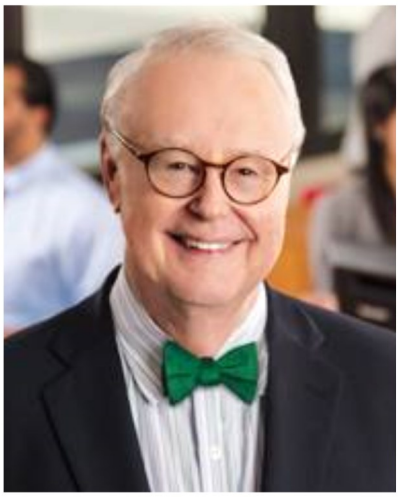
Decisive Utterance

John Marshall Law Student Newspaper for April 2016



Pictured: Dean John E. Corkery

Search for New Dean of Law School Begins!

Dean John E. Corkery announced this Spring that he will be stepping down as Dean of the John Marshall Law School. Dean Corkery has been a member of the law school's faculty since 1973 and has taught evidence, family law, and professional responsibility. In 1998, he became Associate Dean of Academic Affairs. After that he was named Vice-Dean in 2004 and was acting Dean until being named Dean in 2007. Dean Corkery will be returning to the faculty in order to teach after taking a year off to allow for his replacement to be found.

Students were encouraged to participate in a listening and input session on April 19 by the Decanal Search Committee to educate search consultants on what criteria students feel they should be considering in the selection process. As of yet, there has been no word what top candidates are being considered for the position. Be sure to check out future issues of the Decisive Utterance for commentary by Dean Corckery and coverage of the search and selection progress as it continues.

INSIDE

Poison in the Melting Pot: How Islamophobia Threatens our National Identity

By Tmara Abidalrahim and Chris Simmons

While the states have control over their welfare and assistance programs, refugee acceptance and resettlement is a federal issue. Regardless, many states have resisted efforts to relocate Syrian refugees within their borders and publicized their intentions not to cooperate with the federal government's efforts.

The Governor of Alabama, Robert Bentley, filed suit against the U.S. Department of State alleging that the federal government has not complied with the Refugee Act of 1980. The Department of Justice has filed a Motion to Dismiss. Flathead County in Montana has voted to submit a letter to the federal government stating their opposition to refugee resettlement in their county. The State of Indiana plans to appeal a federal ruling that requires Indiana to resume grant payments to a nonprofit contractor for resettlement of refugees. Indiana, like Alabama and Flathead County, cites the lack of thorough vetting of refugees for its opposition to resettlement.

The opposition to the federal government's attempts to provide asylum to those fleeing civil war and oppression is unnecessary as the United States has an incredibly thorough vetting process for refugees. Refugees from the Middle East face even more vetting than those from other parts of the world. Various commissions, NGOs, and the executive branch come together to come up with a plan on how many refugees to allow in

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When You Are $111 Billion in the Hole, Is It Better to Dig or Climb? A Critical Look at Illinois' State Pension Obligations

By: John Giokaris

*That's right, billion with a '**b.**'*

That's how much Illinois's unfunded public pension debt has grown to according to a state legislative report from the General Assembly's Commission on Government Forecasting and Accountability. That includes five pension systems the state is responsible for (state university employees, public school teachers, judges, state lawmakers and state workers).

Much like the often remote figure of the $19 trillion federal debt, you may be thinking, "So what does this have to do with me?" Anyone who pays taxes – particularly income taxes – should listen up. About 25 cents of every tax dollar we pay to Springfield goes toward one of five public pension systems. Okay, that's less than half. So what's the problem? Less than 30 years from now (2045), the ballooning unfunded pension liability is projected to exceed the total amount of assets that the state currently has in its possession. Think of pre-bankruptcy Detroit on steroids.

While there is a precedent for large municipal bankruptcies like Detroit ($18 billion in 2013), Jefferson County, Alabama ($4 billion in 2011) and Orange County, California ($2 billion in 1994), America has certainly never seen an entire state declare bankruptcy in its history.

How soon is that expected to become a reality? According to Moody's Investors Service, Illinois's pension funds aren't predicted to run out of money for another 50 years (until 2066). That could come a lot sooner though, with more taxpayers and job seekers keep leaving the state and Chicagoland area – along with their income.

In fact, Chicago saw the greatest population loss of any major U.S. city in 2015, according to the U.S. Census Bureau. Illinois was one of just seven states to see a population dip in 2015 and had the second-greatest decline rate last year after West Virginia, according to U.S. census data. While the state's population dropped by 7,391 people in 2014, that number more than tripled in 2015 to a loss of 22,194 people.

Some say, "Well then why not just tax the rich more?" Turns out Chicago lost more millionaires than any other U.S. city in 2015 as well. Global wealth data analysts at New World Wealth estimated that Chicago lost 3,000 of its 134,000 millionaires in 2015. That puts Chicago in the top four global cities in terms of the loss of millionaires, along with Paris, Rome and Athens.

Along with the population losses, shrinking tax base and revenue declines, comes the credit rating downgrades as well. Moody's has dropped Chicago bond ratings all the way to junk status, meaning the city must pay sky-high interest rates to borrow more money to make up for any deficit spending. Fitch Ratings has Chicago only one notch above junk and Standard & Poor's Ratings Services at just two notches above junk.

Chicago's unfunded pension liability to police, firefighters and teachers has now accumulated to $20 billion, according to Moody's. As a result, Chicago has a combined debt and pension liability of $26,000 per resident, as calculated by Moody's. That's nearly twice as much as Detroit before that city cut its debt and pension liabilities through bankruptcy in 2013. At that rate, Moody's announced that Chicago risks bankruptcy within the next decade.

So why isn't anyone doing anything about this? They've tried. Both state lawmakers in Springfield and city alderman in Chicago passed laws aimed at reforming their respective pension systems by compelling beneficiaries to contribute more for their own benefits only to have them both struck down by the courts – including the Illinois Supreme Court – as unconstitutional.

Specifically, the courts have found the pension reform laws to violate Article XIII, Section 5 of the Illinois Constitution which reads:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

That language was only added at the last constitutional convention Illinois had in 1970 and was largely borrowed from New York's 1938 pension clause (found under Article V, Section 7 of its constitution) due to lobbying efforts from state university employees, police and firefighters who sought stronger protections for their pension benefits.

As a result, the Illinois high court has strictly interpreted that language to mean that pension benefits and obligations that have accrued over the decades are not to be touched, or "diminished or impaired." That includes fully subsidized

healthcare benefits as well as a 3% compounded cost-of-living adjustment (or annual increase) for all 200,000 active retirees who are currently receiving pension benefits.

It's in stark contrast to every other state supreme court in the country – including Florida, Georgia, Michigan, New Jersey, New Hampshire, Rhode Island and Wisconsin – which have upheld efforts by their state legislatures to reform their public pension systems. That's in large part due to their consensus holding that expectations of public pension benefits are not "property," and when a state government pays out such benefits, it's usually just making good on legislative generosity, not paying out due to any legal obligation.

In 1999, for example, the National Education Association (NEA) sued Rhode Island for amending its teachers' pensions, and the NEA lost. (*Parella v. Ret. Bd. of Rhode Island Employees' Ret. Sys.*, 173 F.3d 46 (1st Cir. 1999)) The federal appeals court in that case held that amending the pension benefits did not violate the Obligation of Contracts Clause, the Takings Clause or the Due Process Clause of the U.S. Constitution (The NEA tried just about every legal argument in the book).

But the Illinois courts remain the sole outlier to hold otherwise, strictly due to the language of the state constitution's pension clause. The only solution the state Supreme Court has offered in its opinions is for the state legislature to get creative in seeking additional tax revenue from the state's shrinking population.

Short of proposing a constitutional amendment to modify the language of Article XIII, Section 5, massive tax increases will be the only option left for Springfield and Chicago.

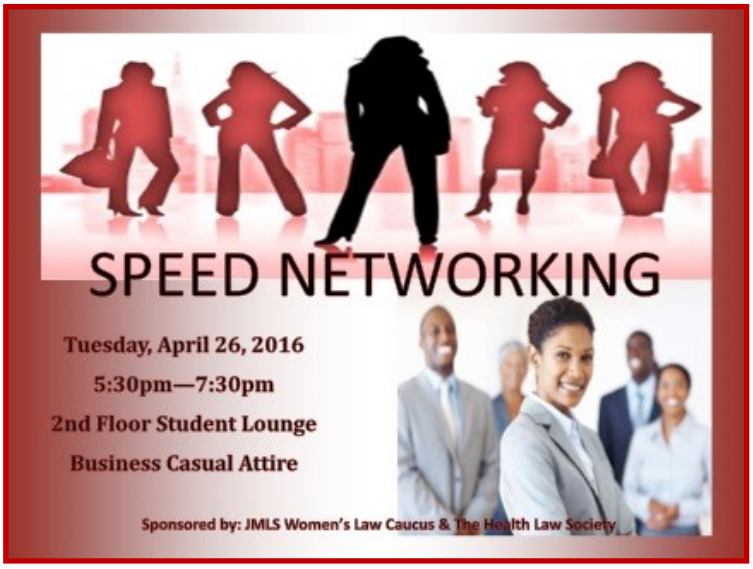
Scribes Bestow Lifetime Achievement Award on Judges Easterbrook and Posner

Pictured (L-R): Judges Easterbrook, Posner

On Friday, April 15 The John Marshall Law School co-sponsored the American Society of Legal Writers (Scribes) for a CLE and awards ceremony. The Scribes is an organization of professional writers who focus on legal subjects and matters of cultural and professional significance. The topics of the panels included; Ethics and Writing, Storytelling for Lawyers, Opinion Writing, and Basic Legal Tips. The panel discussions were not only informational but highly entertaining, with the Law Schools own Prof. Kim Chanbonpin and Prof. Mark Cooney of Thomas M. Cooley Law School offering the audience the opportunity to rewrite wordy phrases in the language of esteemed federal judges, Frank Easterbrook and Richard Posner.

This exercise provided an excellent segway to the awards ceremony later in the evening, where Easterbrook and Posner were awarded Lifetime Achievement Awards, presented by Bryan Garner, President of LawProse, Inc. and Distinguished Research Professor of Law at Southern Methodist University Dedman School of Law. Also recognized at the ceremony, were Wil Haywood for his book *Showdown: Thurgood Marshall and the Supreme Court Nomination that Changed America* and to Lawrence M. Friedman for *The Big Trial: Law as Public Spectacle*. Both of these distinguished writers received the prestigious Scribes Book Award.

Prof. Mark Wojcik is the Vice- President of the Scribes and it is in no small part due to his efforts that John Marshall has had the honor of hosting this year's event. The event was free to students attending the law school and was an excellent way to learn more about the expectations of the legal profession and those who help maintain the quality of thoughtful analysis and clear writing needed to perpetuate our system of justice. Those continuing their legal education this coming year are encouraged to attend.



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Diversity Week Highlights the Benefits of Inclusivity

By: DU Staff

Pictured: Members of the Student Bar Association, led by Daniel Hernandez

This past March John Marshall hosted Diversity Week, a collaborative effort of the Office of Diversity Affairs and the Student Bar Association. From March 7th to the 9th a variety of exciting and enlightening panel discussions and film showings took place.

On the 7th, Michelle Silverthorn, Director of Diversity & Education with the Illinois Supreme Court Commission on Professionalism gave a presentation on the value of inclusive leadership to students and faculty, stressing the importance of diversity in the practice of law in order to meet the needs of a naturally diverse client base in 2016. On the 8th, a panel of Affinity Bar Associations spoke to students about the value that memberships with these organizations can have for them professionally. The 9th was dedicated to résumé writing and branding sessions and ended in a networking reception.

Each night a different set of films were screened by affiliated student organizations to highlight and promote diversity and understanding within the student body. Film selections included: *A Raisin in the Sun* hosted by Black Law Student Association, *Dancehall Queen* hosted by the Caribbean-American Students Association, and *My Cousin Vinny* hosted by the Justinian Society, to name a few.

The program culminated with a luncheon on March 20 with Valerie Jensen, Executive Director of the Twin Cities Diversity in Practice, where students received additional advice on marketing themselves and strategies for professional development. The Culinary Diversity: Tastes from Around the World capped off the evening with delectable culinary selections prepared by students representing favorite dishes from their ethnic or national identities.

John Marshall is fortunate to have a diverse student body and events like Diversity Week help highlight how the school's commitment to inclusion not only enrich the lives of students but the legal profession as a whole. The enthusiasm and logistical efforts of students working in partnership with faculty to coordinate this series of events is worthy of praise and recognition and we at the Decisive Utterance are hopeful that this project will continue for many years to come.

Special thanks should to Troy Riddle of Director of Diversity, Tiffany Alberty of the Office of Diversity Affairs, and Daniel Hernandez and the rest of the Student Bar Association for making Diversity week possible and for helping John Marshall maintain its commitment to inclusion and opportunity for all.

Federalists Rise Above the Rancor with Panel Discussions

By: DU Staff

This past year the John Marshall Law School's Federalist Society has hosted a series of conversations which have been free and open to all students. The events have included discussions about the role of the police, the ideological propensities of the Chief Justice Roberts, and how federal regulations affect the craft brewing industry. The discussions often pair an esteemed faculty member with a visiting academic and legal professionals to provide a balanced perspective on the issue. The events have been incredibly well attended, usually with only standing room remaining at the beginning of each event.

The Federalists are dedicated to the principle of limited government and fiscal responsibility. While not everyone may agree with all of their conclusions, the robust platform for civil debate which the organization provided this past year certainly benefited both students and faculty. President, John Giokaris and the rest of the Federalist e-board can be proud of their contributions to the intellectual life at our law school, and our editorial board sincerely hope that future student leaders are able to maintain the high bar set by this organization.

Pictured: John Giokaris

Pharma Fiasco or: How America Learned to Forget its Problems and Hate the Pharma Bro

By Soe Tha and Michael Reed

In this era of divisive politics, infrastructure deficits, extra judicial police killings and budget crises, there appears to be little common ground to share in our public debate. The one exception appears to be our collective feelings towards Martin Shkreli, the hedge fund manager and pharmaceutical executive better known by his nickname, "Pharma Bro."

Just about everyone agrees Shkreli is kind of a jerk. Hillary Clinton is on public record stating that his business practices were "outrageous," and Donald Trump called him out as a "spoiled brat" at a recent rally. Unlike many of our current Presidential candidates, there are few apologists and supporters to stand against the flood of animosity Shkreli has inspired. What has inspired such a unified front against the young Wall Street exec? Well for starters, he raised the price of the pharmaceutical drug, Daraprim, to $750 a pill.

Shkreli's astronomical price hike of Daraprim brings a spotlight onto a problem many politicians, including current presidential candidates, hope to fix. When word broke out in the fall of 2015 that the drug once priced at $13 per pill increased overnight by 5,556 percent, critics pointed fingers to the United States' free market practices in pharmaceutical pricing.

In the United States, no federal regulation is in place that requires pharmaceutical companies to sell drugs at an affordable price. This market structure undoubtedly allows pharmaceutical companies like Turing to freely pursue unrestricted profits from people in need of drug treatment. In August, Shkreli wrote that hiking the price of Daraprim would bring in $375 million a year, all in profit. "Let's all cross our fingers that the estimates are accurate," Shkreli wrote.

Daraprim is the trade name for a 63 year-old drug, pyrimethamine. The drug is commonly used to treat Toxoplasmosis infection, a type of infection which HIV patients are particularly susceptible to. The patent on Daraprim had expired long before the drug was acquired by Turing. So you can breathe a sigh of relief, since this means that Turing does not have a complete monopoly over the drug.

Other pharmaceutical companies are free to produce generic versions of the drug and set their own sales price. However, the time and costs associated with reverse engineering a drug like Daraprim make it unfeasible for companies to provide less expensive substitutes. Another consideration is that the FDA has a lengthy and expensive approval process for pharmaceuticals.. With just under 9,000 prescriptions for Daraprim written in the United States last year, it's no surprise that there is little to no competition for any generics on the market. Luckily, a California company, Imprimis Pharmaceuticals is working on producing an alternative costing only $1 per pill. But there is no telling whether this alternative will be ready in time to save the thousands of Americans who need it.

Martin Shkreli. Image source: Wikimedia.

Since entering the public spotlight as the single most identifiable example of the pharmaceutical industry's excess, Shkreli's infamy has only become more pronounced. When the public demanded that he retract the proposed price hike, Shkreli promised to do so, and then never followed through. During a congressional hearing where he was asked to testify, he appeared only to assert his 5th Amendment right against even the most benign questions. Afterwards he tweeted his disbelief at the "imbeciles" that run our country. He has also been arrested for defrauding an investment company which he used to manage and appears to be genuinely unmoved by the charges or very public arrest which followed. Possibly the most incriminating for some, was Shkreli's purchase of the only existing copy of the Wu-Tang Clan's album *Once Upon a Time in Shaolin* for $2 Million, sparking a feud with Hip-Hop artist, Ghostface Killer.

At the center of this media circus is Shkreli himself who seems to revel in the role as a public villain while earnestly attacking those who dare to assault his character. Shkreli rebukes his critics by claiming to be a Robin Hood figure in disguise. His belief is that the sales from Daraprim can be used to fund research for the treatment of rare, hereditary diseases Shkreli has further insisted that insurance companies will ultimately be the ones to bear the burden of paying the difference of the controversial price hike. Unfortunately, many insurance companies have now refused to cover the drug, leaving their insured with few viable options for treatment.

Whether Shkreli's altruistic intent is earnest or not is debatable. A truly greedy executive would be more likely to increase the price in increments over time and would likely keep a low profile to avoid public backlash. Shkreli, on the other hand, clearly has something to prove and treats his detractors with mocking condescension. Whether or not you believe his explanations, he appears to be motivated by more than just pure profit. Rather than a symptom of the pharmaceutical industry's greed, Shkreli's antagonistic behavior may be the product of his unwavering faith in the free market's ability to generate broad social benefits, despite clear evidence to the contrary.

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and from what country. They must then be recommended and file for refugee status while outside of the United States. If the application is accepted, they go through numerous security and background checks.

All of this takes around 18 months minimum. So is it really a safety concern? Or is it an irrational fear of the "other" which propels the policy decisions of the Governor Bentley and like-minded politicians?

The United States has a long history of fearing and discriminating against the "other." A sociology term, here it is used to define groups of people whom the majority can impute broad generalizations, marginalize as outside of moral or ethical considerations, or who are deemed incapable of sharing mainstream values.

Pictured: Tmara and fellow members of the Middle Eastern Law Student Association

"Other" status has been bestowed on many in America's history; including Native-Americans, Blacks, Irish, Catholics, Jews, Indians, and Latin-Americans. The majority of Americans have made little effort to understand "others" and as a result, marginalized groups have suffered countless indignities. These travesties are not fables of a distant time and a distant land, whose shortcomings and hardships have been transcended and rectified. The sting of otherness is something felt by many in America today. Those who suffer under the gaze of unearned scrutiny are people you know and love. They are people you work and go to school with. They are your peers. One of whom is Tmara, an American Muslim and 3L in her final semester at JMLS.

Growing up, Tmara never saw herself as different. Granted, she ate her PB&J's with pita bread instead of sandwich bread and brought her own marshmallows to bonfires (because most have gelatin made from pigs in them), but she never felt like there was disconnect. Aside from the awkward "pepperoni-is-made-from-pigs-which-means-its-pork" conversation before ordering pizza, she was no different from anyone else in her class.

Flash forward to September 11, 2001. It was a seemingly normal morning. Tmara dressed herself, walked to school, and sat down in class with her peers. Not long after their lesson had started, the principal spoke over the intercom and announced that there had been an attack on the United States. Tmara and her fellow students were silent. They felt awestruck and confused. Later that day, Tmara found her mother crying in the living room when she came home from school. Her mom was crying for their country, but she also cried out of fear. Not that there would be another terrorist attack, but fear of retribution against the family for crimes they did not commit. At the time, Tmara did not understand. They were American too. So what if the terrorists were Arab or Muslim? What did that have to do with Tmara and her family?

September 12, 2001. Tmara dressed herself, walked to school, and sat down with her peers. But again, this was far from a typical day. The mood had shifted and everyone suddenly had an attitude towards her. They did not see her as one of them anymore, but as an outsider. Kids she had known since kindergarten were yelling at her and wearing sweaters on their heads like turbans to mock her. They threatened her "uncles" and her for what "they" did to "their" country, as if being Muslim and American were somehow incompatible. Tmara could not understand how all of a sudden she was the enemy of people she had so much in common with only one day prior.

A decade later, the situation has improved only marginally. To some, all Arabs were Muslims and all Muslims are terrorists. It does not matter how factually wrong this thinking is. Facts are impervious against this kind of ignorance.

On August 14, 2013, Tmara had recently arrived in Chicago and was ready to kick law school's butt. She stopped into a convenience store on State Street to buy pencils and a woman approached her, a complete stranger. The woman marched up to Tmara, stopped just an inch away, and told her to get out of the way, even though she could have easily stepped around her. Confused, but attempting to be polite, Tmara moved aside to allow the rude stranger to pass. Rather than continue down the aisle though, the woman followed

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Tmara and raised her voice, "I haven't forgotten 9/11! I would kill you if I had a gun on me! I know what you did! I haven't forgotten!" Tmara backed away and remained silent. The woman, now screaming, continued, "Going to jail would be worth it! I wish I could kill you!" The woman made several additional threats and racial slurs until Tmara could not bear it any longer and left the store. During the incident, no one attempted to approach or speak to her or the attacker.

While instances of islamophobia are not always this hostile, they happen regularly. Even if it's just a stare at a woman in a hijab, or a fearful glance, or avoidance of a bearded Middle Eastern man on the bus. If only non-Muslims who were so afraid of the "other" just took a chance to get to know the person they were staring at, they might experience an incredible cross-cultural exchange. Chris, a 2L at JMLS, took that chance and had an amazing experience.

While Chris was an undergrad, he was randomly assigned to live with an Egyptian man named Omar. Omar had had the displeasure of being stabbed as a child simply because he was an Arab, but he never grew to resent his fellow Americans because of it. Chris lived with Omar and his family for a month while they were both in between apartments. That particular month was the month of Ramadan. The family spoke a mixture of Arabic and English in their home. They went to work, came home, and acted as any other family. Chris participated in Ramadan because he wanted to immerse himself with his friend's culture. Chris and the family fasted during the day; the family prayed while he did not. At sundown every night, the mother cooked a fantastic feast often consisting of dates to break their fast, soup, salad, and a main dish. Afterwards, they went out and smoked hookah or watched TV together. He truly felt like he was part of their family. Every Friday, they went to the community center. "As-salamo alaykum," they greeted him as he entered. He watched them pray, and afterwards, they went into another room and shared a huge meal consisting of a dish from each family. The community was not only Egyptians; they were from Pakistan, Morocco, Syria, Palestine, Indonesia, Canada, and more. It was the friendliest and most welcoming experience in his life. Chris's views changed a lot during that time. He had already learned to be more open, but the experience of living with that family changed his perception completely.

Islamophobia is scarier than anything the refugees can be accused of because instead of taking the time to get to know different cultures, as Chris did, we are allowing hostile situations, like what Tmara experienced, to occur against innocent individuals. Refugees are fleeing countries and coming to the United States for solace and instead of getting to know them, we are allowing islamophobic sentiments to gain traction and publicity. Rather than speak out when big-name politicians make comments about Muslims or refugees, so many fear the "other" and allow those words to become their own beliefs. The problem is that these beliefs are hurtful and dangerous.

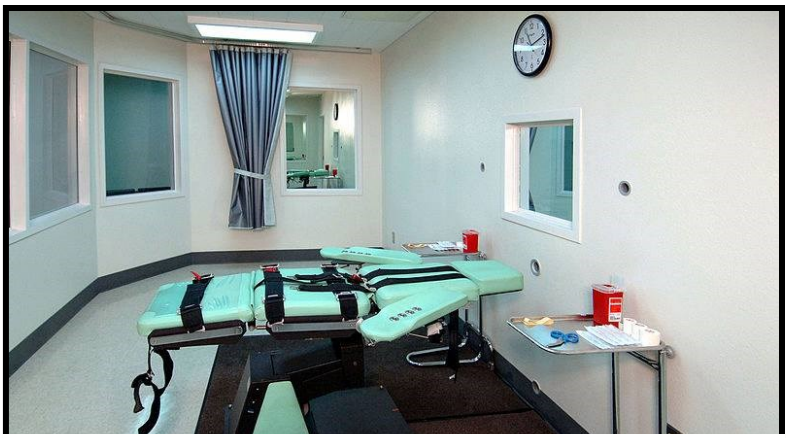
Individuals seeking refuge are not responsible for the turmoil in their countries or ISIS. They simply want to add to the melting pot that we know and love as the United States of America.

Human Sacrifice: A Look at the Death Penalty in America

By John Albarran

Friedrich Nietzsche postulated that, in premodern times, when a man was wronged he retaliated against the transgressor irrespective of the transgressor's "intent", "negligence", or "soundness of mind." Before the inception of "free will", along with the notion that man "chooses" to commit wrongs, pain was inflicted to forge a memory. It mattered not whether the transgressor knew what he did was wrong. Penance was not about correcting the culprit's behavior. It was about making him suffer. From this primitive background sprung the origins of the modern death penalty.

We do not normally think of Aztec human sacrifice rituals, or medieval torture devices, when we think about today's death penalty. But what separates these rituals and diabolical mechanisms from present forms of state sponsored execution? The differences are trivial. For example, we still adorn the condemned with hoods, which shield their view of the firing squad; we read prisoners their last rites before we administer lethal injections; and we provide inmates with bountiful "last suppers" before sending them to the "chair." In effect, only the devices with which we administer death have changed. The basic principal behind why we execute has not.



Lethal injection chamber, source: Wikimedia

As I tried to make clear in my last piece for the Decisive Utterance, when countering the threat posed by terrorists and violent killers, the state is often justified in taking life. Men like Osama bin Laden and Anwar al-Awlaki, for example, murdered civilians in the name of their apocalyptic quest for paradise, and skillfully evaded capture in the process. Thus, the U.S. government was just as morally, and constitutionally, justified in killing those men as a police officer is justified in shooting down a gunman who has opened fire in a crowded shopping mall.

By contrast, when a culprit (foreign or domestic) is captured, and the threat they pose has been neutralized, there is absolutely no justification for killing that person. Killing in such circumstances is a luxury, and a perverse one at that. It is in these instances that we see the old practice of human sacrifice rear its ugly head. A prime example of this type of morbid indulgence was evinced when Governor of Texas, Rick Perry, gloated at a 2012 Republican Presidential Primary Debate that Texas was number one in the country in executions. It mattered not that Texas's murder rate was above the average murder rate for states without the death penalty because, again, the death penalty is not aimed at correcting improper behavior. Rather, in Governor Perry's case, it is about sending the world a message about Texas's "values." Even more sadistic than that was when then Governor of Arkansas, Bill Clinton, executed a mentally retarded African American prisoner named Ricky Ray Rector, in an effort to assure rival Republicans that he was "tough on crime." This, in many ways, is the quintessential example of a modern human sacrifice. It clearly demonstrates how the death penalty is more about pleasing the political "gods" and forging memories on the part of the executioner than it is about teaching the recipient a lesson. Ricky Ray Rector was thus a human sacrifice in a disturbingly literal sense.

Recall, that the four main goals behind punishment in criminal law are deterrence, rehabilitation, restraint, and reciprocity. The death penalty certainly satisfies the restraint and reciprocity portions, since victims' families often take solace in the fact that their loved one's murderer is dead and, because he is dead, he will obviously never commit another crime. But there is no rehabilitation and, according to the Washington Post's Max Ehrenfreund, there is no evidence of deterrence either. Thus, there is no evidence that the death penalty makes society better. In reality, it corrodes society's moral fabric by unnecessarily exposing people to violence.

Take, for example, Utah's 2010 firing squad execution of inmate Ronnie Lee Gardner. According to National Public Radio, Gardner had earlier explained his decision to choose a firing squad over lethal injection thusly: "I lived by the gun, I murdered by the gun, so I will die by the gun." Granting Gardner's wish, the gunmen took aim, and fired. At 12:17 a.m., the coroner pronounced Gardner dead. Ronnie's brother, Randy, was there to witness the aftermath. When asked by an NBC reporter if he thought death by firing squad was humane, Randy couldn't help but balk at the irony of the question: "I had the opportunity to see my brother after four bullets hit his chest," he noted. "[A]nd I could have put my hand in anyone of the holes. It didn't look very humane to me."

Ronnie Lee Gardner was "grandfathered in" as a victim of the firing squad, as Utah had at the time nominally done away with the practice in 2010. But in March of 2015, Utah brought firing squads back. The reason: in 2011, European drug manufacturers began refusing to sell lethal injection chemicals to U.S. prisons in an effort to discourage states from administering the drugs. According to Eric McCann of The Guardian, the European boycott has largely been successful. However, some states, like Texas, Georgia, Missouri, Florida, and Oklahoma refuse to give up the practice. This recalcitrance has led to some states concocting their own "drug cocktails" as substitutes for the chemicals lost to the boycott. The results have been unnerving to say the least.

For example, in April of 2015, Oklahoma administered

an experimental "drug cocktail" to inmate Clayton Lockett, who, according to eye-witness Katie Fretland, "writhed", "groaned", and "thrashed" on his gurney for 43 minutes before finally dying of a massive heart attack. Fretland stated that midway through Clayton's convulsions officials drew curtains over the execution chamber, "obscuring the gruesome spectacle from public view." Even before the boycott, inmates explained that their arms felt like they were set on fire as the now unavailable lethal chemicals entered their veins, supposedly killing them "humanely."

Justice Sotomayor has voiced concern over the lack of scientific testing done on these new lethal injection "cocktails." Though she is right to be concerned, it is doubtful that any amount of scientific research will make the death penalty justifiable, because- as Randy Gardner pointed out to NBC News on the night of his brother's death- there is "no humane way to execute anyone…" Looking at the history of executions, it appears that Randy is right. After all, if firing squads and lethal injections are inhumane, then what can be said of other methods of execution the U.S. has employed, such as gallows, gas chambers, and electric chairs? Electric chairs are particularly ghastly devices, which makes it all the more unsettling that Tennessee's governor not long ago signed into law the revival of their use. Perhaps more surprising is the fact that several states have never taken the "chair" off the books. For those unfamiliar with the ways of "Gruesome Gertie", they need look no further than to U.S. Supreme Court Justice William Brennan, who described the sentence thusly:

"[T]he prisoner's eyeballs sometimes pop out and rest on [his] cheeks. The prisoner often defecates, urinates, and vomits blood and drool. The body turns bright red as its temperature rises, and the prisoner's flesh swells and his skin stretches to the point of breaking. Sometimes the prisoner catches fire....Witnesses hear a loud and sustained sound like bacon frying, and the sickly sweet smell of burning flesh permeates the chamber." (Ecenbarger, 1994).

Aside from the documented carnage, many studies show that a frighteningly large number of prisoners on death row have been wrongfully convicted. According to deathpenaltyinfo.org, 156 people on death row have been exonerated since 1973. If this number is accurate, one shudders to think how many wrongfully convicted men have been executed. The fact that even one person could possibly be executed wrongfully should be enough to convince people to end the practice altogether. But that is not the case. For many, the ritual of killing is clearly more important than the social goals that supposedly legitimize it.

As citizens of a liberal, constitutional democracy, it should not be our goal to sanctify revenge under the pretense of seeking justice. Rather, our goal should be to insulate the sentencing process from the passions of victims. As for those who would argue in favor of the death penalty, by citing the gruesomeness with which many death row inmates have murdered their victims, I would say this: it is one thing for a madman to dole out cruelty and torture, but it is something completely different for our government to do the same, and to do so in our name no less. The abolishment of this practice is long overdue. It is time for America to rid itself of this hideous relic: the human sacrifice.

"What Are We Doing Here?"

By Jake Crabbs

What are we doing here, exactly? What is the purpose law school? I have posed these questions to a few professors, and I have received different answers.

A common answer is that law school prepares students to be practicing attorneys. We are here to learn the nitty-gritty of the practice of law. That is why, for example, John Marshall offers so many clinics where students can get hands-on experience. That is why the school now requires "experience credits" to graduate. We do not see the words "Practice Ready" plastered all over the place for nothing.

Another answer is that law school prepares students for the bar exam. Some, if not all, professors write their own exams with the bar exam in mind. Although passing the bar exam is a prerequisite for practicing law, learning how to do well at one is not the same as learning how to do well at the other. The bar exam, out of necessity, is almost wholly divorced from legal practice. When has a client ever met with an attorney, laid out his predicament, offered four possible solutions, and demanded an answer in under a minute?

The case of Anna Alaburda, working its way through California's state courts, presents another related answer: the purpose of law school is to get a job. Ms. Alaburda graduated from The Thomas Jefferson Law School in San Diego with honors in 2008, and has yet to find fulltime employment as an attorney. She is now going to trial in her case against Thomas Jefferson for misleading her into believing that if she paid her tuition and passed her tests, she would be on the fast track to a high-paying job as a lawyer. There is no doubt that her case will be followed closely by educators around the country.

Like passing the bar exam, getting a job is distinguishable from becoming "practice ready." Securing employment is a distinct skill from succeeding at that employment. That said, there is obviously significant overlap.

This focus on legal education as a means to the end of getting money is nothing new. In one of the oldest extant comedic plays, *The Clouds*, Aristophanes depicts the foundations of legal education. An education in law is the study of how to make the weaker argument prevail over the stronger. And why would one be interested in overthrowing justice? "[T]o win law-suits, whether they be just or not." Evidently this skill would primarily be used to get out of paying just debts; "I want to be able to turn bad law-suits to my own advantage and to slip through the fingers of my creditors," says an aspiring student in Act 2.

The Chorus (a Greek dramatic device similar to a narrator) sings to Socrates's student that "Clients will be everlastingly besieging your door in crowds, burning to get at you, to explain their business to you and to consult you about their suits, which, in return for your ability, will bring you in great sums." The ability to act as an advocate for hire is what makes law school worth the effort.

But *The Clouds* is a parody of inquiry and education. And so, I think, is the idea that law school can be reduced to bar prep or job training. It goes without saying that one of the purposes of law school is to prepare students for the practice of law, but law school should also prepare students to approach life analytically. Socrates may have produced students who were successful lawyers, but that was secondary to producing students who were excellent thinkers and voracious learners. Maybe all of us should focus more on the Socratic Method; and just maybe we will achieve Socratic results.

Image credited to hulu.com.

Rick and Morty & the Crisis of Intellectual Property

By: Michael Reed

In 2014, acclaimed comedy writer Justin Roiland teamed up with writer/producer Dan Harmon of *Community* fame, to unleash the hit animated sci-fi comedy series *Rick and Morty* upon an unsuspecting world. On the outset, the story of a space traveling scientist and his side-kick grandson might not seem out of place on a family-friendly network like the Disney Channel. However, the show's cynical edge, deeply flawed characters, and often absurd perspective may not sit comfortably in the House of Mouse.

Rick's super intelligence allows him to make the impossible real, yet his swollen ego and raging alcohol addiction blind him of the danger he constantly places his loved ones in. Morty is a nervous teen, whose fragile psyche is constantly tested by the pettiness and poor decision-making exhibited by his close family members. Together, the pair humorously confront a series of fantastical encounters such as inter-dimensional paradoxes, alien body-snatchers, a sentient cloud with genocidal intentions which names itself "fart," a car battery powered by a miniature planet whose inhabitants have been tricked into generating electricity, and robot-like clones that go mad from desperately trying to improve Morty's dad's golf game.

However ridiculous, the misguided adventures of the title characters often lead to situations which thoroughly challenge commonly held notions of morality, identity, and freedom of choice. Rick and Morty's trials and tribulations remind us that however we may seek validation in our lives, the rewards are fleeting or forever slightly out of reach. It is only living with the knowledge of this fact that our lives gain some semblance of significance. Our struggles to achieve meaning in a world which remains indifferent to our aspirations causes our lives to be defined by a certain tension. This tension is not wholly unlike the ever-present strain between creative impulses and the law. When intellectual property law works, it encourages creation while protecting the interests of creators, but performing this tight-rope walk can often prove treacherous.

In 2005, Roiland developed a short web series, called *House of Cosby,* about an obsessed fan of Bill Cosby who built a cloning machine so that he could hang out with his favorite comedian. Due to a mishap with the machine, the fan unwittingly created hundreds of Cosby copies, each bestowed with its own oddly annoying personality quirk. *House of Cosby* was well regarded for its obtuse subject matter and absurdist sense of humor but was abruptly discontinued following a cease and desist order from Cosby's legal team. Cosby claimed that the unauthorized use of his voice, name, and likeness infringed on his rights to control his image. The letter also claimed the content of the show was "deeply offensive" and his lawyers aggressively pursued servers and websites that distributed the series until it was taken down.

Though his initial web series was short lived, Roiland was not done courting controversy. His next project was a maddening parody of *Back to the Future* which relied on shock value to create, in his own words, a "vandalization" of the film. Despite the twisted and contentious content of the program, the series did not receive a cease and desist order from *Back to the Future's* production company, Universal Pictures. Instead, the parody versions of Doc Brown and Marty McFly eventually evolved into the characters Rick and Morty which Roiland successfully pitched to Cartoon Network's mature programming block, Adult Swim. Had he not received the cease and desist which ended *House of Cosby*, it's unlikely that Roiland would have pushed the envelope with his *Back to the Future* parody.

Like the tension between meaning and oblivion, the tension between the law and Roiland's propensity to find humor in chaos has created something challenging and highly entertaining. Without the protections allotted Cosby to his image and intellectual property under copyright and trademark, he could not protect his interests from the willful abuse of another comedian. These protections forced Roiland to pursue other creative outlets and to push his work towards genuine parody.

Parody is generally protected under 17 USC 107 as a transformative fair use and would have been likely to survive a legal challenge, had one been filed. The development of this parody eventually resulted in a work which was unequivocally superior to Roiland's previous projects and has garnered him much deserved praise. Since copyright law's purpose is to perpetuate creative works, this series of events is not only vindicating for Roiland as a creator, but of the law itself.

While copyright law may stifle some creative impulses, *Rick and Morty* appears to be a clear example of the contrary. It is a testament to what can be accomplished in straddling the tension between order and anarchy. Roiland's show scores its biggest laughs and makes its most salient points about human nature by mining the conflicts between our existential needs and desires and the indifference of the universe. The functionality of copyright law is also a finite and precarious balancing act, where vibrant creative impulses are tempered by the rights of other artists and the originality of their work.

The law may force some creative endeavors to be abandoned, but this frustration can be the catalyst for creation itself. Whether this is an even trade is a subjective conclusion. Although when this tight-rope is traversed successfully, we can take small comfort in the fact that validation can be found in the struggle between the law and the works it ostensibly protects.

Could Unlikely Presidential Candidates Bring Back Brokered Conventions? A Brief History of a Time Honored Tradition

By John Giokaris

Between billionaire real estate mogul and reality TV star Donald Trump leading an insurgency within the Republican Party and Vermont Senator Bernie Sanders, a self-identified Democratic Socialist, doing the same among Democrats, talk has turned to the possibility of contested conventions for both parties this year.

Almost 90% of Republican insiders predict the GOP is heading for a brokered convention this summer in Cleveland, according to a recent Politico survey of operatives, activists and strategists in 10 key battleground states.

With 81% of the delegates needed to clinch the Democratic nomination in former Secretary of State Hillary Clinton's camp as of this writing, a slim 51% majority of Democratic respondents aren't as worried about a brokered convention according to that same Politico survey. But that's not stopping the Sanders campaign from preparing for a brokered convention themselves. "When we arrive at the convention, it will be an open convention, likely with neither candidate having a majority of pledged delegates," according to Sanders campaign manager Jeff Weaver.

Such conventions occur when no single candidate has secured a majority of delegates after the first vote for that party's presidential candidate at its nominating convention.

As of this writing, Trump has 68.3% of the delegates needed to lock the 2016 Republican nomination after 32 states have held their primaries or caucuses. Clinton is at 81% with 18 Democratic contests left to be conducted. Should neither frontrunner secure the majority of delegates needed to clinch their respective nominations after the primaries have concluded (essentially 50%+1), the conventions then become open or contested conventions and the delegates then broker with each other to rally a majority around one candidate.

While this hasn't happened in recent history due to the primary contests producing results that decidedly give one candidate a majority of delegates since the 1980's, the truth is brokered conventions have a long history in American politics and were in fact quite routine since at least the 1850's through the 1970's.

In 1860, for example, the first and second ballots conducted at the Republican Party convention in Chicago produced a plurality of delegates for New York Senator William Seward. It wasn't until the third ballot when former Illinois Congressman Abraham Lincoln secured a majority of delegates to become the Republican nominee. (Seward went on to serve as Lincoln's Secretary of State.)

In 1880, delegates at the Republican National Convention (again in Chicago) went through 35 ballots without either of the two frontrunners – former two-term President Ulysses S. Grant and former Speaker of the House James G. Blaine – getting a majority. It wasn't until the 36th ballot when Blaine supporters defected and rallied around dark horse candidate James Garfield (a low profile Congressman from Ohio) to push Garfield to a 52.8% majority.

At the 1912 Democratic National Convention in Baltimore, neither Speaker of the House Champ Clark nor New Jersey Governor Woodrow Wilson had won a majority of delegates after the primaries. It took 46 ballots on the convention floor before Team Wilson finally talked enough delegates into coalescing behind the future two-term president.

The 1920 presidential primaries had six Republican candidates that year with California Senator Hiram Johnson winning only a 30.3% plurality of the popular vote. In fact, Ohio Senator Warren Harding finished in last place with just 4.5% of the popular vote, yet at the convention (in Chicago yet again) Harding emerged as the nominee despite his poor showing at the ballot box thanks to campaign manager Harry Daugherty's back room dealings. Daugherty worked behind-the-scenes to paint Harding as a compromise candidate for hardline conservatives and moderates within the party. (Daugherty went on to serve as Harding's Attorney General.)

Republican National Convention 1976, Image source: Wikimedia

Perhaps the most historic contested convention was the 1924 Democratic contest at Madison Square Garden in New York City. The primaries that year had decidedly voted to nominate former U.S. Treasury Secretary William Gibbs McAdoo – winning nearly 60% of the popular vote! Still, going into the convention, there was a polarizing divide between supporters and opponents of Prohibition as well as interference from Ku Klux Klan members who openly endorsed McAdoo (an endorsement he refused to condemn) because they were opposed to McAdoo's next closest opponent for the nomination – New York Governor Al Smith – due to Smith's Roman Catholicism. Because of all the divisions, it took a record 103 ballots before the delegates in attendance finally settled on dark horse candidate John W. Davis, a former U.S. Ambassador to the United Kingdom, as a compromise. It was the longest continuously running convention in American political history, lasting a full 18 days.

Brokered conventions routinely occurred among both parties throughout the 1930's, 1940's and 1950's. The 1968 presidential primaries resulted in the frontrunners being Minnesota Senator Eugene McCarthy for the Democrats and California Governor Ronald Reagan for the Republicans, but without either one locking a majority of delegates going into their conventions. The brokered conventions in Chicago and Miami, respectively, produced Democratic nominee Hubert Humphrey (Lyndon B. Johnson's Vice President) and Republican nominee Richard Nixon (Dwight D. Eisenhower's Vice President).

Reagan nearly became the Republican nominee again in 1976 when he challenged sitting-President Gerald Ford for the party nomination. Ford narrowly eked out the win on the convention floor by a marginal vote of 52.6% to Reagan's 47.4% which incidentally became the last contested convention for either party. Reagan wouldn't finally become the GOP presidential nominee until 1980.

So brokered political conventions certainly aren't without precedent. Indeed, they used to be the norm. Should it happen again for either or both parties in 2016, the pledged delegates going into the conventions are only obligated to vote for their predetermined candidate on the very first ballot. After that, much like NFL players after clearing waivers, they become "free agents" to then interact with others to determine which candidate to rally behind

As history has demonstrated, resorting to a brokered convention hasn't always hurt either party's chances in the November general election either. But it should be interesting to see how the first potential contested convention(s) play out in the 21st century.

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Eileen Halpin has been teaching law since 2000 and has been academically counseling law students since 2006. In fall 2015, she began to privately tutor law students and bar applicants. Now, Eileen is incorporating her academic knowledge with her passion for fitness and boxing, to help you strengthen both your mind and body as you prepare for the Bar Exam.

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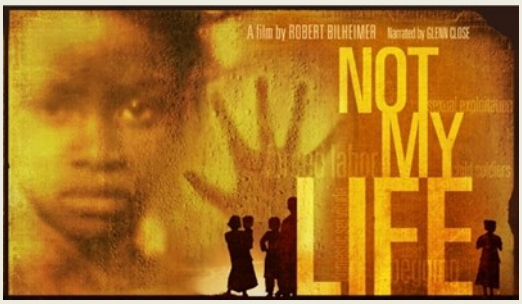

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