

JAY BUTLER
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ACADEMIC EMPLOYMENT

UNIVERSITY OF VIRGINIA LAW SCHOOL

Professor of Law Fall 2021-
Visiting Associate Professor of Law Fall 2020
Courses: International Business Transactions, International Law, Corporate Social Responsibility

WILLIAM & MARY LAW SCHOOL

Associate Professor of Law 2019-2021
Assistant Professor of Law 2016-2019
Courses: International Business Transactions, Extraterritorial Jurisdiction, Corporations and International Law, Contracts

PRINCETON UNIVERSITY

Visiting Research Scholar, LAPA Fellow 2018-2019

COLUMBIA LAW SCHOOL

Academic Fellow and Kellis E. Parker Teaching Fellow 2014-2016

YALE LAW SCHOOL

Visiting Lecturer in Law Fall 2014
Course: Conflict of Laws (co-taught with Prof. Lea Brilmayer)

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Visiting Associate Professor of Law 2012-2014
Courses: International Organizations; U.N. Security Council

EDUCATION

YALE LAW SCHOOL

Juris Doctor, 2011

OXFORD UNIVERSITY

B.A. in Jurisprudence, 2008
Honors: Rhodes Scholar

HARVARD UNIVERSITY

B.A., *magna cum laude with highest honors*, History, 2006
Honors: Phi Beta Kappa

PROFESSIONAL EXPERIENCE

GOVERNMENT OF JAPAN	2013
Legal consultant to the Ministry of Foreign Affairs of the Government of Japan	
INTERNATIONAL COURT OF JUSTICE	2011-2012
Law clerk to Judge Giorgio Gaja and Judge Hisashi Owada (then President of the Court)	
INTERNATIONAL LAW COMMISSION	Summer 2010
Research assistant to Professor Don McRae, Member of the Commission	
DEBEVOISE & PLIMPTON LLP	Summer 2010
Summer associate (offer extended)	
U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT	Summer 2009
Summer clerk to Judge Sonia Sotomayor and Judge Debra Livingston	

BAR ADMISSION

New York

SCHOLARSHIP

***The Corporate Keepers of International Law*, 114 AM. J. INT'L L. 189 (2020)**

- Awarded the Francis Deák Prize by the American Society of International Law, 2021
- Selected for presentation at the Yale/Stanford/Harvard Junior Faculty Forum
- Quoted in JEFFREY DUNOFF & STEVEN R. RATNER, *INTERNATIONAL LAW: NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH* (Aspen Casebook, 5th ed. 2020)

In transborder environmental protection, territorial disputes, internet governance, anticorruption, international human rights, and humanitarian law, private businesses are increasingly supporting the implementation and enforcement of international law. This Article analyzes the various ways that corporate decision making contributes to this phenomenon, and assesses its prospects for enhancing international law's existing enforcement paradigms. In doing so, the Article opens new ground for scholarly and policy consideration of the proper role of corporations in the global legal order.

***Corporate Commitment to International Law*, 53 NYU J. INT'L L. & POL. 433 (2021)**

Corporations are increasingly important actors in international law. But, vital questions underlying this development have long gone unanswered: how and why do corporations commit to international law?

This Article constructs a comprehensive account of business interaction with international legal obligation and suggests that a gateway to demystifying this persistent puzzle lies in corporate *opinio juris*.

Corporate *opinio juris* describes a company's subscription to a rule of international law, even though the company is not technically bound by that rule itself. This subscription functions as a kind of pledge that, once made, has sway over the company and its peers, but also symbiotically enhances the authority of international law. Corporate *opinio juris* provides a common rubric to bring together insights derived from subfields of international law where these corporate pledges to follow international law have been observed, and it serves as a paradigm according to which we may better understand how and why companies adhere to international law.

The Article then unpacks how various structures within business law and management theory help to predict the formation of corporate commitments to international law, and it reveals that corporate *opinio juris* holds potentially sweeping implications for international law generally.

***Corporations as Semi-States*, 57 COLUM. J. TRANSNAT'L L. 221 (2019)**

When Ebola came to West Africa in 2014, Liberia could not cope. The state's already fragile public health infrastructure was largely ineffective in responding to the illness and preventing its spread. And, the World Health Organization's support was slow and stilted. By contrast, Firestone, a tire company that operates a vast rubber plantation in Liberia and runs its own hospital for 80,000 employees, family dependents, and persons in neighboring localities, responded to the virus much more effectively.

This Article uses Firestone's Ebola response as an entry point to study a phenomenon too frequently overlooked. Many for-profit firms that maintain operations in failed and fragile states discharge significant quasi-governmental functions. They provide security, housing, food, water, transportation, infrastructure and healthcare. And, they undertake such tasks not only for their employees but, sometimes, these businesses also reach beyond their own private domain to respond to challenges impacting the local community. Yet, legal scholarship on failed and fragile states largely ignores the provision of public goods by these business entities.

This Article suggests that much more work needs to be done to grapple with the various functions undertaken by these business entities. The Article first details instances of corporations acting as semi-states to add fresh nuance to the prevailing narrative concerning the role of business in failed and fragile states. It then marshals theoretical insights available at the intersection of corporate law and international law to suggest a more complex understanding of the behavior of profit-motivated actors in the state's absence.

The Article then applies this renovated model to question the appropriateness of laws that dissuade firms from operating in failed and fragile states. It flags and addresses reasons for caution, but also considers alternative means through which the international community might better foster the socially beneficial potential of for-profit firms operating in failing states.

***Amnesty for even the Worst Offenders*, 95 WASH. U. L. REV. 591 (2017)**

- **Winner of the Lieber Prize awarded by the American Society of International Law for best article on law and armed conflict in 2018**

In recent years, global policy makers have declared that heads of state must be held accountable through criminal prosecution for internationally wrongful acts. Scholars too have

insisted that the international system's embrace of accountability excludes or renders illegal the granting of amnesty. This Article argues that that position is too narrow and uses the ongoing conflict in Syria, as well as other contemporary examples, to examine some of the consequences of the clamor for prosecution.

The Article rejects the binary juxtaposition of amnesty and accountability in current international legal scholarship, and instead seeks to broaden the terms of the conversation by considering amnesty from the perspective of the Responsibility to Protect (R2P) principle.

The Article suggests that viewing amnesty as a conflict resolution mechanism that may discharge R2P highlights important values and tradeoffs that the debate over amnesty and its relation to accountability has heretofore neglected.

***Responsibility for Regime Change*, 114 COLUM. L. REV. 503 (2014)**

What obligations does a state have after it forcibly overthrows the regime of another state or territory? The Hague Regulations and the Fourth Geneva Convention provide some answers, but their prohibition on interfering with the governing structure of the targeted territory is outmoded. Based on a careful examination of subsequent practice of the parties to the conventions, this Article asserts a new interpretation of these treaties and argues that regime-changers are now under positive obligations in the postwar period and beyond.

Through their conduct and evaluation of modern regime-change missions, states, both individually and acting collectively through international organizations, have manifested revised understandings of obligations in the post-conflict phase of military operations. Accordingly, this Article argues that regime-changing states now not only have Geneva-based direct obligations to establish security in the territory, promote representative local government, protect the human rights of the local population, assist with post-conflict reconstruction, and safeguard minority groups while exercising control over the territory, but also that such states must ensure that the successor regime – whose installation their initial military intervention facilitated – is one that respects international human rights law.

***The Return of Corporate Rights* (work in progress)**

***Inclusive Business* (work in progress)**

***Are treaties really 'deals'?* (work in progress)**

SELECTED PRESENTATIONS

Corporate Commitment to International Law

- Columbia Law School, Comparative and International Law Workshop, Feb. 23, 2021
- University of Virginia Law School, Faculty Workshop, Sept. 28, 2020
- Stanford Law School, Culp Colloquium, June 9, 2020
- University of Chicago, Public Law Workshop, Apr. 28, 2020

The Corporate Keepers of International Law

- Cornell Law School, Faculty Workshop, Nov. 22, 2019
- Yale Law School, Yale/Stanford/Harvard Junior Faculty Forum, June 5, 2019
- Duke University School of Law, Culp Colloquium, May 16, 2019
- Washington & Lee University School of Law, American Society of International Law Southeast Regional Conference, May 13, 2019
- Princeton University, LAPA Seminar, Mar. 25, 2019
- UCLA School of Law, Critical Perspectives on Race and Human Rights: Transnational Re-Imaginations Symposium, Mar. 8, 2019
- Brooklyn Law School, Junior International Law Scholars of the American Society of International Law, Jan. 11, 2019.

Corporations as Semi-States

- William & Mary Law School, International Law Roundtable, Sept. 28, 2018
- American University Washington College of Law, Faculty Workshop, Sept. 18, 2018
- Stanford Law School, Culp Colloquium, June 4, 2018
- Boston College Law School, Faculty Workshop, Apr. 13, 2018

UNIVERSITY SERVICE

- Elected Faculty Representative, Dean Search Interview Panel (2020)
- Ad Hoc Committee to Review the Legal Practice Program (2019-2020)
- Dean's Advisory Committee (2017-2018)
- Enrichment Committee (2017-2018)
- International Committee (2016-2018)
- Rhodes-Marshall Scholarship Nomination Committee (2016-2018; University-wide)

PROFESSIONAL SERVICE

- Executive Council, American Society of International Law (2021-)
- Blacks of the American Society of International Law (BASIL) Taskforce (2021-)