



RUTGERS
Law School

Rutgers Center for Corporate Law *and Governance*

NEWSLETTER FROM THE RUTGERS CENTER FOR CORPORATE LAW AND GOVERNANCE / 2019-2020 Academic Year

“We remain committed to providing our students with a strong foundation for practice in the business law area, as we seek to promote best corporate and governance practices and to stimulate potential law reform.”



MESSAGE FROM OUR CO-DIRECTORS

The fifth year of operation of the Rutgers Center for Corporate Law and Governance was marked by both difficulty and achievement. Since March of 2020, the Center, like everyone, has been affected by the global pandemic. We join other law schools, universities, and institutions across the nation in extending our sympathies and condolences to those who have lost loved ones to COVID-19. As with other academic centers, we have not held “in person” meetings or conferences since March 2020; nor have we been able to meet “live” and in person with students and faculty. We look forward to a time soon when we can resume normal “in person” programming of our events.

Notwithstanding these difficulties, the Center has seen achievements on multiple fronts. Twenty-six students participated in our Entrepreneurship Clinic, providing legal services to a wide variety of for-profit and nonprofit start-ups. Thirty-five members of the Class of 2020 graduated with Certificates in Corporate and Business Law. The Center presented “Bankruptcy 2019: Important Decisions of the Last Twelve Months,” a major all-day conference on “The Rise of Self-Expression in Investment,” keynote addresses by Trevor Norwitz of Wachtell, Lipton, Rosen & Katz and Greg Taxin of Spotlight Advisors, part one of the “Corporate Women Leaders Series” in Newark and in Camden, a “Fiduciary Duties in Business” Workshop, and the Fall Transactional Competition. The Center continued to support the Entrepreneurship Clinic financially for the second year, thanks to a five-year grant from The Connell Company, and instituted a multi-faceted initiative focused on blockchain, cryptocurrencies, and fintech funded by a grant from the Ripple University Blockchain Research Initiative. These achievements were due in large part to our dedicated Advisory Board, active Alumni Steering Committee, dynamic Affiliated Faculty, committed students, and superb Program Coordinators, Tania Bentley and Habibah Johnson.

The Center continues to be a recognized forum for research, analysis and discussion of current issues in corporate law and governance, and a valued resource for faculty, alumni, students and the business and non-profit communities. We remain committed to providing our students with a strong foundation for practice in the business law area, as we seek to promote best corporate and governance practices and to stimulate potential law reform.

Yours truly,

Douglas S. Eakeley and Arthur B. Laby

CO-DIRECTORS, RUTGERS CENTER FOR CORPORATE LAW AND GOVERNANCE



**2019-2020 OPENING ACADEMIC SESSION
“ACTIVISM TODAY: A CONVERSATION BETWEEN TWO OF THE MOST
SEASONED EXPERTS ON SHAREHOLDER ACTIVISM”**

September 11, 2019

For the 2019-2020 Academic Year Opening Session, the Center hosted two of the most seasoned experts on shareholder activism. Trevor Norwitz is a partner at Wachtell, Lipton, Rosen & Katz, where he focuses primarily on mergers and acquisitions, corporate governance, and securities law matters. Greg Taxin previously served in many roles in the industry, including as an investment banker, lawyer, and activist hedge fund manager. The founder and former CEO of proxy advisory firm Glass, Lewis & Co., Mr. Taxin is now managing director of Spotlight Advisors, a firm he founded to advise boards in special situations, including proxy fights, contested mergers and acquisitions, and hostile takeovers.

Messrs. Norwitz and Taxin discussed the current state of shareholder activism, as well as recent developments in corporate governance. This included the future of proxy advisory firms. Mr. Taxin painted a bleak picture for firms like Glass Lewis and Institutional Shareholder Services in light of the intensified efforts of the U.S. Congress and Securities and Exchange Commission to regulate the industry. Mr. Taxin also talked about what he saw as contributing factors to the rise of shareholder activists in the 2000s, including the restrictions placed on investor communication by Regulation Fair Disclosure. Mr. Norwitz expressed a contrarian view of today's corporate governance trends. He advocated for companies to adopt a classified (a.k.a. “staggered”) board system for the election of directors as a mechanism for accountability that also allows directors to have time to perform and think longer-term.



*“A conversation between two
of the most seasoned experts on
shareholder activism.”*



THE CENTER FOR CORPORATE LAW AND GOVERNANCE FALL TRANSACTIONAL COMPETITION

November 22 and 23, 2019

Rutgers Law School students studying transactional and corporate law got to put their knowledge to work at a two-day competition that tested their skills in negotiating a business acquisition, as counsel for both buyers and sellers. The Transactional Competition is an academic initiative organized by the Center and the Law School and designed to provide law students who aspire to practice as transactional lawyers an experience comparable to the experience moot court provides to future litigators.

On November 22 and 23, students enrolled in the Transactional Competition Course taught by Professor Yuliya Guseva and Adjunct Professor Ira Marcus took part in the competition at the Law School's Newark location. Co-Dean David Lopez and Rutgers Law faculty members welcomed participating students and the judges, who were highly experienced practicing attorneys from New York and New Jersey law firms and corporations.

Prior to the competition, the students had marked up an asset purchase agreement that was used in the negotiations. Each two-student team took part in three rounds of negotiations. After each of the rounds, the judges reviewed the markups, observed the negotiations, scored student performance and provided feedback to the competitors. The professors said they hope the participating students significantly improved their transactional skills during this innovative competition.

There were two first-place buyer's teams and two first-place seller's teams. Congratulations to students Samuel Allaman RLAW '20, Lucas Katzenmeier RLAW '20, Kristen Krag RLAW '20, Alcides Mauricio RLAW '20, Yelky Perez RLAW '21, Colman Preziosi RLAW '20, Katarina Gonzalez RLAW '20, and Juan Estrada Castillo RLAW '21.

The competition would not have been possible without the generous help from the lawyers who served as judges: Chris Andrew of Johnson & Johnson, Keith Ansbacher, former General Counsel of BASE, Ami Foger of Saiber LLC, Brett Harris of Wilentz Goldman & Spitzer, Karen Killeen of BASE, Katherine C. Lee of Verizon Enterprise Solutions, Ralph Lowenbach of Orloff Lowenbach, Stifelman & Siegel, Marsha Moore of Post Polak, Vincent Rubino of Hartz Mountain, Kevin Schmidt of Debevoise & Plimpton, Ira Starr of Starr, Gern, Davidson, & Rubin, Charles Weissman of Dechert, Alan Wovsaniker of Lowenstein Sandler, and Seth Zuckerman of Greenberg Traurig.

The competition was generously supported by the Center, Saiber LLC, Debevoise & Plimpton, and Greenberg Traurig.



“THE RISE OF SELF-EXPRESSION IN INVESTMENT”

September 27, 2019

Hosted by the Center in partnership with the Rutgers Institute for Professional Education and organized by Doug Chia (President, Soundboard Governance LLC and Fellow, Rutgers Center for Corporate Law and Governance), Sarah Dadush (Professor of Law, Rutgers Law School) and Stephen Park (Associate Professor & Satell Fellow in Corporate Social Responsibility, University of Connecticut School of Business), this day-long conference brought together state, national and international practitioners from the investment, regulatory, activist, and academic spheres to engage in a vibrant discussion about the role of personal values in the investment markets, as compared with traditional consumer markets. They addressed questions pertaining to the nature and desirability of self-expression in the investment markets, the quality of the tools available for expressive investing, and the openings for law and private norms to support or undermine the expression of personal values in the investment context.

Panel 1: *Self-expression in the marketplace: From individuals to institutions*

- Stephen Davis, Associate Director, Harvard Law School Programs on Corporate Governance and Institutional Investors, Harvard Law School
- Adam Kanzer, Head of Stewardship, BNP Paribas Asset Management
- Melinda Tually, Country Coordinator, Australia, Fashion Revolution
- Clara Vondrich, Director, Divest Invest

Moderator: *Sarah Dadush*

Panel 2: *Identifying the tools and strategies for self-expression in the investment markets*

- Debarshi Basu, VP, Researcher and Portfolio Manager, Blackrock
- Deborah Burand, Professor and Co-Director, Grunin Center for Law and Social Entrepreneurship, NYU Law School
- Margaret Hartigan, CEO and Founder, Marstone
- Alex Lebow, Co-Founder, Say.com

Moderator: *Stephen Park*

Panel 3: *Managing information asymmetries in an expressive marketplace*

- Dana Brakman Reiser, Professor, Brooklyn Law School and Anne Tucker, Professor, Georgia State University College of Law, presented their paper, “Buyer Beware: The Paradox Of ESG & Passive ESG Funds”
- Casey O’Connor-Willis, Senior Program Manager, NYU Stern Center for Business and Human Rights, presented her paper, “Putting the “S” in ESG: Measuring Human Rights Performance for Investors”

Moderator: *Doug Chia*

Panel 4: *How law (hard and soft) supports and inhibits self-expression in the marketplace*

- Ariel Meyerstein, Senior VP, Corporate Sustainability, Citi
- Doug Rappaport, Partner, Akin Gump, LLP
- Cynthia Williams, Professor, Osgoode Hall Law School

Moderator: *Jordan Savitch, General Counsel & Managing Director, The Glenmede Trust Company, N.A.*

PANEL DISCUSSIONS, PRESENTATIONS AND WORKSHOPS



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“BANKRUPTCY 2019: IMPORTANT DECISIONS OF THE LAST TWELVE MONTHS”

September 11, 2019

The Center partnered with the Rutgers Institute for Professional Education, and the American College of Bankruptcy Third Circuit Fellows to present a panel discussion about the most important bankruptcy decisions in the last twelve months, from the United States Supreme Court all the way down to the bankruptcy courts.

Emphasis was on cases that moved, changed, developed, or significantly affected existing law. The panelists covered a multitude of circuit splits that should make their way to the Supreme Court in the next several years. The panel also analyzed emerging areas of controversy in bankruptcy law, involving issues of significance in consumer law and with respect to corporate reorganization.

Panelists included: The Hon. Kevin J. Carey (United States Bankruptcy Judge, District of Delaware), The Hon. Ashely M. Chan (United States Bankruptcy Judge, Eastern District of Pennsylvania), The Hon. Rosemary Gambardella (United States Bankruptcy Judge, District of New Jersey), The Hon. Michael B. Kaplan (United States Bankruptcy Judge, District of New Jersey), Chrystin Ondersma (Professor of Law and Judge Morris Stern Scholar, Rutgers Law School). Moderator: Bill Rochelle (Editor-at-Large, American Bankruptcy Institute)



“The most important bankruptcy decisions in the last twelve months, from the United States Supreme Court all the way way down to the bankruptcy courts.”

“FIDUCIARY DUTIES IN BUSINESS” WORKSHOP

October 4-5, 2019

The scholarship on fiduciary duties in business organizations has a Janus-faced character. On the one hand, business organizations are one of the key contexts for the application of fiduciary duties. On the other hand, the attitude of much corporate law theory reflects some disdain for the role of fiduciary duties.

Marginalization of fiduciary law and theory, however, is out of step with significant developments. For example, the past ten to fifteen years have seen a surge of interest by scholars in fiduciary relationships and the fiduciary obligation. In addition, cracks have emerged in many of the early critiques of fiduciary duties. Finally, a renewed interest in corporate governance and stakeholder models of the corporation, moving beyond pure shareholder interest, underlines a renewed interest in whether fiduciary principles can define a corporate board’s obligation to a wider set of constituencies. In October 2019, Professors Russell and Laby held a workshop in Camden where leading scholars of fiduciary law addressed these issues in a series of papers that will soon be published in a volume by Cambridge University Press.

“WHAT IS CORPORATE LAW?”

November 12, 2019

The Center co-hosted with the Society for Corporate Law and Governance a panel discussion on the topic of “What is Corporate Law?” The goal of this panel was to showcase the different aspects of corporate law and break down the seemingly complex topic of corporate law.

Panelists included:

Amy Bard, Bressler, Amery & Ross, P.C. (ret.); Jewell Watson, Director, Corporate Counsel at The Prudential Insurance Company of America; Kerry Flynn, Vice President at Goldman Sachs; Freddy Jimenez, Vice-President, Law and Compliance at Celldex Therapeutics; Doug Chia, Center Fellow (Moderator)



“THE QUEERING OF CORPORATE AMERICA”

November 19, 2019

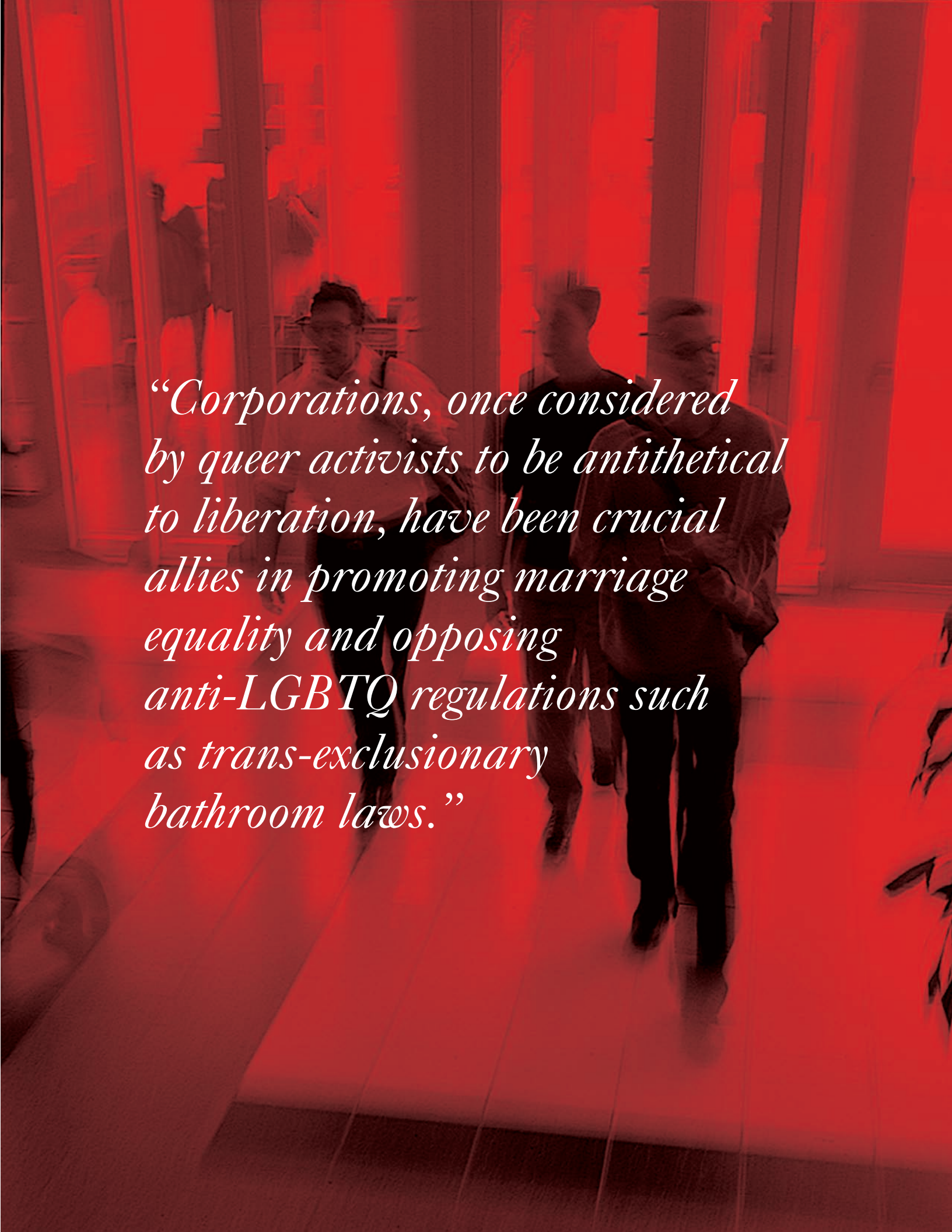
The Center partnered with the Rutgers Center for Gender, Sexuality, Law and Policy and the Rutgers Institute for Professional Education in hosting Distinguished Professor of Law and Judge Frederick Lacey Scholar Carlos A. Ball, who gave a lecture on his recent book “The Queering of Corporate America.” The book provides a fifty-year history of how and why LGBTQ activists have prioritized changes within corporate America as a way of helping to transform the nation’s policies and attitudes toward sexual minorities and transgender individuals. At a time when the LGBTQ rights movement is facing political and public backlash, “The Queering of Corporate America” complicates the narrative of corporate conservatism and provides insights into the future legal, political, and cultural implications of progressive corporate activism. Corporations, once considered by queer activists to be antithetical to liberation, have been crucial allies in promoting marriage equality and opposing anti-LGBTQ regulations such as trans-exclusionary bathroom laws.

“CORPORATE WOMEN LEADERS SERIES”


November 21, 2019

The Center, together with the Women’s Law Forum, the Women’s Law Caucus, and the Society for Corporate Law and Governance, co-sponsored the first panel of this three-part series on November 21, 2019 at both law school campuses. The discussion focused on women in corporate law, both in private practice and in-house. Panelists included:

- Lora Fong, Chief Diversity Officer, NJ Office of the Attorney General
- Stefanie Tavaglione, Associate GC, Labor/Employment, Verizon Camden:
- Meredith Olearchik, VP, Associate GC, Intellectual Property and Food Law, Campbell Soup
- Debbie Carlos, VP, Deputy GC, Litigation, Comcast



“Corporations, once considered by queer activists to be antithetical to liberation, have been crucial allies in promoting marriage equality and opposing anti-LGBTQ regulations such as trans-exclusionary bathroom laws.”

The background of the page is a close-up photograph of several thick books stacked horizontally. The spines of the books are visible, showing different textures and colors, including dark brown leather and lighter-colored cloth. A semi-transparent red overlay covers the entire image. In the center, there is a white rectangular box containing the text "FACULTY PUBLICATIONS" in a bold, white, sans-serif font.

FACULTY PUBLICATIONS

FACULTY PUBLICATIONS

JEAN-MARC COICAUD

"Theory of Politics and Political Legitimacy", in Chinese Political Science Review (Springer, New York, 4 (4), September 2019).

"Conceptualizing and Measuring Global Justice: Theories, Concepts, Principles and Indicators." Guo, S., Lin, X., Coicaud, JM. et al. Fudan J.Hum. Soc. Sci. 12, 511–546 (2019).

SARAH DADUSH

"Contracting for Human Rights: Looking to Version 2.0 of the ABA Model Contract Clauses," 68 Am. U. L. Rev. 1519 (2019) [Symposium: New Perspectives: A Discussion on Modern Global Supply Chains].

"The Law of Identity Harm," 96 Wash. U. L. Rev. 803 (2019).

"Why It's So Hard to Hold Companies Accountable When They Break Their Ethical Promises," Marc Bain, Quartz (Dec. 16, 2019).

KATIE EYER

"Irrational Inequality: The Role of Fact-Based Review in Equality Change" (May 28, 2020). 73 Vanderbilt L. Rev. En Banc 177, 2020, Rutgers Law.

"The Return of the Technical McDonnell Douglas Paradigm," 94 Wash. L. Rev. 967 (2019).

"The New Jim Crow is the Old Jim Crow," 128 Yale L. J. 1002 (2019).

"Statutory Originalism and LGBT Rights," 54 Wake Forest L. Rev. 63 (2019).

"Animus Trouble," 48 Stetson L. Rev. 215 (2019).

JAY FEINMAN

"Law 101," Oxford University Press, fifth edition 2018 (also published in English edition in China and in translation in Spanish, Arabic, Japanese, Dari, Pashtu, Urdu, Bulgarian, and Vietnamese; translation in Simplified Chinese forthcoming 2020)

"Critical Teaching." The paper was prepared for a conference at Princeton University on Critical Legal Studies: Intellectual History and History of the Present, February 2020.

"A User's Guide to the Restatement of the Law, Liability Insurance." Connecticut Insurance Law Journal, Vol. 26, No. 1, 2019.

"The Protection Gap in Homeowners Insurance: An Introduction." Rutgers Law School Research Paper. (November 13, 2019).

MATTEO GATTI

"Can a Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera," with Chrystin Ondersma 46 J. Corp. L. 1 (2020).

"Did Delaware Really Kill Corporate Law? Shareholder Protection in a Post-Corwin World," 16 N.Y.U. J. Bus. L. 345 (2020).

"Board-Shareholder Engagement Practices. Findings from a 2018 Survey of SEC-Registered Companies," with Matteo Tonello, Conference Board Director Notes (2019).

"Upsetting Deals and Reform Loop: Can Companies and M&A Law in Europe Adapt to the Market for Corporate Control?," 25 Colum. J. Eur. L. 1 (2019).

"Deposit Insurance and Banks' Deposit Rates: Evidence from the 2009 EU Policy Change" (August 19, 2019), with Tommaso Oliviero. University of Milan Bicocca Department of Economics, Management and Statistics Working Paper No. 419.

YULIYA GUSEVA

"A Conceptual Framework for Digital-Asset Securities: Tokens and Coins as Debt and Equity." 80 Maryland Law Review 166 (2020), Rutgers Law School Research Paper.

STACY HAWKINS

"Reverse Integration: Centering HBCUs in the Fight for Educational Equality" (September 1, 2020).

ARTHUR LABY

Fiduciary Principles in Investment Advice," Oxford Handbook of Fiduciary Law, Oxford University Press (2019).

"Advisors as Fiduciaries." 72 Florida Law Review 953 (2020).

"Trust, Discretion, and Adviser Fiduciary Status." Laby & Russell, eds., Fiduciary Obligations in Business (Cambridge University Press, Forthcoming).

DAVID NOLL

"MDL as Public Administration," 118 Mich. L. Rev. 403 (2019)

"Brief of Professors of Jurisdiction in Support of Respondents, Ford Motor Co. v. Montana Eighth Judicial District Court, No. 19-368 (U.S.)," Estreicher, Samuel and Hartnett, Edward A. and McKenzie, Troy A. and Noll, David and Silberman, Linda. Seton Hall Public Law Research Paper Forthcoming, NYU School of Law, Public Law Research Paper No. 20-35.

"What Do MDL Leaders Do?: Evidence from Leadership Appointment Orders." 24 Lewis & Clark Law Review 433 (2020), Rutgers Law School Research Paper,

CHRYSTIN ONDERSMA

"Can a Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera," with Matteo Gatti, 46 J. Corp. L. 1 (2020).

"Dispossession and the Need for an Abolitionist Approach to Survival Debt," 120 Columbia L. Rev. Online 8 (2020).

"A Bailout That Excludes Immigrants Hurts Everyone," The Appeal, The Justice Collaborative Institute (June 4, 2020).

"Tackling Issues in Consumer Credit: The Role of Human Rights" (forthcoming book chapter, in "Human Rights, Consumer Law and Vulnerable Consumers," Routledge Press (2020)).

"Human Rights and Insolvency" (forthcoming book chapter, in "Elgar Research Handbook on Corporate Restructuring" (2020)).

JACOB RUSSELL

"For Whom Are Non-Profit Managers Trustees? The Contractual Revolution in Charity Governance." Laby & Russell, eds., *Fiduciary Obligations in Business* (Cambridge University Press, Forthcoming).

FADI SHAHEEN

"The TCJA and the Treaties," Rosenbloom, H. David and Shaheen, Fadi. 95 Tax Notes International 1057 (September 2019), Rutgers Law School Research Paper.

RICK SWEDLOFF

"The New Regulatory Imperative for Insurance." Boston College Law Review, 61 B.C.L. Rev 2031 (2020), Rutgers Law School Research Paper.

REID WEISBORD

"COVID-19 and Formal Wills," Horton, David and Weisbord, Reid K. (April 9, 2020). 73 Stan. L. Rev. Online 18 (2020), Rutgers Law School Research Paper.

"Postmortem Defamation in a Society Without Truth for the Living" (2019). 71 Rutgers University Law Review 667, 2019, Rutgers Law School Research Paper.

"Fiduciary Authority and Liability in Probate Estates: An Empirical Analysis" (November 11, 2019). 53 UC Davis Law Review 2561 (2020).

"Boilerplate No Contest Clauses. 83 Law & Contemporary Problems," Horton, David and Weisbord, Reid K. (2020, Forthcoming), Rutgers Law School Research Paper.

"Inheritance Forgery," Weisbord, Reid K. and Horton, David. 69 Duke Law Journal 855 (2020), Rutgers Law School Research Paper.

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