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The purpose of this bulletin is to increase dissemination of scholarship and communication between younger comparativists. The bulletin is sent out several times per year; the next issue will be sent out in September 2012. Please send all submissions to David Landau at dlandau@law.fsu.edu, in the following format:

Name, email
Institutional Affiliation
Title
Publication Outlet
Link where available online
Abstract

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Unconstitutional constitutional amendments in the case study of Colombia: An analysis of the justification and meaning of the constitutional replacement doctrine
International Journal of Constitutional Law (forthcoming)
Abstract: Through a series of judgments, the Colombian Constitutional Court has developed the so-called constitutional replacement doctrine. This doctrine aims to justify the power of the Court to review the content of constitutional amendments despite the fact that the Constitution only grants the Court the power to review constitutional amendments exclusively on procedural grounds. This article aims to explain and assess the constitutional replacement doctrine. It contends that the justification provided by the Court is not able to overcome the democratic challenge that can be raised against the doctrine. Nonetheless, this article claims that the doctrine is justified within the context of hyper-presidential political systems such as that of Colombia. In support of this claim, it offers an alternative justification by means of a conceptual and a normative argument, and shows that they form the basis for an appropriate theory concerning the meaning of constitutional replacement.

Dr. Paola Bernardini, bernarpa@yahoo.com
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Abdullahi Ahmed An-Na'im's Human Rights Theory and Jacques Maritain's Natural Law Theory: A Comparative Study (dissertation)
Available in PDF from the Author
Abstract:Since the Second Vatican Ecumenical Council, the Catholic Church has developed and given new impetus to her traditional dialogue with other religions emphasizing the importance of what unites people belonging to different faiths. The

Declaration on the Relation of the Church to Non-Christian religions*, Nostra Aetate,* for example, proclaims that the Church, "in her task of promoting unity and love among men, indeed among nations, [...] considers above all [...] *what men have in common and what draws them to fellowship*.[...]." Further on, it argues that "The Catholic Church [...] regards with sincere reverence those ways of conduct and of life, those precepts and teachings which, though differing in many aspects from the ones she holds and sets forth, nonetheless often reflect a ray of that Truth which enlightens all men."

One of these common teachings and precepts is, according to a recent Document of the International Theological Commission, the natural law. Its subscribers write that "the natural law, founded on reason, which is common to all human beings, is the basis for collaboration between all men of good will, beyond their religious convictions." Similarly, in a letter addressed to University Professors, the once Cardinal Joseph Ratzinger recalls that "many Asian and African cultures possess notions for more than one aspect equivalent to that of the natural law." Further on adding that, "notwithstanding the obstacles to be surmounted it would be well worth promoting comparisons which allow a deeper understanding of a fundamental importance for all [...]."

Starting from these premises, the present study aims at comparing the natural law principles present, either implicitly or explicitly, within the human rights theories of two contemporary authors – Jacques Maritain and Abdullahi Ahmed An-Naʿim – belonging respectively to the Catholic and Islamic tradition. Maritain's Thomistic natural law theory of human rights is not representative of the whole contemporary Catholic thought. As I will try to illustrate in chapter one, his theory is in some ways different from the 'New Theory of the Natural Law' developed by Germain Grisez, John Finnis and Robert P. George. At the same time, it is different in many important respects from the modern notion of the natural law depicted by Kant. Likewise, Abdullahi An-Naʿim' s theory of human rights is inspired by the ideas of his teacher, Mahmoud Taha, and by the classical, humanistic tradition of Islam. This tradition is not mainstream, and never has been. However, it is certainly worth delving into for its similarities with the Thomistic, Aristotelian tradition of the natural law. As we will see in chapter two, An-Naʿim uses the word "common normative principle shared by all the major cultural traditions" to designate the universal, superior law, which Maritain designates with the term natural law.

However, in chapter three we will see that, despite the difference in the terminology used, An-Naʿim' s "common normative principle" fulfills the same function of Maritain's natural law. Above all, it plays a normative role, with respect to the law of the state. And, as chapter four will illustrate, it acts as the foundation of the universal human rights recognized in the 1948 Universal Declaration. In the words of Raimon Panikkar, one could say that An-Naʿim's "common normative principle" represents a "homeomorphic equivalent" of the term natural law.

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Convergence and Its Discontents: A Reconsideration of the Merits of Convergence of

Global Competition Law
Chicago Journal of International Law
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1978505, http://works.bepress.com/cgi/viewcontent.cgi?article=1008&context=thomas_cheng1
Abstract: This Article examines the recent phenomenon of the convergence of competition law regimes across the globe. The increasing harmonization of competition law, at both the procedural and substantive levels, has been widely discussed and applauded in recent years. This Article casts doubt on the conventional wisdom that convergence necessarily constitutes a positive development in global competition law. After analyzing the causes of the phenomenon, this Article argues that there should be limits to the pursuit of convergence. First, the costs of convergence should not be overlooked. The most important of such costs is the loss of national regulatory prerogative. Second, the multitude of goals that are pursued by different jurisdictions in their competition laws poses serious obstacles to convergence. Finally, the need to incorporate economic development considerations and cultural variations in market behavior further cautions against wholesale harmonization of competition laws.

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Spatial Legality
Northwestern University Law Review (forthcoming)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2022355
Abstract: For too long, state interests have dominated public jurisdiction and private choice-of-law analyses regarding the reach and application of a state's law, or prescriptive jurisdiction. Individual rights — whether of criminal defendants or private litigants — have been marginalized. Yet states are projecting regulatory power over actors abroad with unprecedented frequency and aggression. State interest analyses proceed from the perennially critiqued but remarkably sticky concept of sovereignty. Now more than ever, legal thinkers, courts and litigants need a bedrock concept from which to build individual rights arguments against jurisdictional overreach. And it should be one that holds not only theoretical cogency but also the promise of real-world traction in cases.
This article introduces the concept of spatial legality. It recasts the familiar and deeply rooted notion of legality — that is, the idea of fair notice of the law — along spatial as well as temporal dimensions. Operating in time, legality vindicates individual rights, for example by prohibiting ex post facto laws. Spatial legality focuses on law's reach in space rather than its existence in time, but the problem is essentially the same: someone is being subjected to a law he could not reasonably have expected would govern his conduct when he engaged in it.
The article begins by taking extant rules of jurisdiction in multistate systems and transforms them through the concept of spatial legality into a right to fair notice of the law applicable at the time of conduct. It then shows how a jurisdictional mix-up metastasizing in both U.S. and international law is presently aggravating spatial legality

problems: namely, the use of personal jurisdiction over parties to bootstrap application of substantive law to their extraterritorial conduct. The mix-up occurs (a) on the criminal side, by using a defendant's post-conduct presence in the forum to justify applying substantive law to prior conduct outside the forum, and (b) on the civil side, by using "general" personal jurisdiction over parties to justify applying forum law to activity outside the forum. Reorienting jurisdictional doctrine around the rights of parties instead of states generates important doctrinal and litigation payoffs: it clarifies and straightens out the law for courts and, where courts do err, supplies parties with rights-based arguments to challenge such errors as opposed to state-based arguments about sovereignty and comity. In this connection, the article proposes a typology that weaves together public jurisdiction and private choice-of-law doctrines to identify how and when spatial legality claims will have the most traction on the current state of the law. It concludes by indicating the limits of a spatial legality concept based only on notice and suggests other rule-of-law criteria like feasibility of compliance, avoidance of contradictory laws, and consistency that, going forward, may further inform analysis of the demands multistate systems with overlapping laws place on fundamental fairness.

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A Medical Malpractice Model for Developing Countries
4 Drexel Law Review 217 (2011)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2010576
Abstract: This Article, written for the symposium "Reforming Medical Liability: Global Perspectives," evaluates the unique plight of developing countries in crafting medical liability regimes. Many developing countries struggle to maintain workable systems for adjudicating physician negligence. This is due to a variety of factors, such as widespread poverty, more pressing public health priorities that demand attention, a scarcity of physicians, immature health care systems, large informal health sectors, regulatory deficits, and weak civil societies, among others. Patients in these countries are also less able than their counterparts in well-developed countries to evaluate and challenge the care they receive and thus serve as early regulatory sentinels.
Given the barriers to redress in developing countries, this article evaluates contemporary reforms in two systems: India, a common law jurisdiction, and Mexico, a civil code jurisdiction. India created consumer forums in the 1980s as an alternative to its notoriously protracted civil litigation system. And Mexico created a medical arbitration system (Conamed) in the late 1990s, also to provide an alternative to civil courts. I argue that given the difficulties that plaintiffs in developing countries often have in procuring physician testimony and accessing their own medical records, Mexico's reforms might be a better model for other developing countries looking for an alternative forum for adjudicating malpractice disputes.

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Transnational Nonestablishment
George Washington Law Review (forthcoming 2012)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1912842
Abstract: Over the past decade, significant changes have occurred in the religious freedom jurisprudence of the European Court of Human Rights. The most recent indicators of change are the conflicting opinions displayed in the 2009 Chamber decision finding the mandatory posting of crucifixes in public school classrooms in Italy impermissible, and its subsequent reversal by the Grand Chamber in 2011. Taking a broader perspective, this Article argues that an emerging trend toward a transnational nonestablishment principle seems to be developing in contemporary Europe. This Article first places the emerging principle into a larger multi-level religious policy framework, one of several such frameworks that also include the Post-Reformation model as well as the U.S. Establishment Clause model. After surveying the development of nonestablishment principles in the United States, under the European Convention, in the law of the European Union and in individual countries, this Article then traces the contours of nonestablishment. In doing so, this Article illustrates that several useful comparisons can be made between the evolving understanding of nonestablishment in the United States and current developments in Europe. Some of these comparative insights – particularly in the public school context – may prove helpful in anticipating the likely future effects of an emerging transnational nonestablishment principle. This Article then assesses possible implications of the emerging nonestablishment principle in Europe, both short-term and long-term, arguing that theories of convergence and subconstitutionalism best describe likely long-term effects. The discussion over disincorporation of the Establishment Clause and recent developments in recalibrating the scope of the Establishment Clause with respect to indirect funding of sectarian schools in the United States provide an opportunity to assess the reciprocal effects of multi-level nonestablishment. Finally, this Article turns to the question whether a shared transnational nonestablishment baseline is emerging, arguing that a nonestablishment baseline as a normative matter is necessary in western-style democratic systems.

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Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights
Cornell International Law Journal 44:3
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1911405
Abstract: Courts Resisting Courts explores a critical tension in international law: the relationship between international and national courts. Leading theorists assume that autonomous national courts heighten compliance with international human rights regimes. This article challenges this orthodoxy. It focuses on the Inter-American Court of Human Rights, an international court unique in that it orders far-reaching, innovative remedies that invoke action not only by the State's executive, but also the legislature and local courts. Original data reveals that national courts, more than any other branch of

government, shirk the Court's rulings. This article turns this insight into a prescription for gaining greater compliance: international human rights courts need to directly engage national justice systems, cultivating them into compliant partners. This argument is relevant not only to the Inter-American Court, but to courts with jurisdiction over human rights across the globe.

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Advancing Women's Rights through Islamic Law: The Example or Morocco
Berkeley Journal of Gender, Law, and Justice (forthcoming 2012)
Abstract: This Article discusses the challenges and opportunities for advancing women's rights through Islamic law using contemporary Morocco as a case study. Part I provides an overview of women's rights in Morocco including the historic 2004 *Mudawana* (Code of Personal Status) reforms. Part II discusses the social roles, cultural representations, and socioeconomic realities of Moroccan women, emphasizing the important role that Moroccan women have played in legal and social reform efforts through their participation in civil society. Part III discusses several legal strategies for advancing women's rights in Islamic states and assesses the strengths, weaknesses, and likely success of each approach. These strategies include implementing international law and secular reform, utilizing the Moroccan legislative process, reinterpreting the Qur'an and the *hadith*, exercising *ijtihad*, and contesting the development of Shari'a. Part IV outlines the most promising strategy for advancing women's rights in Islamic states. This final Part discusses failed reform strategies, outlines an effective reform strategy, and concludes that women's rights are largely compatible with Shari'a provided the right social and political conditions exist.

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Forum Competition and Choice of Law Competition in Securities Law after Morrison v. National Australia Bank
97 Minnesota Law Review [__] (2012)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2029983
Abstract: In Morrison v. National Australia Bank, the U.S. Supreme Court in 2010 held that U.S. securities laws apply only to securities transactions within the United States.
The transactional test in Morrison could be relatively short lived because it is rooted in geography. For cases involving private securities transactions in which geographic determinants of a transaction and thus applicable law are unclear, this article suggests redirecting the inquiry away from the geographic location of securities transactions towards the parties[1] choice of law. In the long run, allowing parties to choose the law pertaining to private transactions could be more effective than relying on geography that is both indeterminate and easy to manipulate.

Jurisdictions could then compete to induce transacting parties to bring private transactions within their jurisdictional reach by designing substantive law and procedures that parties choose ex-ante ("Choice of Law Competition²).
Recent cases expanding the jurisdictional reach of Dutch courts suggest that the Netherlands or another EU member state could engage in a different type of jurisdictional competition. Jurisdictions performing this role adjust their procedural rules to set up a forum within their borders for litigation that appeals to plaintiffs and their lawyers ("Forum Competition"). The U.S. engaged in some Forum Competition for extraterritorial securities litigation prior to Morrison, and the Dodd-Frank Act of 2010 empowers the SEC to continue to bring suits in the United States over securities transactions outside the United States. For many issuers and investors who do not choose the forum ex-ante, Forum Competition can be suboptimal. Depending on future developments, the acceptable outer bounds of Forum Competition between the United States and Europe may need to be defined by treaty or multilateral agreement.

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Why is the U.S. Abdicating the Policing of Multinational Corporations to Europe?: Extraterritorialism, Sovereignty, and the Alien Tort Statute
Berkeley Journal of International Law (Volume 30, Issue 1, forthcoming 2012)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1956520
Abstract: The U.S. has policed the multinational effects of multinational corporations more aggressively than any other country, but recent decisions under the Alien Tort Statute indicate that it is now backtracking. Europe, paradoxically, is moving in the other direction. Why do some countries retract extraterritorial jurisdiction while others step forward? The article traces the opposing trends through corporate human rights cases and suggests that the answer may lie in attitudes towards national sovereignty. The developments raise important questions regarding the position of the U.S. in a globalizing world and its role in upholding international norms.

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Constitution-Making Gone Wrong
Alabama Law Review (forthcoming 2012)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2011440
Abstract: With the recent wave of regime change in the Middle East, the process of constitution-making must again become a central concern for those interested in comparative law and politics. The conception of constitutional politics associated with Jon Elster and Bruce Ackerman views constitution-making as a potentially higher form of

lawmaking with different dynamics than ordinary politics and states that ideally, constitution-making should be designed so as to be a relatively deliberative process where the role of group and institutional interests is de-emphasized. I argue that a focus on achieving deliberation and transformation through constitution-making is unrealistic in certain situations and that theorists should instead often focus on avoiding worst-case scenarios of authoritarian regimes or breakdowns of order. In these situations, the central challenge of constitution-making is not to achieve a higher form of lawmaking but rather to constrain unilateral exercises of power. I use two recent Latin American examples where the constitution-making process was problematic to illustrate the difficulty. If political forces in assemblies are left unconstrained or poorly constrained, they can reshape politics to create a quasi-authoritarian regime (as occurred in Venezuela), or their attempt to impose a constitution on a reticent minority may create a constitutional breakdown (as nearly occurred in Bolivia). Some of the normative recommendations of followers of the dominant model – for example, that constitution-making should be highly participatory and should be undertaken in a specialized constituent assembly – emerge as problematic under this conceptualization because they may increase the likelihood of a worst-case outcome. Further, a focus on the need for constraint highlights the difficulty of achieving it during constitution-making processes; potential constraints such as courts that are often mentioned in the literature may prove ineffective in practice. Finally, I apply my theory in order to get some analytic leverage on the current constitution-making process in Egypt. I argue that the political environment may mean that a focus on avoiding worst case outcomes might be appropriate, and I point out that elements of the Egyptian process may raise significant risks of such an outcome.

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"Do Victims of War Need International Law? Human Rights Education Programs in Authoritarian Sudan"
Law & Society Review 45 (1): 1-32
Available for download: http://onlinelibrary.wiley.com/doi/10.1111/j.1540-5893.2011.00426.x/abstract
Abstract: Drawing on ethnographic fieldwork in Sudan, this article illuminates the consequences of human rights educational workshops as a form of humanitarian assistance to displaced persons. These projects are built on flawed assumptions about Sudanese politics and about the likelihood that human rights education empowers the war-ravaged poor. The beneficial impacts of human rights discourse stem from its side effects, which fulfill urgent and symbolic needs, and not from the core content of human rights. The case of an authoritarian regime exposes an alternative site of rights promotion, outside the established or struggling democracies where most literature on rights resides. Bridging the literature on rights in Western, democratic contexts and on human rights in Africa, this article argues that law is not enough--and is potentially dangerous--in the

insecure and impoverished areas where the international aid community has been encouraging it to flourish.

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Assistant Professor of Law, Fordham Law School
China's Turn Against Law, American Journal of Comparative Law (2011)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1767455
Abstract: Chinese authorities are reconsidering legal reforms they enacted in the 1980s and 1990s. These reforms had emphasized law, litigation, and courts as institutions for resolving civil grievances between citizens and administrative grievances against the state. But social stability concerns have led top leaders to question these earlier reforms. Central Party leaders now fault legal reforms for insufficiently responding to (or even generating) surging numbers of petitions and protests.
Chinese authorities have now drastically altered course. Substantively, they are de-emphasizing the role of formal law and court adjudication. They are attempting to revive pre-1978 Maoist-style court mediation practices. Procedurally, Chinese authorities are also turning away from the law. They are relying on political, rather than legal, levers in their effort to remake the Chinese judiciary.
This Article analyzes the official Chinese turn against law.
These Chinese developments are not entirely unique. American courts have also experienced a broad shift in dispute resolution patterns over the last century. Litigation has fallen out of favor. Court trials have dropped in number. Alternative dispute resolution mechanisms have increased in number. Observing such long-term patterns, Marc Galanter concluded that the United States experienced a broad “turn against law” over the 20th century.
China’s shift also parallels those in other developing countries. In recent decades, nations such as India, Indonesia, and the Philippines have resuscitated or formalized traditional mediative institutions. This is part of a global reconsideration of legal norms and institutions imported or transplanted from the West.
Despite these similarities with global trends, this Article argues that Chinese leaders’ shift against law is a distinct domestic political reaction to building pressures in the Chinese system. It is a top-down authoritarian response motivated by social stability concerns.
This Article also analyzes the risks facing China as a result of the shift against law. It argues that the Chinese leadership’s concern with maintaining social stability in the short term may be leading them to take steps that are having severe long-term effects of undermining Chinese legal institutions and destabilizing China.
Last, this Article argues for rethinking the trajectory of Chinese legal studies. Scholars need to shift away from focusing on formal Chinese law and legal institutions in order to understand how the Chinese legal system actually operates and the direction it is heading.

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Japan's Love for Derivative Actions: Irrational Behavior and Non-Economic Motives as Rational Explanations for Shareholder Litigation
45 Vanderbilt Journal of Transnational Law (2012)
http://law.vanderbilt.edu/publications/journal-of-transnational-law/index.aspx
Abstract: Not long ago, there was a consensus in the legal academy that the Japanese were irrational litigants. As the theory went, Japanese people would forgo litigating for financial gain because of a cultural obsession with maintaining social harmony. Based on this theory, it made perfect (but economically irrational) sense that Japanese shareholders let their U.S.-transplanted derivative action lay moribund for almost four post-war decades, while at the same time the derivative action was a staple of shareholder litigation in the United States.
The 1980s brought a wave of law and economics to the scholarship of Japanese law, which largely discredited the cultural explanation for Japan's (economically irrational) reluctant litigant. In this new academic era, reasonable minds could disagree as to whether the efficiency of settlement or high cost of litigation explained the dearth of litigation in Japan. However, the assumption that the Japanese litigant was economically motivated and rational (i.e., that they would litigate only when the financial benefit from doing so exceeded the cost) was virtually beyond reproach.
In the early 1990s, the number of derivative actions in Japan skyrocketed. Japanese shareholders suddenly found themselves as strange bedfellows with their American counterparts as the only shareholders of listed companies in the world that utilized the derivative action on a regular basis. This extraordinary change in the behavior of Japanese shareholders has largely been understood through the lens of the economically motivated and rational shareholder litigant.
This Article challenges the assumption that the dramatic increase in Japanese derivative actions can be understood solely through the narrow lens of the economically motivated and rational shareholder. Using original empirical and case study evidence, this Article demonstrates that in Japan, neither shareholders nor attorneys stand to gain significant financial benefits from derivative actions. To the contrary, this Article suggests that the non-economic motives (i.e., political and environmental motives and veiled extortion) and irrational behavior of Japanese shareholders, (i.e., the use of inaccurate mental heuristics, self-serving bias, and herding behavior) are critical for providing an accurate explanation for one of the most dramatic increases in shareholder litigation in recent times. This revelation further suggests that the leading literature on shareholder litigation —which forms the basis for the current understanding of shareholder litigation in the United States—is flawed, as it overlooks the critically important role that non¬economic motives and irrational behavior play in driving shareholder lawsuits.

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The Derivative Action in Asia: A Comparative and Functional Approach (Cambridge University Press, Forthcoming, May 2012)
http://www.cambridge.org/gb/knowledge/isbn/item6626086/The%20Derivative%20Action%20in%20Asia/?site_locale=en_GB

Abstract: This in-depth comparative examination of the derivative action in Asia provides a framework for analysing its function, history and practical application and examines in detail how derivative actions law works in practice in seven important Asian jurisdictions (China, Hong Kong, India, Japan, Korea, Taiwan and Singapore). These case studies allow an evaluation of a number of the leading Western comparative corporate law and governance theories which have come to define the field over the last decade. By debunking some of these critically important theories, this book lays the foundation for an accurate understanding of the derivative action in Asia and a re-examination of the regulation of the derivative action around the world.

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"The Development of the New Chinese Banking System: Domestic Modernization or Global Financial Manipulation?"
27 Maryland Journal of International Law (2012)
http://ssrn.com/abstract=1992589
Abstract: Over the last two decades the Chinese government has conducted an unprecedented and rapid transformation of its banking system. These changes are especially noteworthy because they are emerging against a backdrop of great global, as well as internal, financial turmoil. Moreover, the Chinese banking transformation is picking up steam at the very time China is increasingly flexing its political muscle on the global stage. These remarks argue that the current internal transformation of the Chinese banking system is inextricably intertwined with China's rise in the global financial arena. They further argue that China's unique banking structure and recent experiences can provide many insights into how future financial crises may be averted. Furthermore, in addition to being fascinating in its own right, the manner in which China is utilizing its new banking structure to parlay itself into a position of greater political power constitutes one of the largely untold stories of the current global financial crisis.
This banking transformation is also particularly significant in light of its distinctive structure among contemporary financial powers. One unique aspect of the Chinese banking system is the way it straddles the lines between the private and public spheres in ways unfamiliar to western banking systems. As the recent financial crisis has demonstrated, these tensions between public and private in the financial realm are also manifesting in traditionally market-based regimes. China, however, is charting the opposite path from most western regimes — China is moving away from a largely public banking model to a more privatized model, albeit one with "Chinese Characteristics." The development of the modern Chinese banking system, and specifically the emergence of its current mixed public/private banking structure, has received altogether too little attention in the West. The successes and failures of the internal Chinese transition thus offers important lessons to other countries and policymakers as the current global banking crisis deepens.

The Chinese banking transformation also has larger, more long-term global implications. While China is ostensibly just modernizing its banking system, purportedly conducting its own brand of market reform, in reality China has taken advantage of the robustness of its banking system to strengthen its own financial power, both subtly and explicitly, as banking structures in other countries struggle and weaken. In particular, China is attempting to use its financial might to extract financial and political concessions from other countries. Several recent financial developments highlight China's growing power and their broader implications for the global financial arena.
Finally, in an era where many countries, scholars, and key financial and political players are proposing a myriad of "solutions" to financial problems and crises, a broader dialogue is required over the range of potential solutions to systems such as China's, where such solutions may ultimately emerge. We all must be concerned with the question set forth in the tile of these remarks — are China's banking reforms aimed simply at domestic modernization or are they an integral part of China's bid for global political and financial power?

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Punishment and Workplace Compliance: Lessons from Chile
Hofstra Labor and Employment Law Journal
http://ssrn.com/author=1458656
Abstract: Workplace law activists and reformers find it increasingly more difficult to obtain redress for violation of workers[1] rights. Some of them are calling for stricter enforcement and tougher penalties to bring employers into compliance. However, after seven and half months of participant observation at the Labor Directorate and the labor courts of Chile, institutions that use punishment as their main tools of enforcement, I am skeptical about the likelihood of success of mere punishment for effective workplace law enforcement and compliance. I am skeptical even though Chile is a country recognized as the Latin American [3]jaguar[2] for its successful economy and high respect for the rule of law. I observed that in Chile punishment bred a culture of resistance against workplace law enforcement. Some powerful employers mobilized courts and other government players against the labor inspectorate, the agency in charge of administratively enforcing all laws regarding the workplace, rendering the institution moot. My findings provide further evidence for New Governance, responsive regulation and traditional [3]Latin[2] inspection strategies being advocated by some law and policy scholars in the United States and beyond. While most of these scholars do not discard the importance of punishment, they call for more participatory and cooperative regulatory and enforcement processes, the use of persuasive rather than just punitive enforcement orientations, and conciliatory and remedial strategies by the enforcers to obtain better compliance results.
In this manner, the Chilean case supports continued experimentation with

non-punitive enforcement tools not just in Chile but also in the United States and beyond.

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Judicial Formalism and the State Secrets Privilege
William Mitchell Law Review (symposium issue on national security)
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2016987
Abstract: In the last decade, a disturbing pattern of judicial formalism and unwarranted deference to the executive branch with regard to secrecy claims has emerged in U.S. jurisprudence. The application of the state secrets privilege in the U.S. and English litigation surrounding former Guantanamo detainee Binyam Mohamed illustrates the way in which the United States appears to be moving away from the flexible, rule of law-oriented approach that courts in the United Kingdom and Israel take and is instead echoing the formalistic rigidity that the Indian Supreme Court uses in cases involving state invocations of secrecy. This formalism has resulted in the unnecessary and inappropriate failure of U.S. courts to engage in cases that present credible evidence of gross human rights violations at the hands of the U.S. government.
To remedy this situation, Congress should re-introduce state secrets reform legislation that could infuse the litigation process with procedural and substantive fairness. At the same time, the courts must step away from judicial formalism, already rejected in other national security contexts, and instead heed the lessons of countries like India, the United Kingdom, and Israel with regard to the ramifications of a judiciary unwilling to engage in decision-making on these issues of fundamental civil and human rights.

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The Burka Ban: Divergent Approaches to Freedom of Religion in France and in the USA
William & Mary Bill of Rights Journal (forthcoming)
http://papers.ssrn.com/abstract=2028341
Abstract: Six years after prohibiting the wearing of headscarves by students in public schools, the French state passed a law prohibiting the wearing of burkas inpublic places. Compared to France, in the United States there is more tolerance for wearing signs of religious affiliation. The difference in legal responses can be understood in reference to a different background understanding of the fundamental presuppositions of republicanism in the two legal and politicalorders, which also define their conception of secularism. The law enacted in France can be understood in a general frame of a paternalistic state, which is seen as permitted to dictate the proper exercise of their reason to the citizens. In the United States, the dominant understanding of republicanism attempts to reconcile the natural rights philosophy with the conception of the common good. The trust in the use of collective power and the legislature dominant in France can be opposed to the distrust towards the same elements in the United States.