

Floersheimer Center for Constitutional Democracy

at Cardozo School of Law

Colloquia

Spring 2012 Colloquium:

"Religion, the Constitution, and the State: Contemporary Controversies"

The revival of religion in pluralist and multicultural settings deeply immersed in identity politics poses serious theoretical and practical challenges to the legitimacy and viability of the dominant conception of constitutionalism, which seems inextricably linked to the principle of secularism. What is at stake on the theoretical plane is a radical challenge to the essential tenets that animate the project of the Enlightenment: acceptance of a clear-cut distinction between the realm of faith and that of reason together with a commitment to ruling the public sphere according to the dictates of reason; and promotion of equal liberty for all. Certain contemporary religions seem compatible with the rule of reason in the public sphere, but others do not. Thus, fundamentalist religions and even certain non-fundamentalist ones have objected to secular rule constrained by public reason as being morally debilitating.

A great number of practical problems raising difficult constitutional issues are linked to the theoretical challenge outlined above. These include: religious education in public schools; wearing religious symbols in public places (e.g., the Islamic veil in public schools); secular state-imposed subjects to be taught in religious schools (e.g., tolerance, pluralism, gender equality); minority religions' practices that go against mainstream law and culture (e.g., ritual slaughtering of animals for food under Jewish or Muslim religious law); speech that offends religion, and in particular a minority religion (e.g., the controversy over the Danish cartoons deemed profoundly offensive to Islam); virulent religious fundamentalist speech that advocates hatred or violence against other religions or against secularists (e.g., jihadist exhortations by fundamentalist imams); and clashes between religious laws, practices, or customs and the spread of liberal values and rights such as those pertaining to gender equality. To examine these issues, the Colloquium gathers specialists with a broad spectrum of perspectives ranging from secular ones to ones rooted in particular religious traditions. These specialists are from a number of different countries and from many disciplines such as law, history, and political theory.

Convenors

[Susanna Mancini](#), University of Bologna; The Johns Hopkins University Bologna Center; Cardozo School of Law

[Michel Rosenfeld](#), Cardozo School of Law

Speakers

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January 30 - [Suzanne Last Stone](#), Cardozo School of Law
Paper: Public Space

February 6 - [Michel Troper](#), University of Paris X
Paper: Sovereignty and Laicite

February 13 - [Bernhard Schlink](#), Humboldt University
Readings: Memo to participants; Packet I;
Packet II; and Packet III

February 20 - [Ran Hirschl](#), University of Toronto
[Ayelet Shachar](#), University of Toronto
Readings: Demystifying Culture

February 27 - [Pierre Birnbaum](#), University of Paris I, Pantheon-Sorbonne
Readings: Jewish Supreme Court Judges and the Wall of Separation; On the Secularization of
the Public Square

March 5 - [Susanna Mancini](#), University of Bologna; The Johns Hopkins University Bologna
Center; Cardozo School of Law
Readings: The Free Exercise of Exclusion; and Patriarchy as the exclusive domain of the other

March 12 - [Lama Abu-Odeh](#), Georgetown University Law Center
Readings: [Law, Religion and Authoritarianism](#)

March 19 - [Anna Loretoni](#), Scuola Superiore Sant'Anna
Readings: Pluralism and Secularism in the European Public Space

March 26 - [Patrick Weil](#), Yale Law School; University of Paris, Pantheon-Sorbonne
Readings: Headscarf v. Burqa: Two French Bans with Different Meanings

April 2 - [Christopher McCrudden](#), Oxford University
Readings: Courts and Consociations

April 16 - [Gila Stople](#), The Tikvah Center for Law and Jewish Civilization, NYU Institutes on the
Park; Academic Center of Law and Business
Readings: Exclusively Religious Education

April 23 - [Gary Jacobsohn](#), The University of Texas at Austin
Reading: Constitutional Borrowing in South Asia

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April 30 - [Robert Post](#), Yale Law School

Reading: Religion and Freedom of Speech: Portraits of Muhammad

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Spring 2010 Colloquium:

"Global and Comparative Public Law Theory"

The Spring 2010 Floersheimer Center Legal Theory Colloquium was presented in cooperation with the NYU School of Law and the [International Journal of Constitutional Law \(I•CON\)](#), which published several of the papers in Volume 8.

Convenors

[Mattias Kumm](#), Professor of Law, NYU School of Law

[Michel Rosenfeld](#), Justice Sydney L. Robins Professor of Human Rights, Cardozo School of Law

[Joseph H.H. Weiler](#), University Professor and Joseph Straus Professor, NYU School of Law

Speakers

January 20, 2010 - [John McCormick](#), Professor of Political Science, The University of Chicago

Paper: "Greater, More Honorable and More Useful to the Republic": Plebeian Offices in Machiavelli's "Perfect" Constitution

January 27, 2010 - [Sujit Choudhry](#), Professor of Law, The University of Toronto

Paper: "He Had a Mandate": The South African Constitutional Court and the African National Congress in a Dominant Party Democracy

February 3, 2010 - [Stephen Gardbaum](#), MacArthur Foundation Professor of International Justice and Human Rights, UCLA School of Law

Paper: Reassessing the New Commonwealth Model of Constitutionalism

February 10, 2010 - [Vlad Perju](#), Assistant Professor of Law, Boston College

Paper: Cosmopolitanism and Constitutional Self-Government [Canceled]

February 17, 2010 - [Katharine Young](#), Centre for International Governance and Justice, Regulatory Institutions Network, Australian National University

Paper: A Typology of Economic and Social Rights Adjudication

February 24, 2010 - [Alexander Somek](#), Charles E. Floete Chair in Law, The University of Iowa

Paper: Constitutionalism and the Common Good

March 3, 2010 -- [Patrick Weil](#), Visiting Professor, Yale Law School, and Director, Center for the Study of Immigration, Université Paris I, Panthéon-Sorbonne

Paper: A New Strategic Link Between the Nation-State and the Citizen: A Multidimensional Citizenship in a Globalized World

March 10, 2010 - [Rainer Forst](#), Professor of Philosophy, Johann Wolfgang Goethe University, Frankfurt

Paper: The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach

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March 17, 2010 -- [Neil Walker](#), Professor of Public Law and the Law of Nature and Nations, University of Edinburgh School of Law

Paper: Beyond the Holistic Constitution?

March 24, 2010 -- [Miguel Maduro](#), Professor of European Law, European University Institute

Paper: Legal Reasoning and Judicial Adjudication at the European Court of Justice

April 7, 2010 - [Andras Sajo](#), Judge, The European Court of Human Rights

Paper: From Emotions to Constitutional Institutions

April 14, 2010 - [Samantha Besson](#), Visiting Professor of Law, Duke University, and Professor of Public International Law and European Law, University of Fribour

April 21, 2010 - [Martin Loughlin](#), Professor of Law, The London School of Economics and Political Scienc

Paper: On Misunderstanding the Concept of Public Law

April 28, 2010 - [David Dyzenhaus](#), Professor of Law and Philosophy, The University of Toronto

Paper: Militant Democracy in the House of Lords?

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Spring 2009 Colloquium:

"Truth, Trust, and Law: A Comparative Perspective"

This course explored the challenge posed to a legal order by the dual injunctions of pursuing justice and of maintaining the terms of social community, empathy and solidarity. Law must not only protect the moral community but maintain that community. This tension between doing justice and fostering solidarity among citizens is evident across legal traditions. It most frequently is expressed as a tension between justice and mercy. For example, should criminals always receive their just desert or is there room for mitigating circumstances or for nullifying judgment? More generally, should law revolve around truth-seeking or around mediating disputes and solving problems? In our global political world, the nature of the moral community is no longer clear and self-understood. Consequently, demands for mercy or mitigating punishment predicated on shared communal understandings are hotly disputed.

The course approached this large topic from a comparative and interdisciplinary perspective. In the first class, the class viewed and discussed Shakespeare's play *The Merchant of Venice*, analyzing the conflicting demands of upholding contracts and of communal recognition. The class then went on to read Murphy and Hampton, *Forgiveness and Mercy*, and then looked at how this problem is treated in different legal cultures, including American criminal law and Confucian, Jewish, Christian and Islamic thought.

Codirectors

Prof. [Suzanne Stone](#), Cardozo School of Law

Prof. [Adam Seligman](#), Boston University Department of Religion

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[Yeshiva University Center for Jewish Law and Contemporary Civilization](#) at Cardozo

Speakers

Jan. 22: Viewing of The Merchant of Venice

Jan. 29: [Adam Seligman](#), Boston University

Session Title: Love, Necessity, and Law in The Merchant of Venice

Readings: Adam Seligman, Love Necessity, and Law in The Merchant of Venice ; Adam Seligman, Living Together Differently

Feb. 5: [Anver Emon](#), University of Toronto

Session Title: Truth and Trust in Islamic Tradition

Reading: Anver Emon, Pluralism and the Limits of Law

Feb. 12: [Michael Puett](#), Harvard University

Session Title: Law and Community in the Confucian Tradition

Reading: Michael Puett, Innovation as Ritualization: The Fractured Cosmology of Early China

March 5: [Patrick Weil](#), Yale Law School

Session Title: Citizenship and Solidarity: The French Perspective

Reading: Patrick Weil, Lifting the Veil

March 12: [Kwame Anthony Appiah](#), Princeton University

Session Title: Religious Identity as a Challenge to Modern Politics

Reading: Kwame Anthony Appiah, Rooted Cosmopolitanism

March 19: [Suzanne Stone](#), Cardozo School of Law

Session Title: Empathy and Civil Society in the Jewish Tradition

Readings: Edud Luz, Jewish Ethics; Suzanne Last Stone, Jewish Tradition and Civil Society; Yebamoth; Gibeonites background

March 26: [Silvio Ferrari](#), Università degli Studi di Milano

Session Title: Truth and Trust in the Catholic Tradition

Reading: Daniel Philpott, Religion, Reconciliation, and Transitional Justice: The State of the Field

April 2: [Leora Bilsky](#), Tel Aviv University

Session Title: Citizenship as Mask

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Spring 2008 Colloquium:

"Religion and Political Space"

This weekly colloquium focused on the comparative study of religion and political space. Political space is that arena of public action, organized by the sovereign forces of rule for the ordering of public life and the realization of the public good. In examining the relationship between religion and political space, the colloquium examined two critical questions: First, historically, what role has religion and religious groups played in the political sphere? Second, how have different religions and different religious traditions understood their relationship to the political space? How have different religious traditions understood, theorized, or given

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legitimacy to the society's dominant political authority? The colloquium examines these questions in a host of different political arrangements, including the ancient polis, the city-state, empire, the Christian ecumene, the nation-state, and what is now termed by many, the nation-state.

Codirectors

Prof. [Suzanne Stone](#), Cardozo School of Law

Prof. [Adam Seligman](#), Boston University Department of Religion

Cosponsor

[Yeshiva University Center for Jewish Law and Contemporary Civilization](#) at Cardozo

Speakers

Jan. 17: Introduction: Professors Seligman and Stone

Jan. 24: Prof. [Stephen Scully](#), Boston University, Department of Classical Studies

Session Title: Religion and Political Space in Aeschylus' Oresteia

Reading: Aeschylus, The Oresteia

Jan. 31: Prof. Silvio Ferrari, Università degli Studi di Milano

Session Title: The Law of God and the Modern State: The Impact of Religious Legal Traditions on State-Religion Relations

Reading: Remi Brague, The Law of God: The Philosophical History of an Idea, Part I, ch.3 (Historical Conditions of Alliance), Part IV (Law and Cities in the Middle Ages)

Feb. 7: Prof. [Allan Silver](#), Columbia University, Department of Sociology

Readings: Allan Silver, "Two Different Sorts of Commerce" -- Friendship and Strangership in Civil Society; Allan Silver, Friendship and Sincerity; Allan Silver, The Curious Importance of Small Groups in American Sociology; Allan Silver, Some Perspectives on Friendship: Religious and Secular

Feb. 14: Prof. [Robert Weller](#), Boston University, Department of Anthropology

Session Title: Boundary and Power in Chinese Globalizing Societies

Readings: Robert Weller, Discovering Nature: Globalization and Environmental Culture in China and Taiwan, ch. 2; Emma Jinhua Teng, Taiwan's Imagined Geography: Chinese Colonial Travel Writing and Pictures, 1683-1895, ch. 1

Feb. 21: Prof. [Deeana Klepper](#), Boston University, Department of Religion

Session Title: The Inclusion/Exclusion of Jews in the Formation of a Medieval European Polity

Readings: Jonathan Elukin, Living Together Living Apart: Rethinking Jewish-Christian Relations in the Middle Ages, chs 3-5; Deeana Klepper, Christian Views of Jewish Expulsion in the Middle Ages: Theology and Policy

Feb. 28: Prof. [Mark Lilla](#), Columbia University, Department of Religion

Readings: Mark Lilla, The Stillborn God: Religion, Politics, and the Modern West (2007), chs. 1, 6 & 7

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March 6: Prof. [Shlomo Fischer](#), Tel Aviv University

Readings: Shlomo Fischer, Self-Expression and Democracy in Radical Religious Zionist Ideology, ch 5 ("The General Will and the Divine State") (unpub. dissertation); Arye Edrei, Law, Interpretation and Ideology: The Renewal of the Jewish Laws or War in the State of Israel, 28 Cardozo L. Rev. 187 (2006); Shlomo Fischer, Excursus: Concerning the Rulings of R. Ovadiah Josef Pertaining to the Thanksgiving Prayer, the Settlement of the Land of Israel, and Middle East Peace, 28 Cardozo L. Rev. 229 (2006).

March 20: Prof. [Shmuel Trigano](#), Université Paris X - Nanterre, Département de Sociologie
Session Title: How the Modern Nation State Influenced Jewish Existence and Continuity

April 10: Prof. [Adriaan Lanni](#), Harvard Law School (4-6pm)

Reading: Adriaan Laani, [Law and Order in Ancient Athens](#)

April 10: Prof. [James Whitman](#), Yale Law School (7-8:45 pm)

Reading: James Whitman, The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial (Yale Univ. Press, 2007)

April 17: Prof. Ayhan Kaya, Istanbul Bilgi University, Department of International Relations

May 1: Prof. [Andrew March](#), Yale University, Department of Political Science

Session Title: Islamic Meta-Ethics and Grounding Principled Moral Obligation to Non-Muslims in the Conditions of Modernity

Readings: Andrew F. March, "[Theorizing and Theologizing](#) the Rights of non-Muslims"; Andrew F. March, "[Summary](#) of Shaykh 'Abd al- 'Aziz ibn Salih al-Jarba's Al-ta 'sil li-mashru 'iyyat ma hasala li-Amrika min tadmīr" ("Establishing the Legitimacy of the Destruction which Befell America"); Andrew F. March, "[Islamic Foundations](#) for a Social Contract in non-Muslim Liberal Democracies" 101 Am. Poli. Sci. Rev. 235 (2007)

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Spring 2007 Colloquium:

"Constitutionalism in an Era of Globalization and Privatization"

This colloquium concentrated on how globalization and privatization are altering the constitutional relationship between the nation-state and its citizens and other relevant parties. Both globalization and privatization draw power away from the nation-state towards transnational or global institutions and towards national and multi-national private actors. Do these two related trends require the articulation of new constitutional rights or the revision or reconceptualization of old ones? Do they call for internationalization of constitutional law and constitutionalization of international law? Must sovereignty be redefined? Must part or the whole words of private transactions become constitutionalized? Must private actors be given constitutional duties? These questions were examined through weekly presentations by leading scholars in the relevant fields coming from the United States and several foreign countries.

Convenors

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[Andrew Arato](#), Dorothy Hart Hirshon Professor of Political and Social Theory, The New School for Social Research

[Jean Cohen](#), Professor of Political Science, Columbia University

[Michel Rosenfeld](#), Justice Sydney L. Robins Professor of Human Rights, Benjamin N. Cardozo School of Law.

Speakers

Jan. 22: Introduction: Professors Arato, Cohen, and Rosenfeld

Jan. 29: [Prof. Patrick Macklem](#), The University of Toronto Faculty of Law

Reading: What Is International Human Rights Law?

Feb. 5: [Prof. Joseph Weiler](#), New York University School of Law

Reading: Putting the Toothpaste Back In the Tube: The European Union Without a European Constitution?

Feb. 12: [Prof. Andras Sajó](#), Central European University Faculty of Law

Reading: From Militant Democracy to the Preventative State?

Feb. 21 (Wed.): [Prof. Grainne de Burca](#), Fordham University Law School

Reading: Developing Democracy Beyond the State

Feb. 26: Prof. [Michel Troper](#), University of Paris X-Nanterre Law School

Reading: *L'Europe politique et le concept de souveraineté* (Europe and the Concept of Sovereignty)

Mar. 5: Prof. [Michiel Scheltema](#), University of Utrecht

Reading: Law of the Future

Mar. 12: [Prof. Sujit Choudhry](#), The University of Toronto Faculty of Law

Readings: Does the World Need More Canada: The Politics of the Canadian Model in Constitutional Politics and Political Theory; Rethinking Comparative Constitutional Law: Multinational Democracies, Constitutional Amendment and Secession

Mar. 19: Prof. [Gunther Teubner](#), The Johann Wolfgang Goethe University of Frankfurt, School of Law

Readings: The Anonymous Matrix: Human Rights Violations by "Private" Transnational Actors; Societal Constitutionalism: An Alternative to State-centered Constitutional Theory

Mar. 26: Prof. [Hélène Ruiz-Fabri](#), [University of Paris I](#) (Panthéon-Sorbonne) Faculty of Law

Reading: The Constitutionalization of International Law

Apr. 16: [Prof. Jose Alvarez](#), Columbia University School of Law

Reading: International Organizations: Then and Now

Apr. 19 (Thurs): [Prof. Vicki Jackson](#), Georgetown University Law Center

Readings: Introduction; Constitutional Engagement with the Transnational -- Choices for the Future

Apr. 23: [Prof. Susan Marks](#), King's College London School of Law

Readings: Preface; Exploitation as an International Legal Concept

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Apr. 30: [Prof. Renaud Dehousse](#), Paris Political Studies Institute

Readings: A Failure Writ Large: Europe and the Idea of a Constitution; The Making of a Transnational Constitution

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Spring 2006 Colloquium:

"Democracy and Discourse"

Jan. 23: Introduction: Democracy, Discourse, Law: [Peter Goodrich](#)

Jan. 30: Habermas and the Concept of the Public Sphere: Anselm Haverkamp

Feb. 6: State and Terror: [Michel Rosenfeld](#)

Feb. 13: Discourses of Power: Friends and enemies: [Simon Critchley](#)

Feb. 27: Governmentality: Subject, discipline and law: Alain Brossat, University of Paris

Mar. 6: Persons and States: Barbara Vinken, University of Munich

Mar. 13: East and West: [Marinos Diamantides](#)

Mar. 20: Reproducing the State: [Jacqueline Stevens](#)

Mar. 27: Freedom of Speech: [Victoria Kahn](#)

Apr. 3: Aesthetics and Terror: Juliane Rebentisch, University of Berlin

Apr. 10: Democratic Matters: [Rudiger Campe](#)

Apr. 24: The Place of Law: Closing Statements: [Peter Goodrich](#), Anselm Haverkamp

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Spring 2005 Colloquium:

"Why Law? Freedom and Legality"

This colloquium will examine the question of the nature of law and the relation between freedom and law. If we are free beings, then why do we need to be bound by law? If we are bound by law, how can we be said to be free beings? What is the legitimacy of that bond? Freedom and authority are not obviously philosophical correlates, nor is free self-development, the ideal of a truly human life necessarily best fostered by imposition or law. In the tradition of liberal thought, the seminar will address the question, why law? Why law as opposed to no law? Why law as against other forms of natural, ethical or communicative ordering? Why law as opposed to conceptions of its future abrogation? The course will attend to the arguments for freedom and freedom of thought within a variety of theoretical traditions from the Greeks to the contemporary. Cynicism, anarchism, liberalism, Marxism, discourse ethics, natural law, critical theory, and utopian blueprints are amongst the range of theories that will be examined and expatiated.

Convenors

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[Peter Goodrich](#), Benjamin N. Cardozo School of Law

[Simon Critchley](#), New School University, Dep't of Philosophy

Speakers

Jan 24 - Introduction: [Peter Goodrich \(Cardozo\)](#)

Jan 31 - Anthropologies of Law: [David Graeber \(Yale\)](#)

Feb 7 - The Concept of the Political: [Simon Critchley \(New School\)](#)

Feb 14 - Politics of Interpretation: [Joseph Brooker \(London\)](#)

Feb 28 - Violence and Legality: [Anselm Haverkamp \(Berlin & NYU\)](#)

March 1 - The Subject of Law: [Michel Rosenfeld \(Cardozo\)](#)

March 7 - Institutions: Cornelia Vismann (Frankfurt)

March 21 - Reverence for Legality: Jacques Ranciere (Paris)

March 28 - Ethics and Evil: Alain Badiou (Ecole Normale Superieure)

April 4 - Aesthetics and Law: [Desmond Manderson \(McGill\)](#)

April 11 - Interpreting Freedom: [Drucilla Cornell \(Rutgers\)](#)

April 18 - Kynicism and Legality: [Peter Sloterdijk \(Karlsruhe\)](#)

May 2 - Freedom and Interpretation: [Martin Stone \(Cardozo\)](#)

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Spring 2004 Colloquium:

“Liberalism and the Rule of Law: Discussions of the Liberal Temper and the Character of Law”

Convenors

Peter Goodrich, Cardozo School of Law

Peter Gay, Sterling Professor Emeritus, Yale University

Speakers

January 26 - Introduction: Peter Gay (Yale University)

February 2 - John Locke: Robert Stevens (Oxford University)

February 9 - Baron de Montesquieu: Peter Gay

February 19 - Cesar Beccaria: Peter Gay

February 23 - Denis Diderot: Simon Critchley (New School University)

March 1 - Immanuel Kant: Anselm Haverkamp (University of Berlin)

March 8 - Jeremy Bentham: Piuél Haldar (University of London)

March 15 - Oliver Wendell Holmes: Duncan Kennedy (Harvard Law School)

March 29 - John Stuart Mill: Hugh Collins (London School of Economics)

March 22 - John Stuart Mill: George Kateb (Princeton University)

April 14 - Sigmund Freud: Jerome Bruner (NYU)

April 19 - Hans Kelsen: Michel Troper (University of Paris)

April 26 - John Rawls: Pierre Schlag (University of Colorado Law School)

May 3 - Ronald Dworkin: Michel Rosenfeld (Cardozo School of Law)

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