CONTENTS

1  Message from the Director
2  Message from the Dean
5  Conferences, Panels, and Roundtable Workshops
16  Distinguished Speakers
18  Faculty Fellows
21  Recent Publications
MESSAGE FROM THE DIRECTOR

The Notre Dame Research Program on Law and Market Behavior (ND LAMB) embodies a unique vision in legal academia. LAMB promotes foundational research that seeks to influence the way scholars and policymakers think about a range of timely legal and policy issues at the intersection of law and market behavior. The program advances interdisciplinary scholarship across a number of interrelated legal fields, including corporate governance, antitrust, intellectual property, property and contract law, and the legal regulation of individuals and firms in the market more generally.

We are unique, moreover, in bringing together scholars in relevant disciplines outside the law — from psychology and economics to business and beyond — for in-depth conversations across traditional disciplinary boundaries with leading legal experts. ND LAMB also focuses in particular on promoting legal scholarship that draws on empirical, behavioral, and experimental methods by organizing international conferences, panel discussions, and roundtable workshops; inviting distinguished speakers and visiting researchers; providing targeted research support; and developing collaborations with relevant programs and institutes worldwide. Already in its first year LAMB drew great interest both domestically and around the globe, positioning Notre Dame Law School at the forefront of today’s legal scholarship.

Indeed, in its inaugural year the Program held 8 conferences, panels, and roundtable workshops at the Law School, the University’s Global Gateways, and other international locations. During this time we also invited 5 distinguished speakers to present their work at NDLS. As this report describes in detail, our activities spanned the various fields that raise important issues of law and market behavior; brought new empirical evidence to bear on timely policy debates; and began developing a noticeable international profile and impact. Furthermore, by leveraging the strengths of our LAMB Faculty Fellows, the Law School community, and the more than 80 additional scholars from law and related fields who participated in our activities this year, we laid a solid foundation for a program that will help cement Notre Dame’s place at the vanguard of global, cross-disciplinary, legal scholarship in the coming years.

All of these accomplishments would have been impossible without the generous support of both the University’s Office of the Vice President for Research and the Law School, for which we are extremely grateful. We are currently employing our resources to continue advancing the ambitious trajectory of LAMB’s first year. With future resources enhanced by grants and gifts, we also hope to develop a day-to-day, vibrant LAMB community at Notre Dame. A select group of NDLS Student Fellows, Post-Graduate Fellows, Visiting Researchers from related fields, and Visiting Legal Scholars could help expand and leverage the expertise and research of our existing strong core of Faculty Fellows. Such a community could pursue myriad new research projects, take an active part in ongoing LAMB events, and support a year-long seminar in which both fellows and guests would present and discuss their law and market behavior research. This broader, active LAMB group not only would help students and faculty at NDLS take a leading role in shaping the future of legal scholarship, but also would advance the important goal of attracting talented students and outstanding scholars to join the Notre Dame Law School community.

Avishalom Tor
Professor of Law and LAMB Director
Notre Dame Law School
MESSAGE FROM THE DEAN

The special character of Notre Dame Law School encourages our diverse community of students and faculty to cultivate both the life of the mind and the wisdom of the heart. Among the main assets of this outstanding intellectual community you will find a broad range of interdisciplinary programs, which focus on, study, and seek solutions to the most significant challenges facing law and policy in the 21st century. The Research Program on Law and Market Behavior (ND LAMB), our most recent addition to this already excellent array, was established with the joint support of the Office of the Vice President for Research. As this report documents, LAMB has been extremely successful in building on the many strengths of the Law School and the University, drawing on a terrific group of Faculty Fellows and leveraging their research, insight, and energies to reach the legal community, domestically and globally, and to bring this broader legal world into Notre Dame through conferences, workshops, roundtable discussions, visiting speakers, and more. In its first year, the program addressed timely and hotly debated questions of governance and innovation, particularly in the fields of corporate law, intellectual property and antitrust, helping position the Law School at the forefront of legal scholarship and making a significant addition to the vibrant intellectual life of our students and faculty. It is a pleasure to welcome the Research Program on Law and Market Behavior to our thriving interdisciplinary portfolio and I look forward to its continued development and contributions in the years to come.

Nell Jessup Newton
The Joseph A. Matson Dean and Professor of Law
Notre Dame Law School
THE RESEARCH PROGRAM ON LAW AND MARKET BEHAVIOR has been extremely successful in building on the many strengths of the Law School and the University, drawing on a terrific group of Faculty Fellows and leveraging their research, insight, and energies to reach the legal community, domestically and globally, and to bring this broader legal world into Notre Dame through conferences, workshops, roundtable discussions, visiting speakers, and more.
CONFERENCES, PANEL DISCUSSIONS, AND ROUNDTABLE WORKSHOPS

Already in its first year LAMB organized and hosted numerous conferences, panel discussions, and roundtable workshops to examine critically and constructively recent research on law and market behavior and disseminate it to the international scholarly community. Following ongoing policy debates, governance and innovation were key subject matter areas in 2012-2013, particularly in the legal fields of corporate governance, intellectual property and antitrust. The Program’s activities also emphasized the most important methodological development in legal scholarship in recent years—namely, the introduction of empirical, behavioral and experimental research by legal scholars and the application to the law of such evidence that is already produced by researchers in related disciplines, most notably psychology, economics and business.
THE ROLE OF INTERMEDIARIES IN CORPORATE GOVERNANCE:
Empirical Evidence and Policy Challenges

OCTOBER 25, 2012
NOTRE DAME LAW SCHOOL

ND LAMB held a corporate governance conference that brought together leading scholars in law, business, and economics. In the first part of the conference, each expert presented and reviewed in turn recent empirical findings on the role of specific classes of institutional investors and other intermediaries — from mutual funds and public pension funds, through hedge funds, private equity and sovereign wealth funds, to proxy advisors — in corporate governance. Thereafter, in the second part of the event, the participants debated in a moderated roundtable format the key normative and prescriptive legal policy issues concerning the role of these intermediaries. The conference concluded with a keynote presentation by the founding father of the empirical legal studies movement in corporate law.

KEYNOTE SPEAKER
Bernard S. Black
Nicholas D. Chabraja Professor, Northwestern University School of Law and Kellogg School of Management
“Methods for Multicountry Studies of Corporate Governance in Emerging Markets (and Evidence from the BRIKT Countries)”

EMPIRICAL PANEL CHAIR
Julian Velasco, Associate Professor of Law, Notre Dame Law School

ROUNDTABLE MODERATOR
Avishalom Tor, Professor and LAMB Director, Notre Dame Law School

SPEAKERS
K.J. Martijn Cremers, Professor of Finance and LAMB Faculty Fellow, University of Notre Dame Mendoza College of Business
Jill E. Fisch, Perry Golkin Professor of Law and Co-Director, Institute for Law and Economics, University of Pennsylvania Law School
Siona Robin Listokin-Smith, Assistant Professor of Public Policy, George Mason University School of Public Policy, and Research Scholar, Yale Law School
Paul Rose, Associate Professor of Law, Ohio State University Moritz College of Law
Randall Thomas, John S. Beasley II Professor of Law and Business and Director, Law and Business Program, Vanderbilt Law School
The Present and Future of Behavioral Antitrust

December 6, 2012

University College London
Faculty of Laws, London

Together with the UCL Centre for Law, Economics and Society, ND LAMB hosted a cutting-edge conference on the emerging behavioral approach to antitrust law. This new approach, which applies to antitrust empirical evidence of behavioral deviations from strict rationality by market participants, is increasingly popular and hotly debated by competition law scholars and the enforcement agencies in the United States, the United Kingdom, and Europe more generally. In a series of panels, leading experts in this field — both lawyers and economists — from the United Kingdom and the United States examined this emerging approach to competition law and policy and debated its early findings, future potential, and limitations.

Speakers

The Honorable Mr. Justice Barling, President, Competition Appeal Tribunal

Cristina Caffarra, Vice President, Head of European Competition Practice, Charles River Associates

Andrea Coscelli, Executive Director, Markets & Mergers, Competition and Markets Authority (CMA)

Peter Davies, Executive Vice President, Compass Lexecon

Amelia Fletcher, Chief Economist and Senior Director of Mergers, Office of Fair Trading

Christopher Leslie, Professor of Law, University of California at Irvine School of Law

Ioannis Lianos, Professor of Law, University College London Faculty of Law

David Saunders, Chief Executive, Secretary, and Accounting Officer, Competition Commission

Paolo Siciliani, Chief Economist, BBC Trust

Maurice Stucke, Associate Professor of Law, University of Tennessee College of Law

Avishalom Tor, Professor of Law and LAMB Director, Notre Dame Law School

International Profile and Impact

In today’s economy, legal and policy issues relating to market behavior routinely have an international, even global character. For this reason, LAMB’s events and activities are structured to bring together domestic and international experts to discuss common challenges and offer the perspective of diverse legal systems. While most of our work focuses on the United States, the European Union, and key European jurisdictions, the Program continually seeks to integrate voices from many other jurisdictions around the globe. To this end we both leverage the well-placed facilities of the Notre Dame Global Gateways and team with other institutes and centers around the globe to increase the impact of LAMB’s activities and research.
This joint conference with LAMB and the University of Haifa Faculty of Law Aptowitz International Center for Risk, Liability, and Insurance examined current research in behavioral and experimental law and economics across a variety of key legal areas, from judges and courts through firms and markets to broad questions of legal policy.

**SPEAKERS**

Lee Fennell, Max Pam Professor of Law and Herbert and Marjorie Fried Research Scholar, University of Chicago Law School

Alon Harel, Phillip P. Mizock and Estelle Mizock Chair in Administrative and Criminal Law, Hebrew University of Jerusalem Faculty of Law

Ronen Perry, Professor of Law, University of Haifa Faculty of Law

Jeffrey J. Rachlinski, Professor of Law, Cornell University Law School

Doron Teichman, Joseph H. and Belle R. Braun Senior Lecturer in Law, Hebrew University of Jerusalem Faculty of Law

Avishalom Tor, Professor of Law and LAMB Director, Notre Dame Law School

Ori Wiesel, Research Fellow, Max Planck Institute of Economics

Eyal Zamir, Augusto Levi Professor of Commercial Law and Director, Aharon Barak Center for Interdisciplinary Legal Studies, Hebrew University of Jerusalem Faculty of Law

Tal Zarsky, Senior Lecturer, University of Haifa Faculty of Law
THE KNOCKOFF ECONOMY:
HOW IMITATION SPARKS INNOVATION

JANUARY 18, 2013
NOTRE DAME LAW SCHOOL

The Program hosted an in-depth roundtable discussion on the book *The Knockoff Economy, How Imitation Sparks Innovation* by Kal Raustiala and Christopher Sprigman. This all-day workshop examined the book’s provocative argument that imitation does not always stifle creativity, as scholars and policymakers in the field of intellectual property commonly assume, but in many instances inspires innovation instead.

SPEAKERS

Barton Beebe, *John M Desmaris Professorship of Intellectual Property Law, NYU School of Law*

Christopher J. Buccafusco, *Associate Professor of Law and Co-Director of the Center for Empirical Studies of Intellectual Property, IIT Chicago-Kent College of Law*

Robert C. Ellickson, *Walter E. Meyer Professor of Property and Urban Law, Yale Law School*

David Fagundes, *Professor of Law, Southwestern Law School*

Nicole Garnett, *Professor of Law and LAMB Faculty Fellow, Notre Dame Law School*

Renee Gosline, *Associate Professor of Marketing, MIT Sloan School of Management*

Michael A. Heller, *Lawrence A. Wien Professor of Real Estate Law, Columbia Law School*

Daniel B. Kelly, *Associate Professor of Law, Notre Dame Law School*

Fred von Lohmann, *Senior Copyright Counsel, Google*

Mark McKenna, *Associate Dean for Faculty Research and Development, Professor of Law, and LAMB Faculty Fellow, Notre Dame Law School*

David W. Opderbeck, *Professor of Law, Seton Hall School of Law*

Aaron Perzanowski, *Assistant Professor of Law, Wayne State University Law School*

Linda Przybyszewski, *Associate Professor of History, University of Notre Dame*

Pamela Samuelson, *Richard M. Sherman Distinguished Professor of Law, Professor of School Information, and Co-Director of the Berkeley Center for Law and Technology, UC Berkeley School of Law*

Lea Shaver, *Associate Professor of Law and Dean’s Fellow, Indiana University Robert H. McKinney School of Law*

Avishalom Tor, *Professor of Law and LAMB Director, Notre Dame Law School*

Rebecca Tushnet, *Professor of Law, Georgetown Law School*

Yi Qian, *Assistant Professor of Marketing and Kraft Research Professor, Northwestern University Kellogg School of Management*
Professor Mark McKenna hosted a roundtable discussion that brought leading legal scholars in the trademark and advertising fields together with top marketing researchers to engage in a cross-disciplinary discussion from both legal and marketing perspectives of four papers, including: “Hedonic Trademarks” by Irina Manta; “Trademark’s Dynamic Construction of the Consumer” by Alfred Yen; “Remembering the Best of Times or the Worst of Times? The Moderating Role of Brand Commitment on False Product Experience Memories” by Nicole Votolato Montgomery; and “What are my Chances? The Persuasive Implications of Using Imagery to Interpret Ratios” by Ann Schlosser.

**ROUNDTABLE PARTICIPANTS**

Barton Beebe, *John M. Desmaris Professorship of Intellectual Property Law, NYU School of Law*

Stephen Garcia, *Associate Professor of Psychology, University of Michigan Department of Psychology*

Deborah R. Gerhardt, *Assistant Professor of Law, University of North Carolina School of Law*

Eric Goldman, *Professor of Law and Director of the High Tech Law Institute, Santa Clara Law School*

Laura A. Heymann, *Vice Dean and Class of 2014 Professor of Law, William & Mary Law School*

Irina D. Manta, *Associate Professor of Law, Hofstra University School of Law*

William McGeveran, *Associate Professor of Law and Vance Opperman Research Scholar, University of Minnesota Law School*

Mark McKenna, *Professor of Law, and LAMB Faculty Fellow, Notre Dame Law School*

Nicole Montgomery, *Assistant Professor of Marketing, William & Mary Mason School of Business*

Ann Schlosser, *Associate Professor of Marketing, University of Washington Foster School of Business*

Jeremy Sheff, *Assistant Professor of Law, St. John’s University School of Law*

Raghunath Singh Rao, *Assistant Professor of Marketing, McCombs School of Business at The University of Texas at Austin*

Rebecca Tushnet, *Professor of Law, Georgetown Law School*

Alfred Chueh-Chin Yen, *Professor of Law, Boston College Law School*
The antitrust and intellectual property issues raised by the Google Book project and the subsequent judicial challenge were discussed in this panel discussion at Notre Dame’s London Law Centre and shared with the Notre Dame Law School community by videoconference. The panel centered on the class action copyright-infringement law suit brought by publishers and authors against Google, who had entered into agreements with several major research libraries to make digital copies of books and other writings in their collections.

PANEL OF PARTICIPANTS

Joseph P. Bauer, Professor of Law, Notre Dame Law School

Jonathan Griffiths, Professor of Law, The School of Law at Queen Mary, University of London

Dr. Ioannis Lianos, Director, Centre for Law, Economics & Society, University College London Faculty of Law
BEHAVIORAL LAW AND ECONOMICS: SUBSTANCE AND METHODOLOGY

APRIL 3-5, 2013
NOTRE DAME LAW SCHOOL

With leading scholars in the field of behavioral and experimental law and economics, this conference offered a unique forum to examine behavioral analyses throughout the law, consider the methodology of behavioral law and economics and the future challenges it faces. The conference combined presentations reviewing the current state of behavioral law in economics in specific legal fields, like torts, evidence, or criminal procedure, with those discussing the application of key behavioral phenomena, for example, loss aversion or the hindsight bias, across various legal fields. In addition, some speakers examined general questions of legal policy—such as the role of debiasing or behavioral ethics—while others considered issues including the empirical methods employed by behavioral scholars, accounting for legal and market institutions, and more.

KEYNOTE SPEAKER

Ariel Rubinstein
Salzberg Chair, Tel Aviv University School of Economics, Professor, NYU Department of Economics
“Directions in Modeling Bounding Rationality”
PANEL CHAIRS AND SPEAKERS:

Kenworthey Bilz, Professor of Law, University of Illinois College of Law
Russell D. Covey, Professor of Law, Georgia State University College of Law
Melvin A. Eisenberg, Jesse H. Choper Professor of Law, UC Berkeley School of Law
Christoph Engel, Executive Director, Max Planck Institute for Research on Collective Goods
Yuval Feldman, Professor of Law, Bar-Ilan University School of Law
Nicole Garnett, Professor of Law, LAMB Faculty Fellow, Notre Dame Law School
Kent Greenfield, Professor and Law Fund Research Scholar, Boston College Law School
Yoed Halbersberg, Adjunct Professor, Hebrew University of Jerusalem Faculty of Law
Daniel B. Kelly, Associate Professor of Law, LAMB Faculty Fellow, Notre Dame Law School
Russell Korobkin, Richard C. Maxwell Professor of Law, UCLA School of Law
Adrian Kuenzler, Branco Weiss Fellow, Yale Law School
Kevin A. McCabe, Professor of Law and Economics, George Mason University
Gregory Mitchell, Joseph Weintraub-Bank of America Distinguished Professor of Law, University of Virginia School of Law
Janice Nadler, Professor of Law, Northwestern Law
Francesco Parisi, Oppenheimer Wolff and Donnelly Professor of Law, University of Minnesota Law School, and Professor of Economics, University of Bologna, Department of Economics
Daniel Pi, University of Minnesota Law School
Jennifer K. Robbennolt, Professor of Law and Psychology, University of Illinois College of Law
Doron Teichman, Joseph H. and Belle R. Braun Senior Lecturer in Law, Hebrew University of Jerusalem Faculty of Law
Avishalom Tor, Professor of Law and LAMB Director, Notre Dame Law School
Thomas S. Ulen, Swanlund Chair Emeritus, University of Illinois College of Law
Fredrick Vars, Professor of Law, University of Alabama School of Law
Sean H. Williams, Professor of Law, The University of Texas at Austin School of Law
Eyal Zamir, Augusto Levi Professor of Commercial Law and Abaron Bank Center for Interdisciplinary Legal Studies, Hebrew University of Jerusalem Faculty of Law

CHARTING THE FUTURE OF LEGAL SCHOLARSHIP

LAMB promotes cutting-edge scholarship in the various legal areas relating to law and market behavior. Our unique emphasis on empirical, behavioral and experimental approaches together with conversations across the usual disciplinary boundaries already has attracted numerous scholars from around the globe, who are eager to join our events and activities. They share their ongoing research and learn of developments at the new frontiers of legal scholarship.
Together with the Notre Dame Law and Economics Program, LAMB convened a panel of legal scholars with expertise in antitrust and intellectual property to examine the government investigations of the way Google presented search results and ran its search advertising. The panel discussed the merits and demerits of the allegations against Google, the investigations and decisions of the Federal Trade Commission in the U.S. and the European Commission, and the search company’s relevant market conduct in general. In January 2013, the FTC concluded its investigation of allegedly anticompetitive conduct by Google, and while Google agreed to change how it presents some search results, the allegations of search bias that initially motivated the investigation were ultimately dismissed.

CHAIR:
Avishalom Tor, Professor of Law and LAMB Director,
Notre Dame Law School

PANELISTS:
Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth Sr. Professor, University of Michigan Law School
Geoffrey Manne, Executive Director, International Center for Law and Economics
Mark McKenna, Associate Dean for Faculty Research and Development, Professor of Law, and LAMB Faculty Fellow, Notre Dame Law School
Spencer Weber Waller, Professor of Law and Director, Institute for Consumer Antitrust Studies
LAMB BRINGS LEADING EXPERTS AND NEW VOICES IN THE FIELD TO SPEAK ON A WIDE RANGE OF FORWARD-LOOKING LAW AND MARKET BEHAVIOR TOPICS.
Our distinguished speakers enjoy the warm hospitality and intellectual engagement of Notre Dame Law School’s faculty and students. Together with the many scholars who participate in our events, these speakers enrich the academic life at NDLS and after they leave us serve as goodwill ambassadors, who testify to the energy, unique vision, and impact of ND LAMB to the broader academic community in the United States and abroad.

Inaugural Distinguished Speaker:

Robert D. Cooter
Herman F. Selvin Professor of Law and Faculty Co-Director of the Law and Economics Program, UC Berkeley School of Law

“Innovation and the Theory of the Firm”

September 6-7, 2012, Notre Dame Law School

The inaugural LAMB Distinguished Speaker was Robert D. Cooter, Herman F. Selvin Professor of Law and Faculty Co-Director of the Law and Economics Program at Berkeley School of Law. On September 6, Professor Cooter, a pioneer and leader in the field of law and economics, gave a seminar to faculty and students on “Innovation and the Theory of the Firm,” cosponsored by the Notre Dame Program on Law and Economics.

On the following day of September 7, Professor Cooter delivered a public lecture on his recent book with Hans-Bernd Schaefer, Solomon’s Knot: How Law Can End the Poverty of Nations. The lecture was co-sponsored by the Notre Dame Program on Law and Human Development and the Notre Dame Program on Law and Economics.

Brett Frischmann

Director, Cardozo Intellectual Property and Information Law Program and Professor of Law, Benjamin N. Cardozo School of Law

“Infrastructure: The Social Value of Shared Resources”

November 9, 2012, Notre Dame Law School

Brett M. Frischmann, Professor of Law at Benjamin N. Cardozo School of Law, explained how society benefits from infrastructure resources and how management decisions affect a wide variety of interests. Using examples from his book Infrastructure: The Social Value of Shared Resources, Frischmann detailed the link between infrastructure—a particular set of resources defined in terms of the manner in which they create value—and commons—a resource management principle by which a resource is shared within a community. The talk also touched on how the infrastructure commons ideas have broad implications for scholarship and public policy across many fields ranging from traditional infrastructure like roads, through environmental economics and intellectual property, to Internet policy.
Kimberly D. Krawiec
Katharine Robinson Everett Professor of Law, Duke University School of Law
“The Danger of Difference: What Corporate Directors Say about Diversity”
November 28, 2012, Notre Dame Law School
Kimberly D. Krawiec, the Katharine Robinson Everett Professor of Law at Duke University School of Law presented, “The Danger of Difference: What Corporate Directors Say about Diversity.” Krawiec is an expert on corporate law and her talk touched on research spanning a variety of fields, including the empirical analysis of contract disputes; the choice of organizational form by professional service firms, including law firms; forbidden or taboo markets; corporate compliance systems; insider trading; derivatives hedging practices; and “rogue” trading.

Christopher Sprigman
Visiting Professor of Law, University of Virginia School of Law
“What’s a Name Worth?”
January 17, 2013, Notre Dame Law School
Despite considerable research suggesting that creators value attribution (i.e., being named as the creator of a work), U.S. intellectual property law does not provide a right to attribution to the vast majority of creators. However, many European countries give creators much stronger rights to attribution. Professor Christopher Sprigman’s talk explored the complexity of this question—should we give creators attribution—a right that they seem to value?

Ariel Katz
Associate Professor of Law and Innovation Chair in Electronic Commerce, University of Toronto School of Law
“e-books, P-Books, and the Durapolist Problem”
April 8, 2013, Notre Dame Law School
Ariel Katz, an Associate Professor of Law from the University of Toronto, presented his research on “e-Books, P-Books, and the Durapolist Problem.” The paper discusses a novel explanation to the pressing problem of e-book distribution, where retailers (such as Apple and Amazon) create distribution agreements that allow these companies to buy e-books and subsequently sell the books at whatever price the retailers choose. After rejecting some possible explanations, the paper examines the hypothesis that these distribution arrangements reflect the book industry’s solution to the durable monopoly problem (otherwise known as the “Durapolist” problem). The author discussed the important implications of these findings for competition law and policy. The event was co-sponsored by the Notre Dame Law and Economics Program.
Avishalom Tor
Professor of Law
LAMB Program Director

Professor Tor’s research focuses on the study of competition and cooperation in market settings and the legal rules and institutions that regulate them. After receiving his doctorate from Harvard Law School, Avishalom was a Visiting Research Professor at George Mason University School of Law, an Adviser and Consultant to Commissioner Harbour at the Federal Trade Commission on various matters of antitrust law and economics, and a Visiting Professor at the University of Hamburg. Before joining the law faculty, Professor Tor was a Senior Lecturer and co-director of the Forum on Law and Markets at the University of Haifa Faculty of Law. He is also the past Secretary and a current Management Board member of the European Association of Law and Economics, as well as a board member of a number of international competition law institutes.

Professor Tor teaches in the areas of antitrust, corporate governance, and behavioral law and economics. His interdisciplinary work has been published in legal, decision making, psychological, and economic journals, such as the Michigan Law Review, Duke Law Journal, Texas Law Review, Antitrust Law Journal, the Journal of Institutional and Theoretical Economics, and Psychological Science. Avishalom’s research has won grants and awards both domestically and abroad, and received extensive coverage from numerous international, domestic, and professional media outlets including the Economist, Boston Globe, U.S. News and World Report, and more.

LAMB Research: Behavioral and Experimental Law and Economics, Antitrust, Corporate Governance, Behavioral Decision Research

K.J. Martijn Cremers
Professor of Finance and LAMB Faculty Fellow, Mendoza College of Business, University of Notre Dame

Professor Cremers’s research focuses on empirical issues in investments and corporate governance. His academic work has been published in top academic journals such as the Journal of Finance and the Review of Financial Studies, and covered in the Wall Street Journal and the Financial Times. He is an Associate Editor at the Review of Finance and previously was an Associate Editor of the Review of Financial Studies, and serves on the Editorial Board of European Financial Management. Prior to joining the University of Notre Dame in 2012, Cremers was on the faculty at Yale School of Management for 10 years. Hailing from the Netherlands, his undergraduate degree in Econometrics is from the VU University Amsterdam and he earned a PhD in finance from the Stern School of Business at New York University. He introduced a new measure of active management named ‘Active Share’, which is based on a comparison of the holdings of a fund with those of its benchmark, and has become widely used in the financial industry.

LAMB Research: Empirical Corporate Governance, including Shareholder Rights, Ownership, Investment horizon, Executive Compensation and Boards.
Nicole Stelle Garnett
Professor of Law and LAMB Faculty Fellow, Notre Dame Law School

Nicole Stelle Garnett’s teaching and research focus on property, land use, urban development, local government law, and education policy. She is the author of numerous articles on these subjects and Ordering the City: Land Use, Policing and the Restoration of Urban America (Yale University Press, 2009). At Notre Dame, Professor Garnett also is a Fellow of the Institute for Educational Initiatives and the Senior Policy Coordinator for the Alliance for Catholic Education. Professor Garnett received her B.A. from Stanford in 1992, where she graduated with honors and distinction in political science. She received her J.D. from Yale Law School in 1995. Following graduation from law school, Professor Garnett served as a law clerk for the Honorable Morris S. Arnold of the United States Court of Appeals for the Eighth Circuit (1995-1996) and for Associate Justice Clarence Thomas of the United States Supreme Court (1998-1999).

LAMB Research: Property Law, Land Use Planning, Regulatory Reform, Urban and Economic Development

Daniel B. Kelly
Associate Professor of Law and LAMB Faculty Fellow, Notre Dame Law School

Professor Dan Kelly’s research focuses on the economic analysis of property law and wills, trusts, and estates. After graduating from Harvard Law School, where he was a John M. Olin Fellow in Law and Economics, Professor Kelly clerked on the U.S. Court of Appeals for the Second Circuit, worked at Cravath, Swaine & Moore, and completed research fellowships at Yale and Harvard. At Notre Dame, he teaches courses in property, trusts and estates, and law and economics and serves as the co-director of the Law and Economics Program.


LAMB Research: Law and Economics, Property Law, Land Use Planning, Trusts and Estates
ND LAMB FACULTY FELLOWS

Mark McKenna
Associate Dean for Faculty Research and Development, Professor of Law, and LAMB Faculty Fellow, Notre Dame Law School

Mark P. McKenna teaches and writes in the area of intellectual property. Professor McKenna is widely recognized as a leading scholar in the trademark area, having published a number of articles in leading law journals on the topic of trademark law. He has also written about design patent, copyright, the right of publicity, and the intersection of intellectual property rights regimes. Some of his latest projects include an empirical study of Lanham Act false advertising decisions, a comparative analysis of innovation institutions and failures, and a study of the ways IP law understands product dimensions.

Professor McKenna joined the Notre Dame Law School faculty in 2008. Prior to joining the faculty, Professor McKenna was a member of the faculty at Saint Louis University School of Law and practiced law with an intellectual property firm in Chicago, where he primarily litigated trademark and copyright cases. He graduated from the University of Notre Dame in 1997 with a degree in Economics and earned his J.D. from the University of Virginia School of Law in 2000.

LAMB Research: Intellectual Property (primarily Trademark and Copyright), Intellectual Property and Antitrust

O. Carter Snead
William P. and Hazel B. White Director of the Center for Ethics and Culture and Professor of Law, Notre Dame Law School

Carter Snead’s principal area of research is Public Bioethics – the governance of science, medicine, and biotechnology in the name of ethical goods. His scholarly works have explored issues relating to neuroethics, enhancement, stem cell research, abortion, and end-of-life decision making. In addition to his scholarship and teaching, Professor Snead has provided advice on the legal and public policy dimensions of bioethical questions to officials in all three branches of the U.S. government, and in several intergovernmental forums.

Prior to joining the law faculty at Notre Dame, Professor Snead served as General Counsel to The President’s Council on Bioethics, where he was the primary drafter of the 2004 report, “Reproduction and Responsibility: The Regulation of New Biotechnologies.” In 2006, he testified in the U.S. House of Representatives on regulatory questions concerning RU-486 (the abortion pill). From 2004 to 2005, Professor Snead led the U.S. government delegation and served as its chief negotiator for the Universal Declaration on Bioethics and Human Rights (adopted in October 2005). In conjunction with the American Association for the Advancement of Science (AAAS), he regularly lectures to state and federal judges on the uses of neuroimaging in the courtroom. He was recently appointed by the Director-General of UNESCO to a four-year term on the International Bioethics Committee (IBC), a 36-member body of independent experts that advises member states on bioethics, law, and public policy.

Professor Snead received his J.D., magna cum laude, from Georgetown University and his B.A. from St. John’s College.

LAMB Research: Healthcare Regulation, Pharmaceutical Markets
K.J. Martijn Cremers

Spotlight Research:

Thirty Years of Shareholder Rights and Firm Valuation


This paper explores the relationship between shareholder rights and firm valuation.

This research introduces a new hand-collected dataset that tracked restrictions on shareholder rights at approximately 1,000 firms from 1978-1989. In conjunction with 1990-2006 IRRC data, the authors tracked firms’ shareholder rights over thirty years. Most governance changes occurred during the 1980s. The data found a robustly negative association between restrictions on shareholder rights (using the G-Index as a proxy) and Tobin’s Q. The negative association only appears after the judicial approval of antitakeover defenses in the 1985 landmark Delaware Supreme Court decision of Moran v. Household. This decision was an unanticipated, exogenous shock that increased the importance of shareholder rights.

Other published works:

Spotlight Research:
A Room of One’s Own? Accessory Dwelling Unit Reforms and Local Parochialism

Brinig, Margaret F. and Garnett, Nicole Stelle, A Room of One’s Own? Accessory Dwelling Unit Reforms and Local Parochialism, 53 Urban Lawyer 519 (2013).

This research examines the relationship between accessory dwelling units (“ADUs”) reforms and affordable housing.

Over the past decade, a number of state and local governments have amended land use regulations to permit the accessory dwelling units (“ADUs”) on single-family lots. Measured by raw numbers of reforms, the campaign to secure legal reforms permitting ADUs appears to be a tremendous success. The question remains, however, whether these reforms overcome the well-documented land-use parochialism that has, for decades, represented a primary obstacle to increasing the supply of affordable housing. In order to understand more about their actual effects, this Article examines ADU reforms in a context which ought to predict a minimal level of local parochialism. In 2002, California enacted state-wide legislation mandating that local governments either amend their zoning laws to permit ADUs in single-family zones or accept the imposition of a state-dictated regulatory regime. We carefully examined the zoning law of all California cities with populations over 50,000 people (150 total cities) to determine how local governments actually implemented ADU reforms “on the ground” after the state legislation was enacted. Our analysis suggests that the seeming success story masks hidden local regulatory barriers. Local governments have responded to local political pressures by delaying the enactment of ADU legislation (and, in a few cases, simply refusing to do so despite the state mandate), imposing burdensome procedural requirements that are contrary to the spirit, if not the letter, of the state-law requirement that ADUs be permitted “as of right,” requiring multiple off-street parking spaces, and imposing substantive and procedural design requirements. Taken together, these details likely dramatically suppress the value of ADUs as a means of increasing affordable housing.

Other published works:
• Lost Classrooms, Lost Community: Catholic Schools’ Importance in Urban America, University of Chicago Press (2014) (with Margaret Brinig).
• The People Paradox, 43 University of Illinois Law Review (2012).
• Land Use Regulation, Innovation, and Growth, book chapter, in Rules for Growth: Promoting Innovation and Growth Through Legal Reform (Kauffman Foundation on Entrepreneurship 2011).
• Ordering the City: Land Use, Policing, and the Restoration of Urban America, (Yale University Press 2010).
• Affordable Private Education and the Middle Class City, 77 University of Chicago Law Review 205 (2010).
Daniel B. Kelly

Spotlight Research:

Restricting Testamentary Freedom: Ex Ante Versus Ex Post Justifications


This paper investigates the circumstances in which it may be socially beneficial for courts to alter wills, trusts, and other gratuitous transfers at death.

The organizing principle of American succession law—testamentary freedom—gives decedents a nearly unrestricted right to dispose of property. After surveying the justifications for testamentary freedom, I examine the circumstances in which it may be socially beneficial for courts to alter wills, trusts, and other gratuitous transfers at death: imperfect information, negative externalities, and intergenerational equity. These justifications correspond with many existing limitations on the freedom of testation. Yet, disregarding donor intent to maximize the donees’ ex post interests, an increasingly common justification for intervention, is socially undesirable. Doing so ignores important ex ante considerations, including a donor’s happiness, a donor’s incentive to work, save, and invest, and the structure and timing of a donor’s gifts. If donors believe courts may not facilitate their intent, donors may be less happy, accumulate less property, and alter gifts during life. Moreover, because the law often affects donor behavior, ignoring donative intent to benefit particular donees may harm not only the donors but also donees as a class. Thus, the living may themselves benefit if the law allows a certain degree of “dead hand” control.

Other published works:

• The Right to Include, 63 Emory Law Journal (forthcoming 2014).
• Toward Economic Analysis of the Uniform Probate Code, 45 University of Michigan Journal of Law and Reform 855 (2012).
• Strategic Spillovers, 111 Columbia Law Review 1641 (2011).

Mark McKenna

Spotlight Research:

Is Pepsi Really a Substitute for Coke? Market Definition in Antitrust and IP


This paper considers the impact of IP rights on market power generally, and insight into the use of market definition in IP cases using popular cola brands Pepsi and Coke as an example.

Antitrust law explicitly depends on market definition. Many issues in IP law also depend on market definition, though that definition is rarely explicit. Applying antitrust’s traditional market definition to IP goods leads to some startling results. Despite the received wisdom that IP rights don’t necessarily confer market power, a wide array of IP rights do exactly that under traditional antitrust principles. This result requires us to rethink both the overly-rigid way we define markets in antitrust law and the competitive consequences of granting IP protection. Both antitrust and IP must begin to think realistically about those consequences, rather than falling back on rigid formulas or recitation of the mantra that there is no conflict between IP and antitrust.

Other published works:

O. Carter Snead

Spotlight Research:
The Patentability of Human Embryos in the U.S. and E.U.: A Comparative Perspective

The Patentability of Human Embryos in the U.S. and E.U.: A Comparative Perspective (with Professor Lorenza Violini, University of Milan) (forthcoming)

This article examines the competing ways in which U.S. federal law and European Union law seek to shape market behavior in the name of human dignity and the common good by means of intellectual property law.

This article will examine and compare the competing roles played by patent law and policy in the vexed context of human embryonic stem cell research. In American law, while the traditional inquiry into a proposed invention’s “usefulness” might have considered the moral value of the invention, current U.S. patent practices do not take “morals” into account. With respect to those compositions of matter and manufactures that are not naturally occurring (but are made by man), the U.S. Supreme Court, interpreting the relevant existing patent laws, held that the nature of the subject—including whether or not the subject consists of a living organism—is irrelevant to the issue of patentability. These were statutory, not constitutional, interpretations. Congress, of course, retains its authority to enact legislation that could exclude certain subject matter from patentability. This is what Congress has done in the United States - prohibiting the patenting of living human embryos, but allowing patents on cellular based products (e.g., stem cell lines) derived from the destruction of such embryos. By contrast, the European Court of Justice in the landmark case of Brustle v. Greenpeace interpreted Directive 98/44/EC of European Parliament and of the Council of 6 July 1998 (on the legal protection of biotechnological inventions) to forbid patenting of embryos as a violation of ordre public or morality, and a violation of human dignity. Moreover, the ECJ held that patents that depend on prior destruction of embryos are likewise unlawful, immoral, and contrary to human dignity. The article explores these differing approaches, and seeks to uncover the foundational goods that each policy seeks to promote, and the harms they seek to avoid.

Other published works:
• Human Dignity in American Public Bioethics in Human Dignity in Bioethics: From Worldviews to the Public Square (Stephen C. Dilley & Nathan J. Palpant, eds.) (Routledge 2013).
• A Review of Nathaniel Persily, Gillian E. Metzger, and Trevor W. Morrison, eds., The Health Care Case: The Supreme Court's Decision and Its Implications, Oxford University Press 2013 in American Political Thought (forthcoming).
• Memory and Punishment, 64 Vanderbilt Law Review 1195-1264 (2011).
This article examines, organizes, and further develops the recently popular and hotly debated “behavioral antitrust” – an approach that applies to antitrust analysis the empirical evidence of robust behavioral deviations from strict rationality.

This Article shows that both proponents and opponents of behavioral antitrust frequently and fundamentally misconstrue its methodology, treating concrete empirical phenomena as if they were broad hypothetical assumptions. Because of this fundamental methodological error, scholars often make three classes of mistakes in behavioral antitrust analyses: First, they fail to appreciate the variability and heterogeneity of behavioral phenomena; second, they disregard the concrete ways in which markets, firms, and other institutions both facilitate and inhibit rational behavior by antitrust actors; and, third, they erroneously equate all deviations from standard rationality with harm to competition. After establishing the central role of rationality assumptions in present-day antitrust and reviewing illustrative behavioral analyses across the field—from horizontal and vertical restraints, through monopolization, to merger enforcement practices—the Article examines the three classes of mistakes, their manifestation and their consequences in antitrust scholarship. Besides providing guidance to future behavioral antitrust scholarship, the article concludes by discussing two sets of essential lessons that the behavioral approach already can offer to advance antitrust law and policy: One concerning the value of case-specific evidence in antitrust adjudication and enforcement, the other showing how antitrust law can and should account for systematic and predictable boundedly rational behavior that is neither constant nor uniform.

Other published works:

- *Whether and When to Debias through Law*, 12 Law and Business 41 (2010) [In Hebrew].
THE NOTRE DAME RESEARCH PROGRAM ON LAW AND MARKET BEHAVIOR (ND LAMB)

The Research Program on Law and Market Behavior at Notre Dame Law School (ND LAMB) is dedicated to promoting foundational research that seeks to influence the way scholars and policymakers think about a range of timely legal and policy issues at the intersection of law and market behavior. Specifically, ND LAMB explores interdisciplinary research across a number of interrelated legal fields including corporate governance, antitrust, intellectual property, property, contracts and the legal regulation of individuals and firms in the market more generally. The Program draws extensively on relevant extra-legal research in empirical disciplines from psychology and economics to business and beyond. ND LAMB focuses on promoting original legal scholarship that emphasizes observational and experimental methods by organizing international conferences, panel discussions, and roundtable workshops; inviting distinguished speakers and visiting researchers; providing targeted research support to LAMB Faculty Fellows; and developing collaborations with relevant programs and institutes worldwide.

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