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## BRYAN ADAMSON

**“Thugs,” “Crooks,” “Rebellious Negroes,” and “Black Saviors”:  
Racist and Racialized Distortions in Media Coverage of  
Michael Brown and the Ferguson Demonstrations**  
32 HARV. J. ON RACIAL & ETHNIC JUST. (forthcoming 2016)

The tragic killing of Michael Brown in Ferguson, Missouri is an example of the insidious ways in which the media often frame stories about black men, crime, and social protest. Using qualitative and quantitative analysis, this article illustrates how Ferguson news narratives and images emphasized Brown’s deviance, chaos, and disorder. The controversy is examined through First Amendment free speech, hate crimes, and true threat principles as well as FCC regulation of broadcasting and media ownership. Regulatory and institutional barriers to curing the harms created should be responsive to the racist and racialized narratives that commonly arise.



## SARA RANKIN

**The Influence of Exile**  
76 MD. L. REV. (forthcoming 2016)

Many cities use laws and policies to remove visibly poor people from public space. These laws reify popular attitudes toward visible poverty, harming not only the visibly poor, but also society as a whole. This article seeks to expose how the influence of exile operates; in doing so, Professor Rankin argues against the use of the criminal justice system as a response to visible poverty. In its place, we need more effective and efficient responses that take as their starting point an individual right to exist in public space, which for many visibly poor people is tantamount to a right to exist at all.

# BROOKE D. COLEMAN

## One Percent Procedure

91 WASH. L. REV. (forthcoming 2016)

In *One Percent Procedure*, Professor Coleman argues that until institutions like the judiciary and rulemaking bodies actively engage the need for more heterogeneity in their make-up, our civil litigation system will continue to benefit only those who are the most elite. If we truly want our civil litigation system to be more accessible and serve a broader swath of litigants, we must introduce different perspectives into the bodies responsible for crafting the rules that govern civil litigation.



# MARGARET CHON

## Tracermarks: A Proposed Information Intervention

53 Hous. L. Rev. 421 (2015)

We live in a world of information. But paradoxically, we simultaneously suffer from a scarcity of “smart” information – information that is traceable and therefore trustworthy and ultimately verifiable – particularly about goods and services that we consume every day. Combining the insights of global governance theory with behavioral economics, this article sets forth various reasons for this unnecessary information deficit, and proposes an information intervention to address it – a tracermark. Envisioned as a hybrid of a trademark and a certification mark, a tracermark would encourage the disclosure of previously hidden qualities of specific goods and services throughout global value networks.





*Olympic Sculpture Park, Seattle, Washington*  
*Photo by Yosef Chaim Kalinko*

FEATURED BOOK

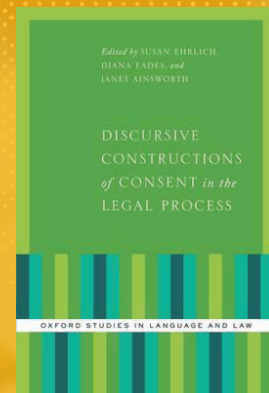
## JANET AINSWORTH

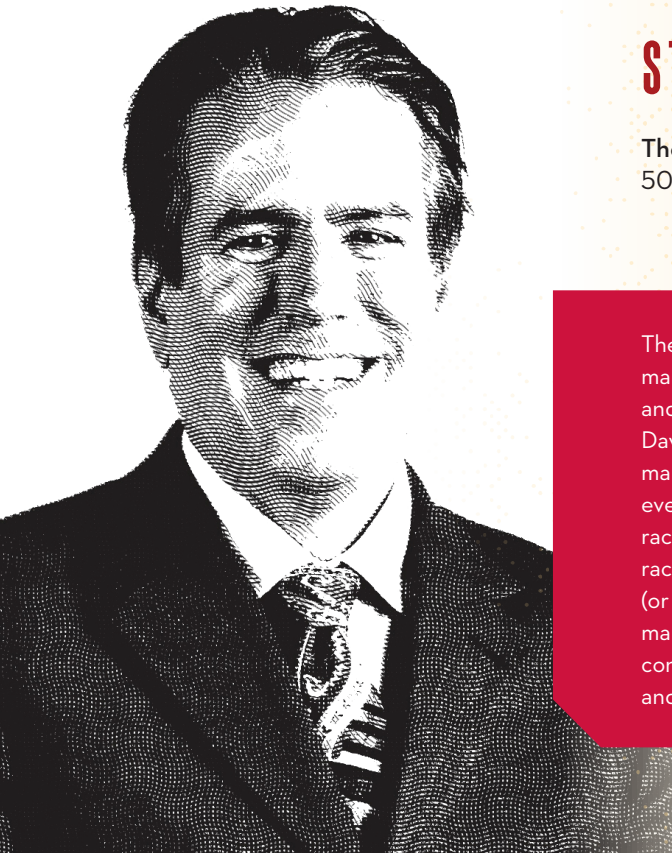
### **DISCURSIVE CONSTRUCTIONS OF CONSENT IN THE LEGAL PROCESS**

(Oxford Univ. Press 2016)

Consent is one of the foundational principles of Western law, yet legal doctrine is often inattentive to how it is communicated, interpreted, and contested. For example, consent in criminal law polices the boundaries between rape and sex, and between theft and gift. In contract transactions, consent to the terms of an agreement justifies the legal enforcement of those terms, even when that consent is nothing more than the action of clicking “I agree” to unread terms in an online purchase. In the context of police-citizen encounters, voluntary consent serves to validate police conduct that otherwise would violate the citizen’s rights, such as searches of one’s person or property or the procurement of confessions. At base, it is the consent of the governed that legitimizes state conduct that would infringe on liberty and human rights absent that consent.

This volume examines the role that consent plays in a variety of legal contexts, and takes a linguistically informed look at consent in its varying interactional contexts. Linguistic methodologies such as critical discourse analysis, conversational analysis, symbolic interactionism, ethnomethodology, speech act theory, and sociolinguistics are used to shed light on the sometimes problematic realization of consent in legal doctrine and practice.





## STEVEN W. BENDER

**The Colors of Cannabis: Race and Marijuana**  
50 U.C. DAVIS L. REV. (forthcoming 2016)

The campaign to legalize small quantities of recreational marijuana succeeded in Alaska, Colorado, Oregon, Washington, and the District of Columbia. Part of a symposium in the U.C. Davis law review, this article examines the life cycle of U.S. marijuana prohibition. Evident in that timeline is racialization at every stage - the initial criminalization of marijuana rooted in racial stereotypes, the enforcement of that prohibition using racial profiling, and the recent legalization of recreational (or medical) marijuana in some states. Despite legalization, marijuana usage continues to disproportionately impose serious consequences on racial minorities, while white entrepreneurs and white users enjoy the early fruits of legalization.



## DIANE LOURDES DICK

**Valuation in Chapter 11 Bankruptcy:  
The Dangers of an Implicit Market Test**  
2016 U. ILL. L. REV. (forthcoming)

Commercial debtors include broad disclaimers in their financial disclosures to the bankruptcy court, such that the valuation estimates they offer in support of a proposed plan of reorganization are essentially meaningless. Rather than pushing debtors to provide more candid disclosures, bankruptcy courts tend to interpret the lack of viable challenges to the debtor's valuation estimates as evidence of their accuracy: if the value of the debtor's assets truly exceeded the amount of its liabilities, then large and powerful investors would enter the fray. This article explains why this so-called "Implicit Market Test" is deeply flawed.

# CATHERINE A. O'NEILL

**Exposed: Asking the Wrong Question in Risk Regulation**  
48 ARIZ. ST. L.J. (forthcoming 2016)

Environmental agencies set health-based standards by asking “to what are people exposed?” That is, they require environmental conditions sufficient to support only people’s contemporary behaviors. However, people’s behaviors have been shaped by environmental degradation. They may not reflect healthful practices – or, in the case of American Indian people, heritage lifeways. Archival materials are used to examine the development of exposure assessment in the early years at the U.S. Environmental Protection Agency. This article proposes a reoriented inquiry – one self-consciously aligned with the purpose of health-based standards and the promise of legal commitments to Native peoples.



# JOHN B. KIRKWOOD

**Buyer Power and Healthcare Prices**  
91 WASH. L. REV. 253 (2016)

Health care prices are higher in America than in other countries. In this article, Professor Kirkwood addresses whether we ought to make greater use of buyer power to reduce those prices, as other nations do. He concludes that the biggest buyer of all, the federal government, should be allowed to negotiate Medicare prescription drug prices. That is likely to reduce drug prices substantially without a large decline in innovation. But encouraging major insurance companies to merge seems undesirable. In many cases, the new firms may use their buyer power to depress physician payments below the competitive level and their market power to raise premiums.







*Seattle Asian Art Museum, Seattle, Washington  
Photo by Yosef Chaim Kalinko*

## FEATURED BOOK

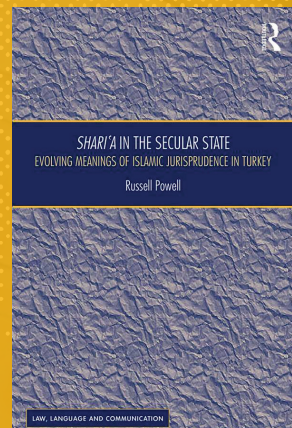
# RUSSELL POWELL

**SHARI'A IN THE SECULAR STATE : EVOLVING MEANINGS  
OF ISLAMIC JURISPRUDENCE IN TURKEY**  
(Routledge 2016)

Words in both law and religion can shape power relationships and are often highly disputed. Shari'a lies within the overlap of these two spheres and provides a unique subject for the study of meaning in that liminal space. This book contributes important insights related to Islamic jurisprudence and secularism in Turkey as well as the role of language in contested legal and religious contexts.

The study provides a historical framework for the ideas and terms covered, including concepts of religion in general, Shari'a in particular, and secularism in the Turkish state. It examines empirical research to describe and analyze contemporary Turkish understandings of religion and Shari'a. There is often a disconnect between support for the adoption of Shari'a and the regulation of everyday behavior through civil codes. Thus, "Shari'a" seems to have taken on new meanings as groups have sought either to appropriate it or criticize it. It is a quintessential example of fractured and contextual meaning at the center of both religious and legal traditions.

This book is essential reading for both academics and those interested in law, linguistics, history, political science, anthropology, sociology, religious studies, or Near Eastern studies.





## CHARLOTTE GARDEN

**Religious Employers & Labor Law:  
Bargaining in Good Faith?**

95 B.U. L. REV. 109 (2016)

In this article, Professor Garden explores a complicated statutory question in labor law: When employee rights under the National Labor Relations Act and employer religious commitments conflict, which will have priority? Multiple statutory regimes arguably apply to such conflicts – not just the NLRA as interpreted by the Supreme Court in a key 1979 decision, but also the later-enacted Religious Freedom Restoration Act. Thus, Garden first proposes a new framework for courts to interpret legislative enactments that arguably override certain earlier court decisions. Then, she considers RFRA's application, proposing a model of limited accommodations that are carefully shaped to minimize burdens on employees.



## ANDREW M. SIEGEL

**Constitutional Theory, Constitutional Culture**

19 U. PA. J. CONST. L. (forthcoming 2016)

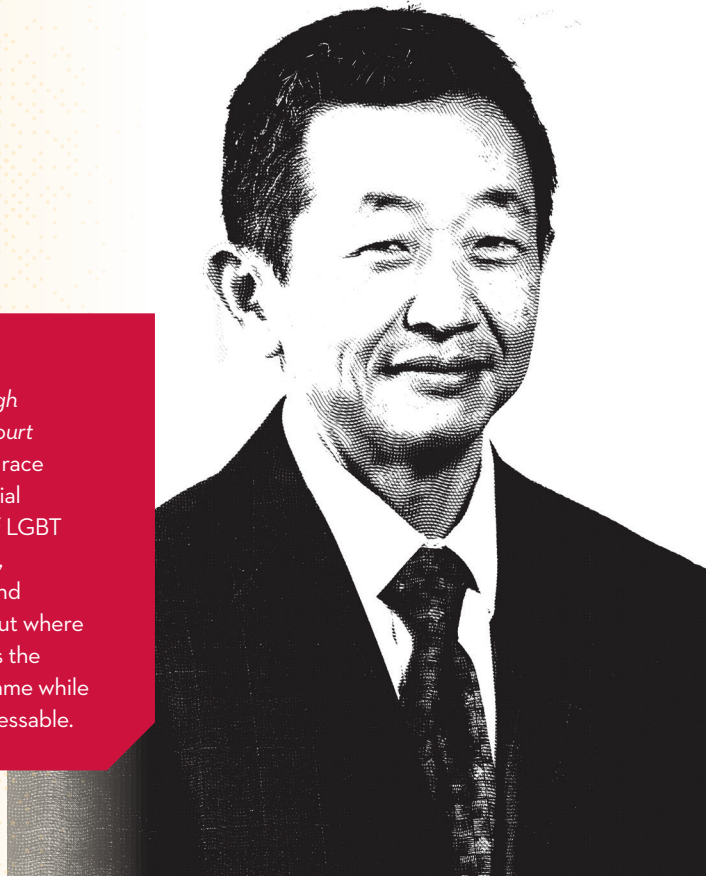
This article offers a fundamental challenge to the way in which contemporary constitutional theory thinks about constitutional practice. Modern constitutional theory tends to identify certain of our constitutional practices as part of an underlying, permanent constitutional “structure” and to dismiss newer, less glamorous institutional arrangements as insignificant. Professor Siegel argues that both of those characterizations are wrong and that both sets of practices and arrangements are part of a nominal, historically contingent, and ever-changing “constitutional culture,” which we need to study in detail if we want to understand how constitutional law is actually made.

## ROBERT S. CHANG

Will LGBT Antidiscrimination Law Follow  
the Course of Race Antidiscrimination Law?

100 MINN. L. REV. 2103 (2016)

Building on Alan Freeman's germinal Minnesota Law Review article, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, this article asks whether Freeman's thesis that race antidiscrimination law serves to legitimize real-world racial inequality might apply with equal force in the context of LGBT civil rights and LGBT inequality. The Court may develop, similar to its colorblind constitutionalism, a "sexuality-blind constitutionalism" in which formal equality is achieved but where distinctions drawn between public and private as well as the accommodation of religion might produce equality in name while leaving much inequality unredressed and legally unredressable.



## ANNA ROBERTS

Asymmetry as Fairness: Reversing a Peremptory Trend

92 WASH. U. L. REV. 1503 (2015)

The scales of justice must be equally poised between prosecution and defense. Thus says Justice Marshall, rejecting a proposal that the peremptory challenge – a tool permitting lawyers to remove jurors for any non-discriminatory reason – be abolished for the prosecution but not the defense. In this article, Roberts challenges the assumption that fairness is best achieved by symmetry. Drawing on legislative precedent involving unequal peremptory challenge allocations, and on contemporary inequities, she proposes that instead of abolition, states should consider reducing prosecutorial allocations of peremptory challenges. Here, as elsewhere in the criminal justice system, asymmetry is a crucial part of fairness.



## FEATURED BOOK

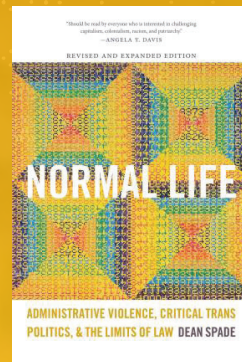
# DEAN SPADE

## **NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW**

(Duke Univ. Press rev. ed. 2015)

## **UNA VIDA NORMAL: VIOLENCIA ADMINISTRATIVA, POLÍTICAS TRANS CRÍTICAS Y LOS LÍMITES DEL DERECHO**

(María Enguix Tercero trans., Bellaterra Press 2016)



In the United States, most people assume that if you want to make changes to improve the lives of a stigmatized and marginalized population, you focus on changing laws. As the trans movement has developed over the last several decades, a “common sense” has emerged that trans people should support discrimination and hate crimes laws that include gender identity protections and they should fight for entry into institutions that have excluded them, like the U.S. military. *Normal Life* challenges these assumptions, bringing the insights of Critical Race Theory, feminism, and other critical intellectual traditions to the question of trans survival and liberation. Inclusion-focused efforts that center legal equality will fail to address the worst harms facing the most vulnerable trans populations. Trans people need to look beyond legal equality strategies and corporatized nonprofit structures to build an effective movement that can transform material conditions. *Normal Life* examines the limits of the legal equality agenda as well as the alternative approaches being developed by grassroots trans activists.

*Normal Life* was first published by South End Press in 2011. In 2015, Duke University Press published a second edition with new material. In 2016, Bellaterra Press translated the second edition and published *Una Vida Normal*.

*Volunteer Park, Seattle, Washington*

*Photo by Molly Landreth*



## FEATURED BOOK CHAPTERS

# THOMAS ANTKOWIAK

### **Social, Economic, and Cultural Rights: The Inter-American Court at a Crossroads**

In *THE INTER-AMERICAN COURT OF HUMAN RIGHTS: THEORY AND PRACTICE, PRESENT AND FUTURE* (Yves Haeck et al. eds., Intersentia Press 2015)

In this chapter, Professor Antkowiak examines how the Inter-American Court of Human Rights has addressed the vast and contentious domain of social, economic, and cultural rights. As the Court has attempted to provide greater international legal protections for vulnerable sectors, such as indigenous communities and prison populations, its development of these rights has proven both creative and controversial.

# CARMEN G. GONZALEZ

### **Energy Poverty and the Environment**

In *INTERNATIONAL ENERGY AND POVERTY: THE EMERGING CONTOURS* (Lakshman Guruswamy, ed., Routledge 2016)

Nearly three billion people in developing countries, whom Professor Gonzalez refers to as the “Energy Poor,” face daily hardships due to lack of modern energy for cooking, heating, sanitation, lighting, transportation, and basic mechanical power. The Energy Poor will be disproportionately burdened by climate change, but have received minimal recognition in the climate change negotiations. In this chapter, she argues that the climate change regime should reduce greenhouse gas emissions and foster climate and energy justice by financing the transition of the Energy Poor to sustainable, decentralized energy technologies that are less cumbersome, expensive, polluting, and vulnerable to capture by national elites and transnational corporations than traditional fossil fuel-based electric grids.

# TAYYAB MAHMUD

### **Neoliberalism, Debt & Discipline**

In *RESEARCH HANDBOOK ON POLITICAL ECONOMY AND LAW* (John Haskell and Ugo Mattei eds., Edward Elgar 2016)

In the neoliberal era, financial markets have brought ever-increasing sections of the working classes within the ambit of credit. Reordered public policies and new norms of personal responsibility demarcate the horizon within which the economically vulnerable pursue strategies of economic survival and security. Refashioned concepts of individual responsibility and human capital facilitate assemblage of subjects who engage debt as risk-taking entrepreneurs. Faced with restructured labor markets, and shrinking wages and welfare, the working classes pay for their basic needs through debt. Engulfment in debt induces self-discipline and conformity with the logic of the financialized economy and precarious labor markets. This ensemble sutures debt with discipline.





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