



ROBERT H. MCKINNEY
SCHOOL OF LAW

INDIANA UNIVERSITY
Indianapolis

American Society of
Comparative Law Younger
Comparativists Committee

2ND ANNUAL

NEW PERSPECTIVES ON COMPARATIVE LAW CONFERENCE

New Voices in Comparative Law



April 18-19, 2013

Hosted by Indiana University Robert H. McKinney School of Law
Indianapolis, IN

Thursday, April 18th

Location: Lawrence W. Inlow Hall, 530 West New York Street, Indianapolis

3:00–3:30 P.M. **REGISTRATION**

3:30–5:00 P.M. **PANEL SESSIONS I**

- ▶ **Panel I-1: Room 391 • Theoretical Approaches to Comparative Law**
Restoring Law in Comparative Law & Economics
 Lindsey Carson, *University of Toronto*

Proportionate Socioeconomic Rights
 Carlos Bernal, *Macquarie University*

The Interstitial Constitution: Lessons from the World's Newest Nation
 Kevin L. Cope, *Washington and Lee University*

Growth Without Institutions? The Case of China
 Horace WH Yeung and Flora Xiao Huang, *Hull University*
- ▶ **Panel I-2: Room 389 • Comparative Private Law**
Causation in Western Tort Laws: An Essay in Comparison
 Marta Infantino, *University of Trieste*

Autonomy of Contract v. Protection of State Interest—Voidable Contracts under Chinese Law in Comparison with other Civil Jurisdictions
 Hao Jiang, *Tulane University*

All that Glitters is not Gold – Approaching European Solutions To Unfair Contracts with Cautious Optimism
 Melissa T. Lonegrass, *Louisiana State University*

Recognizing a Contractual Right to Suspend Performance
 Joshua Karton, *Queen University*

Rivers for Development: The Challenges of Halting Trans-Boundary Harm
 Romin Tamanna, *University of Illinois*
- ▶ **Panel I-3: Room 271 • Judicial Behaviour**

Comparative and Empirical Study on Judicial Behaviour of Court: The Cases of Hong Kong
 Shiya Chen, *University of Illinois*

Comparative Analysis of the Judicial Decision in the Civil and Common Law Systems: A Legal and Philosophical Outlook
 Aymeric D'Alton, *Fordham University*

Judicialization of Corruption in Latin America: An Overview
 Julian Sant'Ana Bento, *Federal University*

Outlines of Court Systems: in France, the USA and Brazil
 Gabriel Eidelwein Silveira, *Federal University*

Global Governance, Global Solutions, Local Damages: A Critical Study in Effects of Judicial Councils
 David Kosar and Michal Bobek, *Masaryk University & University of Oxford*

- ▶ **Panel I-4: Faculty Lounge • IP and Technology Law in Comparative Perspective**
Bringing Criminal Copyright Enforcement in Compliance with Human Rights Obligations: Abolishing Excesses of Criminal Law Against Piracy in Latin America
Alberto Cerda Silva, *Georgetown University*
The Right to Be Forgotten? Or Forgiven?
Hsiang-Yang Hsieh, *Washington University*
Patent Rights in Genetically Engineered Plants and the Privilege of Indigenous and Local Communities
Chen Lung-Sheng, *National Chung Hsing University*

5:30–7:30 P.M. OPENING RECEPTION

- ▶ **Dean's Greeting:** Gary Roberts, *Dean and Gerald L. Bepko Professor of Law, Indiana University McKinney School of Law*
- ▶ **Graduate Student Award Presentation:** Presented by Richard Albert, *Chair of the Younger Comparativists Committee*
Location: Barnes & Thornburg, 11 South Meridian Street, Indianapolis 5th Floor Auditorium)
Co-sponsored by Barnes & Thornburg and the IU McKinney Law Graduate Studies Program

Friday, April 19th

Location: Lawrence W. Inlow Hall, 530 West New York Street, Indianapolis

7:30–8:30 A.M. CHECK-IN AND CONTINENTAL BREAKFAST, ATRIUM

8:00 A.M. OPENING AND WELCOME

Professor Karen E. Bravo, *Associate Dean for International Affairs, Indiana University McKinney School of Law*

8:30–10:00 A.M. PANEL SESSIONS II

- ▶ **Panel II-1: Room 375 • Issues in Transnational Private Law**
Opting Out of the Procedural Morass: A Solution to the Class Arbitration Problem
Emanwel Turnbull, *Maryland Carey University*
Interpreting Regional Public Policy in International Arbitration: The Case of Greater China
Weixia Gu, *Hong Kong University*
Retroactive Application of International Arbitration Agreements under the FAA: Applying Pro-Arbitration Rules of Interpretation
Hossein Fazilatfar, *Emory University*
University Culture, Interests and International Framework Agreements
Cesar Rosado, *Chicago-Kent College of Law*
Venezuelan Order Publico, American Public Policy and the Most Significant Relationship
Zhandra Marin, *Tulane University*

▶ **Panel II-2: Courtroom • Corporate Governance**

Different Models of Shareholder Activism: A Preliminary Comparative and Normative Analysis

Yaron Nili, *Harvard University*

Insider Trading Law in Asia: China, Hong Kong, Japan and Taiwan Visited

Chien-Chung Lin, *Chiao-Tung University*

The Nonsense of Fiduciaries in Corporate Governance and of the Expressive Function of Corporate Law: A Comparative Analysis

René Reich-Graefe, *Western New England University*

New Governance & the State: The Curious Case of Corporate Social Responsibility in China

Virginia Harper Ho, *University of Kansas*

▶ **Panel II-3: Room 245 • Law and Religion**

Halakhah: The Rabbinic Idea of Law

Chaim Saiman, *Villanova University*

A Comparative Study of the Laws of Estate between Secular America and the Sectarian Estate Laws of Lebanon

Rudy Coram, *Attorney*

Mixed Constitutions: Comparative Modalities of Democratic Cohabitation with Public Religion

Jaclyn Neo, *National University of Singapore*

Conventional and Unconventional Corruption in Post-Revolution Egypt

Patrick Yingling, *Law Clerk*

▶ **Panel II-4: Room 385 • Regulatory Law**

Looking Towards Europe: Regulation of Dominance in Nigerian Telecommunications

Bede Opata, *University of Nigeria*

Assessing the Leviathan's Legal Tool: An Empirical Study of the P.R.C. Laws for Pipeline Protection and Its Effects

Ji Li, *Rutgers University*

A Study of International and American HNS Pollution Legislations and Regulations Calls for Establishing Chinese HNS Pollution Scheme

Ruixuan Zhuo, *Tulane University*

The Need for a Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment

Orkun Akseli and Anjanette Raymond, *Durham University and Indiana University*

Renewable Energy Regulation: Comparative Research of the EU and US Renewable Energy Laws and Policies

Ying Chen, *Indiana University McKinney School of Law*

10:00-10:15 A.M. BREAK: Coffee, Atrium

- ▶ **Panel III-1: Room 375 • Multiculturalism, Diversity, Language and Culture**
 - Taking Language Rights Seriously**
Meital Pinto, *Haifa University*
 - Citizenship and Immigration in a Multicultural Society: A Comparative Perspective between Europe and USA**
Antonia Baraggia, *Milan University and Fordham University*
 - Institutional Accommodation of Cultural Diversity in Sub-Sahara Africa with particular emphasis to Ethiopia's Ethnic Federal System**
Gashu Semahagn, *National University of Ireland*
 - Where to Draw the Line: Defining Ownership of Rights in Traditional Cultural Expressions**
Anthony Kakooza, *University of Illinois*

- ▶ **Panel III-2: Wynne Courtroom (Room 100) • New Constitutions and New Constitutional States**
 - Breathing Life into New Constitutions: Third-Party Public Interest Standing as a Tool to Enforce Constitutional Rights in Kenya and Uganda**
Aparna Polavarapu, *University of South Carolina*
 - Scottish Independence, The British Constitution and Worlds of Welfare Capitalism: Is the Scottish National Party's Draft Constitution Fair and Balanced?**
Jujhar S. Dhanda, *Harvard University*

- ▶ **Panel III-3: Room 245 • EU Law**
 - Legal Engineering at the Services of European Private Law**
Ivan Sammut, *University of Malta*
 - Comparing Private Antitrust Enforcement – What Can Europe Learn from the US System?**
Maciej Hulicki, *Jagiellonian University*
 - The European Regulations on Succession of July 2012: A Path Towards the End of the Succession Conflicts of Law in Europe, or Not?**
Angelique Devaux, *Indiana University McKinney School of Law*
 - Distribution Intermediaries and Goodwill Indemnity: The European Approach as a Framework for American Intermediaries**
E Gokhan Tolay, *Temple University*

- ▶ **Panel III-4: Room 385 • Bankruptcy and Insolvency; Debtor-Creditor; Tax**
 - Keeping Your Home in Bankruptcy: A Comparative Study between the American and the Taiwanese Law on How the Consumer Debtor may Retain their Home in Bankruptcy**
Zhizhou Wang, *University of Wisconsin*
 - Cross-Border Insolvency Protocols: A Success Story?**
Akshaya Kamalnath, *Rosky Legal Education*
 - The New Empresa Individual de Responsabilidad in the Brazilian Legal System: Creditor Protection in a Comparative Perspective**
Luana F. Joppert Swensson, *European University Institute*
 - The Hybrid Norms of International Taxation**
Limor Riza, *Carmel Academic Center*

12:00–1:30 P.M. PLENARY—LAW AND REVOLUTION IN THE MIDDLE EAST: ROOM 375

Moderator Professor James P. Nehf, Associate Dean of Graduate Studies, *Indiana University McKinney School of Law*

Sahar Aziz, *Texas Wesleyan University*

Islam Chiha, *Alexandria University*

Mohamed 'Arafa, *Alexandria University and Indiana University McKinney School of Law*

Mohamed Alaa, *Cairo University and American University*

1:30-3:00 P.M. PANEL SESSIONS IV

▶ **Panel IV-1: Room 375 • Corporate Law, Finance and Economic Development**

Rethinking the Role of Law in Finance: A Comparative Analysis of Financial Law Reform in and the Effects of International Financial Crises on Malaysia, Singapore, and Thailand

Narun Popattanachai, *Columbia University*

Appraising Japan's Appraisal Remedy

Alan Koh, *Boston University*

The Use of Asset Partitioning in Business Law: A Comparative Overview

Livia Ventura, *Temple University*

Expanding Secured Credit Firms in China: Is the Floating Charge an Appropriate Transplant?

Haitian Lu and Mark Williams, *Hong Kong Polytechnic University*

The Interpretation of 'Public Use' in the United States and China and its Relation to Economic Development

Chen Zao, *Washington University*

▶ **Panel IV-2: Courtroom • Health, Family and other Social Issues**

Comparing Legal Cultures in Four Welfare States: The Case of Asbestos Compensation

Andrea Boggio, *Bryant University*

National Exhaustion as a Tool to Improve Access to Medicine

Ahmed Eldakak, *Alexandria University and Washington University in St. Louis*

Two Direct Rights of Action

Margaret Ryznar, *Indiana University McKinney School of Law*

Understanding Contemporary Legal Transplants: What Comparative Lawyers Can Learn from the Public Policy Scholarship on Policy Transfers

Daniel Ghezelbash, *Sydney University and Harvard University*

▶ **Panel IV-3: Room 245 • Method in Comparative Constitutional Law**

Using Comparative Constitutional Common Law

Zhou Han Ru, *University of Montreal*

The Irish Courts' Use of Comparative Material in Constitutional Cases

Oran Doyle, *Trinity College*

The Uses of Values and Culture in Comparative Public Law

Michael Phillis, *Australian National University*

Child Pornography, Sexting and Freedom of Expression in the United States and United Kingdom

JoAnne Sweeny, *Brandeis University*

Should we protect Hate Speech? The Divide Between France/Europe-U.S.A.

Ioanna Toukochoriti, *Harvard University*

▶ **Panel IV-4: Room 385 • Issues in Human and Animal Rights**

Animal Protection Theory in Islamic Jurisprudence: A Comparative Approach

Engy Abdelkader, *University of Pennsylvania*

Monitoring and Enforcing Compliance with Human Rights Treaties: An Examination of State Reporting Behaviour

Yvonne Dutton, *Indiana University McKinney School of Law*

Euthanasia - Good Death or Not?

Rosmy Joan, *Jindal Global University*

Rethinking Right to Privacy in Nigeria: perspectives from Shari-ah (Islam Law)

Abdullahi Saliu Ishola, *Kwara State University, Malete-Nigeria*

3:15–3:30 P.M. BREAK: soda, water, healthy snacks

3:30–5:00 P.M. PANEL SESSIONS V

▶ **Panel V-1: Room 375 • Issues in Comparative and Transnational Criminal Law**

Substantive Reasonableness Review: Finding a Model for Appellate Review of Sentencing Discretion

Briana Lynn Rosenbaum, *Stanford University*

The Shrinking Alternatives to Incarceration: A Closer Look at Community Service Practice in Armenia

Sarah Shirazyan, *Stanford University*

Diverging Paths to Efficiency: Pre-Trial Practices in the US and Germany

Shawn Boyne, *Indiana University McKinney School of Law*

Individual Responsibility for Mass Atrocity: In Search of a Concept of Preparation

Neha Jain, *University of Minnesota*

Atrocity Crime Franchises: Effecting an Atrocity Policy One Step Removed

Matthew H. Charity, *Western New England University*

▶ **Panel V-2: Courtroom • Comparative Law: Critical Dimensions**

Intersectional Discrimination in Employment

Holning Lau, *University of North Carolina*

The Language of Westernization in Legal Commentary

Panthip Pruksacholavit, *Washington University*

The Intersectional Constitution of the Duty to Provide Support: Examining the Indian Construction of Legal Capacity with Support for Persons with Disabilities

Rajeev Kadambi, *Brown University*

What We Learned from Dominique Strauss Kahn and Moshe Katsav about Rape, Politics and Power in the 21st Century

Hannah Brenner, *Michigan State University*

► **Panel V-3: Room 245 • Constitutional Theory in Comparative Perspective**

State Constitutionalism and the Myth of American Exceptionalism

David Landau, *Florida State University*

Implicit Limits Upon the Constitutional Amendment Power

Yaniv Roznai, *London School of Economics*

Entrenchment and Constitutional Politics: Interpreting Eternity Clauses

Thomaz Pereira, *Yale University*

The Expressive Function of Constitutional Amendment Rules

Richard Albert, *Boston College Law School*

Temporary Constitutions

Ozan Varol, *Lewis & Clark Law School*

► **Panel V-4: Room 385 • Topics in Comparative Public Law**

How Indonesia's Constitutional Court has Changed the Constitutional Balance

Fritz Siregar, *University of New South Wales*

The Protective Function and the 'Right to Security'

Vanessa MacDonnell, *Ottawa University*

Restructuring the State in "Quebec administrative law": Nationalism, Colonialism and the Reciprocal Influences of French, American and Québécois Legal Thought

Mark Toufayan, *Ottawa University*

The Effect of Constitutional Structures on Rights Reform: Australia and the New Commonwealth Model of Constitutionalism

Scott Stephenson, *Yale University*

Comparative Federalism: Switzerland, Australia, U.S.

Kirsten Nussbaumer, *Saint Louis University*

Acknowledgements

CONFERENCE COMMITTEE

Richard Albert, Mohamed Arafa (co-chair), Shawn Boyne (co-chair), Hano Ernst, Claudia Haupt, Rajeev Kadambi, Vanessa MacDonnell, Ozan Varol, César Rosado, Radwa Salah, Ioanna Tourkochoriti, Tim Webster

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