

Lewis & Clark Law School
Portland, Oregon

Third Annual Conference of
The Younger Comparativists Committee
of the
American Society of Comparative Law

April 4 - 5, 2014



Conference Schedule Overview

Friday, April 4, 2014

Schwabe, Williamson & Wyatt
1211 SW 5th Avenue #1900
Portland, Oregon 97204

5:00 – 7:00 p.m.

Opening Reception

Welcome and Award Presentations

Saturday, April 5, 2014

Lewis & Clark Law School
10015 S.W. Terwilliger Boulevard
Portland, Oregon 97219

8:00 – 9:00 a.m.

Check-in and Continental Breakfast

8:30 - 9:00 a.m.

Welcome and Greeting

9:00 - 10:30 a.m.

Panel Sessions I

10:30 – 10:45 a.m.

Break

10:45 a.m. – 12:15 p.m.

Panel Sessions II

12:15 – 2:15 p.m.

Plenary Panel and Lunch

2:15 – 3:45 p.m.

Panel Sessions III

3:45 – 4:00 p.m.

Break

4:00 – 5:30 p.m.

Panel Sessions IV

Conference Schedule

Saturday, April 5

8:00 – 9:00 a.m.

CHECK-IN AND CONTINENTAL BREAKFAST, LRC Student Lounge

8:30 a.m.

Welcome and Dean's Greeting

Robert Klonoff, *Dean and Jordan D. Schnitzer Professor of Law, Lewis & Clark Law School*

Richard Albert, *Boston College Law School*
Chair, YCC

Ozan Varol, *Lewis & Clark Law School*
Chair, Program Committee

9:00 – 10:30 a.m.

PANEL SESSIONS I

Panel I-1: Arbitration and Dispute Resolution, McCarty Room 1

Med-Arb: A Choice Between Scylla and Charybdis

Daniela Antona, *Cornell Law School*

15 Years of the Handover: The Rise, Discontent, and Convergence of Cross-Border Arbitration in Hong Kong

Weixia Gu, *University of Hong Kong*

How Should International Arbitrators Interpret Commercial Contracts?

Joshua Karton, *Queen's University*

The Tide of the Times? A Sectoral Approach to Latin America's Resistance to the Investor-State Arbitration System

Tom Brower, *University of Virginia*

Panel I-2: Human Dignity and Socioeconomic Rights, McCarty Room 2

Comparing Diverse Approaches to the Margin of Appreciation: The Case of the European and the Inter-American Court of Human Rights

Gonzalo Candia, *Universidad Católica de Chile*

Socio-Economic Rights and the Newness Hypothesis

James Fowkes, *University of Pretoria*

Judicialization of Socioeconomic Rights in Brazil: Mercantilization of the Fundamental Rights as a Deviance in Rights Protection

Vanice Lírio do Valle, *Estácio de Sá University, Rio de Janeiro*

The New French Marriage in an International and Comparative Perspective

Angelique Devaux, *Indiana University, Indianapolis*

Panel I-3: Comparative Assessments of Law and Governance, McCarty Room 3

The Future of Bicameralism in Europe: A Comparative Analysis of Challenges and Reforms

Antonia Baraggia, *University of Milan*

Towards a Varifocal Model of the Separation of Powers

Eoin Carolan, *University College Dublin*

The Failure of Constitutional Jurisprudence: Constitutional Law and Demographic Change in Venezuela

Nicolás Figueroa, *New School for Social Research*

Electoral Management Bodies and Judicial Oversight of the Law of Democracy

Michael Pal, *University of Toronto*

Panel I-4: Cultural and Historical Approaches to Comparative Law, McCarty Room 4

Christianity, Islam, and Secular Law

Zachary Calo, *Valparaiso University*

State of Culture and Mediterranean Transitions: The Cases of Turkey and Morocco

Valentina Rita Scotti, *LUISS "Guido Carli" University of Rome*

Blood's Empire: Historical Explorations of Parent-Child Relationships in Canada

Régine Tremblay, *University of Toronto*

Cultural Differences in Game Theory and the Comparative Law

Viktor Lőrincz, *Université Paris 1 Panthéon-Sorbonne*

Panel I-5: State Sovereignty, Law Making, and Legal Reform, LRC Room 5

The Enlarged State Power to Declare Nullity: On the Hidden State Interest under Article 52 (1) of the Chinese Contract Law

Hao Jiang, *Tulane University*

Precedents Rule: How Informal Institutions in Legal Systems Control Personnel Policy, Induce Judicial Outcomes, and Compete with Formal Law?

Ching-Fang Hsu, *University of Toronto*

Taiwan's Great Crime Decline and Policing Policy: An Empirical Perspective

Kai-Ping Su, *University of California, Berkeley*

Secular and Religious Forums: Religious Arbitration in Western Liberal Democracies

Yvonne Tew, *Columbia Law School*

10:30 – 10:45 a.m.

BREAK: McCARTY BREEZEWAY

10:45 a.m. – 12:15 p.m.

PANEL SESSIONS II

Panel II-1: Financial Regulation, McCarty Room 1

The Impact of Private Actions for Damages on US and EU Public Antitrust Law Enforcement

Baskaran Balasingham, *King's College London*

***Perseverare Diabolicum*: The Shortcomings of Pre-Crisis Financial Regulation, and the Repetition of the Same Mistakes in the Regulatory Response to the Crisis**

Riccardo de Caria, *University of Torino*

A Failed Remedy? English and American Remedies and The Consumer Credit Litigation Explosion

Emanwel Turnbull, *University of Maryland*

Capital, Credit, and Shadow Banking: Understanding China's New Banking System in an Era of Crisis

Shruti Rana, *University of Maryland*

Moderation the Highest Virtue!? Revisiting the Control Transaction and Exploring a Middle Way

Yueh-Ping (Alex) Yang, *Harvard Law School*

Panel II-2: Crime and Punishment, McCarty Room 2

Crime and Punishment, A Global Concern: Who Does It Best and Does Isolation Really Work?

Melanie Reid, *Lincoln Memorial University*

Pluralism by Unification: Overcoming the History of International Criminal Law

James Stewart, *University of British Columbia*

Asad Kiyani, *University of British Columbia*

A Comparative Analysis of Exclusion of Evidence from Criminal Trials in Canada, the USA and Europe

Adelina Iftene, *Queen's University*

Panel II-3: Judicial Design, McCarty Room 3

Gender and the Judiciary: Contextualising Judicial Appointment Procedures to the Supreme Court of India

Vipasha Bansal, *Columbia Law School*

Not Only in the Global South: Transformative Constitutionalism in Comparison

Michaela Hailbronner, *Max Planck Institute for Comparative Public Law and International Law, Heidelberg*

Standing, Islam, and Constitutionalism: The Rise of “Islamic Judicial Review” in Indonesia

Stefanus Hendrianto, *Santa Clara University*

Constraining States: Constitutional Court Lessons for International Courts

Shalev Roisman, *New York University*

Panel II-4: Social and Environmental Challenges: Regulation and Protection, McCarty Room 4

Compliance Through Collaboration: Enlisting Third Parties to Assist Temporary Migrant Workers Realize Workplace-Related Standards in Canada and Australia

Manoj Dias-Abey, *Queen's University*

A Comparative Analysis of the Protections Against Waste

Sally Brown Richardson, *Tulane University*

Comparison Between Water Markets in California and in Spain: A Cautionary Tale of Governmental Failure

Vanessa Casado-Pérez, *Stanford Law School*

A Comparative Research of Workplace Sexual Harassment Law in the U.S. and Taiwan: Its Legal Transplantation, Transformation and Implementation

Bo-Shone Fu, *University of Wisconsin, Madison*

Panel II-5: Comparative Jurisprudence, LRC Room 5

Unwrapping Gifts in European Private Law

João de Sousa Assis, *University of Glasgow*

The Dynamic Allocation of Burden Doctrine as a Mitigation of the Undesirable Effects of *Iqbal*'s Pleading Standard

Nicolás J. Frías Ossandón, *University of California, Los Angeles*

Revisiting Equity Jurisprudence in a Comparative Context: Learning from India's Interpretive Framework

Sujata Gadakar-Wilcox, *Quinnipiac University*

**Tobacco Regulation, Free Speech and Eminent Domain:
Comparing Recent Developments in Australia, India, and the
United States**

Fadi Semaan, *Columbia University*

12:15 – 2:15 p.m.

PLENARY PANEL AND LUNCH, LRC Student Lounge

Modern Challenges to Constitutional Democracy

Moderator: John Parry, *Jeffrey Bain Faculty Scholar and Professor of
Law, Lewis & Clark Law School*

I. The American Common Law of Constituent Power

William Partlett, *Columbia Law School*

II. Amending Constitutional Amendment Rules

Richard Albert, *Boston College Law School*

III. Dynamic Constitutional Theory

David Landau, *Florida State University*

IV. Do Constitutional Rights Make a Difference?

Mila Versteeg, *University of Virginia*

V. Stealth Authoritarianism

Ozan Varol, *Lewis & Clark Law School*

2:15 – 3:45 p.m.

PANEL SESSIONS III

Panel III-1: Corporate Governance and Practices, McCarty Room 1

**Convertible Preferred Stock: Constructing an Institutional
Bridge Between the United States and People's Republic of
China Venture Capital Models**

Olivia Adamski, *University of British Columbia*

Gender Diversity on Indian Boards

Afra Afsharipour, *University of California, Davis*

Putting the "Corporate" Back into Corporate Personhood

Caroline Kaeb, *Northwestern University*

**Enforcing Corporate Governance in China: Or Why We Should
Stop Worrying and Learn to Love the CSRC**

Alan K. Koh, *National University of Singapore*

Chun Zhou, *Peking University*

Panel III-2: Legal Traditions and Legal Transplants, McCarty Room 2

Bringing Certainty and Order Out of the Wilderness of Law: A Common Tendency for the Clarification and Simplification of the Law

Alessandro Martinuzzi, *University of Bologna*

Law, Finance and Politics: Case Study of Egyptian Capital Market

Mohamed Okasha Abdelaal, *University of California, Berkeley*

The De(con)struction of Fiduciary Loyalty

René Reich-Graefe, *Western New England University*

Comparing the Response of the Judiciary to Immigration Detention in the United States and Australia

Daniel Ghezelbash, *Macquarie Law School*

Panel III-3: State Power and the Rule of Law, McCarty Room 3

The Occupation of the Law: Power Dynamics Between the Israeli Judiciary and Legislature Over Controlling Palestinians' Tort Claims Against IDF

Gilat Bachar, *Stanford University*

The Law is a Causeway: Metaphor and the Rule of Law in Russia

Jeffrey Kahn, *Southern Methodist University*

The Problem with Implementing Public Order in a Pluralist Legal System: A Study of Indonesian Private International Law

Yu Un Oppusunggu, *University of Washington*

Powerful Pens: Presidential Legislation in Comparative Perspective

Shubhankar Dam, *Singapore Management University*

Panel III-4: Comparative Constitutionalism, McCarty Room 4

Constitutional Judgments on the Euro-Crisis Law: The Crisis Within the Judicial Discourse in Italy, Portugal and Spain

Cristina Fasone, *European University Institute*

Of Territory, Government, People and Pragmatism: Comparing the Extraterritorial Scope of Constitutional Rights

Noura Karazivan, *University of Montreal*

Distinctive Identity Claims in Federal Systems: Judicial Policing of Subnational Variance

Antoni Abat i Ninet, *University of Copenhagen*

Democratic Integrity

Julien du Vergier, *Davis Polk & Wardwell LLP*

Judges on Remedial Discretion

Robert Leckey, *McGill University*

Panel III-5: Legal Language, Narrative, and Discourse, LRC Room 5

Women's Rights and Women's Rights Discourse in Postcolonial Tunisia and Morocco

John Hursh, *McGill University*

"Watch and Learn": Illegal Behavior and Obedience to Legal Norms Through the Eyes of Popular Culture: The Case of Popular American and Israeli TV Shows

Itay Ravid, *Stanford University*

"Fishing" and the Adversary System

Irene Ten Cate, *Marquette University*

3:45 – 4:00 p.m.

BREAK: McCARTY BREEZEWAY

4:00 – 5:30 p.m.

PANEL SESSIONS IV

Panel IV-1: Investment, Innovation, and Bankruptcy, McCarty Room 1

Carrots and Sticks as Incentive Mechanisms for the Optimal Initiation of Bankruptcy Proceedings

Jaka Cepec, *University of Ljubljana*

The Impact on Patient Access to Genetic Test and Research After the *Myriad* Decision: Experience from Taiwan

Lung-Sheng Chen, *National Chung Hsing University*

Innovation in the Global Arena: What Does the Comparative Intellectual Property Collateralization Laws Teach Us?

Claire Wan-Chiung Cheng, *Taipei Medical University*

EU Comprehensive Investment Policy: Flying Too Close to the Sun?

Dominik Moskvan, *University of Antwerp*

Panel IV-2: Judicial Review, McCarty Room 2

Exporting Counter-Interpretation: Redeeming the U.S. Constitution in the United Kingdom and Abroad

Joshua Braver, *Yale University*

Direct Democracy and Judicial Review as Complementary Mechanisms – A Comparative Study of US and Swiss Legal Systems

Begüm Bulak, *University of Geneva*

Transnational Nonestablishment (Redux)

Claudia Haupt, *Columbia Law School*

Legal Nationalism and European Judicial Review

Alyssa King, *Law Clerk to Judge Nicholas G. Garaufis, U.S. District Court for the Eastern District of New York*

Panel IV-3: Law-Making and Methodological Inquiries, McCarty Room 3

Private International Law and Comparative Law – A Cross-Reference of Methodologies

Roxana Banu, *University of Toronto*

Comparative International Lawmaking

Kevin Cope, *Georgetown University*

Comparative Legal Methodology and Islamic Law: Special Considerations Regarding the Transferability of Laws

Hamid Harasani, *King's College London*

Toward a Theory of Constitution-Making

Eugene Mazo, *Wake Forest University*

Panel IV-4: Law and Contemporary Social Issues, McCarty Room 4

You Can Talk Me Into Anything: Lobbying and Constitutional Rights in Canada and the United States

Dan Gold, *University of Ottawa*

Government Surveillance and Information Privacy: A Comparative Perspective

Hsiang-Yang Hsieh, *Formosa Transnational, Attorneys at Law*

The Eagle's Talons and the Bull's Horns: Plutocracy, Partyocracy, and the Elusive Design of Democratic Integrity

Timothy Kuhner, *Georgia State University*

Towards a Better Solution for Private Interest: Comparative Law Study of Piracy Ransom

Xuele Xu, *Tulane University*

Panel IV-5: Human Rights in Constitutional Courts, LRC Room 5

Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions

Dawood Ahmed, *University of Chicago*

Proportionality Analysis in Institutional Context: What the Experiences of South Africa and Canada Might Suggest for India
Juliette Duara, *National University of Singapore*

Legislative Inconsistency and the “Smoking Out” of Illicit Motives

Niels Petersen, *Max Planck Institute for Research on Collective Goods, Bonn*

Should Reasons be Given? A Comparative Critique of Certiorari
Daniel Yip, *University of Pennsylvania*

5:45 p.m.

Shuttle pick up

6:00 p.m.

Shuttle pick up

PLENARY PANEL

Modern Challenges to Constitutional Democracy

Modern constitutionalism faces new challenges for which there are so far few answers. These challenges line the entire path of constitutionalism from creation to interpretation to enforcement to amendment and to replacement. Constitutional theory used to debate whether constitutional democracy demands a particular constitutional form—largely written as in the United States, mostly unwritten as in the United Kingdom, or partially written and unwritten as in Canada—but today constitutional theory recognizes that form matters less than function. The modern challenges of constitutional democracy raise questions of both form and function, the former often used to distort the latter with the formal trappings of constitutionalism.

Faced with the susceptibility of constitutional forms to non-democratic capture and low democratic outcomes, constitutional theory should reorient itself to these new challenges. This panel begins that work by asking important questions about modern constitutionalism. What are the optimal institutional designs for democratic constitution-making? How should constitutional democracies structure the process of constitutional amendment? Are there super-constitutional rights whose enforcement catalyzes broader constitutional protections? What is the proper conception of the judicial role in a poorly-functioning democracy? Finally, at the sub-constitutional level, how should constitutional democracies guard against political practices, national legislation and executive actions that risk undermining their formal constitutional commitment to democracy? The purpose of this panel is to illustrate and evaluate these modern challenges to constitutional democracy.

- I. John Parry (Moderator): Introduction of panel and panelists
- II. William Partlett: Constitution-Making
- III. Richard Albert: Constitution-Changing
- IV. David Landau: Judicial Role
- V. Mila Versteeg: Comparative Constitutional Law: Rights
- VI. Ozan Varol: Sub-Constitutional Practices and the Constitutional Order
- VII. Group discussion and audience participation

Younger Comparativists Committee Graduate Student Paper Prizes Third Annual YCC Global Conference

Prize Paper: Inaugural Recipient of the Colin B. Picker Prize

Gilat Bachar

J.S.D. Candidate, *Stanford University*

*The Occupation of the Law: Power Dynamics Between the Israeli Judiciary and
Legislature Over Controlling Palestinians' Tort Claims Against IDF*

Honorable Mention

1. Itay Ravid

J.S.D. Candidate, *Stanford University*

*"Watch & Learn": Illegal Behavior and Obedience to Legal Norms Through the Eyes of
Popular Culture: The Case of Popular American and Israeli TV Shows*

2. Alan K. Koh & Chun Zhou

LL.M. Candidate, *Boston University*; Ph.D. Candidate, *Peking University*

*Enforcing Corporate Governance in China: Or Why We Should Stop Worrying and
Learn to Love the CSRC*

The Colin B. Picker Prize honors the contributions of the founding chairperson of the YCC, currently Associate Dean (International) and Associate Professor at the University of New South Wales. The Prize is awarded annually for the most meritorious paper written by a graduate law student and submitted to the Annual YCC Global Conference.

With special thanks to the YCC's Scholarship Advisory Group for applying the highest standards of academic integrity in reviewing these selections among outstanding submissions from graduate law students around the world. The Scholarship Advisory Group is chaired by David Landau (Florida State), and consists of Christopher Bruner (Washington & Lee), Eoin Carolan (University College Dublin), Neha Jain (Minnesota) and Adam Shinar (IDC Radzyner).

Phanor J. Eder Prize in Comparative Law
—Sponsored by the University of Kansas School of Law—
Third Annual YCC Global Conference

Prize Paper

Tom Brower

J.D. Candidate, *University of Virginia School of Law*

The Tide of the Times? A Sectoral Approach to Latin America's Resistance to the Investor-State Arbitration System

First Honorable Mention

Geoffrey Yeung

LL.B. Candidate, *Hong Kong University Faculty of Law*

Religious Exemptions in Sexual Orientation Anti-Discrimination Laws: A Comparative Study

Second Honorable Mention

Lawrence David

BCL/LL.B. Candidate, *McGill University Faculty of Law*

Subnational Constitutionalism and the Concurrent Protection of Religious Freedom: The Canada-Quebec Experience

The Phanor J. Eder Prize in Comparative Law honors the contributions of the first President of the American Society of Comparative Law. The Prize is awarded for the most meritorious paper written by an LL.B. or J.D. student and submitted for the Annual YCC Global Conference.

With special thanks to the University of Kansas School of Law for sponsoring this generous award and to the YCC's Affiliates' Advisory Group for applying the highest standards of academic integrity in reviewing these submissions received in response to our Call for Papers. The 2013 Affiliates' Advisory Group was chaired by Virginia Harper Ho (University of Kansas) and consists of Kevin Cope (Washington & Lee University School of Law), Cristina Fasone (European University Institute), Joshua Karton (Queen's University Faculty of Law), Jaclyn Neo (National University of Singapore Law).

Sponsors

With special thanks to the following donors for their generous support of this conference.

American Society of Comparative Law



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Acknowledgements

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The Younger Comparativists Committee gratefully acknowledges the support of the American Society of Comparative Law, Lewis & Clark Law School, Dean Robert Klonoff, and Schwabe, Williamson & Wyatt. In addition, the Committee expresses its deepest gratitude to Sue Page for her central role in organizing the conference. Finally, the Committee thanks Professor John Parry, and Lewis & Clark law students Katherine Davis, Elizabeth Hilliard, Bryce Kunz, Allison Melgaard, Philip Thoennes, Braden Wolf, and Charis Wolfe for moderating the conference panels.

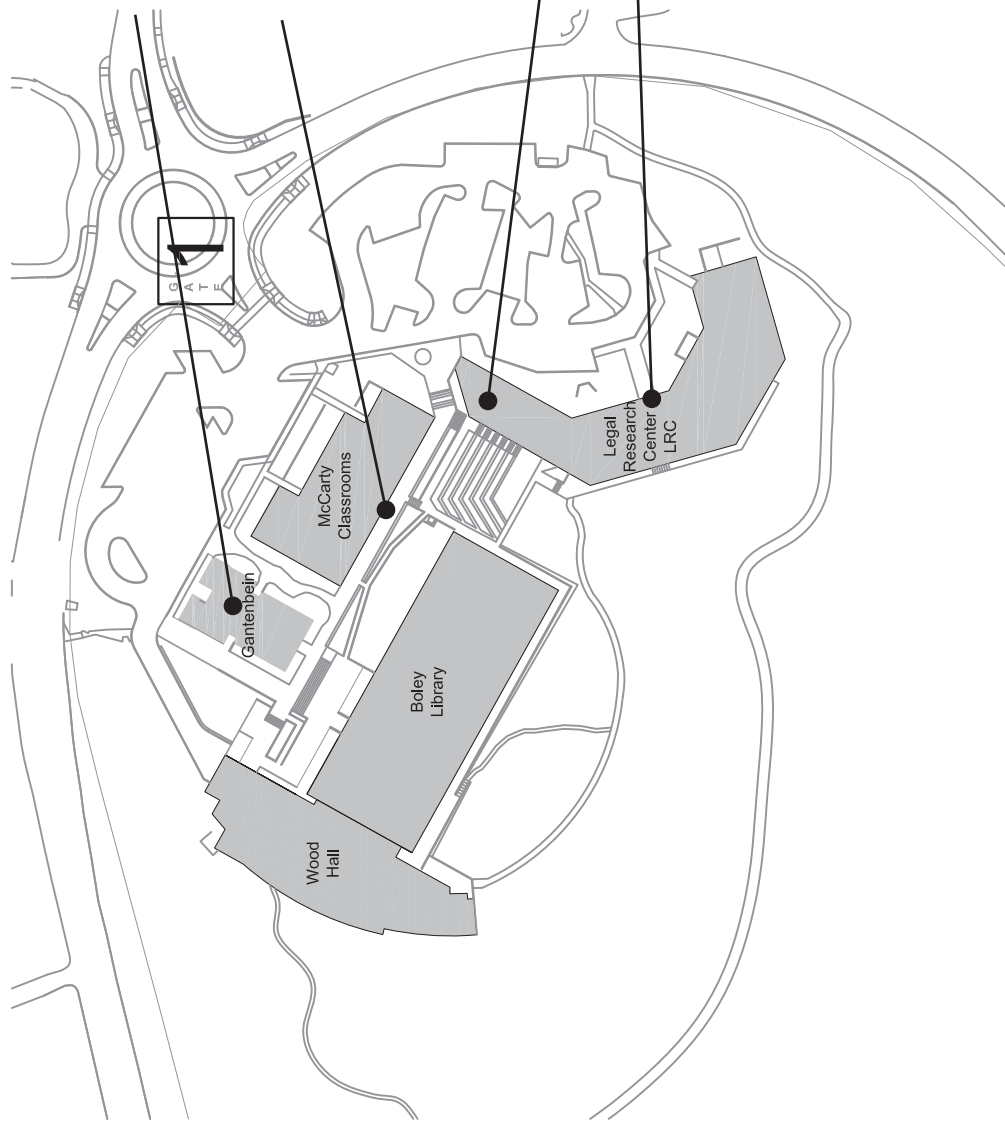
Campus Wifi Connection

To access the campus wifi connection on your laptop, please follow the instructions below.

1. Click on your wireless icon
2. Once the wireless icon is selected, locate and click on **LCSecure** (please do not click on LC Wireless)
3. Once you've selected LCSecure, input the username and password

Username: **lawtemp**

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Gantenbein
Restrooms

McCarty Classroom Complex:
Classrooms 1,2,3,& 4

LRC Classroom 5

Legal Research Center:
Conference Check-in
Breakfast
Plenary Panel
Lunch
Restrooms

Lewis & Clark Law School