Washington University Law

Whitney R. Harris World Law Institute

Building on Strength: The Institute's Next Decade








Features: *Beyond Nuremberg* and *Partners in Peace and Justice*

Washington University in St. Louis
School of Law

Photo by law student Evelyn Chuang, Mount Kilimanjaro

Washington University Law

"We may have different religions, different languages, different colored skin, but we all belong to one human race."

—Kofi Annan

Director's Letter

Meet Us in St. Louis

IN THIS MAGAZINE, you will find a summary of interesting international and comparative law programs and events of the past two years. From award-winning scholarship and academic roundtables to student public interest internships abroad, these pages bring out the depth and breadth of the Washington University School of Law's international and comparative law program, and the importance of the Whitney R. Harris World Law Institute as a center of excellence at Washington University. You will also find an interview with Dean Kent Syverud, chair of the Council of the ABA's Section on Legal Education and Admissions to the Bar. Dean Syverud discusses some of the cutting-edge issues and opportunities faced by U.S. law schools as a result of globalization and the changing world economy. I hope you also will enjoy excerpts from law review articles and a book chapter recently published by Professors David Law, Charles McManis, and myself, as well as an opinion piece by Professor Peggie Smith.

During the first decade of the Harris Institute's existence, the institute became recognized for its work as an academic "think tank." Over the years, the Harris Institute has continued to grow in stature, becoming known for:

- taking on difficult and complex international problems, such as the Crimes Against Humanity Initiative;
- serving as a resource and platform for faculty scholarship and research;
- supporting student activities and curricular development, including academic programs, externships, and clinical opportunities;
- sponsoring and organizing programs and activities to enhance the intellectual life of the law school, Washington University, and the larger community; and

Participants in the Crimes Against Humanity Initiative's St. Louis Experts Meeting

Professor Leila Nadya Sadat, left, and McCall Carter, JD '10, second from right, with summer 2012 interns at the International Criminal Tribunal for Rwanda, located in Arusha, Tanzania. From left: Professor Sadat, Evelyn Chuang, Marie Hastreiter, McCall Carter, and Giovanni Bianchetti

- partnering with other research institutions around the world, throughout the university, and in the St. Louis community.

We are particularly proud of the international work our students and recent alumni are doing, including clerking at Israel's Supreme Court and interning at the U.N. war crimes tribunals. Many of our students and alumni are featured in this issue. We also are pleased to honor the growing list of distinguished recipients of our World Peace Through Law Award, the most recent of whom was Deputy Prosecutor for the International Criminal Court (ICC) Fatou Bensouda, who was sworn in as Chief Prosecutor this past summer.

As the Harris Institute enters its second decade, it continues to build upon strengths already acquired and is consistently innovating and expanding its programming. During the coming academic year, we will be hosting many exciting events, including a major international conference on the 10th anniversary of the ICC's establishment and lectures by prominent practitioners and scholars of international law.

I am particularly delighted to welcome Louis B. Susman, U.S. Ambassador to the United Kingdom and a distinguished alumnus, back to our law school to address the university community. I am also proud of our new partnership with the Sam Fox School of Design & Visual Arts and the essay

Nuremberg prosecutors, from left, Henry King, Ben Ferencz, and Whitney R. Harris

contest we have sponsored in honor of and with the support of former Nuremberg Prosecutor Benjamin Ferencz, his son, Don Ferencz, and the Planethood Foundation.

We are continuing to advance work on the Crimes Against Humanity Initiative, and have now completed the translation of the *Proposed Convention* into French, Arabic, and Spanish. We also have connected with our partners around the world to promote this important rule of law initiative. As always, we will once again work with our partners to co-sponsor the Sixth Annual International Humanitarian Law Dialogs at Chautauqua.

Whitney R. Harris would have turned 100 this year, and I am sure he would have been delighted to see how "his institute" is flourishing. We will celebrate his birthday on November 11, 2012, with a special lecture delivered by Judge Hans-Peter Kaul of the International Criminal Court.

I hope you can join us for one or more of these events, and I look forward to seeing you there.

Sincerely,
Leila Nadya Sadat
Henry H. Oberschelp Professor of Law
Director, Whitney R. Harris World Law Institute

COURTESY OF MONIKA WEISS

The ICC at Ten conference commemorating the 10th anniversary of the International Criminal Court will open with a performance by the internationally acclaimed artist Monika Weiss from the Sam Fox School of Design & Visual Arts. The name of her performance will be *Sustenazo (Lament IV)*; a scene from her installation is depicted above.

10 YEARS
FIGHTING IMPUNITY

FOUNDERS DAY HONORS

Law school alumni David Detjen, AB '70, JD '73 (left), and Louis B. Susman, JD '62 (right), received Founders Day Distinguished Alumni Awards from Chancellor Mark Wrighton in November 2010. Washington University's Alumni Association presents the awards, which recognize outstanding professional achievement and service to the university community, at an annual gala celebration. Detjen is a partner in the New York office of Alston & Bird LLP, where he heads the firm's team that represents European clients, and a member of both the law school's National Council and the Whitney R. Harris World Law Institute's advisory board. Susman, also a member of the advisory board and current Ambassador to the United Kingdom, will return to the law school to launch the 2012–13 Harris Institute lecture series.

Q&A with Dean Syverud: Law School Embraces Globalization

STEPHEN KENNEDY

Dean Kent Syverud

Students and faculty in the 2012 Summer Institute for International Law & Policy in front of the Peace Palace, The Hague

Q: *How has Washington University School of Law embraced globalization in its program of studies?*

A: Our academic curriculum reflects a commitment to international and transnational law, including incorporation of comparative and international elements in courses that have traditionally focused exclusively on American subjects. In addition, we offer students a panoply of opportunities for study and practice abroad. Our longest established program abroad is the Summer Institute for International Law & Policy in The Netherlands, an intensive six-week course in international and comparative law that we offer in partnership with Case Western Reserve University and Utrecht University.

The Summer Institute affords Washington University students the chance to take courses from leading American and European scholars and practitioners alongside colleagues from across the United States and around the world. Participants gain unparalleled exposure to cutting-edge issues in international law.

Q: *How have developments in human rights and public international law molded Washington University's global focus?*

A: One example is our new focus on programs in Europe. We recognize that Europe has long been the center of development of international human rights and remains the seat of many of the most important international legal institutions. The European Court of Human Rights was one of the first modern supranational courts created to hear complaints against states of human rights violations. In addition to its long history of human rights jurisprudence within the continent, Europe has been the *situs* of many foundational international treaties and conventions. Today, The Hague in The Netherlands is the seat of the International Court of Justice, the International Criminal Court, the Permanent Court of Arbitration, and several ad hoc tribunals.

Some of the best educational programs in public and private international law are in Europe at world-renowned institutions, including Utrecht University in The Netherlands, Queen's University Belfast, University of Trento in Italy, and Catholic University of Portugal—all partners of Washington University School of Law through our pioneering Transnational Law Program (TLP).

Our TLP students spend five semesters in St. Louis acquiring a solid foundation in U.S. law with an emphasis on international and transnational law from an American perspective, and then undertake three semesters abroad, acquiring an appreciation for European law and enhancing their understanding of international and transnational law. They then graduate with two degrees—a JD and an LLM.

Their European counterparts pursue a complementary course of study; after earning their degree from their home

European university, they enter the LLM program here. Our graduates have found the TLP experience to be an invaluable start to their legal careers. Indeed, several have found opportunities to use their experience and qualifications to obtain highly competitive positions in international law. Furthermore, our law school has sent students everywhere from Geneva to The Hague for internship opportunities. We are in the process of adding new partner schools in additional European countries to meet increased student demand.

Q: *How has the law school's programming reflected developments in public international law and human rights outside of Europe?*

A: In recent years, Latin American and African states have shown a renewed and serious commitment to the international legal institutions and instruments that will advance human rights into the future. For example, a number of African countries have demonstrated a commitment to the protection of human rights and the rule of law by playing a significant role in the work of the International Criminal Court (ICC). The first-ever judgment issued by the ICC was delivered in May of this year in a case from the Democratic Republic of Congo. To date, 33 African countries—the majority of African countries—have ratified the ICC Statute, making Africa the most heavily represented region within the court's jurisdiction.

Our law school has long supported the advancement of human rights in Africa. This marks the 11th year since Professor Karen Tokarz established the Africa Public Interest Law & Conflict Resolution Initiative, which matches Washington University law students with internship opportunities at nongovernmental organizations in South Africa, Ghana, Tanzania, Rwanda, and Kenya. Our students contribute to the rule of law and human rights efforts of these organizations, while gaining practical legal skills. In the past seven years, Professors Leila Sadat and Tokarz have arranged for almost two dozen of our students to intern with the international criminal tribunals established for Rwanda, Cambodia, and the former Yugoslavia.

In recent years, a number of African economies also have emerged as significant participants in the global economy. Over the past year, economic and development reports have stated that as many as seven of the world's 10 fastest-growing economies are in Africa. We are watching closely the development of diverse regulatory regimes and economic communities in the region, including the Economic Community of West African States (ECOWAS), the East African Community, and the Southern African Development Community, with particular interest in the interplay of economic development with rule of law initiatives in the respective countries and regions. These developments will doubtless provide new opportunities for our students throughout the continent.

We have also noted with interest economic and legal developments throughout the Western Hemisphere. Latin America has long been an important player when it comes to the advancement of human rights. The Inter-American Court for Human Rights, which was established by the Organization of

Washington University law students are increasingly finding opportunities to intern and work in Africa, including in Dar es Salaam, Tanzania.

Students and faculty in the 2011 Summer Institute for International Law & Policy near the Grand Place, Brussels

Paris is among a number of European cities where students and faculty are pursuing international scholarly opportunities.

The law school currently has 12 degree and/or exchange agreements with foreign universities for faculty and students, including the new four-year combined degree program with the University of Queensland.

Professor Kim Norwood, left, is among a regular cohort of Washington University law faculty who teach at Fudan University School of Law in China.

Brazil's emergence as an economic superpower is providing new opportunities for young lawyers.

American States in 1979, is one of the longest-standing autonomous judicial institutions in the world established for the sole purpose of ensuring human rights and basic freedoms. Likewise, the emergence of countries like Brazil as regional and global economic powers provides an opportunity for law students and young lawyers to contribute to a legal practice that literally spans the Americas.

At the same time, we have long-standing partnerships with several universities in the Asia-Pacific region and have been expanding our programs in China, Korea, Japan, and Australia.

Our students also have participated in summer and school-year internships with rule-of-law organizations as well as law firms around the world, including in Chile, Brazil, Cambodia, Thailand, India, Australia, and Israel. We will continue to work with our students and our partners abroad to identify new opportunities for students to deploy the skills and knowledge they have gained in the classroom.

Q: *Has globalization had an impact on the composition of the student body?*

A: Without question. Increasingly, students are drawn to Washington University because of our strength in international law. Many are attracted by one of our international programs; others come because of prominent scholars and teachers like Professor Leila Sadat and Professor Melissa Waters, whose work in foreign relations and international law is particularly well-known.

Other students are drawn by our long-standing internship opportunities abroad. Washington University students have worked at the Khmer Rouge Tribunal in Cambodia, the International Criminal Tribunals for Rwanda and the former Yugoslavia, and countless other international organizations such as the Legal Aid Board in South Africa. Our law school facilitates these opportunities through grants like the Dagen-Legomsky Public Interest Fellowship. The fellowship is a competitive stipend awarded to exceptional students by the Whitney R. Harris World Law Institute, and is intended to support summer study and internships in human rights and international law.

Washington University's LLM degrees in U.S. Law and in Intellectual Property & Technology Law also have attracted a large number of talented international lawyers, scholars, and judges from around the world. These students bring unique cultural and legal professional experiences that further enrich our academic environment and the entire community.

In addition to our residential LLM programs, we now offer our LLM in U.S. Law in an entirely online format. This groundbreaking initiative, @WashULaw, will give foreign lawyers and law students the opportunity to earn an American LLM degree on the same terms as their counterparts in St. Louis without having to interrupt their practice or studies abroad.

Q: *How do these global influences mesh with the law school's goals?*

A: Our goal is to be the best place in the country to become a lawyer. This mission remains the same whether a student plans to pursue professional opportunities here or abroad. From curriculum to admissions to career services, our programs have evolved to reflect a truly global outlook. We are committed to educating globally minded lawyers who have the skills and exposure to provide service—to clients and to humanity at large—anywhere in the world. IIII

By Timothy J. Fox

Institute Forges Convention on the Prevention and Punishment of Crimes Against Humanity

THE WHITNEY R. HARRIS World Law Institute's most significant and ambitious project to date has been the Crimes Against Humanity Initiative. In 2008, Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and Harris Institute director, launched what has become a landmark effort concerning the international rule of law. During the multi-year project, Sadat has led the development of the *Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity*, which addresses the problem that although crimes against humanity appeared in the Nuremberg Charter, unlike genocide and war crimes, they were never elaborated in a comprehensive international treaty.

MARY BUTKUS

"The Crimes Against Humanity Initiative is one of the most sophisticated and challenging endeavors in which any law school has ever engaged," Sadat says. "The *Proposed Convention* is designed to be an influential and important contribution to international law, even more so than the 1935 Harvard law research project to draft international treaties."

Sadat convened leading international judges, academics, and practitioners who wrote, circulated, and debated several drafts of the *Proposed Convention* before including it in a book, containing 15 important essays on the theory and practice of crimes against humanity. *Forging a Convention for Crimes Against Humanity* was published by Cambridge University Press in 2011. Sadat both edited and contributed to this volume, which contains the complete text of the *Proposed Convention* in both English and French. This extraordinary work was recognized in 2011 with the Book of the Year Award from the American National Section of the *Association Internationale de Droit Pénal*.

Ultimately, the goal is to have the convention brought to the United Nations by sponsoring states, where it can be reviewed and serve as the basis for future diplomatic negotiations. As part of this effort, Sadat and high-level international representatives gathered in Paris, where she was serving as the Alexis de Tocqueville Distinguished Fulbright Chair at the University of Cergy-Pontoise. Agenda items were promoting the initiative and discussing its central role in prevention as well as punishment of crimes against humanity. She also presented the project to the Dag Hammarskjöld Foundation in Sweden, U.K. Parliament, European Union, and Irish Centre for Human Rights, among other venues in Europe. More recently the project was presented to the International Law Commission.

"Our initiative is designed to refocus attention on the victims of atrocity crimes and move away from legal characterizations that are of little benefit either in preventing the crimes or punishing the perpetrators," Sadat says. "We truly hope that states will take up the challenge of negotiating and adopting an *International Convention on the Prevention and Punishment of Crimes Against Humanity*."

CAHI Steering Committee

Chaired by **Leila Nadya Sadat,** the Steering Committee for the Crimes Against Humanity Initiative (CAHI) is composed of:

M. Cherif Bassiouni, the Distinguished Research Professor of Law at DePaul University College of Law and founder and president emeritus of the International Human Rights Law Institute;

Hans Corell, former Under-Secretary-General for Legal Affairs and legal counsel of the United Nations;

Richard J. Goldstone, former chief prosecutor of the International Criminal Tribunals for the former Yugoslavia and for Rwanda;

Juan E. Méndez, visiting professor, Washington College of Law, American University, Washington, D.C.;

William A. Schabas, professor, Middlesex University, London and Leiden University; and

Christine Van den Wyngaert, judge for the International Criminal Court.

Beyond Nuremberg

Students Engage in Groundbreaking Work with International Criminal Tribunals

DRAWING ON its direct connection to the Nuremberg legacy, the Whitney R. Harris World Law Institute has emerged as one of the leading centers training lawyers to tackle new challenges facing international criminal justice today. From in-depth externships to research opportunities, the Harris Institute provides Washington University School of Law students with extraordinary opportunities to engage in the development of new legal frameworks.

The law school's connection and contributions to the groundbreaking work of five of the world's international criminal tribunals and courts—the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Special Court for Sierra Leone, and the International Criminal Court (ICC)—are unprecedented. During the past seven years, more than a dozen law students have interned at the ICTR, located in Arusha, Tanzania; almost another dozen have interned at the ICTY in The Hague and at the ECCC in Phnom Penh, Cambodia. These students have worked on judgments that may well set the standards of international criminal law for years to come.

Summer Institute for International Law & Policy students at the International Criminal Court

Andrew Cayley, Extraordinary Chambers in the Courts of Cambodia

Richard Dicker, Human Rights Watch

Since 1994, operating under the auspices of the United Nations Security Council, the ICTR and ICTY together have decided hundreds of cases and prosecuted the worst perpetrators of the Rwandan genocide and the war in the former Yugoslavia.

"The ICTR handed down the first conviction for the crime of genocide and found that rape could be an act of genocide. It was also the first international criminal tribunal in Africa," notes Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute.

Like the ICTR, the ICTY also has established important precedents in international criminal law. "The early jurisprudence of the ICTY is still cited today by the new ICC," Sadat observes. "It essentially laid the foundations of modern international criminal law."

Sadat, along with Karen Tokarz, the Charles Nagel Professor of Public Interest Law & Public Service and director of the Negotiation & Dispute Resolution Program, and Michael Peil, associate dean for international programs, director of the Transnational Law Program (TLP), and lecturer in law, has worked hard to develop the ongoing relationships with all four of the tribunals, cementing the enormous success of Washington University's international internship program.

"These internship opportunities are incredibly competitive," Sadat says.

By Janet Edwards

Law student George Lyle IV, left, with Serge Brammertz, International Criminal Tribunal for the former Yugoslavia

Amitis Khojasteh, JD '08, at the International Criminal Tribunal for the former Yugoslavia

Professor Melissa Waters teaches international, foreign relations, and human rights law.

"To get them, Washington University students must compete not only with students from other U.S. law schools, but with the best and the brightest from all over the world.

"Our superb clinical programs, combined with the substantive knowledge of our students, help them to stand out. As a result, Washington University has one of the most successful placement rates of any law school in the world with the international courts and tribunals," adds Sadat, who teaches courses in international criminal law, human rights, and public international law to help prepare students for success in these highly competitive and sought-after positions.

Similarly, Melissa Waters, vice dean, professor of law, and co-director of the @WashULaw program, helps prepare law students for tackling issues in international law, including through her courses in foreign relations law, the war on terror, international human rights law, and international conflicts of law.

Student Interns Do Fieldwork, Provide Valuable Research

Ryan Haigh, JD '06, was one of the first Washington University law students to intern at an international criminal tribunal. The knowledge he gained during his 2005 summer internship at the ICTR continues to inform his practice today as a deputy prosecutor in Boone County, Missouri. Haigh says he received the internship placement because of his combined professional experiences abroad and relevant law school course work and activities. He credits his summer internship in South Africa with Tokarz, research he completed for the Special Court of Sierra Leone Prosecutor's Office under the direction of Sadat, and his participation in the Philip C. Jessup International Moot Court Competition as preparation for his work at the ICTR.

Interns at international courts and tribunals generally assist with research, reviewing evidence, and writing judgments. Because the ICTR was still building cases in 2005, Haigh's experience also included fieldwork, meeting with witnesses and victims where the atrocities had occurred. He traveled from Tanzania to Rwanda, accompanied by translators.

"The fieldwork was dangerous," he recalls, "but knowing that when you left it was much more dangerous for the people you were leaving behind—and that you may have put their lives in jeopardy—that was very difficult."

Summer Institute for International Law & Policy students with Fatou Bensouda, International Criminal Court, center with orange scarf, and David Crane, Syracuse University and formerly Special Court for Sierra Leone, center in dark jacket

Through these experiences, Haigh says he learned how to "interview with compassion," while still eliciting information that helps both the case and the individual. It's a skill he continues to rely on as a prosecutor, he says.

International Semester Field Placements, Summer Internships

In 2012, law students **Ilunga Kalala** and **Jenny Wren Morris** interned at the ICTR while law student **Vanessa Hill** externed at the ICTY for

Law student Ilunga Kalala, right, promoted civil society and dispute resolution during his internships with Search for Common Ground in the Democratic Republic of the Congo and with the International Criminal Tribunal for Rwanda.

a semester through the school's new International Justice & Conflict Resolution Field Placement.

Kalala, who worked as an assistant to Judge Vagn Joensen, ICTR president, notes: "It was a humbling experience, and I thoroughly enjoyed the relationship I grew to have with the judge and the special assistant to the judge. There was a lot of trust placed in me, as well as a great deal of responsibility."

During their internships, Kalala, Morris, and Hill wrote procedural histories and assisted in research and review of evidence. They also drafted memos on case law from other courts and tribunals, including the Special Court for Sierra Leone and the Special Tribunal for Lebanon. All three noted that their previous summer international internships in the Democratic Republic of the Congo, Tanzania, and Ghana with Tokarz prepared them legally, politically, and culturally for the work at the ICTR and ICTY.

Marie Hastreiter, who interned at the ICTR in summer 2012, notes that the

Tokarz's Professional Relationships in Africa Result in Life-Changing Student Opportunities

KAREN TOKARZ, the Charles Nagel Professor of Public Interest Law & Public Service, has been working on and influenced by dispute resolution initiatives in Africa for more than a decade. A renowned clinician and expert in negotiation and dispute resolution, Tokarz says she was initially inspired by South Africa's ability to successfully move from apartheid to full democracy. She was particularly struck by the country's ability to weather the dramatic transition without open civil war—and the country's national commitment to a nonracialized society.

"The South African Truth and Reconciliation Commission is a true testament to what alternative dispute resolution and restorative justice can do," says Tokarz, who began her work in South Africa as a visiting faculty member at the University of KwaZulu-Natal (UKZN) in fall 2001. "The Commission, established by President Nelson Mandela and the Government of National Unity in the 1990s, was critical to the country's political and social transformation. By the early 2000s, I was able to view the legacy of this important work."

For many years, Tokarz was the chief architect of the law school's highly regarded Clinical Education Program. Now as director of the school's Negotiation & Dispute Resolution Program, she continues to stress to students the professional responsibilities of lawyers to both their clients and society. In her *Mediation Theory & Practice* course and her Civil Rights, Community Justice & Mediation Clinic, she educates her students about dispute resolution, human rights, and community collaboration.

Professor Karen Tokarz, right, with former intern Ibadat Dhillon, JD '06, who continues to work in Dar es Salaam on access to health issues and mentors current law student interns.

After her initial work as a Treiman Fellow at UKZN's Law Clinic in Durban, South Africa, more than a decade ago, Tokarz has returned every year since and has continued to collaborate with UKZN and other law faculties in South Africa. In 2008, she served as a Fulbright Senior Specialist at UKZN, consulting on the development of a dispute resolution master's program. In December 2012, she will speak at the opening plenary of an international conference at UKZN on "Forty Years of Clinical Legal Education at UKZN and in South Africa: Looking Back, Looking Forward." Through her professional ties, she also has established relationships with various NGOs, human rights agencies, and tribunals in southern Africa, which, in turn, have allowed Washington University law

War Crimes Seminar taught by Sadat helped her navigate ICTR documents and put the frequently eye-opening material into context. "I can read and read this material, and never get tired of it," she says. "I try to understand on the one hand these horrible atrocities and on the other hand apply everything I've learned in the classroom."

The positions at the international tribunals and courts have largely been made available due to the tremendous connections and support provided by Sadat, Tokarz, and Peil—a point of unanimous agreement among the law students. Along with their day-to-day internship responsibilities, during their 10-week summer stays or their 16-week semester stays, students are also required to read relevant materials, keep journals, turn in written assignments, and work in community outreach programs. Many also take language classes.

"One of my most rewarding experiences during my internship was an

Professor Leila Nadya Sadat, fourth from left, with Harris Institute fellows and staff members

Professor Karen Tokarz, left, mentored UKZN exchange student Khethiwe Mthembu from South Africa.

students to benefit from groundbreaking internships.

Over the years, Tokarz has coordinated summer internship placements for more than 125 Washington University law students in South Africa, Ghana, Tanzania, Kenya, Burkina Faso, and the Democratic Republic of the Congo; facilitated law student exchange programs with UKZN and the University of Pretoria; and mentored LLM and JSD students from Africa.

Additionally, Tokarz coordinates the school's International Justice & Conflict Resolution Field Placement, in partnership with Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute, and Michael Peil, associate dean for international programs, executive director of the Transnational Law Program, and lecturer in law. Through the field placement, students have been paired for a semester with attorneys and judges at the International Criminal Tribunal for Rwanda, the Khmer Rouge tribunal in Cambodia, and the international courts at The Hague.

"The exchange programs and the summer and semester internships help our students situate what they are learning about public and private law in the United States within the global networks of criminal justice, civil rights, and economic regulation," Tokarz says. "They introduce our students to the emerging role of international tribunals and conflict resolution and advocacy agencies while opening intellectual and professional doors for them."

Inspired by her experiences in Africa, Tokarz created the law school's Africa Public Interest Law & Conflict Resolution Initiative. In addition to facilitating student and faculty exchanges, the program promotes speakers at the law school and university with expertise on Africa and fosters scholarship on Africa. In fall 2012, for example, the initiative co-sponsored with the Harris Institute the World Peace Through Law presentation, delivered by International Criminal Court Deputy Prosecutor Fatou Bensouda. In fall 2011, the initiative co-sponsored with the School of Medicine a presentation on "World Cup 2010: Human Trafficking and Forced Prostitution," featuring John Barr, ESPN commentator for *Outside the Lines*. Tokarz recently authored an article on "Advancing Social Justice Through ADR and Clinical Legal Education in South Africa, India, and the U.S." IIII

interview I conducted with a prosecutor in the appeals chamber of the ICTR to fulfill a practice requirement of the international field placement," notes former ICTR intern and Harris Institute Fellow **Lola Oguntebi,** JD '11.

"Because I interned in chambers at the ICTR and had previously interned for the Defense section of the Khmer Rouge Tribunal, I was especially fascinated by the prosecution perspective, particularly at the appellate level," Oguntebi recalls. She adds that the ICTR appeals prosecutor has become a professional mentor, providing her with useful career advice.

Other Student Opportunities

An innovative agreement with the ICC also is presenting law students with the opportunity to put their research skills into practice. Through the work of the Harris Institute, Washington University School of Law was the first school in the United States to become a partner in the ICC's Legal Tools Project. Through the arrangement, law students are assisting the ICC with building the most comprehensive and complete database within the field of international criminal law.

The ICC's Legal Tools Project involves the comprehensive collection of resources relevant to the theory and practice of international criminal law. It also brings modern technologies into the investigation, prosecution, and defense of genocide, crimes against humanity, and war crimes. Under the direction of Sadat,

Students Intern in Africa for the 11th Year

ACROSS SUB-SAHARAN AFRICA, Washington University law students are making a difference in the lives of people in need. Two students spent the spring 2012 semester in Tanzania and 12 students spent summer 2012 interning in South Africa, Ghana, Tanzania, and Kenya, where they provided legal services, legal research, and dispute resolution assistance through local NGOs and human rights agencies and the International Criminal Tribunal for Rwanda. It was the 11th year for the summer internship program, which also has taken students to Nigeria, the Democratic Republic of the Congo, and Burkina Faso.

The internships are one component of the multifaceted Africa Public Interest Law & Conflict Resolution Initiative, coordinated by Karen Tokarz, the Charles Nagel Professor of Public Interest Law & Public Service and director of the Negotiation & Dispute Resolution Program. In addition to facilitating summer public interest internships and semester-long externships in Africa through the International Justice & Conflict Resolution Field Placement, the Africa Initiative promotes courses, such as the interdisciplinary course on *Community Development in Madagascar*, and fosters on-campus lectures on Africa by leading scholars and diplomats.

"This generation of law students is enormously interested in international law issues. They are deeply concerned with understanding global North–global South relationships. They're also very interested in working in emerging democracies and economies in areas such as southern Africa," Tokarz says.

In summer 2012, for example, student interns included:

- **Eteena Tadjiogueu,** Lawyers for Human Rights in South Africa;
- **Isaac Chaput,** Legal Resources Centre in South Africa;
- **Matteo D'Agostini, Pallavi Garg,** and **Kaitlyn Pennington-Hill,** Legal Aid Board in South Africa;
- **Natasha Wilson,** Care International in Tanzania;
- **Meghan Leipold,** Morningstar Institute in Kenya;
- **Kristin Smith,** FIDA-Ghana Legal Aid Programme;
- **Nacente Seabury,** Legal Resources Centre in Ghana; and
- **Giovanni Bianchetti, Evelyn Chuang,** and **Marie Hastreiter,** International Criminal Tribunal for Rwanda. (This fall two more students, **Annie Schlapprizzi** and **Natasha Wilson,** are interning there.)

In their various internships, students assist attorneys with client interviews, conduct investigations, take witness statements, visit jails and prisons, participate in conflict resolution efforts and community education, and prepare investigative and legislative reports.

At the Legal Aid Board in Durban, South Africa, where Washington University students have interned for almost a decade, they often prepare documents for the court for sentencing hearings, arguing for mitigation of sentences. Tokarz says an effective sentencing report, explaining a client's personal

Peil, and a Harris Institute Fellow (most recently Oguntebi), the students conduct research on national jurisdictions and national cases. These cases involve core international crimes from all over the world.

Prior to the opportunity to work on the ICC Legal Tools project, law students also participated in the Academic Consortium Project of the Special Court for Sierra Leone, researching and writing memoranda for the prosecutor's office.

Additionally, Sadat's *War Crimes* seminar, offered each spring, focuses on the jurisprudence of the war crimes tribunals and the ICC. Her students study in depth the tribunals' methods of legal reasoning, substantive law, and procedures. In addition to reading transformative cases, they prepare a substantial research paper addressing a problem in international criminal law.

"The seminar's purpose is to permit students to deepen their knowledge of international criminal law while at the same time offering extensive guidance in how to write—and even rewrite—an excellent research paper," Sadat notes. "The course material is even more timely now, as the tribunals begin to wind down their work and prepare for the transfer of cases to the next generation of courts."

Professor Karen Tokarz, right, with from left: Scott Wilson, JD/MSW '04, Sheila Seshadri, JD '05, and Andrea Ebrect Nelson, JD '05, at the Tala Game Reserve outside Durban, South Africa in summer 2003

circumstances and the justification for leniency, can make the difference between probation and a multiyear jail sentence.

Legal interns are also expected to perform community service projects during their internships and to submit weekly journals. "Students get to know the context and the community from which their clients come through projects that involve education and training, such as 'street law' projects," Tokarz says. "They also reflect on their experiences with law and lawyering in a new country through their journal submissions."

Several Washington University alumni have developed professional connections in Africa. **Sena Dei-Tutu**, JSD '06, has worked for the past three years with the Rule of Law and Governance Section of the United Nations Mission in Liberia. Transnational Law Program graduate **McCall Carter**, JD '10, is currently serving as associate legal officer in the registry of the ICTR. **Debora Rogo**, JD '09, interned at the Legal Resources Centre in Nairobi, Kenya, in summer 2007. She is currently an associate attorney with the International Law Institute–African Centre for Legal Excellence, based in Kampala, Uganda. In addition, Webster Scholar **Alex Hendler**, JD '03, set up an online documentation center for Tanzania High Court decisions.

Another alumnus, **Ibadat Dhillon**, JD '06, who interned at the Children's Rights Centre in summer 2004, pursued a master's degree in international global health law at Georgetown University after graduation. Since then, he has been collaborating with experts such as Mary Robinson on access to health care issues in Africa, based in Dar es Salaam, Tanzania.

"My summer internship at the Children's Rights Centre and my HIV/AIDS work in the Civil Rights, Community Justice & Mediation Clinic with Professor Tokarz cemented my commitment to do international public health law work," Dhillon says. "Her mentorship inspired me to pursue a career overseas in international public health."

Student Activities

(above) Professor Leila Nadya Sadat, right, with a conference participant and law students Eileen Boyle and Michael Perich, second from left, at the 5th Annual International Humanitarian Law Dialogs, held in Chautauqua, New York

(above) 2010 Dagen-Legomsky and Cash Nickerson Student Fellows from left: M. Imad Khan, Erika Detjen, Jason Meyer, Lola Oguntebi, Professor Leila Nadya Sadat, and Genevra Alberti

(below) JD Stier, Enough Project's Raise Hope for Congo campaign manager, addresses Washington University law students.

(above) Washington, D.C., attorney Steven Schneebaum, International Law Students Association board member, left, with law student Annie Schlapprizzi and Associate Dean Michael Peil, following a panel discussion on Litigating International Human Rights Violations. The event was organized by the American Constitution Society for Law and Policy.

(above) Serge Brammertz, prosecutor for the International Criminal Tribunal for the former Yugoslavia, left, speaking to Harris Institute Student Fellows Shishir Jani and Lola Oguntebi, right

(above) Coach Gilbert Sison, JD '00, second row, third from right, with members of the Philip C. Jessup International Law Moot Court Team and Jessup colleagues from around the world. The law school's Jessup Team holds one of the strongest records in the international competition.

By Timothy J. Fox

Bensouda Named ICC Chief Prosecutor, Honored with World Peace Through Law Award

ON JUNE 15, 2012, Fatou Bensouda, Deputy Prosecutor for the International Criminal Court (ICC), was sworn in as Chief Prosecutor in a ceremony at The Hague. In attendance that historic day

Chief Prosecutor Fatou Bensouda, International Criminal Court

was Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute.

"It was a wonderful day, with dignitaries, friends, family, and court personnel gathered both to witness the transition and to honor Prosecutor Bensouda," Sadat says. "ICC President Sang-Hyun Song presided over the ceremony, and both the President of the Assembly of States Parties, Tina Intelmann, and Chief Prosecutor Bensouda delivered stirring and important remarks."

This was not the first time that Sadat has heard Bensouda offer an inspirational speech. In fall 2011, Bensouda visited Washington University School of Law, gave a stirring talk co-sponsored by the Harris Institute and the Public Interest Law & Policy Speakers Series, and received the Harris Institute's 2011 World Peace Through Law Award—an award reserved for individuals who considerably advance the rule of law and, thereby, contribute to world peace.

"Deputy Prosecutor Bensouda has dedicated her career to the pursuit of justice and the rule of law," says Sadat. "The World Peace Through Law Award acknowledges her extraordinary work in the field of international criminal justice and her many achievements as an ardent champion of human rights."

A native of the Republic of the Gambia, Bensouda was elected Deputy Prosecutor in 2004. She had previously worked as a legal adviser and trial attorney at the International Criminal Tribunal for Rwanda in Arusha, Tanzania, rising to the position of senior legal adviser and head of the Legal Advisory Unit.

In her address last fall, Bensouda noted that the ICC—established in 1998—offers "a new instrument of peace, creating global governance without a global government, but with international law and courts."

Bensouda continued: "The ICC was created as a matter of realism, as a form of protection; that is the main point. Accountability and the rule of law provide a framework to protect individuals and nations from massive atrocities and to manage conflicts."

Investigations are currently under way in the Central African Republic; Côte D'Ivoire; Darfur, Sudan; the Democratic Republic of the Congo; Libya; Mali; and Uganda.

With the presence of the ICC, leaders using massive violence to either attain or to hold power will be held accountable, Bensouda said. "States have accepted that should they fail to prosecute, the International Criminal Court could decide to step in."

But the ICC has some difficult barriers to overcome, she continued. "Arrest of the fugitives wanted by the ICC remains the biggest test for the international community. It requires the collaborative efforts and the consistent approach of states and international organizations. A single court ruling affects the behavior of governments and political leaders, and armies all over the world are adjusting their operational standards," she said.

"The world increasingly, I believe, is understanding the role of the Court."

"Peace is a daily, a weekly, a monthly process, gradually changing opinions, slowly eroding old barriers, quietly building new structures."

—John F. Kennedy

Partners in Peace and Justice: The Harris Institute and the International Court of Justice

AS HOME TO the Whitney R. Harris World Law Institute, Washington University School of Law is a world leader in international issues ranging from climate change to crimes against humanity.

One indicator of the Harris Institute's stature in the international justice community is the fact that three International Court of Justice (ICJ) judges—including a current ICJ president—have visited and lectured on the law school campus since 2008.

Located at the Peace Palace in The Hague, The Netherlands, the ICJ is an international court that decides legal disputes submitted by member states and issues advisory opinions on legal questions when requested by one of the six organs of the United Nations or specialized agencies authorized to make such a request. The ICJ, established in 1945 by the United Nations Charter, is the principal judicial organ of the United Nations.

The first ICJ judge to visit Washington University was His Excellency **Hisashi Owada** of Japan. At the time of his visit in 2008, Owada was preparing to begin his 2009–12 term as ICJ president. Owada delivered the keynote address at a two-day conference, sponsored by the Harris Institute, honoring retiring professor John Owen Haley. Speaking on "The Rule of Law in a Globalizing World," Owada discussed his observations on the transition from a process-focused approach to law centered on the state to an end-oriented approach focused on individuals and human rights protections across international borders.

Prior to his service at the ICJ, Owada served as president of the Japan Institute of International Affairs, and professor of law and organization at Waseda University Graduate School in Japan. A trained diplomat, he has also acted as Japan's Vice Minister for Foreign Affairs, the Permanent Representative of Japan to the Organization for Economic Cooperation and Development in Paris, and the Permanent Representative of Japan to the United Nations in New York.

In 2010, His Excellency **Thomas Buergenthal,** the U.S. judge on the ICJ, delivered the Tyrrell Williams Lecture at the law school. Buergenthal spoke on "The International Judicial System: Its Growing Influence" and commented briefly on his autobiographical book, *A Lucky Child: A Memoir of Surviving Auschwitz.*

Before joining the ICJ in 2000, Buergenthal served as judge and president both of the Inter-American Court of Human Rights and of the Administrative Tribunal of the Inter-American Development Bank. His many professional affiliations include service on the United Nations Truth Commission for El Salvador; United Nations Human Rights Committee; Panels of Conciliators and of Arbitrators, International Centre for Settlement of Investment Disputes, World Bank; Ethics Commission of the International Olympic Committee; and the U.S. Holocaust Memorial Council.

H.E. Christopher Greenwood, seated left, a judge from the United Kingdom on the International Court of Justice, speaks to students and faculty in the Summer Institute for International Law & Policy.

By Timothy J. Fox

Earlier this year, Her Excellency **Xue Hanqin** delivered the annual William C. Jones Lecture at the law school. Hanqin, from China, is another of the 15 judges currently sitting on the ICJ. Her address, "The International Court of Justice and Judicial Settlement of International Disputes: Changes and Challenges," gave a concise history of the court before describing the current challenges and opportunities before it.

Prior to joining the ICJ, Xue represented China as an ambassador and in many international negotiations, expert meetings, and diplomatic conferences. She served the Foreign Ministry of China in various roles, including Director-General of the Department of Treaty and Law, Legal Council of the Ministry of Foreign Affairs, Chinese Ambassador to The Netherlands, and Chinese Ambassador to the Association of Southeast Asian Nations (ASEAN). Xue also headed the Chinese delegation for many United Nations special committees, including The Hague Conference on Private International Law, the Framework Convention on Climate Change, and the Convention on the Elimination of All Forms of Discrimination against Women. She serves as the current president of the Asian Society of International Law.

Several other ICJ judges have interacted closely with Washington University students. Judges Buergenthal, Joan Donoghue, and **H.E. Christopher Greenwood** have spent time with law school students visiting the Peace Palace as part of the Summer Institute for International Law & Policy. Offered by Washington University School of Law and Case Western Reserve University School of Law, the Summer Institute provides exciting opportunities to study international law at Utrecht University in The Netherlands.

Washington University is also one of the few universities in the world invited to participate in the **ICJ's University Traineeship Programme.** With only 16 universities nominating students to the program in 2012, Washington University students are among an elite group applying for these opportunities to learn about international justice on the global stage.

"We are honored to have so many wonderful opportunities to interact with the judges on the world court and to have them teach our students about their important work," says Leila Nadya Sadat, Harris Institute director and the Henry H. Oberschelp Professor of Law.

Professor Leila Nadya Sadat, right, welcomes H.E. Xue Hanqin, the judge from China on the International Court of Justice, at the 2012 William C. Jones lecture.

H.E. Hisashi Owada of Japan, president of the International Court of Justice from 2009 to 2012, delivering a Harris Institute lecture

H.E. Thomas Buergenthal, the U.S. judge on the International Court of Justice, who served as a Tyrrell Williams lecturer at the law school

Scholarly Voices from the Faculty Colloquium on International Law and Theory

TWENTY INTERNATIONAL LAW SCHOLARS from 10 U.S. states; Toronto, Canada; Paris, France; Israel; and Argentina, gathered at Washington University School of Law last fall for the Faculty Colloquium on International Law and Theory.

Hosted by the Whitney R. Harris World Law Institute, the two-day faculty colloquium explored critical issues affecting international law today, including the status of treaties and U.S. law, climate change, crimes against humanity, targeted killing, and head of state immunity.

"The colloquium's informal workshop atmosphere allows for considered, cross-disciplinary interaction among some of the leading minds in the field," says Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and Harris Institute director. Sadat not only co-chaired the conference, but also presented one of the 10 working papers, "Crimes Against Humanity: Limits, Leverage, and Future Concerns."

"Successful prosecutions for crimes against humanity will be critical for the International Criminal Court to fulfill its mandate to end impunity for international crimes that shock the conscience of humankind, and are vitally important to the deterrent element of the Court's work."

Leila Nadya Sadat

"The extensive current debate about the status of international law in the U.S. legal system is not just the continuation of a domestic brawl in a different venue. There is something genuinely international about it."

Paul Dubinsky

"While there is a need for more action on climate change at international, national, and state levels, and regional ones in between, different types of suburbs, as they participate in multilevel networks, can provide models for suburban action and serve as part of pluralist, polycentric efforts to address climate change."

Hari Osofsky

"The revival of the friendship, commerce, and navigation treaty program would provide a valuable opportunity to negotiate updated versions of the FCN treaty with those countries with which treaties were concluded long ago. … It is past time to evaluate whether deals struck more than a century ago are still deals that serve the interests of the United States."

John Coyle

"At a minimum, a soldier may not intentionally kill an individual unless she reasonably believes that individual is a combatant. Soldiers also must take additional precautions unless doing so would increase the risk to the soldiers substantially more than doing so would decrease the risk of mistakenly killing civilians."

Adil Ahmad Haque

By Timothy J. Fox


Melissa Waters


Elena Baylis


Adam Rosenzweig


Ingrid Wuerth


Barry Carter


John Coyle

"The colloquium is consistent with one of the Harris Institute's missions: to support and encourage scholarship at the forefront of international and humanitarian law," Sadat says.

Ten other scholars from around the world took part in the conversation as discussants, including Sadat's co-chair, Melissa Waters, Washington University professor of law and co-director of the new online LLM program for foreign lawyers, @WashULaw.

For more information, visit: law.wustl.edu/news/pages.aspx?id=9023.


Leila Nadya Sadat


Hari Osofsky


Adil Ahmad Haque


Paul Dubinsky

Faculty Colloquium Presenters

Elena Baylis, University of Pittsburgh School of Law, "Justice Junkies on the Move"

John Coyle, UNC School of Law, "Reviving the Treaty of Friendship, Commerce, and Navigation"

Paul Dubinsky, Wayne State University Law School, "The Place of International Law in the U.S. Legal System: The Fragile Status of the Traditional Understanding in the Winter of Our Discontent"

Adil Ahmad Haque, Rutgers School of Law–Newark, "Killing in the Fog of War"

Maximo Langer, UCLA School of Law, "The Archipelago and the Hub: Universal Jurisdiction and the International Criminal Court"

Saira Mohamed, UC Berkeley School of Law, "Shame in the Security Council"

Hari Osofsky, University of Minnesota Law School, "Climate Change Efforts: Possibilities for Small and Nimble Cities Participating in Regional, State, National, and International Networks"

Leila N. Sadat, Washington University School of Law, "Crimes Against Humanity: Limits, Leverage, and Future Concerns"

Matthew Waxman, Columbia Law School, "Regulating Resort to Force: Form and Substance of the U.N. Charter Regime"

Ingrid Wuerth, Vanderbilt University Law School, "Pinochet Revisited: Human Rights and Immunity in National Courts"

Faculty Colloquium Discussants

Christopher Brummer, Georgetown University Law Center

Olivier Cahn, Université de Cergy Pontoise

Barry Carter, Georgetown University Law Center

Amos N. Guiora, S.J. Quinney College of Law, University of Utah

Monica Hakimi, University of Michigan

Charles Jalloh, University of Pittsburgh School of Law

Karen Knop, University of Toronto

David Law, Washington University School of Law

Pierre-Henri Prélot, Université de Cergy Pontoise

Melissa Waters, Washington University School of Law

The Declining Influence of the United States Constitution

IN 1987, to mark the bicentennial of the U.S. Constitution, *Time* magazine released a special issue in which it called the Constitution "a gift to all nations" and proclaimed proudly that 160 of the 170 nations then in existence had modeled their constitutions upon our own. As boastful as the claim may be, the editors of *Time* were not entirely without reason.

Over its two centuries of history, the U.S. Constitution has had an immense impact on the development of constitutionalism around the world. Constitutional law has been called one of the "great exports" of the United States. In a number of countries, constitutional drafters have copied extensively, and at times verbatim, from the text of the U.S. Constitution. Countless more foreign constitutions have been characterized as this country's "constitutional offspring."

It is widely assumed among scholars and the general public alike that the United States remains "the hegemonic model" for constitutionalism in other countries. The U.S. Constitution in particular continues to be described as "the essential prototype of a written, single document constitution."

THERE CAN BE NO denying the popularity of the Constitution's most important innovations, such as judicial review, entrenchment against legislative change, and the very idea of written constitutionalism. Today, almost 90% of all countries possess written constitutional documents backed by some kind of judicial enforcement. As a result, what Alexis de Tocqueville once described as an American peculiarity is now a basic feature of almost every state.

There are growing suspicions, however, that America's days as a constitutional hegemon are coming to an end. It has been said that the United States is losing constitutional influence because it is increasingly out of sync with an evolving global consensus on issues of human rights. Indeed, to the extent that other countries still look to the United States as an example, their goal may be less to imitate American constitutionalism than to avoid its perceived flaws and mistakes.

Scholarly and popular attention has focused in particular upon the influence of American constitutional jurisprudence. The reluctance of the U.S. Supreme Court to pay "decent respect to the opinions of mankind" by participating in an ongoing "global judicial dialogue" is supposedly diminishing the global appeal and influence of American constitutional jurisprudence. Studies conducted by scholars in other countries have begun to yield empirical evidence that citation to U.S. Supreme Court decisions by foreign courts is in fact on the decline.

By contrast, however, the extent to which the U.S. Constitution itself continues to influence the adoption and revision of constitutions in other countries remains a matter of speculation and anecdotal impression. With the help of an extensive data set of our own creation that spans all national constitutions over the last six decades, this article explores the extent to which various prominent constitutions—including the U.S. Constitution—epitomize generic rights constitutionalism or are, instead, increasingly out of sync with evolving global practice.

A STARK CONTRAST can be drawn between the declining attraction of the U.S. Constitution as a model for other countries and the increasing attraction of the model provided by America's neighbor to the north, Canada. We also address the possibility that today's constitution makers look for inspiration not only to other national constitutions, but also to regional and international human rights instruments such as the Universal Declaration of Human Rights and the European Convention on Human Rights. Our findings do little to assuage American fears of diminished influence in the constitutional sphere.

Part I introduces the data and methods used in this article to quantify constitutional content and measure constitutional similarity. Part II describes the global mainstream of rights constitutionalism, in the form of a set of rights that can be found in the vast majority of the world's constitutions. From this core set of rights, we construct a hypothetical generic bill of rights that exemplifies current trends in rights constitutionalism. We then identify the most and least generic constitutions in the world, measured by their similarity to this generic bill of rights, and we pinpoint the ways in which the rights-related provisions of the U.S. Constitution depart from this generic model.

Part III documents the growing divergence of the U.S. Constitution from the global mainstream of written constitutionalism. Whether the analysis is global in scope or focuses more specifically upon countries that share historical, legal,

By David S. Law and Mila Versteeg

SHUTTERSTOCK

political, or geographic ties to the United States, the conclusion remains the same: The U.S. Constitution has become an increasingly unpopular model for constitutional framers elsewhere. Possible explanations include the sheer brevity of the Constitution, its imperviousness to formal amendment, its omission of some of the world's generic constitutional rights, and its inclusion of certain rights that are increasingly rare by global standards.

Parts IV and V tackle the question of whether a prominent constitution from some other country has supplanted the U.S. Constitution as a model for global constitutionalism. Part IV contrasts the growing deviance of the U.S. Constitution from global constitutional practice with the increasing popularity of the Canadian approach to rights constitutionalism. Unlike its American counterpart, the Canadian Constitution has remained squarely within the constitutional mainstream.

INDEED, WHEN CANADA departed from the mainstream by adopting a new constitution, other countries followed its lead. Closer examination reveals, however, that the popularity of the Canadian model is largely confined to countries with an Anglo-American legal tradition. In other words, our analysis suggests that Canada is in the vanguard of what might be called a Commonwealth model of rights constitutionalism, but not necessarily of global constitutionalism as a whole.

Part V considers whether the widely celebrated constitutions of Germany, South Africa, or India might instead be leading the way for global constitutionalism. Although all three are currently more mainstream than the U.S. Constitution, we find little evidence that global constitution-writing practices have been strongly shaped by any of the three.

Part VI explores the possibility that transnational human rights instruments have begun to shape the practice of formal constitutionalism at the national level. The evidence that international and regional human rights treaties may be serving as models for domestic constitutions varies significantly from treaty to treaty. In particular, we find that the average constitution has increasingly grown to resemble the International Covenant on Civil and Political Rights and the European Convention on Human Rights, as well as the African Charter on Human and Peoples' Rights and the Charter of Civil Society for the Caribbean Community.

There is little evidence, however, that any of these treaties is actually responsible for generating global consensus as to what rights demand formal constitutional protection. Although these treaties may express and reinforce preexisting global constitutional trends, they do not appear to define those trends in the first place.

Finally, the Conclusion discusses possible explanations for the declining influence of American constitutionalism. These include a broad decline in American hegemony across a range of spheres, a judicial aversion to constitutional comparativism, a historical and normative commitment to American exceptionalism, and sheer constitutional obsolescence. IIII

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David S. Law, professor of law and professor of political science at Washington University, focuses his scholarship in the areas of public law, comparative law, law and social science, judicial politics, and constitutional and political theory. His scholarship is interdisciplinary and combines quantitative and qualitative research methods with comparative approaches to the study of global constitutionalism, constitutional adjudication, and judicial decision-making more generally. His co-author, Mila Versteeg, is an associate professor of law at the University of Virginia School of Law.

Crimes Against Humanity in the Modern Age

IN SPITE OF THE PROMISES made after World War II to eliminate the commission of atrocities against the world's people, Crimes Against Humanity (CAH) continue to persist. Indeed, they are perhaps the most ubiquitous—and horrifying—offenses committed in modern times.

Notwithstanding, an understanding of both the theoretical basis and the application of CAH to particular cases has been rendered difficult by an absence of consistent definition and uniform interpretation. In the 1990s, several ad hoc international criminal tribunals were established to respond to the commission of atrocity crimes, including CAH, in specific regions of the world in conflict. Building upon this legacy, in 1998, a new institution—the International Criminal Court (ICC)—was established to take up the task of defining CAH and other atrocity crimes and preventing and punishing their commission.

Over the next few years, the ad hoc tribunals will complete their mandates, and, at least for the time being, the ICC will remain the only functioning international criminal jurisdiction in the world. The question of how CAH will play out in the ICC is thus critically important, given the centrality of CAH to successful atrocity crime prosecutions, as this article demonstrates.

MOREOVER, BECAUSE THE ICC is a permanent court with the capacity to intervene in ongoing conflict situations—even prior to the outbreak of conflict in some cases—prosecutions for CAH may assume a preventive role at the ICC that they could never have assumed at the ad hoc tribunals. More than any other crime in the Rome Statute, CAH offer the possibility of avoiding another holocaust—and honoring the promises made following World War II—by permitting international intervention before atrocities completely overwhelm a given civilian population. The recent international intervention in Libya is a case in point.

But is the International Criminal Court up to the task? The early jurisprudence of the ICC raises some serious concerns. As one would expect based upon the data in this article, CAH prosecutions have quickly emerged as central to the ability of the ICC to fulfill its mandate. Indeed, as of this writing, CAH have been charged in all seven of the situations currently before the Court, and in the Kenya, Libya and Côte d'Ivoire situations, CAH currently provide the only possible basis for the Court's jurisdiction *ratione materiae*.

Yet the picture emerging from the Court's Pre-Trial Chambers reveals divergent views among the judges about the correct interpretation of article 7 of the Rome Statute on CAH. This is particularly true of its requirement that CAH be committed pursuant to a "state or organizational policy."

While some opinions involve long and thoughtful discussions of the Statute as well as the customary international law of CAH, others are inexplicably terse, providing virtually no guidance on important and open-ended questions of interpretation. Several proffer unconventional readings of article 7 and others unduly restrictive interpretations of its text.

Although the Statute exhorts the judges to construe definitions of crimes "strictly," with any doubt accruing to the benefit of the accused, some opinions of the Pre-Trial Chambers of the Court exceed this requirement by introducing new limitations on CAH not found in or required by the text of the Statute or customary international law. The conflict regarding article 7's proper scope of application is perhaps most evident in the dissenting and majority opinions in Pre-Trial Chamber II's decision to approve the ICC Prosecutor's request to open an investigation into the post-election violence in Kenya. Indeed, couched in the legalese of the opinions in the Kenya case appears to be nothing less than a struggle to shape the future jurisdiction and direction of the Court.

The dissent in the Kenya case penned by the Court's former second Vice-President, Judge Hans-Peter Kaul, has attracted much positive scholarly attention. Indeed, several scholars have either implicitly or explicitly aligned themselves with the dissent, referring positively to the focus of the dissent on the "historic

context of the adoption of crimes against humanity" and its "careful reasoning" and "methodological transparency." While acknowledging the important contribution of the dissent to our understanding of CAH, this article parts company with it, finding the majority view closer to the text, context, and contemporary understanding of CAH in modern international criminal law.

Although the dissent raises real concerns about the capacity of the Court to absorb the cases being sent to it—and perhaps about the wisdom of the Prosecutor's overall strategy—reshaping the technical requirements of the Court's substantive law as a means to protect the Court's workload or correct a perception of prosecutorial overreaching is the wrong solution. Judge Kaul relies upon the Nuremberg precedent to underscore his conclusion that only States or quasi-State-like organizations following criminal policies may commit CAH.

However heretical it may seem to object, given the canonical status of the Nuremberg precedent in international criminal law, this historical approach does not appear sufficient as a response to the suffering of today's victims of CAH nor does it accurately describe the modern law of CAH. Indeed, it may represent a Eurocentric view of CAH as well as one that would ultimately limit the applicability of CAH as a category of crimes at the ICC, just as genocide was limited at the ICTY, rendering it equally impotent as a tool not only as regards the post hoc punishment of offenders, but as regards the possibility of prevention and deterrence. As this article demonstrates, this result is neither required by the text of the ICC Statute, nor desirable as a matter of international law and policy.

This article represents the first effort to comprehensively and empirically assess the work of the ad hoc international criminal tribunals—and the ICC—in regards to Crimes Against Humanity and ask what "work" is CAH doing as a category of crime as a matter of observable practice. It analyzes the indictment practice at three of the ad hoc tribunals as well as the conviction rates on all counts to determine how often and to what effect CAH counts are being used in particular cases.

ISTOCKPHOTO

International Criminal Court

This empirical analysis informs my construction of a new understanding of Crimes Against Humanity in modern international criminal law at the ICC. Challenging the conventional wisdom on this question, I suggest that CAH at the ICC—the world's first permanent international criminal court—was intended by the framers of the Rome Statute to emerge from the shadow of Nuremberg and develop—appropriately constrained by text, canons of judicial construction, and considerations of sovereignty—as a contemporary antidote to widespread or systematic human rights violations against civilian populations in today's world.

THIS ARTICLE EXPLORES the phenomenon of CAH (Part II), briefly describes their application by three of the ad hoc international criminal tribunals (Part III), and addresses their codification in the ICC Statute (Part IV). It demonstrates that CAH prosecutions have been central to the success of the ad hoc tribunals both quantitatively and qualitatively: They are charged to capture key social harms; to address discriminatory and persecutory campaigns that cannot "qualify" as genocide; to avoid lengthy and unproductive discussions about whether a conflict is international or non-international in nature by eliminating armed conflict as an element of the crime; and perhaps most importantly, to provide broad protection for civilians against the depredations of States or organizations whose policy it is to attack them.

Finally, the article comprehensively surveys the ICC's CAH jurisprudence to date (Part V). The article concludes by offering not only an analysis of the Court's early case law, but a critique in the hopes of moving towards a theory of CAH at the ICC that not only respects State sovereignty but implements the mandate of the ICC to prevent and punish "unimaginable atrocities that deeply shock the conscience of humanity." ||||

Forthcoming in *The American Journal of International Law*

Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute, is one of the world's leading authorities on international criminal law and human rights, and a prolific and award-winning scholar. She was recently elected to the U.S. Council on Foreign Relations.

Two Tales of a Treaty Revisited: The Proposed Anti-Counterfeiting Trade Agreement (ACTA)

OVER THE PAST FOUR YEARS, through a coordinated series of public announcements that seemed to have been stimulated in part by previously leaked documents, details gradually have come to light concerning negotiations over a proposed Anti-Counterfeiting Trade Agreement (ACTA). According to the governments involved in these closed-door "plurilateral" trade negotiations, the purpose of ACTA was simply to help fight the proliferation of counterfeit and pirated goods in international trade.

From the outset, however, the negotiations were embroiled in controversy, for at least four reasons. First, while the negotiations were initially carried out behind closed doors, industry representatives were apparently being supplied with information that was not being disseminated to the public. Second, the "plurilateral" nature of the negotiations aroused suspicions that the ACTA negotiations were but the latest example of "forum-shifting"—a well-documented tactic that is apparently being deployed by owners of intellectual property (IP) in an effort to ratchet up international standards for the protection of private intellectual property rights (IPRs).

THESE PROCEDURAL concerns about the conduct of the negotiations, in turn, contributed to two further suspicions about the substantive purpose and scope of ACTA. The first suspicion was that ACTA was simply an effort on the part of intellectual property owners to socialize the enforcement costs of their private IPRs by enhanced civil, criminal, and border enforcement proceedings and remedies.

The second suspicion—generated in part by a leaked negotiating document—was that the focus of these … enforcement provisions would not be limited to targeting commercial trade in counterfeit and pirated physical goods, but would also extend to "significant willful infringements without motivation for financial gain to such an extent as to prejudicially affect the copyright owner (e.g., Internet piracy)." To the suspicious eye, this verbatim quote from the leaked document clearly seemed to be referring to digital file-sharing—a controversial consumer phenomenon, to be sure, but quite distinct from the issue of commercial trade in counterfeit and pirated physical goods.

A PARTICULARLY JOLTING development in the effort by critics to secure more specifics concerning the ACTA negotiations occurred in March 2009, when, notwithstanding President Obama's campaign promises of greater transparency in U.S. government policymaking, the Office of the U.S. Trade Representative (USTR) denied a Freedom of Information Act (FOIA) request for a copy of the ACTA discussion draft and related materials on the ground that they were "classified in the interest of national security."

[Then] on November 15, 2010, the United States, along with its negotiating partners Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, and Switzerland, announced that the parties had finalized the text of ACTA. The release of this final draft provided a number of answers to lurking questions regarding the scope and purpose of ACTA. …While a majority of the provisions in the final draft target illegal counterfeit and pirated goods in international trade, these same provisions also address IP enforcement efforts in other, more controversial, contexts (albeit still involving trade in physical goods). [Additionally,] Article 27 of ACTA explicitly requires parties to take certain measures to address the enforcement of intellectual property rights in the digital domain.

ERIN KAMVELL

The conflation of these three distinct concerns not only slowed the ACTA negotiation process, but also has created a host of continuing concerns about ACTA that may ultimately undermine ACTA's entry into force—or its overall effectiveness as a practical matter. Since the release of the final proposed text, eight countries—the United States, Australia, Canada, Korea, Japan, New Zealand, Morocco, and Singapore—have signed ACTA. However, support for ratification among the parties negotiating the final draft is divided and mired in controversy.

Within six months of the release of the final proposed text, the Mexican Senate adopted a resolution advising that the Federal Executive not ratify it. On the other hand, one week later the EC recommended ratification of ACTA by the European Parliament without further review, while the U.S. Trade Representative has taken the view that ratification of ACTA by the U.S. Senate is not necessary. On February 25, 2012, however, the European Parliament (EP) received a petition signed by 2.5 million people from all over the world asking them to "stand for a free and open Internet and reject the ratification of the Anti-Counterfeiting Trade Agreement. …"

In response, the EP [launched] its own in-depth investigation into the ramifications of signing ACTA, notwithstanding the previous recommendation of the EC. [In fact, on July 5, 2012, the EP overwhelmingly rejected ACTA.]

ACTA PROPONENTS HAVE two powerful rebuttal arguments to the criticism that ACTA is merely the latest chapter in an industry-instigated industrialized-world effort to impose ever higher standards of IP protection on a reluctant developing world. First, although ACTA is admittedly an industrialized-world initiative, a fluid, but generally increasing number of developing countries subsequently joined in the negotiations. …

Second, while the participation of these developing countries may have been window-dressing, as discrete tangible benefits may have been proffered by ACTA's original proponents to encourage such participation, there are nevertheless ample reasons for developing countries, particularly those that became involved in the ACTA negotiations, to be concerned with international trade in counterfeit and pirated goods, as a mounting body of empirical evidence has linked trade in counterfeit and pirated goods with threats to public health and the involvement of organized crime and terrorist organizations.

[However, the ACTA controversy appears to continue unabated.] An announcement by Polish officials that Poland intended to sign ACTA on January 26, resulted in a series of petitions, protests, attacks on government websites, and a proposed "black out" similar to the one occurring [internationally] on January 18, 2012. Ultimately, this coordinated effort caused Polish Prime Minister Donald Tusk to announce that Poland would not sign ACTA and to send a letter to the European Parliament (EP) asking them to reject ACTA.

Further protests occurred, starting in Sweden and Slovenia, and eventually culminating on February 11, 2012, with coordinated protests occurring in 200 European cities. Perhaps the most dramatic event in this entire chain of events was the resignation of the EP Rapporteur (i.e., investigator) for ACTA, Kader Arif, who stated that his resignation was intended "to denounce in the strongest possible manner the entire process that led to the signature of [ACTA]."

WHATEVER ONE MAKES of these "watershed events," they do not bode particularly well for the future of ACTA. After all, how can ACTA's proponents expect to persuade developing countries to implement legislation modeled on the Digital Millennium Copyright Act or the EU Copyright Directive, when it is widely conceded that these measures have been ineffective in containing massive digital file sharing? And how can they persuade developing countries to pass stronger legislative measures in the face of the unprecedented protests at home against precisely such measures?

In the words of one ACTA commentator, it is "difficult to understand how ACTA could induce other countries that are not current parties to the U.S. free trade agreements or the EU economic partnership agreements, especially those that are emerging and quite powerful, to take up new obligations under this agreement." Thus, even ACTA's proponents have reason to fear that, unless ACTA helps restart multilateral negotiations over international intellectual property enforcement standards, it may prove to be an ineffective and superfluous treaty. ||||

Excerpted with permission from *Intellectual Property at the Crossroads of Trade* (ed. J. Rosén) Edward Elgar (2012)

Charles R. McManis, the Thomas and Karole Green Professor of Law, is a nationally and internationally known expert on intellectual property and the author or co-author of numerous books, articles, and book chapters. A former consultant to the World Intellectual Property Organization, he is on the Executive Committee of the International Association of Teachers and Researchers of Intellectual Property. John S. Pelletier, JD '12, served as his research assistant.

Harris Institute Speakers and Events 2010–12

(left) Leila Nadya Sadat, at podium, introduces participants in a debate on the lawfulness of U.S. drone attacks in the War on Terror, from left: Mary Ellen O'Connell, University of Notre Dame; Matt Sepic (moderator), Minnesota Public Radio; and Kenneth Anderson, American University.

(right) Leonard Rubenstein, Center for Public Health and Human Rights, Johns Hopkins Bloomberg School of Public Health

(left) Lucy Reed, Freshfields Bruckhaus, Deringer

(above) Arsalan Iftikhar, AB '99, JD '03, Islamic human rights activist

(above) Leila Nadya Sadat, center, with Dawn Johnsen, Indiana School of Law, right, and Karen Tokarz

(right) Participants at the 2010 International Humanitarian Law Dialogs at the Chautauqua Institution, Chautauqua, New York

(left) Anna Crosslin, International Institute of St. Louis

(right) Kristin Kalla, Trust Fund for Victims, International Criminal Court

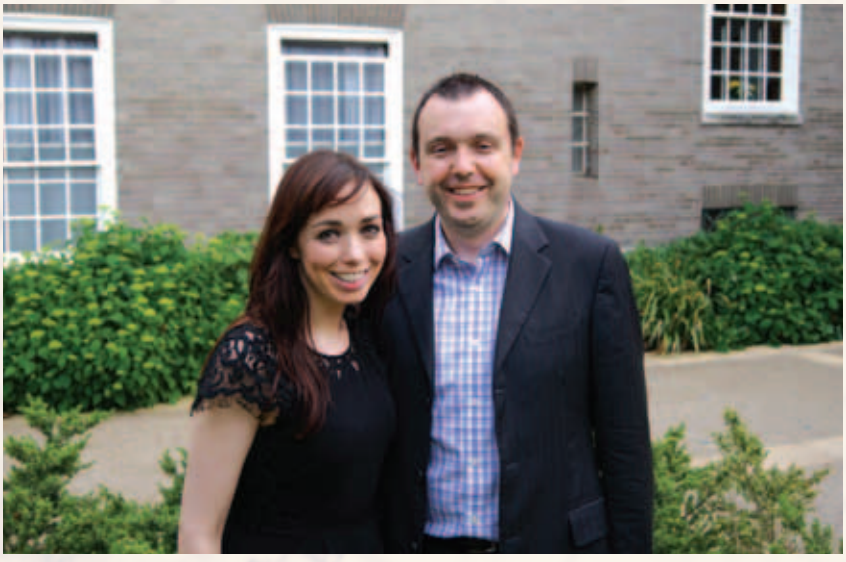
(right) H.E. Xue Hanqin, International Court of Justice

(right) Andrew Cayley, Extraordinary Chambers in the Courts of Cambodia

(right) Fatou Bensouda, International Criminal Court

(above) From left: Melissa Waters; Steven Schneebaum, International Law Students Association and Greenberg Traurig LLP; and Leila Nadya Sadat

(right) JD Stier, Enough Project's Raise Hope for Congo



(left) Neil Richards with co-organizer Kirsty Hughes at the Washington University–Cambridge International Privacy Law Conference at Clare College, University of Cambridge

By Seth Heller, JD '08

A Journey to Jerusalem

"**WHAT, YOU ALREADY ACCEPTED?"** I remember clearly the surprise in my friend's voice when he wondered out loud whether I was crazy to accept immediately an offer to serve as a foreign clerk at the Supreme Court of Israel. It was true; I had almost immediately agreed to move half way across the world to spend six months in Israel—a country I had visited before, but also a country filled with complete strangers to me. It turned out to be one of the best decisions I have ever made.

(right) Seth Heller
(below) Supreme Court of Israel

The clerkship experience was not completely unfamiliar to me. I had previously enjoyed working as a clerk in the United States to judges on the U.S. Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit. That said, clerking in a dynamic country like Israel—with an almost incomprehensible combination of political, legal, and national security issues—was somewhat intimidating. I did not know what to expect.

Professionally and personally, I hoped that an international perspective would be a positive experience for me. As it turned out, my growth on both fronts exceeded anything I could have anticipated. Experiencing Israel through the lens of a foreign clerk at the Supreme Court of Israel was a formative experience.

The position of foreign clerk at the Supreme Court of Israel is an interesting concept. Foreign clerks are not like ordinary judicial clerks—they do not read briefs or draft opinions. Instead, foreign clerks conduct comparative legal research related to either matters before the court or areas of interest to a justice on the court.

For example, a constitutional law issue might come up before the court. A foreign clerk might research how other countries handle that same issue—be it, for example, the United States, Australia, the United Kingdom, or Germany. In fact, it is not uncommon for opinions from the Supreme Court of Israel to cite foreign cases as support for its decisions.

Personally, I had the good fortune of working for Justice Asher D. Grunis, who is now President (Chief Justice). Justice Grunis met with me almost weekly and gave me direction for my research. I also worked with Justice Grunis's law clerks, Ron, Naama, Tal, and Yarden, who took particular interest in my experiences at law school and working at a law firm in the United States. I could not have asked for a better group to mentor me and introduce me to some of the many contours of Israeli law and Supreme Court jurisprudence.

Living in Israel was also an incredible experience. Now that I am back, the most common question people ask me is whether I felt safe in Israel. The funny answer is that I felt safer walking around Jerusalem and Tel Aviv than I almost ever do walking around downtown Washington, D.C.

In all, I was excited to return home to my family, friends, and familiar surroundings. Now that I have been back for almost six months, I cannot wait to go back and visit my friends in Israel. In fact, I am helping organize an international intellectual property conference in Tel Aviv, scheduled for March 2013. So, next spring, I will be able to return to further develop my personal and professional roots in Israel. IIII

Seth Heller is now an associate at Arnold & Porter LLP in Washington, D.C., and a member of the firm's intellectual property group.

SHUTTERSTOCK

By McCall Carter, JD '10

Transitional Justice at the ICTR and the ICTY

(below) McCall Carter, second from right, with Professor Leila Nadya Sadat, third from right, Anees Ahmed, senior legal officer, third from left, and Washington University interns at the International Criminal Tribunal for Rwanda

WHEN I BEGAN studying international criminal justice as a sophomore in college, little did I imagine that I would have the opportunity to work in both of the U.N. ad hoc tribunals before they closed.

As one of the first participants in Washington University's Transnational Law Program, I was given the opportunity to intern on two defense teams at the International Criminal Tribunal for the former Yugoslavia (ICTY) while I was pursuing my master of laws degree in public international law at Utrecht University in The Netherlands.

Shortly after graduating from this program, in late October 2011, I found myself on a plane headed to Arusha, Tanzania, to work as a Pro Bono Legal Researcher in the Chambers of the International Criminal Tribunal for Rwanda (ICTR), where I now serve as an associate legal officer in the Registry.

Working in the Registry of the ICTR is very different from working for either Chambers or Defense. The Registry is responsible for ensuring that all the functions of the tribunal are carried out smoothly and efficiently, and that all Orders from Chambers are put into effect in a timely manner.

While my job still requires me to do legal research on substantive international criminal law, at times, I spend most of my days working on issues of how best to apply that law. This requires me to use creative problem-solving techniques—skills honed not only through my course work in Alternative Dispute Resolution at Washington University, but also through my participation on the law school's Mediation Team.

In addition to assisting the ICTR perform its functions, I have had the opportunity to become involved in preparing for the commencement of the various tribunals' successor, the Mechanism for International Criminal Tribunals (MICT). The MICT, of which the Arusha Branch commenced on July 1, 2012, is tasked with carrying out the residual functions of the tribunals, such as fugitive tracking (in the case of the ICTR), witness protection, and enforcement of sentences. Helping to establish this new institution has been both exciting and interesting.

I also have greatly enjoyed the opportunity to mentor the Washington University interns who have come to the ICTR, and to see first-hand what a wonderful contribution Washington University has made to the success of the tribunal. ||||

McCall Carter is currently serving as an associate legal officer in the Registry of the International Criminal Tribunal for Rwanda and is assisting with the transition to the Mechanism for International Criminal Tribunals.

By Timothy J. Fox

Harris Institute Founder Legomsky Named Chief Counsel for U.S. Citizenship and Immigration Services, Featured in Symposium

THIS FALL, Stephen H. Legomsky, the John S. Lehmann University Professor and founder of the Whitney R. Harris World Law Institute, will complete his first year of service as chief counsel for U.S. Citizenship and Immigration Services (USCIS). USCIS is part of the U.S. Department of Homeland Security (DHS). It is the successor agency to the now-defunct Immigration and Naturalization Service (INS), but shorn of its law enforcement operations, which now reside elsewhere in the department. As chief counsel, Legomsky manages a staff of 160 attorneys, advises the director of the agency on legal and policy issues, and serves as a member of the DHS and USCIS leadership teams.

"Steve is among the most influential and insightful immigration and citizenship law scholars in the world. He also is a dedicated teacher who cares about people and about getting things done right," says Kent Syverud, dean and the Ethan A.H. Shepley Distinguished University Professor. "I can't imagine a better choice for this vital public service position."

Shortly after beginning his government work, Legomsky returned to the law school for the Immigration and Family Reunification conference, which was sponsored by the law school's Harris Institute, Center for the Interdisciplinary Study of Work & Social Capital (CIS), and Immigration Law Society. In his opening remarks, Legomsky called family reunification policy "one of the most pressing issues of our time."

Professor Laura Rosenbury, at podium, with panelists at the Immigration and Family Reunification conference

Professor Stephen Legomsky

The conference consisted of two panel discussions. The first, "Policies in Israel and Europe," was moderated by Leila Nadya Sadat, Harris Institute director and the Henry H. Oberschelp Professor of Law. For this panel, Legomsky shared the dais with Liav Orgad of Israel's Interdisciplinary Center, Herzliya.

Marion Crain, the Wiley B. Rutledge Professor of Law and CIS director, moderated the second panel, "Policies in the United States." It featured Susan Appleton, the Lemma Barkeloo & Phoebe Couzins Professor of Law; Muneer Ahmad, clinical professor at Yale Law School; and Anna Crosslin, president and CEO of the International Institute of St. Louis.

Legomsky said that one burning question is at the center of immigration policies: "What constitutes a 'family?'" Parents and children only? Grandparents? A cousin who grew up with a relative and is "like a brother"? Same-sex couples?

Overall, Ahmad noted, "immigration law perpetuates a heterosexual interpretation of 'family.'" But even for heterosexual couples, "family immigration is always incomplete" as families stretch the boundaries of "family" beyond just parents and children, he stressed.

The definition of "family" is crucial to Appleton's scholarship as well. In the states, she sees high value placed on the parent/child relationship. For example, a court may allow a parent to be incarcerated in a particular facility based on its proximity to his or her children. Even after divorce, courts strive not to limit the connection between children and families, even for a parent who is not paying court-ordered child support.

"The meaning of family becomes a trigger for a host of benefits and protections," Appleton said. "Family integrity is a guiding principle, and one that immigration law perpetuates."

Bringing the discussion closer to home, Crosslin said "family reunification" was "a driving force" for many of the 70,000 Bosnian immigrants who now call St. Louis home. Crosslin said that once in the St. Louis area, the immigrants face daunting economic challenges as many work two jobs—one to support their family stateside, and the other to support the family members left behind.

"The system is set up with a core kind of inhumanity," Crosslin said, "and it is important to realize that these challenges don't just affect the immigrant—they are happening to people around us, and they affect us all."

International Faculty Scholarship, Activities

WASHINGTON UNIVERSITY law faculty members are expanding the school's global reach as they teach, present, and research abroad. Below is a sampling of recent international and comparative law scholarship and recent international activities.

SUSAN APPLETON

Lemma Barkeloo & Phoebe Couzins Professor of Law

Selected Recent Activities

- Presented scholarship, International Academy of Law & Mental Health, Berlin, Germany
- Served as panelist, Washington University School of Law conference, Immigration & Family Reunification

Professor Appleton's primary area of focus is family law, including adoption, assisted reproduction, gender and parentage, surrogacy, and abortion rights.

ADAM BADAWI

Associate Professor of Law

Selected Recent Activities

- Taught U.S. corporate law in conjunction with University of Queensland's Executive LLM program

Professor Badawi's primary areas of focus are contracts and commercial law.

SCOTT BAKER

Professor of Law

Selected Recent Scholarship

- "Intellectual Property Disclosure as 'Threat'" (with P.Y. Lee & C. Mezzetti), 7 *International Journal of Economic Theory* 21 (2011)

Professor Baker concentrates his teaching and writing at the intersection of law, economics, and game theory.

GERRIT DE GEEST

Professor of Law and Director, Center on Law, Innovation, & Economic Growth

Selected Recent Scholarship

- "Carrots, Sticks, and the Multiplication Effect" (with G. Dari Mattiacci), 26 *Journal of Law, Economics & Organization* 16 (2010)

Selected Recent Activities

- Served as professor of law and economics, Utrecht University
- Served as president, European Association of Law and Economics
- Serving as member, Economic Impact Group of the Common Principles of European Contract Law

Professor De Geest's primary areas of focus are law and economics, and comparative law.

JOHN DROBAK

George Alexander Madill Professor of Real Property & Equity Jurisprudence

Selected Recent Activities

- Delivered three lectures at the Sorbonne and Nanterre in Paris, France, drawing on chapters from book manuscript, *Courts, Cooperation, and Legitimacy*
- Taught short graduate course, *Law & the New Institutional Economics*, Nanterre campus
- Delivered lecture, "Reactionary Regulation: The Unintended Consequences of Government's Response to Crisis," conference in Lyon, France, marking formal opening of the Lyon Bar Association new year
- Presented paper, "Thrainn Eggertsson and the Problem of Knowledge: The Effectiveness of Conveying Information in the Electoral and Financial Markets," conference in honor of Thrainn Eggertsson's retirement, University of Iceland

Professor Drobak's primary areas of focus are interdisciplinary studies, privatization and democratization, and the relationship between legal incentives and modern cognitive science.

DORSEY D. ELLIS, JR.

Dean Emeritus; William R. Orthwein Distinguished Professor of Law Emeritus; and Academic Director, Transnational Law Program

Selected Recent Scholarship

- "Projecting the Long Arm of the Law: Extraterritorial Criminal Enforcement of U.S. Antitrust Laws in the Global Economy," 1 *Washington University Global Studies Law Review* (forthcoming)

Selected Recent Activities

- Taught *International & Comparative Antitrust Law*, Summer Institute for International Law & Policy, Utrecht
- Has taught in Belgium, China, Korea, Italy, Oxford, Taiwan, and Tokyo, and as a Fulbright Fellow in Lisbon, Portugal

Professor Ellis's primary areas of focus are legal history, antitrust, regulated industries, law and economics, and torts.

LEIGH GREENHAW

Senior Lecturer in Law

Selected Recent Activities

- Lectured on "From Tensile to Flaccid: The Strength and Resiliency of the Religion Clauses under the Rehnquist &

MEETING OF THE MINDS

In March 2012, Leila Sadat met with ICC Prosecutor Luis Moreno-Ocampo, left, and former Nuremberg Prosecutor Benjamin Ferencz, right, to discuss the relationship between the crime of aggression and crimes against humanity. Sadat also shared her books with them.

SHANGHAI PRESENTATION

Ronald M. Levin, the William R. Orthwein Distinguished Professor of Law, confers with a colleague in Shanghai, China. Levin was in Shanghai as the featured speaker at an International Workshop on Amendment of the Administrative Litigation Law (ALL). In his lecture, Levin summarized judicial review developments of the past decade in the United States, noting that the American system of judicial review is largely stable but that it continues to evolve through case law.

Roberts Courts," Faculty of the Waseda University School of Law, Tokyo, Japan

- Collaborated with D. Bruce La Pierre and Washington University's Office of International Programs to arrange Brazilian delegation visit
- Served as visiting professor, Aoyama Gakuin University Law School in Tokyo, Japan, and visiting scholar, Macquarie University School of Law in Sydney, Australia

Professor Greenhaw's primary areas of focus are law and religion, equal rights, and other constitutional issues.

PETER A. JOY

Vice Dean (2010–12); Henry Hitchcock Professor of Law; and Director, Criminal Justice Clinic

Selected Recent Scholarship

- "Japan's New Clinical Programs: A Study in Light and Shadow," *Global Clinical Movement* (ed. F.S. Bloch), Oxford University Press (2010)

Selected Recent Activities

- Served as visiting professor, University of Northumbria Law School, United Kingdom; met with faculty and law students
- Presented several talks to faculty and students, University of Northumbria Law School, including "Hired Gun? The Principle and Limits of Zealous Advocacy as a Measure of the Ethical Lawyer," "Collaboration between Disciplines in Clinical and Experiential Learning," "Clinical Legal Education and the Mainstream Law Curriculum," and "Identifying Best Practices for Student/Supervisor Interactions"
- Served as project evaluator, Australian Learning & Teaching Council's funded project, "Strengthening Australian Legal Education by Integrating Clinical Experiences: Identifying and Supporting Effective Practices"
- Traveled to Melbourne and Sydney, Australia, to interview stakeholders in Australian Learning & Teaching Council project, attended presentation of project to Council of Australian Law Deans in Sydney, and participated in sessions devoted to project at Australasian Law Teachers Association Conference, Sydney

Professor Joy's primary areas of focus are clinical legal education, legal ethics, and trial practice.

D. BRUCE LA PIERRE

Professor of Law and Director, Appellate Clinic

Selected Recent Activities

- Taught and lectured at Universidade Catolica Portuguesa (UCP), Lisbon, Portugal
- Served as visiting professor, Fudan University, Shanghai, teaching constitutional law class
- Delivered lecture on federalism, "The Supreme Court's Next 'Big' Case: President Obama's Health Care Legislation and the Federal System of Government in the United States," Fudan University
- Lectured at and met with students, faculty, and deans at seven other law schools in addition to Fudan: Renmin University, China's School of Law in Beijing; Shantou University Law School; Xiamen University Law School; Nanjing Normal University Law School; Zhejiang University's Guanghua Law School in Hangzhou; East China University of Political Science and Law, Shanghai; and Jiao Tong University's KoGuan Law School of Shanghai
- Collaborated with Leigh Greenhaw and Washington University's Office of International Programs to arrange Brazilian delegation visit

Professor La Pierre's primary areas of focus are civil rights, school desegregation, election law, and federalism issues.

C.J. LARKIN

Senior Lecturer in Law and Administrative Director, Negotiation & Dispute Resolution Program

Selected Recent Activities

- Delivered four days of lectures on commercial mediation, Free University Tbilisi, Georgia
- Met with students and administrators at other law schools in Tbilisi, Georgia, about Washington University School of Law offerings
- Met with representatives of law schools and law firms about potential placement opportunities in Istanbul, Turkey

Professor Larkin's primary areas of focus are mediation, negotiation, ADR theory and practice, and mediation advocacy.

DAVID S. LAW

Professor of Law and Professor of Political Science

Selected Recent Scholarship

- "The Myth of the Imposed Constitution in Japan," *The Social and Political Foundations of Constitutions*, Cambridge University Press (forthcoming)
- "The Declining Influence of the United States Constitution" (with M. Versteeg), 87 *New York University Law Review* 762 (2012)

- "The Evolution and Ideology of Global Constitutionalism" (with M. Versteeg), 99 *California Law Review* 1163 (2011), translated into Chinese, Tsinghua Rule of Law Forum (trans. X. Xiaofei, forthcoming)
- "The Limits of Global Judicial Dialogue" (with W.-C. Chang), 86 *Washington Law Review* 423 (2011)
- "Why Has Judicial Review Failed in Japan?," 88 *Washington University Law Review* 1425 (2011); being translated into Japanese and published in *Seikei-Ronso* (*The Review of Economics and Political Science*)

Selected Recent Activities

- Co-hosted Washington University School of Law symposium (with J. Haley), Decision-Making on the Japanese Supreme Court; symposium featured two former justices of the Japanese Supreme Court; papers published in *Washington University Law Review*
- Served as Fulbright scholar, National Taiwan University College of Law; conducted research on Taiwan's Constitutional Court and co-taught graduate seminar on constitutional law and politics in East Asia
- Served as visiting professor, Seoul National University School of Law; taught comparative constitutional law to Korean law students and conducted research on the Korean Constitutional Court. Previously served as visiting scholar, Keio University Faculty of Law, Tokyo, and International Affairs Fellow in Japan, Council on Foreign Relations
- Gave presentations on political prosecutions in Taiwan, Woodrow Wilson International Center for Scholars in Washington, D.C., and on Japanese law and politics, annual meeting of Hitachi Scholars, Council on Foreign Relations

Professor Law's primary areas of focus are law and political science, comparative public law, judicial politics, constitutional politics, and constitutional theory.

STEPHEN H. LEGOMSKY

John S. Lehmann University Professor; on leave to serve as Chief Counsel of U.S. Citizenship and Immigration Services, Department of Homeland Security

Selected Recent Scholarship

- *Immigration and Refugee Law and Policy* (with C. Rodríguez, beginning with 5th ed.), Foundation Press (5th ed. 2009; Supplement, 2010)
- "Citizens' Rights and Human Rights,'' 43 *Israel Law Review* 67 (2010)
- "Restructuring Immigration Adjudication," 59 *Duke Law Journal* 1635 (2010)

Selected Recent Activities

- Serving as University Ambassador, University of Hong Kong, through Washington University's McDonnell International Scholars Academy
- Delivered keynote addresses, biennial Conference of U.S. Immigration Professors, and naturalization ceremony in Miami
- Served as discussant at comparative immigration law conference, Azores, speaking on application of criminal justice principles to immigration law

Professor Legomsky's primary areas of focus are U.S., comparative, and international immigration and refugee law and policy.

RONALD M. LEVIN

William R. Orthwein Distinguished Professor of Law

Selected Recent Activities

- Served as featured speaker, International Workshop on Amendment of the Administrative Litigation Law, Shanghai; summarized judicial review developments of the past decade in the United States

Professor Levin's primary areas of focus are administrative law and legislation, ranging from rulemaking and judicial review to regulatory reform and legislative ethics.

JO ELLEN LEWIS

Professor of Practice and Director, Legal Practice Program

Selected Recent Scholarship

- "Legal Writing Programs in Korean Law Schools: Possible Structures and Resources," 10 *Journal of Korean Law* 381 (2010)

Selected Recent Activities

- Taught *Introduction to American Law* to undergraduate law students and *Special Topics in U.S. Law: Torts* to graduate law students, Aoyama Gakuin University School of Law, Tokyo
- Delivered presentation, "Clinical Legal Education: Training Future Practitioners," Waseda University Institute of Clinical Legal Education

Professor Lewis's primary areas of interest are legal analysis and writing, professional practice, advanced legal writing, and real estate law.

WEI LUO

Lecturer in Law and Director of Technical Services, Law Library

Selected Recent Scholarship

- "Chinese Criminal Law," *The Handbook of Comparative Criminal Law* (eds. K.J. Heller & M.D. Dubber), Stanford University Press (2010)

Selected Recent Activities

- Serving as member and past chair, American Association of Law Libraries' Asian Law Working Group
- Serving as member and past president, Asian American Law Library Caucus
- Working with the Legislative Affairs Office of the People's Republic of China's State Council on the creation of a codification system for the PRC's laws and regulations

Professor Luo's primary areas of focus are Chinese law and legal research, in addition to his work in the law library.

CHARLES R. MCMANIS

Thomas & Karole Green Professor of Law

Selected Recent Scholarship

- "Two Tales of a Treaty Revisited: The Proposed Anti-Counterfeiting Trade Agreement (ACTA)," *Intellectual Property at the Crossroads of Trade* (ed. J. Rosén) Edward Elgar (2012)

Selected Recent Activities

- Serving as University Ambassador, Korea University, through Washington University's McDonnell International Scholars Academy
- Served as consultant, World Intellectual Property Organization
- Has taught, lectured, and/or researched throughout the United States and Argentina, Brazil, China, England, Germany, India, Japan, Korea, Malaysia, Singapore, Switzerland, and Taiwan

Professor McManis's primary area of focus is intellectual property law.

KIMBERLY NORWOOD

Professor of Law

Selected Recent Activities

- Taught comparative products liability course, Utrecht University
- Helped establish public interest externships for law students working in Ghana and Kenya, through law school's Africa Public Interest Law & Conflict Resolution Initiative
- Has taught at Fudan University in Shanghai and Aoyama Gakuin University, Tokyo

Professor Norwood focuses her current research on racial identity, colorism issues,

Scholarship of New Faculty Has International Reach

The law school welcomes two outstanding new faculty members, associate professors **Elizabeth Sepper** and **Andrew F. Tuch**, both of whose scholarship tackles international legal issues.

Sepper is a health law scholar whose work explores the interaction of morality, professional ethics, and law in medicine. She also has published in the areas of human rights, women's rights, and international health law, including in the *Texas International Law Journal* and *University of Pennsylvania Journal of International Law*.

She clerked for Judge Marjorie Rendell of the U.S. Court of Appeals for the Third Circuit and practiced at Human Rights Watch and New York University School of Law's Center for Human Rights and Global Justice.

Tuch is an accomplished scholar in the fields of corporate law, securities regulation, and the regulation of financial institutions, especially investment banks. He has published widely, including in peer-reviewed journals in the United Kingdom and Australia.

Tuch clerked for Justice G.L. Davies of the Queensland Court of Appeal, practiced corporate law at Davis Polk & Wardwell LLP in New York and London, and then was a member of the Faculty of Law at the University of Sydney. He is a member of the New York Bar and is qualified to practice in Australia, England, and Wales.

and the intersection of race, class, and public education in America.

MICHAEL PEIL

Associate Dean for International Programs; Lecturer in Law; and Executive Director, Transnational Law Program

Selected Recent Scholarship

- "The Sovereign Debt Crisis, the European Fiscal Stability Treaty, and the Balance of Power Between the EU and the Member States" (forthcoming)

Selected Recent Activities

- Served as visiting scholar, Utrecht University; researched European law and international organizations
- Delivered paper, conference on the role of individuals in development of international law, Cambridge University
- Delivered lecture, Friedrich-Schiller-Universität, Jena, Germany

Professor Peil's primary areas of focus are European Union law and international law.

NEIL RICHARDS

Professor of Law

Selected Recent Activities

- Served as visiting professor, Utrecht University, co-taught *Transnational Legal Perspectives—Freedom of Expression*
- Served as conference organizer, Washington University–Cambridge International Privacy Law Conference, Clare College, University of Cambridge
- Presented papers drawn from forthcoming book, *Intellectual Privacy*, Oxford University Press, University of Cambridge and Durham University, United Kingdom, and University of Mainz, Germany

Professor Richards' primary areas of focus are privacy and First Amendment Law.

LEILA NADYA SADAT

Henry H. Oberschelp Professor of Law and Director, Whitney R. Harris World Law Institute

Selected Recent Scholarship

- "Crimes Against Humanity in the Modern Age," *American Journal of International Law* (forthcoming)
- "Drone Wars and the Nuremberg Legacy," *Proceedings of the Sixth International Humanitarian Law Dialog, ASIL* (forthcoming)
- *Forging a Convention for Crimes Against Humanity* (ed. L. Sadat), Cambridge University Press (2011); won Book of the Year award, International Association of Penal Law (American Branch)
- "Avoiding the Creation of a Gender Ghetto in International Criminal Law," 11 *International Criminal Law* 655 (2011)
- "A Rawlsian Approach to International Criminal Justice and the International Criminal Court," 19 *Tulane Journal of International & Comparative Law* 261 (2010)

Selected Recent Activities

- Elected to Membership, U.S. Council on Foreign Relations
- Served as Alexis de Tocqueville Distinguished Fulbright Chair, honor held by only two other U.S. law professors; gave more than 16 lectures; appeared on French national television as an expert in the *Dominique Strauss Kahn affaire*; and taught two courses at the University of Cergy-Pontoise
- Met with International Criminal Court Prosecutor Luis Moreno-Ocampo and former Nuremberg Prosecutor Benjamin Ferencz to discuss relationship between the crime of aggression and crimes against humanity
- Directed and taught in the law school's Summer Institute for International Law & Policy, Utrecht, which she founded eight years ago
- Lectured at the International Criminal Court and the International Criminal Tribunal for Rwanda (ICTR), as well as in Uppsala, London, Brussels, and The Hague
- Traveled to Arusha, Tanzania, to lecture, conduct research, and meet with Washington University law students interning at the ICTR
- Delivered address on accountability for atrocity crimes, Raoul Wallenberg Institute in Lund, Sweden, in honor of Wallenberg's 100th birthday, and served as distinguished discussant, Grotius Lecture, American Society of International Law annual meeting

- Delivered Katherine B. Fite lecture, "Drone Wars and the Nuremberg Legacy," Chautauqua, New York

Professor Sadat's primary areas of focus are public international law, international criminal law, and human rights law.

PEGGIE R. SMITH

Charles F. Nagel Professor of Employment & Labor Law

Selected Recent Scholarship

- "The Pitfalls of Home: Protecting the Health and Safety of Paid Domestics," 23 *Canadian Journal of Women & Law* 309 (2011)

Selected Recent Activities

- Served as keynote speaker, Legal Challenges to Regulating Paid Domestic Work, International Conference on Excellence in the Home, Sustainable Living: Professional Approaches to Housework, London
- Presented scholarship, Regulating Decent Work for Domestic Workers: International and Comparative Dialogue, Faculty of Law, McGill University, Montreal

Professor Smith's primary areas of focus are employment law and the regulation of care work.

KENT SYVERUD

Dean of the Law School and Ethan A.H. Shepley Distinguished University Professor

Selected Recent Activities

- Delivered plenary address, "Mediation and Education in the U.S.," Mediation in Asia Conference, Korea University
- Presented "The Uncertain Future of American Law Schools," Shanghai Jiao Ton University, KoGuan Law School and at Peking University School of Transnational Law

In addition to his role as head of the law school, Dean Syverud's primary areas of teaching and scholarship are legal education, negotiation, complex litigation, insurance, and civil procedure.

BRIAN TAMANAHA

William Gardiner Hammond Professor of Law

Selected Recent Scholarship

- "The Primacy of Society and the Failures of Law and Development," 44 *Cornell International Law Journal* (2011)
- "The Rule of Law and Legal Pluralism in Development," 3 *Hague Journal on the Rule of Law* 1 (2011)
- *On The Rule of Law: History, Politics, Theory*, Cambridge University Press (2004); Ukrainian translation (2007); Chinese translation, Wuhan University Press (2010)
- *Law as a Means to an End: Threat to the Rule of Law*, Cambridge University Press (2006); Chinese, Japanese, and Spanish translations (2012)

Selected Recent Activities

- Lectured at the Rule of Law Symposium, Singapore Academy of Law (co-sponsored with National University of Singapore and Singapore Management University School of Law)
- Presented lecture series on Theories of Law and Society, University of Externado, Bogota, Colombia; also has taught, lectured, worked and/or conducted research in Australia, Brazil, Canada, Japan, and the United Kingdom
- Served as legal counsel, Micronesian Constitutional Convention and Assistant Attorney General for the Yap State, Federated States of Micronesia

Professor Tamanaha's primary areas of focus are comparative law and jurisprudence.

KAREN TOKARZ

Charles Nagel Professor of Public Interest Law & Public Service; Director, Negotiation & Dispute Resolution Program; and Director, Civil Rights, Community Justice & Mediation Clinic

Selected Recent Scholarship

- "Advancing Social Justice through ADR and Clinical Legal Education in South Africa, India, and the U.S.," *The Global Clinical Movement: Educating Lawyers for Social Justice* (ed. F. Block), Oxford University Press (2010)

Selected Recent Activities

- Visited Washington University School of Law's sister schools in Australia, Israel, and Italy, where she explored possible partnerships with ADR faculty
- Collaborated with law faculty at Roma Tre University and at ADR Center of Italy
- Met with clinicians in Israel from across the country at the annual colloquium of Israeli clinical faculty
- Presented paper, "University-Community Partnerships and Community-Based Teaching, Learning, and Service Programs: Providing Clinical Education for All Law Graduates," 10th *International Journal of Clinical Legal Education* Conference, Northumbria University, United Kingdom
- Will present paper, "Forty Years of Clinical Legal Education in South Africa: Looking Back, Looking Forward," Conference on Law and Access to Justice, University of KwaZulu-Natal in Durban, South Africa, December 2012

Professor Tokarz's primary areas of focus are dispute resolution, justice and conflict, human trafficking, and international clinical legal education and dispute resolution.

MELISSA WATERS

Vice Dean; Professor of Law; and Co-Director, @WashULaw

Selected Recent Scholarship

- *Death Penalty Entrepreneurs: How the Europeans Are Taking Down the Death Penalty, One Country at a Time (and Why the U.S. Should Care)* (forthcoming)
- "Constitutional Engagement in the Transnational Era," book review, 59 *American Journal of Comparative Law* 605 (2011)
- "Judicial Dialogue in Roper: Signaling the Court's Emergence as a Transnational Legal Actor? (A Response to Mark Tushnet)," *The U.S. Supreme Court and International Law: Continuity or Change?* (eds. D. Sloss et al.), Cambridge University Press (2011)
- "International Law as an Interpretive Tool, 1945–2000," *The U.S. Supreme Court and International Law: Continuity or Change?* (eds. D. Sloss et al.), Cambridge University Press (2011)
- "'Lawfare' in the War on Terrorism: A Reclamation Project," 43 *Case Western Reserve Journal of International Law* 327 (2010)

Selected Recent Activities

- Serving as University Ambassador, Utrecht University, through Washington University's McDonnell International Scholars Academy
- Co-Directs new law school online LLM Program in U.S. Law for foreign lawyers, @WashULaw
- Presented scholarship at variety of fora, including American Society of International Law, and lectured on human rights law, U.S. Department of State, Office of Global Women's Issues Iraq Project
- Serving as member, Public International Law and Policy Group, ABA International Legal Education Committee, and ABA Global Administrative Law Committee

Professor Waters's primary areas of focus are foreign relations law, conflict of laws, and human rights law.

By Peggie R. Smith

U.S. Should Ratify Domestic Workers Convention

RECENTLY, the International Labour Organization (ILO) at its annual conference in Geneva agreed to a groundbreaking Convention on Decent Work for Domestic Workers. The Convention establishes international standards to improve working conditions for as many as 100 million domestic workers worldwide, the majority of whom are women and young girls.

The Convention defines domestic work as "work performed in or for a household or households." This definition includes paid caregivers of children and the elderly, as well as workers hired to perform general household tasks such as cleaning, laundry, shopping, and cooking. Delegates to the conference also adopted an accompanying Recommendation. While the Convention is an international treaty that is binding on member states that ratify it, the nonbinding Recommendation provides detailed guidance on how to apply the Convention.

In the United States as well as in many other parts of the world, the provision of paid domestic work is essential. It serves as a vital source of employment for low-income women and provides an indispensable service for countless families. Absent the availability of domestic work, many families would be left in a crisis. While not all households employ a domestic worker, for the many who do, the availability of services represents a significant coping strategy in response to the lack of adequate public support to care for children and the elderly.

The urgency for access to paid domestic services is matched by the urgent need to provide domestic workers with access to fair and decent work. Despite its importance, domestic work remains an economically marginalized job. Throughout the world, the work is poorly paid and offers workers few if any benefits such as access to health care or maternity leave. Workers are also routinely subjected to harsh working conditions, including sexual harassment and other forms of physical abuse, exposure to health and safety hazards, inadequate accommodations for live-in work, and excessive working hours. In addition, because labor legislation in many countries denies coverage to domestic work, workers are especially vulnerable to exploitative labor conditions.

To be sure, the structure of domestic work does not fit comfortably into existing models of workplace protections. Unlike the majority of workers, domestic workers remain invisible, laboring in the private setting of the home and without the support of co-workers. For too long, the uniqueness of domestic work has been used to deny workers basic labor rights extended to the general workforce. The new ILO standards recognize that domestic work is no less valuable because of its location within the private sphere of the family, nor is it any less sheltered from the harsh realities that often accompany waged work. Indeed, working within private households behind closed doors has left domestic workers more vulnerable than most workers to abuse and labor exploitation

The ILO standards aim to help rectify the deplorable conditions in domestic work and to recognize that domestic workers are indeed workers, not servants or members of employing households. Key elements of the Convention require governments to accord domestic workers substantive labor rights that are equivalent to those extended to other workers, including overtime compensation, minimum wage coverage, regular rest periods, Social Security, coverage under safety and health provisions, and respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining.

Adopted last year with the support of countries ranging from Australia to Brazil and South Africa, the treaty will make domestic workers less vulnerable to exploitation.

Although delegates from the United States played a leading role in rallying support for the Convention and advocating strong protections on behalf of workers, it will take a Herculean effort to achieve decent work for domestic workers in the United States. First, the United States must be willing to ratify the Convention. Second, assuming ratification, a long road must be traversed in order to ensure that national labor laws meet the level of protection mandated by the Convention's provisions. At present, none of the major pieces of federal labor legislation in the United States comply with the standards in the Convention.

Even as it remains to be seen if the United States will ratify the Convention, the ILO standards expressed therein, as well as those contained in the Recommendation, now stand as the benchmark by which to measure the treatment of domestic workers and by which to hold policymakers accountable. The ILO standards provide a useful framework for member states, including the United States, to make meaningful strides toward achieving decent work for domestic workers. Policymakers must be continually reminded of the value of domestic work and constantly pressed to regulate such work in a manner that acknowledges domestic workers as real workers who deserve respect and inclusion in the scope of general workplace protections. ||||

Peggie R. Smith, the Charles F. Nagel Professor of Employment and Labor Law, is the co-author of a treatise on employment law and a leading scholar in the regulation of care work that occurs both inside and outside the home.

WHITNEY R. HARRIS WORLD LAW INSTITUTE MAGAZINE

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—Whitney R. Harris

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