

# KATE KLONICK

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## EDUCATION

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**Yale Law School**, Ph.D. in Law, *expected* May 2018, New Haven, CT

**Georgetown University Law Center**, J.D., 2012, Washington, D.C.

*The Georgetown Law Journal*, Senior Online & Development Editor

*Ipsa Loquitur: The Georgetown Law Journal Online*, Managing and Founding Editor

Research Assistant to Prof. Jane Stromseth

**New York University School of Law**, Visiting student, September–December 2011, New York, N.Y.

Research Assistant to Prof. Vicki Been, *Furman Center for Real Estate and Urban Policy*

**Brown University**, A.B., Honors in Modern American History, 2006, Providence, R.I.

Demonstrated second major and selected graduate coursework in Cognitive Neuroscience

## WORK EXPERIENCE

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**Yale Law School, Information Society Project**, *Resident Fellow*, Sept. 2014–present, New Haven, CT

**Yale Law School, Cultural Cognition Project**, *Director of CCP Lab*, Sept. 2015–2017, New Haven, CT

**U.S. Court of Appeals, Second Circuit**, *Clerk to Hon. Richard Wesley*, Aug. 2013–Aug. 2014, Geneseo, N.Y.

**U.S. District Court, Eastern District of N.Y.**, *Clerk to Hon. Eric Vitaliano*, Jul. 2012–Aug. 2013, Brooklyn, N.Y.

**Venable, LLC**, *Summer Associate*, Summer 2011, Washington, D.C.

**Talking Points Memo**, *Investigative Reporter and Blogger*, May–December 2008, New York, N.Y.

**Merrill Lynch**, *Junior Speechwriter*, September 2007–May 2008, New York, N.Y.

**Esquire Magazine**, *Editorial*, January 2007–June 2007, New York, N.Y.

**ABCNews.com**, *Writer and Associate Producer*, 2006–2007, New York, N.Y.

## TEACHING INTERESTS

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*Primary Interests:* Property, Torts, Intellectual Property, Law & Social Science, Computers & Law

*Secondary Interests:* Communications Law, Constitutional Law, Evidence, Criminal Law & Procedure

## ACADEMIC PUBLICATIONS

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[The New Governors: The People, Rules, and Processes Governing Online Speech](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2937985), *forthcoming* HARV. L. REV. (2018).  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2937985](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2937985) (job talk paper)

Private online platforms are the New Governors of online speech. They have an increasingly essential role in free speech and participation in democratic culture. But while it might appear that any Internet user can publish freely and instantly online, many platforms actively curate the content posted by their users. How and why these platforms operate to moderate speech is largely opaque. This Article provides the first analysis of what these platforms are actually doing to moderate online speech both in terms of their substantive policy and through the procedural systems they developed. Drawing from original interviews,

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archived materials, and leaked documents, this Article not only describes how three major online platforms—Facebook, Twitter, and YouTube—moderate content, it situates their moderation systems into a broader discussion of online governance and the evolution of free expression values in the private sphere. It reveals that private content moderation systems create substantive policies that balance free speech norms, corporate responsibility, and the economic necessity to create an environment reflective of the expectations of its users. In order to accomplish this, platforms have procedurally developed a detailed system similar to common law regulation with recursively revised rules contingent on new and changing facts, trained human decision-making like judges, and reliance on a system of external influence. This Article argues that to best understand online speech, we must abandon traditional doctrinal and regulatory analogies, and understand these private content platforms as systems of governance operating outside the boundaries of the First Amendment. These platforms shape and allow participation in our new digital and democratic culture. They are the New Governors of online speech.

*Re-Shaming the Debate: Social Norms, Shame, and Regulation in and Internet Age*, 75 MD. L. REV. 1029 (2016). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2638693](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2638693)

Advances in technology communication have dramatically changed the ways in which social norm enforcement is used to constrain behavior. This is powerfully demonstrated through current events around online shaming and cyber-harassment. Low cost, anonymous, instant, and ubiquitous access to the Internet has removed most—if not all—of the natural checks on shaming. This article ties together the current conversation around online shaming and cyber-bullying and cyber-harassment with the larger legal discussion around social norms and shaming sanctions. It argues that the introduction of the Internet has altered the social conditions in which people speak and, thus, changed the way we perceive and enforce social norms. Accordingly, online shaming is (1) a punishment with indeterminate social meaning; (2) not a calibrated or measured form of punishment; and (3) of little or questionable accuracy in who and what it punishes. In thus reframing the problem, this Article looks at the viability of the legal, normative, private, and State solutions to controlling online shaming. It argues that looking only to State regulation will be an inefficient and ineffective solution. Instead, it proposes using the realizations from the shame debate, successful uses of online norm enforcement, and private remedies to inform the debate around State intervention.

*Comparing Apples to Applejacks: Cognitive Science Concepts of Similarity Judgment and Derivative Works*, 60 J. COPYRIGHT SOC'Y U.S.A. 365 (Spring 2013). <http://ssrn.com/abstract=2442392>

Perhaps more than any other area of law, copyright law is grounded in the subjectivities of human perception. This is especially true in regard to derivative works, where courts and legislatures have long struggled to create laws and tests that outline qualities and categories for determining similarity between original and derivative material. The issue of how to create reliable strictures to judge something as subjective as similarity is not, however, unique to the law. Cognitive scientists have asked the same question for decades, creating various models to explain how people prioritize, categorize, and judge features in determining similarity between two or more objects or ideas. This article examines the doctrine surrounding the derivative works right and transformation factor under the fair use test; provides a brief history and summary of cognitive science and psychology's ideas about human perception of generalization, similarity, and categorization; and analyzes the derivative works and fair use doctrine with the insight of cognitive psychology. This Article's analysis suggests possible improvements to judicial frameworks, and explores future applications for cognitive psychology in copyright laws and ways in which attorneys might use such biases to their advantage.

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Note, [\*Not in My Atlantic Yards: Examining Netroots' Role in Eminent Domain Reform\*](#), 100 GEO. L.J. 263 (2011). <http://ssrn.com/abstract=2442347>

Following the Supreme Court's decision in *Kelo v. City of New London*, which expanded the state's power to condemn private property and transfer it to other private owners under the Fifth Amendment, there have been significant calls to curb the power of eminent domain through statutory reform. Those in favor of such reform argue such legislation is needed to protect private property rights against rising state power, while those opposed argue that empowering the public in land use decisions slows development and, ultimately, economic progress. This Note argues that incorporating public approval need not come at the cost of expediency. Rather, using the Atlantic Yards project in Brooklyn as a case study, this Note demonstrates that advances in technology provide the opportunity for increased community connectivity, involvement and transparency—which can then be used to streamline the public-hearing process. Using the lessons of netroots, the insights of e-Rulemaking, and the classic public hearing model of land use, this Note outlines a new solution to the classic tension between developers and landowners. Thus, a public empowered by statutory reform can couple with Internet political activism to create a new and more efficient approach to traditionally ineffective public forums at little-to-no cost to continued land and real estate development.

## OTHER PUBLICATIONS

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[\*Facebook, Free Expression and the Power of a Leak\*](#), N.Y. TIMES OP-ED (June 27, 2017) with Margot Kaminski

[\*The Most Important Lesson From the Leaked Facebook Content Moderation Documents\*](#), SLATE (Jun. 29, 2017)

[\*Here's What It Would Take for Twitter to Get Serious About Its Harassment Problem\*](#), VOX (Oct. 25, 2016)

[\*Facebook Under Pressure\*](#), SLATE (Sept. 12, 2016)

[\*You'll Never Guess This One Crazy Thing Governs Online Speech\*](#), SLATE (Aug. 24, 2016)

[\*A New Taxonomy for Online Harms\*](#), B.U. L. REV. ANNEX (Nov. 3, 2015)

[\*The Science of Blame: Why We Respond to Tragedies All Wrong\*](#), VOX (Apr. 14, 2015)

[\*Stingrays: Not Just for Feds!\*](#), SLATE (Nov. 10, 2014)

## PRESENTATIONS & CONFERENCES

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Fellows Workshop, Georgetown University Law Center, August 2017, *Presenter*.

Small Group Session, Data & Society, August 2017, *Presenter*.

Faculty Talk, University of Arizona Law School, April 2017, *Presenter*.

Robot Salon, GoogleX, April 2017, *Salon Participant*.

We Robot 2017, Yale Law School, March 2017, *Chair*.

Faculty Talk, Brown University, Cognitive Science and Psychology Dept., March 2017, *Presenter*.

Freedom of Expression Scholars Conference, Yale Law School, May 2016, *Presenter*.

Nebrooklyn Junior Scholars Conference, Nebraska Law School, March 2016, *Presenter*.

Internet Law Works In Progress, New York Law School, February 2016, *Presenter*.

The Future of Artificial Intelligence, New York University, January 2016, *Panel Moderator*.

Freedom of Expression Scholars Conference, Yale Law School, May 2015, *Discussant*.

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Beyond IP 2, Yale Law School, March 2015, *Commentator*.

Works In Progress Intellectual Property, U.S. Patent Trade Office, February 2015, *Presenter*.

## MEDIA

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Kelsey Atherton, [Facebook can't solve its hate speech problem with automation](#), POP. SCI. (Jul. 7, 2017) (discussing how automation can be used to resolve problems with hate speech).

Emma Ellis, [Filtering your world is understandable but it's not helpful](#), WIRED (Jul. 5, 2017) (discussing the psychological role of media echo-chambers and self-selected content).

Kelsey Atherton, [Facebook is hiring 3000 new content monitors for a job AI cannot do](#), POP. SCI. (May 4, 2017) (discussing the problems of using AI for content moderation).

David Boroff, [Facebook adding 3,000 people to review videos of crimes, suicides posted online: 'We need to respond quickly'](#), N.Y. DAILY NEWS (May 3, 2017) (discussing Facebook's new addition of human moderators).

Deepa Seetharaman, [After Posting of Violent Videos, Facebook Will Add 3,000 Content Monitors](#), WALL ST. JOURNAL (May 3, 2017) (discussing history and context of Facebook's new moderators).

[How online campaigning is influencing Britain's election](#), ECONOMIST (May 27, 2017) (discussing the psychological role of fake news and social media echo-chambers on election results and voting).

Michael Farrell, [After 'Facebook killing,' social media confronts its dark side](#), CHRISTIAN SCI. MONITOR (Apr. 20, 2017) (discussing the posting of the Cleveland murder and the implications for free speech and censorship).

Martin Kaste, [Groups Worry About Impact of Police Moves To Block Social Media](#), NPR: MORNING EDITION (Aug. 30, 2016) (radio guest discussing the right to Internet access).

Liam Stack, [No, Google Says, It Did Not Delete 'Palestine' From Its Maps](#), N.Y. TIMES (Aug. 11, 2016) (discussing the effects of online shaming over false reports).

Tom Ashbrook, [On Point](#), NATIONAL PUBLIC RADIO (June 23, 2016) (radio guest discussing online shaming).

Alex Speirs, [Ghost in the Machine: AI, Law, Ethics—What Does It Mean For You?](#), GENERAL COUNSEL MAGAZINE (Summer 2016) (discussing robotics and artificial intelligence and the law).

Josh Brustein and Jing Cao, [Did Nintendo Fire an Employee to Appease a Gamergate Mob?](#), BLOOMBERG (Apr. 4, 2016) (discussing online shaming and real-world legal ramifications).

Karishma Mehrotra, [Popular herbal remedy at center of trademark fight](#), BOS. GLOBE (June 16, 2015) (discussing genericide defense and trademark generally).

Callum Borchers, [Periscope, Meerkat threaten teams' hold on video feeds](#), BOS. GLOBE (May 18, 2015) (discussing copyright distribution issues of new streaming services).

## BAR MEMBERSHIP

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New York State

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