

Sadie Blanchard

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ACADEMIC APPOINTMENTS

Notre Dame Law School

Associate Professor of Law, 2018-present

Yale Law School

Research Scholar in Law & Fellow in Private Law, 2015-2018

Max Planck Institute for Procedural Law (Luxembourg)

Research Fellow, 2013-2015

RESEARCH INTERESTS

Contracts, Contract theory, Private law theory, Private ordering, Quasi-legal ordering, Reputational governance, Institutional and organizational economics, International dispute resolution, Law and political economy

TEACHING EXPERIENCE AND INTERESTS

Courses taught: Contracts, International Business Transactions, Contract Design, Private Law Workshop

Other teaching interests: International Arbitration, Business Associations/Corporations, Other private law subjects

EDUCATION

Yale Law School

J.D., 2010

- Olin Fellow in Law, Economics, and Public Policy
- Finalist, International Round, International Criminal Court Moot Competition
- Senior Editor, *Yale Journal of International Law*
- Co-Director, Lowenstein Human Rights Project and Khmer Rouge Trial Project

Louisiana State University

Honors College, B.A. in Economics (with English literature minor), *summa cum laude*, 2002

WORK IN PROGRESS

Contract or Prison, 92 UNIVERSITY OF CHICAGO LAW REVIEW (forthcoming 2025)

- **Recognized** as one of the best new articles in law and political economy by the Law and Political Economy Project, April 2024
- The article has prompted the Yale Law School Private Law Clinic to begin developing legal strategies for challenging the practices exposed by the article.
- *Summary: This article exposes the astonishing perversion of contract involved in the new criminal enforcement practice of incarceration-alternative (IA) contracting. “Offender-funded” programs empower firms to contract with people suspected or convicted of crimes whose alternative to agreeing to these contracts is prosecution or incarceration. The article examines IA contracting under classical contract theory and in light of the history of economic exploitation using criminal enforcement power, including in the racial peonage system under Jim Crow. IA agreements fail under classical contract theory because they are based on coercive entitlements: rights to sell access to the only escape from punitive governmental measures. While regulating IA contracts might in principle legitimate them by restraining their inherent exploitive potential, the minimalistic legal frameworks actually constructed do not do so. This Article documents this systematic underregulation through the first empirical study of legal regimes for IA contracts. Contract law’s limiting principles should be applied to redress harms and prompt broader restructuring of the financing of incarceration alternatives.*

ESG Reputational Reckoning Bonds

- *Summary: Economic theory predicts that permitting corporate managers to consider stakeholder interests in corporate governance raises agency costs and reduces corporate flexibility. But shareholders have instrumental and non-instrumental reasons to want the corporations in which they invest to be able to credibly commit to protect stakeholder interests. Corporate law scholars and policymakers are puzzling over this institutional design dilemma. Private ordering solutions implemented or recommended include incentive alignment mechanisms, such as executive compensation changes; mechanisms to make reputational governance more effective, such as certifications, ESG metrics, and disclosure standards; and green bonds. This paper outlines the legal and practical limits of those proposals and offers another option, the Reputational Reckoning Bond. Reputation adjudication has been observed to bond commitments in whole or part in other contexts that similarly involve legal or practical constraints on coercive remedies, such as sovereign debt markets and domestic and international public law.*

Quasi-Legal Corporate Governance, LAW AND ECONOMICS OF CORPORATE GOVERNANCE: ECONOMIC ANALYSIS OF LAW IN EUROPEAN LEGAL SCHOLARSHIP (forthcoming, Klaus Mathis, ed., Springer 2025)

- *Summary: This chapter surveys the terrain of corporate governance in search of ways to surmount the agency cost obstacles to shareholders’ pursuit of their nonfinancial goals. It inventories the tools for controlling managerial agency costs—judicial ordering, market ordering, and shareholder-democratic ordering. It reconceptualizes those tools as being complementary in ways that scholars have not appreciated. Recognizing that the tools already function together as part of a*

reputation-based governance regime reveals that adjudication holds greater promise than is currently appreciated for holding corporate managers accountable for any pretextual claims they might make to be acting to advance stakeholder interests.

PUBLICATIONS

Nominal Damages as Vindication, 30 GEORGE MASON LAW REVIEW 227 (2022)

- Profiled in Omri Ben-Shahar, [*Bang for the Buck: How to Compensate Without Money*](#), JOTWELL (2022) (“a space where legal academics can go to identify, celebrate, and discuss the best new scholarship relevant to the law”)
- Cited in Reporter’s Notes to RESTATEMENT THIRD, TORTS: REMEDIES (forthcoming)
- Cited in [*AMES, CHAFEE, AND RE ON REMEDIES*](#) (forthcoming 4th ed. 2024)
- Cited in RICHARD L. HASEN, *EXAMPLES AND EXPLANATIONS FOR REMEDIES* (5th ed. 2024)
- *Summary: A recent Supreme Court decision inspired a resurgence of interest in an old mystery: how can nominal damages vindicate a plaintiff for past harm? The Court relied on the longstanding common law practice of entitling a plaintiff to sue for violation of her rights, even without demonstrating harm in fact, and to recover nominal damages. Courts have long asserted that awarding nominal damages in such suits vindicates the plaintiff. But they have not explained just how awarding \$1 provides vindication, and serious observers scoff at the idea that it does. This Article offers a theory of vindication through nominal damages litigation. It argues that permitting suits for nominal damages enables courts to function as producers of presumptively reliable reputation-relevant information. Plaintiffs pursue, and courts have long allowed, lawsuits for nominal damages when these suits might provide information that effectively remedies or deters harm.*

Contracts Without Courts or Clans: How Business Networks Govern Exchange, 57 GEORGIA LAW REVIEW 233 (2022)

- [*Featured*](#) on the Business Law Scholarship Podcast
- Runner-up, Best Paper Award, History of Insurance in Global Perspective: An International Conference, July 2022, Basel, Switzerland (competitive selection process)
- *Summary: Legal scholars have long recognized the close-knit community as an institution for supporting trade when contract law and trusted courts are unavailable. Recent research suggests that heterogeneous business networks might also support trade. But because these networks lack features traditionally seen as essential to community-supported trade—preexisting social ties and a dearth of exit options—some leading scholars doubt that the networks sustain cooperation. This Article offers compelling evidence that they do. Through an original case study of the reinsurance industry, it shows that when the gains from trade are sufficiently large, parties can build mechanisms to disseminate reliable information needed to support trade by starting with transactions that align incentives and require high transparency about behavior. Parties can then strengthen their commitments by both investing in the bilateral relationship and building a network, which allows information about behavior in trading relationships to spread at low cost. Once constructed, the network enables reputation-based bonding of higher-risk*

transactions and a greater variety of transactional terms than can be supported by incentive alignment alone. This study suggests that cultivated, freestanding business networks can support extralegal private ordering under a larger set of circumstances than legal scholars currently appreciate.

The Limits of Comparative Institutional Analysis, 112 AMERICAN JOURNAL OF INTERNATIONAL LAW UNBOUND 255 (2018)

- Invited symposium essay
- *Summary: Atul Gawande's Checklist Manifesto became a sensation in 2009 because it promised that a simple technique could powerfully discipline decision-making. Gawande had saved lives using hospital checklists, and he argued that checklists could improve outcomes in other complicated endeavors. Neil Komesar's method of comparative institutional analysis is by necessity messier than the checklist, but it similarly aims to improve cognitive processing through a disciplining framework. Puig and Shaffer's introduction of this technique to the debate about foreign investment law reform helpfully highlights the different contexts facing nation states, the value of regime competition, and the importance of implementing reforms in ways that preserve a variety of options for states. Still, their analysis illustrates some of the weaknesses of comparative institutional analysis. This essay identifies those weaknesses and suggests that they also weigh in pluralism's favor.*

Courts as Information Intermediaries: A Case Study of Sovereign Debt Disputes, 2018 BYU LAW REVIEW 497

- *Summary: When foreign sovereigns default on their debt, creditors sometimes sue them. These sophisticated creditors sue even though they know courts can do little to force a sovereign to satisfy a judgment. Why? This Article argues that courts serve as information intermediaries that strengthen reputational enforcement in the international sovereign debt market. It shows, through a case study of sovereign debt defaults and disputes, three ways in which courts play this role. First, in hard cases, courts clarify reputational signals by publicly determining whether breach occurred. Second, through discovery and fact finding, they mitigate information asymmetries concerning aspects of sovereign behavior during default that are difficult to monitor. Third, they provide a forum for shaping the norms by which behavior is judged. The sovereign debt market thus relies on a hybrid of legal and nonlegal enforcement. Parties appeal to the law to determine rights and detect bad behavior. At the same time, they depend on reputation to discourage violations. Recognizing that courts can function as information intermediaries implies that courts can expand the range of markets that reputation can support.*

Legal Certainty During EU Accession: What Can a Foreign Investor in a Future Member State Legitimately Expect?, in TOWARDS A UNIVERSAL JUSTICE? PUTTING INTERNATIONAL COURTS AND JURISDICTIONS INTO PERSPECTIVE 290 (Dário Moura Vicente, ed. 2015)

- *Summary: Investment treaty arbitration tribunals should take a contextual, fact-specific approach to deciding whether foreign investors' "legitimate expectations" were violated by actions of a state during the process of joining the European Union. An interpretation of fair and equitable treatment urged by the European Commission*

would impose a blanket rule that no action an acceding state takes purportedly to comply with EU law can ever violate an investor's legitimate expectations. That approach fails to properly account for the time at which expectations are formed. The European Commission's proposed construction also makes it more difficult for a state that wants to join the EU to credibly commit to uphold promises to foreign investors. That might hinder the ability of such states to attract the foreign investment needed to develop the economy to the level required to join the European Union.

What's in a Meme? The Truth about Investor-State Arbitration: Why It Need Not, and Must Not, Be Repossessed by States, 52 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 617 (2014) (with Charles N. Brower)

- *Summary: Some participants in the debate about international investment law and investor-State arbitration advocate sweeping changes that would undermine the effectiveness of foreign investment protection by politicizing the existing neutral, juridical system for resolving investor-State disputes. With the impending expiration of over 1,000 investment treaties and the negotiation of two trade and investment treaties that would cover 65% of the world economy, the system stands at a watershed moment. This article argue that proposals to politicize dispute settlement should be rejected because the evidence demonstrates that investment treaties and arbitration benefit poor states, are even-handed, enhance transparency, allow states ample regulatory leeway, and promote the rule of law.*

International Development Loans and Compliance with Investment Arbitration Awards, in A REVOLUTION IN THE INTERNATIONAL RULE OF LAW: ESSAYS IN HONOR OF DON WALLACE, JR. 529 (Borzu Sabahi et al, eds. 2014) (with Charles N. Brower and Charles Rosenberg)

- *Summary: This chapter examines legal, ethical, and political issues arising from states' use of their votes on international development loans to secure compliance with investment arbitration awards.*

International Decision, Republic v. High Court of Accra, ex parte Attorney General (Supreme Court of Ghana), June 2, 2013, 108 AMERICAN JOURNAL OF INTERNATIONAL LAW 73 (2014)

- *Summary: This note summarizes and analyzes the decision of the Supreme Court of Ghana in the case in which a U.S. hedge fund sought to attach an Argentine military frigate to satisfy a U.S. court judgment for nonpayment on sovereign bonds.*

Ambiente Ufficio S.p.A. v. Argentine Republic, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility and Dissent, 15 JOURNAL OF WORLD INVESTMENT AND TRADE 314 (2014)

- *Summary: This note summarizes and analyzes the first jurisdictional decision in an investment treaty arbitration brought by a large number of claimants. The case was brought against Argentina and arose out of its default on its sovereign bonds.*

2013 Harvard International Law Journal Symposium Keynote Address, From "Dealing in Virtue" to "Profiting from Injustice": The Case Against "Re-Statification"

[of Investment Dispute Settlement](#), HARVARD INTERNATIONAL LAW JOURNAL ONLINE, vol. 15 (2014) (with Charles N. Brower)

- *Summary: This keynote address counters proposals to increase the politicization of investment dispute resolution. It argues that doing so would undermine the effectiveness of the system of foreign investment protection and inhibit capital flows that promote economic development.*

[State Consent, Temporal Jurisdiction, and the Importation of Continuing Circumstances Analysis into International Investment Arbitration](#), 10 WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW 419 (2011)

- *Summary: This article argues that because of the intense scrutiny under which they operate, investor-state arbitration tribunals should be vigilant about clearly stating their reasoning and explicitly grounding their legal analysis in the relevant treaties. Whether a tribunal should borrow from other tribunals' reasoning on temporal jurisdiction depends on the language and purpose of the temporal limits in the treaty before them. The Article examines two types of temporal restrictions on treaty scope, their purposes, and how international tribunals have analyzed continuing circumstances under each.*

PRESENTATIONS

Contract or Prison

- Yale Law School Private Law Clinic, April 2024. The clinic is now developing legal strategies for challenging the practices exposed by the article.
- Legal Scholarship Workshop, University of Chicago, October 2023
- Midwestern Law and Economics Association Meeting, October 2023 (competitive selection process)
- Markelloquium (monthly invitation-only criminal law seminar that rotates among NYC-area law schools), September 2023
- Vanderbilt Law School Faculty Workshop, August 2023
- CrimFest, Brooklyn Law School, July 2023
- Decarceration Law Workshop, Virtual Annual Conference, July 2023
- Junior Business Law Scholars Conference, University of Oregon, July 2023
- Conference on Law, Economics, and Justice, University of Lucerne, March 2023
- AALS Annual Meeting Contracts Section Panel, January 2023 (competitive selection process)
- Indiana University McKinney School of Law, January 2023

ESG Reputational Reckoning Bonds

- Legal Scholarship Workshop, University of Chicago Law School, October 2024
- International Association on Regulation and Governance Conference, University of Pennsylvania, June 2024 (competitive selection process)
- National Business Law Scholars Conference, June 2024 (competitive selection process)
- Law and Economics of Corporate Governance: Shareholders, Stakeholders, and Beyond, University of Lucerne, March 2024

Nominal Damages as Vindication

- Notre Dame Law School Private Law Workshop, April 2022
- AALS Annual Meeting Remedies Section Panel on Nominal Damages, January 2022 (competitive selection process)
- Notre Dame Law School Faculty Colloquium, November 2021
- Harvard Law School Private Law Theory Workshop, November 2021
- North American Workshop on Private Law Theory, October 2021 (competitive selection process)
- Midwestern Law and Economics Association Annual Meeting, October 2021 (competitive selection process)
- Junior Business Law Scholars Workshop, July 2021
- Canadian Economics Association Annual Meeting, June 2021 (competitive selection process)

Contracts Without Courts or Clans: How Business Networks Govern Exchange

- History of Insurance in Global Perspective, Basel, Switzerland, July 2022
- American Law & Economics Association Annual Meeting, October 2021 (competitive selection process)
- University of Chicago Legal Scholarship Workshop, September 2021
- Notre Dame Law and Economics Workshop, March 2021
- Seton Hall Law Faculty Workshop, February 2021
- Notre Dame Private Law Theory Workshop, Fall 2020
- Penn State Law Faculty Workshop, November 2020
- University of Indiana Maurer School of Law Faculty Workshop, October 2020
- Legal Scholarship Workshop, University of Chicago, October 2020
- Chicagoland Junior Faculty Workshop, October 2020
- Notre Dame Law School Faculty Colloquium, December 2019
- Society of Institutional and Organizational Economics Annual Meeting, Stockholm, June 2019 (competitive selection process)
- Junior Business Law Colloquium, University of Colorado Law School, May 2019
- Seminar, Regulation and Coordination Program, Tulane Law School, April 2019
- Block Center for International Business Law Seminar, Brooklyn Law School, February 2019
- Young Bankruptcy Scholars Workshop, Brooklyn Law School, October 2018 (competitive selection process)
- Canadian Law & Economics Association Annual Meeting, University of Toronto, September 2018 (competitive selection process)
- BYU Law Faculty Colloquium, September 2018

Courts as Information Intermediaries: A Case Study of Sovereign Debt Disputes

- Society of Institutional and Organizational Economics Annual Meeting, HEC Montreal, June 2018 (competitive selection process)
- Stanford Law School Faculty Workshop, January 2018
- Berkeley Law School Faculty Workshop, January 2018
- American Society of International Law, International Law in Domestic Courts Interest Group Workshop, UCLA School of Law, December 2017
- Notre Dame Law School Faculty Colloquium, December 2017

- American Society of International Law, Dispute Resolution Interest Group Workshop, Lewis & Clark Law School, November 2017
- DebtCon 2: Interdisciplinary Sovereign Debt Research and Management Conference, Graduate Institute of Geneva, October 2017 (competitive selection process)
- George Mason Scalia Law School Faculty Workshop, October 2017
- Cardozo Law School Faculty Workshop, October 2017
- University of South Carolina Law School Faculty Workshop, October 2017
- University of Houston Law School Faculty Workshop, October 2017
- Yale Law School Center for Private Law Workshop on Formal and Informal Contract Governance, September 2017
- Reputation Roundtable, Washington & Lee Law School, September 2017
- Canadian Law and Economics Association Annual Meeting, September 2017
- Yale Law School Information Society Project Fellows Workshop, July 2017

Panelist, Opportunities in Arbitration, International Chamber of Commerce Young Arbitrators Forum

- American University Washington College of Law, October 2017

Commentator, The Logic of Contract in the World of Investment Treaties by Julian Arato

- Yale Law School Center for Private Law-American Society of International Law Junior Scholars Workshop, Yale Law School, October 2016

Commentator, Scaling Up Legal Relations by Henry Smith & Andrew Gold

- Hohfeld Centennial Symposium, October 2016

Rent Seeking in International Institutions

- Max Planck Institute for Procedural Law, May 2015

Introduction to International Arbitration

- Guest Lecture, University of Luxembourg Master's Level Course on European Procedural Law, May 2015 and April 2014

Judicial Modesty under a Public Law Theory of International Adjudication

- Workshop on *In Whose Name? A Public Law Theory of International Adjudication* by Armin von Bogdandy & Ingo Venzke (OUP 2014), April 2015

The Fate of Sunset Provisions under Joint Termination and Amendment of Investment Treaties

- Max Planck Institute for Procedural Law, December 2014

What Can a Foreign Investor in a Future EU Member State Legitimately Expect?

- International Law Association Regional Conference, Lisbon, September 2014
- Max Planck Institute for Procedural Law, September 2014

“Relevant,” “Applicable” “Rules”? Two Recent Cases on Article 31(3)(c) of the Vienna

Convention on the Law of Treaties

- Max Planck Institute for Procedural Law, May 2014

ACADEMIC SERVICE

2023-2024

Graduate Admissions Committee, Notre Dame Law School
Convenor, Junior Faculty Colloquium, Notre Dame Law School
Office of Mission Engagement Faculty Fellow, University of Notre Dame
Honors College Dean's Advisory Council, Louisiana State University

2022-2023

Faculty Colloquium Committee, Notre Dame Law School
Convener, Junior Faculty Colloquium, Notre Dame Law School
Mentor, First Generation Law Students, Notre Dame Law School
Honors College Dean's Advisory Council, Louisiana State University

2021-2022

Faculty Colloquium Committee, Notre Dame Law School
Convener, Junior Faculty Colloquium, Notre Dame Law School
Mentor, First Generation Law Students, Notre Dame Law School
Honors College Dean's Advisory Council, Louisiana State University

2020-2021

Convenor, Junior Faculty Colloquium, Notre Dame Law School
Ad Hoc Committee on International Law Curriculum, Notre Dame Law School
Mentor, First Generation Law Students, Notre Dame Law School
Honors College Dean's Advisory Council, Louisiana State University

2019-2020

Convenor, Junior Faculty Colloquium, Notre Dame Law School
Faculty Colloquium Committee, Notre Dame Law School

2018-2019

Ad Hoc Committee on Law Library, Notre Dame Law School

ACADEMIC CONFERENCES AND WORKSHOPS ORGANIZED

Private Funds Conference: Private Equity, Hedge Funds, and Venture Capital
Yale Law School, November 2017 (with Daniel Markovits)

Workshop on Formal and Informal Governance
Yale Law School, September 2017

Junior Scholars Workshop of the Yale Law School Center for Private Law and the American Society of International Law Dispute Resolution Interest Group
Yale Law School, October 2016 (with Perry Bechky)

Hohfeld Centennial Symposium

Yale Law School, October 2016 (with Shyam Balganesh, Daniel Markovits, Ted Sichelman, and Henry Smith)

Workshop on the Philosophy of Contract

Yale Law School, September 2016 (with Daniel Markovits)

OTHER PROFESSIONAL EXPERIENCE

The Honorable Charles N. Brower, Arbitrator (The Hague)

Law Clerk, 2012-2013

King & Spalding (Paris)

Associate, International Arbitration Group, 2011-2012

WilmerHale (London)

Intern, International Arbitration Group, 2010

U.S. Dept. of Justice, U.S. Attorney's Office (New Haven)

Extern, 2009

Boies, Schiller & Flexner (New York & Washington, DC)

Summer Associate, 2009

Documentation Center of Cambodia (Phnom Penh)

Summer Associate, 2008

Bureau of Labor Statistics (Washington, DC)

Economist, 2003-2007

OTHER PROFESSIONAL MEMBERSHIPS AND ACTIVITIES

Scholarship and Admission to Directed Studies, Hague Academy of International Law

Summer Course on Public International Law, 2013

Society for Institutional and Organizational Economics, 2018-2024

American Law and Economics Association, 2019-2024

American Society of International Law, past member

BAR ADMISSION

Admitted to practice in New York, 2011