

**Neil S. Siegel**

David W. Ichel Professor of Law  
Professor of Political Science  
Director, DC Summer Institute on Law & Policy  
Duke University School of Law  
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**EXPERIENCE**

<b>Duke University School of Law</b>	Durham, N.C.
<i>David W. Ichel Professor of Law and Professor of Political Science</i>	July 2013 – present
<i>Director, DC 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
<b>American Constitution Society</b>	Washington, D.C.
<i>Board of Directors</i>	December 2018 – present
<i>Board of Academic Advisors</i>	March 2015 – present
<b>Senator Chris Coons</b>	Washington, D.C.
<b>United States Senate Judiciary Committee</b>	September 2020 – October 2020
<i>Special Counsel for Barrett Hearings</i>	
<b>Senator Chris Coons</b>	Washington, D.C.
<b>United States Senate Judiciary Committee</b>	August 2018 – September 2018
<i>Special Counsel for Kavanaugh Hearings</i>	
<b>American Law Institute</b>	Philadelphia, Pennsylvania
Member	July 2018 – present
<b>Victoria University of Wellington School of Law</b>	Wellington, New Zealand
<i>Ian Borrin Visiting Fellow</i>	May 2017
<b>Senator Christopher Coons</b>	Washington, D.C.
<b>United States Senate Judiciary Committee</b>	February 2017 – March 2017
<i>Advisor for Gorsuch Hearings</i>	
<b>Senator Joseph R. Biden Jr.</b>	Washington, D.C.
<b>United States Senate Judiciary Committee</b>	July 2005 – January 2006
<i>Special Counsel for Roberts and Alito Hearings</i>	

**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

**Boalt Hall 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

**Boalt Hall School of Law, University of California, Berkeley: 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

### Works in Progress

*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, forthcoming 2021)

THE COLLECTIVE ACTION CONSTITUTION (Oxford University Press, forthcoming 2022)

THE CUSTOMARY CONSTITUTION: THE ROLE OF HISTORICAL GLOSS AND CONSTITUTIONAL CONVENTIONS IN CONSTRUCTING THE SEPARATION OF POWERS (book project with Curtis A. Bradley)

### Books

UNITED STATES CONSTITUTIONAL LAW (Foundation Press, 2019) (with Daniel A. Farber)

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

*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 50<sup>th</sup> 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 Sex Equality and Reproductive Rights

*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 50<sup>th</sup> 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)

### **RECENT LEGAL BLOG POSTS**

*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

*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

Leadership in Law and Politics

Sex Equality’s Past—and Future: Pregnancy, Contraception, Abortion

From Bickel to Balkin: Readings in Modern Constitutional Theory

### **Bolch Judicial Studies Institute**

American Constitutional Interpretation

American Statutory Interpretation

### **D.C. 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

Law and Ethics in the Movies (Spring Breakthrough 2020)