

2015

Do Not Cite or Circulate

Lee Anne Fennell

Follow this and additional works at: [https://chicagounbound.uchicago.edu/
public_law_and_legal_theory](https://chicagounbound.uchicago.edu/public_law_and_legal_theory)

 Part of the [Law Commons](#)

Chicago Unbound includes both works in progress and final versions of articles. Please be aware that a more recent version of this article may be available on Chicago Unbound, SSRN or elsewhere.

Recommended Citation

Lee Anne Fennell, "Do Not Cite or Circulate" (University of Chicago Public Law & Legal Theory Working Paper No. 521, 2015).

This Working Paper is brought to you for free and open access by the Working Papers at Chicago Unbound. It has been accepted for inclusion in Public Law and Legal Theory Working Papers by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

CHICAGO

PUBLIC LAW AND LEGAL THEORY WORKING PAPER NO. 521



DO NOT CITE OR CIRCULATE

Lee Anne Fennell

THE LAW SCHOOL
THE UNIVERSITY OF CHICAGO

February 2015

This paper can be downloaded without charge at the Public Law and Legal Theory Working Paper Series:
<http://www.law.uchicago.edu/academics/publiclaw/index.html>
and The Social Science Research Network Electronic Paper Collection.



DO NOT CITE OR CIRCULATE

Lee Anne Fennell

SPEND A LITTLE TIME around legal academia and you will notice something strange.¹ Law professors, who are generally quite enamored of their own words and not especially reluctant to toss around their own half-baked ideas, commonly attach some variant of this essay's title (hereinafter "DNCC") to early versions of their work products before sending them out into the world. Indeed, I have done it myself. But I have never seen the point of the practice, and the disadvantages are plain enough.² Perhaps most puzzling is the prevalence of the DNCC label on papers publicly available on the internet.³ Surely this is a bit like closing the barn door after the horses are out. The paper can already be read by every man, woman, and child on the planet who has access to an internet connection. Where else could it possibly be circulated *to*? After considering possible rationales for the DNCC practice, I have concluded that we would all be better off if legal scholars would cut back significantly on the use of DNCC labels. This essay is devoted to convincing you of that proposition.

*Lee Anne Fennell is the Max Pam Professor of Law at the University of Chicago Law School.
© 2015 Lee Anne Fennell.*

¹ I do not mean to suggest that the practice I describe is unique to legal academia (it clearly isn't), only that this is the place where I have encountered it. Nor do I mean to suggest that the practice I describe is the only strange thing about legal academia.

² Still, I will spell them out briefly in Part II, below.

³ To get a sense of the magnitude of this phenomenon, try running a few searches in your favorite search engine. Instructions not to cite without permission even appear in the star notes of several published law review articles.

I. WHY DNCC?

We can start by asking why anyone would ever slap a DNCC label on their work. Doing so is unnecessary to activate copyright protection and would seem to have little or no effect on the scope of those protections.⁴ The apparent goal is to make readers feel duty-bound to refrain from using the work in otherwise permissible ways. But why? I can think of a number of possibilities, but few of them hold much water. Those that do cannot account for the great majority of DNCC labeling that goes on.

The Absent-Minded Friend. In this scenario, the writer believes that the document is not ready to be seen by anyone other than a particular trusted friend, spouse, colleague, or research assistant. Said friend or associate has been enlisted to help look for the most egregious and glaring of the errors contained therein. The nervous writer readies a cover email that explains the situation and prepares to attach the hideously unfinished document. She hesitates. What if the friend prints out or saves the document, forgets the reason he has it, and begins distributing it all over the place, causing it to get cited derisively by hundreds of strangers who collectively bring the writer's career to a cataclysmic halt? Better affix a DNCC label to the document itself, just in case, before hitting "send." This precaution, which will keep the absent-minded (but thoughtful and literate) friend from inadvertently misusing the document, seems like a valid, if slightly paranoid, use of the convention. However, most of the documents bearing the DNCC label, especially those freely available on the internet, were evidently not entrusted (just) to such a friend.⁵

⁴ Copyright protections attach automatically and require no printed plea. Although a copyright notice is relevant to obtaining damages, DNCC is not a copyright notice. See 17 U.S.C. § 401. Rather, it seems to fall in the category of "restrictive legends." See, e.g., Randal C. Picker, *From Edison to the Broadcast Flag: Mechanisms of Consent and Refusal and the Propertization of Copyright*, 70 U. CHI. L. REV. 281, 287-88 (2003). Whether such a legend could have any effect on the rights of users in this setting is questionable, but even if it did, we would still need an explanation for why an academic author would view that effect as desirable. See *infra* notes 10-13 and accompanying text (discussing potential interactions between copyright law and DNCC).

⁵ Of course, the fact that there are many drafts circulating with the DNCC label in

Do Not Cite or Circulate

The Misdirected Email. A variation on the point above, and on the disclaimers that are routinely appended to law firm email messages, is that the label affixed to the paper alerts any chance recipient to the fact that they received the document only by mistake, or as a result of misfeasance or malfeasance on the part of the person to whom it was initially conveyed. But this seems unlikely to explain much of the DNCCing we see. Very few law review articles are of much interest outside of the tiny enclave of people working in the same subject area. The odds of a random recipient caring enough to circulate or cite the piece seems vanishingly small.

The Impending Presentation. A more likely explanation for DNCC labeling is that the writer signed up to give a paper at a workshop or conference that seemed blessedly far away at the time of commitment but is now bearing down on her like a freight train. The organizers are on her every minute of the day asking for the draft, and she has to give them something. She cobbles together a misshapen draft, adds a DNCC label, and sends it on, hoping for the best. While an impending presentation coupled with poor time management skills explains why someone might end up circulating shoddy work, it does not (on its own) explain what good the DNCC label is expected to do. This explanation, then, must be parasitic on one of the explanations that follow, such as “the reputational hedge.”

The Reputational Hedge. It seems likely that some people put DNCC labels on their work in an effort to hedge their reputational bets. Their hope is that the paper will be very well-received. Their fear is that the paper will be viewed as utter garbage. They would like to have a way to indicate that the paper isn’t really *done* yet and that it will probably get a whole lot better in the future, so that they can limit the downside risk, without cutting into the upside potential. The question is whether the DNCC helps at all in this regard. I think

semi-public fora and even on the internet does not establish that they were not initially conveyed to then-trusted friends in just the manner described above. Perhaps those “friends” didn’t bother to read the DNCC label before widely circulating the draft, or actually circulated it on purpose against the writer’s wishes (after seeing how poorly crafted it was), in hopes of ending the writer’s career. This seems unlikely, however.

it does not. It is unrealistic to assume that bad impressions of work will be magically counteracted by a DNCC label. Few people will reread a paper after having read an early draft, and all one will really gain is an increased chance that the paper will be ignored.

The Future Appointee. Some academics may have aspirations of a future political appointment to the bench or to some other lofty position. In the confirmation hearings that would surround such an event, the appointee might expect her political enemies to brandish snippets that put her intelligence, judgment, views, or grammatical skills in a poor light. But suppose that one or more such snippets come from a paper bearing a DNCC label. Is it plausible to suppose that the appointee's enemies will hesitate to use it? And, if they do use it, is it plausible to suppose that the appointee will be able to effectively use the DNCC label as a shield?

The Edgy Empiricist. I do not do empirical work, so this one is pure speculation. I understand that data arrive raw and have to be "cleaned" or even "scrubbed." Regressions and robustness checks are run. This all takes time, and because small changes in methodology can make large differences in results, the careful empiricist might affix a DNCC warning to unfinished drafts lest anyone rely to their detriment on results that are tentative and in need of further checks or manipulations. This seems reasonable, at least if one posits some reason why the early-stage paper needs to be out there in the first place (*see, e.g., "the impending presentation" supra*).

The Cautious Coauthor. Sometimes coauthors are in different places and on different schedules, communicating scattershot by email and phone, as a deadline approaches that requires putting the paper into the hands of others. Editing progresses, redlining begets blue lining, purple lining, and green lining, and finally, the time is at hand – the paper must be turned in. If not all coauthors have had a reasonable opportunity to review all of the changes, the submitting coauthor might add a DNCC label to the paper as a kind of disclaimer. Sure, a coauthor could write something more forthright, like "Last Edited by Jones. Don't Blame Smith!" or "Warning! This Draft Contains Edits Smith Never Even Saw" but that might puncture the illusion that the coauthors are a team working deliberately and coopera-

Do Not Cite or Circulate

tively toward a unified goal, rather than a loosely allied band of procrastinators.

The Updater. With few exceptions, everyone who uses the DNCC formulation plans to update the draft at some point. Sure, some papers fall by the wayside, but strong pressures toward squeezing publication lemonade out of even the most lemon-like of drafts make paper abandonment a less common phenomenon than one might expect. Thus, one function of the DNCC formulation might be to induce the reader to find, and cite, a later draft or even the published version of the piece, if one exists. The idea is that the reader will say to herself, “Gee, it says not to cite it, but I really want to. I wonder if there’s a version somewhere that *doesn’t* say that.” If pursued, this line of reasoning might put the reader on the trail of the author’s finished masterpiece. But will the trail be followed, and, if so, is the DNCC notice the reason?

I am skeptical on both counts. Unless the paper’s contribution is truly essential to the researcher’s project, the DNCC may cause the paper to get set aside or passed over in the rough and tumble of drafting. If the paper is really important enough to cite, however, most researchers would carefully look into whether there is a later draft or publication that would represent a more authoritative cite – even without the goad of the DNCC. If due diligence can’t turn up a later version when the researcher’s own work is being readied for the world, the DNCC presents a problem – the researcher may feel forced to leave out the cite, raising the risk that the cite won’t make it back in. Without a DNCC notice, the researcher can insert a cite to the working paper into her draft as a placeholder until such time as a more authoritative version comes into being.

The Demanding Publisher. Closely related to the explanation above is the possibility that some publishers might insist on DNCC notices or refuse to consider submissions that have been previously distributed without such a notice attached. The student-edited law reviews in which many DNCCing legal scholars routinely publish have never, in my experience, expressed a DNCC preference. But even if some publishers and journals had such a requirement, it would merely push the puzzle back an additional level. If the publisher’s concern is

with readers accessing content without purchasing a book or a subscription, then it seems as if the prohibition should be on posting or circulating work in the first place; adding a requirement of a DNCC notice clearly does nothing on its own to keep the content off the internet, for example. If, instead, the concern is with garnering proper citations to the published versions, it again seems questionable that a DNCC notice would produce a net increase in proper citations, rather than merely throw researchers off the trail.

The Untimely Death. Could the DNCC notice instead represent an author's attempt to arrange an advance communication from beyond the grave in the event of her sudden demise? If the author were to perish en route to a conference with the paper itself in tow, for example, first responders on the scene would know not to cite or circulate the draft. Perhaps more relevantly, the notice might provide some information to the decedent's family and colleagues about how to treat the work. Yet given that even express requests to destroy works have been famously disregarded,⁶ it seems unlikely that the DNCC would carry very much weight. Those truly concerned with how their work will be treated posthumously would do better to make more comprehensive arrangements, as the DNCC isn't really up to testamentary work.

The Neophyte Networker. Although I have primarily focused on the prohibitions contained in DNCC labels, they usually contain a kind of backhanded invitation as well: the stated bans can be dissolved by obtaining the author's permission. Some legal scholars new to academia might view a DNCC notice as a networking opportunity. Instead of waiting around to meet people in your field, they might reason, just post compelling articles on the internet with DNCC labels, and let the luminaries come to you. Perhaps, along with a plenitude of requests for citation permission, you will receive tips on how to improve the article, adulation, friendship, conference invitations – maybe even offers to visit or interview at other schools.

⁶ See Lior Jacob Strahilevitz, *The Right to Destroy*, 114 YALE L.J. 781, 830-35 (2005) (describing and analyzing Kafka's request to have his work destroyed upon his death, which his executor ignored).

Do Not Cite or Circulate

While anything is possible, it seems safe to assume that if you would have been ignored absent the DNCC label, you will be ignored with equal or greater force after adding it, other things being equal. A better bet is to send out your article to people in your area for feedback. Some will ignore you, but surprisingly many will not.

II. THE PRICE

DNCC labels are not costless. In thinking about the price they exact, it is helpful to address the prohibitions on citing and quoting separately from those on circulation. In thinking about whether the DNCC imposes any marginal burden, it is also useful to consider copyright law and fair use.

No Citing, No Quoting. As online access makes early drafts more and more accessible, the fraction of citations to works in progress can be expected to increase. If everyone puts a DNCC note on every draft, the costs of producing a new draft will rise accordingly, if permission must be sought for each use.⁷ Academics are producing new drafts all the time, so the costs are borne by all of us. This would be a tragedy of the commons if each of us were actually internalizing some benefit from DNCCing that made it individually rational, if collectively foolish, to engage in the practice. But my sense is that, except in some limited cases, it is individually foolish as well. The DNCC provides scholars very little protective cover, while introducing an impediment between ideas and those who would use them. Most of us need all the publicity we can get for our work, and the DNCC works at cross-purposes with that goal. This is made painfully obvious when a blogger drawing attention to a draft feels forced to limit what can be said about it due to a DNCC notice.⁸

⁷ This mirrors “anticommons” arguments raised in other contexts. See, e.g., MICHAEL A. HELLER, *THE GRIDLOCK ECONOMY* (2008).

⁸ See, e.g., Larry Solum, lolum.typepad.com/legaltheory/2009/06/shaman-on-originalism.html (explaining, after providing the abstract of an article recently posted on the Social Science Research Network, “I would like to have included some excerpts, but this paper has a do not quote or cite request.”).

Not only does the audience miss a chance at a potentially relevant and interesting idea, the author is deprived of free publicity.⁹

No Circulating. Academics may hesitate to share DNCC-marked drafts that they have in their possession with their colleagues who are working on similar issues, to the detriment of both the draft author and the potential sharees. Sure, it's possible to contact the author and ask permission to share the work, but that's a pain. Why should academics want to make it harder for others to do them favors?

What About Copyright? In assessing the cost of DNCC, it is important to know whether it purports to restrict readers from engaging in conduct that would otherwise be permissible. Could it be that the DNCC notice merely reiterates the copyright protections that already sheathe these nascent works, effectively performing a public service by warning academics against accidentally turning themselves into infringers? Copyright protects expression, not ideas,¹⁰ so merely citing a work and referring to its thesis or arguments (without quoting or closely paraphrasing) would not implicate copyright law. Quoting and copying unpublished work does fall within the domain of copyright, but the fair use defense remains available.¹¹ To the extent that ordinary academic quoting and sharing count as fair use, the DNCC notice looks like an attempt to narrow the fair use privi-

⁹ Although citations and quotations are not invariably flattering to the author, they are usually good news. See Richard A. Posner, *An Economic Analysis of the Use of Citations in the Law*, 2 AM. L. & ECON. REV. 381, 387 (2000) ("Negligible work is more likely to be ignored than to be cited. A negative citation often indicates that a work has gotten under the skin of the critic, perhaps because it mounts a powerful challenge to established positions or ways of thinking.").

¹⁰ 17 U.S.C. § 102(b).

¹¹ Fair use is determined under a four-factor test, and one of the factors is "the nature of the copyrighted work." 17 U.S.C. § 107. The fact that work is unpublished can enhance the protection it receives. See *Harper & Row v. Nation Enterprises*, 471 U.S. 539, 564 (1985) ("the scope of fair use is narrower with respect to unpublished works" given "the author's right to control the first public appearance of his expression"). But Congress has subsequently made clear that the fair use defense remains potentially available even for unpublished works. See 17 U.S.C. § 107 ("The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.").

lege for work that the author has (in many cases) already made available to the entire world. Even if the label could play some role in copyright analysis, whether by removing an argument that an implied license had been granted,¹² or by providing evidence about the nature of the work that might be pertinent to the fair use determination,¹³ this still does not explain why an author should view such an effect as serving her interests.

There remains the question of whether merely removing the DNCC label goes far enough to address the costs noted here. If some routine academic uses of some manuscripts would exceed fair use, then DNCC is not the (only) problem. Here, we might build on the Creative Commons model to add an “Academic Circulation Encouraged” (“ACE”) label to the lexicon of draft writers – assuming we could come up with a coherent idea of what academic circulation entails. In the meantime, academics should avoid hobbling each other beyond the legal scope of copyright protection by refraining from unnecessary DNCC labels.

III. THE FIX

The DNCC has an appealingly risk-averse quality that seems to exude a high degree of care, and it is easy to understand why academics, myself included, have fallen into using it. Perhaps, for those of us who practiced before teaching, it is a throwback to our days at the law firm, when caution reigned.¹⁴ Even then, I recall one

¹²The law surrounding implied licenses is highly murky, making it difficult to provide any definitive pronouncements here. See, e.g., Christopher Newman, “What Exactly Are You Implying?: The Elusive Nature of the Implied Copyright License,” 32 *CARDOZO ARTS & ENT. L.J.* 501 (2014).

¹³For example, the DNCC might be evidentiary on a question that at least one commentator has deemed important to a fair use claim: “whether, at the time the putative infringement occurred, the creator considered her work finished.” William W. Fisher III, *Reconstructing the Fair Use Doctrine*, 101 *HARV. L. REV.* 1659, 1780 (1988) (proposing that the fair use defense be unavailable where unfinished works are involved). But even if courts were to adopt this approach, labels like “preliminary and incomplete” or “draft” would work just as well.

¹⁴That inexplicable DNCC-like practices are not limited to academia is illustrated by the EPA’s use of the phrase “do not quote or cite” on freely available public

administrative assistant making fun of our obsessive practice of stamping DRAFT on every copy of a brief that was in progress. “What, you think we’re going to just run off to the courthouse and file it?” Well, you can’t be too careful, we thought to ourselves. Accidents can happen. But when the apparently risk-averse choice does little to avert risk and adds costs to the system as well, it is time for a change. The stakes, admittedly, are fairly puny. Still, this is an everyday irritant that could easily be removed, making the world an incrementally better place for legal academics. Let’s make it happen. Here’s how.

Think Before You DNCC. Ask yourself whether you really mean it, what you hope to achieve by it, and whether those hopes are well-founded. If the DNCC gains you nothing, do us all a favor and leave it off. We will all be better off for it – including, probably, you.

Popularize Narrower Alternatives. If a draft still needs a lot of work, the phrase “preliminary and incomplete” might be added. It signals that there’s a later draft to come, but doesn’t tell readers what to do with the draft in their hands. Another alternative is something like this: “Draft [date]; contact author at [email] for the most recent version.” This works well too, assuming one does eventually generate a more recent version. Best of all is to indicate where the paper is forthcoming, once one knows. This does a world of good in inducing accurate updating without reducing the chance that you’ll be cited at all. The use of an “Academic Circulation Encouraged” or “ACE” label would also be helpful in clarifying how the work can be used.

Fight DNCC Abuse. Norm entrepreneurship¹⁵ is needed in this area. It is probably unnecessary to create “Stop DNCC Abuse” buttons

documents. See Lisa Heinzerling, *Environmental Law and the Present Future*, 87 GEORGETOWN L.J. 2025, 2028 n. 13 (1999) (“Although every page of the EPA’s draft guidelines says “Draft – Do Not Cite or Quote,” I have chosen to cite the draft guidelines because they are a readily available public document, and because they provide the most extensive elaboration to date of the EPA’s position on discounting.”).

¹⁵ See Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 929 (1996) (“norm entrepreneurs can alert people to the existence of a shared complaint and can suggest a collective solution”).

Do Not Cite or Circulate

and bumper stickers. But perhaps we should create norms against DNCC use where the draft in question is on the internet and appears to have been posted there by the author herself. Academics are sensitive creatures and if a few bloggers out there could start a trend of mild, good-natured mocking of inappropriately-used DNCC labels, we could turn this thing around.



GB

ACKNOWLEDGMENTS

Lee Anne Fennell (*Do Not Cite or Circulate*, p. ____): I thank Jonathan Masur, Randy Picker, and Lior Strahilevitz for helpful comments.

Readers with comments may address them to:

Professor Lee Fennell
University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637
lfennell@uchicago.edu

The University of Chicago Law School
Public Law and Legal Theory Working Paper Series

For a listing of papers 1–400 please go to <http://www.law.uchicago.edu/publications/papers/publiclaw>.

401. Gary Becker, François Ewald, and Bernard Harcourt, “Becker on Ewald on Foucault on Becker” American Neoliberalism and Michel Foucault’s 1979 *Birth of Biopolitics* Lectures, September 2012
402. M. Todd Henderson, Voice versus Exit in Health Care Policy, October 2012
403. Aziz Z. Huq, Enforcing (but Not Defending) “Unconstitutional” Laws, October 2012
404. Lee Anne Fennell, Resource Access Costs, October 2012
405. Brian Leiter, Legal Realisms, Old and New, October 2012
406. Tom Ginsburg, Daniel Lnasberg-Rodriguez, and Mila Versteeg, When to Overthrow Your Government: The Right to Resist in the World’s Constitutions, November 2012
407. Brian Leiter and Alex Langlinais, The Methodology of Legal Philosophy, November 2012
408. Alison L. LaCroix, The Lawyer’s Library in the Early American Republic, November 2012
409. Alison L. LaCroix, Eavesdropping on the Vox Populi, November 2012
410. Alison L. LaCroix, On Being “Bound Thereby,” November 2012
411. Alison L. LaCroix, What If Madison had Won? Imagining a Constitution World of Legislative Supremacy, November 2012
412. Jonathan S. Masur and Eric A. Posner, Unemployment and Regulatory Policy, December 2012
413. Alison LaCroix, Historical Gloss: A Primer, January 2013
414. Jennifer Nou, Agency Self-Insulation under Presidential Review, January 2013
415. Aziz Z. Huq, Removal as a Political Question, February 2013
416. Adam B. Cox and Thomas J. Miles, Policing Immigration, February 2013
417. Anup Malani and Jonathan S. Masur, Raising the Stakes in Patent Cases, February 2013
418. Ariel Porat and Lior Strahilevits, Personalizing Default Rules and Disclosure with Big Data, February 2013
419. Douglas G. Baird and Anthony J. Casey, Bankruptcy Step Zero, February 2013
420. Alison L. LaCroix, The Interbellum Constitution and the Spending Power, March 2013
421. Lior Jacob Strahilevitz, Toward a Positive Theory of Privacy Law, March 2013
422. Eric A. Posner and Adrian Vermeule, Inside or Outside the System? March 2013
423. Nicholas G. Stephanopoulos, The Consequences of Consequentialist Criteria, March 2013
424. Aziz Z. Huq, The Social Production of National Security, March 2013
425. Aziz Z. Huq, Federalism, Liberty, and Risk in *NIFB v. Sebelius*, April 2013
426. Lee Anne Fennell, Property in Housing, April 2013
427. Lee Anne Fennell, Crowdsourcing Land Use, April 2013
428. William H. J. Hubbard, An Empirical Study of the Effect of *Shady Grove v. Allstate* on Forum Shopping in the New York Courts, May 2013
429. Daniel Abebe and Aziz Z. Huq, Foreign Affairs Federalism: A Revisionist Approach, May 2013
430. Albert W. Alschuler, *Lafler* and *Frye*: Two Small Band-Aids for a Festering Wound, June 2013
431. Tom Ginsburg, Jonathan S. Masur, and Richard H. McAdams, Libertarian Paternalism, Path Dependence, and Temporary Law, June 2013
432. Aziz Z. Huq, Tiers of Scrutiny in Enumerated Powers Jurisprudence, June 2013

433. Bernard Harcourt, Beccaria's *On Crimes and Punishments*: A Mirror of the History of the Foundations of Modern Criminal Law, July 2013
434. Zachary Elkins, Tom Ginsburg, and Beth Simmons, Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice, July 2013
435. Christopher Buccafusco and Jonathan S. Masur, Innovation and Incarceration: An Economic Analysis of Criminal Intellectual Property Law, July 2013
436. Rosalind Dixon and Tom Ginsburg, The South African Constitutional Court and Socio-Economic Rights as 'Insurance Swaps', August 2013
437. Bernard E. Harcourt, The Collapse of the Harm Principle Redux: On Same-Sex Marriage, the Supreme Court's Opinion in *United States v. Windsor*, John Stuart Mill's essay *On Liberty* (1859), and H.L.A. Hart's Modern Harm Principle, August 2013
438. Brian Leiter, Nietzsche against the Philosophical Canon, April 2013
439. Sital Kalantry, Women in Prison in Argentina: Causes, Conditions, and Consequences, May 2013
440. Becker and Foucault on Crime and Punishment, A Conversation with Gary Becker, François Ewald, and Bernard Harcourt: The Second Session, September 2013
441. Daniel Abebe, One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs, September 2013
442. Brian Leiter, Why Legal Positivism (Again)? September 2013
443. Nicholas Stephanopoulos, Elections and Alignment, September 2013
444. Elizabeth Chorvat, Taxation and Liquidity: Evidence from Retirement Savings, September 2013
445. Elizabeth Chorvat, Looking Through' Corporate Expatriations for Buried Intangibles, September 2013
446. William H. J. Hubbard, A Theory of Pleading, Litigation, and Settlement, November 2013
447. Tom Ginsburg, Nick Foti, and Daniel Rockmore, "We the Peoples": The Global Origins of Constitutional Preambles, March 2014
448. Lee Anne Fennell and Eduardo M. Peñalver, Exactions Creep, December 2013
449. Lee Anne Fennell, Forcings, December 2013
450. Jose Antonio Cheibub, Zachary Elkins, and Tom Ginsburg, Beyond Presidentialism and Parliamentarism, December 2013
451. Nicholas Stephanopoulos, The South after Shelby County, October 2013
452. Lisa Bernstein, Trade Usage in the Courts: The Flawed Conceptual and Evidentiary Basis of Article 2's Incorporation Strategy, November 2013
453. Tom Ginsburg, Political Constraints on International Courts, December 2013
454. Roger Allan Ford, Patent Invalidity versus Noninfringement, December 2013
455. M. Todd Henderson and William H.J. Hubbard, Do Judges Follow the Law? An Empirical Test of Congressional Control over Judicial Behavior, January 2014
456. Aziz Z. Huq, Does the Logic of Collective Action Explain Federalism Doctrine? January 2014
457. Alison L. LaCroix, The Shadow Powers of Article I, January 2014
458. Eric A. Posner and Alan O. Sykes, Voting Rules in International Organizations, January 2014
459. John Rappaport, Second-Order Regulation of Law Enforcement, April 2014
460. Nuno Garoupa and Tom Ginsburg, Judicial Roles in Nonjudicial Functions, February 2014
461. Aziz Huq, Standing for the Structural Constitution, February 2014
462. Jennifer Nou, Sub-regulating Elections, February 2014
463. Albert W. Alschuler, Terrible Tools for Prosecutors: Notes on Senator Leahy's Proposal to "Fix" *Skilling v. United States*, February 2014

464. Aziz Z. Huq, Libertarian Separation of Powers, February 2014
465. Brian Leiter, Preface to the Paperback Edition of Why Tolerate Religion? February 2014
466. Jonathan S. Masur and Lisa Larrimore Ouellette, Deference Mistakes, March 2014
467. Eric A. Posner, Martii Koskenniemi on Human Rights: An Empirical Perspective, March 2014
468. Tom Ginsburg and Alberto Simpser, Introduction, chapter 1 of *Constitutions in Authoritarian Regimes*, April 2014
469. Aziz Z. Huq, Habeas and the Roberts Court, April 2014
470. Aziz Z. Huq, The Function of Article V, April 2014
471. Aziz Z. Huq, Coasean Bargaining over the Structural Constitution, April 2014
472. Tom Ginsburg and James Melton, Does the Constitutional Amendment Rule Matter at All? Amendment Cultures and the Challenges of Measuring Amendment Difficulty, May 2014
473. Eric A. Posner and E. Glen Weyl, Cost-Benefit Analysis of Financial Regulations: A Response to Criticisms, May 2014
474. Paige A. Epstein, Addressing Minority Vote Dilution Through State Voting Rights Acts, February 2014
475. William Baude, Zombie Federalism, April 2014
476. Albert W. Alschuler, Regarding Re's Revisionism: Notes on "The Due Process Exclusionary Rule", May 2014
477. Dawood I. Ahmed and Tom Ginsburg, Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions, May 2014
478. David Weisbach, Distributionally-Weighted Cost Benefit Analysis: Welfare Economics Meets Organizational Design, June 2014
479. William H. J. Hubbard, Nuisance Suits, June 2014
480. Saul Levmore and Ariel Porat, Credible Threats, July 2014
481. Brian Leiter, The Case Against Free Speech, June 2014
482. Brian Leiter, Marx, Law, Ideology, Legal Positivism, July 2014
483. John Rappaport, Unbundling Criminal Trial Rights, August 2014
484. Daniel Abebe, Egypt, Ethiopia, and the Nile: The Economics of International Water Law, August 2014
485. Albert W. Alschuler, Limiting Political Contributions after *Mccutcheon*, *Citizens United*, and *SpeechNow*, August 2014
486. Zachary Elkins, Tom Ginsburg, and James Melton, Comments on Law and Versteeg's "The Declining Influence of the United States Constitution," August 2014
487. William H. J. Hubbard, The Discovery Sombrero, and Other Metaphors for Litigation, September 2014
488. Genevieve Lakier, The Invention of Low-Value Speech, September 2014
489. Lee Anne Fennell and Richard H. McAdams, Fairness in Law and Economics: Introduction, October 2014
490. Thomas J. Miles and Adam B. Cox, Does Immigration Enforcement Reduce Crime? Evidence from 'Secure Communities', October 2014
491. Ariel Porat and Omri Yadlin, Valuable Lies, October 2014
492. Laura M. Weinrib, Civil Liberties outside the Courts, October 2014
493. Nicholas Stephanopoulos and Eric McGhee, Partisan Gerrymandering and the Efficiency Gap, October 2014
494. Nicholas Stephanopoulos, Aligning Campaign Finance Law, October 2014
495. John Bronsteen, Christopher Buccafusco and Jonathan S. Masur, Well-Being and Public Policy, November 2014
496. Lee Anne Fennell, Agglomerama, December 2014

497. Avital Mentovich, Aziz Z. Huq, and Moran Cerf, *The Psychology of Corporate Rights*, December 2014
498. Lee Anne Fennell and Richard H. McAdams, *The Distributive Deficit in Law and Economics*, January 2015
499. Omri Ben-Shahar and Kyle D. Logue, *Under the Weather: Government Insurance and the Regulation of Climate Risks*, January 2015
500. Adam M. Samaha and Lior Jacob Strahilevitz, *Don't Ask, Must Tell—and Other Combinations*, January 2015
501. Eric A. Posner and Cass R. Sunstein, *Institutional Flip-Flops*, January 2015
502. Albert W. ALSchuler, *Criminal Corruption: Why Broad Definitions of Bribery Make Things Worse*, January 2015
503. Jonathan S. Masur and Eric A. Posner, *Toward a Pigovian State*, February 2015
504. Richard H. McAdams, *Vengeance, Complicity and Criminal Law in Othello*, February 2015
505. Richard H. McAdams, Dhammika Dharmapala, and Nuno Garoupa, *The Law of Police*, February 2015
506. William Baude, *Sharing the Necessary and Proper Clause*, November 2014
507. William Baude, *State Regulation and the Necessary and Proper Clause*, December 2014
508. William Baude, *Foreword: The Supreme Court's Shadow Docket*, January 2015
509. Lee Fennell, *Slicing Spontaneity*, February 2015
510. Steven Douglas Smith, Michael B. Rappaport, William Baude, and Stephen E. Sachs, *The New and Old Originalism: A Discussion*, February 2015
511. Alison L. LaCroix, *A Man For All Treasons: Crimes By and Against the Tudor State in the Novels of Hilary Mantel*, February 2015
512. Alison L. LaCroix, *Continuity in Secession: The Case of the Confederate Constitution*, February 2015
513. Adam S. Chilton and Eric A. Posner, *The Influence of History on States' Compliance with Human Rights Obligations*, March 2015
514. Brian Leiter, *Reply to Five Critics of Why Tolerate Religion?* August 2014
515. Nicholas Stephanopoulos, *Teaching Election Law*, September 2014
516. Susan Nevelow Mart and Tom Ginsburg, *[Dis-]Informing the People's Discretion: Judicial Deference Under the National Security Exemption of the Freedom of Information Act*, November 2014
517. Brian Leiter, *The Paradoxes of Public Philosophy*, November, 2014
518. Nicholas Stephanopoulos, Eric McGhee, and Steven Rogers, *The Realities of Electoral Reform*, January 2015
519. Brian Leiter, *Constitutional Law, Moral Judgment, and the Supreme Court as Super-Legislature*, January 2015
520. Nicholas Stephanopoulos, *Arizona and Anti-Reform*, January 2015
521. Lee Anne Fennell, *Do Not Cite or Circulate*, February 2015