



KINDER INSTITUTE  
on CONSTITUTIONAL DEMOCRACY



NEWSLETTER | WINTER 2018



# The COLUMNS



## PUBLIC LECTURE SERIES

While all public lectures are uniquely valuable, we take a particular delight in bringing Mizzou alum and current Boston University Honorable Paul J. Liacos Professor of Law **James Fleming** back to his old stomping grounds to present his research to members of our intellectual community. After delivering the Kinder Institute's 2015 Constitution Day Lecture, and returning during Spring 2017 for a discussion of his work on Mill's *On Liberty* and American jurisprudence, he was back this October for a public lecture on the much-maligned but oft-invoked decision in 1905's *Lochner v. New York*.

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Make no mistake: whether it is a six-person, 8am book club or an informal Friday afternoon talk in our seminar room, we are always excited to engage the community in inquiry into and dialogue about the nation's early history and intellectual foundations, and their continued relevance to contemporary political culture. Still, there was a special pleasure that came with being able to bring together over 1,500 citizens of Columbia and beyond for what felt like an intimate, kitchen table chat about presidents past and present with Pulitzer Prize-winning historian **Doris Kearns Goodwin**.

A recap of Goodwin's talk follows on pp. 2-3, but as wonderful as the evening of the lecture was, the energetic response that followed in the days (and weeks) after was almost more inspiring. Columbians packed the Old Hawthorne Country Club the next morning to hear more from Goodwin in a Q&A led by bestselling local author and Unbound Book Festival founder **Alex George**; we had students stop by the office to tell us how much they loved going to the lecture with their parents; and we are still receiving emails from attendees letting us know how important they thought it was for Goodwin to bring a sense of balance to what she described in her lecture title as our "turbulent times."

And now that our second Distinguished Lecture is in the books, it's on to planning the third. While Goodwin and **David McCullough** will be difficult (impossible?) to top, we're currently accepting recommendations for Fall 2019 speakers.



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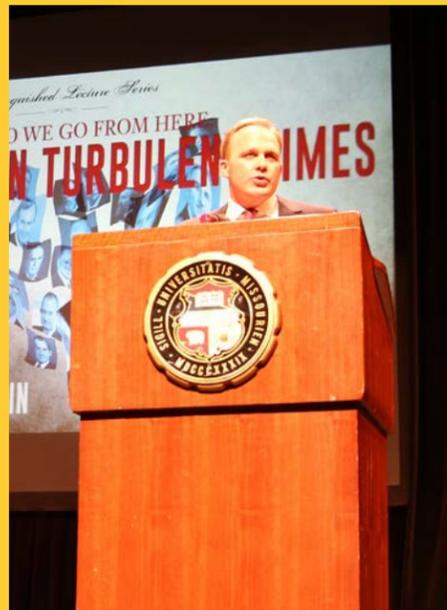
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## *Leadership in Turbulent Times: Where Do We Go from Here?*

Pulitzer Prize-Winning Historian Doris Kearns Goodwin

In drawing her November 6 Kinder Institute Distinguished Lecture to a close, Pulitzer Prize-winning historian Doris Kearns Goodwin shared with the capacity audience at Jesse Auditorium how she came of age as a storyteller listening to her mother recount the places books had carried her and re-creating for her father the full nine-inning narrative of Brooklyn Dodger games using only the encrypted numbers and traced base paths of a scorecard. From these experiences, Goodwin recalled, she learned the beauty of a story’s beginning and middle, as well as the importance of weaving tales as if you don’t know how they will end.

Far from a fanciful coda to her talk, Goodwin’s meditation on the intricacy—and sometimes the mystery—with which the stages of a narrative unfold was at the center of her lecture as a whole, which approached the tall task of making sense of today’s turbulent times by plumbing the depths



of presidential history for insight into our present. For example, she began by noting how it’s helpful to simply keep in mind that, as unprecedented as it may seem, our current administration did not materialize out of history’s thin air. True, we have never seen a president step directly from the business world to the White House; while we have had ex-bankers, peanut farmers, and oil men occupy the executive seat, each president prior to Donald Trump had served in the public theatre in some capacity before assuming the nation’s highest office. That said, Goodwin reminded the audience that the combination of anger, fear, hope, and anxiety from which the Trump campaign sprung is not altogether new. The widening income gap and sense of rural alienation that came with the Industrial Revolution birthed an anti-Wall Street, anti-immigration, anti-Washington populist movement in the turn-of-the-century American South and West that was not entirely different from what we see today.

As Goodwin went on to show, the purpose of summoning our history is not so much to establish these kinds of parallels but, instead, to use knowledge of the struggles and triumphs of our past to improve our present and safeguard our future. In terms of the particular subject matter of her lecture, this meant revisiting three of our nation’s most successful leaders—Lincoln, Teddy Roosevelt, and FDR (or “her guys,” as she fondly called them)—to figure out what traits they held in common.

First and foremost, she noted that all three demonstrated an enduring capacity to sustain their ambition in the face of adversity, whether it came in the form of humble beginnings, political defeats, the death of loved ones, or their own medical trauma. For Lincoln in particular, resilience implied more than just an ability to bounce back. The personal losses that he experienced in his early life—his mother, sister, and his first love, Ann Rutledge—haunted him, to be sure, but they also inspired him to contemplate the basis of legacy and, in doing so, to realize that his memory would live on not because he held office or wielded power but only if he left the world a



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better place. In this sense, Goodwin explained, the most important character trait that adversity produced in all three men was not fortitude but rather the sense of empathy that is necessary to identify with, and to be at all times animated by a desire to ease the suffering of, those people to whom fate has dealt an unkind hand.

A natural byproduct of this alloy of ambition and empathy was humility. In the example of Lincoln, humility manifested itself in a recognition that the war torn country needed a leader who surrounded himself with people who did not limply affirm but who vigorously challenged him, resulting in his famous inclusion of political rivals William Seward, Salmon Chase, and Edward Bates in his presidential cabinet. Goodwin then described how, if we re-examine FDR’s experience of the national distress caused by the Great Depression and the national tragedy caused by World War II, we can see humility take the form of an acknowledgement of, and a subsequent insistence on learning from, his mistakes. And while she observed that, at 100 days, our current president did sound more wistful than ever, even admitting that running a country was harder than he initially believed, she quickly added that we have no evidence yet that he has a temperament suited for the kind of probing self-reflection that led his most regarded predecessors to shoulder the blame for a lack of success, to determine the errors of their ways, and to re-fashion failure into victory.

Though the delivery methods have certainly changed over the years, Goodwin also noted that, like many who came before him, Trump has a noticeable, era-specific communications savvy. Just as Teddy Roosevelt’s punchy, headline-brief turns of phrase were perfectly suited to the rise of the national press—and just as FDR’s conversational style fit the radio age to a tee—campaign-trail Trump seemed to have mastered new media. As she pointed out, however, there is a significant gap between campaigning and governing, and when it comes to negotiating this gap, Lincoln might again serve as a model for Trump. In his refusal to speak extemporaneously, and in the “never sent,

never signed” hot letters into which he privately channeled his anger, Lincoln demonstrated an impulse control that Goodwin suggested our sitting president might singularly benefit from.

From understanding the importance of staying close to the ground, to recognizing the necessity of disconnecting and replenishing energies, there are countless other lessons about “leadership in turbulent times” that we can glean from presidents past. Returning to Lincoln one last time, though, Goodwin provided a final anecdote that summed up what might come of our present and future leaders actually heeding these lessons. As Leo Tolstoy told the *New York Times* in 1909, once, when travelling the remote reaches of the Caucasus, he was the guest of a Circassian chief who he regaled with tales of the technological innovations and great statesmen of recent history. As for the latter, Tolstoy spoke of Napoleon, Frederick the Great, and former Czars, but, as he described, “something was missing.” “You have not told us a syllable,” Tolstoy recalled the Circassian chief saying chidingly, “about the greatest general and greatest ruler of the world. He was a hero. He spoke with a voice of thunder...He was so great that he even forgave the crimes of his greatest enemies and shook brotherly hands with those who plotted against his life. His name was Lincoln.” This was, in many ways, a posthumous affirmation of Lincoln’s desire to lead a life worth remembering, and Goodwin ended her trek through presidential history by noting how perhaps the greatest lesson this subject teaches us is embedded here—in a statement from a Circassian chief deep in the Caucasus Mountains that reveals the degree to which the greatest legacies are tied to an unyielding commitment to the common moral mission of advancing liberty, social justice, and prosperity for all.

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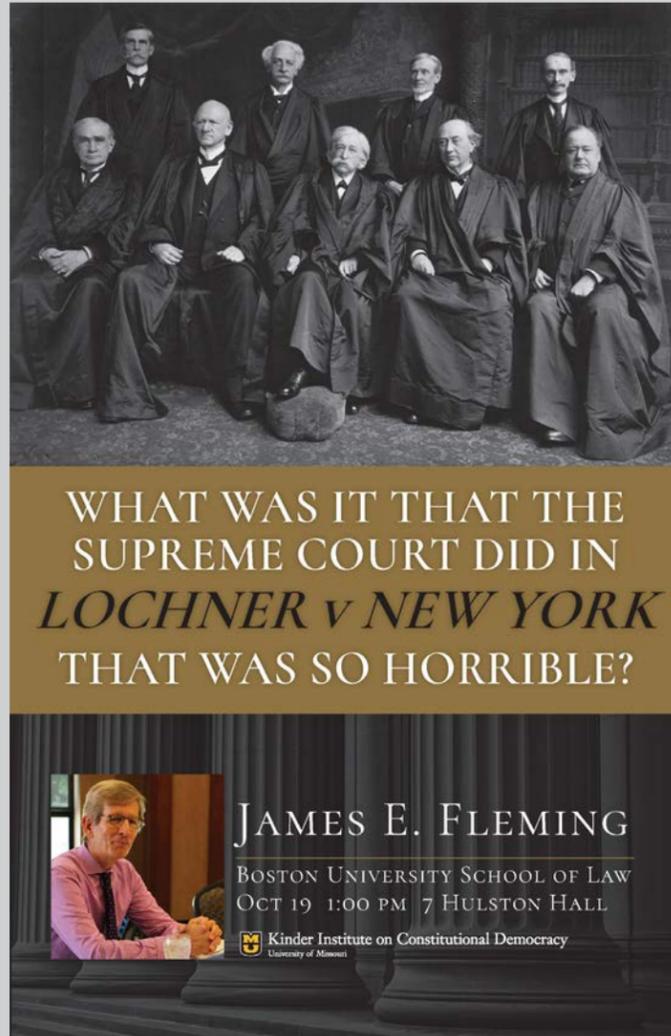
## What Was It That the Supreme Court Did in *Lochner v. New York* That Was So Horrible?

Boston University Honorable Paul J. Liacos Professor of Law  
James Fleming

As Prof. Fleming noted in introducing his October 19 lecture at the MU Law School, in order to finally vanquish “the ghost of *Lochner*,” we should first acknowledge how jurists and legal scholars currently wield the Supreme Court decision in question: not always with thorough consideration, he argued, but more frequently as “a rhetorical club” or meme to criticize opponents and express discontent with majority opinions.

This out of the way, we can then revisit *Lochner v. New York* itself, tracing the decision’s implications over time in order to systematically deduce what it means, in the modern day, to charge someone with “Lochnering” (and whether or not these charges hold water). The 1905 case, which determined that a New York state law preventing bakers from working more than 10 hours per day and more than 60 hours per week was unconstitutional on the grounds that it violated the 14th Amendment’s Due Process Clause, was an immediate, turn-of-the-century lightning rod. Not only did the *Lochner* majority deem the New York law a breach of freedom of contract and an instance of undue meddling in individual rights; they also deemed the state’s regulatory end—the protection of bakers—a pretext for other motives, not least among which was the advancement of a socialist agenda. On the other side, Justice John Marshall Harlan argued in the minority that the law was simply the rational extension of a state government’s legitimate interest in protecting its citizens, while Justice Oliver Wendell Holmes famously contended that the laissez-faire, anti-paternalistic strain of capitalism protected by *Lochner* was at odds with the fact that the U.S. Constitution does not embody a single economic theory.

In what Prof. Fleming referred to as “the first death of substantive due process,” the decision in *Lochner* was rolled back in 1937’s *West Coast Hotel Co. v. Parrish*, which curbed aggressive judicial protection of economic liberties under the Due Process Clause by upholding Washington state’s minimum wage legislation. But while the decision itself was overturned, the ghost of *Lochner* did not vanish. Far from it. Instead, overturning *Lochner* in many ways empowered critics of subsequent, similarly-decided cases, most notably *Roe v. Wade* (1973), *Planned Parenthood v. Casey* (1992), and *Obergefell v. Hodges* (2015). If the Court admitted mistake in *Lochner*, these critics reasoned, how was it not making the *same* mistake in relying on substantive due process arguments to justify judicial protection of personal liberties such as the right to terminate a pregnancy, to use contraception, or to marry whom one chooses?



Over the course of the middle portion of his talk, Prof. Fleming detailed the various explanations that critics have used in recent decades to articulate what was (or wasn’t) wrong with *Lochner* and, by analogical extension, what was (or wasn’t) wrong with *Roe*, *Casey*, and/or *Obergefell* (see the lecture recap at [democracy.missouri.edu](http://democracy.missouri.edu) for a more complete unpacking of this and other topics addressed in the lecture). Interestingly, however, it was a modern revival of pro-*Lochner* sentiment that ultimately allowed Prof. Fleming to move forward in casting out the specter haunting today’s courts.

Specifically, he pointed out how conservative jurists and legal scholars have recently taken to making two related arguments: (1) that *Lochner* was, for the most part, decided rightly and that the courts can and should resume aggressively protecting *enumerated* economic liberties using the Takings or Contracts Clauses; and (2) that because they are *unenumerated*, personal liberties are not constitutionally eligible for protection under the Due Process Clause. (By contrast, he showed how Libertarian scholars and jurists, in reviving *Lochner*, argue that



the rulings in *Roe* and *Obergefell* also represent justifiable, due process protections of basic liberties.) In responding to this conservative swing of the pendulum back toward *Lochner*, Prof. Fleming laid out two counter-claims. Firstly, while he acknowledged that the Constitution does presuppose economic liberty and property rights, he argued that these rights and liberties are so fundamental that they do not need aggressive judicial protection; in their vulnerability, however, basic personal liberties very much do.

Secondly, he asked that the audience consider the long list of fundamental rights that the Supreme Court has protected over the years: “liberty of conscience and freedom of thought; freedom of association, including both expressive association and intimate association...the right to travel or relocate; the right to marry, whatever the gender of one’s partner...the right to direct the education and rearing of children...and the right to exercise dominion over one’s body.” This list is not, he contended, a “subjective, lawless product of judicial fiat” that is “indefensibly indeterminate and irredeemably undemocratic”; it is not reflective of the “spooky, idiosyncratic moral predilections of rogue justices.” Instead, he concluded, the list is constructed through the common law

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constitutional interpretive tradition of reasoning by analogy and thus “represent[s] a coherent practice of protecting basic liberties significant for personal self-government [and] empowering individuals to make the most important decisions in their lifetimes by themselves.” And it is with this recognition, he ended, that we can see the ghost of *Lochner* for what it is—“an apparition fabricated by opponents of the modern practice of substantive due process”—and, at long last, vanquish it once and for all.



## COLLOQUIA & WORKSHOPS

To complement the public lectures covered on pp. 1-5, we soldiered energetically on with our slate of smaller—in number of seats, though not vastness of scope—events, with scholars far and wide stopping by the Kinder Institute to present research on everything from the history of American foster care to forgotten gold rushes of the nineteenth century. In addition to the colloquia and book conference recapped in the coming pages, we also held a workshop with Boston University Professor of Law and Paul M. Siskind Research Fellow **Linda McClain**, where participants discussed a chapter from her book-in-progress, *Bigotry, Conscience, and Marriage: Past and Present Controversies*, which focused on the legacy of *Loving v. Virginia* (1967) and how the decision “illustrates the theme of moral progress in our constitutional jurisprudence.”

As we mentioned in the last newsletter, we also dabbled in some new media ventures during Fall 2017, many of which are now starting to bear fruit. Links to videos of six in-house (and two out-of-town) talks from last semester, including the previously mentioned Q&A featuring **Doris Kearns Goodwin** and **Alex George**, can be accessed on either our media page at [democracy.missouri.edu](http://democracy.missouri.edu) or in the “C-Span” post under “Featured News.”

The Friday History Colloquium Series picks back up in February, with MU Assistant Professor of African-American History **Keona K. Ervin** giving a talk on the 2nd about her recent book, *Gateway to Equality: Black Women and the Struggle for Economic Justice in St. Louis*, and MU Professor of Political Science **Peverill Squire** following on the 9th with a talk on “Constituent Instructions and the Evolution of Representation in America, 1778-1900.”



## Raising Government Children

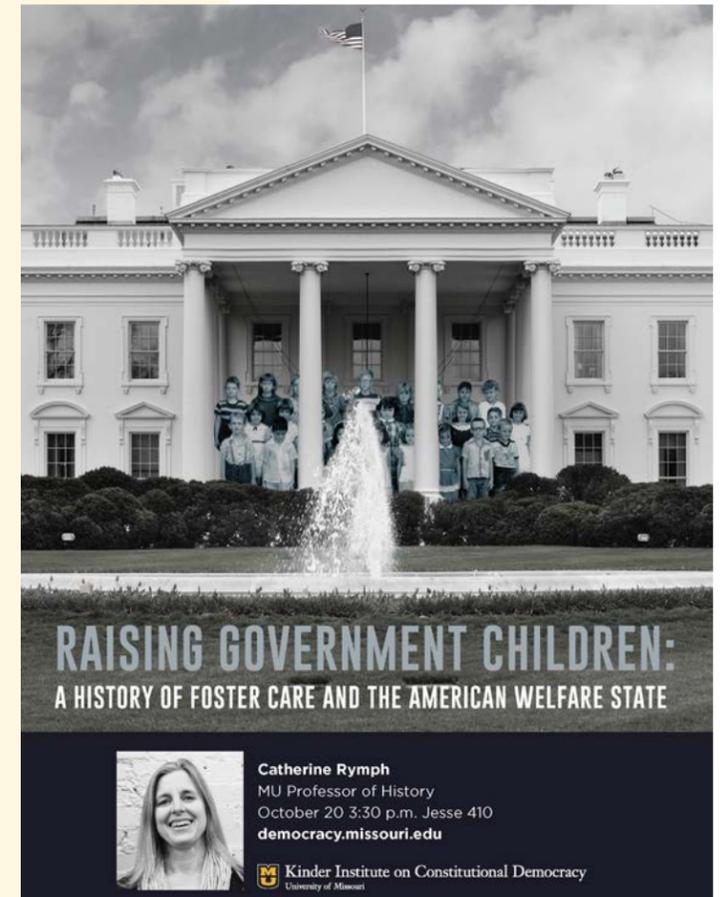
University of Missouri Associate Professor of History  
Catherine Rymph

At the heart of MU Prof. **Catherine Rymph's** new book, *Raising Government Children: A History of Foster Care and the American Welfare State*, is a struggle not necessarily unique to her research's 20th-century focus. From indentured servitude in the 17th century, to Dickensian alms houses and adult prisons, to the orphan trains of mid-19th century America, which sent the eastern seaboard's homeless children west to work on heartland farms, the global community has long flailed at answering the questions of what society's responsibility toward children is and how best to act upon it.

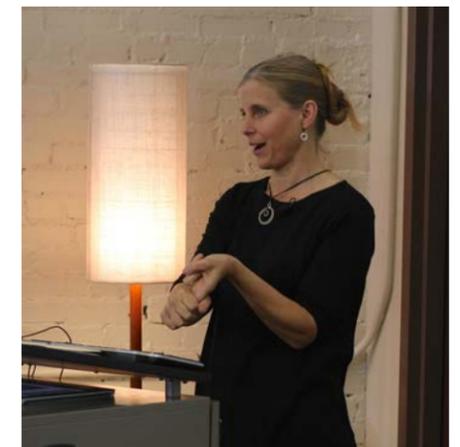
As Prof. Rymph detailed in her October 20 colloquium at the Kinder Institute, while it might be a point on a larger continuum, the 20th century history of foster care in the United States sheds important light on tensions that existed (and still exist) within the foster care system, in particular, and the American welfare state in general. When it comes to the former, these tensions began to take nascent shape around the 1909 Conference on the Care of Dependent Children. Here, Prof. Rymph noted, the central tenet of the Progressive-era child welfare system—that no child should be separated from his/her family of origin for reasons of poverty—rose to the surface. More importantly, though, with the introduction of mothers' pensions and increased state interest in boarding houses, we also see a blurring of the line between public and private responsibility that would become far more pronounced in later decades.

State involvement in promoting family security would ramp up during the New Deal, particularly with the passage of the 1935 Social Security Act, which, in providing unemployment insurance and aid to dependent mothers, both stabilized and professionalized the system of child welfare services. Though considered an option of last resort, it was also during this time that foster care began to emerge as a state-funded program more widely available than the forms of aid which still tethered families' access to child welfare resources to poverty alone. (The qualifier 'more' before 'widely available' should be carefully heeded, Prof. Rymph stressed, as a reminder that access to these resources did not then extend to African-American families.)

It was also during the 1930s and 40s that the state's ideal conception of the foster care system—as a therapeutic, temporary, individualized, and quasi-professional form of aid provided by licensed foster families—collided with the distressed economic landscape of mid-20th century America. Specifically, Prof. Rymph outlined how two separate but very related financial realities—(1) that the foster care system would require significant government subsidization; and (2) that it served as a viable income option for women who, at the time, had few such options—came directly into conflict with legislators' and reformers' widespread anxiety that a vocational notion of foster parenting might attract applicants more interested in profit than a desire to help. Add in the emphasis placed on



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the temporariness of foster care, and the result was an almost impossibly narrow definition of a “normal” foster family: a married, financially-independent, licensed couple who were of child-bearing age and whose legitimate care and concern for the child would not trend toward extreme love or “unbridled attachment.”

For the state apparatus in control of the foster care system, attracting these normal candidates—i.e., not attracting profit seekers—required keeping the rate of payment to foster families low. The negative consequences of this were both specific to foster care and more universal. Locally, the scant compensation for foster parents meant that private families—oftentimes families of limited-to-modest means to begin with—ultimately ended up subsidizing the state’s responsibility for maintaining child welfare standards. In a broader sense, this arrangement also depressed the salary and status of care workers in general, who then, as now, were largely women. The end result, Prof. Rymph argued in closing, is not only that a narrative of poverty has been woven through the history of foster care from the early-20th century to the present, but also that this narrative has continually reinforced larger trends related to inequality and the gender pay gap.

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**TOWARDS A GLOBAL INTELLECTUAL HISTORY OF GOLD**

with THE GOLD RUSH TRIO

Stephen Tuffnell University of Oxford	Benjamin Mountford La Trobe University, Australia	David Goodman University of Melbourne
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November 7 5:00 to 7:00 p.m. Jesse 410 [democracy.missouri.edu](http://democracy.missouri.edu)

Kinder Institute on Constitutional Democracy  
University of Missouri

### *Toward an Intellectual History of Gold*

An Evening with the Gold Rush Trio

As the trio of presenters at our November 7 colloquium stressed in unpacking their research, making sense of the 19th and early-20th century surge of gold rushes in a way that moves the needle forward on the history of global integration means venturing beyond (though not altogether leaving behind) California and the Yukon and exploring New Zealand, the Gold Coast of Africa, and, as University of Melbourne Professor **David Goodman** offered in the talk’s first act, what is now Lumpkin County, Georgia.

Though more or less lost to popular historical memory, the 1829 Georgia rush, sparked by the discovery of rich deposits on Cherokee land in the northernmost reaches of the state, empowered a radical strain of democratic thought, the ripple effect of which was felt all the way around the globe. Specifically, Prof. Goodman focused in his research presentation on the association of individual wealth seeking and reimagined democratic norms that congealed as a counter-argument to Georgia Governor George Rockingham Gilmer’s classically republican proposal to reserve a majority of extracted precious metals for public use. Ultimately, he explained, Gilmer’s fear that the gold rush would overstimulate an anti-democratic love of gain was re-cast by successful gubernatorial challenger Wilson

Lumpkin as an aristocratic plot to withhold wealth from the patriotic poor that was hopelessly out of touch with the people’s right to self-government. This pro-individual rights sentiment re-surfaced in Australia in 1854, Prof. Goodman went on to show, in the form of a successful rebellion against state license fees that cemented miners’ status as symbols of resistance to conservative, paternalistic oppression (a characterization, he added, that remains a touchstone of democratic history and lore in Australia to this day). As he noted in wrapping up, though,

in revisiting these moments in gold rush history—and particularly in revisiting them with the horizons of environmental history in mind—we must raise the question of why republican public interest arguments are *not* remembered as advancing an equally, if differently, democratic agenda.

Shifting the lens slightly, La Trobe University Research Fellow **Benjamin Mountford** examined the differing transatlantic conceptions of national character that emerged out of the struggle for order within gold rush settler societies. In San Francisco, for example, mounting anxiety over the police and courts’ failure to curb what was perceived as the lawlessness of Telegraph Hill’s “Sydney Ducks” led to the 1851 creation of the San Francisco Committee of Vigilance, whose violent, extralegal campaigns for justice were praised by Americans as embodying the stabilizing and fiercely independent frontier will that was being forged in and by mining communities. By contrast, a fear of Californians bringing this vigilante-ism with them to the mining settlements of New South Wales inspired a swift and harsh pursuit of justice within the region’s circuit courts that, as Dr. Mountford argued in bringing his presentation to a close, mapped broadly onto a developing transatlantic distinction between American myths of self-reliance and a British devotion to institutions. Moving forward in time to the more mechanized gold rushes of the later 19th century, University of Oxford’s **Stephen Tuffnell** argued that the evolving nature of mining began to bridge the kinds of transnational gaps on which Dr. Mountford focused. For example, the shift from the crude panning of gold rush “Argonauts” in the 1840s to the machine-driven, capital-intensive extraction methods of the 1880s was accompanied by the formation of trade organizations like the Institute of American Mine Engineers and, in turn, the professionalization and standardization of the industry. While the rise of such organizations on both sides of the Atlantic initiated intra- and international exchanges of ideas through the creation of centralized databases and trade journals, Prof. Tuffnell concluded by noting how it also exposed race- and gender-based lines of division and modes of exclusion within the mining world.





## *The American Civil War as a Conservative Revolution*

University College London Professor of History Adam I.P. Smith

In framing out his December 1 presentation on his recent University of North Carolina Press book, *The Stormy Present*, UCL Prof. **Adam I.P. Smith** argued that the first step in truly understanding antebellum conservatism and its broader implications is rescuing the term ‘conservative’ from a critical tradition that has long downplayed its significance in and to early American history. Specifically, though everyone from republicans to nativists to secessionists staked out conservative corners, histories still largely present this position as inherently counter-intuitive to both the anti-tyrannical American spirit and the rise of liberal democracy. As Prof. Smith would explain, though, this line of thinking ignores the degree to which perhaps the single most guiding principle in the early republic was a conservative impulse to preserve the nation’s revolutionary settlement. This by no means suggests that conservatism was or should be equated with anti-progress attitudes, but instead points to a shared belief among citizens—or, as Prof. Smith was careful to clarify, among white male citizens—that continued moral, intellectual, and technological innovation was predicated on safeguarding the institutions that the Revolution had put in place. For these citizens, he noted, there was simply nothing to be gained, and everything to be lost, from radical change.

If we take for granted the preponderance of pre-Civil War northerners who self-identified as conservative—and given the volume of empirical data that supports this, there is no reason that we shouldn’t take it for granted—the larger question we have to then ask is how these claims to conservatism intersected with the vast majority of northerners’ unwavering anti-slavery stance. Again, answering this question requires salvaging an often overlooked narrative from the scrap heap. Rather than understand the northern manifestation of anti-slavery sentiment and the coming of the Civil War in partisan terms—as a mass 1860 exodus to the Republican party—Prof. Smith contended that we should instead examine the changing political tides of the mid-19th century through the lens of a series of individual choices made at moments of crisis and historical inflection: the Free Soil schism in 1848, for example, and the 1854 Kansas-Nebraska Act and 1858 Lecompton Constitution. Doing so, he noted in drawing his talk to a close, paints a political landscape that is far more complicated than we often assume. For one, he showed how parsing antebellum politics on an individual level reveals a surprising number of anti-slavery, pro-popular sovereignty, states’ rights northerners who did *not* leave the Democratic party. And without minimizing the force of moral outrage, this approach also leaves room to discuss how a deep concern for the Slave Power’s control over the federal government—how a conservative fear for and desire to preserve the fate of the Union—factored into northern republicans’ eventual embrace of radical solutions to eradicating the blight of slavery.

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## CONSERVATIVES AND THE CONSTITUTION

Fall 2017 Book Conference

In providing an overview of the topic of conversation for the November 2 and 3 conference-slash-workshop at the Kinder Institute, Boston College Professor of Political Science and 2017-18 Kinder Institute Distinguished Research Fellow **Ken Kersch** began by noting that focusing too intently on the time frame covered by his new book, from *Brown v. Board* (1954) through the 1980 election of Ronald Reagan, might be a bit misleading, given that there is little discussion of Supreme Court judicial opinions in his work, and even less discussion of Reagan.

Instead, Prof. Kersch explained, the guiding principle for his manuscript, currently titled *Conservatives and the Constitution: The Troubled Odyssey of the Modern American Right*, is to explore conservative ideas about the Constitution as they “lived in” popular politics during the era and were shaped by and filtered through intermediary cultural institutions including: mass market publications like *Reader’s Digest*; radio programs like Notre Dame Law School Dean Clarence Manion’s *Manion Forum*; and the personalities of movement luminaries like Barry Goldwater. As he went on to describe, the diversity of sources that his book plumbs—not only in number and genre but also in rhetoric and agenda—is necessary if one is to adequately convey how the period in question can be seen, alternately, as a time when the American conservative movement was “wandering in the wilderness” or as one in which what constituted conservative identity and thought was rapidly evolving through exchanges of ideas across and within multiple ideological boundaries.

On one hand, capturing the full scope of these inter- and intra-group exchanges is a daunting task, given the sheer number of branches of the conservative movement that existed and/or were under development in the 1950s, 60s, and 70s. On the other hand, though, this thicket of opinion presents a methodological opportunity to be more discursive in approach and to show how, even in disagreement, these sub-divisions of American conservatism were in a near constant process of bonding over the formation of a common project. As Prof. Kersch noted in drawing his introduction to a close, it is only in attending to the various acts of bridging that were taking place during this era that we can begin to close present day knowledge gaps about conservatism, such as a lack of understanding of the ideological lineage of comments like those made recently by White House Chief of Staff John Kelly regarding the Civil War being caused by a failure of compromise, or a reductive tendency to define conservatism by synecdoche: as “all neo-Confederate,” “all Ayn Rand,” or “all Cato Institute.”

Following Prof. Kersch’s opening remarks, a trio of panels convened, two on Thursday evening and another on Friday morning, so early readers could comment on the manuscript. For the first panel, on “Theories of Constitutional Interpretation & Stories about Constitutional Development,” Yale University Knight Professor of Constitutional Law and the First Amendment **Jack M. Balkin** and Princeton University William Nelson Cromwell Professor of Politics **Keith E. Whittington** discussed questions related to the congealing of the movement in the 1980s, such as: who got left out of this process, how did historical memory lead to surprise bonds being formed, how were liberal and progressive ideas appropriated and re-oriented, and at what point did the intellectual debate shrink and give us the finely-tuned policy machine that we see today. The second panel, which featured Kinder Institute Associate Professor **Carli Conklin**, Kinder Postdoctoral Fellow **David Golemboski**, and independent scholar



**Richard Izquierdo**, tackled issues of “Constitutional Designs & Structures,” while the third panel on “Civil Rights & Civil Liberties,” with Kinder Institute Associate Professor **Adam Seagrave**, MU Associate Professor of History **Catherine Rymph**, and MU Honors College Associate Director **Jenelle Beavers**, looked at issues ranging from the preservation of Founding-era radicalism in modern conservative thought to the historical and philosophical development of contemporary conservative views on abortion and same-sex marriage.



## FACULTY AND GRADUATE STUDENTS

While quick-hitting details about recent faculty and graduate student accomplishments can be found in the “News in Brief” section on the newsletter’s back page, we did want to highlight a few things in particular, for which special congratulations are due:

Congratulations to...Kinder Postdoctoral Fellow in Political History **Billy Coleman** for signing a contract with University of North Carolina Press for the publication of his first book, *Harnessing Harmony: Music, Politics, and Power in the United States, 1788-1865*

Congratulations to...Kinder Postdoctoral Fellow in American Political Thought & Constitutionalism **David Golemboski** on accepting a tenure-track assistant professorship in the Department of Political Science, Government, and International Affairs at Augustana University in Sioux Falls, SD

Congratulations to...Kinder Institute Chair in Constitutional Democracy **Jay Sexton** on being chosen to deliver the Society for Historians of American Foreign Relations’ 2019 Bernath Lecture



### *Research and Travel Grants*

Twice each year, we review proposals for our Research and Travel Grant program, which provides select faculty and graduate students from across all disciplines at MU with awards that go toward facilitating progress on scholarly projects that show the promise to expand the horizons of the fields of American political thought and history, broadly and globally construed. During the Fall 2017 award cycle, the following individuals received funding for the projects detailed briefly below:

### *Faculty*

**James Endersby** and **Marvin Overby** (Political Science): to fund archival research for their co-authored book-in-progress, which will examine influential congressional elections from the Founding era to the present, including Madison’s 1788-89 victory over Monroe, the 1858 Illinois Senate contest between Lincoln and Stephen Douglas, and the 1876 Maine House race in which “Czar” Thomas Brackett Reed bested John M. Goodwin

**Martha Kelly** (Russian & German Studies): to fund Summer 2018 travel to Italy, Ukraine, and Austria to broaden the international scope of her current book project, which examines the life and work of Russian poet and public intellectual Olga Sedakova

**Catherine Rymph** (History): to fund research in the British National Archives’ Children’s Overseas Reception Board records related to her new book project, tentatively titled, *America’s Conscience and the Wagner-Rogers Refugee Aid Bill*

### *Graduate Students*

**Hannah Brant** (Political Science): to purchase database subscriptions essential to completing her doctoral research into the influence that unelected congressional staff members have over public policy

**Ed Goldring** (Political Science): to fund travel to South Korea where he will conduct interviews for his dissertation project on how the Internet affects international democratizing pressures

**Carey Kelly** (History): to support travel to Houston, TX, for the November 2017 “National Women’s Conference: Taking 1977 into the 21st Century!”



## UNDERGRADUATE NEWS

It was a busy—based on candy intake, extraordinarily busy—fall semester for members of our undergraduate Society of Fellows. Of course there were the quarterly dinner discussions, during which they were treated to presentations on “Dirty Money,” by MU Professor of Economics **Jeff Milyo**, and the true constitutional story behind congressional appointees, by Kinder Institute Assistant Professor **Jennifer Selin**. And of course there was the hard work put into articles for Volume 4 of our undergraduate journal (see pp. 14-15 for a preview of senior Poli Sci/History major **Abby Kielty’s** study of how Elizabeth Cady Stanton turned the rhetoric of patriarchy back against itself in her first known speech). And then there were the study breaks, tutorials and classes, and pop-up events that filled the rest of the time.

On top of all this, it was also application season, and throughout November and December, we worked with seniors who were looking at graduate programs in law, public policy, political science, and media studies at institutions all over the map, from Albuquerque to Ithaca. And while most of them are now in an envelope-waiting (or is it email, now?) holding pattern, there is one student who we get to brag about a little earlier than usual. In late October, Convergence Journalism major **Allison Pecorin**—who has done more or less everything that the Kinder Institute has to offer, including starring in our undergraduate programs video—was selected to receive the MU School of Journalism’s 25th David Kaplan Memorial Fellowship, and will spend the Spring 2018 semester of her senior year working behind the scenes at ABC News’ Washington Bureau.



## 2018 KINDER SCHOLARS

Over the past eighteen months, we’ve seen a trend forming when it comes to applications for our undergraduate programs that is both exciting and, behind the scenes at least, a little bit agonizing. Specifically, not only have we seen the number of applications for our Society of Fellows and Kinder Scholars Program grow each year; we’ve seen the quality of applications grow in lockstep. This is, of course, wonderful, and a true testament to the elite undergraduate scholarship and service that is taking place at Mizzou. At the same time—and especially when you factor in the interview stage that is now part of the application process for the D.C. program—it makes the process of selecting new classes of Fellows and Scholars positively excruciating. Still, after lengthy deliberation, we emerged on the other side of these interviews in early December with what we know to be a vibrant, exceptional cohort of students who will be heading east in June for our 2018 Kinder Scholars D.C. Summer Program. The new class of Scholars is listed below, with \* denoting past, present, and future members of our undergraduate Society of Fellows.

- Regina Anderson (Strategic Communication)
- Isaac Baker (Secondary Education, History)\*
- Bailey Conard (Journalism, English)\*
- Brian Dugan (Business Marketing, Political Science)
- Mackenzie Elliott (Convergence Journalism)
- Alex Galvin (History)\*
- Gabriel Gassmann (Economics, Spanish)
- Grace Hodson (Public Health)
- Karina Jaimes (History, Political Science)
- Anna Jaoudi (Political Science)\*
- Sarah Jolley (History, English, Political Science)\*
- Hailey Markt (Political Science, International Studies)
- Luke Mouton (Political Science, Psychology)
- Mary Grace Newman (Political Science)
- Anthony Newsome (Political Science)
- Matt Orf (History, Political Science)\*
- Brianna Salas (Health Sciences)
- Faramola Shonekan (History)\*
- Jennifer Sutterer (Political Science, Philosophy)
- Rylie White (Biochemistry, Political Science)\*

After meeting up for the first time as a full group during exam week for a reception and internship hunting crash course, the 2018 Kinder Scholars will re-convene monthly throughout the spring semester, starting in January, for progress updates, resume troubleshooting, and community building in preparation for the summer in D.C.

## THE JOURNAL ON CONSTITUTIONAL DEMOCRACY

from “‘The Voice That Grows with Using’: Appropriating  
Tennyson in Stanton’s Waterloo Address”

by Abigail Kielty

A year after Alfred, Lord Tennyson’s 1847 *The Princess: A Medley* was initially published, approximately 300 women and men assembled for two July days in Seneca Falls, New York, for the first American convention on women’s rights...

While Elizabeth Cady Stanton contributed at-length to the Seneca Falls Convention, there is no official evidence to substantiate the widely-accepted claim that her first speech took place there, nor at the August women’s rights convention at Rochester. Instead, research suggests that Stanton’s first public address took place at Waterloo, NY, in September 1848. The editorial note to the version of Stanton’s Waterloo address published in Rutgers University Press’ *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony* confirms this, stating that “[n]o contemporary record of Seneca Falls noted a major speech by Stanton, though small parts of her address might match her several contributions to the meeting...Lucretia Mott, present at both [the Seneca Falls and Rochester] Conventions, referred to Stanton’s speech in September at Waterloo as ‘thy maiden speech’” (ECS, 1). Stanton would go on to use the content of the speech as a source for short articles for three years after Waterloo, and it is believed, via notations on the cover sheet made by Susan B. Anthony, that Emma Robinson Coe borrowed the speech from Stanton upon visiting her in in 1851... Eventually, possession of the manuscript fell to Stanton’s daughters, who then turned the speech over to Susan B. Anthony. Anthony, in turn, delivered the manuscript to its final resting place—the Library of Congress (ECS, 1).

Though an enjoyable exercise in its own right, tracing the history of Stanton’s first speech back to Waterloo in 1848 serves the larger purpose of providing a definitive answer to the question of how her personal politics related to the discussions and agendas at Seneca Falls and Rochester. For example, though there was much debate at Seneca Falls over whether the *Declaration of Sentiments* should include a demand for suffrage, Stanton’s Waterloo address was unwavering in its call for the franchise for women. In crafting her pro-suffrage argument, Stanton begins by asserting that the question of “Woman’s rights” is the most important and impactful public issue ever raised, and she goes on to note the ever-changing “habits, manners, and customs” of the nations of the old world as a way to propose that the stagnancy of discourse about these rights in the U.S. runs counter to the natural course of the evolution of political societies (ECS, 2). Before laying out her and the suffragettes’ approach to changing voting norms, Stanton anticipates the counterarguments they will face: namely, the notion of man as intellectually, morally, and physically superior, and therefore singularly fit for electing officials...

In rebutting claims concerning man’s physical superiority, Stanton re-purposes her sentiment concerning men as intellectual superiors, stating that until men and women have had the same physical education for many years, no comparison can be made. The physical and intellectual converge in Stanton’s subsequent attack on phrenology, a “science” used at the time to perpetuate unequal rights by linking measurements of the human skull to greater (male) and lesser (female) brain functions. And it is here that one encounters the first instance of her appropriating *The Princess*. Weaving Tennyson’s verse (highlighted in red in the passage below) into her own argument, she condemns the patriarchal appropriation of the theory and terminology of phrenology, a field of study popularized in the United States after a series of lectures delivered in 1834 by Auguste Compe, a leading phrenologist who, interestingly enough, was cited in an anti-feminist explanatory note on Tennyson’s politics that introduced an 1897 reprinting of *The Princess*:

The Phrenologist says that woman’s head has just as many organs as man’s and that they are similarly situated. He says too that the organs that are the most exercised are the most prominent. They do not divide heads according to sex but they call all the fine heads masculine and all the ill shaped feminine, for when a woman presents a remarkably large well developed intellectual region, they say she has a masculine head, as if there could be nothing remarkable of the feminine gender and when a man has a small head very little reasoning power and the affections inordinately developed they say he has a woman’s head thus giving all glory to masculinity. **Some say our heads are less./Some men’s are small, not they the least of men;/For often fineness compensates for size;/Beside the brain/is like the hand and grows,/With using—.** (ECS 7)

For context, the exact wording of the lines from *The Princess* that Stanton incorporates into her speech (highlighted in blue below) read:

Here they might learn whatever men were taught:

Let them not fear: **some said their heads were less:**  
**Some men’s were small; not they the least of men;**  
**For often fineness compensated size:**  
**Besides the brain was like the hand, and grew**  
**With using...** (TP 40, II.130-35).

This unbroken embedding of a near-replica of Tennyson’s verse into her own prose marks a re-appropriation of the male voice that has multiple significances. On a somewhat abstract level, by using Tennyson’s language to bolster her own anti-phrenological claim, Stanton creates a convergence of male voices that strips the two concurring patriarchal figureheads who are in play (the poet/Tennyson and phrenologist/Compe) of their logical agency by placing them in a framework in which they are now arguing against one another. In terms of the intersection of historical and literary significance, Stanton, in revoking male agency, transfers all authority to the voice of Lady Psyche, the speaker of the lines in the poem, and to the voice of the women’s rights movement as a whole. Specifically, the quoted lines are part of a lesson taught by Lady Psyche in which she argues for equality by highlighting the historical accomplishments of women as a way to dispel the myth that they will never be able to achieve the highest echelons of intellectualism on account of their small head sizes...

*Before laying out her and the suffragettes’ approach to changing voting norms, Stanton anticipates the counterarguments they will face: namely, the notion of man as intellectually, morally, and physically superior, and therefore singularly fit for electing officials...*

JOURNAL ON  
CONSTITUTIONAL  
DEMOCRACY

“But let us begin...”

Vol. 3



*Mizzou's inaugural Betty Anne McCaskill Scholar and a participant in our first Kinder Scholars D.C. Summer Program, current Stanford Law 3L Faaris Akremi (MU Class of 2015, Political Science & Geography) took time out of a busy fall schedule to chat with the Kinder Institute's Thomas Kane about his time in law school and on the west coast. Answers, which touch on everything from toxic river metaphors to niche California ballot initiatives, have been edited slightly for length.*

## ALUMNI Q&A

### *Four Questions (and a Lightning Round) with Faaris Akremi*

**Thomas Kane:** Just going off of past updates and conversations, I know your interests to be delightfully broad, but it seems like, somewhere along the line, environmental law rose to the surface as a particular area of professional/scholarly focus. I was wondering if you might go into the motivation behind this pursuit, not just “why environmental law” but also a little bit on what you see as the primary issues that we collectively face within this field and where/how you hope to make an impact in that regard.

**Faaris Akremi:** Early in law school, I was deeply ambivalent about choosing a substantive focus. I knew I wanted to do public interest (rather than private or corporate) work in the long run, but I was having trouble deciding whether I could do the most good through systemic work or front-line direct services to communities in need. And, still more fundamentally, I was trying to decide between environmental advocacy and other substantive areas of the law.

Then a friend of mine shared with me a metaphor that changed the way I think about my career. In this metaphor, there are kittens floating in a toxic river. They are struggling to stay above water, and won't be able to make it to shore without some help. So, in this metaphor, direct services lawyers are the ones with nets on the banks pulling the beleaguered critters out of the current. The systemic advocates—impact litigators, policy advocates and the like—are upstream attempting to get the maniac throwing kittens into a river to quit it. No doubt both of these roles are important to the kittens.

The kittens represent any number of causes I care about. But then there's the question of the hospitability of our planet. It underlies all other issues—including whether the kittens in the tortured (torturous?) metaphor above will find any solace in the world they inhabit once they're rescued. The metaphor, perhaps strained, helped me to see that, while my peers working on other issues are incredibly important, there need to be advocates toiling to secure the predicate to all other freedoms: a world to live in. The scientific consensus really is clear. Unless truly fundamental changes are made soon, our planet will not remain the verdant, life giving place we've always known it to be. The poorest people on Earth are already living through the first of many dire implications of a changing climate.

I hope to, in the short term, lend my voice to advocating for the profound changes that might allow us to avoid some of the grizzliest, most catastrophic consequences of environmental degradation. And, frankly, if we fail, I want to be in a position to demand that the more fortunate among us—those with wealth and power—pay our share of the costs of adapting, and that the poorest and most vulnerable among us are not left to carry the social and physical burden.

So, in a nutshell, I'm passionate about a lot of issues. Immigrants' rights, LGBTQ and gender issues, criminal justice reform, human rights, voter suppression, and any number of other topics really get me going. But I also recognize that, in the long term, none of the rest of it really matters if humanity faces extinction in 150-200 years

**TK:** Following up on the last part of that answer, has your work with environmental advocacy had any effect on how you think about these “bigger picture,” philosophically-grounded concepts like fundamental equality, individual liberties, human rights, etc.?

**FA:** I do think that my path to environmental law has changed the way I think. Most significantly, it's helped me to see how closely connected the major issues facing



humans are. The “environment” is a massive, amorphous thing that captures technical indicia like water quality, air pollution, and wildlife conservation, sure, but also less often considered outputs, like environmental justice and cultural health.

My approach amounts to an acknowledgment of how interwoven environmental, cultural, and political issues are. For instance, if you dig deep enough, environmental issues like resource scarcity underlie or at least shape most or all of the human rights crises we face. In ISIS-controlled Syria, water scarcity and control has been a point of major tension. Water shortage has also shaped many of the battle lines—metaphorical and literal—in the Israel-Palestine conflict. Indeed, if you go far enough into the past—really not *that* far in the grand scale of things—much of the modern cultural strife that exists in the Middle East, Southeast Asia, and elsewhere can be traced to the writ large environmental impacts—physical and cultural—of extractive and abusive colonial relationships.

In short, environmental justice, in its broadest sense, is closely related to issues like gender, racial, and other forms of cultural justice. Realizing this has been sort of freeing for me; by choosing to spend the foreseeable portion of my career working on traditional environmental issues, I'm not siloing myself away from other issues I care about. Rather, I'm working on one piece of a larger puzzle.

Semi-obligatory shout out: I principally credit Mizzou's Geography and Political Science departments for helping me to initially see these connections and Stanford Law School for helping me to explore my role in helping to address them.

**TK:** I asked this to **Sam Franks** too, but in general, I'm really curious about what it was like for people who are as intelligent and as comprehensively informed about contemporary politics as you and she are to learn about the new, non-Missouri political arenas in which you found yourselves—her overseas in the U.K., and you, of course, in Northern California?

**FA:** I noticed a couple of things when I moved across the country to Northern California. The first is born not only of moving to a new place, but also of studying law. Being in Northern California and taking classes on things like land use, property, and local government helped me understand how much of politics is exclusively local. Local laws, priorities, and values shape everything from traffic systems to environmental policies to social safety programs. This was thrown into the starkest relief for me on election night when my boyfriend Ryan was reporting for the Bay Area NPR affiliate on local returns. The national election did not go the way I would have preferred, and at about 10:30pm local time I was ready to go to bed and hope it had all just been a dream. But when I texted Ryan to see when he'd be home, he reminded me that there were still many hours of local returns to be counted and reported...

A second difference is California's fixation on ballot initiatives. Everything from condoms in adult films to the death penalty was on the ballot last November. In fact, there were no fewer than *seventeen* propositions on the ballot on election day. I'm not convinced of the wisdom of the California Constitution's super robust guarantee of direct democracy, but it's undeniable that it has a unique effect on politics and policy here.

Politically, I'm pretty progressive, so the move was also really interesting for me because the political norm in the Bay Area is on the progressive end of the spectrum. Here, debates around critical issues of the day are typically between those on the left and those in the political center. On the one hand, this was refreshing for me, coming from a state like Missouri where we struggle so hard to elect leaders and enact policies that are anywhere *near* the political center. But on the other hand, the political culture in Northern California also made me uncomfortable. When a single ideological bloc has such dominant control, compromise becomes a dirty word and reaching out to the other side becomes an act of political treason. I think that's a shame, and that the lack of compromise in state and local politics is a symptom of the same disease from which our national politics suffers so acutely. After all, the people we disagree with aren't going away anytime soon.

**TK:** Last one: I was wondering how the two clerkships that you have lined up—during the 2018-19 term in the chambers of Judge Matthew Kennelly of the Northern District of Illinois in Chicago; and during the 2019-20 term with Judge Stephen Reinhardt of the U.S. Circuit Court of Appeals for the Ninth Circuit in Los Angeles—serve as logical extensions of what we've talked about so far?

**FA:** One of my professors likes to say that legal education is one of the last bastions of generalism in the professional world. Unlike in medicine or accounting, if you're purposeful about it, you can dabble in a lot of areas of substantive law, gaining basic familiarity with the doctrine, and all the while amassing a set of skills that are more or less universal to lawyering. And I would argue that such a generalist approach is supremely valuable; no matter the area of law you hope to practice, other areas will inevitably arise in unexpected ways...

In a given week clerking, you might interact with criminal law issues involving the federal Racketeer Influenced and Corrupt Organizations Act (RICO); an administrative law question involving the Food and Drug Act; an intellectual property matter involving the Copyright or Patent Acts; and any number of state law contracts and torts disputes peripheral to federal law issues...

Mind you, not all clerkships are precisely the same. But the unifying theme is mentorship in critical skills like writing from a brilliant legal mind—your judge. (As

the child of a family that owes a lot of success to labor unions, I'd liken this to a sort of legal apprenticeship where your teacher just happens to be the best of the best of the best.)

So how does a clerkship fit in with my interests in life and work? As I've shared, I've got particular interests in environmental and refugee issues. But my work during my clerkship years is pretty unlikely to focus on those matters. Instead, I'm clerking because I want to get the invaluable skills and training as a generalist that clerkships offer. I have big goals for the impact I want to have in the world, but I first have to eat my proverbial vegetables. After all, I'm not likely to have much influence on anyone if I don't have the analytical chops and writing skills necessary to win an argument. The fact that a clerkship will expose me to myriad areas of the law I would otherwise be wholly ignorant of is also a wonderful bonus.

### *Lightning Round*

**TK:** What books are in arm's reach as you're typing your response to this question?

**FA:** I'm sitting at my desk and there's a bookshelf within reach, so I won't go through the entire list. But I'm in the middle of *The Golem and the Jinni* by Helene Wecker and just finished *Never Let Me Go* by Kazuo Ishiguro and *The Book of Dust* by Philip Pullman. On a less exciting note, I also have Volumes 1 and 2 of *Intellectual Property in the New Technology Age* immediately at hand, but that's not exactly pleasure reading.

**TK:** Best Supreme Court Justice ever and why?

**FA:** Really hard question. I think I'd choose William Brennan, though, based on his unparalleled ability to use humanity to animate the cold words of the law.

**TK:** Bay Area meal that will make everyone back in Missouri jealous?

**FA:** The Bay Area has lots of good food. The obvious choices, though, are fresh seafood and burritos (and Latin American food in general).

**TK:** The most sublime natural wonder you've experienced on the West Coast?

**FA:** Yosemite is more unbelievable in person than a photograph could ever capture. Half Dome is just the tip of the iceberg; the whole park is simply magical.

**TK:** Worst cinematic representation of a lawyer/lawyering?

**FA:** I don't think there are many good representations, honestly. I recently watched *Marshall* about Thurgood Marshall's early career, which I really enjoyed. But it's sort of the exception to the rule. Most cinematic representations of lawyers emphasize the more romantic, palatable parts of the job and simply ignore the innumerable hours of preparation and busy work that go into something like appearing in court. I think that's a small part of the reason so many people think they want to be lawyers until they actually get a taste for the work.

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For more information about contributing to the Kinder Institute, please feel free to contact Director Justin Dyer, [DyerJB@missouri.edu](mailto:DyerJB@missouri.edu)

 **Kinder Institute on  
Constitutional Democracy**  
University of Missouri

409 Jesse Hall  
Columbia, MO 65211  
573.882.3330  
[democracy.missouri.edu](http://democracy.missouri.edu)

## NEWS IN BRIEF

Continuing the congratulations roll call from p. 12, congrats to Kinder Institute Director **Justin Dyer** for the prestigious “Distinguished Faculty Award” from the Alumni Association...and to Kinder Graduate Fellow Emeritus **Zach Dowdle** on the birth of his first child, Theodore “Teddy” Dowdle...and to Jesse Hall fourth floor dweller and Pasley advisee **Lawrence Celani** on the publication of his first academic book review, of Natasha Lightfoot’s *Troubling Freedom: Antigua and the Aftermath of British Emancipation* in *Journal of World History*...and to undergraduate FIG co-coordinator, and former Kinder Scholar and Society of Fellows member, **Tricia Swartz** for receiving the MU Department of Residential Life’s “Peer Advisor Spotlight Award” for excellence in teaching...Kinder Institute faculty members were on the road throughout the fall, with Chair **Jay Sexton** stopping in at the World War I Museum & Memorial in Kansas City on his way to Denver to take part in an opening night panel discussion for the Museum’s November 2017 “America Joins the Fight” symposium...and Director **Justin Dyer** traveling to Pittsburgh later that week for the Duquesne Law School’s “Resurrecting Truth in American Law and Public Discourse” conference...and Professor **Adam Seagrave** heading a bit further east after him, to the Naval War College, for a November 16 talk on “A ‘Common Sense’ Approach to Foreign Policy in the 21st Century”

We look forward to sharing spring highlights next time around, and be sure to follow us on Twitter, @MUDemocracy, for real-time updates about—and sometimes even live footage of—happenings and achievements here at the Kinder Institute.

