

DAIMEON SHANKS-DUMONT

curriculum vitae (May 2024)

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EDUCATION

University of California, Berkeley, School of Law, Berkeley, CA

PhD Student in Jurisprudence and Social Policy

Aug. 2019–Present

Emphasis in Legal History, Political Philosophy, and Critical Theory

Dissertation Chair: **Christopher Tomlins**, Elizabeth Josselyn Boalt Professor of Law, Berkeley Law

Dissertation Committee: **David Grewal**, Professor of Law, Berkeley Law; **Brian DeLay**, Preston Hotchkis Chair in the History of the United States, Berkeley Department of History

Honors:

Berkeley Center for Private Legal Theory Doctoral Fellowship

Aug. 2024–Present

University of California Outstanding Graduate Student Instructor Award

2023–2024

Selznick Graduate Fellowship

Aug. 2019–Present

University of Colorado Law School, Boulder, CO

Juris Doctor

May 2019

Honors:

International Public Service Fellowship

Summer 2018

Dean's Fellowship

Summer 2017

Colorado Law Community Scholarship

Fall 2018–Spring 2019

Dean's List

Fall 2017, Spring 2018

Certificates:

American Indian Law Certificate with Honors

May 2019

International Law Certificate with Honors

May 2019

Activities:

University of Colorado Law Review, Associate Editor (2017–2019)

Jessup International Moot Court Competition (2017–2018 & 2018–2019)

Doman Society of International Law, Vice-President (Fall 2018–Spring 2019)

Doman Amici Peer Program, L.L.M./M.S.L. Student Liaison (Fall 2018–Spring 2019)

University of Oregon, Eugene, OR

Bachelor of Arts, Italian; Minor: History

May 2002

TEACHING & RESEARCH INTERESTS

Primary: Administrative Law, International Law, Energy Law, Federal Indian Law, Contracts, Property

Secondary: Legal Theory, History and Law, Criminal Law, International Criminal Law, International Human Rights Law, International Dispute Resolution

PUBLICATIONS

The Ideological Functions of Ecocide, 35 HAGUE Y'BOOK INT'L LAW 179 (2024).

This article presents an ideological and structural critique of the international environmental law concept of sustainable development, as embodied in the emerging international crime of ecocide. As part of a larger movement to use international law to address the ecological crisis, there has been a push to amend the International Criminal Court's statute to include ecocide as a stand-alone offense. The proposed amendment has generated much debate; however, the default position of these arguments is that it would be, on the whole, a good to criminalize ecocide. This essay begins

from a different premise by arguing that criminalizing ecocide may paradoxically harm the environmental movement by re-inscribing the liberal ideologies and capitalist relations of production which ensure that “business goes on as usual.”

Martens’ Clause and Ambiguity at the Birth of Modern Humanitarian Law, in FRAMING DEVICES AND GLOBAL LEGAL TRADITIONS: FROM THE ANCIENT WORLD TO THE MODERN NATION STATE (Routledge Studies in Comparative Legal History) (Susan Longfield Karr & Laura Culbertson eds., under contract).

This chapter examines the Martens Clause, named for the Russian jurist Feodor Martens, which was introduced in the Preamble to the 1899 Hague Convention, and that has since taken an outsized importance for international humanitarian law. As one of international law’s foundational “myths,” it has come to represent the first expression that humanitarian concerns should be given consideration during armed conflict. However, Martens’ intent in drafting the Clause had little to do with humanitarian concerns. Rather, it was a contest of wills between European powers over the rights and obligations of occupying armies and the qualification of lawful belligerents that inspired Martens’ language. This chapter recovers the events surrounding the drafting of the Martens Clause to expose its shaky foundation as a source of normative legal doctrine. Examining the contexts in which Martens made his declaration serves to expose the emptiness of appealing to its origin as authority, and problematizes the ambiguities of meaning with which it is has been vested.

The Aesthetics is International Criminal Law, 37 TEMPLE INT’L & COMP. L.J. __ (forthcoming 2024).

This article is a critical response to Randle DeFalco’s book, *Invisible Atrocities*, arguing that his use of Lon Fuller’s analytical philosophy to posit that aestheticism is nothing more than an extra-legal influence on international criminal law necessarily precludes the full critical potential implied by his social constructivist model of norm development. Using historical evidence from the Franco-Prussian war and First World War, the article argues that the recognition of the aesthetic ontology of law opens a whole field of totalizing international criminal law critique, not least of which would be an unmasking of the ideological functions that aesthetics play in determining what (and more importantly, who) are subject to international criminal law’s attentions.

The New Normal: Regulatory Dysfunction as Policymaking, 82 MD. L. REV. 300 (2023) (with Ming Hsu Chen).

Building on an emerging scholarship on internal administrative law, this Article looks inside agencies to expose the phenomenon of regulatory dysfunction in policymaking. It describes the structural characteristics and logics associated with irregular policymaking and explains how the exploitation of such irregularities can lead to dysfunction. It then provides a typology of agency responses to irregularities ranging from bureaucratic legalism to bureaucratic rationality. It concludes by assessing the consequences of dysfunctional policymaking for administrative law and scholarship, showing where it makes a difference to reverse the starting presumption of regularity.

Entrance Fees: Self-Funded Agencies and the Economization of Immigration, 93 U. COLO. L. REV. 405 (2022).

This article examines the financing structure of the U.S. Citizenship and Immigration Services (USCIS), an executive branch administrative agency that is almost entirely funded by fees paid by applicants and petitioners for immigration benefits. This article interrogates the fundamental economic and normative justifications for the use of user fees in the immigration context to argue that the USCIS’s funding structure is both inapt and ineffective at implementing Congress’s immigration policies. Moreover, by effectively shielding the executive branch from budgetary oversight, user fees fund operations that are misaligned with Congress’s intent for the USCIS, which frustrates the constitutional system of checks and balances based on separation of powers principles.

Comment, *From Aspirational to Prescriptive Capacity Building: Post-Conflict States, Rule of Law, and Hybrid International Justice*, 90 U. COLO. L. REV. 1195 (2019).

This comment explores the benefits and drawbacks that are inherent in hybrid international tribunals; specifically, the issues of legitimacy that are prevalent in judicial cultures that suffer from rule of law deficiencies, and the promises of what is termed “aspirational capacity building.” Aspirational capacity building refers to the idea that post-conflict states, whose judicial systems have been weakened by conflict, may rebuild their judicial capacities through interactions with hybrid international tribunals.

Book Review: International Law and the Politics of History, by Anne Orford, 11 COMP. LEGAL HIST. 82 (2023).

This review argues that *International Law and the Politics of History* fundamentally misunderstands the critical potential inherent to the use of history as international legal argument *because* we are all now “post-Realist” lawyers, not in spite of that fact.

Book Review: Robert B. Reich’s The System: Who Rigged It, How We Fix It, 1(2) J. L. & POL. ECON. (2020).

This review argues that *The System* is best understood as a general introduction to US political economy for those new to the subject, written with a clarity of prose and purpose, that provides a broad vantage point from which to see the overall structure of the U.S. political system.

SELECTED WORKS IN PROGRESS

Doctoral Dissertation: Sovereignty as Oil.

The dissertation research project is a critical history of the concept of sovereign equality in international law. It is structured as three broad chapters that explore the relationship between natural resources extraction, commercial society, and hierarchy in international relations. The principal thesis is that sovereignty is a technology of international law that has been used to justify unequal economic relations of trade in modern world economic systems. It is critical inasmuch as it challenges the traditionally accepted idea that sovereign *equality* had always been a constituent aspect of the post-Westphalian international society. Rather, my argument is that the modern international legal concept of equality emerged much later during in the interwar period in the context of Britain’s decolonization of Mesopotamia (now Iraq), in response to the transformation of the global commercial energy regime away from coal and towards petroleum.

Jurisprudence and the G-Man: What Godzilla Can Teach Us about Global Anxieties, International Law, and Social Reality.

This paper is being prepared for the 2024 WG Hart Workshop at the Institute of Advanced Legal Studies at the University of London. It is often said that culture is downstream from politics, but this conception belies the co-constitutive nature of society, politics, and law. While the resonance between legal movements and popular culture are largely contingent rather than causal, the examination of these connections can teach us much about the aesthetic dimensions of law. Just as the “spectacle of atrocity” has shaped what is considered an international crime, international legality is imbricated in a social fabric that seeks multiple expressions of perceived global problems, and is responsive to different social pressures. This essay draws on the work of Susan Sontag, Frederic Jameson, Hans-Georg Gadamer, and others, to explore, through the films of Godzilla, a social theory for the study of international law’s history. It demonstrates how the hermeneutically-minded historian can cut different slices of context from the undifferentiated mass of historical phenomena to bring novel insight to the social nature of legality.

TEACHING EXPERIENCE

University of California, Berkeley, Berkeley, CA

Lecturer in Legal Studies

Summer 2021–Present

- Instructor of record for Legal Studies 157, International Law and International Relations.

Graduate Student Instructor

Summer 2020–Present

- Graduate student instructor for Legal Studies 157, International Law and International Relations.
- Graduate student instructor for Legal Studies 130, Human Rights: The Native Experience.
- Graduate student instructor for Legal Studies 102, Policing and Society.
- Graduate student instructor for Legal Studies 109, Aims and Limits of Criminal Justice.

University of Colorado Law, Boulder, CO

Teaching Assistant for Professor Ming Hsu Chen

August 2018–May 2019

- Leading discussion sessions and review lectures for first-year law students in the required Legislation and Regulation course.
- Providing one-on-one tutoring and advice for students on all aspects of law school methodology and preparation.
- Designing and drafting writing assignments and providing individualized feedback on student submissions regarding substantive legal aspects, as well as broader feedback on legal argumentation and writing skills.
- Identifying and analyzing secondary source material to be provided to students.
- Assisting Professor Chen with course design, textbook selection, and lesson planning.

PROFESSIONAL EXPERIENCE

University of Berkeley, California, Department of History, Berkeley, CA

Research Assistant to Professor Brian DeLay

March 2023–Present

- Researched and prepared legal materials in respect of the history of gun ownership in the United States, understood as the “myth of continuity” that has supported gun rights judicial activism in the twenty-first century.
- Assisted in the framing and translating of empirical historical research into a law review format.
- Provided pre-publication edits and formatting of resulting article, *The Myth of Continuity in American Gun Culture*, which will be published in the California Law Review in 2024.

University of Berkeley California, School of Law, Berkeley, CA

Research Assistant to Professor Dylan Penningroth

May–December 2019

- Assisted in archival research of nineteenth-century legal cases in preparation of Professor Penningroth’s recently published book, *Before the Movement: The Hidden History of Civil Rights* (Liveright: 2023).
- Used genealogical records to evaluate the probability that litigants in southern counties were African American for purposes of empirical historical argumentation.

International Law Commission, United Nations, New York, NY; Geneva, Switzerland

Legal Assistant to the Chair of the ILC, Eduardo Valencia-Ospina

Summer 2018

- Researched and prepared memoranda on issues of international law, in particular the identification of customary international law, subsequent agreements and subsequent practice in relation to the interpretation of treaties, provisional application of treaties, peremptory norms of general international law (*jus cogens*), and succession of States in respect of State responsibility.
- Prepared and drafted written and oral interventions for the Chair of the ILC, in his capacity as an individual member of the Commission, for presentation during plenary debates.
- Analyzed and created summations of individual Commissioners’ legal positions with respect to topics discussed during the plenary and drafting committee debates, as well as prepared daily reports regarding developments of the Commission’s work as a whole.
- Prepared and drafted numerous speeches for the Chair of the ILC, delivered in celebration of the Commission’s 70th anniversary at various United Nations events in New York and Geneva; before the Sixth Committee of the UN General Assembly; and before the Permanent Missions of Romania, India, Japan, Vietnam, Colombia, Chile, Portugal, the Republic of Korea, and the United States.

University of Colorado Law School, Boulder, CO

Research Assistant to Professor Ming Hsu Chen August

2018–Present

- Providing copy-editing and substantive review of Professor Chen’s book, *Constructing Citizenship for Noncitizens* (Stanford: 2020).

American Indian Law Clinic, University of Colorado Law School, Boulder, CO

Student Attorney

Fall 2017–Fall 2018

- Represented an NGO and an indigenous governmental organization in litigation of land disputes, and the implementation of decisions from a foreign domestic court and an international court of justice.
- Assisted in preparing submissions to the UN Human Rights Council’s Universal Periodic Review with respect to past and ongoing violations of international human rights laws and norms.
- Researched and drafted a submission to the Inter-American Commission on Human Rights regarding a state’s failure in implementing and internalizing Commission recommendations, as well as continuing violations of international treaties.
- Worked directly with clients and a supervising attorney in tribal court litigation alleging fraud and breach of contract in a federally-funded housing development project.

University of Colorado Law School, Boulder, CO

Research Assistant to Professor Kristen Carpenter

Fall 2017–Fall 2018

- Assisted Professor Carpenter, pursuant to her work as a member of the UN’s Expert Mechanism on the Rights of Indigenous Peoples, in the preparation and drafting of submissions to various United Nations organs, mechanisms, and mandates.

- Created a comprehensive survey of domestic implementation of the United Nations Declaration on the Rights of Indigenous Peoples, on behalf of a joint Colorado Law–Native American Rights Fund project.

Sustainable Development Strategies Group, Gunnison, CO

Legal Intern

May–September 2017

- Researched and wrote legal memoranda and research reports on various subjects, including indigenous rights, community development agreements, and extractive resource policies and legislation.
- Identified, researched, wrote, and recommended options for a policy review concerning the development of a new mineral resources act in the Northwest Territories, Canada.