

New Publications from Berkeley Law's International Law Faculty January 2013

Kenneth A. Bamberger and Deirdre K. Mulligan

“Comparing Privacy on the Ground in Europe: Initial Data on Governance Choices and Corporate Practices,” *The George Washington Law Review* (forthcoming 2013)

Abstract: This article is the third in a comparative project documenting the ways in which corporations in different countries have operationalized privacy protection in the light of divergent formal laws; interpretive, organizational and enforcement decisions made by local administrative agencies; and other jurisdiction-specific social, cultural and legal forces. It presents the first analysis of data of its kind reflecting research and interviews in three EU jurisdictions (Germany, Spain, and France) and comparing it to findings from our analysis of the implementation of privacy in the United States. A complete consideration of the research on the privacy experience in five countries (United States, Germany, France, Spain, and United Kingdom) – one which more generally draws lessons for broader research on paradigms for thinking about privacy, the effectiveness of corporate practices informed by those paradigms, and organizational compliance with different forms of regulation and other external norms more generally – will appear in an upcoming book-length treatment.

Richard M. Buxbaum

“Back to the Past: Old German Bonds and New U. S. Litigation,” *73 ZaöRV Heidelberg Journal of International Law* (forthcoming January 2013)

Abstract: Bonds issued in the Weimar era by German public and communal bodies became entangled in a two-decades long prewar and wartime set of reformation, repudiation and cancellation events, followed by an equally varied and even longer set of revalidation, renegotiation and repayment events, whose legal consequences have not run their full course to this day. Disputes between states, between holders and states and between holders and issuers occupied the courts and the executive and administrative agencies of the Federal Republic and a number of former Allied and neutral countries for this entire period. This article, exploring the legal resolution of these disputes in the Federal Republic and the United States, illuminates the role of legal acts and of legal doctrines developed to deal with the political consequences that the behavior of the Third Reich and the realities of the postwar division and later reunification of Germany created for these instruments, their issuers and their holders.

“From Paris to London: The Legal History of European Reparation Claims 1946-1953,” *31 Berkeley Journal of International Law* (forthcoming 2013)

Abstract: The umbrella concept of Reparations, including its compensatory as well as restitutionary aspects, regrettably remains as salient today as it was in the 20th century. A fresh look at its history in that century, and how that history shapes today's discourses, is warranted. It is warranted in particular because the major focus in recent decades has been on the claims of individual victims of various atrocities and injustices, generalized as the development of international human rights law by treaty, statute and judicial decision. One consequence of this development is that the historical primacy of the state both as agent for its subjects and as the principally if not solely responsible actor is ever more contested.

How did this shift from state responsibility and state agency over the past half-century or more occur? Considering the apparent primacy of the state in this context as World War II came to an end, is there already in the war and early postwar period a partial explanation of these later

developments? These formulations imply that failures in the inter-state reparations processes of that era played a role in the rise of these alternative processes. Whether that suggestion can be demonstrated in satisfying detail is another matter; but the attempt justifies the following discussion.

Kate Jastram

“The Kids Before Khadr: Haitian Refugee Children on Guantanamo,” 11 *Santa Clara Journal of International Law* (forthcoming 2013)

Abstract: This Comment on Richard J. Wilson’s “Omar Khadr: Domestic and International Litigation Strategies for a Child in Armed Conflict Held at Guantanamo” traces the litigation that established Guantanamo as a rights-free zone in the 1990s, when the United States used it to house Haitian and Cuban asylum-seekers, including unaccompanied minors, and led to its post-9/11 use as a site that was intended to be free from judicial scrutiny. The absence of judicial consideration of the rights of the child in the context of international humanitarian law is shown to have its roots in the similar lack of recognition in the context of international refugee law.

Jamie O’Connell

“Common Interests, Closer Allies: How Democracy in Arab States Can Benefit the West,” *Stanford Journal of International Law* (July 2012)

Abstract: The article uses empirical social science research, theory, and policy analysis to assess the impact of political developments after the Arab Spring on internal stability, international peace, transnational terrorism, and bilateral relation between Arab and Western countries, including the United States.

Harry N. Scheiber

Regions, Institutions, and the Law of the Sea, co-edited with Jinhyun Paik, Nijhoff/Brill (forthcoming February 2013)

Professor Scheiber is also currently editing the papers from an international conference of The Law of the Sea Institute, UC Berkeley, on “Securing the Ocean for Next Generation,” which was held recently in Seoul, Korea, with co-sponsorship by the Korean Institute of Ocean Science and Technology. The papers will be issued as a symposium on line, and then in book form later this year.