

PROMOTION RECOMMENDATION  
The University of Michigan  
Law School

Julian D. Mortenson, assistant professor of law, Law School, is recommended for promotion to professor of law, with tenure, Law School.

Academic Degrees:

J.D. 2002      Stanford Law School, Order of the Coif, Salutatorian  
B.A. 1997      Harvard University, *summa cum laude*, Phi Beta Kappa

Professional Record:

2009-Present	Assistant Professor, Law School, University of Michigan
2008-2009	Visiting Assistant Professor, Fordham Law School (New York, NY)
2006-2008	Associate, Wilmer Cutler Pickering Hale and Door (New York, NY)
2004-2005	Associate Legal Officer, Office of the President, International Criminal Tribunal for the Former Yugoslavia
2003-2004	Law Clerk, Associate Justice David H. Souter, U.S. Supreme Court
2002-2003	Law Clerk, Judge J. Harvie Wilkinson, III, U.S. Court of Appeals for the Fourth Circuit

Summary of Evaluation:

Teaching: Prior to this semester (during which he is adding two new classes) Professor Mortenson has taught Introduction to Constitutional Law, the mandatory Transnational Law course, and a seminar on National Security. He is an energetic, thoughtful, and admired teacher. Professor Mortenson's seminar and Constitutional Law classes have been very well received. This has been reflected in the evaluations, with means of 4.8 and 4.9, out of 5, for "excellent course" and "excellent teacher," respectively, the last time he taught Constitutional Law, and all 5.0 and 4.89, respectively, for the seminar. Professor Mortenson's most recent evaluation means for Transnational Law of 3.94 ("excellent class") and 4.45 ("excellent teacher") are also excellent. Student evaluations (both numeric and accompanying comments) and interviews portray Professor Mortenson as well prepared, motivated, and very clear in his teaching. His students describe him as both "well prepared for every class" and "brilliant." Faculty observations confirmed his clarity, enthusiasm, and good rapport with students, and found the teaching more than competent. In addition, Professor Mortenson is exceptionally devoted to his students outside the classroom. Many students recounted that he has advised them on career choices, interview strategies, and even on broader questions of life as a lawyer. Professor Mortenson is clearly a vital mentor to many of our students.

Research: Professor Mortenson's scholarship falls into two usually separate fields: international law and the constitutional law of federal executive authority.

Professor Mortenson's international law work deals with the issue of how best to interpret international treaties. His first article examines the question of the appropriate jurisdiction of arbitration tribunals to settle disputes between foreign nationals and states arising under international investment treaties. Based on the drafting history of the ICSID Convention (its

*travaux préparatoires*), he argues that the Convention's jurisdictional grant to those arbitration tribunals should be very broad, extending to "any plausible economic asset or activity." If states object to the breadth of that grant, they are free to opt out of that understanding on a treaty-by-treaty basis. This is an important issue, and the article sheds significant new light on it by way of its meticulous examination of the ICSID Convention *travaux*. His second international law article addresses more generally the role of *travaux préparatoires* in the interpretation of treaties. Many commentators and the International Court of Justice regard the use of the *travaux* with great skepticism. Professor Mortenson contests that traditional view on the basis of a close examination of the drafting history of the Vienna Convention itself. The piece is already generating considerable response in international law circles.

Professor Mortenson's executive authority research asserts the key role of law in fettering the President even in times of crisis. In a long and in-depth review essay he methodically takes apart historical claims made by one leading theorist of unbridled executive power. The work is careful, exhaustive, and convincing. It leaves little of its important target standing. In another piece, still in draft, he attempts to deduce from historical materials a structure for those rare occasions when presidential lawbreaking is appropriate. This is an ambitious (if not yet entirely successful) project.

Recent and Significant Scholarship:

*A Theory of Republican Prerogative* (submitted, August 2013)  
*Law Matters, Even to the Executive*, 111 MICH. L. REV. \_\_\_\_ (forthcoming) (book review)  
*The Travaux of Travaux: Is the Viena Convention on the Law of Treaties Hostile to Drafting History?*, 107 AM. J. INT'L L. \_\_\_\_ (forthcoming)  
*Quiborax v. Bolivia: The Uneasy Role of Precedent in Defining Investment*, 2013 ICSID REV. 1  
*Reciprocity and the Regulatory Function of International Investment Law*, 54 HARV. J. INT'L L. ONLINE 124 (Spring 2013)  
*Executive Power and the Discipline of History*, 78 U. CHI. L. REV. 377 (2011) (review essay)  
*The Meaning of Investment: ICSID's Travaux and the Domain of International Investment Law*, 51 HARV. INT'L L.J. 257 (2010)

Service: Professor Mortenson's service to the Law School has been exemplary. He has served on the Global Affairs Committee (2010-11); Personnel Committee (2011-12), Intellectual Community Committee (2011-12), and the Alumni Academic Placement Committee (2012-14). The Personnel Committee chair reported that his participation in this particularly time-consuming committee was "outstanding," combining "diligence and excellent judgment." Other committee chairs echoed these sentiments. In addition to his committee work, Professor Mortenson regularly organizes and attends workshops. Last year, he was a co-organizer of the ASIL-ESIL Legal Theory Workshop. Moreover, Professor Mortenson's service to students is exemplary. He regularly writes dozens of clerkship and fellowship recommendation letters annually, and makes phone calls to potential employers for many students each fall. He also routinely agrees to sponsor students who want to do independent study work. He judges many moot courts for faculty, alumni, and students, and he attends countless student banquets and events. Professor Mortenson is an outstanding citizen of our community, and does more than participate actively in his assigned committee and administrative work. He regularly goes above and beyond,

volunteering considerable time and expending substantial effort to enrich the experience of our students, faculty, and alumni.

External Reviewers:

Reviewer A: "Professor Mortenson is a serious scholar who is able to produce first rate scholarship in international law. He clearly meets the tenure standards indicated in your letter ... I know that I will want to follow his future work closely, because this is the kind of work that is based on careful and reliable research and offers dependable analysis – the kind of work that is always rewarding. ... In the recent past I have written tenure reviews on several candidates for tenure at top US law schools (including Harvard, Cornell and Chicago), and was also involved in hiring decisions at top European institutions. I don't recall enjoying reading an article of any candidate as much as I enjoyed Mortenson's. The same goes for the meticulousness of the research."

Reviewer B: "Julian is an easy case for tenure. ... Particularly bearing in mind that Julian has additional and entirely distinct lines of scholarship, I have no trouble concluding that Julian's scholarship is worthy of tenure. He has certainly demonstrated substantial achievement as a scholar, and the trajectory of his work plainly arcs in a positive direction. There is just no question that he will be productive; that his topic selection will keep him focused on issues that are important, interesting, and in need of attention; that he will write about them well; and that he will write about them in an increasingly-sophisticated manner."

Reviewer C: "Professor Mortenson's work is of very high quality. Its trenchant analysis and charming style put it among the best pieces I have read. It demonstrates the high intelligence, care, and perception of an accomplished scholar. Professor Mortenson makes significant contributions to legal scholarship in the works I read. He would meet standards for tenure at our school."

Reviewer D: "[A]lthough I have not had an opportunity to get acquainted with Professor Mortenson in person, I will be keeping an eye out for him and for his writing in the future. . . . I would personally favor a promotion on this record in my institution, assuming favorable assessment of the other elements of a tenure case – teaching, service, and collegiality."

Reviewer E: "'Travaux of Travaux' is a valuable and original piece of scholarship. ... Taken together these two [international law] pieces are inconclusive in my view with respect to the case for tenure, based upon my knowledge of Michigan's standards. ... They are certainly not a negative, but one could doubt they would be enough if there were not at least one other significant piece in the file making an original contribution to scholarship. But I understand there is such writing."

Reviewer F: "Mortenson's work is thoroughly researched and decidedly innovative. His approach is self-confident, opinionated and refreshingly irreverent. His style is lucid and a pleasure to read. He develops his ideas in a compelling way that grips the attention of the reader and arouses curiosity as his arguments unfold. At the same time he gives immense attention to detail without ever losing the thread of his reasoning. ... I believe that Julian has already made a significant contribution to legal scholarship and shows much promise of future achievement. In

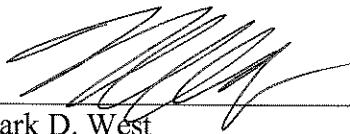
my estimation, a comparison of the quality and importance of Mortenson's work with that of other [junior] scholars makes him a member of a small elite."

Reviewer G: "Prof. Mortenson's writing reveals several notable virtues for a [junior] (or any) scholar. He writes beautifully. He breaks large problems into careful analytic 'bites' that make the flow of his reasoning highly accessible. He brings to bear on his work deep reading in history and philosophy, both of which he discusses with real sophistication. ... I consider this work to demonstrate not only scholarly potential, but significant accomplishment."

Reviewer H: "Mortenson's articles have made a substantial contribution to the burgeoning and important literature concerning international investment law. He writes clearly, chooses significant topics, and has interesting things to say."

Reviewer I: "I recommend him for tenure, and I am confident that he would receive tenure at other top tier law schools, including my own. ... In sum, this is a very strong body of work from a very strong scholar. Michigan is fortunate to have him on its faculty."

Summary of Recommendation: Professor Mortenson has made a significant contribution to scholarship and shows promise of future achievement. Moreover, he is an admired teacher and a wonderful institutional citizen. Considering all three areas together, with the support of the Law School faculty, I recommend Julian D. Mortenson for promotion to professor of law, with tenure, Law School.



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

May 2014