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EDUCATION

Yale Law School, J.D.
Yale University, M.Phil.in American Studies
Yale College, B.A.
Member, American Philosophical Society, 2018
Honorary Fellow, American Society for Legal History, 2013
Member, American Academy of Arts and Sciences, 2008

PROFESSIONAL EXPERIENCE

Nicholas deB. Katzenbach Professor of Law, Yale Law School,
Felix Frankfurter Visiting Professor, Harvard Law School, 2006
Visiting Professor of Law, Columbia Law School, 2001-02
Visiting Professor of Law, Harvard Law School, 2001-02, 1998-99
Visiting Professor of Law, Yale Law School, 1993-94
Professor of Law, University of California, Berkeley, School of Law, 1994; Acting
Professor of Law, 1988-94
Law Clerk to Honorable Spottswood W. Robinson, III, U.S. Court of Appeals, D.C.
Circuit, 1986-87

PUBLICATIONS:

BOOKS

PROCESSES OF CONSTITUTIONAL DECISIONMAKING, with Sanford Levinson, Jack Balkin, Akhil Amar, & Cristina Rodriguez 9th ed. 2026

REPRODUCTIVE RIGHTS AND JUSTICE STORIES, co-edited with Melissa Murray & Kate Shaw, 2019, incl *The Unfinished Story of Roe v. Wade*, with Linda Greenhouse

BEFORE *ROE V. WADE*: VOICES THAT SHAPED THE ABORTION DEBATE BEFORE THE SUPREME COURT'S RULING, with Linda Greenhouse 2d ed. 2012

THE CONSTITUTION IN 2020, co-edited with Jack Balkin, 2009, including *Remembering How to Do Equality* with Jack Balkin and *Democratic Constitutionalism* with Robert Post

DIRECTIONS IN SEXUAL HARASSMENT LAW, co-edited with Catharine A. MacKinnon, 2004. Collection of 40 essays, including my introductory essay, *A Short History of Sexual Harassment*

ARTICLES

Dismantling Equality Rights Through “Biological-Sex” Talk, 105 Tex. L. Rev. (forthcoming 2027) (with Mary Ziegler)

It’s Alive! When the Original Meaning of “Person” Protected by the Fourteenth Amendment Is Not a Fixed, But Living Word, 59 U.C. Davis L. Rev. (2026)

Not Lochner!: Substantive Due Process as Democracy-Promoting Judicial Review, 113 Cal. L. Rev. (2026)

The Ambitions of “History and Tradition” in and beyond the Second Amendment, 174 U. Penn. L. Rev. (forthcoming 2026) (with Joseph Blocher)

History or Memory?: Claims on the Past in Constitutional Argument Over Originalism, Civil War/Reconstruction, and MAGA, 36 Yale J. L. & Hum. 479 (2025)

Foreword: Democratizing Constitutional Memory, 123 Mich. L. Rev. 1011 (2025)

Abortion’s New Criminalization—A History-and-Tradition Right to Healthcare Access After Dobbs, 111 Va. L. Rev. 413 (2025) (with Mary Ziegler)

Comstockery: How Government Censorship Gave Birth to the Law of Sexual and Reproductive Freedom, and May Again Threaten It, 134 Yale L.J. 1071 (2025) (with Mary Ziegler)

The Levels-of-Generality Game: “History and Tradition” in the Roberts Court, 47 Harv. J.L. & Pub. Pol’y 565 (2024)

Equality Emerges as a Ground for Abortion Rights In and After Dobbs (with Cary Franklin) in *ROE V. DOBBS: THE PAST, PRESENT AND FUTURE OF A CONSTITUTIONAL RIGHT TO ABORTION* 22 (Lee Bollinger & Geoffrey R. Stone eds. 2024)

Abortion-Eugenics Discourse in Dobbs: A Social Movement History, 2 J. Am. Con. Hist. 70 (2024) (with Mary Ziegler).

The History of History and Tradition: The Roots of Dobbs’s Method (and Originalism) in the Defense of Segregation, 133 Yale L.J.F. 99 (2023)

Guided by History: Protecting the Public Sphere from Weapons Threats under Bruen, 98 N.Y.U. Rev. 1795 (2023) (with Joseph Blocher)

- For a brief drawing on this article’s analysis of *Bruen* and *Rahimi*, see Brief of Second Amendment Law Scholars as Amici Curiae in Support of Petitioner, U.S. v. Rahimi, No. 22-915, 2023 WL 5489050 (2023)
- Gun Rights and Domestic Violence in *Rahimi*—Whose Traditions Does the Second Amendment Protect? <https://balkin.blogspot.com/2023/10/gun-rights-and-domestic-violence-in.html> (with Joseph Blocher)

How “History and Tradition” Perpetuates Status: Dobbs on Abortion’s Nineteenth-Century Criminalization, 60 *Hous. L. Rev.* 901 (2023)

Memory Games: Dobbs’s Originalism as Anti-Democratic Living Constitutionalism — and Some Pathways for Resistance, 101 *Texas L. Rev.* 1127 (2023)

Equal Protection in Dobbs and Beyond: How States Protect Life Inside and Outside of the Abortion Context, 43 *Colum. J. of Gender & the Law* 67 (2023) (with Serena Mayeri & Melissa Murray)

- Discusses equal protection argument of our amicus brief in *Dobbs*: Brief of Equal Protection Constitutional Law Scholars Serena Mayeri, Melissa Murray, and Reva Siegel as Amici Curiae in Support of Respondent, *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392, 2021 WL 4340072 (2021)
- For another overview of this work, please see *Reproductive Rights and Dobbs* in *YLS Today*, Jan. 23, 2023

Abortion: Rights in Motion — Global Constitutionalism 2022 (with Linda Greenhouse & Judge Daniela Salazar Marín)

Race and Guns, Courts and Democracy, 135 *Harv. L. Rev. F.* 449 (2022) (with Joseph Blocher)

The Remaking of the Second Amendment, *N.Y. REV. OF BOOKS*, June 10, 2022 (with Duncan Hosie)

The Politics of Constitutional Memory, 20 *GEO. J. L. & PUB. POLICY* 19 (2022)

Answering the Lochner Objection: Substantive Due Process and the Role of Courts in a Democracy, 96 *N.Y.U.L. REV.* 1902 (2021) (with Douglas NeJaime), *reprinted in* 38 *Civil Rights Litigation and Attorney Fees Handbook* (Steven Salzman ed. 2022).

Why Restrict Abortion? Expanding the Frame on June Medical, 2020 *SUP. CT. REV.* 277 (2021)

When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under Heller, 115 *Nw. L. REV.* 139 (2021) (with Joseph Blocher)

Surrogacy, Autonomy, and Equality, 2020 *Global Constitutionalism Seminar Volume*, Yale Law School (with Douglas NeJaime)

Conscience Wars in the Americas, 5 *LATIN AM. L. REV.* 1 (2020) (with Douglas NeJaime)

Guerras de conciencia en las Américas (Conscience Wars in the Americas), 5 *LATIN AM. L. REV.* 1 (2020) (with Doug NeJaime)

What Obergefell v. Hodges Should Have Said, Concurring Opinion (with Douglas NeJaime), in *WHAT OBERGEFELL V. HODGES SHOULD HAVE SAID* (Jack Balkin ed. 2020)

Why Regulate Guns? 48(4) J.L. MED. & ETHICS (2020) (with Joseph Blocher)

The Pregnant Citizen, from Suffrage to the Present, GEO. L.J. 19TH AMEND. SPECIAL EDITION 167 (2020), reprinted in 37 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES HANDBOOK (Steven Salzman ed. 2021).

The Nineteenth Amendment and the Democratic Reconstruction of the Family: Recovering a Constitutional Tradition, 129 YALE L.J.F. 450 (2020), reprinted in 36 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES HANDBOOK (Steven Salzman ed. 2020).

The Constitutionalization of Disparate Impact—Court-Centered and Popular Pathways, 106 CAL. L. REV. 2001 (2019)

Religious Exemptions and Antidiscrimination Law in Masterpiece Cakeshop, 128 YALE L.J.F. 201 (2018) (with Douglas NeJaime)

Blind Justice: Why the Court Refused to Accept Statistical Evidence of Discriminatory Purpose in McCleskey v. Kemp—and Some Pathways for Change, 112 NW. L. REV. 1269 (2018)

“Critical Legal Histories” and Law’s (In)determinacy, 70 STAN. L. REV. 1673 (2018)

Religious Accommodation, and its Limits, in a Pluralist Society, in RELIGIOUS FREEDOM AND LGBT RIGHTS: POSSIBILITIES AND CHALLENGES FOR FINDING COMMON GROUND (Robin Fretwell Wilson & William Eskridge, Jr. eds. forthcoming 2018) (with Douglas NeJaime)

Cutler Lecture: Pregnancy as a Normal Condition of Employment: Comparative and Role-Based Accounts of Discrimination, 58 WM & MARY L. REV. 971 (2018)

ProChoiceLife: Asking Who Protects Life and How--and Why It Matters In Law and Politics, 93 IND. L.J. 207 (2018)

Conscience Wars in Transnational Perspective: Religious Liberty, Third-Party Harm, and Pluralism in THE CONSCIENCE WARS: RETHINKING THE BALANCE BETWEEN RELIGION, IDENTITY, AND EQUALITY (Susanna Mancini & Michel Rosenfeld eds. forthcoming 2018) (with Douglas NeJaime)

Community in Conflict: Same-Sex Marriage and Backlash, 64 U.C.L.A. L. REV. 1728 (2017)

The Difference a Whole Woman Makes: Protection for the Abortion Right After Whole Woman’s Health, 126 YALE L.J. F. 149 (2016) (with Linda Greenhouse)

Casey and the Clinic Closings: When “Protecting Health” Obstructs Choice, 125 Yale L.J. 1428 (2016) (with Linda Greenhouse)

Democratic Constitutionalism, National Constitution Center White Paper (2015) (with Robert Post)

Conscience and the Culture Wars, American Prospect, Summer 2015 (with Doug NeJaime)

Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics, 124 Yale L.J. 2516 (2015) (with Douglas NeJaime)

Compelling Interests and Contraception, 47 Conn. L. Rev. 1026 (2015)

(with Neil Siegel) *Contraception as a Sex Equality Right*, 124 Yale L.J.F.

349 (2015) (with Neil Siegel) *How Conflict Entrenched the Right to*

Privacy, 124 Yale L.J.F. 316 (2015)

Meador Lecture: Race-Conscious, But Race-Neutral? The Constitutionality of Disparate Impact in the Roberts Court, 66 Ala. L. Rev. (2015)

Harris Lecture: Abortion and the “Woman Question”: Forty Years of Debate, 89 Ind. L.J. 1365 (2014)

Dignity and the Duty to Protect Unborn Life in UNDERSTANDING HUMAN DIGNITY (Christopher McCrudden ed. 2014)

The Supreme Court, 2012 Term—Foreword: Equality Divided, 127 Harv. L. Rev. 1 (2013).

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Dignity and Sexuality: Claims on Dignity in Transnational Debates Over Abortion and Same-Sex Marriage, 10 Intl. J. Con. L. 335 (2012).

Before (and After) Roe v. Wade: New Questions About Backlash, 120 Yale L.J.2028 (2011) (with Linda Greenhouse)

From Colorblindness to Antibalkanization: An Emerging Ground of Decision in Race Equality Cases, 120 YALE L.J. 1278 (2011)

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Struck By Stereotype: Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination, 59 Duke L.J. 771 (2010) (with Neil Siegel), reprinted in *The Legacy of Ruth Bader Ginsburg* (Scott Dodson ed. 2015).

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Heller and Originalism's Dead Hand - In Theory and Practice, 56 U.C.L.A. L. Rev. 1399-1424 (2009)

Introduction: The Constitutional Law and Politics of Reproductive Rights, 118 Yale L.J. 1312-17 (2009)

Dead or Alive: Originalism as Popular Constitutionalism in Heller, 122 Harv. L. Rev. 191 (2008), reprinted in *THE SECOND AMENDMENT ON TRIAL: CRITICAL ESSAYS ON DISTRICT OF COLUMBIA V. HELLER* (Saul Cornell & Nathan Kozuskanich eds. 2013)

Dignity and the Politics of Protection: Abortion Restrictions Under Casey/Carhart, 117 Yale L.J. 1694-1800 (2008)

2007 Brainerd Currie Lecture. *The Right's Reasons: Constitutional Conflict and the Spread of Woman-Protective Antiabortion Argument*, 57 Duke L.J. 1641 (2008)

Roe Rage: Backlash and Democratic Constitutionalism, 42 Harv.C.R.-C.L. L. Rev. 373 (2007) (co-authored with Robert Post)

Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression, 56 Emory L. J. 815-42 (2007)

2006 Baum Lecture. *The New Politics of Abortion: An Equality Analysis of Woman-Protective Abortion Restrictions*, 2007 U. Ill. Law Rev 991-1053 (2007)

Originalism As a Political Practice: The Right's Living Constitution, 75 Ford. L. Rev. 546-74 (2006) (co-authored with Robert Post)

2005-06 Brennan Center Symposium Lecture, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA*, 94 Cal. L. Rev 1323-1419 (2006)

Democratic Constitutionalism: A Reply to Professor Barron, 1 Harv. L. & Pol'y Rev.(Online) (Sept. 18, 2006), http://www.hlpronline.com/2006/06/post_siegel_01.html. (co-authored with Robert Post)

“You’ve Come A Long Way, Baby”: Rehnquist’s New Approach to Pregnancy Discrimination in Hibbs, 58 Stan. L. Rev. 1871-98 (2006)

Principles, Practices, and Social Movements, 154 U.Penn. L. Rev. 927-50 (2006) (co-authored with Jack Balkin)

Questioning Justice: Law and Politics in Judicial Confirmation Hearings, Yale Law Journal (The Pocket Part), Jan. 2006, http://www.thepocketpart.org/2006/01/post_and_siegel.html. (co-authored with Robert Post)

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The Jurisgenerative Role of Social Movements in U.S. Constitutional Law (for publication with the papers of the Seminario en Latino América de Teoría Constitucional y Política (SELA), June 10-12, 2004, Oaxaca, México)

Popular Constitutionalism, Departmentalism, and Judicial Supremacy, 92 Calif. L. Rev. 1027-43 (2004) (co-authored with Robert Post)

Gender and the United States Constitution: Equal Protection, Privacy, and Federalism, in Constituting Women: Comparative Perspectives (eds. Ruth Rubio-Marin & Beverley Baines, Cambridge Press 2004)

Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles Over Brown, 117 Harv. L. Rev. 1470-1547 (2004)

The American Civil Rights Tradition-- Anticlassification or Antisubordination?, in *Issues in Legal Scholarship, The Origins and Fate of Antisubordination Theory: A Symposium on Owen Fiss's "Groups and the Equal Protection Clause," Vol. 2* BePress 2003) (<http://www.bepress.com/ils/iss/2/>), reprinted in 58 U. Miami L. Rev 9-33 (2004) (co-authored with Jack M. Balkin)

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Protecting the Constitution from the People: Juricentric Restrictions on Section Five Power, 78 Ind. L.J. 1-45 (2003) (co-authored with Robert Post).

She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family, 115 Harv. L. Rev. 947- 1046 (2002)

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Equal Protection By Law: Federal Antidiscrimination Legislation After Morrison and Kimel, 110 Yale L.J. 441-526 (2000) (co-authored with Robert Post)

Discrimination in the Eyes of the Law: How “Color Blindness” Discourse Disrupts and

Rationalizes Social Stratification, 88 Calif. L. Rev. 77-118 (2000), reprinted in *Prejudicial Appearances* (Duke Press 2001)

Collective Memory and the Nineteenth Amendment: Reasoning About “the Woman Question” in the Discourse of Sex Discrimination in History, Memory, and the Law (Austin Sarat & Thomas R. Kearnes eds. 1999)

The Racial Rhetorics of Colorblind Constitutionalism: The Case of Hopwood v. Texas in Race and Representation: Affirmative Action (Robert Post & Michael Rogin eds. 1998)

Valuing Housework: Nineteenth-Century Anxieties about the Commodification of Domestic Labor, in Special Issue: Changing Forms of Payment, 41 American Behavioral Scientist 1437-51 (1998)

Civil Rights Reform in Historical Perspective: Regulating Marital Violence in Redefining Equality (Neil Devins & David Douglas eds. 1998)

Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action, 49 Stan. L. Rev. 1111-1148 (1997)

“The Rule of Love”: Wife Beating as Prerogative and Privacy, 105 Yale L.J. 2117-2206 (1996)

In the Eyes of the Law: Reflections on the Authority of Legal Discourse in Law’s Stories: Narrative and Rhetoric in the Law (Peter Brooks & Paul Gewirtz eds., 1996)

Modernizing Wife Beating in Yale Law Report (Fall 1996)

Abortion in A Companion to American Thought (R. Fox & J. Kloppenberg eds., 1995)

Abortion As a Sex Equality Right: Its Basis in Feminist Theory in Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood (Martha Fineman & Isabel Karpin eds., 1995)

The Modernization of Marital Status Law: Adjudicating Wives’ Rights to Earnings, 1860 - 1930, 82 Geo. L.J. 2127-2211 (1995)

Home As Work: The First Woman’s Rights Claims Concerning Wives’ Household Labor, 1850 - 1880, 103 Yale L.J. 1073-1217 (1994)

Reasoning From the Body: An Historical Perspective on Abortion Regulation and Questions of Equal Protection, 44 Stan. L. Rev. 261-381 (1992)

Book Review, 3 Berkeley Women’s L.J. 171 (1988) (reviewing S. Lehrer, *Origins of Protective Labor Legislation for Women, 1905 - 1915* (1987))

Employment Equality Under the Pregnancy Discrimination Amendment of 1978, 94 Yale L.J. 929 (1985)

SERVICE

Board of Advisors/Academic Advisors, American Constitution
Society Board of Directors, American Constitution Society
2011-17
Faculty Advisor, Yale Chapter, American Constitution
Society Member, General Council, International
Society of Public Law
Surrency Prize Committee, American Society for Legal History, 2015-17
Professional Development Committee, American Association of Law
Schools, 2009-11 John Phillip Reid Book Award Committee, American
Society for Legal History, 2009-11 Board, American Society for Legal
History, 2005-07
Steering Committee, Women's Faculty Forum, Yale
University Board, *Yale Journal of Law and Feminism*