Legal Developments in France and the United States in the Era of Globalization

by Vivian Grosswald Curran

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The dream of many internationalists in the 19th and 20th centuries was to see an international legal order in which universally recognized rules would govern, helping civilization to prevail over brutality and chaos. Instead, as the world has been “globalizing,” a phenomenon which means many different things to many different people, internationalists have not seen universally recognized legal norms attain binding and enforceable status the world over. As globalization has come to law, it has brought with it, rather, both new alignments and new fragmentations.

With the generous assistance of a European Union Center of Excellence Faculty Research Grant last year, I looked at the effect of transnationalization on the adjudication of grave crimes against humanity in France and the United States. Legal transnationalization is blurring all sorts of previously distinct categories in law, from public to private law and from criminal to civil law.

In the United States, victims can seek compensation under non-criminal tort law for conduct that is criminal in nature, even if no criminal trial has taken place or will be taking place. Divorcing a civil trial for financial compensation for a grave crime from any criminal law adjudication is not an accepted form of action in France, however. While victims there also may sue for monetary compensation, in principle they must do so as part of the criminal trial, for many reasons that are embedded in the larger legal system of the nation.

The criminal trial in France fulfills public objectives that the non-criminal one is unable even to approximate, given that non-criminal procedures there are conducted essentially entirely by writing and without the presence of live testimony or witnesses. Unlike in France, the tort trial in the United States can electrify the public and have as many cross-examinations and grandiloquent statements as the criminal trial. Similarly, the tort trial does not reserve a greater or a lesser role for the judge in the United States than its criminal law counterpart, whereas such is not the case in France.

In France, the presiding judges in criminal law cases deal only with criminal law and are so central to the trial that they have been called “republican monarchs.” The lawyers’ role pales by comparison. Traditionally, lawyers have hesitated to say much during the trial in order not to seem to suggest that the judge has not done his or her job adequately. The French presiding judge will speak at length about the personality of the defendant, and the many factors which led the individual defendant to commit the act in question, something that would be unheard-of in an American court. The French criminal law judge, not the lawyers, will question the defendant at length, and the French defendant almost never will refuse to speak in court, because by the time a defendant has been brought to trial, the system believes it has excellent reason to find the defendant

Continued on page 6
Wednesday, February 4
Lecture:
“The European Union’s Security Strategy and the Human Security Agenda: Another Approach to the Concept of “Smart Power”?”
Dr. Eric Remacle, Visiting Distinguished Professor from the Universite libre de Bruxelles (ULB), will lecture on human security and smart power as it relates to the security strategy of the EU. He is currently teaching a graduate course titled “Europe, Human Security, and the Security-Development Nexus.” An informal farewell reception for Dr. Remacle will follow the lecture. 12:00 noon, 4130 Posvar Hall. For more information, please contact Karen Lautanen at kal70@pitt.edu.

Thursday, February 19
Jean Monnet Symposium:
“The EU, NATO and the U.S. in the New Century: Trends in Competition and Cooperation”
Professor Alberta Sbragia and Dr. Michito Tsuruoka. This annual symposium will explore how the EU and NATO are increasingly forging relationships with other regions, countries, and institutions beyond Europe. These new relationships necessarily have impacts on the vital transatlantic relationship with the U.S. The symposium will also provide a “comparative regionalist” perspective on important issues. 1:00 p.m., Pittsburgh Athletic Association. For more information, please contact Thomas Allen at tfa3@pitt.edu.

Monday, March 2
Lecture:
“The European Union and the United Nations: An Important and Evolving Relationship”
Nicola Harrington, Deputy Director, Policy and Communications, United Nations, Brussels, will present. 12:00 noon, 4130 Posvar Hall. For more information, please contact Karen Lautanen at kal70@pitt.edu.

Tuesday, February 10
Lecture:
“Women in Italy During the Last Two Centuries”
Dr. Stefania Licini, Visiting Italian Fulbright Professor from the University of Bergamo, will lecture. Dr. Licini is currently teaching an undergraduate course titled “Italian Modern History: Economics and Society in the 19th and 20th Centuries.” 12:00 noon, 3610 Posvar Hall (History Lounge). For more information, please contact Karen Lautanen at kal70@pitt.edu.

Tuesday, February 17
Pizza & Politics
Topic: TBA
Galina Zapryanova, PhD Candidate in the Department of Political Science and recipient of a 2008 EUCE Summer Pre-Dissertation Fellowship, will present on a topic related to her current research. Pizza and soft drinks will be provided. 12:00 noon, 4130 Posvar Hall. For more information, please contact Sandra Hall at ssh13@pitt.edu.

Wednesday, February 25
Roundtable Discussion:
“Why the Violence? A Discussion about Greek Politics and Society”
Dr. Achilleas Mitsos, Visiting Distinguished Practitioner and Legacy Laureate, and Dr. Despina Alexiadou, Assistant Professor, Department of Political Science, will lead this discussion in response to recent events. An informal farewell reception for Dr. Mitsos will follow the discussion. 2:00-3:30 p.m., 4130 Posvar Hall. For more information, please contact Karen Lautanen at kal70@pitt.edu.

Monday, March 2
Roundtable Discussion
Nicola Harrington, Deputy Director, Policy and Communications, United Nations, Brussels, will present. 10:00 a.m., Location TBA. For more information, please contact Karen Lautanen at kal70@pitt.edu.

MARK YOUR CALENDARS:

Fourth Annual Graduate Student Conference on the EU
“The Future of the EU: External Challenges and Internal Debates”
University of Pittsburgh
March 21, 2009

The EU currently faces many challenges that affect its citizens, institutions, and policy-making capabilities. This conference wishes to highlight graduate student research that addresses some of these broad challenges.

The conference will be open to students, faculty, and the public. For more information, please visit www.ucis.pitt.edu/euce/events/gradconf/index.html.
In late July 2008, St. Francis Xavier University hosted the biannual Scottish Gaelic Studies conference in Antigonish, Nova Scotia, Canada. With the aid of a EUCE/ESC Small Grant, I was able to attend and present a paper on “Minority Language Learning and Ideologies of Speakerhood: The Experiences of Adults Learning Gaelic in Scotland.”

This was the first year for the conference to be held outside of Scotland. It began in 2000 at the University of Aberdeen in Scotland, followed by meetings at the University of Glasgow (2002), University of Edinburgh (2004), and the Gaelic college on the Isle of Skye, Sabhal Mòr Ostaig (2006). This year it was held in Nova Scotia—New Scotland—near the world’s only remaining diasporic Scottish Gaelic-speaking area.

The conference has fostered a new and welcome interdisciplinary ethos in Scottish Gaelic studies. Alongside the more traditional focus of Celtic Studies on medieval and contemporary Gaelic literature, the conference has encouraged the presentation of research on Gaelic language and culture in fields such as anthropology, sociolinguistics, sociology of language, cultural geography, and media studies. Language planners have also used the conference as a forum for presentation and discussion of language policy proposals and have been able to draw upon the research-based perspective of historians and social scientists.

The conference has started to play a small but significant role in Gaelic language development, as a handful of scholars every year have chosen to deliver their academic papers in the medium of Gaelic. It would be nothing unusual to use a major state-sponsored language such as English, French, or German to deliver a conference paper, but it is a notable achievement to do it in Gaelic to a comprehending and appreciative audience. This is because Gaelic is a minority language, with about 50,000 speakers among Scotland’s population of 5 million (approximately 1 percent). Gaelic has been undergoing processes of language shift, or death, in Scotland for the past several centuries and is losing many of its higher registers. The delivery of conference papers in Gaelic is part of a grassroots effort to create new higher registers such as academic language to augment everyday spoken Gaelic and make the language viable in all areas of life. Proponents wish to change the popular perception that Gaelic is a language of rurality, agriculture, and remote island life. Since Gaelic lacks its own language academy or official government body for corpus planning, such efforts take on even greater significance in defining the role of Gaelic in Scottish and academic life.

The conference social events and trip to Cape Breton Island provided valuable opportunities to meet Nova Scotian Gaelic speakers and regional language planners and activists. The latter have now provided the impetus for my next major research project, a comparative project examining trajectories of language revitalization and economic development in Nova Scotia and Scotland. The two cases are so interesting to compare because they are at very different stages of language shift (Nova Scotia much further along than Scotland, sadly). This impacts attitudes towards the language among speakers and the kinds of initiatives language planners are able to undertake in each location. What makes it so fascinating, though, is that it will not be purely a comparative project because the two cases have begun to cross-fertilize. This trend was apparent from the “Cruinneachadh nan Gàidheal/Gathering of the Gaels” cultural event which followed immediately after the conference, in which members of a Gaelic cultural group from the Outer Hebrides had regional government sponsorship to attend and teach singing and dancing workshops and enter into formal discussions on language policy with Nova Scotian organizations. These people had been among the original informants for my dissertation research eight years previously, which made the situation all the more interesting to study.

A disorienting encounter encapsulates this cultural and economic exchange. The Friday before the conference I had been on the Isle of South Uist in the Outer Hebrides. I was trying to set up an interview with a woman about her economic development work on Gaelic at the tail end of my research trip to Scotland. I was unable to meet with her, and on Saturday I flew back to Glasgow and on Sunday on to Canada. When I walked into the university cafeteria for breakfast on Monday morning before the conference started, there she was! We greeted each other in Gaelic, and for a moment I wondered if I had actually left the Hebrides at all. This moment among many others embodied the new trans-Atlantic exchange between New World and Old World, language planners and academics, and policy and practice.
**FELLOWSHIPS, GRANTS, AND OPPORTUNITIES**

**FOREIGN LANGUAGE & AREA STUDIES (FLAS) FELLOWSHIPS**
The FLAS Fellowship is a prestigious award that enables the recipient to devote full time to graduate study. FLAS Fellowships are given for two award periods—the academic year and the summer—and will be awarded only for the study of a modern foreign language. The Summer FLAS fellowship application is due February 13, 2009. For more information and an application, please visit [www.ucis.pitt.edu/euce/students/graduate/FLAS.html](http://www.ucis.pitt.edu/euce/students/graduate/FLAS.html). Please contact Sandra Hall at ssh13@pitt.edu with any questions.

**EUCE FACULTY RESEARCH GRANT ROUND TWO**
The European Union Center of Excellence (EUCE), with partial funding from the European Commission, offers grants for research related to post-World War II European integration for University of Pittsburgh faculty in any department or school. The deadline for round two of the 2008-2009 competition is February 20, 2009. A faculty selection committee will meet shortly after the deadline. For additional information, visit [www.ucis.pitt.edu/euce/faculty/funding/EUCEGrant.html](http://www.ucis.pitt.edu/euce/faculty/funding/EUCEGrant.html). Please direct question to Timothy S. Thompson, Associate Director, at tst@pitt.edu or 412-624-3503.

**EUCE SUMMER PRE-DISSERTATION FELLOWSHIPS**
The EUCE is pleased to announce a pre-dissertation competition for advanced graduate and professional school students for research or internships related to post-World War II European integration. The application deadline is February 23, 2009. For more information and an application, visit [www.ucis.pitt.edu/euce/students/graduate/EUCE-Pre-Dissertation.html](http://www.ucis.pitt.edu/euce/students/graduate/EUCE-Pre-Dissertation.html). Please contact Sandra Hall at ssh13@pitt.edu with any questions.

**EUCE DISSERTATION FELLOWSHIPS**
The EUCE announces its annual dissertation award competition, open to PhD students at the University of Pittsburgh who have completed or are about to complete all required coursework and are writing a dissertation on a topic directly related to the EU’s development, institutions, policies, identities, external relations, and/or relationship with individual member states. The deadline for fellowship applications is February 23, 2009. For more information and an application, please visit [www.ucis.pitt.edu/euce/students/graduate/EUCE-Dissertation.html](http://www.ucis.pitt.edu/euce/students/graduate/EUCE-Dissertation.html). Please contact Sandra Hall at ssh13@pitt.edu with any questions.

**EUROPEAN SPRING INSTITUTE 2009**
**“THE FUTURE OF EUROPE: LOBBYING IN BRUSSELS”**
Hosted by Prague’s Center for Public Policy and the Institute for European and National Strategies, the European Spring Institute 2009 is a seven-day academic program to be held March 28-April 4, 2009 for undergraduate and graduate students of various nationalities. The program combines intensive academic courses with cultural, social, and recreational opportunities and provides students with an exciting chance to deepen their knowledge of current EU politics through the exchange of ideas with academics, policy practitioners, and fellow students from different ethnicities. The deadline for applications is February 15, 2009. For more information, please visit esi.cz.

**EUROPEAN SPRING SCHOOL 2009**
The SIAS Consortium of Institutes for Advanced Study is now accepting applications for the 2009-10 Summer Institute: “Comparative Federalism and Separation of Powers: Lesson from-and for-National, Supranational, and Global Governance.” The first workshop will be held from July 20-31, 2009 in Berlin, Germany. These workshops are supported by a grant which will cover travel, meals, and lodging for both U.S. and European meetings. Grant applications are due on February 27, 2009. For more information and an application, please visit www.wiko-berlin.de/index.php?id=112&L=0.

**HEWLETT INTERNATIONAL GRANT PROGRAM**
The University Center for International Studies announces the Spring 2009 Hewlett International Grant Program competition. The Hewlett awards are intended to help University of Pittsburgh faculty in the development or completion of international projects. Applications must be received by February 28. For additional information about eligibility, funding priorities, evaluation criteria, as well as an application, please visit [www.ucis.pitt.edu/main/hewlett_international.html](http://www.ucis.pitt.edu/main/hewlett_international.html).

**EUROPEAN SPRING SCHOOL 2009**
The EUROPEUM Institute for European Policy’s European Spring School 2009 is titled “Central Europe in the EU - How the Czech shape the EU politics?” and will focus on the role, activities, and influence of the new member states from Central Europe (Czech Republic, Poland, Hungary and Slovakia) in the enlarged EU and its institutions. Participants will learn about and discuss the current political and economic challenges the EU member states in Central Europe are facing. Applications are due February 28, 2009. Please visit [www.europeme.org/springschool](http://www.europeme.org/springschool) for more information.

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The rise of English as the international lingua franca often makes it easy for native English speakers to travel or study abroad and maintain the ability to communicate effectively with those around them. The prevalence of English can present a challenge, however, for travelers wishing to converse with locals in their native language. This has been my experience studying and working in both Germany and Austria. Unless you learn to be very persistent, it can be challenging to find someone to talk to you in your target language. Otherwise, after one slip-up, your question is answered in English, and you then find yourself in the role of teacher instead of student.

A Foreign Language Area Study fellowship helped finance my trip to study Swedish at the Uppsala International Summer Session (UISS) in Uppsala, Sweden for eight weeks this past summer. Studying in Sweden, I thought that this challenge would be especially difficult for me, having had only two semesters of language instruction before my departure. Most Scandinavians do not have to practice their English; they speak it very well and with ease. Little did I know that their proficiency in English would actually have an impact on my language studies.

As a graduate student in the Linguistics department concentrating in Second Language Acquisition (SLA), learning a new language is both rewarding and annoying. On the one hand, SLA people love errors—errors, after all, help reveal the acquisition process!—which means that I never felt completely discouraged when I made repeated mistakes. On the other hand, I found myself performing meta-analyses on my language development that often became frustrating and discouraging.

While in Sweden, I discovered that I could track the progress of my Swedish proficiency through the nature of the responses I received. I progressed from getting asked, in English, “Where in Germany are you from?” (an interesting aside in itself) to receiving consistent answers in Swedish after only two weeks of the Summer Session. I did have to be persistent at times, as I fumbled to recall a word or the correct conjugation, but most of the people with whom I interacted were very encouraging. Perhaps they were humming me, but I appreciated the practice in any case.

What was more surprising, though, was how often I was asked, “But why are you studying Swedish?” Of concern to many English as a Second Language (ESL) educators and researchers is the de-emphasis on other foreign language study that accompanies the rise of English as a lingua franca. Many Swedes with whom I spoke this summer were surprised to learn that anyone would take the time and energy to study their native language. They seemed to think of it as an unnecessary endeavor, given that they can speak English so well. However, it is both because Swedes are so proficient in English and also have a less-commonly-taught native language that I began studying Swedish.

Motivation type and its impact on acquiring a second language is a prominent topic in the fields of SLA and foreign language instruction. My fellow UISSers came from a total of 33 countries with a variety of first language backgrounds. Most of my fellow classmates either had family or significant others who hailed from Sweden or their work or studies required some knowledge of Swedish. I found that of my fellow students, the ones who could give a concrete answer to the “But why are you studying Swedish?” question were more motivated than those who could not.

Student motivation is especially important for instructors and curricula planners to consider when preparing lessons. Since I am also studying to be an ESL instructor, I found my time in the Swedish classroom this summer to be interesting on several levels. Never before had I attended an intensive language program or attended a language class where the use of English was forbidden. The seven hours a day of language instruction I received this summer enabled me to improve my Swedish language skills at least threefold. I was also able to meta-analyze both my instructors’ teaching styles and the materials used in the classroom. This insider perspective allowed me to recognize the activities that were beneficial versus those that were not as effective. For example, I found myself unmotivated in lessons where activities were not varied or (gasp!) English was used in the classroom.

My research benefited threefold as well: I improved in a language spoken by a largely bilingual population, got an intimate look at my own acquisition in a foreign language, and gained an insider view of a well-established intensive language learning program.
guilty, and the defendant's best chance for minimizing his or her sentence is to explain the facts in the best light possible and to try to make a pleasing impression. Virtually no rules of evidence limit what the judge can say in court in front of the French jury, including reading past statements from the case file of what the defendant said during interviews to a prior investigating magistrate.

The French presiding judge all along will be concerned with representing the State and the State's views. While there are no official court transcripts or stenographers, every important trial is covered by newspaper reporters. Presiding judges do more than direct questions at defendants and witnesses. They also provide running commentary and instruction. The court's verdict will be the verdict of the State, and the lessons to be drawn from the case will be explained to the population. In Rousseauian terms, the population is composed of citizens rather than individuals, or of individuals who have shed their private identities to become citizens in the public space in which the court operates and in which the social contract functions. Although lay people vote on the issue of guilt and innocence, they are joined by the panel of judges who vote with them and who discuss the trial with them after it has taken place and before the joint voting occurs.

In the way of legal globalization, in recent years, some issues that have not been resolved officially by visible changes in law seem to be undergoing shifts on the ground. On the one hand, a problem for the United States has been difficulty in reaching an international convention to enforce civil judgments against defendants for grave human rights violations where the defendants have not been tried criminally. Under a statute known as the Alien Tort Claims Act, numerous foreign defendants have been subject to large civil damages pursuant to United States tort trials, but virtually no such verdicts have been enforced against them abroad. The civil-law nations of Continental Europe and elsewhere have shown great reluctance to accept the idea of such universal civil (i.e., non-criminal) jurisdiction by the United States and of the concept of allowing monetary damages as the sole remedy for grave criminal activity.

On the other hand, as contacts have increased and multiplied among the nations of the world, the strategies of lawyers have inspired others across borders. For example, United States tort suits have inspired several lawsuits in France where the underlying conduct was for grave human rights violations but where one or more rules of criminal actions precluded the victims from proceeding with a French criminal court complaint. Several such tort suits met with defeat, but in one recent case, a French court for the first time in history held for the plaintiffs against the French government. Transnationalization or globalization may have played a role beyond the direct increase in numbers and frequency of cross-border contacts among lawyers and judges.

An indirect effect of transnationalization has been the increase in courts in different nations that are able and willing to adjudicate a given case. This result is due to the increase in cross-border contacts and subject-matter of an increasing number of cases. This in turn has allowed a previously national phenomenon known as “forum shopping” to become an international phenomenon. Forum shopping refers to a party's search for a court that is likely to rule most favorably for itself. Consequently, courts that may conclude it to be in the national interest to keep a case or kind of case within national borders may be more inclined to stretch existing law to accommodate requested innovations, if that is the price to pay for maintaining national judicial sovereignty over certain issues or certain cases. The irony in such situations is twofold: on the one hand, such preservation of national sovereignty may have to be redeemed at the cost of changing national law unofficially. On the other hand, one sees a role reversal between courts and litigants from the traditional role of courts as delivering judgments of the merits of cases brought by litigants. Here the converse occurs, as litigants become the judges of judges, deciding if decisions are satisfactory or if they should take their business elsewhere.

We can see that law is not internationalizing formally into a single regime, but rather is changing under transnational influences. Abrupt, unofficial, ad hoc legal changes can introduce considerable difficulties of adaptation, however, into national legal systems that have developed laboriously over centuries, where they would need to make deep systemic changes in order to accommodate transatlantic importations, and to avoid losses in justice and in public confidence. As the face of law changes on the ground throughout the world, judges, lawyers and scholars are starting to meet in greater numbers with a view to unraveling the mysteries of how law is internationalizing without becoming a single international legal order. Paul Éluard, a French poet, believed that poets are those who know how to adapt to the earth’s surprises. In the era of globalization, this also has become the objective of many who seek to understand law today.

Vivian Curran is a member of the American Law Institute and of the International Academy of Comparative Law. She is the creator of Pitt Law School's innovative Languages for Lawyers program, in which students study foreign languages in a legal context, and of English for Lawyers, in which foreign lawyers study English in a legal context. She received a EUCE Faculty Research Grant last year for her comparative research of France and the United States.
Washington, D.C. Trip to Explore European Scholarly and Research Funding Opportunities

The Office of the Provost is delighted to sponsor a set of briefings on European scholarly and research programs to which non-European nationals can apply for support. Representatives of EU countries will discuss funding programs, sabbatical leave arrangements, and opportunities for academic partnership. Any of the University’s faculty members are welcome to attend. Attendees will leave Pittsburgh by bus on Sunday, April 19, 2009 at 1:00 p.m., and the day-long event will take place on Monday, April 20, 2009 in Washington, D.C. The Provost’s Office will cover the cost of the trip and provide for meals and transportation. Please contact Betsy Foster at bfoster@pitt.edu to register.

Note to EUCE/ESC Affiliated Faculty, Students, & Alumni:
Please keep us informed about your professional achievements pertaining to the study of the EU and Europe. Send news of awards offered, grants received, books recently published, job appointments accepted, etc., to the newsletter editor at eucnews@pitt.edu.

Call for Papers
Aleksanteri Conference 2009: Cold War Interactions Reconsidered
The 9th Aleksanteri Conference will take place at the University of Helsinki on October 29-31, 2009 and aims to challenge traditional analyses of the Cold War by looking at new ways to view and conceptualize the international and transnational histories of the Cold War era. Proposals for panels and abstracts for individual papers are due March 15, 2009. Please visit www.helsinki.fi/aleksanteri/conference2009/index.htm for more information.

EITM Europe Summer Institute 2009
Mannheim University’s Faculty of Social Sciences and the Mannheim Centre for European Social Research will conduct the Empirical Implications of Theoretical Models (EITM) Europe Summer Institute on the problems of testing theoretical models from a political-economic perspective. The institute will take place from June 29 to July 10, 2009 and is designed for advanced graduate students and junior faculty whose research and teaching would benefit from training seminars on the link between methods of empirical analysis and theoretical models. The application deadline is March 15, 2009. For more information, please visit eitm.sowi.uni-mannheim.de.

BIGSSS PhD and Post-Doctoral Fellowships
The Bremen International Graduate School of Social Sciences (BIGSSS) invites applications to its PhD and post-doctoral fellowship program. The program provides close supervision of dissertation work within a demand-tailored education and research framework. Successful applicants will pursue a topic in one of the following Thematic Fields: global integration; integration and diversity in the new Europe; social integration and the welfare state; attitude formation, value change, and intercultural communication; or life-course and lifespan dynamics. Applications are due by March 15, 2009. For more information and an application, please visit www.bigsss-bremen.de/index.php?id=954. Please address any questions to admissions_officer@bigsss_bremen.de.

EUC/ESC Newsletter:
Director: Professor Alberta Sbragia
Associate Director: Timothy Thompson
Editor: Julie Draper

For newsletter announcements, comments, or submissions, e-mail: eucnews@pitt.edu

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If you would like to be added to the EUCE/ESC newsletter's electronic distribution list, please email the Center at euce@pitt.edu. Include the subject line “Newsletter” and your name, address, and affiliation. You can also call us at 412-648-7405 or send a fax to 412-648-2199. In addition, the latest edition of the newsletter and a complete, updated list of events can always be found at our website: www.ucis.pitt.edu/euce/euce.html.

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- **February 17** - Pizza & Politics, Topic TBA. 12:00 noon, 4130 Posvar Hall.
- **February 25** - Roundtable Discussion: “Why the Violence?” 2:00-3:30 p.m., 4130 Posvar Hall.
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