

ISSN: 0897-6546

CAMBRIDGE UNIVERSITY PRESS

Law & Social Inquiry

Journal of the American Bar Foundation

Law & Social Inquiry (LSI) is a multidisciplinary quarterly publication of original research articles and review essays that analyze law, legal institutions, and the legal profession from a sociolegal perspective. LSI contributors examine law-and-society issues across multiple disciplines, including anthropology, criminology, economics, history, philosophy, political science, sociology and social psychology. The journal's combination of empirical and theoretical scholarship and critical appraisal of the latest sociolegal scholarship makes LSI an indispensable source for legal scholars and practitioners.



Law & Social Inquiry is published by Cambridge University Press on behalf of the American Bar Foundation

The American Bar Foundation (ABF) is among the world's leading research institutes for the empirical and interdisciplinary study of law. An independent, nonprofit organization for more than 65 years, the ABF seeks to advance the understanding and improvement of law through research projects of unmatched scale and quality on the most pressing issues facing the legal system in the United States and the world. The ABF's mission is to expand knowledge and advance justice through innovative, interdisciplinary, and rigorous empirical research on law, legal processes, and legal institutions. The ABF is committed to broad dissemination of research findings to the organized bar, scholars, and the general public. The results of these findings are published in a wide range of forums, including leading academic journals, law reviews, and academic and commercial presses. The ABF is recognized as a 501(c)(3) nonprofit organization. The ABF does not provide external grants. In the course of collaborative research efforts with other institutions, the ABF does not pay indirect costs. Primary funding for the ABF is provided by the American Bar Endowment (ABE) and the Fellows of the American Bar Foundation. Further information about Foundation programs and activities can be found at: www. americanbarfoundation.org.

Law & Social Inquiry (ISSN: 0897-6546; Online ISSN: 1747-4469) is published quarterly on behalf of the American Bar Foundation (ABF) by Cambridge University Press (One Liberty Plaza, 20th floor, New York, NY 10006). Periodicals postage rate paid at New York, NY, and at additional mailing offices. POSTMASTER: Send address changes in the USA, Canada, and Mexico to: Law & Social Inquiry, Cambridge University Press, Journals Fulfillment Department, One Liberty Plaza, 20th floor, New York, NY 10006. Send address changes elsewhere to Law & Social Inquiry, Cambridge University Press, Journals Fulfillment Department, UPH, Shaftesbury Road, Cambridge CB2 8BS, England.

Disclaimer

Any opinions, findings, and conclusions or recommendations expressed in ABF publications are those of the author(s) and do not necessarily reflect the views of the American Bar Foundation or the American Bar Association. The AMERICAN BAR FOUNDATION, ABF and related seal trademarks as used by the American Bar Foundation are owned by the American Bar Association and used under license.

ISSN: 0897-6546 E-ISSN: 1747-4469

© American Bar Foundation (2019)

Law & Social Inquiry

Volume 44, Issue 2, May 2019

Editor

Christopher W. Schmidt cschmidt@abfn.org

Review Section Editor

Howard S. Erlanger howard.erlanger@wisc.edu

Associate Editors

Stephen Daniels Margot Moinester Rachel Montgomery Asad Rahim Victoria Woeste

Editorial Coordinator

Willa Sachs wsachs@abfn.org

Editorial Board

2017-2019:

Mary Gallagher, University of Michigan

Mitu Gulati, Duke University

Alexandra Huneeus, University of Wisconsin, Madison

Thomas M. Keck, Syracuse University

Darryl Li, University of Chicago

Calvin Morrill, University of California, Berkeley

César F. Rosado Marzán, Chicago-Kent College of Law

Justine Tinkler, University of Georgia

Mila Versteeg, University of Virginia

Kevin Woodson, University of Richmond

2018-2020:

Shahla Ali, University of Hong Kong

Amada Armenta, University of Pennsylvania

Vanessa Baird, University of Colorado, Boulder

Rohit De, Yale University

Peter C. DiCola, Northwestern University

Aziz Huq, University of Chicago

Anna-Maria Marshall, University of Illinois, Urbana-Champaign

Mark Fathi Massoud, University of California, Santa Cruz

Ashley T. Rubin, University of Toronto

Kristen A. Stilt, Harvard University

Shauhin Talesh, University of California, Irvine

2019-2022:

Paul M. Collins Jr., University of Massachusetts, Amherst

Seth Davis, University of California, Berkeley

Alison Dundes Renteln, University of Southern California

Ingrid V. Eagly, University of California, Los Angeles

Alison Gash, University of Oregon

Mark Goodale, University of Lausanne

Ya-Wen Lei, Harvard University

Sandra R. Levitsky, University of Michigan

Larisa Mann, Temple University

Osagie K. Obasogie, University of California, Berkeley

Keramet Reiter, University of California, Irvine

Justin T. Sevier, Florida State University

Susan Trevaskes, Griffith University

American Bar Foundation

Board of Directors

Officers and Directors

David S. Houghton, Omaha, NE

President
E. Thomas Sullivan, Burlington, VT

Vice-President

Walter L. Sutton, Jr., Dallas, TX

Treasurer

Jimmy K. Goodman, Oklahoma City, OK

Secretary

Michael H. Byowitz, New York, NY Jennifer Chacón, Los Angeles, CA Sandra J. Chan, Santa Barbara, CA Doreen D. Dodson, St. Louis, MO George S. Frazza, New York, NY Robert J. Grey, Jr., Richmond, VA Hon. Sophia H. Hall, Chicago, IL Kay H. Hodge, Boston, MA Harold D. Pope, Detroit, MI Lauren Robel, Bloomington, IN Andrew M. Schpak, Portland, OR

Ex Officio

Robert M. Carlson
President, American Bar Association
Judy Perry Martinez
President Elect, American Bar Association
William R. Bay
Chair, House of Delegates, American Bar Association
Michelle A. Behnke
Treasurer, American Bar Association

Stephen N. Zack
President, American Bar Endowment
Robert A. Clifford
Chair of the Council of the Fund for Justice and Education
Kimberly A. Yuracko
Dean, Northwestern University Pritzker School of Law

The Fellows

Reginald M. Turner
Chair
Ellen M. Jakovic
Chair-Elect
Hon. Eileen A. Kato (Ret.)
Secretary
Honorific – Non-Voting
Rew R. Goodenow
Immediate Past Chair – Fellows

Administration Ajay K. Mehrotra

Director
Kathleen D. Pace
Director of Development
Angelo Barone
Director of Finance
Sarah Levy
Director of Legal Affairs and
Operations
Francine Blazowsk
Executive Assistant

Executive Committee

David S. Houghton, Chair Doreen D. Dodson Jimmy K. Goodman Kay H. Hodge E. Thomas Sullivan Walter L. Sutton, Jr. Reginald M. Turner

Research Faculty

Bernadette Atuahene, J.D., Yale University; M.P.A., Harvard University Traci Burch, Ph.D., Harvard University Devon Carbado, J.D., Harvard University John Comaroff, Ph.D., University of London Stephen Daniels, Ph.D., University of Wisconsin, Madison Shari Seidman Diamond, Ph.D., Northwestern University; J.D., University of Chicago Ronit Dinovitzer, Ph.D., University of Toronto Bryant G. Garth, Ph.D., European University Institute, Florence; J.D., Stanford University Tom Ginsburg, J.D., Ph.D., University of California, Berkeley John Hagan, Ph.D., University of Alberta

Terence Halliday, Ph.D., University of Chicago James J. Heckman, Ph.D., Princeton University Carol A. Heimer, Ph.D., University of Chicago John P. Heinz, J.D., Yale University Steven D. Levitt, Ph.D., Massachusetts Institute of Technology Sida Liu, Ph.D., University of Chicago Ajay K. Mehrotra, Ph.D., University of Chicago; J.D., Georgetown University Elizabeth Mertz, Ph.D., Duke University; J.D., Northwestern University Janice Nadler, Ph.D., University of Illinois, Urbana-Champaign; J.D., University of California, Berkeley Robert L. Nelson, Ph.D., J.D.,

Northwestern University

Laura Beth Nielsen, Ph.D., J.D., University of California, Berkeley Dylan C. Penningroth, Ph.D., Johns Hopkins University Jothie Rajah, Ph.D., University of Melbourne Robert J. Sampson, Ph.D., State University of New York at Albany Rebecca Sandefur, Ph.D., University of Chicago Christopher Schmidt, Ph.D., J.D., Harvard University Susan P. Shapiro, Ph.D., Yale University Christopher L. Tomlins, Ph.D., Johns Hopkins University Victoria Saker Woeste, Ph.D., University of California, Berkeley

Law & Social Inquiry

Volume 44, Issue 2, May 2019

Articles

Historical Modes of Perpetual Penal Confinement:	
Theories and Practices before Life Without Parole	
Christopher Seeds	305
The Judicial Politics of Burqa Bans in Belgium and	
Spain—Socio-Legal Field Dynamics and the Standardization of	
Justificatory Repertoires	
Marian Burchardt, Zeynep Yanasmayan, and Matthias Koenig	333
Fairness at Trial: The Impact of Procedural Justice and	
Other Experiential Factors on Criminal Defendants' Perceptions of	
Court Legitimacy in Poland	
Stanislaw Burdziej, Keith Guzik, and Bartosz Pilitowski	359
When the Death Penalty Goes Public: Referendum, Initiative, and	
the Fate of Capital Punishment	
Austin Sarat, John Malague, Lakeisha Arias de los Santos,	
Katherine Pedersen, Noor Qasim, Logan Seymour, and Sarah Wishloff	391
The "Right to Wage War" against Empire: Anticolonialism and the	
Challenge to International Law in the Indian National Army	
Trial of 1945	
Mithi Mukherjee	420
Illicit Justice: Aspirational-Strategic Subjects and the Political	
Economy of Domestic Violence Law in India	
Poulami Roychowdhury	444
In the Name of the Law: Legal Frames and the Ending of the Occupy	
Movement in Hong Kong	
Shen Yang	468
Review Section	
Review Symposium: Retrospective on the Work of Hendrik Hartog	
What Makes Hartog Hartog: Introduction to a Symposium on the Work	
of Dirk Hartog	
Risa L. Goluboff	491
Pigs and Positivism: Between Jurisprudence and Politics	
Roy Kreitner	498
Rights-consciousness as an Object of Historical Inquiry: Revisiting the	
Constitution of Aspiration	
Ely Aaronson and Arianne Renan Barzilay	505
Marital Consciousness and the Criminalization of Spousal Abuse	
Galia Schneebaum	512
Parents and Adult Children: The Elusive Boundaries of the Legal Family	
Shelly Kreiczer-Levy	519
Slavery, Freedom and Contract: Blurred Lines and Historical Resistance	
Eli Cook and Anat Rosenberg	526
Response: A Muddle in the Middle	
Hendrik Hartog	534
D. I.M.	E 40
Book Notes	549