Short Title: **Human Rights Law**

Title: Disaster, Displacement, and Human Rights: Bridging the Collaborative Gap

General Info: A collaborative interdisciplinary effort to address the enormity of human rights issues created by natural disasters like tsunamis, earthquakes, and hurricanes in addition to those suffered as a result of armed conflict, terrorism and human trafficking. Speakers represent diverse backgrounds and experience in addressing the problems, including researchers, law professors, human rights organizations, and governments.

September 25-27, 2015

Friday, September 25:


Oola received his legal training in human rights law and transitional justice at Makerere University in Uganda and holds an MA in Peace and Conflict Studies from the University of Notre Dame. He is Director of the Conflict, Transitional Justice, and Governance Programme at The Refugee Law Project, within the Makerere University School of Law, Uganda.  

Saturday, September 26:

9-10:30 Panel: “Responding to the Legal Needs of Disaster Survivors: A Collaborative Effort of the Legal Profession”

David Nguyen, Director, ABA YLD Disaster Legal Services Program

John Eidleman, Senior Program Counsel, Legal Services Corporation

Tom Maligno, ED, William Randolph Hearst public Advocacy Center & Director of Pro Bono & Public Interest, Touro Law Center

Discussant: Robert C. Blitt, Faculty, College of Law, University of Tennessee

Anthony Barash, Chair, ABA Committee on Disaster Response and Preparedness

After the devastating impact of Hurricane Katrina, the legal profession has built a collaborative response to the legal needs of disaster survivors. From the efforts of law students, volunteer attorneys, and civil legal service attorneys, the legal response to assist low-income and vulnerable disaster survivors is a human and civil rights issue. For the past ten years, the legal profession has collaborated, developed, educated, and trained attorneys, bar associations, civil legal service agencies, and law students to prepare and plan for disasters and the response to their communities.

This panel presentation will:

1. Provide an overview of this ten-year evolution
2. Discuss the collaborative efforts within the legal profession that have bridged the gap in responding to the legal needs of disaster survivors
3. Highlight best practices of collaboration
4. Provide a model for other countries or professions
5. Discuss challenges to low-income survivors and vulnerable populations. Participants will:
   1. Understand the importance of responding to the legal needs of disaster survivors as a human and civil rights issue
   2. Understand the collaborative efforts of the legal profession (from student to practitioner)
   3. Identify best practices
   4. Understand a model of collaboration.

**Paper Abstracts:**

**Nguyen** will highlight the main legal issues disaster survivors request from volunteer attorneys. He will also discuss the Disaster Legal Services program in collaboration with FEMA and the American Bar Association.

**Eidleman** will discuss the importance of disaster preparedness for civil legal service agencies and their response to the disaster legal needs of their population. Their collaboration with the private bar is critical as civil legal services respond to the long-term legal needs, which is a civil and human rights issue.

**Maligno** will discuss the law student response to the legal needs of disaster survivors from Katrina until Sandy and now. Mr. Maligno will highlight the practical importance for law students and stress how law students can collaborate with the legal profession to meet needs and gain experiential learning.

**Barash** will discuss the importance of the private bar and the involvement of bar associations and statewide organizations to respond to disasters. While it is important to respond to their communities, it is a critical mission of bar associations to stress preparedness to their membership.

**Blitt** will provide a critical commentary on the presentations of the speakers and the theme of the panel as a whole from an international human rights and constitutional law perspective.  

**11 AM - 12:30 PM**

Disasters, (Dis)ease, and the Rights of the Displaced

Raja H. Swamy, Department of Anthropology, UT

**Jonathan Todres, College of Law, Georgia State University**

**Mostafa Naser, College of Law, Univ. Of Chittagong, Bangladesh**

Helen Rosko, Department of Geography, UT

David O’Kane, Max Planck Institute for Social Anthropology, Germany

Discussant: Paul Gellert, Department of Sociology, UT

**11:15-11:30 Todres: A Children’s Rights Response to Natural Disasters**

Large-scale natural disasters create humanitarian crises for hard hit areas, dramatically disrupting children’s lives. The aftermath of any large-scale natural disaster raises many children’s rights issues, at every stage of the process, from relief to reconstruction. In many instances, public attention and government responses focus on select issues affecting children. For example, in the immediate aftermath of the 2010 earthquake in Port-au-Prince, Haiti, public attention focused
most notably on the threat of trafficking. Although no one questions the urgent need to prevent child trafficking, isolating it as an issue can lead to overlooking both the structural issues that heighten children’s vulnerability to being trafficked and other equally pressing children’s rights violations. Using Haiti as a case study, this paper seeks to advance a more holistic approach to child well-being following natural disasters, by situating children’s experience in a rights framework. The paper delineates the range of rights violations children suffer in natural disasters, explores the interrelationship among these rights, and proposes steps to foster the realization of all children’s rights and well-being. Using a children’s rights lens to assess children’s experiences in and following natural disasters helps highlight both the need for multidisciplinary approaches and opportunities to develop comprehensive responses.

11:30-11:45

Naser: Interface between Disaster-induced Displacement, Human Rights and Adaptation Strategies: Legal and Policy Perspectives in Bangladesh

Many studies and reports published by national and international organizations recognize Bangladesh as one of the most affected countries due to the environmental effects of global climate change, and confirm that a large number of people will be displaced within the country as a result. However, there is no simple and straightforward solution to the challenges posed by natural disasters-induced migration, and a ‘one-size-fits-all’ approach will not effectively resolve the complex nature, and patterns, of population displacement. Rather than any single approach, a multifarious, comprehensive, proactive, and coherent policy approach is imperative for managing people displaced by environmental reasons in an orderly and humane manner. The principal policy objective should be to increase the range of options open to those most vulnerable to the effects of environmental change. Based on the available data regarding the environment, climate change, and migration, this paper initially efforts to foster a deeper understanding of the interface between environmental change and human migration in the context of Bangladesh. This understanding helps reinterpreting existing adaptation responses, and suggesting alternative adaptation measures and strategies that may have positive effects in increasing resilience to environmental changes. Negating a ‘one-size-fits-all’ approach, a range of legal and policy options are suggested in this paper. These measures will indeed capacitate Bangladesh to respond proactively to minimize the impending environmental risks and maximize the benefits for environment related migrants. It also sets out a roadmap showing how policy interventions could contribute to better integrating the full spectrum of migration issues and concerns into an overall environmental and developmental policy, and vice-versa, within Bangladesh.

.5 hour
Panel IX:
UNIDENTIFIED REMAINS, MEMORY AND TRAUMA

2:00 – 2:15: Victor Toom

2:15 – 2:30: Jim Emison, Amy Z. Mundorff, and Thomas Parsons

2:30 – 2:45: Adrianne Kembel

2:45 – 3:00: Malathi de Alwis

3:00 – 3:15: Discussant: Hugh Tuller

3:15 – 3:30: Q&A, Discussion

Presenters:
Victor Toom, Centre for Forensic Science, Northumbria University
Jim Emison, J.D., Attorney at Law (retired)
Amy Z. Mundorff, Department of Anthropology, University of Tennessee
Thomas Parsons, International Commission on Missing Persons
Adrianne Kembel, Department of Anthropology, University of Tennessee
Chair/Discussant: Hugh Tuller, Department of Anthropology, University of Tennessee

Paper Abstracts:

2:15-2:30 pm Emison, Mundorff and Parsons.: Seeking Justice for Elbert Williams

Elbert Williams, murdered June 20, 1940, in Brownsville, Tennessee, is the first known NAACP member killed for his civil rights work. He vanished in police custody; three days later his body was found in the Hatchie River. The county coroner ordered a burial on that day, without ceremony in an unmarked grave. A local grand jury ruled that Williams had died at the hands of unknown parties. The US DOJ initiated investigations into the death as a civil rights violation, but later reversed the decision and closed the case. No one was ever prosecuted for Elbert’s murder. This paper presents the collaborative effort to locate Elbert Williams’ grave, analyze and identify his remains, determine the cause of death, and re-inter his remains with honor. Traditional investigative work, new techniques in remote sensing, and DNA analysis have aimed at establishing an accurate account of this significant historical event.

.25 hour
Panel VIII:

ADVOCACY, ACTIVISM, AND SOLIDARITY IN LAW AND JUSTICE

2:00 – 2:15: De Ann Pendry
2:15 – 2:30: Amanda J. Reinke
2:30 – 2:45: John Stauffer
2:45 – 3:00: Daniel Rezene Mekonnen
3:00 – 3:15: Discussant: Jon Shefner
3:15 – 3:30: Q&A, Discussion

Presenters:

De Ann Pendry, Department of Anthropology, University of Tennessee
Amanda J. Reinke, Department of Anthropology, University of Tennessee
John Stauffer, America Team for Displaced Eritreans

Daniel Rezene Mekonnen, Visiting Fellow, Centre for Migration Law, University of Neuchâtel; Senior Legal Advisor (affiliate), International Law and Policy Institute (ILPI), Oslo, Norway

Chair/Discussant: Jon Shefner, Department of Sociology, University of Tennessee

Paper Abstracts:

Pendry: Struggles for Justice by Immigrants and Allies in Tennessee: “Sí, se puede. Yes, we can.”

This paper will discuss the efforts of immigrants to claim their rights and protest detentions and deportations. Since 2005 I have been collaborating with groups that are part of the Tennessee Immigrant and Refugee Rights Coalition. We have supported efforts to obtain federal immigration reform and advocated for state and local policies that are welcoming to immigrants. We have worked on trying to prevent anti-immigrant laws from being passed in Tennessee. As have other groups across the country, we started campaigns against federal internal enforcement programs, such as 287(g) that enlisted local jail officials to serve as Immigration and Customs Enforcement (ICE) agents. In Nashville, 287(g) was in place from 2007 to 2012, and over 10,000 people were put in deportation proceedings. Many were initially picked up for minor
traffic violations. Nationwide immigrant rights groups began calling for “Not One More Deportation” and “Keep Families Together.” Immigrants have become more vocal in telling their stories. They insist, “Aqui estamos, y no nos vamos. We are here, and we are not leaving.” From 2012-2013, we campaigned against the implementation of 287(g) in Knox County, Tennessee, which ultimately was not implemented due to sequestering of federal funds. Since then, the Comité Popular de Knoxville and Allies of Knoxville’s Immigrant Neighbors have participated in campaigns such as supporting President Obama’s executive orders for Deferred Action, advocating for “tuition equality” for undocumented students, joining with other groups to “Put People First,” and attending the 50th anniversary of the Selma Voting Rights March.

Reinke: Mediating Humanity: The Mediation Room as Space of Conflict and Contest

Sociolegal studies’ reparative turn popularized informal approaches to conflict resolution, such as community mediation, in an effort to increase access to justice for populations marginalized by the formal legal system. The physical space of community mediation dispute resolution processes is a site of contest and conflict between disputants, parties involved, and the practitioners offering mediation services. Particularly, practitioners emphasize mediation goals as “humanizing” disputants and empowering participants. However disputants focus on resolving the immediate conflict and, when possible, restoring relationships. In addition to disparate goals between practitioners and their clients, service providers also control the process of defining and achieving justice in the mediation room. As they guide clients through the community mediation model, they focus disputant attention on practitioner-defined conceptions of justice, often inadvertently wrestling ownership of the mediation process from disputants. Analysis of mediation as an interactional event challenges assumptions that it is disputant-driven, while spatial and discourse analyses reveal the complexities of goals and conflict among participants. Based on ongoing ethnographic research in the San Francisco Bay Area and situated in sociolegal, legal anthropological, and legal studies perspectives, this presentation analyzes the mediation event to illuminate how conflict and contest between practitioners and clients manifest in the physical space.

Stauffer: How a Tiny Refugee NGO Can Effectively Inform and Influence a Broad Range of Entities around the World

Since its founding over five years ago, The America Team for Displaced Eritreans has continually grown the ways it assists Eritrean refugees and asylum seekers around the world. A broad spectrum of awareness, interest and willingness to help or act is required in the face of a treacherous regime that directly oppresses its citizens in any country which the refugee may reach. The concept of this growth is straightforward: seeking and acting appropriately on ways and means of providing advocacy and assistance. The result to date has been to
build effective communication with entities within the UN, the U.S. resettlement infrastructure, the U.S. government, NGOs, refugee networks and activists, and members of the media. In his presentation, John will discuss the WHYs and HOWs of working with various entities, and he will provide guidelines that will assist any organization seeking to extend and maintain its influence wherever it will do good – for humanitarian purposes or for reasons of security – including Dos and DON’Ts in communication.

_Mekonnen: Activist Lawyers in Social Movements: Eritrea as a Case Study of Transnational Cause Lawyering_

There is a surplus of academic literature that portrays Eritrea as one of the best examples of a transnational nation-state (Bernal 2014, Hepner 2013, Kebreab 2008, O’Kane & Hepner 2009). As such, Eritrea is equally lived in its national borders and its vibrant diaspora communities, literally experienced in the form of Eritrea proper and Eritrea diaspora. Thus, Eritrea also becomes a very important case study for the phenomenon of transnational cause lawyering. Without ignoring prevailing “definitional wrangles,” for purposes of this abstract, cause lawyering can be understood as a form of “moral activism” wherein committed lawyers “do more than simply deploy their technical services on behalf of their client” (Sarat and Scheingold 1998). As a practice, it can manifest in any of the following non-exhaustive instances: pro bono work, lobbying, public mobilisation beyond courtroom and other forms of activism. As argued by a strong proponent of cause lawyering (Kieran McEvoy 2011), in situations of massive political violence, lawyers are expected to become more open to the view that the legal professional is indeed political, as opposed to the view that lawyers should remain neutral (even in the face of sustained political violence). Building on McEvoy’s piercing interrogation of the role of the legal profession in the Northern Ireland conflict, which is characterized by a deafening “culture of quietism,” this study assesses the role of the Eritrean legal profession (collectively) in fighting the prevailing totalitarianism of PFDJ in Eritrea. The examination is based on the following major assumptions. At individual level, there are noteworthy contributions by some Eritrean and non-Eritrean activists (lawyers and non-lawyers). Such achievements include, among other things, meaningful interventions made in the form of: writing petitions and/or expert testimonies, presenting alternative/shadow reports to semi-judicial UN, EU and AU organs, and in very limited instances litigation before courts of law. At the collective level, however, the Eritrean legal profession has utterly failed in fulfilling its call of duty as the harbinger of justice. The study will examine the major factors that have led to such a dismal failure and will propose some practical suggestions for improvement.
Sunday, September 27, 9-10:00 AM


Presentation Abstract: This lecture will describe how local and international organizations have worked together to investigate and, in some cases, prosecute violations of human rights and international humanitarian law, as well as develop support mechanisms for affected communities. International laws and treaties prohibiting forced disappearances, the use of land mines, and recruitment of child soldiers will be highlighted in the lecture.

Presenter Bio: Eric Stover is Faculty Director of the Human Rights Center and Adjunct Professor of Law and Public Health, University of California at Berkeley. Before coming to Berkeley in 1996, Stover served as the Executive Director of Physicians for Human Rights and the Director of the Science and Human Rights Program of the American Association for the Advancement of Science. He has served on several forensic missions to investigate mass graves as an "Expert on Mission" to the International Criminal Tribunals for the former Yugoslavia and Rwanda.

Panel III:

HUMAN RIGHTS IN THE CARIBBEAN

10:00 – 10:15: Bertin Louis, Jr.
10:15 – 10:30: Annette Martinez-Orabona
10:30 – 10:45: David Baluarte
10:45 – 11:00: TBD
11:00 – 11:15: Discussant: Bertin Louis, Jr.
11:15 – 11:30: Q&A, Discussion

Presenters:
Bertin Louis, Jr., Department of Anthropology and Africana Studies, University of Tennessee
Annette Martinez-Orabona, Executive Director, Caribbean Institute for Human Rights/Instituto Caribeño de Derechos Humanos (ICADH)
David Baluarte, Assistant Clinical Professor of Law, Director, Immigrant Rights Clinic, Washington and Lee University School of Law
Nancy Morisseau, Esq. Board of Directors, Haitian American Lawyers Association of New York, Inc.
Organizer/Chair/Discussant: Bertin Louis, Jr.
Panel Abstract: On February 10, 2015, the corpse of a Haitian man named Henry Claude Jean, also known as “Tullie,” was found hanging from a tree in Ercilia Pepin Park located in Santiago, Dominican Republic. This lynching occurred at a time of ongoing debate about legal measures that have stripped birthright citizenship from citizens of Haitian descent in the Dominican Republic. In the Bahamas new immigration laws that began November 1, 2014 are creating human rights violations without proper recourse. This panel uses anthropological, historical and legal approaches to investigate human rights-related issues in the Caribbean concerning people of Haitian descent (the Bahamas and the Dominican Republic, for example). Specifically, the presentations will discuss intra-racial tensions in the African diaspora, citizenship law, the right to nationality, statelessness discourse and discriminatory migration policies in the Caribbean.

Paper Abstracts:

Louis: The Haitian Diaspora of the Bahamas: An Alternative View
Haitians are the largest immigrant group in the Bahamas. This diaspora ranges from 30,000 to 60,000 people in an archipelagic nation of approximately 377,000. Haitians are viewed as threatening the sovereignty and social stability of the Bahamas if their migration continues there. This presentation takes an alternative view of the Haitian diaspora in the Bahamas emphasizing the ways in which Bahamian society creates a permanent Haitian underclass, which partly facilitates Bahamian prosperity. Using historical analysis and ethnographic research conducted in Nassau, Bahamas in 2005 and 2012, the presentation focuses on how the Bahamian state exploits Haitian labor, how contemporary Bahamian identity relies on the construction of a repugnant Haitian “Other” and how the progeny of Haitians in the Bahamas are betwixt and between nationalities.

Martinez-Orabona: Discriminatory Migration Policies in the Caribbean
This presentation looks at discriminatory migration policies in the Caribbean using the cases of the Dominican Republic and the Bahamas. Immigration policies in the Caribbean have been under international scrutiny during the last couple of years. Specifically, the Dominican Republic has been denounced and condemned by the Inter-American Human Rights System (Commission and Court) for its discriminatory policies and practices, which unduly target communities of Haitian descent. However, other Caribbean states have been largely overlooked and not monitored in the same depth. Changes in the migratory policies in The Bahamas are but one example of how other states are engaging in similar human rights violations without proper international oversight. This presentation will argue that without local and international oversight we could see other Caribbean states creating a systemic pattern of discriminatory migration policies.

Baluarte: Citizenship Law, Nationality and Statelessness Discourse in the Caribbean
This presentation will discuss citizenship law, the right to nationality, and statelessness discourse in the Caribbean. It draws on Professor Baluarte’s practical experience as an international human right lawyer in The Dominican Republic and a project manager for the UN High Commissioner for Refugees in The Bahamas. In those roles, Baluarte worked to address discriminatory
immigration and citizenship laws and policies that disadvantaged Haitian migrants and their children.

*Morriseau*: Men Anpil: *Strategies for Effective Advocacy and Engagement in Addressing the Birthright Crisis in the Dominican Republic*

On September 23, 2013, the Constitutional Court of the Dominican Republic issued a decision, TC-0168-13, *The Case of Juliana Deguis Pierre*, which summarily divested the citizenship of several generations of Dominicans, disproportionality rendering over 200,000 Dominicans of Haitian descent stateless. Notwithstanding the well-documented, decades-long history of abuse, xenophobic and racist state policies perpetuated against those of Haitian ancestry in the Dominican Republic, the Constitutional Court’s decision still shocked many throughout the world, and in particular, the Haitian diaspora. Amidst huge international outcry, the Haitian and Dominican diaspora, along with human rights practitioners, have collaborated to raise awareness of the plight of denationalized persons in the Dominican Republic. Given that the Constitutional Court, in a subsequent decision (TC-0256-14), declared that the country’s 1999 accession to the jurisdiction of the Inter-American Court of Human Rights (IACHR) was unconstitutional, a retaliatory measure that could lead to the country’s withdrawal from the IACHR, such collaborations are extremely important and vital in continuing political and international pressure for systemic change. The goal of this presentation is to highlight a relatively diverse group of actors using specific types of mechanisms and tools of advocacy in attempt to influence the policies of the Dominican Republic. The presentation will inquire as to what other areas for productive cross-pollination are available in further addressing these issues.  

1.5 hours

Panel VIII:

**LAW AND JUSTICE FROM A SOCIAL STANDPOINT**

12:00 – 12:15: Derakhshan Qurban-Ali (Political Science and Peace, Conflict, and Justice Studies, University of Toronto) *The Implications of Hungarian Policy on the Integration and Experiences of Refugees and Asylum Seekers in Hungary and Its Greater Effects on Migration Trends in the European Union*

12:15 – 12:30: Hadas Yaron Mesgena (Anthropology, Academic College of Tel Aviv-Yaffo) *The Israeli Anti-Filtration Law and the Detention of African Refugees and Migrants in the Negev Desert*


12:45 – 1:00: Cora True-Frost (College of Law, Syracuse University) *The Limits of Naming and Shaming: A Structural Case for Prosecutorial Declination*

1:00 – 1:15: Discussant: Karla McKanders (College of Law, University of Tennessee)

1:15 – 1:30: Q&A, Discussion

Speakers and Abstracts:

12:00 – 12:15: Derakhshan Qurban-Ali (Political Science and Peace, Conflict, and Justice Studies, University of Toronto) *The Implications of Hungarian Policy on the Integration and Experiences of Refugees and Asylum Seekers in Hungary and Its Greater Effects on Migration Trends in the European Union*
Presentation Abstract:
With over 51 million refugees worldwide in 2014—the highest number recorded since the refugee crisis following WWII—the effects of displacement and migration are being felt across the globe. Europe is facing increasing numbers of asylum seekers every year as a result of protracted conflicts globally and irregular migration is proliferating expansively. As refugee flows into the European Union surge, it is pertinent to examine how this manifests socially and politically in a transit country such as Hungary, which sits on the frontier of the Schengen Area. International and domestic pressures have resulted in controversial developments in Hungary’s policies pertaining to asylum and detention, and concern is mounting from the UNHCR and NGOs that Hungary is not complying with international and EU standards on asylum procedures. Thus, this research paper seeks to assess the state of integration and asylum-related policy in Hungary, in order to highlight shortcomings with respect to EU and international law. The effectiveness of integration strategies and asylum policies in Hungary and Germany will also be compared. Lastly, this paper will attempt to illustrate how these policies affect greater migration patterns in the European Union, based on the trajectories of asylum-seekers leaving Hungary as a result of integration challenges. These questions will be answered through a comprehensive analysis of relevant secondary literature, as well as primary research and interviews with asylum seekers, civil society actors, and locals in Hungary and Germany.

12:15 – 12:30: Hadas Yaron Mesgina (Anthropology, Academic College of Tel Aviv-Yaffo) The Israeli Anti-Infiltration Law and the Detention of African Refugees and Migrants in the Negev Desert

Presentation Abstract:
This presentation discusses the Israeli anti infiltration law, the establishment of Holot detention facility in the Negev desert and the detention of Eritrean and Sudanese in the facility. Mesgina will also discuss the original version and purpose of the law during the early years of the state, how the law “came back to life” more than sixty years later and also how the new law has been contested by human rights organizations in court. Overall the presentation seeks to understand Israel’s policy regarding African refugees and migrants in connection to the Israeli Palestinian conflict and Palestinian refugees. The paper is based on archival research conducted at the Israel state archive and field research conducted in Israel.


Presentation Abstract: Those individuals who present themselves at port of entries of the United States to seek asylum but without proper entry permits are subjected to mandatory civil detention pending consideration of their asylum claims. While the Department of Homeland Security could release (parole) them into the country if they are not a danger to the community, a flight risk and they have someone to accommodate them, most are denied this opportunity. At least in some areas of the United States, these arriving aliens, as they are called, are again eligible for a custody redetermination hearing before an Immigration Judge from the Department of Justice (and this is nemo iudex in causa sua) who could order their release upon reasonable conditions unless the Department of Homeland Security establishes by clear and convincing evidence that they are a danger to the community or flight risk. Arriving aliens are eligible for this custody redetermination hearing only after more than 180 days in detention. Again, with no family and financial establishment in the U.S. that could be resorted to if the alien evades immigration enforcement, flight risk is hard to challenge and it is often established with ease. Even if arriving aliens’ request to be released is granted, it is mostly on the condition that a reasonable amount of bond money (could be as much as $30,000) is deposited. This amount is unavailable to many asylum seekers. Hence, they remain detained for a year or years. Detention conditions in the U.S. may be heavenly when compared to the jails of repressive regimes. Yet, detention is detention. Hence, some detainees jokingly make the point that they are persecuted more here than elsewhere.

12:45 – 1:00: Cora True-Frost (College of Law, Syracuse University) The Limits of Naming and Shaming: A Structural Case for Prosecutorial Declination

Presentation Abstract: In December of 2014, International Criminal Court Prosecutor Fatou Bensouda proclaimed that she would suspend the ten-year-long investigation and outstanding warrant against the Sudan’s President Al-Bashir. President Al-Bashir understandably greeted the news triumphantly, and claimed that the ICC had “failed” in its mission. Why did the Prosecutor publicly announce that she is no longer actively investigating the case or seeking jurisdiction over this high-profile indictee, and thus giving him license to celebrate? Informed observers know that the Prosecutor’s target audience was not in fact Bashir, but was instead the intransigent UN Security Council.

This Article fills a gap in the interdisciplinary literature about compliance by examining the relationship between the Prosecutor of the International Criminal Court and the UN Security Council. This Article argues that the Prosecutor can and should take a more aggressive role in managing the difficult relationship between the ICC and the UN Security Council, specifically, by using her discretion to decline to investigate or prosecute forthcoming UN Security Council referrals. The effects of such a refusal to investigate on the sociological legitimacy of the emerging system of international criminal law remain largely unexamined in the literature.

The Article begins with an overview of the structure and law governing the relationship between the International Criminal Court (ICC) and the United Nations Security Council. It next surveys international relations and social science literature on the effects of naming and shaming. In the third section, it describes the social legitimacy, efficiency, and accountability tradeoffs the ICC Prosecutor faces in interacting with the Council. The fourth Part makes the structural case for prosecutorial declination in cases of Security Council referrals. The final section unpacks the implications of this argument for international law and compliance theories.

Presenter Bio: C. Cora True-Frost is Associate Professor of Law at Syracuse University College of Law (SUCOL). She earned an LL.M. from Harvard Law School and a J.D./M.P.A. magna cum laude as one of two Law Fellows at SUCOL and the Maxwell School of Citizenship and Public Affairs. Her scholarship draws from the areas of international relations theory, administrative law, and public international law. She teaches classes in international and domestic criminal law, international human rights law, and regulatory law and policy.

Presenter Bio: Karla McKanders is Associate Professor of Law at the University of Tennessee. She specializes in Asylum & Refugee Law, Humanitarian Law, and Immigration Law. In her scholarly writings, she addresses issues of access to justice, immigration federalism, and has sought new ways of approaching legislative and executive reforms to the immigration system. She has also explored the constitutionality of state and local laws targeting immigrants as well as the legal connections between past discriminatory laws and current anti-immigrant legislation.

1:15 – 1:30: Q&A, Discussion

Total CLE Hours Available: 8.50