

## KENNETH M. EHRENBURG

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### EDUCATION

#### Yale Law School

J.D., June 1997                      Substantial J.D. essay: *Razian Analogs*.  
Advised by Professor Jules Coleman.

#### Columbia University

Ph.D., Philosophy 2005              Dissertation: *A Functional Methodology for General Jurisprudence*.  
Advised by Professor Jeremy Waldron.

M.A., Philosophy 1994              Masters essay: *Morality, Value and Motivation*.  
Advised by Professor Bonnie Kent.

B.A., *magna cum laude*, Philosophy 1993.

### CURRENT APPOINTMENTS

*HLA Hart Visiting Fellow*, University College, Oxford (Michaelmas Term 2010)

*Visiting Scholar*, George Washington University Law School (2010 – 2011)

*Assistant Professor of Philosophy, Research Associate Professor of Law*, University at Buffalo  
(2005 – Present)

### TEACHING AND RESEARCH INTERESTS

Philosophy of law, Evidence law and epistemology, Political authority, Professional responsibility, Statutory and Contractual Interpretation, Metaethics

### PUBLICATIONS

*The Claim of Pre-emption: A Discussion of Raz's Theory of Legal Authority*

(co-authored with Gian Paolo Terravecchia),

in *PROSPETTIVE ODIERNE DELLA FILOSOFIA ANALITICA* \_\_\_\_ (Antonio Allegra ed., Gian Paolo Terravecchia trans., Editrice Universita' di Padova, 2010 forthcoming).

Highlighting the difficulties in Joseph Raz's notion that the law claims to pre-empt individuals' reasons for action, arguing instead that subjects allow the law to pre-empt their reasons when acceding to its authority. This has implications for motivations required or defined by law, suggesting that law cannot properly require that subjects be motivated by legal duties.

*Defending the Possibility of a Neutral Functional Theory of Law*,

29 *OXFORD JOURNAL OF LEGAL STUDIES* 91 (2009).

An understanding of law's social functions is crucial to explaining law and requires empirical evidence, but this position does not commit a theorist to embrace the value of those functions, or law's chances of success. This implies that the sociological study of law can be jurisprudentially fruitful in providing information about the different functions law performs. It also suggests that the proper way to understand and assess particular legal enactments and policies is in terms of the social function that they are to serve.

*Archimedean Metaethics Defended*, 39 METAPHILOSOPHY 508 (2008).

Defending a neutral point of view from which to analyze law and morality against the arguments of Ronald Dworkin. Dworkin attacks external skepticism about law and morality as incoherent, saying that one cannot step outside these practices in order to assess them. I show that external skepticism is still a viable position and important for certain arguments to improve our moral and legal practices.

*Philosophy of Law*, in PHILOSOPHY 296 (JiYuan Yu & ZhiWei Zhang eds., ZhaoYun Pan trans., Series on Western Research in the Humanities and Social Sciences, ShuMing Lu series ed., China Renmin University Press, 2008) (in Chinese).

An overview of Anglo-American jurisprudence for a major Chinese academic encyclopedia, canvassing both general jurisprudence and theoretical issues in criminal, tort, contract, property, constitutional, and evidence law, as well as concerns in judicial review and interpretation. Also includes extensive bibliography.

*House v. Tritter: On the Clash of Theoretical and Practical Authority*, in HOUSE AND PHILOSOPHY 174 (Henry Jacoby ed., Blackwell Philosophy and Pop Culture Series, William Irwin series ed., Wiley, 2008).

Using the plot of a popular television series to highlight the tension between the authority of expert witnesses and that of legal officials as exemplified by a case where a talented doctor knows he can better help his patients by taking narcotics to treat his own chronic pain. This has implications for how finders of fact navigate legal instructions on weighing and assessing expert testimony. Currently available in eight languages.

*The Ideal and Non-Ideal in Behavior Guidance: Reflections on Law and Buddhism in Conversation with the Dalai Lama*, 55 BUFFALO LAW REVIEW 675 (2007).

Highlighting the distinct approaches to behavior guidance employed by law and aspirational religious institutions like Buddhism, focusing on the work of Lon Fuller. There is importance to both baseline or duty-centered rules such as found primarily in criminal law, as well as aspirational guidance principles that are found in religious law and sometimes seen in civil law. However, the specific assumptions and aims of these two modes of guidance must be harmonized to be effective.

*Procedural Justice and Information in Conflict Resolving Institutions*, 67 ALBANY LAW REVIEW 167 (2003).

Notions of procedural justice alone are sufficient to support evidentiary exclusions in a wide variety of legal and law-like institutions that focus on conflict resolution, including courts. Special attention is paid to the relevance and need for exclusion of parties' own assessments of the value of their claims. The implication is that relevant evidence is still properly excluded by principles of procedural justice alone.

*Social Structure and Responsibility*, 5 LOYOLA POV. LAW JOURNAL 1 (1999).

Economic success in competitive systems requires resource redistribution to those who fail. Once we recognize that success in competitive endeavors depends meaningfully on the failure of others, policy implications that involve strong redistributive mechanisms should be drawn. Particular attention is paid to the role of education in fostering a sense of self-esteem necessary to counter the effects of internalized competition.

## PAPERS UNDER SUBMISSION

*The Anarchist Official: A Problem for Analytic Legal Philosophy*

The possibility of legal officials who do not accept the law as binding is a lacuna that must be filled by any successful general jurisprudence, and is missed by current dominant theories. The result is a de-emphasis on the centrality of legal officials for our understanding of law, which in turn can have constitutional implications such as the need to incorporate common lay attitudes on questions of constitutional validity.

*Law is Not (Best Considered) an Essentially Contested Concept*

Opposing Dworkin's claim that law is an interpretive concept, the variety of competing theories of law does not mean the concept is so value-laden as to preclude agreement or progress. This realization implies a support of sociological investigations of law, and the possibility that actors within a legal system are capable of agreement on issues of interpretation.

*Collective Intent, Searlean Codification and the Criteria of Legal Validity*

A tension between the notion of codification in Searle's theory of institutional facts and current notions of the sources of legal validity, shows a need for an amendment to Searle's theory to accommodate basic legal validity rules.

## OTHER WORKS IN PROGRESS

*Book Proposal: Understanding Law through its Functions*

An extended examination in the use of social functions to understand the law across a variety of legal theories and philosophies, arguing that function is essential to a proper understanding of law despite ongoing debates over its character and relevance.

*Functions in Jurisprudential Methodology*

A state-of-the-discipline discussion of the arguments surrounding the use of functional thinking in trying to understand law and legal systems. Invited by PHILOSOPHY COMPASS.

*Joseph Raz's Theory of Authority*

A state-of-the-discipline overview of Joseph Raz's theory of authority and the debates it has generated. Invited by PHILOSOPHY COMPASS.

*Epistemic Contextualism and Evidentiary Exclusion*

A current epistemic theory, claiming that the standards for knowledge attributions vary by context is used to justify the exclusion of otherwise relevant evidence as seen in many legal systems. This has the bootstrapping effect of showing the intuitive appeal of contextualism, and supporting the exclusionary rules against a variety of critics dating back to Bentham.

*Bad Evidence vs. Weak Evidence: A reply to Schauer on Bad Science being Good Evidence*

While the law might have good reason for the inclusion of what would be considered weak evidence by scientific standards, this cannot be applied to another category of evidence that would be considered objectively bad in failing to offer any support for the claimed fact. This implies the need for the application of scientific standards of relevance in legal contexts, even while scientific standards may not be appropriate for excluding weak evidence.

*Law is a Perspectival Authority Concept*

Showing that different perspectives on the nature of law can conflict with one another while not representing competing theories, and that this is explained by the hierarchical authority structure inherent in legal systems. This implies that competing legal philosophies can be partially harmonized by seeing them as each privileging the perspective of one legal actor over others.

*The Service Conception does not Require Legal Authority to Claim Preemptive Reasons*

Joseph Raz's service conception of authority should not include the claim that the law demands to pre-empt the reasons of those subject to it. Such a claim is not needed for legal authority to be legitimated. Subjects allow legal directives to preempt their reasons when acceding to the authority of law, but this does not imply that the law itself is demanding that of them. This enables

us to see the requirements of law as less manipulative of our reasons, making it potentially easier to justify legitimate authoritative directives.

*Justification Defenses Show that Legal Authority does not Claim Preemptive Reasons*

The choice-of-evils defense entails that the law cannot be claiming to pre-empt the reasons of those subject to it. Since it allows a subject's own personal reasons to serve as exculpatory evidence for a criminal defendant, the law cannot be understood to demand that subjects exclude their own reasons for action.

*Gaps in the Law Show that Legal Authority does not Claim Preemptive Reasons*

Showing that a belief in legal gaps (propositions of law that are neither true nor false) requires one to reject the idea that law must be claiming to preempt the reasons of those subject to it. Since a subject's reasoning in hard cases cannot be preempted by legal directives *ex hypothesi*, construing law to demand such preemption would make the legitimization of legal authority almost impossible.

CONFERENCE PRESENTATIONS (REFEREED)

*Political Obligation under Anarchist Officials: A Problem for Analytic Legal Theory*,  
Annual Meeting of the Association for Political Theory, London, Ontario, Oct., 2007.

*Law as Perspectival Authority Concept*,  
23<sup>rd</sup> World Congress of Philosophy of Law and Social Philosophy, Krakow, Aug., 2007.

*Justification and Gappiness Limits Law's Claim to Exclude Reasons*,  
23<sup>rd</sup> World Congress of Philosophy of Law and Social Philosophy, Krakow, Aug., 2007.

*Law as Pattern Language: An Architectural Theory Illuminates the Law*,  
Annual Meeting of the Law and Society Association and the Research Committee on Sociology of Law, Berlin, July, 2007.

*Collective Intent, Codification and the Law*,  
5th International Conference on Collective Intentionality, Helsinki, August, 2006.

*Law as Pattern Language: An Architectural Theory Illuminates the Law*,  
Annual Congress of the Canadian Law and Society Association, Toronto, June, 2006.

*Defending the Methodological Space for a Neutral Functional Theory of Law*,  
Annual Congress of the Canadian Philosophical Association, Toronto, June, 2006.

*Natural Law and the Problem of the Anarchist Official*, XLIV Reuniones Filosóficas,  
"Natural Law," Universidad de Navarra, Pamplona, Spain, March, 2006.

*The Moralized Epistemology of Legal Testimony*, 29<sup>th</sup> Conference on Value Inquiry, on  
"Crime, Punishment, and Responsibility," Oklahoma State University, 2001.

*The Shortcomings of the Separability Thesis in Legal Positivism*, Cardozo Law School  
Graduate Legal Theory Conference, 1993.

INVITED TALKS

*Law is a Perspectival Authority Concept*,  
"New Voices in Legal Theory Roundtable II," St. Louis Univ. Law School, April 23-24, 2010.

*Defending the Possibility of a Neutral Functional Theory of Law*,  
McMaster University Department of Philosophy, Hamilton, Ont., November 16, 2009.

*Bad Evidence vs. Weak Evidence: A Reply to Schauer*, Theorists and Jurists Series, Baldy  
Center for Law and Social Policy, University at Buffalo Law School, November 12, 2009.

*Law's Claim to Authority is Not a Claim to Preemption: Choice of Evils and Legal Gaps*,  
University at Buffalo Law School Faculty Workshop, October 9, 2009.

Response to Rebecca French, Tim Jensen, and Stephanie Phillips, *Secular Law and Religion: Encounters*, “Re-describing the Sacred/Secular Divide: The Legal Story II,” Baldy Center for Law and Social Policy, University at Buffalo, May 1-3, 2009.

*Justification and Gappiness Limit Law's Claim to Exclusionary Authority*,  
“New Voices in Legal Theory Roundtable,” Cardozo & NYU Law Schools, May 16-17, 2008.

*Collective Intent, Codification and the Law*,  
Concordia University Department of Philosophy, Montreal, QC, February 9, 2007.

*Ideal and Non-Ideal Theory in Behavior Guidance*,  
“Buddhism, Law and Social Change,” a workshop and conversation with the 14<sup>th</sup> Dalai Lama, University at Buffalo Law School, September, 2006.

Response to William H. Simon, *Toyota Jurisprudence: Legal Theory and Rolling Rule Regimes*, Baldy Center for Law and Social Policy, University at Buffalo Law School, Faculty Seminar Series, April, 2005.

Response to Ann Munro Iverson, *The Official Story and its Limitations: Perry's Critique of Hart's Methodological Project*, Columbia University Graduate Philosophy Conference on “Rationality,” 2001.

#### TEACHING EXPERIENCE

University at Buffalo, SUNY,  
*Assistant Professor of Philosophy & Research Associate Professor of Law*

##### Graduate:

Professional Responsibility (Law School only).

Philosophy of Law (cross-listed Law & Grad. School).

Topics in Legal Philosophy: Authority (cross-listed Law & Grad. School).

Topics in Legal Philosophy: Interpretation & Rule Following (cross-listed Law & Grad. School).

##### Undergraduate:

Law, Morality & Authority (cross-listed in Pol. Sci., a survey of moral and political theory).

Philosophy of Law (a survey of legal theory, including legal positivism, natural law, Dworkin, American Legal Realism, Law & Economics, Critical Legal Studies, Feminist Legal Theory, and a variety of specific jurisprudential topics in evidence, constitutional law, criminal law, torts, contracts, and property).

Law and Morality (a study of the Hart-Dworkin, Hart-Fuller, and Finnis-Raz debates).

Law and Responsibility (focusing on liability and criminal responsibility).

Political Philosophy (cross-listed in Pol. Sci., an historical survey).

Topics in Legal Philosophy Seminar: Obligation to Obey the Law.

Topics in Legal Philosophy Seminar: Methodology of Legal Philosophy.

Barnard College Department of Philosophy, *Adjunct Assistant Professor*  
Philosophy and Human Existence, Sp 05.

Pratt Institute Department of Social Science & Cultural Studies, *Visiting Assistant Professor*  
Existentialism, Sp 05.

Ethics and Social Issues, Fa 04.

New York University Department of Philosophy, *Adjunct Instructor*

Introduction to Philosophy, Fa 01, Fa 02, Fa 03.

Ethics, Sp 02.

Ethics and Society, Summer 00.

Columbia University Department of Philosophy, *Teaching Assistant*

Free Will and Responsibility, Professor Bernard Berofsky, Fa 02.

Methods and Problems of Phil. Thought, Professor Bernard Berofsky, Sp 01.

Methods and Problems of Philosophic Thought, Professor John Collins, Fa 01.

Symbolic Logic, Professor Achille Varzi, Sp 01.

Methods and Problems of Philosophic Thought, Professor Akeel Bilgrami, Fa 00.

Columbia University School of Law, *Teaching Assistant*

Perspectives in Legal Thought, Visiting Professor Jules Coleman, Fa 00.

Yale University Department of Philosophy, *Teaching Fellow*

Ethics, Professor Shelly Kagan, Sp 97.

The Problem of Evil, Professor Susan Neiman, Sp 95.

Yale University DeVane Lecture Series, *Teaching Assistant*

Life, Death, and the Law, Professor Guido Calabresi, Sp 97.

## LEGAL EXPERIENCE

Tina Stark, Esq., New York, NY, *Research Attorney*.

Research and support writing for NEGOTIATING AND DRAFTING CONTRACT BOILERPLATE (Tina Stark ed., American Lawyer Media, 2003). 2000 – 01.

Capital Defender Office, New York, NY, *Contract Attorney*.

Contracted as expert in capital appeals. Drafted appeals for death row inmates based on state and Federal constitutions. 1999 – 2000.

O'Melveny & Myers, LLP, New York, NY, *Litigation Associate*.

Litigation preparation and execution involving plaintiff-side private antitrust case against Microsoft (personal focus on qualification of expert witnesses in corporate culture and business ecology), and defense of insurance companies against environmental polluters. 1998 – 99.

New York City Department of Parks and Recreation, *Assistant to Counsel*.

Represented Dept. with NYC Corporation Counsel in litigation involving First Amendment, copyright and contract issues. Drafted and interpreted a wide variety of capital, land use and licensing contracts. Performed and officiated park usage dispute resolutions. Freedom of Information Officer. 1997 – 98.

Friedman & Kaplan, LLP, New York, NY, *Summer Associate*.

Legal research and drafting of memoranda of law and other court papers in litigation of commercial contract and employment disputes. Summer 96.

Post-Conviction Defender Organization of South Carolina, *Summer Associate*.

Drafted court briefs seeking post conviction relief for death row inmates. Authored practice memoranda opposing retroactive application of Federal habeas corpus reforms, distributed nationally to capital punishment organizations. Aided in field investigations and jury interviews. Summer 95.

## FELLOWSHIPS & GRANTS

HLA Hart Visiting Fellow, University College Oxford (Fall 2010)  
University at Buffalo CAS Fund for Conferences and Lectures Grant  
Baldy Center for Law and Social Policy Annual Research Grant  
Columbia Center for Law and Philosophy Graduate Fellow  
Columbia Presidential Fellow  
Columbia Department of Philosophy Teaching Fellow & Dissertation Year Fellow  
Yale Department of Philosophy Teaching Fellow

## GRADUATE SUPERVISION

### Supervisor:

Jennifer Kiefer, “A Comparative Examination of Natural Law and Value Pluralism: Evaluating Evaluations,”  
M.A., Philosophy, University at Buffalo, 2009.

### Committee Member:

David F. Ricchiazzi, “Redeeming Anthropocentrism: Valuing Non-Reasoning Creatures from within a  
Reason-Centered Ethic,” M.A., Philosophy, University at Buffalo, 2007.

## SERVICE

### Peer reviewing:

LAW AND PHILOSOPHY  
JOURNAL OF CONSCIOUSNESS STUDIES  
*NYU Press*  
*Oxford University Press*  
Czech Republic Science Foundation

American Philosophical Association Committee on Philosophy and Law, 10-13

Representative to University at Buffalo Faculty Senate, 06-07

Faculty Advisory Committee for Baldy Center for Law and Social Policy, 09-present

Faculty Advisory Committee for Institute for Jewish Thought & Heritage, 09-present

Faculty Advisory Committee for Teaching, Learning and Technology, 07-present

Faculty search for inaugural Director and Chairperson of Institute for Jewish Thought & Heritage, 06-07, 07-08

Faculty search for inaugural Gordon and Gretchen Gross Chair of Jewish Studies, 08-09

Faculty search for Jewish Studies Assistant Professor, 09-10

Faculty Planning Committee for visit of 14<sup>th</sup> Dalai Lama, 2006

Co-convener, Baldy Center Legal Theory Working Group, 05-present

Member, Baldy Center Law, Evidence and Cognitive Science Working Group, 09-present

Committee member, Baldy Center Theorists and Jurists Speaker Series, 08-09

Supervisor, Election Protection Project of the Lawyer’s Committee for Human Rights, 2004

### Department Committees:

Colloquia, 05-06, 06-07 (chair)  
Undergraduate Affairs, 05-06, 07-08, 09-10  
Faculty Search in Social and Political Philosophy, 06-07  
Teaching Quality, 07-08  
Graduate Affairs, 08-09  
Graduate Placement, Sp 09 (chair), 09-10  
Executive, 09-10  
Progress and Evaluation, 09-10 (chair)

## BAR ADMISSION

Admitted in New York, 1999

## MEMBERSHIPS

American Philosophical Association, Canadian Philosophical Association, Association for Political Theory,  
American Section of the International Association for Philosophy of Law and Social Philosophy, American  
Society for Political and Legal Philosophy, Canadian Law and Society Association, American Bar  
Association, New York State Bar Association, New York State Defenders Association