

PROMOTION RECOMMENDATION
The University of Michigan
Law School

Gabriel S. Mendlow, assistant professor of law, Law School, is recommended for promotion to professor of law, with tenure, Law School.

Academic Degrees:

J.D.	2011	Yale Law School, New Haven, CT
Ph.D., M.A.	2008	Princeton University, Philosophy, Princeton, NJ
A.B.	2001	Harvard University, Social Studies, Cambridge, MA

Professional Record

2013-Present	Assistant Professor, Law School, University of Michigan
2013-2015	Special Assistant United States Attorney, United States Attorney's Office for the Eastern District of Michigan, General Crimes Unit (part time)
2012-2013	Special Assistant United States Attorney, United States Attorney's Office for the Eastern District of Michigan, General Crimes Unit
2011-2012	Law Clerk, Hon. Richard N. Palmer, Connecticut Supreme Court
2008-2010	Post-doctoral Associate and Law and Philosophy Fellow, Yale Law School and Yale University Department of Philosophy

Summary of Evaluation

Teaching: Professor Mendlow has taught Criminal Law, Criminal Theory and Torts at the Law School. These three course offerings range across large attendance first year mandatory law classes to smaller seminar type offerings. He has also taught a graduate level Seminar in Ethics at the Philosophy Department. Professor Mendlow has been a successful and well-regarded teacher, with exceptionally strong teaching evaluations. In their evaluations and in interviews, students use words like "phenomenal," "fantastic," "outstanding," "thought-provoking," "rigorous," "passionate," and "captivating" to describe Professor Mendlow's teaching and the classes he leads. Law School colleagues who have witnessed his teaching use the same kind of adjectives, and commend Professor Mendlow for his ability to engage his students over difficult doctrinal issues (and distinctions) and highly abstract questions. Because Professor Mendlow teaches in the area of substantive criminal law, where sensitive issues arise (e.g., rape, hate crimes, speech, etc.), he is universally praised for his sensitivity in setting up class discussion on such issues, and enabling and guiding student participation in those classes. In sum, Professor Mendlow is already one of the best teachers in the Law School, even as he teaches in an area assuredly at the center of any legal and governance system, but that is complex, occasionally abstract, and sometimes off-putting.

Research: Professor Mendlow's scholarship addresses two separate but not unrelated lines of inquiry. Two of his already-published works address questions of moral philosophy or moral psychology, specifically questions of temptation and weakness of will. These works are not primarily directed at legal scholars, but instead at traditional moral philosophers. The remainder of his scholarship pertains to criminal law philosophy and criminal law theory, focusing on what Professor Mendlow calls the "intentional object" of punishment. This work progresses through a

relatively unified inquiry, as follows: Starting from the simple idea that criminal punishment has an intentional object, he demonstrates how difficult it can be to identify that object, and then proceeds to consider what exactly counts as an appropriate or proper object for criminal punishment. His more specific focus in two of these articles—including *Why Is It Wrong to Punish Thought?* forthcoming in the *Yale Law Journal*—is the question of whether thoughts, as opposed to actions, are a proper object for punishment. Overall, Professor Mendlow’s scholarship is of a very high quality, beautifully and clearly written, and persuasively argued, and constitutes substantial and highly original contributions to criminal law theory. Professor Mendlow has a particular ability to deal surely with a mass of legal and philosophical material (including the intricacies of common law criminal law and criminal procedure doctrine), to look beneath the surfaces of articulated statutes, case opinions or doctrines to discover deeper patterns of thought, logic and underlying normative structures, all as a way to render sophisticated critiques and offer innovative and thought-provoking responses. He is adept at teasing out tacitly assumed habits (never described openly as doctrine) thought to operate in the criminal law, forcefully and persuasively distinguishing assumed principles that are conflated or illogical when revealed, and then insightfully offering original ideas or theoretical hypotheses as to what doctrines are in fact operating, and how. He does all of this in areas of enormous contemporary significance, such as thought crimes, conspiracy prosecutions, attempt liability, the First Amendment and free speech, the post 9.11 generation of anti-terrorism statutes, pretense prosecutions, and the like.

Recent and Significant Scholarship:

Want of Care: An Essay on Wayward Action, 17 *Ethical Theory and Moral Practice* 299 (2014)
What Temptation Could Not Be: A Lesson from the Criminal Law, in Law and the Philosophy of Action 153 (Enrique Villanueva ed., 2014)
Why Is It Wrong to Punish Thought? (forthcoming 2018, *Yale Law Journal*)
Divine Justice and the Library of Babel (forthcoming 2018, *Ohio State Journal of Criminal Law*)
The Elusive Object of Punishment
The Action-as-Object Requirement

Service: Professor Mendlow’s service record is superior. Within the Law School, he has served on a wide range of committees, focusing on helping students interested in academic careers and those seeking post-graduation judicial clerkships, including reaching out to countless judges to promote the Law School’s students. He has given numerous talks in various settings to faculty, students, and prospective students, and provided guidance for law journals and teams participating in inter-school moot court competitions. He is also a key participant in the intellectual life of the Law School, having given several faculty presentations or workshops, and having organized and acted as a commentator at the high profile Michigan *Law and Ethics Lecture* by a Yale Law School colleague. Outside of the Law School, and in addition to teaching a graduate seminar in the Philosophy Department, he has served on Ph.D. dissertation committees for that department, presented to that department’s Ethics Discussion Group, and served on two external committees, one at the Medical School and one university-wide, both occupied with developing policy on how individual-level research data should be shared with individuals to whom those data pertain. Professor Mendlow also gives presentations of his scholarly work around the world, acts as a referee for highly-regarded philosophy journals

internationally, and is a member of the editorial board for the journal *Criminal Law and Philosophy*.

External Reviewers:

Reviewer A: “He excels at careful analytical discussion of doctrines in criminal law, teasing out principles that although not doctrines in criminal law, are tacitly assumed, carefully distinguishing one principle from another with which it is sometimes conflated, and then insightfully assessing such principles.”

Reviewer B: “[Three of Professor Mendlow’s articles] are substantial, and original, contributions to criminal law theory; they show an ability to deal confidently with a wide range of legal and philosophical material, to look beneath the surfaces of doctrines and cases to find deeper patterns of thought and underlying normative structures; and they offer some new and potentially fruitful ideas.”

Reviewer C: “This group of [punishment-related] papers is truly outstanding and together make a substantial contribution to criminal law theory. It is the most sustained analysis of punishment for thoughts out there, and it deftly criticizes conventional views while offering a novel and fresh perspective.... Any criminal law theorist writing on [the object of punishment or punishment of thoughts alone] will have to deal with his innovative arguments.”

Reviewer D: “... when my generation fades, I’d bet my bottom dollar that Professor Mendlow is among the handful of scholars who will immediately come to mind among those who teach criminal law when someone asks, ‘Who are the best folks doing criminal law theory today?’”

Reviewer E: “... his work is deep and of exceptionally high quality and clearly demonstrates that Mendlow deserves tenure and promotion even at an outstanding law school such as the University of Michigan...”

Reviewer F: “He is an extremely smart and talented criminal law theorist who has already distinguished himself from his peers by producing substantial scholarship of uniformly high quality.... When I ask colleagues that work in criminal law theory who are the most promising researchers in the field, they invariably name two people: my colleague, Gideon Yaffe, and your colleague, Gabe Mendlow. Gabe’s work is universally admired by his peers and is already considered a “must read.””

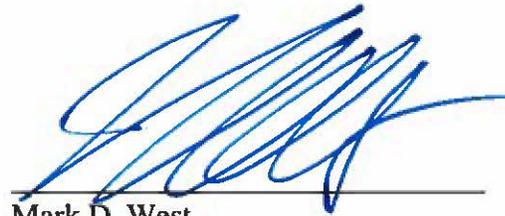
Reviewer G: “He is an outstanding critic and has a gift at framing issues to isolate and highlight what is important. He has original, plausible ideas that seem to emerge from his moving seamlessly from issues that emerge in practice to their theoretical underpinnings. That’s unusual for a philosopher, as are his crosscutting interests in criminal law, privacy, and freedom of speech.”

Reviewer H: “[The three pieces reviewed] demonstrate subtlety, analytic precision, lucid and graceful exposition, and extraordinary originality. But the originality, in the case of the second and third articles reviewed below, is also rooted in the soil of legislative criteria and judicial reasoning.”

Reviewer I: "He's written a collection of very interesting and important papers that are united in expounding an original and plausible vision of substantive criminal law."

Summary of Recommendation:

Professor Mendlow has made a significant contribution to scholarship in the areas of moral philosophy and criminal law theory, and is already considered one of the nation's leading scholars in criminal law theory and philosophy of law. He is also one of the Law School's most accomplished teachers, and has provided exemplary service to the Michigan Law School, the university at large, and his field. With the enthusiastic support of the Law School faculty, I am pleased to recommend Gabriel S. Mendlow for promotion to professor of law, with tenure, Law School.



Mark D. West
Dean, Law School
Nippon Life Professor of Law

May 2018