

THE VANDERBILT LAW REVIEW

— ALUMNI NEWSLETTER —

Message from the Editor in Chief and Executive Editor

Alumni and friends of the *Vanderbilt Law Review*,

Welcome to the dawn of a new decade and the dawn of a new volume—seventy-three! We write to you in the midst of an unprecedented global response to the COVID pandemic. Despite the logistical difficulties and new sources of stress, our team has kept in high spirits and found creative ways to publish on schedule. We hope you and your families are safe and that this might provide a brief distraction!

Much has happened since our last update to you. In September, the *Law Review* co-hosted a talk by Judge Michael Scudder (7th Cir.) about Justice Kennedy’s free speech jurisprudence. You can read more about this talk on page 4. In October, we had a fantastic turnout for our alumni open house, which we plan to make an annual tradition in conjunction with Reunion Weekend. We had so much fun getting to know those of you who came out from near and far.

In October, we also held a symposium with Professors J.B. Ruhl and James Salzman entitled “Governing Wicked Problems.” The event brought together thought leaders from a variety of fields who both dug into substantive wicked problems (such as biodiversity and gentrification) and offered governance strategies to address those problems (such as incrementalism and adaptive governance). Professor Richard Lazarus of Harvard gave two talks: the keynote address, which focused on climate change as a “super-wicked problem,” and an incredibly engaging lunch talk about the story behind *Massachusetts v. EPA*, “the most important environmental case ever.” You can read more about the Symposium on pages 2 and 3.

The 3L members recently selected the Editorial Board for the 2020–2021 academic year. We cannot wait to see what their leadership will bring to the organization. The new Articles Committee is already finished filling three issues’ worth of professional scholarship, and the 2Ls have submitted their Notes for publication. Speaking of Notes, we encourage you to check out some of the fantastic student scholarship published this year. Are you interested in the securities law implications of Elon Musk’s tweeting? What we should do about universal injunctions? The restitution of Nazi-looted art? Whether we should shackle defendants in nonjury proceedings? [We’ve got you covered.](#)

This November, we will be partnering with the Law and Business Program to host a symposium in honor of Professor Margaret Blair, who is retiring. Corporate law scholars from around the country will gather to discuss her contributions to the field.

As always, we love hearing from you, and we hope you will be in touch with any comments, updates, or ideas for future newsletters!

Sincerely,

Hannah Martins Miller (J.D. ’20), Editor in Chief, and Jeff Turner (J.D. ’20), Executive Editor



GOVERNING WICKED PROBLEMS

The *Vanderbilt Law Review* held a symposium entitled “Governing Wicked Problems” at Vanderbilt Law School on October 24–25, 2019. The event was co-hosted by Professors J.B. Ruhl and James Salzman, who described the theme in this way:

“ ‘Governing Wicked Problems’ explores whether emerging theoretical and empirical work centered around concepts of resilience, adaptive governance, and complex adaptive systems offers a generalizable approach that could improve upon the conventional “war on” strategy often taken when government wrestles with intractable policy challenges—i.e., wicked problems.

Wicked problems are the opposite of hard but ordinary problems, which public and private governance institutions can solve in a finite time period by applying standard techniques. Not only do conventional governance processes fail to tackle wicked problems, they may exacerbate situations by generating undesirable consequences. The symposium is organized to step back and ask whether there are general governance design principles that could prove useful across the category of wicked problems. More fundamentally, we are pushing back on the conception that each wicked problem is *sui generis* as a governance challenge.

We have invited a small number of thought leaders from a variety of fields to write about both substantive wicked problems (such as climate change and gentrification) and governance strategies to address such problems (such as resilience and adaptive governance). The focus of the symposium is neither to run through each problem and its specific challenges nor to consider governance strategies in the abstract. Instead, we will marry the specific and abstract, asking what generalizable insights have been learned about how to design public and private governance regimes to manage wicked problems.”

Look forward to reading the articles produced by symposium participants this November!

The speakers for the Symposium included:

- **Barbara Cosens**, University of Idaho College of Law
- **Robin Craig**, The University of Utah College of Law
- **Richard Lazarus**, Harvard Law School
- **Gary Marchant**, Sandra Day O'Connor College of Law
- **Alex Camacho**, UC Irvine School of Law
- **Scott Campbell**, University of Michigan, Taubman College of Architecture and Urban Planning
- **Moira Zellner**, University of Illinois at Chicago, College of Urban Planning and Public Affairs
- **Jonathan Gilligan**, Vanderbilt University, Earth & Environmental Sciences
- **Craig Philip**, Vanderbilt University, Research Professor of Civil and Environmental Engineering
- **Chris Serkin**, Vanderbilt University Law School
- **Mike Vandenbergh**, Vanderbilt University Law School



Judge Scudder Talk

Judge Michael Y. Scudder of the Seventh Circuit gave a talk entitled “Justice Kennedy’s Contributions to the Law of Free Speech” at Vanderbilt Law School on September 12, 2019.

The *Law Review* hosted the event with the Cecil D. Branstetter Litigation & Dispute Resolution Program as part of the Branstetter Judicial Speaker series.

Vanderbilt Professor Sara Mayeux moderated the talk.



Selections of Recent Citations to Law Review Scholarship

recent amendments, the delegates sought to guarantee African-American participation on juries in another way. With a careful eye on racial demographics, the convention delegates sculpted a “facially race-neutral” rule permitting 10-to-2 verdicts in order “to ensure that African-American juror service would be meaningless.”⁴

Adopted in the 1930s, Oregon’s rule permitting nonunanimous verdicts can be similarly traced to the rise of the Ku Klux Klan and efforts to dilute “the influence of racial, ethnic, and religious minorities on Oregon juries.”⁵ In fact, no

¹ Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana 374 (H. Hearsey ed. 1898); Eaton, *The Suffrage Clause in the New Constitution of Louisiana*, 13 Harv. L. Rev. 279, 286–287 (1899); *Louisiana v. United States*, 380 U.S. 145, 151–153 (1965).

² See 31 Cong. Rec. 1019 (1896).

³ *Strauder v. West Virginia*, 100 U.S. 303, 310 (1880).

⁴ *State v. Maxie*, No. 13–CR–72522 (La. 11th Jud. Dist., Oct. 11, 2018), App. 56–57; see also *Frampton, The Jim Crow Jury*, 71 Vand. L. Rev. 1593 (2018).

⁵ *State v. Williams*, No. 15–CR–58698 (C. Ore., Dec. 15, 2016), App.

Constitutional Convention of the State of Louisiana 375 (H. Hearsey ed. 1898). And the convention approved non-unanimous juries as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service. See Aiello,

until it is overruled by this Court. As I read the Court’s various opinions today, six Justices treat the result in *Apodaca* as a precedent for purposes of *stare decisis* analysis. A different group of six Justices concludes that *Apodaca* should be and is overruled.

supra, at 16–26; *Frampton, The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1620 (2018).⁷

In light of the racist origins of the non-unanimous jury, it is no surprise that non-unanimous juries can make a difference in practice, especially in cases involving black defend-

A 2018 *Vanderbilt Law Review* article entitled “The Jim Crow Jury” was cited in both the Supreme Court majority and concurring opinions in *Ramos v. Louisiana*.

You can read the full opinion [here](#) and the article [here](#).

But notwithstanding *Voisine*’s interpretation of the phrase “the use of physical force,” as used in a different statute,⁸ to only require a *mens rea* of recklessness, the ACCA’s force clause requires more—namely, the “use of physical force against the person of another[.]” 18 U.S.C. § 924(e)(2)(B)(i) (emphasis added);⁹ see Jeffrey A. Turner, Note, *Reestablishing a Knowledge Mens Rea Requirement for Armed Career Criminal Act “Violent Felonies” Post-Voisine*, 72 Vand. L. Rev. 1717, 1731–44 (2019) (explaining why *Voisine*’s narrow holding turning on the word “use” and its reasoning do not extend to the ACCA).

⁸ See Note, *Reestablishing a Knowledge Mens Rea Requirement for Armed Career Criminal Act “Violent Felonies” Post-Voisine*, 72 Vand. L. Rev. 1717, 1741 & n.169 (2019) (citing Ala. Code § 13A-6-21(a)(3) (2019); Alaska Stat. § 11.41.220(a)(1) (2019); Ariz. Rev. Stat. Ann. § 13-1204 (2019); Colo. Rev. Stat. § 18-3-203(1)(d) (2019); Conn. Gen. Stat. § 53a-60(a)(3) (2019); Del. Code Ann. tit. 11, § 612(a) (2019); Haw. Rev. Stat. § 707-711 (2018); Iowa Code § 708.2(4) (2019); Kan. Stat. Ann. § 21-5413(b)(2) (2019); Ky. Rev. Stat. Ann. § 508.025(1)(a) (West 2019); Me. Rev. Stat. Ann. tit. 17-a, § 208 (2019); Mass. Gen. Laws ch. 265, § 13A(a) (2019); Mo. Rev. Stat. § 565.052 (2016); Neb. Rev. Stat. § 28-309(1)(b) (2016); N.H. Rev. Stat. Ann. § 631:2(I)(a) (2019); N.J. Stat. Ann. § 2C:12-1(b)(3) (West 2019); N.Y. Penal Law § 120.05 (Consol. 2019); N.D. Cent. Code § 12.1-17-02 (2019); Okla. Stat. tit. 21, §§ 641–642, 646(A)(1) (2019); Or. Rev. Stat. § 163.165 (2018); Tenn. Code Ann. § 39-13-102(a)(1)(B) (2019); Tex. Penal Code Ann. §§ 22.01(a)–22.02(a) (West 2019); Utah Code Ann. § 76-5-103(1) (LexisNexis 2019)).

Two amicus briefs filed in *Walker v. U.S.* cited Jeffrey Turner’s Note. The Supreme Court is considering whether a criminal offense that can be committed with a *mens rea* of recklessness qualifies as a “violent felony” under ACCA.

You can read his Note [here](#).

court. *Sims*, 530 U.S. at 108–09 (citing *Hormel v. Helvering*, 312 U.S. 552, 556 (1941)). The courts’ inherent authority likely allows them to adopt that “long unquestioned” forfeiture rule, see *Carlisle v. United States*, 517 U.S. 416, 426 (1996) (citation omitted), which dates to the writs of error from English common law. See Robert J. Martineau, *Considering New Issues on Appeal*, 40 Vand. L. Rev. 1023, 1026–28 (1987); Roscoe Pound, *Appellate Procedure in Civil Cases* 107–10,

Professor Robert J. Martineau’s article, “Considering New Issues on Appeal,” was cited by the Sixth Circuit in *Island Creek Coal Co. v. Bryan*, 2019 WL 4282871 (Sept. 11, 2019).

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Please join us in congratulating our award winners for the 2019-2020 academic year.

Candidate's Award

Jeff Turner

Awarded by the second-year staff of the *Vanderbilt Law Review* to the third-year staff member, other than the editor-in-chief, who has made the most significant contribution to their development as staff members of the *Vanderbilt Law Review*.

Editor's Award

Jill Warnock

Awarded annually to up to two third-year editorial board members who have made the most significant contributions to the *Vanderbilt Law Review*.

Morgan Prize

Szymon Barnas

A cash award, in honor of Professor Edmund M. Morgan, given to the student contributing the most outstanding piece of student writing published in the *Vanderbilt Law Review* during the school year. The winner of this prize is ineligible to receive the Weldon B. White Prize.

You can read his note [here](#).

The Myron Penn Laughlin Note Award

Carlie Malone

Awarded to the student, other than the recipient of the Morgan Prize, who has contributed the best student note published in the *Vanderbilt Law Review* during the school year.

Her note is forthcoming.

Please join us in congratulating the 2L class on their new positions.

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