

# Doug NeJaime and Heather K. Gerken

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This is Inside Yale Law School, the podcast series designed to give you a peek inside to the scholars, the thinkers, the teachers, and the game changers of Yale Law School. I'm Heather Gerken, the Dean, here to open a little window into the world of this remarkable place.

I think it's impossible to understand, for instance, how our Constitution protects families of same sex couples without understanding all of the state and local developments that have been happening over the preceding decades that have changed people's understandings of what counts as a family and who deserves respect as a family. That doesn't just come into being. It's carved out by advocates and real people living their lives but changing the views of judges and state lawmakers that inevitably affects our national understandings of who counts.

I have with me here today, Doug NeJaime, the Anne Urowsky Professor of Law at Yale Law School. Doug, thank you so much for being here.

Thanks.

I wanted to first start talking about your scholarship and then about your work in the world. So let's start with your newest article, the one in the Columbia Law Review, which you workshopped, I think, last spring. Can you talk about that?

Yes, so it's called "How Parenthood Functions." And it is a large empirical study of all cases that are electronically available over the past four decades since 1980 on what my co-author, Courtney Joslin at UC Davis, and I call functional-parent doctrines. And these are doctrines that recognize someone as having parental rights or responsibilities based on actually forming a parent-child relationship with a child and parenting that child.

So we have a lot of ways in which we've traditionally given people the legal status of being a parent. They're an adoptive parent. They're a genetic parent. They give birth. But more recently, we've developed these doctrines that say, well, the person who's actually parenting the child-- we should treat that person as a parent.

And it's really important from a child's perspective because from the child's perspective, the person who is parenting them on a day-to-day basis is their parent. It's what our colleagues at the Yale Child Study Center call psychological parent. And it's protecting that relationship that really promotes the well-being of children because we know that having a strong attachment relationship is vital to a child's development. So I remember when you workshopped the paper, it was absolutely fascinating because the basic frame of the paper was that the story that we typically talk about when we talk about these ideas is quite different from the reality. And I wonder if you might say a few words about that.

Yeah, so there's been-- there's a growing literature on functional-parent doctrines. And there's been a lot of advocacy around these doctrines as well as states are adopting them. But there tends to be a particular paradigm case that people have in mind, partly because the cases that got the most publicity around these doctrines were cases involving same-sex couples.

And that's in part because when a same-sex couple were raising a child together, one of them was the biological parent and one of them wasn't. And they were living under discriminatory frameworks that didn't treat the nonbiological parent as a parent. And they couldn't get married for a long period of time. And

they couldn't adopt. And so when they broke up, the nonbiological parent was out of luck unless there was a functional-parent doctrine.

And so people imagine the cases, really, as being same-sex parent cases. But what we found in our work is that that's just a tiny slice of the cases in which these doctrines are doing work. And in fact, they're serving a wide range of families-- families who are struggling with an array of challenges, from housing insecurity to economic insecurity, incarceration, substance use disorders.

And so what happens is someone comes in to parent the child when those who might be the legal parents are really not capable of parenting at that time. And these doctrines, then, are invoked by courts to legally protect that relationship. So rather than finding that same-sex couples constitute the largest share of the cases, we found that relatives constituted a larger share of the cases. And among relatives, grandparents were the largest share.

And so there's grandparents who are serving as grandparents. But there are lots of grandparents who are serving as parents of children, which has only been exacerbated by the pandemic, in which many children were-- had lost their primary caregiver, and the opioid epidemic, where many children are being parented by people other than their legal parents.

So this surprised everyone in the workshop. But I wonder if it surprised you given that you've been in this world for a long time.

It completely surprised me. So we certainly expected that we'd find a lot of cases that weren't same-sex couple cases. We didn't expect that relative cases would predominate in the way that they did. And we also didn't expect that there would be so many cases of families that are functioning under such significant challenges and the circumstances that they're facing in just trying to put together care arrangements in the face of that, and how important these doctrines are to protecting children.

The other thing that was really striking was that about a third of the cases involved child welfare involvement, meaning that the state was already intervening in these families. So it's not that someone's invoking the doctrine to get the state to come in and do something. The state's already involved. And the child might be removed from their home. And what the functional parent is saying is, I'm parenting this child. Protect this child's current home placement and their relationship with me. And that's really not something anyone expected to find in these doctrines.

So in some ways, it's a deeply intuitive doctrine. You can imagine it. But I know that the empirics were really tough because states use different sources of authority. They describe it differently. So what kind of work was involved in pulling that together? It must have been enormous.

Yeah, so one, hopefully, contribution of the article is actually just to identify this thing that we call functional-parent doctrines and to put under that heading a number of disparate doctrines that people hadn't treated together before. So we commonly use terms like "defacto parent," "in loco parentis," in the place of a parent. But we found many other doctrines that fit this category-- defacto custodian, equitable caregiver. There's a presumption of parentage for people that have held a child out as their child. And we were able to group these together.

But then pulling the cases and actually coding them along 15, 16 different dimensions was a huge undertaking, only made possible by the fact that at Yale Law School we have the most fabulous talented students who really spearheaded the empirics of this with a team of research assistants who took different states and were able to code the cases; and two research assistants, Sonia Qin and Alex Johnson, who were the heads of the research teams, who kept producing these spreadsheets and

redoing them and redoing them so that, ultimately, every case of this 700 cases had the eyes of Professor Joslin or I on them and multiple students so that we were able to be confident with what we were producing.

Yeah, it's really amazing. And I wonder if you could just situate that work against the backdrop of your lifelong work, which is all in this area but looking at different pieces of it.

Yeah, so I've been primarily interested over the past several years in the law's treatment of nonbiological parent-child relationships. And we just take for granted that biological parents have rights and responsibilities with respect to their children. And yet, we live in a world in which so many children are being parented by someone who's not a biological parent. And we tend to assume that that person adopts the child.

But for many people, that relationship is not an adoptive parent-child relationship and shouldn't have to be. Adoption, typically, is when one person has rights to a child, and those rights are relinquished or terminated, and someone else assumes parental rights and responsibilities.

But for many of the families that I look at, they're having children through assisted reproduction, with donor sperm or donor egg. And they're intended parents from the outset. Or they've been parenting a child for several years, perhaps with the biological parent of the child. And many people don't even realize that they should have to adopt their own child.

And so I've been interested in how the law deals with these old and new family formations. And, increasingly, that the law has tried to protect those relationships. And yet, we still see pockets of resistance and places in which the law has blind spots and privileges biological relations over nonbiological relations. And so I've been generally interested in trying to develop the case, both doctrinally and normatively, for the law to really respect and protect these nonbiological parent-child bonds.

So one of the things I love about your work, Doug, is that you're describing a field that is bound by tradition and, yet, waves of change are running across it. And you're able to catch why that's intellectually interesting. But you never lose sight of the human costs and-- of that issue.

And what is particularly moving to me is that you've actually done work in the world on these issues and put your scholarship into practice. And so I wonder if you could talk about the thing that inspired all of us, which is the work you did with the Connecticut legislature?

Yes, so there's clear ways in which the law can be reformed to protect the kinds of relationships that I've been focused on in my research and writing. And so I've been involved with legislative efforts to change the law. And, in some ways, it does require rethinking a lot of the assumptions that have animated our family-law frameworks. But, in other ways, as you said, we're in the midst of change. And so there's opportunities to see law changing in ways that we should seize on and continue to move forward.

And so Connecticut has been a jurisdiction where we've tried to protect families and children and, specifically, LGBT families. We were one of the first states to recognize marriage equality. Our legislature protected the adoption rights of same-sex couples, which is not true of legislatures of many jurisdictions. And so we started to advocate for a reform of our parentage laws in Connecticut.

And I-- partly because you've created an environment here where those of us on the academic side are encouraged and free to do clinical and experiential work-- created the Connecticut Parentage Act clinic and was able to work with our talented students to actually try to get the Connecticut legislature to overhaul our laws.

The Connecticut Parentage Act was based on the Uniform Parentage Act of 2017-- which I was involved with-- put out by the Uniform Law Commission, that offers a framework for states to update their parentage laws to be gender-neutral, sexual-orientation neutral, marital-status neutral, and to also protect children's relationships with their parents regardless of how they were conceived.

And we were using that as a model in Connecticut. One thing that people, I think, didn't realize is that while Connecticut had been out in front in a lot of ways, our parentage laws were really outdated. So if you had an unmarried same-sex couple in Connecticut who had a child together with donor sperm, and they raised that child together for eight years, and then they break up, the nonbiological mother did not even have standing to go into court and say that she was a parent and should have shared custody of the child.

And so we were just telling people, you don't have any way of actually vindicating your parental rights. And so we worked with the legislature and our great legislative champion representative, Jeff Curry, who has shepherded many LGBTQ rights bills, to overhaul our parentage laws to protect these nonbiological parent-child relationships for same sex couples and for different sex couples, for families formed through assisted reproduction and those who aren't, and also to protect children who might have more than two people who are parenting them.

And the first session that we ran the legislation was thrown off course by the pandemic. So we had an amazing public hearing with the Judiciary Committee. Students testified. And I was just so proud of them. And it was such a successful hearing that the ranking Republican member on the committee decided to co-sponsor the legislation during the hearing after he heard from families affected by our laws. But the legislature closed during the pandemic.

We went back the following year and passed with bipartisan support. Only one person in the legislature in the House voted against the bill. And it passed unanimously in the Senate. And Governor Lamont signed the law into effect. And it took effect in 2022.

And I know you've been engaged in the process of change at lots of different levels in lots of different institutions. How do you think about dealing with people on the other side of these questions?

One thing that I think was probably the-- one of the just most important things that came out of the clinic was students getting to see that we could work across ideological and political divisions on an issue that they thought about as a priority of the left, this reform for parentage laws. And that in Connecticut, we had really amazing support from Republican lawmakers-- not just going along with it, but actually leading.

And the Judiciary Committee, for instance, changed from 2020 to 2021. And the ranking member was one of the most conservative members of the State House. And we met with him. So we didn't view it as, he's not going to go along with this, and we need to figure out how to go over his objection. We viewed it as, he's a lawyer. He has a family. He can understand what's at stake here. And so let's meet with him.

And we created a memo-- the students drafted with me-- of here's what every provision, every part of the statute does, and then an overview of why this is important. And we met with him. And he was skeptical. And he asked really hard questions. And we had a really vigorous discussion. And then he co-sponsored the bill because he said, I get what this is doing. And he said, you've done your work.

And the year before when the ranking Republican member on the Judiciary Committee co-sponsored, he actually gave a sort of mini speech in the Judiciary Committee in which he commended us for the way we had done this legislation.

And he said, Yale Law School seems to really know how to do this because this is a lesson in how to do legislation. You guys did all your homework. You reached out to us in advance. You took the time to meet with us. You didn't view us as your adversaries. You viewed us as your collaborators. And I'm confident that this actually is going to have support across the aisle because you've done the hard work.

And so I think it was great for students to see that people are open when you meet with them, that-- and maybe there is a way in which national politics are just very different. But at the state level, people wanted to get stuff done. And they were community members. And we were meeting with them and working to persuade them. And I really valued that.

One of our students gave testimony in the legislative session. And she had been one of the first children in the country born to a male same-sex couple through surrogacy. And she gave really moving testimony and was, herself, in tears. And a junior Republican member of the Judiciary Committee called me after that and said, I don't know if you just saw this person who testified-- not knowing it was one of my students-- she was amazing and how our laws could not protect a family like hers hurt.

And he said to her, your dad's clearly did such a good job. People get this. And people can be persuaded. And all of the issues that get so politicized don't have to always be so politicized. And that's a really important lesson for people. And just a couple of months ago, I was in the New Haven courthouse where, for the first time, a judge adjudicated a nonbiological mother and an unmarried same-sex couple to be a legal parent under the Connecticut Parentage Act.

And if this had happened just a year before, she would have potentially never seen her child again. And it just really brought me to tears because it was so moving the way the law could really change people's lives.

That's wonderful. Well, huge congratulations. And I know it's becoming a model for other states and that you're, in fact, working with other states. So I think you're doing some work for Massachusetts right now. Yes, so we just are introducing, again, the Massachusetts Parentage Act. And the article that we were discussing, actually, was a key part of a legislative meeting there last year. And we're hopeful that this year, the Massachusetts Parentage Act is going to move forward. There's been objections to some of the functional-parent doctrines, particularly from advocates for domestic violence survivors who are concerned that the doctrines might give survivors-- might give abusers a basis on which to continue to harass and coerce victims.

But what we did in Connecticut was work with domestic violence advocates in the state to build in protections for survivors of domestic violence in the law, and then train advocates on how to use the law to protect survivors. And that's become-- that was not part of the Uniform Act and has become a model for other states. And so Massachusetts is doing that as well.

That's great. I want to talk a little bit about your teaching. But first, I just want to ask you just a more general question because as a federalism person, I cannot resist. I mean, one of the things that's interesting about your work is that you're looking at things happening at the state level and the local level inside courts that most scholars don't even get a view into. I don't even know if some of them know they exist.

And we, I think, with our emphasis as scholars on federal law and constitutional law, tend to think in a very topline level about these kinds of questions. But you're looking at all the churn that's happening beneath, and the change that comes from below. So I wonder, how do you think about those things as you negotiate a place that tends to be dominated by a Federal view?

Yeah, I think in so many ways it gives me a different view of how federal law becomes federal law because there's so much happening on the ground-- for instance, to change our understandings of what's a family and who's a parent-- that will shape understandings of federal law.

And I think it's impossible to understand, for instance, how our Constitution protects families of same-sex couples without understanding all of the state and local developments that have been happening over the preceding decades that have changed people's understandings of what counts as a family and who deserves respect as a family. That doesn't just come into being. It's carved out by advocates and real people living their lives but changing the views of judges and state lawmakers that inevitably affects our national understandings of who counts.

Yeah. I think it's funny-- I think you and I may be the only-- I don't know for sure about you-- but may be the only fans of Justice Kennedy's opinion in Windsor--

Yes. [LAUGHS]

--because it doesn't really make an enormous amount of sense from conventional constitutional law doctrine because he doesn't really treat it as a federalism question, nor does he treat it as an equal protection question in the classic sense. But he talks about that. And there's, actually, sort of a love letter to the work that gets done on the ground in that opinion.

Yeah, in my world, so many scholars of LGBTQ law and family law criticize Justice Kennedy's opinions, both in Windsor and in Obergefell as conservative and too marriage-centric. And I think those decisions-- they do not just have meanings that exist without us figuring out what those meanings are. And we-- they give us resources to make arguments about who counts and what a family is.

And what I see in those opinions is actually a pretty significant attempt to say, there's a long history of excluding gay and lesbian people and their families. And that history has been changing. And we now appreciate that they are forming families that are worthy of respect. And for constitutional purposes, that should matter.

And one thing that those decisions did was not just say, and we only respect them when they're married. It actually sort of said, they are respect-worthy when they're forming families, and they should then be integrated into the constitutional order more broadly. So I think they-- those decisions can be used to protect non-marital families just as they protect marital families.

So my mantra in constitutional law is that rights are like families. They're built, not born.

Yes.

[LAUGHTER]

And I feel like it's particularly resonant for your work.

Yes.

That is true on both sides of your work.

Yeah.

I wonder if we can talk a little bit about teaching? Because you are a fabulous teacher and have won teaching awards seeming-- I think everywhere you've taught. And you teach both in traditional classroom style, and then you also got to teach in your policy clinic. Can you just talk a little bit about what it's like to teach-- particularly, what it's like to teach our students?

What's wonderful about teaching here is that the students are so deeply engaged and committed, and they're so talented that you can start from a place of people understand the basics, and we're going to

now figure out the gaps and the inconsistencies and dive deep into these important questions at the forefront of a field.

What's sometimes a challenge is that our students, as you said, are steeped in the idea that federal law is the central thing we're studying. And so I tend to teach in areas where it's more state law. I teach family law. I teach professional responsibility. These are generally state law courses.

And, for me, it's a challenge. But it's also a reward because-- especially in the world we're in today, and the state of our federal courts, and a Congress that might not be capable of doing what it's done in previous generations-- getting students to see all of the things that can happen in state law under state constitutional provisions, but also just under state statutes and state common law, the ways in which those bodies of law can actually do equality work without speaking in registers of traditional equality discourse.

And having them appreciate the opportunities that exist in states, that legislatures are actually doing a lot of amazing things, and we should be taking advantage of that. That state courts can have understandings that depart from what federal courts say, and we should be taking advantage of that. And so it's, for me, really rewarding to get students to see state law as a site of real opportunity for them. And then to get them-- to see them go out and do-- design fellowships that have state law at the center to work at state-based organizations has really been amazing.

Yeah, now my clinic also does work in-- for the city of San Francisco, so lots of state law. Although, I will say federal pre-emption law is the bane of our existence. [LAUGHS]

Right

And so I don't know how many pre-emption memos I've read over the, whatever, 15 years the clinics been in existence. What about the difference between teaching those two kinds of courses? They're really-- teaching a clinic versus teaching a traditional class?

Yeah, so the clinic-- for me, that was a challenge because I'm not a clinical teacher. And so I've read a lot of literature on clinical teaching. And I've tried to integrate some of the methods. But it's not what I do on a day-to-day basis. It also was a legislative clinic and not a litigation clinic. And so that was a challenge as well.

And I think, as someone who tends to be controlling, to be able to actually give over to the students authority was a challenge for me. And I know our clinicians here are just superb at doing that. That was a real challenge for me. And I think each year of the clinic-- I did it for three years-- I got better at doing that. But the reward was being at a hearing and seeing your students testify and bring legislators to tears, and seeing, like, they can do-- they have this. And getting them to run meetings, and run webinars, and be in the community doing work was just a kind of reward that you don't get in the nonclinical teaching space. Yeah, yeah, it's like watching them put on their superhero capes and realizing, wow, they're lawyers.

Yeah.

Yeah, I know. It's really wonderful. And the truth is actually the growth-- virtually all of the growth in our clinics has been from the nonclinical side, from the academic side. So it's really interesting to see that happening at this moment.

So can we talk a little bit-- if I may just ask a personal question, but I know that a lot of the work you do is now bound up in your own personal life. And you adopted a child. And I wonder if you might just talk a little bit about that.

Yeah, so I was writing about marriage for a very long time, being unmarried. My now husband and I were together for many years before we got married. And so it was interesting to write about the institution of marriage and not be married, and then get married. I was writing about parenthood for a very long time, not being a parent. But our son is about to turn four in a month.

And having adopted him and raising him with my husband has only cemented the commitments that I had when I was writing as not being a parent. There's something about the experience of actually parenting and being an adoptive parent that has led me to be even more committed to the idea that it's the hard work of parenting that our law should respect and protect.

And from the perspective of the child, the biological bond is not what's meaningful, that what's meaningful is who is the person that's meeting my emotional, material, psychological needs on a day-to-day basis.

So I can't help but think sometimes-- as I was sitting in that courtroom watching a judge say that the nonbiological mother was a legal parent under the law and that next week she would resume having parenting time with her child, who she hadn't seen in 11 months at that point-- I can't help but think, well, what if someone had said, well, I'm not a parent of my child, and I can't see my child. What would that do to me? What would that do to my child?

And so it really does lead me to be even more interested in developing the arguments that based on law and based on science and based on people's experience, that we really should be developing legal frameworks that protect the relationship between the child and the person who's parenting them. And that would be the most welfare-promoting position for our law to take.

And, unfortunately, too often our law allows people who are biological parents but have not played a role in the child's life to swoop in and have superior rights to someone who's been doing that really hard important work of parenting the child.

What's sort of amazing both with your intellectual work and your practical work is you've built an entirely different world for your child and all our kids to inhabit, so thank you so much for that.

Yeah, thanks.

I wonder if you might talk a little bit about a question that I think doesn't often appear on the academic radar. We spend a lot of time interpreting laws and thinking about how to interpret them. We don't actually write them. And it's a completely different art. So I wonder if you could talk a little bit about how you learned to do it, how you and your students learn to do it, what it's like to put in place a law against the backdrop of an entire statutory scheme?

Yes, so this was a huge challenge and undertaking. The Uniform Law Commission drafts uniform acts, which the goal of that is to make it easier for state lawmakers to-- who are part-time legislators working under a lot of constraints, to be able to change their laws in a way that has been vetted by experts and specialists, and also to produce some uniformity.

But, of course, the Uniform Act is not drafted for any particular state. So when you actually try to change law in a state, you're usually doing it against the backdrop of hundreds of pages of statutes that have been on the books, sometimes for decades, and have been changed over time, and reflect all sorts of compromises from past legislatures. And some of which were changed piecemeal and some of which were overhauled.

And so it was a challenge to figure out, how do we tailor parentage reform for Connecticut's existing statutory frameworks? Connecticut also is distinctive in that we split our parentage matters across two



courts-- the probate court and the superior court, family court division-- the family division of superior court.

And so under our laws, traditionally, if a man wants to establish paternity of a nonmarital child, he goes to probate court and files a petition. If a woman wants to establish paternity over a child, she goes to family division of superior court. And we also actually give our juvenile court jurisdiction to do parentage, paternity, as well.

And so that means you have multiple stakeholders because probate court doesn't want to lose its matters, and family division, of course, is going to keep some parentage matters. And it also means you have statutes and rules and procedures that are governing different courts. And you need to figure out how this is all going to work together.

And so what we did was over the course of, really, what ended up being two years, is we met with the probate court-- a chief administrative judge of the probate court and the chief counsel at probate court. And we met with the superior court-- the chief administrative judge and the chief family division judge almost weekly, at some points, to go through statutes and figure out how would we change things to negotiate language changes.

And then there were groups like the family law section of the Connecticut Bar that did their own study committees in which they were, then, going to suggest markups of the bill. And so some of it was technical. Some of it was really substantive. There were things that we were not going to give on that would have weakened the bill.

And, eventually, we ended up with what was a 180-page bill that was a lot of new law and also amendments to existing statutes. And in an area like this, we didn't even have the term parentage in Connecticut. We had paternity.

Amazing, amazing.

We talked about children born out of wedlock. And we just-- we had to change a lot. So what we're-- that's the big piece. And you have to decide how much are you going to do. But then once you get a law passed, there's other parts of Connecticut statutes that are going to reflect the outdated language. And so the thing that we've been doing since then is doing subsequent cleanup bills to try to change other areas of law.

So we didn't touch adoption statutes when we did the Parentage Act because we weren't dealing with adoption. But if the adoption statutes now use terms that are outdated and define parent in a way that's outdated, we need to update those statutes. So we're now looking at all of the adoption statutes, which the students had done a first cut of figuring out, what are all the adoption statutes that are relevant, how might they be changed? And that is a long, arduous process that they committed a lot of time to that is coming to fruition now, a few years later.

It's interesting because you've got the students focus on the really granular hard work slog-- roll up your sleeves slog of change, which I think is something that people don't really think about. They sort of imagine the win and then-- as if nothing happens after that. So that's a wonderful-- I wonder, since you've been in this world for a while and working on these issues for a long time, how you might talk to our students about this moment in time?

Because on the one hand, over the course of our lives-- lifetimes, LGBTQ rights have changed fundamentally. On the other hand, it's been a tough couple of years. And I wonder how you-- how do you talk to your own students about that question?

Yeah, so we are witnessing a wave of anti-LGBTQ measures, primarily at the state level. But I would anticipate we'll see some efforts in the house as well.

And we're also living in a time where federal courts are not respecting LGBTQ rights in the ways that some of our students would hope. And that's hard. But it's, I think, part of conflict in a Democratic society over really contested issues.

And in some ways, some of the issues that are arising today make you think that it's like the '80s or '90s all over again, where we're-- the fights over curriculum. Those are fights that we had decades ago. Fights over whether schools have to allow LGBTQ student groups-- those are fights we had decades ago. But in other ways, the fights are new. And they are a sign of progress because, for instance, the fights over transequality are only possible because we've made strides, because people now recognize that trans people are part of their communities, and because courts and legislatures and executive actors have acted to protect trans people's rights to exist, and to access health care, and to be treated as fully belonging in educational spaces.

And so there's responses. There's backlash. There's backlash to changes. And backlash isn't just to court decisions. It's to legislative changes. It's to what other states do. And so in our hyperpolarized nation right now, we are seeing some jurisdictions really try to restrict the rights of LGBTQ people. But we're seeing other jurisdictions respond, both by expanding rights in their own jurisdictions and by trying to protect people who might be coming from more hostile jurisdictions.

And I think that goes back to the question of state law that we've talked about. Which is, state law is offering an opportunity to do really important equality work. I don't think our students are naive. So they don't think that change is going to happen and there's not going to be responses. And so they're out there fighting and trying to be responsive to what's happening in hostile states but also trying to take advantage of opportunities that exist in states that are much more receptive.

You've been engaging with these questions and with the other side for a long time. I wonder if you have advice about thinking about just how to get change done through the-- how does political engagement work if you really want to get something done?

Yeah, so one thing that I try to impart on our students, which is somewhat against what some of our colleagues might say, is that they can't abandon any venue. So I know that in a time like today, where the federal courts are really hostile, where the US Supreme Court has a conservative supermajority, there is an instinct to turn away from courts.

But people who want to make social change turn away from arenas at their own risk. And their opponents will continue to be advocating in courts and in legislatures and in the executive branch. And they need to also do the same thing. And it doesn't mean that you do it in the same way you do when you think you have a receptive judiciary. But all of these arenas offer opportunities to change people's minds, to craft messages, to put pressure on other actors.

And so students need to keep a full view of the tools that are available to them as social change actors, and take advantage of those tools, and use them strategically, and understand the ways that they interact. And the goal is not always to produce a win in a particular venue but, instead, to take advantage of what you can do in that venue to push forward your cause.

Which-- the thing I love about that, Doug, is one of my very favorite pieces of yours is "Winning by Losing," which is-- you wrote a long while ago. But it still is an incredibly important piece in the discussion of social movements.

Yeah, I-- thank you, and I think that we tend to do too much to emphasize results and winning or losing. And, instead, what we see is that advocates, themselves, are pretty adept at taking losses, losses in court, using them to pressure legislatures, using them to message, using them to fundraise. And so it goes back to the question of, there's lots of bad stuff happening. There's some good stuff happening. That's the push and pull. And we're always in this conflict. And that's what it means to be fighting over these important issues in our society today.

Well, thank you, Doug, for being a model and teaching our students to do the same.

Thanks.

[MUSIC PLAYING]