

**JUSTIN DRIVER**  
Robert R. Slaughter Professor of Law  
Yale Law School  
127 Wall Street  
New Haven, CT 06511

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## EDUCATION

**HARVARD LAW SCHOOL, JURIS DOCTOR** 2004  
Activities: *Harvard Law Review*, Volume 116 (Editor), Volume 117 (Book Reviews Chair and Articles Editor)  
Lowell House, Pre-Law Residential Tutor and Member of Fellowships Committee  
Black Law Students Association, Member

**OXFORD UNIVERSITY, MAGDALEN COLLEGE, MASTER OF STUDIES IN MODERN HISTORY** 2000  
Honor: Marshall Scholarship

**DUKE UNIVERSITY, MASTER OF ARTS IN TEACHING** 1998  
Honor: Rockefeller Brothers Fund Fellowship

**BROWN UNIVERSITY, BACHELOR OF ARTS WITH HONORS IN PUBLIC POLICY** 1997  
Honors: Noah Krieger Prize for best senior thesis in Public Policy  
Judge Alfred Joslin Award for outstanding campus leadership  
Charles Royce Fellowship for academic achievement  
Rose Writing Fellows Program

## EXPERIENCE

**YALE LAW SCHOOL, NEW HAVEN, CT**  
*Robert R. Slaughter Professor of Law* 2020-present  
*Counselor to the Dean* 2022-2023  
*Professor of Law* 2019-2020

**UNIVERSITY OF CHICAGO LAW SCHOOL, CHICAGO, IL**  
*Harry N. Wyatt Professor of Law* 2016-2019  
*Professor of Law* 2014-2016

**UNIVERSITY OF TEXAS SCHOOL OF LAW, AUSTIN, TX**  
*Professor of Law* 2013-2014  
*Assistant Professor* 2009-2013

**STANFORD LAW SCHOOL, STANFORD, CA** Winter, Spring 2014  
*Herman Phleger Visiting Professor*

**HARVARD LAW SCHOOL, CAMBRIDGE, MA** Fall 2013  
*Sullivan & Cromwell Visiting Assistant Professor*

<b>UNIVERSITY OF VIRGINIA LAW SCHOOL, CHARLOTTESVILLE, VA</b> <i>Visiting Assistant Professor</i>	Spring 2013
<b>UNIVERSITY OF CHICAGO LAW SCHOOL, CHICAGO, IL</b> <i>Visiting Assistant Professor</i>	Autumn 2012
<b>SIDLEY AUSTIN, LLP, WASHINGTON, D.C.</b> <i>Associate</i>	2007-2009
<b>HON. SANDRA DAY O’CONNOR (RET.) &amp; HON. STEPHEN BREYER, U.S. SUPREME COURT</b> <i>Law Clerk</i>	2006-2007
<b>HON. MERRICK B. GARLAND, U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT</b> <i>Law Clerk</i>	2005-2006
<b>CHARLES HAMILTON HOUSTON FELLOWSHIP, HARVARD LAW SCHOOL</b> <i>Research Fellow</i>	2004-2005
<b>SIDLEY AUSTIN, LLP, WASHINGTON, D.C.</b> <i>Summer Associate</i>	2004
<b>JENNER &amp; BLOCK, WASHINGTON, D.C.</b> <i>Summer Associate</i>	2003
<b>O’MELVENY &amp; MYERS, WASHINGTON, D.C.</b> <i>Summer Associate</i>	2003
<b>HALE &amp; DORR, BOSTON, MA</b> <i>Summer Associate</i>	2002
<b>THE NEW REPUBLIC, WASHINGTON, D.C.</b> <i>Assistant Literary Editor</i>	2001

### SELECTED PUBLICATIONS & WORKS IN PROGRESS

#### BOOK

THE SCHOOLHOUSE GATE: PUBLIC EDUCATION, THE SUPREME COURT, AND THE BATTLE FOR THE AMERICAN MIND (Pantheon, 2018)

- A *Washington Post* Notable Book of the Year
- A *New York Times Book Review* Editors’ Choice
- Steven S. Goldberg Award for Distinguished Scholarship in Education Law
- American Bar Association Silver Gavel Award, Finalist, received Honorable Mention
- Phi Beta Kappa’s Ralph Waldo Emerson Book Award, Finalist
- Scribes Book Award, Runner-up

#### ACADEMIC JOURNALS

*The Warren Court Paradox* (in progress)

*The Cure as Disease: The Conservative Case against SFFA v. Harvard* (draft completed)

*In Praise of Justice Sandra Day O'Connor*, 137 HARVARD LAW REVIEW *forthcoming* (2024)

*The Coming Crisis of Student Speech*, 76 STANFORD LAW REVIEW *forthcoming* (2024)

*The Strange Career of Antisubordination*, 91 UNIVERSITY OF CHICAGO LAW REVIEW *forthcoming* (2024)

*Civic Education, Students' Rights, and the Supreme Court*, LXV NOMOS *forthcoming* (2024)

*Three Hail Marys: Carson, Kennedy, and the Fractured Détente over Religion and Education*, 136 HARVARD LAW REVIEW 208 (2022)

*Brown and Red: Defending Jim Crow in Cold War America*, 74 STANFORD LAW REVIEW 447 (2022) (with Gregory Briker)

*Assessing Affirmative Action's Diversity Rationale*, 122 COLUMBIA LAW REVIEW 331 (2022) (with Adam Chilton, Jonathan Masur, and Kyle Rozema)

*The Incoherence of Prison Law*, 135 HARVARD LAW REVIEW 515 (2021) (with Emma Kaufman)

*The Supreme Court as Bad Teacher*, 169 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1365 (2021)

*The Public School as the Preeminent Site of Constitutional Law*, 73 NEBRASKA LAW REVIEW 1 (2020) [presented as the Lane Lecture in Lincoln, Nebraska, on November 8, 2019]

*Freedom of Expression within the Schoolhouse Gate*, 73 ARKANSAS LAW REVIEW 1 (2020) [presented as the Hartman Holtz Lecture in Fayetteville, Arkansas, on November 1, 2019]

*The Keyes of Constitutional Law*, 106 CALIFORNIA LAW REVIEW 1931 (2018)

*The Courts, the Schools, and the Constitution*, 100 PHI DELTA KAPPAN 14 (2018)

*Constitutional Outliers*, 81 UNIVERSITY OF CHICAGO LAW REVIEW 929 (2014)

*Reactionary Rhetoric and Liberal Legal Academia*, 123 YALE LAW JOURNAL 2616 (2014)

*Supremacies and the Southern Manifesto*, 92 TEXAS LAW REVIEW 1053 (2014)

*The Constitutional Conservatism of the Warren Court*, 100 CALIFORNIA LAW REVIEW 1101 (2012) [selected for Junior Faculty Forum at Harvard Law School, and the William Nelson Cromwell Article Prize]

*The Significance of the Frontier in American Constitutional Law*, 2011 SUPREME COURT REVIEW 345 (2012)

*Recognizing Race*, 112 COLUMBIA LAW REVIEW 404 (2012)

*Rethinking the Interest-Convergence Thesis*, 105 NORTHWESTERN UNIVERSITY LAW REVIEW 149 (2011)

*Judicial Inconsistency as Virtue: The Case of Justice Stevens*, 99 GEORGETOWN LAW JOURNAL 1263 (2011)

*The Consensus Constitution*, 89 TEXAS LAW REVIEW 755 (2011)

*Rules, The New Standards: Partisan Gerrymandering and Judicial Manageability after Vieth v. Jubelirer*, 73 GEORGE WASHINGTON LAW REVIEW 1166 (2005) [invited symposium participant]

Note, *Underenfranchisement: Black Voters and the Presidential Nomination Process*, 117 HARVARD LAW REVIEW 2318 (2004)

## **BOOK SECTIONS**

*Jay Gatsby, Justice Douglas, and the Significance of Class in American Society*, in POWER, PROSE, AND PURSE: LAW, LITERATURE, AND ECONOMIC TRANSFORMATIONS, ALISON LACROIX, SAUL LEVMORE & MARTHA C. NUSSBAUM (Oxford University Press, 2019)

*Of Big Black Bucks and Golden-Haired Little Girls: How Fear of Interracial Sex Informed Brown v. Board of Education and Its Resistance*, in THE EMPIRE OF DISGUST, ZOYA HASAN, AZIZ Z. HUQ, MARTHA C. NUSSBAUM & VIDHU VERMA (Oxford University Press, 2018)

*Justice Thomas and Bigger Thomas*, in FATAL FICTIONS: CRIME AND INVESTIGATION IN LAW AND LITERATURE, ALISON LACROIX, RICHARD H. MCADAMS & MARTHA C. NUSSBAUM, EDS. (Oxford University Press, 2016)

## **EDITED VOLUMES**

2023 THE SUPREME COURT REVIEW (University of Chicago Press, *forthcoming*) (with David A. Strauss, Geoffrey R. Stone, and William Baude)

2022 THE SUPREME COURT REVIEW (University of Chicago Press, 2023) (with David A. Strauss, Geoffrey R. Stone, and William Baude)

2021 THE SUPREME COURT REVIEW (University of Chicago Press, 2022) (with David A. Strauss, Geoffrey R. Stone, and William Baude)

2020 THE SUPREME COURT REVIEW (University of Chicago Press, 2021) (with David A. Strauss and Geoffrey R. Stone)

2019 THE SUPREME COURT REVIEW (University of Chicago Press, 2020) (with David A. Strauss and Geoffrey R. Stone)

2018 THE SUPREME COURT REVIEW (University of Chicago Press, 2019) (with David A. Strauss and Geoffrey R. Stone)

## **POPULAR PRESS**

*Rules of Engagement: Thomas E. Ricks Examines the Civil Rights Movement Through the Lens of Military History*, THE NEW YORK TIMES BOOK REVIEW, November 13, 2022, at BR41

*Think Affirmative Action is Dead? Think Again.*, THE NEW YORK TIMES, October 31, 2022, at A18

*Does Campus Diversity Justify Affirmative Action? Our Study Says Yes*, THE WASHINGTON POST, October 18, 2022 (with Adam Chilton, Jonathan Masur, and Kyle Rozema)

*“The Greatest Talker of His Time”: Felix Frankfurter was an eloquent liberal champion of judicial restraint. Is it time for a reappraisal?*, THE ATLANTIC, September 2022

*Two Cheers for a Free Speech Ruling*, THE NEW YORK TIMES, June 25, 2021, at A23

*Why We Should All Want the Suspended Cheerleader to Win Her Supreme Court Case*, THE WASHINGTON POST, April 30, 2021

*Schooling Qualified Immunity*, EDUCATION NEXT, Summer 2021

*Where the Sick Get Sicker and the Sane Are Driven Mad: Behind Bars*, THE NEW YORK TIMES BOOK REVIEW, August 9, 2020, at BR12

*How Judges Weigh Shades of Gray to Make Tough Legal Decisions*, THE WASHINGTON POST, October 26, 2018

*Ask the Author: Our Constitution Says We Must Take This Risk*, SCOTUSblog, October 16, 2018

*How Trump Nominee Brett Kavanaugh Could Threaten Undocumented Children’s Education*, TIME, September 2018

*The Constitution Goes to School*, THE VOLOKH CONSPIRACY, September 17, 2018

*Do Public School Students Have Constitutional Rights?*, THE NEW YORK TIMES, August 31, 2018

*The Report on Race that Shook America*, THE ATLANTIC, May 2018

*Challenging Conventional Perspectives of Burger Court*, THE WASHINGTON POST, June 20, 2016, at p. B6

*60 Years Later, the Southern Manifesto is as Alive as Ever*, LOS ANGELES TIMES, March 11, 2016

*Divine Justice*, THE NEW REPUBLIC, Sept. 29, 2014, pp. 40-45 (reviewing SCALIA: A COURT OF ONE, BY BRUCE ALLEN MURPHY)

*Ignoble Specificities*, THE NEW REPUBLIC, April 5, 2012, pp. 32-35 (reviewing LIVING ORIGINALISM, BY JACK M. BALKIN)

*Obama’s Law*, THE NEW REPUBLIC, June 30, 2011, pp. 10-14

*Why the High Court is Ready for Gay Marriage*, THE WASHINGTON POST, June 26, 2011, pp. B1, B4

*Robust and Wide-Open*, THE NEW REPUBLIC, Feb. 17, 2011, pp. 36-39 (reviewing JUSTICE BRENNAN: LIBERAL CHAMPION, BY SETH STERN & STEPHEN WERMIEL)

*It’s Alive*, THE NEW REPUBLIC, July 8, 2010, pp. 10-12

*The Stevens Myth*, THE NEW REPUBLIC, Apr. 29, 2010, pp. 19-20

*Why Law Should Lead*, THE NEW REPUBLIC, Apr. 8, 2010, pp. 28-32 (REVIEWING THE WILL OF THE PEOPLE, BY BARRY FRIEDMAN) [reprinted in 2011 GREEN BAG ALM. 375, issue honoring exemplary legal writing]

*The Lawyer's Revolution*, THE NEW REPUBLIC, Mar. 13, 2006, pp. 38-41 (reviewing A MATTER OF LAW: A MEMOIR OF STRUGGLE IN THE CAUSE OF EQUAL RIGHTS, BY ROBERT L. CARTER)

*Indelible Marks*, THE NEW REPUBLIC, Nov. 22, 2004, pp. 29-33 (reviewing BLACK TRIALS: CITIZENSHIP FROM THE BEGINNINGS OF SLAVERY TO THE END OF CASTE, BY MARK S. WEINER).

*Dream Weaver*, THE NEW REPUBLIC, Jan. 19, 2004, pp. 33-37 (reviewing HER DREAM OF DREAMS: THE RISE AND TRIUMPH OF MADAM C.J. WALKER, BY BEVERLY LOWRY)

*Why Johnnie Can't Lead*, THE NEW REPUBLIC, Feb. 17, 2003, pp. 36-41 (reviewing A LAWYER'S LIFE, BY JOHNNIE COCHRAN WITH DAVID FISHER)

*Pillar of Ire*, THE NEW REPUBLIC, Apr. 29, 2002, pp. 33-37 (reviewing AMIRI BARAKA: THE POLITICS AND ART OF A BLACK INTELLECTUAL, BY JERRY GAFIO WATTS)

*Cambridge Diarist: Class Act*, THE NEW REPUBLIC, Nov. 25, 2002, p. 42 (reviewing 8 MILE (Universal Studios))

*The Mirth of a Nation: Black Comedy's Reactionary Hipness*, THE NEW REPUBLIC, June 11, 2001, pp. 29-33

*Sports Nut: The Soles of Black Folk*, SLATE, Apr. 27, 2001

## HONORS & AWARDS

Presidential Commission on the Supreme Court of the United States, Commissioner

Steven S. Goldberg Award for Distinguished Scholarship in Education Law

William Nelson Cromwell Article Prize

American Academy of Arts and Sciences, Elected in 2022

American Law Institute, Elected Member, Elected in 2017

American Bar Association Silver Gavel Award, Finalist, received Honorable Mention

Phi Beta Kappa's Ralph Waldo Emerson Book Award, Finalist

Scribes Book Award, Runner-up

Marshall Scholarship, Selection Committee, New England Region, Member

American Constitution Society, Academic Advisory Board, Member

*Supreme Court Review*, Editor

Marshall Scholarship