BEHIND THE SCHOLARSHIP: CAN THE U.S. DECLARE CHAPTER 11?
A NATIONAL ‘BANKRUPTCY’ PLAN
PROFESSORS KITCH AND MAHONEY DISCUSS OPTIONS FOR REORGANIZING U.S. DEBT

The United States maintains a massive debt load—currently about $23 trillion—and nobody knows if or when it might lead to an existential crisis for the country.

Professors EDMUND W. KITCH and JULIA MAHONEY assert in a new paper that restructuring that debt, like a business in trouble would, should be on the table in case of emergency.

While the nation can’t simply file for Chapter 11 bankruptcy reorganization, the pair contend that a similar idea for the cash-strapped federal government isn’t crazy—and may actually be workable.

The idea originated from a class they taught together on constitutional aspects of fiscal and monetary policy, including actions taken to address the financial crisis of 2008. The professors arrived at the conclusion that debt restructuring may eventually be a necessity because of popular but deficit-ballooning programs, such as those involving the social safety net and national security, combined with some future unforeseen downturn.

“We doubt that payments on treasury obligations will necessarily take precedence over what the electorate sees as more pressing needs,” Kitch and Mahoney write in “Restructuring United States Government Debt: Private Rights, Public Values, and the Constitution,” published in the Michigan State Law Review.

If the government prints more and more money to try to keep its promises while also facing insurmountable debt, the result could be runaway inflation, the professors say. They reference what happened in Argentina, which experienced a 53.8% annual inflation rate in 2019 while simultaneously attempting to renegotiate its indebtedness.

But is U.S. debt restructuring constitutional? Despite some conventional thinking to the contrary, Kitch and Mahoney say that because the Constitution doesn’t expressly prohibit it, such a move is indeed possible.

“Nothing in the Constitution as originally ratified forbids debt restructuring,” they write.

Some interpret the 14th Amendment’s Public Debt Clause as a blanket prohibition on the federal government’s failing to make its debt payments. But while the clause affirms the validity of U.S. debt, “failing to pay a debt in full and on time is not at all the same thing as questioning the debt’s validity,” they write.

The professors acknowledge that the U.S. has a strong legal history of upholding property and contract rights, which could serve as barriers to any restructuring deal.

But they also point to precedent. Even though the public has largely forgotten, the U.S. has restructured its debt twice: under Alexander Hamilton’s debt repayment scheme in the 1790s, and later, at the start of the New Deal, when the U.S. abandoned the gold standard.

The professors suggest that a liquidity fund that the secretary of the treasury could access would be the most feasible way to enable the government to perform its most important functions while pursuing a restructuring of its obligations. “The long existence of the Exchange Stabilization Fund shows that the idea that the Secretary of the Treasury needs access to discretionary funds to deal with unexpected events is well-accepted,” they write.

Nevertheless, they aren’t betting against the U.S. economy, they say. They just think it might be wise to be prepared.

—Eric Williamson

ANDREW BLOCK continues to serve as the vice chair of Gov. Ralph Northam's Commission to Examine Racial Inequity in Virginia Law, which was established by Northam in June 2019. Throughout the spring and summer, Block and student research assistants JESSIE AMES '22, JULIET RUSINO '21, TRUST KUPUPUKA '22, KELSEY MASSEY '21, WES WILLIAMS '22 and CHRIS YARRELL '22 provided substantial research support for the commission, including helping the commission develop a set of legislative and policy proposals for Northam's consideration that would bring needed reform, and safer and more equitable practices to law enforcement in Virginia. Block also authored three opinion pieces on juvenile justice that appeared in The (Fredericksburg) Free Lance-Star, the Richmond Times-Dispatch and the Juvenile Justice Information Exchange.

RICHARD BONNIE '69 continues to work on two long-term projects. One is serving as a co-reporter on the American Law Institute’s Restatement on Children and the Law, a project led by Columbia law professor ELIZABETH SCOTT ’77. His work on juvenile justice currently focuses on dispositions in juvenile courts and transfer of juveniles to criminal courts. In another ongoing project, he is serving on the National Academy of Medicine’s Action Collaborative on Countering the U.S. Opioid Epidemic, an effort that began in 2018 and has now converged with actions needed to respond to the COVID-19 pandemic because of its interruption of treatment for people with substance use disorders. He has also been advising the American Academy of Neurology on ethical challenges posed by the pandemic. Bonnie and co-authors Dr. Arian Lewis of New York University Medical School and Professor Thaddeus Pope of William Mitchell Law School appeared before the Uniform Law Commission in the spring making the case for revising the Uniform Determination of Death Act. He will now represent the American Academy of Neurology as an observer on the ULC study committee appointed to carry out this task. This team published an article in JAMA Neurology in August titled “Is there a Right to Delay Determination of Death by Neurologic Criteria?”

Closer to home, a work group chaired by Bonnie completed a two-year study on mandatory outpatient treatment for people with mental illness and presented a report to the Virginia General Assembly in August. The report recommends a comprehensive overhaul of the Virginia statutes governing this topic. Mandatory outpatient treatment was first enacted by the General Assembly in 2008, as recommended by the Supreme Court’s Commission on Mental Health Law Reform chaired by Bonnie in the wake of the mass shooting at Virginia Tech in April 2007.

Also in Virginia, the General Assembly enacted the “red flag” law that the Consortium for Risk-Based Firearm Policy, which Bonnie is a member of, developed and disseminated in 2013, bringing the total of states that have enacted such legislation to 19. The law sets up a procedure through which law enforcement can take firearms from someone deemed a threat to themselves or others.

Another project by Bonnie addresses the continuing increase in the number of people with mental illness admitted to the nation’s jails and prisons. “Criminalization” of mental illness has been one of the core elements of contemporary manifestos for comprehensive criminal justice reform. Bonnie and Columbia Medical School professor (and former UVA colleague) Dr. Ken Hoge have proposed a novel legal pathway for civil commitment of people arrested for criminal offenses that are demonstrably related to mental illness, thereby avoiding the inefficiencies associated with assessment of competence to stand trial. The first article outlining the new plan is in press in the psychiatric literature. Bonnie co-authored an amicus brief for Kohler v. Kansas with University of Pennsylvania Law School professor Stephen J. Morse, arguing that the state of Kansas, in denying defendants the option of an insanity plea, violates due process. Nearly 300 co-signers who are experts in either criminal law or mental health law joined the brief, which was filed in June. Bonnie and Morse followed up their advocacy with an op-ed in

BROWN ’90 TO CONDUCT RESEARCH AT CAMBRIDGE AS THOMAS JEFFERSON VISITING FELLOW

Professor DARRYL BROWN ’90 will conduct research at the University of Cambridge as a Thomas Jefferson Visiting Fellow in the spring of 2021. Brown said the fellowship will be a valuable opportunity to pursue research projects focused on comparative studies of English and American criminal procedure law, as well as of the divergent approaches—despite a shared common law heritage—of English and American courts on these topics.

“More generally, it will also be an ideal opportunity to engage with Cambridge faculty and institutions, to build foundations and to broaden networks for future work,” he said.

Brown will present a paper in a faculty colloquium and participate in others at the Faculty of Law’s Cambridge Criminal Justice Centre. He said he shares similar research interests with criminal justice professor Jonathan Rogers, the center’s co-deputy director.

Brown is the O. M. Vicars Professor of Law and Barron F. Black Research Professor of Law. He teaches Criminal Law, Criminal Adjudication and Evidence, among other courses. Before joining the law faculty in 2007, he was the Class of 1958 Alumni Professor of Law at Washington and Lee University School of Law, where he joined the faculty in 1998. He is the author of “Free Market Criminal Justice: How Democracy and Laissez Faire Undermine the Rule of Law” and co-author of “Adjudication of Criminal Justice: Cases and Problems.”

Spearheaded by UVA President Edgar Shannon Jr. and longtime Downing Fellow John Treherne, the research fellowship launched in 1978. Over the past 40 years, UVA has sent faculty from the Schools of Law, Medicine, Architecture, Engineering, and Arts & Sciences. UVA Executive Vice President and Provost M. ELIZABETH MAGILL ’93 was a Thomas Jefferson Visiting Fellow in 2011 while a professor at UVA Law. Charles McCurdy, now a professor of history and law emeritus, was a fellow in 2009.

—Mike Fox
Professor JOE FORE '11 has been elected a board member of the Legal Writing Institute. LWI, the second-largest organization of law professors in the United States, announced seven new board members for 2020-24 in April.

Fore currently serves as co-editor-in-chief of one of LWI's publications, “The Second Draft,” a journal devoted to scholarship about legal skills pedagogy. He has also been helping lead efforts to revamp LWI’s publications website and online presence.

“My main goal is to complete our work updating LWI’s digital publishing model, which will help to improve both the visibility and the status of legal skills scholarship,” Fore said. “I would also like to increase LWI’s engagement with the practicing bench and bar—to share our expertise and research to improve legal communication and make it easier for lawyers, judges and the public to understand and use.”

Fore has been a co-director of the Law School’s Legal Research and Writing Program since 2014. In addition to teaching research and writing courses, Fore works extensively with the Law School’s moot court programs. In 2018, he received the BLSA Service Award for his role in coaching the Black Law Students Association’s extramural moot court teams.

With more than 1,000 members, LWI is “dedicated to improving legal communication by supporting the development of teaching and scholarly resources and establishing forums to discuss the study, teaching, and practice of professional legal writing” according to the organization’s website.

—Mike Fox

In August, KEVIN COPE received a contract with Oxford University Press to co-edit a new “Oxford Handbook of Comparative Immigration Law.” The volume will feature chapters by over 60 leading scholars from around the world. It will likely be the first comprehensive, book-length manuscript on the subject when it is published in spring 2022. In September, Cope presented his co-authored work on COVID-19-related liberty restrictions at online workshops at the Georgetown University Law Center and George Mason University. And in April, he discussed the research on NPR’s “All Things Considered” and China Radio International’s “World Today.”

NAOMI CAHN recently published “What’s Wrong About the Elective Share ‘Right?’” in the University of California at Davis Law Review. Her co-authored article (with Albertina Antognini, Kaipananea T. Matsamura and Emily J. Stolzenberg), “Perspectives on Nonmarital Relationships,” was recently published in the Family Court Review. She became associate editor of the ACTEC Law Journal and Family Law Section co-editor of the Jotwell. She spoke at an American Bar Association Real Property, Trust and Estate Law Section Professors’ Corner on “The Trusts and Estates Canon” in July 2020. As a contributing editor to the Forbes Leadership Channel, Cahn has published articles such as “New Study Shows How White Lies Can Hurt Women at Work,” “Mother’s Day and COVID-19’s Impact on Women of Color” and “Returning to Work, Disability, and COVID-19.”

As the supervising editor of A.JIL, Unbound, the online supplement to the American Journal of International Law, ASHLEY DEEKS organized a symposium titled “How Will Artificial Intelligence Affect International Law?” and wrote the introductory essay, which appeared in April. Her article on the role of text analysis and algorithmic tools to develop international law and resolve international disputes, “High-Tech International Law,” came out in the George Washington Law Review in June. In July, she presented on the law and ethics of autonomy at a NATO workshop. In September, her book chapter on the relevance of international humanitarian law to the Restatement (Fourth) of Foreign Relations law came out as part of a book co-edited by PAUL STEPHAN ’77. Also in September, she participated in a workshop on cyber autonomy organized through NATO’s Cyber Center of Excellence. She presented a paper on how states can preserve democratic accountability when using increasingly autonomous cyber tools in military contexts.

In May, JOE FORE ‘11 received the Legal Writing Institute’s inaugural Emerging Scholar Award for his 2019 article on lawyers’ use of probabilistic language when advising clients. Fore also continued to publish a bimonthly column devoted to legal writing in Virginia Lawyer magazine, the official publication of the Virginia State Bar. His latest columns focused on crafting effective headings and providing meaningful feedback to intern and summer associates.

GEORGE GEIS recently published “Information Litigation in Corporate Law” with the Alabama Law Review. He also presented on this topic at Elon Law School and at UCLA. Geis joined and published the fourth edition of the casebook “Corporate Finance: Principles and Practice” (Foundation Press) with Emory law professor William Carney and Berkeley law professor Robert Bartlett, and is teaching from his new casebook this spring. Geis also gave talks at Fordham Law School on blockchain and the law, and at the University of Utah on a current research project exploring shareholder responsibility for corporate misdeeds. And he has been active as the faculty director of the John W. Glynn, Jr. Law & Business Program—teaching a new seminar in this area, coaching the Law School’s new
transactional law case competition team, and leading other activities at the intersection of law and business.

MICHAEL GILBERT'S paper “Active Virtues,” which he co-authored with MAURICIO GUIM S.J.D. ’18, was accepted for publication in the Washington University Law Review. Gilbert and Guim’s paper “Constitutional Locks” was accepted for publication in the International Journal of Constitutional Law. Gilbert presented “Conflict Avoidance in Constitutional Law,” co-authored with CHARLES BARZUN ’08, at the Virtual Workshop on Constitutional Law and Economics. Along with DEBORAH HELLMAN, Gilbert co-leads a UVA Democracy Initiative called CLEAR: Corruption Lab for Ethics, Accountability, and the Rule of Law.

RISA GOLUBOFF was a panelist May 26 for the National Constitution Center’s discussion “The Story of Plessy v. Ferguson.” On July 16, she was a panelist for “Suffrage, Struggle, and Striding Ahead—Where We’ve Been Since the 19th Amendment, Where We’re Going, and How to Get There,” held for the National Association of Women Lawyers Annual Meeting, “A Century of the 19th Amendment.” She spoke for a Federal Judicial Center webinar Aug. 20 and was also interviewed Aug. 26 on “On-Air with UVA,” hosted by the UVA Clubs program and the Law School.

G. EDWARD WHITE and Goluboff are also commentators for “John Marshall: The Man Who Made the Supreme Court,” a documentary available via streaming on Amazon Prime that focuses on the chief justice and seven of his pivotal cases.

RACHEL HARMON’S casebook, “The Law of the Police,” will be published by Wolters Kluwer this winter. The book is the first to present materials and analysis for law school students and other readers who want to understand the legal rules that govern police interactions with citizens and that provide the backdrop to current debates about the role of police and police reform. She has been appointed founding director of the Center for Criminal Justice at UVA. She co-authored “Changing the Law to Change Policing: First Steps,” a document that provides guidance for immediate steps officials at the federal, state and local levels can take to advance the process of transforming the police. It includes recommendations on reforms to legal remedies and policing practices and seeks to promote uniform standards with respect to data collection and transparency. In the aftermath of George Floyd’s death in Minneapolis, she has advised government officials, nonprofits and others on police reform and legal changes. She appeared on Tyler Cowen’s podcast, “Conversations with Tyler,” and continues to serve as an associate reporter.

GILBERT RECEIVES ALL-UNIVERSITY TEACHING AWARD

Professor MICHAEL GILBERT was named a recipient of this year’s All-University Teaching Award. The award celebrates top-notch instruction across Grounds. Gilbert, who teaches courses on elections law, legislation, and law and economics, is a perennial favorite of students for his gentle and relatable teaching style that encourages participation. Those who joined the nominations included current and former students, as well as his peers.

Student feedback from his recent courses often referred to him as the best or one of the best professors they have ever had.

“Professor Gilbert is an incredible instructor,” a student who took his fall Constitutional Law and Economics course wrote. “He takes complex, esoteric concepts and communicates them in a way that is accessible and memorable.”

In 2015, Gilbert was the first UVA Law professor to win the UVA Student Council Distinguished Teaching Award. Such recognitions reflect the joy he takes in his work.

“I love spending time with the students, working through hard problems together, and demystifying [court] opinions,” Gilbert said. “I take a lot of pleasure in that last step. Once you get past the convoluted language, the ideas are often not so complicated. They may be controversial, but they’re not complicated. I like revealing that. It shows the students, and it reminds me, that we can do this.”

He said students paid him what may be the ultimate teaching compliment recently. They let him know that they had gained the feeling of comprehensive learning.

“I recently taught Law and Economics to a large group of students,” he said. “Towards the end of the semester, I was talking with some of them, and they told me the course should be renamed ‘How Everything Works.’ That’s an exaggeration, perhaps, but I appreciated the sentiment.”

Gilbert is the Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law. In addition to his teaching responsibilities, he is an inaugural scholar in UVA’s Corruption Lab on Ethics, Accountability, and the Rule of Law, also known as CLEAR.

Winning the award, “makes me proud and a little sheepish,” Gilbert said. “The University has many excellent teachers, and I’m humbled to be singled out.”

—ERIC WILLIAMSON
HAYASHI, MASON JOIN COALITION FINDING SOLUTIONS TO PANDEMIC-INDUCED STATE FINANCIAL CRISSES

As states across the country struggle with significant budget shortfalls due to the coronavirus pandemic, a coalition of tax scholars has come together to provide policy recommendations to help ease the crisis. Professors ANDREW HAYASHI and RUTH MASON have joined the effort, called Project SAFE (State Action in Fiscal Emergencies).

“This is no ordinary recession,” said Mason, the Edwin S. Cohen Distinguished Professor of Law and Taxation. “Government at all levels will have to work together to weather the crisis.”

In the early days of the pandemic, the federal government passed two bills to help states and localities, including the Families First Coronavirus Response Act, which temporarily increases the federal share of Medicaid expenditures; The Coronavirus Aid, Relief and Economic Security Act, or CARES Act, reimburses states for half of the states’ share of unemployment benefits through December, plus offers another $150 billion to states and localities, but places significant restrictions on state and local governments’ use of that money.

“The quickest solution to the state fiscal crisis in the short term is for Congress to step up and provide more direct aid,” said Daniel Hemel, a Project SAFE participant from the University of Chicago Law School. “We think states will need quite a bit more than that $150 billion, and they will need to be freed from the restrictions that Congress so far has imposed.”

Project SAFE argues that the federal government could further help states through direct grants and interest-free loans, including extending longer-term loans to states and localities.

Under extreme financial pressure, states are considering how to close their budget gaps, including through tax hikes, social service cuts and layoffs that could have negative consequences for the economy.

Mason and the coalition said states should consider expanding their state sales tax bases, such as through digital services taxes and broad-based consumption taxes, imposing excess profits taxes, aggressively using rainy day funds, and repealing or modifying statutory balanced-budget rules.

“If ever there was a time for digital services taxes, this is it,” Mason said.

Localities could provide targeted property tax relief for low-income households, and reassess high-end properties to raise revenues, Hayashi said.

“Everyone needs income right now,” said Hayashi, the Class of 1948 Professor of Scholarly Research in Law and director of the Virginia Center for Tax Law. “It’s all a question of tradeoffs and how to spread the harm from the recession across people and across generations in a way that minimizes suffering and speeds the recovery.”

Local governments have an important role to play, Hayashi added, but they need help from the Treasury and the Federal Reserve.

“Localities may be able to raise more revenue from the property tax, but it needs to be done in a nuanced way that provides relief for the most vulnerable homeowners,” he said.

Project SAFE devotes a number of recommendations to how states can raise revenue by conforming to recent federal tax laws. The coalition also offers recommendations to states for longer-term solutions for fiscal stability, from repealing balanced-budget requirements to reducing barriers to revenue-raising legislation.

—Mary Wood

on the American Law Institute’s Principles of Policing Project.

ANDREW HAYASHI’S recommendations about state and local tax policies designed to respond to the economic effects of the coronavirus pandemic have appeared in The Washington Post and State Tax Notes, drawing on his paper “Countercyclical Property Taxes,” published this summer in the Virginia Tax Review. He continues to do research incorporating prosocial and antisocial attitudes into the traditional law and economics framework, and published “Do Good Citizens Need Good Laws? Economies and the Expressive Function” with MICHAEL GILBERT in Theoretical Inquiries in Law. Hayashi published “Myopic Consumer Law” in the Virginia Law Review in May. That paper considers the use of behavioral economics to analyze debt-financed purchases of homes and other durable goods, and he is working on a follow-up project with Professor Oren Bar-Gill of Harvard Law School.

DEBORAH HELLMAN published two articles: “Measuring Algorithmic Fairness” in the Virginia Law Review and “Opioid Prescribing and the Ethical Duty to Do No Harm” in the American Journal of Law & Medicine. In addition, she participated in a
A new multidisciplinary course co-taught by Professor THOMAS NACHBAR is helping the Pentagon tackle emerging national security challenges. Students who take Innovation in the Public Interest work on real problems facing the U.S. Department of Defense—from understanding the implications of using artificial intelligence in making military decisions to implementing “norms of behavior” in outer space. The students present their work for consideration by the Pentagon.

A multidisciplinary team of faculty was awarded a national grant to establish the course, aimed at teaching graduate students to examine the complex technological, legal and policy implications of real-world problems faced by various agencies within Defense Department.

Nachbar is a national security law expert, judge advocate in the U.S. Army Reserve and a senior fellow at the Center for National Security Law. He co-teaches the class with computer science professor Jack Davidson, and politics and public policy professor Philip Potter.

A goal of the course is to teach law students how to work with people from other disciplines in a practical problem-solving environment, Nachbar said.

“There are law students, policy students and engineering students on each one of the teams,” he said. “When you think of lawyers in their offices, the stereotype is that they’re not doing project-based problem-solving. They’re thinking great legal thoughts and writing briefs. But that’s not accurate. Lawyers work with others all the time to solve problems, and more often than not they’re doing it in teams with technical and policy experts.”

UVA is the only Virginia university that is a founding partner of the Public Interest Technology University Network, run through the Office of the Provost. The University received a $90,000 grant—one of 27 grants awarded across the country—from think tank New America as a way to cultivate academic initiatives that prepare the next generation to design, build and govern new technologies that advance the public interest.

Nachbar said he hopes the course is available in the future and that law students will come away with skills that help them work with nonlawyers in the field.

“What I’m really hoping they get from the course is that when they’re talking to somebody who’s working for their client, they’re not only talking to a person, they’re talking to a set of interests,” he said. “Understanding where those interests sit within the organization’s larger interests—whether it’s a firm or the government—gives them a huge amount of context in understanding those conversations.”

—Mike Fox
Professor Cynthia Nicoletti has been named a recipient of the UVA Student Council Distinguished Teaching Award.

The award is given annually to recognize a teacher who makes a positive and lasting impact on the University by developing relationships with students through the creation of an engaging and challenging classroom atmosphere. Eleven recipients of the award are chosen by a selection committee composed of undergraduate students who consider both quantity and quality of nominating letters.

“It’s truly an honor to receive this award, particularly at a time like this,” Nicoletti said. “I was surprised, but elated, to hear that my students had selected me for this award and that the Academic Affairs office had selected me. The classroom experience was under so much stress this past semester, and I don’t know of any professors who didn’t worry about finding a way to connect with students in these difficult circumstances. I have to say that my students were amazing, and their hard work and dedication made it possible.”

A student nominator in Nicoletti’s course Global Legal History, co-taught with UVA history professor Paul Halliday, said her detailed feedback on assignments and her engagement with the student commentary was inspiring.

“Her attention to every student as well as the consideration she gave to our arguments has been instrumental in helping me grow as a scholar,” the student wrote. “Both oral and written feedback in papers, final exams, and class participation was tailored to us as individuals, which made it critically helpful in improving writing and argumentation over the course of the class.”

Nicoletti is the Class of 1966 Research Professor of Law. Her book, “Secession on Trial: The Treason Prosecution of Jefferson Davis,” won the 2018 Cromwell Book Prize, given by the William Nelson Cromwell Foundation each year for excellence in scholarship to an early career scholar working in the field of American legal history. She has received numerous awards and fellowships, including the William Nelson Cromwell Prize for the best dissertation in legal history, awarded by the American Society for Legal History in 2011. In August, she won the Supreme Court Historical Society’s 2019 Hughes-Gossett Prize for best article in the Journal of Supreme Court History, for “Chief Justice Salmon P. Chase and the Permanency of the Union.”

Mike Fox

In May, Michael Livermore published “The Problem of Data Bias in the Pool of Published U.S. Appellate Court Opinions” in the Journal of Empirical Legal Studies. That piece uses advanced text analysis tools to investigate whether the standard social science approach to researching judicial decision-making could generate misleading conclusions about the role of judges’ ideology in affecting case outcomes. The research on that piece was carried out over five years with collaborator Daniel Rockmore and Keith Carlson of Dartmouth College. Livermore and his co-authors find that correlations in the limited and selected sample of published opinions cannot be properly interpreted to imply that there are large differences in outcomes before judges with different political affiliations. In November, Oxford University Press will publish a new book by Livermore, with co-author Richard L. Revesz of New York University, “Reviving Rationality: Saving Cost-Benefit Analysis for the Sake of the Environment and Our Health.” That book argues that the Trump administration has misused cost-benefit analysis and departed from practices endorsed by both political parties for decades to attempt to justify regulatory rollbacks that undermine the well-being of the American public.
The authors offer a set of recommendations for future administrations interested in restoring cost-benefit analysis to its prior productive role in regulatory decision-making.


RUTH MASON published “The Transformation of International Tax” in the American Journal of International Law. Mason’s article argues that the 2008 recession precipitated a political crisis that motivated an unprecedented international project to curb corporate tax dodging. Contrary to dominant scholarship, she argues that this effort transformed international tax—changing its participants, agenda, institutions, norms and even its legal forms. Perhaps most important, efforts to close corporate tax loopholes widened a rift over revenues that threatens a 100-year-old tax treaty framework. Mason also published two articles with the Virginia Tax Review, one on the dormant foreign commerce clause and one on the legality of digital taxes in the European Union. Mason gave the paper (over Zoom) at Oxford and in the Indians/Leeds Summer Workshops.


**VIRTUAL NATIONAL FACULTY WORKSHOP SERIES LAUNCHES, FEATURES ROBINSON**

Professor KIMBERLY J. ROBINSON spoke about “A Federal Right to Education” as part of a first-of-its-kind UVA Law National Faculty Workshop series offered this summer, “From Policing and Protest to Discrimination and Systemic Racism.” The six virtual workshops, which were open via Zoom to law faculty nationwide and UVA Law students and staff, focused on issues raised by the Black Lives Matter movement and the broad array of legal questions it implicates. Each workshop featured a single scholar who presented on a recent or current project, with UVA Law faculty members serving as moderators. Robinson’s talk was moderated by Professor KIM FORDE-MAZRU.

Other participants included:

- Randall L. Kennedy, Michael R. Klein Professor at Harvard Law School, who spoke on competing visions of racial justice in “The Racial Promised Land?,” with Professor DEBORAH HELLMAN moderating.
- Paul Butler, the Albert Brick Professor in Law at Georgetown University Law Center, who spoke about prison abolition and police diversion in “De Facto Abolition and Divestment,” with Professor JOSH BOWERS moderating.
- Jeremy Waldron, University Professor at New York University School of Law, who spoke about “What Demonstrations Are, and What Demonstrations Mean,” with Vice Dean LESLIE KENDRICK ‘06 moderating.
- Linda Greenhouse, senior research scholar at Yale Law School and New York Times reporter and columnist, who spoke about “The Supreme Court’s Challenge to Civil Society” with Professor MICAH SCHWARTZMAN ‘05 moderating.
- And Boston University School of Law Dean Angela Onwuachi-Willig, who discussed the cultural trauma Blacks experience from high-profile cases involving police and quasi-police killings in “The Trauma of Injustice,” with Professor ANNE COUGHLIN moderating.

—Mary Wood
SCHAUER NAMED FELLOW OF THE BRITISH ACADEMY

Professor FREDERICK SCHAUER was elected a corresponding fellow of the British Academy in July in recognition of his distinguished contributions to academic thought.

Schauer is a world-renowned expert in the areas of constitutional law, evidence, legal reasoning, freedom of speech, and jurisprudence and the philosophy of law.

The British Academy is comprised of more than 1400 academics, who are elected from the United Kingdom and around the world based on their outstanding contributions to the humanities and social sciences. Corresponding fellows are scholars of distinction who reside outside of the U.K. and have “attained high international standing in any of the branches of study which it is the object of the Academy to promote.”

Schauer said he is honored to receive the award, which is a rare distinction among Americans, both in law and in other fields. Fewer than 10 American legal scholars are fellows, a group that includes Guido Calabresi and Richard Posner. Schauer was the only American elected in law in 2020.

“The U.K. has been a big part of my academic life for over 40 years, in terms of visiting appointments at both Oxford and Cambridge, lectures over the years at many U.K. universities, and publication of some of my books and articles,” he said. “I am truly flattered by this unexpected and unusual honor.”

New members are named at the conclusion of a lengthy secret-ballot process culminating at the Annual General Meeting of Fellows, held each July.

Schauer is a David and Mary Harrison Distinguished Professor of Law at UVA, and he is among the most recognizable names in the legal academy. His expertise has been demonstrated in hundreds of books, book chapters, articles, essays, classes and personal appearances.

Among his other accolades, he is a fellow of the American Academy of Arts and Sciences, a recipient of a Guggenheim Fellowship, and has been chair of the Section on Constitutional Law of the Association of American Law Schools, and of the Committee on Philosophy and Law of the American Philosophical Association.

—Eric Williamson

THOMAS NACHBAR’S two most recent papers, “Algorithmic Fairness, Algorithmic Discrimination” and “Twenty-First Century Formalism,” will be coming out in the next year in the Florida State University and University of Miami law reviews, respectively. This summer, he completed a draft article, which he presented via Zoom at the summer UVA faculty workshop series, on antitrust’s ancillary restraints doctrine. This coming spring, he will teach the second iteration of the multidisciplinary Innovation in the Public Interest course. Although the pandemic response prohibited in-class meetings this spring, students in the inaugural Innovation in the Public Interest class were able to present their projects to sponsors at the U.S. Department of Defense and other federal government agencies via teleconferencing, expanding the number of agency stakeholders who were able to attend the talks. Nachbar reports the response was overwhelmingly positive, and several of the student groups were asked by project sponsors to present to a wider audience at follow-up events and to provide supplemental materials to help implement their recommendations. He is currently serving on the Federal Communications Commission working group on security threats to the Secure Internet Protocol. In other government service, he was selected for promotion to lieutenant colonel in the U.S. Army Reserve and is now serving in his reserve capacity as an adjunct professor teaching national security law at the Judge Advocate General’s Legal Center and School in Charlottesville.


DAN ORTIZ, as counsel of record and director of the Supreme Court Litigation Clinic, filed a cert petition and cert reply in Retallick v. Van Dyke, which asks whether state anti-SLAPP (strategic litigation against public participation) statutes apply in federal court under Erie Railroad Co. v. Tompkins. He also filed a cert petition and cert reply in Kollaritsch v. Michigan State University Board of Trustees, which asks whether Title IX plaintiffs who have been sexually assaulted or harassed must prove additional assault or sexual harassment after having given notice of the original injury to the educational institution in order to state a claim for damages. As co-counsel, he helped draft the clinic’s cert petition and cert reply in Khaytek v. Barr, which concerns the type of notice the government must give to end the period of continuous presence required for cancellation of a noncitizen’s removal, and whether a court of appeals can refuse to review certain determinations that would not change the outcome of a noncitizen’s present applications for immigration relief but would impose permanent, prospective immigration consequences. He has also been working on an article on the concept of deterriorization in European administrative law and a book chapter on voting rights in Virginia’s 1971 Constitution.

KIMBERLY ROBINSON will publish “Designing the Legal Architecture to Protect Education as a Civil Right” in the Indiana Law Journal. She also spoke at the National Education Policy’s “Gary B. and the Right to Literacy 65 Years after Brown” on June 4, the Center for American Progress’ “A Federal Right to Education: From Brown to Rodriguez and What Lies Ahead” on May 13, and the UVA Miller Center of Public Affairs’ “The Pandemic’s Lasting Effect on Education” on May 12. She was a guest on “The Learning Curve” podcast for “The Legal Debate about Education as a Federal Right” on May 7.
In the spring, **George Rutherford** published two articles: “Statutes of Limitations: Claims Forgotten, Forgiven, or Foregone?” and “Disaggregated Discrimination and the Rise of Identity Politics.” He also has an article coming out in the fall on “Reconstruction in Legal Theory.” Over the summer, he updated his book on employment discrimination and civil rights to discuss the landmark decision of the Supreme Court recognizing sexual orientation and gender identity as prohibited forms of discrimination under Title VII. He is also working on an article on “Admiralty, Human Rights, and International Law.”

**Frederick Schauer** published “Probabilistic Causation in Law” (with **Barbara Spellman**) in the *Journal of Institutional and Theoretical Economics*. “Rules, Defeasibility, and the Psychology of Exceptions” was published in the *Journal of Institutional and Theoretical Economics*. “Fuller and Kelsen—Fuller on Kelsen,” was published in *Archiv für Rechts- und Sozialphilosophie*. He delivered (via Zoom) the lecture “Truth, Falstik, and Freedom of Speech in Times of Crisis” at Federal University of Paraná, Brazil. He delivered (via Zoom) the lecture “On the Relationship Between Law and Legal Reasoning” at Universidad de la Salle in Guayaquil, Ecuador.

This summer, **Richard SCHRAGGER** presented at two virtual events addressing federalism in a time of pandemic, one sponsored by the University of Michigan Law School and another sponsored by the UVA Miller Center. He also participated in a virtual conference on "firearms localism," sponsored by the Duke Center for Firearms Law. He co-authored several editorials, with **Micah Schwartzman ’05** and Nelson Tebbe, on the demise of the separation of church and state under the Trump administration. Those appeared in The New York Times, The Washington Post and The Atlantic. His article “What is Government Speech? The Case of Confederate Monuments” was published in the Kentucky Law Journal as part of a symposium on Confederate iconography. And his article “Religious Antiliberalism and the First Amendment,” co-authored with Schwartzman, appeared in the Minnesota Law Review.

**Micah Schwartzman ’05** commented on the Supreme Court’s religious freedom cases for the American Constitution Society’s annual “Supreme Court Review.” He participated in the Annual Law and Religion Roundtable and a colloquium on “The Unraveling of the New Deal Settlement;” hosted by Cornell Law School. As director of the Karsh Center for Law and Democracy, he

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**Shin ’10 to Direct Juvenile Defense Clinic**

Professor **Crystal Shin ’10** stepped down as director of the Program in Law and Public Service to direct a new clinic.

The clinic, which starts this spring and has yet to be formally named, will focus on holistic juvenile defense.

“I’m excited to return to clinical teaching and my poverty lawyering roots,” Shin said. “I had always hoped to return to the practice of law at some point, so when I had the opportunity to design a new in-house clinic, I gladly accepted.”

The Law School currently offers 20 clinics. Separately from the Child Advocacy Clinic, Shin’s clinic will represent clients on school- or community-referred juvenile delinquency matters in juvenile and domestic relations courts.

“The clinic will represent indigent youth on delinquency matters as well as collateral special education and school discipline matters,” she said. “By having one clinic provide holistic representation in courts and in schools, we can provide critical representation to clients and increase the likelihood of their future success because a favorable disposition in one system may lead to a better outcome in the other system.”

Shin noted that students with disabilities in Virginia are suspended at three times the rate of their non-disabled peers and are disproportionately more likely to be referred to law enforcement by schools.

Dean **Risa Goluboff** said she was pleased that Shin will be able to expand her teaching efforts as part of a larger plan to enhance the school’s in-house clinics and public service support more generally (see p. 10).

Since Shin joined the school and began leading the Program in Law and Public Service, she implemented an enhanced curriculum centered on social justice and building practical skills, redesigned the first-year Law & Public Service course to include more practical elements, helped launch the Shaping Justice conference, created a peer mentoring component to supplement the faculty mentoring program, increased alumni engagement and giving, and started monthly “Lunch & Learn” meetings with inspiring public interest practitioners around the country.

“Over the past three years, Crystal has built a robust community around the program and nurtured our network of alumni,” Goluboff said. “We’re so pleased she can take on this new role that will enhance curricular offerings for students interested in public service, as well as serve a critical need in our community.”

As an attorney with the Legal Aid Justice Center from 2010 to 2014, Shin served as an adjunct lecturer at UVA Law and supervised students who represented clients through the Child Advocacy Clinic. She first joined LAJC as UVA Law’s 2010 Powell Fellow, representing indigent children and families on special education, school discipline, juvenile justice and immigration cases while working with the JustChildren Program.

— **Mike Fox**
VERDIER, VERSTEEG’S RESEARCH CITED BY SUPREME COURT OF CANADA IN LANDMARK CASE

A paper by Professors Pierre-Hugues Verdier and Mila Versteeg was cited by the Supreme Court of Canada in a precedent-setting ruling that holds Canadian companies accountable for human rights abuses.

In Nevus Resources Ltd. v. Araya, the court ruled that a Canadian mining company can be sued in a Canadian court for offshore abuses, rather than requiring courts in the jurisdiction where the alleged crime occurred to be the arbiter.

The professors published “International Law in National Legal Systems: An Empirical Investigation” in the American Journal of International Law in 2015. In it, they find that “in virtually all states, customary international law rules are in principle directly applicable without legislative implementation.”

The court cited this finding in support of its decision to confirm that customary international law forms part of Canadian law. The court went on to provide a domestic legal remedy for violations of human rights protected by international norms.

The professors said the long-term implications of the case could include greater international recognition of the practice of trying such cases in the home states of multinational firms.

Prosecutors and human rights advocates have long attempted to hold U.S. and foreign corporations accountable in U.S. courts for human rights violations overseas under the Alien Tort Statute. In recent decisions, however, the U.S. Supreme Court has all but eliminated this recourse.

Versteeg is the Martha Lubin Karash and Bruce A. Karash Bicentennial Professor of Law; co-director of the Human Rights Program and the Center for International & Comparative Law at UVA Law; and a senior fellow at the Miller Center.

Verdier is the John A. Ewald Jr. Research Professor of Law and director of the Graduate Studies Program at UVA Law.

--- Eric Williamson


Commission on Civil Rights. Her research on risk assessment was discussed in The Economist, The Intercept and Law.com. She launched a new online workshop called “Virtual Law & Economics” with Professor Albert Choi at the University of Michigan and Daniel Sokol at the University of Florida. She gave talks at the “Law, Business, and Accounting Colloquium” at the University of California, Berkeley; and at the Endogenous Rules Workshop at Claremont Graduate University. She also participated in the Neighborhood Criminal Law Roundtable at the University of Maryland.

Paul Stephan ’77 took up his appointment as special counsel to the general counsel of the U.S. Department of Defense and is on leave from the Law School for a year. In October, he will take part in a virtual conference organized by the European Journal of International Law on “The Restatement (Fourth) of the Foreign Relations Law of the United States.” His faculty workshop at the University of Miami Law School, originally scheduled for last March, was moved to this fall. The book of essays he edited, “The Restatement and Beyond: The Past, Present, and Future of U.S. Foreign Relations Law,” was published by Oxford University Press. He is working on a book, provisionally titled “The Crisis in International Law: System Shocks, National Populism, and the Battle for the World Economy.”

Megan T. Stevenson gave a talk on bail reform to the U.S. Commission on Civil Rights. Her research on risk assessment was discussed in The Economist, The Intercept and Law.com. She launched a new online workshop called “Virtual Law & Economics” with Professor Albert Choi at the University of Michigan and Daniel Sokol at the University of Florida. She gave talks at the “Law, Business, and Accounting Colloquium” at the University of California, Berkeley; and at the Endogenous Rules Workshop at Claremont Graduate University. She also participated in the Neighborhood Criminal Law Roundtable at the University of Maryland.


Pierre-Hugues Verdier’s recent book, “Global Banks on Trial: U.S. Prosecutions and the Remaking of International Finance,” was featured in an online book panel organized by the American Society of International Law’s International Economic Law Interest Group. An article he co-wrote with Paul Stephan ’77, “International Human Rights and Multinational Corporations: An FCPA Approach,” will appear in the Boston University Law Review in 2021. He continues to work with Mila Versteeg on a project on the role of international law in national legal systems, as part of which they are preparing an article co-written with Kevin Cope that will trace the historical evolution of the relevant doctrines worldwide using quantitative and qualitative methods. Verdier is also teaching a new course, International Trade and Investment.