LEGAL SCHOLARSHIP NETWORK: LEGAL STUDIES RESEARCH PAPER SERIES
UC DAVIS SCHOOL OF LAW
Vol. 7, No. 6: June 20, 2005

Publisher: Law School Research Papers - Legal Studies
a division of
Social Science Electronic Publishing, Inc. (SSEP)
and Social Science Research Network (SSRN)

Editor: KEVIN R. JOHNSON
Associate Dean for Academic Affairs, School of Law, and Mabie/Apallas Professor of Public Interest Law and Chicana/o Studies, University of California, Davis
Mailto:krjohnson@ucdavis.edu

T A B L E of C O N T E N T S

NEW and FORTHCOMING ARTICLES

S S R N I N F O R M A T I O N

ACQUIRING PAPERS

N E W and F O R T H C O M I N G Articles

"Reconciling State Sovereignty and Investor Protection in Denial of Justice Claims"
Virginia Journal of International Law, Vol. 45, 2005

BY: ANDREA K BJORKLUND
University of California, Davis
School of Law

Document: Available from the SSRN Electronic Paper Collection:
http://papers.ssrn.com/paper.taf?abstract_id=739764

Paper ID: UC Davis Law, Legal Studies Research Paper No. 46

Contact: ANDREA K BJORKLUND
Email: not available
Postal: University of California, Davis
School of Law
Martin Luther King, Jr. Hall
Davis, CA 95616-5201 UNITED STATES

ABSTRACT:
International tribunals have traditionally employed ill-defined measures to ascertain whether a State's judicial practices with respect to aliens have resulted in a denial of justice under international law. Foreign investors with rights conferred by bilateral and multilateral investment agreements may challenge domestic court decisions, but may obtain relief only from an act that shocks the conscience or surprises a sense of judicial propriety. My hypothesis is that these imprecise standards are more likely to result in an unreasoned critique of a State's judicial processes than would more systematic and reasoned analysis of the judicial system's alleged shortcomings.

International tribunals have decided dozens of denial of justice cases in the last 130 years; many of them are characterized by disparity between rhetoric (high deference) and reality (poorly explained findings of denials of justice). These decisions advance the interests of neither sovereign States nor foreign investors, both of whom seek clear, predictable outcomes from national judicial systems and international tribunals. The challenge is to develop a denial of justice standard that maximizes the dispensation of justice to a particular investor while minimizing intrusion on the sovereignty of the State whose judicial system is questioned. The approach set forth below, sequential review, does just that. The first-order inquiry examines a particular court decision; the second-order inquiry, commenced only if the first fails to dispose of the claim in its

entirety, examines alleged inadequacies in the judicial system as a whole. By creating a coherent, well-reasoned body of jurisprudence, investment tribunals bolster their legitimacy, fulfill the goals of both investors and sovereign States, and enhance the dialogue between international and national courts.

Critics periodically draw public attention to the secret threat to democracy and popular sovereignty supposedly inherent in an international tribunal's purporting to pass judgment on a U.S. court decision or government regulation. Yet there is nothing secret about a nation's offering such a remedy to foreign investors, and a nation's conferring such authority on international tribunals is the very essence of a sovereign act.

"Law, Culture and the Lore of Partnership: Of Entrepreneurs, Accountability, and the Evolving Status of Partners"
Wake Forest Law Review, Forthcoming

BY: ROBERT WILLIAM HILLMAN
University of California, Davis School of Law

Document: Available from the SSRN Electronic Paper Collection:
http://papers.ssrn.com/paper.taf?abstract_id=740627

Paper ID: UC Davis Law, Legal Studies Research Paper No. 47

Contact: ROBERT WILLIAM HILLMAN
Email: Mailto:rwhillman@ucdavis.edu
Postal: University of California, Davis School of Law
Martin Luther King, Jr. Hall
Davis, CA 95616-5201 UNITED STATES
Phone: 530-752-8020

ABSTRACT:

In important respects, contemporary partnerships are modifying the associational form under which they operate in ways that represent clear departures from the classic partnership model.

This article explores the mystique of partnership, the role of partnership in our culture, and how partnership law has evolved to encourage the structuring of relationships that bear little resemblance to the partnership model on which the law was developed (e.g., nonequity partners in professional services firms). It considers the implications of this change and questions whether long-standing assumptions concerning what it means to be a partner continue to hold.

"Maria and Joseph Plasencia's Lost Weekend: The Case of Landon v. Plasencia"
IMMIGRATION STORIES, David A. Martin, Peter H. Schuck, eds., Foundation Press, 2005

BY: KEVIN R. JOHNSON
University of California, Davis

Paper ID: UC Davis Law, Legal Studies Research Paper No. 43

Contact: KEVIN R. JOHNSON
Email: Mailto:krjohnson@ucdavis.edu
Postal: University of California, Davis
400 Mrak Hall Drive
Martin Luther King, Jr. Hall
Davis, CA 95616-5201 UNITED STATES
Phone: 530 752 0243
Fax: 530 752 7279

ABSTRACT:
This is a chapter to a book, edited by David A. Martin and Peter H. Schuck, that includes chapters telling the stories of major U.S. immigration law cases. This chapter tells the human story of Maria and Joseph Plasencia behind the Supreme Court's decision in Landon v. Plasencia 459 U.S. 21 (1982). In an opinion written by Justice Sandra Day O'Connor, the Court held that the question whether Plasencia, a lawful permanent resident who was accused of being inadmissible because she was seeking to smuggle noncitizens into the country upon her return to a brief weekend trip to Mexico, could be determined in an exclusion (rather than a deportation) hearing, but also that this hearing must comport with due process. Prompted by Landon v. Plasencia, Congress in 1996 amended the immigration statute to provide that returning lawful permanent residents seeking to enter the country are generally not subject to the same procedures and inadmissibility grounds as first-time entrants. A beneficial dialogue between the Supreme Court in Landon v. Plasencia and Congress thus secured greater rights for lawful permanent residents and arguably made immigration procedures more consistent with mainstream constitutional norms.

The real life drama of Maria and Joseph Plasencia shows a rather ordinary couple - one an immigrant, the other a native-born U.S. citizen - caught up in larger national and international tides. Far from a passive observer, Maria Plasencia refused to concede removal but pressed her claim to return to her family in the United States. Legally, the Supreme Court decision in the case was a loss for Maria, but, released pending appeal and never pursued by the INS after the Supreme Court's decision, she returned to normal life in the United States with her family.

"The Return of the Ring"
California Law Review, Vol. 93, 2005

BY: ANGELA ONWUACHI-WILLIG
University of California, Davis
School of Law

Document: Available from the SSRN Electronic Paper Collection:
http://papers.ssrn.com/paper.taf?abstract_id=729507

Paper ID: UC Davis Law, Legal Studies Research Paper No. 45

Contact: ANGELA ONWUACHI-WILLIG

Email: Mailto:aonwuachi@ucdavis.edu
Postal: University of California, Davis
School of Law
Martin Luther King, Jr. Hall
Davis, CA 95616-5201 UNITED STATES

ABSTRACT:
In 1996, the United States Congress began its imposition of a marital solution to poverty when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"). Nearly ten years later, Congress has strengthened its commitment to marriage as a cure for welfare dependency with proposals such as the Personal Responsibility, Work, and Family Promotion Act of 2005. If passed, this bill would provide 1.5 billion dollars for pro-marriage programs and require each state to explain how its welfare program will encourage marriage for single mothers who receive public aid. With these proposals, Congress has continued to construct poverty as a private rather than public problem. These programs, designed to move poor individuals into the husband-wife, normatively heterosexual dyad, are part of a long-term plan for privatizing economic responsibility for children in impoverished households.

This Article situates recent welfare debates concerning the Temporary Assistance to Needy Families ("TANF") program, in particular those debates concerning the proposal of the "marriage cure," within a post-colonial context and examines, both historically and currently, how the law of marriage has been used in the United States as a tool for "civilizing"
outsiders. Part I analyzes how marriage laws were used in the post-bellum period as a means of minimizing states' economic responsibility to provide for newly-emancipated Blacks, especially former slave children. Part II scrutinizes the racialization of welfare recipients in the United States in recent history and dissects current and proposed TANF marriage-promotion provisions to reveal how marriage and law are again being operated as tools for domesticating welfare queens.
Finally, this Article concludes by exploring alternatives to this proposed marriage cure to poverty.

"Enlightened Constitutionalism"
Connecticut Law Review, Vol. 37, 2005

BY: MADHAVI SUNDER
University of California, Davis
School of Law

Document: Available from the SSRN Electronic Paper Collection:
http://papers.ssrn.com/paper.taf?abstract_id=744824

Paper ID: UC Davis Law, Legal Studies Research Paper No. 48

Contact: MADHAVI SUNDER
Email: Mailto:msunder@ucdavis.edu
Postal: University of California, Davis
School of Law

Martin Luther King, Jr. Hall
Davis, CA 95616-5201 UNITED STATES
Phone: 530-752-2896
Fax: 530-754-5304

ABSTRACT:
In his important new essay, "Imposed Constitutionalism," Noah Feldman shares his dilemma as an American constitutional advisor to the fledgling democracy in Iraq: How can we Western outsiders exercise influence in constitutional processes without undermining local autonomy and democracy itself? His answer: We cannot. Ironically, the conclusion of his "insider's" account is that political "outsiders" ought to take no part in - indeed, they ought not even to influence - the constitutions of new democracies. Western influence is imposition.

It is brave of Feldman to describe the very actions that brought him fame as problematic. And it is rare to see a person with real power to affect a country's constitution graciously make the case for abdicating that power. But Westerners'
deference to local elites and our elision of internal traditions of dissent for equality within new Islamic democracies has the perverse effect of buttressing local fundamentalists' claims that equality is "Western" and anathema to Islam. The problem is that while Feldman sees democracy in the Muslim world as homegrown, he seems to imagine egalitarianism as largely exogenous to Islamic democracy. Thus, egalitarianism becomes "imposed" by Westerners in ways that undermine democratic self-determination. But as my own research has shown, Islamic communities increasingly demonstrate endogenous commitments to equality. These commitments are evident especially in the challenges posed by Islamic women reformers to traditions of patriarchy offered under a religious guise. Depicting equality claims as "imposed" works against the claims of internal reformers who would seek to reconcile Islam and equality and who desire affirmation of their views from a sympathetic global public. The unintended consequence of Feldman's proposal is that we side with the fundamentalists instead of the egalitarian reformers.

I suggest instead that now is the time for active engagement - for throwing our lot in with those who seek an Islamic democracy that is respectful of women's equality and fundamental rights to open debate and critical reason. An enlightened constitutionalism, in contrast to an imposed constitutionalism, recognizes that modern nations are much more heterogeneous and porous than previously imagined. Enlightened constitutionalism would not shut down the channels of transnational dialogue in the name of facilitating self-determination, because it understands that external influence on the internal is inevitable - that deference is inevitably choice. Furthermore, it sees cross-cultural discourse and dissent as important goods in themselves - for example, as sources of support for internal reformers and as potential inspiration for new ideas. In the end, the commitment of enlightened constitutionalism to embrace dialogue even in the face of postcolonial and neocolonial power turns on a particular understanding of human beings themselves.
Enlightened constitutionalism reflects the cosmopolitan constitution of us all: the inspiring human ability to create ourselves as historical beings, selecting and modifying diverse traditions to suit our changing needs and aspirations in modernity.

P A R T N E R S in P U B L I S H I N G

Editor and Subscription Information for Journals Carrying Accepted or Recently Published Papers Abstracted in this Issue

Please mention SSRN when subscribing to these journals.

VIRGINIA JOURNAL OF INTERNATIONAL LAW
Contact: Editor in Chief
Email: Mailto:vjil@virginia.edu
Postal: Virginia Journal of International Law
University of Virginia Law School
580 Massie Road
Charlottesville, VA 22903-1789 USA
Phone: (804) 924-3415
Fax: (804) 924-3237

URL: http://scs.student.virginia.edu/~vjil

To subscribe, contact the above address.

WAKE FOREST LAW REVIEW
Editor: Editor in Chief
Contact: Managing Editor
Postal: Wake Forest Law Review, Inc.
Wake Forest University School of Law
P.O. Box 7206
Winston-Salem, NC 27109-7206 USA
Phone: (336) 758-5439
Fax: (336) 758-4496

URL: http://www.law.wfu.edu/x2083.xml

To subscribe, contact the addresses above. Subscription rate: $21/year for 4 issues.

UNIVERSITY OF CALIFORNIA DAVIS SCHOOL OF LAW, LEGAL STUDIES RESEARCH PAPER SERIES
Contact: Kevin R. Johnson
Email: Mailto:krjohnson@ucdavis.edu
Postal: UC Davis School of Law
400 Mark Hall School of Law
Davis, CA 95616 USA
Phone: 530 752 0243
Fax: 530 752 7279

For more information on the series, please use the contact addresses above.

CALIFORNIA LAW REVIEW
Contact: Editor in Chief
Email: Mailto:californialawreview@law.berkeley.edu

Postal: California Law Review
592 Simon Hall
University of California
Berkeley, CA 94720 USA
Phone: (510) 642-7562
Fax: (510) 642-3476

URL: http://www.law.berkeley.edu/journals/clr/

To subscribe, contact Publications Coordinator, 588 Simon Hall, Univ. of California, Berkeley, CA 94720-7200 Phone:(510)643-6600, Mailto:kabrams@law.berkeley.edu

CONNECTICUT LAW REVIEW

Contact: Editor in Chief
Email: Mailto:ConnLRev@law.uconn.edu
Postal: Connecticut Law Review
University of Connecticut School of Law
65 Elizabeth Street
Hartford, CT 06105-2290 USA
Phone: (860) 570-5331
Fax: (860) 570-5332

URL: http://connecticutlawreview.org

To subscribe, send $28 for a one year subscription to the above address.

CLICKABLE EMAIL AND WEB ADDRESSES

All email and web references in this journal are in a form that enables compliant email programs and web browsers to recognize them. This feature is supported by Claris Emailer 2.0, NetScape 2.0 or higher, and Eudora 3.0. A reader with a compliant mailer can click on a web address to go directly to the paper's download web page or click on a Mailto address to obtain a pre-addressed email form. PLEASE IGNORE the "Mailto:" command preceding each email address when copying addresses directly into your mailer.

A D M I N I S T R A T I V E I N F O R M A T I O N

---

* Missing Issues and Change of Address

Contact Mailto:Missing@SSRN.Com for missing issues, or Mailto:AddressChg@SSRN.Com for email address changes. We may not be aware of a problem unless you contact us.

S U B S C R I P T I O N S

HOW TO SUBSCRIBE TO SSRN JOURNALS

1. Site license membership

Many university departments and other institutions have purchased site licenses covering all of the journals in a particular network. If you want to subscribe to any of the SSRN journals, you may be able to do so without charge by first checking to see if your institution currently has a site license.

To do this please click on any of the following URLs. Instructions for joining the site are included on these pages.

Accounting Research Network
http://www.ssrn.com/update/arn/arn_site-licenses.html

Economics Research Network
http://www.ssrn.com/update/ern/ern_site-licenses.html

Financial Economics Network
http://www.ssrn.com/update/fen/fen_site-licenses.html

Legal Scholarship Network
http://www.ssrn.com/update/lsn/lsn_site-licenses.html

Management Research Network
http://www.ssrn.com/update/mrn/mrn_site-licenses.html

Social Insurance Research Network
http://www.ssrn.com/update/sirn/sirn_site-licenses.html

If your institution or department is not listed as a site, we would be happy to work with you to set one up. Please contact mailto:site@ssrn.com for more information.

2. Individual membership (for those not currently included on a site license):

* Join a site license, request a trial subscription, or purchase a subscription within the SSRN User HeadQuarters:
http://www.ssrn.com/subscribe

FINANCIAL HARDSHIP:
SSRN understands there is financial hardship in certain countries (for example the former Soviet Union and Eastern Bloc). If you are undergoing financial hardship and believe you cannot pay for a journal, please send a detailed explanation to Mailto:Subscribe@SSRN.Com

---
