

The Robbins Collection in Religious and Civil Law

DIGEST
SPRING 2018

BerkeleyLaw
UNIVERSITY OF CALIFORNIA

CONTENTS

FRONTMATTER

Director's Note	1
New Staff	1

EVENTS

Symposium: Judicial Independence & Accountability	3
Conference: Legal Issues in Taiwan & the U.S.	5
Conference: Customary Law Today	6
Lecture: The Boundaries of Judaism	7

FELLOWS & FOLIOS

Robbins Fellow Spotlight	9
Recently Published	
Books & Monographs	12
Essays & Film	13
Collection Catalogue	14

THE ROBBINS RECORD

United States v. Robbins	16
--	--------------------

ON THE HORIZON

Upcoming: Online	19
Upcoming: People & Publications	20

THE ROBBINS COLLECTION IN RELIGIOUS & CIVIL LAW DIGEST

Vol. 1, No. 1
April 2017–May 2018



CONTACT

The Robbins Collection
UC Berkeley School of Law
Suite #R230A
Berkeley, CA 94720
Email: robbins-law@berkeley.edu
Web: law.berkeley.edu/research/the-robbins-collection
Phone: (510) 642-1829

UPDATE YOUR EMAIL

To update your email address,
please email:
robbins-law@berkeley.edu

[FOLLOW @UCBROBBINS](#)



The Robbins Collection Digest
is published by the Robbins
Collection at the University of
California, Berkeley, School of
Law. © 2018

Cover photo © Berkeley Law

BerkeleyLaw
UNIVERSITY OF CALIFORNIA

NEW STAFF

The Robbins Collection welcomes Emily Best as the new Assistant Director. Ms. Best brings a wealth of experience in administrative operations and program development both at Berkeley Law and institutions in Europe and Asia.

■ ■ ■

We welcome Sohayla Farman as our Publications & Communications Specialist. Ms. Farman worked on dozens of scholarly books in the editing department at the University of California Press. She will work on the publication of the next Daube volume and promotional materials for the department and website.

■ ■ ■

The Robbins Collection is pleased to have Jessie Sherwood as our Manuscript Cataloger. Dr. Sherwood will catalogue a backlog of our manuscripts and other rare materials. She has a doctorate in Medieval Studies from the University of Toronto and she honed her cataloging and preservation skills at the University of Washington.

Director's Note

The Robbins Collection is a seminal part of Berkeley Law, where it has grown into a preeminent international research center and library in the fields of religious and civil law. Since its foundation in 1952, the Robbins Collection has been dedicated to promoting research of contemporary legal issues that, in the words of founder Lloyd M. Robbins, “have practical applications in solving modern legal problems.”

Lloyd Robbins’ words were undoubtedly based on his own experience with civil law systems. A challenger of community property laws in his time, Dr. Robbins applied a practical comparative methodology to the institution of community property. The slow development of California’s community property laws, since its inclusion in the state’s 1849 Constitution, illustrate a legal process of great significance for understanding the complex relationships between different legal systems in a given society.

We proudly continue the legacy of Lloyd Robbins on the Berkeley campus by applying comparative methodologies to current legal issues in the United States and internationally. Over the past two decades, the Robbins Collection has sponsored nearly two hundred legal scholars through research fellowships and partnered with numerous legal institutions around the globe to host programs and workshops. It is only with the impressive work of visiting scholars, students, and fellow Berkeley academics that the Robbins Collection can continue to innovate as both a library and international research center that will further shape the esteemed legacy of Berkeley Law.

Laurent Mayali
Lloyd M. Robbins Professor of Law
Director, The Robbins Collection
University of California, Berkeley
School of Law

EVENTS

*A look back at the conferences and
symposiums that took place at
Berkeley Law and around the globe.*



Judicial Independence and Accountability in Latin America

Symposium: The Robbins Collection at Berkeley Law

On Saturday, December 9th, the Robbins Collection hosted a symposium at Berkeley Law that addressed the possibility that judicial accountability—when properly conceived—can enhance independence by bolstering judicial legitimacy in Western democracies. Hosted and moderated by Berkeley Law’s Lloyd M. Robbins Professor of Law Laurent Mayali and Robbins Collection Postdoctoral Fellow Pablo Echeverri, the symposium was attended by an esteemed group of legal scholars.

Symposium organizer Pablo Echeverri considered the event’s topic as a response to a question posed in Juvenal’s sixth satire: “But who will guard the guardians?” For Mr. Echeverri, the symposium was an opportunity to address Juvenal’s question in a contemporary context and discuss the challenges of achieving an equilibrium between judicial independence and accountability. Mr. Echeverri said: “The current wave of populist politics worldwide poses a threat to the rule of law that must be answered, in part, by a strong and independent judiciary. It is important not to confuse the need to ensure that the judiciary be subject to appropriate checks and balances with the populist rallying cry that courts must be accountable to majoritarian politics.”

In his opening address to the group, Professor Mayali touched upon the symposium’s lineage to Lloyd M. Robbins’ past as a Latin American legal scholar and translator of seminal Spanish civil law texts, such as the *Leyes de Toro*. The first session, “Institutional Design: Transnational Initiatives and Domestic Realities,” began with an introduction of UNESCO’s current initiatives from the agency’s Regional Adviser of Communication and Information, Guilherme Canela de Souza Godoi. Adviser Canela elaborated on UNESCO’s participation in the Ibero-American Summit, an annual congregation of 23 Ibero-American Supreme Courts for the purpose of implementing international standards on access to information and judicial transparency. The first session also included comparative discussion on the design of domestic institutions in countries such as Argentina, Chile, Colombia, and the U.S. that have contributed to, and combatted against, the fraught state of judicial independence and accountability.

PARTICIPANTS

AGUSTIN BARROILHET: Professor, Univ. of Chile Faculty of Law

ALVARO PEREIRA: Doctoral Candidate, Berkeley Law

AMANDA TYLER: Professor, Berkeley Law

AMNON REICHMAN: Robbins Collection Visiting Professor in Comparative Law, Berkeley Law

ANGEL OQUENDO: George J. & Helen M. England Professor of Law, Univ. of Connecticut School of Law

CRISTIAN VILLALONGA TORRIJO: Professor, Pontificia Univ. Católica de Chile Faculty of Law

EDGAR GONZALEZ LOPEZ: Justice, Consultative & Civil Service Chamber, Council of State of Colombia

ERIC RAKOWSKI: Professor, Berkeley Law

GUILHERME CANELA DE SOUZA GODOI: Regional Adviser of Communication & Information, UNESCO

JAVIER TAMAYO JARAMILLO: Former Justice of the Civil Chamber of the Supreme Court of Colombia

JAVIER VELASCO VILLEGAS: Master of Law Candidate, Berkeley Law

JULIO GAITAN BOHORQUEZ: Professor, Univ. del Rosario Faculty of Jurisprudence

MAXIMO LANGER: Professor, UCLA School of Law

ROSALINDE & ARTHUR GILBERT
FOUNDATION ISRAEL
STUDIES COLLOQUIUM

On Thursday, November 30th, Professor Amnon Reichman delivered a presentation on "Legal-Net: The Use and Misuse of Technology in the Regulation of Judges in Israel" at Berkeley Law in affiliation with the Berkeley Institute for Jewish Law and Israel Studies. Professor Reichman is the 2017-18 Robbins Collection Visiting Professor in Comparative Law and comes from Israel's University of Haifa. Legal-Net, established in 2010, is Israel's online judiciary management system. Professor Reichman, speaking on his paper of the same title, explored the implications of this vast concentration of judiciary data, as well as its effects on the regulation of judges and the unification of legal administration through information and technology.

■ ■ ■

BERKELEY LAW & UNIVERSIDAD
NACIONAL AUTONOMA DE
MEXICO DUAL MEET

From April 27-28, Berkeley Law and the Universidad Nacional Autonoma de Mexico collaborated in a dual meet conference, the first between the two universities. The event was organized by UNAM's Institute of Juridical Research (IIJ) and Dr. Susana Dávalos, Head of the IIJ's Graduate Department and a Berkeley Law JSD graduate. Presentations from Berkeley Professors Kenneth Ayotte and Meir Dan-Cohen covered private law and the philosophy of law. Professor Laurent Mayali and John Yoo were co-presenters of, "A Comparative Analysis of Counter-Terrorism Laws in Europe and the U.S." The second day featured presentations and commentary from Berkeley Law Professors Dan Farber, Justin McCrary, and Robert Cooter.



"The academics provided a strong framework for the discussion upon which country and international experts could contribute with practical examples and specific policy proposals." –Pablo Echeverri

The morning's discussion was expanded upon in the second session, "Judicial Culture and Public Expectation." Conversations in the afternoon session considered impartiality in judicial transparency. Additionally, participants discussed how accountability functions as a meeting point between institutional structure and judicial culture. A major point of discussion was "whether transparency entails a risk," and the possibility of attack on judiciaries as a result of transparency.

Dr. Javier Tamayo, former Justice of Colombia's Civil Chamber of the Supreme Court, critiqued the idea of impartiality with regard to the media's influence on judicial transparency. He found a problematic interplay between the judiciary and the media that occurs after a summary of decisions are publicized while the official *ratio decidendi* of Colombia's Constitutional Court is being written. Dr. Tamayo expressed concern for controversial cases over the influence of public debate and pressure on the judiciary before a *ratio decidendi* is published. "For instance, with the Arbitration Statute [Law 1563 of 2012], the Court declared that it was constitutional, but we waited six months to know why. In that period, different academic forums discussed the potential reasons. The Court may write its decisions based on these discussions. The concern is that these decisions might create precedent. Is the media reporting creating a precedent? Or is the *ratio decidendi*, released six months after the explanation of arguments, the one that creates the precedent?" Dr. Tamayo's questions were challenged by participants who advocated for the accessibility to information, "The pressure of the media and civil society is justified because they want to and should know."

Mr. Echeverri found it "beneficial to have a variety of perspectives and ideological positions that enriched the conversation. The academics provided a strong framework for the discussion upon which country and international experts could contribute with practical examples and specific policy proposals." For participant and Berkeley Law doctoral candidate Alvaro Pereira the experience was unique, "Not only for having the time to learn from experienced judges and legal scholars, but also for being able to propose alternative reactions to current phenomena and potential avenues for change." Symposium participants will each write a response paper to the symposium which the Robbins Collection hopes to publish in the summer of 2018 as a compendium for public and scholarly use.



Current Legal Issues in Taiwan and the United States

Civil Law and Common Law Perspectives: National Taiwan University

On October 20th, several Berkeley Law professors participated in a joint conference, “Current Legal Issues in Taiwan and the United States,” held in Taipei at the National Taiwan University’s College of Law. The conference brought together legal scholars from NTU, National Central University, and Berkeley Law, as well as a High Court Judge of Taiwan’s Intellectual Property Court and a Justice from the Constitutional Court of Taiwan to account for current legal issues within the realms of: (1) Regulation and governance in a commercial world; (2) Judicial reform and criminal court; (3) Separation of powers and justice.

Berkeley Law Professor and Robbins Collection Director Laurent Mayali joined Wang-Ruu Tseng, Dean of NTU’s College of Law, in delivering the event’s opening remarks. Berkeley Law’s Dr. George Horvath, Lecturer and Postdoctoral Fellow, presented in the first session, “Regulation and governance in a commercial world.” Dr. Horvath’s presentation, “The Challenge of Medical Product Identity,” considered the various difficulties of regulating drugs, medical devices, and biological products—three medical product categories authorized by the FDA and each subject to different regulatory congressional statutes. The closing session, “Separation of Powers and Justice,” included Berkeley Law Professors John Yoo, Amanda Tyler, Eric Rakowski, and Andrew Bradt. Professor Tyler’s presentation, “Abraham Lincoln, the Civil War, and Habeas Corpus,” looked critically at President Lincoln’s decision to suspend the writ of habeas corpus during the Civil War to detain Confederate soldiers outside of the criminal process, a topic that is not far removed from the subject of her newest book, *Habeas Corpus in Wartime*. Closing the final session was Professor’s Rakowski’s, “Custom as Public Policy: Tying the Hands of the Dead.” The presenters were joined in discussion by the Honorable Justice of the Constitutional Court Sheng-Lin Jan and Berkeley Law’s Andrew Bradt.

The jointly hosted event is the second time that NTU and Berkeley Law have joined forces to host a conference that brings light to current legal issues in both countries. In October of 2016, the Robbins Collection hosted a one-day workshop at Berkeley Law that included participants from the National Taiwan University, including overlapping guests like NTU College of Law Dean Wang-Ruu Tseng and High Court Judge Dr. Sungmei Hsuing.

The event marks the second occasion of the Robbins Collection and National Taiwan University joining forces to host a one-day conference that sheds light on current legal issues in both countries. In October 2016, Robbins hosted a similar event at Berkeley Law.

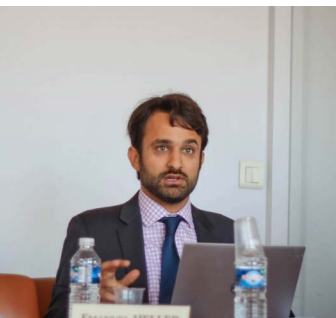
Photo of conference participants courtesy of National Taiwan University.

"To have the opportunity to engage in a host of comparative law discussions with scholars trained in different legal traditions, and to learn about similarities and differences between our traditions was illuminating."
-Amanda Tyler



Customary Law Today

Institut des Usages: Montpellier, France



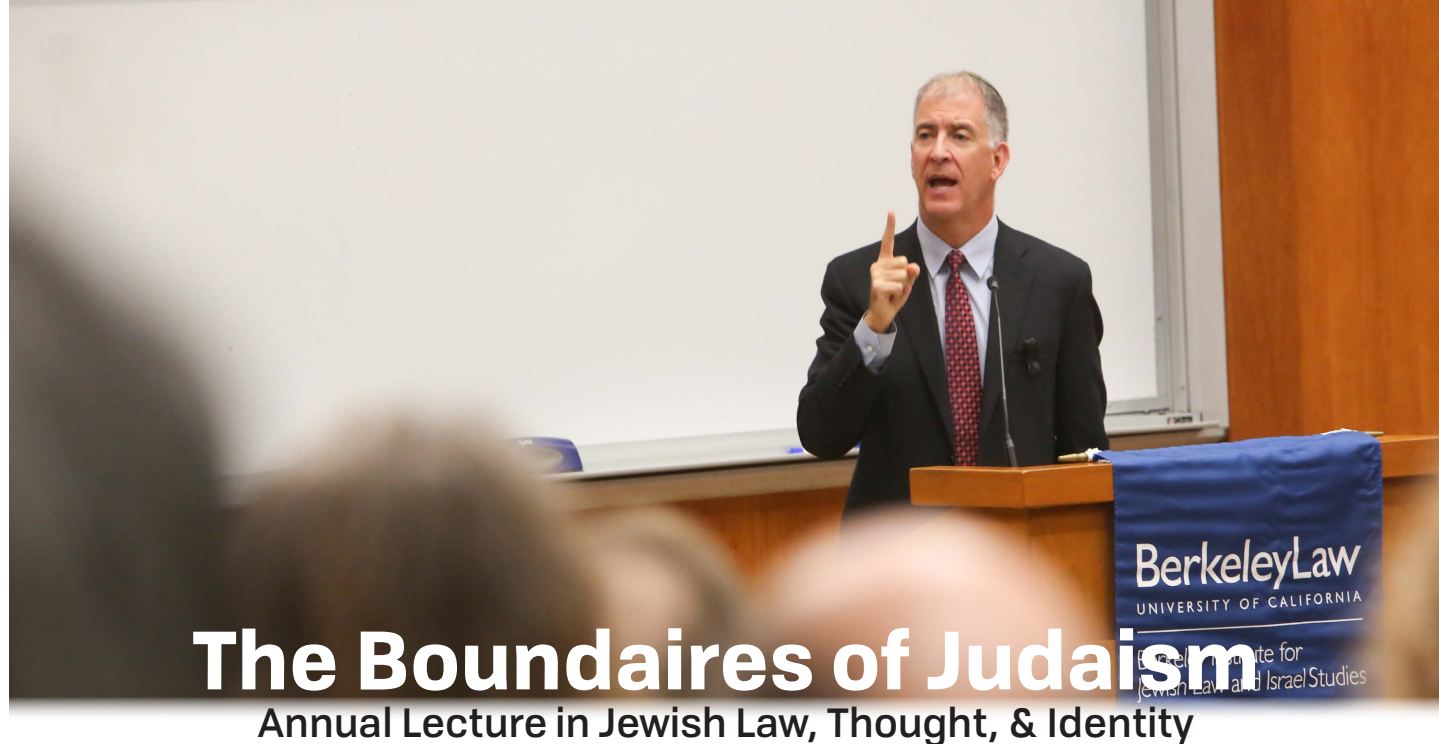
Photos by Simon Rossard.
Center: Professors Laurent Mayali & Pierre Mousseron. **Above:** Robbins Fellow Pablo Echeverri. Professor Amanda Tyler.

In late May, the Robbins Collection co-hosted a two-day workshop in Montpellier, France with the Institut des Usages entitled, “Customary Law Today.” The workshop falls into a long line of tradition at the Robbins Collection of bridging the gap between Berkeley Law and foreign legal institutions through international collaboration to provide leading scholars with a platform to engage with new ideas and issues at the forefront of contemporary legal research.

“Customary Law Today” brought together eighteen professors from around the globe, including five of Berkeley Law’s very own, to present papers and discuss customary law as it currently exists in the contemporary legal fields of: private law, constitutional law, business law, international law, criminal law, and philosophy of law. Berkeley Law Professor and Director of the Robbins Collection, Laurent Mayali moderated the event alongside Pierre Mousseron, Professor of Law and Director of Montpellier’s degree program in international trade law.

Professor Amanda Tyler, who presented on the influence of custom in American federal law, appreciated the workshop’s immersive approach to analyzing customary law, saying, “The conference provided an ideal setting for engaging with the work of other scholars exploring how custom has infused a great spectrum of law across many topics.” Professor Tyler’s presentation was preceded by Professor Eric Rakowski’s discussion on “Customs and Inheritance,” in the private law category. Rounding out Berkeley Law’s representation was Professor John Yoo, one of the two presenters for international law, whose research tackled the problematics of custom in international law. Robbins Collection Postdoctoral Fellow Pablo Echeverri was also in attendance to present, “The Role of Custom in Rule 144A Capital Markets Transactions,” in the business law category.

Presentations were followed by discussion, allowing scholars to analyze customary law within a particular category and within the scope of their own country, a process which Professor Tyler found valuable: “To have the opportunity to engage in a host of comparative law discussions with scholars trained in different legal traditions and to learn about similarities and differences between our traditions was illuminating.” In an effort to make complete papers available to the public for further study, a compendium of essays from the workshop was published by Springer in March, 2018.



Every year, the Robbins Collection partners with the Berkeley Institute for Jewish Law and Israel Studies to host the Annual Lecture in Jewish Law, Thought, & Identity. On October 17, community members and students—young and old—convened at Berkeley Law to hear Dr. Rabbi Donniel Hartman, President of the Shalom Hartman Institute, deliver “The Boundaries of Judaism,” a lecture that considered the communal Jewish identity.

“Who is a good Jew?” Dr. Hartman’s opening line was met with a few raised hands and laughter. His rhetorical inquiry expertly segued into an examination of why it is difficult to ascertain a collective Jewish identity from the evolving boundaries of subgroups. According to Dr. Hartman, distinctions between behavior that is tolerable, acceptable, or deviant create the boundary lines of belonging to a social group. A “shared ethos” of the Jewish community is lost when the denomination’s subgroups problematize the notion of tolerance and disregard a pluralism of belonging.

A compelling speaker, Dr. Hartman stressed the importance of understanding and accepting social differences in order to achieve a sense of community. “Attitudes toward difference threaten our communal life,” he cautioned while promoting the idea of pluralism. If an individual is free to belong to a plurality of social groups, a shared ethos is possible with the understanding that to be Jewish does not mean that one must ascribe

solely to the boundary lines of a singular denominational subgroup.

Dr. Hartman’s book by the same title delves into these ideas further and applies the Talmud to his arguments. His lecture was well received by audience members as a promotion of positive behaviors beneficial to all communities, religious or not.



Top: Rabbi Dr. Donniel Hartman.
Upper right: Lecture attendee.
Lower left: Rabbi Dr. Donniel Hartman.
Lower right: Lecture attendee.
Photos © Laura Turbow.

FURTHER READING:

[*Putting God Second: How to Save Religion from Itself*](#) (Beacon, 2016)

[*The Boundaries of Judaism*](#) (Bloomsbury Academic, 2007)

FELLOWS & FOLIOS

Get to know our newest visiting fellows in the Robbins Fellow Spotlight and read the newest publications from Robbins affiliated scholars.

AGNÈS DESMAZIERES

Robbins Fellow Spotlight

In June, the Robbins Collection welcomed Agnès Desmazières, a French researcher whose work focuses on the Catholic Church as it pertains to history, theology and canon law. With materials and resources from the Robbins Collection, Agnès was able to expand her ideas on the interdependent relationship between canon law and theology, as it developed in European countries from the medieval Church into contemporary Christianity. Her approach to theological research is considerate of a turn of phrase from Pope Francis: “Dialogue is much more than the communication of truth.”

Agnès’ theological focus on canon law is largely why she chose to conduct research at the Robbins Collection at Berkeley Law. She explained that twentieth-century canonist texts and journals relating to the medieval church are not as accessible in France. (A search for ‘canon law’ on UC Berkeley’s LawCat catalogue restricted to the Robbins Collection alone yields 6,936 results). “Canon law is involved in the theological debate and is important in order to relate theory and practice,” Agnès says. Theological dialogue is a communication of truth for Agnès—a dialogue functioning within dimensions of emotion, history, culture, and spirituality. A historical approach, “helps to understand how a theological and canonical debate is influenced by a particular cultural context and is also one moment of a longer history.”

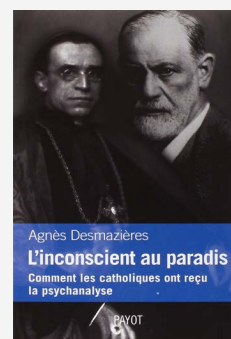
This is not the first time Agnès has been a fellow with the Robbins Collection. Five years ago during her first fellowship with Robbins, she examined psychology’s impact on twentieth century canon law—more specifically, the impact on the role of priesthood. The research from her first fellowship was included as part of a paper she presented at the University of Lyon, currently in preparation to be published. Agnès is the author of the book, *L’Inconscient au paradis: Comment les catholiques ont reçu la psychanalyse*, a text that culminated from the subject of her dissertation—the Church’s contentious relationship with psychoanalysis. As part of her research, Agnès worked in the Vatican’s archives to better understand how Catholic theologians and medical experts pressured the Church to recognize psychoanalysis.

A remarkable scholar, Agnès earned her doctorate in history from the European University Institute in Florence in 2009 and defended her doctorate in theology in September at the Centre Sèvres-Facultés Jésumes de Paris. In early 2017, Agnès co-hosted a seminar, “Psychoanalysis and Church,” for Césor in France and taught courses at the Institut d’Études Politiques de Paris. Following her fellowship, Agnès will teach theology at the Centre Sèvres-Facultés Jésumes de Paris and the Catholic University of Paris.



Our new profile series shines a light on the scholars who visit Berkeley Law as Robbins Collection Visiting Fellows. These talented academics utilize the Collection’s texts to further their legal research.

■ ■ ■



(Payot Libraire, 2011).

MARIA SOLE TESTUZZA



COLLECTION CLOSE-UP:

Dr. Testuzza utilized theological postulations from Baltasar Gomez de Amescua's *Tractatus de potestate in seipsvm* (1609), for the findings in her second book. Gomez de Amescua, a Spanish lawyer who took on a new viewpoint in retelling the theological idea of *dominium sui*, contributed to the legal recognition of a dominium over the self.

From August through September, the Robbins Collection proudly hosted the return of Maria Sole Testuzza, an Italian scholar whose work examines the historical emergence of legal subjectivity and the juridical relationship between the individual and the body. Since receiving her doctorate from Italy's University of Macerata in 2008, Dr. Testuzza has written two books, taught university courses, and published papers in the field of human rights, particularly with regard to postulations of self-ownership and the historically transforming "representation of a potestas over oneself and over one's own body." Rather than base her conclusions on a single doctrine, Dr. Testuzza uncovers the complexities of the issue by reconciling the numerous disputes between legal sources and moral theology texts from the 16th through the 18th century.

Dr. Testuzza was a Robbins Fellow once before in 2009 when she was writing her first book, *Tra cielo e terra: I congegni dell'obbedienza medievale*, (Giappichelli, 2011). On the basis of medieval canon law, she investigated the medieval concept of obedience as a multifaceted and dynamic juridical category. In late 2016, Dr. Testuzza published her second book, *Ius corporis, quasi ius de corpore disponendi*, (Giuffrè, 2016), in which she used the *Tractatus de potestate in se ipsum* by Baltasar Gomez de Amescua to explore the juridical topic of self-ownership. By reconciling the texts of medieval *ius commune*, 15th and 16th century jurists, Castilian law, and Spanish scholastics, Gomez de Amescua transformed the theological postulation of a *dominium super suos actus* into a legal recognition of a dominium over one's own body and produced a "sort of taxonomy of the legal use of this special property."

While at Robbins, Dr. Testuzza's focus was on expanding the research and conclusions laid out in *Ius Corporis*. She turned her scholarly attention to the historical development of rights, duties, and the body in the modern school of natural law. To investigate further into the topic of corporeal duties, Dr. Testuzza analyzed texts from the Robbins Collection such as, seventeenth-century works by Spanish Jesuit Luis de Molina, seventeenth-century commentaries on the work of Hugo Donellus, and seventeenth-century *dissertatio* by German scholar, Johann Samuel Stryk, among others.

Upon completing her visiting fellowship, Dr. Testuzza returned to Italy where she works as a research fellow at the University of Florence's School of Law. In Florence, she continues to investigate the *iura in corpore* between the seventeenth and eighteenth centuries.

BY THE NUMBERS: Since 1990, the Robbins Collection has supported nearly 150 visiting scholars with academic fellowships—an average of six visiting fellows per year.

RAFFAELLA BIANCHI RIVA

Raffaella Bianchi Riva, an Italian academic and Assistant Professor at the University of Milan, visited Berkeley Law from September until late November to continue her research on the legal effects of scandal in the Middle Ages. Dr. Bianchi Riva currently teaches courses on the history of the legal profession in the university's department of Italian and supranational law.

Dr. Bianchi Riva's first research focus was professional legal ethics in the early Modern Age. In 1997, Italy's National Bar Council approved the first official Code of Conduct for Italian Lawyers. The subsequent debates about the regulation of professional ethical conduct brought a question to Dr. Bianchi Riva's mind that would germinate into much of her research: "Are legal ethics—the rules, the duties—ethical and moral, or legal?" Since then, Dr. Bianchi Riva has studied how professional legal ethics were historically shaped into a deontological model, one which emphasizes the relationship between duty and the moral obligation of an action, regardless of the consequential end.

In 2009, Dr. Bianchi Riva received her doctorate in the history of institutional doctrines from the University of Insubria in Como, Italy. Her thesis traced the two-fold moral obligation that a lawyer is morally bound to both the judicial system and the client back to its roots in jurisprudence and moral theology of the Middle Ages. Her research from her thesis evolved into her first book:

L'Avvocato Non Difenda Cause Ingiuste: Ricerche sulla deontologia forense in eta medievale e moderna (Giuffrè. 2012). When speaking on the topic of deontology in the legal context, Dr. Bianchi Riva considers the "continuous balance [of] different values" as a constant moral task for the lawyer. She says, "For instance, from one end there is the duty of confidentiality [to the client], and from the other end there is the duty to truth and honesty. The difficult work is for the lawyer to balance out these different values." Dr. Bianchi Riva's second book, *La Coscienza Dell'Avvocato: La deontologia forense fra diritto e etica in eta moderna*, analyzes the constant importance of a lawyer's conscience in guiding their professional decisions, a concept which still lingers in the profession today.

Dr. Bianchi Riva is currently researching the legal effects of scandal in the Middle Ages, "in the broader context of the relationship between law and society from one end, and law and ethics from the other." Her comparative approach highlights the shifts in accepted customs, values, and habits of past institutions, including the practice of waiving laws to prevent social reactions. Dr. Bianchi Riva clarified: "Scandals arose and still rise when people cry that a situation has gone against their values and habits. In medieval canon law, legal rules could be waived in order to avoid scandal. A lawful act could be prohibited, or on the contrary, an offense could be tolerated depending on the timing of the scandal." Speaking on the goals of her latest research, she says, "after focusing on medieval canon law, I can compare the results of canon law with other medieval systems in the early and late middle ages to open up the research about canon law [in comparison] to other legal systems."

"Are legal ethics—the rules, the duties—ethical and moral, or legal?"



RECENTLY PUBLISHED

The latest books, essays, and more from past and present Robbins Collection scholars

BOOKS + SCHOLARLY MONOGRAPHS

THE SACRIFICIAL
LAWS OF LEVITICUS
AND THE JOSEPH
STORY

CALUM CARMICHAEL

THE SACRIFICIAL LAWS OF LEVITICUS AND THE JOSEPH STORY by Calum Carmichael

The Sacrificial Laws of Leviticus and the Joseph Story is the latest contribution to an impressive body of work by retired Cornell University Professor, preeminent David Daube scholar, and esteemed scholar of Biblical and Jewish law, Calum Carmichael. In *Sacrificial Laws*, Dr. Carmichael studies Leviticus 1–10 as a response to and commentary upon the story of Joseph, offering a new understanding of the complicated tale of the first Israelite family. The text is available in hardcopy and ebook formats. (Cambridge University Press)

IUS CORPORIS, QUASI IUS DE CORPORE DISPONENDI by Maria Sole Testuzza

Published in late 2016, *Ius Corporis* is the second book from Italian human rights scholar, Maria Sole Testuzza. Drawing from the early 17th century text, *Tractatus de potestate in se ipsum*, the book examines the emergence legally recognizing an individual's *dominium super actus*. Dr. Testuzza's work employs historically opposing legal and moral arguments to consider the transforming posulations of corporeal necessity, self-ownership, and obedience in a legal context. Hardcopies are available for purchase. (Guiffrè Editore)

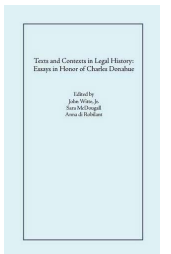


THE BEGINNINGS OF ISLAMIC LAW: LATE ANTIQUE ISLAMICATE LEGAL TRADITIONS by Lena Salaymeh

The Beginnings of Islamic Law by Lena Salaymeh—Professor of Law at Tel Aviv University and former Robbins Postdoctoral Fellow—applies critical theory to contextualize the study of Islamic law as an entanglement of law and history. Resting on the idea that law is always historically situated, the book critiques methodologies of holistic comparison and an “origins driven” approach to the study of Islamic law. Dr. Salaymeh compares Jewish Law and Islamic law within specific legal areas, such as family law and international law, and within their relative socio-political contexts to produce measured, historical comparisons. The text is available for purchase in hardcopy format and in a digital version for download. (Cambridge University Press)

TEXTS AND CONTEXTS IN LEGAL HISTORY: ESSAYS IN HONOR OF CHARLES DONAHUE, Edited by John Witte, Jr., Sara McDougall, and Anna di Robilant

Harvard Law Professor Charles Donahue, “a lawyer and a legal historian of the first rank,” serves as the inspiration for this [volume of essays](#) published by the Robbins Collection. Each of the volume's 26 essays from leading historians are influenced by Donahue's insightful methods of understanding both the text and context of a primary source. Martha Minow, Donahue's professorial colleague at Harvard Law writes that he “guided generations of scholars to focus on the words, structures, and assumptions embedded in legal texts, and then to ask daring questions about context.” The text can be purchased through the Robbins Collection website, via Amazon or Barnes & Noble. (The Robbins Collection)





“THE 2015 POWER-BALANCING REFORM IN COLOMBIA” by Pablo Echeverri

Robbins Postdoctoral Fellow Pablo Echeverri was recently published in the *Chicago-Kent Journal of International and Comparative Law*.

His paper, “The 2015 Power-Balancing Reform in Colombia,” examines the failure of Colombia’s 2015 constitutional reform to expunge itself of a “revolving door” incentive for judicial officers and achieve a meaningful restructuring of the nation’s judiciary. A Robbins Postdoctoral Fellow since 2015, Mr. Echeverri will join the Duquesne School of Law faculty as an Assistant Professor in the summer of 2018. The full paper can be read online, courtesy of the [Chicago-Kent Journal of International and Comparative Law](#).

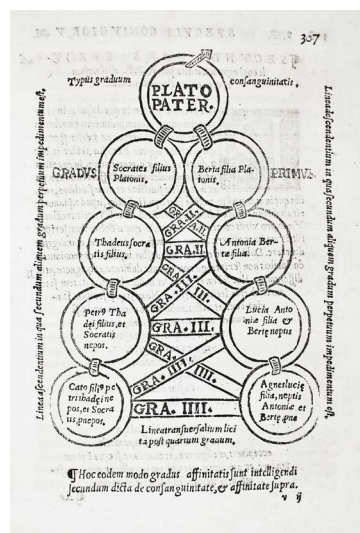
“ISLAMIC LAW REFORM: BETWEEN REINTERPRETATION AND DEMOCRACY” by Mohammad Fadel

“Islamic Law Reform,” by University of Toronto Faculty of Law Professor Mohammad Fadel was recently published in volume eighteen of Brill’s [Yearbook of Islamic and Middle Eastern Law](#). Professor Fadel visited Berkeley Law in early 2017 to deliver his lecture, “Is Islamic Law ‘Religious’ Law?” as part of an event by the Robbins Collection and Berkeley Law’s *Journal for Middle Eastern and Islamic Law*. In his paper, Professor Fadel considers the pre-19th century writings of Sunnī jurists as an articulated body of rules that “provide a coherent basis to public law” with the potential for reforming the historical rules of Islamic jurisdictional law. “Islamic Law Reform” can be read by purchasing Brill’s *Yearbook of Islamic and Middle Eastern Law*.

RECENTLY PUBLISHED ESSAYS + FILM



TAMING NEW MEXICO,
PBS Program



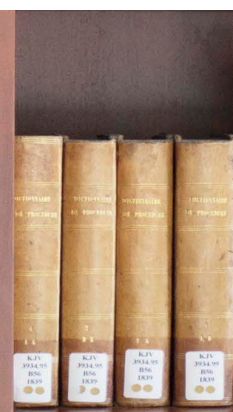
Above: Page detail from the *Speculum Conjugiorum*, Alfonso de la Cruz, Mexico: 1556. Photo ©The Robbins Collection.

Taming New Mexico, a new program on PBS New Mexico, includes images from Robbins Collection holdings that figure into the long history of New Mexico’s transition from a Spanish-Mexican rule of law into today’s legal system. The documentary tracks the origins of New Mexico’s federal court system, covering the figures and key issues that shaped

New Mexico’s federal judiciary. The Robbins sources for the program include: *Recopilacion de leyes de los reynos de las Indias* (Madrid, 1681); *Política Indiana* by Juan de Solórzano Pereira (Madrid, 1648); and *Speculum Conjugiorum* by Fray Alonso de la Vera Cruz (Mexico, 1556). The aforementioned sources are also featured in the Robbins Collection digital exhibit, [California’s Legal Heritage](#). *Taming New Mexico* can be streamed in its entirety on [Youtube](#).



BY THE NUMBERS: Since 1992, the Robbins Collection has published twenty-four books on topics related to legal history. Five of those were part of an ongoing series on the written works of renowned biblical law scholar, David Daube. Daube was Director of the Robbins Collection (known then as, the Robbins Hebraic and Roman Law Collections) from 1970 until his retirement in 1981.



COLLECTION CATALOGUE

by Jessie Sherwood

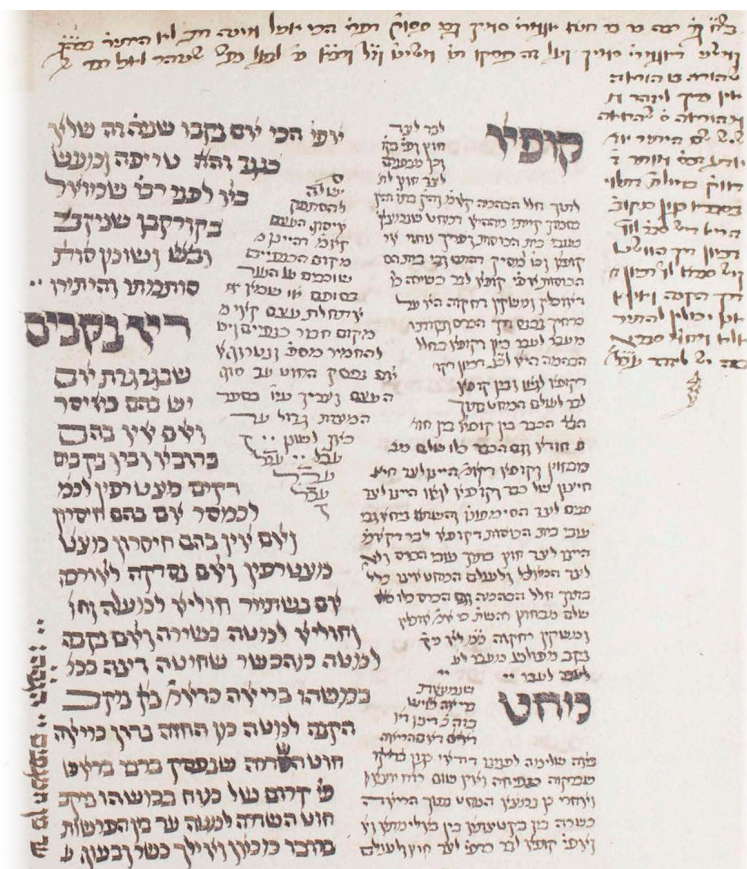
Manuscript Cataloguer
Jessie Sherwood shares
the detailed histories
behind two recently
catalogued Collection
acquisitions.

Manuscript 307: The Small Book of Commandments with Glosses

Copied in the mid-fifteenth century by four scribes, Robbins Manuscript 307 contains Isaac ben Joseph of Corbeil's *Sefer Mitzvot Katan*, also known as the *Ammude ha-Golah*, with the glosses of his student, Perez ben Elijah of Corbeil, cunningly and elegantly written around, alongside, and within the main text.

Well-received in its own day, the *Sefer Mitzvot Katan* enumerates and explicates the 613 commandments, interspersed with homilies, parables, and exegesis. It survives in some 170 manuscripts dating from the 1290s to the early sixteenth century. Perez ben Elijah provided an early and authoritative gloss to the text, and these are incorporated into most of the *Sefer Mitzvot Katan*'s extant copies.

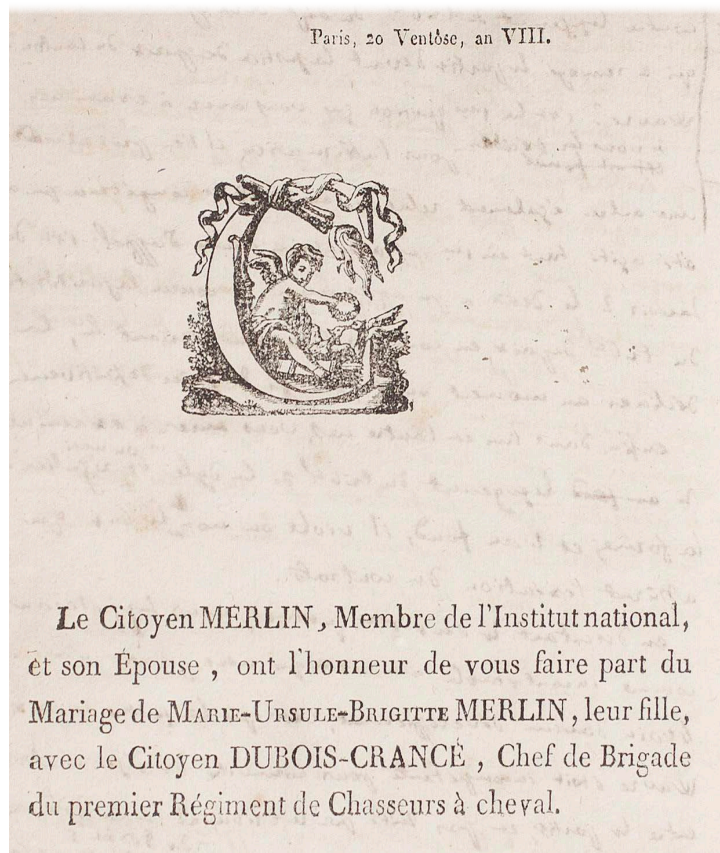
Other glosses and comments have been added to the margins of Manuscript 307, including extracts from the Samson ben Zaddok's *Sefer Tashbez*, the *Terumah Hadeshah*, and references to Solomon of Troyes, among others. This manuscript has been signed by one of its scribes and three separate censors. Meir ben Isaac, a scribe active in northern Italy, and Isaac of Arles, an internal censor, signed the recto of the first folio. Christian censors, Laurentius Franguellus and Giovanni Domenico Vistorini, signed the verso of folio 122 in 1574 and 1619 respectively. This manuscript is also notable for its many and fanciful pen and ink drawings, some of which defy ready identification.



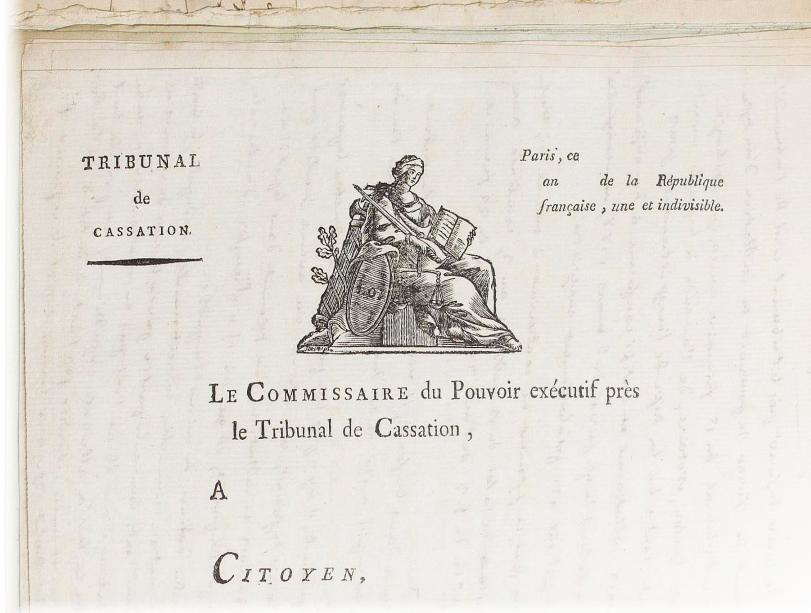
Above: Robbins Manuscript 307, *The small book of commandments with glosses*, Isaac ben Joseph, of Corbeil, Italy; 1450. Photo ©The Robbins Collection. Top: Detail of Manuscript 307.

Manuscript 232: Réquisitoires autographes

Philippe-Antoine Merlin enjoyed a notable career in French law and politics: deputy for Douai to the États généraux in 1789, president of the Convention nationale and a member of the Comité de salut public in 1794, commissioned to report on civil and criminal legislation in the same year, a member the Institut national des sciences et des arts from 1795 onwards, Minister of Police in 1795 and then Minister of Justice in 1796, and member of the Directoire exécutif between 1797 and 1799. Under the Consulate, Merlin became commissaire for the government at the Tribunal de Cassation, a court of error created in 1790. In 1804, the Tribunal de Cassation became the Cour de Cassation, and Merlin became its procurer-general. As such, he played a role in the



Top right: Robbins Manuscript 232, *Réquisitoires autographes*, Philippe-Antoine Merlin, France: 1754–1804. Photo ©The Robbins Collection. Above: Page detail of Merlin's daughter's marriage announcement. Photo ©The Robbins Collection.



application and interpretation of the Code civil des Français, or Napoleonic Code, also promulgated in 1804. Banished from France during the Second Restoration in 1816, Merlin spent his years in exile writing the *Répertoire de jurisprudence* and *Recueil alphabétique des questions de droit*.

Robbins Manuscript 232 contains a collection of thirty-eight requisitions, or prosecutorial addresses, written by Merlin between 1801 and 1804, while he was commissaire for the government at the Tribunal de Cassation. Each requisition contains a brief case summary with its number, the date, and the names of the parties in the upper left corner. Many concern cases involving obligations or transactions contracted before 1789 in accord with laws that conflicted with those enacted since the Revolution. Thus, it provides a unique window into French law before the adoption of the Napoleonic code. Written on loose paper that was subsequently bound, the requisitions were heavily edited. There are numerous corrections, cancellations, and interpolations.

Many of these requisitions were written on the back of announcements, letters addressed to Merlin, notices, forms, and other ephemera. These include multiple copies of his daughter's marriage announcement and an invitation to dine with the Premier Counsel, Napoléon Bonaparte who ruled France as First Consul before his coronation as emperor in 1804.

Lloyd M. Robbins

THE ROBBINS RECORD

United States v. Robbins: A Brief History

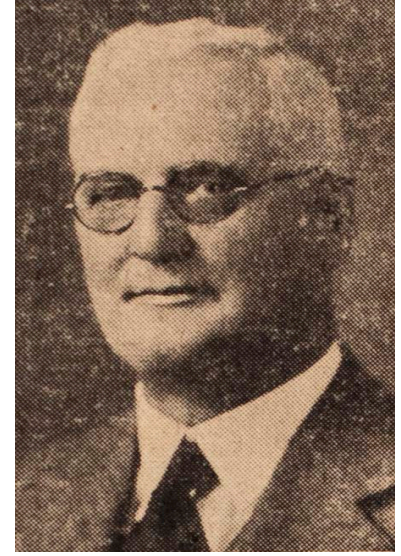


Photo © The Robbins Collection.

“The Rights of the Wife”

In 1918, Reuel and Saditha Robbins—parents of the Robbins Collection Founder, Lloyd M. Robbins—were wealthy bank owners living in California’s Suisun City. That year, the couple attempted to file separate tax returns on the basis of community property, each for one-half of the income from their jointly accumulated property. The separate returns were denied by the IRS on the grounds that the taxes be assessed as if all income belonged to Mr. Robbins. Saditha Robbins was denied the right to claim one-half of the income from the community property she shared with her husband.

Despite the IRS’ demands, the Robbins’ were not wrong to assume their separate returns fell under California’s community property guidelines. In the Constitution of California, adopted in 1849, community property was outlined as such: “All property, both real and personal, of the wife owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as to that held in common with her husband,” (XI, 14). The constitution’s inclusion of community property rights can be traced back to California’s roots under Spanish-Mexican rule and civil law texts such as the *Lex Visigothorum* and the *Fuero Juzgo*.

Despite California’s inheritance of civil law principles, the state’s legislature never agreed upon a clear definition of “the rights of the wife” in the decades following 1849. By the early twentieth century, a wife’s interest in community property devolved into an expectancy. To the state and the federal government, a wife did not have a real, vested in-

terest in community property until her spouse died, or the marriage ended in divorce. The unclear definition of “the rights of the wife” to community property, and the taxation of that property, resulted in legal action on the part of the Robbins family after Reuel Robbins passed away in 1919. The Robbins family filed suit to recover \$6,788.03—the amount Reuel would have saved if the couple had been allowed to file separate tax returns. Even though the Robbins family filed suit in 1919, the case *United States v. Robbins* would not reach the U.S. Supreme Court until late 1925. During this time, Lloyd Robbins’ efforts in community property cases and issues produced resounding change to California’s community property statutes.

Lloyd Robbins closely followed the legal proceedings of *Blum v. Wardell*, which ruled in 1920 that a wife does not have to pay estate taxes on the whole community property she obtains after the death of her spouse. Decided in a northern California District Court, *Blum v. Wardell* declared that a wife held a vested interest in her half of community property. Since half of the community property was considered to be the wife’s, an estate tax could only be imposed on the half left to her by her deceased husband. Though the case dealt specifically with estate and inheritance taxes, the ruling had implications for how the state would approach income tax on community property. In 1921, the case was moved to the Circuit Court of Appeals, Ninth Circuit, where the court delivered the same ruling. While the case was presented in the Court of Appeals, Lloyd Robbins sat in as an *amicus curiae* and advocated for a refund to the California taxpayers who

paid estate taxes on the whole of community property. The federal government, in an effort to avoid retroactive refunds on collected estate taxes, requested a *writ of certiorari* from the U.S. Supreme Court after the ruling in the Court of Appeals. When the Supreme Court denied the *writ of certiorari*, the original decision was affirmed.

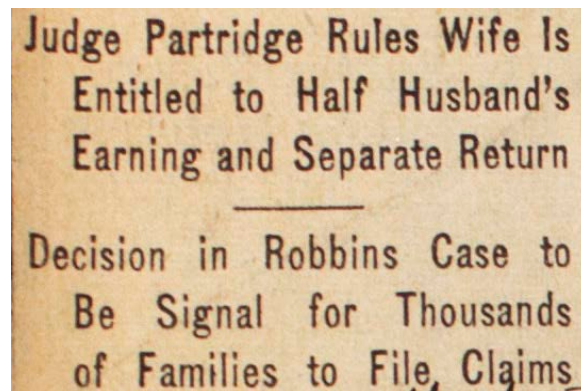
In March of 1924, United States Attorney General Harry Daugherty issued a final opinion on *Blum v. Wardell* that supported a wife's vested interest. Daugherty's decision proved to be invalid after his resignation shortly after, but his successor, Attorney General Harlan Stone, arrived at the same conclusion. The federal government pushed back against General Stone's decision to prevent a pay out of retroactive refunds to California taxpayers. In 1924, Lloyd Robbins and California Senator Samuel Shortridge, represented California taxpayers and submitted arguments to uphold the decisions of Generals Stone and Daugherty. Lloyd Robbins argued that California wives held a vested interest in community property since California achieved statehood in 1849, a right bolstered by the state's lineage to Spanish civil law codes. By 1925, Secretary of Treasury Andrew Mellon refused to publish Stone's official opinion under the grounds that it did not thoroughly go into the question of income tax. Secretary Mellon requested test cases be taken up to settle the issue in court, and one such test case was *United States v. Robbins*.

"A Mere Expectancy"

On April 29, 1925, Judge John Partridge heard the Robbins case in a northern California District Court. The case questioned whether a wife has a vested or expectant right in community property and the ruling would determine if wives had the right to file separate federal income taxes on their share of community property. In his ruling, Judge Partridge held the right of a husband and wife to file separate returns for income tax purposes. Judge Partridge stated: "It is the marriage which creates ownership; death or divorce merely give possession. And the truth and substance is, that

only one-half of the income really belongs to the husband; the other half, in law and right and justice, to the wife."

In May, 1925, *United States v. Robbins* was moved to the Supreme Court as an income tax test case. If the court were to side with Judge Partridge's original ruling, it was estimated that the Treasury would have to refund \$77 million dollars to California taxpayers in inheritance and income taxes. On December 7, attorney Peter Dunne argued that the principle of community property existed in California since the Spanish occupation. On January 4, 1926, the U.S. Supreme Court reached a decision, holding that in California the interest of a wife in community property was that of "mere expectancy." According to the ruling delivered by Justice Oliver Wendell Holmes, the whole community is vested in the husband, a decision that reversed the district court's ruling. Shortly after, Robbins and Dunne filed for a rehearing, which was denied by the Supreme Court.



It was not until 1927 that Lloyd Robbins' saw his efforts come into fruition through legislation. The Civil Code of California legislated in 1927, "The respective interests of the husband and wife in community property during the continuance of the marriage are present, existing and equal interests," (161a). Though the statute could not be applied

retroactively to Robbins' case, it did apply to community property acquired after 1927. Lloyd Robbins continued to work in community property law and in 1929 he published a translation of laws and commentary related to community property from the *Leyes de Toro*, a compilation of laws initiated by Spanish rulers Ferdinand and Isabella in 1505. In 1940 he published translations of community law writings by sixteenth-century Spanish jurists whose commentaries focused on the provisions of Visigothic law that granted vested rights to wives in community property. He was the first scholar to translate these writings in English and made them available to the public at the request of the California State Bar Association. Without Lloyd Robbins' professional and personal interest in community property and California's early roots in civil law, the Robbins Collection at Berkeley Law would not exist today.

ON THE HORIZON

*A preview of what the
Robbins Collection has
in store for 2018.*



NEW WEBSITE FOR THE FIRST BOOKS PRINTED IN THE AMERICAS

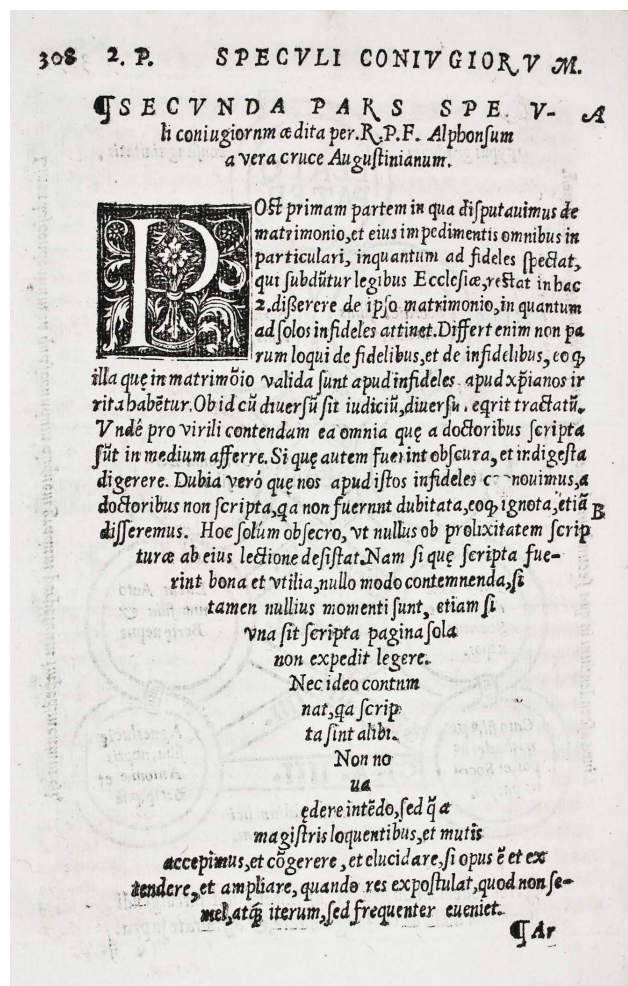
The Robbins Collection is partnering with Primeros Libros de las Americas to digitize two rare legal texts as part of the Primeros Libros digital collection. The collection was created in an effort to account for the 220 titles known to have been printed in the Americas before 1601. Currently, 136 digitized surviving titles are featured on the collection's [website](#) thanks to the collaborative effort between 21 participating institutions.

The Robbins Collection contributed a 1556 volume of the *Speculum Conjugiorum*, as well as a volume of the *Advertencias para los confessors de los naturales*, printed in 1600. The digitized texts will appear on the Primeros Libros website in the coming weeks. *Speculum Conjugiorum* was printed in Mexico City by the first printer of America, Juan Pablos. The volume is one of the first American books to be printed in italic type and one of the earliest American law books. The Robbins Collection holds one of four copies in the United States. Written by Mexican cleric Fray Alfonso de la Vera Cruz, the text deals with matrimonial legal issues. *Advertencias*, written by Fray Juan Bautista, is a manual of rules related to the sacrament of confession. It is written in Spanish, with a side-by-side page translation in Nahuatl, the Aztec language.

As a whole, the digital collection commemorates a significant moment in history for printing in the New World and provides a scholarly database for primary sources. The digital collection was founded in part by Julianne Gilland, former Deputy Director for the Robbins Collection and current Deputy Director of the Museum of Art at Colby College in Maine.

UPCOMING

Online Updates



Below: Page detail from the *Speculum Conjugiorum*, Alfonso de la Cruz, Mexico: 1556 Photo ©The Robbins Collection.

Follow the Robbins Collection on [Twitter](#) for updates on these projects and more: @UCBRobbins



UPCOMING

People + Publications

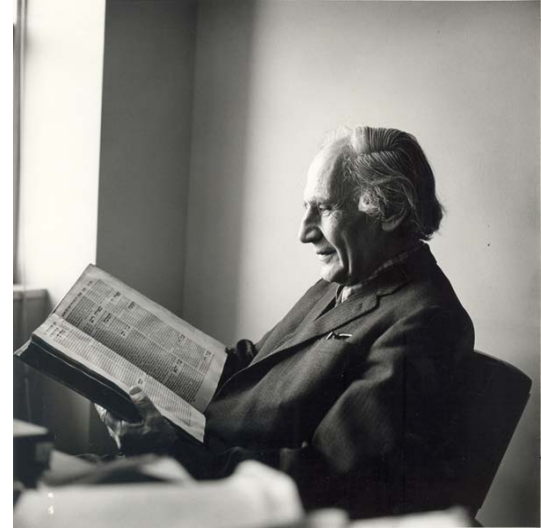
AWAY FIELD PLACEMENT PROGRAM: STUDENT INTERVIEWS

Berkeley Law's Away Field Placement Program gives J.D. students the opportunity to receive academic credit for legal work performed for a non-profit or government agency outside the Bay Area. The program allows students to work in approved agencies in places such as Australia, China, Egypt, Haiti, and Switzerland, among many others, but does not cover housing and travel costs. To alleviate the burden of travel costs on students, the Robbins Collection is sponsoring four J.D. students in their Away Field Placements.

The four Robbins-sponsored students worked in Belgium, Chile, South Africa, and South Korea. In order to qualify for a Robbins sponsorship, the student must be working in a country, region, or city outside the U.S. that is characterized by civil or religious law traditions and institutions. Students may also qualify if the work they perform is on behalf of an agency that focuses on an area of civil or religious law. In the spring of 2018, the 16 total students returned to Berkeley and spoke about their experience in an event held by the Away Field Placement Program. The Robbins Collection will feature profiles and interviews with the four sponsored students.

BY THE NUMBERS: A total of 218 pieces of writing by David Daube have been published in the five volumes of the Collected Works of David Daube series.

David Daube.
Courtesy of
the Boalt Hall
Law School
Archives. ©
Marshall
Berman
Photography.



COLLECTED WORKS OF DAVID DAUBE: VOLUME SIX FORTHCOMING

In 1992, the Robbins Collection published *Talmudic Law*, the first volume in the *Collected Works of David Daube* series. The four publications in the series that followed *Talmudic Law* are a testament to vast profundity of David Daube's writing, which has examined topics such as New Testament law, Roman law, ancient history, and linguistics. The presently unnamed sixth volume will focus on Daube's Roman law writings and will feature a series of transcribed lectures on the linguistic, social, and philosophical aspects of Roman law. Additionally, the volume will include two essays on linguistics and law, as well as a transcribed lecture on Roman law that was originally delivered to the editors of the *Natural Law Forum* (currently known as the *American Journal of Jurisprudence*). Volume six is in preparation to be published later this year.

FIVE VISITING FELLOWS IN 2018

The Robbins Collection will host five visiting fellows this year. Each of the five fellows will work on their research at the Robbins Collection for two months. Fellows will arrive consecutively from May through September. The incoming group of visiting fellows includes academics from Arizona State University, University of Macerata, University of Salento, University of Siena, and Universidad del Rosario. The Robbins Collection will explore the work of these scholars in the [Robbins Fellow Spotlight](#) profile series.



ROBBINS

COLLECTION

BerkeleyLaw
UNIVERSITY OF CALIFORNIA