LawQuadrangleNotes

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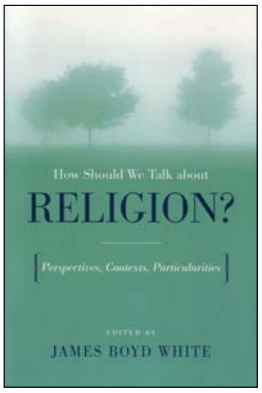

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A message from Dean Caminker

Possessing an international perspective is something so common and pervasive today, at least among educated audiences, that one can barely countenance such wasn't always the case. But think back to the significant public resistance to our involvement in World Wars I and II, to consumers' initial antipathy to Japanese and Chinese products, to restaurant and home cuisines that rarely featured ethnic foods, and to higher education study abroad programs in the '50s, '60s, and even '70s, that offered England, France, and for the truly adventurous, Spain.

That solipsistic and even isolationist strain has always been part of our national character, and indeed a factor in the philosophical, cultural, and political stereotyping that attempts to separate America's heartland from its more internationally-attuned, trendsetting coastal population centers. So it's hardly surprising our admissions research indicates that some of our prospective students from the east and west coasts think Michigan Law is, well, a bit provincial compared to other schools they're considering.

Now that's hardly an unreasonable hypothesis to anyone who's grown up on the ethnocentrism of Manhattan or Boston, LA or San Francisco—or for that matter, anyone who identifies with Saul Steinberg's cartoon map of the United States or Woody Allen's films. But while stereotypes are occasionally useful shortcuts, they can also be outright wrong or misleading, which is why I'm quick to correct visitors who assume that Ann Arbor, the University, and the Law School are the epitome of Midwestern provincialism. In point of fact, we're about as provincial as London and about as hick as Cap Ferrat.

This meaty issue of *Law Quad Notes* provides very compelling evidence of just how expansively a global perspective permeates the School. To be sure, other law schools talk about such an outlook, but that often means a handful of courses on or about international law. At Michigan, we offer those courses and many more, but we also have a faculty whose international experience is significant—in the past decade, 24 have taught in Japan alone—and whose research and scholarship has a strong international focus.

But that's just the beginning. Michigan Law also hosts a number of international conferences; our faculty lead and participate in major international centers; we offer students multiple and various opportunities to study internationally as well as to work as interns and externs, to win clerkships and fellowships, and to volunteer overseas; our Library, one of the very best in the world, boasts unusually robust holdings in international law—in most cases more comprehensive than exist in the respective home countries; and we attract visiting faculty, LL.M. and S.J.D. students, and research scholars from all over the world. The only shortcoming I've discovered—and I keep holding this over the head of Assistant Dean of Admissions Sarah Zearfoss, '92—is that we have yet to attract an applicant from Antarctica.

The point that's so interesting to me is that this school of law doesn't pigeon-hole its international focus in a single box—say curriculum, for example. Rather, it's virtually everywhere you look: curriculum, to be sure, but also public service, student activities, journals, law school events, library, graduate programs, research and scholarship, faculty service, volunteerism, and no doubt many more. Were NYU or Harvard to make such a claim, I doubt anyone would think it out of the ordinary. But when a law school in "the heart of the heart of the country" (to use William Gass' terminology) not only makes the claim, but substantiates it, that's truly remarkable.

Another point worth noting is that Michigan is no Johnny-come-lately to its global perspective. As I write this, Harvard is garnering media attention for reforming its 1L curriculum, one plank of which is offering new first-year courses in international and comparative law. But it's midwestern Michigan Law, not eastern Harvard, that first required a course in Transnational Law—a full five years ago. At that time, the president of the American Society of International Law (ASIL) said our course was "one of the truly stunning developments in the teaching of international law in the United States …" and an "inspiration" he hoped would be "emulated by other law schools." Just shortly thereafter, on March 16, 2002, Supreme Court Justice Sandra Day O'Connor said this in a keynote address at the annual meeting of the American Society of International Law:

"Through the ASIL's efforts, American judges are becoming more aware of their responsibilities to respect not only domestic law but also the law of nations. But more effort is needed. Law schools must ensure that their students are well

versed in the increasingly international aspects of legal practice. The University of Michigan Law School has just begun requiring all students to complete a two-credit course in transnational law."

Indeed, the rationale for studying international law today is much more powerful than when Justice O'Connor voiced it. Correspondingly, our faculty's teaching, scholarship, and public service activity reflects an understanding that safety and security lie not in isolationist withdrawal but through engagement with the rest of the world—a world where even in its most remote corners, global contact is omnipresent at the click of a TV monitor or a computer mouse, by turning on a cell phone or text-messaging via PDA. And our faculty are also fully aware that the most compelling legal challenges of the day arise out of conflicts such as those between national security concerns and ensuring the sustainability of civil liberties, conflicts that get to the heart of our national beliefs and values as well as those pertaining to critical international issues.

The men and women who choose to study law at Michigan today are, with few exceptions, already sophisticated observers of the international scene and well aware of how governments, corporations, NGOs, and other organizations operate across, as within, borders. Indeed, many have not just studied abroad during their undergraduate careers, but increasingly have worked or volunteered overseas. But while they're hardly novices to internationalism, their understanding of the law from that perspective is, at best, thin. And that, of course, is why the Michigan Law faculty takes its responsibility so seriously in educating students in a manner that will prepare them for a career where legal issues do not stop at customs checkpoints. To meet that responsibility, an international dimension permeates courses once thought of as solely domestic in nature—for example, corporate law, contracts, jurisdiction, and Constitutional law. Of the 23 members of the faculty who focus on international and foreign law, 20 also teach courses—copyright, sex equality, banking, and tax, for example—where that focus isn't primary but still enormously valuable. Several members of the clinical faculty even include an international component in their teaching, research, or caseload.

To date, the University of Michigan Law School has alumni working in 79 countries, and that number will no doubt expand as our students take advantage of this extraordinary faculty's global perspectives and detailed knowledge of aspects of international law. I hope you enjoy reading about just a small sampling of that knowledge. And I hope, too, you won't hesitate to make your opinion known should someone, no doubt from the east or west coast, dare suggest Michigan Law isn't at the forefront of international legal study and education.

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An eye on the world

The rule of law that we cherish establishes boundaries—of behavior, commerce, and social interaction. Law also establishes borders—of sovereign states, regional alliances, local jurisdictions. As commerce and communication blur the distances between countries, legal practitioners increasingly deal with the people and laws of many nations.

Yet these people and laws remain very different, even as international laws and norms draw us more closely together. At Michigan Law, international law in all its forms has been here from the beginning. Pioneers like Hessel E. Yntema, Eric Stein, S.J.D. '42, and others brought world attention to the study of European law and the emerging European Union. Stein continues to look ahead, and today other scholars like Daniel Halberstam, Nicholas C. Howson, Vikramaditya S. Khanna, and Mark D. West continue the tradition with teaching and research on, respectively, Europe, China, India, and Japan. Other faculty members, like Robert L. Howse, Catharine A. MacKinnon, and James C. Hathaway, regularly cross borders in their study of world trade, feminism/equality, and refugee/asylum issues. For scholar Laura N. Beny, research often takes her back to Sudan, her birthplace. For Matthias W. Reimann, LL.M. '83, an editor-in-chief of the *American Journal of Comparative Law*, the journal once again has returned home to Michigan Law. As Hathaway, Stein, and Professor Emeritus Theodore J. St. Antoine, '54, show in the articles that conclude this issue, the richness and complexity of international involvement are infinitely varied.

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WHY JAPAN? A Rube Goldberg experiment in comparative law

By Mark D. West

Nippon Life Professor of Law Mark D. West is director of both the Law School's Japanese Legal Studies Program and its Center for International and Comparative Law; he also directs the University of Michigan's Center for Japanese Studies. He has studied and taught at the University of Tokyo and Kyoto University, and has been a Fulbright Research Scholar, an Abe Fellow, and a fellow of the Japan Society for the Promotion of Science. Fluent in Japanese, he practiced with the New York-based international law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, where his clients included many large Japanese multinational corporations.

I stumbled into Japan through a purely academic route. When I went to college, I had planned to take four or five languages. I soon realized that my oh-so-brilliant plan wasn't feasible, and tried to nail it down to one. But which one? I had a friend in high school who used to read Chinese books, and, thinking it would be interesting—no, as an 18-year-old, *cool*—to be able to read those characters, I decided to head in that direction. My small college didn't offer Chinese, but it offered Japanese, and that was close enough for me: at least it had those same cool characters. After a couple of years of language study and a stay in Japan, I found myself leaning toward a career in law (if this Japan thing didn't pan out, I reasoned, I'd at least be a lawyer). I combined the two interests by writing my senior thesis on Japanese law. The paper was published (it was, shall we say, unsophisticated), and it set me on my career path.

Some of our students come into law school with a similar set of interests and skills. Many have spent substantial time in Japan, and a few in each class have mastered the language. For these students, "Why Japanese law?" is easy to answer, as many soon find themselves in demand with firms that have many Japanese clients. In addition to course offerings, Michigan can provide these students with a multitude of resources (including our renowned library and world-class visitors) and, in part because we keep our LL.M. class and research scholar programs relatively small, close contacts in the Japanese legal profession that can last a lifetime.

But Japanese law isn't just for those who already have Japanese experience. The days of the "international" boutique law firms have passed. Most large firms now have at least a few Japanese clients, and it's likely that most of our students will come into contact with Japan-related legal issues at one time or another. For those students, what is important is not so much the ability to read Japanese statutes or to translate (after all, the client wants a first-rate lawyer, not a first-rate translator), but the ability to place in context Japanese issues that may arise in practice. It's helpful to have a general idea, for instance, how torts, contracts, and criminal law function in Japan's civil law system. It's useful to understand the system of Japanese legal education, and what kinds of professionals it tends to produce. And to provide legal advice in the way that a Japanese client can best use it, it's essential to know how both the myths and the truths of the roles of litigation, lawyers, contracts, courts, judges, prosecutors, regulators, and statutes function in Japan.

But even if a student will never face a Japan-related issue in practice, studying Japanese law still makes a lot of sense. That's true for any foreign law class, but I'm hard pressed to think of a better system for studying law-and-society, comparative law, and on-the-ground law-and-economics than Japan. The Japanese legal system is a Rube Goldberg contraption of a comparative law experiment: What results if you take a predominantly Chinese system, plop it in pre-feudal Japan, completely overhaul it with German and French ideas in the 19th century, and then 70 years later have Americans, most of whom had little or no knowledge of Japan, revise the system by doing such things as drafting a New-Deal-style Constitution and dumping the Illinois Business Corporation Act of 1933 into Japan's Commercial Code? Keep in mind, of course, that this mishmash occurs in the context of Japanese society, which leads to questions like whether Japan's relatively low litigation rates can best be explained by culture or economics, or whether Japan's organized crime can be attributed directly to defects in its legal system and enforcement regime. In my Japanese Law class, the law-and-society lens helps clarify why Japanese courts have held that state-sponsored

Shinto groundbreaking ceremonies don't run afoul of the freedom-of-religion provision in its constitution, or that (until 1987) a "responsible party" to a marriage's decline cannot receive a divorce if the other party does not consent, or that preparing blowfish in "the traditional way" is insufficient to escape liability in suits brought by the heirs of poisoned customers.

These kinds of questions are fun and intriguing, and in the right context, could perhaps fill a lull at a firm's cocktail party. To me, that's not such a terrible goal, but the study of Japanese law in a U.S. law school prepares students for much more than that. Looking at these issues as Michigan-trained lawyers in the Japanese context forces us to ask hard, thought-provoking questions about our own system. How do economics and culture affect behavior in the U.S. legal system? Why do we do what we do, and why do we do it like that? Is there another way to do things? These lines of investigation help students even in a purely domestic practice think outside the box, look for creative solutions, and use some of the methods that we use in class to investigate empirical questions of Japanese law—economic reasoning, interviews, and (gasp) regression analysis—to help. Adding these tools to the lawyer's toolbox can help all students become better advocates. Using Japanese law as a way of teaching those skills is a somewhat stealthy, but effective, way to do it.

Law School, Japan enjoy deep, lasting ties

Michigan Law's ties with Japan are deep and enduring. The School's first two Japanese students graduated in 1878, and, through the Law School's scholar exchange with the University of Tokyo and other programs, many of Michigan Law's faculty members have taught in Japan. Dean Evan H. Caminker regularly meets with Japan-based Law School graduates as part of his visits to alumni in Asia.

The Law School's LL.M. program always includes students from Japan, and the U.S.-based student body includes growing numbers of students who are fluent in Japanese. Japanese alumni and legal and government officials regularly visit the Law School.

Japanese Law, the core course of Michigan Law's Japanese Legal Studies Program, exposes students to the roles of Chinese, German, and American law in the development of modern Japanese law and outlines the formal structure of the Japanese legal system, the country's legal profession, dispute settlement mechanisms, and how law and the cultural setting relate. Nippon Life Professor of Law Mark D. West teaches the course, and for two to three weeks of each class term, he co-teaches with visiting professors from the University of Tokyo Faculty of Law.

Other Japanese law-related courses in the program include Comparative Family Law, Comparative Corporate Law, Individual Rights in Japan, and Independent Research. In addition, the School offers seminars in a variety of subjects. In recent years seminar topics have included Institutions and Actors in the Japanese Legal System and Japanese Legal Documents, the latter taught in Japanese using documents written in Japanese.

Students in the program also may spend a semester studying at Waseda University Law School for transfer credit leading to the J.D.

In addition, at least two research scholars are adding to the Japanese presence at Michigan Law this year: Associate Professor Ryoko Iseki of Doshisha University Faculty of Law, and Tomoko Sasanuma, an associate professor at Ehime University Faculty of Law and Letters. Iseki, who came to the Law School last spring and remained until July 31, was doing research on intellectual property law. Sasanuma, who is doing research here until December, is examining labor and employment law and equality law.

Finally, law students can draw from the University-wide ties with Japan and academic and research interest in the country. If they choose, they can pursue a dual degree program leading to a masters degree in Japanese studies as well as their J.D. Information is readily available through the University's Center for Japanese Studies, which West directs.

WHY CHINA? A startling transformation

By Nicholas C. Howson

Assistant Professor Nicholas C. Howson has lived and worked extensively in the People's Republic of China (PRC), reads and writes Chinese fluently, and has been involved with some of the most significant corporate and securities legal issues stemming from China's "opening to the outside world." He has acted as a consultant to the Ford Foundation, the United Nations Development Program and the Chinese Academy of Social Sciences, and various Chinese government ministries and administrative departments in the drafting of the PRC Securities Law (1998) and the amended PRC Company Law (2005). He is a designated foreign arbitrator for the China International Economic and Trade Arbitration Commission and a former chair of the Asian Affairs Committee of the Association of the Bar of the City of New York. Prior to studying law, he spent two years (1983-85) as a graduate fellow at Fudan University in Shanghai, China, doing course work and writing on late Qing Dynasty-early modern Chinese literature; after law school, he was awarded a Ford Foundation/Committee for Legal Education Exchange with China fellowship to complete research in Qing Dynasty penal law, during which time he was resident at Beijing University (and working with scholars at People's University and the China University of Politics and Law) for the latter part of 1988. His expertise in Chinese law, politics, and economic reform takes center stage in courses like China: International Engagement/Domestic Legal Reform and Chinese Investment, and enriches other courses he teaches in Banking and Finance, Corporate Law and Practice, and International and Comparative Law.

With China's growing economic and political power dominating world headlines, the People's Republic of China's (PRC) sudden influence over the ever-*globalizing* world economy, and that nation's direct effect on every aspect of our lives, it often seems the exasperated question should be "Is there anything *but* China?"

Yet this points to only one half of the story, the impact of China and its extraordinary path of development over the past two decades *on the outside world and the United States*. Another vantage point—*the view from inside China*—reveals a process of transformation even more startling and far-reaching than the external manifestations of China's rise. That is a set of transformations which includes: rapid modernization and industrialization; the attendant huge internal migrations of a formerly peasant population and accelerating inequalities; an "opening to the outside world" capped by the PRC's accession to the World Trade Organization (WTO); marketization of the economy and semi-privatization of large sectors of industry; internal governance reform; the tentative development of civil society; explicitly directed and spontaneously-generated political reform; and, most importantly for Michigan Law, an impossibly ambitious, once in a generation, all-encompassing program of "legal construction."

In the late 1970s, leaving behind the serial trauma of the Anti-Rightist Campaign, the Great Leap Forward, and the Great Proletarian Cultural Revolution, China's post-Mao leadership committed the nation to a policy of "Reform and Opening to the Outside World." A new legal order, newly promulgated substantive law, revivified legal institutions, trained judges and lawyers, and a Chinese-style "rule of law" consciousness were all understood to be critical components for the chosen economic development model, not to mention profitable interactions with the

outside world—from the attraction of foreign capital investment to reinvigorated international trade.

Thus, China's change over the past 20-plus years has been explicitly prodded, shaped, and protected by law, and yet notions of law and legal institutions which are specific to China's modern history and political culture. Perhaps most compelling, the introduction of rule of law ideas into China, originally designed to support internal economic development and external business and financial interactions, has had pronounced unintended consequences for the PRC—so that individuals properly seeking enforcement of contracts and protection of property rights in a new semi-market economy now strive for the protection of far more sensitive civil and political rights against the same superior forces which directed legal reform in the first place.

This is why the Michigan Law School is so intent on becoming a center for the study of China's legal transformation—not just because China's growing economic and political power affects every aspect of our daily lives, but because its internal process of legal reform is unprecedented in the history of the world.

And China has much to teach us: for only by observation and understanding of the legal system changes sought, frustrated and accomplished inside the most populous nation in the world, are we sure to harvest a more profound understanding of our own legal, economic, and political structures, and the underlying assumptions which continue to support them.

Avi-Yonah: Tsinghua exchange offers 'opportunity for mutual learning'

Reuven S. Avi-Yonah, who directs Michigan Law's LL.M. international tax law program, also regularly teaches in China and other countries. The experience quickly showed him the mutual benefit of a faculty exchange between Michigan Law and one of China's top law schools.

The result is the highly successful exchange between Michigan Law and Tsinghua University Law School in Beijing. "The exchange started three years ago," explains Avi-Yonah, the Irwin I. Cohn Professor of Law. "I had taught Tsinghua students at the National Accounting Institute in Beijing in 2000 and 2001, and we started the faculty exchange program in 2003."

Avi-Yonah and Associate Dean for Academic Affairs Kyle D. Logue are scheduled to teach at Tsinghua in 2007. Since the exchange began, Professors Richard D. Friedman, Michael S. Barr, Robert L. Howse, Nicholas C. Howson, Vikramaditya S. Khanna, and adjunct faculty member (and Business Law Faculty Fellow) Timothy L. Dickinson, '79, have taught at Tsinghua.

In return, Tsinghua scholars have visited at Michigan Law, and a small number of J.D. candidates have gone to Tsinghua.

"The exchange consists of a one-credit course (18 hours) for both Tsinghua and Beida University students on a U.S. law topic," Avi-Yonah explains. "Between 30 and 130 students a year have taken the class. In addition, Professors Steven R. Ratner and Alicia Davis Evans have visited Tsinghua for a conference on topics in U.S. and Chinese business law held in 2005 to commemorate Tsinghua Law School's 10th anniversary."

"The main benefit is a link with one of the best schools in China, and the opportunity for mutual learning," according to Avi-Yonah. "Tsinghua Law School is now considered perhaps the most dynamic and innovative of China's major law teaching institutions."

Irwin I. Cohn Professor of Law Reuven Avi-Yonah

WHY EUROPE? Let me count the ways . . .

By Daniel Halberstam

Professor of Law Daniel Halberstam is the director of the European Law Program at the Law School. He is the founding director of the European Union Center at the University of Michigan and now serves on its advisory board. Halberstam also serves on the advisory editorial board of *Cambridge Studies in European Law and Policy* (Cambridge University Press). His research and teaching focuses on European Union law, constitutional law, and comparative federalism. He is co-author, with M. Polares Maduro, of *Constitutional Challenge in Europe and America: People, Power and Politics*, forthcoming from Cambridge University Press.

My connection to Europe is plain. I was born and raised in Germany, where I completed my secondary education before coming to the United States for college.

I might note that my father was an American Jew. If asked, I might add that my mother, a German Protestant who lived through the war as a child, converted to Judaism and became an American citizen before I was born.

If pressed, I could further explain that my father, the son of a rabbi, was a naturalized citizen himself, born in Poland and brought to the United States (via Germany) when his family immigrated in 1926. My great-grandfather, Rabbi Aaron Halberstam (who was the great-grandson of Rabbi Haim Halberstam of Sanz) stayed behind and, 16 years later, was pulled from his ritual bath and shot by the SS along with hundreds of other Jews in the town square of Tarnow.

Finally, I suppose, I could tell the story of my ancestor, Rabbi Meir of Rothenburg, who was a European of sorts as well. Born in Worms, Germany, in 1215, he traveled as a young man to Paris, a renowned center for Talmudic learning at the time. While studying there, he witnessed the disputations of the Talmud in 1240, in which the brilliant Chief Rabbi of Paris defended the Talmud in vain against charges of heresy. After an initial acquittal in the King's Court, the Church staged a retrial before its own tribunal and prevailed. On orders of the Pope, 24 cartloads of Talmudic manuscripts were seized throughout France and Portugal and set ablaze in a bonfire that inaugurated a new age of destruction for the Jews of Europe.

Rabbi Meir returned to Germany and founded a school for Talmudic studies in Rothenburg ob der Tauber. His scholarly reputation soared and the Jews of Germany soon turned to him as the final court for their religious and legal disputes. When Rudolf I of Hapsburg, the Holy Roman Emperor, declared Jews serfs of the treasury, Rabbi Meir set out to emigrate for Palestine—but he was captured and imprisoned along the way. The Emperor demanded a ransom of over 20,000 silver marks (an enormous sum: five tons of silver). His followers raised the money, but Rabbi Meir urged that it not be used, as this would only vindicate the Emperor's oppressive policies against the Jews. After seven years in captivity, Rabbi Meir died in prison. And yet, the Emperor would not release the body. Fourteen years later, the Jewish merchant Alexander Süsskind Wimpfen gave his fortune for the release of the rabbi's remains. As compensation, Wimpfen asked only that, upon his own death, he be buried next to the rabbi. Their tombstones rest beside each other in the Jewish cemetery in Worms to this day. I have stood before them many times.

Even for Americans without such personal connections, the bonds between America and Europe run far deeper than meets the eye. Take the FDR Memorial in Washington, D.C., which bears President Roosevelt's most memorable statements. Chiseled in stone is the phrase he used in his "fireside chat" on December 29, 1940, to inspire Americans to save Europe: "We must be the great arsenal of democracy." Famous words. Few probably know that they were written by Jean Monnet, the French Cognac vintner, bureaucrat extraordinaire, and chief architect of the European Union. The image of an "arsenal" was no accident. Monnet was a munitions man. Having worked on the principal allied war munitions council during World War I, he well knew the importance of mobilizing U.S. weapons support early on in the fight against Nazi

Germany. After lobbying Administration officials with meticulous balance sheets and those soon-to-be famous words, Monnet met with success. His friend, Supreme Court Justice and FDR confidant Felix Frankfurter, told Monnet never to use those words again—they now belonged to the President.

From the FDR memorial to the Statue of Liberty and beyond, our European connections are so pervasive that they fade into the background, unexamined. As we focus on our present differences with Europe and highlight market opportunities elsewhere in the world, we should not, however, forget the enormous give and take between the United States and Europe that pervades our daily lives.

Consider only the economic facts that John Bruton, the European Commission's Ambassador to the United States and former Irish Prime Minister, presented at the University of Michigan's EU Center last March. With 25 member states and a population of 450 million, "[t]he EU's member states account for almost a third of the global economy and 40 percent of all global trade, making it the world's most significant trading area." As the ambassador reported, the transatlantic relationship runs deep from investments to goods. On the investment side, for example, "there are more European investments in the state of Texas than U.S. investments in China and Japan combined." More broadly, "EU companies are the single largest foreign investor in 45 of the 50 U.S. states [including Michigan], and rank second in the remaining five," providing "65 percent of all foreign investment in the U.S. in 2003." American companies, in turn, "obtain three times as many profits from their investments in just one [tiny] European country, Ireland, as they do from all their investments in China," and, more generally, "earn more from their investments in the EU than in the rest of the world combined." In terms of trade in goods, the EU and the U.S. are each other's main trading partners. The EU is the largest export market for the United States after Canada, and the single largest source of imports. Conversely, the U.S. is both the largest export market as well as the largest source of imports for the European Union.

There is yet more to why we should care about Europe than monuments, munitions, and markets. Over the past half century, Europe has been engaged in an historic political enterprise, the significance of which rivals that of the American Revolution. As Eric Stein's pioneering work here at the law school revealed over 25 years ago, the lawyers and judges of Europe have quietly built a Europe-wide system of constitutional governance. What we find is a common polity of citizens and peoples with a common market, a common interest in peace, and a modicum of shared values.

Europe's new legal order continues to unfold before our eyes. Despite the seeming disaster of the French and Dutch "no" votes in referenda on the Draft Constitutional Treaty in 2005, the idea of European constitutionalism is alive and well. What is more, European constitutionalism has come to serve as the touchstone for debates about regional integration across the world. Indeed, in my view, European constitutionalism even challenges our own, often all-too-settled notions of what it means to have a constitution right here in the United States.

If you ask me "Why Europe?" I say "That's why."

European Law

Michigan Law pioneered the study of European law. In doing so, it was following a directive to provide study in international law that was laid down before the Law School opened its doors: The 1837 statute that established the University of Michigan specified that its "law department" (which opened in 1859) would include a professor of "international law."

Students and scholars interested in European and European Community law today find an ever richer lode here. European Law Program Director Daniel Halberstam's own course, European Legal Order, builds on the foundation established by the Law School's pioneering Transnational Law course.

Other courses, like English Legal History, Federalism, International Trade Law, and International Commercial Transactions, help students deepen their understanding of European and other international law.

Visiting scholars and leaders from Europe regularly teach and speak at the Law School via the School's International Law Workshop, Research Scholars program, Helen DeRoy Visiting Professorships (see story on page 29), and other programs. In addition, the University's European Union Center offers a wide range of programs and often joins hands with the Law School to present programs.

WHY INDIA?

World's largest democracy, with an Anglo-American common law system

By Vikramaditya S. Khanna

The world's attention is now focused on India. Whether because of its phenomenal economic growth, deep and rich history, multitudes of peoples and cultures, geographic and climatic diversity, or simply because it is the most populous and most sprawling democracy in the world—India has captured everyone's notice. Indeed, as they say: Everyone needs an "India Strategy". What, then, is our (or your) "India strategy" and what can we learn by studying India?

There are many reasons why lawyers would find studying legal issues related to India fascinating, even aside from the meteoric resurgence of the Indian economy. For example, India is the world's largest democracy, with virtually unparalleled heterogeneity in its peoples, cultures, climates, and resources. This leads to many important issues that a democracy must handle through law and regulation. Learning from the successes and problems India has faced in managing this would be very valuable in thinking more broadly about legal issues in an increasingly heterogeneous society and world. Indeed, India has one of the most sophisticated pluralistic legal systems, wherein different laws can apply to different people based on a variety of factors.

Further, India's current legal system is based on the Anglo-American common law model, which means that among the most important emerging markets India is the one that bears the closest resemblance to our own system. Moreover, the legal language in India is English. The combination of these two features means that India can offer certain kinds of legal services to U.S. law firms and companies. Legal process outsourcing, as it is now dubbed, not only could have an impact on the market for legal services in the United States, but also on the development of the legal profession in India. Indeed, some students are considering the idea that it would be very valuable to obtain some legal experience in India.

In addition, India provides an enviable environment in which to examine the importance and influence of the law in aiding development. Over the last 15 years India has undergone a process of very significant legal change from a system with heavy government control to one that is more market-oriented. The changes can be seen in many areas. For example, the law plays a critical role when thinking about loosening restrictions on the Indian business environment, providing guaranteed access to education for certain groups, ensuring clean air and environmental responsibility, and addressing claims of social and distributive justice. Understanding how these changes arise in such a large emerging market and how legal training and research can help in the formulation of policy, and indeed in the formation of laws, is critical to appreciating the role of the law in development.

These are just some of the reasons why the University of Michigan Law School is so interested in India. Indeed, exploring legal issues related to India not only fosters a better appreciation of an immense and important country like India, but also helps to develop a deeper understanding of our own legal system and the importance of the law to development and overall well-being.

Professor Vikramaditya Khanna's abiding interest in India, its legal and other institutions, and the complex effects of its burgeoning economy are apparent in his teaching and academic activities. In addition to delivering lectures and writing for American and European institutions, he has presented papers at the Indian Institute of Management and the Indian School of Business. Last year he co-organized four conferences in Bangalore and Hyderabad, India, on the role of foreign investment capital in Indian venture capital markets. The founding editor of *India Law Abstracts*, an online abstracting journal, he lectures in the United States and elsewhere on subjects such as the development and impact of corporate governance reform in India, economic history of business organizations in ancient India, outsourcing and the Indian legal services market, Sarbanes-Oxley and the foreign firm, and the development of modern corporate governance in China and India (with Assistant Professor Nicholas Howson, see story on page 8). Khanna's research on India is related to his other research and teaching interests, such as corporate law, securities regulation, corporate crime, and law and economics. Khanna has also developed the course The Impact of Sarbanes-Oxley on Doing Business, being offered for the first time this fall at Michigan Law and the Stephen M. Ross School of Business at the University of Michigan.

International law and informal norms

By Robert L. Howse

Robert L. Howse, the Alene and Allan F. Smith Professor of Law, is a world-renowned authority on trade law and the process and consequences of globalization. Since 2000, he has been a member of the faculty of the World Trade Institute, Berne, Master's in International Law and Economics Programme, and is a frequent consultant or adviser to government agencies and international organizations such as the Organization for Economic Cooperation and Development, United Nations Conference on Trade and Development, the Inter-American Development Bank, the Law Commission of Canada and the UN Office of the High Commissioner for Human Rights. He is a Reporter for the American Law Institute on WTO Law. He has acted as a consultant to the investor's counsel in several NAFTA investor-state arbitrations. He is a core team member of the Renewable Energy and International Law (REIL) project, a private/public partnership that includes, among others, Yale University, the law firm of Baker & McKenzie, and the investment bank Climate Change Capital. Howse serves on the editorial advisory boards of the European Journal of International Law and Legal Issues in Economic Integration. He has also held a variety of posts with the Canadian foreign ministry, including as a member of the Policy Planning Secretariat and a diplomat at the Canadian Embassy in Belgrade.

Globalization—the intensified mobility of goods, services, people, capital, ideas, and trends across national boundaries—has vast implications for law, many of which are not captured by the traditional or classic idea of international law. Many transboundary issues entail informal cooperation or coordination between judges and/or regulators in different national jurisdictions. Often there are no binding international legal rules but instead more or less informal norms emerge with a view to solving transboundary problems.

The range of areas is enormously wide—from bankruptcy to child custody. When judges draw on legal sources from other countries they are not (contrary to what is sometimes said) doing international law—they are simply expanding their horizons as jurists beyond national boundaries. Voluntary codes of corporate social responsibility are having important effects on firm behavior and play an important role in the debates about globalization, and yet these often are not closely linked to rules of international law.

International law is, in large part, made by the consent of states and its content negotiated by government officials. But some of the most rapidly developing areas of international law in our time of globalization are those that engage the interests and directly affect the lives of individuals—human rights, trade and investment, international criminal law. It is arguable that governments and their diplomats have lost control of international law, which is now being debated, invoked, interpreted, followed, and arguably even reshaped by a very wide range of actors, none of which have what is called "international legal personality"—a formal law-making capacity that is still reserved for states and international intergovernmental organizations.

At the same time, some of the traditional international law-making processes—such as multilateral treaty-making—face serious challenges in keeping up with the pace of change in technology, global business practices, and other trends. Such treaty-making takes a long time and involves building consensus among large numbers of states.

In the area where I focus much of my research, international economic law, this has been particularly obvious recently with the impasse in the Doha round of trade negotiations at the WTO. In the light of this impasse, regional arrangements—made between smaller groups of countries—will play a greater role. The proliferation of bilateral and regional pacts has created worries about "fragmentation" of international economic law.

But "fragmentation" is a broader issue than just regionalism and an almost inevitable consequence of the nature of globalization: the enormous range of subject matters that are engaged by transboundary activity that requires some sort of legal order. This leads to a wide range of legal regimes and fora. And there are pervasive overlaps: between intellectual property, anti-trust, and investment law, for instance; between trade rules dealing with import restrictions and international law applicable to biosafety and food safety in general; and so on. How to create appropriate relationships between the different regimes and fora is a key question, one that has recently been tackled by the International Law Commission.

WHY SUDAN?

Ambiguous identities forge persistent conflict

By Laura N. Beny

The following essay is excerpted from the prospectus for *Perspectives on Genocide and Genocidal Violence in the Sudan*, edited by Law School Assistant Professor Laura N. Beny, Sondra Hale of UCLA, and Lako Tongun of Claremont Colleges, California. The book is under advance contract for publication by the University of Michigan Press. Its 14 chapters, written by prominent historians, anthropologists, social scientists, political leaders, and others, "tell overlapping stories about the social constructions of race, gender, culture, and religious and political loyalties, each of which underlies the longstanding conflict" in Sudan, according to Beny, whose essay in the book is titled "Beyond Economics: Slavery in the Sudan as Genocide." Other chapters cover Darfur, the decades' long North-South conflict, slavery, gender crimes, the political economy of oil, and political Islam.

"This book is very timely and relevant, as the crisis in Darfur has reached huge proportions and there is ongoing heated debate about UN intervention in the region," Beny noted in September, shortly after returning from a personal and research visit to the country. On September26 the U.S. House and Senate passed similar measures to authorize sanctions against Sudanese persons implicated in the commission of war crimes, and in October the Sudanese government expelled the chief UN envoy to the country.

Beny, who was born in the Sudan, frequently speaks and writes on the country. She has served on the editorial board for the Sudan Studies Association of North America and currently is a research fellow at the U-M's Stephen M. Ross School of Business' William Davidson Institute, where she coordinates and manages the Sudan policy brief series of articles on economic policy issues in the Sudan.

The question of genocide is, arguably, the most pressing human rights question to emerge in the 20th and 21st centuries. Although the Holocaust of 1930s-1940s Europe is still the template for genocide studies in the minds of most Western observers, more recent and deeply disturbing political events (e.g., Bosnia and Rwanda) have forced a more international approach. The United Nations Genocide Convention was constructed to fit the model of Europe and students of genocide are only now focusing on other case studies that may not fit established models. We are part of an emerging approach that calls for a reassessment of ideas about genocide: a redefinition, a broadening of concepts, an investigation beyond Europe, and an approach that is, at once, culturally specific and transnational. Our book also presents an approach that is gendered, not simply by the inclusion of women as victims, but more significantly by considering gender as an analytic concept.

While a few recent books on Sudan address genocide, these books narrowly focus on the current crisis in Darfur, western Sudan. International attention on Darfur has tended to overlook, except in passing, the fact that similar genocidal crises occurred in southern Sudan almost continuously from the late 1950s until 2005, when the government and the Sudan People's Liberation Army/Movement (SPLA/M) consummated the Comprehensive Peace Agreement in January 2005.

Sudan is ambiguously included in both Africa and the Middle East. This dual orientation has been a source of persistent conflict, in large part because successive post-independence governments have, while sometimes paying lip-service to multiculturalism, defined the state as exclusively Arab and Islamic. Virtually all of the ethnic groups that reside outside of what is commonly referred to as the "central riverain culture" (the so-called "Arab-Nubian core" of the Sudan) have been variously marginalized by the socioeconomic, cultural, and religious policies of successive governments, culminating with the most extreme policies of the current National Islamic Front government, which came to power via a military coup in 1989.

These policies, which have been biased toward the interests of the center, have threatened the existence of the peoples and cultures of the periphery. The non-Arab, often non-Muslim or only nominally Islamic peoples and cultures of the south, west, and east have been variously assaulted, either through direct state (or state supported private) violence or indirectly through neglect and attrition. The forms of direct and indirect assault have included imposition of the dominant culture (i.e., forced Islamization and Arabization), driving men out, intentional starvation, forced displacement and relocation, indoctrination, rape and other gendered assaults, aerial bombardment, enslavement, and

malign neglect. These assaults on human dignity have been most evident in southern Sudan and the Nuba Mountains of the southwestern Sudan and, more recently, in Darfur, western Sudan.

While all this is occurring, Sudan is enjoying a growing geopolitical significance, which surged when it became an oil-exporting country in 1999. The newly oil-exporting Sudan is strategically located, culturally and geographically, to offer a window into the conflicts in the Horn of Africa and into the spread of radical Islam (or Islamism) in a vast region. It is an area long of interest because of its African and Arab combinations and tensions; its Muslim, Christian, indigenous religious interactions; its complex legal system (with religious, civil, and customary co-existing); its economic potential; and its dynamic of military-civilian conflicts. It is also a society with a complex civil society, a weak state, regional and political fragmentation, and fierce competition among sectarian, non-sectarian, religious, and secular political parties.

Furthermore, Sudanese society has never recovered from the diverse waves of colonialisms and foreign intrusions that have punctuated its history (Ottoman, Egyptian, Arab, and British) and dramatically bifurcated its land into "northern" and "southern." Sudan is a fertile testing ground for numerous inquiries in the areas of colonialism, racism, economic and human exploitation, neocolonialism, human rights, rule of law, constitutionalism, the role of religion in the state, development, self-determination, state formation, human rights, and now, tragically, genocide.

That the warring parties of the North-South conflict achieved a peace settlement in 2005 does not render such study irrelevant as it relates to that particular conflict. Indeed, sustained peace and lasting reconciliation rest fundamentally upon the establishment of truth and justice, however they are administered.

Documentary footage

Professor of Law James C. Hathaway; Michael Awan, a member of the Lost Boys group; Assistant Professor of Law Laura N. Beny, who does research in Sudan and is co-editor of a forthcoming book on the Sudan; and documentary film maker Megan Mylan are shown below in front of the Michigan Theater, where the Refugee and Asylum Law Program, which Hathaway directs, and the Student Network for Asylum and Refugee Law presented a benefit showing of the film *Lost Boys of Sudan*. The movie-length film tells the story of two Sudanese boys, orphaned by the violence in their home country, who first survived lion attacks and militia gunfire as they and thousands of other children walked hundreds of miles to reach a Kenyan refugee camp, and then were among a group of refugees chosen to leave the camp and come to America, where they found themselves facing the abundance and alienation of life in another new country. Hathaway, Awan, Beny, and Mylan were panelists for a post-screening discussion of the film and conditions in Sudan. Directed by Mylan and Jon Shenk, *Lost Boys of Sudan* showed on PBS in 2004. It won two Emmy nominations, the Independent Spirit Award, and was named Best Documentary in the Bay Area (San Francisco) International Film Festival. Its Ann Arbor showing was part of an outreach campaign to support refugees from the crisis in Darfur, Sudan. As part of the outreach campaign, the film was screened on Capitol Hill with the Congressional Refugee and Human Rights Caucuses and with the State Department's Refugee and Migration Bureau.

Human rights should know neither border nor gender

Professor Catharine A. MacKinnon specializes in sex equality issues under international and constitutional law. She pioneered the legal claim for sexual harassment and, with the late Andrea Dworkin, created ordinances recognizing pornography as a civil rights violation. The Supreme Court of Canada has largely accepted her approaches to equality, pornography, and hate speech. Representing Bosnian women survivors of Serbian genocidal sexual atrocities, she won with co-counsel a damage award of $745 million in August 2000 in *Kadic v. Karadzic*, which first recognized rape as an act of genocide. She works with Equality Now, an NGO promoting international sex equality rights for women.

Professor Catharine A. MacKinnon's goals of working for women's and gender equality inexorably took her beyond borders into challenging the legal, social, cultural, psychological, and other barriers that keep most women unequal to men worldwide.

As Professor Daniel Halberstam noted in introducing her recently to a lecture audience, "she virtually created the field of sex equality law, both in constitutional law and, increasingly, in international law." Indeed, MacKinnon's vision of human rights as equal entitlements for women as well as men is without borders. Her work to ensure those rights for those who have been deprived of them, mostly women, gives her a global view and has made her a world personality.

MacKinnon conceived and litigated the groundbreaking *Kadic v. Karadzic*, in which Bosnian Muslim and Bosnian Croat women and child victims of Serbian sexual atrocities sued Bosnian Serb leader Radovan Karadzic for planning and ordering a campaign of murder, rape, forced impregnation, and forced prostitution to destroy their religious and ethnic groups. The case recognized rape as an act of genocide for the first time, a breakthrough that has influenced international tribunals. Suing for rape as torture and as war crimes as well, they successfully relied on the obscure 1789 Alien Tort Claims Act, which Second Circuit Chief Judge Jon O. Newman said "creates federal court jurisdiction for suits alleging torts committed anywhere in the world against aliens in violation of the law of nations." With co-counsel Maria Vullo of Paul, Weiss, MacKinnon secured a damages award from a federal jury of $745 million in August 2000.

At Michigan, MacKinnon regularly teaches a seminar on Women's Human Rights with Affiliated Overseas Faculty member Christine Chinkin. Some international materials are always

included in Sex Equality, her lecture class. Her most recent book, *Are Women Human? And Other International Dialogues* (Harvard University Press, 2006), is a collection of international and comparative writings and speeches. She recently spoke on a panel on women's issues internationally at the American Society for International Law, the proceedings of which will be published in the *American Journal of International Law*, for which she is also writing a book review.

In the last year, her "Women's September 11th," analyzing the relation between the "war on terror" and the undeclared war on women, was published in the *Harvard Journal of International Law*; her analysis of the rights of Muslim women after divorce under equality doctrine in India was published in the *International Constitutional Law Journal*; and her argument that pornography is a form of international trafficking in women was published by the *Michigan Journal of International Law*. Efforts to collect the judgment in *Kadic v. Karadzic* are ongoing. She continues to work with Equality Now, an international activist organization for women's rights around the world, as well as to lecture and consult and be involved in international and domestic issues of women's rights, including sex trafficking.

MacKinnon's thinking on sex discrimination centers upon, but is not limited to, the problem of discrimination against women by men. She has also been in the forefront of developing new thinking about the impact of gendered notions like aggressiveness and competitiveness on men, and in defending sexually violated men. In her brief on behalf of plaintiff Joseph Oncale in *Oncale v. Sundowner Offshore Services*, for example, MacKinnon was instrumental in convincing the U.S. Supreme Court in 1998 that sex discrimination consisting of same-sex harassment is actionable under the Civil Rights Act of 1964—the first such recognition by that Court. There the plaintiff had been sexually assaulted by other men while they all were working on an offshore oil rig in the Gulf of Mexico. She has also argued in an article published recently, and has contended in teaching since 1977, that discrimination against gay men and lesbian women is sex-based discrimination.

This ever-broadening vision held a central place in MacKinnon's lecture "Women's Status, Men's States" for the International Law Workshop earlier this fall. "Women are in the midst of the process of becoming human, a process that is changing human rights itself," she told her standing-room-only audience. States are "male institutions," she said, dominated by men and embodying male gender characteristics like sovereignty.

Is international law a counterweight to these tendencies, she asked, or "is it a meta-male?" Even as international law limits states, it builds on, depends on, and supports the power of states as such, she asserted. "Gender itself is a largely overlooked transnational force that works to support the dominance of men over women and some men over other men."

Catharine A. MacKinnon, the Elizabeth A. Long Professor of Law

The structure of jurisdiction favors male dominance, she further argued, as women are often told, "Go back home and work it out with him"—back to the place where most injuries to women most often happen. That is why she considers *Kadic v. Karadzic* to be "a signal victory on the jurisdictional frontier," in that it permitted women to seek remedy against men who harmed them at home in another country under substantive international principles.

In MacKinnon's view, "women's resistance to the denial of their rights, centering on sexual violation, is the cutting edge of human rights at the turn of the 21st century."

A beacon in refugee law

Professor James C. Hathaway is director of Michigan Law's Refugee and Asylum Law Program, a Senior Visiting Research Associate with Oxford University's Refugee Studies Program, president of the Universidad Internacional Menéndez Pelayo's Cuenca Colloquium on International Refugee Law, and an editor of both the *Journal of Refugee Studies* and *Immigration and Nationality Law Reports*. He established and directs the Refugee Caselaw Site (www.refugeecaselaw.org) and regularly provides training in refugee law to academic, nongovernmental, and professional groups around the world.

James C. Hathaway, the James E. and Sarah A. Degan Professor of Law

James C. Hathaway, a world-renowned authority on refugee law who literally has written the book(s) on the subject (*The Rights of Refugees under International Law* [2005], *Reconceiving International Refugee Law* [1997], and *The Law of Refugee Status* [1991]), happily reports that world leaders in the refugee law field increasingly recognize the significance of Michigan Law's Refugee and Asylum Law Program—and indeed are coming to the Law School to contribute to and benefit from it.

Specifically, says Hathaway, the School's biennial Colloquium on Challenges in International Refugee Law has been drawing increasing attention worldwide for the *Michigan Guidelines* that each biennial session produces after participants spend several days focusing with laser-like intensity on a single issue.

And this year, he says, the colloquium broadened its vision. It moved beyond simply providing a definitional answer to a refugee law issue, a complex enough process, to embracing the human rights ramifications that emanate from translating definition into policy and action.

"I think the influence of the colloquium is really spreading," explains Hathaway. As evidence, he notes that refugee experts around the world are using the *Guidelines*, that this year for the first time the colloquium had a co-sponsor, and that this year's colloquium topic was broader and more action oriented that previous ones had been.

This year's colloquium was held November 10-12 at the Law School. Like its predecessors, it offered students of refugee law the singular opportunity to rub elbows and match minds with academic and legal experts from around the world on a specific issue—the internal protection alternative in 1999, the limitation of refugee status to persons able to show their fear of persecution is "for reasons of" race, religion, nationality, membership of a particular social group, or political opinion in 2001; and the meaning of the "well-founded fear" clause of the refugee definition in 2004.

The *Guidelines* issued from these colloquia have had an impact, according to Hathaway. New Zealand's refugee law jurisprudence now incorporates some of their language, and England's House of Lords recently cited the *Guidelines* as a source that the lords used to come to their decision.

"This year's topic was an unusual one," he continues. "We are branching out to the human rights of refugees. We're actually taking up the contentious issue that links refugee law and international human rights law: When can a state force the person claiming refugee status to have his claim determined in a foreign country other than where he is now physically present? Governments increasingly assert their right to send refugee claimants to another country to have their protection needs assessed—for example, under the recent U.S.-Canada agreement. What are the legal constraints on such removals?"

The University of Melbourne in Australia co-sponsored this year's colloquium, thereby forming a partnership that offers Michigan and Melbourne law students the opportunity to participate. Hathaway and Melbourne Law Professor Michelle Foster jointly constructed the research project, her students researched it, and Michigan Law students ran the colloquium.

"We will strive clearly to explain the legal basis for and constraints on the prerogative of states to remove refugee claimants from their territory, taking particular account of the jurisprudence of leading asylum countries," Hathaway explained to participants beforehand. "Our goal is to identify areas of consensus and controversy, and

ultimately to define a 'best practice' standard to assist advocates, judges, and policymakers engaged in the application of refugee law."

The colloquia was being chaired by Rodger Haines, deputy chair of the New Zealand Refugee Status Appeals Authority, who also has taught at Michigan Law and taken part in previous colloquia.

Haines and Hathaway also worked together last spring with Luis Peral, a professor in Madrid and a research scholar at the Law School a few years ago, to develop and lead the first Cuenca Colloquium on International Refugee Law at Universidad Internacional Menendez Pelayo in Spain. Hathaway, president of the Cuenca colloquium, explained that the program began with an education program for Ph.D. level law students, that then shifted into a policy making session for government and non-governmental leaders from throughout Europe. Participants dealt with issues like European cooperation, the problem of mass exodus, the definition of refugee, and refugee rights.

Participants were "working at an incredibly high level of expertise," Hathaway reported, noting that "refugee issues are just hugely important in Europe now. After every session the media wanted to know what was discussed."

The Cuenca colloquium is "essentially a collaboration born at Michigan," Hathaway added, noting that he, Peral, and Haines began to develop the outline of the colloquium when Peral was a research scholar at Michigan Law and Haines was here as a visiting professor. "It's a nice Michigan story."

(An excerpt from Hathaway's most recent book, *The Rights of Refugees*, begins on page 71.)

Program in Refugee and Asylum Law

Michigan Law's Program in Refugee and Asylum Law is a dynamic blend of "a formal academic program" and "direct engagement with the process of international refugee law reform." In the academic realm, it includes cousres like International Refugee Law, Refugee Rights Workshop, U.S. Asylum Workshop, and Immigration and Nationality.

The program also requires active research into international and comparative refugee law, activity that includes support for research scholars, and hosting of the biennial Colloquium on Challenges in International Refugee Law (see accompanying story).

In addition, some participants may be chosen to be Michigan Fellows in Refugee and Asylum Law, which allows them to do a summer internship with an organization that works with refugees. Last summer's fellows and their work locations included:

- **Chad Doobay**, Jesuit Refugee Service in Lusaka, Zambia
- **Talia Dobovi,** Refugee Policy Program of Human Rights Watch in Washington, D.C.
- **Allison D. Kent**, Refugee Policy Development Division of Citizenship and Immigration Canada in Ottawa
- **Alicia Kinsey,** European Union office of the European Council on Refugees and Exiles in Brussels
- **Scott Risner**, New Zealand Refugee Status Appeals Authority in Auckland

Affiliated Overseas Faculty offer different, valuable insights

Michigan Law is fortunate to include among its teachers three Affiliated Overseas Faculty members who come to the School to teach special, concentrated courses, present lectures, and participate in other activities. These scholars are renowned within and beyond their home countries and universities.

Affiliated Overseas Faculty scholars, who are renowned within and beyond their home countries and universities, are:

Christine M. Chinkin, a professor of international law at the London School of Economics and Political Science, University of London. She is an internationally respected scholar of public international law, alternative dispute resolution, international criminal law, human rights (especially women's human rights), and the intersection of feminist jurisprudence and international law. She holds an LL.B. with honors and an LL.M. from the University of London, a second LL.M. from Yale University, and a Ph.D. from the University of Sydney.

Christine M. Chinkin

J. Christopher JcCrudden is Fellow and Tutor in Law at Lincoln College, Oxford, and Professor of Human Rights Law at the University of Oxford. He holds an LL.B. from Queen's University, Belfast, an LL.M. from Yale, and a D. Phil. from Oxford. He specializes in human rights and currently concentrates on issues of equality and discrimination and the relationship between international economic law and human rights.

Bruno Simma, a judge on the International Court of Justice, has served as dean of the Munich Faculty of Law and director of the Institute of International Law at the University of Munich. He is a member of the Court of Arbitration in Sports of the International Olympic Committee, is co-founder of the European Society of International Law, and is co-founder and co-editor of the *European Journal of International Law.*

Affiliated Overseas Faculty members combine academic research and scholarship with significant activity in legal, human rights, and other fields. Asked about her recent international activities, for example, Chinkin reported that "I am a member of a study group on the Human Security doctrine. This led to a report on a human security doctrine for Europe, which was presented to the European Parliament in 2005 and [resulted in] a book by the same name (Routledge, 2006). I have a chapter in the book on an International Legal Framework for Peace and Security. The study group is now continuing its work at the behest of the Finnish government.

"And I am working on a project for the UN Development Program evaluating their post-conflict programs in light of human security criteria."

J. Christopher McCrudden

She also is co-author of the book, *How International Law is Made*, which will be published by Oxford University Press in 2007, and has contributed to the UN Secretary-General's study on violence against women, which will be submitted to the General Assembly.

During 2005-06 she contributed to international human rights training for the UK [United Kingdom] Foreign and Commonwealth Office, Amnesty International, UNDP in Armenia, and the Bar Human Rights Council in Kabul and Damascus.

She also is director of studies for the International Law Association.

Earlier this year, Queen's University in Belfast, where McCrudden grew up and earned his first university degree, awarded him an honorary doctorate of laws, noting that "he has had, and continues to have, considerable influence on official thinking and practice, having served on several government committees including the Northern Ireland Standing Advisory Commission on Human Rights and the European Commission's group of legal experts on equality law."

McCrudden "helped to ensure that the human rights and equality commitments contained in the Belfast Agreement were accurately reflected in the Northern Ireland act [of] 1998," Professor Colin Harvey said in his delivery of the honorary degree citation. "As a graduate of this university who has gone on to establish a global reputation for his outstanding work on equality, discrimination, and human rights law, it is only right that this, his home institution, honors him," Harvey added.

McCrudden serves as a specialist advisor to the British House of Commons' Northern Ireland Affairs Committee, is a member of the Procurement Board for Northern Ireland, is a member of the editorial boards for several journals, and serves on the European Commission's Expert Network on the Application of the Gender Equality Directives. He is the first scholar to be named Professor of Human Rights Law at Oxford.

Bruno Simma

For Simma, "as a judge of the International Court of Justice, I am of course limited in what I do 'on the side,' as it were. . . [but] I regularly act as an arbitrator at the Court of Arbitration for Sports in Lausanne and have also served as an arbitrator in a recent arbitration between Belgium and The Netherlands concerning the so-called Iron Rhine case."

He recently received an honorary doctorate from the University of Macerate (Italy) and was elected an associate member of the renowned Institut de Droit International.

In addition, he is continuing international legal research and writing, among other issues about the consequences of the LaGrand and Avena judgments [involving foreign nationals' access to their countries' consulates if charged with an offense] for the U.S. judiciary, and frequently lectures in various European countries and receives student groups from a variety of countries at The Hague.

Simma lectured on "The International Court of Justice: An Insider's View" as part of the Law School's International Law Workshop speakers series in October.

People, times, Law School leadership join to launch South Africa program

By David I. Chambers

Professor Emeritus David Chambers launched Michigan Law's South Africa externship program 10 years ago just as that country was emerging from apartheid and beginning to function under its new constitution, adopted in 1996. Here Chambers recalls how the externship program began. Now the Wade H. McCree Jr. Collegiate Professor Emeritus of Law, Chambers directed the program until his retirement from active teaching in 2003.

How did the South African externship program start? Through a fortuitous coming together of people, the times, and Law School leadership.

In February 1996, a young AIDS activist from South Africa named Zackie Achmat came to the United States for several weeks and spent some time in Ann Arbor. Zackie was then working with the AIDS Law Project at the Centre for Applied Legal Studies at the University of the Witswatersrand (Wits) and went on to found the Treatment Action Campaign that successfully pressured the South African government to begin supplying antiviral medications to people with HIV.

I was then teaching a seminar on the public policy response to HIV in the United States, and chatted with Zackie several times. In one of our conversations, we talked about the possibility that a Michigan law student might be interested in coming over to South Africa and working with his organization.

Within a few days, a law student named Ben Cohen, who had also talked to Zackie, approached me about sponsoring him for a one-term externship. I knew Ben as a fine student and said sure, forgetting that for a law student to receive credit for a term away from the Law School, Law School regulations (and the ABA) required that a professor from the Law School visit the site of the externship during the term. When I remembered the rule, I told Ben that it would be unaffordable for the Law School to send me to South Africa just to oversee one student. Ben's quick and determined, and he immediately suggested that we see whether additional South African organizations might want students and whether additional Michigan students might want to go. I agreed that dividing the costs of sending me over to see 10 students might be easier for the dean to swallow than bearing it for one.

The short of it is that Ben was right. I flew to South African during spring break of 1996, and with guidance from Heinz Klug, a former African National Congress (ANC) activist and at the time a lecturer at Wits (now a professor of law at the University of Wisconsin), I located several private human rights groups that were eager for help and willing to try our students. Returning to Ann Arbor, I found, with Ben's help, nine other students equally eager for the opportunity. And the dean said yes.

The first year had some bumps (two students found, for example, that the job I'd lined up for them had fallen through by the time they arrived and scrambled,

successfully, to find other placements), but every student returned enthusiastic about the term. Indeed, one returned for a second stint in South Africa after graduation. Another was so moved by her human rights work in South Africa that she asked the American law firm where she was planning to work after graduation to release her from her acceptance and took a job with a Neighborhood Legal Services program in Chicago instead.

In fact, many externs have found that participation in the South African program has proved to be a watershed experience: Some, like the woman who went to Chicago, found that the experience caused her to re-think—and re-direct—her legal career; others, like Cohen, found that it strengthened their initial desire to work in public service, human rights, or international law.

I decided to try it again the next year, and the next, gradually shaping an increasingly organized program. I visited South Africa for two or three weeks each fall both to visit the sites where the students were working and to hold a three-day workshop with them at which they each directed an hour's conversation and presentation on the work they were doing or some aspect of their experience of living in South Africa that had especially intrigued or influenced them. During the same three weeks, I talked with new groups about sending students the next year.

Then, during the following winter, I held information sessions with students interested in applying and nailed down the available placements with the South African organizations. In most years, more students applied than there were placements available.

In a precedent that remains an important part of the program, I never picked the students who went. Rather, students prepared resumes and one-page cover letters for the organizations for which they wanted to work, I faxed the resumes and letters to the organizations, and they picked the students they wanted. In that way, I could remain the coach and cheerleader for all the applicants. So could my assistant, Trudy Feldkamp, who came to know the students nearly as well as I did.

After the second year of the program, I decided that students might be well served by having a formal introduction to the new South Africa legal system before beginning their externships. So in the winter semester I offered a course on the new South Africa constitution and the new Constitutional Court that had been created to interpret it and was industriously beginning to do so. Since then, nearly all students who have gone over (and a large number of others who were simply interested in the subject) have taken the course. I taught the course jointly with my wonderful friend, Karthy Govender, LL.M. '88, Professor of Law, University of Natal, Durban, and Member of the South Africa Human Rights Commission. Professor Govender has continued to teach the course since my retirement three years ago.

Externships

Externships, the semester-long assignments at human rights, government, and other agencies for which law students receive Law School credit after fulfilling academic requirements associated with the assignments, become an enriching part of many students' legal education. Michigan Law has ongoing externship programs with the Aire Center, a legal aid center based in London, England, that works throughout the European Union, and in South Africa. In addition, many students fashion their own externships to serve in the United States and overseas at agencies like the U.S. Department of State, Office of the U.S. Trade Representatives, U.S. Department of Commerce, Overseas Private Investment Corporation, and others.

In these essays, South African externship program founder David I. Chambers describes the early days of the program, and former extern Barbara Hou, '06, reflects on her experiences in South Africa. Hou's essay is based on the final report that she filed with her supervising professor and appears here with permission. Participants in the program file biweekly reports during the course of the 13-week externship and then summarize their experiences and conclusions in their final reports.

A new way to understand human rights

By Barbara Hou

Barbara Hou, '06, served her externship in the Cape Town office of South Africa's Human Rights Commission. She volunteered last summer in Uganda with an NGO involved in peace initiatives in the conflict-affected areas of northern Uganda.

My internship at the South African Human Rights Commission (SAHRC) was awesome. I have always believed that education and learning encompass far more than merely book-learning. Karthy Governder's (South African legal scholar and Adjunct Professor Karthigasen Govender, LL.M. '88, a member of SAHRC) class on Constitutionalism in South Africa definitely provided a good background for the work I would be doing at the SAHRC, and it was also the first time I was able to really study in-depth another country's legal system. Going to South Africa helped me contextualize the knowledge I gained from his class, and to apply my knowledge in a real world setting. At the SAHRC, I was able to attend parliamentary sessions in which members of parliament would debate on and discuss the provisions of proposed legislation, such as the Children's Bill. I would then go back to the office and research specific issues of the bill that impacted human rights. My internship taught me a range of real life skills such as how not to get mugged, how to work with different people from different cultures, and how to organize a group of people to focus on pressing social issues.

I'm glad that Michigan Law had the vision to develop and sustain a vibrant study abroad program, and that I as well as my fellow law students were able to take advantage of this tremendous opportunity to live in and work in another country in an entirely different legal system. I think developments such as the Transnational Law course requirement, and a broad course curriculum in classes like Japanese Law, South African Constitutionalism, International Human Rights Law, etc. are some of the reasons that Michigan Law provides a superior legal education. As current news headlines indicate, we can no longer afford to live in a cocoon, isolated from an understanding of the perceptions and challenges that other countries face.

Judith Cohn, our supervisor, was also a great person to work for and to learn from. She was always willing to take the time to explain the issues of a particular matter thoroughly. Even though I knew she was very busy, I never felt like she was too busy for me. She was also a good listener and I felt like my voice and opinions, and even questions and concerns, were seriously considered and valued. I felt like an equal member of the team. At our weekly meetings, Judith would always discuss her thoughts on a human rights issue and discuss how she was struggling with a particular concept and would solicit feedback from us, the interns. We would contribute our own thoughts, questions, and we could even openly challenge some of her ideas. She was always willing to listen to what we had to say. I always enjoyed our discussions.

I remember one time we talked about language in schools. In South Africa, many of the black South Africans learn a native language in the home before going to school. For example, a child might grow up speaking Xhosa or Zulu in the home before entering school. The question posed was how schools should incorporate lessons in the native language. This issue is similar to bilingual education issues, especially in states like California. Do you require instruction in English, when the students don't know any English when they enter the school system and risk that the student learns English at the expense of the substantive subject matter? Or do you require instruction in the native language so that the child can understand

Barbara Hou, '06, in Cape Town, South Africa

the substance of what is being taught, but risk that English language skills will be poorly developed? I felt good that I was able to relate to the Parliamentary Unit some of my understanding of bi-lingual education issues in the United States and to apply some of that understanding in the South African context.

The nature of my assignments was both substantive and procedural. In terms of substantive assignments, I worked on several different human rights issues and had to research the arguments surrounding the issue and draft memos for Judith so that she could get a quick survey of all the issues surrounding a particular topic. I was able to research issues as interesting as virginity testing, or as important as a right to basic education. I also had the opportunity to write my own submission on the Genetically Modified Organisms Amendment Bill.

Being at the Commission made me realize that some things that I did not initially consider human rights issues are actually extremely important human rights issues. For example, the right to access to information was one right that initially I did not think of as a human rights issue. But now I do think that such things are important for furthering human rights, especially as a due process matter. I also learned more about international law because the South African Constitution mandates the consideration of international law, and at times foreign domestic law. So, I didn't just learn about South African law, I also learned about Indian law, international law, and the laws of other similarly-situated African countries.

I also had the best of all worlds in terms of the subject matter of the work that I did. Because I was at the Human Rights Commission, I was able to work on all sorts of issues related to human rights. I didn't just work on gender issues, or land issues, or educational issues. I received exposure to all those issues and more. Being in Cape Town was also fantastic, both for touring and living. So many talks, seminars, workshops, and community events were held in Cape Town and I was always encouraged and enabled to attend those events.

Ten years from now, I'm sure that I will have forgotten the rule against perpetuities, the four components of a tort case, the difference between all the different types of murder in criminal law, etc. But my experience in South Africa will stay with me for the rest of my life. I met incredible people, made incredible friends, and learned so much about a different culture and legal system. It gives me hope that we can go about doing what we do in perhaps a slightly or even drastically different way to achieve the goals that we want.

In the end, I think you get out of the externship what you put into it and what you decide for yourself that you want to get out of it. I knew that I was very lucky to have such an opportunity, and I really tried to appreciate every moment and learning opportunity that I was presented with. Even just chatting with Babalo, a South African intern at the SAHRC, on our five-minute walk from Parliament back to the office gave me a deeper understanding and appreciation of the complexities of human rights issues. I remember walking down the street one day and Babalo told me that in her culture, some women cut off a bit of their pinky finger as part of their culture (this is done when they are young girls). I couldn't believe it. But we walked down the street and sure enough, Babalo pointed out two women who had this procedure done to them.

Is that a human rights issue? I still don't know. It's funny because Babalo, who works at the Human Rights Commission, doesn't think it is. The line is fuzzy for me. Even now I'm still not sure. I guess that was a valuable lesson, too: that human rights issues are culturally defined. I always knew that, but to experience it firsthand gave me a very real appreciation of cultural relativism arguments and has forced me to closely examine and question what we consider a human rights problem. I'm thankful to Michigan for my externship opportunity, and to those in South Africa who took me under their wing to explain to me more about their culture. I only hope that I will have more of such opportunities and that in the end we can fashion workable solutions that further human rights while preserving the different cultures that make this world so fascinating.

From Hutchins Hall to The Hague: Reflections of an ICJ Law Clerk

By Jason Morgan-Foster

The author, a 2005 Michigan Law graduate, is currently a Research Scholar in the Center for Human Rights and Global Justice at New York University School of Law. He represented Michigan Law in the University Traineeship Program at the International Court of Justice in 2005-06. The program is currently open to only 10 law schools worldwide, including Michigan Law.

An enormous stained-glass window dominates the Great Hall of Justice, the main chamber of the International Court of Justice (ICJ) in The Hague. A gift from the British Commonwealth, its four massive panels tell the story of the development of international peace through law. The first panel represents a past era of anarchy and disorder, where violence prevailed over law. The final panel depicts a future international utopia, where strict adherence to the rules of international law lead to everlasting peace. It is left to each observer in attendance at the court to judge how far along that progression the world has come.

I sat pondering that question last December, as the court read its decision in *Congo v. Uganda*. Seventeen judges in full regalia assumed their positions facing the audience. The legal teams for the two states involved in the dispute took their seats immediately facing the judges. Slowly, the president of the court began to read from the judgment of over 100 pages. It is practice at the ICJ for judgments to be read in a public sitting, with the parties present and represented by high-level government agents. Everyone concentrated to make out the words of the judgment, which found that Uganda had violated the principles of non-use of force and non-intervention, violated its obligations under international human rights law and international humanitarian law, and illegally exploited Congolese natural resources.

As I have prepared for what I hope becomes a career in international law, my faith in the international legal order has often been challenged. In many contexts, the prevailing sentiment regarding international law is guarded skepticism about its real-life applicability. I have been told time and again that international law is not "real" law, or that it does not exist at all. I wish all such doubters could have been present that day in the Great Hall of Justice, to hear the court's findings, which were clear, pertinent, and timely. One could not help but wonder how that day's judgment would contribute to the overall evolution of international law depicted on the stained-glass windows above. As the states formally accepted the court's conclusions, I was left feeling hopeful. This was international law in action: Two sovereign states had come here to have their differences settled by expert judges according to rules of treaty and custom, rather than through continued blood and death on a battlefield.

I was present at the court as part of the ICJ University Traineeship Program, where I acted as a law clerk for Judge Bruno Simma (of Germany, one of Michigan Law's Affiliated Overseas Faculty) and Judge Abdul Koroma (of Sierra Leone). The ICJ Traineeship Program is the first major clerkship program of its kind at the principal judicial organ of the United Nations.

Open to only 10 law schools throughout the world, including Michigan, it accepts one graduate (or, in exceptional circumstances, two graduates) from each school per year to serve nine-month clerkships at the court. Michigan joined the program in 2004, sending Carsten Hoppe, '04, and Sonia Boutillon, '03, to the court. I represented Michigan in the 2005-06 year, and Marko Milanović, LL.M. '06, is Michigan's clerk for the 2006-07 year. The daily work of a law clerk at the ICJ is similar to that of a clerk in any other court, consisting primarily of legal research and drafting on issues pertinent to pending cases; the primary difference is that the body of applicable law is public international law, made up of treaties, custom, and general principles, with a nod also to the opinions of the most highly qualified publicists in international law. Because the specifics of court work are subject to confidentiality requirements, I would like to share several general observations on the court.

When I speak with people about my clerkship, I have noticed two recurring misconceptions in the public understanding of the ICJ. First, there is general confusion about what the ICJ is and what it does. Although it is the principal judicial organ of the United Nations, it is not the best known Hague tribunal among the general public, due in large part to extensive media coverage of two other such tribunals, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Court (ICC). The ICTY was trying Slobodan Milošević for genocide and war crimes in a high profile trial cut short by his premature death last March, and it continues to try other alleged perpetrators of the violence in the former Yugoslavia. The ICC is a permanent court established to try individuals for international crimes, which has made frequent headlines in the United States because of the U.S. refusal to ratify the Rome Statute creating the court and U.S. legislation preventing the dispersal of military aid to countries which have ratified it. Compared with the ICJ, the work of both of these tribunals is very new and quite substantively limited. The ICTY is an ad hoc tribunal established by resolution of the Security Council under its Chapter VII powers in 1993. Its work is solely dedicated to claims arising out of the Yugoslav conflict, and it will cease existence when these claims are resolved. The ICC, established by treaty in 2002, is a permanent court with global scope (subject to jurisdictional considerations), but its work, like that of the ICTY, is limited to the prosecution of individuals under international criminal law. The ICJ, on the other hand, is the principal judicial organ of the United Nations, created by the United Nations Charter and functioning since 1946. It is the only public international court with general subject matter jurisdiction, adjudicating upon the full gamut of substantive public international law rules. Only sovereign states can be parties before the ICJ—it is not open to claims by or against individuals. Judgments of the ICJ can be enforced by operations authorized by the UN Security Council.

The second common misconception is that the United States does not participate as a litigant before the ICJ. This belief, also fueled by media attention concerning U.S. opposition to the ICC, could not be further from the truth. Although the United States withdrew from the ICJ's compulsory jurisdiction in 1986, it is a party to many treaties containing clauses selecting the ICJ as the required forum for disputes of treaty interpretation or application. Consequently, the United States has appeared before the court more than any other single litigant, and many of the most important ICJ cases have included the United States as a party. To cite one example, in the Case Concerning United States Diplomatic and Consular Staff in Tehran (*United States v. Iran*), the ICJ concluded that by failing to act when Iranian militants attacked the U.S. embassy in 1979, occupied the premises and subsequently detained 52 American hostages in the embassy for 14 months, Iran violated its international legal obligations to the United States. The 1980 judgment ordered the release of the hostages and payment of reparations by Iran. The hostages were released in 1981, the United States froze Iranian assets, and the Iran-U.S. Claims Tribunal was established to hear individual claims arising out of the conflict. The United States has also litigated cases against France, Hungary, Bulgaria, Czechoslovakia, Switzerland, the Soviet Union, Canada, Italy, Libya, Paraguay, Germany, Yugoslavia, and most recently, Mexico. Thus, although the United States has refused to join the ICC and although many recent U.S. foreign policy actions have been decidedly unilateral, the United States has historically—and even recently—been a frequent and important litigant at the ICJ.

This year marks a monumental time at the ICJ: Not only did the institution turn 60 amidst celebratory fanfare attended by the Queen of The Netherlands and UN Secretary-General Kofi Annan, the court is also facing its biggest challenge in recent history in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*. The case requires the ICJ to judge the complex question of state responsibility for genocide, a question which has laid dormant during the 60-year history of both the Genocide Convention and the court. Thus, whereas the ICTY is trying individuals for their role in the heinous events in the former Yugoslavia, the ICJ has now set out to determine whether there is enough evidence to establish that those acts, taken cumulatively, constituted a genocide which can be attributed to the state of Serbia and Montenegro (formerly the Federal Republic of Yugoslavia). The scope of this task is enormous, involving consideration of all the myriad facts making up an individual

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genocide trial, raised to the nth degree so as to assess their cumulative effect. Thus, when people mistake the ICJ for the tribunal that was trying Milosevic, they are only half wrong: The ICJ is not trying the individual, but it is examining the actions of the Serbian government. Never before has the court been called upon to judge state responsibility for genocide under the convention, and its conclusions will shape the future role of the court and of international law itself. It is an extremely contentious issue because it raises the possibility that a state can be accused of an international crime, a taboo subject among international lawyers since 2000, when the notion of "state crime" was expressly removed from the Draft Articles on State Responsibility. The Court is now forced to confront the controversy head-on.

The ICJ Traineeship Program provided me a glimpse into a truly rarefied institution, one which for 60 years has been inhabited almost uniquely by the aging experts in public international law, never before by freshly-minted law graduates like myself. But it is in fact fitting that the ICJ has begun reaching out to law students in this way, because it is from teaching posts at law faculties that many of the judges have come. The current president of the court, Rosalyn Higgins, is no exception. President Higgins, in her former role as law professor, famously taught scholars of international law to "reject the notion of international law merely as the impartial application of rules" for an understanding of international law as a "decision-making process." I thought back to this lesson on one of my final days at the court, and it was at that moment when I finally realized why I could never pin down exactly which of the stained-glass panels in the Great Hall of Justice represented the current state of international law. The "process" that is international law is not well-represented by a linear progression. The world is simultaneously in the first panel and the last, and international law is the system of decision-making available to all actors to move us towards the final panel each time we drift in some way towards the first.

This year as part of the University Traineeship Program, I was able to be a part of the process of international law, in relation to both the Great Lakes region of Africa and the former Yugoslavia. In both of these cases, I cannot help but think that President Higgins' words speak also to those doubters of international law and its institutions. The ICJ will never solve all of the problems in those regions or any other region. But an institution which continues with significant success to address complex disputes in many regions of the world should not be faulted merely for failing to achieve a more absolute success. As President Higgins has taught us, success is in the process, and that process must always continue. An essential part of that process is the education of young lawyers in public international law; to this end, the University Traineeship Program offers an unparalleled new development.

Peace Palace, The Hague—home to the International Court of Justice and the Permanent Court of Arbitration

DeRoy Visiting Professors offer international insights

European Community law specialist and former European Court of Justice Advocate General Walter van Gerven especially enjoys visiting and teaching at Michigan Law, he says, because its faculty and students are more knowledgeable about European law than he finds at most other places in the United States.

As the Helen R. DeRoy Visiting Professor at Michigan Law, the Belgium-based van Gerven also contributed to the continuing vitality of that tradition by sharing his experience, expertise, and scholarship with faculty and students alike during his 11-week stay here this fall.

"Because of Eric Stein and others, Michigan is at the first level among top universities in its interest in European law," van Gerven explained. His seminar, EU: A Polity of States and Peoples, was a weekly reminder of the liveliness of that interest, he said. The seminar's title reflects van Gerven's conviction that Europe's long history of distinct nations and separate peoples and languages makes it unsuitable for a U.S.-style presidential system.

"The seminar attracted not only the interest of American students, but also of foreign students" he reported. "So when we have class discussions it is very interesting and lively."

Students in the seminar agreed, adding that it was especially valuable to have a European with the first-hand experience of van Gerven teaching the seminar and initiating discussion.

Van Gerven's visit to Michigan Law as a DeRoy Visiting Professor continued a longstanding program that brings overseas scholars to the Law School to teach, present public lectures, and participate in other activities. In 2003, for example, Rodger Haines, of Auckland University in New Zealand and a member of his country's Refugee Status Appeals Authority, visited as a DeRoy Professor. This fall he returned to moderate the biennial Colloquium on Challenges in International Refugee Law, which is part of the Law School's Refugee and Asylum Law Program. (See story on page 18.)

Among other recent DeRoy Visitng Professors:

- Gareth H. Jones, of Trinity College, Cambridge;
- Dan Sperber, of the Centre de Recherche en Epistemologie Applique, of the Ecole Polytechnique in Paris;
- Philip G. Alston, professor and director of the public law program at the Center for International and Public Law, Australian National University, Canberra;
- Jochen Abr. Frowein, LLMCL '58, professor at the Max Planck Institut fur Auslandisches und Internationales Privatrecht, Heidelberg;
- Yoichiro Yamakawa, M.C.L. '69, Koga & Partners, Tokyo.

The Helen L. DeRoy Visiting Professorship is funded by the Detroit-based DeRoy Testamentary Foundation.

For van Gerven, a member of the law faculty at Katholieke University Leuven in Belgium, his visit was a busy one. In addition to teaching his twice-weekly seminar, in September alone, he addressed the Law School's International Law Workshop (ILW) on "Does the European Union Really Need a Constitution?" and lectured at the University of Michigan's International Institute on "Which Form of Government for the European Union?"

European Community law specialist and former European Court of Justice Advocate General Walter van Gerven.

Yes, he answered in his ILW lecture and a subsequent interview, the European Union does need a constitution, even though many things that a constitution typically provides for, like a universally elected parliament and executive accountability, already exist.

The current proposal, whose "gestation period was too short," should be abandoned as too long, unwieldy, and redundant, he explained. But "the body politic needs a flag, an anthem, a motto (all of which the EU has). It also needs a constitution."

As to what form an EU government should take, he told the International Institute, it should be a parliamentary system with the European Commission as the executive whose democratic legitimacy stems from citizen involvement in parliamentary elections.

Conferences, symposia embrace the world view

The fusing of the international with the domestic is nowhere more apparent than in the conferences and symposia being held at Michigan Law this academic year. Like this country itself, with its blending of people from national backgrounds throughout the world, these gatherings of scholars, legal practitioners, and government and business leaders reflect the mingling of domestic and foreign experience that is blurring boundaries and bringing peoples closer together.

From an in-depth examination of technology's impact on copyright, with participants from both sides of the Atlantic, to a gathering of international jurists to be held here in May, the globalized import of many legal issues regularly comes under the microscope here at the Law School.

Even next spring's four-day symposium celebrating the 30th anniversary of Michigan Law's Child Advocacy Clinic includes a major session on child welfare and children's rights around the world and features an address by the chairman of the UN Committee on Children.

This academic year began, in fact, with two conferences on international subjects taking place simultaneously, one investigating Patents and Diversity in Innovation, the other examining issues facing the Great Lakes.

Participants in the symposium **Patents and Diversity in Innovation**, held September 29-30, wrestled with issues raised by the growing gap between discrete product technologies like pharmaceuticals and complex product technologies like those in the field of information technology. The symposium was co-organized by Rebecca Eisenberg, the Law School's Robert and Barbara Luciano Professor of Law.

While such issues often are considered to be domestic in nature, technology and the globalization of trade in products as well as ideas have given them growing international significance. "In the United States, recent efforts to craft patent reform legislation reveal deep inter-industry divisions, with the information technology sector favoring a number of reform provisions adamantly opposed by the pharmaceutical and biotechnology industries," according to symposium organizers. "In Europe, there has been intense political controversy over whether and how to extend the scope of patentable subject matter to areas of innovation outside of traditional technologies. The controversies . . . have been framed differently in the United States and Europe, but they share a common need for expanded evidence-based answers and a deeper understanding of how the patent system can work to better foster innovation."

On September 29 specialists from the United States and Canada gathered here to ponder and hopefully help preserve the future of the Great Lakes, the glacier-carved containers that hold one-fifth of the world's fresh water, a resource eyed ever more enviously by much of the rest of the United States and the world.

"Federalism and international law concerns are at the forefront of every issue related to the Great Lakes region," conference organizers noted, and "local water shortages combined with a growing awareness of the water-envy emanating from other parts of the world have induced a coalition of state, national, provincial, and tribal governments to work together to improve the limited legal framework currently available to protect the Great Lakes from large-scale, long-distance diversions."

Forming a significant portion of the U.S.-Canadian border, the Great Lakes are a living laboratory for the practice and development of international environmental law. One conference session, for example, dealt with the roles of federal and state governments in relation to international actors.

Other conferences and symposia this academic year focusing on international issues or including international components include:

- First International Network for Tax Research conference on **Taxation and Development**, held November 3-5 and hosted by the Law School. This was the first conference to grow out of an Organization for Economic and Community Development gathering at the Law School last spring organized by Irwin I. Cohn Professor of Law Reuven Avi-Yonah, a renowned international tax law scholar who directs Michigan Law's LL.M. international tax program as well as the Law School's faculty exchange with Tsinghua University Law School in China.
- **Intelligence Gathering and International Law**, a conference on February 9-10, 2007 sponsored by the *Michigan Journal of International Law* and thought to be the first formal inquiry into the issue by a gathering of scholars. Explain the organizers: "Despite the strong and growing salience of intelligence in international affairs, international law is largely silent on intelligence collection and dissemination. While states may regulate intelligence gathering domestically, no significant treaties or conventions address the process, nor is it

subject to any internationally recognized set of principles or standards."

• **The Child Advocacy Law Clinic 30th Anniversary**, March 29-April 1, 2007, is both a reunion of former students associated with the pioneering clinic and a symposium on child protection that brings to the Law School many of the world's best-known experts in child protection issues. In contemporary life, many areas of child protection, like international adoption and issues of nationality, regularly involve an international component. A special session on the conference's first full day, March 30, will be devoted to Child Welfare and Children's Rights Around the World; among the speakers will be Jaap E. Doek, chairman of the UN Committee on Children.

• **The International Jurists Conference** will convene at the Law School in May 2007, bringing judges from Europe and elsewhere together in an American setting. Sponsored by the Furth Family Foundation, a philanthropic arm of the family of Fred Furth, '59, and the Law School, the annual conference took place in Prague in May 2006 and in Kiev in 2005. It is one of the world's top gatherings of jurists and offers judges from different countries and legal systems the opportunity to compare their courts and legal systems and note the similarities and differences of the issues they face.

Works in progress

Hessel E. Yntema Professor of Law Mathias W. Reimann, LL.M. '83, foreground at right, moderates a discussion of in-progress articles on comparative law subjects at a conference of scholars at the Law School earlier this year. Reimann, an editor-in-chief of the *American Journal of Comparative Law,* and Jacqueline Ross of the University of Illinois College of Law organized the inaugural gathering to offer scholars the opportunity to discuss with researchers in the same field the works they are preparing but have not yet completed. "While there is a large, and growing amount of comparative law scholarship in the United States, there is no regular opportunity for comparative law scholars to meet and discuss work in progress in any depth," according to Reimann. "The scholarly programs at other meetings usually aim at the presentation of finished papers on a given topic with very limited, if any, time for discussion." The Michigan Law workshop responds "to the need for a forum in which comparative law work in progress can be explored among colleagues in a serious and thorough manner that will be truly helpful to the respective authors," Reimann said. Participants discussed works in progress by scholars from the University of Illinois Law School; Cravath, Swaine & Moore LLP in New York; University of Pittsburgh School of Law; Temple University; Yeshiva University; and New York University Law School. Future conferences will alternate each year between Michigan Law and the University of Illinois College of Law.

Opportunities abound for international enrichment

Michigan Law maintains a variety of programs that provide opportunities for students and recent graduates to enhance their international experiences. Some students opt to spend a term studying at one of several universities abroad, others earn credit through externships in South Africa (see stories beginning on page 22) or elsewhere, student interns each summer work in Cambodia, and the list of opportunities goes on.

Other Law School programs, like the Helen De Roy Fellows program, the Jean Monnet Research Fellowships program, and the speaker series known as the International Law Workshop, regularly bring to Michigan Law some of the world's top experts in international law, policy, trade, and other subjects.

Here are thumbnail sketches of some Law School programs that make up the international side of life at Michigan Law.

American Journal of Comparative Law

After an absence of many years, the journal has returned to Michigan Law, where American Society of Comparative Law founder and legendary Michigan law professor Hessel E. Yntema ran the journal until his death in 1966. Michigan Law professor Mathias W. Reimann, LL.M. '83, is an editor-in-chief of the journal.

Clara Belfield & Henry Bates Overseas Fellowships

Through the generosity of Helen Bates Van Thyne, the Law School has an endowment for assisting recent graduates or law students who have completed two or more years of legal studies to travel abroad for study or work. Fellowship winners have pursued legal studies abroad and served professional internships with international or government agencies, non-governmental organizations, law firms, and other institutions in foreign countries. Bates Fellowship winners for 2006 are: Felix Chang, '06, for study with the Belgrade Center for Human Rights, the Center for Democracy and Human Rights in Montenegro; Sarah Chopp, '06, for work at the East West Management Institute for Human Rights in Cambodia Project; Khelia Johnson, '06, for work with the Strategy and Policy Unit of the International Telecommunication Union in Geneva, Switzerland; and Maria Rivera, '05, who is working in the chambers of Advocate-General Miguel Polares Maduro at the European Court of Justice in Luxembourg.

Dual Degrees

Law students interested in specific geographic areas or professional specialties often earn an additional advanced degree while pursuing legal studies. Michigan Law offers more than a dozen of these dual degree programs, in which the student works toward both degrees at the same time. While nearly any of these dual degree programs can enhance a student's preparation for working in the international arena, a number of the programs arm the student with specific knowledge of law and a distinct area of the world. Among them are Law and Chinese Studies (the newest of the dual degree programs), Law and Japanese Studies, Law and Modern Middle Eastern & North African Studies, Law and Russian & East European Studies, and Law and World Politics. Each of these dual degree programs leads to the J.D. in conjunction with a master's degree in study of the specialized geographic area. Students pursuing a dual degree benefit from the Law School's location at the heart of the University of Michigan, a major international research university.

Graduate Degrees

The University of Michigan Law School has a long and proud tradition of welcoming international students for graduate legal studies. The Law School offers four graduate degree programs: The LL.M., the International Tax LL.M., and the M.C.L. (Master of Comparative Law), each one-year programs, and the S.J.D. (Doctor of the Science of Law), for which completion of the LL.M. is required.

Externship Program

Michigan Law maintains one-semester for-credit externship programs in South Africa (see stories beginning on page 22) and with the AIRE Center in London, England, and students also fashion their own individualized programs to provide advanced training or research opportunities. With assistance from Michigan Law faculty and staff members, students have developed externships with the U.S. Department of State, the Office of the U.S. Trade Representatives, U.S. Department of Commerce, the Overseas Private Investment Corporation, and others.

International Court of Justice University Traineeship Program

Michigan Law is one of a small, select group of law schools eligible to sponsor graduates' applications for one of the 10 available spots in the International Court of Justice's nine-month University Traineeship Program in The Hague. Michigan Law has placed four applicants during the three years it has participated. (See story on page 26.)

International Law Workshop

This speakers series features Michigan Law faculty members and renowned overseas scholars lecturing on issues of import and interest on the international front. This fall's schedule of speakers included:

- Former European Court of Justice Advocate General and Katholieke University Leuven (Belgium) Professor Walter van Gerven (see story on page 29),

speaking on "Does the European Union Really Need a Constitution?"

- Renowned international scholar and equal rights advocate Catharine A. MacKinnon, the Law School's Elizabeth A. Long Professor of Law, speaking on "Women's Status, Men's States" (story on page 16);
- H.E. Judge Bruno Simma of the International Court of Justice and an Affiliated Overseas Faculty member at the Law School, discussing "The International Court of Justice: A View from the Inside."
- Catherine Powell, co-faculty director of Fordham Law School's International Human Rights Program, discussing "Tinkering with Torture: Testing the Relationship Between Internationalism and Constitutionalism";
- Law Professor Lawrence R. Helfer, director of Vanderbilt University Law School's International Legal Studies Program, speaking on "The Law and Politics of Treaty Withdrawals"; and
- New York University School of Law Professor Jerome A. Cohen, senior partner with Paul, Weiss, Rifkind & Garrison and adjunct senior fellow for Asia studies at the Council on Foreign Relations, speaking on "Does China Have a Legal System?"

Jean Monnet Research Fellowship Program

Made possible by the Milton and Miriam Handler Foundation, this fellowship provides support for a law professor to spend six months at the Law School conducting research and writing a publishable paper on European integration. The project is operated in conjunction with the University of Michigan's European Union Center and coordinated by Professor of Law Daniel Halberstam, a founder of the center. Fellows for 2006 are Hilde Caroli Casavola of the University of Molise (Italy) Faculty of Economics and Vassilis Hatzopoulos of Democritus University of Thrace (Greece); 2007 fellows are Iyiola Solanke of Norwich Law School, University of East Anglia (England) and Leone Niglia of the University of Aberdeen (Scotland) School of Law.

Michigan Fellowships in Refugee and Asylum Law

An integral part of Michigan Law's Refugee and Asylum Law Program (see story on page 18), these fellowships offer top students summer internships at one of six partner organizations on three continents.

Michigan Journal of International Law

Work on the student-run *Michigan Journal of International Law*, the seventh most-cited international legal scholarship journal in the world, offers the opportunity to become better acquainted with the world of renowned scholars in the international law field while honing editorial skills and perhaps working on organization and execution of a conference or symposium. *The Journal of International Law* is hosting a symposium on intelligence gathering and international law in February. (See story on page 30.)

Pro Bono Cambodia Project

Part of the Law School's Program for Cambodian Law and Development, the Pro Bono Cambodia Project offers summer internships for law students to provide research assistance to groups in Cambodia. In cooperation with the University of Michigan's International Institute, the pro bono project offers internships to students of law as well as students in fields like urban planning, public policy, public health, social work, or business. Last summer, interns worked with the Khmer Institute for Democracy, Mu Sochua's gender justice project, the Cambodia Ministry of Land Management, the Community Legal Education Center, the Center for Social Development, the World Bank, the GTZ Gender Justice Project, Family Health International, and the International Justice Mission.

Semester Study Abroad

The Law School maintains semester study abroad agreements with eight universities in Japan, Israel, and Europe "to permit students to receive the educational benefit of engaging in legal studies in another country at an outstanding educational institution where the Michigan student will be pursuing a foreign curriculum in classes with predominantly non-U.S. students." Via these agreements, students may study at Leiden University in the Netherlands; the University of Paris II; University College London; Katholieke University in Leuven, Belgium; Bucerius Law School in Hamburg; European University Institute in Florence; University of Tel Aviv; and Waseda University Law School in Tokyo. In addition, students may follow their own individualized semester study abroad programs if approved by the Law School. In recent years students have fashioned programs with the University of Copenhagen, ITAM in Mexico City, the University of Hong Kong, ICADE and Comillas, in Madrid, Spain, and other schools.

Student Funded Fellowships

This Law School student organization raises money for grants to law students who take unpaid or low-paying summer jobs in the public interest field. Fellowships are provided for overseas as well as domestic placements.

CONCLUSION

World view reaches far and near

Law Library Director Margaret Leary is fond and proud of saying that whatever you want to study in law, in any jurisdiction, you can do with materials in Michigan Law's library. The case is especially significant for the study of international and comparative law because the complexity of the field and the widespread nature of its research materials make Michigan Law one of the most complete single destinations for such research.

What if you want to study the European Union, for example. The Law Library is a repository for EU documents, making it an attractive site for study of what the EU is saying. But what if you want look into other aspects of the European Union?

- International public law? The treaties and other agreements that the EU's 25 member states have signed with each other. The library has them, in the original languages and also in English.
- International law like the laws of the EU's 25 individual member states? The library has them.
- The comparative law scholarship produced by those who have studied the similarities and differences of the laws of the different countries? The library has it.

The Law Library's extensive collections of international and comparative materials rank it among the nation's and world's best. Scholars from the United States and abroad frequently come here to delve into its holdings, which many have said to be better than what is available to them in their home countries. Indeed, *National Jurist* magazine has ranked the Law Library fourth of 183 law libraries in the United States.

The library's initial critical mass of international material was assembled over a 50-year period through the dedication and perseverance of Dean Henry Bates and Hobart Coffey, the latter regularly traveling the world to find collections of laws to bring home to Michigan. Today's acquisition efforts have changed, but they are no less diligent. For example, the library collects court reports from all U.S. jurisdictions, Great Britain and the Commonwealth, and most European, Asian, and South American countries.

In many ways, the library is emblematic of the Law School, whose role as a center of international and comparative law scholarship is longstanding and dynamic. The previous pages only have highlighted aspects of this vitality Internationalism and globalization touch us all, and virtually all faculty members, students, and graduates come face to face with such phenomena in their daily work. And many other faculty members devote all or much of their professional work to international issues. Among them are:

- Hessel E. Yntema Professor of Law **Mathias W. Reimann**, LL.M. '83, a scholar of comparative law, is an architect of Michigan Law's pioneering Transnational Law course, now a much-imitated requirement for Law School graduation. He also is an editor-in-chief of the *American Journal of Comparative Law*, the journal of the the American Society of Comparative Law. International law scholarly pioneer Hessel E. Yntema, who taught at Michigan Law from 1933-60, was the journal's first editor-in-chief and ran the publication for 14 years, until his death in 1966. Last year the journal returned to Michigan after a long absence, "another signal of Michigan's continuing commitment to the study of comparative and foreign law," according to Riemann. "With its wide-ranging study-abroad, externship, and academic exchange programs, its Center for International and Comparative Law, and, last but not least, its large and growing number of faculty members focusing on international and foreign law, the Law School is once again an appropriate home for the *American Journal of Comparative Law*."
- Professor **Steven R. Ratner**, who specializes in public international law, has written forcefully about the fallout from *Hamdan v. Rumsfeld*, in which the U.S. Supreme Court ruled last summer that trying detainees at Guantanamo Naval Base by military commission violates federal statute and U.S. treaty obligations.
- Professor **John A.E. Pottow**, whose research focuses on cross-border insolvency, regularly presents papers for INSOL International (International Association of Restructuring, Insolvency and Bankruptcy Professionals) and has been invited to advise on South Africa's cross-border insolvency issues.
- Professor **Rebecca Scott** (see story on page 41), the Charles Gibson Distinguished University Professor of History, co-directs the international Law in Slavery in Freedom Project, which works closely with scholars in France,

Germany, Brazil, and Cuba. "Because the phenomenon of chattel slavery itself had such a strong international dimension, research on these questions benefits from an international team and multiple archives," she notes. Scott's co-director of the project is Martha S. Jones, an assistant professor of history and a visiting faculty member at the Law School.

• Irwin I. Cohn Professor of Law **Reuven Avi-Yonah**, who oversees the Law School's LL.M. international tax program and the faculty exchange program with Tsinghua University Law School in China (see story on page 9), teaches regularly in China, Argentina, and Israel.

Indeed, in addition to the faculty members who have participated in Michigan Law's teaching exchanges with universities in China and Japan, many members of the faculty have taught as visiting professors at universities around the world, like Thomas G. Long Professor of Law **William I. Miller,** who will be a visiting professor at St. Andrews University in Scotland during the first half of 2007. (See story on page 45.)

Many other faculty members find themselves drawn into international law activities through the connections forged by their domestic work. "Even those whose work focuses on domestic law are drawn to participate in transnational and international projects involving fundamental principles that undergird many legal systems," notes Thomas M. Cooley Professor of Law **Edward H. Cooper**, who has advised American Law Institute projects like Principles of Transnational Procedure, International Jurisdiction and Judgments, and International Intellectual Property.

"My role has been to offer perspectives based on domestic United States procedure," Cooper explains. "I have no foundation in transnational or international law."

And sometimes a faculty member's international experience can be just plain helpful. Take Clinical Professor **Anne Schroth**, for example, a founder of the Law School's Pediatric Advocacy Initiative, which brings together legal, medical, and social work specialists to resolve the medical and other problems of poverty-stricken children before the issues associated with them reach the legal arena.

"I'm not involved in internationally oriented activities," says Schroth, who has lived and worked in Guatemala. "But I do speak Spanish, and I use it to represent clients here in the United States, not for any international purpose."

Another border crossed.

IN DETAIL

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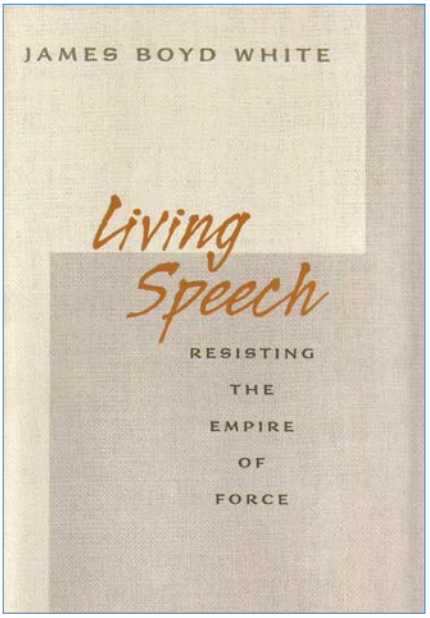
Samuel D. Estep, '46

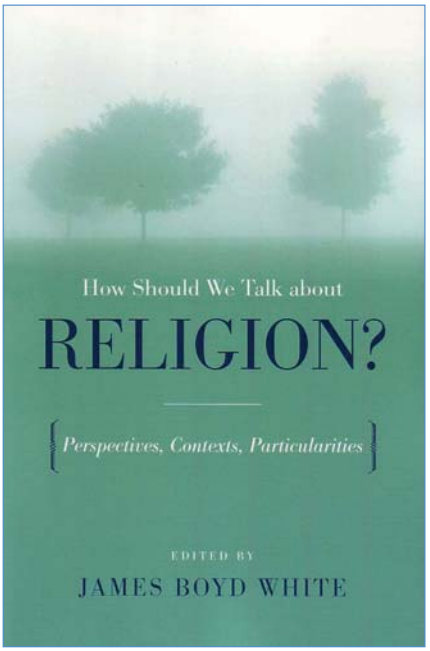
Professor Emeritus Samuel D. Estep, '46, died July 8, 2006. He had joined the Law School faculty in 1948 after practicing law in Detroit for two years after his graduation.

He was promoted from assistant to associate professor in 1951 and to full professor in 1954.

A winner of the Francis Allen Award from the Law School Student Senate for his teaching contributions, Estep was especially interested in the intersection of science and law and the legal issues associated with atomic energy. He published many articles in scholarly journals on the legal problems emerging from the peacetime use of atomic energy.

"Professor Estep devoted his career to teaching in such diverse fields as constitutional law, commercial law, and science and the law," the *University Record* reported on the occasion of his retirement from active teaching in 1989. "His work as a scholar has been devoted primarily to topics drawn from his interest in science and law."





Recent books by James Boyd White

L. Hart Wright Collegiate Professor of Law James Boyd White

James Boyd White and the power and pitfalls of language

James Boyd White, the L. Hart Wright Collegiate Professor of Law at Michigan, immerses himself and his scholarship in our efforts to yoke language to our lives, and his two most recent books, both out this year, continue this quest though coming at it from two different directions.

In *Living Speech: Resisting the Empire of Force* (Princeton University Press), White explores his "long-standing interest in what is at stake—intellectually, ethically, politically—when the human mind meets and tries to use the languages that surround it, in the law and elsewhere: languages that are made by others, that are full of commitments to particular ways of imagining the world—describing it, judging it—and that carry deep within them the habits of mind, the values, of the world in which they are made."

"What I think is at stake at such moments of expression is practically everything, including both the integrity of the individual person and the quality of our larger culture and policy," he writes in his Preface. "In our struggles with our languages we define and reveal the nature of our own processes of thought and imagination; we establish characters for ourselves and relations with others; we act upon the materials of meaning that define our culture, sometimes replicating them, sometimes transforming them, for good or ill. The activity of expression is the heart of intellectual and ethical life."

Roaming through a rich variety of intellectual fields—literature like Dante's *Divine Comedy* and Shakespeare's *Hamlet*; court cases like *Virginia State Pharmacy Board v. Citizens Consumer Council* and *Ashcroft v. Free Speech Coalition*; correspondence like Abraham Lincoln's letter to General Joseph Hooker; Quaker worship practices; and others—White, as his publisher says, reminds us "that every moment of speech is an occasion for gaining control of what we say and who we are."

Some idea of the book's themes can be found in its chapter titles: from "Speech in the Empire," "Living Speech and the Mind Behind It," and "The Desire for Meaning," to "Writing that Calls the Reader into Life—or Death," "Human Dignity and the Claim of Meaning," and "Silence, Belief, and the Right to Speak."

White applies the idea of living speech to the law in two ways. First, he argues that the First Amendment should be understood as having at its core the protection and fostering of living speech; second, he maintains that in deciding cases under the First Amendment, but not only there, it is necessary that judges engage in living speech themselves if the law is to be a powerful agent of resistance to the empire of force rather than its instrument.

According to White, the phrase "empire of force" comes from an essay on the Iliad by the French philosopher Simone Weil, where she uses it to mean not only brutal force and violence of the kind we have always seen in war, and now see in police states, but, more deeply, our ways of thinking and talking and imagining that dehumanize others and ourselves, trivialize human experience, diminish the possibilities of meaning in life, and thus make that kind of force possible: propaganda, sentimental clichés, politics by buzzwords, unquestioned ideologies, and so forth.

In his other book out this year, *How Should We Talk about Religion?* (University of Notre Dame Press), White takes on the role of editor, working like the moderator on the printed page of the 14 chapters that grew out of a seminar of the same title held under the auspices of the Erasmus Institute at the University of Notre Dame in 2000.

"These chapters should not be read as a series of unrelated essays aimed at distinct professional audiences—historians or psychologists, say, or philosophers—but as composed for the diverse audience to which they were originally given and then rewritten for the even more diverse audience we hope this book reaches," he writes. "While each of the writers speaks from a disciplinary base, each of them also questions the nature and limits of that base, both as an independent matter and in connection with the other essays in this book. The writers of these essays know that they speak in different ways, and that these differences are an important part of our subject."

Two examples:

- "Christianity in Spanish America was, in the first instance, a by-product of invasion and conquest. . . . Military and spiritual conquests were thus intimately intertwined, and this correlation of

see "White" on pg. 45

New faculty members deepen, enrich Michigan Law's teaching, research

Michigan Law always has enjoyed the scholarship, pedagogy, and collegiality of outstanding faculty members. The Law School community benefits immensely from its professors' research, writing, and professional and public service activities, and the School is known worldwide as the home of active, involved, and dedicated legal scholars.

This year, the Law School welcomes six new faculty members, and also recognizes two additional professors who will join the active teaching ranks next fall. The addition of these scholars to the ranks of the faculty enhances Michigan Law's depth in issues like criminal law and employment law, and brings to Michigan a widely known expert on the law of remedies and the law of religious liberty. In addition, two of the new professors will add to the School's already high renown in the field of intellectual property.

Here are the new faculty members:

Alicia Alvarez joins the faculty as a clinical professor. She has developed numerous clinics as a faculty member at De Paul University College of Law in Chicago and in El Salvador as a consultant for the National Center for State Courts and DPK Consulting Inc.

Alvarez was a Fulbright Scholar and Visiting Professor at the University of El Salvador, where she co-coordinated a Central American clinical conference. She was also a visiting professor of clinical education at Boston College. She has worked with Business and Professional People for the Public Interest and the Legal Assistance Foundation of Chicago. She was on the National Steering Committee of the Association of American Law Schools' conference on law schools and equal justice issues as well as the chair of the poverty law section.

In addition, she is a member of the Chicago Bar Association and was on the Board of Directors for the Society of American Law Teachers. Alvarez received her B.A., *magna cum laude*, from Loyala University of Chicago and her J.D., *cum laude*, from Boston College Law School.

Eve L. Brensike, '01, joins the faculty as an assistant professor of law. She earned her B.A., *magna cum laude*, from Brown University, and, before entering law school, worked as a criminal investigator for the Public Defender Service in Washington, D.C., as well as a property subrogation paralegal for the Law Offices of White and Williams in Philadelphia, Pennsylvania.

At Michigan Law, where she earned her J.D. *summa cum laude*, she was an articles editor on the *Michigan Law Review* as well as a board member on the Henry M. Campbell Moot Court Board. During law school, she volunteered at a number of public defender and capital defense organizations in addition to working in the Civil Rights Division of the United States Department of Justice.

After law school, Brensike clerked for the Hon. Stephen Reinhardt on the Ninth Circuit Court of Appeals and worked in both the trial and appellate divisions of the Maryland Office of the Public Defender.

Brensike's research and teaching interests include criminal law, criminal procedure, evidence, and *habeas corpus*. Her article "Structural Reform in Criminal Defense Representation" is forthcoming. Her article "Saying Goodbye to a Legend: A Tribute to Yale Kamisar—My Mentor, Teacher, and Friend," appeared in *Michigan Law Review* (2004).

Professor of Law James R. Hines Jr. also is Walton H. Hamilton Collegiate Professor of Economics in the Department of Economics at Michigan, and serves as research director of the University of Michigan Stephen M. Ross School of Business, Office of Tax Policy Research. His area of interest is taxation.

He is a research associate of the National Bureau of Economic Research, research director of the International Tax Policy Forum, and co-editor of the American Economic Association's *Journal of Economic Perspectives*. He was previously on the faculty at Princeton and Harvard, and has held visiting appointments at Columbia, the London School of Economics, and Harvard Law School.

Hines has a B.A. and M.A. from Yale, and a Ph.D. from Harvard, all in economics. Once, long ago, he says, he was an economist in the United States Department of Commerce. His writing has been published widely, appearing in journals such as the *Survey of Current Business, Tax Review, Journal of Policy Analysis and Management, American Economic Review, Harvard Business Review, National Tax Journal, Economica*, and others.

Professor Douglas Laycock is one of the nation's leading authorities on the law of remedies and also on the law of religious liberty. He testifies frequently before Congress and has argued many cases in the courts, including the U.S. Supreme Court.

Laycock is author of the leading casebook *Modern American Remedies*; the award-winning monograph, *The Death of the Irreparable Injury Rule*; and many articles in *Harvard Law Review*, *Columbia Law Review, Supreme Court Review*, and elsewhere.

He is a member of the Council of the American Law Institute and an elected fellow of the American Academy of Arts & Sciences.

Laycock earned his B.A. from Michigan State University and his J.D. from the University of Chicago Law School. Prior to joining U-M Law School, he was associate dean for research and held the Alice McKean Young Regents Chair at the University of Texas Law School, Austin. Before joining UT, he was a professor of law at the University of Chicago Law School.

Laycock is the first holder of Michigan Law's newly-established Yale Kamisar Collegiate Professorship of Law. (See story on page 46.)

Jessica Litman was previously a professor of law at Wayne State University in Detroit, where she taught copyright law, Internet law, and trademarks and unfair competition.

She was also a professor at the University of Michigan Law School from 1984-1990 and a visiting professor at New York University Law School and at American University Washington College of Law. Litman is the author of the book *Digital Copyright* (2nd Ed., Prometheus Books, 2006) and the co-author with Jane Ginsburg and Mary Lou Kevlin of the casebook *Trademarks and Unfair Competition Law* (Foundation Press, 2001). Her work also has appeared in (J.C. Ginsburg and R.C. Dreyfuss, eds.) *Intellectual Property Stories* (Foundation Press, 2006) and in many other scholarly publications.

Litman has testified before Congress and the White House Information Infrastructure Task Force's Working Group on Intellectual Property. She is a trustee of the Copyright Society of the USA and the chair elect of the American Association of Law Schools Section on Intellectual Property. Litman serves on the advisory board for the Public Knowledge organization, is a winner of Public Knowledge's IP^3 award for 2006, and has served on the National Research Council's Committee on Partnerships in Weather and Climate Services.

She also is a member of the Intellectual Property and Internet Committee of the ACLU and the advisory board of Cyberspace Law Abstracts.

J.J. Prescott joins the Law School as an assistant professor. He received his J.D., *magna cum laude*, in 2002 from Harvard Law School, where he was the treasurer (Vol. 115) and an editor of the *Harvard Law Review.*

Prescott clerked for Judge Merrick B. Garland on the U.S. Court of Appeals for the D.C. Circuit, and he was a research fellow at Harvard Law School in 2003-04, a special guest at the Brookings Institution (Economic Studies) in Washington, D.C., in 2004-05, and a research fellow at Georgetown University Law Center from 2004-2006.

Prescott's research and teaching interests include criminal law, sentencing law and reform, employment law, and torts. Much of his work is empirical in focus. He has taught at Stanford University, Harvard Law School, and Harvard's Economics Department.

He was awarded a double B.A. with honors and distinction in economics and public policy from Stanford University in 1996, and is currently completing a Ph.D. in economics at the Massachusetts Institute of Technology.

Faculty designates who begin teaching in fall 2007:

Scott Hershovitz, who will join the faculty as an assistant professor, is currently a member of the appellate staff of the Civil Division of the United States Department of Justice. He graduated *summa cum laude* from the University of Georgia, with an A.B. in political science and philosophy and an M.A. in philosophy. He also holds a D.Phil. in law from the University of Oxford, where he studied as a Rhodes Scholar. He earned his J.D. at Yale Law School, where he was a senior editor of the *Yale Law Journal* and a recipient of the Felix S. Cohen prize.

After graduating from law school, Hershovitz clerked for Judge William A. Fletcher of the U.S. Court of Appeals for the Ninth Circuit. Before joining the Michigan Law faculty in September 2007, he is clerking for Justice Ruth Bader Ginsburg of the Supreme Court of the United States.

Hershovitz's primary research interests are jurisprudence, tort law, and political law. He has published articles in *Virginia Law Review, Legal Theory*, and *Oxford Journal of Legal Studies*, and is editor of *Exploring Law's Empire: The Jurisprudence of Ronald Dworkin*, being published by Oxford University Press this fall.

Margaret Jane Radin is currently the William Benjamin Scott and Luna M. Scott Professor of Law at Stanford University, and director of Stanford Law School's LL.M. Program in Law, Science and Technology. She will join the Michigan Law faculty as a professor of law.

Radin received her A.B. from Stanford, where she was elected to Phi Beta Kappa, and her J.D. from the University of Southern California, where she was elected to Order of the Coif. She also holds an honorary LL.D. from Illinois Institute of Technology/Chicago-Kent School of Law, as well as an M.F.A. in music history from Brandeis University.

A noted property theorist, Radin is co-author of *Internet Commerce: The Emerging Legal Framework* (the first traditional-format casebook on e-commerce, published this year by Foundation Press). She also is the author of *Reinterpreting Property* (University of Chicago Press, 1993) and *Contested Commodities* (Harvard University Press, 1996).

Radin's current research involves intellectual property, information technology, electronic commerce, and the jurisprudence of cyberspace. Most recently, she has investigated the role of contract in the online world, as well as the expansion of propertization through the expedient of treating information as if it were a tangible object. As a teacher, she has pioneered courses in Legal Issues in Cyberspace, Electronic Commerce, and Intellectual Property in Cyberspace. In 2002 she founded Stanford's Center for E-Commerce. She also directs Stanford's innovative LL.M. program in Law, Science, and Technology. Professor Radin is a member of the State Bar of California.

Rebecca Scott's *Degrees of Freedom* wins multiple honors

Professor Rebecca J. Scott, the University of Michigan's Charles Gibson Distinguished University Professor of History, has been chosen winner of the Frederick Douglass Book Prize, which is awarded for the best book on slavery or abolition.

Scott won for her book *Degrees of Freedom: Louisiana and Cuba after Slavery* (Harvard University Press, 2005). The book examines the paths to freedom taken in two sugar-producing societies, and the post-slavery orders constructed in each. It draws upon manuscript materials in archives in Louisiana and Cuba to explore both the structures of coercion that continued after slavery, and the strategies that former slaves and their allies used to challenge those structures. The prize is awarded by Yale University's Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, sponsored by the Gilder Lehrman Institute of American History.

The other two finalists for the prize were Steven Deyle for *Carry Me Back: The Domestic Slave Trade in American Life* (Oxford University Press), and Richard Follett for *The Sugar Masters: Planters and Slaves in Louisiana's Cane World, 1820-1860* (Louisiana State University Press).

The $25,000 annual award is the most generous history prize in the field. The prize will be presented to Scott at a dinner in New York City in February.

This year's three finalists were selected from a field of nearly 80 entries by a jury of scholars that included Mia Bay of Rutgers University, Larry E. Hudson Jr. of the University of Rochester, and Jane Landers of Vanderbilt University. The winner was selected by a review committee of representatives from the Gilder Lehrman Center for the Study of Slavery, Resistance and Abolition, the Gilder Lehrman Institute of American History, and Yale University.

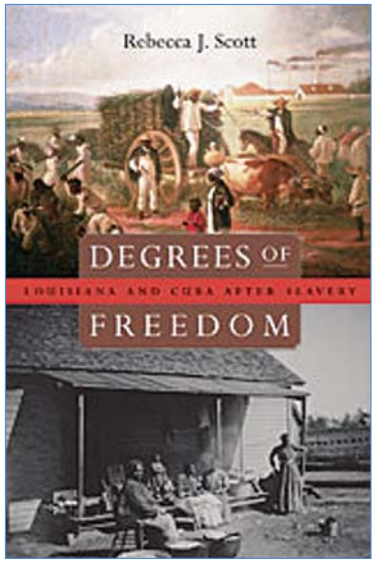
"Rebecca Scott's *Degrees of Freedom: Louisiana and Cuba after Slavery* is a worthy recipient of the Frederick Douglass Prize," said Hudson, an associate professor of history at the University of Rochester. "Its examination of the political obstacles to black freedom in post-emancipation Cuba and Louisiana provides an innovative and exciting approach to comparative history that will influence the study of the black experience for decades to come."

The Frederick Douglass Book Prize was established in 1999 to stimulate scholarship in the field of slavery and abolition by honoring outstanding books. It is named for Frederick Douglass (1818-95), a slave who escaped bondage to emerge as one of the great American abolitionists, reformers, writers, and orators of the 19th century.

Degrees of Freedom also won two other awards:

- The Gulf South Historical Association's annual book award, which was presented to Scott at the association's annual conference in October. The association is a consortium of Gulf Coast area schools including the University of South Alabama, the University of West Florida, Pensacola Junior College, the University of Southern Mississippi, Southeastern Louisiana University, Texas Christian University, and Texas A&M at Galveston.
- The American Studies Association's John Hope Franklin Prize, the association's highest honor, as the best book of the year in the field of American Studies.

Rebecca J. Scott



Michigan Law launches new Business Law Faculty Fellows program

We all have fond memories of going to that "favorite" professor who could help us (you fill in the blank). And in a move to help build those memories—as well as to help law students find teachers, mentors, and leaders who are experienced, highly regarded, and well connected in students' specialized fields—Michigan Law has established a third component of its successful Affiliated Faculty program.

The newest addition, the Business Law Faculty Fellows, follows the successful launch last year of Michigan Law's Public Interest/Public Service Faculty Fellows program, which in turn is similar to the School's successful Affiliated Overseas Faculty program, launched a few years ago.

Each affiliated faculty program groups together experts who "bring a breadth of practical experience to their teaching and interactions with Michigan Law students that enhance the classroom," explains Michigan Law's description of its new group of Business Law Faculty Fellows.

The four Business Law Faculty Fellows, like their Public Interest/Public Service counterparts, are adjunct professors with extensive experience in their respective fields. They "teach courses of special interest to students planning careers in business, they offer career mentoring, organize events to increase students' understanding of career possibilities, and interact with students in smaller settings designed to encourage conversations about business career paths and provide an expanded network of contacts for students interested in pursuing careers in business," the Law School explains of the program.

All four Business Law Faculty Fellows are Law School graduates, which gives them a special insight into the lives and career questions of their students. The fellows are:

Barry A. Adelman, '69, a senior partner at Friedman Kaplan Seiler & Adelman LLP in New York City.

Adelman works with domestic and international clients in activities including mergers and acquisitions; public and private issuances of equity and debt securities; formation and structuring of domestic and international

Barry A. Adelman, '69

corporations, partnerships, limited liability companies, and joint ventures; project financings; secured loan transactions; agreements for the acquisition, construction, and maintenance of communications systems, including vendor financing of such systems; and other commercial transactions.

He also represents and advises individuals and families on business and financial transactions and personal matters.

Adelman teaches courses like Anatomy of a Deal and Seminar Supplement.

Timothy L. Dickinson, '79, a partner in the Washington, D.C., office of Paul, Hastings, Janofsky & Walker LLP, devotes his practice primarily to international commercial matters, including all aspects of political risk insurance, counseling on the Foreign Corrupt Practices Act and U.S. export law, economic sanctions, and International Traffic in Arms Regulations (including enforcement actions), as well as assisting with commercial transactions involving joint ventures and the establishment of operations for U.S. companies overseas. He works closely with U.S. defense industry companies on issues relating to overseas sales and represents political risk insurance entities dealing with coverage issues, dispute arbitration, and recovery activities. He has worked on major infrastruc-

Timothy L. Dickinson, '79

ture projects in the Middle East and Asia and has represented foreign governments in matters of public international law, including treaty rights, expropriation, and sovereign immunity.

Dickinson has been involved in many technical legal assistance projects:

Through the International Human Rights Law Group he participated in development and implementation of the election process in Bulgaria in 1990; he and then-ABA Executive Director Robert Stein were the first official ABA delegation to visit Vietnam and work with the Vietnam Lawyers Association; while chair of the ABA's Section of International Law and Practice, Dicksonson and then-ABA President Jerome Shestak led an ABA delegation to the People's Republic of China whose visit eventually led to conclusion of a Memorandum of Understanding between the ABA and the All China Lawyers Association; and from 1993-98 Dickinson was extensively involved in the ABA's programs in Cambodia relating to assistance to Parliament, the Ministries of Justice and Commerce, and the Cambodian Bar Association. He continues to be involved with programs in ASEAN (Association of Southeast Asian Nations) countries.

In addition to his B.A. and J.D., Dickinson holds the LL.M., earned as a Jervey Fellow at Columbia University; he also has studied at the Hague Academy of International Law in The Netherlands and L'Université d'Aix-Marseille in France and has externed in the Office of the Legal Adviser of the U.S. Department of State. He has worked in the Legal Service of the Commission of the European Communities in Brussels and practiced for 15 years with Gibson, Dunn & Crutcher in Washington, D.C. He was partner-in-charge of Gibson, Dunn & Crutcher's Brussels office from 1990-92. He was an adjunct professor at Georgetown University Law Center from 1983-93.

At Michigan Law, Dickinson teaches Transnational Law and International Commercial Transaction, and serves on the board of the Center for International and Comparative Law. He has chaired the ABA's Committees on European Law and Foreign Claims and its Section of International Law and Practice, has served on the Executive Council of the International Law Institute and the ABA's Asia Law Initiative Council, and chairs the ABA's worldwide technical legal assistance activities with the United Nations Development Program.

Karl E. Lutz, '75, was formerly a senior partner with Kirkland & Ellis in Chicago, but now focuses on teaching, other outside interests, and his role as a Business Law Faculty Fellow.

Karl E. Lutz, '75

At Kirkland & Ellis, Lutz practiced corporate law, specializing in private equity, venture capital, leveraged buyouts, mergers and acquisitions, debt and equity financings, and board representations. He also served on Kirkland & Ellis' senior committee for several years.

Lutz has lectured at numerous graduate law and business schools, and has served as general counsel of a public company. At Michigan Law, he has taught courses in business transactions, private equity and entrepreneurial transactions, law firms and legal careers, and professional responsibility.

Dennis Ross, '78, has enjoyed a career rich in diversity: He has worked in government, academia, private firm practice, and the corporate sector. He began his practice with Davis Polk & Wardwell in New York City, then joined the Michigan Law School faculty in 1982.

Dennis Ross, '78

From 1984-89, he held a variety of positions in the Tax Policy Office of the U.S. Treasury Department, including tax legislative counsel and later acting assistant secretary.

Ross returned to Davis Polk in 1989 as a partner in the firm's tax department. In 1995, he joined the Ford Motor Company as chief tax officer, and in 2000 became Ford's general counsel. He retired from Ford last year, but retains a consulting relationship with the company.

Ross's teaching interests include a variety of tax and business courses.

Leonard M. Niehoff, '84

Michigan Law's Niehoff, '84, cited in ruling against warrantless surveillance

A U.S. District Court judge cited a Michigan Law teacher in the decision she handed down last summer declaring the National Security Agency's warrantless Terrorist Surveillance Program (TSP) unconstitutional because it violates the First and Fourth Amendments.

In her written decision last August, District Judge Anna Diggs Taylor cited an affidavit submitted by Leonard M. Niehoff, '84, an adjunct faculty member who teaches ethics, mass media law, and evidence. Niehoff is a shareholder in the Ann Arbor office of Butzel Long.

Taylor cited Niehoff's affidavit more than once, noting at one point that "the ability to communicate confidentially is an indispensable part of the attorney-client relationship. As University of Michigan legal ethics professor Leonard Niehoff explains, attorney-client confidentiality is 'central to the functioning of the attorney-client relationship and to effective representation.' He further explains that defendants 'TSP' creates an overwhelming, if not insurmountable obstacle to effective and ethical representation' and that although plaintiffs are resorting to other 'inefficient' means for gathering information, the TSP continues to cause 'substantial and ongoing harm to the attorney-client relationships and legal representations.' He explains that the increased risk that privileged communications will be intercepted forces attorneys to cease telephonic and electronic communications with clients to fulfill their ethical responsibilities."

The suit was brought by the national and Michigan organizations of the American Civil Liberties Union and the Council on American Islamic Relations, the National Association of Criminal Defense Lawyers, and others seeking an injunction against the federal government's operation of the TSP.

"This is a challenge to the legality of a secret program undisputedly inaugurated by the National Security Agency at least by 2002 and continuing today, which intercepts without benefit of warrant or other judicial approval, prior or subsequent, the international telephone and internet communications of numerous persons and organizations within this country," Diggs Taylor explained of the plaintiffs' charge.

"The permanent injunction of the TSP requested by plaintiffs is granted inasmuch as each of the factors required to be met to sustain such an injunction have undisputedly been met," she wrote in her decision. "The irreparable injury necessary to warrant injunctive relief is clear, as the First and Fourth Amendment rights of plaintiffs are violated by the TSP."

Miller will visit St. Andrews as Carnegie Centenary Professor

William Ian Miller, the Thomas G. Long Professor of Law, has been named a Carnegie Centenary Professor at St. Andrews University in Scotland and will be in residence there from January-June as a visiting professor.

"A pleasant surprise, to say the least, and I even hate golf," Miller said.

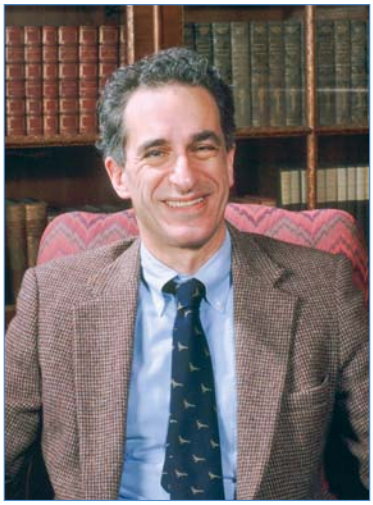
Miller, a member of the Michigan Law faculty since 1984, is a scholar of the Icelandic sagas, emotions (the Association of American Publishers named his book *The Anatomy of Disgust* [Harvard University Press] the best book of 1997 in anthropology/sociology), and the law of the talion, the ancient code that calls for "an eye for an eye" and punishment that equals the crime. Miller's most recent book, *Eye for an Eye* (Cambridge University Press, 2006), is a meditation on the evolution of the code of revenge and the law of the talion and their continuing roles in contemporary life and law.

The Carnegie Trust for the Universities of Scotland established the Carnegie Centenary Professorships in 2001 to mark the centenary of the trust. Nineteenth century business magnate Andrew Carnegie, who was born in Scotland, established the trust in 1901 with a gift of $10 million, a figure that was several times the total of the assistance the government then provided to the four ancient Scottish universities. The trust now supports 13 Scottish universities.

The Centenary Professorships' Web page says the program chooses scholars "of the highest academic standing who will contribute to academic/scientific developments in the Scottish universities in their particular fields, whether in teaching or research or in both, in emerging as well as established disciplines or in interdisciplinary field.

"Such senior scholars of high distinction, by their very presence, will confer benefits on the Scottish universities."

Founded in 1413, the University of St. Andrews is Scotland's oldest university and the third oldest in the English-speaking world. It has a total of about 7,000 undergraduate and graduate students.



Thomas G. Long Professor of Law William I. Miller

"White" cont'd from pg. 37

purposes has shaped Christian experience in Latin America to the present day," Notre Dame Professor in Arts and Letters Sabine MacCormack begins her chapter "A House of Many Mansions."

• Ebrahim Moosa, an associate professor of Islamic studies at Duke University, opens his essay "The Unbearable Intimacy of Language and Thought in Islam", with these words: "Public discussions about Islam are often reductive, hiding more than they are supposed to reveal. Talk about 'Islamic fundamentalism' might give comfort to those who like to talk in ideological keystrokes, but it remains a problematic category precisely because it also carries an unusual and complex political freight."

Others in the book frame their chapters from the perspectives of philosophy, classics, medieval studies, anthropology, economics, political science, art history, and other disciplines.

"Each of the authors had his or her own way of talking about religions, and the merit of this collection lies in large part in the diversity of approach—of discipline and background, age and nationality, religious outlook and intellectual commitment—reflected here," White tells readers. "Yet perhaps there is something of an answer to our question that can be found in this collections of essays, for we found that we talked together much better—more fully, more deeply, more intelligently—than any of us did alone."

An evening of recognition and collegiality

It's a very welcome occasion when faculty members can come together to celebrate each other in the kind of atmosphere of collegiality and easygoing dinnertime conversation that accompanied Michigan Law's Faculty Recognition Dinner in October.

As Dean Evan H. Caminker noted in his welcoming remarks, the opportunity to enjoy such an evening comes too seldom amid the hectic daily schedules of teaching, research, counseling, mentoring, and other activities that fill faculty members' daily lives.

The Recognition Dinner evening included a formal program that gave participants the opportunity to celebrate the career of a long-time faculty member, savor the creation of a professorship in honor of a recently retired professor, thank a departing associate dean and welcome his replacement, and to enjoy the naming of two faculty members to endowed professorships:

Professor Emeritus Layman E. Allen

Professor Emeritus Layman E. Allen, who took emeritus status last spring, drew praise for his cutting edge work in using mathematical logic as an analytical tool in law, employing computers in legal research, and developing now widely popular games of logic and mathematics. His most recent work involves ferreting out unintended ambiguities in legal statutes and the game that grew out of his research, The Legal Argument Game of Legal Relations.

"It has been a great pleasure to come to know you as a friend and colleague," Caminker told Allen.

The inventor of widely used games such as WFF 'N PROOF and EQUATIONS, Allen joined the Michigan Law faculty in 1966. "I had the good fortune in my first year on the faculty to vote for the addition of Layman Allen to the faculty," recalled former dean and Professor Emeritus Theodore St. Antoine, '54. St. Antoine drew appreciative laughter when he explained that Allen was on Yale's faculty at the time but found the New Haven law school a bit too practical for his tastes.

Allen has no pretensions, is "the genuine article" and is "the most 24-carat member of our profession I have ever encountered," St. Antoine said.

Ralph W. Aigler Professor of Law Richard D. Friedman proudly related his daughter's award-winning participation in high school state championships using Allen's games—he held up one of his daughter's trophies as evidence—and could have doubled as a standup comic as he described his own struggle to read the 60-page instruction manual for Allen's game.

Professor Steven J. Croley

Professor Steven J. Croley, who this fall completed three years as associate dean for academic affairs, was praised for his dedication and efficiency and his launch of new initiatives like the highly successful Public Interest/Public Service Faculty Fellows (PIPS) program, which designates a number of adjunct professors with extensive public interest experience for special roles as teachers and mentors.

"I was greatly appreciative when three years ago he expressed his interest in working with me as a team," recalled Caminker, who then was the incoming dean.

Croley's successor, Professor **Kyle D. Logue**, noted that he and Croley were a year apart at Yale Law School and have become close friends since both came to Michigan Law 13 years ago. Logue said Croley's accomplishments are many and varied—from prodigious scholar to marathon runner—but he would focus on "two big things that he did that really made a mark on this institution":

1. Coping with recent budget constraints by enlisting faculty members to teach more courses and/or courses they perhaps had not taught in some time; and
2. "Helping to put the U-M Law School on the map as a place that teaches and takes seriously its public service," by establishing the "extraordinarily successful" PIPS program and "also finding a way to combine his own career with pro bono work." Croley is using his current sabbatical to work as a volunteer U.S. attorney in Detroit.

Yale Kamisar Collegiate Professor of Law Douglas Laycock

Professor Douglas Laycock, a renowned scholar of the law of remedies and the law of religious liberty who joined Michigan Law's faculty this fall, was named to the newly-created Yale Kamisar Collegiate Professorship of Law, named for the recently retired professor.

Professor Don Herzog explained that Laycock is a prolific writer who is widely recognized for his scholarship and intellectual energy. "You name it, and I think he's done it," Herzog said of Laycock's work.

"Everyone has his own Yale Kamisar story," Caminker noted. Indeed, Kamisar himself came to the podium to "set straight" the frequently told tale of how he threw a book at a student and broke the student's glasses. Yes, he said, he did throw the book—underhand, he stressed, underhand—but it was part of demonstrating a legal point. And, yes, he

confessed, he did break the student's glasses. But the student was not wearing them at the time; they were on the desk. And yes, he said, he did pay to replace them for the uninjured student.

Kirkland & Ellis Professor of Law Omri Ben-Shahar

Wade H. McCree Collegiate Professor of Law Kyle D. Logue

Two professors also were named to endowed professorships: Omri Ben-Shahar as Kirkland & Ellis Professor of Law and Logue as Wade H. McCree Collegiate Professor of Law. A specialist in law and economics, Ben-Shahar joined Michigan Law eight years ago and is director of the Law School's John M. Olin Center for Law and Economics.

Caminker noted that the Kirkland & Ellis chair, established at Michigan Law in 1993 with gifts from the firm, William R. Jentes, '56, and Karl E. Lutz, '75, is one of four at U.S. law schools named for the Chicago-based firm, considered one of the best in the nation.

The McCree chair was created in 1988 to honor the one-time Sixth Circuit Court of Appeals judge, U.S. solicitor general, and Law School faculty member. McCree died in 1987. His widow Dores, who retired from the Law School in 1996, daughter Kathleen McCree Lewis, '73, and grandson Aaron McCree Lewis '05, attended the dinner program.

Top: Professor Emeritus Layman E. Allen's exuberant expression says it all as he displays one of his gifts from the Law School.

Above: Professor Steven P. Croley shows the multi-image frame of Law School images he received in recognition of his three-year service as associate dean for academic affairs.

Above: Yale Kamisar Collegiate Professor of Law Douglas Laycock, left, is shown with Kamisar, the Clarence Darrow Distinguished University Professor of Law Emeritus, the longtime faculty member whom the professorship honors.

Above: Omri Ben-Shahar (at left) and Kyle D. Logue have been named Kirkland & Ellis Professor of Law and Wade H. McCree Jr. Collegiate Professor of Law respectively. Logue also is Michigan Law's new associate dean for academic affairs.

Left: Logue spends a moment with Dores McCree at the Faculty Recognition Dinner. His professorship honors McCree's late husband.

ACTIVITIES

Irwin I. Cohn Professor of Law **Reuven Avi-Yonah** hosted and delivered a paper for the inaugural conference of the OECD/INTR (Organization for Economic and Commercial Development/International Network for Tax Research) on "Taxation and Development," which drew more than 50 participants from around the world. During the summer he testified before the U.S. Senate Permanent Subcommittee on investigations of offshore tax shelters; participated in a steering group meeting to prepare for the OECD/INTR conference held at Michigan Law this fall, and taught a course on OECD model tax treaty at Di Tella University in Buenos Aires. Last May, he organized a conference on U.S. and Chinese approaches to transfer pricing at Peking University in Beijing, and delivered a paper at the conference on the evolution of U.S. transfer pricing through 2006.

Professor of Law **Michael S. Barr** has been appointed co-chair of the Equal Access to Justice Committee, Section of Individual Rights and Responsibilities, of the American Bar Association. Barr presented his paper "Transforming the Financial Services Market for Low- and Moderate-Income Households" at the Center for American Progress in Washington, D.C., in July. This fall he spoke about his empirical research in Detroit on household financial services at the Harvard Business School-FDIC forum on consumer finance and at the Harvard University Joint Center for Housing Studies, as well as at the University of Texas Law School.

Omri Ben-Shahar, newly named Kirkland and Ellis Professor of Law, presented his new study "A Bargaining Power Theory of Gap-Fillers" to faculty seminars at Cornell, Duke, and New York universities earlier this year. He has been a visiting faculty member at the New York University School of Law and the University of Chicago Law School during this fall term. Ben-Shahar is the director of Michigan Law's Olin Center for Law and Economics.

Frank Murphy Distinguished University Professor of Law and Psychology **Phoebe C. Ellsworth** presented a paper on confirmation bias in criminal investigations in October at the First Annual Conference on Empirical Legal Studies at Austin, Texas, and a paper on courts' responses to empirical data on the death penalty at a meeting of the Society for Experimental Social Psychology in Philadelphia. She was a panelist to discuss the relation between cognition and emotion at a program of the International Society for Research on Emotion in Atlanta in August, and in July presented a paper on contextual influences on the interpretation of facial expression in Japan and America at the International Association for Cultural Psychology in Spetses, Greece.

Assistant Professor of Law **Nicholas C. Howson** gave a speech entitled "China and Rule of Law" at the Woodrow Wilson Center for International Scholars in Washington, D.C., last fall. In October of last year, he presented "China's Acquisitions Abroad—Global Ambitions, Domestic Effects" at the Law School's International Law Workshop (expanded text published in *Law Quadrangle Notes*, 48.3, Winter/Spring 2006), and shortly thereafter the inaugural lecture at Western Michigan University's "Global Business Lecture Series" on China's reforming capital markets. In January, he was a featured speaker at the Columbia Law School's conference "China's Emerging Financial Markets: Opportunities and Obstacles" in New York City, addressing the role of foreign financial institutions in the transformation of China's banking sector (a presentation he reprised shortly afterwards at the 16th Annual Asian Business Conference at the University of Michigan's Stephen M. Ross School of Business). In February, he gave a paper on the private right of action in securities disclosure cases in China at the Eurasia Group in New York City, which paper he continued to develop in presentations before the Michigan Law School Governance Workshop, directed by Professors **Sallyanne Payton** and **Jill Horwitz** (March) and a more extended lecture before the University of Michigan Center for Chinese Studies (April). Also in March, he gave a faculty presentation at the Law School entitled "China's Hong Kong—'Democratization' of Legislative and Executive Elections Under the SAR's Quasi-Constitution". At the end of April, Professor Howson was in New Haven at the Yale University School of Management China Conference to present his draft chapter on the Chinese legal profession, which is being published in book form by the Yale University Press this fall. After the end of term at Michigan, Professor Howson taught the first half of a U.S. Securities Regulation course with Professor **Vikramaditya S. Khanna** in Beijing, China, under the Michigan-Tsinghua Teaching Exchange Program directed by Professor **Reuven**

Avi-Yonah. While in China, Professors Howson and Khanna also gave lectures at the China Securities Regulatory Commission in Beijing and the Shanghai Stock Exchange in Pudong, Shanghai, on the regulation of securities offerings and market supervision generally. In addition, Professors Howson and Khanna gave a jointly written paper entitled "The Development of Modern Corporate Governance in China and India" at the 3rd Annual Asian Law Institute (ASLI) Conference "The Development of Law in Asia: Convergence versus Divergence" in Shanghai on May 27. In July, Howson submitted written testimony to the U.S. Congress on China's compliance with its WTO commitments in the securities and fund industry sectors (his personal testimony being postponed at the last minute because of a Joint Session of Congress called to hear the Iraqi Premier). For a three-year term commencing with the 2006-7 academic term, Howson was elected to the Executive Committee of the Michigan Center for Chinese Studies. At the end of September, he participated in an author's workshop in Tokyo, Japan, presenting his chapter on Chinese corporate law in the forthcoming volume (Hideki Kanda, Kon Sik Kim, and Curtis J. Milhaupt, Eds.) *A Decade After Crisis: Transforming Corporate Governance in Asia* (Routeledge, 2007) sponsored by the University of Tokyo's Center of Excellence on Soft Law, Seoul National University Center on Financial Law, and the Columbia Law School Center for Japanese Legal Studies. In mid-October, he gave a paper on the application of corporate fiduciary duties principles by the PRC courts at the Tsinghua University Commercial Law Forum's 6th International Symposium on Commercial Law in Beijing, China. In mid-September, he was at Yale Law School to present his paper on new Article 148 of China's 2005 Company Law.

In October, Clarence Darrow Distinguished University Professor of Law Emeritus **Yale Kamisar** delivered a paper on *Miranda v. Arizona* (1966) at the Ohio State University Moritz School of Law; he also delivered the keynote address at a University of Colorado Law School conference on criminal procedure. In September, in commemoration of the 40th anniversary of the *Miranda* decision, Kamisar played Ernesto Miranda's attorney in Chapman University School of Law's re-enactment of the *Miranda* oral argument before the U.S. Supreme Court.

Professor of Law **Ellen D. Katz** served as commentator for the *Houston Law Review*'s Frankel Memorial Lecture in November. In September, she spoke on "Reviving the Right to Vote in the Roberts Court" at the symposium Election Law and the Roberts Court at the Moritz College of Law, the Ohio State University, in Columbus, and discussed "Not like the South: Regional Variation and Political Participation Through the Lens of Section" at a faculty workshop at Notre Dame School of Law. Last spring she spoke on "Cows, Crops, Courts, and Voters: Closing Georgia's Range," as part of the Elizabeth Battell Clarke Legal History Program at Boston University; and delivered comment on the session "Law and the Meaning of Freedom" as part of the colloquium Slavery and Freedom in the Atlantic World: Statutes, Science, and the Seas, sponsored by the Institute for the Humanities at the University of Michigan. Early this year she was a roundtable participant for the program Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate at the Earl Warren Institute for Race, Ethnicity, and Diversity at the University of California's Washington Center.

Douglas Laycock, who joined the Michigan Law faculty this fall, also was named to the newly created Yale Kamisar Collegiate Professorship in Law. (See stories on page 38 and page 46.) Laycock delivered the keynote address, "The Supreme Court and Religious Liberty," at the conference Walls of Fear, Bridges of Hope: Religious Freedom in America, sponsored by The Interfaith Alliance and the Interfaith Social Section Task Force of Temple Beth Emeth and St. Clare of Assisi Episcopal Church in Ann Arbor in October. He also discussed "The Supreme Court and Religious Liberty" in talks to the Ann Arbor Kiwanis Club and reunioning Law School graduates in October, as well as took part in meetings of the Council of the American Law Institute in New York City and of the Advisors to the Restatement (Third) of Restitution and Unjust Enrichment in Philadelphia. In September, he spoke on "Government Money, Government Speech, and the Establishment Clause in the Supreme Court" at the conference From the State House to the Schoolhouse: Religious Expression in the Public Sphere, sponsored by the Program on Law and State Government at the Indiana University School of Law in Indianapolis. In July he spoke on "The Federal Law of Sovereign Immunity" at the Continuing Legal Education

Program on Suing and Defending Governmental Entities sponsored by the State Bar of Texas in San Antonio. And in June he participated in the invitation-only conference of academics and practitioners on Church Autonomy sponsored by the Christian Legal Society in Springfield, Virginia.

Director of the Law Library **Margaret A. Leary** has been elected president of the Board of Trustees of the Ann Arbor District Library. She was elected to the board in spring 2004.

Richard O. Lempert, '68, the Eric Stein Distinguished University Professor of Law and Sociology, has been elected president of the Law and Society Association, chosen secretary of the Political and Social Science Section of the American Association for the Advancement of Science, and named to the council of the Sociology of Law Section of the American Sociological Association. He is editor of *Evidence Stories*, which Foundation Press published last summer.

Professor of Law **Jessica Litman**, who joined the Michigan Law faculty this fall from a faculty position at Wayne State University Law School in Detroit, delivered the paper "Lawful Personal Use" at the University of Texas Law School's symposium Frontiers of Intellectual Property. The paper will be published in volume 85 of *Texas Law Review*. (Michigan Law Professor and intellectual property expert **Rebecca Eisenberg** also participated in the symposium, as did Margaret Jane Radin, who joins the Law School's faculty next year.) In October, Litman, responding to an invitation from Seattle University Law School Professor Maggie Chon, '86, presented a paper in that law school's Powerful Ideas, Influential Voices speakers series. Last June, she spoke on "The Politics of Copyright Law" at a plenary session of the Association of American Law Schools' mid-year meeting/workshop on Intellectual Property and delivered the paper "The Economics of Open Access Law Publishing" at a concurrent session of the same workshop. The latter paper appears this fall in volume 10 of the *Lewis & Clark Law Review.*

Assistant Professor of Law **John A.E. Pottow** delivered his paper "Reckless Lending" at the Canadian Law and Economic Group meeting in September in Toronto.

Professor of Law **Adam C. Pritchard** in November participated in the Federalist Society's National Lawyers Convention, visiting Seoul College of Law, and served as commentator for the Korea Securities Dealers Association's conference on Conflicts of Interest in Investment Banking. In August he served as visiting professor at the University of Iowa Collge of Law.

Professor of Law **Steven R. Ratner** earlier this year was featured speaker on "Renditions and Targeted Killings in the Global War on Terror: What Place for International Law?" at the International Law Society of the University of Tokyo Colloquium on the subject in Tokyo. In April he was a panelist discussing "Responding to Mass Atrocities: Intervention, Prosecution, or Both?" at the conference The Crisis in Darfur: International Response to Genocide in the 21st Century at Eastern Michigan University in Ypsilanti, and presented the paper "Predator and Prey: Seizing and Killing Suspected Terrorists Abroad" at the conference Philosophical Issues in International Law at the University of North Carolina at Greensboro. Late last year he was featured speaker for the University of Michigan Center for Southeast Asian Studies Lectures Series Seminar on the Khmer Rouge Genocide Trial and commentator on a paper by Professor Fritz Allhoff from the University's Bioethics, Value, and Society Faculty Seminar on Physician Involvement in Hostile Interrogations.

Hessel E. Yntema Professor of Law **Mathias W. Reimann**, LL.M '83, has been honored with election as a Titular Member of the International Academy of Comparative Law. During the summer he also presented a workshop in Zurich, Switzerland, on the systemic advantages of American-style lawyering in the 21st century (the workshop was organized by Professor Doctor Jens Drolshammer, M.C.L. '71) and spoke on the same topic at the University of Bonn; and delivered a report on "Pure Economic Loss" jointly with Professor Nils Jansen of the University of Dusseldorf at the XVIIth International Congress of Comparative Law in Utrecht, Netherlands.

James E. and Sarah A. Degan Professor of Law Emeritus **Theodore J. St. Antoine**, '54, spoke on "Human Rights in the Workplace" in September at a meeting of the International Association of Labor Law Journals in Paris, France.

Clinical Assistant Professor of Law **Vivek Sankaren**, who was certified last spring as a Child Welfare Law Specialist by the National Association of Counsel for Children, did a presentation on "Strengthening the Delivery of Legal Services to Parents" at the National Association of Counsel for Children

conference in Louisville in October. Last August he served as expert consultant to the roundtable discussion for SafeHavens Domestic Violence Technical Assistance Providers in Atlanta.

In August, **A.W. Brian Simpson**, the Charles F. and Edith J. Clyne Professor of Law, delivered the inaugural Salmond Lecture and participated in the Salmond Symposium "Developing a New Zealand Jurisprudence" at the University of Wellington, New Zealand. The symposium commemorated the centennial of the arrival of Sir John Salmond (1862-1924) as the first professor of law at Victoria. Simpson also taught a class on the economic analysis of Victorian tort law at Victoria University and gave a seminar on litigation to secure redress for the indigenous inhabitants of the Chagos Islands in the Indian Ocean, who were displaced between 1967 and 1973 to facilitate establishment of the U.S. Diego Garcia airbase known as Camp Freedom.

Lawrence E. Waggoner, '63, has been appointed reporter for the Uniform Law Conference Committee to revise provisions of the Uniform Probate Code dealing with intestacy rights of children, especially children of assisted reproduction, which held its first meeting in October.

James Boyd White, the L. Hart Wright Collegiate Professor of Law, is author of the just-published *Living Speech: Resisting the Empire of Force* (Princeton University Press) and editor of the newly published essay collection *How Should We Talk About Religion?* (See story on page 37.) In October, he spoke on law and literature at a conference in Como, Italy, and also lectured on the subject at the University of Milan.

Visiting and adjunct faculty

Visiting professor **David Driesen**, the Angela S. Cooney Professor at Syracuse University College of Law, used the fall term to give his Environmental Law students a preview of his forthcoming book *Environmental Law: A Conceptual and Pragmatic Approach* (co-written with Robert Adler), teaching from a draft of the book, to be published next year by Aspen. In October, he delivered the paper "The Kyoto Protocol and Renewable Energy: Is There a Role for Fiscal Policy?", at the seventh annual Conference on Environmental Taxation in Ottawa, hosted by the Law Faculty of the University of Ottawa. In September, he moderated a panel discussion on International Law and the Great Lakes at the Law School as part of the Environmental Law Society's symposium on the Great Lakes.

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Michigan Law alumni directory work moves ahead

Compilation of the information that graduates have provided for the new Michigan Law alumni directory will begin this winter after telephone verification of the data is completed.

Harris Connect Inc., which is producing the directory for the Law School, has begun conducting telephone verification of the data you graduates have provided, and will continue this process through January. After that Harris will begin compiling the data and preparing it for publication. Distribution of the directory is expected by mid-summer.

The new directory, the Law School's 11th, will contain a wealth of information about Michigan Law's nearly 20,000 graduates, including name, graduation year, work affiliation, legal practice area, and e-mail addresses for those who provide them. In addition to letting you search for an individual graduate, the directory will group classmates and other graduates by class year, geographic area, and/or professional practice specialty. All Law School alumni will appear in the directory, and online through our password protected "Alum Network," unless exclusion is specifically requested.

Accurate compilation of such a massive amount of data is a huge and rigorous undertaking that takes many months to complete. Work on the directory began last summer when a letter from Dean Evan H. Caminker went out to all graduates explaining the project and enclosing a questionnaire for return by October 1. Those who preferred to update information online could go to www.alumniconnections.com/update and use their ID password (as provided by Harris Connect via letter or e-mail) to access the questionnaire page.

In October, a followup postcard was mailed to remind those who had not completed and returned their questionnaires, either by telephone, mail or online, to do so, and to order a directory. (Alumni may call the publisher directly to update their information via the telephone number provided on the postcard.)

Now, as we approach the last month of 2007, work on the project is shifting to verification of the information that you have provided so that it can be compiled and sorted into the various categories that the directory will include.

The goal is to make the directory "as comprehensive as possible," notes Dean Caminker.

"The directory will become an invaluable resource for your professional life as well as for maintaining and renewing Michigan Law School friendships from your class year and in your part of the world," Caminker says. "Once again, in addition to indexes by class year and metropolitan area, the directory will include an index by field of practice."

Matt Meyer, '02

Matt Meyer, '02: Michigan Law known worldwide for service

Matt Meyer, '02, recalls the tragedy keenly:

He was in Kenya, and a man asked him for $6 so he could hire a taxi to take his sister, seriously ill with dysentery, to the hospital. Meyer was carrying only $1 at the time, and quickly gave it to the man, who used the money to board a bus with his ailing sister. Meyer knew the ride to the hospital would take the pair at least an hour.

Later, Meyer ran into the man again, and learned that his sister had died because she had not got to the hospital quickly enough.

"She died for lack of $5," Meyer exclaimed, recounting the story to incoming Law School students enjoying a barbecue dinner under the tent after completing the Service Day portion of their orientation.

Meyer, now an attorney with Simpson Thacher & Bartlett in New York City, was so moved by his undergraduate experiences in Kenya that he founded the Akala Project there to provide jobs to local people by manufacturing footwear from castoff vehicle tires. Later, while in law school, he and a fellow student formed Ecosandals (www.ecosandals.com) to sell the sandals worldwide. Over the past five years, Ecosandals has helped generate about $140,000 for people who often struggle to earn $1.40 each weekly. Ecosandals also has established an evening high school for its employees.

Ecosandals has been recognized by the Jefferson Awards, the World Bank, and CNN, and media in some 17 countries on four continents have done reports on the effort.

Meyer has been active in such public service throughout his adult life. Before attending Michigan Law he served in Teach for America in the District of Columbia, where he taught fourth grade and computers, recruited colleagues to establish the See It, Believe It, Achieve It Academy for more than 80 elementary school students, and coached a team of fifth and sixth grade computer neophytes to the final round of a global Web site design competition. After law school, he used his Skadden Fellowship to establish a community economic development clinic in his native Delaware to offer pro bono legal services to nearly 100 small business and nonprofit clients.

Now a practicing attorney, he works with investment funds, large mergers, and public issuances of stock. He also has continued his pro bono work, successfully representing asylum seekers, offering assistance to low-income entrepreneurs, and co-coaching a team of high school students to the semi-finals of the largest city moot court competition in America.

"You are entering a law school known around the world for service," Meyer told his listeners. Law "implements the values we believe in," he said, urging his listeners to use what they learn to help others as well as earn their own livelihoods. "You're learning in a law school known as the top of the top, and with that comes responsibility."

New students spend Service Day working at a variety of community agencies that assist the hungry, drug dependent, abused mothers, and others. The dinner was sponsored by Michigan Law's Office of Public Service and the Office of Development and Alumni Relations.

Service Day is supported through a gift from Randy Mehrberg, '80, and his wife, Michele M. Schara, establishing the Randall E. Mehrberg and Michele M. Schara Fund for Public Service in Honor of Susan M. Eklund, '73. The gift has substantial matching support from the Chicago-based energy company Exelon, for which Mehrberg is executive vice president and general counsel. Eklund, the U-M's associate vice president for student affairs and dean of students, was the Law School's dean of students for 20 years.

A look at the class of 2009

First-year law students 369
(from 42 states, 13 countries, 143 universities)

Median LSAT score 168

Median GPA 3.67

Minority enrollment 28%
African American ..... 7 %
Latino ..... 5 %
Native American ..... 2 %
Asian American ..... 14 %

Male 55%

Female 45%

Mean age ..... 24.2 yrs
(More than two-thirds have taken off one or more years after undergraduate education; 15 percent have graduate degrees.)

Entering LL.M. candidates 35
(from 20 countries)

Second-year transfers 38

Fiske Fellows hold 5th anniversary reunion in Washington, D.C.

Robert B. Fiske Jr., '55, and Dean Evan H. Caminker, center, are shown with Fiske Fellows at the fellowship program's fifth anniversary reunion in Washington, D.C., last spring. Fiske, a partner with David Polk & Wardwell in New York and the first independent counsel for the Whitewater investigation, endowed the Robert B. Fiske Jr. Fellowship Program for Public Service in 2001 to encourage graduating law students to enter public service. The program supports three new graduates for three years by providing debt repayment assistance on all educational loans and a first-year stipend. Fiske's own public service has been extensive: In addition to acting as the first Whitewater independent counsel, he has served as assistant U.S. attorney and U.S. attorney in the Southern District of New York, as chairman of the Attorney General's Advisory Committee of U.S. Attorneys, as chairman of a Judicial Commission on Drugs and the Courts, and a member of the Webster Commission's Commission for the Review of FBI Security Programs. From left, front row, are: Frank Karabetsos, '01; Kristen McDonald, '06; Bethany Hauser, '02; Dean Caminker; Fiske; Christopher Rawsthorn, '03; and Tara Sarathy, '02. Back row, from left: Joseph Syverson, '05; Ryan Danks, '02; George Torgun, '02; Aaron DeCamp, '04; Michael Kabakoff, '03; and Steven Bressler, '01. The 2006 fellowship winners are McDonald, serving at the Philadelphia (PA) District Attorney's office; Syverson, '05, working at the tax division of the U.S. Department of Justice in Washington, D.C.; and (not shown) Peter Mazza, '05, who is working at the U.S. Attorney's office in San Diego.

Graduates' books offer tips for practitioners

Two new books by Michigan Law graduates offer solid how-tos for practicing law and avoiding the trap of writing the obtuse prose disparaged as legalese.

In *The Curmudgeon's Guide to Practicing Law* (American Bar Association, 2006), Mark Hermann, '83, offers solid tips wrapped in good humor in chapters like How to Fail as an Associate, How to Enter Time so that Clients will Pay for It, and Dress for Success. And in *Lifting the Fog of Legalese: Essays on Plain Language* (Carolina Academic Press, 2006), Thomas M. Cooley Law School Professor Joseph Kimble, '72, offers suggestions for clear writing and provides working examples of turgid, repetitive legal writing and how it can be—and in many cases was—improved.

These volumes are slim—*Curmudgeon* is 140 pages, *Lifting the Fog* 200 pages—and each easily packs into a laptop or overnight bag. It's easy to imagine one or both quickly becoming dog-eared and well-traveled.

Hermann, a partner with the international firm Jones Day in Cleveland, uses his curmudgeonly approach to offer blunt advice that can be helpful to new and longtime practitioners alike. On taking depositions, for example:

"When you ask questions at depositions, remember that those questions are likely to be read later at trial. Many lawyers seem to forget this. At trial, we typically go out of our way to speak like just plain folks. We abandon the elevated diction that we use in the ordinary course of our lives, and we substitute two-bit words for the dollar-fifty ones that we regularly use. Thus, at trial, many lawyers will choose to ask, 'When you signed page three, did you know that this was a done deal?' instead of, 'By affixing your signature to the contract, did you understand that contract formation thereby occurred?'

"That's good strategy. You can't sound like a jerk in front of a jury. But remember, your deposition questions are also likely to be read to the jury. It doesn't do much good to sound like an ordinary person when you're live in front of the jury, only to have the jury hear deposition questions that sound as though they were posed by pointy-headed Ivy Leaguers. Worse yet, if the deposition was videotaped, the jury will hear your own voice, in all of its pointy-headedness, and the jury will know that you're just faking it at trial. There's only one way to fix this. Avoid elevated diction at depositions as surely as you avoid elevated diction at trial."

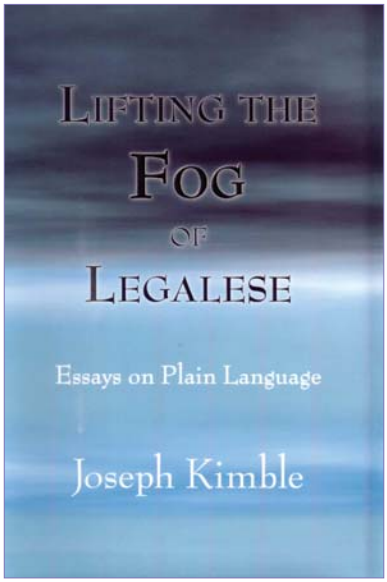
Hermann even includes a chapter called The Curmudgeonly Secretary that was written by his assistant. An example: "If you want me to act like I'm part of your team, treat me like I'm part of your team. If you treat me like I'm a piece of office equipment, I'll act accordingly. And given how often office equipment breaks down, that's not a good idea."

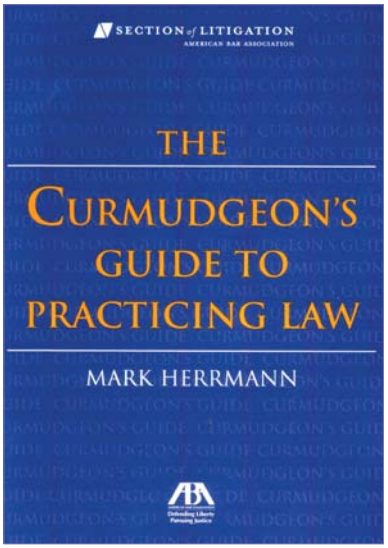
In contrast to Hermann's more general guide, Kimble's book focuses on the writing and written documents that are at the heart of so much of legal practice. Kimble teaches research and writing at Thomas M. Cooley Law School, where he has been a fulltime faculty member since 1984, lectures worldwide on the subject, and practices what he preaches through his own writing.

Kimble is executive director of Scribes (the American Society of Writers on Legal Subjects) and editor in chief of *The Scribes Journal of Legal Writing*. He has lectured on writing to legal organizations throughout the English-speaking world and is the drafting consultant to the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and led the work of redrafting the Federal Rules of Civil Procedure.

He's collected a number of essays he has written over the past 15 years into *Lifting the Fog of Legalese*, which culls from Kimble's "Plain Language" column

see "Books" on pg. 56





"Books" cont'd from pg. 55

in the *Michigan Bar Journal* and other publications that he edits.

"The legal vocabulary is commonly archaic and inflated" and "tends to be poorly organized and poorly formatted," Kimble writes in his Introduction. The result, he says, "is legalese—a form of prose so jumbled, dense, verbose, and overloaded that it confuses and frustrates most everyday readers and even many lawyers."

That said, he sets the stage for his book with examples, like:

- *From a letter:* Please be advised that I am in receipt of your letter in regard to the above matter and have enclosed my response to the same.
- *In other words:* I received your letter about the Spann case and have enclosed my response.

Or,

- *From a contract* (a standard provision): If any term, provision, Section, or portion of this Agreement, or the application thereof to any person, place, or circumstance, shall be held to be invalid, void, or unenforceable by a court of competent jurisdiction, the remaining terms, provisions, Sections, and portions of this Agreement shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
- *In other words:* If a court invalidates any portion of this agreement, the rest of it remains in effect.

"Such a mess we lawyers have gotten ourselves into," writes Kimble. "And because law touches almost everything in some way, so does the fog of legalese. I think no reform would more fundamentally improve our profession and the work we do than learning to express ourselves in plain language. To that end, this book."

John Warner Fitzgerald, '54

Former Michigan Supreme Court Justice John Warner Fitzgerald, '54, died July 7 after a lengthy illness. He was 81.

Fitzgerald served on the state's highest court from 1974-82. He previously had served as a state senator, 1958-62, and as a judge on Michigan's Court of Appeals, 1964-74.

He also was a professor at Thomas M. Cooley Law School in Lansing and served on the school's original board.

Public service was characteristic of Fitzgerald's family:

- His father, Frank D. Fitzgerald, served two terms as Michigan secretary of state and died in 1939 during his second term as governor;
- His grandfather, John Wesley Fitzgerald, served in the Michigan House in 1895-96;
- And his son, Frank M. Fitzgerald, served in the state House from 1987-98 as state financial and insurance services commissioner from 2000-03. Frank M. Fitzgerald died in 2004.

Reunion: A time to come back home

Class Reunion, a time to re-connect with all that your legal education means. From once again seeing former classmates to visiting former teachers or leading your family through the halls where you took the first steps in the legal career you have followed since.

Each year Michigan Law hosts two reunion weekends, and the first came this year immediately after classes resumed. During the weekend of September 8-10, members of the classes of 1981, '86, '91, '96, and 2001 and their families and guests returned to the Law School for a wonderful fall weekend of friends, family, football, and reconnection.

Two members of these reunioning classes also stepped into the roles of speakers for the occasion: former U.S. Senator Peter Fitzgerald, '86, addressed his fellow graduates prior to the tailgate luncheon that preceded the Michigan vs. Central Michigan football game (Michigan won 41 to 17); and Frank H. Wu, '91, dean and professor of law at Wayne State University in Detroit, was speaker for the Minority Alumni Breakfast that kicked off the day's reunion activities. The following stories, with photos of the speakers, report on these talks.

A report and photos of the second reunion weekend, October 27-29, will appear in the spring issue of *Law Quadrangle Notes.*

Peter G. Fitzgerald, '86: 'I care'

Former Illinois U.S. Senator Peter Fitzgerald brought laughter to his fellow graduates when he recalled his first class as a summer starter at Michigan Law in 1983:

His professor, Thomas G. Kauper, '60, now the Henry M. Butzel Professor of Law, scanned through the names of students before him and "somehow settled on my name, Peter Fitzgerald." Surprised to be called on, but nonetheless prepared, like most new law students are, Fitzgerald dutifully answered to the best of his ability.

"So what, Mr. Fitzgerald," Kauper shot back when he had finished. "Who cares?"

Having weathered that initiation, Fitzgerald was well on his way to his J.D. And he never stopped caring. That's why, he recounted for fellow graduates during September's reunions for the classes of 1981, '86, '91, '96, and 2001, he struggled against pressures from within and outside the U.S. Senate to have Patrick G. Fitzgerald (the two men are not related) named U.S. Attorney for the Northern District of Illinois. Fitzgerald, the special investigator for the CIA outing case, is the prosecutor whose work led to last summer's conviction for graft and sentencing of former Illinois Governor George Ryan to six and one-half years in prison.

As the only U.S. Senator from the party in power, Fitzgerald, a Republican, had the traditional right to name a nominee to the U.S. Attorney post. Spurred by the story of how longtime *Chicago Tribune* editor/publisher Colonel Robert R. McCormick had gone to President Herbert Hoover seeking a Chicago outsider to break the power of Al Capone—Hoover sent in U.S. Treasury agent Elliot Ness and his team, who brought down Capone on tax evasion charges—Fitzgerald sought out high level advice at the FBI and elsewhere to name the best prosecutor he could find. The name that came back: Patrick G. Fitzgerald, then an assistant U.S. Attorney in New York. Politically unaffiliated and nonpartisan, Patrick Fitzgerald himself expressed shock when contacted about taking the traditionally political appointment in Chicago.

But sticking to his guns is what Peter Fitzgerald was known for in the U.S. Senate and the Illinois legislature before that. A Republican maverick, he spent a total of 12 years in the two posts, ending his U.S. Senate term in 2005 after enjoying what he calls "a wonderfully tough experience."

In a talk peppered with insider's tales, Fitzgerald frequently drew knowing nods, smiles, and laughter from his audience. He recalled that he was only 38 when he was sworn into the U.S. Senate, becoming that chamber's youngest officeholder and nearly 30 years younger than most U.S. Senators. In contrast, Sen. Strom Thurmond of South Carolina was 96 at the time, he noted.

Fitzgerald spent his first weeks as U.S. Senator hearing the impeachment of President Bill Clinton, the first U.S. president to be impeached in 130 years. "Every time I'd get tired, I'd look over at Strom Thurmond, and he'd be wide awake, there in the first row, 96 years old," Fitzgerald recalled. At the time

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"Fitzgerald" cont'd from pg. 57

Thurmond exercised 45 minutes daily and swam laps in the Senate pool once a week. At a break in the impeachment proceedings, the incredulous junior senator approached Thurmond and said, "I hope at your age I'm as active as you. He looked down at me and said, 'Son, you're not that active now.'"

About 90 percent of lawmakers' time is spent working with the proposals of special interest groups, Fitzgerald related. Usually, but not always, such proposals are presented as in the public interest but actually further a narrow interest. "I always tried to do my best to peel the onion on any bill that purported to be in the public interest. . . . I tried to find those areas where the narrow special interest jibed with the public interest."

For example, Fitzgerald noted, baby seat manufacturers lobbied for laws to require the seats in automobiles, but such a position also served a society-wide public interest. It was a very different case with the manufacturer of synthetic blood that wanted the Defense Department to pay for testing it on soldiers injured in Iraq.

"It was a constant effort to scrape away the rhetoric," Fitzgerald explained.

But this is the system the Founding Fathers envisioned, he noted. They defined tyranny as the unification of legislative, judicial, and executive authority into a single king, so they separated those powers into the three arms of their new government. Then they built further checks into the separated powers: a bicameral legislature, appeals courts and the Supreme Court, "to create a system so robust" that all interests can compete in its arena.

During a brief question and answer session following his talk, Fitzgerald noted that although he voted in favor of the McCain-Feingold Campaign Finance Bill he still feels there are difficulties with the way American political campaigns are funded. He also decried the gerrymandering that occurs when the political party in power redraws congressional districts every decade in a way designed to retain its hold on political power. "That's a big hole in our democracy now," he noted.

Fitzgerald, who was the Law School's commencement speaker in May 2004, was a banking executive before his legislative career, and he is re-entering the banking field now that he has returned to private life. He is establishing a new bank in McLean, Virginia, where he now lives.

Former Illinois U.S. Senator Peter G. Fitzgerald, '86

Frank H. Wu, '91: Affirmative action brought me home

Why did Frank H. Wu, '91, return home to Detroit three years ago to become dean of Wayne State University Law School after a more-than-decade-long career as teacher and community leader in Washington, D.C.?

He grew up in Detroit, and like so many people, he left the area after receiving his B.A. from Johns Hopkins and his J.D. from Michigan Law, first to practice law in San Francisco, then to teach at the predominantly black Howard University in the nation's capital.

"I came back because of the University of Michigan and affirmative action," he told those attending the Law School's annual breakfast for minority and other graduates. The breakfast was part of events during the September 8-10 reunion weekend last fall.

Like so many others, Wu said, he saw a Detroit during the 1980s and '90s that had become a shell of the vibrant city that once had been the fourth largest in the United States. But when he returned to testify in the University of Michigan's affirmative action/admissions case, he saw renovation in Detroit and "I wondered if a renaissance actually was happening." He saw new condominiums going up along Woodward Avenue, where nothing had been built during the two previous decades. He saw new businesses opening. He decided it was time to return, to contribute.

"I'm not naïve," he explained. "Many of these initiatives will fail. But some will succeed, because they have the leadership and dedication to succeed." And that is what counts, for the successes are showing the falsity of racial stereotypes associated with Detroit and other cities, stereotypes that Wu considers "flimsy but profound in their power."

Wu, co-author of *Race, Rights and Reparation: Law and the Japanese American Internment*, and author of *Yellow: Race in America Beyond Black and White*, is a highly regarded scholar and author, and often has debated affirmative action opponents. But now, he said, he declines to participate in such debates because he has come to believe it is a two-fold mistake to enter the fray.

- First, because debate so often involves antagonistic point-counterpoint instead of civil dialogue, and because debates often are conducted in sound bite type comment and suggest that there only are two alternatives and the solution can be achieved in 60 or 90 minutes. "I'd like to support the idea that we have a dialogue, with all as equals, so that we can see the complexities and ambiguities," he said. "When we debate, what we do is debase the very subject we debate."
- Second, because debates of affirmative action often begin with the programs of affirmative action, rather than original, abiding issues of racial and gender discrimination and disparity. "If we change the question that is asked, it changes the entire conversation," he said.

So how do you do that? a listener asked. Be a helper, not a challenger, according to Wu. Ask how agreed upon American ideals can be put into effect rather than dwelling on why they haven't been.

Start by taking many people at their word, he advised. When a law firm's diversity officer decries the firm's lack of diversity, or you hear a speaker talk about the benefits of having a business, organization, or other institution incorporate a diversity of personnel that mirrors the racial, ethnic, and/or gender makeup of the United States, take them at their word, he advised. Offer to work with them toward a solution, telling them "let's sit down and work out the nitty gritty."

"If we can force people to be true to their rhetoric," Wu noted, "we can make progress."

Frank H. Wu, '91; dean of Wayne State University Law School

From top:
William H. Dance, '49; Robert M. Veracruysse, '68

1949

William H. Dance, of counsel with Vercruysse Murray & Calzone, was honored with a Distinguished Service Award from the Michigan chapter of the American Immigration Lawyers Association. He has practiced immigration law for more than 45 years and is a founder of the organization. In recognition of his exceptional and dedicated service, the award has been named after him.

1954

Lawrence L. Bullen was awarded an honorary Doctor of Laws degree by Spring Arbor University in Spring Arbor, Michigan, in recognition of his lifetime of public service.

1956

The Council of Michigan Foundations recognized **Raymond H. Dresser Jr.** with a special award for community foundation philanthropy. Dresser helped found the Sturgis Area Community Foundation and has supported it for more than 40 years.

1964

Alan R. Kraves has been elected to the board of the International Association of Attorneys and Executives in Corporate Real Estate. He is president of Sheldon Good & Company, Auctions LLC, in Chicago.

William R. Radford, managing partner in the Miami office of Ford & Harrison LLP, has been selected as a "super lawyer" by a vote of his peers and *Law & Politics* magazine. He practices labor and employment law

1965

Timothy D. Wittlinger of Clark Hill was honored by the Oakland County Bar Association for 40 years of service. He specializes in technical contract litigation and has served on the Oakland County Bar Association mediation committee.

1967

Lewis T. Barr of Ulmer Berne LLP in Cleveland has been named in the *Best Lawyers in America*. He practices tax law.

Calvin Bellamy, chairman and chief executive officer of Bank Calumet, has joined the Hammond, Indiana, office of Krieg DeVault LLP as a partner. He is a member of the firm's estate planning, financial institutions, and business practice groups.

Jeffrey H. Miro, partner in Honigman Miller Schwartz & Cohn and adjunct professor at the Law School, has been appointed to the board of directors of Limited Brands Inc.

Philip A. Nicely of Bose McKinney & Evans LLP in Indianapolis has been named as one of the best lawyers in the country by *The Best of the U.S.* He is chair of his firm's real estate group.

1968

David L. Callies, Benjamin A. Kudo Professor of Law at William S. Richardson School of Law in Honolulu, is co-author of *The Role of Customary Law in Sustainable Development*. He teaches land use, state and local government, and real property and is co-editor of *Land Use and Environmental Law Review.*

Warren S. Grimes was named the Irving D. and Florence Rosenberg Professor of Law at Southwestern Law School in Los Angeles. A member of the fulltime faculty since 1988, he teaches courses in administrative and antitrust law and is co-author of *The Law of Antitrust: An Integral Handbook*.

Chambers USA recognized **Robert M. Veracruysse**, shareholder in Vercruysse Murray & Calzone, in its 2006 edition. He practices employment, labor, and civil rights law.

From top: Michael B. Staebler, '69; David M. Lick, '70; Eric Schneidewind, '70; Alan T. Ackerman, '72; Theodore Nowacki, '72; Philip "Chip" Ahrens, '75






1969

Michael B. Staebler, partner with Pepper Hamilton LLP and a member of the firm's executive committee, has been appointed to the Michigan Economic Development Corporation executive committee and corporation board.

Anthony Van Westrum was honored by the Denver Bar Association with the award of merit, its highest honor, for outstanding commitment to the community and the legal profession. He chairs the Colorado Bar Association's Amicus Brief Committee, is a member of the Legislative Policy Committee and Ethics Committee, and represents the Business Law section on the board of governors.

1970

David M. Lick has joined Forster, Swift, Collins & Smith P.C. in Lansing as a shareholder. He practices commercial litigation, business, and corporate law in the firm's commercial litigation practice group and has been an adjunct faculty member in the department of natural resources at Michigan State University.

Steve Schember has been elected chairman of the Outback Bowl game in Tampa for a one-year term. He is a senior partner in the litigation group of Shumaker, Loop & Kendrick.

Eric Schneidewind was named president of AARP Michigan. He previously served on its executive committee and is a former chair of the Michigan Public Service Commission. He is counsel to Energy Michigan, a trade group of Michigan businesses and end users.

Isaac Schulz of Ulmer Berne LLP in Cleveland has been named in the *Best Lawyers in America*. He is chair of the firm's health care group.

1972

Alan T. Ackerman, managing partner of Ackerman & Ackerman in Troy, Michigan, received a distinguished service award from the Oakland County Bar Association, the organization's most prestigious award. He has been a member of the association's foundation board of trustees since 2003.

Richard M. Lavers was named chief executive officer of Coachmen Industries Inc. in Elkhart, Indiana.

The Kansas Supreme Court has appointed **Thomas V. Murray**, of the Overland Park office of Lathrop & Gage L.C., chairman of the Kansas Board of Law Examiners, which administers the Kansas Bar Examination. Murray has served on the board for 11 years.

Theodore Nowacki of Bose McKinney & Evans LLP in Indianapolis has been named one of the best lawyers in the country by *The Best of the U.S.* He concentrates his practice in consumer credit regulations and compliance, lender liability, inter-creditor arrangements, loans and lien enforcement, and environmental matters.

1973

Ronald L. Kahn of Ulmer Berne LLP in Cleveland has been named in both the *Best Lawyers in America* and in *Chambers USA*. He chairs the firm's tax practice group.

1974

Craig A. Wolson, who specializes in securitization, derivatives, bank finance, corporate finance, securities, and general corporate matters, has become Special Counsel at New York's Cadwalader, Wickersham & Taft LLP, resident in Charlotte. Wolson chairs the Structure Finance Committee of the New York City Bar Association and was named a New York Super Lawyer for 2006 by *Law & Politic*.

1975

Philip "Chip" Ahrens, partner at Pierce Atwood LLP in Portland, Maine, has been ranked among the best attorneys in *Chambers USA*. He is senior partner in the firm's environmental practice group.

From top: Frank G. Dunten, '75; Guy F. Guinn, '75; Brent Rector, '75; David B. Calzone, '81; Janet E. Lanyon, '82; James R. Sobieraj, '82; George H. Vincent, '82

Frank G. Dunten has joined Dickinson Wright PLLC in Grand Rapids as a corporate attorney. Named West Michigan's Legal Professional of the Year for 2006, he has served as general counsel to a variety of businesses and organizations throughout west Michigan.

Guy F. Guinn, who specializes in banking and finance at Calfee, Halter & Griswold LLP in Cleveland, has been named among the best attorneys in *Chambers USA*.

Brent Rector, who practices employment and labor law at Miller Johnson in Grand Rapids, has released an updated version of the *Occupational Safety and Health Guide for Michigan Employers* manual produced in partnership with the Michigan Chamber of Commerce.

1976

Christine Albright, partner and head of the trust and estates practice at Winston & Strawn LLP in Chicago, was named head of the American Bar Association's section of real property, probate, and trust law.

1977

Mesa County (Colorado) District Judge **Amanda Bailey**, who was appointed to the court in 1990, will retire at the end of her current term in January 2007.

1981

Chambers USA recognized **David B. Calzone**, shareholder in Vercruysse Murray & Calzone, in its 2006 edition. He practices employment law.

Charles M. Denton II, of Varnum, Riddering Schmidt & Howlett LLP in Grand Rapids, spoke on "Expert Witness Testimony in Complex Environmental Litigation" at the 10th annual spring conference of the Michigan Association of Environmental Professionals. Chair of the firm's environmental litigation group, Denton is also a trustee on the East Grand Rapids Public Schools Board of Education.

1982

Janet E. Lanyon was elected to the executive committee at Dean & Fulkerson in Troy, Michigan. She is a member of the firm's labor practice group and practices labor and employee benefits law and litigation.

James R. Sobieraj was named president-elect of the Intellectual Property Law Association of Chicago at the group's most recent annual meeting. He is chair of litigation practice at Brinks Hofer Gilson & Lione and also a member of the board of directors of the National Inventors Hall of Fame Foundation.

George H. Vincent, who practices corporate and mergers and acquisitions law at Dinsmore & Shohl LLP in Cincinnati, was included in Chambers USA *America's Leading Lawyers for Business*.

1983

James Laing was elected president of Wolverine Mutual Insurance Company in Dowagiac, Michigan. It is the fourth time a member of the Laing family has headed the firm in its 89-year history.

Margaret Coughlin LePage, partner at Pierce Atwood LLP in Portland, Maine, has been ranked among the best attorneys in *Chambers USA*. She practices employment law.

Former deputy city attorney **Anne-Christine Massullo** has been appointed a San Francisco Superior Court judge.

Frederick M. Snow joined First American Bank in Elk Grove Village, Illinois, as senior vice president and general counsel.

1984

Paul A. Fitzsimmons has joined the litigation department at the Washington , D.C., office of Saul Ewing as special counsel. His practice focuses on insurance matters in business and commercial settings.

From top: James Laing, '83; Margaret Coughlin LePage, '83; Frederick M.Snow, '83 Mark Moran, '86; Scott A. Huizenga, '88; Greg Guevara, '92; Lydia Pallas Loren, '92

1986

Mark Moran, a partner with Washington, D.C.-based Steptoe and Johnson LLP, was profiled in August in *The American Lawyer* for his role as lead counsel for the Canadian industry in the long-running Canadian-U.S. softwood lumber trade issue. He also represented the Canadian government in a World Trade Organization challenge arising from the same dispute, becoming one of only a handful of private lawyers to argue a case successfully before the WTO Appellate Body.

1987

Tina S. Van Dam, recently retired corporate secretary of the Dow Chemical Company and current senior counsel for corporate governance and finance of the National Association of Manufacturers, has joined the Conference Board as associate director of the Governance Center and Directors Institute in New York City.

Suzanne Thomas has joined Preston Gates & Ellis LLP in Seattle as a partner. She focuses her practice on employment law, intellectual property protection, and related business matters.

Anne "Andi" S. Kenney has joined Jenner & Block LLP in Chicago as of counsel to the firm's environmental, energy, and natural resources law practice.

1988

Scott A. Huizenga has been appointed chair of the corporate practice group at Varnum, Riddering Schmidt & Howlett LLP. He focuses his practice on transactional matters including mergers, acquisitions, sales, and joint ventures.

1989

The University of Iowa appointed **Marcella David** as head of its newly organized Office of Equal Opportunity and Diversity. She also holds a faculty appointment in the university's College of Law.

1990

Jim Rowader has been promoted to director of labor and employee relations, assistant general counsel, at the Target Corporation in Minneapolis.

Ron Wheeler has been named associate director for public services at the Georgia State University College of Law Library in Atlanta.

1992

Greg Guevara has rejoined Bose McKinney & Evans LLP as a partner in the labor and employment group. He represents regional and national corporate clients in all aspects of labor and employment law.

Lydia Pallas Loren was appointed interim dean at Lewis & Clark Law School.

1993

Mark G. Malven has joined Dykema's corporate finance practice group in its e-commerce and technology practice. He is working primarily in the Bloomfield Hills, Michigan, and Chicago offices.

1995

The Chicago Foundation for Women awarded its first Founders Award for Young Women to **Alicia Aiken**, supervisory attorney at the Legal Assistance Foundation of Metropolitan Chicago. The award is given to a woman under 40 who has a history of strong advocacy in improving the lives of women and girls. Aiken plans to use the award to research model courts and legal programs to improve the domestic violence legal response system.

Public interest attorney **Cheryl A. Leanza** was named managing director of the United Church of Christ's Office of Communications Inc. She also teaches First Amendment and broadcasting to graduate students in Georgetown University's Communications, Culture, and Technology program.







From top: Rachel Tausend, '01; Jessica S. Hylander, '03

1996

Daniel P. Dain has joined in forming the law firm Brennan, Dain, Le Ray & Wiest, P.C. in Boston. The firm specializes in all aspects of real estate development.

1997

Robert Olin was named partner at Thacher Proffitt & Wood LLP in New York. He is a member of the firm's finance practice group.

1998

Andrew J. Tavi was named vice president and general counsel at Noble International Ltd. in Warren, Michigan.

1999

Mariana Ardizzone, senior associate at Maciel, Norman & Asociados in Buenos Aires, received a "Key Women in Energy" award.

David C. Kirk was elected partner at Troutman Sanders LLP in Atlanta. He is a member of the firm's governmental law practice group.

Dana A. Roach has joined the Wayne State University Law School faculty as an assistant professor. She is teaching the Non-profit Corporations and Urban Development Clinic this fall.

2000

Michael A. Satz has joined the University of Idaho College of Law faculty as an associate professor. He is teaching Contracts, Secured Transactions, and Consumer Law.

2001

Rachel Tausend joined Stradley Ronon Stevens & Young, LLP in Washington, D.C., as an associate in its securities litigation and investment management practice groups.

2002

Carole BenEzra, an associate at Jaffe Raitt Heuer & Weiss, P.C., in Southfield, Michigan, was appointed to the firm's electronic transactions association research and information resources committee and the women networking in electronic transactions membership committee.

2003

Shawn Gordon joined the Boston office of Fish & Richardson P.C. as an associate in its litigation group. His practice focuses on chemistry, medical devices, genetics, and software.

Jessica S. Hylander, who practices at Dinsmore & Shohl LLP in Cincinnati, has been named an Ohio Super Lawyer Rising Star by *Law & Politics Media*.

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'29	David Cooper Vokes	9/7/2006
'34	Charles R. Sprowl	8/7/2006
'38	Daniel S. Morrison	7/9/2006
'39	David W. Carson	5/7/2006
	Herbert K.H. Lee	6/7/2006
'40	Roland R. Kruse	6/26/2006
	Cecil Roscoe Smith	3/21/2006
'42	Wallace C. Eblen	8/2/2006
	John W. Gee	8/26/2006
	Robert D. Mitchell	2/13/2006
'46	Samuel D. Estep	7/8/2006
'47	Richard W. Smith	5/21/2006
'48	Edward D. Buckley	5/29/2006
	Irving Slifkin	7/31/2006
	Thomas J. Wheatley	8/31/2006
'49	Charles D. Bell	9/4/2006
	John Lewis Crow	6/18/2005
	Richard V. Ehrick	1/28/2005
	Reamer W. Wigle	2/13/2005
'50	Norman W. Dake	8/6/2006
	Stuart A. Goldfarb	5/29/2006
	Richard B. Gushee	5/15/2006
	Harold Hoag	8/4/2006
	Laurie W. Larson Jr.	7/23/2006
'51	Andrew J. Burrows Jr.	5/22/2006
	John C. Houston	7/27/2005
	Rodney C. Kropf	6/15/2006
	William A. Reid	4/11/2005
'52	Russell M. Dickson	9/11/2006
	John E. Hubbard	6/16/2006
	Jerold H. Keyworth	7/7/2006
	John Thomas McGraw	2/11/2005
	James M. Smith	5/28/2005
'54	John W. Fitzgerald	7/7/2006
	Herbert A. Goldsmith Jr.	5/14/2006
	Donald M. Wilkinson Jr.	8/13/2006
'55	Allen Schwartz	8/18/2006
'57	Robert D. Guy	6/6/2006
	Daniel C. Learned	8/17/2006
	Ronald S. Lieber	6/12/2006
'58	Lewis H. Markowitz	7/3/2006
	Daniel L.R. Miller	6/19/2006
'59	Thomas T. Crumpacker	8/11/2006
	Barry Hirsch	7/27/2006
'60	Bernard L. Bebeau	5/15/2005
	Robert John Garrett	8/13/2006
	Warren D. Sundstrand	8/1/2006
'63	Jeffery W. Barry	7/8/2006
	James T. Maatsch	9/2/2006
'64	C. Jon Rosengren	7/13/2006
'65	T. Peter Craven	6/20/2006
'66	Aaron D. Grossman	8/5/2006
	R. Mark Leidigh	6/20/2006
	John C. Provine	4/14/2006
'71	Benjamin W. Spaulding	5/21/2006
'72	Richard A. Cipolla	5/1/2006
'73	Larry Thomas Frantz	3/20/2006
'74	Thomas G. Thorbeck	7/11/2006
	Frederick C. Williams	7/10/2006
'80	Donald B. Rintelman	5/13/2006
'82	Michael F. Walsh	7/3/2006
'94	Michael Rafael Etzioni	8/24/2006
2002	Jason M. Moss	6/6/2006
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BRIEFS

IN DETAIL

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69 Faculty and students share interests

U.S. Solicitor General Paul D. Clement describes the events that made the U.S. Supreme Court's 2005 term "historic" during a talk at the Law School earlier this year.

U.S. Solicitor General: O'Connor, Alito,Roberts made for "historic" Supreme Court term

The U.S. Supreme Court's 2005-06 term was especially significant historically and had two distinct parts to it that made it seem like two terms instead of one, U.S. Solicitor General Paul D. Clement told a Michigan Law audience last fall.

Clement, speaking in a program sponsored by the student chapter of the Federalist Society, noted that with the death of Chief Justice William H. Rehnquist and the retirement of Justice Sandra Day O'Connor the Court had "a remarkable change in membership." The arrival of Chief Justice John G. Roberts in September 2005 and Justice Samuel Alito in January 2006 brought the first change in personnel to the Court in some 20 years, he noted.

In addition, the session had the unique dynamic of O'Connor hearing cases and writing decisions after she had submitted her resignation but was remaining on the Court until her replacement was confirmed. Attorneys arguing before the Court with O'Connor on it did not know if a decision would be rendered soon enough to stand or if they might have to re-argue their case after O'Connor retired.

"You were arguing before nine members but you didn't know if the case would be decided by an eight-judge court," Clement explained.

O'Connor participated in about one-fourth of the Court's cases during the 2005-06 term, and "she was in the majority on all 20," Clement reported. Indeed, he noted, two of the decisions were 5-4, and the Court issued them anyhow while O'Connor's vote still could be included.

"Because of the change in personnel, there was a palpable sense that this was an historic Court [term]," Clement explained. The term included a series of "firsts" and "lasts," like the first decision of O'Connor's last term, her last opinion, the first question asked by Roberts or Alito, the first decision by either of the new justices, the first hints of any overall Court shift.

Interestingly, the first half of the term, while O'Connor remained on the bench, included "a surprising number" of unanimous decisions, Clement reported. During the second part of the term "more decisions were by a sharply divided court."

For example, he said, the Court upheld New Hampshire's parental notification law in the first abortion case the Court had heard in several years, and O'Connor wrote the opinion. The Court also decided unanimously against the State of Georgia in a case involving the federal Americans with Disabilities Act, and the decision was written by usually staunch federalist Justice Antonin Scalia, Clement noted.

After O'Connor's departure, decisions often were more closely divided, Clement continued. The Court split 5-3 and issued half a dozen opinions in *Georgia v. Randolph, Scott* in deciding that one spouse could authorize a warrantless home search over the other spouse's objection.

In several of these split decisions, Justice Anthony M. Kennedy provided the decisive vote while urging moderation, as he did by joining the 5-4 majority in limiting the scope of the Clean Water Act and concurring in the 5-3 decision in the *Hamdan* case that overturned using military tribunals for terrorism detainees and upheld the Geneva Conventions' application to such suspects.

At the time Clement visited the Law School, in late September, the Court's 2006-07 docket had not been completed enough to fully analyze the upcoming term, Clement said. But he noted that there are some "very important" cases coming before the Court during the term, among them cases involving abortion, the use of race in K-12 school districting, a challenge to federal refusal to regulate greenhouse gases, and the size of and proportionality of punitive damages.

U.S. Solicitor General Paul D. Clement

Inspiring Paths speakers discuss careers

Left, Scott Garland, '95, senior counsel in the Computer Crime and Intellectual Property Section of the U.S. Justice Department, describes the variety of work that he may do in his job, ranging from trying cases anywhere in the United States to working on legislation, policy development, designing programs, training agents, working with undercover investigation, or a host of other activities. "You can do all of these things at the Department of Justice," he explained. Garland was the first speaker in the Office of Public Service's Inspiring Paths lecture series, which presents speakers who discuss their public service, government, and/or pro bono work and the career paths they have followed. Right, Michael Posner, president of Human Rights First and the second speaker in the fall series, describes his organization's immigration and asylum work, what he called the "post 9/11" agenda, and efforts to "support and amplify" the voices of human rights organizations around the world. At the time of Posner's visit, Human Rights First was working to defeat the bill to retain interrogation options for the commander-in-chief and the CIA that otherwise are forbidden by Article 3 of the Geneva Conventions. "I'm an eternal optimist," he explained. "Who would have imagined the end of the Soviet Union, peace in Northern Ireland, the end of apartheid in South Africa?"

Shared interests bring together faculty, students

Faculty members who teach and work in the international arena and students interested in the same subjects got a chance to get acquainted and share views last spring at the International Law Students' first-of-its kind reception. Faculty members and students shared refreshments and informal conversation at the gathering, hosted at the Lawyers Club. As these photos attest, conversation was lively and engaged faculty members and students alike. Among the Michigan Law faculty and administrators who attended and enjoyed chatting with students were, from top:

- Assistant Dean for International Affairs Virginia B. Gordan, who also is administrative director of Michigan Law's Center for International and Comparative Law.
- Professor Steven A. Ratner, a specialist in the law of war, the intersection of international law and moral philosophy, and issues facing new governments and international institutions in the post-Cold War era.
- Clinical Professor Nicholas J. Rine, who directs Michigan Law's Cambodian Law and Development Program and supervises summer interns in their work with human rights NGOs and government ministries in Cambodia.
- Charles F. and Edith J. Clyne Professor of Law A.W. Brian Simpson, a scholar of the history and development of human rights law and English legal history who works closely with the London-based AIRE Center, a human rights legal services NGO that operates primarily within the European Community.

IN DETAIL

71 Refugees' human rights and the challenge of political will

James C. Hathaway, the James E. and Sarah A. Degan Professor of Law, is a leading authority on international refugee law whose work is regularly cited by the most senior courts of the common law world. He is director of the University of Michigan's Program in Refugee and Asylum Law, Senior Visiting Research Associate at Oxford University's Refugee Studies Program, and president of the Universidad Internacional Menéndez Pelayo's Cuenca Colloquium on International Refugee Law.

He has also held visiting professorships at the Universities of Tokyo, California, and Cairo, and regularly provides training on refugee law to academic, nongovernmental, and official audiences around the world. Among his more important publications are a leading treatise on the refugee definition, *The Law of Refugee Status* (1991); an interdisciplinary study of refugee law reform, *Reconceiving International Refugee Law* (1997); and most recently, *The Rights of Refugees under International Law* (2005), from which this essay is excerpted.

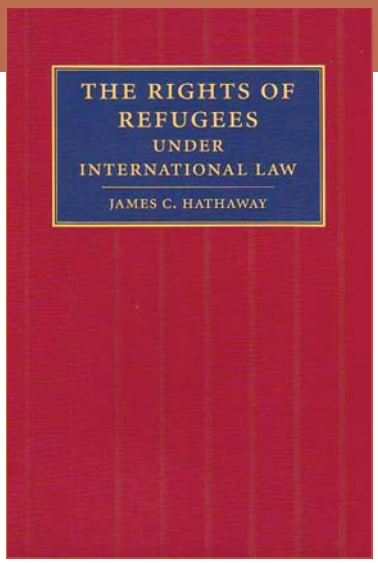
Professor Hathaway established and directs the Refugee Caselaw Site (www.refugeecaselaw.org), and is an editor of the *Journal of Refugee Studies* and the *Immigration and Nationality Law Reports*. He earned his J.S.D. and LL.M. at Columbia University, and an LL.B. (Honors) at Osgoode Hall Law School of York University in Canada.

73 Teaching ADR in the labor field in China

Theodore J. St. Antoine, '54, is a graduate of Fordham College and the University of Michigan Law School. He also spent a year as a Fulbright Scholar at the University of London. He practiced in Cleveland, in the U.S. Army, and for a number of years in Washington, D.C. St. Antoine is known for his writing in the field of labor relations and has engaged in arbitration. He was President of the National Academy of Arbitrators in 1999-2000. He began his academic career at the University of Michigan Law School in 1965 and served as its Dean from 1971 to 1978. He is the James E. and Sarah A. Degan Professor Emeritus of Law. He has also taught as a visitor at Cambridge, Duke, George Washington, and Tokyo Universities, and in Salzburg.

78 Europe's evolving constitution

Widely regarded as an eminent scholar in international and comparative law, **Eric Stein**, S.J.D. '42, is Hessel E. Yntema Professor of Law Emeritus at the University of Michigan Law School. He holds Doctor of Law degrees from the University of Michigan and Charles University, Prague, and Honorary Doctor of Law degrees from both Free Universities of Brussels and from the West-Bohemian University in Pilsen, Czech Republic. He served in the U.S. Department of State and was adviser to the U.S. Delegation to the UN General Assembly and to the U.S. representatives at the UN Security Council and the International Court of Justice. He has taught and lectured widely at American, European, and Asian Universities and at the Hague Academy of International Law. Formerly Honorary Vice President of the American Society of International Law and counselor of that society, he is the author of numerous books and articles on international law, European Union law, and comparative law. Professor Stein is a member of editorial boards of a number of American and European periodicals including the *American Journal of International Law*. He participated in an international group called on to advise Czech and Slovak authorities on constitutional issues. Professor Stein has received many honors, among them the 2001 University of Michigan Press Book Award in recognition of his literary accomplishments; a Lifetime Achievement Award from the American Society of Comparative Law (2004); recognition by the European Union Studies Association for his extraordinary contribution to European Union studies; inclusion in the International Biographical Center Living Legends book and nomination as an International Educator of the Year for 2004; Medal of Merit First Degree from Czech Republic President Vaclav Havel for "outstanding scientific achievement" (2001) and he has been made an honorary citizen of the Czech town of his birth. In May 2005, Stein was the focus of a story, "Europe's Prophet," by Alexandra Kemmerer, in the *Frankfurter Allgemeine Zeitung* (Frankfurt, Germany).



Refugees' human rights and the challenge of political will

by James C. Hathaway

The following essay is excerpted from the Epilogue to The Rights of Refugees Under International Law *by James C. Hathaway.* *Totaling nearly 1,200 pages and a decade in the making,* The Rights of Refugees Under International Law *links standards of the UN Refugee Convention to norms of international human rights law and applies this to empirical analyses of some of the world's most difficult protection challenges.*

Governments in all parts of the world are withdrawing in practice from meeting the legal duty to provide refugees with the protection they require. While states continue to proclaim a willingness to assist refugees as a matter of political discretion or humanitarian goodwill, many appear committed to a pattern of defensive strategies designed to avoid international legal responsibility toward involuntary migrants. Some see this shift away from a legal paradigm of refugee protection as a source of enhanced operational flexibility in the face of changed political circumstances. For refugees themselves, however, the increasingly marginal relevance of international refugee law has in practice signaled a shift to inferior or illusory protection. It has also imposed intolerable costs on many of the poorest countries, and has involved states in practices antithetical to their basic political values.

In the face of resistance of this kind, it be must recognized that no international oversight body (or international agency) will ever be positioned actually to *require* governments to implement rights perceived by states as at odds with their fundamental interests. The real challenge is therefore to design a structure for the implementation of Refugee Convention rights which states will embrace, or at least see as reconcilable to their own priorities. Only with the benefit of an implementation mechanism of this kind will governments be persuaded normally to abide by even clear Convention duties; and only when compliance is the norm will it be realistic to expect any supervisory mechanism to be capable of responding dependably and effectively to instances of non-compliance.

To be clear, it is suggested here that the goal should be to reconceive the *mechanisms* by which international refugee law, including the refugee rights regime, are implemented—*not* to undertake a renegotiation of the Refugee Convention itself. Those who favor the latter course seem largely to misunderstand the nature and function of the Convention-based protection regime. The goal of refugee law, like that of public international law in general, is not to deprive states of either authority or operational flexibility. It is instead to enable governments to work more effectively to resolve problems of a transnational character, thereby positioning them better to manage complexity, contain conflict, promote decency, and avoid catastrophe. Indeed, international refugee law was established precisely because it was seen to afford states a politically and socially acceptable way to maximize border control in the face of socially inevitable involuntary migration—an objective which is, if anything, even more pressing today than it was in earlier times. Refugee law has fallen out of favor with many states not because there is any real belief either that governments can best respond to involuntary migration independently, or that the human dignity of refugees should be infringed in the interests of operational efficiency. Rather, there seems to be overriding sentiment that there is a lack of balance in the mechanisms of the refugee regime which results in little account being taken of the legitimate interests of the states to which refugees flee.

- First, some governments increasingly believe that a clear commitment to refugee protection may be tantamount to the abdication of their migration control responsibilities. They see refugee protection as little more than an uncontrolled "back door" immigration route which contradicts official efforts to tailor admissions on the basis of economic or other criteria, and which is increasingly at odds with critical national security and related priorities.
- Second, neither the actual duty to admit refugees nor the real costs associated with their arrival are fairly apportioned among states. There is a keen awareness that the countries in which refugees arrive—overwhelmingly poor, and often struggling

with their own economic or political survival—presently bear sole legal responsibility for what often amounts to indefinite protection.

In short, the legal duty to protect refugees is understood to be neither in the national interest of most states, nor a fairly apportioned collective responsibility. It is therefore resisted.

There are ways to address both of these concerns. As a starting point, there needs to be a clear recognition that refugee protection responsibilities can be implemented without denying states the right to set their own immigration priorities. The refugee regime is not an immigration system; it rather establishes a situation-specific human rights remedy. When the violence or other human rights abuse that induced refugee flights come to an end, so too does refugee status. Equally important, even this right to protection is explicitly denied to serious criminals who pose a danger to the host community, and to persons who threaten national security.

Nor is the duty of protection logically assigned on the basis of accidents of geography or the relative ability of states to control their borders. To the contrary, governments have regularly endorsed the importance of international solidarity and burden-sharing to an effective regime of refugee protection. While collectivized efforts to date have been ad hoc and usually insufficient, they provide an experiential basis for constructing an alternative to the present system of unilateral and undifferentiated state obligations. It is particularly important to recognize that different states have differing capabilities to contribute to a collectivized process of refugee protection. Some states will be best suited to provide physical protection for the duration of risk. Other states will be motivated to assist by providing dependable guarantees of financial resources and residual resettlement opportunities. Still other governments will collaborate by funding protection or receiving refugees in particular contexts, on a case-by-case basis. Under a thoughtful system of common but differentiated responsibility, the net resources available for refugee protection could be maximized by calling on states to contribute in ways that correspond to their relative capacities and strengths.

In short, none of the legitimate concerns voiced by governments amounts to a good reason to question the underlying soundness of responding to involuntary migration in line with the rights-based commitments set by the Refugee Convention and other core norms of international law.

Today, more than ever before, governments are engaged in a variety of serious discussions regarding reform of the refugee law system. Perhaps spurred on by the formal commitment made on the 50th anniversary of the Refugee Convention in 2001, there is clear interest in exploring both the operational flexibility which refugee law affords, and the value of systems to share both the responsibilities and burdens inherent in refugee protection. It is not at all clear, however, that these initiatives are predicated on the central importance of finding practical ways by which to respond to involuntary migration from within a rights-based framework. Poorer states are glad that there is, at last, some realization by governments in the developed world that ad hoc charity must be replaced by firm guarantees to share responsibilities and burdens. Governments of wealthier and more powerful countries are pleased that the UN High Commissioner for Refugees and other states are now prepared to acquiesce in demands that their refugee protection responsibilities not be construed to impose ongoing obligations towards all who arrive at their territory. But potentially lost in the discussions as they have evolved to date is the central importance of reforming the mechanisms of refugee law not simply to avert perceived hardships for states but also in ways that really improve the lot of refugees themselves. It is not enough to find sources of operational flexibility, nor even to devise mechanisms by which to share the responsibilities and burdens. If the net result of these reforms is only to lighten the load of governments, or to signal the renewed relevance of international agencies to meeting the priorities of states, then an extraordinary opportunity to advance the human dignity of refugees themselves will have been lost.

The real challenge is to ensure that the reform process is actually driven by a determination fully and dependably to implement the agreed human rights of refugees, even as it simultaneously advances the interests of governments. There is no necessary inconsistency between these goals; to the contrary, they are actually mutually reinforcing priorities. The Convention's refugee rights regime establishes a framework that can easily lay the groundwork for solutions to the current crisis of confidence in the value of refugee law.

Teaching ADR in the labor field in China

by Theodore J. St. Antoine

My first visit to China, in 1994, was purely as a tourist, and came about almost by accident. In late September of that year I attended the XIV World Congress of the International Society for Labor Law and Social Security in Seoul, South Korea. In the second week of October I was scheduled to begin teaching a one-term course in American law as a visiting professor at Cambridge University in England. Despite my hazy notions of geography, I realized it made no sense to return to the United States for the intervening week. The obvious solution was to continue flying westward around the world. Having never been to China before, my wife and I decided to spend the first week of October in Beijing and environs.

Like nearly all other American tourists, I suppose, our first morning in Beijing I asked the hotel doorman to hail a taxicab to take us to Tiananmen Square. "I'm very sorry, sir," the doorman replied gravely, "Tiananmen Square is closed today." I could hardly believe my ears; the world's largest public square was closed? The exact truth was slightly different. It was October 1, the 45th anniversary of the Communist Revolution. Chinese officialdom, along with soldiers, students, and honored citizens, had taken over the major public sites. Also closed were such standard tourist attractions as the Summer Palace and the Temple of Heaven. But what appeared at first as a big disappointment turned out to be a blessing in disguise. Advised by a friendly young Chinese, we headed off to an antique center and some of the famous alleyways ("hutongs") we might never have explored otherwise. The whole city was in a holiday mood. Old men were playing mah-jongg outdoors. Little kids were catching goldfish from tanks along the sidewalks; they then placed the goldfish in water-filled plastic pouches to take home.

Despite these quaint scenes, however, the overall impression was how backward the city appeared in a material sense. The taxis were old Volkswagen Beetles. Many of the people were still wearing Mao jackets. The cab drivers seemed proud of a new "beltway," but they were about the only persons on it. The great mass of the populace rode bicycles even in the heart of the city. Some new high-rise building was under way but it was hardly in a class with Manhattan or the Chicago Loop.

We were to return just eight years later to an entirely different world. In the meantime, during the 1990s, the privatization of production facilities and the influx of foreign companies had increased dramatically. This was at least part

Theodore J. St. Antoine

of the explanation for a tenfold rise in labor disputes over the decade. There were 300,000 such disputes in 2000, with about 100,000 going to arbitration. China adopted a new labor law in 1994, which included provisions for a governmentally operated arbitration system. But, perhaps with good reason, arbitral decisions were not readily accepted. About 50-60 percent of the awards were appealed to the courts, as contrasted with only about 1.0-1.5 percent in the United States. In response to these developments, a group of six faculty members from the University of Michigan, with me as titular head, obtained modest grants to go to China during 2002-06 and introduce Chinese labor specialists to American techniques of alternative dispute resolution (ADR) in the labor field. The core mission, however, was to teach present and future university faculty about ADR, on the theory they in turn could teach others.

The driving force behind our program was a remarkable young man, Liu Jinyun, a native Chinese. Liu had managed to educate himself by an extensive reading program during the Cultural Revolution. When more normal times returned to

China, Liu sped through high school and college in a couple of years. One of the University of Michigan's legendary figures, Leslie Kish, met Liu on a visit to China and persuaded him to come to Ann Arbor, where he earned his Master's and Ph.D. degrees in sociology. Liu then joined the staff of Michigan's Institute of Social Research, while retaining an adjunct professorship at his home university in Beijing. Liu had worked in a factory during the Cultural Revolution, but he was not a labor specialist. Nonetheless, he was observant enough to realize that something momentous was happening in China's economy and its labor relations in the 1990s. He became convinced, and persuaded the rest of us, that a contingent of Michigan experts in ADR could make a worthwhile contribution.

The first thing I noticed upon our arrival in 2002 was that the extraordinary 9 percent average annual increase in gross domestic product which China had been enjoying for over two decades—unmatched by any other major economy in the world—had begun to pay off in spectacular fashion. The Volkswagen taxis had been replaced by gleaming new models,

... one speaker observed that China may now hold the dubious distinction of having replaced the United States as the major country in the world with the widest disparity between the rich and the poor.

which, while not American behemoths, were of an entirely respectable size by European standards. Practically everyone on the streets, except for a few elderly folk, was stylishly dressed in Western attire. To keep the economy rolling, the government had been encouraging the purchase of private automobiles, and the traffic jams at rush hour would have done New York City proud. (One could not help wondering how much was going into mass transit as a feasible alternative.) Handsome new skyscrapers had gone up in much of central Beijing. I read that one-fifth of all the construction cranes in the world—and one-half of all the skyscraper construction cranes—were now located in Shanghai. My wife could not resist telling the dean of one of the colleges we visited that she was worried about the eventual fate of all the picturesque "hutongs" in Beijing. He replied that she was not the only one who was worried about that.

With a population of 1.3 billion, China is more than four times the size of the United States. But its workforce of over 700 million is still 50 percent agricultural. The average hourly wage is 32 cents (50 cents in manufacturing), compared to $16-17 in the U.S. The China wage rate does not include the traditional "iron rice bowl," consisting of free or subsidized food, housing, and recreational benefits. As the country moves toward a "socialist market economy," however, and private and foreign investment increases along with global competition, the state may not be able to maintain these lifetime guarantees of the past. Still, the economic juggernaut steams ahead. China's gross domestic product (measured in purchasing terms) is now second only to that of the U.S. GDP is in the $5 trillion range, roughly half of ours or of the Euro countries of the European Union. And China's economy is growing about three times faster than ours or Europe's.

Lots of persons are making a good deal of money in China. My wife and I wished to attend a performance of a foreign dance troupe in the Great Hall of the People. The Hall's main auditorium holds 10,000 and is the site of the Chinese National Congresses. Seats were advertised at the equivalent of $100 and $50 apiece in U.S. dollars. I assured my wife that $50 in good old American money ought to get each of us a very satisfactory seat. In fact we wound up three rows from the back of that 10,000-capacity auditorium. And there were plenty of Chinese up front in the $100 section.

China is paying a price for this rapid economic development. At a conference on Chinese labor reform which was held in Ann Arbor in 2003, one speaker observed that China may now hold the dubious distinction of having replaced the United States as the major country in the world with the widest disparity between the rich and the poor. The economic and societal costs include a loss of social values; rampant corruption at many levels; and increasing inequality, especially among the rural population and certain groups, such as the elderly, new workers, the less educated, and women. Although the official unemployment rate is under 5 percent, the reality is at least 15 percent. The government seems to have adopted the philosophy: Grow the market today and let a future generation deal with social problems and the need for greater economic equality.

My hunch is that much of the most practical, productive

comparative labor law and policy activity in the future—research as well as teaching—will resemble the Michigan program in China, but ideally it will be more extended. The emphasis will be on the shared problems of a global economy, and what we can learn from each other. Our six faculty members made a total of six separate visits (singly or in groups) to China over four years, averaging about 10-12 days each. They gave 15 sets of lectures in Beijing, Hong Kong, Shanghai, Shenzhen, and Taipei. One professor also spent several months studying Chinese ADR procedures. About 500 Chinese attended our lectures. They included government officials, lawyers, mediators and arbitrators, human resources managers, labor union members, professors specializing in law, economics, and industrial relations, and graduate students. The principal local institution involved, the School of Labor Economics, Capital University of Economics and Business, in Beijing, has added a new course to its curriculum, Alternative Labor Dispute Resolution. The school also has plans to publish a textbook on Alternative Labor Dispute Resolution, with the assistance of Michigan faculty members.

Up to the present, the only officially recognized labor organizations are government dominated through Communist Party affiliation. The All-China Federation of Trade Unions (ACFTU) consists of 1.7 million primary trade unions with about 135 million members out of the 700-million-plus workforce. In labor disputes, unions have historically tended to act more like an intermediary between the employer and the employees, rather than like an advocate for the workers. The Trade Union Law, amended in 2001, emphasizes that labor organizations are designed to protect the "legitimate rights and interests" of workers, and requires enterprises to "heed the opinions" of the union when they consider "major" business issues. But some skeptics point out that this actually enhances Party involvement in the management of enterprises, even private enterprises, since all unions must by law belong to the ACFTU and the latter is essentially a Party instrumentality.

The amended Trade Union Law calls for unions, on behalf of workers, to engage in "consultation on the basis of equality" with corporate management and to enter into "collective contracts." There are around 300,000 such group agreements in China, along with many individual employer-employee contracts. Strikes are not formally prohibited but the right to strike was removed from the Chinese Constitution in 1982. Since then the legal status of work stoppages is problematical,

Teaching ADR in China: Theodore St. Antoine, '54, is fifth from left.

apparently dependent on the judgment of government officials, often at the local level. There were 8,000 reported strikes in 2000, and subsequently at least two dozen major work stoppages involving anywhere from several hundred workers to as many as 50,000. Protests have also taken the form of sit-ins and blockages of streets, roads, and rail lines. The causes included unpaid wages and benefits, worker layoffs, and enterprise privatization.

The vast majority of labor disputes, over 90 percent, involve individual and not collective claims. An important 2001 amendment of the Trade Union Law requires management to consult with the representative labor union before terminating a worker. As yet there is little reliable information about how this process is working. Since 1993, regulations issued by the central government have governed the mediation and arbitration of grievances of any sort by a worker against an employer. The first formal step is mediation before a local committee composed of representatives of the enterprise, the workers, and the trade union. The union representative chairs the committee. Except for the union representative, however, these bodies are appointed by management or the government. And of course the Communist Party controls the union.

If the parties are dissatisfied with the efforts at mediation, they may proceed to one of the 3,200 local labor dispute arbitration committees in the country. These committees are also tripartite, consisting of government, union, and employer representatives, with the government representative chairing. They appoint the arbitration panels, which preferably consist of three arbitrators but in practice a single arbitrator is common. Some 20,000 government labor arbitrators are available in the local labor bureaus to deal with the 200,000 or so cases that now go to arbitration annually. In the relatively rare instances of

tripartite arbitration in the United States, the neutral nonparty chair ordinarily decides the case in effect, simply adding the concurring vote of either the union or the employer delegate to produce a majority. In China, however, all three arbitrators generally make an effort to negotiate a solution among themselves before resorting to any formal decision-making. Something like this negotiation process is not unheard of in tripartite arbitrations in the United States, especially in new-contract or "interest" disputes. It might be one of the areas in which we have some lessons to learn from the Chinese.

Appeals from arbitral decisions may be made to the courts in China, and about half of all labor arbitrations wind up there. Here too the Communist Party is in charge, with only Party members becoming judges. While this whole process, both the arbitration and judicial portions, may seem to stack the deck against individual workers, the decisions that are released indicate employees do prevail in a substantial number of cases. From an outsider's perspective, the major procedural flaw in the Chinese system is the lack of finality in arbitration and the capacity of the courts to entertain review de novo. At times in some locales the appeal rate is as high as 90 percent.

... it may not be easy for government to yield much control over arbitrator appointments.

Significant changes in Chinese labor relations occurred during the four-year period of our lecture series on ADR. A pilot program of labor dispute resolution by independent arbitrators started in Beijing and Shanghai in 2003. The arbitrators are generally lawyers in private practice. Before that, all labor arbitrators were government employees from district and city labor bureaus. Even in the new experiments, however, it appears that the labor bureaus will make the appointments. A question asked me during my lectures was how could the neutrality and impartiality of nongovernmental arbitrators be ensured. I refrained from saying I would like to know how the neutrality and impartiality of governmental arbitrators could be ensured in the Chinese system. Instead I pointed out that in the United States, the repeated use over time of labor arbitrators was dependent on their continuing acceptability to both unions and employers. Insofar as the new trial efforts with independent arbitrators in China might eventually entail the voice of labor and management in their selection, the problem of neutrality and credibility could largely be solved. But it may not be easy for government to yield that much control over arbitrator appointments.

China's ACFTU now plans to set up different forms of organization in factories and shops with different forms of ownership, such as state-owned, foreign-owned, privately-owned, and joint ventures. Outside the state-owned enterprises, the union would act much more like an autonomous advocate for the workers rather than an arm of government. The ACFTU stoutly denies, however, that this represents any sort of movement toward independent unionism. The slogan is, "One union—two functions." That refers to the markedly different roles of ACFTU affiliates in state-owned firms and in others. But despite strong official opposition, including the threat and the actuality of imprisonment, dissenters continue to agitate for the creation of some truly independent, nongovernmental unions. The likelihood of genuine collective bargaining, in one form or another, in the relatively near future seems fairly high. The growing unrest among Chinese labor, as evidenced by the dramatic surge in strike activity, as well as the keener sensitivity of the government to the demands of the World Trade Organization and the conventions of the International Labor Organization, may all contribute toward that end.

A live possibility exists that a neutral labor arbitration association will be established in China. It would be akin to the American Arbitration Association and would provide arbitration services to workers, unions, and employers. Its services might include the compilation of profiles of, and recommendations on, arbitrators, as well as their training, examination, and certification. Americans of course have always shied away from any formal testing or certification procedure for arbitrators. But the systematic Chinese seem leery of unleashing a group of unproven wannabe arbitrators into the field.

In my own initial set of lectures in 2002, running over five days, I concentrated almost entirely on labor mediation and arbitration techniques in the United States, with just a little discussion of the legal background. But I found my audiences, especially the professors and the graduate students, wanted to learn more about American labor law in general and even something about the history and structure of American labor unions. For the second year's series, therefore, I started off with an overview of the U.S. system of labor and employment law. By this time my task was eased considerably because the

participants had full Chinese translations of my course outline. At the recommendation of my Chinese hosts, I did not attempt to deal with the existing governmentally operated mediation and arbitration system in China, or how it might be adapted to take advantage of the best features of the American process. Nonetheless, after I became more familiar with the Chinese approach, I made more of an effort in the last couple of years to compare the two systems and show how each might draw some lessons from the other. I think such an approach gave Chinese audiences a firmer starting point and enabled them more easily to understand the differences and the relative merits of the American system. I also said more about the qualifications of arbitrators, the various ways of selecting them, and the pros and cons of single arbitrators versus tripartite panels.

With the modifications just mentioned, the major topics I covered in China were (a) the differences between mediation and arbitration; (b) the diverse forms of mediation; (c) the distinction between grievance ("rights") arbitration and new-contract ("interest") arbitration; (d) the conduct of the arbitration hearing; (e) the rules of evidence; (f) the arbitrator's decision and judicial review; and (g) case studies of several types of hypothetical arbitrations. Once we got into the hypotheticals, however, the participants became intensely interested in how the cases should be resolved and it was harder to get them to focus on the procedural aspects. A Chinese faculty member then gave me some advice that improved matters considerably.

The advice came at one of the top law schools, where I was told the students would respond warmly to role-playing exercises. I had no doubt that was true; I have found role-playing highly effective in teaching both advocacy and decision-making techniques in America. But even if the Chinese students (and I) could have overcome the language obstacles, the limitations of time made it unfeasible to have the students engage in such exercises. Nonetheless, I found I invariably got an enthusiastic reaction when I departed from a straight lecture mode and played the part, in turn, of employee representative, employer representative, and arbitrator. I suppose it should be no surprise that in dealing with rather complex concepts, concreteness and specific, vivid illustrations are even more important pedagogically in a foreign setting than at home.

A highlight of the later portion of our program was a two-month stay at the Michigan Law School by the Chinese faculty member who currently teaches the course in Alternative Labor Dispute Resolution at Capital University in Beijing. This visit made it easier for me and others at Michigan to collaborate with her and the faculty at Capital in preparing a textbook on ADR in the labor field. The Chinese have high hopes for this project. They believe the sort of scholarly yet practical volume that is proposed could be a milestone on the road to a more effective use of ADR techniques in resolving labor disputes. The Chinese Ministry of Labor has also made overtures about obtaining assistance in a possible revision of the 1994 Labor Law, and specifically the provisions covering arbitration.

One of the real revelations for me in our Chinese program was the fluency in English of nearly all the graduate students we encountered. For general or mixed audiences, naturally, we used interpreters, translating after every few sentences. When I spoke at a couple of leading law schools, with only graduate students in attendance, our hosts informed us we could dispense with the interpreter altogether. It was not braggadocio. The students all laughed in the right places, and came back with some hard-hitting technical questions—in nearly flawless English. It may not be only Indian lawyers who will provide competition for American law firms through outsourcing to Asia in the future.

The Chinese academic community, both faculty and students, seemed entirely receptive to new ideas from America about ADR procedures in dealing with labor disputes. They were full of questions and desirous of getting their hands on additional written materials providing more detail about the subject. Labor bureau mediators and arbitrators appeared less enthusiastic, but that was probably to be expected. How many government bureaucrats relish the notion of having to change their accustomed ways, especially at the behest of a bunch of outsiders? On the other hand, I was pleasantly surprised at the willingness of higher-level officials from the Ministry of Labor to hear us out in what appeared a most attentive and open-minded fashion. And indeed, as previously indicated, changes in the direction of the American ADR model do seem to be occurring, with perhaps more in the offing.

Europe's evolving 'constitution'

The following essay is an updated excerpt based on the keynote address the author delivered at the ninth International Conference of the European Union Studies Association last year in Austin, Texas, at which he was awarded EUSA's Lifetime Contribution to the Field Prize. Stein was the first lawyer to receive the prize, which had been awarded three times previously. The complete address appears in the summer 2005 issue of EUSA Review, Vol. 18, No. 3.

Eric Stein

by Eric Stein

Let me start with a quotation the source of which you may or may not recognize.

"[There is a form of society], in which several states are fused into one with regard to certain common interests, although they remain distinct, or only confederate, with regard to all other concerns. In this case the central power acts directly upon the governed, whom it rules and judges in the same manner as a national government, but in a more limited circle. Evidently, this is [not] a federal government, but an incomplete national government, which is neither exactly national nor exactly federal but the new word which ought to express this novel thing does not exist."

While you contemplate the likely author, let me read one more passage from the same sources: "The human understanding more easily invents new things than new words, and we are hence constrained to employ many improper and inadequate expressions."

It may come as a surprise to you—as it has to me—that the author is none other than the 19th century French aristocratic traveler, Alexis de Tocqueville, describing one of the categories of his model of composite states, and—what is even more astounding—his prophesy of the predicament which we have been facing in dealing with European integration. This is what Professor Neil MacCormick has said about the European Community: "Here we have not merely a new legal system, but maybe even a new kind of legal system. . . . We have remained, as it were, bewitched with the paradigm of the state and its law. . . ." We are "juristic pre-Darwinians," unwilling to welcome a new species, any "novel interlopers into our judicial consciousness." In fact, we still insist on translating solutions developed within the state to the novel phenomenon and using state nomenclature. This, in a sense is a natural tendency since the state is, so to speak, the only show in town if one looks for a model, and international law is of little help.

I shall mention some more or less egregious examples of the "translation" conundrum. Take the world "demos." Demos, I am told by my colleague in classics, meant anywhere from 6,000 to 13,000 Athenians, free and male, who met in an assembly (Ekklesia), first in the Agora and later in the place with the intriguing name Pnyz. What, please tell me, has this picture to do with the situation of the peoples in the European Union member states or with the non-existent European people? Yet demos and demoi have become embedded in the vocabulary of EU scholarship.

Another—and perhaps more serious example—is the term "identity." National identity in the ethnic-cultural-historic-territorial sense is—sociologists tell me—a well established category. But, the so-called "European identity," to the extent that it exists today, is an entirely different cup of tea, and we should have another name for it. If nothing else, the babble of 20 languages and the prospect of Turkey's admission to the Union makes a mockery of any reliance on ethnicity or history.

In an interesting research project, the British sociologist Yasemin Soysal examined how Europe is portrayed in school books and debates about school curricula in the United Kingdom, Germany, and France, and her conclusion illuminates the problem. She points out that what she calls European identity differs considerably from the national type of identity which is deeply rooted in history, cultures, or territories. She found that history schoolbooks may glorify Europe's Roman, Catholic, or even Greek origins as remarkable European achievements; but these origins are less and less offered within a religious or ethnic narrative, and increasingly in the more abstract form of the universal principles they contain; what holds Europe together, in schoolbooks, she concludes, is a set of civic ideals and universalistic principles.

I would agree that these ideals and principles, along with common expectations, European Union law, Walter Hallstein's "Rechtsgemeinschaft," and the drafting of an EU constitution, provide the foundation for an evolving identification with "Europe." In other words they provide the foundation for a European identity, if I must use the term, in the absence of a better word for a new phenomenon.

My third example of the translation problem is applying the "democracy-accountability" concept to Union institutions. Let me just mention the approach taken in the recent draft constitution; that document incorporates the present form of the so-called dual accountability, that is the accountability of ministers in the European Council to national parliaments and the European Commission accountability to the European parliament elected by the peoples in the individual member states. The accountability of ministers to their parliaments remains illusory in most member states, but the constitution would have sought to increase the role of the European parliament as a means of improving accountability.

In addition, however, the constitution text included three other innovations: first, a "participatory model," defined as a structured, systematic dialogue between the institutions and the civil society. A spokesman for civil society argued that this could either be a potential "milestone" for a change in decision making, or just "a blast of hot air" ending again in mere consultation. Professor Jo Shaw shared the latter skeptical view. According to the second innovation, the national parliaments would be given an opportunity to give their opinion on proposed Union legislation, clearly an effort to advance the subsidiarity principle. And finally, an elaborate provision for a popular initiative aimed at inducing the commission to act where it has failed to act.

Lastly, in this litany of translation troubles, are the terms "constitution" and "constitutionalizing." The use or misuse of these concepts is startling. I have seen references to Constitutio Westphalica and a Westphalian constitutional moment. But let me go back just to the aftermath of World War II—halcyon days of international institution building. The basic documents of international organizations founded at the time, such as the International Labor Organization and the World Health Organization are named "Constitutions." Allow me to mention a talk I gave back in 1955—just half a century ago—while I was on the staff of the State Department Bureau of United Nations.

I questioned the use of the term "constitutional" with reference to the United Nations. The U.N.—I said—was a loose association of sovereign states in a world fundamentally dominated by power considerations and we could not analyze its problems in terms of an orderly community, operating under a rule of law. Today, I would suggest a similar caution in the current academic debate about "constitutionalizing" the World Trade Organization.

The same year, in 1955, I was part of a working group of officials, facing a blank sheet of paper, with a mandate to make a first draft of a basic document for a new international organization which was to deal with the novel nuclear energy problems. This was at the time when the vision of a new, post-war world order had begun to fade. I don't remember which one of us in the working group had the good sense of calling the new creature modestly "an agency" and its basic document a "statute" rather than "a constitution." The International Atomic Energy Agency was eventually established in Vienna and it has emerged as an important player in the nuclear nonproliferation campaign.

And this brings us chronologically to the birth of the judicial "constitutionalization" saga in European integration. It is, to add a touch of drama (with a grain of salt) a story of a dark

conspiracy and outrageous collusion, engineered by a coven of judges and lawyers against unsuspecting governments. It started, you will recall, with a trivial controversy over import duties—the notorious VanGend en Loos case—which the Dutch court referred to the European Court.

In 1962-63 I was spending some months in Brussels with the legal service of the commission at the invitation of its director general, the brilliant and influential Michel Gaudet, formerly of the Conseil d'Etat. I was able to sit in the meeting of the legal service lawyers that was to work out a formal opinion of the commission in the VanGend case for submission to the Court of Justice. In the fascinating debate, advocates of the "constitutional" approach argued with the traditional internationalists. I must confess that—looking at the text of the treaty—I did not see an alternative to the internationalist position. In the end, led by the director general, the "constitutionalists" prevailed. The conclusion, written in the commission brief and accepted by the court, was that it was the Court of Justice, not the national court, that decides whether a Community treaty provision had a direct effect in the legal orders of the member states and the court would apply the most liberal criteria of interpretation: the spirit, general scheme, and wording. In the court's vision, the Community treaty is not an ordinary treaty. The Community constitutes a new legal order "for the benefit of which the states have limited their sovereign rights within limited fields, and the subjects of which comprise not only member states but also their nationals and that imposes obligations upon, and confers rights upon individuals as part of their legal heritage."

I do not know which one of the judges on the European Court was the principal co-conspirator with Gaudet-cabal. But at any event, it is the commission rather than the court that deserves the credit (or the blame) for the basic idea of "constitutionalizing" the EC Treaty, a move designed to replace the international law canon with public law concepts—all this on the basis of rather scant provisions of the Community treaty.

The result, as evidenced by subsequent European Court decisions, has been to turn the broad Community treaty obligations addressed to governments and the principles which were to be implemented by the political institutions, into directly effective provisions enforceable by interested individuals. The "vigilance of the individuals," as the Court put it, along with the reduction of the unanimity requirement in the council have made the common and the single markets a reality.

The second act in the constitutionalization drama was the equally well known *Costa v. E.N.E.L.* case. It originated in an obvious collusion between a Milan justice of the peace and Costa, a local attorney, who hated the nationalization of the public utility in his city. Costa sued to question the payee of his monthly electric bill and the justice of peace managed to push the case before the Italian Constitutional court and the European Court of Justice. The European court seized this opportunity, passed up in VanGend, to establish the general principle of "precedence" of Community law over national law and it claimed the last word in any conflict between the two legal orders. So, the broadly defined direct effect of Community law in the national legal orders, the principles of supremacy, preemption, and implied powers and the crucial case law on foreign affairs powers—along with the expansion of the unique system of judicial review and enforcement of Community law—have become the foundation of the "supranational" or proto-federal legal order, so aptly envisaged by de Tocqueville.

On this foundation the court has built further constitutional-type general principles, such as a broad definition of European citizenship and the protection of basic human rights of individuals against acts of Community institutions. The court has fashioned its own human rights doctrine from the constitutional traditions of the member states and from the European Convention on Fundamental Rights. Incidentally, the court's solicitude for individual rights is in a stark contrast with its persistently restrictive interpretation of the individual's direct access to the court. This widely criticized interpretation was to be partly "overruled" in the draft constitution.

In an expansive mood, the court called the Community treaty a "constitutional charter," and it tended to construe the Community powers—and its own jurisdiction—quite broadly in the early years when the Community legislation was scarce and there was a need to fill in the gap by judge-made law. The court was criticized on that score. There is some evidence that as Community legislation multiplied, the court has inclined toward a less expansive definition of Community powers in both the internal and external spheres of its activities; but this assessment is contradicted for instance by the court's more recent bold interpretations of gender equality. Also, the court continued to fill in gaps in the treaty system, for example by the path-breaking holding on member state liability for damages caused to individuals by member state breach of Community law, and the liberal use of the concept of "cohesion," and of

the very general treaty provision calling for cooperation in the Community. The court's jurisdiction has been extended along with the competences of the Union by successive amendments of the constituent treaties and it would have been further expanded in the constitution for Europe. It is too early to estimate the impact of the principle of subsidarity, but it is interesting that only in October 2000, for the first time in its history, the court arguably struck down a Community law for lack of Community competence.

So much for the constitutionalizing process which appeared to reach its climax in the drafting of the treaty extablishing a constitution for Europe. This is what the president of the European Parliament, Josep Borrell Fontelles, had to say about the magic of the word "Constitution" at the signing of the document in Rome in October 2004:

"The word 'Constitution' . . . carried political and symbolic weight. We should stand by our choice of this word, as we Europeans know how significant it is. In the past, the word 'Constitution' has been a point of departure when dictatorships have fallen. It has helped to bring a new dawn of democracy to Poland, to France, and to my own country, Spain, not so very long ago."

This is a telling explanation why the Europeans, having created "a new thing" in de Tocqueville's words, refuse to find a truly new name for it even though it has features incompatible with the standard pattern of a national constitution. As a treaty, it had to be ratified by all member states through national treaty making processes, and it provided for a right to withdraw from membership, and in its Part III, it dealt in massive detail with policies and voting formulae. But the first and second parts have all the trappings of a national basic law. The official title, "Treaty Establishing a Constitution for Europe," clearly distinguishes between the treaty as a form and constitution as a substance (Lenaerts). At the end of the day, the European Council of Heads of State and Government recognized the inherent ambiguity and spoke of a "Constitutional Treaty."

At any rate, the constitution seemed to represent a new phase in the half-a-century integration process which has been marked by a persistent tugging, with the connivance of the hesitant governments, at the umbilical cord that ties the new creature to the international law "Grundnorm."

In concluding, I shall take the liberty to lapse again into a bit of personal musing. There is in all of us a need for a vision that would help us "escape the two-dimensional, stale image of the world." For me, it was the first idea of the new post-war international order centered on the United Nations. As I mentioned earlier, I worked in the State Department Bureau of United Nations (later significantly renamed the Bureau of International Organization). I started there in 1946. By the early 1950s, I became disillusioned with the unfulfilled vision of the UN. At the same time, dispatches passing over my desk reported about the novel, strange structure rising in Luxembourg. There is in all of us—as Dr. Freud tells us—a longing for returning to the locale and dreams of our childhood. To see my old Europe attempting to shed its old ways for a new art of governance was an appealing prospect.

Clearly, these thoughts and feelings have been at the foundation of my positive attitude toward European integration for more than half a century. Professor Trevor Hartley, who emphatically rejects the constitutionalist theory, has written that I apparently was the first to put that theory forward. Yet it was the court itself that first enunciated the theory in its VanGend and Costa opinions. The basic concept has been elaborated by scores of scholars, most recently by Professor Daniel Halberstam [of the University of Michigan Law School] in his captivating theory of "recalibration" of the position in the Union of individuals as citizens, consumers, officials, judges.

There has been, needless to say, articulate opposition to such theories by realists, neo-functionalists, and intergovernmentalists of different hues. Clearly, the Union, an evolving creature with an ambition for a self-referential basis, does not fit readily into the crystalline, positivist, anti-constitutionalist world. I readily confess my membership in the constitutionalist club—but with an important caveat. I expect that the Union will become a premier player in the world arena, but I have consistently disagreed with the idea of some "constitutionalists" that the Union will or should or could become ultimately a centralized federation, a "superstate." [New York University Law] Professor J.H.H. Weiler has made the case against that goal more forcefully than I could. He points to the negative, exclusionary features of such a form, to the absence of a truly constitutional foundation and to the pervasive differences between the peoples of the member states I mentioned earlier.

As of September 2006, 15 of the 25 member states have ratified the Treaty Constitution; it was defeated in the popular referenda in France and The Netherlands and its future is uncertain.

EVENTS CALENDAR

December 21 .....Senior Day

2007

January 3-6.....Association of American Law Schools, Washington, D.C.

February 5-8 .....Michigan Difference Seminars in Florida: Palm Beach and Naples

February 9-10 .....Symposium: International Law and State Intelligence Gathering (*Michigan Journal of International Law*)

March 17.....Scholarship Dinner

March 29-April 1.....Symposium: Child Advocacy Clinic 30th Anniversary Celebration

April 13-15.....Conference: Law and Democracy in the Empire of Force

April 19 .....Senior Celebration

May 4.....Honors Convocation

May 5.....Senior Day

May 16-18 .....International Judicial Conference

May 23-25 .....Bergstrom Fellowship Training

This schedule is correct at deadline time but is subject to change.

A complete calendar of Law School events is available at www.law.umich.edu.
Click on the News and Information link.

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On the cover: The International Court of Justice in session at The Hague. Fourth from right at the bench is H.E. Judge Bruno Simma, an Affiliated Overseas Faculty member at Michigan Law. To Simma's right is H.E. Judge Thomas Buergenthal, the U.S. judge on the court. Photo courtesy of Jason Morgan-Foster, '05, whose essay about clerking at the court begins on page 26.

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