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## Symposium Introduction

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# Symposium Introduction

Pamela Wilkins

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“All of us labor in webs spun long before we were born.”<sup>1</sup>

Anyone from Mercer University or from Macon, Georgia—indeed, anyone from the American South—should understand the truth of this statement. Markers and reminders of the past are ubiquitous: the Ocmulgee Mounds that were occupied by different Native American cultures for thousands of years; Confederate monuments that were only recently moved away from downtown Macon; even a plaque commemorating where Reverend Pearly Brown liked to play the gospel blues; and a museum in the house where the Allman Brothers once lived, jammed, and smoked weed. Whether we celebrate or deplore them, these long-spun webs (at least in part) define us.

The law also spins its own webs, with the help of legislatures, advocates, and judges. To name a few:

The Americans with Disabilities Act of 1990<sup>2</sup>

*Plessy v. Ferguson*<sup>3</sup> and *Brown v. Board of Education*<sup>4</sup>

The Voting Rights Act of 1965<sup>5</sup> and *Shelby County v. Holder*<sup>6</sup>

The Indian Removal Act of 1830<sup>7</sup>

The Thirteenth,<sup>8</sup> Fourteenth,<sup>9</sup> and Fifteenth<sup>10</sup> Amendments to the United States Constitution.

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1. WILLIAM FAULKNER, REQUIEM FOR A NUN (ACT I, SCENE 3) (1951).
  2. 104 Stat. 327 (1990).
  3. 163 U.S. 537 (1896).
  4. 347 U.S. 483 (1954).
  5. 79 Stat. 437 (1965).
  6. 570 U.S. 529 (2013).
  7. 4 Stat. 411 (1830).
  8. U.S. CONST. amend. XIII.
  9. U.S. CONST. amend. XIV.
  10. U.S. CONST. amend. XV.

All the various webs spun by the law are the product of stories we tell, stories with powerful themes: Who belongs? Who decides? Whose stories are heard? Whose aren't noticed? Whose are very much noticed and then suppressed? Which stories can we not bear to hear? Which do we yearn to hear and tell?

The 2022 Mercer Law Review Symposium, *Past is Prologue: Legal Narrative and the Law's Potential for Justice and Injustice*, explores the webs in which we labor. Differently put, the symposium explores the stories we tell—and don't tell—about the law (both past and present).

But why examine these legal narratives? First, because like it or not, we ourselves—law students, law professors, lawyers—are characters in these narratives, moving the story forward, backward, or nowhere, whether wittingly or unwittingly. Second, because understanding the legal narratives we have inherited gives us some hope of consciously embracing some and rejecting or transcending others. As Bruce Springsteen said, “you better reckon with [the past] in your life and in your daily experience, or it will get you. It will get you really bad.”<sup>11</sup>

Each of the articles in this issue approaches the symposium theme from a different perspective:

*Stories from the Negative Spaces*<sup>12</sup> presents a fascinating story of immigration and the American process of assigning race and ethnicity. Here, Professor Joy Kanwar explores the often contradictory ways “whiteness” or “Caucasian” status has been defined in American jurisprudence. Prof. Kanwar's exploration reveals how racial categories are created and then used to create in-groups and out-groups in American society.

Two articles focus on issues affecting Native American communities. Professor John LaVelle's *Surviving Castro-Huerta*<sup>13</sup> concerns a far broader issue: tribal autonomy. Professor LaVelle argues that *Oklahoma v. Castro-Huerta* is an “unprecedented attack on the autonomy of Native American nations in the United States”<sup>14</sup> and a “dubious, revisionist retelling of U.S-tribal relations.”<sup>15</sup> In “illuminat[ing] the case's alarming distortions of history and precedent,” Professor LaVelle relies on a

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11. Bruce Springsteen, *quoted in Observer Music Monthly #65* (June 2009).

12. Joy Kanwar, *Stories from the Negative Spaces: United States v. Thind and the Narrative of (Non)Whiteness*, 74 MERCER L. REV. 801 (2023).

13. John LaVelle, *Surviving Castro-Huerta: The Historical Perseverance of the Basic Policy of Worcester v. Georgia Protecting Tribal Autonomy, Notwithstanding One Supreme Court Opinion's Errant Narrative to the Contrary*, 74 MERCER L. REV. 845 (2023).

14. *Id.* at 846.

15. *Id.* at 847.

fascinating source: the papers of individual Supreme Court justices. This thorough legal and historical examination is fascinating.

*Burning Questions: Changing Legal Narratives on Cannabis in Indian Country*<sup>16</sup> examines how narratives around cannabis have and continue to affect minority communities. Authors Carter and Rotman also consider the legal, economic, and political complexities of cannabis as an on-reservation tribal industry.

*Law's Body*<sup>17</sup>, by Matt Selah, Hannah Potter, and Kendall Foley, explores an intriguing question: *How do law's narratives construct one of its central objects: the human body?* As the authors observe, constructions of terms like personhood, injury, disability, and moment of death all require a concept of the body. Thus, law's narrative constructions of the body affect virtually every area of law.

*Coase's Parable*<sup>18</sup> turns legal narrative on its head, calling most of our standard legal narratives into question. In *Coase's Parable*, Professor F.E. Guerra-Pujol examines economist Ronald Coase's "novel and unorthodox counter-narrative to the standard victim-wrongdoer story in law"<sup>19</sup>: namely, that "victims are just as responsible as wrongdoers for their plight."<sup>20</sup> As Professor Guerra-Pujol observes, the implications of this counter-narrative are simultaneously compelling and troubling.

One article reflects directly on America's original sin, the "rock on which Freedom Stumped its toe"<sup>21</sup>: racism. *Critical Race Theory in the Legal Academy*<sup>22</sup>, by Professor Cynthia Thompkins, interrogates the conflicting narratives surrounding an often-praised and just-as-often-maligned theory: Critical Race Theory. In exploring the narratives around Critical Race Theory, Professor Thompkins turns to primary source material: the work of the late legal scholar Derrick A. Bell, Jr., a leading CRT founder. She then asks whether CRT has furthered or hampered the pursuit of equal justice for Black Americans; whether CRT

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16. Sam J. Carter & Robin M. Rotman, *Burning Questions: Changing Legal Narratives on Cannabis in Indian Country*, 74 MERCER L. REV. 993 (2023).

17. Matt Saleh, Hannah Potter & Kendall Foley, *Law's Body*, 74 MERCER L. REV. 1023 (2023).

18. F.E. Guerra-Pujol, *Coase's Parable*, 74 MERCER L. REV. 1041 (2023).

19. *Id.*

20. *Id.* at 1042.

21. LANGSTON HUGHES, *American Heartbreak*, in *SELECTED POEMS OF LANGSTON HUGHES* (Vintage Classics 2011).

22. Cynthia Elaine Tompkins, *Critical Race Theory in the Legal Academy: Derrick Bell's Seminal Law Review Articles and Critical Race Theorists Scholarship; CRT Opponents Conflicting Views and Potential Consequences of Critics' Cancellation Strategy*, 74 Mercer L. Rev. 1079 (2023).

narratives are valid or specious; and why CRT has encountered such extreme resistance.

Professor Stevie Leahy's *The Battle of the Narrative in Jones v. Mississippi*<sup>23</sup> focuses on a vulnerable and largely powerless group: juveniles within the American justice system. This article considers how narrative is both used and, all too often, ignored in juvenile sentencing decisions.

Professor Marcia Ziegler's *Thirty-two Shots in the Dark*<sup>24</sup> examines a timely issue: police reform. Law enforcement's killing of Breonna Taylor furnishes the setting for Prof. Ziegler's consideration of how to effect changes in policing. She posits that local governments have the power to increase police accountability notwithstanding state legal structures that protect law enforcement even when such protection is unjust and stifles reform.

The Law Review owes a special debt of gratitude to Professors Linda Berger and Kathy Stanchi, who moderated the 2022 Symposium. Both are giants within the legal academy: they are principal organizers of The United States Feminist Judgments Project, one of the most ambitious and creative intellectual projects within the legal profession. Along with Professor Bridget Crawford, Professors Berger and Stanchi co-edited *Feminist Judgments: Rewritten Opinions of the United States Supreme Court*. In addition to their work with the Feminist Judgments Project, Berger and Stanchi are nationally recognized scholars in the areas of rhetoric and persuasion. In fact, they co-authored the highly influential *Legal Persuasion: A Rhetorical Approach to the Science* (Routledge 2017). Given their groundbreaking body of work, they were the ideal moderators for a symposium focused on interrogating the past, and they did so with grace, good humor (despite being several time zones away!), and perspicacity.

The Mercer Law Review hopes that readers of this symposium issue are invigorated and challenged by the authors' exploration of important themes. We also hope this issue represents only a beginning of a longer, larger conversation. Join us on this journey.

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23. Stevie Leahy, *The Battle of the Narrative in Jones v. Mississippi: Consideration of Youth "In Name Only,"* 74 MERCER L. REV. 1129 (2023).

24. Marcia Ziegler, *32 Shots In The Dark: How Local Governments Can Increase Police Accountability When States Refuse To,* 74 MERCER L. REV. 1155 (2023).