Fourth Annual

Constitutional Law Colloquium

FRIDAY, NOVEMBER 1—SATURDAY, NOVEMBER 2, 2013

KEYNOTE SPEAKER

Daniel Farber
Sho Sato Professor of Law;
Co-Director, Center for Law, Energy & the Environment
UC Berkeley School of Law

PHILIP H. CORBOY LAW CENTER
25 EAST PEARSON STREET, CHICAGO, IL 60611

THE COLLOQUIUM IS SUPPORTED IN PART BY RESEARCH FUNDS FROM
THE RAYMOND AND MARY SIMON CHAIR IN CONSTITUTIONAL LAW

Hosted by Professors John Nowak, Raymond & Mary Simon Chair in Constitutional Law,
Juan Perea, Alexander Tsesis, and Mike Zimmer
PRESENTERS

WILLIAM ARAIZA
Brooklyn Law School

HILLARY FARBER
University of Massachusetts
School of Law

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University of Kentucky
College of Law

WAYNE BATCHIS
University of Delaware

AMANDA FROST
American University,
Washington College of Law

ROBERT KAHN
University of St. Thomas
School of Law

ARIEL BENDOR
The Emanuel Rackman Law
Center Bar-Ilan University

CHARLOTTE GARDEN
Seattle University
School of Law

ALLEN KAMP
The John Marshall
Law School

ERIC BERGER
University of Nebraska
College of Law

DAVID GARTNER
Arizona State University,
Sandra Day O’Connor
College of Law

JESSICA KNOUSE
The University of Toledo
College of Law

JOSH BLACKMAN
South Texas College of Law

KHAGESH GAUTAM
Jindal Global Law School

ROBERT KNOWLES
Valparaiso University
Law School

JONATHAN BURTON-
MACLEOD
University of Florida,
Levin College of Law

MARY MARGARET
GIANNINI
Florida Coastal
School of Law

KATYA KOZICKI
Pontifical Catholique
University of Parana
and Federal University
of Parana

CECILIA CABALLERO LOIS
Federal University of Rio
de Janeiro Faculty of Law

PAUL GOWDER
University of Iowa
College of Law

JOSEPH LANDAU
Fordham University
School of Law

ANTHONY CASO
Chapman University
School of Law

TIFFANY GRAHAM
University of La Verne
College of Law

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BASTOS JUNIOR
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School of Law

SY MOKOWITZ  
Valparaiso University  
Law School

VALERIE MUNSON  
Southern Illinois University  
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Russian State University  
Trade and Economics

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SUNY Buffalo Law School

JEFFREY PARNESS  
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OFER RABAN  
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School of Law

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Indiana University  
Bloomington,  
Maurer School of Law

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Loyola University Chicago  
School of Law

STEVEN SCHWINN  
The John Marshall  
Law School

JESSICA SMITH  
The University of  
North Carolina at Chapel Hill

ITAI SNEH  
John Jay College/CUNY

MATTHEW STEILEN  
SUNY Buffalo Law School

LEE STRANG  
The University of Toledo  
College of Law

LAUREN SUDDELL LUCAS  
Georgia State University  
College of Law

JOANNE SWEENEY  
University of Louisville  
Louis D. Brandeis  
School of Law

JEREMY TELMAN  
Valparaiso University  
Law School

CRISTINA TILLEY  
Loyola University Chicago  
School of Law

SETHER BARRETT TILLMAN  
National University  
of Ireland-Maynooth

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College of Law

JOSEPH TOMAIN  
Florida Coastal  
School of Law

ALEXANDER TSESIS  
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School of Law

DAVID UPHAM  
University of Dallas,  
Politics Department

REBECCA ZIETLOW  
The University of Toledo  
College of Law

EVAN ZOLDAN  
The University of Toledo  
College of Law
KEYNOTE ADDRESS

DAN FARBER

Sho Sato Professor of Law; Co-Director, Center for Law, Energy & the Environment

Dan Farber is the Sho Sato Professor of Law at UC Berkeley School of Law. He is also the co-director of the Center for Law, Energy, and the Environment. Professor Farber serves on the editorial board of Foundation Press. He is a member of the American Academy of Arts and Sciences and a Life Member of the American Law Institute. He is the editor of Issues in Legal Scholarship.

Professor Farber is a graduate of the University of Illinois, where he earned his BA, MA, and JD degrees. He graduated, summa cum laude, from the College of Law, where he was the class valedictorian and served as editor-in-chief of the University of Illinois Law Review. After graduation from law school, he was a law clerk for Judge Philip W. Tone of the United States Court of Appeals for the Seventh Circuit and then for Justice John Paul Stevens of the Supreme Court of the United States. Professor Farber practiced law with Sidley & Austin, where he primarily worked on energy issues, before joining the University of Illinois College of Law faculty in 1978. He was a member of the University of Minnesota Law School faculty from 1981 to 2002, where he was the McKnight Presidential Professor of Public Law. He also has been a visiting professor at the Stanford Law School, Harvard Law School, and the University of Chicago Law School. He has written eighteen books and speaks extensively on a variety of law related topics.

LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW FACULTY HOSTS

JOHN NOWAK
Raymond and Mary Simon Chair in Constitutional Law
LUC.edu/law/fulltime/nowak.shtml

JUAN PEREA
Professor of Law
LUC.edu/law/fulltime/perea.shtml

ALEXANDER TESIS
Professor of Law
LUC.edu/law/fulltime/tsesis.shtml

MICHAEL ZIMMER
Professor of Law
LUC.edu/law/fulltime/zimmer.shtml
COLLOQUIUM AGENDA

FRIDAY, NOVEMBER 1, 2013

8:00–8:45 AM  
Check-in & Continental Breakfast  
Lounge for Power Rogers & Smith  
Ceremonial Courtroom  
Room 1040

8:45–9:00 AM  
Introduction  
Power Rogers & Smith  
Ceremonial Courtroom  
Room 1040

9:00–10:30 AM  
**PANEL A: THE RHETORIC OF CONSTITUTIONAL DECISION MAKING**  
Room 1303  
John Nowak, Discussant & Moderator  
Eric Berger  
*University of Nebraska College of Law*  
The Politics of Constitutional Certainty  
Jonathan Burton-Macleod  
*University of Florida, Levin College of Law*  
Does Constitutional Rhetoric Matter and, If So, What Does It Do? Citizens United  
Paul Gowder  
*University of Iowa College of Law*  
The People’s Will & the People’s Law

10:30 – 10:45 AM  
Break & Refreshments  
Faculty Lounge, 13th floor

10:45 AM–12:15 PM  
**PANEL D: IS ORIGINALISM USEFUL?**  
Room 1303  
Margaret Moses, Moderator  
Sheldon Novick  
*Vermont Law School*  
Failure of the New Originalism: What Sort of Document Was “This Constitution” Understood to Be?  
Lee Strang  
*The University of Toledo College of Law*  
Originalism & Computer-Assisted Research Techniques  
David Upham  
*University of Dallas, Politics Department*  
The Meanings of the “Privileges & Immunities of Citizens” on the Eve of the Civil War  
Evan Zoldan  
*The University of Toledo College of Law*  
The “Professional” Meaning of the Ex Post Facto Clause

10:30 – 10:45 AM  

10:45 AM–12:15 PM  

Panel C: Constitutional Interpretation  
Room 1401  
Alexander Tsesis, Moderator  
Anthony O’Rourke  
*SUNY Buffalo Law School*  
Unmediated Constitutional Adjudication  
Seth Barrett Tillman  
*National University of Ireland-Maynooth*  
Six Puzzles for Professor Akhil Amar  
Alexander Tsesis  
*Loyola University Chicago School of Law*  
Constitutional Theory: Deontological & Consequentialist

Panel B: Process-Oriented Constitutionalism  
Room 1304  
Margaret Moses, Moderator  
David Gartner  
*Arizona State University, Sandra Day O’Connor College of Law*  
Universal Participation  
Nicole Huberfeld  
*University of Kentucky College of Law*  
State Decisions on Obamacare  
Christopher Peters  
*University of Baltimore School of Law*  
Process, Substance & Constitutional Rights: The Case of the Second Amendment
PANEL E: CONSTITUTIONAL RIGHTS & NATIONAL SECURITY
Room 1304

Samuel Brunson, Moderator

Hillary Farber
*University of Massachusetts School of Law*
Eyes in the Sky: Constitutional and Regulatory Approaches to Domestic Drone Deployment

Itai Sneh
*John Jay College/CUNY*
Post 9/11 Constitutional Perspectives on Torture: Did the Prohibited Become the Norm?

Joanne Sweeney
*University of Louisville*
*Louis D. Brandeis School of Law*
Anti-Terrorism Laws & Human Rights

PANEL F: DUE PROCESS UNDERPINNINGS OF CRIMINAL PROCEDURE RIGHTS
Room 1401

Michael Zimmer, Moderator

Ariel Bendor
*The Emanuel Rackman Law Center*
*Bar-Ilan University & Hadar Dancig-Rosenberg*
*Bar-Ilan University*
Criminal Law & Constitutional Rights

Janet Moore
*University of Cincinnati College of Law*
Peculiar Sacredness: Inequality Aversion & the Right to Counsel

Jessica Smith
*The University of North Carolina at Chapel Hill*
Evaluating the Constitutionality of States’ Responses to Melendez-Diaz

PANEL G: SOCIETAL DEVELOPMENT & 20TH CENTURY JUDICIAL INTERPRETATION
Room 1403

Spencer Waller, Moderator

Allen Kamp
*The John Marshall Law School*
Constitution Interpretation and Technological Change

Katya Kozicki
*Pontificale Catholique University of Paraná and Federal University of Paraná*
Weak Judicial Review X Strong Democracy

Ofer Raban
*University Oregon School of Law*
The Roberts Court’s Formalism

12:15–1:30 PM

Lunch
Kasbeer Hall, 15th Floor (use south elevators)

KEYNOTE SPEAKER

Daniel Farber
*Sho Sato Professor of Law; Co-Director, Center for Law, Energy & the Environment, UC Berkeley School of Law*

1:45-3:15 PM

PANEL H: GOVERNMENT SPEECH & PUBLIC FORUM
Room 1303

Alexander Tsesis, Moderator

Jake Linford
*Florida State University College of Law*
Copyright’s Public Forum

Steven Morrison
*University of North Dakota School of Law*
Private Public Forums

Helen Norton
*University of Colorado School of Law*
When Government Lies: The Constitutional Implications of Government Falsehoods

Nadia Sawicki
*Loyola University Chicago School of Law*
Compelling Images: The Constitutionality of Emotionally Persuasive Health Campaigns
COLLOQUIUM AGENDA

FRIDAY, NOVEMBER 1, 2013 continued

PANEL I: SPEECH INTERSECTS WITH OTHER AREAS OF THE LAW
Room 1304

James Thuo Gathii, Moderator

William Araiza
Brooklyn Law School
Constructing a Press Clause That Actually Does Something

David Han
Pepperdine University School of Law
Liability & Remedy in Speech-Tort Jurisprudence

Cristina Tilley
Loyola University Chicago School of Law
NY Times v. Sullivan: Tort Rules, Speech Rules & the Fulcrum of State Action

PANEL J: RACE & THE CONSTITUTION
Room 1401

Juan Perea, Moderator

Laura Cisneros
Golden Gate University School of Law
Justice Roberts & the Rhetoric of Rebirth: Calculated Forgetting to Purge Judicial Guilt-Reflex

Juan Perea
Loyola University Chicago School of Law
Doctrines of Delusion

Lauren Sudeall Lucas
Georgia State University College of Law
Undoing Race: Multiracial Identity

Vinay Harpalani
IIT Chicago-Kent College of Law
Race-Consciousness as Part of The Compelling Interest in Diversity

PANEL K: ENFORCEMENT OF CONSTITUTIONAL POWERS
Room 1303

Michael Zimmer, Moderator

Mary Margaret Giannini
Florida Coastal School of Law
The Politics & Process of Pardon: Managing the Intersection Between Executive Discretion and Victims’ Right

Vladimir Nazarov
Russian State University of Trade and Economics
Constitutional Legal Regulation of Monetary Systems

Matthew Steilen
SUNY Buffalo Law School
Marbury, Departmentalism & Non-Enforcement

Franita Tolson
Florida State College of Law
The Constitutional Structure of Voting Rights Enforcement

PANEL L: RELIGION
Room 1401

John Nowak, Moderator

Perry Dane
Rutgers University School of Law-Camden
Of Reason & Reasonableness

Khagesh Gautam
Jindal Global Law School
Protecting Free Exercise of Religion under the Indian and the US Constitutions

Valerie Munson
Southern Illinois University School of Law
Fraud on the Faithful? The Charitable Intentions of Church Members & the Peculiar Nature of the Law Governing Church Property in the US

John Nowak
Loyola University Chicago School of Law
Discussant
PANEL M: FEDERALISM
Room 1403

John Breen, Moderator

Allan Erbsen
University of Minnesota Law School
Is the Mississippi River Unconstitutional?

Amanda Frost
American University,
Washington College of Law
Interstate Stare Decisis: State Court Treatment of Lower Federal Court Precedent

Garrick Pursley
Florida State University College of Law
Campaign Finance Safeguards of Federalism

6:00–9:00 PM
Dinner & Reception
Osteria Via Stato
620 N. State Street
Reception 6:00–7:00 PM
Dinner 7:00–9:00 PM
COLLOQUIUM AGENDA

SATURDAY, NOVEMBER 2, 2013

8:15-9:00 AM
Continental Breakfast
Faculty Lounge
13th floor

9:15-10:30 AM

PANEL N: SPEECH & RACE
Room 1303
Juan Perea, Moderator
Wayne Batchis
University of Delaware
Ideology as Catalyst for Principled Doctrinal Change: Hate Speech, Commercial Speech & the 1st Amendment
Robert Kahn
University of St. Thomas School of Law
European Opponents of Hate Speech & Limits of US Free Speech
M. Isabel Medina
Loyola University New Orleans, College of Law
Silencing Race by Prohibiting Ethnic Studies

PANEL O: EQUAL PROTECTION
INTERPRETIVE TECHNIQUES & VALUES
Room 1304
Alexander Tsesis, Moderator
Josh Blackman
South Texas College of Law
Which Rational Basis Test?
Katie Eyer
Rutgers University School of Law-Camden
Equal Protection & Discriminatory Intent
Bertrall Ross
University of California- Berkeley School of Law / Princeton University Lapa Program
Transparent Adjudication: Promoting Democratic Dialogue on Judicial Conceptions of Politics

PANEL P: ACCESS TO JUSTICE
Room 1401
John Bronsteen, Moderator
Tara Leigh Grove
William & Mary Law School
Standing Outside of Article III
Sy Moskowitz
Valparaiso University Law School
The Rehnquist-Roberts Court: Procedural Rulings Mask Ideological Results
Steven Schwinn
The John Marshall Law School
Open Courts & Access to Justice

PANEL Q: THE FUTURE OF SEXUAL ORIENTATION PROTECTION
Room 1403
Michael Zimmer, Moderator
Tiffany Graham
University of La Verne College of Law
Same-Sex Sodomy Bans Post-Lawrence v. Texas
Joseph Landau
Fordham University School of Law
Presidential Constitutionalism and Civil Rights
Steve Sanders
Indiana University-Bloomington, Maurer School of Law
Political Process Theory & State Constitutional Mini-DOMAs

10:30 – 10:45 AM
Break & Refreshments
Faculty Lounge, 13th floor

10:45-12:15AM
PANEL R: PROCREATION & THE CONSTITUTION
Room 1303
Michael Zimmer, Moderator
Anthony Caso
Chapman University School of Law
Free Exercise, the Contraceptive Mandate & Rights of Conscience
Jessica Knouse
The University of Toledo College of Law
Liberty & Equality in Era of Assisted Reproductive Technology
Jeffery Parness
Northern Illinois University College of Law
Constitutional Constraints on Second Parent Laws

PANEL S: FIRST AMENDMENT BEYOND SPEECH
Room 1304
Neil Williams, Moderator
Charlotte Garden
Seattle University School of Law
Meta Rights
Joseph Tomain
Florida Coastal School of Law
Online Privacy: 1st Amendment Analysis of Opt-In Regime
Rebecca Zietlow
The University of Toledo College of Law
Is There a Constitutional Right to Organize?

PANEL T: INTERNATIONAL RELATIONS & CONSTITUTIONAL DECISION MAKING
Room 1403
Nora O’Callaghan, Moderator
Cecilia Caballero Lois
Federal University of Rio de Janeiro, Brazil, Faculty of Law
The New Brazilian Constitutional Court
Enrique Guerra-Pujol
Barry University Dwayne O. Andreas School of Law
Gödel’s Loophole II: A Comparative Constitutional Study
Robert Knowles
Valparaiso University Law School & Jeremy Telman
Valparaiso University Law School
Foreign Affairs Originalism & Kiobel
Luiz Magno Pinto Bastos Junior
Universidade do Vale do Itajaí
Constitutional Dialogue Between Courts: The Use of Foreign Materials

12:15–1:30 PM
Lunch
Kasbeer Hall, 15th Floor (use south elevators)