

Florida State University

College of Law

Tallahassee, Florida

Fourth Annual Global Conference
Younger Comparativists Committee
of the American Society of
Comparative Law

April 16 - 17, 2015



Conference Schedule Overview

Thursday, April 16, 2015

Florida State University College of Law
425 W. Jefferson St.
Tallahassee, FL 32306

5:30 pm – 7:30 pm **Opening Reception**
FSU College of Law Rotunda

Welcome and Award Presentations

Friday, April 17, 2015

Florida State University College of Law
425 W. Jefferson St.
Tallahassee, FL 32306

8:15 am – 8:45 am **Check-in and Continental Breakfast – Room 310**
(B.K. Roberts Hall)

8:45 am – 9:00 am **Opening and Welcome – Room 310**

9:00 am – 10:30 am **Panel Sessions I**

10:30 am – 10:45 am **Coffee Break**

10:45 am – 12:15 pm **Panel Sessions II**

12:15 pm – 2:15pm **Plenary Panel and Lunch – Room 310**

2:15 pm – 3:45pm **Panel Sessions III**

3:45 pm – 4:00 pm **Coffee Break**

4:00 pm – 5:30 pm **Panel Sessions IV**

Conference Schedule

Friday, April 17

8:15 – 8:45 am **CHECK-IN AND CONTINENTAL BREAKFAST – ROOM 310
(B.K. Roberts Hall)**

8:45 am **Welcome and Dean's Greeting – Room 310**

Donald J. Weidner, *Florida State University College of Law
Dean and Alumni Centennial Professor*

David Landau, *Florida State University College of Law
Chair, Program Committee*

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

9:00 – 10:30 am **PANEL SESSIONS I**

Panel I-A **Corporate Governance – Room 331**

Moderator: Christoph Henkel, *Mississippi College School of Law*

CSR and the Arab Spring Revolutions: How Is CSR Not Applied in Egypt

Ahmad Alshorbagy, *Alexandria University Faculty of Law, Egypt*

**Contemplating Competition Law as Part of the Corporate Governance Arsenal:
Lessons from Korea**

Yong Lim, *Harvard Law School*

**Fiduciary Duties of Corporate Directors: A Comparative Study of the U.S.
Corporate Law and the Organization for Harmonization of Business Law in
Africa (OHADA)**

Zachee Puoga Tinhaga, *University of Michigan Law School*

Breach of Trust: Corporate Governance Enforcement in Korean Criminal Court

Yun Soo Shin, *Harvard Law School*

Panel I-B Privacy, Surveillance, and the Internet – Room 208

Moderator: Holning Lau, *University of North Carolina School of Law*

Preventive Surveillance, Data Protection and the Rule of Law in Turkey with regard to European Standards

Begum Bulak, *University of Geneva, Department of Law*

Indirect Liability under the DMCA and Its Counterpart in Taiwan: A Comparative Study

Lung-Sheng Chen, *National Chung Hsing University, Taiwan*

“Digital Strip Searches” at the Border: Critiquing the Approaches of the United States and United Kingdom

Tim Cochrane, *University of Pennsylvania Law School*

Sharing, Forgetting, and New Primacy Norms: A Comparative Look

Hsiang-Yang Hsieh, *National Taipei University of Technology*

Panel I-C Legal Transplants and Legal Theory – Room 210

Moderator: Mohamed Arafa, *Alexandria University Faculty of Law, Egypt & Indiana University McKinney School of Law*

Reforming by Numbers: the World Bank Induction of Legal Patterns

Luigi Bruno, *McGill University, Faculty of Law*

The Curious Case of ‘Smith Dakota v. North Carolina’: The Pathology of a Bad Cite in East Africa

Brian Dennison, *Uganda Christian University, Faculty of Law*

Unpacking the Concept of Good Faith in Islamic Commercial Contracts: Some Analytical Comparisons with the Concept in English Contract Law

Sara Hourani and Farah Youseph, *Bournemouth University, UK*

De-Naturalizing ‘American Legal Exceptionalism’: Early 20th Century Trans-Atlantic Divergences and Contemporary Comparative Law Scholarship

Katharina Isabel Schmidt, *Yale Law School*

Panel I-D Constitutional Design – Room 310

Moderator: Sahar Aziz, *Texas A & M School of Law*

Unwritten Constitutional Norms and Written Constitutions

Richard Albert, *Boston College Law School*

A Weak Vision of Structural Constitutional Law

David Landau, *Florida State University College of Law*

Constitutional Sequencing

Eugene Mazo, *Wake Forest University School of Law*

Temporal Unamendability: A Study of the Prohibition on Amending Constitutions During States of Emergency

Yaniv Roznai, *New York University Law School*

Constitutional Stickiness

Ozan Varol, *Lewis & Clark Law School*

10:30 am – 10:45 am COFFEE BREAK

10:45 am – 12:15 pm PANEL SESSIONS II

Panel II-A The Judiciary and the Public Good – Room 310

Moderator: Eugene Mazo, *Wake Forest University School of Law*

The Possibilities and Limitations of Structural Injunctions in Brazil

Marcella Ferraro, *Federal University of Parana, Brazil*

Constitutional Welfare Rights Adjudication and Institutional Constraints

Tiago Fidalgo de Freitas, *European University Institute*

The Mythos of Jurisdictional Retaliation

Zoe Niesel, *Wake Forest University School of Law*

'Principled' Reasoning in Fundamental Rights Adjudication

Se-shauna Wheatle, *Durham University, UK*

Panel II-B Comparative Criminal Law and Criminal Law Reform – Room 331

Moderator: Victoria Shannon, *Washington & Lee University School of Law*

Judicial Corporal Punishment in the United States (Again)?! Lessons from Islamic Criminal Law for Curing the Ills of Mass Incarceration

Mohamed Arafa, *Alexandria University Faculty of Law, Egypt & Indiana University McKinney School of Law*

Busy Defendants and Phantom Trials: Rethinking the Defendant's Attendance Requirement before the ICC

Johanna Göhler, *Yale Law School*

The Role of the Criminal Law in the PIP Breast Implant Scandal: Lessons from France

Melinee Kazarian, *University of Portsmouth*

Panel II-C Comparative Constitutionalism – Room 208

Moderator: Yaniv Roznai, *New York University Law School*

Contrasting Neighbors: Rethinking Judicial Independence in India and Sri Lanka

Rehan Abeyratne, *Jindal Global Law School, India*

Apples and Oranges Docket Control and the (Surprising) Lessons the US and Indian Supreme Courts Can Offer Each Other

Rishad Chowdhury, *University of Chicago Law School*

Constitution Formation as a Moment of Possibility: The United States Constitutional Convention (1787) and the Constituent Assembly of India (1946–1947)

Sujata Gadkar-Wilcox, *Quinnipiac University*

The Empowering Function of Constitutions in a Comparative Perspective

Zsuzsanna Gedeon, *New York University School of Law*

Do Federal Constitutions like Local Constitutions? A Comparison between Germany, Switzerland, the United States and the European Union

Francois-Xavier Millet, *University of the French West Indies*

Panel II-D The Common Law: Tradition and Innovation – Room 210

Moderator: Kristen Barnes, *University of Akron School of Law*

Insuring America's Uninsured Natural Catastrophes: Landslides

Christopher French, *Penn State Law*

Conceptions of Authority and Common Law Convergence, and the Future of the Common Law World

Dan Priel, *Osgoode Hall Law School*

Common Law Constitutionalism and its Counterpart in Japan

Jun Shimizu, *UCLA School of Law/Chuo Law School, Japan*

How American Common Law Doctrines May Inform Mainland China to Achieve Certainty in Land Sale Contracts

Wei Wen, *University of New South Wales*

Panel II-E Comparative Perspectives on Chinese Corporate Law – Room 241

Moderator: Tahirih Lee, *Florida State University College of Law*

China and Its Controlled Capital Markets: A Comparative Perspective on the Problems and Prospects for Shareholder Activism

Tamar Groswald Ozery, *University of Michigan Law School*

Control and Autonomy in Chinese Corporate Groups

Virginia Harper Ho, *University of Kansas School of Law*

Divided in Theory Converging in Practice: Comparing Corporate Veil Piercing in China and U.S. with Empirical Analysis

Chang Liu, *Harvard Law School*

Multi-Party Governance of the Stock Market and the Reform of China's Securities Law: Recognition, Recombination of Key Governance Variables, and Entities' Comparative Advantages

Chenglong Lu, *Zhejiang University, China*

12:15 pm – 2:15 pm PLENARY PANEL AND LUNCH – ROOM 310

Perspectives on Latin American Constitutional Law

Moderator: David Landau, *Florida State University College of Law*

Hannah Arendt in Venezuela: Huge Chavez versus the Supreme Court over the Creation of the 1999 Constitution

Joshua Braver, *Yale University*

The Supreme Court of Colombia, 1910–1991: Judicial Review in Political and Historical Perspective

Mario Alberto Cajas Sarria, *Icesi University Law School*

***Tesis de Jurisprudencia*: An Analysis of the Mexican System of Judicial Precedents**

Rolando Garcia Miron, *Stanford Law School*

Dialogic Constitutionalism: Manifestations in Brazilian Judicial Review

Vanice Regina Lírio do Valle, *Estacio de Sa University, Brazil*

Constitutional Moments and Constitutional Thresholds in Brazil: Mass Protests and the Rise of Pluralism

Juliano Zaiden Benvindo, *University of Brasilia*

2:15 pm – 3:45 pm PANEL SESSIONS III

Panel III-A **Constitutions and Religion – Room 310**

Moderator: Jill Goldenziel, *Boston University and Harvard University*

Minorities, the Right to Education, and Indirect Discrimination Claims

Kristen Barnes, *University of Akron School of Law*

Roma Integration and Inclusion: The Views from Central and Southeastern Europe

Felix Chang, *University of Cincinnati College of Law*

Religious Freedom, Liberal Constitutionalism and the Common Good: On *Hobby Lobby* and *S.A.S v. France*

Stefanus Hendrianto, *Santa Clara University School of Law*

Constitutionalizing Religion and Religious Freedom: A Comparative Study of Paths and Outcomes in Three Asian Jurisdictions

Dian Shah, *University of Malaya*

Panel III-B **Marriage and the Family – Room 331**

Moderator: Dan Priel, *Osgoode Hall Law School*

The US International Public Policy in Front of Islamic Family Law Traditions

Moustafa Alameldin, *Indiana University McKinney School of Law*

Remedial Grace Periods as Judicial Strategy: Marriage Equality in the United States, South Africa, and Beyond

Holning Lau, *University of North Carolina School of Law*

Ensuring Economic Equality Across Provincial Borders: An Appeal to Comparative Law

Jodi Lazare, *McGill University, Faculty of Law*

***Sans foi, ni loi*: Appearances of Conjugal Love and Lawless Love**

Regine Tremblay, *University of Toronto, Faculty of Law*

Panel III-C **Common Law and Civil Law in Comparison – Room 208**

Moderator: Sally Richardson, *Tulane University Law School*

From *Jurisprudence Constante* to *Stare Decisis*: The Migration of the Doctrine of Precedent to Civil Law Constitutionalism

Rodrigo Camarena Gonzalez, *Macquaire Law School, Australia*

**Enforcement of Judgments and Role of the Judge in Comparative Perspective:
Common law vs. Civil Law Tradition**

Carlo Vittorio Giabardo, *University of Turin*

**The Structure of the American Civil Code in Comparison of the Napoleonic
Code**

Julie Rocheton, *University of Michigan Law School*

**Legislating Tolerance: A Comparison in Treatment Between Civil and Common
Law Traditions**

Sara Ross, *Osgoode Hall Law School*

Panel III-D Law, Governance, and Legal Reform – Room 210

Moderator: Sujata Gadkar-Wilcox, *Quinnipiac University*

**Interrupting the Will of the People: Presidential Assent in Comparative
Perspective**

Shubhankar Dam, *Singapore Management University School of Law*

American Plutocracy

Timothy Kuhner, *Georgia State University College of Law*

**Towards a Theoretical Framework for Understanding Property Regime
Transitions: Case Study from Indian Subcontinent and Pakistan**

Umar Rashid, *University of Management and Technology, Pakistan*

**Constitutions as Counter-Curses: Revenue Allocation Institutions and the
Resource Curse**

Tom Brower, *University of Virginia School of Law*

Panel III-E Financial Regulation and Commercial Law – Room 241

Moderator: Virginia Harper Ho, *University of Kansas School of Law*

**Islamic Finance within a Global Economy: Towards a Common Sustainable
Future**

Hanaan Balala, *Institute of Islamic Banking and Finance*

**The End of the Waterfall: Too Big to Fail, Too Big to Bail or the Role of Central
Counter Parties in Over-The-Counter Derivative Market Reform**

Christoph Henkel, *Mississippi College School of Law*

**New York vs. Hong Kong – A Burst of Regulatory Competition: The Listing of
Alibaba**

Flora Huang, *University of Leicester*

This Time's for Real: Establishing an Explicit Deposit Insurance System in China
Yi Zhou, *University of Michigan Law School*

3:45 pm – 4:00 pm COFFEE BREAK

4:00 pm – 5:30 pm PANEL SESSIONS IV

Panel IV-A Judicial Review – Room 310

Moderator: Stefanus Hendrianto, *Santa Clara University School of Law*

Non-Justiciability and “Political Questions” in the US and UK

Hasan Dindjer, *Harvard Law School*

Defining Shari’a: Stoning and the Politics of Islamic Judicial Review

Shoaib Ghias, *UC Berkeley School of Law*

One and Twin Peak Models. Impact of Court System on Uniformity of Administrative Justice

Jurgen Goossens, *Ghent University, Belgium*

Political Context for Judicial Review: Indonesia Experience

Fritz Siregar, *University of New South Wales*

Who May Sue the One-Party Dominated State

Benjamin Chen and Zhiyu Li, *UC Berkeley School of Law*

Panel IV-B Private Law: Procedure and Remedies – Room 331

Moderator: Zoe Niesel, *Wake Forest University School of Law*

Punitive Damages and the Public/private Distinction. A Comparison between the United States and Italy

Marco Cappelletti, *Cleary Gottlieb Steen & Hamilton LLP*

Slander Boldly, Something Always Sticks: Problems and Solutions of Private International Law in Cases of Internet Cross-Border Defamation

Tobias Lutzi, *University of Oxford, Faculty of Law*

Judging Third-Party Funding

Victoria Shannon, *Washington & Lee University School of Law*

Mental Element of Patent Infringement in Taiwan

Richard Li-dar Wang and Shao-ting Hong, *National Chiao Tung University, Taiwan*

Panel IV-C Human Rights and Ethical Issues – Room 208

Moderator: Timothy Kuhner, *Georgia State University College of Law*

When Law Migrates: Refugees in Comparative Law

Jill Goldenziel, *Boston University and Harvard University*

The Power of the Body: Analyzing the Corporeal Logic of Law and Social Change in the Arab Spring

Zeina Jallad, *Columbia Law School*

Human Rights Abroad: Comparing and Contrasting Approaches from the United States Supreme Court, the Canadian Supreme Court and the European Court of Human Rights

Jane Rooney, *Durham Law School, UK*

Euthanasia and Physician-Assisted Suicide in China and the United States: What a Comparative Analysis Has to Offer

Konstantin Tretyakov, *Harvard Law School*

Panel IV-D Authoritarianism, Revolution, and Transitional Justice – Room 210

Moderator: Ozan Varol, *Lewis & Clark Law School*

Theater or Transitional Justice in the Aftermath of Egypt's 2011 Uprisings

Sahar Aziz, *Texas A & M School of Law*

Constitutional Repeats Itself: Can Turkey Be the Model? A Comparative Analysis between Turkish and Egyptian Constitutional Experience Post Military Coups

Ahmed El-Sayed, *University of Copenhagen*

Hong Kong as Devolution Problem

Alyssa S. King and Alvin Y.H. Cheung, *U.S. Court of Appeals for the Second Circuit/New York University*

Deliberative Authoritarianism Through Participatory Constitutional Reform Under the AKP in Turkey, 2007 to Present

Erin McGrath, *University of Pittsburgh, Graduate School of Public and International Affairs*

Plenary Panel: Perspectives on Latin American Constitutional Law

Latin America presents one of the most interesting – and complex – regions for the study of law in its social context. The region has long had a rich diversity of legal systems and institutions, including a breathtaking diversity of judicial designs, institutional strength, constitutional provisions, and systems of precedent. Recent decades have seen a sharp increase in the power of constitutional law and constitutional courts across the region, with an increasing swath of political issues becoming judicialized. Courts have taken on a range of issues including socio-economic rights, same-sex marriage, abortion, and political corruption. At the same time, scholars from the region are placing increased attention on the existence of constitutional cultures and constitutional politics outside of the courts. Finally, some constitution-makers in the Andes have promulgated a new model of constitutionalism that represents a challenge to the liberal model. This panel will explore some of the most interesting issues surrounding the past and future of Latin American constitutionalism, including constitution-making, the system of precedent, the sources of judicial power and models of judicial review, and popular constitutionalism.

- I. David Landau (Moderator): Introduction of Panel and Panelists
- II. Joshua Braver: *Hannah Arendt in Venezuela: Hugo Chavez versus the Supreme Court over the Creation of the 1999 Constitution*
- III. Mario Alberto Cajas Sarria: *The Supreme Court of Colombia, 1910–1991: Judicial Review in Political and Historical Perspective*
- IV. Rolando Garcia Miron: *Tesis de Jurisprudencia: An Analysis of the Mexican System of Judicial Precedents*
- V. Vanice Regina Lírio do Valle: *Dialogic Constitutionalism: Manifestations in Brazilian Judicial Review*
- VI. Juliano Zaiden Benvindo: *Constitutional Moments and Constitutional Thresholds in Brazil: Mass Protests and the Rise of Pluralism*

Colin B. Picker Graduate Student Prize Fourth Annual YCC Global Conference

Prize Paper

Katharina Isabel Schmidt

Yale Law School

De-Naturalizing 'American Legal Exceptionalism': Early 20th Century Trans-Atlantic Divergences and Contemporary Comparative Law Scholarship

Honorable Mentions

1. Shoaib Ghias
UC Berkeley School of Law

Defining Shari'a: Stoning and the Politics of Islamic Judicial Review

2. Benjamin Chen & Zhiyu Li
UC Berkeley School of Law

Who May Sue the One-Party Dominated State

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's review process was chaired by Shawn Marie Boyne (IU-McKinney) and included Christopher Bruner (Washington & Lee), Neha Jain (Minnesota), and Aparna Polavarapu (South Carolina).

Phanor J. Eder J.D. Prize in Comparative Law Fourth Annual YCC Global Conference



Prize Paper

Tom Brower
JD Candidate, University of Virginia School of Law

Constitutions as Counter-Curses: Revenue Allocation Institutions and the Resource Curse

Honorable Mentions

1. Philip M. Thoennes,
JD Candidate, Lewis & Clark Law School

Eo Nomine: The Divergence of State and Foreign Immunity

2. Julian Yang
JD Candidate, Queen's University Faculty of Law

Comparative Analysis of Merger Control Under Chinese Anti-Monopoly Law

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 in response to an open call for papers. The winner receives a stipend from LexisNexis defraying the cost of attendance at the YCC Global Conference.

With special thanks to LexisNexis for generously sponsoring this 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 Affiliates' Advisory Group was chaired by Joshua Karton (Queen's University) and included Christina Fasone (European University Institute), Mohamed Arafa (IU-McKinney), Patrick Yingling (Pittsburgh and Reed Smith LLP), Thomas Perroud (Sciences Po), and Antonio Baraggia (Milan).

**Richard M. Buxbaum Prize
for Teaching in Comparative Law
Fourth Annual YCC Global Conference**

Inaugural Recipient

Kirsten Anker

McGill University, Faculty of Law

The YCC created the Buxbaum Prize in the summer of 2014 in honor of Professor Richard M. Buxbaum, the 2014 recipient of the ASCL Lifetime Achievement Award. Professor Buxbaum is the Jackson H. Ralston Professor of International Law (emeritus) at the University of California, Berkeley. The Buxbaum Prize for Teaching in Comparative Law is awarded independently by the YCC in recognition of teaching excellence in any subject of comparative public or private law by an untenured scholar in a tenure-track position at an ASCL Member Institution.

With special thanks to the Committee reviewing submissions for this award, which was chaired by the Director of Advisory Groups, Ioanna Tourkochoriti (NUI-Galway) and included Afra Afsharipour (University of California-Davis), Richard Albert (Boston College), Sally Richardson (Tulane), and Ozan Varol (Lewis & Clark).

Acknowledgements

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The Younger Comparativists Committee gratefully acknowledges the support of the American Society of Comparative Law, Florida State University College of Law, and Dean Donald J. Weidner. In addition, the Committee expresses its deepest gratitude to Alberto Lopez, Morgan Applegate, and Catherine Miller for their central roles in organizing the conference. The Committee is pleased to recognize LexisNexis for its generous sponsorship of the Phanor J. Eder J.D. Prize. Finally, the Committee thanks all members of the Program Committee, the Scholarship Advisory Group and the Affiliates Advisory Group for their indispensable contributions to the success of this conference.

Campus WiFi Connection

For those who study or work at U.S. institutions, and some institutions abroad, you can connect to the internet through the **eduroam** network following the instructions below.

1. Click on your wireless icon
2. Once the wireless icon is selected, locate and click on **eduroam**
3. Once you've selected eduroam, log in using the username and password you use at your home institution.

Visitors to Florida State University's main campus can also connect to the university's public Wi-Fi network—FSUWIN. This is a self-service feature available to all guests at FSU. This temporary access is limited to a one-day timeframe.

- The guest will need to provide a valid U.S. phone number with one of the following carriers: Sprint, Verizon, AT&T or T-Mobile
- A text will be sent to the phone number provided and will include an auto-generated password to log in to FSUWIN

If your institution is not part of the eduroam network and you do not have a U.S.-based cell phone number with one of the carriers above, please ask for a wifi token when you check in.