

Neil S. Siegel

David W. Ichel Professor of Law
Professor of Political Science
Associate Dean for Intellectual Life
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Duke University School of Law
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EXPERIENCE

Duke University School of Law	Durham, N.C.
<i>Associate Dean for Intellectual Life</i>	July 2022 – present
<i>David W. Ichel Professor of Law and Professor of Political Science</i>	July 2013 – present
<i>Director, Summer Institute on Law and Policy</i>	July 2013 – present
<i>Co-Director, Program in Public Law</i>	July 2008 – June 2018
<i>Professor of Law and Political Science</i>	July 2009 – June 2013
<i>Associate Professor of Law and Political Science</i>	July 2007 – June 2009
<i>Assistant Professor of Law and Political Science</i>	July 2004 – June 2007
Senator Chris Coons	Washington, D.C.
United States Senate Judiciary Committee	March 2022 – April 2022
<i>Special Counsel for Jackson Hearings</i>	
Senator Chris Coons	Washington, D.C.
United States Senate Judiciary Committee	September 2020 – October 2020
<i>Special Counsel for Barrett Hearings</i>	
Senator Chris Coons	Washington, D.C.
United States Senate Judiciary Committee	August 2018 – September 2018
<i>Special Counsel for Kavanaugh Hearings</i>	
American Law Institute	Philadelphia, Pennsylvania
Member	July 2018 – present
Victoria University of Wellington School of Law	Wellington, New Zealand
<i>Ian Borrin Visiting Fellow</i>	May 2017
Senator Christopher Coons	Washington, D.C.
United States Senate Judiciary Committee	February 2017 – March 2017
<i>Advisor for Gorsuch Hearings</i>	

Senator Joseph R. Biden Jr.
United States Senate Judiciary Committee
Special Counsel for Roberts and Alito Hearings

Washington, D.C.
July 2005 – January 2006

Associate Justice Ruth Bader Ginsburg
Supreme Court of the United States
Law Clerk

Washington, D.C.
July 2003 – July 2004

Office of the Solicitor General
United States Department of Justice
Bristow Fellow

Washington, D.C.
July 2002 – June 2003

Chief Judge J. Harvie Wilkinson III
United States Court of Appeals for the Fourth Circuit
Law Clerk

Charlottesville, VA
June 2001 – June 2002

O'Melveny & Myers LLP
Summer Associate

Washington, D.C., June 2001
San Francisco, CA, Summer 2000

School of Law
University of California, Berkeley
Lecturer appointed by Dean to design/teach Introduction to U.S. Law
Teaching Assistant, Criminal Law (Sanford Kadish)

Berkeley, CA
Fall 2000

Jurisprudence & Social Policy Program
University of California, Berkeley
Graduate Student Instructor

Berkeley, CA
1997–2001

EDUCATION

University of California, Berkeley School of Law: J.D., 2001

Graduated 1st in class; *Boalt Hall Fellowship* (full tuition, fees); Senior Articles Editor, *California Law Review*; Jurisprudence Awards in Federal Courts, U.S. Supreme Court Seminar, Criminal Law, Constitutional Law & Public Choice Theory, Law & Economics, and 18th Century Constitutional Design

University of California, Berkeley: Ph.D. (Jurisprudence & Social Policy), 2001

Dissertation: *Intransitivities Protect Minorities: Interpreting Madison's Theory of the Extended Republic*; Field Examinations in U.S. Constitutional Theory and Law & Economics; *Berkeley Graduate Fellowship* (full tuition, fees, stipend); *Kadish Center for Morality, Law & Public Affairs Fellow*; *John M. Olin Law & Economics Fellowship*

Duke University: M.A. (Economics), 1995

Full-tuition scholarship; *Spengler Fellow*

Duke University: B.A., *summa cum laude* (Economics, Political Science), 1994
Angier B. Duke Memorial Scholarship (full tuition); *Phi Beta Kappa*; Graduation with
Distinction in Economics, Political Science; Prize for Best Senior Thesis in Economics

SCHOLARLY WRITING

Work in Progress

Packing the Court: Law, Conventions, and Politics (book project with Curtis A. Bradley)

Forthcoming

THE COLLECTIVE-ACTION CONSTITUTION (Oxford University Press, forthcoming 2024)

Books

UNITED STATES CONSTITUTIONAL LAW (Foundation Press, 2nd ed. 2024) (with Daniel A. Farber)

Recent Written Testimony

Composition of the Supreme Court, Testimony Before the Presidential Commission on the
Supreme Court of the United States (July 20, 2021)

Articles and Essays on Historical Practice, Constitutional Norms, and Separation of Powers

The Trouble with Court-Packing, 72 DUKE LAW JOURNAL 71 (2022)

The Trump Presidency, Racial Realignment, and the Future of Constitutional Norms, in
AMENDING AMERICA'S UNWRITTEN CONSTITUTION (Richard Albert, Yaniv Roznai, & Ryan C.
Williams eds., Cambridge University Press, 2022)

Historical Practice, Madisonian Liquidation, and the Originalism Debate, 106 VIRGINIA LAW
REVIEW 1 (2020) (with Curtis A. Bradley)

Law Is Not Enough, 45 OHIO NORTHERN UNIVERSITY LAW REVIEW 197 (2019) (2018 Carhart
Lecture)

After the Trump Era: A Constitutional Role Morality for Presidents and Members of Congress,
107 GEORGETOWN LAW JOURNAL 109 (2018)

Political Norms, Constitutional Conventions, and President Donald Trump, 93 INDIANA LAW JOURNAL 177 (2018) (symposium entitled “The Future of the U.S. Constitution”)

Historical Gloss, Constitutional Conventions, and the Judicial Separation of Powers, 105 GEORGETOWN LAW JOURNAL 255 (2017) (with Curtis A. Bradley)

After Recess: Historical Practice, Textual Ambiguity, and Constitutional Adverse Possession, 2014 SUPREME COURT REVIEW 1 (2015) (with Curtis A. Bradley)

Articles, Essays, and Book Chapters on Collective Action Federalism and Related Subjects

The Taxing Clause, NATIONAL CONSTITUTION CENTER, INTERACTIVE CONSTITUTION (2016) (with Steven J. Willis)

The Power to Tax, Not to Destroy: An Effects Theory of the Taxing Clause, NATIONAL CONSTITUTION CENTER, INTERACTIVE CONSTITUTION (2016)

The Necessary and Proper Clause, NATIONAL CONSTITUTION CENTER, INTERACTIVE CONSTITUTION (2016) (with Gary Lawson)

The Necessary and Proper Clause and the Collective Action Principle, NATIONAL CONSTITUTION CENTER, INTERACTIVE CONSTITUTION (2016)

Direct and Indirect Taxes, NATIONAL CONSTITUTION CENTER, INTERACTIVE CONSTITUTION (2016) (with Steven J. Willis)

Still Very Narrow after All These Years—And Rightly So, NATIONAL CONSTITUTION CENTER, INTERACTIVE CONSTITUTION (2016)

Collective Action Federalism and Its Discontents, 92 TEXAS LAW REVIEW 1937 (2013)

Distinguishing the “Truly National” from the “Truly Local”: Customary Allocation, Commercial Activity, and Collective Action, 62 DUKE LAW JOURNAL 797 (2012) (symposium on law and custom)

Not the Power to Destroy: An Effects Theory of the Tax Power, 99 VIRGINIA LAW REVIEW 1195 (2012) (with Robert D. Cooter)

Free Riding on Benevolence: Collective Action Federalism and the Minimum Coverage Provision, 75 LAW & CONTEMPORARY PROBLEMS 29 (2012) (Issue No. 3)

The Liberty of Free Riders: The Minimum Coverage Provision, Mill’s “Harm Principle,” and American Social Morality, 38 AMERICAN JOURNAL OF LAW & MEDICINE 374 (2012) (with Jedediah Purdy) (symposium on the constitutionality of the Patient Protection and Affordable Care Act)

“Early-Bird Special” Indeed!: Why the Tax Anti-Injunction Act Permits the Present Challenges to the Minimum Coverage Provision, 121 YALE LAW JOURNAL ONLINE 389 (2012) (with Michael C. Dorf)

Four Constitutional Limits that the Minimum Coverage Provision Respects, 27 CONSTITUTIONAL COMMENTARY 591 (2011)

Collective Action Federalism: A General Theory of Article I, Section 8, 63 STANFORD LAW REVIEW 115 (2010) (with Robert D. Cooter), *republished as revised in* COMPARATIVE CONSTITUTIONAL DESIGN (Tom Ginsburg ed., 2012)

Dole’s Future: A Strategic Analysis, 16 SUPREME COURT ECONOMIC REVIEW 165 (2008)

International Delegations and the Values of Federalism, 70 LAW AND CONTEMPORARY PROBLEMS 93 (2008)

Commandeering and Its Alternatives: A Federalism Perspective, 59 VANDERBILT LAW REVIEW 1629 (2006)

Why the Eleventh Amendment Always Matters, Even When Transaction Costs Are Zero: A Reply to Professor Farber, 18 CONSTITUTIONAL COMMENTARY 177 (2001)

Articles, Essays, and Book Chapters on the Politics of Constitutional Law and Judicial Statesmanship

Foreword—The October 2018 Term: Leaving Things Undecided—and Non-Partisan—For Now, 3 AMERICAN CONSTITUTION SOCIETY SUPREME COURT REVIEW 1 (2019)

Reciprocal Legitimation in the Federal Courts System: Racial Segregation, Reapportionment, and Obergefell Appendix A, 70 VANDERBILT LAW REVIEW 1183 (2017)

The Distinctive Role of Justice Samuel Alito: From a Politics of Restoration to a Politics of Dissent, 126 YALE LAW JOURNAL FORUM 164 (2016)

Federalism as a Way Station: Windsor as Exemplar of Doctrine in Motion, 6 JOURNAL OF LEGAL ANALYSIS (2014)

None of the Law But One, 62 DRAKE L. REV. 1055 (2014) (constitutional law symposium on “The Obamacare Case and Its Significance for the 50th Anniversary of LBJ’s Great Society”)

More Law than Politics: The Chief, the “Mandate,” Legality, and Statesmanship, in THE HEALTH CARE CASE: THE SUPREME COURT’S DECISION AND ITS IMPLICATIONS (Nathaniel Persily, Gillian E. Metzger & Trevor W. Morrison eds., 2013)

Prudentialism in McDonald v. City of Chicago, 6 DUKE JOURNAL OF CONSTITUTIONAL LAW & PUBLIC POLICY 16 (Special Issue 2010)

Interring the Rhetoric of Judicial Activism, 59 DEPAUL LAW REVIEW 555 (2010) (Clifford Symposium)

The Virtue of Judicial Statesmanship, 86 TEXAS LAW REVIEW 959 (2008)

Umpires at Bat: On Integration and Legitimation, 24 CONSTITUTIONAL COMMENTARY 701 (2007)

Theorizing the Law/Politics Distinction: Neutral Principles, Affirmative Action, and the Enduring Insight of Paul Mishkin, 95 CALIFORNIA LAW REVIEW 1473 (2007) (with Robert C. Post)

Race-Conscious Student Assignment Plans: Balkanization, Integration, and Individualized Consideration, 56 DUKE LAW JOURNAL 781 (2006)

Articles and Essays on Constitutional Theory

Constructed Constraint and the Constitutional Text, 64 DUKE LAW JOURNAL 1213 (2015) (with Curtis A. Bradley)

Jack Balkin's Rich Historicism and Diet Originalism: Health Benefits and Risks for the Constitutional System, 111 MICHIGAN LAW REVIEW 931 (April 2013) (reviewing JACK M. BALKIN, *LIVING ORIGINALISM* (2011))

A Coase Theorem for Constitutional Theory, 2010 MICHIGAN STATE LAW REVIEW 583 (symposium: A Response to BARRY FRIEDMAN, *THE WILL OF THE PEOPLE* (2009))

A Theory in Search of a Court, and Itself: Judicial Minimalism at the Supreme Court Bar, 103 MICHIGAN LAW REVIEW 1951 (2005)

A Prescription for Perilous Times, 93 GEORGETOWN LAW JOURNAL 1645 (2005)

Articles, Essays, and Book Chapters on Gender Equality and Reproductive Rights

The Wages of Crying Roe: Some Realism About Dobbs v. Jackson Women's Health Organization, 2 JOURNAL OF AMERICAN CONSTITUTIONAL HISTORY 101 (2024)

Why the Nineteenth Amendment Matters Today: A Guide for the Centennial, 27 DUKE JOURNAL OF GENDER LAW AND POLICY 235 (2020)

The Pregnant Captain, the Notorious REG, and the Vision of RBG: The Story of Struck v. Secretary of Defense, in *REPRODUCTIVE RIGHTS AND JUSTICE STORIES* (Kate Shaw, Reva Siegel, and Melissa Murray eds., 2019)

Compelling Interests and Contraception, 47 CONNECTICUT LAW REVIEW 1025 (2015) (with Reva B. Siegel) (symposium on the 50th Anniversary of *Griswold v. Connecticut*)

Griswold at 50: Contraception as a Sex Equality Right, 124 YALE LAW JOURNAL FORUM (2015) (with Reva B. Siegel)

Struck by Stereotype: Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination, in THE LEGACY OF RUTH BADER GINSBURG (Scott Dodson ed., 2015) (with Reva B. Siegel)

Equality Arguments for Abortion Rights, 60 UCLA LAW REVIEW DISCOURSE 160 (2013) (with Reva B. Siegel)

The New Textualism, Progressive Constitutionalism, and Abortion Rights: A Reply to Jeffrey Rosen, 25 YALE JOURNAL OF LAW AND HUMANITIES 55 (2013)

Struck by Stereotype: Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination, 59 DUKE LAW JOURNAL 771 (2010) (with Reva B. Siegel) (postscript by Associate Justice Ruth Bader Ginsburg)

Pregnancy and the Anti-Stereotyping Principle: From Struck to Carhart, 70 OHIO STATE LAW JOURNAL 1095 (2009) (with Reva B. Siegel) (symposium on the jurisprudence of Associate Justice Ruth Bader Ginsburg)

"Equal Citizenship Stature": Justice Ginsburg's Constitutional Vision, 43 NEW ENGLAND LAW REVIEW 799 (2009) (symposium on the jurisprudence of Associate Justice Ruth Bader Ginsburg)

Issues Edited

Foreword, The Constitutionality of the Affordable Care Act: Ideas from the Academy, 75 LAW & CONTEMPORARY PROBLEMS *i* (2012) (Issue No. 3)

Miscellaneous

Some Modest Uses of Transnational Legal Perspectives in First-Year Constitutional Law, 56 JOURNAL OF LEGAL EDUCATION 201 (2006)

Comments

State Sovereign Immunity and Stare Decisis: Solving the Prisoners' Dilemma Within the Court, 89 CALIFORNIA LAW REVIEW 1165 (2001)

Sen and the Hart of Jurisprudence: A Critique of the Economic Analysis of Judicial Behavior, 87 CALIFORNIA LAW REVIEW 1581 (1999)

LEGAL BLOG POSTS

Bruen in light of Rahimi: Doctrine that Hands a Loaded Gun to Lower Courts, BALKINIZATION (November 8, 2023)

The Wages of Crying Roe, BALKINIZATION (October 23, 2023)

The Trouble with Court-Packing, BALKINIZATION (February 5, 2022)

The Trump Presidency, Racial Realignment, and the Future of Constitutional Norms, BALKINIZATION (January 29, 2021)

Before (and Before and Before) Severability, BALKINIZATION (November 10, 2020)

We Already Know Enough to Conclude that President Trump Should be Impeached and Removed from Office, BALKINIZATION (October 6, 2019)

In Defense of the Chief Justice's Execution of His Responsibilities in NFIB v. Sebelius, BALKINIZATION (March 31, 2019)

Justice Frankfurter's Misplaced Legitimacy Concerns in the Reapportionment Cases, BALKINIZATION (March 28, 2019)

The Anti-Constitutionality of Court-Packing, BALKINIZATION (March 26, 2019)

A Different Border Wall: Judgments of Legal Quality in Texas v. United States, BALKINIZATION (December 22, 2018)

Texas v. U.S.: Congress's Inherent Power to Require No One to Do Anything, BALKINIZATION (December 18, 2018)

A Constitutional Role Morality for Presidents and Members of Congress, BALKINIZATION (February 7, 2018)

Political Norms, Constitutional Conventions, and President Trump, BALKINIZATION (January 21, 2018)

Some Notes on Court Packing, Then and Now, BALKINIZATION (Nov. 27, 2017)

Countermajoritarian Difficulties and the Political Branches: Contesting "Elections Have Consequences," ACSBLOG (April 7, 2017)

Norms and Conventions Meet Donald Trump, OXFORD HUMAN RIGHTS HUB BLOG (March 2, 2017)

The U.S. Constitution, Constitutional Conventions, and President Trump, OXFORD HUMAN RIGHTS HUB BLOG (March 1, 2017)

Reciprocal Legitimation in Response to President Trump, BALKINIZATION (February 14, 2017)

Judicial and Media Independence after the Next Attack, LAWFARE (February 9, 2017)

The Distinctive Role of Justice Samuel Alito: From a Politics of Restoration to a Politics of Dissent, BALKINIZATION (October 19, 2016)

Reciprocal Legitimation in the Federal Courts System, BALKINIZATION (July 18, 2016)

The Supreme Court's Reassuring—and Concerning—Abortion Ruling, ACSBLOG (July 5, 2016)

Constitutional Conventions, the Judicial Separation of Powers, and Justice Scalia's Replacement, BALKINIZATION (February 14, 2016) (with Curtis Bradley)

John Roberts, Ted Olson, and the Judicial Separation of Powers, BALKINIZATION (January 26, 2016)

Obergefell, Judaism, and the Authority of Tradition, BALKINIZATION (September 09, 2015)

Whole Woman's Health: Casey, Res Judicata, and Supreme Court Review, BALKINIZATION (June 24, 2015)

Windsor: Encouraging Constitutional Change, Not (Just) Clearing the Channels of Political Change, BALKINIZATION (March 17, 2015)

Clear Text Versus Extra-Textual Considerations: Bond, Noel Canning, and King, BALKINIZATION (March 5, 2015)

Animus Versus Moral Opposition: Material and Expressive Considerations, BALKINIZATION (September 30, 2014)

POPULAR PUBLICATIONS

The Lawlessness of the Dobbs Decision, SLATE (June 27, 2022) (with Dahlia Lithwick)

How RBG Would Have Powered Through this Crisis, CNN (September 21, 2020)

The Supreme Court Is Avoiding Talking about Race, ATLANTIC (August 7, 2020)

Anthony Kennedy Is Not Stupid, SLATE, Feb. 5, 2017 (with Dahlia Lithwick)

The Democrats Can't Block Gorsuch, SLATE, Feb. 1, 2017 (with Dahlia Lithwick)

Court-Hacking Comes to North Carolina, RALEIGH NEWS & OBSERVER, Oct. 18, 2016 (with Joseph Blocher)

A Litmus Test for Trump's Racism, THE HILL, June 10, 2016

The Harm in the GOP's Pseudo-Principled Supreme Court Stance, THE HILL, April 15, 2016

The American People Will Decide the Supreme Court's Future Anyway, THE HILL, March 3, 2016

Does CNN Deserve to be Reelected?, HUFFINGTON POST, November 8, 2012

Romney, Women, and the Supreme Court, HUFFINGTON POST, Nov. 5, 2012

Yes, the Justices Indeed "Make Law," RALEIGH NEWS & OBSERVER, July 13, 2009

The Meaning of the Court's Decision in the School Cases, CONTRA COSTA TIMES, July 2007

Detainees and the Constitution, RALEIGH NEWS & OBSERVER, Sept. 27, 2006, at A13

Beware the Anti-Freedom Amendment, RALEIGH NEWS & OBSERVER, June 9, 2006, at A15

Separating Childhood Heroes from Today's Politics, PHILADELPHIA INQUIRER, Feb. 24, 2006, at A15

Taking Issue: Americans Deserve Answers, *National Public Radio Online*, Oct. 20, 2005

Remembering Chief Justice Rehnquist, WASHINGTON POST, Sept. 5, 2005, at A30

Rigorous Questions Would Be Only Fair, PHILADELPHIA INQUIRER, July 21, 2005, at A19

The Conservative Choice Is a Moderate, RALEIGH NEWS & OBSERVER, July 6, 2005, at A13

The Rhetoric Behind "Strict Constructionism," DURHAM HERALD-SUN, June 19, 2005, at A11 (with Aziz Huq)

Why President Bush Should Not Take the 5th, HOUSTON CHRONICLE, June 17, 2005, at B11

Medical Marijuana: Read Between the Lines, RALEIGH NEWS & OBSERVER, June 14, 2005, at A11

Justices Create Confusion in Sentencing by Declaring Guidelines Advisory, DAILY JOURNAL, Jan. 18, 2005 (with Erwin Chemerinsky)

Nomination Could Bridge Divide, SUN SENTINEL, November 22, 2004, at 23A

The Election and the U.S. Supreme Court, CHICAGO TRIBUNE, November 2, 2004, at C21

COURSES

J.D. Program

Constitutional Law

Federal Courts

The Collective-Action Constitution

Bolch Judicial Studies Institute

American Constitutional Interpretation

American Statutory Interpretation

Summer Institute on Law & Policy

How to “Think Like a Lawyer”: Introduction to Legal Reasoning

From Congressional and Presidential Power to Liberty and Equality Rights: Introduction to Constitutional Law

Trinity College of Arts & Sciences

American Constitutional Development and Interpretation I: The Constitutional Structure

American Constitutional Development and Interpretation II: Individual Rights