

HEATHER K. GERKEN

Yale Law School
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EMPLOYMENT:

Yale Law School

Dean and Sol & Lillian Goldman
Professor of Law
July, 2017–present

J. Skelly Wright Professor of Law
November 2008–June 2017

Professor of Law
July 2006–November 2008

Visiting Professor of Law
September 2005–June 2006

Harvard Law School

Professor of Law
July 2005–June 2006
Assistant Professor of Law
July 2000–June 2005

**Harvard University Center for Ethics and
the Profession**

Eugene P. Beard Faculty Fellow
September 2003–June 2004

Jenner & Block, Washington D.C.

Associate, December 1996–July 2000

**Justice David H. Souter,
Supreme Court of the United States**

Law Clerk, July 1995 - July 1996

**Judge Stephen Reinhardt,
U.S. Court of Appeals for the Ninth Circuit**

Law Clerk, June 1994–June 1995

EDUCATION:

University of Michigan Law School, J.D., May 1994

- *Summa cum laude*; Order of the Coif
- Henry M. Bates Memorial Scholarship: highest honor awarded to a graduating student
- Clarence Darrow Scholarship: full-tuition merit scholarship
- Editor-in-Chief, *Michigan Law Review*
- Commencement Speaker
- *Other Honors and Awards*: Robert S. Feldman Labor Law Award; ABA-BNA Labor and Employment Law Award

Princeton University, History, B.A., June 1991

- *Summa cum laude*; Phi Beta Kappa
- Dodds Prize: one of four top prizes awarded to graduating seniors
- Princeton University Scholar; Kenneth C. Harris Award for research
Senior Thesis: *Stepping Out of the Bounds of Womanhood: An Analysis of Rosie the Riveter and the Women Who Worked During World War II*

SCHOLARLY PUBLICATIONS:

BOOKS

The Democracy Index: Why Our Election System is Failing and How to Fix It (Princeton University Press, 2009)

Editor, *Race, Reform, and Regulation of the Electoral Process: Recurring Puzzles in American Democracy* (Cambridge, 2010) (with Guy-Uriel Charles and Michael Kang)

ARTICLES, ESSAYS, AND REVIEWS

The Myth of the Laboratories of Democracy, 122 COLUM. L. REV. 2187 (2022) (with Charles Tyler)

The Discursive Benefits of Structure: Federalism and the First Amendment, in *THE FREE SPEECH CENTURY* (Lee C. Bollinger & Geoffrey R. Stone ed., 2019)

Resisting the Theory/Practice Divide: Why the 'Theory School' is Ambitious About Practice, 132 HARV. L. REV. F. 134 (2019)

Presentation on Behalf of the Social Sciences, 71 BULL. AM. ACAD. ARTS & SCI. 8 (2018)

Second-Order Diversity: An Exploration of Decentralization's Egalitarian Possibilities, in DIFFERENCE WITHOUT DOMINATION: PURSUING JUSTICE IN DIVERSE DEMOCRACIES (Danielle Allen and Rohini Somanathan ed., 2020)

The Jorde Lecture: A Research Agenda for Federalism in the 21st Century, 105 CAL. L. REV. 1695 (2017)

Federalism: A User's Guide, 45 Hofstra L. Rev. 1087 (2017)

Playing Cards in a Hurricane: Party Reform in an Age of Polarization, 54 Hous. L. Rev. 911 (2017)

Progressive Federalism: A User's Guide, 44 Democracy Journal (Spring 2017)

The Taft Lecture: Living Under Someone Else's Law, 84 U. Cincinnati L. Rev. 377 (2016)

Beyond Sovereignty, Beyond Autonomy: A Nationalist's View of Federalism's Future, National Constitution Center's Interactive Constitution Project (2016)

Article I, Section 8: Federalism and the Overall Scope of Federal Power, National Constitution Center's Interactive Constitution Project (with Randy Barnett) (2016)

The Citizens United Trilogy: The Myth, the True Tale, and the Story Yet to Come, in ELECTION LAW STORIES 359 (2016) (with Erica Newland)

The Right to Vote: A Conversation with the Co-Chairs of the Presidential Commission on Election Administration, 159 Proceedings Am. Phil. Soc. 17 (March 2015)

The Real Problem with Citizens United: Campaign Finance, Dark Money, and Shadow Parties, 159 Proceedings Am. Phil. Soc. 5 (March 2015)

The Childress Lecture, Federalism and Nationalism: Time for a Détente?, 59 St. Louis. L. Rev. 997 (2015).

An Academic Elegy, 100 Iowa L. Rev. 109 (2015)

The Craft of Interpreting the Declaration of Independence, Crooked Timber (June 15, 2015)

The Party's Over: Shadow Parties, Campaign Finance, and the Legacy of McCutcheon, 2014 Sup. Ct. Rev. 175 (with Joseph Fishkin)

The Interlocking Gears of Rights and Structure: Why the Critics Are Wrong about U.S. v. Windsor, 95 B.U. L. Rev. 487 (2015) (Boston University's Annual Distinguished Lecture)

Living Under Someone Else's Law, Democracy Journal 24 (Spring 2015) (with James Dawson)

Slipping the Bonds of Federalism, 128 Harv. L. Rev. 85 (2014)

The Political Safeguards of Horizontal Federalism, 113 Mich. L. Rev. 57 (2014) (with Ari Holtzblatt)

The Right to Vote: Is the Amendment Game Worth the Candle?, 23 Wm. & Mary L. Rev. 11 (2014)

How to Teach the Socratic Method with a Heart, 21 The Law Teacher 24 (Fall 2014)

Polarization at the Local Level, Marquette Lawyer 13 (Fall 2014)

The Two Trends That Matter for Party Politics, 89 N.Y.U. L. Rev. Online 32 (2014) (with Joseph Fishkin)

The Real Problem with Citizens United: Campaign Finance, Dark Money, and Shadow Parties, 97 Marquette L. Rev. 904 (2014).

Federalism as the New Nationalism: An Overview, 123 Yale L.J. 1889 (2014)

The Loyal Opposition, 123 Yale L.J. 1958 (2014)

A Public Finance Model for Lobbying: Lobbying, Campaign Finance, and the Privatization of Democracy, 13 Elec. L. J. 75 (2014) (with Alex Tausanovitch)

The Federalis(m) Society, 36 Harv. J. L. & Pub. Pol'y 943 (2013)

Abandoning Bad Ideas and Disregarding Good Ones for the Right Reasons: Reflections on a Festschrift, 48 Tulsa L. Rev. 535 (2013)

Exit, Voice, and Disloyalty, 62 Duke L.J. 1349 (2013)

Make It Easy: The Case for Automatic Registration, 28 Dem. J. 17 (2013)

Déjà vu All Over Again: Courts, Corporate Law, and Election Law, 126 Harv. L. Rev. 86 (2013) (with Michael Kang)

Federalism(s), 53 Wm. & Mary L. Rev. 1549 (2012)

A New Progressive Federalism, 24 Dem. J. 37 (Spring 2012)

Comment, *The Constitution, the Practice of Democracy, and Unintended Consequences*, Bulletin of the American Academy of Arts and Sciences, Winter 2012, at 26.

Keynote Address: Lobbying as the New Campaign Finance, 27 Georgia St. L. Rev. 1155 (2011)

The Foreword: Federalism All the Way Down, 124 Harv. L. Rev. 4 (2010)

Judge Stories: Clerking for Judge Reinhardt, 120 Yale L.J.529 (2010)

The Institutional Turn in Election Law Scholarship, in RACE, REFORM, AND REGULATION OF THE ELECTORAL PROCESS: RECURRING PUZZLES IN AMERICAN DEMOCRACY (Gerken, Charles, and Kang eds., 2010) (with Michael Kang)

Keynote Address, What Election Law Has to Say to Constitutional Law, 44 Ind. L. Rev. 7 (2010)

Getting From Here to There in Redistricting Reform, 5 Duke J. Const. L. & Pol'y 1 (2010)

Creating Better Heuristics in the Presidential Nominating Process: Why a Citizens Assembly Beats Out Iowa and New Hampshire, 125 Pol. Sci. Q. 233 (2010) (with Doug Rand)

Clerking for Justice Souter, 35 J. Sup. Ct. Hist. 4 (2010)

Mexico's Election Reforms: A Comparative View, 2 Mexican L. Rev.163 (July-December 2009)

In Praise of Rankings, John L. Gedid Lecture Series, 19 Widener L. Rev. 1 (2009)

Dean's Lecture, *The Invisible Election: Making Policy in World Without Data*, 35 Ohio Northern L. Rev. 1013 (2009)

Making Democracy Work, Book Review (*The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design*, by Andrew Rehfeld; *Saving Democracy: A Plan for Real Representation in America*, by Kevin O'Leary), 37 Pol. Theory 838 (2009).

Uncooperative Federalism, 118 Yale L.J. 1256 (2009) (with Jessica Bulman-Pozen)

Provisional Ballots: The Miner's Canary for Election Administration, in PROVISIONAL BALLOTS: AN IMPERFECT SOLUTION (Report of the Pew Center on the States, 2009).

Getting from Here to There in Election Reform, 34 Okla. City. Univ. L. Rev. 33 (2009)

Shortcuts to Reform, 93 Minn. L. Rev. 1582 (2009)

Replacing Section 5 of the Voting Rights Act: An Opt-In Approach, White Paper, The Tobin Project

The (Winding) Road Ahead, "Data for Democracy: Improving Elections Through Metrics and Measurement," 43 (Pew Center on the States 2008)

Larry and Lawrence, 42 Tulsa L. Rev. 843 (2007)

Justice Kennedy and the Domains of Equal Protection, 121 Harv. L. Rev. 104 (2007)

Rashomon and the Roberts Court, 68 Ohio St. L. J.1213 (2007)

The Hydraulics of Constitutional Reform: A Skeptical Response to Our Undemocratic Constitution, 55 Drake L. Rev. 925 (2007)

The Double-Edged Sword of Independence: Inoculating Electoral Reform Commissions Against Everyday Politics, 6 ELEC. L. J. 184 (April 2007)

Of Sovereigns and Servants, 115 YALE L. J. 2634 (2006)

A Third Way: Section 5 and the Opt-In Approach, in THE FUTURE OF THE VOTING RIGHTS ACT 277 (Epstein et al. 2006)

A Third Way for the Voting Rights Act: Section 5 and the Opt-In Approach, 106 COLUM. L. REV. 708 (2006)

Dissent, Diversity, and the Global Polity, in THE LEAST EXAMINED BRANCH: THE ROLE OF LEGISLATURES IN THE CONSTITUTIONAL STATE 547 (eds. Bauman & Kahana 2006)

Dissenting by Deciding, 57 STAN. L. REV.1745 (2005)

Second-Order Diversity, 118 HARV. L. REV. 1099 (2005)

Lost in the Political Thicket: The Supreme Court, Election Law, and The Doctrinal Interregnum, 153 U. PENN. L. REV. 503 (2004)

The Costs and Causes of Minimalism in Voting Cases: Baker v. Carr and Its Progeny, 80 N.C. L. REV. 1411 (2002)

Election Law Exceptionalism? A Bird's Eye View of the Symposium, 82 B.U. L. REV. 737 (2002)

Understanding the Right to an Undiluted Vote, 114 HARV. L. REV. 1663 (2001)

Morgan Kousser's Noble Dream, 99 MICH. L. REV. 1298 (2001)

New Wine in Old Bottles: A Comment on Richard Hasen's and Richard Briffault's Essays on Bush v. Gore, 29 FLA. ST. UNIV. L. REV. 407 (2001)

Note, *Understanding Mixed-Motives Claims Under the Civil Rights Act of 1991*, 91 MICH. L. REV. 1824 (1993)

SELECT POPULAR PUBLICATIONS:

Semi-regular contributor to Balkinization, Election Law Blog, Room for Debate, and Politico.

“Campus Free Speech is Not Up for Debate,” *Time Magazine* (July 13, 2017)

“Federalism is Dead: Long Live Federalism,” *The Atlantic* (June 28, 2017)

“We’re About to See States’ Rights Used Defensively Against Trump,” *Vox* (Dec. 12, 2016)

“Wisconsin Court Case May Be Last Hope to Fix Gerrymandering Before 2020,” *Vox* (Dec. 1, 2016)

“Uncooperative Federalism,” *The Nation* (Nov. 29, 2016)

“On Voting Rights, Amendments Are Too Hard to Achieve and Enforce,” *New York Times Online* (November 4, 2014)

“The ‘Bad News Bears’ of Elections,” *The Hill* (June 4, 2014)

“The Real Problem with *Citizens United*,” *Marquette Lawyer* (Summer 2014)

“Rerouting the flow of ‘dark money’ into political campaigns,” *Washington Post* (April 3, 2014) (with Wade Gibson and Webb Lyons)

“The Fox and the Hedgehog: How Do We Achieve Political Accountability Given What Voters (Don’t) Know?,” *Cato Unbound* (October 14, 2013)

“Goodbye to the Crown Jewel of the Civil Rights Movement,” *Slate* (June, 2013)

“Real State Power Means Getting in the Obama Care Game,” *Harvard Business Review Online*, (April 2, 2013) (with Ted Ruger)

“No Middle Ground,” *New York Times Online* (June 27, 2011)

“Coloring Inside the Lines,” *Slate* (November 10, 2010)

“The Real Problem With *Citizens United*,” *American Prospect Online* (January 22, 2010)

“A Silver Lining,” *New York Times Online* (January 21, 2010)

“Will History Repeat Itself?,” *Huffington Post* (October 29, 2009)

“A False Depiction of Judging,” *New York Times Online* (July 15, 2009)

“Four Lawyers Review Sotomayor’s Performance,” *Wall Street Journal* (July 17, 2009).

“An Uncertain Fate for the Voting Rights Act,” *American Prospect Online* (June 23, 2009)

“Race, Voting Rights, and the Genius of Justice Souter, *American Prospect Online* (May 5, 2009)

“A Common Law Judge,” *New York Times Online* (May 4, 2009)

“Our Elections Run Well, Don’t They?,” *Minneapolis Star Tribune*, March 30, 2009

“We Have the Facts and We’re Voting Yes,” *The American Prospect*, March 27, 2009

The Case for Keeping Score, “Revitalizing Democracy: Special Report,” *The American Prospect* (January/February 2009)

The Invisible Election, Election Law Blog, November 16, 2008

Shadow districting commissions, Balkinization (series of posts dated May 5, 6, 31 & June 4, 2008)

Out of the Shadows: Private redistricting can help overcome lawmakers’ partisanship, LEGAL TIMES (Vol. XXXI, No. 18, May 5, 2008)

Fixing Democracy, Brennan Center for Democracy Blog (May, 2008)

Justice Kennedy’s Emerging Vision of Race, Balkinization (series of posts dated September 25 - 27, 2007)

A New Agenda for Election Law Scholarship, Balkinization (series of posts dated June 18- 22, 2007)

New Style of Election Reform Begins to Emerge, ROLL CALL (Tues. March 27, 2007).

How Does Your State Rank on the Democracy Index? LEGAL TIMES (Vol. XXX, No. 1, January 1, 2007)

Six Ways to Reform Democracy, Seeds of Change Forum, BOSTON REVIEW (November/December 2006)

Let’s Shift Gears in Voting-Rights Enforcement, ROLL CALL (Dec. 12, 2005)

Next Time, Start with the People, Balkinization, Nov. 10, 2004 (with Chris Elmendorf)

Citizens Must Drive Electoral Reform, ROLL CALL (Nov. 15, 2005)

For Shame: How to Embarrass States into Election Reform, TNR-Online (Sept. 28, 2005)

Race (Optional), The New Republic (Sept. 15, 2005).

Lost in the Political Thicket, LEGAL AFFAIRS (November/December 2004) 22.

Bigger Issues, New Democracy Forum, 26 BOSTON REVIEW 18 (2001)

OUTSIDE ACTIVITIES AND HONORS

Teaching

Named one of the 26 Best Law Teachers in the Country, *What the Best Law Teachers Do* (Harvard University Press 2013).

Subject of National Law Journal article, “This Scholar’s Comfortable in the Classroom,” for balancing teaching and research.

Yale Law Women Faculty Teaching Award, Yale Law School, 2009. Awarded to one member of the faculty each year.

Sachs-Freund Award for Teaching Excellence, Harvard Law School, 2003. Awarded to one member of the faculty each year.

Service/Reform/Political Work

Proposed creating a “Democracy Index” in 2007. The proposal was incorporated into three separate bills (sponsored by Senators Hillary Clinton and Barack Obama and Representative Israel). The Pew Trusts made the idea a reality, releasing the nation’s first Election Performance Index in the spring of 2013.

Featured on NPR’s On the Media, “A Modest Election Finance Reform Proposal (That Might Actually Work)” (October 2014)

Senior Adviser, Obama for America Reelection, 2011-2012. Member of the National Election Protection Team and the Boiler Room “Legal Brain Trust.”

Senior Adviser, Obama for America, 2007-2008. Member of the National Election Protection Team and the Boiler Room Team.

Co-founder and Adviser, San Francisco Affirmative Litigation Project, Yale Law School. Program allows students to do cutting-edge structural reform litigation in conjunction with the nationally renowned San Francisco City Attorney’s office. The program has become a national model and helped focus attention on local government work as a source for change.

Trustee, Mellon Foundation

Trustee, Princeton University

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

Member of American Bar Association Task Force for American Democracy

Commissioner, Bipartisan Policy Center Commission on Political Reform

Testified before the Senate Rules Committee on the constitutionality of campaign-finance reform in the wake of *Citizens United*, on data collection and election administration, and on the constitutionality of disclosure rules.

Testified on federalism before the Speaker's Task Force on Intergovernmental Affairs, United States House of Representatives

Testified before Massachusetts legislature on redistricting and special elections.

Counsel of Record, Amicus Brief on behalf of Heather K. Gerken, Jonathan N. Katz, Gary King, and Samuel S.-H. Wang, *Gill v. Whitford*, Supreme Court

Member, Advisory Committee to the Standing Committee on Election Law, ABA

Originated idea for Harvard Law School's 1L Reading Groups

Member, Outside Review Team, Moritz Law School, Ohio State

Member, Academic Steering Committee; Chair (2005-2010), Democratic Governance Working Group, The Tobin Project. Program designed to connect academics to policymakers.

Trustee, Campaign Legal Center. Nonpartisan group dedicated to election reform. 2007-2016.

Participant, New Haven Teachers Institute. Work with New Haven teachers to build curricula on Citizenship and Identity.

Member, Election Performance Index Advisory Group, the Pew Trusts

Member, Advisory Committee, MIT Election Data and Science Lab

Member, Connecticut Elections Performance Task Force

Member, Advisory Group, State Election Web Site Assessment. Project jointly sponsored by the California Voter Foundation and the Center for Governmental Studies.

Board of Supervisors, Center on Law and Redistricting

Member, State Election Web Site Assessment Project, California Voter Foundation and Center for Governmental Studies

Member, ABA Redistricting Task Force. Task force charged with recommending best practices for redistricting.

Member, American Law Institute

Member, Supreme Court Bar (2017), Connecticut Bar (2017), District of Columbia Bar (1998), Maryland Bar (1997).

Scholarship

Work featured in the Politico's Top 50 Ideas 2017 Issue, Boston Globe's Ideas Section, the Atlantic "Ideas of the Year" 2013 Issue, the New York Times, NPR, and Time Magazine.

Honoree, "Not Your Father's Federalism," Tulsa Law Review Legal Scholarship Symposium Honoring the Work of Heather Gerken, University of Tulsa College of Law

Symposium Devoted to "Federalism All the Way Down," Colorado Law School

Symposium Devoted to "Federalism and Nationalism: Time for a Détente?" Childress Lecture, St. Louis University

Member of the American Academy of Arts and Sciences

Order of the Coif Distinguished Visitor 2011-2012

***Green Bag* Exemplary Legal Writing 2010 Honoree**

Board Member, Foundations Press

Misc.

Featured guest cook for www.dramaticpancake.com

Wrote nine vampire novels for an audience of one.

<https://parenting.blogs.nytimes.com/2015/04/10/as-a-daughter-becomes-a-teenager-a-mother-becomes-a-vampire-novelist/>