detail and raises questions such as : • What does it mean for the British concept of 'justice' that their national budget for legal aid is more than twice that of the courts of justice? • How come that the prison population in most West European countries is growing even though most indicators of crime are decreasing ? • Why do European countries with few judges and low budgets for the courts of justice treat civil procedures faster and more efficient than those with many judges and high budgets?

Blankenburg Erhard **: Indicators of Justice** (4412) The more the European Union has to fight for its democratic legitimacy, the more it resorts to the 'rule of law' as a common standard of membership. Indicator comparisons of the chain of institutions in criminal justice as well as civil and administrative courts show, however, that fulfillment of these standards varies even among the established members. Comparing six West European and five post-communist systems of justice renders a portrait of quite distinctive legal cultures.

Blokker Paul **: Cultural Diversity, Rights, and Democracy in Post-Enlargement Europe** (2318) The democratization of the former communist countries in Central and Eastern Europe (CEE) has been predominantly understood as a process concerning the institutionalization of political communities based on civic and political rights and the rule of law. The rights-based programmes were not, however, the only political programmes that informed the overall horizon and specific aims of the political transformation of societies in CEE, as programmes invoking ethno-cultural traditions as a basis of social solidarity for the new political community emerged more or less simultaneously. It might then be argued that the political transformations of – many a time multi-cultural - post-communist societies have to do with two – potentially contradictory and often seen as mutually exclusive – significant markers for political identities and social integration: one is rights-based/civic and the other value-based/ethno-cultural. Such a distinction is

equally reflected in normative political theory with regard to democracy and cultural diversity. Contemporary political theory is predominantly engaged with two major questions, i.e., how to achieve the equality of all and how to provide recognition of difference. In this paper it is argued that both approaches are ultimately incapable of fully addressing the problématique of cultural plurality that designates contemporary Europe, and that a third approach is needed. This approach would need to be able to provide for equality, a sufficient degree of social cohesion without invoking a homogeneous, 'thick' cultural identity, and sufficient recognition for cultural identities (beyond negative rights). I conclude by briefly outlining such an approach that is based on inter-cultural dialogue and an emphasis on a form of recognition that is not merely based on a form of protection and rights, but rather on effective participation.

Bonelli Maria da Gloria **:Brazilian Reception of the Legal Complex Homogenization: Case Study of Judges in Sao Paulo** (2103) This paper investigates the process of local reception of the exportation of the rule of law through the judiciary reform

Bonzano Luce **: Looking for asylum: a sociolegal analysis of Darfur refugees** (1538) The main goal of this paper is showing a general overview of the misapplication of the right of asylum in Italy, analysing a case-study: the Darfurian refugees. I will start from an analysis of the International legislation, concerning the right of asylum, looking firstly to the U.N. Geneva Convention regarding the status of refugees, but also at the Dir. 2001/55 CE and Dir. 2003/9/CE . Furthermore, I will introduce the Italian legislation constituted by the Law n. 89/1990 and then I will examine the Immigration Law n.286/1998 and its reform by the legislative decree 189/2002 . The aim of this investigation is remark the difficulties that this de-regulation creates to the asylum's seekers and the importance of a specific Law regarding the right of asylum, in Italy. This analysis of the legislation will be followed by an empirical research trough some interviews to Darfurian refugees, social workers and a lawyer. I will analyse the situation of the Sudanese refugees from the Darfur's Civil war, in Italy.

Bordone Dafne **: Lawyers' Self-Regulation and Disciplinary Proceedings: A Survey of the Milan Bar** (4116) The topic of Lawyers' Self-regulation implies nowadays important considerations on the role of Bar Associations in Italy, especially in view of the incoming reform of the entire system regulating the Legal Profession itself. The survival of the Italian Legal Profession's self-regulatory system is told to be guaranteed by the ability of the disciplinary proceedings both to safeguard lawyers' dignity and ornament to the pro-fession. Yet the Bars have been recently criticised for a sort of "deontological permissivism", which leads ultimately to outline the possible consequences for the Legal Profession itself. The research describes the findings gathered through an analysis of the disciplinary decisions issued by the Milan Bar from 1990 up to 2006. The main purpose of this paper is to offer some food for thoughts about the efficiency of Milan bar's policing function, as well as the contribution of formal disciplinary measures to the maintenance of professional standard for practising lawyers, trainees and societies of lawyers. I shall therefore be principally concerned with analysing the course of the disciplinary proceedings against lawyers, trainees and societies of lawyers in the Milan bar in the selected time-frame. In particular, four sets of variables will be considered: a) "the number of claims", b) "the number of decisions", c) "the proceeding outcomes", and d) "the sanction applied". I shall also examine the type of "reply" to disciplinary claims deriving from the Milan bar itself.

Bosisio Roberta **& Paola Ronfani: The Denied Rights of Immigrant Children in Italy** (1316) This paper analyses legislation and administrative practices concerning separated children. These minors live out of their country and are separated by their parents. Nevertheless, sometimes they are in contact with members of the extended family living in the country where they migrated. It ends with some reflections stemming from our ongoing research on cultural mediation, which involves both separated children and cultural mediators.

Boyea Brent D **and Paul Brace: American State Constitutions and the Agenda of State Supreme Courts** (2114) The constitutions of the American states offer significant variability in both content and structure (Lutz, 1988; Tarr, 1998). Some state constitutions are short framework-oriented documents while others are lengthy and codify many state policies (Hammons, 1999). These constitutions thus offer widely varying constraints to the state supreme courts that must apply them and to the litigants that seek relief. In our study we evaluate how features of state constitutions affect the character of litigation that rises to state supreme courts. We argue that long policy-oriented constitutions, rather than short framework-oriented constitutions, provide more extensive grounds for seeking remedies in civil litigation resulting in considerable docket space being occupied by civil litigation. While early studies of state supreme courts found increased attention to tort, criminal, and public law issues (Kagen et al., 1977), more recent findings suggest that state supreme courts present different venues for dispute resolution (Brace and Hall, 2001). Importantly, while many state supreme courts devote substantial time to criminal issues, others focus almost exclusively on civil claims (Brace and Hall, 2005). As the final arbiter of many rights and torts claims, our research focuses on these differences suggesting that variation in court dockets is the result of important differences in state constitutional content and political contexts. We expect that the quantity of plaintiff/defendant appeals is enhanced by the policy-oriented nature of many state constitutions. At the conclusion of the study, we illustrate how variation in constitutional design influences the business of state supreme courts.

Bradley Caroline **: Gaming The System: Virtual Worlds and the Securities Markets** (1231) Virtual worlds raise two big questions for securities regulation. First: to what extent do real world rules of securities regulation apply to the issuance of "securities" in virtual worlds? Second, should securities regulators be concerned that as player-inhabitants in virtual worlds who invest in virtual securities may develop false expectations about real world securities markets?

Braig Katharina **The individual right to reparation for victims of sexual violence during armed conflict in international law - Theory and practice** ( )

Braithwaite Jo **: Explaining diversity policies in large London law firms** (4215) This paper draws on original interview data to examine the apparent diversity boom in large London law firms, in particular evaluating if the business case arguments for diversity have had a significant impact in practice. Having done so, the paper argues that there are other factors, in addition to the pull of the business case, which need to be taken into account.

Breithaupt Marianne **: Gender Bias in Child Maintenance Arrangements** (4307) Male legal advisors in youth welfare offices in Germany achieve higher child maintenance titles than female legal advisors. The phenomenon is not a German

one. The question is how to level out the gender bias in the course of decision making and to increase the maintenance orders of female legal advisors and female judges.

Brich Cecile **: How naïve was Foucault? Autopsy of a failed resistance movement** (1204) In 1971-72, Michel Foucault instigated and co-ordinated a movement of resistance to contemporary penal imprisonment in France. Foucault and his colleagues at the Groupe d'information sur les prisons (GIP) began by calling for prisoners to send in testimonies of their experience of imprisonment. In addition, they circulated a questionnaire for inmates to fill in with details of various aspects of prison life. Predictably, the response to such a mode of enquiry was very poor. Despite Foucault's acute theoretical awareness of the distribution of discourse in society, the discursive practices he employed in communicating with the prison population betray a striking linguistic naivety. Though he aimed to challenge the class bias routinely displayed by French tribunals, the communicative strategies he adopted were similarly elitist. I propose to show that the ultimate failure of Foucault's resistance movement can be attributed to the communication breakdown which his inappropriate linguistic choices led to.

Brighenti Andrea **: Emergent normativities in a crew of graffiti writers** (4136) The paper is based on an ethnographic research carried on inside a graffiti writers crew in the North-East of Italy. It aims at investigating the interplay of external and internal normativities that inform the practice of graffiti writing. Graffiti writing is part of hip hop culture, born in the North-American metropolis at the end of the Sixties, and subsequently disseminated in a world-wide diaspora that nowadays cuts across race, class and gender lines. As part of hip hop culture, writing inherits a specific symbolic and normative language. In this paper, writers are observed as a community of practice which develops its own self-regulatory normativity. Endogenous norms interact with different normative sources and codes deriving from other social fields, such as criminal law, political commitment, and art. Writing thus is seen as an 'interstitial practice' that illustrates, not simply how a conflict among different normative systems comes along, but also and especially how social fields are shaped through conflicts over the power of nominating (even before judging) practices, or, in other words, through symbolic violence and the capillarity of power. Visibility and territoriality are two crucial aspects that interact with normativity in writing and concur to substantiate it.

Brighenti Andrea **: Playing Justification in Parliamentary Debates** (1523) This paper concerns the empirical study of a parliamentary debate that occurred at the Italian Parliament, in its two Chambers, the Camera and the Senato. It aims at understanding the interactive processes and strategies that lead to the production of a normative legal text – i.e., a text which contains normative propositions, as well as statements of intent, definitions, references to other legal documents etc. – as it comes along within an institutional context endowed with its own specific set of constraints and rules. The debate we examine concerns the decision of joining and supporting the US-lead military coalition in the war against Iraq in 2003, a debate which took place under the Berlusconi government during winter–spring 2003. The paper focuses on the production of argumentative justifications for political decision during parliamentary debates – decisions which are going to be translated into legal texts. In this type of context, disagreement over the interpretation of facts, declarations of one's association to given stances, and the undertaking of decisions is manifested and performed within an institution which structures interaction in order to prevent any resort to violence. From this perspective, a parliament can be seen as a structured context for regulated disagreement, as well as an arena for the negotiation of diverging prises de position – stances of associations and dissociations – through an array of means which include all kind of attempts at persuading the others. In other words, what matters in this context are not mere contingent preferences, associations, and prises de position of this or that political man, but rather the argumentative justifications provided for those preferences, associations, and prises de position.

Brinks Daniel **& Varun Gauri: "Promises to Keep" - Enforcing Social and Economic Rights in the Developing World** (4517) This paper is a draft of the concluding chapter in a projected edited volume exploring the use of litigation and related legal strategies for the enforcement of economic and social rights in the developing world. The book includes case studies of this phenomenon in Brazil, India, Indonesia, Nigeria and South Africa. The paper summarizes and draws lessons from the case studies.

Brooks Robert A. **: Box Shopping in Nike Town** (2138) This research involves interview with, and obervations of the work of, temporary attorneys in Washington, D.C., from 2000 through 2004. Prior research suggested that "responsible autonomy" was the only control measure at work in contract attorneys. This research, which involved attorneys doing mostly large-scale document review projects, found that a variety of control measures were utilized by law firms, and various practices of resistance were evident at those attempts at control. The reasons for the divergence between the findings is explained by various organizational factors that were different in the two groups of contract attorneys studied.

Brooks Kim **et al., "Taking a Break from Feminism? Exploring the Past, Present and Possible Future of 'Outsider Perspectives' Law Courses"** (1517) The authors of this article, researchers at each of seven Canadian law schools (University of Victoria, University of British Columbia, University of Calgary, University of Manitoba, Osgoode Hall Law School at York University, University of Ottawa, and University of New Brunswick) explore patterns of student enrolment in "outsider perspectives" courses. Part I of this paper outlines what we mean by outsider pedagogy and courses, distinguishing outsider from the more commonly used terminology "critical." This is followed in Part II by a literature review that addresses the question of why outsider pedagogy and student enrolment in such courses are significant to legal education. Part III of the paper refers to our first research question and explains course enrolment trends including school-specific and general enrolment trends in feminist and other outsider perspectives courses. Part IV of the paper addresses our second research question and describes our survey methodology and findings including both quantitative and qualitative student and faculty responses. The aim of these surveys was to provide some insight into faculty members' perceptions of the trends in outsider course enrolment, as well as some insight into why students choose to take or not take these upper-year elective courses. Finally in Part V we conclude with reflections on the opportunity that this project has provided us in beginning a conversation about the current and future place of outsider pedagogy in Canadian law schools.

Brown Elizabeth F. **.: A Preliminary Look at Regulatory Structures for Financial Services** (1215) How nations regulate financial services (banking, insurance, and securities) has changed dramatically in the past decade as 16 nations, including the United Kingdom, Germany and Japan, have consolidated their financial regulatory agencies into a single national agency. One of the nations resisting this trend, however, is the United States. U.S. resistance is due in part to a concern that the costs of such consolidation will exceed its benefits. While numerous studies have been conducted comparing the costs of various single financial regulators around the world

with the United States regime, none of these studies has controlled for differences in culture and regulatory intensity between the United States and these other countries. Thus, it is not clear if the United States would achieve substantial cost savings if it merely consolidated its financial regulators. My paper attempts to address this problem by examining the costs of six different regulatory structures used by the states within the United States, which range from separate agencies for each financial services industry to a single agency that regulates all financial services and organizes its departments based on regulatory objectives such as prudential concerns and market conduct objectives. Examining how the states within the United States regulate financial services eliminates some of the problems, like differences in regulatory intensity and culture, which arise when one compares how different countries regulate financial services. My paper offers a way of filtering out these differences and focusing on whether a single regulatory agency regulates more efficiently than multiple agencies.

Brown Keyder Virginia M **.:A Modest Proposal: the EU as the Fifty-first State** (2218)

Bruinsma Fred J **: Role Perceptions and Separate Opinions in the ECHR** (1998-2006) (4139)

Bryde Brun- Otto **: Constitutional Law In "Old" and "New" Law and Development** ( ) Paper given at the Plenary Session of the International Conference "Law and Society in the 21st Century", Humboldt-Universität zu Berlin, 25-28 July 2007. Brun-Otto Bryde is Justice at the Federal German Constitutional Court (Karlsruhe)

Burri Susanne **: Trends in Female Labour Market Particpation and Work-Family Policies in the Netherlands** (4538) The division of paid and unpaid work between men and women is still unbalanced in the Netherlands and this has an important impact on income and power relations. The employment rate of women is much lower than the employment rate of men. The number of working hours, the kind of work and their positions in the labour market diverge. The gendered division of labour gets even stronger when employees become parents. A great majority of women quits the job (11%) or reduces their working time after the birth of the first child (49%). Only 9% of the fathers quit or reduce the working time . Policies of the Dutch government are aimed at achieving a better work-life balance. Part of this strategy is a better quality of non-standard work such as casual work, part-time work and fixed-term contracts. A right to adjust one's individual working time has been introduced by statutory legislation in 2000. Bills aimed at facilitating the conciliation of work and family life and on childcare have been adopted and been subject to evaluations. A recently adopted Act on lifecycle agreements should facilitate career interruptions. Currently more fundamental questions are being discussed, such as changes to the social security system. This paper will sketch these recent developments in the Netherlands, assessing them from a gender perspective.

Bushimata Atsushi **, Tsuneo Niki & Shiro Kashimura: Mobilization of Legal Professionals by the Ordinary Citizens in Contemporary Japan** (1307) We will present the results of preliminary analysis of a survey research data conducted in 2005 in Japan. We explore the situational, background, behavioral and perceptual characteristics of the citizens who seek lawyer advice to solve their problems.

Butler **: Critical legal geography and the social theory of Henri Lefebvre** (4227) The theoretical and sociological works of Henri Lefebvre have been some of the most important influences on critical geography and the 'spatial turn' in the social sciences during the last three decades. While the writings of David Delaney and Nicholas Blomley have made Lefebvre's concept of the 'production of space' more well-known to critical legal scholars, large portions of his work have not been comprehensively analysed within the emerging field of critical legal geography. In this paper I will formally introduce three key elements of Lefebvre's social theory which can contribute to the theoretical resources of this field of study. Firstly, I will outline the ways in which the concept of the 'production of space' can contribute to theoretical scholarship on public law and the administrative state. Secondly, I will emphasise the close relationship between law and the bureaucratic administration of 'everyday life', and how the everyday is inherently shaped by processes of spatial production. I will conclude by arguing that the connections between these two concepts can be demonstrated through Lefebvre's articulation of the 'right to the city' as a platform for generating new forms of citizenship, primarily based around the body's inhabitance of space.

Cammarata Roberto **& Roberta Bosisio: Right/not right - Justice issues and moral dilemmas in adolescents' representations** (4225) This paper presents some results of a qualitative research about Justice and participation in adolescents' social representations, the goal of which was to point out and analyze the normative representations of a sample of adolescents as to several justice issues, some of which particularly complex and dilemma-like. The basis of the present study and research, which lasted two years, is the assumption that children and adolescents are social actors with the necessary skills to work out even complex moral reasoning as, just like adults do, in the formulation of their moral and justice judgements they use a plurality of normative references in different relational contexts. It is besides assumed that social representations resulting from this reasoning are affected not only by social, age and cultural variables, but also by participatory experiences during their socialization. This guideline also assumes to consider children and adolescents as skilful subjects for moral initiative and reasoning as to strictly philosophical issues. In the survey, in fact, adolescents have been stimulated to express themselves and argue about some moral dilemmas object of philosophical studies and empirical researches carried out with adult subjects. The presentation of the results concerning some particularly relevant items and dilemma-like situations is preceded by a concise exposition of the theoretical frame of the research.

Candeub Adam **: Media Conglomeration, Ownership Regulation, and Democracy's Future** (1516) ABSTRACT: Unprecedented consolidation has swept the media industries. At the same time, court rulings have savaged the Federal Communication Commission's (FCC) limits on corporate control of radio, television, and newspapers, leading to stacks of proceedings languishing at the FCC. All of which have helped foment a vocal political struggle between consumer groups advocating ownership restrictions and the media industry pressuring for deregulation. This article argues that the FCC's regulation has failed because it has misconstrued its goal. Rather than ensure sufficient numbers of "media voices," the FCC should strengthen the vital function the media plays in democratic society: decreasing citizens' costs in monitoring government. By reading the newspaper or watching the news, citizens can learn about available government benefits and detect elected officials' inappropriate behavior, without having to watch C-SPAN incessantly or make endless FOIA requests. The FCC's regulations, therefore, should maximize the output of news about politics, rendering the agency relationship between citizens and politicians more effective. Rather than use direct subsidies, a policy response many have urged but which presents significant problems, the FCC can alter the quantity and nature of news production through its regulation of media industry's ownership and geographic structures. New economic and social science research has shown that these structural features influence strongly news output and content. For instance, the greater degree of overlap between media markets and political jurisdictions increases the

amount of political news coverage. Media ownership regulation must utilize these insights to maximize output of political news. The Article concludes by examining blogs, YouTube and other net applications and how they will likely affect regulation.

Candioti Magdalena **: Building a Judicial System: Judicial Reform in Buenos Aires in the First Postcolonial Years (1810-1830)** (2410)

Cantius Mubangizi John **: Developing a Human Rights Culture amidst Poverty and Inequality: The South African Post-apartheid Experience** (4340) With the advent of a new political and constitutional dispensation in 1994, a human rights culture was created in South Africa. However, creating a human rights culture is one thing but maintaining it is another, particularly in a country like South Africa where more than 50% of the population are considered poor and the gap between rich and poor is among the largest in the world. This paper explores the challenges that South Africa faces in developing a human rights culture in the face of persistent poverty, vast economic disparities and gross inequality. In so doing, the paper looks at the following aspects: - the role of international law; - the role of the constitution; - the role of the courts and other state/constitutional institutions; - the role of non-state actors; and - the challenges that need to be dealt with. The paper concludes by looking at the way forward and the prospects of sustaining a human rights culture and maintaining the democratic miracle that has characterized the South African society over the last twelve years.

Carlarne Cinnamon **: Notes From A Climate Change Pressure-Cooker: Local, State And Civil Society Attempts At Transformation Meet National Resistance In The USA** (4422) Global climate change poses one of the most pressing environmental, economic, and social problems of the 21st Century. The USA bears a disproportionate burden for contributing to global climate change and has the capacity – if not the will – to be a world leader in combating climate change. Local, state and civil society efforts to transform climate change policy-making in the USA, however, have met with persistent resistance at the federal level, spurring a new era in American environmental policy. While the federal government was once the leader in environmental policy-making, it is now – at times – the laggard. Meanwhile, sub-federal actors find increasingly inspired ways to push for more progressive climate change policies. Much has been written about sub-federal efforts to adopt climate change policies, but this is just the tip of the iceberg. From adopting local policies, to employing common law and tort-based litigation, to using existing federal environmental laws, to invoking the jurisdiction of international institutions, civil society is utilizing every possible mechanism to overcome stagnation and resistance at the national level and thereby drive a progressive climate change policy agenda from the bottom up. This paper examines new and creative uses of local, national and international law to overcome federal resistance and to force legal transformations in climate change policy-making in the USA.

Catalina Smulovitz **: Judicialization in Argentina. Legal Culture or Taking advantages of the opportunities?** (3206) Since 1983 Argentina has witnessed a process of "judicialization" of conflicts and of "juridification" of social interactions. Why, when and where did people turn to the law? This paper argues that judicialization is not related to ex- ante changes in the legal culture but to changes in the opportunity structure for making claims that combined with the existence of a support structure of lawyers specialized in labor right and a new structure of advocacy NGOs resulted in the increased use of law claims. These two developments transformed legal claims into a strategic political tool. In particular the paper shows the process that led to the formation of a supply of advocacy lawyers and organizations.

Chacartegui Consuelo **& Nuria Pumar: Retirement pensions and gender: the Spanish case from the European perspective** (4224) The European Union in its task of coordinating the different social protection systems recommends member countries to take steps to prevent economic imbalances caused by ageing populations. Spain and other European countries -such as Sweden, Italy or Germany- follow the trends marked by the European Union with regard to pensions. In recent years, these countries have carried out reforms to be entitled to benefits, increase the proportionality between contributions and benefits and introduce formulas similar to private funded systems. These reforms will lead to retirement pensions linked to contributions becoming an airtight system, thus excluding the most vulnerable workers from them. This work aims to show that this type of restrictive measures despite being formulated in a neutral way, fail to correct -and actually increase- the differences between women and men in employment, since women are more affected by unstable working conditions than men. Lower wages for women and higher incidences of their careers being interrupted to attend to family duties will make access for women to retirement pensions even harder. The shortfalls in the protection of retirement pensions contrast sharply with a common European employment policy which aims to raise the employment rate of women. Having examined the incidence of this type of reforms from a gender perspective, the final aim of the work will be to show whether the European directive against discrimination regarding Social Security, headed by Directive 79/7 and displayed in the European Court of Justice's case law, constitutes an adequate regulatory tool to neutralize those reforms which lead to indirect discrimination.

Chang Wen- Chen **: East Asian Foundations for Constitutionalism: Resistance or Reconstruction?** (4214) The majority of countries in East Asia have become liberal democracies with vibrant developments of constitutionalism and rule of law. Scant attention, however, has been paid to particular social, political and cultural foundations for East Asian constitutionalism. Worse, constitutionalism in East Asia has been attributed merely to the global expansion of constitutionalism from the West. Without a formal recognition of constitutionalism in East Asia, the discourse of constitutionalism loses the opportunity to understand diverse ways of constructing and reconstructing constitutionalism. This paper, as part of a larger research project on East Asian constitutionalism, proposes to utilize the approach of constitutional ethnography to examine the founding, destruction and transformation of constitutional rules in Japan, South Korea and Taiwan. By examining social, political and cultural circumstances in which these leading constitutional democracies in East Asia established their respective constitutional regimes, this paper seeks to argue that a distinctive life of constitutionalism has been brought to birth in East Asia.

Choi Susanne YP **: Criminalization or Prevention? Sex Work and HIV Prevention in China** (1232) This paper examines the Chinese state's various forms of managing female prostitution in the reform era and discusses the implication of this management on HIV prevention from the perspectives of female prostitutes. We triangulate historical records with qualitative data (field notes and full transcripts of in-depth interviews of 47 women who exchange sex for money) and quantitative data (a community survey of 200 women who exchange sex for money) collected between 2003 and 2005 in a city in Sichuan Province.

Choquet Luc- Henry **: Taking into Consideration the Cultural Aspects of Families in Judicial Educative Actions for Young Offenders** (4313) The difficulties minors and young majors in problem areas encounter in becoming socialised, the segregation and discrimination they are victims of, are part of nowadays debate on social policy. The

republican model can no longer be applied rigidly and society can no longer be represented in class struggle terms only because such approaches have broadly led to underestimate other dimensions. In addition to traditional point of view "vertical", genealogical, legal and social, The new approaches are fuelled by observation of current events and underlines gaps between contemporaries as well as between cultures, thinking patterns : it is a kind of "horizontal" point of view that stresses peer effect and the role played by urban environment. Now, this second approach with cultural dimension begins to be considered in prevention, judicial handling and educational action.

Clam Jean **: Aging Postmodernity: Law Beyond Polycontexturality and the Fragmented Self** (4209)
The lections sociology of law has been taught by postmodern sociologies can be summarised and brought to a double point: polycontexturality of social meaning production and action; multiplicity of selfness of the subject – being the correlate of the polycontexturalisation of social communication. My thesis is: Both dynamics are no more the pulling ones and represent a sort of historical facts of the present. Postmoderniy is aging with the aging of this stimulative moment that defines in my account its central moment. The stimulative moment of postmodern culture, while accelerating its soaring, overwhelmed the multifaceted subject itself. It determined a recession or an intermittency of the subject. Our social present is determined by the transformation of the stimulative potency of Postmodernity into a contraction of the noospherical transmutation of the world which reached in it its last peak.

Clark Kathleen **: Confidentiality Norms and Government Lawyers** (1118) This article addresses the confidentiality obligations of government lawyers, and how those obligations differ from private sector lawyers. It examines the rather complex question of the identity of a government lawyer's client, notes that many government lawyers make decisions that are normally reserved for clients, and finds that those lawyers can appropriately consider the public interest in making those decisions. On the specific issue of confidentiality, the article asserts that, as a substantive matter, government lawyers may disclose government wrongdoing and may reveal information that is subject to disclosure under freedom of information laws. But as a procedural matter, state supreme courts and governments need to establish procedures for government lawyers to follow in disclosing wrongdoing or other information that would be subject to disclosure under freedom of information laws.

Codd Helen **: Subversive sperm?** (4119)

Coeurdray Murielle **: France in the 1990's: How Judges Came to the Private Sector and Why Their Skills Were Valued** (1521) France in the 90s saw some judges being recruited as « judicial experts » by a few big French companies. Although only a handful of judges and a few firms were involved the phenomenon is worth analysing. On the one hand, the transfer of judges to the private sector could be considered particularly striking because from an historical perspective the basic principles of conduct in the public and private sectors have been considered to be at opposite ends of the spectrum. More precisely, a neutral approach to the search for money and power would not normally be considered compatible with a search for market share. On the other hand the way in which the institutions have adjusted to this possibility is revealing. The means are apparently now available to give judges leave of absence to work in the private sector while safeguarding their old job for them should they ever need it. In parallel to this the recruitment of judges has also begun to change the definition of what constitutes acceptable business practice in the private sector. This paper attempts to explain how it is that some French firms have come to value the French judicial ability so highly. By focusing on the transformations in the relative strengths of the different parties in France in the 90s that have lead to the rise of a new economic order, the paper shows how the private sector became interested in judges with a particular expertise in certain economic matters, while at the same time these judges have taken advantage of the new historical context to put into practice their conception of the way of how business principles should be elaborated by emphasising preventive judicial risk.

Cohen Mathilde **: Giving Reasons in Court Practice: Decision-Makers at the Crossroads** (1513)
This article examines the thesis according to which the practice of giving reasons is a central element of liberal democracies. In this view, public institutions' practice —and sometimes duty— to give reasons is required so that each individual may view the state as reasonable and therefore, according to deliberative democratic theory, legitimate. Does the giving of reasons in actual court practice achieve these goals? Drawing on empirical research carried out in a French administrative court, it is argued that in practice giving reasons often fall either short of democracy or beyond democracy. Reasons fall short of democracy in the first case because they are transformed from a device designed to "protect" citizens from arbitrariness into a professional norm intended to "protect" the judges themselves and perhaps further their career goals. In the second case, reasons go beyond democracy because judges' ambition is much greater than merely providing petitioners with a ground for understanding and criticizing the decision: they aim at positively —and paternalistically in some instances— guiding people's conduct. The discussion proceeds by drawing attention to social aspects that are often neglected in theoretical discussions on reason giving. A skeptical conclusion is suggested: one can hardly ever guarantee that any predetermined value will be achieved by the giving of reasons. The degree to which individuals are empowered by the reasons given to them is dependent on the way in which decision-givers envision their reason-giving activity and this representation is itself conditioned by the social setting of the court.

Corley Pamela **, Amy Steigerwalt & Artemus Ward: The Chief Justice of the United States - Uniter or Divider?** (1132) Chief Justice John Roberts made unanimity and collegiality a priority when he assumed office at the start of the 2005 Term of the United States Supreme Court. Conventional wisdom says that the more unanimous a decision is, the more legitimacy it will have with future justices, lower courts, elites, and the public at large. During Chief Justice Roberts' first Term, the Court issued more unanimous opinions than at any other time in recent history (53.3%). How did Chief Justice Roberts achieve this new-found consensus? Did the Supreme Court take on cases during the 2005 term that were more likely to lend themselves to unanimous decisions? Or did Chief Justice Roberts successfully use his role as Chief to encourage and obtain consensus? We address these two questions herein by examining all of the cases decided by the Supreme Court during Chief Justices Warren, Burger, Rehnquist and Roberts' first terms in order to assess both what types of cases are more likely to result in unanimous opinions and whether Chief Justice Roberts indeed was able to utilize his personal management skills to achieve more consensus than recent past Chief Justices. We find overall that "easy" cases are more likely to be decided unanimously, and that Chief Justice Roberts has indeed used his leadership skills to gain a new level of consensus in the modern era.

Cormier Kelley **: Creating a Culture of Commercial Contracting: Development Assistance in Kyrgyzstan's Agricultural Sector** (2212) This study analyzes the distinct approaches taken by three bi-lateral international development organizations in fostering the culture of commercial contracting in post-Soviet Kyrgyzstan's fruit and vegetable

sector. Since 2003 some tenuous contractual relationships have developed between newly private farmers and processors. The reasons why these relationships prevailed, while the majority failed, are central to this analysis. I will use data for the period 2003-2006 to trace the evolution of these development efforts, and to explore the role of development-assistance organizations in fostering contractual relationships in Kyrgyz agriculture.

Cortés Diéguez Juan Pablo **: An European Approach to the Construction of Online Dispute Resolution Methods for Consumers, The European Small Claims Procedure** (4414) In the e-commerce era the use of litigation is often expensive, complicated and time-consuming. In order to promote consumer confidence and a truly integrated common market the European Commission has produced a proposal for the regulation of European Small Claims Procedure (ESCP). The proposed ESCP is predominantly a written procedure that deals with claims under €2,000 arising in cross-border disputes. The main advantage of the ESCP is that it provides for the enforcement of decisions in any of the Member States without the present need of going through the formal mutual recognition of judgements. The introduction of the ESCP, in conjunction with Information Communications Technology (ICT), tools has the potential to realise more efficient enforcement of the rights of European consumers. This paper, however argues that the effectiveness of the Commission's proposal may be hindered by its own restrictions such as its exclusive application to cross-border disputes, its low monetary threshold and the lack of adequate provisions supporting Online Dispute Resolution (ODR) methods, which seem to be the best candidate to deal with e-commerce disputes. ODR methods have proved to be effective with small valued cross border disputes by using assisted negotiation and online mediation, i.e. SquareTrade; automated negotiation, i.e. CyberSettle; and online arbitration, i.e. UDRP.

Costa José A.F. **: International investment arbitration - a duty or a career?** (4207) Study of the distribution of arbitrators in ICSID cases and of the profiles of the arbitrators which have been nominated more often.

Couso Javier **: "Legal Doctrine as Culture: The Transformation of Constitutional Discourse and the Judicialization of Politics in Latin America"** (3206) Building on the growing body of literature which has documented the emergence of judicialization of politics in Latin America (Ríos-Figueroa & Taylor, 2006; Taylor, 2006; Sieder et al.,, 2005; Gloppen et al., 2004; Domingo, 2004; Smulovitz, 2002; Helmke, 2002), this paper takes 'legal culture' to be a useful analytical category to make sense of the behavior of judges, lawyers and even society at large, in order to explore the connection between the judicialization and legal culture in that region. Furthermore, it claims that in addition to structural factors like the introduction of constitutional courts, the grant of judicial review powers to high courts, or the emergence of 'support structures', important changes in the 'internal' legal culture of the region have been crucial for the emergence of judicialization of politics in Latin America. Specifically, the paper traces the role that legal doctrine –in particular, constitutional theory—has played in transforming the region's legal culture.

Cserne Peter **: Contract Regulation between Paternalism and Freedom of Contract: A (Behavioral) Law and Economics Perspective** (1235) There is an enormous literature, doctrinal, historical, economic, sociological and philosophical on the limits of freedom of contract. What can psychological findings (empirical data about cognitive and emotional biases in information gathering, information processing, risk-assessment, choice consistency etc.) as referred to in behavioral law and economics add to this? How can the findings in cognitive psychology about judgment and decision making change the justifiability and the extent of limiting freedom of contract? If it can be proven that people "fall prey to cognitive and emotional biases" systematically and repeatedly then these findings might support the case for paternalism in these given instances. Law's response to bounded rationality can be manifold; also, the empirical findings alone do not justify legal intervention. Biases are context-dependent, embedded in a complex decision-making mechanism, privately hired experts can help individuals to choose more rationally, and learning effects can be at work. In a dynamic perspective, regulation may lead to the inhibition of learning rational choice in the future. After making sure that an instance of self-harming irrational behavior is at hand we have to ask whether and how (at what price) law can provide adequate solutions for the problem. Recently "libertarian" and "asymmetric" paternalism have been suggested as regulatory ideas which take into account both behavioral insights and economic and libertarian counterarguments. Although the ongoing discussion about contract regulation have significantly different accents in Europe and in the US, both end up in an empirically oriented pragmatic balancing of costs and benefits.

Currie Albert **: The Legal Problems of Everyday Life** (1317) Baseed on a the results of a 2006 national survey of justiciable problems, the paper describes the incidence and patterns of justiciable problems and the connections between clusteds of legal problems and between legal and non-legal social and health-related problems.

Dallara Cristina **: When domestic politics matters: patterns of judicial reform in the Former Yugoslavia countries** (1121) This article analyses the process of judicial reform in three post-communist countries (Slovenia, Croatia and Serbia) belonging to the Former Yugoslavia. These countries, although with some differences, had experienced a long and difficult process of judicial reform, still ongoing. The first aim of the paper is to give an account of these difficulties considering the different political domain of each country. The paper aims also to show how the main theoretical approaches applied by comparative judicial scholars to analyse judicial reform in transitional countries, mainly based on domestic factors, fare against the evidence in the case studies. Thus, the paper will revise two main analytical perspective: one assuming the primacy of historical and cultural legacies (Linz 1975, Toharia 1976, Magalhaes 1999), the second giving relevance to the strategic reasons of the political elites in shaping judicial institution reforms (Ginsburg 2000, Magalhaes and Guarnieri 2006, Hirschl 2004). The aim is to evidence that these approaches provide only partial explanations of the patterns of judicial reforms under study. In fact, if both the "legacies of the past approach" and the "political elites interests and strategies" one were powerful in explaining judicial reforms outputs in Southern European countries, and to some extent in Latina America , they are not exhaustive in depicting the complexity of the post-communist countries; especially in the three case studies belonging to Former Yugoslavia and characterized by on-going transitions, unfinished state-building and ethnic divisions. For this reason, in order to better understand the reform on-going in these countries we consider more fitting, as suggested by some authors (Bumin, Randazzo and Walker 2005) to make also use of the concept of "judicial institutionalization" that will be presented in the following pages.

Dambach Mia **: Shifting paradigms towards a culture of control within juvenile justice in NSW, Australia** (1328) In the early 1990's, numerous law reform proposals for the future of the Juvenile Justice System in New South Wales (NSW), Australia were produced with the overarching principle being the rehabilitation of the child. This paper argues that whilst the rehabilitative and benevolent attitude of the Juvenile Justice System in NSW remains dominant, there have been gradual and systematic encroachments to this approach. This work utilises Garland's Culture of Control to explain the NSW Government's shifting methodology. This paper contends that the NSW Government now makes policies and practices in a 'culture of

control'. This culture is cultivated by the media, especially the tabloid press by their reporting (and often non-reporting) of certain incidents and presentation of juvenile crime as being 'out of control'. The Government then feels pressured to respond and do so with hasty and more controlling mechanisms, without supporting research and with the hope of gaining political support. This paper examines two areas, being the punitive police practices targeting children and punitive trends in sentencing children to demonstrate this new culture. This paper concludes that these more controlling mechanisms are often unjustifiably punitive and result in numerous contraventions of international law. These contraventions include the principles of best interests, participation of the child, the well being of the child, proportionality, detention as a last resort, lack of attention to diversionary principles and various forms of discrimination. In the context of these breaches, this paper provides some law reform proposals for the juvenile justice system more consistent with international law.

Davidson Diane **and Miriam Lapp: Political Financing in Canada: Achieving a Balance** (2330)
The Canadian electoral legislation has greatly evolved over time and continues to do so, with the main objective to consolidate the public confidence in the electoral process. Fairness, transparency, integrity and accountability are the main values that sustain the evolution of, and refinements to the Canadian framework. The current provisions articulate a balance between equality and liberty. Money plays a central and indispensable role in the electoral process. Unfair practices and corruption often stem from the absence of proper regulation, or from its loopholes. In Canada, these situations have often served as catalysts for reforming or amending the electoral and political regulatory frameworks. Current reforms brought by Bill C-24 in 2004 and by Bill C-2 in 2006 provide the opportunity to discuss ways for preventing corruption. The first part of this presentation outlines the main aspects of the financing regulations in Canada, the context they originated from and how they evolved over time. The second part summarizes the current regime, including the new provisions to the financing regime and changes to the enforcement mechanisms. The presentation concludes on potential challenges for the near future.

Dawson Mark **: What is Lisbon?: The Ambiguity of Social Europe in the Open Method of Coordination** (4531)
This paper discusses the relationship between the Open Method of Coordination and the ida of a 'social deficit' in Europe. In particular, it examines the use of the OMC as a counter-weight to the constraints brought upon the welfare state by the edifice of European Economic law. The relationship between the two is posited as ambiguous - while on the one hand, the Open method heralds the enrty of European regulation into areas previously closed-off under the Treaties (thus balancing economic intgeration through the gradual building-up of 'coordinative competences'), its social policy ovbjectives have been closely tied to both budgetary stability and the extension of the free market. Is this tying a subjugation of social to economic rationality, or might it procedurally allow a reflexive integration of two different sets of functional concerns? These twin readings of Lisbon's recent reforms may represent alternative blue-prints for the Method's future.

De Munck Jean **& Jean-François Orianne:Toward a Capability Approach of Legal effectiveness** (1416)
Abstract : Does the Capability Approach provide new insights into the difficult question of the effectiveness of law? This paper tries to outline what a theory of the effectiveness of rights-as-capabilities might be, by applying it to a privileged example: the 1996 European Directive giving all citizens of the European Union a right to parental leave. In the first part of the paper, we say a few words on a theoretical displacement required by a definition of rights as capabilities. The rights must therefore be considered as a space generating valued possible worlds offered to the freedom of individuals. We then make clear how rights-as-capabilities may be understood in two ways : as orientations of meaning and as resources. On this basis, we analyse the right to parental leave as a space of meaning and as legal access to statutory, financial and judicial resources. We finally will emphasise the importance of the contextual non-legal factors of conversion of rights in real-life use. We conclude on the necessity in EU to go beyond a magical conception of rights.

Deakin Simon **: Industrialisation, Legal Origin and Economic Development in Historical Perspective** (3122)
The influential 'legal origin' hypothesis claims that the regulatory style of a given country is profoundly influenced by the origins of its legal system in one or other of the principal legal families, namely the common law (as associated with the UK, the British commonwealth and the United States) and the civil law (in its French, German and Scandinavian variants). However, the principal explanations given for this effect - the so-called 'adaptability' and 'political' channels – fail to convince because they rely on an inaccurate and outmoded account of the common law-civil law divide, which modern comparative legal scholarship has largely superseded. This paper suggests an alternative perspective, based on the historical experience of industrialization and legal change in Europe. It will be argued that a critical dimension is the timing of legal innovation in relation to industrial development. In England, industrialization came about prior to the emergence of the legal forms which came to underpin the business enterprise, namely the company limited by share capital and the contract of employment, whereas on the continent of Europe, these legal institutions predated industrialization, in part thanks to the stimulus provided by early codification. The subsequent development of distinctive 'varieties of capitalism' is open to reconsideration in the light of this observation.

Deess (Perry) Eugene **: Freedom In Our Hands: An Overview of the Jury and Democracy Project** (1330)
This paper offers an overview of teh Jury an Democracy Project a research initiative dedicated to studying the links between jury service an dcivic engagement in democratic societies. The paper offers summary results of key findings from the broad research program including the relationship between jury service and voter participation and the contribution of jury service to confidence in the judicial system. It concludes with comments about international issues in the introduction of the jury system.

Deng Fang **: Why has China's Marriage Law been amended twice since 1980?** (4113) Although China's economic reform has caught everyone's eye, there has been a vital cultural reform in China in which the Chinese culture absorbs spiritual nourishment from Western culture and reforms and renews itself. Close examination of the amendment of China's Marriage Law shows that the populace in China participates with great enthusiasm in the cultural reform, as they have in the economic reform. The cultural reform has prompted indigenization in China.

Dessecker Axel **: Continued detention of "dangerous offenders": local or global?** (1428) In recent years, several countries have introduced new criminal sanctions for "dangerous offenders". A common feature of these changes is their establishment of continued and typically indefinite detention for public protection -- that is, after the end of the prison sentence. Examples of this kind of legislation include Australia (New South Wales, Queensland, and Western Australia -- all for serious sex offenders), Germany (nachträgliche Sicherungsverwahrung), and Switzerland (Änderung der Sanktion or changement de sanction). The paper will explore the question how far this penological change on the local level has been influenced by global practices of targeting high-risk offenders or at least by crime-control policies imported from other criminal justice systems.

Dezalay Sara **: LAWYERING WAR OR TALKING PEACE? On militant usages of the law in the resolution of internal armed conflicts: a case study of International Alert** (2139)t The period that has followed the end of the Cold War has been marked by three concurring phenomena - the, depicted as such, proliferation of internal armed conflicts; the multiplication of the modalities of interventions within and on those conflicts, and of the actors, in particular non-governmental organizations (NGOs), by whom they are carried out; and an increasing role of the law as well as the wide gamut of its usages, which, when applied to armed conflict situations, seem to contribute to a gradual process of juridification and judicialization of war. Focusing on NGOs and using the law as an entry point, e.g. as a form of capital and as participating to a twofold "shaping" process (that of armed conflict situations themselves, and as reflecting on the actors that create and use legal or para-legal tools, and the spaces, national and international, on which they operate), this paper aims at building on a sociological approach so as to account for some of the dynamics of the space of conflict resolution since the end of the Cold war. It is thus divided in two parts. The first bases itself on a theoretical tool, that of a "weak field", that best describes the space of conflict resolution, a space that is both extremely diversified, but unified by a commonality in the framing of problems and their solutions (the "prevention" of conflicts paradigm). It purports in turn to narrow the study to the usages of the law, through "polarizations" that were obtained on the basis of a broad definition of the term "conflict resolution", understood as encompassing interventions on and within armed conflict situations, and was chosen so as to account for the broadest range of NGOs and to transcend situated definitions in academic fields or spaces of practices. These polarizations in the usages of the law point in particular to two competing process of juridification, with the first aiming at a "globalization of peace" through dialogue and alternative modes of conflict resolution, and the second at a "globalization of justice" through lawyering and the criminalization of war. The second part will in turn focus on the London based NGO International Alert, which uses alternative modes of conflict resolution and is a prime example of a multiple-card agent, relying on the multiplicity of resources - the law being one among others available - that make up the strength of the space of "conflict resolution" as a weak field.

Dilling Olaf **: Proactive Compliance? Repercussions of National Product Regulation in Standards of Transnational Business Networks** (2438) This paper illustrates the links between the self-regulation of transnational business networks and the law by analysing the management of chemical substance risks in the electric and electronic equipment industry. National product regulation (and to some extent regulation of production processes) can influence standards employed globally by leading corporations within their network of suppliers and contract manufacturers. However, it is also shown that the diffusion of regulatory standards within transnational production networks is not a linear process: corporate actors to some extent selectively appropriate standards and proactively self-regulate substances of concern that are not yet regulated by state-based law. Similarly, the suppliers may also influence the contents of the standards used in the network.

DiRusso Alyssa A **: He Says, She Asks: Gender, Language, and the Law of Precatory Words in Wills** (1100)

Domingo Maria del Pilar **: Relaciones de poder y los sistemas de justicia en América Latina** (3123)

Domitrovich Stephanie **: Judicial Independence and Ensuring Impartiality: When, Why, and How State Trial Judges Use Court-Appointed Experts** (1521) State level judges make vital evidentiary decisions in the U.S. adversarial process affecting the lives of many people in many types of cases--from homicide to child abuse. However, results of a national survey indicate judges themselves may lack the necessary knowledge to evaluate this evidence. Prior to the instant research, the only other published surveys addressing the use of court-appointed included one performed on the federal judiciary and a limited one regarding family court cases only. The research reported herein assessed how state trial judges use their authority to appoint experts and identified factors involved in their appointing experts. Four hundred trial judges from four states were selected from points on the "admissibility regimes" continuum and were surveyed by mail. The present research suggests that judges consider not only applying the Daubert trilogy guidelines, but also the impact to the parties and to their jurisdictions of using court-appointed experts. Judges also consider the cost to the parties or the jurisdiction. Data also included the impact on settlement and on the perception of procedural justice by the parties. Data revealed differences in the frequency of these appointments in various types of cases, such as family, criminal and civil court cases. Other factors were identified, but were not found to be statistically significant.

Dorbeck-Jung Bärbel **& Mirjan Oude Vrielink: What can new governance learn from transparency problems related to European pharmaceuticals regulation?** (1502) New governance is characterised by shifting away from traditional command-and-control regulation in favour of basically non-hierarchical modes of governing. In the scientific debates about new governance, transparency is an issue with many faces. Its effectiveness, however, is still a puzzle. This paper explores what lessons can be drawn from transparency problems with which the EU governance of pharmaceuticals has been confronted. First the meanings of transparency in the general EU governance policy and in its policy related to pharmaceuticals is dealt with. Next, we conceptualise the notion of effective transparency. In the final step we draw some lessons based on transparency problems that have been discussed in EU drugs governance.

Dose Nicolai **: New or old Governance** (3129) New forms of governance have gained increasing attention in the scientific debate. Although they are not always clearly defined they seem to be characterized by delegated decision-making, coordination, expanded participation, flexibility, a procedural rationality and so forth. Moreover, they seem to be able to "solve" problems which hitherto have proved hard to deal with. However, new forms of governance are also met with criticism. Very often they delay the solution of a problem. Or a remedy is found by externalizing costs. Thus, opposing standpoints can be observed. I will argue in my paper that both standpoints can be justified. However, they should not be generalized for all kinds of societal problems and situations. Because the adequate form of governance depends on more than only one aspect it is impossible to come to a general appreciation of new forms of governance. In my paper – being based on my book project on governance – I will develop some criteria that help to choose the adequate form of governance depending on contextual factors and on the societal problem at hand. I will show that old and new forms alike can only be successful if certain conditions of success are met.

Dougan Paul **: Groups or Associations? Transnational Crime and Constructing Criminal Identities** (1414) It is often argued that associations are intelligent organisms with minds and intentional states of their own. It is also argued that groups are merely a plurality of individuals who are related or associated only in a specific and limited sense. This paper draws on both classical and contemporary scholarship to develop an ontological account of persons which has real-world legal and ethical implications

Douglas Heather **: The Violence of the Law- The Criminl Law Response to Breaches of Domestic Violence Orders** (2240) Feminist scholars have demonstrated how legal interventions in relation to domestic violence frequently impose further violence on women as a product of a narrow criminal law perspective. Linda Mills argues that legal interventions commonly reproduce the emotional abuse initially perpetrated by violent men. She argues that such interventions ignore the perspectives of the women the interventions are designed to protect and support. This paper draws on a study of court responses to breaches of domestic violence protection orders and explores the violence of state intervention in this context. The law may provide protection to women in the form of domestic violence protection orders and recognise the criminal nature of breaches of such orders. However the process involved in demonstrating a criminal breach often involves a ruthless contest about the facts and numerous court appearances before resolution. Further, breaches often result in no conviction being recorded or in trivialising fines. This paper explores how the understandings and concerns of women that are generally ignored by the traditional criminal legal paradigm may be privileged in order to develop non-violent state interventions in this context.

D'Souza R **: Imperial Agendas, Global Solidarities and Socio-legal scholarship on the "Third World"** (1532) This paper draws attention to the poverty of theory in socio-legal scholarship on the "Third World". Socio-legal scholarship on the "Third World" is driven by two contending impulses. The first is the "development" agenda spearheaded by Western governments and International Organisations. The second is the global solidarities critical of the inequities and human degradation following from the "development" agenda. In the first type of scholarship social and legal histories are treated as unproblematic. The second type of scholarship is critical of positive law and sensitive to social and legal histories of the "Third World" but the theoretical lens through which they view socio-legal issues in the "Third World" do not provide the conceptual resources to bridge the analytical gap between imperialism of the past and the present. Both types of scholarship rely on liberal theory, positive law and constitutionalism. Consequently imperial agendas and global solidarities share common theoretical grounds and appear as mirror images. For socio-legal studies to be relevant to societies with colonial histories the shared conceptual grounds between the two contending forces need to be interrogated. At stake is the very concept of "society" in social and legal theory.

Dukes Ruth **: Property Paradigms in Employment Relations** (1102) In my paper I investigate the use of property paradigms in employment relations. I look both at attempts by those with a progressive agenda to use the idea of employee ownership to argue for limitations of managerial prerogative, and at the HRM motivational technique of giving 'ownership' of operations or projects to employees. I reject the use of property paradigms as unhelpful and argue instead for the importation of public law concepts to employment relations, focusing specifically on the idea of constitutionalization.

Dumas Bethany K **.: Legal Construction of Ordinary Terms and Passive Constructions** (2203) In a recent case pitting the Ho-Chunk Nation of Wisconsin against the Wisconsin Department of Revenue, I was asked to address these questions: (1) In the sentence at issue, "The land on which the sale occurred was designated a reservation or trust land on or before January 1, 1983," what is the meaning of the word designated? (2) Does the sentence at issue name the agent by whom the designating is to be done? In my research, I reached two conclusions: 1. In the sentence at issue, "The land on which the sale occurred was designated a reservation or trust land on or before January 1, 1983," the word designate has its usual, ordinary, and general sense, meaning "To indicate, select, appoint, nominate, or set apart for a purpose or duty, as to designate an officer for a command. To mark out and make known; to point out; to name; to indicate." Since no agent is named in the sentence at issue or elsewhere in the text, we cannot tell the identity of the agent from reading the sentence. All we can know is that the designating has to have been done by somebody or some entity. That suggests that the person, agency, or other entity by whom the designating must be done is immaterial, for the English language permits such identification, and it is entirely usual and ordinary for agents to be specified in "by … " phrases, as indicated above. I reached these conclusions on the basis of both lexicographic and syntactic analysis, each of which can be used in similar situations; thus, my methodology suggests a model for similar situations.

Eades Diana **: What the f***? Offensive language and neocolonial control** (1204) In the Australian state of Queensland, people still go to prison for using "offensive language". It might be thought that this reflects a prudishness or linguistic sensitivity in Australian society and culture. On the contrary, "four-letter words" are widely used in private conversations, public broadcasts, and even in commercially-produced greeting cards. As observed by one magistrate, listeners to one of the most popular national radio stations during breakfast "cannot help be assailed by [four-letter words] with regularity between mouthfuls of toast". This paper brings research in anthropology, linguistics and criminology to an examination of this issue. From early colonial times, discriminatory legislation made it possible to arrest and charge Aboriginal people for offences such as "indiscipline" and "immoral behaviour", which were not applicable to the non-Aboriginal population. Since the repeal of this discriminatory legislation in 1984, the selective application of the "offensive language" law plays an important role in the criminalisation of Aboriginal people, which is central to contemporary neocolonialism.

Ehrenberg **: Law as Pattern Language** (4227) The law is replete with structures that are the result of a plethora of discrete choices about how to solve a large variety of social challenges and problems. A city or building is similar in a physical way, containing structures built on the basis of choices that balance physical and social needs. Both require some degree of harmony among the choices made for the structures to stand. Both experience disharmonies as tensions in their operation. Both confront some problems as necessary to solve. Both are judged on the basis of internal norms of efficacy and external norms that are more difficult to define. In this paper I canvass the architectural theory of Christopher Alexander, finding within it an analogical basis for a theory of general jurisprudence. I find that one advantage of applying Alexander's theory to the law is a clearer understanding of the relationship between the descriptive elements of legal theory and the norms by which we judge our laws. Alexander's theory systematizes architectural elements at different levels of generality into a "pattern language," providing a design blueprint for everything from entire geographic regions to the placement of windows within a wall. A formal understanding of the patterns within legal systems will better exhibit the norms that govern those structures and institutions, also allowing us to clarify any agenda for legal reform.

Eisenberg Theodore **: Taking a Stand on Taking the Stand** (4222) Paper for session 4222

Ekardt Felix **:The Headscarf, the Right, and the Good** (1434) The normative framework of western societies is a liberal theory of justice (respectively a liberal constitution). The topic of the presentation is a

philosophical and legal justification for the crucial liberal distinction between the right and the good within the framework of an over-arching modern liberal theory of universal justice. This will contain a revised concept of lib-erty – without referring to collectivist ideas on the one hand and a biased "economic-centred" concept of liberty on the other hand. Each limitation of this "broad" liberty on grounds other than liberty and conditions of liberty itself and everything that can be deduced from liberty would challenge the maximum equal liberty – for the sake of some other principle which does not possess the same valid fundamental justification as liberty (which cannot be denied with-out entering into a self-contradition, because every human being necessarily presupposes the autonomy/ liberty of all human beings once he or she starts talking). Consequently, liberal justice is liberty, and limitations of liberty for the sake of a "good life" are unlawful. There-fore, concerning the headscarf, the presentation critizises approaches which deny the idea of universal justice (as "multicultural relativism") on the one hand – as well as approaches which mix justice and good life on the other hand (as the demand for a "mainstream culture"). Furthermore, laicism is critizised as an unlawful limitation of liberty.

Ellison Graham **, Mary O'Rawe: Security Governance in Transitional Societies** (1530) Policing in Northern Ireland has always been deeply problematic and linked to the dynamics of conflict in the region during the course of the past thirty years. The Independent Commission on Policing (ICP) was established under the terms of a negotiated constitutional settlement in Northern Ireland (The Belfast Agreement, 1998) to make recommendations for the reform of the nature, character and structure of policing in the region. The paper suggests that while the report the ICP provides a blueprint for police reform that has an international resonance it can also be seen as a bold attempt to engage more elliptically with contemporary debates in security governance that point to the increasingly fragmented nature of late-modern policing, and a weakening of state sovereignty in relation to how security is provided for and governed. I argue that in spite of the networked approach postulated by the ICP the public police continue to enjoy a pre-eminent role in the provision of security in Northern Ireland. Furthermore, there is little evidence of any significant weakening of state capacity in relation to the overall 'steering' and 'rowing' of security governance. The discussion concludes by suggesting that aspects of policing and security in Northern Ireland, are likely to provide the template for the norm in the context of global instability and the 'war on terror'.

Ellman Ira **, Sanford Braver and Rob MacCoun: Intuitive Lawmaking: The Example of Child Support** (1426) Legal rules are often understood as setting the appropriate balance between competing claims. One might expect policymakers to identify these competing claims and employ a systematic and comprehensive analysis to assign them relative values, and to generate legal rules that follow from those values. But probably, they will not. Such analyses are difficult and usually subject to methodological quibble. The greater the required effort and the more questionable its results, the more appealing is the alternative of reliance on intuition. And indeed, intuition is perhaps the most common tool of legal policymakers. But what do policymakers do when they make policy by intuition? Does some analytic framework lie behind their judgments after all, even if they do not or could not explain their choices in those terms? This study examines that question in the context of child support rules. Child support awards necessarily involve tradeoffs in the allocation of finite resources among at least three private parties: the two parents, and their child or children. Using a sample of citizens called to jury service, we gave our respondents Likert items measuring their agreement or disagreement with each one of a large set of statements about child support policy, and also sought their view about the appropriate amount of support in particular cases. The data analyzed thus far suggests that our respondents follow a predictable and rational course in their intuitive lawmaking. An exploratory factor analysis found that a respondent's level of agreement or disagreement with each Likert item can be understood as expressing the respondent's views on four fundamental propositions. Further, despite the fact that they were given no rules for deciding support amounts in individual cases, other than to set support at the dollar amount that seemed right to them, their judgments in these cases were not random. Rather, the judgments varied systematically with both parental incomes and respondent views about these four basic principles (as reflected in their ratings of the Likert items). It thus appears that our respondents largely share a common understanding of the relevant factors that should influence decisions in particular cases, even though they differ in their judgment of the appropriate support level in many of them. This paper foreshadows findings we will explore further in forthcoming papers that draw on this growing data set. Among them are findings that dollar judgments in individual cases are affected by framing and order, and that there is a fair amount of noise in the judgments respondents make about the initial cases presented to them. However, once anchored by their initial judgments, our respondents decide individual cases that are subsequently presented to them with considerable consistency and predictability. Finally, we find gender differences that conform to stereotypic expectations, but our data also show that the magnitude of these differences shrink when those with personal experience in the legal child support system are removed from the sample, although the remaining gender differences are still significant. In sum, the initial analysis reported here suggests this data set will shed important light on how people think when they are asked to decide the level of child support the law should require in particular cases.

Ellman Ira Mark **, Sanford L Braver and Robert Maccoun: Intuitive Lawmaking: The Example of Child Support** (1426) Legal rules are often understood as setting the appropriate balance between competing claims. One might expect policymakers to identify these competing claims and employ a systematic and comprehensive analysis to assign them relative values, and to generate legal rules that follow from those values. But probably, they will not. Such analyses are difficult and usually subject to methodological quibble. The greater the required effort and the more questionable its results, the more appealing is the alternative of reliance on intuition. And indeed, intuition is perhaps the most common tool of legal policymakers. But what do policymakers do when they make policy by intuition? Does some analytic framework lie behind their judgments after all, even if they do not or could not explain their choices in those terms? This study examines that question in the context of child support rules. Child support awards necessarily involve tradeoffs in the allocation of finite resources among at least three private parties: the two parents, and their child or children. Using a sample of citizens called to jury service, we gave our respondents Likert items measuring their agreement or disagreement with each one of a large set of statements about child support policy, and also sought their view about the appropriate amount of support in particular cases. The data analyzed thus far suggests that our respondents follow a predictable and rational course in their intuitive lawmaking. An exploratory factor analysis found that a respondent's level of agreement or disagreement with each Likert item can be understood as expressing the respondent's views on four fundamental propositions. Further, despite the fact that they were given no rules for deciding support amounts in individual cases, other than to set support at the dollar amount that seemed right to them, their judgments in these cases were not random. Rather, the judgments varied systematically with both parental incomes and respondent views about these four basic principles (as reflected in their ratings of the Likert items). It thus appears that our respondents largely share a common understanding of the relevant factors that should influence decisions in particular cases, even though they differ in their judgment of the appropriate support level in many of them. This paper foreshadows findings we will explore further in forthcoming papers that draw on this growing data set. Among them are findings that dollar judgments in individual cases are affected by framing and order, and that there is a fair amount of noise in the judgments respondents make about the initial cases presented to them. However, once anchored by their initial judgments, our respondents decide individual cases that are subsequently presented to them with considerable consistency and predictability. Finally, we

find gender differences that conform to stereotypic expectations, but our data also show that the magnitude of these differences shrink when those with personal experience in the legal child support system are removed from the sample, although the remaining gender differences are still significant. In sum, the initial analysis reported here suggests this data set will shed important light on how people think when they are asked to decide the level of child support the law should require in particular cases.

Emmerich Fabienne **: Hunger strikes in prison: resistance and autonomy** (4119) The aim of the paper is to critically examine the ECtHR's decisions in relation to the force-feeding of hunger strikers in prison from two different, yet connected perspectives: the first is resistance in prison within the framework of penality - punishment as a social institution encompassing "the network of laws, processes, discourses, representations and institutions which make up the penal realm" (Garland, 1990: 17). This will put the ECtHR's decisions into the social context; the second consists of examining the impact of punishment on the personal autonomy of the individual prisoner. This level will explore and critically evaluate the ECtHR's underlying moral assumptions on which its decisions are based. The main research question of the paper is to what extent can contextualising hunger strikes within the discussions of resistance in prison and personal autonomy of the prisoner inform the analysis of the ECtHR standards on the force-feeding of hunger strikers.

Fabri Marco **& Marco Velicogna: Information and Communication Technology for Justice** (4120) The European Union (EU) is an extraordinary laboratory of innovation and change. The diversity of environments within Europe provides contrasting examples of the use of information and communication technology (ICT) to support the access and the administration of justice. The variety of solutions adopted by individual countries, legally, technically and managerially, offers a unique insight into judicial applications of ICT. It also demonstrates the size of the challenge facing Europe if it is to harmonize systems across national boundaries. This paper will present some of the findings of an ongoing research on ICT in European justice systems. It will illustrate a synthesis of ICT applications and trends in a range of jurisdictions with differing legal traditions, highlighting some common trends and the impact, if any, that they have on the legal environment and, more in general, on society. It will show the diversity of ways and approaches in which EU members are harnessing ICT to support the operation of their legal systems.

Fabri Marco **& Philip Langbroek: Is There a Right Judge for Each Case? A Comparative Study in Six European Justice Systems** (2116) This paper presents some research findings of a study on the distribution of cases among judges on an assignment from the Council for the Judiciary of the Netherlands carried out in 2005 and 2006. Case assignment is one of the main issue of court organizations, because it touches upon some of the essential aspects of rendering justice: judicial independence and impartiality, court flexibility and efficiency. Organising case assignment properly is a conditio sine qua non of public trust in the absence of bias in the courts, but it is also essential for a timely delivery of justice. This empirical study was organized around four main issues: a) institutional court settings of the nations considered in this study; b) principles and general rules applicable to internal case assignment in the judicial systems included in this examination; c) internal court organization related to case assignment rules, practices and instruments, the main point of interest in this research project; d) internal case assignment systems, which explores in some detail the practice of case assignment in the courts.

Falk Armin **& Michael Kosfeld: The Hidden Costs of Control** (1409) We analyze the consequences of control on motivation in an experimental principal-agent game, where the principal can control the agent by implementing a minimum performance requirement before the agent chooses a productive activity. Our results show that control entails hidden costs since most agents reduce their performance as a response to the principals' controlling decision. Overall, the effect of control on the principal's payoff is non-monotonic. When asked for their emotional perception of control, most agents who react negatively say that they perceive the controlling decision as a signal of distrust and a limitation of their choice autonomy.

Faundez Julio **: Legality Without Courts: The Rule of Law before Allende** (4303) Until 1973, when the army deposed President Allende, most observers regarded Chile as an exception among developing countries. Its political regime was democratic and its stable institutions respected the rule of law. This paper argues that, despite appearances, neither political nor legal institutions had the strength or resilience hitherto taken for granted. It traces the evolution of Chilean political and legal institutions using the process of democratization as its unifying thread. As well as explaining the strengths and weaknesses of the political regime, it shows the impact of legal institutions and legal ideology in the country's political development.

Fehlberg Belinda **and Mavis Maclean: Current Child Support Agendas in Australia, England and Wales** (1426) This paper will consider recent and significant changes to child support law in England and Australia. In England, recent shifts have been away from detailed regulation and toward private agreement, with the safety net of State enforcement (and ultimately financial support) being available when private transfers do not occur, in Australia the messages are more mixed, with the recent changes involving a more complex child support formula than ever before, yet also increasing encouragement of private agreement. Our particular interest is to explore the practical implications of these changes for carers (usually mothers) and their children.

Fehr Stephanie **: Religious Symbols in the UK: The Legal Perspective** (1434) draft for presentation

Ferrao Brisa **: Do Brazilian Judges Favor the Weak Party?** (4335) This article discusses the theoretical foundations of the concept of jurisdictional uncertainty, which means, the uncertainties associated to the settlement of contracts in the Brazilian jurisdiction, and that manifests itself predominantly as an anti-saver and anti-creditor bias. According to Arida et al (2005), Brazilian judges tend to favor the weak part in the claim, not the just, as a form of social justice and redistribution of income in favor of the poor people. The article shows that there is no point for the judge in deciding against the law to favor the poor. A utility function is discussed, taking into account the advantages the judge could gain from this behavior, outweighed by the penalties such as professional criticism and the reversal by a higher court. As a result, its predicted that the judge will refrain itself from deciding disregarding the original tenor of legislation, and this behavior could favor the wealthy and politically powerful. An empirical test was conducted, analyzing 181 judicial decisions, and the results were supportive to the main ideas, showing that a contract has 45% more of chances of being maintained if it is beneficial to the richer. The judiciary disregards the contract only in the areas that the Legislative decided to protect the weaker part, such as in labor contracts, social security and environment. In areas like financial contracts, commercial law and landlord-tenant relations, the judges do not interfere. Key Words: Law and Economics, Judicial System, Economic Growth, Judge's impartiality. Subject Classification: E40; K42; O17

Fitzpatrick Peter **: Surpassing Sovereignty** (2113) Surpassing Sovereignty

Fordham Judith **: Secrets of the Jury Room: The "CSI effect"** (3111) Report of Australian mixed-methods research with juries in criminal trials involving expert evidence.

Fortin Elizabeth **: Experiential Knowledge of Tenure and Legal Knowledge of Tenure** (2231) Abstract: The paper looks at the approaches to tenure reform over the last ten years in post-apartheid South Africa and considers how particular forms of knowledge of tenure have shaped approaches to its reform. The discussion draws upon a year's multi-sited fieldwork involving an ethnographic study in a community within the former Gazankulu 'homeland', as well as further research in policy-making, NGO and academic circles in South Africa. It considers how the knowledge of tenure, ownership and rights of key groupings participating in policy debates surrounding reform has been shaped in political arenas and by the ways such groupings have positioned themselves or have been positioned in those arenas. In many cases, for reasons of political expediency, it was necessary that their views, often incorporating academic or legal nuance of particular complexity, had to be presented not only as a coherent whole but also as a simplified 'package' for bureaucratic, political, public or media consumption. In addition, particular processes of legitimation for those views also had to be pursued. For insiders in law-making circles, these were shaped by the demands of policy coherence and politics, for 'outsiders', similar strictures also shaped not only the 'room for manoeuvre' that they found themselves in but also the ways they endeavoured to present their ideas. This paper looks first at discourses that have shaped the approach to tenure reform adopted by particular groupings and then at the processes of legitimation pursued to provide validity for their approach.

Fraley Jill **: Torture and Performance: The Changing Political Function of Torture** (3139) When the United States was accused of torturing Iraqi detainees, theorists came to her defense, citing a utilitarian analysis of the greater good, specifically the need to gain information about future terrorist attacks. The "ticking bomb" hypothetical employed in these justifications assumes that the function of torture is interrogation. The assumption is not an acceptable one. The political and social functions of torture are not static, and are not consistently conducive to interrogation. Torture is a malleable tool. Historically, torture has moved from a focus on confession to interrogation to internal social control, and now, this article proposes, to a function of international social control. Understanding this changing function of torture allows us to better understand why modern states would adopt the use of torture, as well as why and how the daily practices of torture are changing. Most importantly, taking account of the changing function of torture provides a foundation for a more sophisticated analysis of the potential moral arguments supporting torture.

Frerichs Sabine **: Judicial governance in the European legal field: A political economic perspective** (1114) Referring to the emergence of 'new forms of governance' and 'transnational legal orders' (see sub-themes of the conference), this paper explores the specificity of legal and judicial governance in the European Union from a socio-legal and political economic perspective. Judicial governance is conceived of as a distinctive type of (social) integration through law beyond the state and meant to capture the legal dimension of the so-called turn from (national) government to (multilevel and network) governance. In the European context, the governance turn dates back to the relaunch of the integration process in the eighties following political and economic crises in the seventies and foreshadowing the globalized political economy of the nineties. Drawing on regulation theory and international political economy, I will first elaborate on the transformation of the classic (national) rule of law towards a ‚multilevelled' and ‚networked' (supranational or transnational) rule of law. Building on the sociological concept of legal fields, I will then provide a socio-legal specification and 'microtranslation' of the regulationist approach to the law. In particular, I will argue that the European legal field – emerging from supranational integration of the national legal fields – has recently been transformed by a new mode of legal production in the international, or better: transnational legal field (in the making), thus reflecting the turn to economic globalization and a Postfordist logic of production in the last decades. The two-fold theoretical argument will be confirmed by empirical observations on judicial governance in the European field of economic and social regulation.

Friends Making **, Making Enemies: Simulacra of the Islamic Woman in Western Liberal Democracies** (1213) There is a tendency in Western discourse today to present the wants and needs of Muslims as unified, unproblematically identifiable, and coherent via a more traditional model of single-nation citizenship. This reified presentation of Muslim interests fails to address the diversity of wants and needs that exists within this community of contested cultures and various social and political backgrounds. What begins as a sometimes well-intentioned attempt by some policymakers and those advising them (including academics) to better serve the needs and improve the lives of Muslims within Western democracies ends with the production of a univocal and weirdly hyperpoliticized-while-depoliticized abstraction. That paradoxical abstraction is then treated as a peg to be forced into the hole of liberalism. This abstraction creates "friends" (the image of an "ideal" Muslim that can be assimilated and integrated into a secular, Western liberal democracy) and "enemies" (the image of the "aberrant" Muslim that must be expulsed from secular, Western liberal democracy). Policymakers and those advising them then address these reduced figures as types of citizens that must be praised or punished according to the standards of liberal citizenship. Ironically, this abstraction may be counterproductively creating additional "enemies" by a) reinforcing the image of the militant Islamist and b) further alienating Muslims who do not match the "ideal" image of what a Muslim is "supposed" to be in a liberal democracy.

Frischmann Brett **: Revitalizing the Essential Facilities Doctrine** (1525) Our article examines an age old debate about the nature and limits of property rights and the current manifestation of this debate in antitrust law. Many areas of law struggle to balance private property rights Cmost importantly, the right of exclusion Cwith the public's right of access to essential resources. What is the best way to manage resources that provide both public and private benefits? For years, academics and law makers have debated this question with respect to transportation systems, communication networks, scientific research, and a variety of other "infrastructural" resources. Many press for private control of such resources, arguing that the market most efficiently distributes their respective costs and benefits. Others take the position that these resources should be managed in an openly accessible manner. Advocates for this approach maintain that private control often is overly restrictive and unfairly allocates benefits to a few private parties. In the antitrust area, this tension is mediated by the essential facilities doctrine. Under certain circumstances a monopolist incurs antitrust liability in denying a competitor access to a facility under the exclusive control of the monopolist. While versions of this doctrine go back to the beginning of the antitrust laws, it has been heavily criticized by many commentators and by the Supreme Court itself in dicta. We advocate the revitalization of the essential facilities doctrine and answer these criticisms. Our article seeks to 1) connect the essential facilities debate in the antitrust field to the broader question of private rights versus open access in other areas of the law, particularly intellectual property law; 2) propose

and apply an economic theory of infrastructure that comprehensively defines what facilities are essential and must be shared on an open and nondiscriminatory basis; and 3) demonstrate that courts are capable of applying this test in antitrust and elsewhere.

Fudge Judy **: Working-time Regimes, Flexibility, and Work-Life Balance: Gender Equality and Families** (3113) Through a blend of collective bargaining and legislation, a standard working day of eight hours and working week of forty hours took root in Canada during the 1950s and 1960s. These norms balanced protection for employees against flexibility for employers, and they were based upon a male breadwinner/female housewife division of paid and unpaid labour. Since the 1980s, these working-time norms have been under increasing pressure. On the demand side, the process of globalization, the intensification of competition, the spread of digital technologies, and the rise of just-time production and the 24-hour service economy have led to the proliferation of flexible forms of working time that diverge from the standard. On the supply side, demographic changes such as the feminization of the labour force, the increasing labour force participation of women with young children, the shift to dual-earner households, and the aging of the population have led to a variety of working-time arrangements that do not conform to the norm. This paper will examine the legal regulation of working time and working time practices in Canada in order to evaluate the extent to which the current regulatory regime contributes to work-family conflict. It will offer a number of proposals for reconciling work and family life in a manner that promotes gender equality and a caring society.

Fudge Judy **: The New Discourse of Labour Rights? From Social to Fundamental Rights** (1102) This article explores the emergence of the new discourse of labour and social rights in the world of work and focuses in particular on how this discourse is being used in the European Union (EU) and the ILO. I argue that this the new normative language is an example of Polyani's double movement in that it responds to the need to re-institutionalize the employment relationship in light of economic restructuring, the breakdown of the standard employment relationship, and the challenge to traditional forms of collective representation. The new discourse of labour rights also involves a realignment of the relationship between social rights and the market, and a reconceptualization of the juridical nature of social rights. However, this new discourse is both indeterminate and contested. To support my argument I examine the idea of social rights relating to work from three perspectives – genealogical, conceptual, and normative. I offer a taxonomy of the different dimensions of labour and social rights, which concentrates on the juridical nature of social rights in the EU. The emphasis is on showing the different juridical forms – constitutional, legislative, and policy – that social rights can and do take. In the final part, I provide a brief discussion of the normative basis of the new discourse of labour and social rights at the EU and ILO, which invokes the work of Amartya Sen, especially his concept of capability.

Fukui Kota **: Dynamism of the Coupling between Contesting Peripheries of Planetary Systems of Justice: On the Example of the Formation of ISO standards Concerning Customer Satisfaction and the Resolution of Customer Problems** (1418)

Galle Brian **: Fairness and Federalism in Taxation** (1423) This paper offers a new account of tax fairness, sometimes called "horizontal equity." Others have dismissed HE as a placeholder for other values, or as a mere privileging of existing distributions of social goods. I argue that this latter point in fact may be a virtue, in the sense that it may at times be useful to subordinate the tax system's distributive judgments to those rendered by other parts of the law. I defend this claim both in terms of a philosophical conception of tax justice as well as a more pragmatic, welfarist view. I freely acknowledge, however, that my welfarist claims may be open to empirical dispute.

Gallinaro Damiano **: (How is possible)... Teaching Anthropology in a Law Faculty. An Italian Experience** (4334) If we look at the curriculum studies in Law of some italian universities is evident the absence of any anthropological teaching. Just in two universities is comprise in the optionally teachings, a class of Sociology of Law. The goal of this reflectionis to recognize the reasons of this absence.

García Paz María Florencia **: The Part-time Work and the Family Life in Spain from a Feminist Approach** (4115) For the present paper I analyze from a socialist feminist perspective the precarious and gendered nature of the part-time work in Spain, and how the part-time contract as a reconciliation measure between working and family lives reinforces the gendered division of labour between the paid and unpaid labour. Furthermore, Y develop the different family-friendly policies and that in spite of their objectives of challenging the gendered division of labour, they usually reproduce it. I propose that it is necessary to increase the male participation in carer activities equiparating the fatherhood and the motherhood in order to equiparate the gendered distribution of labour within the household and the labour market.

Garsten Christina **& Kerstin Jacobsson: Post-political regulation: Markets, voluntarism and illusory consensus** (2202) The paper introduces the notion of post-political regulation. Drawing on Chantal Mouffe, we argue that increasingly the attempts to regulate presuppose the existence or at least the possibility of consensus, rather than conflict. The trends towards moralization of political life means that political conflicts are transformed into either legal or moral frameworks, processes by which conflictual relationships are increasingly transformed into consensual relationships. In the process, the nature of power relations and control are invisibilized. Examples in the regulatory field are voluntary regulatory arrangements (eg standards), soft law, and moral regulatory frameworks such as codes of conduct, Corporate Social Responsibility, and various auditing practices. This paper focuses specifically on global regulation and governance, which is increasingly post-political in nature, we argue. The paper provides empirical illustrations as well as discussing causes and consequences.

Gastiazoro Maria Eugenia **: Gender differences in the legal profession** (4215) The presence of women in the Argentinian legal professions has increased greatly. According to a census made in the year 2001, women are 41.2% of all the people who receive legal degrees. In spite of women having been massively joint in the legal professions, several different investigations have revealed constant, significant inequities as regards gender within the public sector-specially in the justice administration-. Those inequities have also appeared through the liberal profession routine within the private sector. On the one hand, vertical segregation refers to women that are allowed less frequently into the highest job levels that have the characteristic of being the most powerful as regards decision making and income levels. On the other hand, horizontal segregation refers to women tending to focus only on job positions that are "adequate" to their sex which, most of the times, are the less prestigious ones or the ones that have less economic interest. Both forms of discriminations are reflected in significant inequities as regards income levels. Having explained the situation, it is important to highlight that

the work result is the interpretation of men and women working in the private law field who see inequalities and the factors that produce them. There are several explanations to this phenomenon due to a complex reality in which different variables interact. They are connected with the three theoretic models resumed by Hull and Nelson (2000): assimilation, choice, and constraint or oppression.

Gehrig Tina **: Bureaucratic Biographies - Legalization Strategies of Afghan Immigrants in Germany** (2440) Asylum seekers in Germany are categoriezd by the state in a variety of legal statuses. Some persons manage to climb this legal hierarchy, but most stay stuck in a legal limbo. This paper compares two diametrically opposite strategies adopted by two Afghan families struggling to improve their legal situation. Whereas one family approaches the German administrative apparatus just as it would an Afghan one, adopting a strategy typical of a patron-client type of relationship, the other family reproduces the behavior expected by the German welfare state (punctuality, transparency, a striving for financial independence), thus acting as "deserving foreigners". The various experiences Afghans make of the legal-bureaucratic apparatus destabilize the idea of a "Rule of Law" and reveal the mechanisms through which the state is performed.

Gehring Jacqueline **: Resistance or Responsiveness? Explaining State Responses to the European Union's Racial Equality Directive** (4416) This paper argues that variation in the institution of citizenship best explains the variation among states in their implementation of the European Union's racial equality directive.

Gelter Martin **: A Theory on the Impact of Shareholder Control and Ownership Concentration on Corporate Stakeholders, or: Team Production meets Comparative Corporate Governance** (3112) While the predominant view of corporate governance is characterized by agency theory and shareholder primacy, an alternative view, based on specific investment by all stakeholders of the firm, has gained ground in recent years. The American corporate law literature has become increasingly aware of the unusually large degree of autonomy managers enjoy in the US, which is interpreted by proponents of the specific investments perspective as a factor mitigating the risk of holdup by (or on behalf of) shareholders, and thus a factor encouraging specific investment by other groups, including the creation of human capital by employees. This paper investigates the implications of this "stakeholder approach" for compara-tive corporate governance and uses it as an additional explanation for institutional complementarities. I argue that concentrated ownership, as it is typical for Continental Europe, is conducive to holdup problems regarding nonshareholder constituencies. In the presence of strong shareholder influence, legislative measures aiming at the protection of stakeholders (such as codetermination or restrictive employment laws), can be interpreted as a response to the holdup risk and therefore seem to be normatively more desirable than in a system characterized by a low degree of shareholder influence. The United Kingdom is interpreted as an intermediate case.

Gershon Ilana **: Maori in the Neoliberal NZ Parliament** (4233) In this paper, I turn to recent debates in the New Zealand parliament over whether the indigenous Maori are a cultural group or a racial group. In making this a political question, the Labour and National parties have segregated culture from race. For the now victorious Labour party, the Maori are cultural. And for their opposition, the National party, Maori are a racial group, so much so that National members of parliament label any legislation addressing specifically Maori dilemmas as "race-based legislation." This debate creates political landmines for the members of Parliament who are also Maori – are they racial or cultural representatives, and what does this entail? I argue that in the NZ parliament there is a disconnect between the Maori discussed in Parliament and the Maori who speak in Parliament. The Maori discussed might be either cultural or racial, depending on one's political affiliations. But the Maori who speak are always culture-bearers, speaking for an otherness that inevitably requires that the government address Maori historical grievances. In short, the political debate between culture and acultural race is transfigured when politicians are faced with potential political allies who stand for Maoriness.

Gessner Volkmar **, David Nelken: Studying European Ways of Law** (3135) Europe is heir to a variety of legal cultures. Comparative lawyers see European (private) law split into four "legal families", namely the Roman, Germanic, Scandinavian and Common law families. Sociologists of law look more closely and find within these "families" divergences in regulatory styles, court practices, alternative dispute resolution, legal professions, crime rates etc. More generally, social scientists point to multiple forms of norm creation and norm implementation. On the other hand, the EU production of unified or harmonized law and implementation practices represents a common trend away from formal law under the influence of the European Court of Justice. Together with European Union directives and regulation by soft law this may give rise to what has been described as a "new European legal culture". A possible common denominator of European legal thinking may be its rejection of the idea that law should be governed by the market, rather than the other way around. In fact some authors treat the existence of a European patchwork of divergent communities, ideas and institutions as an opportunity rather than considering it a problem.

Gessner Volkmar **: Comment on the British Inquiry Report** (3201) This comment examines the demand side of empirical research. Experience shows that data offered by empirical sociology of law remain largely unused or are misused by political actors. The author tends to discourage students to specialize in empirical research.

Ghazzal Zouhair **: From microstoria to ethnomethodology: crime-in-action in contemporary Syria** (2326) This paper explores, in the context of microstoria's and ethnomethodology's overlapping and conflicting methodologies, and within the range of historical and anthropological horizons, how an approach to criminal records in contemporary Syrian society is possible. To begin with, the study of an unfolding crime in Syria represents several logistic and analytic difficulties. First among them is the difficulty at collecting data exhaustively, in particular the taping of police interrogations, and the investigative judge's sessions, with suspects and witnesses, not to mention the court hearings. We are therefore left with the documents that each case-file contains, and upon which the court based its ruling. But we're yet confronted with another problem, that of the unavailability of a continuum of historical records: since the files are preserved on average for no more than 20 to 25 years, it is difficult to properly analyze and evaluate the evolution of the criminal system. We therefore have to content ourselves for the most part with written documents, as they have been delivered to us by the judicial authorities, which could be both a blessing and a curse. But in either case, some of the methodological criteria of microstoria and ethnomethodology are met, such as the micro analysis of a limited number of texts that would help us to discern the bigger picture, or the interpretation of texts as the process through which actors document criminal events. The paper, based on a couple of contemporary cases from the city of Aleppo (north of Syria), shall explore how best to make use of the findings of microstoria and ethnomethodology in the domain of the practice of criminal law in an Islamic society.

Gilbert Andrew **: Confusing Trafficking with Smuggling: The Offence of Human Trafficking for Sexual Exploitation in English Law** (1212) This paper explores the meaning of human trafficking for sexual exploitation in English law. Under the definition of human trafficking in the United Nations Trafficking Protocol of 2000 the victim's consent is not relevant to establishing the offence where one of the prescribed means is used to secure the victim's participation in the trafficking enterprise. It is not, therefore, terminologically possible to be a consenting trafficking victim under the terms of the Protocol. Indeed, the consensual, yet illicit, transportation of individuals across national borders is properly labelled people smuggling. The paper demonstrates how English law has framed the offence of trafficking for sexual exploitation in a way which permits of the possibility of a trafficking offence being committed where none of the prescribed methods to obtain the victim's compliance have occurred. English law thereby blurs the distinction between trafficking and smuggling. Finally, it emphasises the importance of terminological precision in an area where the nature and extent of any post-rescue treatment or support provided to the victim may well depend on how they have been labelled by law enforcement agencies.

Girón Alicia **: MIGRATION, REMITTANCES AND MACROECONOMIC ENVIRONMENT** (1538) The objective of this article is, first of all, to try to explain the importance of the financial circuits and of the working capital in a trans-border space in relation with the macroeconomic policies of the last 15 years. When we refer to financial circuits and to trans-border capital, we are specifically referring to the sending of remittances from migrant workers to their country of origin. The second objective is to relate capital flow stemming from the migrant workers with direct foreign investment, the service of the foreign debt and other economic variables. Finally, this study also aims to establish an academic debate regarding the effects that macroeconomic policies have had in the economic and social Human Rights of the population that participates in the trans-border financial circuits. The migrant workers have not only lost the Human Rights to a decent job in their country of origin, but also the fees and salaries that they earn when they migrate, are lower in the host country, and of course, they do not have access to services such as education, health and housing, to which resident workers do. In view of the above, we try to create an awareness regarding the urgent need for legal regulations concerning the capital flow based on the remittances, which have given the countries of origin financial stability in favor of those who export it. It is necessary to underscore the importance of basic legal regulation that guarantees the Human Rights to employment, in order to put a stop to the exodus of the workforce. The statistical information presented, refers only to Mexico, so as to emphasize the previous statements.

Girón Alicia **: Migration, Remittances and Economic Environment** (1538) The objective of this article is, first of all, to try to explain the importance of the financial circuits and of the working capital in a trans-border space in relation with the macroeconomic policies of the last 15 years. When we refer to financial circuits and to trans-border capital, we are specifically referring to the sending of remittances from migrant workers to their country of origin. The second objective is to relate capital flow stemming from the migrant workers with direct foreign investment, the service of the foreign debt and other economic variables. Finally, this study also aims to establish an academic debate regarding the effects that macroeconomic policies have had in the economic and social Human Rights of the population that participates in the trans-border financial circuits. The migrant workers have not only lost the Human Rights to a decent job in their country of origin, but also the fees and salaries that they earn when they migrate, are lower in the host country, and of course, they do not have access to services such as education, health and housing, to which resident workers do. In view of the above, we try to create an awareness regarding the urgent need for legal regulations concerning the capital flow based on the remittances, which have given the countries of origin financial stability in favor of those who export it. It is necessary to underscore the importance of basic legal regulation that guarantees the Human Rights to employment, in order to put a stop to the exodus of the workforce. The statistical information presented, refers only to Mexico, so as to emphasize the previous statements.

Gomez Manuel **: All In The Family-The Influence of Social Networks on Dispute Processing [A Case Study of a Developing Economy]** (1307) This paper presents the results of an empirical investigation of the influence of social networks on how individuals choose to process their legal disputes. The research focuses on business disputes and disputants in Venezuela, a developing economy. Previous socio-legal research adopts a dichotomous view of societies, labeling them as either traditional or modern, and argues that certain forms of disputing processing are differentially preferred by most disputants in each system. This research finds a mix of dispute processing mechanisms and preferences in the Venezuelan business sector. Applying social network theory, I argue that rather than stage of development explaining dispute processing preferences, social networks within the Venezuelan business sector reveal when and why business disputants choose different formal fora and different mechanisms. The research that informs this paper was conducted using a multi-method approach, but the overarching research strategy has been that of a case study. Data obtained from secondary sources, and also from semi-structured interviews with at least seventy respondents was collected from 2002 to 2006. Two cases of disputes processing within the business sector have been analyzed (courts and publicly-sponsored ADR institutions), each one referring to a different mechanism and/or forum that is available to disputants in Venezuela.

Gotell Lise **: Risky Women and Canadian Sexual Assault Law** (2340) In earlier research, I traced the emergence of a positive consent standard in Canadian law. Discourses of risk management underpin recent sexual assault decisions, constituting the ideal victim as the rape-preventing subject who exercises appropriate caution (yet fails) and the normative masculine sexual subject as he who avoids the risk of criminalization through securing consent. In this paper, I focus on how legal constructions of good victimhood are constituted through exclusion. The inverse opposite of the rape-preventing subject is the risky woman, the woman who avoids personal responsibility for sexual safety, the woman who "chooses" to engage in a "high-risk lifestyle." The sharp descent into the space of risk is a feature of cases that involve aboriginal women, women working in the sex trade, women with addictions and homeless women. Such risky women surrender their status as legal subjects capable of having their refusals recognized in law. They are constructed as having literally descended into a space of risk and in this process their subjectivity is siphoned. As I will demonstrate here, standards of good victimhood, now less rooted in chastity, are nonetheless built upon exclusions that draw upon persistent race and class-based ideologies.

Greer Scott L. **.: Coming after the Court: Choosing paths in European Union health services policy** (1502)

Groenendijk Kees **: Barriers for Newcomers, The Entry of Young Dutch Lawyers of Turkish and Moroccan Origin in the Bar** (4215)

Gross Luciana **Cunha: Judicial Administration in Brazil: Dissemination of Information and Transparency** (1304) The reform of the justice system has been integrated into the Brazilian state's institutional reform agenda since the beginning of the 1990'. In fact, the administration of the judicial system's institutions is one of the focal points of such agenda. Therefore, questions pertaining to the types of demands received by the judicial system's institutions, the services they provide, the form in which they provide such services, the time and costs involved become essential questions in order to understand the way the judicial institutions are administered. However, the access to such data, which will make possible an evaluation of these institutions' performance as public service providers, will depend on the existence of an information production policy and a commitment to transparency. The paper tries to verify the degree of transparency in the Brazilian judicial system's institutions by identifying the existing information production policies and by observing the handling of the information produced and the use of such information in the judicial administration and in the planning for the future.

Gross Samuel **: Frequency and Predictors of False Conviction:The Problem, and Some Data on Capital Cases** (3120) The fundamental problem with false convictions is also one of their defining features: they are hidden from view. As a result, it is nearly impossible to gather reliable data about the characteristics or even the frequency of false convictions. In the first section of this paper we address the problems inherent in studying wrongful convictions – the extent of our ignorance, and the extreme difficulty of obtaining the data that are needed to answer even basic questions. In the second section we dispel a bit of that ignorance by considering data on false convictions in a small but important subset of criminal cases about which we have unusually detailed information: death sentences. From these data we estimate the frequency of wrongful capital convictions in the United States, and present a handful of findings that suggest features of criminal investigations and defendants themselves that are modestly predictive of false convictions in capital cases.

Gross Samuel R. **: The Rhetoric of Racial Profiling** (4436) In 1988 racial profiling - the term, not the practice - was unknown. By 2000, twelve years later, everyone, from George Bush to Jesse Jackson, agreed that racial profiling is anathema. In this essay I review the brief and turbulent public career of racial profiling: its origins in hijacker and drug courier profiling, its flowering as a central aspect of drug interdiction on the highway, the ultimately successful efforts to expose and end that practice, and the political backlash it unleashed. Since 1999, no major American political figure has risked endorsing racial profiling, not even after the terrorist attacks of 9/11, although some programs they support fit the definition. Now that it is an acknowledged evil, many police departments work hard to avoid claims of racial profiling, while on the other side complainants in a host of contexts use the term to describe an extraordinary range of conduct. Along the way racial profiling may have become less common, but it has not disappeared.

Guibentif Pierre **: Evolution Of Theory: The Production Of Luhmann's Work In A Comparative Approach** (2135) This paper presents some results of a comparative analysis of the theoretical work of Foucault, Luhmann, Habermas, and Bourdieu, and puts forward an interpretation and an assessment of Luhmann's work based on this comparison. It focuses on theoretical evolution. First, the comparative approach is justified and its methodology briefly explained. Secondly, a pattern of evolution is outlined, that applies to the four authors analysed. Thirdly, Luhmann's evolution is revisited on the basis of this pattern and the specificity of that evolution is tentatively explained by the peculiar way Luhmann has to produce his papers, on the basis of notes stored in his Zettelkästen. The last section discusses some practical conclusions – concerning the designing of training programmes, and in the organisation of research bodies – that may be drawn from this comparison of social theories' evolution.

Gunnarsson Åsa **: Gender Equality and the Diversity of Rights and Obligations in Swedish Social Citizenship** (4538) The gender perspective adopted in the paper concerns both the politics of sex equality between men and women, and the legal constructions of gender relations. Formally, social participation in the welfare state, implemented in terms of equal, individual eligibility for social entitlements and individual tax obligations, seems to go hand in hand with equal opportunities. Welfare regime provisions governing the distribution of social rights and tax obligations are mainly linked to individuals and there is also a strong state involvement in the care of children. Nevertheless, in times of budget cuts in expenditure the distributive principles in what can be defined as a normative Swedish model of social citizenship have been put to the test. One important outcome, and a point of departure for this essay, is that a large number of women have suffered disproportionately from cutbacks in public welfare provision. This is probably a symptom of a gendered dimension to social power within the legal structures that regulate the right to receive social welfare and the obligations to participate in generating public welfare. One frame of reference for scholarly analysis is that a normative model of individual rights and obligations creates an imaginary concept that all citizens are equal under a neutral law. Such a uniform approach to social citizenship is incapable of identifying those legal structures in which the patterns of social power reside, and which reproduce sex inequalities between men and women together with stereotyped gender constructions. In contrast, taking a gender perspective on welfare-state regulations highlights the diversity of possible legal strategies for achieving sex equality drawn from social, economic and political contexts. The aim of this paper is to explore, from a Swedish perspective, why a transformed conception of social citizenship is needed in order to achieve a more inclusive social welfare regime from a gender perspective.

Guth Jessica **: The opening of borders and scientific mobility: The impact of the EU enlargement on the movement of early career scientists.** (4115) This paper, based on extensive empirical work with Polish and Bulgarian scientists in Germany and the UK, examines the impact of the EU enlargement including the free movement of persons provisions on the mobility of scientists from Eastern to Western Europe. It focuses on early career researchers and particularly PhD candidates and begins by sketching out the status and ensuing free movement rights of those scientists in European Law. It then moves to discuss the policy rationale for promoting scientific mobility and examines how this fits with the scientists' own perspectives. Following on from there the paper looks at various areas where the EU enlargement has had an impact including the continuing transitional agreements, cheaper travel and the question of tuition fees and goes on to consider the symbolic power of law in influencing scientific mobility.

Hadfield Gillian **: Settlement Values: How 9/11 Victims Saw the Choice between Money and Going to Court** (2312) The modern legal profession has increasingly come to frame the choice between suit, settlement and trial in financial terms and to see the avoidance of litigation with a monetary payment as an unambiguously positive goal for lawyers, judges and policymakers to pursue. In this paper I report the results of a quantitative and qualitative empirical study of how those who were injured or lost a family member in the September 11, 2001 terrorist attacks evaluated the tradeoff between a cash payment--available through the Victim Compensation Fund--and the pursuit of litigation. Responses make it clear that potential plaintiffs saw much more at stake than monetary compensation and that the choice to forego litigation required the sacrifice of important

non-monetary values: obtaining information about what happened, prompting public findings of accountability for those responsible (which, for respondents, included many entities in addition to the terrorists themselves), and participating in the process of ensuring that there would be responsive change to what was learned about how the attacks and deaths happened.

Halbert Debora **: Privacy in Virtual Worlds: The dimensions of privacy in gaming and virtual communities** (1516)

Halme Miia **: Human Rights in SCANET: Toward the Black Letter of Law** (2204) Law and society scholars attempt to understand international law and human rights as sociocultural as well as legal fields; focussing on the manner they realize global legal pluralism, openness and opportunity. This paper explores the realization of these elements through the study of educational activities of the Scandinavian Network of Human Rights Experts (SCANET), a network formed primarily of influential human rights lawyers and activists working in universities, human rights institutions and different UN bodies. The distinct aim of SCANET experts is to 'elevate' human rights from the non-legal - 'sociocultural' field - to the legal realm, thus transforming the system of international human rights law into an analogy of domestic legal systems. As a consequence, in SCANET lawyers monopolize human rights expertise, subjecting other forms of knowledge to legal insights. This has particular consequences on human rights knowledge, of which one consequence is an inverse relationship of theory and empiria. Simultaneously this approach challenges the notion of pluralism in the human rights phenomenon. As the majority of SCANET experts are Northern lawyers, its educational activities convey a distinct notion of law to participating students, future human rights experts. Simultaneously the possibility of pluralistic normative orders becomes challenged. My paper discusses some problems and challenges that derive from these premises.

Harpalani Vinay **: Figure for Formal, Material, and Symbolic Modes paper** (2432) Figure 1 of my paper

Harpalani Vinay **: Formal, Material, and Symbolic Modes of Racialization** (2432)

Havinga Tetty **: Product Liability, Insurance and the Private Regulation of Food Safety** (1210) In food safety regulation, as in other domains of regulation, the traditional command-and-control form of regulation has been criticized. In food economics literature three factors are distinguished that simultaneously encourage food firms to adopt food safety measures: market forces, food safety laws and regulations, and product liability laws. In this paper we will explore the influence of product liability on food safety measures within firms. Product liability is thought to have potential impact on how food firms manage food safety and food hygiene. Liability law may influences preferences and costs of firms directly, inducing businesses to take measures to prevent liability claims. The influence of product liability on business risk management may also be more indirectly, through liability insurance. Insurance companies may induce food safety controls (through the terms of insurance policy or by calibrating premiums according to the level of precautions taken). However, insurance could also limit the economic incentives for firms to produce safe food. The extent to which liability law and insurance does play a role in promoting food safety and food hygiene is unknown.

Heitzmann Barbara **: What Perceptions Do People Have of the Just Attribution of (Criminal) Legal Responsibility?** (4225) A research project at the Institute of Social Research in Frankfurt is at present investigating whether a trend towards a complete individualization of ascriptions of legal responsibility can be discerned in the legal conceptions of citizens. Discussions are being conducted with respondents in the context of interviews focused on three prepared legal cases. The interviews are interpreted to determine what criteria the interviewees employ when they consider the guilt of the actors and what personal concepts of responsibility underlie their judgements. The project is ongoing and here will be reported on the criteria informing attributions of legal responsibility which we have been able to extract from the positions taken by the interviewees.

Hernández-López Ernesto **: Sovereignty Migrates in US and Mexican Law: Transnational Influences in Plenary Power and Non-Intervention** (4120) Mexico and the US exercise increasingly transnational, less absolute, sovereignty with respect to migration. This is evident in changes to Mexico's norm of non-intervention (NIV) and the US' plenary power doctrine (PPD), two doctrines sourced in international sovereignty. Both historically defined sovereign authority in absolute terms, avoiding any foreign influence or domestic limitation. NIV prohibits Mexican foreign relations from interfering in another state's domestic affairs. Traditionally it barred a foreign policy on migrants in the US, leading to Mexico's "no policy" on migrants. PPD labels immigration law as immune from judicial review because the political branches have complete, "plenary," authority over it. Traditionally, PPD barred constitutional limitations to this migration authority. Two events since 2001 inspire a transnational examination of changes in traditional sovereignty. First in Zadvydas v. Davis, the Supreme Court explicitly stated that the plenary power is "subject to important constitutional limitations." Second, Mexico actively lobbied US lawmakers for reforms to US immigration laws, an effort sometimes called the "whole enchilada." These developments point to the opposite of each doctrine's conclusion, that: there are constitutional limits to PPD and foreign relations may influence another state's lawmaking. This examination is presented in five sections which: transnationally analyze international migration, describe PPD and NIV's foundations in absolute sovereignty, present Mexico's active foreign relations on migrants, discuss the US Supreme Court's use of the canon of avoidance to limit PPD, and conclude how these changes suggest a transnational influence in legal sovereignty conceptions.

Hervey Tamara **: EU Governance of Health Care and the Welfare Modernization Agenda** (2301) The European Union (EU) is becoming increasingly involved in the governance of health care in its Member States. This includes the use of various "new governance" tools by the EU institutions, in the context of health care. At the same time, facing a situation of "permanent welfare austerity", some actors in the EU Member States have become interested in modernization of welfare, including health care, in various forms, the most extreme of which call for welfare liberalization and/or privatization. One of the fundamental critiques of "new governance" in the EU context concerns the (perceived) inability of new governance to protect the "social" against the "market" in Europe's constitutional settlement. Using a multilevel governance and constructivist approach, this article explores the relationships between EU governance of health care and the new politics of European welfare, as applied in health care contexts, in particular its modernization. How are "new governance" spaces and processes being used to advance an agenda of health care modernization and what is that agenda?

Hessick Carissa **: Violence Between Lovers, Strangers, and Friends** (4436) The conventional wisdom in criminal law is that violence between strangers is more serious crime than violence between individuals who know one another. When asked about their crime concerns, most people respond that they fear becoming the victim of a violent crime at the hands of a stranger.

Yet more violent crimes occur between people who are intimate partners, family members, friends, or acquaintances than between strangers. This paper identifies and examines arguments in favor of treating stranger violence more seriously, and it concludes that none of the arguments sufficiently justifies the unequal treatment of stranger and non-stranger violence. The paper also identifies several affirmative reasons why violence in close personal relationships might be considered more serious than stranger violence. Ultimately, the paper concludes that non-stranger violence should be treated just as seriously as stranger violence, and it briefly explores a few practical challenges associated with the prevention and punishment of violence between non-strangers.

Hodapp Paul **: Positive Action and Democracy** (1117) I defend flexible quotas as a form of positive action for women. I begin with an analysis of fundamental rights to show that positive action is a fundamental right, based on a fundamental right to participate in democratic society. I consider in turn objections based on a fundamental right to property that trumps other fundamental rights, based on a merit principle, and based on the unfairness of positive action to male employees.

Howard Tim **:Law Social Movements and Social Change** (1323) This paper demonstrates the impact of narrative framing as reproduced in print media and it's correlation with legal actions to impact social thought and policy. The data is derived from the Florida tobacco litigation, court proceedings, and media coverage.

Huang Cheng- Yi **: The Crisis of Rechtsstaat in Taiwan – Democratic Governance, Rule of Law and Citizen Participation in the Administrative Procedure** (1405) Political scientists have praised the "rule of law" (especially the German model of Rechtsstaat) for safeguarding democratic consolidation. But in Taiwan, the rule of law threatens to become merely a legal formalism trapping the nascent democracy in the internal tensions of democratization. Realizing the Rechtsstaat in Taiwan's democratic regime has involved transplanting legal codes from Western countries without fitting them into Taiwan's social context. Unfortunately, this process produces a dogmatic legal practice seperating from vernacular legal sensibilities. Moreover, owing to the antagonistic legislature and inert bureaucracy, the stringent "non-delegation" doctrine of the Rechtsstaat paradoxically frustrates any further endeavor to reform the political infrastructure in the aftermath of democratization. Thus the efficacy of Taiwan's democratically constituted government is actually jeopardized by a formalistic application of the Rechtsstaat ideologies. By analyzing the adoption and implications of Taiwan's German-style Administrative Procedure Law, I examine the role of "rule of law" in the dynamics of democratic consolidation and revisit the central tension between the rule of law and democracy. Rather than focusing on constitutional discourses, I look at the actual daily operation of administrative law, contrasting its Rechtsstaat, underpinnings with the executive branch's recent attempts to gain legitimacy through experiments of direct democracy like citizen conferences and deliberative polls. By reflecting on the trial-and-error of Taiwan's democracy, my paper would prompt people even further to think about the appropriation of popular sovereignty and the dilemmas of constitutional democracy.

Huang Kuo- Chang **: How Legal Representation Affects Case Outcomes--An Empirical Perspective from Taiwan** (1317) From the late 1980s, the question of whether and to what extent legal representation affects case outcomes has attracted many scholars' attention. As part of the rising academic interest, a good number of empirical studies were published on this subject. This paper revisits this question and reports the result of an independent empirical study using the official data on more than 100,000 civil cases terminated in Taiwan from 2000 to 2006. Two questions are of main interest: whether cases with representation by lawyers are more likely to be settled and whether legal representation enhances a party's chance to obtain victory in tried cases. The empirical study reports that cases are most unlikely to be settled when both parties are represented by lawyers, while parties are most likely to settle the case when neither is represented. The study also shows that legal representation has no bearing on the case outcomes when the parties go to trial. Those two findings seem to raise the question of whether it is worthwhile to retain a lawyer when one is involved in a civil dispute in Taiwan. This paper establishes a theoretical framework to explain the empirical study results and answer that question. The author argues that it is the party's decision not to settle that leads to his/her seeking legal representation, not vice versa, so that the representation-selection effect leads to the lowest settlement rate in the cases where both parties were represented. With regard to the cases not settled, the merits of the plaintiff's claim, not the fact of legal representation, dictate the result of the final judgment because of the judge's predominant role in the trial process in Taiwan. Viewed together, these two arguments suggest that the influence of lawyers on how a case is disposed of in Taiwan may not be as strong as their colleagues' influence in the United States.

Hunter Rosemary **: What (or Who) is a Feminist Judge?** (1407) Many of the expectations and aspirations about the 'difference' that women judges would make have proved unrealistic, given the inevitable diversity and often conservatism of women appointed as judges. But we might reasonably expect feminist judges to 'make a difference'. This paper focuses on feminist judges, and seeks to tease out in some detail both (descriptively) who counts as a feminist judge and what it is that feminist judges do, and (normatively) what it is that we might reasonably expect of feminist judges, in light of the institutional norms and constraints within which they must operate.

Hunter Rosemary **: The Family Court of Australia's Children's Cases Pilot Program: Practitioner Views** (2423) The Children's Cases Pilot Program was introduced by the Family Court of Australia in two Registries of the Court in March 2004. It was designed to be a less-adversarial, more child-focused means of dealing with disputes over post-separation parenting arrangements that reached the stage of a contested hearing in the court. Procedural innovations in the Children's Cases Program included discontinuous hearings focused on identifying and addressing key issues concerning future arrangements for the children, judicial rather than party management of the process, and a new role for mediators in the court process. This paper discusses the findings of the evaluation of the Pilot Program, with a focus on lawyers' views of the CCP process and their changed roles within it. These views assume particular significance in light of the fact that new legislation in force from July 2006 enshrines a version of the CCP as the prescribed method of dealing with children's cases in the Family Court.

Huppes Gjalt **: Sustainability between optimisms and realism. A socio-technical framework** (2236) Current systems of governance are mostly based on technical modelling with cultural mechanisms and direct influence on economic actions to realise the aims as modelled. Institutional development for sustainability is not taking place systematically. Modes of governance hence can only follow the current system of control. Institutional developments, with the legal system as a core, are required to open up new modes of governance for sustainability.

Huppes-Cluysenaer E. A. **: Two Concepts of Formal Law Confused: the decline of institutions** (1138) Weber has developed his concept of formal law along two different lines and has equated them too easily. This confusion still continues and is conducive to the decline of the functioning of institutions. How this effect results will be explained in three steps. The first is that Weber struggles with two concepts of formal law as a basis for legitimacy. One he developed in his theory about the rationality of law, focussing on the abstract system of law as elaborated in the Begriffsjurisprudenz. The other, elaborated in Pragmatism, he used in his theory about law as an instrument of social control, focussing on legal rules as the means of creating collective behavioural expectations. The second step is that the entanglement of these two concepts of law in Weber's theoretical work is not just a minor flaw in his theorizing. It has promoted a basic misunderstanding of both the abstract systematic quality of law and its instrumental qualities. This confusion is by now deeply rooted in social theory in general. The third step is that the two different concepts of formal law refer to two different concepts of substantive law. One refers to the structural elements of institutions, the other to their goal achieving elements. The basic misunderstanding of the function of law weakens the structural element in institutions as well as their capacity to create stable collective behavioural expectations. This decline is reflected in a loss of social solidarity and stability. Keywords: system of law, Begriffjurisprudenz, law as a means of social control, Pragmatism.

Ibikoglu Arda **: Struggles for Control: Prison Strife in Turkey Since 1980's** (2219) This paper aims to explain why Turkish prisons continued to experience violent outbursts, hunger strikes, and state assaults during 1990's despite the end of harsh military rule and transition to civilian administration in prisons. Based on interviews with former political prisoners, prison personnel, prison administrators, and NGO representatives in Turkey, this study aims to challenge the state-centered approach in prison studies by demonstrating the intricate power struggles among different actors involved in prisons. I argue that the episodes of violence in 1990's that culminated with a major state assault in 2000 can be explained by the state's failed attempts at challenging the bases of the successful mobilization of political prisoners inside and outside the prisons. The strong ideological background of political prisoners, the repression of the military regime in prisons with legacies of resistance and martyrdom, and the architecture of Turkish prisons allowed the political prisoners to sustain a strong sense of solidarity and discipline in their wards. These roots of mobilization inside were combined with strong links with NGOs and human rights activists outside the prisons. The state, on the other hand, mobilized in various realms to subdue these bases of prisoner mobilization. Each failed attempt entrenched political prisoners' bases of mobilization, which in return irritated the state even more and increased the number of lives lost in each major episode of the conflict.

Ichihashi Ktsuya **: Law and Legal Assistance in Uzbekistan** (4435) Currently, the draft of the Administrative Procedure Law is being discussed by the Parliament of Uzbekistan. This draft has provisions on the principles concerning substantive issues in administrative law, preliminary procedures on administrative acts, and appeal procedures which must be followed by administrative organs issuing administrative acts. In Uzbekistan, rather than the protection and realization of the rights and interests of the people, administrative organs are more concerned with the convenience of case management practice. Even though the country has been independent for 15 years, the system is still one of 'inaccessible administration' to the people, and from the perception of the people, it is one of 'untrustworthy administration'. The purpose of the Administrative Procedure Law is firstly, to change the system from 'inaccessible administration' to 'accessible administration'. Secondly, it aims to establish a fair and transparent system. Thirdly, establish a 'trustworthy administration' through the people's utilization of the Administrative Procedure Law. It is hoped that through these measures, the Administrative Procedure Law will be revolutionary for the administrative practice. Currently, JICA and GTZ are supporting the Uzbekistan government's effort on administrative law reform (for example, Administrative Procedure Law, Administrative Penalty Law, and Law on Public Service). IN addition, JICA and GTZ are also exchanging opinions concerning the draft of Administrative Procedure Law. In this paper, I will introduce the contents of JICA's support projects on Administrative Procedure Law. Further, during the exchange of opinions with GTZ, some distinctive differences between the approaches of JICA and GTZ became apparent. It would be interesting to talk about the characteristic differences and I will also discuss about this point.

Infanti: Anthony C. **: Tax Equity** (1423) Simply put, this article stands the traditional concept of tax equity on its head. Challenging the notion that tax equity is an unequivocal good, this article deconstructs the concept to reveal the subtle, yet pernicious ways in which it shapes tax policy debates and impinges upon critical tax scholars' contributions to those debates. The article describes how tax equity, with its narrow focus on "income" as the sole relevant metric for judging tax fairness, presupposes a population that is homogeneous along all other lines. Through this insidious homogenization of the population, tax equity performs both a sanitizing and a screening function in the tax policy debate: It, in effect, forecloses consideration of non-economic forms of difference (e.g., of race, ethnicity, gender, sexual orientation, or physical ability) when determining the appropriate allocation of tax—and, by extension, societal—burdens. Paradoxically, with its ostensible concern for fairness, tax equity is often the most logical avenue for introducing critical concerns into tax policy debates; yet, the concept has been defined in such a way as to bar entry to precisely these types of concerns. It should come as no surprise, then, that "mainstream" tax scholars tend to be so resistant—and, at times, openly hostile—to critical contributions to tax policy debates. Drawing from the critical tax literature as well as critiques of that literature, the article provides examples of these homogenizing, sanitizing, and screening effects at work. The article then considers—and refutes—several anticipated critiques of this fundamental rethinking of a core concept. The article concludes by examining why, from the perspective of the dominant group, constructing a concept of tax equity that so narrowly focuses on the economic dimension of people is such a powerful rhetorical move. This exploration is largely guided by Antonio Gramsci's concept of "hegemony," which posits that a social group dominates others through a combination of force and control over ideas.

Iturralde Manuel **: Punishment and Authoritarian Liberalism: the Politics of Emergency Criminal Justice in Colombia, 1984-2006** (4419) The continuous use of emergency measures by Colombian governments during the last two decades, along with a complex combination of generalized violence and social dislocation, have had a deep impact on the Colombian criminal justice system. Such a political tendency to enforce exceptional mechanisms and institutions to investigate, prosecute and sentence what governments and an emotive public opinion regard as dangerous criminals, has structured the Colombian emergency criminal justice - a punitive system characterized by the hardening of criminal procedures and punishments, on the one hand, and the limitation of the human rights and legal guarantees of those prosecuted, on the other. The aim of this paper is, borrowing the expression from Foucault, to make a history of the present of Colombian emergency criminal justice. That is, to critically explain how it is currently structured, how it came into being and what functions, other than repressing serious forms of crime, it performs. By reducing complex social, economic and political problems to criminal phenomena, Colombian governments have legitimated authoritarian liberalism - a political model that privileges capitalism and the interests of the economic and political elites over social equality and political inclusion. The normalization of emergency penality and the predominance of authoritarian liberalism are by no means peculiarities of the Colombian

context, but the manifestation of a global trend – the use of punishment to uphold neo-liberalism, which has become the prevailing political and economic paradigm of late modern societies.

J Gerald **. Thain: Law Professor & Foreperson of a Jury: How I Spent (some of) Last Summer** (3111)

Jacobsson Kerstin **& Håkan Johansson: The micro-politics of the OMC process: NGO activities and the social inclusion process** (2409) The paper studies the open method of coordination (OMC) in the field of social inclusion, as implemented in Sweden. It conceptualizes the domestic context in terms of a social field, composed of a)an institutionalized policy paradigm, b) institutionalized patterns of cooperation and c) institutionalized actor relationships and power relationships. The paper studies the actor responses to the OMC and the institutional context in conjunction. It is shown that the OMC social inclusion has empowered social NGOs in relation to the Swedish welfare state, and the OMC has also contributed to new patterns of cooperation among social NGOs in Sweden. The importance of the OMC social inclusion lies in its side-effects on the NGO sector - in policy terms it is a marginal process given the persistence of the dominant policy paradigm, that of a universal welfare state.

Jahic Galma **& Seda Kalem: Court Experiences and Attitudes towards Courts:Results of a National Survey in Turkey** (4225) This paper discusses results of a survey conducted in Turkey in 2007. The goal of the survey was to assess the extent of the court experience (use) within the general population, and to analyze how different types of experiences with courts effect the attitudes towards courts in general population. Attitudes towards courts are compared by different types and degrees of involvement (plaintiffs, complainants, defendants, vitims, witnesses, observers).

James Kathryn **: Tales from the 'never ever': Perspectives on consumption tax reform in Australia and the United States** (4321) Notwithstanding a wide divergence in government and institutional structures, electoral systems, and social and political values, there has often been a convergence of tax systems in western democracies. By the second decade of the last century, virtually every western country had a national income tax, and by the end of the Second World War, as a result of the widening of the tax, it had emerged as a major revenue source for most governments. Over the next decades, social security taxes assumed an important role in most western countries. And by the end of the twentieth century, all developed countries bar one – the United States – had adopted a national consumption tax and, importantly, had adopted the same form of consumption tax, a multi-stage "value-added" tax (VAT). A wide array of factors has been proffered to explain the success or failure of tax reform initiatives. An analysis of the experience of two countries with consumption tax reform – Australia, the last of the OECD1 countries to adopt a VAT apart from the U.S., and the U.S., the only OECD nation without a VAT – suggests that it is the confluence of a number of political and economic factors that influences reform outcomes and that history is the key to understanding these outcomes.

Johns Fleur **: Performing Power: The Deal, Corporate Rule, and the Constitution of Global Legal Order** (1115) This article presents a stylized account of legal work involved in doing a corporate deal transnationally, drawing inspiration from the work of American legal realist, Robert Hale. In so doing, it seeks to show that legal institutions on which transnational corporate power depends are far more plastic, discordant, and irresolute than commonly recorded. By tethering global legal order to the decisive interiority of the transnational corporation, while taking that interior for granted, recent accounts (such as those of Michael Hardt and Antonio Negri or A. Claire Cutler) may do more to fortify than query the contemporary "rule" of global capital.

José Antônio **Maristrello Porto: The Legal and Financial System Link: A Case Study from Brazil** (4303) Different scholars have alternately identified geography, international trade, and institutions as the main determinants of economic growth. The economic literature identifies institution quality, specifically the quality of the legal and financial system, as an essential factor in creating and enhancing economic growth. However, the link between the legal and financial system is still controversial. This paper outlines a specific group of events involving payroll debit loans in Brazil and adds evidence of the relationship between the legal and the financial system. The paper uses empirical evidence to study the rise of Brazilian payroll debit loans as an instance of variation in institutional setting. First, I show that payroll debit loan regulation reduced the interest rates charged by the financial institutions and increased the amount of transactions as well as the sum of money. Second, I show that a judicial decision with no formal precedential effect nevertheless led banks to restrict the amount of money of the payroll debit loan and to increase its interest rates. These findings lead me to conclude that the legal and the financial system are strongly related.

Jungmann- Huls **: The shadow of the court. How she influences the succesrate of amicable debtsettlement in The Netherlands** (3105) How the cost-benefit analysis of creditors and the image of the court negatively influence the succesrate of amicable debt counseling

Kaczmarek Karolina **& Aleksandra Matulewska & Przemyslaw Wiatrowski: The Methods of Expressing Obligation in English, Hungarian, and Polish Statutory Instruments: Comparative Analysis of Selected Aspects of Deontic Modality** (1204) Abstract: The authors analyze the structure of imperative clauses (PL: przepisy nakazujące; HUN: utasító jogszabályok) in English, Hungarian and Polish statutory instruments, including the EU ones. The emphasis is put on the modal verbs used in Polish clauses and their Hungarian and English equivalents. The clauses are analysed from the semantic and syntactic perspective. Grammatical and lexical exponents of deontic modality in Polish, English and Hungarian are compared. The semantic components constituting modally marked utterances are described.

Kaneko Yuka **: Role of Law Models in Law and Judicial Reform in Asia: Controversial Development Strategies** (4303) The purpose of this study is to review the phenomena of legal and judicial reforms in Asia from the 'inside'. Japan has been almost the only active donor from the inside of Asia in this field, and, as such, has experienced more than a little friction with Western donors. The author reviews this friction in the context of harmonization between the imported formal law models and the existing local legal order including the customary norms. Special forcus is on the cases taken from recent Japan's official assistance projects, namely, the conflict in Cambodia between the draft Civil Code assistance by Japan and the Land Law reform directed by the World Bank and the ADB ; another conflict in Cambodia between the draft Civil Procedures Code assistance by

Japan and the draft Law on Establishment of Commercial Court promoted by Canada and the World Bank; and finally the ADR assistance project by Japan for post-Tsunami disaster Acheh.

Katano Yohei **: Environmental Policy and Social Capital in Tokyo** (4212)

Kenney Sally J **: Femocrats, Gender, and Judicial Selection: the Inside Story** (1207) Both Presidents Carter and Clinton pledged to appoint women judges, and both did. To understand their policy success, we need to consider the role of strategic feminist insiders in the Administrations--femocrats--who worked with women's groups on the outside. Their partnership explains their effectiveness. Together, they overcame obstacles and ensured the policy promise became a reality.

Kilborn Jason **: Comparative Cause and Effect: Consumer Insolvency and the Eroding Social Safety Net** (2206) This paper explores the connection between social welfare reform and the adoption of consumer debt relief law in Europe. Health care expenses and unemployment are significant contributors to overindebtedness in Europe, and outside the primary sources, one finds suggestions to the effect that the unraveling social safety net was a major contributing factor in the adoption of consumer debt relief laws in Europe in the 1990s. This paper critically analyzes this notion by tracking the recent scaling back of social assistance programs in Sweden, Germany, and France, and comparing that movement with the adoption of consumer insolvency regimes in those three countries. The temporal correlation seems to be quite weak, and closer examination of the individual social welfare regimes reveals latent weaknesses that were amplified by changes in consumer economic factors in the 1980s. Rather than an eroding social safety net causing the adoption of consumer bankruptcy law, other powerful variables seem to have driven both of these reform processes. In countries with both strong and weak safety nets, consumer insolvency law has become the treatment of choice for new financial risks confronting consumers in the 21st century.

KIM Seong- Hyun **: The Democratization and Internationalization of Korean Legal Field** (3137) The economic internationalization and political democratization are redefining the essential factors of Korean legal field such as the legal institutions, the positions and roles of lawyer, and the notion of legal profession. The most important capital in this transformation is the internationally recognized expertise and the morality untainted from the past. Concerning the expertise, the American models influence not only on the law firms who represent the interests of multinational corporates but also on the activities of human rights lawyers. The business lawyers and human right lawyers as actors of civil society contribute together to retreat of state, but their strategies and operations are carried out through the state. I will explain around the development of business lawyers and human right lawyers the reconstruction process of Korean legal field that produced the diversification and the specification of legal profession.

Kim Joongi **: A Forensic Study of Daewoo's Corporate Governance: Does Responsibility for the Meltdown Solely Lie with the Chaebol and Korea?** (4311) Abstract In 1999, the Daewoo Group, one of the biggest transnational conglomerates, collapsed, committing a staggering

kingston Jeffrey **: Human Rights, Justice and Reconciliation in Timor Leste** (4114) Discussion of problems plaguing judicial system in Timor Leste (East Timor), the difficulties in establising the rule of law and the impact on human rights. Also examines efforts to promote reconciliation within Timor Leste and with Indonesia.

Kirkland Anna **: Think of the Hippopotamus: Legal Consciousness in the Fat Acceptance Movement** (2418)

KIVILCIM- FORSMAN Zeynep **: THE NEW TRANSNATIONAL LAW-MAKING** (3140) Although the non-governmental organisations lack legal personality in international law, their determining position is increasing and they are interacting and communicating not only with states, but also other non-state actors. The purpose of the study is to research the ways and possibilities of direct participation of NGOs in the process of norm creation in international law, independently of the existence or approval by states or Inter-governmental organizations. The study of the subject will be based on the case of Baku-Tbilisi-Ceyhan (BTC) Pipeline project. Amnesty International emphasized the limiting effect of the Host Government Agreements between the BTC Consortium running the project and the Republic of Azerbaijan, Georgia and the Turkish Republic on the rights of these governments to regulate the areas of human rights, health, security and environment. In order to address these concerns, the main stakeholder in the project, the British Petroleum Company, approached Amnesty International and engaged a dialogue not with the states parties to the agreements but with this NGO. The concrete outcome of this dialogue has come in the form of a Deed Poll signed by all BTC consortium partners. This Deed Poll constitutes a one-sided legally binding contract and gives rise to rights for the concerned States. Using the Baku - Tbilisi - Ceyhan Pipeline as an example, the purpose of the study is to determine the existence and limits of NGOs capacity to create directly applicable norms of international law. The possibility of norms thus created without State participation to give rise to rights from the point of view of states and the legal consequences of this will be investigated.

Klijn Albert **: The (Dutch) Public & the (Dutch) Judiciary: Gaps to bridge?** (1108) In this paper I present an overview of several research projects initated by The Netherlands Council for the Judiciary that focus on the tense relationships between the public and the judiciary. I argue that there is a cumulation in knowledge both at the level of knowledge about the often stated gap in public trust and the methodological level.

Kljucar Maja **: In Search of the Reality of Company Law in Croatia** (4212) This article gives short overview over the discussion concerning the functional method of comparative law. Then it discribes a working procedure consisting of three levels which came into being when using the functional method at comparing the company prior to registration in Germany and Croatia. The focus is on the results of the question, if the law on the books, meaning the written company law of Croatia, is enforced by legal institutions and the reality of the company prior to registration in Croatia. ABSTRACT: While comparing the German to the Croatian law of ´Company prior to registration´ ("Vorgesellschaft"), a legal institute regarding the formation of companies, the applied functional method of comparative law proved to be of little help as it does not offer any answer how to integrate the law in action. The paper states that the functional method is still the right method to use but needs development. As a contribution to this may serve the following "working instructions" consisting of three levels: The first level looks at the so called law on the books, the written legal rules having the function of protecting creditor rights in the foundation period of a company. Here former socialist phrases and ideas still can be found, but also a mixture

of elements deriving from the origin countries which may develop into something own, new in the future. The second focuses on the historical and economical setting of those rules an suggests positive conditions for a successful reception process as it ties up to the legal tradition and reveals the function of Croatian company law to be a transformation engine. The last level looks at the law in action which is of special importance as reception of law bears the danger of remaining dead letters. This is being approached by a still growing list of aspects resulting from the special needs of the present comparision, e.g. the state of the judiciary or the "one-stop-shop" aiming at accelerating the founding process and to fight corruption

Knegt Robert **: The employment contract as an exclusionary device** (4115) If the employment contract is regarded as the formalization of a market transaction, it can be shown to be structured so as to exclude a lot of aspects that are arguably part of labour relations, and that often used to be covered by its regulation in the medieval and premodern era. Departing from a life-time perspective on labour careers, the employment contract is analyzed as an 'exclusionary device'. It is argued that, although it has been re-embedded by welfare state regulation, its exclusionary character has remained. Recently, as a consequence of political pressure, apparently economically motivated, towards 'flexibilization' of labour relations, in particular European states are facing an interesting dilemma. 'While 'flexibilization' calls for loosening the regulated ties between employers and employees, the implications of the EU 'Lissabon agenda' require that these same employers and employees take an extended responsibility for employment careers. The policy dilemma that flows from these contradictory requirements, and its consequences for the employment contract, are exposed by analyzing developments in the Netherlands.

Knegt Robert **: Legitimacy, argumentative anticipation and representations of order** (1138) Weber's concept of 'legitimacy' may be regarded as a sophisticated attempt to give normative aspects of relations of domination their due place in a profoundly sociological theory. In the first part of the paper I will keep up this sophistication against criticism of a too close relation between normative and sociological concepts in Weber's theory. Secondly, I will argue that Weber's conceptualization in general (and his 'act as if'-notion in particular) thus leaves room for integration of more recent insights in the motivation of action and is far beyond the notion of 'rule-following' figuring in often simplified accounts of his sociology of law. The notion of 'orienting oneself to the representation of a legitimate order' does, however, raise questions as to the relation between knowledge of normative and of social structures in motivating social action, to which Weber's cognitivistic approach seems not to provide adequate answers. Some of these questions are here further developed for the field of the regulation of labour relations.

Knieper Rolf **: Pulls and Pushes of Legal Reform along the Silk Road** (4435) After some 15 years of legal and judicial reform of various degrees in newly created and independent post-soviet States and an intensive practical involvement of the author, the paper wants to explore -the motivation of different actors and institutions on all sides: host countries, their governments, enterprises, judiciary etc, donor countries, development agencies; -the initiation, procedure and substance of the reform process; -the possibilities, potential and constraints of legal reform by legal transplants ; -the necessities of co-operation between external and internal experts as well as external and internal institutions; -the prerequisites of a transformation of "law in the books" to "law in practice". On all accounts serious questions are raised and the appreciation varies: Has this second big "movement" of "law and development" learned the lessons of the first one? Is it fair to say that again the "movement" is doomed to fail? Are there structural reasons which militate against international legal co-operation and transfer of law?

Koelling Peter **: A Theory of Judicial Independence** (1421) This paper sets forth a theory of judicial independence. Judicial independence in a liberal republican democracy serves to establish and protect civil liberties, political rights and rule of law. In order to do so three pairs of components must be present and balanced. The first pair of components are insulation and accountability. Courts must be insulated from the politics of the executive, legislature, and political parties and should not be influenced by social and economic power. Courts must also have some form of accountability. The lack of accountability erodes public support for the courts and encourages the other political branches to attempt to exercise control to compensate for the lack of accountability. The second pair of components are utility and efficiency. Courts must be useful to society, they must fairly punish crime, protect civil liberties and justly resolve disputes. Courts must be efficient, because waste and delay cause political support to diminish. Inefficiency reduces the ability of the courts to pursue their function. The third pair of components, authority and restraint, relate to the power of courts. Courts must hold the judicial authority of government and the ability to enforce their orders and decisions. The proper incorporation of judicial authority in fact stabilizes and makes other institutions more resilient. At the same time courts must be restrained. Courts must have self imposed limits on the ability to act for no executive or legislature would long permit limitations upon their own powers in the face of an unrestrained court system.

Kohen Beatriz **:REPRESENTATIONS OF GENDER DISCRIMINATION AMONG THE FAMILY LAW JUDGES OF THE CITY OF BUENOS AIRES** (4307) The family law section of the judiciary of the city of Buenos Aires is increasingly becoming numerically feminised. Once it has been established that law is not hard science but that, instead, its application is mediated by the world view of the judge, it makes sense to explore the judges'perceptions and values. Moreover, as gender is such a relevant issue to family law, it is very important to unravel the family law judges' gender representations, to consider the factors that impinge in their gender conceptions and in their daily work and decisions and, particularly, whether women and men judges differ in the way they conceive gender. This paper conveys my findings re how men and women understand the effects of gender in family life, their awareness of gender subordination and discrimination within the family and the judiciary and how they experience the large entry of women into the judiciary and its consequences.

Korkea-aho Emilia **: An Taisce -Case and the Question of a Legal Remedy Before the ECJ (Or Rather Why the Question Was Not There)3129** Soft law or New Modes of Governance (NMGs) has piqued scholars from a range of fields, not least from law. The reason for this agitation is clear. The longer and more effectively NMGs are applied within the EU, the more likely that they raise the question of the demarcation between the legal and the non-legal. Yet the lawyers are only just halfway in the study of this matter. Governance is more than rule-drafting or establishing pre-requisites for policy-making; it is necessarily followed by rule-application or the operation of a given practice. Then what is to follow? For lawyers, the answer should be fairly plain: disputes and the cry for legal remedies. One can argue against straightforwardness, but not against the fact that there is remarkably little literature on soft law and its actual application vis-à-vis the availability of legal remedies, in particular of access to them. The arrangements that link the public and the private in creating and possibly implementing soft law have added a momentum to this notion. Here is under study An Taisce -case from the ECJ wherein no notion was made of an effective legal remedy. Rather the outcome seemed to be (and as is later witnessed in other

cases) favouring effective and factual participating in NMGs as substitute to effective legal protection. The problem is worsened by the suspension among the Union and the Member States of competence in the area of civil justice. It is suggested here that the rapid proliferation of NMG mechanisms should be balanced by a more liberal and innovative application of requirements for legal protection. Only this way can NMGs be successfully promoted. Failing that, they will be met with increasing suspicion by actors.

Koukiadaki Aristea **: The Reformulation of EU-Level Norms in the British System of Industrial Relations: The Case of Information and Consultation of Employees** (2427) The 2002/14/EC Framework Directive concerning information and consultation rights of employees at national level allows considerable flexibility in implementation through agreements concluded between management and labour. Viewing the Directive as a tool in allowing EU law to become embedded in the national industrial relations systems, the paper assesses the impact of its implementation in the British system of industrial relations. The study reveals that while the transposing legislation has prompted the review of existing consultative arrangements in a wide range of organisations, it has had less impact in stimulating collective organisation for the conclusion or amendment of existing ICE arrangements between management and trade unions. In addition, the institutional design of the enforcement regime does not provide great incentive for employers to comply with the legislation and for employees and trade unions to request the establishment and/or amendment of existing consultative arrangements.

Kruger Rosaan **: Confronting Unfair Racial Discrimination: the South African Experience** (3130) This paper investigates the provisions and application of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 in view of the transformative agenda set by the Constitution of the Republic of South Africa, 1996.

Krygier Martin **: The Rule of Law - Legality, Teleology, Sociology** (1522) This article argues that the proper way to approach the rule of law is not to offer, as lawyers typically do a list of characteristics of law supposedly necessary for the rule of law to exist. Rather one should begin with teleology and end with sociology. That is, start by asking what we might want the rule of law for, then what sorts of things need to happen for us to achieve such ends, and only then move to ask what we need in order to get it. that third question will involve legal institutions but it cannot be answered without looking beyond them to the societies in which they function, the ways they function there, and what else happens there which interacts with and affects the sway of law. For the rule of law to exist, still more to flourish and be secure, many things beside the law matter, and sicne societies differ in many ways, so will those things.

Kyriakakis Joanna **: The Rise of Extraterritorial Jurisdiction to Address The Global Activities of Multinational Corporations: Trends, Resistances and Futures** (2417) There is a current trend toward national extraterritorial jurisdiction to address the global activities of multinational corporations and, in doing so, improving the potential for corporate accountability in relation to breaches of human rights. This paper is particularly focused on the growth in national legislation relating to international crimes arising from domestic implementation of the Rome Statute of the International Criminal Court. After briefly outlining the trend, using the example of Australia, this paper considers some resistances to extraterritorial jurisdiction under public international law doctrine and from the perspective of international relations. It concludes by arguing in favour of an extension of the International Criminal Court's jurisdiction to include corporations, as a complementary development toward improved corporate accountability for involvement in international crimes.

Lacle Zayenne **: Business Acumen: Competition Quality and Ethics in Dutch Notary Firms** (4116) In 1999 a new notarial act came into force in the Netherlands. The enactment of the new notarial act in 1999 was aimed at enhancing competition and abolishing the guilt-like structure of the notarial profession. The liberalization of the notarial market, through the abolition of fixed fees as well as regulated establishment, would bring about the flux of young notaries, innovation and dynamics in an otherwise dusty profession and better prices for consumers. The EU-induced liberalization plans of the legislator led to an up heal amongst the notaries represented in the political and public arena by their professional organization (Koninklijke Notariële Beroepsorganisatie KNB). More competition would lead to a decline of the quality of the services and ethical wrongdoings of notaries, or so it was perceived. The main focus of this paper is to illustrate the developments in the ethics of notaries as it is reflected in the daily basis on firm level. I will illustrate how notaries describe notarial ethics, how they reflect upon their legal tasks in comparison with other (legal) professionals, how they interpret an ethical dilemma and which are the dilemma's they are confronted with in their daily (commercially induced) practice of notarial law.

Laitinen Ahti **: Official and unofficial norms an social change** (4110) For the guaranteeing of the requisite amount of conformism, societies use norms and, in connection with norms, coercion. Norms can be classified into official and unofficial norms. In principle, the last-mentioned are more effective. But in practice, unofficial norms are not as effective as they could be. There are several reasons for this state of affairs. The number of laws in contemporary societies is greater than ever. For many people, laws have no meaning and significance. That is why laws do not direct people's behaviour as much as before. Contemporary societies are multicultural, and different values are mixed together. This causes problems. People in contemporary society do not know each other, and hence they can commit stupid an cruel acts without a shame. In this presentation I will give information about the number of laws and regulations, about a certain loss of their effectiveness, and, alternately, about the reasons for the ineffectiveness of unofficial norms.

Larsson Stefan **and Karsten Åström: Spatial Planning and Sociology of Law - Sustainable development issues in constructing infrastructure for the third generation mobile telephone system in Sweden** (2320) The infrastructure for the third generation of mobile telephony, UMTS, is under construction in Sweden. Within three years four operators were to build competing systems to cover 99,98 % of the population. The case of the 3G infrastructure illustrates how sustainability issues are handled in planning and environmental management, with conflicting goals between institutional levels and contradictory legislation. At the national level economic and technological optimism and regional policy is in conflict with environmental and sustainability goals. No comprehensive assessment was made of the entire system; the infrastructure is assessed through one permit for each mast, at the local level, giving the administrative system an extreme challenge, and giving unexpected environmental and social outcomes as a result from the lack of comprehensive assessment. Based on surveys of all local planning authorities, a regional sample of permit processes and examination of legal cases the paper examines the outcomes of the fragmented assessment of the local permit process level, from a sustainability perspective. What are the emerging effects and conflicts? The role of law in central planning with local outcomes in the case of regulating and controlling spatial planning in the case of 3G, will be analysed in this paper.

Lauth Hans- Joachim **, Jenniver Sehring: Rule of law and informal institutions in new democracies** (1310) This paper investigates the relationship between informal institutions and rule of law in new democra-cies of the so-called "third wave". The analysis builds on a broad concept of institutions. It combines a neo-institutionalist perspective with the notion of institutions of older traditions in Political Science, in order to examine in how far factual behaviour such as corruption and clientelism – defined as informal institutions – are compatible with or opposed to the norm expectations related to the formal institution of a state under rule of law. The main question is, which governance options are suitable to reduce the power of opposed informal institutions and to foster stability and quality of rule of law and therewith of democracy. The hypotheses are based on different schools of New Institutionalism, transformation theory and compliance research

Lazarus Liora **and Benjamin Goold, Security and Human Rights: The Search for a Language of Reconciliation** (2435) Introduction to Benjamin Goold and Liora Lazarus (eds) Security and Human Rights (Hart Oxford 2007) - an interdisciplinary collection of essays on security and human rights today.

Lee Jae- Hyup **: Corporate Counsels in Korea: A New Breed of Lawyers?** (2307) Significant movements among Korean companies to create in-house law departments only started since the middle of 1990s. At the first stage of its development, legal departments hire non-lawyers who have graduated undergraduate law faculties. The current picture of legal departments, however, shows very different outlook both in quantity and quality: foreign lawyers, young attorneys who are fresh out of the JRTI, laterals from law firms, and more recently, former high-ranking judges and prosecutors. A majority of legal departments in this study are mainly responsible for routine legal affairs such as reviewing contracts. A truly businessmen-type lawyering, however, has not yet emerged. This trend seems to be changing. Shareholder litigations, government's and civil society's concern toward transparent corporate governance cases, for instance, will lead the corporate leadership to institutionalize their legal departments and let their in-house counsels involve more actively in corporate decision-making early on. The recent conclusion of the KORUS FTA and the passage of the Law School Act will also accelerate the process.

Leiss **Donohue: Removing Barriers to Conflict Resolution** (2328)

Lelieveldt Herman **: Assessing the Trade-Off between the Effectiveness and Representativeness of Local Civic Organizations** (4228) Urban scholars have put great faith in the possible contribution of local civil society organizations to the quality of neighborhoods because of their potential to tackle neighborhood problems while at the same time connecting to the local citizenry in a variety of ways. There are serious indications however that there is a tension between the two requirements and that effectiveness goes at the expense of responsiveness and the other way around. This paper examines this tension through an analysis of the problem-solving activities of 409 local civil society organizations that were surveyed in eight Dutch neighborhoods in the spring of 2007. Results show that there is a remarkable high level of problem-solving activities and that organizations without professional staff are only a little less involved in tackling problems than those with professional staff, suggesting ample involvement of ordinary citizens in problem-solving. A further examination of problem-solving strategies shows that organizations in more than half of the cases engage residents as co-producers in trying to tackle a problem that they have mentioned. The results suggest a far higher level of civic involvement in tackling urban problems than previous studies have found.

Lentz Carola **: Earth shrines and property rights: the sacred/secular connection in West African land litigation** (4312) In many parts of Africa, claiming to belong, by virtue of descent or some other crite-rion, to the pioneers or 'first-comers' to a specific region is the most widespread strat-egy to legitimate allodial property rights. First-comers, be they individuals or, more commonly, a group of frontiersmen, are believed to have established a special relation-ship with the spirits of the land and thus played a crucial role in 'opening up' the wild bush or forest for human settlement and agriculture. In many places, first-comers estab-lished shrines at which regular sacrifices are offered to the earth god in order to ensure the fertility of the land and the well-being of the community. The office of the earth priest, the custodian of the shrine, is usually vested in the lineage of the first-comers, at least according to widespread norms, and even where it was appropriated by powerful late-comers, these often still present their claims in the idiom of first-comership by re-interpreting the settlement history. If first-comers are believed to be the founders of earth shrines, the reverse is also true: control over an earth shrine supports claims to first-comership and thus to allodial property. The history and territorial reach of an earth priest's spiritual services are interpreted as 'proofs' of secular property rights. As a con-sequence, the shrines' origins, trajectories and jurisdiction were, and continue to be, often subject to intense debate. Drawing on examples of conflicts over land tenure in northern Ghana, the paper will explore how these 'sacred' foundations of property rights are carried over into the modern legal system, and how the assertion of spiritual authority becomes an asset in land litigation in and outside the courts.

Lin Andrew Jen-Guang **: The Front-End and Rear-End Corporate Governance Reforms in Taiwan: Unsettled Issues on Regulatory Reform** (3411) The purpose of this article is to examine the major front-end and rear-end corporate governance mechanisms adopted by the TSEA and Taiwan's Companies Act. It focuses on the amendments of the TSEA and the Companies Act adopted after the Year of 2000. Particularly, this article discusses the introduction of independent directors and audit committee into the corporate structure, the reform of disclosure requirements, and civil liabilities for making false disclosure. This article tries to evaluate the efficiency and effectiveness of corporate financial disclosure system under the 2006 TSEA. It will examine the interaction of the corporate governance provisions and the civil liability provisions for misrepresentation to see whether the regulatory reform can improve the quality of corporate financial disclosure. It will also examine the judgments of the courts to see how the courts apply and interpret the law. This article will not speculate on how the courts will interpret the language of the newly amended TSEA. However, it will study the adjudicated cases and review whether the courts have interpreted and applied the provisions consistently. If there are any conflicting court decisions, whether they occurred inevitably owing to the vagueness of the languages used in the TSEA, or whether they occur because of the misunderstanding or misinterpretation of some courts?

Littwin Angela **: Beyond Usury: A Study of Credit Card Use and Preference Among Low-Income Consumers** (1215) The question of whether to re-impose usury restrictions lies at the heart of the debates over consumer credit regulation. Advocates of interest rate regulations argue that creditors are exploiting low-income borrowers, making huge profits while they lure these families into financial traps from which they can never emerge. Opponents of regulation note the benefits of expanding credit to low-income consumers. This debate has continued for more than two decades, but until now no one has asked the affected families their views about access to credit or what safety features they would welcome. This paper presents original data from a

study of low-income women. The findings suggest that usury regulation may be an unnecessarily blunt instrument to provide protection for low-income families, as low-income families themselves can identify credit protection devices that would be more nuanced and more useful.

Lo Giudice Alessio **: The Question of Collective Identity. Possible Conceptual Models** (4120) My paper is meant to show that the traditional conceptions developed in order to study individual identity form a platform useful to analyse the possibilities of new postnational collective identities, such as the European one. At the individual level, the first approach to be taken into account is essentialism. Passing to the collective level we may find social structuralism, according to which identity is given by social attributions that govern a category implying a structural commonality (social class, ethnicity). But from essentialism a sort of primordialism derives as well, whereby identity is given by natural features building an alleged identitarian essence. A second approach to individual identity is constructivism, whose homologue at the collective level is social constructivism: identities are built, created and rebuilt, rather than being biologically, culturally or structurally pre-ordinate. Within this approach we have different views, too. According to a pragmatic notion, collective identity is the product of the relationship between social actors deeply rooted in the concrete experiences. Another view is a model of narrative identity that considers the biographical structure as a condition for thinkability of collective identity. In the paper I am going to show that the legal and political translation of these approaches towards collective identity leads to point out several useful models. My final aim will be to clarify how these different models affect the political and legal mise en scène of European identity.

Luker Trish **: Intention and Iterability: On Reading Fingerprints as Signs of Identity** (1533) In August 2000, Justice O'Loughlin of the Federal Court of Australia handed down the decision in Cubillo v Commonwealth in which Lorna Cubillo and Kwementyay Gunner took action against the Commonwealth Government, arguing that it was vicariously liable for their removal from their families and communities as children and subsequent detentions in the Northern Territory during the 1940s and 1950s. The case is the landmark decision in relation to legal action taken by members of the Stolen Generations in Australia. The decision provides an interesting site for an examination of the function of race in the reception of evidence in legal claims made by Indigenous people in 'postcolonising' countries such as Australia, and in particular the privileging of documentary over oral and other unwritten forms of testimony. In this paper, I will analyse one of the key sites of evidence in the trial—a form of consent with the purported thumbprint of Gunner's mother, Topsy Kundrilba, which O'Loughlin read as a request that he be removed to St Mary's Hostel. I will provide a deconstructive reading of the form of consent, raising a series of questions in relation to the document and its reception by the court. Drawing on a semiotic framework and the work of Jacques Derrida, I investigate the significance of the concepts of intention and iterability to the interpretation of the document, arguing that the thumbprint cannot be read as a signature; it does not function as a sign of individualised identity.

Machura Stefan **: The Influence of Political Parties on the Third Power** ( ) The political significance of courts is increasing. Courts have been involved in sweeping political developments recently. Political parties can not leave the "court arena" of politics aside. However, they should limit their influence wisely so that the independence of the "third power" of the state is preserved. The paper discusses recent developments and outlines channels by which parties can influence the courts and the prosecutorial service.

Maeda Tomohiko **: Collaboration between Judges and Court Clerks -Expanding Domain of Court Clerks in Japanese Civil Justice** (3115) Japanese court system has experienced sharp rise of number of civil cases (with both of civil litigation and other civil proceedings such as enforcement, bankruptcy, and so on) from late 1970's on. Under the circumstances, Japanese courts have begun to utilize their court clerks (Saibansho-Shokikan) in variety of roles (especially as judges' assistants) other than original role of court reporter. This paper is result of interviews with judges, court clerks, and other court officials. It will describe variety of roles court clerks play in Japanese civil justice these days and their relationship with judges (and other staff). It will show that court clerks are career officials and inhouse quasi-lawyer, who assist their judges directly in civil litigations. And it will also show that domain of each clerk is determined on ad hoc basis through informal interaction with judges, considering such factors as their legal ability, cases involved, current work load, and so on. Based on these findings, it will present working hypothesis for effectiveness of utilizing court clerks in civil litigations, and compare them with their counterparts in other countries.

Maher Imelda **: Any New Governance? Juridification and Networks in EC Competition Law** (2301) This paper explores the use of soft law systems and networks in the highly juridified field of competition law in order to reflect on the newness or otherwise of new governance and the interface of regulation, competition and new governance. EC competition law is long established but has undergone a 10 yr period of reform that is nearing completion. The reforms overlap with the controversial shift to new governance methods in the EU. The competition reforms on the other hand occurred within the traditional governance structures of the EC. They occurred alongside but were not interlinked with the open method despite the emphasis on competitiveness in the Lisbon agenda, culminating in the reform of three Council of Ministers formations to create a Competitiveness Council. However, even within the competition sphere networks as a new form of governance have emerged – largely as a result of a failure to agree hard law but in practice it now appears as an effective mechanism for making decisions as to jurisdiction and to facilitate the sharing of confidential information in relation to enforcement. The paper will thus explore the extent to which our understanding of law and governance is challenged where networks emerge in a highly juridified sphere and the extent to which this differs from, is shaped by or draws on the emergence of new governance methods via the Lisbon strategy.

Mandel Gregory **: When to Open Infrastructure Access** (4320) Frischman's theory of infrastructure commons provides a useful lens through which to view a wide variety of societal resources, including information, transportation, environmental, and intellectual property resources. Frischman's analysis reveals interesting relationships between many of these seemingly disparate resources, and concludes that most public and social infrastructure (nonrivalrous resources that are used to produce public or nonmarket output goods) should be managed by some sort of open access regime. While providing an original and useful descriptive framework, Frischman's infrastructure theory does not appear to fully develop guidelines for determining which public and social infrastructure resources should be managed through open access regimes and which should not. Rather, the framework appears to imply that all, or almost all, public and social infrastructure resources should be managed through open access regimes. This paper expands upon Frischman's infrastructure theory to develop normative guidelines to help elucidate how and when to select an open access versus a restrictive regime to govern particular infrastructure resources. This expansion requires distinction between the stage of development of different infrastructure: yet to be conceived, yet to be produced, and in need of management.

Marchetti Elena **: 'Policing' family violence through the use of Australian Indigenous sentencing courts** (2230) Some Australian jurisdictions are using Indigenous sentencing courts to sentence family violence offenders. These courts use Indigenous community representatives to talk to a defendant about their offending and to assist a judicial officer in sentencing. While certain jurisdictions do not allow family violence matters to be heard in the Indigenous sentencing courts, magistrates and Elders in New South Wales and Queensland encourage the hearing of such matters in their courts. There has been a great deal of debate surrounding the appropriateness of using restorative justice and Indigenous-controlled justice practices for partner, sexual and family violence. The debates focus on issues such as whether or not power imbalances between victims and offenders exist, and whether or not more punitive responses should be adopted despite a victim's desire to maintain family unity. This paper uses data collected from interviews with Magistrates and Elders and feminist critical race theories that have explored the complexities involved in responding to family violence in Indigenous communities, to investigate whether the processes of the Indigenous sentencing courts are suitable for 'policing' family violence offenders.

Markard Nora **: War and Gender: Sexual Violence and Refugee Law (draft paper)** (2240)

Markard Nora **: War and Gender: Sexual Violence and Refugee Law** (2240) Globalization and the end of the Cold War have contributed to what some political scientists call "new wars". Today's civil wars are often marked by internationalization, a strong economic element, a plethora of non-state actors and, crucially, a sharp rise in violence against civilians. Meted out by young or under-age recruits that join armed groups for a variety of reasons including abduction, this violence is strongly gendered and often sexualized, especially against women. It part of a continuum of violence that starts before the war and doesn't end with it. Today's refugee law has to respond to these changes in a dynamic way. Not only the chang-ing function of "irrational" violence and war economies, but also their gender aspect have to be carefully analyzed in order to provide adequate legal protection. Seeking to integrate contemporary issues of refugee law with research on war and gender and drawing on recent developments in international criminal law, this paper proposes new ways of conceptualizing sexual violence in "new wars" and points out challenges to the application of the Refugee Convention both on a factual and on a doctrinal level. Finally, it will briefly discuss compared responses in national law and jurisprudence.

Markovits Inga **: Justice in Lu̇ritz, Chapters 1-3.doc** ( )

Markovits Daniel **: Professional Ethics and Political Legitimacy** (4316) The traditional conception of the lawyer's professional role ¬ a conception that emphasizes the lawyer's fidelity to her client ¬ has been subjected to sustained criticism in recent decades. Both core elements of this conception have come under threat. On the one hand, a series of theoretical arguments in legal ethics have questioned the adversary zeal associated with traditional lawyerly fidelity. These arguments reject the traditional notion that a contest among partisan lawyers best promotes accurate justice overall and add that even if it did, claims about what is best overall cannot justify the wrongs that partisan lawyers directly commit. On the other hand, a series of practical developments in the legal profession ¬ involving an increased division of labor among lawyers ¬ have caused lawyers increasingly to identify with the merits of their clients' claims and so to abandon the professional detachment, the self-effacing refusal to be judgmental, that traditional lawyerly fidelity involves. Most lawyers nowadays represent exclusively one side of a class of disputes, and so come personally to identify with the claims that this side presses. Cause lawyers, perhaps most notably, go so far as to make this identification self-conscious, and indeed a desideratum of legal practice. I propose to elaborate a new argument in favor of the traditional ideal of lawyerly fidelity, which connects this ideal to the legitimacy of adjudication. I argue that adjudication achieves its legitimacy by promoting a form of engagement among disputants and between disputants and the state. Lawyers help to sustain this engagement by mediating between their clients' claims and the rules and institutions through which the state assesses the claims. In order to succeed in this mediating role (rather than confronting their clients as alien, and indeed as arms of the state whose interventions are in need of legitimation), lawyers must serve rather than judge their clients. The two prongs of this formulation restate the two core commitments associated with the traditional conception of lawyerly fidelity.

Marsan Clara **Raventós: Delimiting the Demos that Underpins Contemporary Constitutional Polities** (3118) The success that the constitutional form has had as the preferred one to design contemporary polities – which have mainly been States, but also some supra- and infra- State entities - is likely to be attributed to what can be identified as the meta-people element embedded within it. For a meta-people element within a constitutional system, I am not referring to elements that benefit the people through the enactment of constitutionalism (e.g. fundamental rights, distribution of power to avoid tyranny, etc.) but to the fact that, in the form of a constitution the paradox of the authority and the recipient of the legal order is resolved in favour of the people. In other words, constitutionalism presupposes that it is the people who will be the everlasting power holder and designer of the normative system.

Martin Elaine **: U.S. Women Federal COurt Judges Appointed By Carter** (2408) Despite the increase in the number of women judges, lawyers, and law students, there is still considerable disagreement in both scholarly and journalistic publications as to whether any gender 'difference' is symbolic, substantive, or both. This paper should contribute to that discussion. In an article published in 1982, I predicted that women appointed to the federal bench by President Carter between 1976 and 1980 would "make a difference" in the administration of justice in the United States. This paper is both a test of that prediction, and an exploration of what it means to make a difference. Starting with the original article and continuing with never before published interviews and written surveys conducted in the early 1980s, I examine the personal backgrounds and ambitions of those 40 federal court women.

Matczak Marcin **: Is judicial formalism compatible with legal positivism and rule of law ideals?** (4502)

Mattos Paulo **: Industrial Policy and Competition in Developing Countries: from the regulatory state to the new developmental state** (4526) The main purpose of this paper is to analyze what could be labeled a new developmental state in Brazil in comparison with the regulatory state model adopted by Cardoso Administration in the Nineties.

Mc Namee Eugene **: In the midst of death we are in life; biopolitics and beginning again in Rwanda** (1413) This article, using a framework of analysis based on Foucaultian ideas of 'biopolitics' and Agamben's 'completion' of that notion, together with the more focused theorisations of Mahmood Mamdani, re-visits two basic questions of the Rwandan genocide which have not been satisfactorily resolved by purely materialist analyses of the roots, dynamics and consequences of the genocide. The first is that of why so many civilians participated in the massacres, or to put the question in strong terms, 'how could even the most extreme forms of indoctrination or duress have produced such an outpouring of murder by civilians against civilians?' The second relates to the acknowledged failure by the international community to prevent or stop the genocide, and might be phrased 'how could so many stand idly by when so little

could have prevented such untold suffering?' The effort is to examine the plausibility and value of linking together on a conceptual (bio-political) level the 'internal' questions of why a genocide in Rwanda and why in that way, with the 'external' questions of why non-intervention followed by intervention in the form that it eventually arrived, using in particular Agamben's theory of the relationship between sovereignty and 'bare life'.

McGinley Ann C **: Creating Masculine Identities: Bullying and Harassment "Because of Sex"** (4224)
The article uses masculinities theory and new research on the gendered nature of bullying to analyze Title VII and to argue that harassing behavior occurs because of sex even where it is hazing or horseplay, is not specifically directed at the female plaintiff or is sex- and gender-neutral in content.

Meidinger Errol **: Competitive Supra-Governmental Regulation: How Could It Be Democratic?** (2502)
This paper explores the possibility that a developing form of regulatory governance is also sketching out a new form of anticipatory regulatory democracy. 'Competitive supra-governmental regulation' is largely driven by non-state actors and is therefore commonly viewed as suffering a democracy deficit. However, because it stresses broad participation, intensive deliberative procedures, responsiveness to state law and widely accepted norms, and competition among regulatory programs to achieve effective implementation and widespread public acceptance, this form of regulation appears to stand up relatively well under generally understood criteria for democratic governance. Nonetheless, a more satisfactory evaluation will require a much better understanding of which programs win regulatory competitions, and why.

Melossi Dario **, Alessandro De Giorgi, Ester Massa: Second Generations in Italy between Culture Conflict and Deviance: A Self-Report Study** (1214) Our study was directed to exploring the hypothesis of a differential "normative socialisation" of second generation minors in the city of Bologna, Italy, through a self-report study carried out among students attending the last year of "middle" school (eighth grade, 13-14 years old). The questionnaire was administered to all eighth grade attendants in four Bologna schools having, for Italy, a rather high rate of "immigrant" minors. The collected data were analysed through multivariate regression, relating socio-demographic and other variables to the dependent ones measuring deviance rates. The results of this analysis will be presented in the discussion.

Meuwese Anne **: EU impact assessment: regulation or constitutional law?** (2414) The European Commission introduced impact assessment (IA) in 2002 following recommendations from the Mandelkern group on Better Regulation. This paper investigates the rationale behind this new procedure, as well as its capacities for empowering various stakeholders and the way in which the procedure and its outputs are reviewed. It is argued that using the contrasting lenses of regulation studies and constitutional law scholarship for analysing these issues contributes to better capturing the salience of impact assessment as a set of emerging norms in EU lawmaking.

Meyer David D **: What Role for Race in the Placement of Children?** (4108) This paper considers the extent to which courts and other government actors may consider race in making decisions about a child's upbringing, focusing on U.S. law. In 1984, the U.S. Supreme Court sought to provide an answer, ruling that the federal Constitution generally prohibits considerations of race in child-custody decisions. Nearly a quarter-century later, however, the question remains fiercely contested, dividing those who consider racial identity central to child welfare from those who aspire to "color blindness" in family formation and relations. Recent developments in U.S. law, in fact, appear to point in opposite directions at the same time. On one hand, some recent court decisions have affirmed the relevance of race, holding that judges may prefer same-race placements as long as they consider other factors as well. On the other, federal enforcement policy has embraced a new interpretation of federal law that would treat almost any acknowledgment of race as unlawful in decisions concerning child placement and adoption. This paper suggests that neither of these views accurately reflects the constitutional limitations on considerations of race in child-placement decisions. It argues that the equality guarantee of the U.S. Constitution, properly understood, permits taking account of race where necessary to substantially benefit a child. Although empirical evidence suggests that such cases would be rare, the Constitution should not be understood to make race categorically irrelevant to child placement decisions.

Midgley Rob **: South Africa: Legal Education in a Transitional Society** (4338) This contribution focuses on stakeholders that are external to universities and their influence on South African legal education. Where relevant, the manner in which universities have interacted and responded to external interest has also been recorded.

Midgley Rob **: The Emerging Role of Ubuntu-botho in Developing a Consensual South African Legal Culture** (4539) This paper explores the extent to which courts have aspired to mould a new South African legal culture by using the concept of ubuntu-botho in a transformative sense to express African values and to form a cohesive, plural, South African legal culture.

Miyazawa Setsuo **: American Influence in Legal Education Reform in China, Korea, and Japan** (4114)
This is an interim report of a commissioned review essay of the English-language literature on American influence on legal education reform in China, Korea, and Japan. Drafts about China and Korea are attached, while some general ideas about Japan will be orally presented with power point slides. Bibliographies are attached.

Mnisi Sindiso **: Redefining Expertise in Customary Law Cases in South Africa** (2424) According to the South African Constitution, the state is founded on the value of the rule of law. Implicitly, laws must satisfy the principle of legality and, hence, be clear and specific, consistently applicable, foreseeable, and (easily) ascertainable. Somewhat paradoxically, the same Constitution also entrenches customary law, although the positivistic notions inherent to legality oppose the application of (at least, living) customary law. Against this background, this paper critiques the rules for the ascertainment of customary law for civil court purposes and the transplantation of the hegemonic of legality to customary law cases. In it, I argue that – notwithstanding the apparent systemic schizophrenia – to be effective in the constitutionally ordained recognition of customary law the courts must abandon or amend their current conceptions of particular dominant substantive and procedural principles. Amongst these, I propose that their notion(s) of 'expertise' should give way to the comparably loose, or non-existent, typology of living customary law; in this way, facilitating the fluid exchange between the common 'knowledge(s)' of the communities and juristic facts observed by civil courts settling customary disputes.

Mootz III Francis J **: Law's Hermeneutic Ontology** (1237) Law is a practice that claims to be aligning itself with objective truth: "The Law." Natural law theories justified this state of affairs for centuries, but in the wake of the collapse of traditional natural law theories there appears to be no ontological account of law that does credit to the depth of the practice. In particular, legal postivism has failed to fulfill its promise to provide guidance after the eclipse of natural law. Using Steven Smith's, "Law's Quandary," as a touchstone, I will account for the ontology of law in a naturalistic manner, but without relapsing to traditional natural law accounts. I draw guidance from contemporary theories of rhetoric and hermeneutics, and conclude that law's quandary is really life's quandary, but that we can account for the quandary in satisfactory and productive ways.

Morag-Levine Noga **: The Problem of Pollution Hotspots: Common Law, Coase, and Pollution Markets** (1235) Unlike direct regulatory demands for uniform reductions by all pollution sources, emissions trading allows for varied responses by different polluters. The cost-saving gains associated with pollution markets are a direct function of these markets' indifference regarding which of the relevant pollution sources will operate above its initial quota and which below. Integral to this flexibility, however, is the potential of such markets to contribute to localized pollution "hotspots" where the relevant pollutants are not spatially fungible. In opting for this tradeoff, pollution markets accord with key precepts of the nuisance doctrines that have historically governed air pollution under common law, this article argues. Using Coase's article, The Problem of Social Cost, as its point of departure, the paper follows the thread linking the common law with the pollution markets that Coase's work helped inspire. Coase viewed as inefficient legal rules requiring across-the-board internalization of negative externalities, such as pollution. This view echoed the common law's longstanding preference for locally tailored definitions of the interference thresholds necessitating legal intervention. Coase found in the common law's propensity to balance opposing economic interests evidence of an (implicit) symmetrical construction of the competing rights at play. On the one hand was the right of property owners to put their resources to productive use even when that use imposed harm on others; on the other the right of neighboring residents not to be subjected to such harms. Neither right enjoyed a priori protection under a common law regime that varied the outcome of pollution and other nuisance disputes in accordance with the circumstances of each case. Under this "locality doctrine" pollution that might have been considered a nuisance in an upscale residential area was not deemed so in poor, more industrial locales. Within this framework, pollution hotspots were an inevitable, and ultimately acceptable, consequence of air pollution regulation under nuisance law. Where plaintiffs challenged this outcome judges often invoked scientific uncertainty regarding any health effects and attendant trivializing characterizations of the relevant injury. Over several centuries, English and later American pollution control policy was characterized by a back-and-forth swing between two regulatory paradigms: one tolerant of variations in levels of control as it aimed to tailor regulation to the circumstances of differing pollution sources and locales; the other committed to feasible mitigation of pollution across all sources. Tracing emissions trading to its common-law roots underscores the tradeoffs that this policy approach entails. It may also offer a clue on why pollution markets have generally encountered a more skeptical reception in Europe, relative to the United States.

Morgan Bronwen **: Comparative Regulatory Regimes in Water Service Delivery - Emerging Contours of Global Water Welfarism?** (1509) This paper explores a very specific dimension of broader global policy issues concerning water resources: the regulatory governance aspect of delivering water services to ordinary citizens in urban contexts for domestic use. Water provision, as with many other areas of collective provision, is increasingly shaped by attempts to embed social facets into the expansion of transnational markets: part of the incremental growth of 'globalisation with a human face'. The paper summarises a combination of developments in policymaking and provision that is creating the nascent outlines of a transnational institutional dimension to urban water services delivery. It stresses that this process is still heavily dependent on national and local state institutions. Domestic regulatory institutions are a crucial part of the picture, and the paper elaborates a theoretical framework that is then used to frame empirical findings from case studies of the regulatory governance of water services in Bolivia, Chile and Argentina during the 1990s and early 2000s. These case studies illustrate the regulatory dimensions of a debate at the intersection of social policy and global governance: one that could be emblematic of potential trajectories of transnational regulatory politics in areas beyond water (most obviously other public utilities such as gas and electricity, but also health and education).

Motha Stewart **: Veiled Women and the "Affect" of Religion in Democracy** (1321) The veiled woman troubles feminism and secularism in much the same way. Both feminism and secularism face a problem of finding a position that respects individual autonomy, and simultaneously sus- tains a conception of politics freed from heteronomous determination. This article gives an account of what is being resisted and by whom in modes of politics which seek to produce an autonomous subject emancipated from `other laws' (heteronomy). It also draws on Jean- Luc Nancy in order to consider what has been termed the problem of Islam in Europe as a wider juridical and political problem centred on the significance of affect as heteronomy. It thus explores the tension between piety and polity.

Moura Alexandrina Sobreira de **: Environmental Federalism in Brazil** (4526) Brazil is a Federative Republic composed of the Union, the States, the Federal District and the Municipalities, all of which are autonomous according to the Federal Constitution of 1988. Federative autonomy is based on two ground elements: the existence of government authorities pertaining to each tier and the establishment of exclusive competencies. This distribution of competencies gives rise to a complex state structure, in which several spheres of government rule over the same population and the same territory. The assignment of autonomous powers, therefore, requires to delimit the fields of government action with regard to functions, tasks and services provided (Afonso da Silva, 2002). As far as the environment is concerned, the assignment of competencies follows the general rules established by the Constitution when it bestows upon the "Public Power" (Poder Público, general term which refers to all the public territorial entities of the federation) the obligation to protect the environment and ensure the right of all citizens to an ecologically balanced environment. The Brazilian System of Environmental Management is largely decentralized across tiers of government. The Federal Government is responsible for the setting of general norms and guidelines as well as for its enforcement through its operational organs whereas States and municipalities formulate and implement supplemental legislation and its application. The new Constitution of 1988 defined broadly the competence of the tiers of government regarding environmental issues and dedicated a specific chapter to the environment.

Mugerwa Jackson H. **: Not for the Judiciary: security Certificates and Canada's war on Terror** (2431) The paper undertakes a critical analysis of the "security certicate" process under the Canadian "Immigration and Refugee Protection Act" (IRPA). It is argued that the process compromises the rule of law and is unconstitutional. The Supreme Court of Canada has recently declared portions of the IRPA unconstitutional. It is my contention that the security certificate process is ill-suited for the judiciary. This is because the process deals with :"future" considerations of policy and strategy; considerations replete with utilitarian calculations. Courts, on the other hand, deal with issues of justice according to law and , justice, in my view, deals with "backward" looking considerations. We are mixing apples and oranges.

Müller Ulrike A.C. **: Politics of the Waiting Room and Professional Direct Action: Private Practice Cause Lawyering in Berlin** (3101) This paper examines cause lawyering in private practice in Berlin. Based on qualitative interviews, it outlines a distinct type of cause lawyering which can be framed as 'professional direct action'. This mode is a response to the historical decline of supportive political movements. It differs from legal top-down versions (test case litigation), from political bottom-up approaches (political mobilisation lawyering), and from critical lawyering. Focussing on conventional professionalism, the cause and the client are inherently related instead of opposed to each other, as each individual's chance to determine her life is the cause. Open politicisation is rare – due to the very political opposition to hierarchy between the client and the lawyer. Professional direct action shows the potential of lawyering as a covert strategy which can pursue radical political goals with apparently neutral procedures. Therefore, it does not fit into the juxtaposition of legalism and political ideals. From an internal perspective, the stress on the clients' decision, and elements of decommodification show deeply transformative aspects. Despite the apparent proximity to conventional lawyering, professional direct action constitutes a true mode of cause lawyering, An inherent danger of this mode is not the individualisation of clients but of lawyers. Lawyers lack the possibility for collective exchange, which is important both to provide affirmation and to facilitate theoretical reflection – on new dangers, but also on cause lawyers' historical victories. Earlier visible political constraints have been replaced by more subtle economic constraints which obstruct collective exchange as a motivational and conceptual resource.

Murray Stuart J **.: Calculating Risk: The Politics of the Subject** (2110) This paper discusses how an emerging neoliberal ethos of risk and calculativity has begun to change the ways that the subject relates to itself as an ethical subject. I offer a brief example drawn from biomedicine and then turn to one of the late writings of the political theorist, Hannah Arendt. With Arendt, I argue that the ethos of risk and culculativity turn the subject's self-relation into the concern, foremost, for biological life -- from bios to zoe. I argue that ethical reflection is an ontological relation, whereas risk and calculativity reduces ethics to an epistemological question. I suggest, finally, that it is Arendt's understanding of speech that offers us the possibility of a more ethical self-relation and a rhetoric that fosters an alternative mode of governance.

Myers JoAnne **, The Entrenchment of Second Class Citizens: Public Policy, Law and Homosexuals AND Tne Markers of Citizenship in a Liberal Democracy** (1213) This is a WORKING DRAFT of a larger project. The idea of public square-- the public sphere -- has been idealized even as access to it is controlled and limited by the state. [Participatory] democracy is messy. This messiness is an anathema to the state; the purpose of governmental states is to efficiently control its sovereign public. Yet, as Bhiku Parekh (1999) puts it: the role of the modern state is to reconcile the demands of (national) unity and diversity. The category Citizen is extremely contested and contextualized by cultural, political, historical, economic, situational, and place. There are markers that render people second class citizens. In the United States, as elsewhere, these markers include property ownership, productivity, age (maturity), patriotism, the right to autonomy/privacy (read as “control over one’s mind, body and labor”) among others. This paper looks at how government entrench citizens, in this case, homosexuals via public policy, assimilation to, and access to, full citizenship. The paper proposes a transformative theory and practice to reach a participatory democracy.

Nagenborg Michael **& Karsten Weber: Ethics, Law, and Future Technologies** (1417) The 21st century will see the raise of technologies coming along with the promises to bring major changes at least to rich societies. Robots i. e. are expected to become as common as computers are today, while computers will turn into invisible, ubiquitous, and pervasive devices. Authors like Warwick (2004) or Brooks (2002) thus argue that humans have to become man-machine-hybrids to be able to control these advanced technologies. These technologies do not only present major ethical challenges like surveillance issues, but may also fundamentally contest law and ethics, because they argue with our common understanding of what a human being is. Although even conservative authors like Fukuyama (2002) are in favour of regulation, the question is raised how we can continue to argue for regulations which are based on traditional understandings of humans. Levy (2006) i. e. states that we need a new branch of law, robotic law, which better fits to the invention of intelligent and autonomous robots than our current human centred law is. In our paper we will address the question how ethics and law may deal with future technologies, while pointing out to the fact, that this “new” technologies are already under development today. We therefore will ask how and to what extend we might regulate future technologies today, from our background of projects on mobile communication (Weber) and robotics (Nagenborg).

Nakamura Masaki **: Legal assistance and social change in Mongolia** (4435) The transition to democracy in Mongolia began in 1990, which saw the commencement of political democratization and the establishment of a market oriented economy. In May 2003 the land privatization process began. As one of the few countries in the world where nomadic pastoralism is considered a key industry, the introduction of property ownership rights is bound to have a profound impact on the nomadic culture. The ramifications of the new laws were, however, insufficiently debated, and with the backing of institutions such as the IMF and the ADB, the ruling party railroaded land privatization legislation through parliament. The adoption of this legislation in turn gave rise to an anti-land privatization movement, which became one of the causes for the subsequent defeat of the MPRP in the 2004 parliamentary elections. In this presentation, I would like to discuss about the legal assistance and its influence on the Mongolian society.

Nash Jonathan R. **& Rafael I. Pardo: An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review** (4418) Commentators have theorized that several factors may improve the process, and thus perhaps the accuracy, of appellate review: (1) review by a panel of judges, (2) subject-matter expertise in the area of the appeal, (3) other lawfinding ability, (4) adherence to traditional notions of appellate hierarchy, and (5) the judicial independence of appellate judges. The considerable discussion that has expounded upon these theories has occurred in a vacuum of abstract generalization. This Article adds a new dimension by presenting the results of an empirical study of bankruptcy appellate opinions issued over a three-year period. The federal bankruptcy appellate structure provides certain litigants the choice to appeal, in the first instance, to one of two distinct appellate tribunals—district courts and bankruptcy appellate panels (BAPs)—whose structural features relating to the theorized qualities of appellate review differ. As BAPs appear to have more of the features identified as improving the quality of appellate review, the study tests the theory through various hypotheses that focus on the perception held by other federal courts within the bankruptcy appellate structure of the quality of appellate review provided by these distinct appellate tribunals. The data show that, as measured by (1) the subsequent disposition rendered by courts of appeals and (2) the citation practices of other federal courts to the appellate opinions issued by BAPs and district courts, BAPs have been perceived to provide a better quality of appellate review. Having unearthed some evidence that supports the theoretical notions underlying the quality of appellate review, this Article concludes that commentators and policymakers ought to be encouraged to explore further, in a more detailed manner, the question of how appellate structure can be designed to produce better results.

Nelken David **:using the concept of legal culture (2314)** Discusses the utility of the concept of legal culture using as a case study the problem of court delays in Italy

Noonan Kathleen **and William Simon: The Rule of Law in the Experimentalist Welfare State: Lessons from Child Welfare Reform** (2885) Discussions of the rule of law in the welfare state have tended to stall in four antinomies: rules v. standards; bureaucratic v. adjudicatory control; broad v. narrow judicial intervention; and negative v. positive rights. This paper reports on recent innovations in child protective services in Alabama and Utah. It argues, first, that the innovations show great promise of improved practice in an area often regarded as hopeless, and second, that they suggest possible resolutions of the four antinomies.

Nuijten Monique **& David Lorenzo: TERRITORIAL STRUGGLE, INDIGENOUS PEOPLES AND LEGAL CULTURE IN THE ANDEAN HIGHLANDS OF PERU** (4539) The Andean highlands of Peru have known centuries of territorial struggle under different political regimes and involving a variety of actors, such as colonial authorities, hacendados, indigenous communities, and state agencies. This paper starts with a short overview of the role of the law and legal procedures in territorial questions in various epochs. This is followed by a detailed study of the history of territorial claims of Usibamba, a comunidad campesina in the central highlands of Peru. We show how territorial struggles involve state attempts to control populations and look at the role of the law and legal procedures in these processes. We also look at the ways in which notions of territory are linked to definitions of indigenousness and how this is expressed in the history of Peruvian legislation. The study is based on ethnographic fieldwork and the analysis of archival material on land disputes and court cases.

Nunes Tiago de Garcia **: Porto Alegre, Brazil - from the "Legal" to the "Real" City. Social Emancipation and the "Right to the City" in the Special Areas of Social Interest (AEIS). Case Presentation: Salvador França Village** (1323)

Oliveira Celso Ramos de **, Júlio César Butuhy & Marcelo Traldi da Fonseca:Tourism and Law: the Consumer Defense Code aplicated in the Brasil hotels.** (2133) Promulgation command post Brazil, of the Law nº 8,078, September of 1990, was a "water splitter" in the commercial relations between the tourist companies (in the case of the investigation, the study of the São Paulo hotels) and the tourist product consumers, before "abandoned" before the greater one to be able economic of the lenders of services. The codification united the laws that dealet with the commercial relations and only code, denominated Code of Defense of Consumer (CDC), considered by some jurists, only as a form to respect the determination of the Federal Constitution of 1988: the state must promote the defense of the consumer

Oliver Liz **: Living Flexibly? How Europe's Science Researchers Manage Mobility, Fixed-Term Employment and Life Outside of Work** (4115) This paper draws from interviews with mobile science researchers to explore individual experiences of mobility and fixed-term employment in the EU. Focusing on the balance of work and family life, the paper takes a socio-legal approach, aiming to understand the contribution of EU law and policy to the resource framework within which individuals make career decisions. The high incidence of fixed-term employment and the expectation of geographic mobility in science labour markets has made science researchers very 'flexible' employees, and arguably model EU citizens. But how are these factors managed in the context of every-day life? Developing sound empirical evidence of how individuals experience mobility and fixed-term employment, could lead to more sensitive and effective policy making. This is particularly pertinent as human resource issues in science research have become central to achieving the 'Lisbon objective' of making Europe the most competitive and dynamic knowledge-base economy by 2010. A range of policies designed to increase the mobility of researchers and to manage the use of fixed term contracts have been developed. Added to that the introduction of a hard legal measure, Directive 99/70/EC on Fixed-Term Work, is set to have an impact on the way that all workers are employed on a fixed-term basis. This paper will draw from rich empirical evidence to inform our understandings of these developing areas of law and policy in the EU.

Oomen Barbara **: Legal cultures, blurred boundaries: the case of transitional justice in Uganda** (4208)

Ordower Henry **: Methods for Study of Immutable Tax Rules and their Cultural Determinants** (4421) Discusses the concept of income in U.S. tax law in its cultural context. Explains why certain items are not income. Extends discussion to Q-tip trusts. Methodology for analyzing cultural determinants.

Oros Elena **: Migrating Legal Culture. Traffic regulations for Mexican migrants** (1539)

Ostrom Hans **: Langston Hughes and the Poetry of a Dream Legally Deferred** (2432) This paper focuses on Hughes's virtually unique capacity as a poet not merely to address broadly defined political and social questions but to represent in poetry highly specific political, social, and legal issues—even specific legal cases. Literary historians, critics, and theorists have long debated the extent to which literary writers may, can, and should be "political." Some scholars almost reflexively argue that political literature equals propagandistic literature; others argue that all literature is political, just as "the personal" is "the political"; and many take a positions somewhere between these extremes.

Pacelle, Jr., Richard L. **et. al. Creating the Living Law and Maintaining the Constitutional Shield: Decisionmaking on the Modern Supreme Court** (1132)

Panke Diana **: How the European Court of Justice Facilitates Compliance Against the Resistance of Member States** (1114) The European integration proceeded non-linear and brought about a gap between level and scope: While most policies in the first pillar have been increasingly supranationalized, the depth of integration is significantly lower for the second and third pillars (Börzel 2006). Although it belongs into the first pillar, social policy is often regarded as a domaine réservée for states (Mosher and Trubek 2003). Accordingly, member states have been reluctant to transfer social policy competencies to the European Union (EU). Yet, in the form of employment policies, the EU actively shaped the European social policy since the mid 1970ies. Unlike most of the social policy research, this paper does not focus on the creation, but on the implementation of EU social policies. It inquires whether domaine réservée considerations affect state's compliance pattern. Do states violate social policies more often

than secondary law in other fields? Are states less inclined to change domestic policies in the social policy area in response to the EU infringement proceeding? Can the European Court of Justice (ECJ) overcome the obstacles of a 'Social Europe' and induce compliance even vis-à-vis rigidly reluctant states? The paper demonstrates that social policy provisions are as frequently violated as any other EU secondary laws, if we control for the number of legal acts in force. Member states do not resist the ECJ to a stronger extent in so-cial policy matters than in other policy fields. Even for the European-skeptic UK as a least likely case, ECJ judgments facilitate compliance in social policy issues. In fact, two qualitative case studies on Court cases against Germany and the UK regarding incorrect legal transpositions of the equal access directive reveal that support for EU-integration and a state's propensity to pool sovereignty does not impact on compliance restoring dynamics in sensitive areas.

Park Jaihyun **& Neal Feigenson: Effects of PowerPoint on juror decision making** (4222)

Pásara Luis **& Julio Faundez: International Actors in Justice Reform in Latin America** (3123)
International actors have developed an important role along the Latin American efforts in justice reform, both in financial and technical terms. Officials and experts played a crucial role by initiating or reinforcing social concerns on the subject and contributed to write down this problem in the public agenda. Interestingly, their role has not been sufficiently analysed. This paper proposes a preliminary consideration of the concepts and tools mostly used by international actors, and explores the characteristics of the relationships established between international and domestic actors participating in justice reforms. It is suggested that the international actors' role in some cases may result in contradiction with the main goals of the reform process.

Payne Leigh **: Criminalizing Speech in Argentina** (4309)

Pelicand Antoine **: Peace Judges, Proximity Judges** (3111) Since 2002 proximity judges were set in France, in order to resolve "small disputes of daily life". This paper compares their current introduction in civil courts with the situation of peace judges who existed until 1958. In each case, they are laypersons dealing with a lot of similar and depreciated issues at the lowest level of judiciary institution. However, they aren't considered in the same way. Peace judges had got a clear jurisdiction at the beginning of twentieth century and became closer to professional judges. In comparison, proximity judges have been regarded as strangers and strongly criticized by judiciary and legal professions since they were created. These differences lead us to reconsider the gap between the sacred and the profane in judicial sphere. Indeed many studies are laying stress on "dying" of splendour : formal justice is depreciated, lawsuits become features of everyday life. By many points, the present resistance to new lay judges shows on the contrary an increased sacralization of justice, that we will try to explain.

Perera Chandima D. **: ILO Standards, Gender, and Globalization in the Field of Textile Industry in Sri Lanka** (1122)

Perera Dulani **: ILO Standards, Gender and Globalization in the Field of Textile Industry in Sri Lanka** (1122)

Perez-Vega Ivette **: 'Willie Bester: An Artists Resisting the Injustice of Post-Apartheid in South Africa'** (4220)
Willie Bester is regarded as one of South Africas's most important resistance artists against the injustices of Apartheid and post Apartheid. His socio-political comments dwells on the unchanged racial attitudes in South Africa, and that the processes of the Truth and Reconciliation Committee have been ineffective. His extraordinary work, painting and sculpture, has focused on the complex realities of life in his country, that is symptomatic of a society that is still marred by economic and other inequities despite the triumph of democracy in 1994.

Perry-Kessaris Amanda **: Enriching the World Bank's Vision of National Legal Systems and Foreign Direct Investment** (3138)

Peuker Enrico **: Aspects of Legitimacy in the European Joint Administration** (1138) On the European level there is intensive cooperation of administrative actors of the Member States and the European Union. The traditional distinction between indirect and direct administration seems to be widely antiquated. Instead, the notion of the European joint administration thrives. However, the European joint administration causes problems of legitimacy, which cannot be resolved with the common model of legitimacy. Hence, it is necessary to review alternative forms of legitimacy. In doing so, the Weberian question has to be the benchmark: How can the correctness of law and the administrative decisions based on the law be guaranteed in order to raise the belief in legitimacy?

Phillipson Gavin **: Criminalising incitement to religious hatred: useful, invidious or superfluous?** (1130)
Paper by Professor Phillipson outlining the new offence of incitement to religious hatred in the UK, possible justifications for the offence; interpretative dilemmas, related ECHR issues and possible other routes to controlling the same behavior through existing legal powers.

Piemontese Patrizia **: The law' s Speeches** (1523) The relationship between law and language in general.

Pieret Julien **: Is there such a Right, a Right to Safety?** (1436) For several years, the ubiquity of the safety issue has been accompanied by an increasingly stronger claim to a subjective right to safety. Thus, in Belgium, the existence of this right, and the correlative obligation for the authorities to guarantee its respect, regularly appear in the reasons for various texts which have recently modified the criminal law and the criminal procedure. Does this right exist? What does it cover: a right to objective safety, bearing on the absence of infringement to the people and their goods, or a right to the subjective safety which would proscribe any feeling of fear ? What would be the nature of such a right: can we classify it, as do the dominant uses, among the human rights ? Moreover, can this right be mobilized by judges or is it simply a general principle without constraining value ? Lastly, the legitimacy of the recognition of such a right should be called into question, taking into consideration the traditional and contemporary missions assigned to the legal regulation. Indeed, the emergence of a subjective right to safety seems closely related to the concept of a Risk Society, which would call for an in-depth rethinkinking of the role devolved to this type of regulation.

Pietermann Roel **: Parallels in Precaution** (1435) In this paper I suggest there are clear parallels in precaution. Where policies are based on worst case scenarios and apocalyptic futures, they tend to have similar characteristics, irrespective of the kind of danger that is anticipated.

Pinnell Sabrina L **: Formation vs. Action: What Empowers Constitutional Courts?** (3118) A debate exists as to what really gives constitutional courts legitimacy and authority in new democracies. Is it the initial formation (interests involved, structure, powers) of the courts, or the actions of these courts after they are formed in terms of what cases are heard, their decisions, and the interactions of these courts with other areas of the state? This paper will focus on three constitutional courts in two countries (the two courts of the Russian Federation and the court of South Africa) to consider this question. While formation had a definite effect on the authority of the courts in these two countries, the later actions of these courts indicate that establishing legitimacy is still important even after formation. Research on judicial independence, power and legitimacy may therefore have to take a long-term view to evaluate the real authority of constitutional courts, and consider their behavior as well as their structures.

Pires Edmundo Balsemão **: Towards a Law of Cultural Ceremonial** (4313)

Pitch Tamar **: Society of Prevention** (2431)

Platsas Antonios Emmanuel **: Interpreting the European Constitutional Treaties - A Matter of Principle(s)?** (2332) In this paper the author attempts to highlight the necessity for a 'principlistic' approach in the interpretation of the European constitutional texts. Just like principles tend to govern the life of the person, so too the interpretative language in relation to a constitutional treaty is formed out of overriding truths and axioms that we generically call principles. With particular regard to the European constitutional texts it will be attempted to be shown which principles form the interpretative core for these and how these principles are to govern these texts and whether or not such an approach is a desirable one. The approach taken is a largely legal one but legal sociology will come into play when for instance the principle of social justice will be explored.

Poier Salvatore **: Black Beard's Mouse. From Pirates to Hackers** (2302) NOTE: this will be the thesina for Oñati Master Course. The literature about piracy flourished just at the end of the Golden Age of pirates (1660-1725). In a mixture of fear and admiration, that literature describes pirates as bloodthirsty champions of liberty, from an anarchic point of view, and of the fight against the official violence, a typical asset of kingdoms and their armies. The hackers' contribution to the conception and birth of the Net is fundamental. But when the web started making the navigation and the electronic purchase of goods easier, the safety of the Net became a big issue, and the hackers gradually became a threat. Similarly to the Golden Century, the room for the hackers is shrinking and their work criminalized. My paper will focus on the use of the word "pirate" and the world of "piracy" to identify who the hackers are and in what their work consists. Why have we assimilated the hackers' work (i.e. opening, looking, learning, adapting, and sharing) to pirate activities? Why in the 1970s did the hackers themselves identify their work as pirate? What remains of the libertarian ideology? Is there any sort of hackers' ideology nowadays? Is the battle toward a new concept of intellectual property the way to finally embody the communitarian revolution of the internet? Or is it simply a way to standardize, and so to defuse, the potential revolution of the Net?

Pruitt Lisa R **: Toward a Feminist Theory of the Rural** (2433) Feminists have often criticized law's ignorance of women's day-to-day, lived experience; at the same time they have sought to reveal the variety among those experiences. This article builds on both critiques to argue for greater attentiveness to a neglected aspect of women's situation: place. Specifically, Professor Pruitt asserts that the hardships and vulnerability that mark the lives of rural women and constrain their moral agency are overlooked or discounted by a contemporary cultural presumption of urbanism. This Article considers judicial responses to the realities of rural women's lives in relation to three legal issues: intimate abuse, termination of parental rights, and abortion. In each of these contexts, Pruitt scrutinizes judicial treatment of spatial isolation, lack of anonymity, a depressed socioeconomic landscape, and other features of rural America. She contrasts responses to the plight of rural women in these legal contexts, where courts often show little empathy or understanding, with judicial responses to the vulnerability and hardships associated with sustaining rural livelihoods in non-gendered contexts. Drawing on rural sociology and economics, as well as from judicial opinions, Pruitt argues that the combination of features that constitute rural America seriously disadvantages rural women. She further maintains that this disadvantage is aggravated when society's prevailing urban perspective obscures legal recognition of the rural. Unlike Catharine MacKinnon's landmark work under a similar title, Toward a Feminist Theory of the State, Pruitt does not purport to articulate grand theory. Nevertheless, by showing how features of rural life are often overlooked or misunderstood by legal actors, and by explaining the legal relevance of these features to critical junctures at which women encounter the law, Pruitt begins the process of articulating a feminist theory of the rural.

Pupolizio Ivan **: The Ideologies of Mediation** (2328) The paper aims at defining the different meanings, methods and practices of mediation, as a consensual procedure for the processing of disputes. To reach this goal, the work first analyses the contribution that (the) sociological literature on dispute processing gave to the success of the movement for the informal justice in the United States, legitimating the idea that adjudication may not be the best method for the resolution of all disputes, particularly those among people involved in continuing relationships. From this common starting point, the description of the different social projects that underlie a lot of mediation programs in the United States and in Europe allows for the creation of three ideal types of mediation. At last, the usefulness of a distinction among 'bargaining', 'communitarian' and 'therapeutic' mediation is tested through an empirical research on six experiences of neighborhood mediation in Italy: beyond a first, quantitative description of this relatively recent phenomenon, ten interviews with as many mediators have tried to analyse the conception they have of their work, of the nature and the scope of the mediation process, of the kind of help they can offer to the disputing parties and of the wider context these programs have to deal with, in connection with other, more traditional procedures of dispute processing.

Quadrelli Isabella **: Fathers' Identity after Divorce** (1113) Drawing from the results of a recently concluded research project on men and women's post divorce experience, I will focus my attention on the construction of fatherhood identity after divorce and consider how the law is used to sustain such construction. Data are based on qualitative interviews with divorced men and women, lawyers and judges. The interviewed fathers contructed their post-divorce fatherhood identity in a complementary way with respect to a model of motherhood which imply the centrality of the mother in the bringing up of children and the pre-eminence of motherhood identity for women. As a consequence, it is based on a fatherhood role defined as residual and on a separation of functions and activities based on gender. This identity construction is typical of fathers who were involved in their children's lives and visited them weekly. A recent

legal reform in Italy, which introduced joint custody, broadened out the opportunities for direct negotiation between ex-spouses on matters concerning children's living arrangement, visitation and maintenance. Divorced fathers' negotiation strategies tend to reproduce the traditional gender structure and, in many cases, to nourish the conflict with the former wife in order to sustain their identity construction, thus impeding any possibility of change in gender relationships.

Rahmatian Andreas **: Property Rights and Narcissism: A Psychoanalytical Approach** (1522) Property lawyers and theorists take a great interest in the legal doctrinal construction of property rights and in their political, moral or economic justifications, but they rarely look into possible psychological roots of property rights and the powers they entail. Similarly, psychologists rarely touch upon property rights at all, and if so, only in brief passing comments. There are various possible ways in which the institution of property may be approached from a psychological viewpoint, for example on the basis of individual or social psychology. The psychoanalytical examination of property provides another insightful approach. This paper wants to look at the phenomenon of property from a psychoanalytical angle, mainly on the basis of Sigmund Freud's concept of narcissism (1914), which was developed further especially by Erich Fromm (1965, 1973, 1978). A study of this kind, with a focus specifically on property, does not seem to have been undertaken so far. The paper is largely a reinterpretation of Freud's and Fromm's texts, because they deal with the legal phenomenon of property only very briefly, as is typical of psychological studies in general. However, it will be argued that the general psychoanalytical concept of narcissism is sufficiently flexible and versatile so that it can cover well the institution of both corporeal and intellectual property.

Raitt Fiona **: Children, Participation and the Judicial Imagination** (3110) In this paper I outline the main advantages of judges speaking directly to children in certain family cases. I draw on the findings of an empirical study I conducted recently with judges and sheriffs in Scotland, where such conversations between judges and children are quite common. I argue, perhaps controversially, that the greater involvement of judges may hold the key to enhancing children's rights of participation in family proceedings.

Ramji-Nogales Jaya **, Andrew I. Schoenholtz and Philip G. Schrag: Refugee Roulette--Disparities in Asylum Adjudication** (1201) This paper is a draft of an article that will appear in the November 2007 issue of the Stanford Law Review. The draft is reproduced from the SSRN website at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=983946 Former Attorney General Robert Jackson told Congress in 1940: "It is obviously repugnant to one's sense of justice that the judgment meted out . . . should depend in large part on a purely fortuitous circumstance; namely the personality of the particular judge before whom the case happens to come for disposition." Yet outcomes in asylum cases, which can spell the difference between life and death, apparently depend in large measure on which government officials decide them. In many cases, the most important moment in an asylum case is the instant in which a clerk assigns an application to a particular asylum officer or immigration judge. This study analyzes databases of decisions from all levels of the asylum adjudication process: 246,000 decisions by 927 asylum officers over a seven year period; 140,000 decisions of 225 immigration judges over a five year period; 76,000 decisions of the Board of Immigration Appeals over six years; and 4215 decisions of the U.S. Courts of Appeal during 2004 and 2005. The analysis reveals amazing disparities in grant rates, even when different adjudicators in the same office each consider large numbers of applications from nationals of the same country. For example, in one regional asylum office, 60% of the officers have grant rates for Chinese applicants that deviate from that region's mean grant rate for Chinese applicants by more than 50%. The paper also explores correlations between sociological characteristics of individual immigration judges and their grant rates.

Rasmussen Steen **, Diana Mangalagiu, Hans Ziock, Johan Bollen & Gordon Keating: Collective Intelligence for Decision Support in Very Large Stakeholder Networks: The Future US Energy System** (1527) Pick your favorite complex societal issue. For example, how could the US govern-ment, its citizens, and its energy companies reach an acceptable future national US energy plan? How could such a complex problem even be approached in a rational and transparent manner? We discuss a recently developed Inter-net-based method for clarifying issues, provid-ing insights into understanding causes of con-flict in large stakeholder groups facing complex issues, and reaching consent. This method has been tested on a variety of complex social and technical issues that illustrate how the Internet can be used to harness the collective intelli-gence of large stakeholder groups. This work further shows how to positively influence the capability of large stakeholder networks to make more informed decisions. As our main objective, we outline the key open research questions for applying Internet based collective intelligence methods in very large stakeholder networks. As a case study we examine what it would take to develop "the lay of the land" of possibly millions of stakeholders for the possible future US energy systems. We discuss stakeholder access issues, inherent conflict of interest issues, as well as the necessary machine automation of the collective intelligence method to handle this scale of stakeholder involvement.

Rathus Zoe **: Shifting the gaze in family law - The dangers for women and children of the increasing emphasis on the future** (4108) In 2006 the Australian government instituted a major transformation of the family law system. It includes the phasing in of mandatory mediation for separating couples (with some problematic exceptions) and significant changes to the Family Law Act 1975 (FLA). This paper argues that the new system will shift the gaze away from the history of the 'intact' family towards the future and may be dangerous for women and children who have left domestic violence. The reforms were driven by fathers' rights groups whose members, it is suggested, benefit from the gaze shift. Much of the mediation will be conducted by government funded, community-based Family Relationship Centres (FRC's). This paper will suggest that influences on the practice framework of FRC's may unconsciously (or even consciously) exclude discussion of past violence. Changes to the FLA strongly encourage equal time arrangements – thus shifting the gaze away from evidence of past violence towards post-separation events and a new ideal future. Other changes add to the future-focussed cocktail; a new 'friendly parent' provision and an emphasis on children having a 'meaningful relationship' with both parents. Some provisions make the past dangerous territory, including mandatory costs against any party found to have made 'false allegations'.

Rauschenbach Mia **: Law as a Product of Emotion: The Rise of the Victim in Switzerland** (2108)

Restrepo David **: Human Rights and ethnic identity in a sociological perspective: The case of the urban indigenous population in Colombia** (1313) This article is a short progress of my Master´s tesina at the Onati International Institute for the Sociology of Law. It presents a short description of two main indigenous communities in the department of Antioquia- northwest Colombia- and its Capital Medellin. The current trends of these groups concerning, identity, community, terriotory etc. are presented in order to propose an analysis of the evolution of the indigenous movements but also the conflicts between them. The Urban Indigenous Cabildo in Medellin represents almost a postmodern indigenous movement since it doesnt follow the paradygm Land-

selfgovernment-autodetermination, and therefore presents new challenges to the traditional indigenous movements that have somehow led the struggle.

Rethimiotaki Eleni **:The change of Greek administrative practice with in the context of European integration** (1128)
The transformation of the relation between the Greek, administrative state and its citizens within the context of European integration. Due to historical and sociopolitical factors the achievement of democracy in Greece has lasted for a period of one century and a half. The institutions of the Greek State and administration have been imported but not embedded in the newly born, still premodern, country, during the 19th century. However, it took almost the 2/3 of the 20th century, that is until the fall of the military dictatorship in 1974, that democracy has been finally stabilized. The effort to establish the rule of Law in Greece seems connected to the social and political strive to participate in the E.U. The European integration project has been considered as a process of social change in order to achieve a higher status of economical and political development. At first the present paper will focus at the theoretical discussion regarding the relation between law and social change. It will also describe the recent theoretical debate which consider the process of European integration as a complex process of social change. Secondly the present paper will examine the social representations regarding law in general and especially European law as an instrument of changing the administrative practices p.e. through institutions such as the Greek Ombudsman. Finally, it will describe the latest activity of the Greek Ombudsman and it will discuss its possible interactive effect on Greek administrative practice.

Rogerson Carol **: Informal Law Reform: Canada's Experiment with Spousal Support Guidelines** (1426)
In contrast to the evolution of the law of spousal support in many other western jurisdictions, Canadian law provides a very generous basis for post-divorce spousal maintenance payments. Rejecting the 'clean break" philosophy that has prevailed in many jurisdictions, the Supreme Court of Canada has interpreted the federal Divorce Act to recognize a broad role for spousal support not only in compensating spouses for economic disadvantages (i.e. loss of earning capacity) incurred as a result of the marriage, but also in ameliorating the economic hardship and need caused by loss of the marital standard of living (non-compensatory support). Yet Canadian law also emphasizes the highly discretionary, individualized nature of spousal support decisions. The result is a law of spousal support that is generous in principle, but confused, uncertain and contentious on the ground. Spousal support outcomes can vary significantly from one part of the country to another and from judge to judge. As a result, lawyers have difficulty advising clients and reaching settlements and many legitimate spousal support claims are abandoned because of the risks and costs entailled. This paper will discuss an innovative project initiated by the Canadian Department of Justice, and of which the author is a co-director, to develop a set of informal, advisory spousal support guidelines based upon and reflecting dominant outcomes in current practice. A set of draft guidelines, which was released in January, 2006, has already received appellate court endorsement and has begun to significantly permeate the daily practice of both lawyers and judges.

Rosenberg Arnold **: Motivational Law** (2416) Governments and organizations use law not only to set standards and rules of conduct, but also to motivate people to observe those standards and rules and thereby improve intrinsic social control. Motivational law consists of those laws or rules, the primary purpose or function of which is to motivate people to comply with the laws that regulate their behavior. Such rules function by increasing the cohesiveness of communities, which in turn causes adherents to be shamed if they fail to comply with the community's rules. They also function by exploiting innate cognitive biases. Motivational law has important implications for the study of both religious law and secular governance. Used intensively by many religions such as Islam and Judaism, it has given religious legal systems great longevity and effectiveness, while a tendency in modern democracies to underutilize motivational law could jeopardize the effectiveness of "soft law" New Governance approaches in the secular realm. The clash between Islamic countries and the West can be understood as a clash between societies that espouse divergent bodies of motivational law, in the case of Israel, and between Islamic societies that use motivational law extensively to gain allegiance and adherence to other religious laws, and predominantly Christian and secular societies that neither use it nor understand it. The pervasive use of motivational law entails severe risks. Motivational law can mandate censorship and facilitate authoritarianism and cultism. Where discrete communities use motivational law intensively to promote compliance with their rules, members of the community also may be motivated to conceal wrongdoing and acquiesce in oppression within the community. Also, as manifested in some Islamic states, motivational law can become ritualized, in the sense that it takes on non-motivational functions, and as such both exerts resistance to social change within the community and engenders stress between communities with divergent bodies of motivational law. The wearing of hijab, for example, serves as a method of motivating Muslims to observe rules of marital fidelity, but in some Islamic countries it becomes a symbol of religiosity, and implicitly, of allegiance to the existing political regime, enforced by religious police. In such cases, ritualized motivational law on hijab slows the pace of social and religious change, yet inspires resistance among women who resent having a motivational device forced upon them.

Rosentreter Michael **: Taxes under the Merovingian: Germanic Tax Practice under Sociological Aspects** (1534)
In the 6th century at the threshold between the Roman antique to the Germanic influenced Middle Ages the bishop Gregor of Tours (Gregorius Turonensis) wrote his "Ten Books of Franconian History" (Decem Libri Historiae) as a chronicler and participating witness. The comparison of the roman tax practice and its administration with the legislative attempts of the Merovingian monarchs to meet their demand points not only to the differences between the Roman and Germanic understanding of law and between legality and arbitrariness. This comparison even makes clear which are the necessary constitutional prerequisites that Max Weber named in the Sociological Basic Terms (might, rule, association – Macht, Herrschaft, Verband) and in his Sociology of Government (respect of legitimacy and bureaucratic administrative staff) in the 19th century.

Rosentreter Michael **: The Effect of a German Health Law on the Utilisation of Medical Services** (1218)
The German health system as a social insurance model bases on two main principles: The principle of solidarity implicates that social security contributions are charged as a percentage of the gross salary within a range of income. The principle of parity financing means that both, employer and employee, have to bear the contribution for the insured party on equal terms. Problem and aim of the policy is to relieve the employer's contribution for better competi-tiveness on the one hand and to stabilise the costs of the social insurance on the other hand. For the first time with the 4th Law for the Modernisation of the Health System (Gesund-heitssystem-Modernisierungsgesetz IV) from January 1st 2004 there was introduced a fee for the doctor's office (Praxisgebühr) to regulate the access for medical services. The theory of the "demand spiral" (Anspruchsspirale) by Philipp Herder-Dorneich says that the demand for special goods maximises individual use in systems where every person has to pay a compulsory charge in spite of rising prices. The collective now has to bear the higher costs which leads into a "rationality trap" (Rationalitätenfalle) because the contributions for the social insurance have to be risen again. It was examined by a linear regression onto the variables need, income and lifestyle for a syn-chrony model and by a categorical comparison (conditional main effect model) for the longi-tudinal analyses whether the risen pays resulted in a lowered utilisation as was intentioned by

the policy-makers and whether there were undesirable effects onto the incomes like being a handicap for the access to medical services. The data base used was the "Health Monitor" (Gesundheitsmonitor) which is an access panel with 10.500 respondents required by the "Bertelsmann-Foundation" to act every six month.

Ross Jacqueline E **.: The Place of Covert Policing in Democratic Societies** (2234) In the wake of the September 11 attacks, undercover policing has become an increasingly important law enforcement tool in the United States and in Europe. More frequent deployment of covert tactics has confronted democratic governments with difficult questions about how these extraordinary operations should be controlled and conceptualized. How ubiquitous should covert tactics become, and how should regulatory systems respond to their increased importance? What are the challenges of taming the constantly changing and highly contested practices of undercover policing, which stubbornly resist oversight? Legal systems differ in their concerns about undercover surveillance and in their willingness to deploy covert agents and informants against a spectrum of perceived threats ranging from national security dangers like terrorism or political and religious extremism to organized crime, drug trafficking, and more ordinary forms of criminality. In most democracies, political elites, legal actors, and critics agree that undercover investigations are in some sense a necessary evil. But national legal systems vary in what they mean by that. They have disparate conceptions of what makes covert investigations troublesome; of the proper goals of infiltration; and of the mechanisms by which undercover tactics should be legitimated and controlled. In short, legal systems forge different regulatory compromises and accord different degrees of legitimacy to the "necessary evil" of covert operations. Much of the scholarship about undercover policing in Europe has focused on doctrine. My study examines undercover policing empirically, through 89 qualitative, open-ended field interviews that I conducted with state and federal police officials, undercover agents, training and supervisory officials, control officers, prosecutors, and judges in 15 of the 16 German states. Through these interviews, I examined the ground-level strategies and practices of those who conduct, supervise, and evaluate covert operations. I organize my comparison of the United States and Germany around four dimensions of conflict with fundamental norms, including tensions with (1) privacy and trial rights such as the right to cross-examine witnesses; (2) the mandate to separate intelligence-gathering from law-enforcement functions; (3) norms against improper interactions between undercover agents and their target environment; and (4) values of accountability and oversight. This essay identifies national differences between the degrees to which undercover policing conflicts with higher values along the four dimensions of comparison. The article links these tensions with a number of "legitimacy deficits" peculiar to each system. Differences between the degree of conflict with higher-order norms help explain why the legitimacy of Germany's covert policing system remains considerably more contested than its American counterpart—even as Germany imposes much more significant regulatory constraints on the initiation and conduct of undercover operations.

Rothmayr Allison Christine **: Courts and the Biotechnology Revolution in North America and Europe: governing with judges?** (2320) Countries around the world are adopting and implementing public policies regulating biotechnologies. Courts are also involved in this process. However, the question of how courts have contributed to policy-making has not been studied from a comparative perspective. The present paper compares litigation and the impact of court decisions across three countries, Canada, the USA and Switzerland for assisted reproductive technologies and embryonic stem cell research. The paper inquires to what extent court involvement varies across countries and how this variation might be explained. Based on existing research we would expect considerable differences across the three countries, the US being the most and Switzerland the least litigious case, with Canada ranking somewhere between the two. The empirical analysis comes, however, to a different conclusion. Courts have had more influence on public policy-making in Switzerland than in the US, and basically no influence in Canada. The variable importance of court decisions across countries can be explained through the characteristics of the policy-making process, in particular the actor constellation and the degree to which states, cantons and provinces engaged early on in policy-making. The paper also reveals that in all three countries, courts have the tendency to defer to government when private interests challenge public policies. Medical and research interests had the most success in challenging restricting regulations at an early stage in the policy making process, i.e. in the late 1980s and early 1990s, when the issue of assisted reproductive technology was relatively new on the political agenda.

Rueda Pablo **: Legal Discourse and Social Change during Economic Crises: The Transformations of Subsistence Rights in Colombia between 1992 and 2004** (4309) Students of judicial politics tend to consider that the legal discourse of courts is epiphenomenal; little more than a tool used to reproduce the status quo and legitimize the dominant political interests. But, it is generally assumed, the legal discourse of courts has little or no influence over social change. According to this view, the epiphenomenal character of legal discourse should be most evident during times of crisis, when law and courts are likely to be used as a means to legitimize unpopular governmental actions. This paper acknowledges the limitations of judicially-created social change, but it also challenges the assertion that legal discourse is epiphenomenal. It analyzes how the expansion of 'subsistence rights' discourse in Colombia failed in its attempt to include individuals and groups marginalized from the market. However, this discourse also fostered a massive wave of litigation that empowered the court politically and enabled it to mobilize congress and the executive to take series of political actions that helped prevent the crumbling of the middle class during the economic crisis of the late 1990s.

Ruediger Marco Aurélio **: Murder in Rio de Janeiro State: Its Geographical Distribution and Impact on Public Policies Aimed at Reducing Crime** (4318) This paper aims to analyze the geographic distribution of homicides throughout Rio de Janeiro State. Official data provided by Public Security Institute of Rio de Janeiro concerning the occurrence of Homicides were gathered and geographically distributed according different regions. The distribution indicates a great occurrence of homicides in Rio de Janeiro metropolitan area and in the States's Northern region, which has been characterized by an economic boost linked to the recent development of oil industry. This study demonstrates that official statistics do not show the occurrence of homicides by age, especially for young men between 15 and 24 years old. Thus, the official statistics underestimate the occurrence of homicide in the most vulnerable social group affected by violence as victims and authors of this kind of crime. As a conclusion the study suggests a change in the way that Rio the Janeiro's Homicide statistics are build, as a way to sustain more accurate policies in regions facing the most serious crime problems.

S Margaret **. Williams and Frank C. Thames, Jr.: Women's Representation on High Courts in OECD Countries** (1207) We examine the number of women currently serving on various high courts in OECD countries. We find a significant amount of variation both within and between countries, suggesting that the process by which judges are selected as well as the type of high court influence the number of women serving. Additionally, we consider the extent to which quota laws within the country affect the representation of women on these courts.

Sadek Maria Teresa **: Access to Justice: Small Claims Courts in Brazil** (2306)

Saegusa Mayumi **& Julian Dierkes: Integrating Alternative Dispute Resolution into Japanese Legal Education** (4114) We examine the spread of alternative dispute resolution (ADR) mechanisms to Japanese legal education. We collected course syllabi from all newly established law schools in Japan. By examining the teaching ADR before and after the introduction of law schools in 2004, we test our prediction of massive isomorphism. We found that many of these law schools immediately responded to ambiguous recommendations on teaching ADR. Such isomorphism may not be an unexpected outcome in a state-initiated institutional change, but the remarkable scope and speed of ADR adoption into curriculum of Japanese law schools is unexpected. We thus conclude that an institutional shock initiated by a state gives organizations an impetus for the immediate adoption. This is even so in organizational fields like education where status is a major component of institutional isomorphism. In our analyses, status emerges as a key variable to show the variation of organizational responses to institutional pressure toward conformity. Our study shows that the relationship between status and conformity is a linear one. Higher status organizations are more likely to adopt new institutional components. The clear link we have found between ADR-courses and the high proportion of academics offering such courses, holds out the potential of more diffusion of ADR in the Japanese legal education. If quality in legal education will come to be associated with the well-established law schools where teaching of ADR is more common, the practice of ADR may diffuse through the graduates of such highly prestigious schools as well as through the imitation of the curricula of these schools by others.

Salomone Rosmary **: Language, Schooling, and National Identity: The Implications of Transnationalism, Globalization, and Mass Migration** (1316) The current debate in the United States over undocumented immigrants, the controversy over a Spanish version of the national anthem, and congressional proposals declaring English the "national" or "unifying" language all point to a growing identity crisis sweeping the country. The media abound with public intellectuals and political pundits pondering, "Who are we?" For a nation built in large part on immigration, the language question in particular has been a recurrent lightening rod in the movement toward ongoing compulsory nationalization. An often overlooked yet important factor in this effort is the critical role that public schooling has played in carrying through national goals. In recent years, transnationalism, a globalized economy, and mass migration across the globe have made that role even more challenging. This paper uses language policy and schooling as the prism for exploring how these trends have given rise to "dual identities" and transmigrant practices, and what the potential consequences might be for educating and integrating the children of "new immigrants." It suggests that the United States, as a nation, reassess the prevailing assimilation ideal, and that policy makers and educators adopt strategies to consciously maintain and develop the immigrant child's native language and literacy skills as both a personal benefit and a national resource. It further compares and contrasts the United States experience with the immigration problems now confronting western European nations like France, Germany, and the Netherlands, where different historical circumstances have driven different educational solutions.

Sand Inger- Johanne **: What Is the Context of Inter- and Transnational Law Today?** (1115) The relations between law and politics - analyzed by the role of the context of law in the era of globalization. Using the global and local multi-cultural scenarios and the war on terror as examples for the theoretical analysis of the role of context and communicative discourses.

Sannerholm Richard **: Beyond Criminal Justice: New Approaches to Rule of Law Promotion in Post-conflict Societies:** (1405) The rule of law has been hailed as a panacea for developing and transition countries. Despite a concerted effort to promote rule of law in the aftermath of violent conflict, few projects and programmes can be said to have had a successful impact on post-conflict peace processes. This paper will argue that the poor track-record of rule of law promotion has little to do with the rule of law as such, but more to do with how the concept is perceived and projected by donor agencies. Many of the projects and programmes launched under big fanfare in Liberia, Sierra Leone, Afghanistan and other post-conflict scenes focus predominately on criminal justice and civil and political rights, while failing to support rule of law in other areas desperate for attention; for example administrative agencies (dealing with licenses and permits), land and registration systems, the state financial system (and in particular public procurement and handling of natural resources) and non-state justice systems

Sato Yasunobu **: The Recent Development of Modernisation of Dispute Processing in Vietnam** (1104) Vietnam, becoming a member to the WTO on 11 January 2007, has been recently accelerating the process of law reform. In this context, the new investment law and enterprise law entered into force. They contribute to modernization of dispute processing by means of adopting the Ordinance of Commercial Arbitration in 2003 for promoting foreign investment. Nevertheless, practical issues still remain and human resource development is urgently demanded. On the other hand, traditional model of informal dispute processing, such as to hoa giai (team for settlement), in grass roots level is utilised for maintaining the one-party rule by the communist party. Seeking for so-called 'socialistic' market economy, now the Vietnamese government seems to be entering the new stage of judicial reform to adapt market economies to her feudalistic tradition and socialistic ideology.

Sato Iwao **, Hiroshi Takahashi, Nobuo Kanomata, SHiro Kashimura; Citizens' Access to Legal Advice in Contemporary Japan** (2306) Based on a national survey conducted in 2006, authors examine how and why some of the citizens involved in disputes utilized the third-party advice providers and the other not. The landscape of the patterns of the citizens' utilizing the third-party advice providers and also the magnitude and nature of the barriers to their accessing the legal advice in contemporary Japan will be explained. Suggestion regarding the theoretical framework of the survey will be also discussed.

Satz Ani B **: Solving the Health Care Crisis: The Paradoxical Case for Universal Access to High Technology** (4134) The current U.S. health care crisis is fueled by consumer demand for high technology health care services. Without exception, however, proposals for reform focus on access to basic minimums, ignoring demand for high technology. This Article addresses this lacuna in the health care debate. Paradoxically, it suggests that the solution to the health care crisis is universal access to the very technologies elevating the costs of health care under the current system. Individuals should have access to all health care services – traditional and high technology – that support basic health care. Operating under financial constraints, individuals will make trade-offs and choose from among these goods, in order to maximize their basic health goals. This Article develops its universal access thesis from the formal work of Amartya Sen, long neglected in legal scholarship. It explains why the dominant utilitarian and deontological frameworks that inform current legal and political approaches to health care distribution fail to accommodate patient preference for, and the benefits of, high technology health care. Unlike these approaches, a theory of basic capability equality in health care accounts for the biological and external constraints an individual faces when making medical decisions. As such, it allows the development

of an alternative framework for health care distribution, which allocates resources in a more effective manner without increased expenditures.

Scamardella Francesca **:Reflexive Law behind Globalization: a new perspective** (1102) "Capital is global, work is local", has written Beck. Globalization is acting on the work, changing the relationships and the forms of contraction; so I think it is important to understand how Labour Law is changing. Investigating around the changes produced by globalization, above all in terms of workers' rights and of transformation of the labour law, I will try to understand if global players can achieve a balance among their different and divergent interests, avoiding the conflicts and the supremacy of the strongest parties. I believe that labour law needs to be the final product of a dialogue among different social, political and economic actors, overpassing the boundaries of the national sovereignty and the competence of the single institutions. Crossing through a practical case from Pakistan and the differences between soft law and hard law, I will try to explain, in the final part, the proposal of the "reflexive law", taken by Teubner, Luhamann and, Habermas's studies.

Schäller Steven **: Reasoning with precedent. A quantitative approach to jurisdictional strategy of the German Federal Constitutional Court.** (1136) The paper explores the question whether and how the German Federal Constitutional Court (FCC) uses precedents as a line of argument. Despite the fact that precedents play a minor role in German jurisdictional tradition, it can be shown that the opinions of the FCC do make a massive but irregular use of precedents. This raises questions for the factors and variables that could potentially influence the specific recourse to precedent in the opinions of the FCC. We assume, that the – to some extent – arbitrary recourse to precedents is linked to the attempts of the FCC to make its decisions plausible. By that, the use of precedents becomes a tool for fostering its power of interpretation. The paper will first give some theoretical insights into the usage and role of precedents in German jurisdictional methodology. This will provide us with key-variables, which may then be operationalized in a quantitative content analysis of the opinions of the FCC. The paper will conclude with the presentation and discussion of the empirical findings of the content analysis.

Scheeck Laurent **: Fundamental Norms, Supranational Courts and the Diplomacy of Transnational Judicial Networks in Europe** (4121) The European courts' increasingly nested linkage has given rise to new forms of supranational judicial diplomacy between judicial actors of the European Court of Justice (ECJ), the European Court of Human Rights (ECourtHR) and national courts that goes beyond traditional understandings of adjudication and has had a deep impact on law- as well as policymaking. The paper mainly aims to put judicial discourses and lawmaking in their political context. It explores how supranational lawyers (judges, advocate generals, referendaires, law professors, NGO's, etc.) strategically endeavour to establish transnational epistemic communities that serve as a vehicle for supranational integration and how they engage into strategic interaction with national and supranational adjudicators. This evolving relationship, which is simultaneously underpinned by hierarchical conflicts and cooperative logics, appears to have become one of the foremost ways to harmonise the rather fragmented European normative space. Our main hypothesis is that supranational courts have brought up a common supranational "jurisprudential screen" as they relate to each other in order to prevail over national and private actors. The paper addresses the nature of their jurisprudential and face-to-face dialogue. Whereas this dialogue is mostly related to human rights case law, national courts have recently developed new forms of resistance to European law by imposing various constitutional restrictions at the very moment when the ECJ and the ECourtHR had managed to entangle national courts into their own human rights jurisprudence - which traditionally allowed some supreme courts to put under pressure the principle of primacy of EU law. While dealing with the changing context in which the European courts evolve after the failure of the European Constitution of 2004, the paper also focuses on socio-historic variables, as well as statistical data (i.e. the evolution of the ECHR in ECJ case law) to explain how and why fundamental norms jurisprudence brings together Europe's lawyers and, especially, it's judges. Drawing on in-depth interviews with judges and other judicial actors, as well as on a contextual analysis of case law, the research aims to provide insights into the inner circles of these emerging transnational networks and to assess the impact of inter-judicial dialogues on European law and politics.

Scheffer Thomas **: Knowing how to sleep walk – Expertise and its relevant other Knowledges in an English Jury Trial** (2424)

Schielke Sabine **: Experts as Authorities in Debates on Biotechnology** (1513) It cannot be taken for granted that experts play a major role in preparing regulations in liberal modern societies. Therefore, the expert as a figure is an object of further considerations including questions of legitimacy on the one hand, and trust in their expertise on the other hand. This article will reconstruct two viewpoints concerning the attitude towards experts with regard to trust.

Schleef Debra **: The Thirty-Hour Day: Business and Law School Expectations about Balancing Work and Family** (3119) Utilizing interviews with 37 law students and 42 business students, I examine the expectations and strategies of elite professional students to dilemmas posed by the balance of work and family. Most of these men and women want children, and support a strong family-oriented gender ideology in which students claim that family is more important than career. Moreover, many also subscribe to what Hays refers to as "intensive mothering" – a belief that parents should spend an enormous amount of time, physical and emotional energy, and money raising their children. However, the reality of the lives of these students questions the possibility of such a commitment to family and children. The respondents plan for careers with greedy institutions with long hours, commutes, and travel. Although women spend more time thinking and talking about these decisions than male students do, neither men nor women engage in strategies directed at accomplishing them (for example, by discussing these with prospective spouses, negotiating with current partners, querying companies about family-friendly policies, etc.). I conclude by explaining how preexisting gender and social class ideologies are altered by both market processes and professional school cultures, which reinforce work-oriented schemas but do nothing to reinforce a family schema.

Schlueter Georg H. **: Combating Corruption in Thailand** (1405)

Schneider Elizabeth M **: The Dangers of Summary Judgment: Gender and Federal Civil Litigation** (1133) This Article examines the problematic application of summary judgment in federal courts through a study of gender cases. Identifying a new dimension of the interrelationship between procedure and gender, I examine the ways in which summary judgment impacts on cases involving gender and gender impacts on judicial decisionmaking on summary judgment, with emphasis on the intersection of Daubert and summary judgment. I analyze summary judgment in federal gender discrimination and tort cases involving women plaintiffs and argue that there is flawed judicial decisionmaking in these cases. I describe empirical data compiled for this Article on whether summary

judgment is granted disproportionately against women plaintiffs in federal court. I discuss the special problems of judicial determination of these cases, issues of gender and judging and the need for more diverse decisionmaking, the need for these cases to be heard through live testimony in a public forum, and the way in which summary judgment practice reinforces the troubling "privatization" of federal civil litigation. I conclude that judicial decisionmaking in these cases illustrates the way in which current summary judgment practice permits subtle bias to go unchecked and reveals the dangers of summary judgment generally.

Schor Miguel **: Mapping Comparative Judicial Review** (1101) This Article explores the questions scholars ask about comparative constitutional judicial review and critically assesses the answers they provide. Scholars ask three, interrelated questions: (i) why has judicial review (almost) conquered democracy; (ii) whether empowering courts to construe constitutions has a democratic pay-off; and (iii) how best to make sense of the variation that judicial review exhibits around the world. The Article makes two conclusions. First, our scholarly maps of judicial review have for too long viewed the world through the prism of the exceptional American Supreme Court. Our understanding of judicial review would be improved if our maps were to deemphasize and contextualize the American experience. Second, the questions that scholars ask about comparative judicial review implicitly rest on larger questions about democracy that need to be teased out and illuminated. In short, questions about the emergence and maintenance of democracy and the problematic relationship that the United States has to the world's constitutional democracies lie at the root of our understanding of comparative judicial review.

Schreiner Agnes T.M. **: Trento and Its Internal Legal Culture** (1539) This paper will discuss the Trento project which is a gathering of legal scholars and practitioners, who are comparing the national legal systems mainly from the Member States of the European Union. They confine themselves to private law themes and subthemes, which are generally categorize under the subjects Contract, Property, and Tort. The coming and working together of the participating professionals of private law has been going on for some thirteen years now and although some participants are varying year by year, they can considered to be a constituent group. The two aims of the Trento study project, as proclaimed at the outset of the project, namely to search for the Common Core of European Private Law and to establish a Common European Legal Culture, contribute to this making up a whole of course. I will concentrate on the concept 'legal culture' and on the comparison of legal cultures. Thereby I will discuss the analytical distinction between internal and external legal culture as Lawrence Friedman once had developed. It might help me in the meanwhile to present some results from the research I am doing on the Trento project in particular and the Europeanisation of private law in general.

Schucher Karen **: "Anti-Discrimination Law: Potential, Paradox and Pitfalls"** (1517) Can law generally, and anti-discrimination laws more specifically, provide remedies for women's social inequalities? This question raises issues about the aspirations of anti discrimination laws, about how sex discrimination is conceptualized in law, and about how legal process engages with anti-discrimination legal rights. Debates within Canadian human rights doctrine and legal practice provide interesting perspectives on these questions.

Schultz Ulrike **: Do Women Judge Differently?** (1407) About perceived and constructed gender differences in legal work

Schwartz David S **: Stop Waiting for the Social Scientist: The Limits of Empirical Research in the Mandatory Arbitration Debate** (2422) The regime of mandatory arbitration under the Federal Arbitration Act forces many consumer, employment and civil rights claims out of court and into a system of private arbitration by enforcing pre-dispute arbitration contracts. The system of mandatory arbitration remains highly controversial among legal commentators and policymakers. Many involved in the debate over mandatory arbitration believe that the argument for legislative reform necessarily turns on empirical proof that arbitration outcomes relative to court outcomes systematically favor the regulated corporate defendants who impose the arbitration agreements on consumers and employees. This paper argues that empirical research on this question cannot be a prerequisite to legislative reforms. Even assuming a definitive answer is possible as a matter of social science – which there is strong reason to doubt – the answer would still fail to resolve the cluster of normative questions waiting on the other side. The best and only way to resolve the policy debate is to rely on broad brush empirical inferences from behavorial evidence, and to decide the matter by returning to constitutional first principles.

Schwartz Richard **: Legal Evolution toward a World Rule of Law: The International Criminal Court as a Plausible Step in that Direction** (1520) Some recent developments may be part of an evolution toward a world rule of law. The International Criminal Court (ICC) is especially important in a world of failed states, genocide, terrorism, and preemptive wars. The ICC can stabilize and support governments in the kind of situation found in Uganda and the Democratic Republic of the Congo. It has already made progress in these two situations, investigating and (in the DRC) arresting the rebellious leaders who would overthrow legitimate governments. It is not yet clear whether the ICC will be able to deal with Darfur, where the Sudan government itself is allegedly supportive of genocide. But that case too is under investigation by the ICC prosecutor. Empowerment and widespread support of the ICC could help to reorder the currently troubled, potentially chaotic, world order. However, the ICC faces major resistance. The Treaty of Rome which established the Court has been ratified by 102 states, but not by three of the most important ones: China, Russia, and the United States. The United States withdrew its earlier signature, has not considered ratification, and has urged other nations not to ratify. The 2008 U.S. presidential election might bring that issue before the American public – or it might not. Collaborative research could contribute to our understanding of the low visibility of this question and suggest ways of bringing the matter forward for serious consideration.

Schwitters Rob **: Tort, Social Policy and the Iron Cage** (1438) Weber's fundamental aim in his sociology of law is to give an account of the (varying modes of) rationalization the legal order embodies. In my paper I will examine recent debates concerning tort law in the light of the various modes of rationality, Weber distinguished. The last three decades the debate concerning tort law is dominated by a tension between instrumental and non-instrumental approaches, a tension which reflects to some extent Weber's contrasting concepts of formal rational law and substantive rational law. However, these tensions may best be analysed in terms of his concept of the iron cage.

Schwöbel Christine E. J. **: Overcoming Pride and Prejudice: Promoting a Dialogue between the Cultures** (1515) In a world that is increasingly divided between Islamic and Western States it is necessary to acknowledge global similarities rather than differences. The similarity that is valid in respect of every human being is the notion of human dignity and the fundamental human rights that follow there from. However, the claim to this similarity is often misunderstood as a means of imperialism by

the West, a means of destroying the diversity of cultures. Advocates of cultural relativism claim that the notion of rights themselves is Western in that it privileges the individual, ignoring that other cultures may revolve around the community and around customs and rules rather than rights. Those that dismiss the idea of universal human rights consider the discussion of universal human rights as the continuation of the "colonial syndrome" of the West - especially since human rights are a means of binding States to compliance. Upon analysis of the arguments put forward by cultural relativists, one is compelled to come to the conclusion that the assertions of the cultural relativists regarding the non-existence of universal rights are unsound; one set of norms, namely jus cogens norms, are universally applicable. It will be demonstrated that a universalist reasoning is compatible with cultural diversity. The recognition of universal human rights therefore enables us to develop a dialogue between the cultures.

Sefiha Ophir **: Sacred Mountains and Profane Dollars: Multiple Discourses Surrounding Snowmaking on the San Francisco Peaks** (2205) This investigation examines media, interview and legal-historical documentation of the current debate regarding the proposal to manufacture snow using reclaimed water at the Snowbowl ski area located on the San Francisco Peaks mountains near Flagstaff, Arizona. This action has drawn sharp protest from both American Indian Nations who call the area sacred and environmentalists who question the safety of the reclaimed water. We examine the process by which local coalitions attempt to define environmental and economic values in such a way that will resonate with others. These highly mediated activities create contested territory whereby groups attempt to package and frame specific definitions of these values. This debate exposes hegemonic assumptions that aid us in deconstructing conflicting understandings of colonialism, racism, and other issues that typically go unacknowledged. Two interwoven themes emerged from our analysis: Indians as Greedy and Indians as Hypocrites. These themes are also found in the legal history of sacred site protection in the United States. We argue the fundamental un-acknowledgement of Indian cosmology that persists via a dichotomous conception of religion and civic society and demands separation of dominant forms of civic decision making.

Semmelmann Constanze **, Social Policy in EC competition law** (2133) The paper deals with the collision of social policy and economic goals in EC competition law, in particular Art. 81 EC. Until 2004, the Commission has considered non-competition and in particular social policy objectives within Art. 81 EC, which was mainly confirmed by the Community Courts. Due to a lack of consistency and transparency in the application and the enforcement modernisation concerning EC competition law, the question arises of how non-competition goals and in particular social policy objectives should be dealt with in the future. The paper argues that they can only be taken into account by the national enforcement authorities provided that they can be translated into economic aspects. Under very narrow conditions, the Commission should retain the power to consider public policies in Art. 81 EC.

Sezgin Yuksel **: Building a Typological Theory of Legal Pluralism through Analyses of Israeli, Egyptian, and Indian Personal Status Regimes** (1437) By focusing on the current personal status regimes in Israel, India and Egypt, where each ethno-religious group's communal jurisdiction over its members in regard to matters of family law (marriage, divorce, inheritance etc.) is recognized by the state, this paper aims to examine the role and place of religious law in creating various subjectivities and citizenship practices throughout the postcolonial world. Embracing a fusion of comparative historical and institutionalist analyses, this paper argues that the choice of recognizing the jurisdiction of religio-legal institutions in the field of family law has always been a deliberate design of postcolonial states in contrast to claims of "colonial legacy" and "path dependency" theories. Utilizing a wide array of primary documents gathered through my fieldwork in these three countries, I will illustrate that the degree to which a particular religio-legal order is grafted onto a postcolonial state's legal structure (in the field of family law) has often been determined by the outcome of a unique interplay among two independent variables: postcolonial leaders' choice of regime type and, relative balance of power between the state and religious communities at the time of the state's initial consolidation. In conclusion, in an attempt to typologize, it will be exemplified that modern family laws have emerged out of a power struggle in which both state agents and societal actors have fiercely fought in order to realize their own socio-political vision by creating certain forms of subjectivities, citizenship practices and narratives by means of controlling the family.

Shakya Mallika **: Mao's cultural capital in Nepal: Legal pluralism among the modern entrepreneurs** (4137) Paper abstract

Shariff Fauzia **: Power Relations and Legal Pluralism: An Examination of Resistance to Injustices Amongst the Santal Adivasi of India and Bangladesh** (1437) Legal pluralism is posited here as instrumental for individual resistance to inequalities in the context of power relations. This paper discusses the co-existence of multiple legal orders in society in Asia and in particular the use of alternative legal orders by members of an adivasi (tribal) community in India and Bangladesh (the Santal). The Santal are a diasporic tribe often living with other tribal peoples and non-tribals. Individuals in the tribe face injustices linked to gender, ethnicity, poverty, political powerlessness, illiteracy. Relations between individuals are affected by rules and processes of socialisation in a number of co-existing and interconnected semi-autonomous normative fields (the legal orders of the family, local community and State). The paper illustrates how individuals navigate through the legal orders of the family, local Santal community and State to access justice and the factors that limit their opportunity to renegotiate power relations.

Shastri Satish **: Migration and The Rights of Indigenous People- an Indian Perspective** (3133)

Shavit Uriya **: Arab Intellectual Responses to the American Invasion of Iraq: Democratization and the Phantom of Imperialism** (1128) The presentation analyzes why Arab liberals largely rejected President's George W. Bush democratization doctrine and the war in Iraq.

Shaw Gisela **: Civil-law notaries and the challenge of liberalisation: the case of France** (4539) Civil-law notaries are amongst the most strictly regulated professions in Continental Europe. Relationships with their respective national governments are particularly close, albeit by no means always tension-free. The notariat in France has, over the last 200 years, managed to acquire and retain a relatively high degree of autonomy, status and prosperity. Its relationship with the government - an intriguing mix of hostility and complicity - has generally worked to the advantage of both sides. In recent years, one essential premise has changed: the notariat's fate, along with that of liberal professions generally, has ceased to be determined purely within a national framework. Economic globalisation and the liberalising initiatives of the European Commission have introduced a new factor into the equation, moving the issue to a higher and previously unknown level and requiring a new set of political tools. This paper assesses the impact of the European Commission's liberalisation project and of economic globalisation on the profession of notaire in France. It argues that, on the one hand,

there do indeed exist serious threats to the profession in its traditional form and the values it claims to stand for. On the other hand, at least in principle, notaires in France have an edge over their colleagues in other Western European countries in that a cautious and carefully controlled process of liberalisation from within has been in progress since the 1960s. This has offered the profession opportunities to adjust and prepare for things to come, opportunities which have, admittedly, so far only been seized by a tiny minority.

Sheehan Grania **, April Chrzanowski and John Dewar: Pension Splitting on Divorce in Australia** (1426)
This paper presents the findings from a national survey of property distribution on separation and divorce. The aim of the study was to evaluate the impact on settlement behaviour of the Family Law Legislation Amendment (Superannuation) Act 2001 (Cth), which allows superannuation to be split between former spouses on divorce. There was a distributive justice-based argument for reforming the law to facilitate a fairer distribution of the husband's superannuation benefits to the wife following divorce. The Act had the potential to increase divorced women's ability to finance their own retirement, and resolve the procedural problems that had prevented the court from being able to create a separate interest for the non-superannuated spouse at the time of settlement. Whilst these objectives were clear, the Act's effect on the pre-existing discretionary system of allocating property on divorce was harder to predict because the Act provides no direct guidance as to whether, and in what proportion, superannuation should be split. We hypothesised, on the basis of previous research, that various procedural, legislative and social factors may limit the impact of this reform on settlement outcomes. The survey findings indicate that an unexpectedly low proportion of former spouses split superannuation. However, the high proportion of former spouses taking superannuation into account when dividing matrimonial property has increased the pool of wealth available for division post-reform, and the overall share of property received by particular groups of women has changed as a consequence. The legal, social and economic factors that were related to the uptake of superannuation splitting are also discussed.

Sieder : Legal Cultures in the (Un)Rule of Law: Indigenous rights and juridification in post-conflict Guatemala (3206) This paper analyzes processes of juridification whereby indigenous social movements stake their rights claims to greater autonomy not by resorting to the courts, but rather by mimicking the state and constituting alternative '(para)-legalities'. Specifically, it focuses on efforts by indigenous social movements in Guatemala to contest natural resource exploitation by multinational corporations through symbolic representations and alternative practices invoking international legal principles and rights to prior consultation. Combining local custom and practices, global rights discourses and international instruments and institutions, these processes of juridification challenge the very legitimacy and practice of state law. I argue that they can be understood as a response to current patterns of economic and legal globalization, and also to the acute deficiencies of the rule of law in Guatemala.

Silva Felipe Gonçalves **: The public sphere and the effectiveness of anti-racism legal protections in Brazil** (4521) In this paper, we try to evaluate the "effectiveness" of the Brazilian anti-racism legal protections, making use of an analytical approach focused on the expected connections between rule of law, the dynamic of the public sphere and democracy itself. In the first part of this paper we shall analyze the evolution of punitive anti-racism legislation in Brazil in relation to its capacity to incorporate the results of the continuous deliberative processes running outside the institutional forums of legislative power. This will therefore entail ascertaining to what degree the evolution of the nation's punitive anti-racism legislation can be considered less the result of a self-programming of political power centered within the national legislative institutions and more the expression of a democratic self-regulation rooted in civil society. The second part of this paper will summarize the results of our research into how that punitive legislation is applied by the São Paulo Court of Justice.

Simons Kenneth **: Self-defense: reasonable beliefs or reasonable self-control?** (4413) The reasonable person test is often employed in criminal law doctrine as a criterion of cognitive fault: Did the defendant unreasonably fail to appreciate a risk of harm, or unreasonably fail to recognize a legally relevant circumstance element (such as the nonconsent of the victim)? But it is sometimes applied more directly to conduct: Did the defendant depart sufficiently from a standard of reasonable care, e.g. in operating a motor vehicle, that he deserves punishment? A third category, which might be viewed as a subcategory of the second, has received too little attention: Did the defendant fail to act with the degree of self-control that can fairly be expected? Many criminal acts occur in highly emotional, stressful, or emergency situations, situations in which it is often both unrealistic and unfair to expect the actor to formulate beliefs about all of the facts relevant to the legality or justifiability of his conduct. A "reasonable degree of self- control" criterion can best account for these contextual factors. Conventional criminal law norms often conceal the importance of "reasonable self-control," instead artificially applying cognitive or oversimplified conduct criteria. In self-defense, for example, it is conventional to ask whether the actor believes, and whether a reasonable person would believe, each of the following facts: (a) an aggressor was threatening him with harm, (b) that harm would be of a particular level of gravity, (c) his use of force in response would prevent that harm, (d) the level of responsive force he expects to employ would be of a similar level of gravity, (e) if the force was not used, the threatened harm would occur immediately, and (f) no nonviolent or less forceful alternatives were available whereby the threat could be avoided. United States law typically requires an affirmative answer to each of these questions. Yet in many cases, an actor threatened with harm will actually have no beliefs at all about most of these matters. It would be unfair to deny a full defense to all such actors. At the same time, if we want to hold such an actor to a standard of "reasonableness"—and there are good reasons to do so—then we must reformulate the criterion as requiring a reasonable degree of self-control in response to a threat of force.

Slepcevic Reinhard **: Making European Law Work through Courts – The Importance of National Differences** (1114)
Several studies have recently highlighted the importance of European courts for EU politics. According to this strand of the literature, national courts have become a driving force for European integration and even for democratic governance in Europe. In addition, litigation before national courts is regularly presented as a promising instrument to remedy problems related to the implementation of EU legislation. At the same time, however, policy-oriented analyses have repeatedly shown that such litigation may have quite diverse effects on the implementation of EU law. How can such differential effects of national litigation be explained? In this paper, I try to tackle this question by presenting a theoretical account supported by new empirical evidence. I argue that differential effects of public interest group litigation can be explained through a 'stage model' that focuses on three interconnected 'stages': (1) public interest group litigation; (2) interpretation of national courts; (3) reaction of the competent authorities. As these elements differ widely across Member States, the possibilities to enforce European law through courts vary considerably. This has important consequences for European integration and the possibility of democratic governance through courts. In order to illustrate the theoretical argument, the paper presents empirical evidence from an in-depth study on public interest group litigation in the field of EU nature conservation law – the Natura 2000 Directives – in Germany, France and the Netherlands.

Sluiter Goran **: Behind the written law: Why international criminal tribunals function the way they do** (4139)
The past decade we have witnessed a proliferation of international criminal tribunals. Their proceedings are governed by a very rudimentary legal framework, certainly compared to domestic criminal justice systems. As a result, the participants in international criminal proceedings have a large discretionary freedom as to their role perception and role performance. The paper discusses –among other things- three issues: • The objectives of international criminal trials remain uncertain; as a result, no clear choice for a model of criminal procedure –accusatorial v. inquisitorial- has yet been made. • Participants in international criminal trials come from all legal systems in the world and have difficulty in dissociating themselves fully from these systems. • Pre-trial investigation tends to be relegated to national systems; however, international criminal tribunals carry the responsibility for the fairness of the trial. What consequences should this have for the conduct of participants in these trials?

Sozzo Maximo E **.: In the name of democracy? Explorations around police reform in Argentina** (2106)

Spamann Holger **: "Law and Finance" Revisited** (3112) I re-collect the legal data for the "Antidirector Rights Index" (ADRI) of shareholder protection rules from La Porta et al. (1998) for 46 countries with the help of local lawyers. My emphasis is on reliability of the data; I do not change the original variable definitions. Correctly coded ADRI values are neither distributed with significant differences between Common and Civil Law countries, nor predictive of stock market outcomes in re-runs of regressions from La Porta et al. (1997, 1998). Results derived with the ADRI in the literature will have to be revisited.

Spender Peta **:The Price of Justice - Controversies about Litigation Funding in Australia** (1109)
Whilst the aspiration of access to justice is fundamental to the rule of law, its attainment is increasingly mediated by private institutional funding. As government legal aid has declined, the market has increasingly funded the services which provide access to justice. In Australia there has been a sharp increase in third party investment in both litigation and litigators. This paper will examine this development through several issues which have engendered controversy including the rise of corporate litigation funders, the shift from professionalism to commercialism in the conduct of litigation and the role of the share market in funding litigation firms, exemplified by the world's first listing of the law firm, Slater and Gordon Ltd, in May 2007. The paper will consider the effect of these developments upon access to justice.

Spina Ferdinando **: Central Government and the Resistance of Local Communities: Two Italian Conflicts** (4636)
The so-called risk society, within the globalisation as a macro-structural process, has as one of its most relevant effects, the de-legitimation of the constitutional state, and its capacity to lead social complexity. From this standpoint, Nimby movements can be understood as indicators of the situation of modern democracy. The aim of my research is to analyse Nymby conflicts against the background of Habermas' discourse theory of law and democracy. I will focus my attention on two case-studies concerning conflicts between local communities and the Italian State: the protest against European high-speed rail in Val di Susa, and the protest against the building of a big industrial plant in Brindisi. I will analyze the juridical aspects connected to the involvement of the local communities in the deliberative institutional procedures.

Stadler Lena **:Ex-partner Stalking and Child Custody and Visitation Disputes** (2433) The paper addresses the very current topic of ex-partner stalking in the context of family disputes, especially the consequences that such stalking may have on future custody and visitation rights over children. Most empirical studies concentrate on the problem of stalking itself and the potential effects on the victim. Therefore my research project focuses on the effect on the children in the case one parent stalks the other. The problem in these cases is that stalking generally requires a total breakdown in the communication, but this is almost impossible as long as minor children are involved. One question of the research is how the legal professionals and other experts from various disciplines deal with this problem, what special aspects have to be taken into consideration of the child's best interest, what kind of support to the child can be offered, and how elements of the legal disputes, custody arrangements and visitation rights interact. The aim is to find criteria which would enable the professionals involved better to regard the particular dynamics of stalking, when delivering opinions for the protection of the child and the stalked parent. The paper will present preliminary results from interviews with seventeen experts dealing with stalking cases (family lawyers, family court judges, psychological experts).

Sterett Susan **: Governing with documentation: claiming and fixing identities** (4109)

Stewart Fenner **: Deliberation On A More Rational System of Corporate Governance: A Commentary On The Thoughts of Strine, Bainbridge and Zumbansen** (1233) Three articles inspire this piece of writing: (1) Leo Strine's "Toward Common Sense and Common Ground? Reflections on the Shared Interests of Managers and Labor in a more Rational System of Corporate Governance", (2) Stephen Bainbridge's reaction to Strine, entitled "The Shared Interests of Managers and Labor in Corporate Governance: A Comment on Strine", and finally Peer Zumbansen's article, which, in part, comments on the Strine-Bainbridge discourse, entitled "Varieties of Capitalism and the Learning Firm: Corporate Governance and Labor in the Context of Contemporary Developments in European and German Company Law". What I attempt to do is observe and impart this exchange of ideas so as to deliberate on whether America needs a more rational system of corporate governance, and if so, what legal scholars might do to help. I wish to emphasize, in particular, Zumbansen's assessment, for his position on the American corporate governance debate appears to suggest a more unique vision compared to those of the other two writers. He suggests that this corporate governance debate needs a shift in its underlying paradigm away from the present rights-based understanding of the corporation, which informs both Strine's and Bainbridge's perspectives. His alternative paradigm offers an important opportunity to deliberate whether, on the one hand, the American debate as exemplified by Strine and Bainbridge is well prepared to meet the challenges which corporations will need to overcome if they are to excel in the emerging Knowledge economy, or, on the other hand, if Zumbansen's alternative model represents the seed of a much needed innovation in the American understanding of corporate governance. My ambition is to highlight the importance of this exchange and offer some points of elaboration, in hopes of sparking further deliberation on this issue.

Susanti Bivitri **: Reading the Progress of Legal Reform in Indonesia: the Politics of Law Making in Indonesia After the "New Order" Regime** (2104)

Tadros Victor **: The Scope and the Grounds of Responsibility** (4413) This paper is a discussion of the general theory of responsibility that sits in the background of institutional questions of responsibility. I show how an

integrated theory of responsibility should be developed as providing the background for different kinds of responsibility to be realised through institutional settings. This should frame discussions of particular questions of the scope of responsibility and liability in the criminal law, including the question of objective and subjective standards in criminal law.

Taekema Sanne **: The Point of Law: The interdependent functionality of state and non-state regulation** (1139)
Law is claimed to serve key functions in society, such as maintaining order, meaning that a legal system is justified by its role in society. Although social theorists have questioned the effectiveness of state law in regard to such functions, the normative argument that law should be functional remains valid. Taking Llewellyn's law jobs theory as a starting point, I will address the question for which functions state law is needed. Llewellyn argued that the central functions of law can be fulfilled by non-state rules equally well. Rather than take this argument for granted, I will examine whether more specific elements of law's broad purposes can be distinguished which are served differently by state and non-state rules. For instance, in what Llewellyn calls the law job of adjusting trouble cases different categories of conflicts can be distinguished for which state law seems more or less needed, consider, for instance, the growing importance of alternative dispute resolution. My approach will be a critical analysis of literature that relates legal functions to non-state rules, leading to an argument which aspects of state law cannot be missed for which functions. Finally, I will address the issue whether non-state rules can be defined as law if we take the perspective of legal functionality.

Tamir Michal **: "The Hebrew Language Has Not Created A Title For Me": A Legal and Sociolinguistic Analysis of New-Type Families** (2129)
Israel may currently be home to more children of gay parents per capita than any other country, a phenomenon consistent with a culture that celebrates family, if antithetical to the religious convictions of many of its citizens. Yet those "new-type families" are not institutionally recognized, which limits their access to marriage, adoption, surrogacy, divorce, custody arrangements, prenuptial agreements, and benefit sharing, as well as myriad less tangible or quantifiable needs. While alternative families abound, the current regime neglects to grant them the legal status and privileges that heterosexual citizens and their children enjoy, simply because they diverge in one fundamental way from the reigning model and thus simply fail to fit squarely within the traditional definition of "family." Further, that lack of status pervades Israeli culture, manifesting as an absence of social acknowledgment, a gap between the authenticity with which new-type families live and the non-recognition with which they are met, and a conspicuous absence in the Hebrew language itself. How do parents who are not heterosexual partners forge space for their family units when neither language nor laws vindicate or even recognize them? The authors interviewed nontraditional parents and present their experiences with family formation in the parents' own words. This Article explores the nexus of language, social identity, and legal status for alternative families and seeks to promote the legal reform that would provide those families the recognition they deserve and demand.

Tanaka Maki **: The Expert of Self in the Process of Global Governance: The Role of Persons with Disabilities in the Drafting of the Disability Rights Convention** (1115)
The existing literature on global governance generally attaches importance to scientific knowledge and professional expertise in international institutions. For example, the role of scientific experts is well studied in the contexts of the creation and implementation of international institutions for the global environment. In other contexts of global governance, the relevant literature analyzes the role of professional experts in economics, policy, and law. Then, is there any role for laypersons in knowledge construction and norm generation for global governance? Is there any place for their expressive knowledge and experiential know-how in the process of global governance? To answer the questions, I will draw on the idea of the expert of self in the literature on governmentality. In disciplinary society, scientific knowledge and professional expertise are intrinsically linked to interventionist rationalities and technologies of regulatory apparatuses. In contrast, logics and practices embodied in the market prevail under neoliberal governance. Individuals as consumers and entrepreneurs become the experts of themselves with the knowledge of their own needs, experiences, and aspirations. From the perspective of governmentality, the present paper will dissect the rise and fall of different types of expertise in terms of shifting logics and practices of international institutions on disability. In particular, the paper will demonstrate the penetration of neoliberal governance with the prominence of persons with disabilities as experts of self in the drafting process for the Convention on the Rights of Persons with Disabilities.

Tang Yi - Shin **: Bilateral versus Multilateral Strategies in the Design of International IPR Agreements: Effects on the Technology Transfer to Developing Countries** (3140)
This paper explores the theory in which the differentiation of political interests between developed and developing countries may effectively raise transaction costs during the conclusion of international agreements for the particular market of technology transfers. In this sense, we argue that a proper manipulation of negotiation strategies, in particular by increasing the amount of bilateral forms of cooperation aside from the existing multilateral IPR arrangements, could substantially overcome such costs and lead to improved institutional arrangements in the current global geography of technology dissemination. We focus this problem by analyzing the influence of bilateral investment treaties on the current TRIPS Agreement and providing econometric evidence to our arguments.

Tarumoto Hideki **: Recent Development of a Legal Framework of Migration in Japan** (1538)
Globalisation propels all states to elaborate legal frameworks of controlling migration. But there are diverse paths of developing the frameworks. States are not free from any other actors influencing the frameworks such as markets, NGO/NPOs and international regimes. In some countries such as Britain, the parliament is the most dominant field to create legal setting of migration, whereas in another countries such as the United States, client politics based on forces of business and immigrant groups plays a major role of set-up of the frameworks. An Asian country, Japan, demonstrates the third way of legal control of migration. Without strong parliament nor business and immigrant groups, Japan has created a relatively strong legal framework to control immigrants based on so-called singular bureaucratic sovereignty led by the Ministry of Justice. Through the framework, Japan legally constructs preferred immigrants such as IT workers and {\it Nikkeijin}, and unwanted but necessary ones such as unskilled and undocumented workers. But, such Japanese highly-selective framework of migration is gradually changing due to huge labour demands and fear of rapid depopulation. The reform of the Industrial Training and Technical Internship Programme and the introduction of unskilled foreign workers have been becoming urgent issues.

Tata Cyrus **: Transformation, Resistance, and Legitimacy: the meance of the 'innocent guilty plea'** (2126)
The criminal process in the lower courts relies on defendants voluntarily admitting guilt. Is it possible that defendants who are guilty will be more likely to plead guilty earlier in the process if the process is more transparent, humane and individualised? Measures intended to encourage defendants to feel that they are being dealt with fairly and individually tend to offer defendants some kind of space (or voice) so that their account can be listened to. Yet by doing so, the legitimacy of the process of guilt-admission risks fundamental challenge.

Thus, the roles of defence lawyers, (or in unrepresented cases, judges), and pre-sentence report writers are crucial in trying to ensure that the defendant both pleads guilty without undue delay and avoids (witting or unwittingly) reopening the guilty plea. This paper combines the implications of findings from two recent studies in the Scottish intermediate courts. The first was into the impact of changes to defence lawyer remuneration structures on case management; preparation; pleading advice and decision-making. The second study explored the construction, use and interpretation of pre-sentence reports. By providing defendants with a space in which to express their admission of guilt, the guilty plea can also easily be reopened. Such 'innocent guilty pleas' pose central problems to the process: not only in practical and temporal terms, but also because the 'innocent guilty plea' derails the whole moral enterprise of the guilt production process. How do pre-sentence report writers, defence lawyers and judges attempt to manage the menace of the 'innocent guilty plea'?

Thacher David **: Availability as Resource and Bias** (4212) Recent discussions of the nature and value of expertise in government policy-making have taken a psychological turn. Scholars like Cass Sunstein have mobilized evidence about the heuristics and biases that distort lay judgments about risk—particularly the so-called "availability heuristic", in which vivid and familiar images of potential dangers distort judgments about the probability that those dangers will actually materialize—in order to justify a large role for experts in policy design. In this paper I argue that this perspective emphasizes the costs of "availability" without attention to the constructive role it plays in rationality. That role is suggested by neglected elements of the cognitive psychology literature itself, and it finds further support in the broader field of cognitive science (particularly in the philosophy of mind and cognitive neuroscience). That evidence suggests that without close attention to exactly the kind of vivid imagery that distorts probability judgments, experts may rely on a stylized and inaccurate representation of the event whose probability they seek to estimate. This essential ingredient of intelligent decision-making is especially precarious in government, since policymakers regularly make decisions that will affect distant publics whose experiences they do not share and implicate situations they have never encountered. I discuss the ways in which both participatory democracy and narrative research can help counteract this bias in expert decisionmaking.

Theissen Natalia **: Media Publication versus personality rights in German Law Courts - a focus on women** (1135) The coverage on women in the mass media thends sharply to differ form the coverage on men therefore leading to different - that is gender - based - inflictions on personality rights. This paper plans to identify the specific gender - based coverage and the resulting violations of the personality rights. Furthermore the paper likes to discuss the legal consequences of the gender-based coverage citing important German and international legal court decisions.

Thiel Thorsten **: Theoretical possibilities for political participation in the European Union** (1416) In this rough sketch I focus on a possible return of participatory elements within democratic theory. In the first part of the paper I examine the reasons why discussions on democratic theory revive in the European Union. I suggest that there is a lack of democratic control, which bears normative and factual demands. I briefly discuss why it is of no use strengthening the established nation-centred system and ignoring the changed problems. In the last part I present some classical objections against all forms of more active participation and discuss whether participatory or deliberative theories can provide answers to these objections. Because I do not find a convincing solution I plead for reduced expectations towards participatory forms of de-mocracy. In the best case they could help to originate opposition but they aren't able to solve legitimacy problems on their own.

Thornton Dorothy **, Robert A. Kagan & Neil Gunningham: The Persistence of Economic Factors in Shaping Regulation and Environmental Performance: The Limits of Regulation and Social License Pressures** (3125) Many students of regulation, ourselves among them, have questioned models of regulation and business behavior that emphasize economic motives, finding instead that social norms (relating to environmentalism and law-abidingness) and social pressures play an important role in inducing businesses to comply with regulations and to go beyond compliance. This paper explores the limits of such "social license" pressures. Whereas our previous research focused on highly visible, closely regulated industries and on larger corporations, this paper explores the limits of "social license" pressures by examining regulation of dangerous diesel emissions from trucks and buses in the U.S., thus examining smaller companies that operate in highly competitive or unprofitable markets and find it extremely difficult to afford or pass on the cost of best available emission control technologies. We find that, economic variables, most prominently the sheer enormity of the economic cost of "greening" the national fleet of heavy-duty diesel vehicles, has (a) limited the coerciveness of direct regulation of vehicle owners and operators; (b) dwarfed the reach and effectiveness of the governmental programs that subsidize the purchase of new vehicles; and (c) elevated the importance of each company's "economic license" – as opposed to its "social license" – in shaping its environmental performance

Thornton Margaret **& Joanne Bagust: The Gender Refrains of Corporate Legal Practice** (3141) Despite the fact that women now comprise well over 50 per cent of law graduates in Australia as elsewhere, women lawyers continue to be clustered disproportionately in the lower echelons of the profession. Iterations of the familiar liberal refrain that it will only be a matter of time before equality is attained have become rather worn. The paper considers a range of strategies that have been developed to effect a work/life balance, illuminated by interviews with male and female lawyers in a number of leading corporate firms. It is argued that insufficient attention has been accorded contextual factors. Not only is there a residual suspicion of the feminine in positions of authority and resistance to the idea of bodily absence in the workplace, liberal progressivism has paid insufficient attention to the way the discourses of business, competition, the market and individual choice are presently being privileged over the discourses of social justice and equality for women

Tosini Domenico **: The Autonomy of Law in the War on Terror** (2341) The purpose of this paper is to analyse the clash between recent antiterrorism policies and the legal system, and its impact on the autonomy of law. Special attention will be paid to American and British measures that followed the terrorism attacks of 11 September 2001 and those of 7 July 2005. Systems theory (especially from Niklas Luhmann's perspective) will be adopted as the theoretical framework. Here, contemporary Western societies are viewed as social (communication) systems based on an internal, functional differentiation, in which law is an autonomous subsystem. Other subsystems, such as the political system, the economy, and science, for example, comprise, according to this perspective, the societal environment of law. After the political events of 9/11 and 7/7, the structure of functional differentiation has been under attack from a twofold risk. New terrorist movements such as Al-Qaeda continue to pose a political risk to the political system of modern states. In this regard, recent legislation, such as the American 'USA Patriot Act' and the British 'Antiterrorism, Crime and Security Act' and other extraordinary provisions, such as the detention at Guantanamo Bay, have to be explained as attempts to defend the autonomy (sovereignty) of states threatened by political violence. As a result, a legal risk has been developing in relation to law, due to the necessity and urgency (claimed in daily political discourse) to circumvent some of the constraints inherent the rule of law in order to deal effectively with an

emergency posed by an actual or potential terrorist attack. The hypothesis that will be contended is that all scholars' opinions, protests, and court' rulings opposed to such a new state of emergency must be analysed, in the first instance, as being a reaction of the communication system of law in defence of its own autonomy. The semantics of human rights, which course through the current debates about the war on terror, constitute an epiphenomenon of this struggle by the legal system to protect its differentiation from the societal environment.

Tufte Geir Conrad **: Elderly Care and Care of Persons with Disabilities from a Norm Perspective** (1416)
This paper with the title "Elderly care and care of persons with disabilities in a normative perspective" is one part of an ongoing Nordic-Baltic project called "Changing Patterns of Local Government and Civil Society: Towards a Common Model of Welfare Society in Latvia, Lithuania, Norway and Sweden?" According to the research program, the broad aim of the study is "to examine comparatively the modernization and democratization of local government and how these institutional changes impact on the delivery of vital welfare services in four selected countries" (Program: Velferdsforskning 2004:1). In our research project we will study two municipalities in each of the four countries mentioned above; one with more than 50, 000, and one with less than 50, 000 inhabitants. Four different policy areas will be selected: social work, elderly care, leisure activities and housing policy. We will both carry out a survey study comprising 400 municipality residents and conduct individual interviews with some 20 people in each of the selected communities. The interviewees are local politicians with high positions in the municipality, such as sitting on the municipality council or on committees with many tasks and financial responsibilities. Other participants include certain municipality administrative heads and, finally, representatives of leading local industrialists and of various NGOs such as unions and senior citizen organizations. Does it matter how welfare is organized in our society and what regulations etc. control its organization and administration, for instance in the care of the elderly? Elderly care will be the empirical focus of the paper before you and of the study we are going to perform. Its aim is to study how elderly care is organized, administered and implemented from a normative perspective. The way welfare is organized depends on the variables constituting the total organizational process: Roles, procedures, culture, space and structuring (Lundquist 1987, 1992). According to Agevall (Agevall 2002 p. 163), roles constitute units in organizational management based on the assumption that the actor acts as expected. Procedures are various methods for control, decision-making and coordination. Culture stands for the language, the views of reality and the more or less homogenous values of the organization members. Space can refer to the geographical location of an activity, either in different places or within one and the same place. It can also comprise the geographical boundaries of organization activities (under municipal, county, private or cooperative responsibility). Space may also, for example, include the architecture, design and furnishing of the localities where the activities take place. By structuring is meant how the organization variables relate to each other. The care of the elderly – its contents and application – will in different ways and forms be linked to the various systems of society (the societal context): socio-cultural, economic, technical and political/administrative systems. Furthermore, there are links – of different kinds depending on the work conditions referred to – to the biotic and physical systems in the environment. Studies of norms begin with actions (directions for action) that take place in the different systems within the societal context. Both actions and norms are either separately or jointly linked to actors (single or several) and one or several structures (organizations). The structures may in certain contexts and situations function as actors. By starting from one or several actions and then searching backwards, it is possible to get at the motivations for acting. It is necessary to clarify the basis of or reasons behind actions: analyzing the directives for action. In this perspective, norms may be defined as directives for action. The basis of Hydén's Norm theory is that there are three conditions for the norm: values, knowledge and possibilities and that these concepts constitute the norm. The three concepts affect each other and the norm formation and they cannot be regarded as totally autonomous but as developed in dialogue with each other. Changes in rules of law may thus lead to changes in knowledge as well as in values. What legal changes may lead to is therefore often impossible to predict, which may be due to the dialogue and mutual influences between value, knowledge and possibilities. One tentative conclusion states that local leaders comply with the norms that are imbedded in the state-regulations in the field of elderly care and care for persons with disabilities. A second conclusion is that networking between municipality and local NGOs might be more to the benefit of strong groups in the community rather than to weak groups. A third conclusion is that networking does not necessarily represent a strengthening of local, representative democracy. The paper presents small pieces only of the data which are collected, because data are still being collected. Discussion and conclusion are therefore only tentative.

Tvrdy Linda **:Equal Rights and Common Law Legal Culture in Reconstruction North Carolina** (1223)
In North Carolina in the wake of the American Civil War formal institutions of judicial administration had ceased to function. The Union Army and the War Department's Bureau of Freedmen and Abandoned Lands ("Freedmen's Bureau") stepped into the breech, providing both formal and informal mechanisms for dispute resolution. The power relationships, both implicit and explicit, in the common law of antebellum North Carolina came into direct conflict with emancipation and the 14th Amendment's requirement of equal citizenship in the offices of the Freedmen's Bureau and in the hearing rooms of the military commissions. This paper will argue that the common law was a deeply ingrained aspect of civic culture, which emphasized social order over individual rights, and in which all members of the local community participated in shaping and enforcing. In addition, this paper will argue that common law and customary notions of good social order, rather than claims of constitutional right, continued to provide the institutional framework for reshaping North Carolina's sociolegal culture in the immediate aftermath of the Civil War. This paper will argue that the common law regulation of personal rights and social relationships that existed in antebellum North Carolina constituted a legal and cultural impediment to the promise of universal equal citizenship envisioned by Radical Republicans and African Americans as the just and necessary result of the Civil War. Antebellum common law regulated the rights and duties of individuals using a system of rules that created a relational, differentiated, and hierarchical social order. The 13th and 14th amendments to the U.S. Constitution and the federal Civil Rights Act of 1866 abolished slavery, made citizenship universal for persons born in the United States, and required that citizenship rights be equal. These conflicting systems of personal rights regulation came into direct conflict in the first instance in Union Army and Freedmen's Bureau courts at the end of the Civil War and the beginning of Reconstruction. Union Army policy required that military commissions trying civilians and the Freedmen's Bureau apply local common law to the extent possible in adjudicating civil matters. As Reconstruction proceeded, the Freedmen's Bureau and the Union Army oversaw the administration of justice in the reconstituted civil courts and provided an alternative forum for persons who could not obtain justice in local courts. This paper examines the records of the proceedings of the military trials of civilian matters and finds that while the military courts and Freedmen's Bureau agents sought to eliminate patent discrimination against African Americans in the administration of justice, their reliance on relational, status-oriented common law traditions, such as admitting "character evidence" to establish the status and reputation in the community of witnesses and defendants, demonstrates the difficulty of administering equal citizenship rights within a legal culture based on differentiation, status and hierarchy.

Uruena Rene **: The UN's 1267 Commitee and the Hidden Role of International Law in Anti Terrorist Policy** (2234)
This paper is written as an effort to escape the dialogue of the deaf between those who believe that international law can do no wrong in the war on terrorism, and those who argue its utter irrelevance. Using the case of

the terrorist blacklist administrated by the UN's 1267 Committee, I argue that that such dichotomy, and its obsessive focus on compliance, has the effect of hiding a decisive role played by international law in nti-terrorist policy. International law is a tool of governance of the "the middle ground"; namely, the suspended state between war and peace that characterizes the war on terror. As such, it has to be understood literally as a tool, with independent agency. Thus, administrative law, and ot the law of war, is the paradigm of the international legal order within the war on terror. Therein lay its limitations, and its spaces for resistance.

Utz Stephen **: Justifying Transitional Justice** (3116) This paper discusses recent philosophical attempts to justify judicial and similar institutions in a stateless context like that of certain varieties of transitional justice.

Vakulenko Anastasia **: Islamic Dress in Human Rights Jurisprudence: A Critique of the Current Trends** (1321) This paper highlights some of the discursive implications of framing the question of Islamic dress as one of religious rights. It is argued that the very construction of hijab issues as those of 'religious identity', sustained by the use of Article 9 ECHR as the primary legal basis for such cases, has shaped a number of counterproductive trends. These include: using a language of choice to produce an obscure and unsatisfactory account of Muslim women's agency; false dichotomising of culture and gender; and producing an ever more docile and exposed subject through the subtle mechanisms of public scrutiny and moralising. The paper's arguments draw on the critical thought of Wendy Brown and postcolonial feminism.

van Frederike **de Poll: A Quest for Accountability? The Effectiveness of International Criminal Tribunals on Combating Impunity** (1520) The goal of the paper, which presents my dissertation project, is to provide an analytical framework for analysing the impact of the International Atrocities Regime on impunity, thus supporting the claim that the establishment of the Regime in the early 1990s has broken down the existing culture of impunity for political and military leaders who have planned and initiated genocide, crimes against humanity and war crimes. In order to do so, it is dealt with two main questions: (1) How can impunity be operationalised and measured? (2) What causes the effectiveness of the international criminal tribunals and courts?

Van Aerschot Paul **: On the Implementation of the Right to Participation in Social Policy** ( ) The trend to involve clients in the decision-making concerning their own case raises questions about the consequences of this development for the position of the recipient of social services. The paper examines the legal provisions on the right to participation in Denmark, Finland and Sweden and the conditions of implementation of such provisions in general. The author concludes that offering the client an opportunity to exert a real influence on decision-making requires a policy of implementation ranking high on the agenda of the officials. This policy should include the elaboration of criteria which can be used to determine an adequate level of participation.

van Erp Judith **: Naming and shaming as a regulatory instrument: the case of the Dutch Authority for Financial Markets** (1210) This paper has investigated the legitimacy aspects of naming and shaming as a regulatory instrument. It has sought to identify whether and how a disclosure policy can contribute to the legitimacy of regulatory enforcement, or whether it will undermine it. This has been done by studying the first months of implementation of the disclosure policy of the Dutch Authority for Financial Markets. This authority has been established to ensure trust in the financial market. Trust will only arise when both the public and the financial market place confidence in the regulator and consider the enforcement as legitimate. A disclosure policy can contribute to this legitimacy in two ways. First, it can adequately warn and educate the public about the risk of doing business with dishonest financial companies. Second, it can deter potential offenders, and reassure honest companies that their dishonest competitors are being punished, and thus contribute to compliance. Whether these effects occur, depends on the way the disclosure policy is implemented, because the true nature of naming and shaming only becomes apparent in the practicalities of publication.

van Manen Niels F. **: Legitimacy and Types of Legality** (1438) Even supposing that Weber was right about legality being a source of legitimacy of power (Herrschaft, authority), he was wrong that formal-rational law was the only type of legality. His misunderstanding is due to his concept of (relative) natural law. Research in the development of law and society in the last century, showed that there are other types of legality, enacted in different social institutions, each of them contributing to institutional coherence. Those types of legality are permanently competing, since each one is convincing. Home page: http://home.medewerker.uva.nl/n.f.vanmanen/

van Rooij Benjamin **: Bringing Justice to the Poor, Bottom-up Approaches to Legal Development Cooperation** (2104) In the last decade a bundle of ideas has been developed, best summarized as bottom-up approaches to legal development cooperation. The approaches share a common concern that legal interventions should benefit the poor, and that their needs and preferences should form the basis for interventions. To some extent the approaches are presented as new and alternative, and better than existing practices and the existing legal development paradigm in what has been labeled as "the rule of law orthodoxy". This paper seeks to study the content of bottom-up approaches, looking at how they are defined, how they analyze problems they seek to solve and at the measures they propagate to reach such solutions. Second, the paper addresses why these approaches have emerged over the last decade analyzing changes in development approaches, studying the critiques about preceding legal interventions and looking at criticisms of the existing the Rule of Law paradigm. Third, the paper analyzes the merits of bottom-up approaches. Recognizing the many merits of these approaches, this paper concludes that they are not complete substitutes for the current rule of law paradigm or free of some of the same problems that have plagued existing legal development cooperation practices, so often criticized. As such they offer much to existing practices and the existing rule of law paradigm, but should be seen as additions and be incorporated into existing practices instead of fully replacing them.

van Rooij Benjamin **: Greening Industry Without Enforcement?An Assessment of the World Bank's New Pollution Regulation Model for Developing Countries** (4526) The best comparative and overview source now available for knowledge about pollution regulation in developing countries is the 2000 World Bank policy research report called "Greening Industry". The Bank finds that there is a new model for pollution regulation in lower and middle-level income countries which is an alternative to "traditional" command and control regulation. The new model stresses flexible norms and non-state pressures on regulated enterprises coming from communities and markets. This paper presents an investigation into this new model. While recognizing the importance and the merits of the measures proposed under the new model, this study concludes that the prevalence of weak law enforcement may undermine the new model's potential to control pollution in developing countries. While new strategies should continue to be explored, attention should remain to developmental pollution regulation's weakest link: state law enforcement. A second conclusion is that community and market pressure only occur under certain circumstances, often not found in lower and middle-level income countries. Given these

conclusions, developing countries require smart mixes of various regulatory instruments instead of contrasting non-state and state regulation. The question is how in the particular and varied circumstances of developing countries the right mixes of regulatory instruments can be made.

Velicogna Marco **: The Role of ICT in the Criminal Justice Chain** (1417) The dramatic increase and reshaping of the criminal phenomena that has characterized recent years, pose new challenges that national criminal-justice systems need to face. Examples of such challenges are the rise in violent crime, the terrorism emergency, and the transnationalization of organized crime. The use of ICT in the European judicial systems is considered one of the key elements to respond to such challenges and, at the same time, to improve significantly the administration of criminal justice. The rapid development of technology opens up new opportunities in the fight against crime. Recent legislation and technological developments, have increased the possibility to store and exchange data, documents and information within and between police forces, public prosecutors offices and courts. Furthermore ICT opens new possibilities for supporting investigations, prosecution activities, management, and national and international cooperation (see recent example of Home Office problems in the UK with keeping track of expats convicted of serious crimes abroad). As a counterbalance to such positive aspects, the use of ICT may pose serious threats to privacy and other constitutionally protected values. This paper presents the preliminary results of an on-going research project (ICT for Public Prosecutors) funded by the European Commission carried out by LSE, Finnish Ministry of Justice, IRSIG-CNR, Utrecht University. It discusses the role of technologies in the criminal justice chain in England and Wales, Finland, Italy and The Netherlands. The study is not limited to legal literature, but it has a inter-disciplinary approach, and it focuses on practical experiences and policies implemented.

Veraart Wouter **: Time, Restitution and the Law** (4532) This paper deals with problems of restitution of property rights in the context of transitional justice, confined to situations in which the addressed injustices are already in the far past (more than forty years ago). The central topic is the function of law when confronting extreme injustice beyond regular terms of prescription and limitation. First, a legal-philosophical framework will be discussed, in which relevant legal concepts are defined. These concepts will serve as analytical tools in three case studies which will be briefly examined with regard to long-term restitution issues that arose after 1989: firstly, the restitution of land rights by the South African Land Claims Court established in 1996; secondly, one aspect of the restitution legislation promulgated after the German unification in 1990; and thirdly, the very recent restitutions of nazi-looted art works in the Netherlands to heirs of the original owners. This paper departs from the basic assumption that the wholesome effect of legal solutions in addressing historic injustices is often overvalued. Legal restitution of property rights has its momentum: it should preferably take place as soon as possible after the deprivations of property rights occurred. But when several decades have passed, law's function may become much more "guiding" and advisory than apodictic. The use of legal terms, principles and institutions may still be helpful, but in a loosened and more modest way.

Veronese Alexandre **: Court-based access to justice projects in Brazil - between social wok and legal services** (1106) Among the sixty-seven projects of access to justice listed in a 2006 research mapping of alternative dispute resolution experiences, produced by the Brazilian Ministry of Justice, there were twenty-three experiences of the "Balcões de Direitos" (Rights' Counter) program. They were mapped in 2002 in a collaboration conducted by the Ministry, the United Nations Development Program (UNDP) and a grass-root organization named "Viva Rio". Research teams including field observation analyzed the projects. It appeared then of special regard the existence of two projects ran by State courts, which seemed peculiar in an activity traditionally dominated by NGOs. The paper describes those projects to figure out the agenda of legal aid and social services offered by courts in a context of legitimacy crisis of the Brazilian Judicial Branch. It discusses the political implications in this problem concerning the civil society organizations and the alternatives dispute resolutions trends. It concludes that the complex relations between these projects and the civil society have its roots in the reformist ambient in which is grounded the Brazilian judicial system. They originated two possibilities of relationships: cooperation or competition among them. However, recent data suggests that there is a growing of state-based initiatives and a relative stagnation of civil society experiences.

Vines Prue **: Apologies, justice and moral responsibility: law and private versus public apologies** (1126) The area of transitional justice has focussed on governmental wrongs to a large extent, and in this area work on truth and reconciliation in both municipal and international law has used calls for apologies as part of the arsenal of reparation. In the area of civil liability in the last five years or so a tranche of legislation protecing private apologies has grown up in a large range of jurisdictions. This paper seeks to explore the difference in function between public and private apologies and how they relate to the areas of public and private law (loosely defined). In particular the paper seeks to understand how law as a system interacts with public and private apologies, considering apologies as representative of a moral system as opposed to a legal system.

Voeten Erik **: WHAT MOTIVATES INTERNATIONAL JUDGES? EVIDENCE FROM THE EUROPEAN COURT OF HUMAN RIGHTS** (4139) I use a new dataset of dissents in the European Court of Human Rights (ECHR) to examine whether ECHR judges vary systematically in the extent to which they favor their national governments and in their overall propensities to find government violations. Variation in judicial philosophies appears to be the strongest explanation for variation in the manner by which ECHR judges apply legal rules. I also find strong evidence that judges from countries with low levels of domestic legal independence are more likely to find against their own government than judges from countries where the legal system is better insulated from political interference. Presumably the latter judges perceive an activist international court as an intrusion on a satisfactory status quo, whereas the former perceive it as a potentially useful constraint on domestic executive power. There is some evidence that career ambitions also motivated judicial behavior but no evidence that judges ruled based on cultural biases or that geopolitics played a role in judicial decisions. The implications of these findings for theories of international courts are discussed.

Vogt Hans- Ueli **: Convergence in Corporate Governance in Light of Globalization** (2214) A lot of the research and debate conducted in the area of comparative corporate governance concentrates on the question whether corporate governance structures of the world's leading economies have converged or are about to converge in the near future, and how such convergence (or the lack thereof) can be measured or described adequately. This paper, while based on this research and debate, seeks to establish a comprehensive theoretical framework for describing and analyzing convergence in corporate governance. The concept around which this framework is centered is globalization. It focuses on processes fostered by globalization: imitation, parallel innovation, and coordination. The evolution of corporate governance structures in the global legal system is not determined by optimization, but by instances of variation that call for the selection of new (or the old) legal structures.

Walecki Marcin **: The Europeanization of political parties - influencing the regulations on political finance** (2132)
Europe does matter for political parties because of the impact of its rules, directives and norms into the domestic sphere. Drawing on new evidence, this paper sheds light on largely hidden aspects of the Europeanization of political parties and argues that the legal framework regulating party funding has been directly affected by this process. Political parties in EU candidate countries and the member states of the Council of Europe have become the target of stricter regulations in order to combat political corruption. The way in which external agencies have influenced the regulations on the funding of political parties is analysed. The article illustrates how political parties gain in importance in the context of the EU accession process and associated anti-corruption reforms. The influence of Europeanization on party funding regulations has been particularly important in the cases of Latvia, Poland, Slovakia, Bulgaria and Romania, as well as Turkey and the Balkan countries that have declared their intention of joining the EU.

Warning Michael J. **.: Transnational Bureaucracy Networks and Their Law** (2438) Solving global environmental problems – like those posed by the abundant use of chemicals – proves difficult for the individual state and the international system. Spe-cific public governance structures were developed attempting to respond to these difficulties. On the institutional side, transnational bureaucracy networks emerged, often initiated and managed by International Organizations and involving experts from national administrative agencies. These networks identify problem areas and create technical standards as remedies. In order to become effective, these stan-dards are eventually absorbed by international and national legal orders. This importance of transnational bureaucracy networks and their law gives – from a legal perspective – rise to the question of their legitimacy. Traditionally, lawyers consider legitimacy to be conveyed by the parliament through a chain – the parliament elects the government as the head of the executive and en-acts the laws to be enforced. However, in the practice of transnational bureaucracy networks and their law this concept of legitimacy proves to inoperable. Hence, other mechanisms that can ensure legitimacy must be applied. Empirical evidence gleaned from the analysis of networks operating in the field of chemical safety shows how such alternative mechanisms are actually applied. These, however, must be rooted in law to effectively substitute the legitimacy chain. In fact, constitutional law formulates requirements that alternative mechanisms must fulfil.

Webb Julian **: Socio-legal studies, transdisciplinarity and the challenge of complexity** (4314)
This paper argues that, whilst socio-legal approaches have become increasingly accepted within the academy, there remains much groundwork to be done in developing and defining, at an epistemological level, the relationship between the legal and the social. The intention of this paper is to locate socio-legal studies within current debates about the significance (and signification) of interdisciplinary versus transdisciplinary approaches to scholarship. From a perspective of phenomenological realism, and drawing on a range of work in law and social theory, this paper argues that we need an adequately complex version of transdisciplinary socio-legal scholarship both to provide adequate description of the socio-legal world and to create new openings for scholarship in the interstices and 'undecidables' that are immanent in a mono- or even inter-disciplinary world view. In particular it posits the possibility of employing emergent but unstable forms of "paradisciplinary" knowledge as a means of resisting mono-disciplinary epistemic closure.

Webley Lisa **: Adversarialism or consensus? Family Solicitors and Family Mediators: Cues from Professional Bodies About Values and Approaches** (1524)

Wei Yuwa **: Securitization - A New Mechanism for Reforming China's Financial Sector** (1215)
After years' deliberation, the first Chinese law endorsing asset backed securitization was finally enacted in 2005. In the meantime, Chinese banks have been engaging foreign banks including some Canadian, Australian, and Hong Kong banks in pilot projects of securitization in China. This connotes the introduction of a new reform mechanism, and the dawn of a new phase of economic reforms. This paper will analyze the Chinese banking sector and the pressure faced by Chinese banks after China's entry into the World Trade Organization. It will examine the role of securitization and its regulations in China's financing sector reforms.

Weiss Manfred **: The European Framework of Employment Protection** (2208) The paper will try to examine the European Community's (EC) input into the area of employment protection. Starting point for any further consideration is the minimalist approach to social policy in the Roman Treaty of 1957. The evolution of a policy on social protection – from the early stages in the 1970ies up to the Charter of Fundamental Rights of the EU in 2000 – will be analyzed. The potential of the institutional patterns for the production of rules on employment protection will be analyzed, including the integration of the European social partners into the legislative machinery. The output up to now will be evaluated. And finally the perspectives for future development of European employment protection law will be discussed.

Wells Helen **: Demonopolized and democratized: expertise and the speed limit enforcement debate** (2424)
The increasing use of speed cameras to enforce speed limits has been a controversial development, particularly in the UK. It continues to be the subject of heated public debate despite the publication of numerous studies by 'experts' in the field indicating the effectiveness of cameras at reducing road casualties. This paper proposes that this enduring debate can be understood as a consequence of two developments which are characteristic of a risk society and which have seen the notion of expertise – so fundamental to the construction of legitimate mala prohibita laws - become both demonopolized and democratised (Beck). As a result of the demonopolization of expertise, official expert sources are forced to compete within what is effectively a marketplace containing contradictory expert interpretations about the risks of driving at speeds in excess of the speed limit. Supposedly objective scientific proof must therefore be promoted and marketed to the public if it is to succeed in becoming the basis of laws which are seen as legitimate. As a result of the democratisation of expertise, however, the traditionally-conceived lay market for this expertise is also increasingly emancipated from reliance on such experts. In relation to the 'everyday risk' (Hunt) of driving, this public can bring to the debate its own experientially-derived 'common sense' expertise, gleaned as a result of its own daily experiments in risk. Laws based on traditional expertise, in such areas where public lay expertise is also available, may therefore face particular challenges of legitimacy.

White Alan M **: Behavior and Contract** (4123) The behavioral economics literature has seriously undermined rational choice theory as a description of the way consumers and sellers behave. In the real world, consumers use abbreviated and biased reasoning and short cuts of various types, are heavily influenced by affect and channeling factors, and respond to framing and endowment effects. Sellers study and understand consumer behavior, and exploit this knowledge. The result in a deregulated marketplace is seller exploitation and consumer harm. Numerous empirical examples of "irrational" consumer behavior and seller exploitation are explored. Law and economics scholarship has been reluctant to face the normative implications of our improved

understanding of consumer and seller behavior. “Soft paternalism” seeks to retain the ideal of a perfect market by fixing the information and bias problems, clinging to the values of utilitarianism and autonomy. The insights of behavioral economics may enlighten lawmakers as to how better to strive for genuine autonomy, and genuine utility maximization. Viewing contract law as a tool for justice, however, requires doing more than improving the means without rethinking the ends. A deeper notion of justice requires that we return to the prevention of exploitation of the weak by the powerful, an equity-based value, as one of the lodestars for what the law of contracts ought to be.

Whitecross Richard **and Michael Adler: Transforming the Administrative Justice Landscape in Scotland:the implications of reforms in Scotland** (1110) We consider the main developments in the current reform of tribunals in the UK – the Leggatt Report, the White Paper and the current Tribunals, Courts and Enforcement Bill. In Part Two, we consider each of the main components of the system of administrative justice in Scotland – complaints procedures, ombudsmen and tribunals. The first of these is currently being reviewed as part on an Independent Scrutiny of Regulation, Audit, Inspection and Complaints Handling that will report in August 2007. The second has already been the subject of major institutional reform – in 2002, all the major Scottish ombudsmen were amalgamated into a single, unitary office, the Scottish Public Sector Ombudsman. The third is in a state of flux because the implications for Scottish tribunals of the ongoing reform of tribunals – in which the major UK tribunals are being amalgamated into a unitary Tribunals Service – are still unresolved. The paper argues that the recent Scottish election and the establishment of a minority Scottish Nationalist Party government have created a new background against which the administrative justice system in Scotland must be considered. At present, the new administration is developing its policies and it is possible that administrative justice in Scotland may be seen as a suitable area for consensus building across the Scottish Parliament. Against this background, we outline three key challenges that face the existing system of administrative justice in Scotland. The first raises the question of whether or not a separate administrative justice department should be established, that would centralise oversight and responsibility for administrative justice, should be established within the Scottish Executive. The second considers possible models for the management of the Tribunals Service in Scotland and in particular on the devolved tribunals. The third considers the arguments for and against the establishment of a Scottish Administrative Justice and Tribunals Council.

Wiater Patricia **: "Culture" in the Jurisprudence of the European Court of Human Rights** (4113) The aim of the European Court of Human Rights is the establishment of common European standards in human rights protection and, at the same time, the recognition of legitimate legal and cultural diversity. In its jurisprudence, the Court has to “draw the line” between what is a matter for each community to decide at local level and what is so fundamental that it entails the same requirement for all countries whatever their traditional and cultural divergences. The Court's approach towards this task, from a theoretical and methodical point of view, shall be discussed.

Wiener Antje **: Making Normative Meaning Accountable** (2332) If cultural practices shape experience and expectations, they need to be identified and made account-able based on empirical research. Drawing on IR theory, International Law and normative democratic theory this article develops a framework approach to study the contested meaning of norms in international politics under conditions of constitutionalisation beyond the state. The goal is to formulate observations and identify a design for empirical research fit to examine the invisible constitution of politics i.e. the indiviudally held associative connotations which inform contested interpretation of normative meaning. To do so, the article is organised in two parts. Part I derives research assumptions and hypotheses from the literature. It turns to the distinction of types of norms and conditions of norm contestation in section 2, identifies research assumptions and hypotheses in section 3, argues to bring culture back into constitutionalism in section 4, and summarises the guiding question of convergence, divergence or diffusion of normative meanings in section 5. Part II then focuses on research operationalisation. Section 6 elaborates on rationale of research framework and type of enquiry. Section 7 highlights the method of interview evaluation. Section 8 identifies the research indicators including type of social group to be interviewed; fundamental norms that are likely to be contested; domestic political arenas in which the social groups operate; and issue areas linked with core constitutional norms. Section 9 summarises the case study’s design and procedure.

Wiese Kirsten **: Gender aspect of religious symbols** (1434)

Williams Garrath **: Legal and moral approaches to responsibility** (4128) Some of the most informative recent work on responsibility is by legal scholars, such as Arthur Ripstein, Nicola Lacey and Peter Cane. In different ways, they examine responsibility as a means to secure reciprocity and uphold a framework of shared norms. Meanwhile, moral philosophers continue to focus on the individual person, looking for subjective factors that make it appropriate to hold someone responsible. Focussed on individual agency, they ignore the intersubjective dimensions of responsibility. My paper argues that this is puzzling and problematic. On the face of it, moral philosophers have much more reason to be concerned about the intersubjective dimensions of responsibility. Unlike legal philosophers, they cannot assume the existence of codified norms, nor of authoritative judges, nor of enforcement mechanisms. To the contrary, non-legal attributions of responsibility continually reveal considerable disagreement in norms and their adjudication and enactment – suggesting that the problem of shared norms should be of considerable concern in accounts of responsibility. Although these legal authors are careful not to make claims about moral responsibility, I will argue that moral philosophers have much to learn from their intersubjective focus. I suggest, moreover, that attributions of responsibility take on a further, distinct importance in the moral sphere. That is, they represent the central mechanism by which we negotiate the absence of codified norms and authorised judges, and arrive at some provisional coordination in our informal, normative judgments.

Winn Jane **& Yuping Song: Can China Promote E-Commerce Through Law Reform? Some Preliminary Case Study Evidence** (2304) This article analyzes legislation recently enacted in China to promote the use of electronic commerce among Chinese businesses. It reviews the terms of regulations to promote the use of accounting software by Chinese firms, the electronic commerce enabling provisions of the 1999 Contract Law and the 2004 Electronic Signature Law in light of China’s economic development goals. It contrasts the success of the accounting software regulations with the limited impact of the Contract Law provisions and the likely negative impact of the Electronic Signature Law.

Wood Stepan **: ISO Corporate Social Responsibility Standards and the Legitimation of Global Regulation Beyond the State** (4531)

Wordplay After **: The Principle of the Selfish Institution and the Idea of Law as Governance** (4205) Institutions bend law; they mediate it. This is one of the great lessons of law & society empirical scholarship as well as the new work on heuristics and ecological rationality. This paper argues that this mediation defaults to the constitutive relations of the institution and suggests that this principle has important meaning for new theoretical movements in the law, including new governance and new legal realism.

Wrase Michael **: An Institutional Approach towards the Recent History and Present State of Rechtssoziologie (Sociology of Law) in the Federal Republic of Germany** (1532) In their paper "Studying European Ways of Law," presented at this conference, Volkmar Gessner and David Nelken ask whether there can "be such a thing as a European sociology of law" (Gessner/Nelken, 2007: 1). Despite the profound differences in language, culture and academic traditions "which are inextricably intertwined with modes of thinking about, experiencing and studying law" and the objection, uttered by many, that such "contrasting legal epistemes cannot communicate," they explore considerably much of a common ground for an emerging European as well as a global socio-legal field. Garcia Villegas states that "interest in the sociology of law has increased in the United States, Europe, Latin America, and Asia over the last twenty years. The number of publications, congresses, and programs has grown substantially and bears witness to the existence of a dynamic healthy academic field of study. However, the field´s production is fragmented into national clusters, which makes it difficult to grasp its spirit and evaluation in a global perspective" (Garcia-Villegas, 2006: 344). It cannot be denied that there are vast differences between legal cultures and their specific institutional settings which, at the same time, have shaped the very outlines of "socio-legal studies" or "sociology of law" in each society quite differently. That is why it seems advisable not only to take the concept of legal culture as a basis for our endeavour in order to find out more about the peculiarities, but also to explore common features of socio-legal studies on the national and on the trans-national level alike. However, it seems that, despite all differences, the various fields of socio-legal studies in Western Europe, and also several countries abroad, show interesting similarities ...

WU Chien- huei **: Mission Im(possible)? Could the WTO Save Chinese Courts?** (4114) This paper examines the scope and nature of China's WTO obligation to provide an independent judicial review. It first presents the trend in the WTO to strengthen domestic judicial review, and then analyzes this obligation embodied in China's Accession Protocol. Section 2(D) of China's Accession Protocol lays down more stringent requirements in relation to the "prompt review" of administrative actions. The scope is also wider than existent provisions in the WTO agreements. This paper then examines the existent WTO jurisprudence in order to clarify the criteria of "independence" and "impartiality", and finds that no sufficient and clear guidance is available. As informed by Article 2 of Dispute Settlement Understanding, it is thus feasible and indispensable to examine international standards as well as jurisprudence concerned. This paper then discusses various global and regional standards in relation of independence and impartiality, and also explores the jurisprudence laid down by the European Court of Justice. Based on these standards and jurisprudence, laid down by on the WTO and other international legal instruments, and international tribunals, this paper then presents the efforts and progress that China has so far made for the implementation of this "independent judicial review" obligation, and then examines the compatibility with standards outlined in previous sections. It finds that the administration of justice, the practices of legislative interpretation, adjudicative case guidance system can not pass the scrutiny of the Panel and the Appellate Body, if a case is brought into the WTO.

Yoshida Naoko **: De-masking the Enigma in Koban:What the Principle of Political Neutrality Brought to** (4124)

Yoshioka Suzuka **:Seeking Legal Advice in Rural Areas of Japan** (3107) This paper is based on my research about how disputes are handled in a so-called "closer-knit community." Offices of lawyers are generally located only in towns and are, thus, not always accessible to members of the rural populace who may need legal services. The need for legal services exists not only in big cities but in rural areas as well, however. People in rural areas are at a disadvantage because of the lack of a number of public services such as public transport and medical care, and, in particular, legal advice. How do they resolve such problems? How do they seek legal advice? I discuss these matters based on my ethnographic study, conducted in an island community of Okinawa since 2003, based on data pertaining to the remarkable patterns of seeking legal advice.

Young Rosalie **: College Student and Prisoner Interaction: The Benefits and Risks of Integrated Programming** (2219) This paper will discuss a variety of programs designed to promote interaction between incarcerated men and women and college students, as well as the benefits, risks and frustrations inherent in establishing and operating these programs. Policymakers and correctional facility administrators often express reservations about the security threats, additional work, and negative publicity which may result from integrated programming. Educators, college students and incarcerated persons describe the positive, often unexpected learning that can develop when two groups which rarely meet interact. Both advocates and opponents of integrated programming express strong feelings that must be carefully evaluated.

Yu Xiaohong **: Legislative-Judicial Relations in China** (1137)

Zurek Karolina **: Social Implications of Europeanisation of Risk Regulation: Theoretical Framework for Analysis of the Problem in the Case of Food Safety** (2221) A commonly overlooked aspect of current Europeanization of food safety policy in the common market are the often unintended, sometimes counterproductive, and always complex social consequences caused by this type of risk regulation. Contemporary research has largely been concerned with analysing the institutional problems of risk regulation, focusing upon the role of science in the policy making process, the separation of risk assessment and risk management, and related problems of legitimacy and accountability. Very little attention, however, has until now been given to the economic and social impact of risk regulatory decisions and matters of distributive justice involved. It is here argued that the economic and social dimensions of European risk regulation can—if not duly recognized, analysed, and integrated with the political and legal process—lead to potentially critical challenges to European solidarity and social policy. My research attempts to address these currently marginalized aspects by following three different—yet interrelated—paths of (1) examining the market mechanisms which affect diversity and competitive advantage, (2) analysing the "embeddedness" of risk regulation and the diversity of risk perception, and (3) addressing questions of solidarity in bearing the costs of common regulatory standards and related problems of distributive justice.