

EMILY KADENS

Northwestern University Pritzker School of Law
375 E. Chicago Ave.
Chicago, IL 60611
312-503-1838

kadens@law.northwestern.edu

Web profile: <http://www.law.northwestern.edu/faculty/profiles/EmilyKadens/>
SSRN: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=602739

EMPLOYMENT

Cornell Law School, August–December 2021.

- Visiting Professor of Law.

Northwestern University Pritzker School of Law, January 2013–present.

- Professor of Law, January 2013–present.
- Visiting Professor of Law, September 2012–December 2012.

Georgetown University Law Center, August 2011–December 2011.

- Visiting Professor of Law.

University of Texas School of Law, August 2005–December 2012.

- Baker and Botts Professor in Law, September 2010–December 2012.
- Assistant Professor, August 2005–August 2010.

Law Clerk, Chief Judge Danny J. Boggs, Sixth Circuit Court of Appeals, August 2004–August 2005.

Lecturer, University of Chicago, Winter Quarter 2004.

- Designed and taught undergraduate course, “Prosecuting Crime: From Torture to Due Process” in the Department of Law, Letters, and Society.

Summer Associate, White & Case LLP, Washington, D.C., Summer 2003.

Lecturer, University of Chicago, Spring Quarter 2003.

- Designed and taught undergraduate seminar, “The Foundations of the Western Legal Tradition, 500-1500” in the Department of Law, Letters, and Society.

Lecturer, University of Toledo Community and Technical College, Toledo, Ohio, 1993–1994.

- Taught American and World literature in the Department of General Studies.

EDUCATION

University of Chicago Law School, 2001–2004.

J.D. with honors, 2004.

Research Assistant to Professor David Currie.

Casper Platt Award for best student paper

Ann Watson Barber Outstanding Service Award

Princeton University, 1995–2001.

Ph.D. in History, 2001.

Dissertation: *The Vernacular in a Latin World: Changing the Language of Record in Thirteenth-Century Flanders*.

M.A. in History, 1997. General Examinations passed with distinction.

Université Catholique de Louvain-la-Neuve, Belgium, 1994–1995.

Diplôme d'études médiévales, avec la plus grande distinction.

University of Chicago, 1988–1993.

M.A. in General Studies in the Humanities, 1993.

B.A. in General Studies in the Humanities, with College honors, 1992.

- Phi Beta Kappa, elected June 1991.

SELECTED PUBLICATIONS

A Marine Insurance Fraud in the Star Chamber, in *STAR CHAMBER MATTERS: THE COURT AND ITS RECORDS 155–174* (K.J. Kesselring & Natalie Mears, eds., 2021).

New Light on Twyne's Case, 94 *AMERICAN BANKRUPTCY LAW JOURNAL* 1–84 (2020).

Cheating Pays, 119 *COLUMBIA LAW REVIEW* 527–589 (2019) (honorable mention for the 2020 Sutherland Prize).

Cheating Pays, invited blog post on the Oxford Business Law Blog, October 15, 2019, <https://www.law.ox.ac.uk/business-law-blog/blog/2019/10/cheating-pays>.

Reviewed on Jotwell.com: <https://contracts.jotwell.com/enjoy-the-little-things/>.

The Dark Side of Reputation, 40 *CARDOZO LAW REVIEW* 1995–2027 (2019).

The Dark Side of Reputation, invited blog post on the Oxford Business Law Blog, October 8, 2019, <https://www.law.ox.ac.uk/business-law-blog/blog/2019/10/dark-side-reputation>.

Convergence and the Colonization of Custom in Pre-modern Europe, in *COMPARATIVE LEGAL HISTORY* 167–185 (Olivier Moreteau & Kjell Modeer, eds., 2019).

The Admiralty Jurisdiction of the Court of Requests, in *TEXTS AND CONTEXTS IN LEGAL HISTORY: ESSAYS IN HONOR OF CHARLES DONAHUE* 349–366 (John Witte, Jr., Sara McDougall & Anna di Robilant, eds., 2016).

Custom's Past, in Curtis Bradley, ed., *CUSTOM'S FUTURE: INTERNATIONAL LAW IN A CHANGING WORLD* 11–33 (Cambridge 2016).

The Law Merchant: The Tyranny of a Construct, 7 *JOURNAL OF LEGAL ANALYSIS* 251–289 (2015).

Pre-modern Credit Networks and the Limits of Reputation, 100 *IOWA LAW REVIEW* 2429–2455 (2015).

What Kept Pre-modern Credit Networks Afloat?, invited blog post on the CLS Blue Sky Blog, Oct. 22, 2015, <http://clsbluesky.law.columbia.edu/2015/10/22/what-kept-pre-modern-credit-networks-afloat>).

Introduction: Lessons from the History of Custom, 48 *TEXAS INTERNATIONAL LAW JOURNAL* 349–355 (2013).

- Custom's Two Bodies*, in CENTER AND PERIPHERY: STUDIES ON POWER IN THE MEDIEVAL WORLD IN HONOR OF WILLIAM CHESTER JORDAN 239–248 (Katherine L. Jansen, G. Geltner & Anne E. Lester eds., 2013).
- How Customary is Customary International Law?*, 54 WILLIAM & MARY LAW REVIEW 885–920 (2013) (with Ernest A. Young).
- The Myth of the Customary Law Merchant*, 90 TEXAS LAW REVIEW 1153–1206 (2012).
- The Pitkin Affair: A Study of Fraud in Early English Bankruptcy*, 84 AMERICAN BANKRUPTCY LAW JOURNAL 483–570 (2010) (awarded ABLJ 2011 Editors' Prize).
- Book Review, *The Medieval Origin of the Legal Profession: Canonists, Civilians, and Courts* by James A. Brundage, 60 JOURNAL OF LEGAL EDUCATION 84 (2010).
- The Last Bankrupt Hanged: Balancing Incentives in the Development of Bankruptcy Law*, 59 DUKE LAW JOURNAL 1229–1319 (2010).
- The Puzzle of Judicial Education: The Case of Chief Justice William de Grey*, 75 BROOKLYN LAW REVIEW 143–200 (2009) (awarded 2010 Sutherland Prize).
- Justice Blackstone's Common Law Orthodoxy*, 103 NORTHWESTERN LAW REVIEW 1553–1605 (2009).
- Book Review, *A Revolution in Commerce: The Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* by Amalia Kessler, 50 AMERICAN JOURNAL OF COMPARATIVE LAW 101 (2009).
- Book Review, *On Common Laws*, by H. Patrick Glenn, 26 LAW AND HISTORY REVIEW 190 (2008).
- Kaufmännisches Gewohnheitsrecht und das Französische Handelsgesetzbuch von 1673* (Merchant custom and the French Code of Commerce of 1673), AKTEN DES 36. DEUTSCHEN RECHTSHISTORIKERTAGES 260–279 (Rolf Lieberwirth & Heiner Lück, eds. 2008).
- Legal Memory: Learning the Law in 17th-Century Germany*, UT LAW MAGAZINE 10 (Fall 2007).
- The More Things Change*, UT LAW MAGAZINE 24 (Winter 2005).
- Can dictamen help date the documentary language switch? The case of the 13th-century Franc of Bruges* 121–144, in, IN PRINCIPIO ERAT VERBUM (B-M. Tock, ed., 2005).
- President Polk on Internal Improvements* 8 GREEN BAG 75 (2004) (with David Currie).
- Order Within Law, Variety Within Custom: The Character of the Medieval Merchant Law*, 5 CHICAGO JOURNAL OF INTERNATIONAL LAW 39–65 (2004).
- Fifteen entries ranging in length from 500 to 2000 words in ADDENDUM TO THE DICTIONARY OF THE MIDDLE AGES (Scribner 2004). Entries include “Calumny Oath,” “Capital Punishment,” “Diplomatics,” “Libri feudorum,” and “Middle Ages.”
- De invoering van de volkstaal in ambtelijke teksten in Vlaanderen: een status quaestionis* (“The introduction of the vernacular in documents of use in Flanders: a state of the question”), 14 MILLENNIUM: TIJDSCHRIFT VOOR MIDDELEEUWSE STUDIES 22–41 (2000).
- Vreemde woorden in een vreemde taal. Volkstaalwoorden in Latijnse documenten uit Vlaanderen vóór 1250* (“Foreign words in a foreign language. Vernacular words in Latin documents from Flanders before 1250”), 12 TAAL EN TONGVAL, themanummer 35–54 (1999).

WORKS IN PROGRESS

The Dark Side of Commerce: Trust, Reputation, and Fraud in Early Modern England—book-length study of the history of commercial fraud.

Lopes v. Chandelor and the Law of Deceit—article examining the unknown Chancery suit behind the famous case believed to underpin the modern law of implied warranties.

LECTURES AND CONFERENCES

Podcast on *Twyne's Case*, Planet Lex, August 19, 2020, <http://planetlex.libsyn.com/2020/08>.

“The Dark Side of Commerce.”

- Presented at the Oxford University Legal History Forum, November 30, 2020; and the Law and History Workshop, Tel Aviv University School of Law, December 17, 2020.

“New Light on *Twyne's Case*.” Presented at the Georgetown University Law Center Legal History Colloquium, October 25, 2019.

Commentator on Christian Burset, “Relativizing the Rule of Law in the Eighteenth-Century British Empire,” at the Chicagoland Junior Scholars Conference, Loyola Law School, Chicago, September 27, 2019.

“Closure, Not Custom.” Presented at the 11th Transnational Commercial Law Teachers’ Meeting and Conference, London, England, September 12, 2019.

Podcast on Reputation and Cheating, on the Business Scholarship Podcast, August 28, 2019, <https://andrewkjennings.com/2019/08/28/emily-kadens-on-reputation-and-cheating/>.

“Commercial History in the Star Chamber Archives.” Presented at the Court of Star Chamber and Its Records Conference, Durham University, Durham England, July 9, 2019.

“Cheating Pays.” Presented at Fourth Workshop on Relational Contracting, University of Chicago, September 14, 2018.

“How Important Is Reputation to Commerce? Evidence from Early English Bankruptcy Bustouts.” Presented at the *Texas Law Review* Symposium “Bankruptcy’s Universal Pragmatist: A Celebration of the Work of Jay Lawrence Westbrook,” February 3, 2018.

Commentator on papers presented on panel “Merchants, Institutions, and Legal Changes in the Medieval World.” American Society of Legal Historians, October 28, 2017.

“Trading on Reputation: Trust and Cheating in Seventeenth-Century London.” Presented at the Law, Entrepreneurship, and Innovation Colloquium, Brigham Young University Law School, March 20, 2017.

Panelist, “Public and Private Order in Historical and Comparative Perspective,” Society for Institutional and Organizational Economics, Paris, France, June 17, 2016.

Instructor on Medieval Commercial Law, at the Autumn School at the Henri Pirenne Institute for Medieval Studies at Ghent University, Belgium, October 21, 2015.

“Pre-modern Credit Networks and the Limits of Private Ordering.” Presented at the conference “Spontaneous Order and Emergence of New Systems of Property,” New York University Law School, November 15, 2014.

- “The Thousand Year Crisis of Custom.” Discussed at the conference “Custom in Crisis,” Duke University Law School, October 31, 2014.
- “An Intellectual History of Custom.” Presented at the Catholic University of Leuven Belgium, October 2, 2014.
- “The Law Merchant: The Tyranny of a Construct.” Keynote address presented at the “Private Ordering Conference,” Said Business School, University of Oxford, August 31, 2014.
- “Convergence and the Colonization of Custom in Pre-modern Europe.” Presented William and Mary Law School, February 6, 2014.
- “Procedure and the Taming of Custom.” Presented at the conference “Comparative Legal History: Methodology & Legal Sources, Institutions & Codifications,” Lund, Sweden, August 2013.
- “Proving Custom.” Presented at the workshop “Process, Procedure, and the Making of the Western Legal Tradition” at the University of Wisconsin Law School, April 15, 2013.
- “Custom in the Courts.” Presented at George Washington University Law School, March 21, 2013.
- “The Continuing Problem of Custom.” Presented at the American Bar Foundation, November 7, 2012.
- “The Continuing Problem of Custom: From the Medieval Jurists to International Law.” Presented at the Boston College Law School Legal History Roundtable, October 11, 2012.
- “The Use and Abuse of Custom in Pre-modern Europe.” Presented at the conference “Is There a Role for Custom in Modern European Legal Systems,” held at the University of Texas School of Law, April 14, 2012.
- “Customary International Law: the Tyranny of a Construct.” Presented at William and Mary Law Review Symposium (with Ernest Young, Duke Law School), Williamsburg, Virginia, February 25, 2012.
- “The Myth of the Customary Law Merchant.”
- Presented at the Faculty Colloquium, Duke University Law School, Durham North Carolina, September 2, 2011; Legal History Workshop, University of Iowa College of Law, Iowa City, Iowa, October 10, 2011; Northwestern University Law School, Faculty Colloquium, October 26, 2011; Georgetown University Law Center, Faculty Workshop, November 3, 2011.
- “The Myth of Spontaneous Law.”
- Presented at the Legal Theory Workshop, Columbia University Law School, New York, New York, February 15, 2011; Legal History Colloquium, University of Virginia School of Law, Charlottesville, Virginia, November 22, 2010; Faculty Speaker Series, Tulsa University College of Law, Tulsa, Oklahoma, October 22, 2010.
- “The Early History of English Bankruptcy.” Presented at the Duke Law and History Society, Duke Law School, Durham, North Carolina, January 13, 2010.
- “The Myth of Spontaneous Law.” Presented at the American Society of Legal History, Dallas, Texas, November 13, 2009.
- “The Last Bankrupt Hanged: Capital Punishment for Bankruptcy in 18th-Century England.” Presented at the University of Texas School of Law Faculty Colloquium, September 11, 2009 (Douglas Baird, University of Chicago Law School, commentator).

- “The Difficult Birth of Modern Bankruptcy Law.” Presented at the Case Western Reserve Law School Legal Theory Colloquium, Cleveland, Ohio, April 20, 2009.
- Commentator at the “Conference on Comparative Medieval Law,” Chicago, Illinois, October 2, 2008.
- “Merchants, Kings, and the Codification of Commercial Law.” Presented at the “American Law & Economics Association Annual Meeting,” New York, New York, May 17, 2008.
- “Blackstone Reading (and Writing) Contract Law.” Presented at the conference: “To Collect the Minds of the Law,” Lund, Sweden, June 21, 2007.
- “Blackstone the Comparativist.” Presented at the University of Oxford, Legal History Section, Oxford, England, May 1, 2007.
- “A Bankruptcy in 17th-Century France.” Presented at the “Commercial Realities Conference,” Austin, Texas, April 13, 2007.
- “Merchant Custom and the French Commercial Code of 1673.” Presented at the University of Pennsylvania Law School, Philadelphia, Pennsylvania, February 26, 2007.
- “Merchant Custom and the French Commercial Code of 1673.” Presented at Northwestern University Law School, Chicago, Illinois, February 27, 2007.
- “Die Kodifikation kaufmännischer Usancen in der Ordonnance de Commerce Ludwigs XIV.” Presented at the Thirty-sixth Deutscher Rechtshistorikertag, Halle, Germany, September 11, 2006.
- “The Relationship between code and custom in early modern commercial law.” Presented at the American Society of Legal Historians convention, Cincinnati, Ohio, November 12, 2005.
- “Custom and control: redefining the historical law merchant.” Presented at the conference: “The Empirical and Theoretical Underpinnings of the Law Merchant” at the University of Chicago Law School, October 16-17, 2003.
- “The vernacular in a Latin world: the mysterious demise of the Latin monopoly on writing documents in 13th-century Flanders.” Presented at the University of Chicago Medieval Workshop, October 31, 2001.
- “What handwriting tells us about documentary language use.” Presented at the American Bar Foundation, Chicago, Illinois, November 1, 2000.
- “Latin, French, and Flemish in Thirteenth-Century Flanders.” Presented at the international conference: “The Dawn of the Written Vernacular in Western Europe,” at the University of Leuven, Belgium, May 18-20, 2000.
- “What is so natural about writing documents in the vernacular?” Presented at the Vlaamse Werkgroep Mediëvistiek, University of Ghent, Belgium, April 23, 1999.

INVITED NON-ACADEMIC LECTURES

- “Trust, Commercial Cheating and Morality from an Historical Perspective.” Presented at Lake Shore Unitarian Society, Winnetka, Illinois, March 4, 2018.
- “Books for Learning the Law, 1200-1700.” Presented at the Caxton Club, Chicago, Illinois, December 9, 2016.
- “Law’s Story: The Development of Law and Lawyers As Revealed Through Early Law Books.” Presented at George Washington University Law School, February 12, 2013.

“The Law Through the Book.” Public lecture at the “International Summit of the Book” held at the Library of Congress, Washington, D.C., December 6, 2012. Available at (starting at 3:01:00): http://www.loc.gov/today/cyberlc/feature_wdesc.php?rec=5666.

“The Continuing Problem of Custom: From the Medieval Jurists to the Supreme Court.” Kluge Fellowship public lecture at the Library of Congress, Washington, D.C., July 19, 2012. Available at: http://www.loc.gov/today/cyberlc/feature_wdesc.php?rec=5621.

“Looking at the Law Through the Lens of Rare Books.” James Madison Council Spring Meeting (major donor council at the Library of Congress), April 18, 2012.

- Also presented versions of this talk to federal judges on December 1, 2011 and May 31, 2012; and to the staff of the Law Library of Congress on July 11, 2012.

“The Origins of Modern Bankruptcy.” Presented at the Federal Judicial Center Bankruptcy Judge Conferences, March 22, 2011 in Charlotte, North Carolina, and August 3, 2011, Portland, Oregon.

“The Last Bankrupt Hanged: Bankruptcy Procedure in 18th-Century England.” Presented at the “Jay L. Westbrook Bankruptcy Conference,” Austin, Texas, November 16, 2007.

HONORS AND FELLOWSHIPS

Fellowship, Institute for Advanced Studies, Historical School, Princeton, NJ, January–July 2022.

*Sutherland Prize, honorable mention, 2020. Received for *Cheating Pays*, 199 COLUMBIA LAW REVIEW 527 (2019).*

Student Bar Association Faculty Appreciation Award, 2017-2018, Northwestern School of Law.

Outstanding First Year Course Professor, 2012-2013, 2018-2019, Northwestern School of Law.

Richard & Diane Cummins Legal History Research Grant, January 2013-March 2013. Residential research fellowship given by the Jacob Burns Law Library at the George Washington University Law School.

Kluge Fellowship, January 2012-August 2012. Resident research fellowship given by the Library of Congress.

*Editors’ Prize, 2011. Given annually by the American Bankruptcy Law Journal Editorial Advisory Board to an author who has demonstrated special excellence in an article published in that journal. Received for *The Pitkin Affair: A Study of Fraud in Early English Bankruptcy*, 84 AMERICAN BANKRUPTCY LAW JOURNAL 483 (2010).*

*Sutherland Prize, 2010. Given annually by the American Society of Legal Historians for the best paper in English legal history. Received for *The Puzzle of Judicial Education*, 75 BROOKLYN LAW REVIEW 143 (2009).*

Casper Platt Award, 2004. Awarded annually by the University of Chicago Law School for the outstanding paper written by a law student.

Ann Watson Barber Outstanding Service Award, 2004. Given annually by the University of Chicago Law School to a third-year student who has made an exceptional contribution to the quality of life at the Law School.

American Bar Foundation post-doctoral fellow, Chicago, Illinois, October 2000-September 2001.

Flemish Community Grant for research in Flanders, Belgium in affiliation with the Universities of Ghent and Antwerp, academic year 1999-2000.

Belgian American Educational Foundation Grant for research in Belgium in affiliation with the University of Antwerp, 1999.

Fulbright Scholarship for research in Belgium in affiliation with the University of Leuven, academic year 1998-1999.

Rotary Foundation Ambassadorial Scholarship for research in The Netherlands, in affiliation with the University of Leiden, academic year 1997-1998.

RESEARCH INTERESTS

European legal history, with a focus on the history of commercial law, especially bankruptcy, commercial fraud, and credit, and on custom and the conflict between the learned and the customary laws.

COURSES TAUGHT

Contracts

Torts

Contracts II: Complex Commercial Contracting

Western Legal Tradition (European legal history)

English Legal History

Roman Law

Legal History Workshop

Blackstone

Appellate Clerkship Writing

INSTITUTIONAL AND PROFESSIONAL SERVICE

Manuscript reviewer

- *American Journal of Legal History*; Cambridge University Press; *Economic History Review*; Edinburgh University Press; *Enterprise & Society*; *Harvard Law Review*; *Law & History Review*; *NYU Law Review*; *Rechtsgeschichte*, Routledge Law.

Grant proposal reviewer

- European Research Council Consolidator Grant; Francqui Research Professorship, Francqui Foundation, Belgium; Nederlandse Organisatie voor Wetenschappelijk Onderzoek, The Netherlands.

Professional service

- Elected to the American Law Institute, 2019
- Member, Editorial Board, *American Journal of Legal History*, 2016–present
- Program Committee, American Society of Legal Historians, 2018
- Board Member, AALS Section on Commercial Law, 2009-2014
- Executive Committee, Order of the Coif, 2012–2015
- Assisted with training alumni entering the academic job market: participated in leading workshops held by the University of Chicago, the Federalist Society, and the Library of Congress (for outgoing Supreme Court clerks)

Faculty service

- Member, Climate Survey Committee, 2020–2021
- Member, Faculty Advisory Committee, 2013-2015, 2018-2020
- Northwestern Alumni presentation, Zurich, Switzerland, August 3, 2017
- Chair, Curriculum Committee, Northwestern University School of Law, 2016-2018; Member, 2015-2016
- Co-Chair, Workshop Committee, Northwestern University School of Law, 2015-2016
- Big Ten Consortium, Academic Leadership Fellow, 2014-2015
- Co-Organizer, Faculty Projects Day, Northwestern University School of Law, 2014, 2015
- Co-Chair, Student Life Working Group, Northwestern University School of Law, 2013–2014.
- Member, Clerkship Director Search Committee, Northwestern University School of Law, 2013
- Chair, Library Director Search Committee, Northwestern University School of Law, 2013
- Regularly teach model classes for admitted student days
- Regularly organize faculty research presentations (“Prof Talks”) and mock classes for Northwestern University School of Law Orientation week.
- Lectures on rare books presented to Northwestern alumni clubs in DC in February 2013, and Detroit and Milwaukee in April 2014, and at Alumni Reunions in 2013 and 2014
- Judicial Clerkship Advisor, University of Texas School of Law, 2006-2012; Northwestern University School of Law, 2013-2018
- Chair, ad hoc committee to revise the course schedule and grading system at the University of Texas School of Law, 2012
- Regularly delivered 1L Orientation and Skills-Sequence lectures on case briefing and legal analysis at University of Texas School of Law.
- Regularly hosted reception for older 1Ls during Orientation at University of Texas School of Law.
- Lecture on the history of law to alumni and community groups

LANGUAGES

Strong speaking and reading ability in French and Dutch.

Reading competence in German, Italian, and Latin.

BAR MEMBERSHIPS

Illinois; United States Court of Appeals for the Sixth Circuit.