

Roger Williams University

DOCS@RWU

School of Law Conferences, Lectures & Events

School of Law Publications

4-25-1998

Separation of Powers in State Constitutional Law

Roger Williams University School of Law

Follow this and additional works at: https://docs.rwu.edu/law_pubs_conf

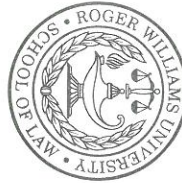


Part of the [State and Local Government Law Commons](#)

Recommended Citation

Roger Williams University School of Law, "Separation of Powers in State Constitutional Law" (1998).
School of Law Conferences, Lectures & Events. 24.
https://docs.rwu.edu/law_pubs_conf/24

This Document is brought to you for free and open access by the School of Law Publications at DOCS@RWU. It has been accepted for inclusion in School of Law Conferences, Lectures & Events by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.



ROGER WILLIAMS UNIVERSITY
RALPH R. PAPITTO
SCHOOL OF LAW
10 Metacom Avenue
Bristol, Rhode Island 02809

Nonprofit Org.
U.S. Postage
PAID
Bristol, RI
Permit No. 10

A One-day Symposium on Legal Ethics

Lawyer Collaboration with Systems of Evil

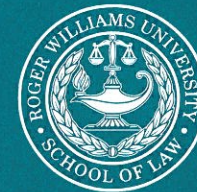
Friday, April 16, 1999

Bristol, Rhode Island

Hosted by the

Roger Williams University Law Review

Underwritten by a generous grant from
the Providence, Rhode Island law firm of
Decof & Grimm



ROGER WILLIAMS UNIVERSITY
RALPH R. PAPITTO
SCHOOL OF LAW

Lawyers are trained to be zealous advocates on behalf of their clients. Sometimes, in their zeal to advance their clients' interests, lawyers lose sight of their own moral compass.

The *Roger Williams University Law Review* has assembled a distinguished panel of law professors from around the country to examine a variety of instances, both historical and contemporary, in which lawyers may have collaborated with evil.

This Symposium will attempt to make more concrete the uncomfortable vagueness of the choices a lawyer may be required to make between professional role and moral conscience.

SYMPOSIUM AGENDA

- 9:00 a.m. **Welcome**
- 9:20-10:15 **Wrong Tomorrow, Wrong Yesterday, But Not Today: On Sliding into Evil with Zeal But without Understanding**
Robert A. Burt, Alexander M. Bickel Professor of Public Law, Yale Law School
- 10:15-11:00 **Thomas R.R. Cobb and the Law of Negro Slavery**
Paul Finkelman, John F. Seiberling Professor of Constitutional Law, University of Akron School of Law
- 11:00-11:15 **Break**
- 11:15-12:00 **Three Lawyers in the "Redemption" of the Old South**
Paul D. Carrington, Harry R. Chadwick Sr. Professor of Law, Duke University School of Law
- 12:00-1:00 **Luncheon**
- 1:00-1:45 **The Risks of Adjudicating Vichy**
Richard H. Weisberg, Walter Floersheimer Professor of Constitutional Law, Benjamin N. Cardozo School of Law
- 1:45-2:30 **The American Death Penalty at Century's End: The Problem of Systemic Injustice**
Robert J. Cottrol, Harold Paul Green Research Professor of Law, George Washington University Law School
- 2:30-2:45 **Break**
- 2:45-3:30 **Lawyer Management of Systems of Evil: The Case of the Tobacco Industry**
Richard A. Daynard, Professor of Law, Northeastern University School of Law
- 3:30-4:00 **Reactions and General Remarks**
Susan P. Koniak, Professor of Law, Boston University School of Law and Visiting Professor of Law, Harvard Law School
- 4:00 **Closing Comments**

PRESENTERS



Robert A. Burt, Alexander M. Bickel Professor of Public Law, Yale Law School

Presentation: "Wrong Tomorrow, Wrong Yesterday, But Not Today: On Sliding into Evil with Zeal But without Understanding"

Professor Burt will focus on conduct that might be called "unwitting collaboration with evil" – that is, conduct that clearly reveals itself as evil only in retrospect, though with such force and clarity as to make it almost incredible that the evil was not clearly seen as such by the participants. A range of behaviors illustrate this problem: for examples, unconsented medical research where the researchers believe themselves to be "advancing science" and acting in perfect good faith, or unthinking acceptance of racial or gender stereotypes without an understanding of their hurtful and demeaning implications. Consideration of this kind of "unwitting collaboration" will lead Professor Burt to examine the dynamic of what lawyers call the "slippery slope" – that is, why and how it is that seemingly unobjectionable (and even avowedly admirable) actions can dull one's moral sensibilities so as to make a downward slide seem easy and justified even though the ultimate destination, if clearly acknowledged at the outset, would have been rejected as wrongful. The transformation of good intentions in the nineteenth-century institutionalization of mentally ill and retarded people into brutal warehousing in the twentieth century is one such example. Are we witnessing the unfolding of a comparable example, as the right to refuse life-prolonging medical treatment is extended through voluntary assisted suicide ultimately to involuntary euthanasia?



Chris Hildreth

Paul D. Carrington, Harry R. Chadwick Sr. Professor of Law, Duke University School of Law

Presentation: "Three Lawyers in The 'Redemption' of the Old South"

Professor Carrington will examine and contrast the late 19th century careers of John Harlan, Lucius Lamar, and Randolph Tucker, each of whom confronted the moral challenge of conducting a public career in a time of widespread moral degradation.

Stan Barouh



Robert J. Cottrol, Harold Paul Green Research Professor of Law, George Washington University Law School

Presentation: *"The American Death Penalty at Century's End: The Problem of Systemic Injustice"*

Professor Cottrol will examine the modern death penalty and the role of lawyers and judges in its administration. In the author's view, the application of the death penalty has to be

looked at as an egregious example of systemic injustice and indeed evil. Any examination of capital punishment as such an example must develop a notion of injustice distinguishable from policy disagreement, however strong that disagreement may be. Although the author is a long-time opponent of the death penalty, he begins with a review of the argument in support of capital punishment and with the premise that it need not result in systemic injustice. He proceeds to contrast the death penalty supported by capital punishment advocates with the system currently in place in the United States. His argument is that the actual system has such severe problems of inequitable administration, possibility of error, hyper-technicality in the review process, and corruption of the trial process that the problems far outweigh the alleged benefits proclaimed by death penalty supporters.

Glenn Pike



Richard A. Daynard, Professor of Law, Northeastern University School of Law

Presentation: *"Lawyer Management of Systems of Evil: The Case of the Tobacco Industry"*

Professor Daynard will describe how, unlike systems of evil in which lawyers have played subsidiary roles, the tobacco industry's smoking-and-health disinformation campaign has for several years been managed by a "Committee of Counsel."

Their responsibilities have included determining what research will be done (or not done) by company scientists, what outside research will be funded (including by supposedly independent funding agencies), and what statements about smoking and health will be made by company executives. They hid research that showed the dangers of smoking under the attorney-client and work-product privileges, and they failed to produce damaging materials required under court orders. Professor Daynard will assert that the energetic and imaginative contributions of these lawyers have made possible much of the devastation being wrought by tobacco-caused addiction and disease.



Paul Finkelman, John F. Seiberling Professor of Constitutional Law, University of Akron School of Law
Presentation: *"Thomas R.R. Cobb and the Law of Negro Slavery"*

Professor Finkelman's article will focus on Thomas R.R. Cobb, the official reporter for the Georgia Supreme Court and a co-founder of the Lumpkin Law School, which later evolved into the University of Georgia

School of Law. Cobb was the central figure in the writing of the Confederate Constitution and the organizer of "Cobb's Legion" before his death in 1862 at the battle of Fredericksburg. Most importantly, Cobb was the author of the only treatise on the law of slavery written by a southerner: *An Inquiry into the Law of Negro Slavery*. Professor Finkelman will explore the way Cobb used "scientific" arguments, scriptural interpretation, legal theory, common law doctrine, and Anglo-American precedent to create a proslavery argument in the form of a treatise which purports to be neutral.



Susan P. Koniak, Professor of Law, Boston University School of Law

Professor Koniak will offer observations on the symposium presentations and general remarks on the broad topic of lawyer collaboration with systems of evil. She is visiting this academic year at Harvard Law School and teaches courses on the ethical and legal responsibilities of lawyers. Professor Koniak is the author, along with

Professors Geoffrey C. Hazard, Jr., and Roger C. Cramton, of *The Law and Ethics of Lawyering*, a leading textbook on the legal profession.



Richard H. Weisberg, Walter Floersheimer Professor of Constitutional Law, Benjamin N. Cardozo School of Law

Presentation: "The Risks of Adjudicating Vichy"

Professor Weisberg will discuss how several prominent French criminal procedures (and two full trials), as well as an American federal court case, have recently arisen regarding the treatment of France's Jewish population during the dark period of 1940-44 (the "Vichy" years). To what extent do these events do justice to the actual history of Vichy, or to what extent do they risk distorting the truthful record of France's victimization of Jews, some 76,000 of whom were deported, under color of Vichy law, to the concentration camps "in the East?" If risks are incurred by such litigation, are they in some measure outweighed by the light lawyers may help to throw on this still hidden history? Professor Weisberg will review his recent findings about Vichy and assess the risks of adjudicating it.

The *Roger Williams University Law Review* will publish the papers presented at the *Lawyer Collaboration with Systems of Evil* symposium in its Fall 1999 issue. The Law Review is in its fourth year of publication, producing a spring and fall issue annually. The Fall 1998 issue included papers presented at the Law Review's *Separation of Powers in State Constitutional Law* symposium held in April 1998. In April 2000, the Law Review will host a conference on *Rational Actors or Rational Fools? The Implications of Psychology for Products Liability*, with papers to be published in the Fall 2000 issue. The Law Review devotes its entire spring issue to an annual survey of Rhode Island law, and it welcomes submissions from authors on Rhode Island topics.

The *Roger Williams University Law Review* gratefully acknowledges the generous grant from

DECOF & GRIMM

whose principal sponsorship is being used to defray conference expenses.



ROGER WILLIAMS UNIVERSITY
RALPH R. PAPITTO
SCHOOL OF LAW

Bristol, Rhode Island

Roger Williams University School of Law offers a challenging education at an institution whose hallmark is excellence.

The four-level law building, designed exclusively for the study of law, contains state-of-the-art technology in legal education and is completely self-contained. In addition to the extensive law library, the law building contains class and seminar rooms, a law practice center including trial advocacy and appellate moot court rooms, and all ancillary services.

The School of Law faculty reflects a diversity in experience and expertise. With 26 full-time faculty members, there is a broad range of expertise including admiralty, copyright, international law, labor, products liability, and securities regulation. In addition, 37 adjunct professors expand the curriculum with their expertise.

A significant aspect of the School of Law curriculum is its comprehensive skills training program that enables law students to master those analytical, communicative, and other lawyering skills that facilitate effective legal problem solving. Simulation courses provide practical training in trial advocacy, client interviewing, counseling, and appellate advocacy. The Lawyering Skills Program brings pragmatic application to a solid foundation of legal doctrine.

Roger Williams University School of Law earned full approval from the American Bar Association in February 1997, in the shortest time possible under ABA rules.

Registration Details

Each registrant must complete a separate registration form (forms may be duplicated for additional registrants) and enclose the registration fee. The registration fee includes the day-long conference as well as refreshments and lunch. If you are paying by credit card, you may fax your registration form to (401) 254-4655.

Should you have any questions, or need to update your registration information, please contact Gerlinde Celona at the *Roger Williams University Law Review*, by telephone at (401) 254-4661 or by e-mail at gbc@rwulaw.rwu.edu.

CLE Credit

- Roger Williams CLE will assist in your reporting process.
- Although rules differ in each jurisdiction, Rhode Island MCLE has awarded 6 CLE credits (all of which are ethics credits) for attorneys attending the Symposium.
- This Symposium has been placed on the Rhode Island Judicial Education calendar.

Refund Policy

Registration fees will be refunded, less a \$10 processing fee, to those whose written requests are received before April 12, 1999. Contact the *Roger Williams University Law Review* at 10 Metacom Avenue, Bristol, RI 02809-2171 by mail or by fax at (401) 254-4655.

No refunds will be given for cancellations of registration after April 12, 1999.

REGISTRATION FORM

Mail completed form with payment to: *Roger Williams University Law Review*,
Ten Metacom Avenue, Bristol, RI 02809-5171 or Fax to (401) 254-4655.
(Please type or print information)

Name _____
Last First Middle Initial

Name Preferred on Badge _____

Title _____

Telephone _____

Organization _____

Address _____

City _____ State _____ Zip _____

Form of Payment

- ☐ No charge – Judges and students
- ☐ \$25 – Lawyers admitted within last 3 years
- ☐ \$75 – Senior lawyers, academics, and other attendees
- ☐ Check enclosed. Payable to *Roger Williams University Law Review*.
- ☐ Charge fee to: ☐ American Express ☐ MasterCard ☐ Visa

Account # _____

Expiration Date _____

Signature _____

Date _____

Registration Deadline: April 12, 1999