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PROFESSIONAL EXPERIENCE

Nicholas deB. Katzenbach Professor of Law, Yale Law School

Subjects taught (recent): Constitutional Law; Democratic Constitutionalism; Antidiscrimination Law; Law and Inequality; Public Law Workshop; Reproductive Justice; Equality, Community, and Sovereignty, Transnationally; The Politics of Method—Law & Economics and Originalism

Administration/Service: developing programs to support students and alumni entering law teaching, 2007–17; Deputy Dean of Intellectual Life, 2007-09

Felix Frankfurter Visiting Professor, Harvard Law School, 2006

Visiting Professor of Law, Columbia Law School, 2001-02

Visiting Professor of Law, Harvard Law School, 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

EDUCATIONAL BACKGROUND

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

SERVICE (RECENT)

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*,

BOOKS

PROCESSES OF CONSTITUTIONAL DECISIONMAKING, with Sanford Levinson, Jack Balkin, Akhil Amar, & Cristina Rodríguez 8th ed. 2022

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

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 our essay on *Remembering How to Do Equality* and an essay co-authored with Robert Post on *Democratic Constitutionalism*

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

Abortion's New Criminalization—A History-And-Tradition Right to Healthcare Access After Dobbs and the 2023 Term (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. (forthcoming 2025) (with Mary Ziegler)

The “Levels of Generality” Game, or “History and Tradition” as the Right’s Living Constitution, 47 Harv. J.L. & Pub. Pol’y (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* (Lee Bollinger & Geoffrey R. Stone eds. 2024)

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

Colorblindness, Originalism, and Constitutional Memory: Competing Claims on Our Past in SFFA v. Harvard (with Jack Balkin)

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. REVIEW 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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Backlash to the Future? From Roe to Perry, 60 U.C.L.A. L. Rev. Disc. (2013)(with Linda Greenhouse).

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The Constitutionalization of Abortion, in Michel Rosenfeld and Andras Sajo, eds., *The Oxford Handbook of Comparative Constitutional Law* 1057 (Oxford: Oxford University Press 2012), *reprinted in* *Abortion Law in Transnational Perspective: Cases and Controversies* (Rebecca J. Cook, Joanna Erdman & Bernard H. Dickens 2014).

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

Roe's Roots: The Women's Rights Claims that Engendered Roe, 90 *B. U. L. Rev.* 1875 (2010)

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).

Pregnancy and Sex-Role Stereotyping, From Struck to Carhart, 70 *Ohio St. L.J.* 1095 (2009) (with Neil Siegel)

Dignity and Reproductive Rights. SELA (The Seminario en Latinoamérica de Teoría Constitucional y Política – the Seminar in Latin America on Constitutional and Political Theory), June 2009 (Asunción, Paraguay)

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)

Roe as Sex Equality Opinion in What Roe Should Have Said (J.M. Balkin ed. NYU Press 2005)

The Jurisgenerative Role of Social Movements in U.S. Constitutional Law (for publication with the papers of the Seminario en Latino América de Teoria Constitucional y Politica (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)

Legislative Constitutionalism and Section Five Power: Policentric Interpretation of the Family and Medical Leave Act, 112 Yale L.J. 1943-2059 (2003) (co-authored with Robert Post)

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)

Text in Contest: Gender and the Constitution from a Social Movement Perspective, 150 U. Penn. L. Rev. 297-351 (2001)

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)