

The Robbins  
Collection and Research  
Center in Religious  
and Civil Law

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**DIGEST**

**2019**

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THE ROBBINS COLLECTION  
AND RESEARCH CENTER IN  
RELIGIOUS & CIVIL LAW

DIGEST

2019



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UNIVERSITY OF CALIFORNIA



# Director's Note

## NEW STAFF

The Robbins Collection welcomes Ryan Furtkamp as our communications and publications manager. Ryan worked at Stanford University Press and the University of California Press for the past seven years. He will work on the publication of our books and the annual digest, create digital exhibits, and write articles for the Robbins Collection website.

■ ■ ■

We are happy to announce that Jessie Sherwood is joining the Robbins Collection as Associate Librarian. For the past two years Jessie has been a Manuscript Cataloger at the Robbins Collection, having cataloged a backlog of 400 manuscript codices, fragments, and documents. Jessie has a PhD in medieval studies from the University of Toronto and an MLIS from the University of Washington.

Since its creation by Lloyd M. Robbins, the Robbins Collection has been known in the international scholarly community for its extensive holdings in civil and religious law embracing various legal systems from the 12th to the 21st century. Following Lloyd M. Robbins farsighted wish to create an institution that would serve as a resource for solving current legal challenges, the Robbins Collection has become over the years one of the most preeminent research center for the comparative legal studies of religious and civil law bringing together students and legal scholars from all over the world. This digest highlights the research projects, workshops, conferences, lectures, and publications that best define the work of the Collection and its research center for the past year. We are particularly proud of the long lasting intellectual bonds and institutional connections that developed over the years through a large network of visitors and alumni whose dedication and faithfulness is key to the Robbins Collection's future developments and impact as a leading research center in religious and civil law.

By fostering scholarly collaborations and supporting new research along the academic perspectives anticipated by Lloyd M. Robbins, the Robbins Collection and its Research Center will continue to highlight the contemporary relevance of comparative legal studies in the diverse religious traditions and civil law systems. This past year witnessed the presentation and development of various scholarly events on a number of topics frequently found in national headlines, from the relationship between Islamic law and civil law in Europe to the sexual abuse crisis in the Catholic Church. In the course of these intellectual pursuits, research fellows, visiting scholars and collaborators have made important contributions to their fields. They all reflect some of the most notable Robbins' accomplishments of this past year. They also serve as a sign of what is to come in the future.

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

# NEWS & EVENTS

*A look back at the conferences and symposiums that took place at the Robbins Collection, and a look forward at future news and events.*





# Reconciling Islamic and European Civil Laws

## Avenues and Obstacles to the Integration of European Muslim Immigrants

The influx of Muslim immigrants to European countries like France and Germany over the past several decades continues to influence the makeup of the population’s cultural and religious identities. The percentage of Europe’s population that is Muslim grew to an estimated 4.9%—an estimation that is projected to grow in the next several years with the rise of Muslim refugees seeking asylum. How are the legal differences between Islamic law and the predominant system of European Civil Law reconciled to ensure that all religious, cultural, and minority groups are recognized and accommodated? This issue, and its tangential lines of conflict, were the focus of the conference, “Reconciling Islamic and European Civil Laws: Avenues and Obstacles to the Integration of European Muslim Immigrants.” Sponsored by the Robbins Collection and organized by Berkeley Law Professors Laurent Mayali and Charles Rice, the event took place at Berkeley Law on April 6th and 7th, 2018 and brought together leading scholars from Europe, Canada and the United States whose work examines the intersection of Islamic Law and European Civil Law.

Over the course of two-days, the conference participants presented papers and discussed topics such as, the development of Muslim jurisprudence in countries where Muslims are a minority, the areas in which Islamic Law and European Civil Law conflict, practices that mitigate conflicts between these two legal systems, and the issues that arise when Islamic councils use sharia law for private disputes in European countries. The presence of international participants from countries such as France and Germany widened perspectives on these issues and promoted comparative discussions. Farida Belkacem, a PhD candidate at the European University Institute and visiting researcher at Berkeley who participated in the roundtable said the conference “contributes to a better understanding of the multiple challenges faced by Muslim communities in the West....There are huge differences between the way Muslim communities are perceived and portrayed throughout the West and the way they live *de facto*.”

Charles Rice '80, an attorney for Shartsis Friese, LLP and Lecturer at Berkeley Law, served as the moderator for the first three sessions. Jeremy Gunn, Professor of Law and Political Science at the Université Internationale de Rabat, Morocco began the presentation of papers with “Islam



Above: Conference Participants, photo by Jim Block. Below and right: Conference Participants, photos by Rachel Deletto.

“Being a Muslim and having lived in France for six years, I witnessed behind the scenes how challenging and sometimes conflicting Islamic and European laws can be. Islam’s place in the European legal system needs to be addressed.”  
 —L.L.M. Student Anas Benmalek

and the Concept of the Separation of Religion and the State.” Mr. Gunn examined the combination of religion and state in Islamic countries as a means to sanctify the political control of religion. Mr. Gunn’s presentation was followed by Emmanuel Tawil, an Associate Professor at the Université Paris 2 Panthéon-Assas, and Henning Plöger, Director of the Division for Basic Rights of Germany’s Federal Ministry of Justice and Consumer Protection.

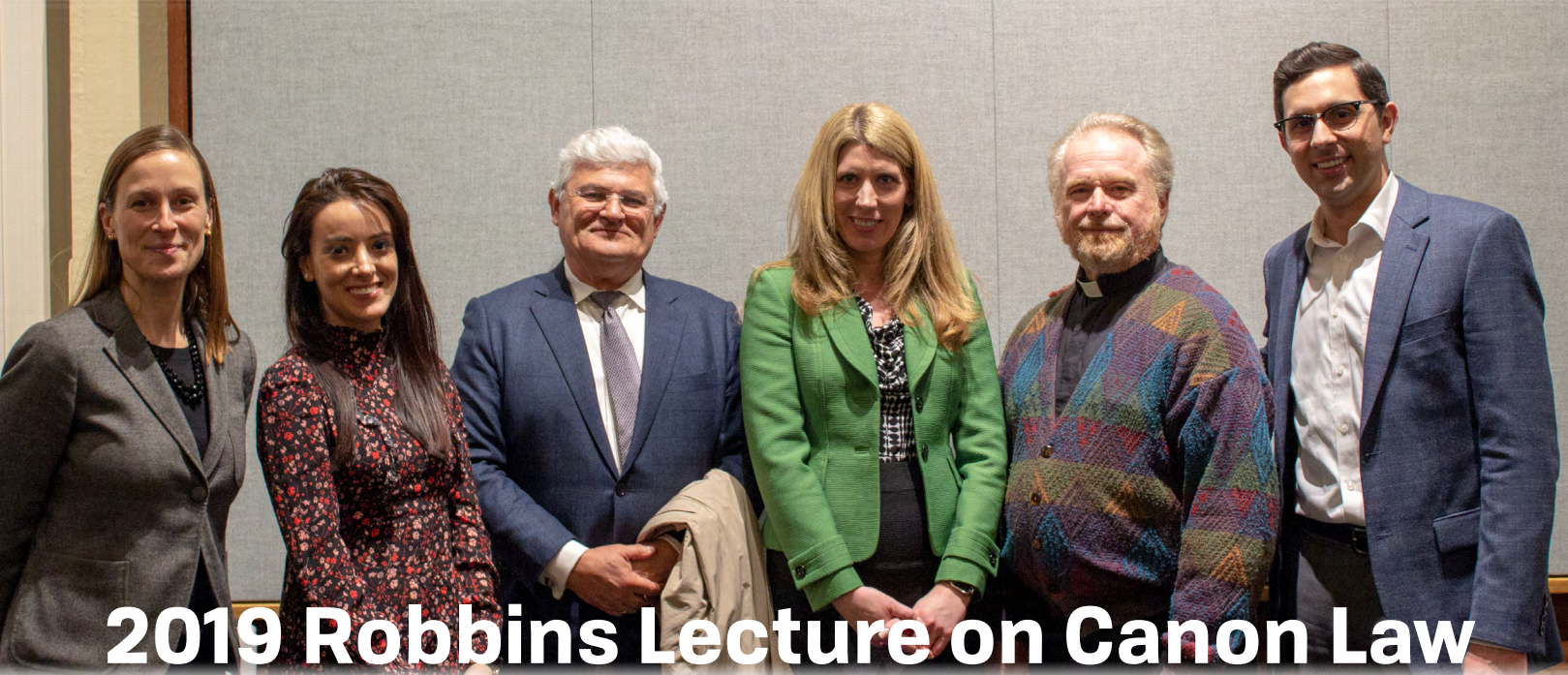
The conference was open to the Berkeley Law community and among those in the audience were two Berkeley Law L.L.M. candidates. Chiraz Zribi was born and raised in Tunisia and studied in France before attending Berkeley Law. Ms. Zribi said, “I am not sure that such a free and open debate could’ve taken place in France given the sensitivity and the political dimension of the issue.” Ms. Zribi considered the issues to be aligned with her personal experience as a university student in France, “back then, in Europe, the question of Islam and whether it is compatible with the values of the western countries was in the heart of every political debate. This conference was the opportunity for me to explore these issues more deeply.” Anas Ben Malek, a Berkeley Law L.L.M. candidate, also studied at a university in France. Mr. Malek, a Moroccan native, asked the roundtable to consider the complications that arise when religious symbols like headscarves are banned at the university level and the effect it has on adult students. Mr. Ben Malek later said, “being a Muslim and having lived in France for six years, I witnessed behind the scenes how challenging and sometimes conflicting Islamic and European laws can be. Islam’s place in the European legal system needs to be addressed.”

Other presentations explored applications of Islamic legal norms in Europe and reconciling Islamic family law with European public order. The sessions were moderated by Laurent Mayali and Arthur Shartsis. “Islamic Family Law and *Ordre Public* in Continental Europe,” presented by Andrea Büchler, Chair for Private and Comparative Law at the University of Zurich’s Law Institute, analyzed the entanglement of *sharia*-based family law for Islamic populations amidst Europe’s own complicated history with family law. She touched on Europe’s adherence to *lex patriae*, which considers the choice of law for many family law issues to be determined by the nationality of the persons concerned. Throughout the conference Mohammad Fadel, Associate Professor of Law at the University of Toronto Faculty of Law, challenged many arguments that were based in a European perspective and was able to provide an Islamic-centered perspective on a number of issues. His presentation, “Islamic Family Law, Private International Law, and European Public Order” spoke more to the Islamic perspective with regard to the issue of entangling Islamic family law within the context of liberal jurisdictions. Mr. Fadel detailed the Islamic norms in family law proceedings in contrast with European liberal policies to ultimately support a system of pluralism in family law arbitration.



Top and Bottom: Conference Participants. Photos by Jim Block





# 2019 Robbins Lecture on Canon Law

## How the Church can Overcome the Abuse Crisis

In 2013, Dr. Jennifer Haselberger made [national news](#) when she publicly resigned as the top canon lawyer for the Archdiocese of Saint Paul and Minneapolis and exposed their mishandling of sexual abuse. On February 25, 2019, Dr. Haselberger gave the 2019 Robbins Collection Lecture on Canon Law, “How the Church Can Overcome the Sexual Abuse Crisis.” The lecture occurred just a few days after Pope Francis convened a meeting at the Vatican to address the sexual abuse crisis. While victims of sexual abuse and other Catholics had hopes that Pope Francis would finally lay out concrete steps and actions the Catholic Church could take, many were [left disappointed](#).

Dr. Haselberger addressed the shortcomings of the meeting at the Vatican, and outlined how holes in Canon law created conditions that precipitated the sexual abuse crisis. Only in 2001 did the Catholic Church promulgate several new laws related to sexual abuse, indicating their knowledge of the severe problem. One year later the coverage of the crisis by the *Boston Globe* led to widespread media scrutiny in the United States.



Dr. Haselberger had four suggestions to reduce the number of new sexual abuse cases within the Catholic Church. The first was allow lay people to authentically participate in the governance of the Catholic Church, rather than merely cooperating. Lay people are already doing this kind of work in their parishes—for example, bookkeeping or accounting. Allowing lay people to govern on their own authority would provide broad public oversight of priests. Another recommendation was to raise the age of ordination. For the last sixty years ordination has been allowed at 25 years old, providing a college to seminary to ordination “pipeline.” If the Church raised the age of ordination to 30 or 35, priests would enter seminary and become ordained with a conviction and dedication that could only

come after a decade of living life outside of the confines of the Catholic Church.

In addition, the Church needs to reconsider viewing the clerical state as a lifetime appointment. The Catholic Church maintains that once ordained, one is a priest forever. However, in practice priests lose the clerical state on a voluntary or involuntary basis frequently. Ongoing discernment of the call to ministry should be normalized for the benefit of the Catholic Church and the individual priests.

Dr. Haselberger’s lecture demonstrates the importance and urgency of the canon law scholarship. It is only through an understanding of the structure and laws that guide the Catholic Church that we can begin to find solutions to the ongoing sexual abuse crisis. This year’s lecture was arranged in coordination with the student organization Catholics at Berkeley Law.

Above: L to R, Emily Best, Cristina Mora, Laurent Mayali, Jennifer Haselberger, Father Paul Rospond, and Matt Junker. Left: Jennifer Haselberger  
Photos by the Robbins Collection





# Habeas Corpus and the Constitution in Wartime

## A Comparative Approach

The codification of habeas corpus can be traced to the 17th century in England, when Parliament passed the English Habeas Corpus Act of 1679. The English Parliament is also responsible for inventing the concept of habeas suspension during wartime. This conception of habeas and its suspension were highly influential on American habeas law in the 18th century and are still debated to this day.

Modern debates about the meaning of the Suspension Clause in the United States have happened largely in a historical vacuum. There is a wealth of precedent that can inform contemporary conversations, but that history is often ignored. In her book, *Habeas Corpus in Wartime: From the Tower of London to Guantanamo Bay*, Berkeley Law Professor Amanda Tyler presents this forgotten history in a very comprehensive account. It recovers the neglected history of habeas corpus suspension in the U.S., showing us the arguments we are having now are not new. Thomas Jefferson requested, and was denied, habeas suspension; Abraham Lincoln famously declared a suspension during the Civil War; and the internment of Japanese-Americans during World War II required a suspension of habeas corpus. However, all of these examples of habeas corpus suspension did not happen without the same fervent debate we see now, when discussing the role and power of suspension in America's ongoing wars.

The September 2018 conference, "Habeas Corpus and the Constitution in Wartime: A Comparative Approach" explored this history, among other related topics.

Throughout the day, conference participants discussed topics as varied as the role of history in constitutional interpretation, the separation of powers in wartime, presidential powers during the Civil War, the War on Terror and the application of Constitutional law, and the intersection of law and politics in habeas corpus. The conversation was enriched by the participation of judges from the U.S. Court of Appeals and legal scholars from the United Kingdom, France, and Spain.

*"[This] was an incredible opportunity to bring together scholars and jurists from a range of legal traditions to engage in a fascinating and immensely rich discussion of how law should function in wartime. It was a special privilege to have my own work serve as the impetus for our discussions."—Professor Amanda Tyler*



Top: Discussion participants. Bottom: Jessie Sherwood and Judge Wood. Photos by Jim Block.



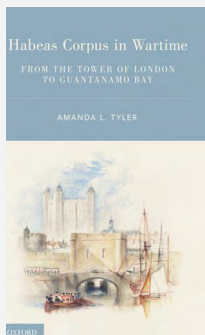


*“To discuss a great book about the past, surrounded by great books from the past. It’s hard to think of anything finer.”—Professor Tom Poole*

The conversation about judicial powers and wartime suspension was of particular interest to many of the participants. The concept of war has changed since habeas corpus was first suspended in the United States during the Civil War. War has become a more drawn out affair, without clear boundaries. Participants discussed ideas like sunset clauses, which would end the suspension of habeas corpus after a certain period of time, and judicial review over suspension, which would act as a check against both the legislative and executive branches. In the past, the courts have acted as a check to these powers and have found habeas suspensions to be unconstitutional.

For Professor Amanda Tyler the conference “...was an incredible opportunity to bring together scholars and jurists from a range of legal traditions to engage in a fascinating and immensely rich discussion of how law should function in wartime. It was a special privilege to have my own work serve as the impetus for our discussions. And, I am deeply grateful to the Robbins Collection and Laurent Mayali for making this great event happen.”

This event reflects the important role of the Robbins Collection as a research center and library that promotes civil law research, strengthening connections between Berkeley Law and international academic institutions. Professor Tom Poole said, “To discuss a great book about the past, surrounded by great books from the past. It’s hard to think of anything finer.”



*Amanda Tyler, Habeas Corpus in Wartime: From the Tower of London to Guantanamo (New York: Oxford University Press, 2017).*

#### PARTICIPANTS

PROFESSOR JOHN CAIRNS: University of Edinburgh School of Law

DEAN ERWIN CHEREMINSKY: Berkeley Law

PROFESSOR ROBERT M. CHESNEY: University of Texas School of Law

PROFESSOR MARY L. DUDZIAK: Emory University School of Law

PROFESSOR YOLANDA GÓMEZ LUGO: Departamento de Derecho Público, Universidad Carlos III de Madrid

PROFESSOR WANDA MASTOR: Université Toulouse, Capitole 1

PROFESSOR THOMAS POOLE: London School of Economics

PROFESSOR AMNON REICHMAN: University of Haifa Faculty of Law and Visiting Robbins Professor of Law, Berkeley Law

THE HONORABLE STEPHEN F. WILLIAMS: U.S. Court of Appeals for the District of Columbia Circuit

THE HONORABLE DIANE P. WOOD: U.S. Court of Appeals for the Seventh Circuit

PROFESSOR AMANDA TYLER: Berkeley Law

PROFESSOR LAURENT MAYALI: Berkeley Law

Left: Professor Amanda Tyler. Right: Professors Thomas Poole and Bobby Chesney. Photos by Jim Block.



# Comparative Legal Issues

## Taiwan and the United States

### PARTICIPANTS

National Taiwan  
University College of Law

VICE DEAN KUAN-LING  
SHEN

ASSISTANT PROFESSOR  
KAI-PING SU

ASSISTANT PROFESSOR  
YUEH-PING (ALEX) YANG

PROFESSOR HSIN-CHEN  
WANG

Berkeley Law:

PROFESSOR KENNETH  
BAMBERGER

PROFESSOR LAURENT  
MAYALI

PROFESSOR ERIC  
RAKOWSKI

PROFESSOR STEVE  
SUGARMAN

PROFESSOR FRANK  
ZIMRING

In October 2018 the Robbins Collection and Research Center hosted its third joint symposium with National Taiwan University. The symposium, “Comparative Legal Issues: Taiwan & the United States,” was held at Berkeley Law. Participants in the symposium discussed capital punishment, bank ownership and legal enforcement, and technological innovation and regulatory challenges; all topics that hold relevance in both Taiwan and the United States.

The symposium opened with a session by NTU Assistant Professor Kai-Ping Su, titled, “Why the Era of Capital Punishment is Not Ending?” with comments by Professor Frank Zimring of Berkeley Law. The presentation by Professor Su reviewed the last five decades of capital punishment in Taiwan, and how the frequency of executions has ebbed and flowed under different ministers of justice and presidents. NTU Assistant Professor Yang presented the second morning session, “State Ownership of Banks and Legal Enforcement in Taiwan,” with comments from Professor Eric Rakowski of Berkeley Law. The presentation considered the regulatory and enforcement mechanisms between state banks and private banks in Taiwan. Professor Kuan-Ling Shen from NTU College of Law moderated both morning sessions.

Following a coffee break, NTU Professor Hsin-Chun Wang presented “Technological Innovation in Insurance and Regulatory Challenges,” with Professor Laurent Mayali moderating and with Professors Ken Bamberger and Steve Sugarman, all from Berkeley Law, commenting. This session considered the impact of the insurance technology sector on the insurance market in Taiwan. The fast growth of the technology sector poses a challenge to the regulatory bodies of Taiwan and risk mitigation.

This was the third jointly held event between the Robbins Collection at Berkeley Law and the National Taiwan University College of Law. The previous symposium on current legal issues in Taiwan and the United States was hosted by NTU in Taipei, Taiwan. The Robbins Collection at Berkeley Law is looking forward to the continued relationship with the NTU College of Law and other preeminent institutions in the civil law tradition.

Top: conference participants. Photo by the Robbins Collection





## Jewish Law and the #MeToo Movement A Feminist Perspective

In October 2017 the #MeToo movement became an internationally viral phenomenon, due to the sexual abuse allegations against Harvey Weinstein and other men in entertainment and media. The movement encouraged women to share their experiences of sexual assault in order to draw attention to the ubiquity of harassment that many women face. Although initially focused on assault and harassment in the media industry, it did not take long for people to discuss the prevalence of this abuse within all facets of life, including education, sports, politics, and religion.

On February 21 the Robbins Collection and the Berkeley Institute for Jewish Law and Israeli Studies co-hosted Rabbi Rachel Adler, the David Ellenson Professor of Modern Jewish Thought at Hebrew Union College. Rabbi Adler's lecture, "Jewish Law and the #MeToo Movement" was the Robbins Collection Annual Lecture in Jewish Law, Thought, and Identity. Lecturing on the intersection of halakhah, or Jewish Law, and #MeToo, Rabbi Adler argued that allegations of sexual abuse and harassment are addressed inadequately, if at all, by halakhah. She posed the question, "What would have to change for halakhah to offer a model of gender justice?"

Students and community members attended Rabbi Professor Adler's lecture and engaged in a broad range of topics regarding Judaism, such as the unique nature of halakha, with its own systems of justice, and #MeToo. Rabbi Adler suggested that Jews are already used to negotiating boundaries within larger communities as a minority religion in the United States. Therefore, engagement about #MeToo is a familiar negotiation within the Jewish community.

This annual lecture is the central mission of the Robbins Collection, which is dedicated to the research and publication of studies of Jewish Law, in addition to Canon Law, Islamic Law, and civil law. A special thanks to our co-hosts, the Berkeley Institute for Jewish Law and Israeli Studies.

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## Discretionary Referendums in Constitutional Amendment A Comparative Perspective



On March 14 the Robbins Collection hosted Professor Richard Albert, the William Stamps Farish Professor of Law at the University of Texas at Austin, for his talk, "Discretionary Referendums in Constitutional Amendment: A Comparative Perspective." The discussion was centered on the Brexit referendum, as well as three other historical examples. A French referendum in 1962 moved France away from an electoral college system to Presidential elections by direct popular vote. As a comparison, Professor Albert described the cases of two failed referendums: a referendum in 1992 which sought to amend the Canadian Constitution and the Colombian peace deal with the FARC in 2016 which failed in referendum and was eventually passed through legislative channels.

All of these referendums had at least one thing in common: they were not constitutionally required, and in most cases, the Parliament or Congress of each government had to create mechanisms by which the results of referendums could be validated. Ordinary constitutional channels had to be bypassed, either by creating legislation to move ahead with the referendum and honor the results, or to take steps after referendums to validate, or invalidate, the results. In all cases, however, the referendums took place because government leaders felt compelled by political imperatives to bring the vote directly to the people.

# NOTEWORTHY

## ROBBINS LIBRARIAN JENNIFER NELSON WINS RESEARCH GRANT

Jennifer Nelson, reference librarian for the Robbins Collection, has won the prestigious Association of College and Research Libraries European Studies Section [De Gruyter European Librarianship Study Grant](#) for 2019. Her winning project, “Iucundum mihi est reperiri typographum: A Case Study of an Early Modern Publishing Success Story,” is an archival study of the letters by Gian Vittorio Rossi (1577-1647) to publishers and booksellers, focusing on his late-in-life publishing success. Rossi’s letters reveal the broad interconnected publishing landscape of the 17th century, including authors, booksellers, and readers. The project will explore how Rossi’s communication circuit between Roman booksellers and readers and his northern European publishers are reflective of relationships and networks in the Early Modern book industry. Her project sheds light on the publication of Rossi’s works, his pseudonyms for his friends and acquaintances, and his publishing success as a satirist.

The grant, sponsored by the Walter de Gruyter Foundation for Scholarship and Research, provides €2,500 to support a research trip to Rome. Jennifer Nelson will receive the award during the 2019 American Library Association’s (ALA) Annual Conference.

## ROBBINS POSTDOC ALEXANDRA HAVRYLYSHYN WINS AWARD

Alexandra Havrylyshyn, a Robbins Postdoctoral Fellow, submitted the winning paper to Selma Moidel Smith Law Student Writing Competition, sponsored by the California Supreme Court Historical Society. The winning paper, “How a California Settler Unsettled the Proslavery Legislature of Antebellum Louisiana,” will be published in the 2019 volume of *California Legal History*. This paper is part of a larger book project, tentatively titled *Black Women, Free Soil Suits, and the Civil Law*, which Dr. Havrylyshyn is preparing while at the Robbins Collection.

## DIGITAL EXHIBITS

Over the past several months the Robbins Collection has been digitizing many of our past exhibits. Robbins Collection exhibits currently available on our website are: California’s Legal Heritage, The Medieval Law School, and The Common Law and Civil Law Tradition. In 2019-2020 we look forward to presenting The Roman-Dutch Legal Tradition, Famous Trials and their Legacies, and Milestones in Legal Culture.

All of these digital exhibits will be displayed in the Donor Lobby at Berkeley Law and available [on the Robbins Collection website](#).

## ROBBINS AWARD WINNERS

Two Robbins-Postdoc scholars have won prestigious book and professional awards this past year. Leon Wiener Dow has won the National Jewish Book Award in the category of Contemporary Jewish Life and Practice for his book *The Going: A Meditation on Jewish Life*, published by Palgrave Macmillan. Lena Salaymeh was honored with the American Academy of Religion Award for Excellence in the Study of Religion in Textual Studies for her 2016 book, *The Beginnings of Islamic Law: Late Antique Islamic Legal Tradition*, published by Cambridge University Press.

## INTERNATIONAL AWAY FIELD PLACEMENT PROGRAM SUPPORT

The Robbins Collection sponsored several Berkeley Law J.D. students to cover travel expenses for the Away Field Placement program. Over the past year we have sponsored students working at placements in: the International Trade Center in Geneva; the Department of Justice Office of Foreign Litigation in London; the Legal Resources Clinic in Cape Town, South Africa; the European Commission Directorate-General for Justice and Consumers, Unit of International Data Flows and Protections in Brussels, Belgium; and Sin Fronteras, in Mexico City.



# UPCOMING

## NEW AND RETURNING FELLOWS

The Robbins Collection has three returning Fellows joining us in fall 2019. Senior Fellow, Dr. David Johnston, will continue the research he began in spring 2019. Dr. Agnès Desmazières will also be returning to continue her research on the Catholic Church and canon law. Professor Corinne Leveleux-Teixeira will be returning to the Robbins Collection to continue her research in canon law. Dr. Jennifer Haselberger will join us as a Robbins Collection Fellow for the first time, after giving the Robbins Collection Lecture on Canon Law early in 2019.

To read more about Dr. Desmazières's research you can read an [in-depth profile](#) on the Robbins Collection website.

## CONFERENCE: JOHN NOONAN JUDGE AND LEGAL SCHOLAR



The upcoming conference, “Judge Noonan: Judge and Legal Scholar,” will highlight various aspects of Judge Noonan’s legal work, bringing a variety of themes to the table and exploring the coherence of his legal thought, the richness of his scholarship, and the features of his distinctive contribution to the American jurisprudence.

One of Judge Noonan’s favorite phrases, a Latin motto that enduringly marked his judicial style, was *audi alteram partem*, “hear the other side.” This gathering seeks to bring into focus—and celebrate—the many sides of Judge Noonan’s intellectual life.

The conference will be held on September 6th and 7th at Berkeley Law. Email [robbins@law.berkeley.edu](mailto:robbins@law.berkeley.edu) for more information.

## 2019-2020 ROBBINS VISITING PROFESSOR



Professor Jacqueline Ross, the Prentice H. Marshall Professor of Law at the University of Illinois, will be joining Berkeley Law as a Robbins Visiting Professor for the 2019-2020 academic year. Professor Ross, an expert in evidence and

criminal law procedure, will be teaching comparative criminal law. She has written and edited many books on this subject, most recently *Comparative Criminal Procedure* and *Comparing the Democratic Governance of Police Intelligence: New Models of Participation and Expertise in the United States and Europe*.

## 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 profundity of David Daube’s writing, which has examined topics such as New Testament law, Roman law, ancient history, and linguistics. The sixth volume, *Roman Law and Language*, will focus on Daube’s writings on Roman law 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* (now the *American Journal of Jurisprudence*). Volume six will be available in September 2019.



# RESEARCH

*Meet Robbins affiliated scholars and learn about their research and recent publications.*



# ROBBINS SCHOLARS

## AMNON REICHMAN

*A more in-depth look  
at the research and  
backgrounds of various  
Robbins affiliated  
scholars.*



In 2017 Amnon Reichman joined Berkeley Law as the Robbins Collection Visiting Professor in Law. This fall Amnon will return to his position on the faculty of the University of Haifa Faculty of Law, where he has been teaching since 2001. During his time as the Robbins Collection Visiting Professor of Law, Professor Reichman has taught comparative law, conducted his own research, hosted conferences, and shared the value of comparative law with Berkeley Law students.

Professor Reichman's appointment as the Robbins Collection Visiting Professor in Law was not his first affiliation with Berkeley Law and the Robbins Collection. He received his LL.M. from Berkeley Law in 1996 and was a visiting professor a decade later for the 2006-2007 academic year. Although he did not have an official affiliation with the Robbins Collection during that appointment, he worked closely with the Robbins Collection on comparative law research, which has remained the focus of his scholarship since. He has been taking advantage of his time at the Robbins Collection and Berkeley Law, conducting several research projects with a comparative law dimension to each.

In 2017 Professor Reichman hosted a colloquium on Legal-Net, Israel's online judicial management system that operates as an administrative organizer for Israel's court system—it manages cases, court decisions, administrative contact, legal research, and other administrative tasks. Since then, his research has expanded to look at how other jurisdictions handle judicial selection and how judges are appointed or selected in Israel, the United States, and in other legal systems. The Legal-Net colloquium is also representative of Professor Reichman's other research interests, many of which are in line with the mission of the Robbins Collection. Professor Reichman is interested in cyber regulation in a comparative dimension, and in privacy, which often intersects with religious freedom.

Professor Reichman came into the Robbins Collection Visiting Professor of Law position with several goals in mind. The first was to develop an interest among students for comparative law and to create a clear distinction between international law and comparative law. He also wanted to engage with scholars in the United States to further recognize of the Robbins Collection as a center of comparative law research. To this end, Professor Reichman helped facilitate the visit of Professor Richard Albert of the University of Texas to give a lecture on [comparative constitutional law as it applies to discretionary referendums](#).

Although professor Reichman will be returning to his permanent position on the Faculty of the Law at the University of Haifa in August, the research projects and professional connections made during his time at the Robbins Collection will continue to shape his scholarship.

# DAVID JOHNSTON

Robbins Collection Senior Fellow David Johnston, Queen's Council (QC), is a professor, scholar, and practicing attorney and law commissioner in Scotland. He was the Regius Professor of Civil Law at the Uni-



versity of Cambridge, a Senior Visiting Fellow at the Robbins Collection at Berkeley Law, a Visiting Professor at Université de Paris I and Université de Paris IV, a Visiting Professor at University of Osaka Law School, and an Honorary Professor at the University of Edinburgh Law School. Mr. Johnston currently practices law in Edinburgh, with a focus on public law, human rights, and commercial law.

Mr. Johnston's first visit to the Robbins Collection was in 1995, to attend a conference on ancient law and economics. Since then, he has come to the Robbins Collection nearly a dozen times to conduct research and write.

Mr. Johnston is especially well known for his scholarship on Roman law. On his most recent visit he was working on a second edition of *Roman Law in Context*, taking advantage of our extensive holdings in primary and secondary materials on Roman law at the Robbins Collection. He wrote much of the first edition of *Roman Law in Context*, published by Cambridge University Press in 1999, at the Robbins Collection. When asked why he has continuously returned to the Robbins Collection for more than a decade, Mr. Johnston says, "The library is extremely well stocked. The staff are unfailingly helpful when I need anything, whether a book or an article from an obscure publication. In addition, depending on the time of year, there is also the prospect of coinciding with other visiting scholars with similar interests."

# JENNIFER HASELBERGER

The Robbins Collection recently welcomed Dr. Jennifer Haselberger, an independent researcher and canon lawyer, as a Senior Robbins Fellow. She is conducting research on the sexual abuse crisis in the Catholic Church. Specifically, she will be analyzing how ecclesiastical penalties, like excommunication, were imposed historically for the most grave crimes in the Catholic church to better understand why excommunication has not been applied to priests who sexually abuse minors. The 1983 Code of Canon Law reduced the number of crimes for which excommunication was

automatically imposed. Sexual abuse of a minor, or knowingly not preventing abuse, is not a crime for which that penalty is automatically imposed. While the Church considers abortion and ordination of women as excommunicable crimes under the Code of Canon Law, it has surprisingly never discussed adding the sexual abuse of minors as a crime punishable by excommunication.

Her appointment as a Robbins Senior Fellow at the Robbins Collection allows Dr. Haselberger a unique opportunity to conduct this research. In her words, "the Catholic Church is using its power and authority over theologians to inhibit innovative thought around the sexual abuse crisis." Most canon law collections exist at Catholic universities and colleges, but the Robbins Collection has one of the largest canon law collections outside of church affiliated institutions. Regarding her research, Dr. Haselberger said, "Public institutions such as UC Berkeley and the Robbins Collection provide an important space for independent thought and free exchange of ideas." She will be taking advantage of our collection of treatises on ecclesiastical immunity, canonical commentaries, dissertations, and our medieval texts on the sacrament of penance. When asked why she is particularly interested in excommunication Dr. Haselberger commented, "Since laws are an expression of the values of a community, this intrigues me especially in light of the commentary surrounding the laicization of former Cardinal Theodore McCarrick and its characterization as the Catholic equivalent of the death penalty. Historically, that description would be used to describe excommunication rather than laicization."



# 2018-2019 FELLOWS

The Robbins Collection began offering fellowships in 1990. In the decades since, nearly two hundred scholars and researchers have spent time here as Robbins Fellows. Forty of those fellows have returned multiple times to continue their research. For the 2018-2019 academic year we welcomed the five fellows below, all of whom have previous associations with the Robbins Collection.

## PAST FELLOWS:

Are you a past Robbins Fellow?

Have you participated in a Robbins hosted conference?

We would love to keep in touch with you. Share your publications, new affiliations, and research interests with us. Email us at [robbins@law.berkeley.edu](mailto:robbins@law.berkeley.edu).



**A**larico Barbagli visited the Robbins Collection from Università di Siena's Department of Jurisprudence. Professor Barbagli studies the history and origins of medieval law. While at the Robbins Collection, he researched the history of medieval bankruptcy in modern law. Professor Barbagli was at the Robbins Collection for three months over the summer.



**J**ulio Cesar Gaitán Bohorquez is a Professor in the Law Department at Universidad del Rosario in Bogotá, Colombia. Professor Gaitán researches public law and worked on his project, "Free Speech: A Comparative Study of Constitutional Standards in Latin America" while he was at the Robbins Collection. Professor Gaitán was at the Collection for two months over the summer.



**S**tefano Malpassi joined the Robbins Collection for two months in the summer of 2018. He visited from the Department of Law at the University of Macerata, in Italy. During his time at the Robbins Collection he researched comparative law and the history of civil law.



**L**uigi Nuzzo is a Professor of Legal History and History of International Law at Università del Salento in Lecce, Italy. He has published extensively about the history of international law, colonial law, the Spanish Indies from the 16th to 17th century, and the German and Italian legal culture between the 19th and 20th centuries. While at the Robbins Collection he worked on his project, "Western Law in Chinese Context: A Comparison Between French, British, and North American Land Rights at Tianjin, China (1860-1900)."



**S**tefan Stantchev is an Associate Professor at Arizona State University School of Humanities, Arts, and Cultural Studies. Dr. Stantchev's main research interests are religious and economic power relations within Europe and throughout the Mediterranean from 1000CE to 1500CE. Professor Stantchev visited the Robbins Collection for one month over the summer and worked on his project, "The Legal and Cultural History of the Papal Bull in Coena Domini in the Later Middle Ages."

# In Favor of Liberty

## Conflict of Laws and Slave Travel between Louisiana and France

Charlotte  
+  
Mark

by Alexandra Havrylyshyn  
Robbins Postdoctoral Fellow



Louisiana, perhaps more than any other state, presents judges with questions on the conflict of laws. To this day, the state is known as a member of a third legal family, which mixes elements of the civil and common law traditions. Such legal mixture results from the state's colonial history. The French in 1699, the Spanish in 1762, and finally the Americans in 1803 laid claim to the vast territory stretching upwards from the mouth of the Mississippi River. They brought with them their language, their laws, and their customs: sometimes imposed; sometimes willingly adapted; sometimes re-interpreted and modified by natives and newcomers alike. While the French and Spanish followed the civil law tradition, American officials generally adhered to the British common law tradition.

Faced with an amalgam of French, Spanish, and American laws, Gov. William Charles Cole Claiborne commissioned three jurists, all deeply knowledgeable of civil law, to compile the *Civil Code of the State of Louisiana* (1825). An original edition of this code, published in New Orleans by J.C. de St. Romes, is held by the Robbins Collection. To make the code more legible to the largely French-speaking population in this relatively new American state, editors Louis Moreau-Lislet, Pierre Derbigny, and Edward Livingston ensured that one side of the text was printed in English, while the facing page contained a French translation.

The diverse provenance of the code's editors provide a window into the multiculturalism of the state. Of French ancestry, Lislet was born in Saint Domingue (modern-day Haiti) and ended up in New Orleans by way of Cuba. A native of France, Derbigny emigrated to Saint Domingue and later joined the enclave of French émigrés in Philadelphia before settling in New Orleans. Livingston was born in New York, but

moved to Louisiana, where he became a prominent lawyer.

New Orleans was a crossroads not only for elite jurists of European descent but also for enslaved and free people of African ancestry. In 1830, twenty-three percent of the city's population of nearly 50,000 were free people of color, while another thirty-three percent were slaves. As one walked about the city, one would hear not only English but also Creole French. One would see colorful costumes, from Paris's latest fashion to colorful headscarves called *tignons*, worn by free women of color in defiant response to a law intended to mark them as inferior.

By 1830, the slave market in the city of New Orleans was the largest in the United States. The domestic slave trade had seen a sharp uptick when an 1808 federal statute criminalized American participation in the international slave trade. The *Civil Code of the State of Louisiana* (1825), along with statutes and case law, outlined and constrained the civil capacity of enslaved and free people alike.

In general, the *Civil Code of the State of Louisiana* (1825) prohibited slaves from making contracts and from suing or being sued. In this way, Louisiana was similar to neighboring common law states. However, Louisiana jurists made two exceptions. Under Article 174, a slave could only make one kind of contract: that which related to his own emancipation. Under Article 177, a slave could not "be a party in any civil action, either as plaintiff or defendant, except when he has to claim or prove his freedom." Throughout the South in general, restrictions on a slave's contractual rights intensified over time.

Relatively late in the antebellum period, however, a series of successful freedom suits arose in Louisiana. Slaves could sue for freedom for a variety of reasons, including broken promises or improperly executed wills, but perhaps the most interesting



for scholars and practitioners of comparative law is the free soil claim. The case of *Marie-Louise v. Marot* (1835-6) heralded a flurry of free soil claims based on similar facts and arguments. In April 1828, the Marot family had sailed to France. Among them was Josephine, who was taken to Paris so that she could learn the art of hairdressing. Josephine was then a minor, and was about the same age as Marie-Emilie Suzette Marot, who although a child was also Josephine's owner.

The prevalence of women as both claimants and defendants in the series of cases that followed was not uncommon. The ability of women, despite their gender, to own slaves, is explained in part by Louisiana's civil law inheritances, stemming all the way back to Visigothic traditions wherein married women could retain separate property. Lislet, Derbigny, and Livingston codified Louisiana's separate property regime in Book III ("Of the Different Modes of Acquiring the Property of Things"), Title VI ("Of the Marriage Contract, and of the Respective Rights of the Parties in Relation to their Property") of the *Civil Code of the State of Louisiana* (1825).

Initially, Josephine's mother (a free woman of color) brought suit claiming that, although Josephine had been given to Marie-Emilie on the condition that Josephine be freed when she reached twenty, Josephine was now twenty and had not yet been freed. Initially, this was not a freedom suit, but a lawsuit based on the claim of a broken promise. The court of first instance had ruled for the plaintiff. With much reluctance, Chief Justice George Mathews of the Supreme Court of Louisiana overturned the lower-court decision because he found that the document promising Josephine her freedom was legally defective. Clearly sympathetic to a mother's legal action "brought to redeem a helpless female from slavery," Mathews further observed that, "it is really painful in applying rules of law to a case to be obliged to violate sentiments and feelings of humanity." Asserting his judicial power, he remanded the case for trial *de novo*, because "justice, in our opinion, requires such a proceeding." *Louise v. Marot*, 8 La. at 479. Mathews, moreover, signaled to the plaintiff and her lawyer that since Josephine had traveled to France, she could submit a supplementary petition for freedom on that basis.

By exercising his discretion to remand the case for retrial, and furthermore by guiding the enslaved person on a path to emancipation, Mathews adhered to the principle of *in favorem libertatis*. With roots in both Roman and canon law, the principle that judges ought to interpret statutes and case law in favor of liberty was far from forgotten in antebellum Louisiana. In

fact, a different source held by the Robbins Collection shows that in 1820, Louisiana jurists declared it to be "a rule of law, that every judge shall favor liberty, as it congenial to nature not only that men, but that all other animals should desire it." Perhaps it was in looking about them at the booming slave trade in New Orleans that these jurists intuited slavery to be against human nature. This passage is found in Moreau-Lislet and Henry Carleton's translation and republication of the *Laws of Las Siete Partidas, Which are Still in Force in the State of Louisiana*, which was commissioned by the Louisiana legislature in 1819. Although this seven-part digest of the laws of Spain (imitating the Roman Pandects) was first begun under the supervision of Alfonso the Wise in 1265, most of its provisions still formally applied across the Atlantic Ocean in an American state more than five centuries later. Even after Spanish and Roman law were officially repealed in Louisiana in 1828, lawyers and judges still remembered and practiced Spanish and Roman legal principles.

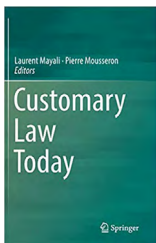
When Marie-Louise's supplementary petition reached the Supreme Court of Louisiana, Justice Mathews relied on expert witnesses of "unimpeached credibility" to reason that under French law, Josephine had become free merely by setting foot upon French soil. By emphasizing "immediate emancipation," Mathews distinguished Louisiana jurisprudence from the jurisprudence of Anglo-American jurisdictions (*Louise v. Marot*, 9 La. at 479). In the precedent-setting free soil case of *Somerset v. Stewart*, the legal issue had come to hinge on whether a slave was in temporary "transit" or on a permanent "sojourn" to free soil (98 Eng. Rep. 499, K.B. 1772). This distinction is central to free soil cases in Louisiana's neighboring Anglo-American states. However, this distinction seemed irrelevant to Mathews, who was much more interested in both understanding and deferring to the "benign and liberal effect of the laws and customs" of the sovereign country of France (*Louise v. Marot*, 9 La. at 473). In the French legal tradition as Louisiana courts understood it, a slave became free instantaneously by touching French soil. Although this did not perfectly align with the actual state of the law in France, this holding coupled with Article 177 of the *Civil Code of the State of Louisiana* did allow another nineteen enslaved black women and girls to sue for, and in most cases gain, their freedom.

Signature image from *Charlotte c.w. v. Pierre Cazelar*, No. 1078 (3d D. Ct. New Orleans 14 Mar. 1849), Louisiana Division/City Archives, New Orleans Public Library, VSA 290.

# RECENTLY PUBLISHED

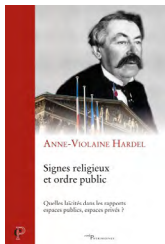
The latest books, essays, and more from past and present Robbins Collection scholars

## BOOKS + SCHOLARLY MONOGRAPHS



*CUSTOMARY LAW TODAY* edited by Laurent Mayali and Pierre Mousseron

*Customary Law Today* addresses current practices in customary law. Including contributions from scholars in the U.S., France, Israel, Canada, and more, the book examines the current impacts of customary law on various aspects of private law, constitutional law, business law, international law, and criminal law. The contributors to this volume expand the traditional concept of the rule of law, and argue that lawyers should not narrowly focus on statutory law but should instead pay more careful attention to the impact of practices on “real legal life.” This book is available in hardcover. (Springer)



*SIGNES RELIGIEUX ET ORDRE PUBLIC*  
by Anne-Violaine Hardel

In 2004, France passed a law that banned the wearing conspicuous religious symbols in public school. *Signes religieux et ordre public* highlights the legal mechanisms that led to the passing of the law. Since the constitution of 1946, the French republic has been a secular state. Dr. Hardel asks how the 2004 law, and its aftermath, attempted to deal with tensions between diversity and citizenship. She argues the state faces many challenges, foremost the attempt to hold together the guarantee of public freedom, and the limits imposed on those freedoms by the secular state. This book is available in paperback. (Les éditions du cerf)

*CIBO E PRATICHE ALIMENTARI TRA DIRITTO E RELIGIONE* by Maria Sole Testuzza

Published in 2018, *Cibo e pratiche alimentari tra diritto e religione* is an examination of the role of food as it relates to *ius commune*. Rules about the consumption of food, or the restrictions on food are central to many religions and often attach moral judgments. Dr. Testuzza asks how food became the main object of focus during the *ius commune* period and looks at the role played by secular legal culture. Dr. Testuzza’s book seeks to make sense of this well-worn debate, and to make us question our existing assumptions. The book is available in paperback. (Bonanno Editore)



*TRA CIELO E TERRA*  
by Maria Sole Testuzza

*Tra cielo e terra* searches for the semantic origins of medieval “obedience,” a word that has deep cultural and societal connections to the daily life of the Christian west. While obedience suggests an appearance of law, medieval obedience was done willingly, without a specific legislative origin. It was, instead, a projection of religious values. In this book, Dr. Testuzza looks at the theological, political, and civil dimensions of obedience. The book is available in paperback. (G. Giappichelli Editore)



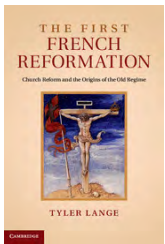


## RECENTLY PUBLISHED ESSAYS



### *EXCOMMUNICATION FOR DEBT IN LATE MEDIEVAL FRANCE* by Tyler Lange

Late medieval church courts frequently excommunicated debtors at the request of their creditors. Dr. Tyler Lange analyzes over 11,000 excommunications between 1380 and 1530 in order to explore the forms, rhythms, and cultural significance of the practice. He also demonstrates how from 1500 or so, believers gradually turned away from the practice and towards secular courts, at the same time they retained the moralized, economically irrational conception of indebtedness we have yet to shake. (Cambridge)



### *THE FIRST FRENCH REFORMATION* by Tyler Lange

The political culture of absolute monarchy that structured French society into the eighteenth century is generally believed to have emerged late in the sixteenth century. *The First French Reformation* offers a new interpretation of the origins of French absolutism. Dr Lange connects the fifteenth-century conciliar reform movement in the Catholic Church to the practice of absolutism by demonstrating that the monarchy appropriated political models derived from canon law. The book reveals how the reform of the Church offered a crucial motive and pretext for a definitive shift in the practice and conception of monarchy, and explains how this First French Reformation enabled Francis I and subsequent monarchs to use the Gallican Church as a useful deposit of funds and judicial power. (Cambridge)

In 2017, Dr. Pablo Echeverri and Laurent Mayali co-hosted a symposium at the Robbins Collection, “Judicial Independence and Accountability in Latin America.” Participants in the conference wrote response papers, now published on our website as a series of essays. The essays include: an Introduction by Dr. Pablo Echeverri; “21st Century Latin American Judiciaries” by Agustín Barroilhet; “Sobre la Independencia, Transparencia, Publicidad y Responsabilidad en el Ejercicio de la Función Judicial” by Édgar González López; “Holding the Judiciary Accountable or in Check?” by Ángel R. Oquendo; “Judicial Independence and Accountability in Colombia” by Álvaro Pereira; “The Colombian Constitutional Court, A Sovereign Without Control” by Javier Tamayo Jaramillo; “Accountability, Legal Translations and Reproductive Rights in Latin America” by Javier Velasco; and “Judicial Independence and Accountability in Latin America” by Cristián Villalonga Torrijo. Dr. Echeverri was a Robbins Collection post-doctoral Fellow from 2016–2018 and is now an Assistant Professor at Duquesne University School of Law.



**BY THE NUMBERS:** The Robbins Collection is comprised of over 300,000 holdings, including books, incunabula, microfilm, and periodicals. As of Spring 2018 we have cataloged all 322 manuscripts, including 57 manuscript fragments and 110 documents.





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