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## **EMPLOYMENT**

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### **Tulane University Law School**

*James McCulloch Chair in Energy Law*  
*Professor of Law*  
*Director, Tulane Center for Energy Law*

**New Orleans, LA**

*July 2023- present*  
*July 2023- present*  
*July 2023- present*

Teaching Energy Law 1, International Energy Law, Property, Torts.

### **Washburn University School of Law**

*Senator Robert J. Dole Distinguished Professor of Law*  
*Professor of Law (with tenure)*  
*Co-Director, Oil and Gas Law Center*  
*Associate Professor of Law*  
*Associate Director, Oil and Gas Law Center*

**Topeka, KS**

*July 2020- July 2023*  
*July 2017- July 2023*  
*January 2017- July 2023*  
*August 2012- June 2017*  
*February 2014- January 2017*

*Elected to Washburn Chapter of Phi Beta Delta*

*May 2017*

Taught Cyberlaw, Energy Law, International Petroleum Arbitration, International Petroleum Transactions, and Joint Operations in Oil and Gas Projects. Commercial Law, Contracts, Evidence, Alternative Dispute Resolution, Arbitration, Graduate Legal Seminar, Introduction to Anglo-American Law.

### **Georgetown University Law Center**

*Adjunct Professor of Law*

**Washington, DC**

*Spring 2009- Spring 2012*

Taught International Arbitration and supervised independent research on public international law.

### **Milbank, Tweed, Hadley & McCloy LLP (currently Milbank LLP)**

*Associate*

**Washington, DC**

*May 2007- May 2012*

### **Fulbright & Jaworski LLP (currently Norton Rose Fulbright US LLP)**

*Associate*

**Houston, TX**

*June 2005 – April 2007*

## **HONORS & APPOINTMENTS**

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**Organization of Petroleum Exporting Countries:** Lead Investigator, Energy Transition Policy & Regulatory Briefs.

**Government of Mongolia:** Proclamation of gratitude from the Mongolian Minister of Justice (May 2011).

**Who's Who Legal (Arbitration)/ Global Arbitration Review:** Future Leader (2021, 2022, 2023, 2024).

**American Society of International Law (ASIL):** Member, Executive Council (2021-2024); Member, Honors Committee (2024-2025); Chair, Standing Interest Group Committee (2021-2024); Member, Standing Interest Group Committee (2020-2021); Co-Chair, Private International Law Interest Group, American Society of International Law (2016-2019); Chair, 2019 Caron Prize Committee (2019); Committee Member, 2018 Caron Prize Committee (2018); Planning Committee Member, 2017 Mid Year Research Forum; Selection Committee Member, Jus Gentium Research Award Selection Committee (2015).

**American Branch, International Law Association (ABILA):** Member, Board of Directors (2022-present); Co-Chair, International Law Weekend (2024); Member, International Law Weekend Planning Committee (2021-2022).

**International Law Students Association (ILSA):** Editorial Committee Member, Philip C. Jessup International Moot Court Competition (2016-2018).

**Center of International Law in Nepal.** Academic Advisor (September 2016-present).

**Association of International Energy Negotiators:** Chair, Nuclear Taskforce (June 2024- present).

**Center for American and International Law (CAIL):** Board of Trustees (ex officio) (July 2022-present).

**Institute for Energy Law (CAIL):** Member, Executive Committee (2022-2024); Member, Strategic Planning Committee (2022-2024); Member, Advisory Board (2016-present); Member, 2<sup>nd</sup> Leadership Class (2019); Chair, Academic Outreach Committee (2022-2024); Member, International Practice Steering Committee (2020-present); Module Co-Chair, International Module, 73<sup>rd</sup> Annual Energy Law Conference (Feb. 2022).

**Southwest Institute for International and Comparative Law (CAIL):** Chair (July 2022-present); Co-Chair, Symposium on Global Business (June 27, 2022).

**Institute for Transnational Arbitration (CAIL):** Member, Academic Council (2016-2022); Co-Chair, 30<sup>th</sup> Annual ITA Workshop and Annual Meeting (2018); Chair, Work-in-Progress Workshop (2018).

**Investment Claims (Oxford University Press):** Editor in Chief (2017-2024); Managing Editor (2013- 2017).

**TransLex Principles:** Board of Trustees (March 2024- present).

**International Investment Law and Arbitration** (Brill| Nijhoff): Member, Editorial Board (2015-present).

**American Review of International Arbitration (Columbia Law School):** Member, Advisory Board (2019-present).

**ICSID Review (Oxford University Press):** Member, Peer Review Board (2012-present).

**Oxford University Press Investment Claims Summer Academy:** Co-Chair (2015-present).

**Annual Investment Treaty Arbitration Conference** (Juris: Washington, DC): Co-Chair (2012-2017)

**Annual Houston Oil and Gas Investment Arbitration Conference:** Co-Chair (2014-2016).

## PUBLICATIONS

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### A. Condensed Sampling of Significant Works

#### Books & Edited Volumes

- Governing the Global Energy Commons (Oxford University Press, forthcoming March 2026)

Energy governance today is at a crossroads. Before Russia’s invasion of Ukraine, it might have appeared that a general consensus was building around a market approach. However the fallout from Russia’s invasion – and the specter of geo-political competition over energy resources and their use as a tool in geo-political competition – has seriously undercut any such appearance. The scope and size of the energy transition challenge similarly has raised doubts in some corners as to how a market approach could possibly deploy the needed change at anywhere the needed speed. This begs the question: what should energy governance look like and why? This book argues that energy must be viewed as a ‘commons.’ It will provide a theoretical argument for a human-development-based governance approach of the energy commons and anchor this approach in the historical development of energy law and policy.

- Transnational Law of Renewable Energy (Oxford University Press 2024) (with Teddy Baldwin & Catherine Banet).

This book will address the global legal regime for renewable energy. It will seek to provide a first stab at restating the emerging international consensus on renewable energy governance. The authors hope to provide a resource for researches and practitioners in global renewable energy projects. In particular, it will address the inconsistent community, national, and transnational demands for project governance and develop a means to reconcile these inconsistent demands under a single legal umbrella.

- Principles of International Energy Transition Law (Oxford University Press 2023) (with Leonardo Sempertegui).

Energy transition is a complex global problem. Complicating energy-transition governance, energy-transition policies cut across multiple legal silos (human rights law, environmental law, international economic law, finance law, energy law, law of the sea, transnational commercial law, etc.). This work proposes to provide a single resource that brings all of these different legal regimes under one roof and makes plain the interactions between them and how they can be reconciled. The book introduces the energy transition problem by situating the climate emergency in its broader energy context. The book explains how global energy value chains are deeply enmeshed in and drive global economic and human development. It explains how energy transition needs to resolve a trilemma between energy equity to provide access to energy needed to fuel human development around the world, energy security to provide for resilient and reliable energy systems, and environmental sustainability. The book develops thirty-two international legal principles governing different aspects of this energy trilemma. The book uses a commons governance perspective in order to assist in a holistic approach to balancing the different limbs of the trilemma – and the different legal principles – against each other.

- [Good Faith in Transnational Law, A Pluralist Account](#) (Brill | Nijhoff 2022)

I provide a theoretical account of good faith in transnational law. I argue that good faith is a tool to translate between different lived experiences. My starting point is deeply pluralist: I accept that transnational law is irreversibly fragmented. I also accept that transnational law necessarily must respond to fundamentally inconsistent values to be authoritative to all the communities transnational law aspires to govern. Such pluralist starting point is bound to create confusion: it appears that good faith can be invoked by all sides to support fundamentally inconsistent results. I develop how a focus on good faith as a process of decision-making seeking to support mutual other regard and communication is sufficiently capacious to explain these apparent inconsistencies. In doing so, I hope to defend the transnational law enterprise and argue that just like communication across languages is possible without recourse to a universal language, good faith permits us to communicate across economic, social, and cultural normative worlds without need for an axiomatic first legal principle.

- American Branch, International Law Association (ABILA) Book of the Year 2023

- [Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets](#) (Hart Publishing, 2020) (with Tade Oyewunmi, Penelope Crossley, and Kim Talus).

The book examines the legal and regulatory dynamics of energy transitions through a contextual lens. The book considers the applicable energy law and policy frameworks in (i) highly industrialized economies such as the US, EU, China and Australia; (ii) resource-rich developing countries such as Nigeria and regions like Southern Africa; as well as (iii) international economic and environmental law. It showcases how complex interconnections between energy supply chains can create both positive and negative feedback loops and identifies governance solutions effectively to facilitate more reliable, sustainable and secure energy supply systems in the twenty-first century.

- 14 Best New Energy Policy eBooks To Read In 2021, <https://bookauthority.org/books/new-energy-policy-ebooks>
- 100 Best Energy Policy Books of All Time, <https://bookauthority.org/books/best-energy-policy-books>
- Paperback edition (Australia/ New Zealand): 2022
- *Reviewed in* Frederick H. Turner, *Decarbonization and the Energy Industry*, 36 [Natural Resources & Environment](#) 62 (2021).
- *Reviewed in* Joseph A. Schremmer, *Decarbonization and the Energy Industry*, 4 [Oil, Gas & Energy Law](#) (2021)
- *Reviewed in* Daria Shapovalovna, *Book Review: Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets*, 23 [Environmental Law Review](#) 297 (2021)

- [Evidence in International Investment Arbitration](#) (Oxford University Press, 2018) (with Ian Laird & Kabir Duggal).

The book is the authoritative systematical exploration of the law of evidence in investor-state arbitration. The book proposes a codification of the rules of evidence guiding decision-making in investor-state arbitration based on a comprehensive review of the jurisprudence, emerging evidentiary rules and principles in commercial arbitration and the public international law of evidence. The book provides theoretical and practical guidance on the treatment of evidence at all stages of international investment law disputes. The book seeks to streamline how question of fact can be resolved in light of the contextual complexity of interconnected commercial usages, state policy processes, and global supply chains.

- Cited in *Antonio del Valle Ruiz et al. v. Spain*, PCA Case No. 2019-17, *Award* (13 March 2023).
- Cited in *Beijing Everyway Traffic & Lighting Tech. Co. Ltd v. Ghana*, PCA Case No. 2021-15, *Award* (30 January 2023).
- Cited in *Odyssey Marine Exploration, Inc. v. Mexico*, ICSID Case No. UNCT/20/1, *Procedural Order No. 3* (23 April 2021)
- Cited in *Michael Ballentine & Lisa Ballentine v. Dominican Republic*, PCA Case No. 2016-17, *Procedural Order No. 14* (Aug. 31, 2018).
- Cited in *Vantage Deepwater Co. v. Petrobras America, Inc.*, 2018 WL 6270641 (S.D.Tex.).
- Reviewed in *Evidence in International Investment Arbitration*, 11 *Arbitraje* 948 (2018).
- Appendix I reproduced in the *Trans-Lex Principles* ([www.trans-lex.org](http://www.trans-lex.org)).
- 2018 Top 10 most visited book on Oxford University Press InvestmentClaims.com database.
- 2019 Top 10 most visited book on Oxford University Press InvestmentClaims.com database.

#### Articles

- Bundles of Freedom, 75 Rutgers University Law Review (forthcoming, 2024)

Property law is undergoing a paradigm shift away from a negative freedom paradigm premised in the right to exclude – ‘freedom from’ interference by our neighbors and by the state. Energy-related property jurisprudence currently is undoing this primacy of negative freedom by embracing correlative rights. I argue that this new jurisprudence is a welcome development. It links up the current property case law with a core value of property law prevalent at America’s founding: property law serves to mobilize society through reasonable, coordinated resource use to overcome novel, serious physical, economic, and political challenges. I show that an understanding of property rules as serving reasonable coordinated resource use re-ties together the bundle of property law sticks by means of a different conception of freedom dominant in early American thought: freedom as civic republican non-domination. I conclude that property rules, in this re-conception, play a central and constructive role alongside liability rules in deploying law to meet today’s crucial policy challenges.

- The Dark Sun Network, 94 U. Colorado Law Review 681 (2023)

Climate scientists agree that climate change will soon require the deployment of a highly dangerous geoengineering approach known as “solar radiation management.” Solar radiation management uses chemical or physical barriers to solar energy entering the atmosphere and thereby forces global temperatures downwards almost immediately by creating “artificial shade.” Problematically, the unilateral deployment of domestic solar radiation management approaches can have different and potentially devastating effects around the world, even if they help the country deploying the approach to limit the worst climate change consequences at home. So far, there is no global governance framework that can guide the development and deployment of solar radiation management. In this Article, I develop how a networked, bottom-up governance approach can resolve the current solar radiation management global governance deadlock. I argue that such bottom-up governance must be consistent with principles of nondomination developed in civic republican and postcolonial theories of consent.

- The Precaution Presumption, 31 European Journal of International Law 1277 (2020) (lead article) (peer reviewed).

The precautionary principle is a central, if controversial, feature of global governance. I explore this controversy through a pluralist lens. What makes the precautionary principle so controversial is that it prevents us from appreciating risk holistically by focusing only on some risks to the exclusion of others. I

argue that we can overcome this problem by treating precaution as an evidentiary principle. My approach translates competing precautionary claims into a holistic appreciation of risk in its fuller factual context. I analyze that existing evidentiary conceptions of precaution do not adequately achieve this goal and submit that thinking of precaution as an evidentiary presumption provides a workable solution.

- [Geo-Markets](#), 38 [Virginia Environmental Law Journal](#) 58 (2020)

Geo-Markets submits that complex energy supply chain interconnections do not permit us to close the climate achievement gap with needed speed, requiring us to design effective geo-engineering markets and integrating such markets in current climate governance processes. I depart from the predominant regulatory approach to geo-engineering by asking how carbon markets and solar radiation management markets can and should be deployed to achieve measurable climate outcomes without stretching fiscal resources. I use an energy law lens to make concrete proposals and theorize that an integrated market-based approach can provide a roadmap for geo-engineering governance and deployment.

- ELPAR Top 20 award (best 20 environmental law articles of 2020, *Environmental Law and Policy Review* (Environmental Law Institute/ Vanderbilt Law School))

## B. [Books & Edited Volumes](#)

1. [The Elgar Concise Encyclopedia of Wind Power](#) (Edward Elgar, forthcoming December 2026) (with Catherine Banet and Penelope Crossley)

The Encyclopedia is a single volume reference work with regard to wind power and wind power governance. The encyclopedia is global in scope and will cover approximately 100 to 150 entries.

2. [Governing the Global Energy Commons](#) (Oxford University Press, forthcoming March 2026)

Energy governance today is at a crossroads. Before Russia's invasion of Ukraine, it might have appeared that a general consensus was building around a market approach. However the fallout from Russia's invasion – and the specter of geo-political competition over energy resources and their use as a tool in geo-political competition – has seriously undercut any such appearance. The scope and size of the energy transition challenge similarly has raised doubts in some corners as to how a market approach could possibly deploy the needed change at anywhere the needed speed. This begs the question: what should energy governance look like and why? This book argues that energy must be viewed as a 'commons.' It will provide a theoretical argument for a human-development-based governance approach of the energy commons and anchor this approach in the historical development of energy law and policy.

3. [Transnational Law of Renewable Energy](#) (Oxford University Press, forthcoming October 2024) (with Teddy Baldwin & Catherine Banet).

This book will address the global legal regime for renewable energy. It will seek to provide a first stab at restating the emerging international consensus on renewable energy governance. The authors hope to provide a resource for researchers and practitioners in global renewable energy projects. In particular, it will address the inconsistent community, national, and transnational demands for project governance and develop a means to reconcile these inconsistent demands under a single legal umbrella.

4. [Principles of International Energy Transition Law](#) (Oxford University Press, 2023) (with Leonardo Sempertegui).

Energy transition is a complex global problem. Complicating energy-transition governance, energy-transition policies cut across multiple legal silos (human rights law, environmental law, international economic law, finance law, energy law, law of the sea, transnational commercial law, etc.). This work proposes to provide a single resource that brings all of these different legal regimes under one roof and makes plain the interactions between them and how they can be reconciled. The book introduces the energy transition problem by situating the climate emergency in its broader energy context. The book explains how global energy value chains are deeply enmeshed in and drive global economic and human development. It explains how energy transition needs to resolve a trilemma between energy equity to provide access to energy needed to fuel human development around the world, energy security to provide for resilient and reliable energy systems, and environmental sustainability. The book develops thirty-two international legal principles governing different aspects of this energy trilemma. The book



uses a commons governance perspective in order to assist in a holistic approach to balancing the different limbs of the trilemma – and the different legal principles – against each other.

5. Good Faith in Transnational Law, A Pluralist Account (Brill | Nijhoff, 2022)

I provide a theoretical account of good faith in transnational law. I argue that good faith is a tool to translate between different lived experiences. My starting point is deeply pluralist: I accept that transnational law is irreversibly fragmented. I also accept that transnational law necessarily must respond to fundamentally inconsistent values to be authoritative to all the communities transnational law aspires to govern. Such pluralist starting point is bound to create confusion: it appears that good faith can be invoked by all sides to support fundamentally inconsistent results. I develop how a focus on good faith as a process of decision-making seeking to support mutual other regard and communication is sufficiently capacious to explain these apparent inconsistencies. In doing so, I hope to defend the transnational law enterprise and argue that just like communication across languages is possible without recourse to a universal language, good faith permits us to communicate across economic, social, and cultural normative worlds without need for an axiomatic first legal principle.

- American Branch, International Law Association (ABILA) Book of the Year 2023.

6. Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets (Hart Publishing, 2020) (with Tade Oyewunmi, Penelope Crossley, and Kim Talus).

The book examines the legal and regulatory dynamics of energy transitions through a contextual lens. The book considers the applicable energy law and policy frameworks in (i) highly industrialized economies such as the US, EU, China and Australia; (ii) resource-rich developing countries such as Nigeria and regions like Southern Africa; as well as (iii) international economic and environmental law. It showcases how complex interconnections between energy supply chains can create both positive and negative feedback loops and identifies governance solutions effectively to facilitate more reliable, sustainable and secure energy supply systems in the twenty-first century.

7. International Petroleum Law and Transactions (Rocky Mountain Mineral Law Foundation, 2020) (with Owen L. Anderson, Jacqueline L. Weaver, John S. Dzienkowski, John S. Lowe & Keith B. Hall).

International Petroleum Law and Transactions is the leading treatise on the subject. It is a reference for lawyers, negotiators, commercial investors, regulatory agencies, and the many international governmental and nongovernmental organizations concerned with oil and gas development. The book provides the tools to analyze and understand both current international petroleum arrangements and the types of agreements and issues that continue to emerge.

8. Investment Treaty Arbitration and International Law, vol. xi: Investment Treaty Arbitration and Intellectual Property (with Ian Laird, Borzu Sabahi & Todd Weiler: Juris Publishing, 2018).

The volume addresses the challenges posed by intellectual property disputes for international investment law. It begins with an interrogation of jurisdictional question of intellectual property as ‘investment’. It continues with a discussion whether the regulation of intellectual property by host states can violate international investment agreements. It further addresses the remedial questions that arise in the context of international intellectual property disputes in international investment law.

9. Evidence in International Investment Arbitration (Oxford University Press, 2018) (with Ian Laird & Kabir Duggal).

The book is the authoritative systematical exploration of the law of evidence in investor-state arbitration. The book proposes a codification of the rules of evidence guiding decision-making in investor-state arbitration based on a comprehensive review of the jurisprudence, emerging evidentiary rules and principles in commercial arbitration and the public international law of evidence. The book provides theoretical and practical guidance on the treatment of evidence at all stages of international investment law disputes. The book seeks to streamline how question of fact can be resolved in light of the contextual complexity of interconnected commercial usages, state policy processes, and global supply chains.

- Cited in *Antonio del Valle Ruiz et al. v. Spain*, PCA Case No. 2019-17, Award (13 March 2023).

- Cited in *Beijing Everyway Traffic & Lighting Tech. Co. Ltd v. Ghana*, PCA Case No. 2021-15, Award (30 January 2023).
  - Cited in *Odyssey Marine Exploration, Inc. v. Mexico*, ICSID Case No. UNCT/20/1, Procedural Order No. 3 (23 April 2021)
  - Cited in *Michael Ballentine & Lisa Ballentine v. Dominican Republic*, PCA Case No. 2016-17, Procedural Order No. 14 (Aug. 31, 2018).
  - Cited in *Vantage Deepwater Co. v. Petrobras America, Inc.*, 2018 WL 6270641 (S.D.Tex.).
  - Appendix I reproduced in the Trans-Lex Principles ([www.trans-lex.org](http://www.trans-lex.org)).
  - 2018 Top 10 most visited book on Oxford University Press InvestmentClaims.com database.
  - 2019 Top 10 most visited book on Oxford University Press InvestmentClaims.com database.
10. [Investment Treaty Arbitration and International Law, vol. x: ISDS, Doomed Experiment or Nascent Revolution?](#) (with Ian Laird, Borzu Sabahi & Todd Weiler: Juris Publishing, 2017).
- The volume takes stock of the so-called backlash against international investment law. Organized around a keynote by Mark Kantor, the volume considers the potential for reorganizing investor-state dispute resolution from an arbitral to a court-based paradigm. It further grapples with the question whether protecting ‘investments’ is in fact a tenable exercise and if so, how the concept of ‘investment’ must be construed. The volume further interrogates whether the most frequently invoked norm of investor-state arbitration (fair and equitable treatment) remains a tenable legal protection in investor-state arbitrations. The volume closes out with a discussion of reform proposals for remedies in investor-state arbitration.
11. [Investment Treaty Arbitration and International Law, vol. ix: Investment Treaty Arbitration and Natural Resources](#) (with Ian Laird, Borzu Sabahi & Todd Weiler: Juris Publishing, 2016).
- The volume examines the particular problems of applying investment law in the context of natural resources projects. Organized around a keynote by Prof. W. Michael Reisman, the volume opens with a question of what rights in a natural resource project are capable of protection pursuant to international investment agreements. It interrogates the remedial approaches used by tribunals in natural resources disputes and in particular questions whether investment tribunals follow traditional public international remedial principles. The volume further addresses the question of lawful expropriation in the natural resource space the problem of corruption endemic in the natural resources sector.
12. [A Nascent Common Law, The Process of Decisionmaking in International Legal Disputes Between States and Foreign Investors](#) (Brill | Nijhoff, 2015).
- The book submits that investor-state dispute resolution relies upon an inductive, common law decision-making process, which reveals a necessary plurality of first principles within investor-state dispute resolution. Relying upon, amongst others, Wittgenstein’s Philosophical Investigations, I explain how this plurality of first principles does not devolve into arbitrary indeterminacy. I provide an alternative account to current theoretical conceptions of investor-state arbitration and explain that these theories cannot adequately resolve a key empirical challenge: tribunals frequently reach facially inconsistent results on similar questions of law.
- Cited in *Marco Gavazzi & Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, award (Apr. 18, 2017)
13. [Investment Treaty Arbitration and International Law, vol. viii: New Developments in Investment Treaty Arbitration: A Return to Fundamentals?](#) (with Ian Laird, Borzu Sabahi & Todd Weiler: Juris Publishing, 2015).
- The volume revisits the fundamentals in investor-state arbitration. Organized around a keynote delivered by George Kahale III, the volume asks whether standards of arbitrator independence need to be strengthened. It further addresses the application of traditional concepts such as full protection and security and the development of the law away from its humble beginnings. Particularly, it looks at the importance of proportionality analysis in the merits assessment of any governmental action. It closes out with an assessment of the importance of contributory fault as a factor more investment tribunals should take into account.

14. Investment Treaty Arbitration and International Law, vol. vii: BIT, Contract, or a Bit of Both? Investor-State Dispute Resolution in the Energy Sector (with Ian Laird, Borzu Sabahi & Todd Weiler: Juris Publishing, 2014).

The volume addresses the law applicable to international energy projects. Organized around a keynote delivered by David Haigh QC, the volume considers the specific protections of the Energy Charter Treaty and further addresses the particular maze created by energy project documents and their interaction with treaty protections in bilateral and multilateral investment treaties. The volume further considers the particular difficulty of the multiparty nature of most large energy projects (be it in the pipeline, power, or oil and gas setting).

15. Investment Treaty Arbitration and International Law, vol. vi : NAFTA, DR-CAFTA & Beyond (with Ian Laird, Borzu Sabahi & Todd Weiler: Juris Publishing, 2013).

The volume asks if there is a particularly American understanding of free trade and investment protection. Organized around a keynote by Hugo Perezcano, the volume takes a look at key features in NAFTA and DR-CAFTA. It discusses in particular the idiosyncrasies of preliminary objections in DR-CAFTA, as well as the minimum standard of treatment in the NAFTA context. It further examines whether health and environment provisions in DR-CAFTA in particular provide a new governance pathway in international investment law.

16. Reports of Overseas Private Investment Corporation Determinations (contributing editor; Mark Kantor et al. eds.: Oxford University Press 2011) (peer reviewed).

The two volume set makes available the complete collection of Overseas Private Investment Corporation (OPIC) determinations including historical decisions which have not yet been published. This comprehensive two-volume work is a collection of determinations from OPIC, the US governmental political risk insurance provider, in the form of its Memoranda of Determinations from 1966 to 2010. This reference work is the first to make the underlying primary material available to the investment law, political risk and academic communities. The volumes include headnote summaries for all determinations.

#### C. Textbooks

17. Experiencing International Arbitration: Resolving Cross Border Disputes (West Academic, 2020) (with Michael D. Nolan).

We approach international arbitration with the goal to teach students how to engage in a global practice of law through simulations inspired by real life disputes. The book allows students to understand the key procedural and substantive problems of global practice by immersing them in simulations to experience every stage of an international arbitration. Published in the West Experiencing series, the book seeks to assist law schools in making available alternative ways in which to achieve basic institutional learning outcomes.

18. Experiencing Arbitration (West Academic, 2019) (with Michael D. Nolan).

The book facilitates “practice ready” students who are ready to represent parties in U.S. domestic arbitrations. It covers the full scope of the role of arbitration counsel in advising clients, including drafting arbitration clauses, prosecuting and defending court actions at the enforcement stage, and day-to-day ethical problems.

- Featured on *51 Best-Selling Contracts Books of All Time*, <https://bookauthority.org/books/best-selling-contracts-books>.
- Featured on *71 Best-Selling Litigation Books of All Time*, <https://bookauthority.org/books/best-selling-litigation-books>.

#### D. Articles, Book Chapters, Essays (By Year of Publication)

##### Published in 2025

19. Artikel 85, Honsell Kommentar zum UN-Kaufrecht (Boris Dostal ed., Springer Verlag, forthcoming 2025)



This chapter updates the leading German language commentary on the UN Convention on Contracts for the International Sale of Goods with regard to its Article 85.

20. Artikel 86, [Honsel Kommentar zum UN-Kaufrecht](#) (Boris Dostal ed., Springer Verlag, forthcoming 2025)

This chapter updates the leading German language commentary on the UN Convention on Contracts for the International Sale of Goods with regard to its Article 86.

21. Artikel 87, [Honsel Kommentar zum UN-Kaufrecht](#) (Boris Dostal ed., Springer Verlag, forthcoming 2025)

This chapter updates the leading German language commentary on the UN Convention on Contracts for the International Sale of Goods with regard to its Article 87.

22. Artikel 88, [Honsel Kommentar zum UN-Kaufrecht](#) (Boris Dostal ed., Springer Verlag, forthcoming 2025)

This chapter updates the leading German language commentary on the UN Convention on Contracts for the International Sale of Goods with regard to its Article 88.

23. Polyrelativity, work submitted to journals (August 2024)

Energy transition has a governance problem. Much of the literature fails to address this problem. It discusses instead who should make energy transition decisions (the President, Congress, state governments, etc.). This perspective misses the core substantive problem from view: how should we share the benefits and burdens of transition? Without answering this ‘how’ of energy transition, any answer to ‘who’ risks an appearance of arbitrary decision-making. In this article, I submit for the first time that we can solve this ‘how’ question by means of the property law doctrine of correlative rights. I showcase the potential for this approach by arguing that correlative rights can solve the essential problem of transmission planning, an area to which correlative rights have not previously been applied.

Published in 2024

24. Climate Prevention, [Georgetown Environmental Law Review](#) (forthcoming, 2024)

The obligation to prevent transboundary environmental harm has taken center stage in the legal fight to curb climate change. I argue that the traditional understanding of prevention premised in a tort-based idea of wrongfulness faces an insurmountable impasse in addressing climate change. States do not have a tort-based duty to prevent climate change: it is not wrongful to emit greenhouse gases. A tort-based duty to the contrary would fly in face of settled climate law. Such a tort-based duty also cannot otherwise be created out of general environmental law principles. If prevention is to be relevant to climate change, at all, we therefore must switch perspectives. I argue that it is possible to re-theorize climate prevention on the basis neighborliness understood as holding correlative rights in a shared climate community. This approach is both more ambitious and more pragmatic. On the one hand, it requires the affirmative joint conservation of climate systems as opposed to imposing a negative duty to prevent doing harm oneself individually only. At the same time, it eschews a categorical ban on fossil fuels and allowing states to rely on a hybrid approach to energy transition that combines all available means to decarbonize energy systems in light of national circumstances, instead (e.g., increasing non-fossil fuel penetration and supporting carbon capture).

25. Bundles of Freedom, 75 [Rutgers University Law Review](#) (forthcoming, 2024)

Property law is undergoing a paradigm shift away from a negative freedom paradigm premised in the right to exclude – ‘freedom from’ interference by our neighbors and by the state. Energy-related property jurisprudence currently is undoing this primacy of negative freedom by embracing correlative rights. I argue that this new jurisprudence is a welcome development. It links up the current property case law with a core value of property law prevalent at America’s founding: property law serves to mobilize society through reasonable, coordinated resource use to overcome novel, serious physical, economic, and political challenges. I show that an understanding of property rules as serving reasonable coordinated resource use re-ties together the bundle of property law sticks by means of a different conception of freedom dominant in early American thought: freedom as civic republican non-domination. I conclude that property rules, in this re-conception, play a central and constructive role alongside liability rules in deploying law to meet today’s crucial policy challenges.

### Published in 2023

26. The Dark Sun Network, 94 U. Colorado Law Review 681 (2023)

Climate scientists agree that climate change will soon require the deployment of a highly dangerous geoengineering approach known as “solar radiation management.” Solar radiation management uses chemical or physical barriers to solar energy entering the atmosphere and thereby forces global temperatures downwards almost immediately by creating “artificial shade.” Problematically, the unilateral deployment of domestic solar radiation management approaches can have different and potentially devastating effects around the world, even if they help the country deploying the approach to limit the worst climate change consequences at home. So far, there is no global governance framework that can guide the development and deployment of solar radiation management. In this Article, I develop how a networked, bottom-up governance approach can resolve the current solar radiation management global governance deadlock. I argue that such bottom-up governance must be consistent with principles of nondomination developed in civic republican and postcolonial theories of consent.

27. Electricity Market Design, in Foundation for National Resources and Energy Law Annual Institute (2023) (with Catherine Banet, Alberto Büll & Darryl Lew)

The chapter explores the challenges posed by current climate, energy access, and energy security needs for the design of electricity markets. It submits that markets are the only means for states to gain access to needed investment to see through energy sector reforms. Nevertheless, the manner in which states design these markets is crucial to the policy success of energy solutions. The chapter provides best practices following a review of U.S., E.U., and Brazilian policy approaches.

28. Keynote Remarks, in T Weiler et al. eds., Investment Treaty Arbitration and International Law, vol. xvi (forthcoming, Juris Publishing, 2023)

The Keynote outlines the challenges that energy transition presents for investment law. It explains how investment plays a weight-bearing role for success in energy transition while admonishing that investment law must account for global energy and economic justice concerns.

### Published in 2022

29. Human Rights Counterclaims in International Arbitration, in Proceedings of the Institute on Oil and Gas Law (LexisNexis, 2022)

The chapter outlines how human rights claims and counterclaims can be articulated in contractual and investment arbitrations on the basis of a hypothetical scenario. It discusses the challenges such an articulation of human rights challenges might face as well as the potentially unexplored argumentative avenues they permit.

30. Diligent Zero, 75 SMU Law Review 417 (2022).

Policymakers advocate for energy system shock therapy. I argue that such shock therapy is problematic because it loses the deep structural importance of current energy systems from view. We can achieve meaningful energy transition success by pivoting from a net zero climate policy to a diligent zero legal lens that holistically promotes the progressive realization of human rights, as well as environmental, and climate commitments. The literature already has identified the crucial importance of due diligence in climate and environmental, human rights, and corporate governance contexts. I advance this literature by theorizing how to conduct diligence holistically rather than piecemeal in siloed and competing climate, environmental, human rights, and corporate governance due diligence streams.

31. A Parisian Consensus, 60 Columbia Journal of Transnational Law 657 (2022) (lead article).

Global climate action so far has proved unable to meet its moment. I argue that the reason for the current policy impasse is that we focus on climate change as an environmental, not an energy problem. Once we switch perspectives, we can see that world society is trapped in an energy trilemma between energy equity, energy security, and environmental sustainability. We can only escape the trilemma when we rebalance the three limbs against each other. I propose that a commons governance approach can achieve this goal. I argue that the most plausible such solution will rely on and expand economic globalization. But instead of focusing economic globalization, I argue that the energy trilemma can only be solved if economic globalization is placed in the service of global development.

32. Living on a Prayer, Termination of Intra-EU BITs and the Law of Treaties, in The Vienna Convention on the Law of Treaties in International Arbitration: History, Evolution, and Future (Esmé Shirlow & Kiran Gore eds.) (Kluwer Law International, 2022).

The chapter is part of a volume on the importance of the Vienna Convention on the Law of Treaties. In the chapter, I discuss the termination of intra-EU BITs through the lens of the Vienna Convention. I outline how a Vienna Convention approach may lead to potentially problematic results. I then outline how the termination of Intra-EU BITs could be viewed through three competing lenses of the law of unilateral acts, state practice, and the prohibition of treaty termination by the terms of the treaty itself, precluding a state from relying on it on the basis of the principle of *ex iniuria non oritur ius*.

33. The Importance of States and the Private Oil Sector for Successfully Implementing the Energy Transition, Rocky Mountain Mineral Law Foundation Annual Institute (2022) (with Leonardo Sempertegui).

We outline the efforts made by State oil companies and international oil companies to combat climate change. We survey the main areas in which oil producing states and oil companies can assist in energy transition efforts. We focus particularly on Carbon Capture, Utilization & Storage (CCUS). We argue that any energy transition efforts must be compliant with human rights obligations of the international community as codified in the International Covenant on Economic, Social and Cultural Rights.

34. Investment Arbitration as Incubator of Evidentiary Principles in International and Transnational Law, in Investment Law as a Motor of Legal Development: Assessing Radiating Effects in General International Law (Stephan Schill, Christian Tams & Rainer Hofmann eds.: Edward Elgar 2022)

The chapter argues that evidentiary principles developed in detail in international investment arbitration can usefully inform the development of the law of evidence in general international law. The chapter outlines how investment arbitration departs from general international legal sources and, due to tribunal practice, might provide a helpful source for the further development of international law evidentiary principles. The chapter focuses on burden of proof, standard of proof, inferences, presumptions, and the treatment of witnesses and experts. It showcases how investment arbitrations might be particularly helpful to interrogating evidentiary rulings by the International Court of Justice in the Corfu Channel, Military and Paramilitary Activities, the Croatian Genocide, and the Pulp Mills cases.

#### Published in 2021

35. Cancelling Schmitt, 32 European Journal of International Law 729 (2021)

In this letter, I outline the importance of continued engagement with Martin Heidegger and Carl Schmitt for liberal discourses in international law.

36. Paris Rulebook Stumbling Blocks, The Vienna Briefs on Decarbonization, Energy & Development (Nov. 8, 2021)(with Leonardo Sempertegui, Teddy Baldwin, Guxtavy Niemtschik, Albert Kishek & John Spisak)

In this policy brief, we outline the key stumbling blocks remaining for the Glasgow negotiations of the Paris Rulebook. We pay particular attention to climate finance and carbon market challenges.

37. Second Generation Development-Based Net Zero Pledges as the Vehicle to Achieve Paris-Goals, The Vienna Briefs on Decarbonization, Energy & Development (Nov. 2, 2021)(with Leonardo Sempertegui, Teddy Baldwin, Gabrielle Frawley & Heather Kellum)

In this policy brief, we outline the fundamental problems of a net zero approach to energy transition from a developmental perspective. We argue for a net zero 2.0 approach is driven not solely by emission concerns but is instead developmentally focused.

38. Introduction, The Vienna Briefs on Decarbonization, Energy & Development (Nov. 2, 2021)(with Leonardo Sempertegui)

In this policy brief, we introduce the Vienna Briefs project. The policy briefs endeavor to provide a Global South perspective on energy transition.

39. Discussion of Keynote Remarks by Lucinda Low', in M Alrashid et al. eds., Investment Treaty Arbitration and International Law, vol. xv (forthcoming, Juris Publishing, 2021)

40. Cyber-Nuisance, 42 University of Pennsylvania Journal of International Law 1005 (2021).

In the article, I submit that cyber governance crucially requires a better understanding of the legal nature of cyberspace itself. I argue that we should understand cyberspace as a global web of correlative rights protected by means of a general nuisance principle. I rely on a functional comparative property and natural-resource law analysis to prove the existence of such a general nuisance principle premised upon the idea of correlative rights. I demonstrate that this principle is applicable to cyberspace and is in fact consistent with many of the existing starting points of cyberlaw. I meaningfully advance the literature by providing a more precise legal framework for understanding the nature of cyberspace and the obligation of state and non-state actors alike to protect it. This framework can explain an intuitive insight about cyberspace that so far has escaped cyberlaw paradigms—namely, that cyberspace is at once a local and a global domain, giving rise to local and global rights and obligations. The Article does so in a noticeable departure from dominant cyberlaw frameworks by grounding the analysis of cyberspace in comparative property law.

41. Curious Unilateralism, 12 [Federal Courts Law Review](#) 113 (2021) (peer reviewed and edited by members of the federal judiciary)

In the article, I argue for a principled constitutional unilateralism. I submit that something important is lost when painting all unilateralism with the same pejorative brush. My argument focuses on a particular dynamic – the interplay between (1) the value motivating decision-making and (2) the ability of other constitutional actors to contest it. Using this dynamic, I distinguish between two kinds of unilateralism: (a) curious unilateralism that positively invites others to contest unilateral decisions and (b) illiberal unilateralism, which forecloses opportunities meaningfully to do so. I argue that curious unilateralism is an important constitutional perspective. I also show how curious unilateralism can provide a principled justification for Chief Justice Roberts’ politically inscrutable jurisprudence. My argument in favor curious unilateralism is both pragmatic and normative. I submit that the Chief Justice gets something right about how value should inform political decision-making and that, on this point, the dominant paradigms of public reason go astray.

42. The Biden (Energy) Doctrine, 27 [ILSA International & Comparative Law Journal](#) 293 (2021) (invited – drawn from remarks at American Branch International Law Association International Law Weekend 2020)

I outline what to expect from the incoming Biden administration on international energy questions. I propose that the driving force of the Biden administration on international energy policy is not a progressive push for energy transition but rather a pragmatic preference for existing energy supply chains following the motto “if it ain’t broke, don’t fix it.” I outline the potential limitations of this approach.

#### Published in 2020

43. The Precaution Presumption, 31 [European Journal of International Law](#) 1277 (2020) (lead article) (peer reviewed).

The precautionary principle is a central, if controversial, feature of global governance. I explore this controversy through a pluralist lens. What makes the precautionary principle so controversial is that it prevents us from appreciating risk holistically by focusing only on some risks to the exclusion of others. I argue that we can overcome this problem by treating precaution as an evidentiary principle. My approach translates competing precautionary claims into a holistic appreciation of risk in its fuller factual context. I analyze that existing evidentiary conceptions of precaution do not adequately achieve this goal and submit that thinking of precaution as an evidentiary presumption provides a workable solution.

44. Truths in Translation, 44 [Fordham International Law Journal](#) 101 (2020).

The rule of law has often been upheld as an antidote to arguments premised in alternative facts and a bulwark against sliding into a post-truth society. Problematically, how the rule of law establishes facts remain seriously under-theorized. I argue that the closest analogue to answering this question is to look at the treatment of evidence in dispute resolution. I diagnose that key rules on the treatment of evidence rely upon the same engine as “alternative facts” in the post-truth society, that is value-based narratives. I articulate that these rules run into an “ought-is” problem: actors receive the benefit of their own narratives of how they should have acted when we try to determine how they did in fact act. Problematically, the rule of law does not appear to make available a means of justifying one set of

narratives over others. It is thus seemingly left without means to respond to post-truth critics of the liberal rule of law project. I try to resolve this “ought-is” problem by reconceptualizing presumptions through the lens of good faith as other regard. This reconceptualization permits one to understand dispute resolution as the translation between narrative-based factual claims. This translation does not assume that there is a single objective reality to which these factual claims could be reduced. Rather, it embeds these factual claims in the respective contexts in which the claims are advanced and thereby creates a shared reality between the disputants that is anchored in their respective narratives without preferring one to the other. This understanding of what is “fact” in the post-truth society thus permits one to continue a rule-of-law based discourse through engagement rather than reducing the assertion of rule of law in a post-truth world to a political confrontation of liberal versus illiberal values contrary to the assertions of illiberal champions in the world community.

45. Geo-Markets, 38 [Virginia Environmental Law Journal](#) 58 (2020)

Geo-Markets submits that complex energy supply chain interconnections do not permit us to close the climate achievement gap with needed speed, requiring us to design effective geo-engineering markets and integrating such markets in current climate governance processes. I depart from the predominant regulatory approach to geo-engineering by asking how carbon markets and solar radiation management markets can and should be deployed to achieve measurable climate outcomes without stretching fiscal resources. I use an energy law lens to make concrete proposals and theorize that an integrated market-based approach can provide a roadmap for geo-engineering governance and deployment.

- ELPAR Top 20 award (best 20 environmental law articles of 2020, *Environmental Law and Policy Review* (Environmental Law Institute/ Vanderbilt Law School))

46. Market Mechanisms for Pricing Carbon, in [Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets](#) (2020, Hart Publishing) (Tade Oyewunmi et al. eds.) (with Lori McMillan)

We outline the key problems of a popular approach to pricing carbon, carbon taxes. We argue that carbon taxation at heart runs the risk of regressive taxation. We submit that this risk has to date not been fully addressed in carbon tax proposals. We suggest that other approaches to carbon pricing are likely better able to provide a contextually more sustainable approach to climate and energy action that does not risk doing economic harm to more vulnerable population groups.

47. Global Governance Networks for Climate Change and Energy Investments, in [Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets](#) (2020, Hart Publishing) (Tade Oyewunmi et al. eds.).

I outlines the key governance processes for climate change and energy investments. I analyze these processes through a transnational network lens. I survey how these networks were formed and how they operate.

48. International Investment Law and Transitional Energy Markets, in [Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets](#) (2020, Hart Publishing) (Tade Oyewunmi et al. eds.) (with Diane Desierto).

We argue that investment law is a critical part of any energy transition process to lock in political commitments towards decarbonization. We explain how investment law can in fact achieve this goal. We also discusses the potential for claims by coal fired powerplant sponsors and provides a rubric for understanding such claims in an overall energy transition framework.

49. Decarbonization and the Energy Industry: An Introduction to the Legal and Policy Issues, in [Decarbonisation and the Energy Industry: Law, Policy and Regulation in Low-Carbon Energy Markets](#) (forthcoming 2020, Hart Publishing) (Tade Oyewunmi et al. eds.) (with Tade Oyewunmi, Penelope Crossley, and Kim Talus)

#### Published in 2019

50. Introductory Remarks, 113 [Am. Soc'y Int'l L. Proc.](#) 260 (2019)

The remarks introduce a panel simulation on the negotiation of a mining agreement. The simulation sought to illustrate how climate commitments will become part of new significant projects in the mining sector. The simulation invited practitioners and academics and NGO advocates to take on the roles of



project sponsor counsel, government counsel, indigenous people's counsel, and international financial organization. The panel showcased how such negotiations are a new frontier in climate mitigation and energy transition.

51. The Paris Paradigm, 2019 [University of Illinois Law Review](#) 1637

I build on my earlier argument in *Climate Commons Law* that the Paris Agreement permitted members to make binding unilateral declarations on climate mitigation. In this article, I consider whether the Obama administration had the constitutional authorization to make such substantive commitments. I argue that the existing constitutional law literature incorrectly treats the Paris Agreement as a purely procedural executive agreement. I use transnational law theory to show that the Paris Agreement and action taken pursuant to it instead constitute a global governance network. I then develops a "Paris Paradigm" governing presidential authority to commit the U.S. in such global governance networks. I use the under-theorized category of implied Congressional delegation of foreign affairs authority in *Youngstown* to shows that the President has the authority to enter into, and unilaterally to make commitments within, such a global governance networks in reliance upon domestic rulemaking authority. The President must however act with constitutional good faith to make and such commitments. I conclude that the Paris Paradigm has important repercussions for attempts by later administrations to undo administrative rules that support global governance commitments (such as the Clean Power Plan).

52. States of Resistance, 14 [Duke Journal of Constitutional Law & Public Policy](#) 91 (2019)

Can states try to use their powers to affect foreign policy? The withdrawal by the U.S. from the Paris Agreement under the Trump administration placed this question front and center. I assess whether such conduct by states contradict the Supreme Court's pronouncement in *Garamendi* that "the exercise of the federal executive [foreign affairs] authority means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two." *Garamendi*, 537 U.S. 1100 (2003). The literature has split over the precise precedential value of *Garamendi* for the appraisal of the constitutionality of California's conduct. I argue that such a reading of *Garamendi* is too fast and analyze state participation in foreign affairs through the lens of the transnational legal process and global governance network literatures. I argue that governments, including state governments, participate in a multitude of competing global governance networks. These multiple networks inherently create friction with each other due to the resistance by their participants against the norm proposals by participants in other networks. State participation in global governance networks thus necessarily creates resistance to federal foreign policy, and does so along predictable lines mapped in the Article as logically separate "states of resistance." Consistent with the framework of global governance networks, I submit that all such state conduct must be appraised through the Constitution's Compact Clause. I conclude that states may challenge the federal government by coordinating their actions consistent with their existing regulatory powers even within the confines of *Garamendi*.

- Cited in Daniel A. Farber, Yuichiro Tsuji, Shiyuan Jing, *Thinking Globally, Acting Locally: Lessons from the U.S., China, and Japan*, 82 *Ohio State Law Journal* 953 (2021)

[Published in 2018](#)

53. Paris Agreement Regained or Lost? Initial Thoughts, [EJILTalk!](#) (Dec. 28, 2018)

I provide an early assessment of the progress and missed opportunities at the Katowice climate negotiations.

54. Failing the Hague Stress Test, [EJILTalk!](#) (Nov. 6, 2018)

I argue that the policy announced by the International Court of Justice to prevent it members to serve as arbitrators in investor-state disputes is a dangerous precedent for international adjudication. I argue that the pressures against investor-state dispute settlement in fact stand for a broader rejection of international law and international dispute resolution and therefore should be treated with care.

55. Climate Commons Law, The Transformative Force of the Paris Agreement, 50 [New York University Journal of International Law and Politics](#) 885 (2018).

I argue that it is incorrect to view the Paris Agreement as purely procedural treaty. I argue that the Nationally Determined Contributions made by states pursuant to the Paris Agreement are the most

important part of the Paris architecture. I submit that some of these NDCs – particularly the NDC made by the U.S. – is a unilateral act by the U.S. binding as a matter of international law. I provide a detailed defense of this unilateral act theory. I further argue that these unilateral acts can mature into customary international law to the extent widespread and representative state practice in fact implements the kind of energy policies intended by the Paris Agreement negotiators.

- Cited in Christian Tomuchat, Enforcement of International Law, From the Authority of Hard Law to the Impact of Flexible Methods, 79 ZEITSCHRIFT FÜR AUSLÄNDISCHES RECHT UND VÖLKERRECHT 579 (2019).

56. Law and “Stickiness” in the Times of the Great Unglued, [Opinio Juris](#) (Feb. 20, 2018) (invited Symposium submission regarding Harold Koh’s *International Law in the Trump Administration*).

The essay argues that the stickiness of international law can in fact be justified both as a matter of international and foreign relations law on the basis of protecting reliance interests in international climate and energy transition negotiations.

57. Value and Judgment in Investment Treaty Arbitration, 2018 [Journal of Dispute Resolution](#) 13 (2018) (invited response piece as part of American Society of International Law conference).

The piece responds to a contribution to the same volume by Relja Radovic.

#### Published in 2017

58. More Privacy Principle, A Reply to Asaf Lubin, [Yale Journal of International Law Forum](#) (Nov. 29, 2017).

The piece replies to a response by Asaf Lubin to ‘The Privacy Principle.’

59. The Privacy Principle, 42 [Yale Journal of International Law](#) 345 (2017).

In the article, I argue that international law can regulate global surveillance programs without sacrificing national security interests. I submit that a general principle approach to privacy can add to the discussion that so far is dominated by a disagreement between those who argue that intelligence programs operate beyond the grasp of legal constraint and those who advance a human-rights based approach expressly rejected by the US, France, Russia, and China. I establish the Privacy Principle by means of a comparative analysis of the private laws of core states with significant signals intelligence capabilities – the United States, France, Russia, China, Israel, and Iran. Privacy in turn can be theorized in terms of reasonable expectations of seclusion as defined by the twin factors of the physical or virtual space affected and the intimacy of the information at issue. The “right to privacy” invariably weighs such reasonable expectations of seclusion against the public interest, permitting intrusions when they are proportionate to all relevant interests at stake. In the article I conclude that a privacy principle can in fact provide a reasonable guideline for conducting needed intelligence programs while protecting the right to privacy.

60. The Reign of Law in International Investment Decision-making, Summary Report of the Second Annual Oxford Investment Claims Summer Academy, Lady Margaret Hall (Oxford), [InvestmentClaims](#) (Aug. 2017) (with Diane Desierto and Ian Laird).

The essay reports on the results of the second annual Oxford Investment Claims Summer Academy convened by Oxford University Press.

61. Supernational Law, 50 [Vanderbilt Journal of Transnational Law](#) 155 (2017).

In the article, I take issue with the description of investor state dispute settlement as unfairly asymmetrical. This characterization, I submit, is premised in an expectation interest lens. I propose an alternative to the expectation interest model prevalent in the current literature: ISDS does not focus upon investor expectancy, as currently theorized, but protects the reciprocal reliance interests of states as well as multinational investors. An ISDS process focused on the reliance interests of states and non-state actors imposes meaningful obligations on all parties to investment transactions. These obligations are part of a legal process mediating between state-to-state international law and commercial transnational law norms. By protecting the reciprocal reliance interests of states and multinationals, ISDS emerges as a constitutive component of the success of global public-private cooperation. This change in perspective

demonstrates how ISDS can assist both states and multinationals in harnessing market mechanisms to achieve development policy goals.

- Cited in *Argentine Republic v. Petersen Energia Inversora S.A.U.*, *Brief of amicus in support of petition for certiorari*, 2018 WL 6389613 (U.S.) (Dec. 3, 2018)

62. The Washington Discourse, *Investment Treaty Arbitration and International Law*, vol. x at vii (Ian Laird et al. eds.: Juris Publishing, 2017) (with Kabir Duggal).

I discuss the concept of the Washington consensus in international investment law and asks how much vitality that consensus still holds. I argue that the Washington consensus certainly has transformed into a discourse. This discourse remains reasonably robust and helpful despite arguments from critics to the contrary.

63. Evidence in Investor-State Arbitration- The Need for Action, Kluwer Arbitration Blog (Mar. 16, 2017), <http://kluwerarbitrationblog.com/author/frederic-sourgens/>.

I submit that fact-finding is a central part of investor-state arbitration. It queries that there is an insufficient engagement with the rules governing this fact-finding by academics. I outline how a more rigorous engagement can meaningfully add to our appreciation of decision-making in investor-state arbitration.

#### Published in 2016

64. The Virtue of Path Dependence in the Law, 56 *Santa Clara Law Review* 303 (2016).

When legal literature discusses path dependence, it invariably sees path dependence as a problem to be resolved. I propose that path dependence in fact has value and that this value has significance for a proper understanding of ‘development.’ The rule of law critically requires that legal decisions be made in a stable and transparent manner. Stability and transparency that necessarily imports path dependence. Such path dependence appears developmentally desirable only if the quality of early legal decisionmaking is normatively desirable. As the quality of early legal decisionmaking – per the path dependence literature – is frequently deeply problematic due to the lack of information about the future application of legal decision available to early decision makers, the growing literature suggests a potential disconnect between normatively desirable development and the rule of law. I address this problem head on by providing a normative defense of path dependence. This normative defense explains how and why a path dependent rule of law fosters normatively desirable development, relying on Sen’s and Nussbaum’s approach to development. Path dependence makes it possible for an open democratic society to improve in a Pareto-superior manner along the four dimensions of openness, prosperity, freedom, and criticality. Development without such path dependence instead could erode one or more of these dimensions and as such be normatively less desirable.

- Cited in Ralf Michaels, *International Arbitration as Private or Public Good*, in *The Oxford Handbook of International Arbitration* (Thomas Schultz and Federico Ortino, eds., forthcoming June 2020).

65. Public Contract Guarantees by National Institutions, *Transnational Law of Public Contracts* 739 (with Michael Nolan & Mark Rockefeller; Mathias Audit & Stephan Schill eds.: Bruylant, 2016) (peer reviewed).

Political risk is a significant impediment to global investment flows. Much has been written about political risk protection by way of investment structuring to benefit from international investment treaties. Significantly less has been written about political risk insurance and what kind of insurance products are available to address political risk. This chapter outlines the dominant public contracts of investment guarantee and investment insurance available from leading national institutions.

66. The Stability Function of Natural Resource Arbitration, *Investment Treaty Arbitration and International Law*, vol. ix at vii (Ian Laird et al. eds.: Juris Publishing, 2016).

I introduce an edited volume on investment arbitration in the natural resources sector. Drawing together the contributions by leading academics such as Michael Reisman and Michael Ratner and leading practitioners like Gaëtan Verhoosel and Marinn Carlson, it argues that national resources arbitration plays an important stabilizing function for international natural resources projects. It argues

that this stability function is often overlooked in the literature arguing that such arbitration are deeply problematic.

67. Constitutional Law, Angloamerikanische Rechtssprache, vol. iii at 1 (with Raymond Diamond) (Franz J. Heidinger & Andrea Hubalek eds., LexisNexis Verlag Wien, 2016).

We introduce non-US lawyers to core concepts of US constitutional law. We acquaint foreign lawyers to key terminological issues and further outlines the key areas of jurisprudential debate. We focus both on the structural elements of the constitution itself, as well as key constitutional rights.

68. Administrative Law, Angloamerikanische Rechtssprache, vol. iii at 61 (with Raymond Diamond) (Franz J. Heidinger & Andrea Hubalek eds., LexisNexis Verlag Wien, 2016).

We introduce non-US lawyers to core concepts of US administrative law. We acquaint foreign lawyers to both administrative process and substantive issues of judicial review of administrative decision-making. We briefly sketch constitutional issues underlying administrative lawmaking challenged in recent jurisprudence.

#### Published in 2015

69. The End of Law: The ISIL Case Study for a Comprehensive Theory of Lawlessness, 39 Fordham International Law Journal 355 (2015).

I develop a theory of lawlessness in international law in the context of operations against ISIS in Syria. Lawlessness such as the one currently witnessed in Syria is both absolute and impervious to legal response. Speaking of a lawful response therefore is meaningless. I argue that lawlessness progresses domestically in three stages: (1) pragmatic lawlessness, constituting a temporary loss control by the government apparatus; (2) formal lawlessness, constituting a loss of authority of the government apparatus; and (3) functional lawlessness, constituting a loss of the social fabric necessary to support any authoritative social decision. I theorize that international law progressively loses its own authority to address lawlessness because of a transnational transference of lawlessness; this transference becomes complete at the functional lawlessness stage. I submit that lawlessness in Syria has reached functional levels. I argue finally that the U.S. must act to counteract the corrosive effect of functional lawlessness extra-legally in order to protect its national security interests and forestall more serious systemic losses of authority on the international plane.

70. Functions of Freedom, Privacy, Autonomy, Dignity, and the Transnational Legal Process, 48 Vanderbilt Journal of Transnational Law 471 (2015).

What is the function of freedom for the transnational legal process? I answer this question through the lens of the 2014 Ukrainian crisis and the deeply inconsistent international legal arguments presented by each side of the conflict. These inconsistencies suggest that criticism of international law as purely political pretense has merits. I submit that transnational legal process theory can account for and incorporate these facial inconsistencies and thus address the criticism leveled at international law. I proceed to develop a theory of freedom as a value that is internal to, and necessary for, transnational legal process. This theory of freedom relies not upon the classical liberal understanding of freedom as positive or negative freedom. Instead, I reconstruct freedom around the value of human dignity. I conclude that freedom as dignity is a central value of the transnational legal process and that the transnational legal process would cease to function in its absence.

71. Reconstructing International Law as Common Law, 47 George Washington International Law Review 1 (2015) (lead article).

I address one of the predominant deconstructive critiques of international law. This approach, in a nutshell submits that international law is an exercise in international politics, which operates by means of the technical idiom of competing self-contained treaty regimes addressing the various areas of international legal regulation. I argue that this critique of international law fails on its own terms. I explain that the critique's juxtaposition of international politics with international law is inconsistent with the postmodern practice of deconstruction upon which it relies. I next recalibrate the insights gained from the critique to show that it demonstrates that international law functions like a common law as opposed civil law modality. This means that international law follows an inductive rule-establishment process. An inductive process establishes norms on the basis of factual regularity. I show that good faith drives this inductive rule establishment in international law. Good faith coordinates and translates how

international law takes account of a wide variety of facts for purposes of establishing a rule and for assessing the violation of a rule. It does so by placing these facts in the context of what emerges as the core goal of international law: the protection of the legitimate differences in interest, experience, and perspective of the subjects international law intends to govern.

72. Fundamentals Revisited, Investment Treaty Arbitration and International Law, vol. viii at xi (Ian Laird et al. eds.: Juris Publishing, 2015).

I introduce an edited volume on a revisit of fundamentals in investment arbitration in the natural resources sector. Drawing together the contributions by leading academics such as George Foster and Joshua Karton and leading practitioners like George Kahale III and Paolo di Rosa, I argue that the fundamentals of investment arbitration have proven remarkably resilient. I point out the areas of greater challenge for investment arbitration going forward.

73. ICSID Decisions 2013, Yearbook of International Investment Law and Policy \_\_ (with Nicholas Birch, Kabir Duggal, Ian Laird & Borzu Sabahi; Andrea Bjorklund ed.: Oxford University Press, anticipated 2015) (peer reviewed).

We analyze all investor-state decisions for the 2013 calendar year made public prior to the chapter going to press. We provide a critical engagement with these decisions and attempt to draw trendlines in the jurisprudence on jurisdiction, merits, and damages.

74. Creating Conduits: Summary Report of the First Annual Oxford Investment Claims Summer Academy, St. Anne's College (Oxford), EJILTalk!, <http://www.ejiltalk.org/creating-conduits-summary-report-of-the-first-annual-oxford-investment-claims-summer-academy-st-annes-college-oxford/> (Aug. 12, 2015) (with Diane Desierto & Ian Laird).

The piece reports on the proceedings of the first Investment Claims Summer Academy convened by Oxford University Press at St. Anne's College Oxford.

#### Published in 2014

75. Law's Laboratory: Developing International Law on Investment Protection as Common Law, 34 Northwestern Journal of International Law & Business 181 (2014) (lead article, issue 2).

In the article, I posit that international law on investment protection develops as a common law through adjudication of investor-state disputes. I review the three prevalent theories on the development of international law on investment protection((a) that investor-state decisions reflect a new customary international law, (b) that investor-state decisions are a potentially corrupt tool of corporate usurpation of international law, and (c) that investor-state disputes form part of a self-contained legal regime. I explain that each theory fails because it superimposes policy preferences not present in investor-state decisions. In rejecting these theories, I argue that investor-state disputes trace a case-by-case common law process rather than conform to any rigid theory. Accordingly, I provide a cogent theory of persuasive precedent in investor-state arbitration premised upon a common law understanding of persuasive authority in the U.S. courts. The case-by-case common law approach clarifies the current problem of substantively inconsistent decisions arising out of investor-state disputes. Normatively, the decision-making divergence between investor-state tribunals is preferable to artificial uniformity that the three currently prevalent theories impose upon investor-state decision-making tribunals and outcomes.

76. Reason and Reasonableness, The Necessary Diversity of the Common Law, 67 Maine Law Review 73 (2014).

I address the idea of "reasonableness" in common law jurisprudence. I argue that common law jurisprudence uses three fundamentally inconsistent utilitarian, pragmatic, and formalist reasonableness paradigms and that this inconsistency drives the common law norm-generation process. I use this theory to re-evaluate hard cases as cases in which these three reasonableness paradigms lead to different results in a specific legal dispute. I use this insight into hard cases to address a question left unresolved by Frederick Schauer's classic 2004 *The Limited Domain of the Law*, namely how common law develops as a limited domain while remaining responsive to changes in community standards and policy preferences.

77. What is a Distressed Investor to Do?, 1 Journal of Damages in International Arbitration 103 (with Michael D. Nolan: 2014) (peer edited).



- *Republication of 2 Transnational Dispute Management* (2008).
78. Truth in Method, The Interpretation of International Investment Law: Equality, Discrimination and Minimum Standards of Treatment by Dr. Todd Weiler, 28 ICSID Review, Foreign Investment Law Journal 247 (2014) (invited article).
- Book review of Dr. Weiler's *The Interpretation of International Investment Law: Equality, Discrimination and Minimum Standards of Treatment*.
79. ICSID Decisions 2012, Yearbook of International Investment Law and Policy 69 (with Nicholas Birch, Kabir Dugal, Ian Laird & Borzu Sabahi; Andrea Bjorklund ed.: Oxford University Press, 2015) (peer reviewed).
- Review of 2012 investor-state decisions published in that year.
80. Is it Time for a Regime Change? Protecting International Energy Investments against Political Risk, Investment Treaty Arbitration and International Law, vol. vii at vii (Ian Laird et al. eds.: Juris Publishing, 2014).

I introduce the volume with contributions from leading arbitrators, practitioners and academics in the energy sector. It appraises the responsiveness of energy arbitration to community needs and argues that, on the whole, international energy investments are protected in an appropriate manner by the existing treaty regime.

#### Published in 2013

81. By Equal Contest of Arms, Jurisdictional Proof in Investor-State Arbitrations, 38 North Carolina Journal of International Law & Commercial Regulation 875 (2013).
- I develop how the process of jurisdictional proof in investor-state arbitrations functions. Existing scholarship tends to ignore the importance of the process of jurisdictional decision making, i.e., jurisdictional proof, focusing instead on the stated legal rationale on the face of the decisions examined. This blind spot has significant practical and theoretical consequences. I develop how such a process should unfold. Appropriate jurisdictional analysis, I argue, is premised upon an even-handed balancing test of evidence and arguments actually advanced rather than by the development and application of formal rules. By focusing solely on the stated legal rationale supporting a jurisdictional decision, scholarship has incorrectly attempted to discover formal legal rules driving the decision rather than understanding the manner of balancing the relevant competing interests. This theoretical reconceptualization not only offers important insights for the ongoing scholarly dialogue on jurisdiction, but as applied offers practical redress to a central failing in recent investor-state jurisdictional decisions.
- *Republished in 1 Transnational Dispute Management* (2014) (peer edited).
82. Keep the Faith, Investment Protection Following the Denunciation of International Investment Agreements, 11 Santa Clara Journal of International Law 335 (2013) (invited).
- I develop fully a theory of state arbitral consents as unilateral acts at international law. I explain how this understanding of state consents to arbitral jurisdiction refuted the dominant view of the consequence of the results of treaty denunciations. I theorize how this result is in fact the appropriate application of general international legal good faith principles taking into account the conflicting reliance interests of investor and state stakeholders in international investment law. The article, together with my Preliminary Comment, is one of the authoritative accounts of the problem of treaty denunciation cited in the literature and jurisprudence.
83. Doubling Down on Deference? Treatment Standards and the Public Law Fallacy, 8 World Arbitration & Mediation Review 379 (with Baiju Vasani: 2013) (peer reviewed).
- We critique the conception of international investment arbitration as international public law. In particular, we argue that the ideals of deference of such a public law idiom do not fit the function or history of investor-state arbitration. Instead, we anchor investor-state arbitration in an international law paradigm and explain how this paradigm sheds a different light on deference.
84. *Die Geister Die Ich Rief*, Uncommon Remedies in International Dispute Resolution, 107 American Society of International Law Proceedings 33 (with co-authors: 2013).

This article summarizes the young voices panel at the 107th American Society of International Law Annual Meeting. It focuses on less common remedies such as specific performance and moral damages in the context of international law. It questions why these remedies should not be utilized more fully in investor-state arbitrations in particular.

85. Free Trade à l'Américaine, NAFTA, DR-CAFTA and Beyond, Investment Treaty Arbitration and International Law, vol. vi at xi (Ian Laird et al. eds.: Juris Publishing, 2013).

The chapter introduces the discussion and papers presented at the sixth annual Juris Investment Treaty conference. It outlines the theme of the conference – U.S. regional free trade agreements – and weaves core themes from the conference together.

86. Leviathan on Life-Support, Restructuring Sovereign Debt And International Investment Protection After *Abaclat*, Yearbook of International Investment Law and Policy 485 (with Michael Nolan & Hugh Carlson; Karl Sauvant ed., Oxford University Press: 2013) (peer reviewed).

This article addresses jurisdiction of arbitral tribunals constituted under international investment agreements over sovereign bond related claims brought in class-action style proceedings following the decision in *Abaclat v. Argentina*. We go through the treaty practice of all ICSID member states to establish that sovereign bond restructuring is very much within the scope of international investment treaties. We further outline that as a matter of history, mechanism of mass claims were always intended to be part of the framework for such arbitral proceedings.

87. A Bit of a Virtual Vade Mecum, Oxford University Press Blog, <http://blog.oup.com/2013/07/international-investment-law/> (July 2013)

The post explains the mission of the Investment Claims arbitral reporter published by Oxford University Press.

#### Published in 2012

88. ICSID Decisions 2011, Yearbook of International Investment Law and Policy 41 (with Ian Laird, Sobia Haque & Borzu Sabahi, Karl Sauvant ed.: Oxford University Press, 2012) (peer reviewed).

In the chapter, we provide a summary of investment decisions in 2011.

#### Published in 2011

89. The Limits of Discretion? Self-Judging Emergency Clauses in International Investment Agreements, Yearbook of International Investment Law and Policy 362 (with Michael Nolan; Karl Sauvant ed.: Oxford University Press, 2011) (peer reviewed).

In *Limits of Discretion*, we survey non-precluded measures clauses in investment treaty programs. We address two questions: do “self-judging” non-precluded measures clauses make the State adopting a measure the sole arbiter whether a measure is exempted from the treaty? And if not, what does it mean for a non-precluded measures clause to be “self-judging?” We argue that too much has been made of the term “self-judging.” Tribunals will be able and required to review the invocation of such “self-judging” clauses — the question is how and when. Rather than rely on the characterization of a clause as “self-judging,” we conclude that a tribunal will be required by invocation of such a provision to engage an appraisal of the good faith of the invoking state.

90. ICSID Decisions 2010, Yearbook of International Investment Law and Policy 62 (with Ian Laird & Borzu Sabahi; Karl Sauvant ed.: Oxford University Press, 2011) (peer reviewed).

In the chapter, we provide a summary of international investment decision in 2010.

91. Recent Trends in Public Political Risk Instance Coverage, Corporate Finance Review (with Michael Nolan et al., May/ June 2011).

In the essay, we examine trends in public political risk insurance. We assess whether public political risk insurance is an effective tool of political risk management and compare it to other tools available for risk mitigation.

92. The U.S. and EU Debt Crises in International Law—A Preliminary Review, Wall Street Lawyer (with Michael Nolan et al., Oct. 2011).

In the essay, we examine how sovereign debt crises should be examined from an international legal perspective. We particularly focus on the potential of investor-state arbitrations arising out of the EU and US debt crises.

#### Published in 2010

93. Limits of Consent, Arbitration Without Privity and Beyond, Liber Amicorum Bernardo Cremades (with Michael Nolan: Kluwer, 2010).

In *Limits of Consent*, we address the theories of consent to jurisdiction in public international law and investor-state arbitration. We argue that we must take seriously the adage that international legal proceedings frequently occur beyond the bounds of traditional privity. We examine how such theories of consent work in general international law and apply the lessons to the investor-state arbitration context.

94. ICSID Decisions 2008-2009, Yearbook of International Investment Law and Policy 87 (with Ian Laird & Borzu Sabahi; Karl Sauvant ed.: Oxford University Press, 2010) (peer reviewed).

In the chapter, we provide a summary of international investment decision in 2008-2009.

95. State-Controlled Entities as Claimants in International Investment Arbitration: An Early Assessment, 32 Columbia Center on Sustainable International Investment (with Michael Nolan, December 2, 2010).

- Cited in José Alvarez, *Sovereign Concerns and the International Investment Regime*, Sovereign Investment: Concerns and Policy Reactions 258 (Karl Sauvant et al. eds., Oxford University Press, 2012)

State-controlled entities, including state-owned enterprises and sovereign wealth funds, are increasingly important participants in international investment flows and international trade. As claimants in contractual arbitrations, they may face some unique issues, since it is not always clear whether such disputes may be considered "commercial." Until the status of such claims has been resolved, each case has to be examined on its merits. We provide an initial rubric for such an assessment.

96. The Importance of History – Reflections on Lassa Oppenheim's 150<sup>th</sup> Birthday, 5(3) Friends of Jessup Newsletter (2010).

#### Published in 2009

97. Issues of Proof of General Principles of Law in International Arbitration, 4 World Arbitration & Mediation Review 505 (with Michael Nolan: 2009) (peer reviewed).

- Cited in Gary Born, International Commercial Arbitration (Kluwer, 2020).
- Cited in Jean d'Aspremont, *What Was Not Meant to Be: General Principles as a Source of International Law*, Global Justice, Human Rights and the Modernization of International Law (Riccardo Pisillo Mazzeschi et al. eds., Springer, 2018)

In *Issues of Proof*, we address the problems presented by relying on general principles of law in international arbitration. We provide a toolkit for how a general principle of law should be proved, relying both on the jurisprudence of the international court of justice and on comparative law scholarship. We further provide a catalogue of principles generally accepted in international law.

98. Annulment and Judicial Review - How "Final" Is an Award?, Investment Treaty Arbitration and International Law, vol. ii (Ian Laird and Todd Weiler eds.: Juris Publishing, 2009)

In the chapter, I argue for a different means to rectify so-called errors of law outside of the annulment mechanism. My suggestion is to create an advisory panel to work on soft-law restatements of law. The suggestion has since become a viable reform suggestion for investor-state arbitration.

#### Published before 2009

99. A Preliminary Comment – The Interplay Between State Consent to ICSID Arbitration and Denunciation of the ICSID Convention: The (Possible) Venezuela Case Study, Transnational Dispute Management (with Michael Nolan: 2007).

- Cited in *Fábrica de Vidrios Los Andes, C.A. & Owens-Illinois De Venezuela, C.A v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/21, award (Nov. 13, 2017)
- Cited in *Blue Bank International & Trust (Barbados) Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/12/20, separate opinion of Christer Söderlund (Apr. 3, 2017)
- Cited in *Highbury International AVV v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/14/10, request (Mar. 10, 2014)
- Cited in Christoph Schreuer, The ICSID Convention, A Commentary (2<sup>nd</sup> edition, Cambridge University Press, 2009)

In the *Preliminary Comment*, we argue against the then-prevailing view of state consent to arbitration as an offer to arbitrate. We submit instead that state arbitral consents are unilateral acts of state under international law. We argue that because of this nature of consents, the denunciation of ICSID Convention has no effect on the continued availability of ICSID arbitration against the denouncing state.

100. Comparative Law as Rhetoric: an Analysis of the Use of Comparative Law in International Arbitration, 8 Pepperdine Dispute Resolution Journal, 1 (2007).

- *Republished in 3 Georgia Commercial Law Journal* (2016).
- Cited in R. Doak Bishop & Edward Kehoe, *The Art of Advocacy in International Arbitration* (2nd ed. Juris Publishing, 2010).
- Cited in Guillermo Aguilar Alvarez, *Written Advocacy, Arbitration Advocacy in Changing Times* (Albert Jan van den Berg ed. WoltersKluwer, 2011)
- Cited in Joshua Karton, *International Arbitration as Comparative Law in Action*, 2020 J. Disp. Resol. 1.

In *Comparative Law as Rhetoric*, I argue that it is a fundamental misunderstanding of international arbitration to believe that law could at all be applied in the arbitral setting like it would be applied in court proceedings. Instead, I argue that counsel utilize comparative law as a rhetorical tool to plead their case to a frequently diverse set of arbitrators (diverse in terms of their home jurisdictions). I provide a framework to explain how such rhetorical use of law nevertheless can lead to predictable decision-making in international arbitration.

101. Positivism, Humanism, and Hegemony - Sovereignty and Security for Our Time, 25 Penn State International Law Review 433 (2007).

In *Positivism, Humanism and Hegemony*, I consider whether the concept of sovereignty can be recast in light of humanist literature. I juxtapose the positivist understandings of sovereignty with the problems of hegemonic uses of power. I engage in an historical analysis of the origins of the concept of sovereignty and argue that a humanist understanding of sovereignty is able to provide a better understanding of the concept of sovereignty than a positivist conception.

102. ICSID Arbitration and the Importance of Public Accountability of a Private Judicature- A Roman Law Perspective, 9 International Community Law Review 59 (2007).

- Cited in Christoph Schreuer, The ICSID Convention, A Commentary (2<sup>nd</sup> edition, Cambridge University Press, 2009)

In the article, I explore the problems of public accountability in current investment law practice. These problems arise from the private interpretation of international investment treaty and customary law in arbitration. It analyses these problems through the historical lens of Roman law and the Roman law tradition in international law. It suggests a Praetorian system of international accountability and

explores the remarkable similarities between current investment arbitration and classical Roman civil procedure.

103. Norway: Arbitration in Norway, 12(1) IBA Arbitration Committee Newsletter 23 (with Mark Baker, May 2007).

The article provided an in-depth analysis of arbitration law in Norway and new legislative developments. It was the first publication to do so in English at the time.

104. Fulbright Arbitration Report (editor, 2006).

The report provides an update on international arbitration developments around the world taking place in 2005-2006. The report was a leading practitioner resource for international arbitration update at the time of its publication.

105. Glem ikke Østerrike!, 54(8) Universitas (Mar. 8, 2000).

#### Lectures, Presentations & Panel Participations

1. Speaker, Advancing Legal and Regulatory Principles for Energy Transition, 28th Conference of the Parties to the UN Framework Convention on Climate Change (COP28), Dubai, United Arab Emirates, December 5, 2023.
2. Keynote Speaker, Juris Investment Arbitration and International Law Conference, Washington, DC, May, 2022.
3. Speaker, *Carbon Capture and Geo-Markets*, Environmental Law and Policy Annual Review (Vanderbilt University School of Law), Nashville, Tennessee, April 5, 2021.
4. Moderator, *Charting the Course of International Dispute Resolution Through ADR*, International Arbitration & Dispute Resolution Symposium: New Directions in International Arbitration & Mediation (Washington University in Saint Louis School of Law), Saint Louis, Missouri, Feb. 19, 2021.
5. Discussant/ Moderator, "Dispute Resolution and Arbitration," American Society of International Law (ASIL) Midyear Meeting Research Forum, hosted by Case Western Reserve University School of Law, Cleveland, Ohio, October 29, 2020.
6. Discussant and Moderator for Lucinda Low, *Keynote address: The Difference between Evolution and Revolution in Trade and Investment Dispute Settlement Mechanisms: Of Chaos, Crossroads, and the R-factor*, Juris Investment Arbitration and International Law Conference, Washington, DC, June 23, 2020
7. Team Member, Notre Dame Reparations Design and Compliance Lab Workshop, South Bend, Indiana, May 24-26, 2020.
8. Panelist, *True or False: Security for Costs Should be Mandated for Investor-State Arbitration?*, Juris Investment Arbitration and International Law Conference, Washington, DC, June 16, 2020.
9. Moderator, *Practicum: Mock Appellate Argument: Compelling Arbitration under U.S. Law*, International Arbitration & Dispute Resolution Symposium: What Happens Before and After International Arbitration? (Washington University in Saint Louis School of Law), St. Louis, Missouri, Feb. 21, 2020.
10. Speaker, *Climate Change as a Concern in Negotiating Mine Development Agreements*, 113th Annual Meeting of the American Society of International Law, Washington, DC, March 29, 2019.
11. Mock advocate, *Third Party Funding Arbitrator Challenge*, International Arbitration & Dispute Resolution Symposium (Washington University in Saint Louis School of Law), St. Louis, Missouri, March 1, 2019.
12. Discussant, Work in Progress Workshop: Dr. Crina Baltag, *Amicus Curiae in Investment Arbitration*, Institute for Transnational Arbitration, New York, NY, Feb. 9, 2019.
13. Co-Chair & Speaker, *Transnational Legal Frontier and Legal Education*, Center for International Law in Nepal, Kathmandu, Nepal, Jan. 25, 2019.



14. Evidence in International Investment Arbitration, International Centre for Settlement of Investment Disputes (World Bank), Washington, DC, Sept. 13, 2018.
15. Presenter & Discussant, American Society of International Law Midwest Interest Group Work-in-Progress Workshop, Carbondale, IL, Sept. 7-8, 2018.
16. Evidence in International Investment Arbitration, Queen Mary University of London, London, July 4, 2018.
17. International Law in Domestic Courts of Nepal, Concepts, Center of International Law in Nepal, Kathmandu, Nepal, May 1, 2018.
18. Moderator, Institute of Transnational Arbitration Academic Council Winter Meeting, Washington, D.C., Jan. 26-27, 2018.
19. Global Faith, Good Faith and the Unity of Difference in Transnational Law, University of Oklahoma College of Law, Norman, Oklahoma, Feb. 7, 2017.
20. Moderator, Jurisdiction, American Society of International Law & University of Missouri Works in Progress Conference, Columbia, Missouri, Feb. 3, 2017.
21. Moderator, Legal Theory, American Society of International Law & University of Missouri Works in Progress Conference, Columbia, Missouri, Feb. 3, 2017.
22. Global Faith, Good Faith and the Unity of Difference in Transnational Law, Institute of Transnational Arbitration Academic Council Winter Meeting, Washington, D.C., Jan. 28, 2017.
23. Supranational Law, Fall 2016 International Investment Law and Policy Speaker Series, Columbia Law School, New York, Sept. 26, 2016.
24. Internal Preparation of a Case in International Arbitration, 2016 Selected Topics and Miscellany CLE, Washburn University School of Law, Topeka, Kansas, June 24, 2016.
25. Is the Vienna Convention on the Law of Treaties Dead in BIT Arbitration?, OUP Investment Claims Webinar, Oct. 20, 2014.
26. Frack that! Can Investment Treaties Provide Effective Protections Against Fracking Bans?, 2014 Selected Topics and Miscellany CLE, Washburn University School of Law, Topeka, Kansas, June 27, 2014.
27. Applicable Law in Transnational Proceedings, Comparative Law and Rhetoric in International Arbitration, National Commercial Law Week, National Commercial Law Center, Tbilisi, Georgia, May 25, 2014 (USAID sponsored).
28. Recognition and Enforcement of Interim Measures Issued by International Arbitral Tribunals, National Commercial Law Week, National Commercial Law Center, Tbilisi, Georgia, May 25, 2014 (USAID sponsored).
29. Political Risk and Government Change: The Good, the Bad and the Ugly, National Commercial Law Center/ National Institute for Human Rights, Free University of Tbilisi, Tbilisi, Georgia, May 24, 2014 (USAID sponsored).
30. *Iura Novit Curia* in Investor-State Arbitration, National Commercial Law Center/ National Institute for Human Rights, Free University of Tbilisi, Tbilisi, Georgia, May 23, 2014 (USAID sponsored).
31. Control Mechanisms in International Adjudication, Georgetown University Law Center, Washington, DC, April 11, 2014.
32. The Interpretation of International Investment Agreements, Young International Centre for the Settlement of Investment Disputes (World Bank), Washington, DC, February 2014.
33. Discovery in International Arbitration Workshop, Young ICCA, Boston, MA, October 7, 2013.
34. Annulment of ICSID Awards, Columbia Law School, New York, NY, April 2013.
35. Uncommon Remedies in International Dispute Resolution, 107th Annual Meeting of the American Society of International Law, Washington, DC, April 4, 2013.

36. Annulment, Club Español del Arbitraje & American University Washington College of Law, Investment Arbitration in Latin America (2011).

## **EDUCATION**

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### **Johann Wolfgang Goethe-Universität**

*Doktor der Rechtswissenschaft (Ph.D. in Law); magna cum laude*  
*Dissertation: Good Faith in Transnational Law, A Pluralist Account*  
*Supervisor: Joachim Zekoll*  
*Committee: Joachim Zekoll; Stefan Vogenauer; Alexander Peukert*

**Frankfurt, a. M., Germany**

*March 8, 2022*

### **Tulane University Law School**

*Juris Doctor (J.D.), cum laude; Dean's Medal*  
*Philip C. Jessup Moot Court Team*  
*Guest Editor, Tulane Law Review*

**New Orleans, LA**

*May 2005*

### **University of York**

*Master of Arts (MA), Political Philosophy, The Idea of Toleration*

**York, UK**

*May 2003*

### **Universitet i Oslo**

*Candidatus Magisterii (BA), Philosophy & Latin*

**Oslo, Norway**

*July 2000*

### **University of Warwick**

*Read courses in Philosophy & Politics*

**Coventry, UK**

## **MEMBERSHIPS**

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American Branch, International Law Association  
Association of International Energy Negotiators  
American Society of International Law  
Bar of the District of Columbia  
State Bar of Texas

## **OTHER LEGAL EXPERIENCE**

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### *Judicial Extern*

*United States District Court for the Eastern District of Louisiana*  
*The Hon. Martin L.C. Feldman*  
*2004-2005*

## **LANGUAGES**

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German (native), French (native), Norwegian (fluent), Italian (fluent), Danish (working knowledge), Spanish (reading proficiency), Portuguese (reading proficiency), Dutch (basic reading proficiency).

## **HOBBIES**

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Cooking (Italian; French creole and French food in particular); Singing; Running