IN THEIR OWN WORDS

On behalf of the faculty of the University at Buffalo Law School, The State University of New York, Dean Makau Mutua is pleased to announce the appointment of six new faculty members and one visiting professor:

Angela P Harris
S. Todd Brown
Michael Halberstam
Stuart Lazar
Tara J. Melish
Ruqaiijah Yearby
Wentong Zheng

We introduce them to you with brief profiles, and they introduce themselves in their own words.
How is it that certain people come to be identified as a group, and how does that group come to be treated as inferior to others? Even more importantly, how can subordination be disrupted? These questions motivate my scholarship and my teaching.

In the United States, both subordination and anti-subordination happen in the zones where “law” and “culture” interact. For the first-year course that I teach, Criminal Law, I use a casebook that I wrote with Cynthia Lee at George Washington University School of Law, Criminal Law, Cases and Materials (West Publishing, 2005). Our book explores the way that substantive criminal law both shapes and is shaped by cultural dialogues about crime and punishment, as well as conversations about race, gender and sexuality. Criminal Law is a great course to teach because students always have strong feelings and opinions. I always learn something new, and I like the challenge of creating a space that is safe enough for both candor and disagreement.

From the beginning of my scholarly career, my work has been rooted in the interconnections between race and gender. I am currently working on a chapter for a book, “Women and the Law Stories,” edited by Stephanie Wildman and Elizabeth Schneider, which I am co-authoring with historian Rebecca Hall. The chapter uses the concept of “racialized gender” to show how social identities in the post-Reconstruction South were shaped by race and gender subordination together. Our argument is that race and gender are not distinct forms of subordination that “intersect”; they are mutually constitutive.

Hall and I also recently taught a seminar on “critical race feminisms” that explored this idea through United States history from the founding up to the Second Reconstruction” in the 1960s. In addition to investigating the interconnections between gender and race, in the last few years I have become increasingly interested in writing about class and sexuality. A casebook I wrote with Emma Coleman Jordan, Economic Justice Race, Gender, Identity, and Economics (Foundation Press, 2005), identifies a split between economic analysis and moral analysis, and criticizes that split. Why do we think of the economy as something “private” that lies outside the purview of government? Can we integrate economic analysis of institutions and practices of production and exchange with moral analyses of justice and fairness? We are excited about revising this book in light of new developments such as the recent subprime mortgage scandal, the evolution of law and economics to embrace cognitive psychology and organizational sociology, and political interest in greater state oversight of financial markets.

Sexuality is a new scholarly interest of mine. Sexuality is an area of life that we are inclined to think of as quintessentially “private”; yet further investigation reveals active participation by the state in defining which sexual activities are permitted and which are forbidden, as well as government efforts to channel sexuality into institutions, like marriage, that are tightly regulated by law. Partly in response to this regulation, groups whose sexuality is marginalized have organized themselves into social groups that demand recognition and reparation from the state. With the help of feminism, reproductive technologies that separate sexuality from family formation, and changing cultural attitudes toward sexuality, these groups have successfully won a space for themselves in American culture, but, as the same-sex marriage controversy demonstrates, space is still marginal. Like criminal law, I see the field of “law and sexuality” as constituted by this struggle in the zone between law and culture.

Another aspect of the interplay between law and culture that has heavily influenced both my teaching and my writing is the complicated relationship between legal change and social movements. I have taught courses in “economic justice,” “environmental justice” and “law and social justice,” and am currently learning about the social movement for “reproductive justice.”

The presence of the word “justice” in these titles signals for me tension between law, with its mandate to promote order and stability, and justice, which sometimes demands radical changes in social relations. The tension between law and justice produces laudable social change, but it also reminds us that both moral justice and legal justice are always works in progress.
S. Todd Brown
Associate Professor

S. Todd Brown, an expert in bankruptcy law, comes to UB Law School following two years as an Abraham L. Freedman Teaching Fellow at the Beasley School of Law at Temple University, in Philadelphia. Previously he worked with the law firm Jones Day, in Cleveland, representing corporate debtors and creditors in Chapter 11 and cross-border bankruptcies, and with the Washington, D.C., firm Wilmer Cutler Pickering Hale and Dorr, where he developed training programs for other attorneys on bankruptcy law and corporate investigations, and worked on banking issues in such high-profile cases as Enron and Worldcom.

Brown's J.D. is from the Columbia University School of Law, and he did his undergraduate work in philosophy at Loyola University of New Orleans, from which he graduated summa cum laude.

Brown writes and teaches in the areas of bankruptcy and business law.

My research concerns the design and practice of bankruptcy, mass tort and corporate law, with an emphasis on the manner in which these areas test the underlying assumptions and limits of traditional litigation. This work focuses on the critical individual decisions, group dynamics and market forces that lead to seemingly irrational - but predictable and avoidable - choices and outcomes in litigation.

In large corporate bankruptcies, for example, the key fiduciaries must usually balance the interests of dozens (or more) competing constituencies. Although many view this balancing as purely financial, such a narrow view ignores the political and social dimensions of modern bankruptcy law and practice. Even in cases where the respective financial rights of creditors are relatively straightforward, personal and practical concerns may demand special attention and, ultimately, lead to final distribution proposals that differ considerably from the statutory priority scheme. For example, my most recent article, "Section 524(g) Without Compromise: Voting Rights and the Asbestos Bankruptcy Paradox" (Columbia Business Law Review, 2008), traces how the admirable goal of maximizing compensation for those injured by bankrupt defendants fundamentally compromised not only the prospects for compensating severely injured plaintiffs but also the integrity of the bankruptcy process.

My current work in progress, "The Private Market for Specious Claims," builds upon the 524(g) article by explaining how mass screenings and trading of client "inventory" provided more than the "mass" in asbestos mass tort; they dramatically altered the risk assessment involved in presenting specious claims. This critical step in the dramatic rise in specious claim filing has been largely ignored by asbestos mass tort critics, who have focused on disparaging plaintiff's counsel, litigants, judges and juries. Although this article does not attempt to deflect this criticism, understanding the role that the private market played in this area may provide important lessons for minimizing specious claim filing in future mass tort litigation.

In other work, I am developing a broader discussion of the conflict between the priority scheme of the bankruptcy code, on the one hand, and the special interest "veto" powers enjoyed by unions and mass tort lawyers, on the other. These issues are front-and-center in the recent Chrysler and General Motors bankruptcy cases, and they present a unique opportunity to highlight the political, social and class issues that corporate debtors and bankruptcy judges must confront under the Bankruptcy Code.
Michael Halberstam
Associate Professor

Michael Halberstam’s research is in governance and institutional development. He received his J.D. at Stanford Law School and his Ph.D. in Philosophy from Yale University. He joins UB Law from Columbia Law School, where he was a fellow with the Center for Law and Economic Studies.

He practiced for several years with the firm of Paul, Weiss, Rifkind, Wharton & Garrison in New York City, where he specialized in civil litigation in the state and federal courts in the fields of securities, banking, directors and officers’ liability, bankruptcy and other complex business disputes. His pro bono practice was in the area of voting rights. Before joining Paul, Weiss, he clerked for District Judge Thomas Griesa in the United States District Court for the Southern District of New York.

Halberstam has also taught and written in the area of political philosophy, including a book entitled Totalitarianism and the Modern Conception of Politics (Yale University Press, 2000).

Halberstam teaches in the areas of Civil Litigation, the Law of Democracy, and Corporations. He writes on governance and institutional development.

My research interests are in governance and institutional development in private and public law. My current focus is on how law affects the way in which governments and private organizations make use of knowledge resources and foster innovation.

My work in private (corporate) law proposes a significant shift in thinking about corporate internal organization with concrete implications for corporate governance. In “Knowledge Inputs, Legal Institutions and Firm Structure Towards a Knowledge-Based Theory of the Firm” (Northwestern Law Review 2007), my co-author Erica Gorga and I draw on the view in New Institutional Economics that firms are innovation machines with distinct knowledge sets and capabilities. We examine the relations between knowledge inputs, legal institutions and firm structure, and argue that firm structure varies depending on the knowledge resources a firm must coordinate and marshal; and depending on how the regulatory environment affects the use and production of knowledge resources. In other words, what a firm does shapes its organization; and firm organization cannot be reduced – even for purposes of corporate governance – to a nexus of contracts that generate transaction costs or agency costs between managers and shareholders.

The article lays out a framework for a research agenda that is expected to lead to concrete policy proposals across a broad range of governance issues. The analysis has a bearing on innovation policy, intellectual property regulation, and the current reassessment of the Sarbanes-Oxley Act.

My current work on public (political) institutions is on the Law of Democracy. In an article on the Voting Rights Act of 1965, I provide an original interpretation of the structure and implementation of the VRA’s controversial preclearance regime.

The VRA’s preclearance regime requires covered jurisdictions to submit all law changes affecting elections to the United States Attorney General for approval before they can be enforced. This regime has been persistently characterized as a uniquely heavy-handed federal intervention into state and local lawmaking. In a constitutional challenge decided this past term by the Supreme Court, petitioners called it “the most federally invasive law in existence.” My article counters this view by showing that the preclearance regime is consistent with decentralization and localism. In so doing, the article contributes to our understanding of the institutionalization of civil rights and explores the unexamined tension and false opposition between localism and civil rights so often encountered in constitutional law and democratic political theory.
Stuart Lazar

Associate Professor

It was during his junior year of college, through an introductory class in tax accounting, that Stuart Lazar first became fascinated with tax law. Lazar, who graduated with distinction and class honors from the University of Michigan, continued to explore this interest at the University of Michigan Law School, where he graduated cum laude.

Following law school, Lazar returned to New York, where he received an LLM in Taxation from New York University School of Law. Lazar was an associate at Skadden, Arps, Slate, Meagher & Flom in New York City, where he worked with investment bankers, clients and other attorneys on mergers and acquisitions, restructuring and other transactions.

Later, he moved to Providence, Rhode Island, where he worked primarily on corporate and partnership tax issues as a partner at Edwards & Angell, LLP in the firm’s Providence and Boston offices. While living in the Northeast, Lazar also taught at Roger Williams University School of Law. Before joining the University at Buffalo faculty in 2008, Lazar was a visiting professor at Tulane Law School, where he taught courses in corporate tax, partnership tax, individual income tax and tax policy.

The study of tax law has, to me, always been a two-front exercise: the study of tax policy and the study of statutory interpretation. It is only by understanding what was actually written into law and why the law was written that way does one have a chance of making sense of the Internal Revenue Code.

With a backdrop of working for two large corporate law firms, it is no wonder that my scholarly pursuits have, in the past, focused on corporate tax issues. In an article entitled “The Definition of Voting Stock and the Computation of Voting Power Under Sections 368(c) and 1504(a): Recent Developments and Tax Lore” (Virginia Tax Review, Summer 1997), I explored the question of how the Internal Revenue Service and the courts interpreted the term “voting stock” in two areas of corporate law. The questions there included not only whether stock constituted voting stock, but how to determine the voting power embodied in such stock. In a second article entitled “Lessinger, Peracchi and the Emperor’s New Clothes: Covering a Section 357(c) Deficit with Invisible (or Nonexistent) Property” (Tax Lawyer, Fall 2004), I delved into the issue of whether a shareholder’s own promissory note constitutes property when contributed by such shareholder to a corporation in conjunction with other property. The answer to that question has many interesting tax implications to the shareholder.

My current scholarship, however, focuses on an issue relating to individual taxation: the tax treatment of higher education expenses. This project came about as a result of my frustration with the current treatment of such expenses on two fronts. First, under current law, educational expenses are generally treated as personal (rather than business) expenses and not deductible by a taxpayer who invests a significant amount of money and energy to further his or her education. While there are many personal benefits to furthering one’s education, it should be clear that higher levels of education lead to greater professional opportunities—and, ultimately, higher income. As a general rule, under our system of taxation, taxpayers are taxed on net income. To disallow a deduction for such expenses incurred in the creation of such income is, taxpayers are allowed to deduct the costs of educational expenses rather than personal expenses. In addition, I provide a method of allowing taxpayers to deduct the costs of these business expenses over the course of their lifetime. This solution helps to provide an incentive for higher education expenses, as well as a treatment of such expenses that correctly taxes a taxpayer’s net income.

While some of these provisions complement each other, many of these provisions contradict each other. In addition, through my research, I have discovered that these provisions fail to provide the incentives to the constituents for whom they were intended.

In my article, I argue that higher education expenses should be considered business expenses rather than personal ones. In addition, I provide for a method of allowing taxpayers to deduct the costs of these business expenses over the course of their lifetime. This solution helps to provide an incentive for higher education expenses, as well as a treatment of such expenses that correctly taxes a taxpayer’s net income.
Tara J. Melish
directs the Buffalo Human Rights Center at UB Law School. A graduate of Brown University and the Yale Law School, she comes to Buffalo after teaching in the law programs at a variety of universities, most recently at Notre Dame, Åbo Akademi (Finland), George Washington, Oxford, Georgia and Virginia.

Active in litigation and reporting initiatives before United Nations and Inter-American human rights bodies, she has worked in the United Nations Secretariat, in the drafting negotiations of the U.N. Convention on the Rights of Persons with Disabilities, at the Center for Justice and International Law, and as legal adviser or consultant to a number of international organizations.

Melish was Editor in Chief of the Yale Human Rights and Development Law Journal, clerked for the Honorable James R. Browning on the Ninth Circuit Court of Appeals, and has been the recipient of professional fellowships from the MacArthur Foundation, Fulbright Foundation and the Yale Law School.

Melish writes and teaches in the areas of human rights law, comparative law and international law.

My current scholarship centers on two areas: comparative national and subnational approaches to the incorporation of human rights treaty norms and comparative standards for the adjudication of rights claims, particularly those involving economic, social and cultural rights.

First, embracing what I call a "participatory instrumentalist" view on human rights treaty compliance, my scholarship trains a comparative lens on the types, numbers and use-patterns of the institutional spaces recognized by governments for deepening domestic engagement with human rights norms as a consequence of treaty ratification. A mapping of the quality, quantity and accessibility to disaggregated population groups of these institutional spaces provides a more accurate and reliable picture of "compliance," I argue, than can measures typically espoused in the empirical literature under realist, liberal, constructivist and transnational legal process accounts. By focusing too narrowly on the rational game-theoretic interactions between States, the norm-socializing work of transnational advocacy networks, or raw achievement of a narrow set of externally-determined outcome indicators, these latter models often bypass the agency, priorities and participatory relevance of the very social actors that human rights treaty law is drafted and ratified to benefit: the individuals whose dignity interests fail to find recourse in domestic political processes.

My research seeks to refocus attention on how these individuals use the legal resources provided by treaty ratification to open participatory spaces at the domestic level for ensuring that their voices and dignity interests are effectively taken into account. In so doing, my work understands human rights law not as a set of fixed rules to be "obeyed" by States, as do dominant models, but rather as a primarily reflexive law regime, designed to set in motion broader participatory processes through which the precise meaning of rights can be given locally relevant content in contextually meaningful, often pluralized ways. Such a model suggests, in turn, a distinct metric of treaty compliance, one which focuses as much on "process" and "structural" indicators as on quantified "outcome" indicators.

Second, my scholarship seeks to answer persistent assertions that claims based on economic, social and cultural rights norms are less susceptible to judicial resolution than those based on civil and political norms. By examining the comparative legal standards used by adjudicatory bodies at the admissibility, merits and remedial stages of litigation with respect to a broad spectrum of human rights claims, my work seeks to reveal the common set of standards, proportionality tests and discretion doctrines that apply consistently across all rights-based claims, regardless of subject matter.
Ruqaijah Yearby

Associate Professor

Ruqaijah Ayanna Yearby directs UB Law School's J.D./M.P.H. and J.D./PharmD programs. Her appointment is jointly with the Law School and UB's School of Public Health.

A biology major as an undergraduate at the University of Michigan, she earned her master of public health degree from Johns Hopkins School of Public Health, in Baltimore, and her law degree from Georgetown University Law Center in Washington, D.C. Her resume also includes periods in law practice, as assistant regional counsel for the U.S. Department of Health and Human Services and a clerkship for Judge Ann Claire Williams in the U.S. Court of Appeals, Seventh Circuit.

Before coming to UB Law, Yearby taught at Loyola University in Chicago, where she did extensive work in bioethics and on issues of racial disparities that affect access to health care.

Yearby writes and teaches in the areas of Administrative Law, Bioethics, Health Care Law, Law and Science, and Law and Medicine.

Bridging the gap between biology, public health and law, my research centers on the protection of vulnerable populations from exploitation and discrimination. My current projects review health care laws governing clinical trials and long-term care, evaluate the effectiveness of these laws through empirical and anecdotal evidence, and propose remedial strategies, legal and otherwise, to protect the interests of vulnerable populations.

My first project, entitled "When Is a Change Going to Come?: The Continued Exploitation of Children for the Benefit of an Unworthy Society," examines whether the justice principle, which mandates scrutiny in the selection of human subjects for clinical trials to ensure that the population is not selected merely because they are in a compromised position, adequately protects vulnerable children. Although clinical trials offer the prospect of benefits to specific individuals participating in ongoing studies, the benefit is understood as societal in nature. When the risks to individuals are invariably pitted against greater societal gains, decision-making pertaining to human subject selection can be gravely compromised. In such circumstances, the benefit of clinical trials is inextricably intertwined with the problem of devaluing the humanity of certain human beings, resulting, at times, in the exploitation of vulnerable children for the benefit of the greater society. In light of the current law's failure to adequately protect vulnerable children, I propose a radical paradigm shift with respect to the application of theories of justice. Specifically, regulators must repudiate the use of the utilitarian theory of justice, which favors the interests of society when weighed against children, and replace it with an egalitarian theory of justice that will not sanction the sacrifice of vulnerable children for an unworthy society.

My second project, entitled "Learning From the Mixed Blessing of Title VI of the Civil Rights Act: Integrating Civil Rights Enforcement with the Health Care Regulatory System to Address Racial Inequities," discusses the persistence of racial inequities in health care, caused by racial discrimination despite civil rights laws and prescribes a solution to address these racial inequities. Although hospitals were fully integrated as a result of Title VI of the Civil Rights Act of 1964, integration-related gains have not been realized in the nursing home industry.

While some nursing homes removed discriminatory language, many did so without necessarily ceasing discriminatory practices. The time has come to use innovative strategies to address continued racial discrimination in the provision of quality nursing home care. One such strategy is to use neutral laws such as the Medicaid Act to induce the government to fulfill its non-race-based regulatory duties as a way to reinvigorate civil rights enforcement. This strategy is not merely aimed at forcing the government to fulfill its regulatory mandates; it is also intended to transform a broken civil rights system that implicitly accepts the unequal treatment of elderly African-Americans into an effective one that prescribes and puts an end to institutionalized racial discrimination.
Wentong Zheng
Associate Professor

Wentong Zheng, a native of China, earned a doctoral degree in economics at Stanford University, and concurrently earned a J.D. degree from Stanford Law School, where he was an executive editor of the Stanford Law Review. After completing his work at Stanford, Zheng joined the Washington, D.C., law firm Steptoe & Johnson, where he worked on international trade litigation and trade policy advocacy.

His primary research interests are in law and economics. His current research critically examines the use of market benchmarks in economic law, for example in calculating countervailing duties in international trade law. He also has advanced quantitative research skills which he plans to apply in empirical studies of legal and public policy issues. Finally, Zheng is committed to research that illuminates Chinese law in its political, economic and cultural contexts.

Zheng writes and teaches in the areas of empirical law and economics.

My scholarship centers on two distinct areas: law and economics, and Chinese law.

In the areas of law and economics, I have taken a keen interest in the role of market in law in general and the use of market as a benchmark for economic value in law in particular. For example, I recently completed an article on the use of market benchmarks in the countervailing duty law, which compares the terms of a government action to the terms available in the market to identify and measure government subsidies. I showed that the market benchmarks utilized in the countervailing duty law envision a "perfect" or "near-perfect" market, i.e., a market that is "undistorted" by the government action under countervailing duty investigation. That perfect-market approach leaves the countervailing duty law in constant search for the perfect market, which, unfortunately, exists only in the counterfactual world. I demonstrated that many of the assumptions and policy choices made by the Department of Commerce (the agency charged with countervailing duty determinations) in that search process are based on flawed reasoning and flawed economics.

The countervailing duty law is only one of the many areas of law with heavy reliance on market, and in my future research I intend to analyze similar issues in those other areas of law.

In addition, my other area of interest in law and economics is empirical studies of legal and public policy issues. In a highly complex system known as modern society, many of the most pressing legal and public policy questions can be answered only through empirical analysis of data. In graduate school, I received advanced training in econometrics and statistics, and wrote my Ph.D. dissertation on the effect of state lotteries on crime. I intend to leverage my strength in that field and conduct empirical studies in host of areas such as crime and health law.

Besides law and economics, my other primary research area is Chinese law, particularly Chinese business law. I was born and raised in China, and my practice at an international law firm in Washington, D.C., frequently entailed analysis of complicated Chinese law issues. My familiarity with both the Chinese law and the broader Chinese society makes me well suited for research in Chinese law. A recent example of my Chinese law scholarship is a co-authored article on China’s newly enacted Anti-Monopoly Law. Unlikely many of the other articles written on the subject, our article focuses on the unique political, economic and cultural factors that are essential to understanding the key features of the law.