

Selected Bibliography for:  
2016 *University of Pennsylvania Law Review* Symposium  
**1966 and All That: Class Actions and Their Alternatives After Fifty Years**

November 11-12, 2016 Philadelphia, PA

Organizing Faculty: Stephen Burbank, Jonah Gelbach, and Tobias Wolff

**Panel 1 - Class Action History**

Stephen B. Burbank, *The Class Action Fairness Act of 2005 in Historical Context: A Preliminary View*, 156 U. PA. L. REV. 1439 (2008). Available [here](#).

Stephen B. Burbank, *Pleading and the Dilemmas of Modern American Procedure*, 93 JUDICATURE 109 (2009). Available [here](#) (with PennKey login).

Stephen B. Burbank, *Pleading and the Dilemmas of "General Rules"*, 2009 WIS. L. REV. 535 (2009). Available [here](#) (with PennKey login).

Stephen B. Burbank & Sean Farhang, *Litigation Reform: An Institutional Approach*, 162 U. PA. L. REV. 1543 (2014). Available [here](#).

Stephen B. Burbank & Sean Farhang, *Federal Court Rulemaking and Litigation Reform: An Institutional Approach*, 15 NEV. L. J. 1559 (2015). Available [here](#).

Stephen B. Burbank & Sean Farhang, *The Subterranean Counterrevolution: The Supreme Court, the Media, and Litigation Retrenchment*, 65 DEPAUL L. REV. 293 (2016). Available [here](#).

David F. Engstrom, *Harnessing the Private Attorney General: Evidence from Qui Tam Litigation*, 112 COLUM. L. REV. 1244 (2012). Available [here](#).

David F. Engstrom, *Agencies as Litigation Gatekeepers*, 123 YALE L.J. 616 (2013). Available [here](#).

David F. Engstrom, *Private Enforcement's Pathways: Lessons from Qui Tam Litigation*, 114 COLUM. L. REV. 1913 (2014). Available [here](#).

Samuel Issacharoff, *Administering Damage Awards in Mass-Tort Litigation*, 10 REV. LITIG. 463 (1991). Available [here](#) (with PennKey login).

Samuel Issacharoff, *Class Action Conflicts*, 30 U.C. DAVIS L. REV. 805 (1997). Available [here](#) (with PennKey login).

Samuel Issacharoff, *Settled Expectations in a World of Unsettled Law: Choice of Law After the Class Action Fairness Act*, 106 COLUM. L. REV. 1839 (2006). Available [here](#).

Samuel Issacharoff, *Assembling Class Actions*, 90 WASH. U. L. REV. 699 (2013). Available [here](#).

David Marcus, *Erie, The Class Action Fairness Act and Some Federalism Implications of Diversity Jurisdiction*, 48 WM. & MARY L. REV. 1247 (2007). Available [here](#).

David Marcus, *From "Cases" to "Litigation" to "Contract": A Comment on Stability in Civil Procedure*, 56 ST. LOUIS U. L.J. 1231 (2012). Available [here](#).

David Marcus, *The History of the Modern Class Action, Part I: Sturm und Drang, 1953—1980*, 90 WASH. U. L. REV. 587 (2013). Available [here](#).

David Marcus, *The Public Interest Class Action*, 104 GEO. L. J. 777 (2016). Available [here](#).

Catherine Struve, *The Paradox of Delegation: Interpreting the Federal Rules of Civil Procedure*, 150 U. PA. L. REV. 1099 (2002). Available [here](#).

Catherine Struve, *Time and the Courts: What Deadlines and Their Treatment Tell Us about the Litigation System*, 59 DEPAUL L. REV. 601 (2009). Available [here](#) (with PennKey login).

### **Panel 2 - Contemporary Class Action Practice**

Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 STAN. L. REV. 497 (1991). Available [here](#) (with PennKey login).

Janet Cooper Alexander, *Contingent Fees and Class Actions*, 47 DEPAUL L. REV. 347 (1998). Available [here](#).

Maria Glover, *The Structural Role of Private Enforcement Mechanisms in Public Law*, 53 WM. & MARY L. REV. 1137 (2012). Available [here](#).

Maria Glover, *Mass Litigation Governance in the Post-Class Action Era: The Problems and Promise of Non-Removable State Actions in Multi-District Litigation*, 5 J. TORT L. 3 (2014). Available [here](#).

Deborah R. Hensler, *Science in the Court: Is There a Role for Alternative Dispute Resolution?*, 54 LAW & CONTEMP. PROBS. 171 (1991). Available [here](#).

Deborah R. Hensler, *Bringing Shutts into the Future: Rethinking Protection of Future Claimants in Mass Tort Class Actions*, 74 UMKC L. REV. 585 (2006). Available [here](#) (with PennKey login).

Judith Resnik, *From "Cases" to "Litigation"*, 54 LAW & CONTEMP. PROBS. 5 (1991). Available [here](#).

Judith Resnik, *Aggregation, Settlement, and Dismay*, 80 CORNELL L. REV. 918 (1995). Available [here](#).

Judith Resnik, *Lessons in Federalism from the 1960s Class Action Rule and the 2005 Class Action Fairness Act: "The Political Safeguards" of Aggregate Translocal Actions*, 156 U. PA. L. REV. 1929 (2008). Available [here](#).

Judith Resnik, *Compared to What? ALI Aggregation and the Shifting Contours of Due Process and of Lawyers' Powers*, 79 GEO. WASH. L. REV. 628 (2011). Available [here](#).

### **Panel 3 - Alternatives to Class Actions**

Andrew D. Bradt, *The Shortest Distance: Direct Filing and Choice of Law in Multidistrict Litigation*, 88 NOTRE DAME L. REV. 759 (2012). Available [here](#).

Andrew D. Bradt, *Resolving Intrastate Conflicts of Laws: The Example of the Federal Arbitration Act*, 92 WASH. U. L. REV. 603 (2015). Available [here](#).

Abbe R. Gluck, *The Federal Common Law of Statutory Interpretation: Erie for the Age of Statutes*, 54 WM. & MARY. L. REV. 753 (2013). Available [here](#).

Margaret H. Lemos, *Aggregate Litigation Goes Public: Representative Suits by State Attorneys General*, 126 HARV. L. REV. 486 (2012). Available [here](#).

Margaret H. Lemos, *Privatizing Public Litigation*, 104 GEO. L.J. 515 (2016). Available [here](#).

Edward H. Cooper, *Rule 23: Challenges to the Rulemaking Process*, 71 N.Y.U. L. REV. 13 (1996). Available [here](#).

Edward H. Cooper, *Aggregation and Settlement of Mass Torts*, 148 U. PA. L. REV. 1943 (2000). Available [here](#).

Troy A. McKenzie, *Toward a Bankruptcy Model for Nonclass Aggregate Litigation*, 87 N.Y.U. L. REV. 960 (2012). Available [here](#).

Troy A. McKenzie, *Bankruptcy and the Future of Aggregate Litigation: The Past as Prologue?*, 90 WASH. U. L. REV. 839 (2013). Available [here](#).

#### **Panel 4 - Cross-Cutting Issues**

Stephen B. Burbank, *International Civil Litigation in U.S. Courts: Becoming a Paper Tiger?*, 33 U. PA. J. INT'L L. 663 (2012). Available [here](#).

Stephen B. Burbank & Linda J. Silberman, *Civil Procedures Reform in Comparative Context: The United States of America*, 45 AM. J. COMP. L. 675 (1997). Available [here](#) (with PennKey login).

Robert G. Bone, *Rethinking the "Day in Court" Ideal and Nonparty Preclusion*, 67 N.Y.U. L. REV. 193 (1992). Available [here](#) (with PennKey login).

Robert G. Bone, *Rule 23 Redux: Empowering the Federal Class Action*, 14 REV. LITIG. 79 (1994). Available [here](#) (with PennKey login).

Robert G. Bone, *Agreeing to Fair Process: The Problem with Contractarian Theories of Procedural Fairness*, 83 B.U. L. REV. 485 (2003). Available [here](#) (with PennKey login).

Robert G. Bone, *Sorting through the Certification Muddle*, 63 VAND. L. REV. EN BANC 105 (2010). Available [here](#).

Robert G. Bone, *The Misguided Search for Class Unity*, 82 GEO. WASH. L. REV. 651 (2014). Available [here](#).

John C. Coffee, Jr., *Rethinking the Class Action: A Policy Primer on Reform*, 62 IND. L.J. 625 (1986/1987). Available [here](#).

John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 COLUM. L. REV. 1343 (1995). Available [here](#) (with PennKey login).

John C. Coffee, Jr., *Class Action Accountability: Reconciling Exit, Voice, and Loyalty, in Representative Litigation*, 100 COLUM. L. REV. 370 (2000). Available [here](#).

John C. Coffee, Jr., *Litigation Governance: Taking Accountability Seriously*, 110 COLUM. L. REV. 288 (2010). Available [here](#) (with PennKey login).

Marcel Kahan & Linda Silberman, *Matsushita and Beyond: The Role of State Courts in Class Actions Involving Exclusive Federal Claims*, 1996 SUP. CT. REV. 219 (1996). Available [here](#).

Tobias B. Wolff, *Preclusion in Class Action Litigation*, 105 COLUM. L. REV. 717 (2005). Available [here](#).

Tobias B. Wolff, *Federal Jurisdiction and Due Process in the Era of the Nationwide Class Action*, 156 U. PA. L. REV. 2035 (2008). Available [here](#).

Tobias B. Wolff, *Discretion in Class Certification*, 162 U. PA. L. REV. 1897 (2014). Available [here](#).

### **Final Panel - The Future of Class Actions and Their Alternatives**

Stephen B. Burbank & Tobias Barrington Wolff, *Redeeming the Missed Opportunities of Shady Grove*, 159 U. PA. L. REV. 17 (2010). Available [here](#).

Edward H. Cooper, *The (Cloudy) Future of Class Actions*, 40 ARIZ. L. REV. 923 (1998). Available [here](#).

Edward H. Cooper, *Class Action Advice in the Form of Questions*, 11 DUKE J. COMP. & INT'L L. 215 (2001). Available [here](#).

Deborah R. Hensler & Thomas D. Rowe, Jr., *Beyond "It Just Ain't Worth It": Alternative Strategies for Damage Class Action Reform*, 64 LAW & CONTEMP. PROBS. 137 (2001). Available [here](#).

Deborah R. Hensler, *Alternative Courts? Litigation-Induced Claims Resolution Facilities*, 57 STAN. L. REV. 1429 (2005). Available [here](#) (with PennKey login).

Richard L. Marcus, *They Can't Do That, Cant They? Tort Reform via Rule 23*, 80 CORNELL L. REV. 858 (1995). Available [here](#).

Richard L. Marcus, *Reassessing the Magnetic Pull of Megacases on Procedure*, 51 DEPAUL L. REV. 457 (2001). Available [here](#).

Richard L. Marcus, *Assessing CAFA's Stated Jurisdictional Policy*, 156 U. PA. L. REV. 1765 (2008). Available [here](#).

Richard Marcus, *Still Confronting the Consolidation Conundrum*, 88 NOTRE DAME L. REV. 557 (2012). Available [here](#).

Richard Marcus, *Bomb Throwing, Democratic Theory, and Basic Values – A New Path to Procedural Harmonization?*, 107 NW. U. L. REV. 475 (2013). Available [here](#).

Richard Marcus, *Bending in the Breeze: American Class Actions in the Twenty-First Century*, 65 DEPAUL L. REV. 497 (2016). Available [here](#).

Arthur R. Miller, *Of Frankenstein Monsters and Shining Knights: Myth, Reality, and the "Class Action Problem"*, 92 HARV. L. REV. 664 (1979). Available [here](#) (with PennKey login).

Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. REV. 286 (2013). Available [here](#).

Arthur R. Miller, *The Preservation and Rejuvenation of Aggregate Litigation: A Systemic Imperative*, 64 EMORY L.J. 293 (2014). Available [here](#).

Tobias B. Wolff, *Multiple Attempts at Class Certification*, 99 IOWA L. REV. BULL. 137 (2014). Available [here](#).