

JAY BUTLER
William & Mary Law School
613 South Henry Street, Williamsburg VA 23185
jbutler@wm.edu 202-570-0209

EDUCATION

YALE LAW SCHOOL

Juris Doctor, 2011

Activities: Coker Teaching Fellow; Yale Black Law Students Association; Yale Journal of International Law

OXFORD UNIVERSITY

B.A. in Jurisprudence, 2008

Honors: Rhodes Scholar

HARVARD UNIVERSITY

B.A., *magna cum laude with highest honors*, History, 2006

Honors: Phi Beta Kappa

ACADEMIC EMPLOYMENT

UNIVERSITY OF VIRGINIA LAW SCHOOL

Fall 2020

Visiting Associate Professor of Law

Course: International Business Transactions

WILLIAM & MARY LAW SCHOOL

Associate Professor of Law

2019-

Assistant Professor of Law

2016-2019

Courses: International Business Transactions, Contracts, Extraterritorial Jurisdiction, Corporations and International Law

PRINCETON UNIVERSITY

2018-2019

Visiting Research Scholar, LAPA Fellow

COLUMBIA LAW SCHOOL

2014-2016

Academic Fellow and Kellis E. Parker Teaching Fellow

YALE LAW SCHOOL

Fall 2014

Visiting Lecturer in Law

Course: Conflict of Laws (co-taught with Prof. Lea Brilmayer)

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

2012-2014

Visiting Associate Professor of Law

Courses: International Organizations; U.N. Security Council

PROFESSIONAL EXPERIENCE

GOVERNMENT OF JAPAN Legal consultant to the Ministry of Foreign Affairs of the Government of Japan	2013
INTERNATIONAL COURT OF JUSTICE Law clerk to Judge Giorgio Gaja and Judge Hisashi Owada (then President of the Court)	2011-2012
INTERNATIONAL LAW COMMISSION Research assistant to Professor Don McRae, Member of the Commission	Summer 2010
DEBEVOISE & PLIMPTON LLP Summer associate (offer extended)	Summer 2010
U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT Summer clerk to Judge Sonia Sotomayor and Judge Debra Livingston	Summer 2009

BAR ADMISSION

New York

SCHOLARSHIP

***The Corporate Keepers of International Law*, 114 AM. J. INT'L L. 189 (2020)**

- Selected for presentation at the Yale/Stanford/Harvard Junior Faculty Forum
- Quoted in JEFFREY DUNOFF & STEVEN R. RATNER, **INTERNATIONAL LAW: NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH** (Aspen Casebook, 5th ed. 2020)

In transborder environmental protection, territorial disputes, internet governance, anticorruption, international human rights, and humanitarian law, private businesses are increasingly supporting the implementation and enforcement of international law. This Article analyzes the various ways that corporate decision making contributes to this phenomenon, and assesses its prospects for enhancing international law's existing enforcement paradigms. In doing so, the Article opens new ground for scholarly and policy consideration of the proper role of corporations in the global legal order.

***Corporate Commitment to International Law*, 53 NYU J. INT'L L. & POL. ____ (forthcoming 2021)**

Corporations are increasingly important actors in international law. But, vital questions underlying this development have long gone unanswered: how and why do corporations commit to international law?

This Article constructs a comprehensive account of business interaction with international legal obligation and suggests that a gateway to demystifying this persistent puzzle lies in corporate *opinio juris*.

Corporate *opinio juris* describes a company's subscription to a rule of international law, even though the company is not technically bound by that rule itself. This subscription functions as a kind of pledge that, once made, has sway over the company and its peers, but also symbiotically enhances the authority of international law. Corporate *opinio juris* provides a common rubric to bring together insights derived from subfields of international law where these corporate pledges to follow international law have been observed, and it serves as a paradigm according to which we may better understand how and why companies adhere to international law.

The Article then unpacks how various structures within business law and management theory help to predict the formation of corporate commitments to international law, and it reveals that corporate *opinio juris* holds potentially sweeping implications for international law generally.

***Corporations as Semi-States*, 57 COLUM. J. TRANSNAT'L L. 221 (2019)**

When Ebola came to West Africa in 2014, Liberia could not cope. The state's already fragile public health infrastructure was largely ineffective in responding to the illness and preventing its spread. And, the World Health Organization's support was slow and stilted. By contrast, Firestone, a tire company that operates a vast rubber plantation in Liberia and runs its own hospital for 80,000 employees, family dependents, and persons in neighboring localities, responded to the virus much more effectively.

This Article uses Firestone's Ebola response as an entry point to study a phenomenon too frequently overlooked. Many for-profit firms that maintain operations in failed and fragile states discharge significant quasi-governmental functions. They provide security, housing, food, water, transportation, infrastructure and healthcare. And, they undertake such tasks not only for their employees but, sometimes, these businesses also reach beyond their own private domain to respond to challenges impacting the local community. Yet, legal scholarship on failed and fragile states largely ignores the provision of public goods by these business entities.

This Article suggests that much more work needs to be done to grapple with the various functions undertaken by these business entities. The Article first details instances of corporations acting as semi-states to add fresh nuance to the prevailing narrative concerning the role of business in failed and fragile states. It then marshals theoretical insights available at the intersection of corporate law and international law to suggest a more complex understanding of the behavior of profit-motivated actors in the state's absence.

The Article then applies this renovated model to question the appropriateness of laws that dissuade firms from operating in failed and fragile states. It flags and addresses reasons for caution, but also considers alternative means through which the international community might better foster the socially beneficial potential of for-profit firms operating in failing states.

***Amnesty for even the Worst Offenders*, 95 WASH. U. L. REV. 591 (2017)**

- **Winner of the Lieber Prize awarded by the American Society of International Law for best article on law and armed conflict in 2018**

In recent years, global policy makers have declared that heads of state must be held accountable through criminal prosecution for internationally wrongful acts. Scholars too have

insisted that the international system's embrace of accountability excludes or renders illegal the granting of amnesty. This Article argues that that position is too narrow and uses the ongoing conflict in Syria, as well as other contemporary examples, to examine some of the consequences of the clamor for prosecution.

The Article rejects the binary juxtaposition of amnesty and accountability in current international legal scholarship, and instead seeks to broaden the terms of the conversation by considering amnesty from the perspective of the Responsibility to Protect (R2P) principle.

The Article suggests that viewing amnesty as a conflict resolution mechanism that may discharge R2P highlights important values and tradeoffs that the debate over amnesty and its relation to accountability has heretofore neglected.

***Responsibility for Regime Change*, 114 COLUM. L. REV. 503 (2014)**

What obligations does a state have after it forcibly overthrows the regime of another state or territory? The Hague Regulations and the Fourth Geneva Convention provide some answers, but their prohibition on interfering with the governing structure of the targeted territory is outmoded. Based on a careful examination of subsequent practice of the parties to the conventions, this Article asserts a new interpretation of these treaties and argues that regime-changers are now under positive obligations in the postwar period and beyond.

Through their conduct and evaluation of modern regime-change missions, states, both individually and acting collectively through international organizations, have manifested revised understandings of obligations in the post-conflict phase of military operations. Accordingly, this Article argues that regime-changing states now not only have Geneva-based direct obligations to establish security in the territory, promote representative local government, protect the human rights of the local population, assist with post-conflict reconstruction, and safeguard minority groups while exercising control over the territory, but also that such states must ensure that the successor regime – whose installation their initial military intervention facilitated – is one that respects international human rights law.

***The Return of Corporate Rights* (work in progress)**

***Inclusive Business* (work in progress)**

***Are treaties really 'deals'?* (work in progress)**

SELECTED PAST & UPCOMING PRESENTATIONS

Inclusive Business, Comparative and International Law Workshop, Columbia Law School, Feb. 23, 2020

Corporate Commitment to International Law, Faculty Workshop, University of Virginia Law School, Sept. 28, 2020

Corporate Resistance to State Wrongs, Culp Colloquium, Stanford Law School, June 9, 2020 (via Zoom)

Corporate Resistance to State Wrongs, Public Law Workshop, University of Chicago, Apr. 28, 2020 (via Zoom).

The Corporate Keepers of International Law, Faculty Workshop, Cornell Law School, Nov. 22, 2019.

The Corporate Keepers of International Law, Yale/Stanford/Harvard Junior Faculty Forum, Yale Law School, June 5, 2019.

The Corporate Keepers of International Law, Culp Colloquium, Duke Law School, May 16, 2019.

The Corporate Keepers of International Law, American Society of International Law Southeast Regional Conference, Washington & Lee University School of Law, May 13, 2019.

The Business of International Law, LAPA Seminar, Princeton University, Mar. 25, 2019.

The Business of International Law, Critical Perspectives on Race and Human Rights: Transnational Re-Imaginations Symposium, UCLA School of Law, Mar. 8, 2019.

The Business of International Law, Junior International Law Scholars of the American Society of International Law, Brooklyn Law School, Jan. 11, 2019.

Corporations as Semi-States, International Law Roundtable, William & Mary Law School, Sept. 28, 2018.

For-Profit Firms and Failing States, Faculty Workshop, American University, Washington College of Law, Sept. 18, 2018.

Corporations as Semi-States, Culp Colloquium, Stanford Law School, June 4, 2018.

Corporations as Semi-States, Faculty Workshop, Boston College Law School, Apr. 13, 2018.

Business in the Breach, Culp Colloquium, Duke University School of Law, May 18, 2017.

Business in the Breach, International Law Roundtable, William & Mary Law School, May 16, 2017.

Amnesty for Even the Worst Offenders, Faculty Workshop, Wake Forest University School of Law, Apr. 6, 2017.

UNIVERSITY SERVICE

- Elected Faculty Representative, Dean Search Interview Panel (2020)
- Ad Hoc Committee to Review the Legal Practice Program (2019-2020)
- Dean's Advisory Committee (2017-2018)
- Enrichment Committee (2017-2018)
- International Committee (2016-2018)
- Rhodes-Marshall Scholarship Nomination Committee (2016-2018; University-wide)

REFERENCES

<p>Prof. Jack L. Goldsmith Harvard Law School 1563 Massachusetts Avenue Boston, MA 02138 Telephone: 617-384-8159 Email: goldsmith.jack@gmail.com</p>	<p>Prof. Angela Banks Sandra Day O'Connor College of Law Arizona State University 111 E. Taylor Street Phoenix, AZ 85004-4467 Telephone: 480-965-9024 Email: angela.m.banks@asu.edu</p>
<p>Prof. Guy-Uriel Charles Duke University School of Law 210 Science Drive Durham, NC Telephone: 612-306-9555 Email: charles@law.duke.edu</p>	<p>Prof. Sean D. Murphy George Washington University Law School 2000 H Street NW Washington, DC 20052 Telephone: 202-994-8763 Email: smurphy@law.gwu.edu</p>
<p>Prof. Lea Brilmayer Yale Law School 127 Wall Street New Haven, CT 06511 Telephone: 203-432-0194 Email: roberta.brilmayer@yale.edu</p>	<p>Prof. W. Michael Reisman Yale Law School 127 Wall Street New Haven, CT 06511 Telephone: 203-432-4962 Email: michael.reisman@yale.edu</p>