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PUBLICATIONS: Books

Pack the Court! A Defense of Supreme Court Expansion (Temple University Press, 2021).

The New Roberts Court, Donald Trump, and Our Failing Constitution (Palgrave Macmillan, 2017): designated a Hottest Title of 2017 by Palgrave Macmillan.

Neoconservative Politics and the Supreme Court: Law, Power, and Democracy (New York University Press, 2013).

Free Expression and Democracy in America: A History (University of Chicago Press, 2008): American Booksellers Foundation for Free Expression Book of the Month (January 2009); First Amendment Center/National Archives Book Forum Selection (May 2009).

Law and Religion: A Critical Anthology (New York University Press, 2000): editor.

American Legal Thought From Premodernism to Postmodernism: An Intellectual Voyage (Oxford University Press, 2000): finalist for 2001 Oklahoma Book Award; translated into Japanese and Chinese.

Please Don't Wish Me a Merry Christmas: A Critical History of the Separation of Church and State (New York University Press, 1997): awarded the Josephine Yalch Zekan Prize.

PUBLICATIONS: Articles and Essays

Searching for Truth that Speaks to Power: Free Speech and Equality on Campus, 73 Am. U. L. Rev. _ (forthcoming).

Saving the Supreme Court? Constitutional Rights and the Inevitability of Politics, _ Houston L. Rev. _ (forthcoming).

Free Speech, Social Justice, and *Brandenburg*, in "Fight Like Hell": Free Speech and Incitement in the Twenty-First Century (Eric T. Kasper & JoAnne Sweeney eds., State University of New York Press, forthcoming).

Blinded by the White: The Nation's Fatal Flaw, _ Cornell J. Law & Public Policy _ (forthcoming).

White Christian Nationalism Enters the Political Mainstream: Implications for the Roberts Court and Religious Freedom, 53 *Seton Hall L. Rev.* 667 (2023) (abstracted on the website *Race, Racism, and the Law*).

The Roberts Court's Transformative Religious Freedom Cases: The Doctrine and the Politics of Grievance, 28 *Cardozo J. of Equal Rights & Social Justice* 507 (2022).

Court-Packing Time? Supreme Court Legitimacy and Positivity Theory, 68 *Buff. L. Rev.* 1519 (2020).

Free-Speech Formalism Is Not Formal, 12 *Drexel L. Rev.* 723 (2020) (presented at Symposium on Not Your Father's First Amendment).

Free-Speech Formalism and Social Injustice, 26 *Wm. & Mary J. Race, Gender & Social Justice* 47 (2019) (presented at Symposium on First Amendment Marketplace Morass).

Broken Platforms, Broken Communities? Free Speech on Campus, 27 *Wm. & Mary Bill Rts. J.* 949 (2019), *reprinted in* *The First Amendment Law Handbook* (Rodney A. Smolla ed., Thomson Reuters, forthcoming).

The Politics of the Law-Politics Dichotomy, 33 *B.Y.U. J. Pub. L.* 15 (2019).

Having Your Cake and Eating It Too? Religious Freedom and LGBTQ Rights, 9 *Wake Forest J. of Law & Policy* 35 (2018); SSRN's Top Ten Download List for AARN: Sexuality (Sub-Topic) (August 15, 2019); *Feminist Theory & Philosophy eJournal*; LSN: Constitutional Claims (Topic) (August 15, 2019); *Sexuality & Gender Studies eJournal* (August 15, 2019); WGSRN: Family Law, Gender & Sexual Difference (Topic) (August 15, 2019); WGSRN: Feminist Philosophy (Topic) (August 15, 2019); WGSRN: Non-Binary Gender & Sexuality Studies (Topic) (August 15, 2019); and WGSRN: Religion, Marriage, & Motherhood (Sub-Topic) (August 15, 2019).

Justice Scalia and the Originalist Fallacy, *in* *The Conservative Revolution of Antonin Scalia* 189 (Howard Schweber & David A. Schultz eds., Lexington Books, 2018).

Nothing New Under the Sun: The Law-Politics Dynamic in Supreme Court Decision Making, 2017 *Pepp. L. Rev.* 43 (presented at Symposium on The Supreme Court, Politics, and Reform): SSRN's Top Ten Download List for The Judiciary & Judicial Process (July 18, 2018; July 9, 2018); and *Federal Courts and Jurisdiction eJournal* (July 29, 2018; July 21, 2018).

The History, Philosophy, and Law of Free Expression in the United States: Implications for the Digital Age, *in* *Speech and Society in Turbulent Times* 192 (Monroe Price & Nicole Stremlau eds., Cambridge University Press, 2018).

Postmodern Free Expression: A Philosophical Rationale for the Digital Age, 100 *Marquette L. Rev.* 1123 (2017); SSRN's Top Ten Download List for Post-Modern (Topic) (June 8, 2018); and Political Theory: History of Political Thought eJournal (June 8, 2018).

The Return of the Self, or Whatever Happened to Postmodern Jurisprudence?, 9 *Wash. U. Jurisprudence Rev.* 267 (2017), *reprinted in* *Jurisprudence, Classical and Contemporary: From Natural Law to Postmodernism* (Richard Delgado et al. eds., 3d ed. 2021).

The Word that Cannot be Spoken: Notes From Jurisprudential Underground, 16 *Conn. Pub. Int. L.J.* 79 (2017).

Missing the Point of the Past (and the Present) of Free Expression, 89 *Temple L. Rev. Online* 55 (2017).

Brown v. Board of Education for Topeka, in *Max Planck Encyclopedia of Comparative Constitutional Law* (Rainer Grote, Rüdiger Wolfrum, & Frauke Lachenmann eds., 2017).

A Plea for Constitutional Balance, 68 *Rutgers U. L. Rev. Commentaries* 12 (2016).

Can Law be a Source of Insight for Other Academic Disciplines?, 8 *Wash. U. Jurisprudence Rev.* 151 (2016).

Freedom of Speech, in *American Governance* (Stephen L. Schechter ed., Macmillan, 2016).

Prior Restraints, in *American Governance* (Stephen L. Schechter ed., Macmillan, 2016).

(Same) Sex, Lies, and Democracy: Tradition, Religion, and Substantive Due Process (With an Emphasis on *Obergefell v. Hodges*), 24 *Wm. & Mary Bill Rts. J.* 341 (2015); SSRN's Top Ten Download List for Impact of Judiciary (April 1, 2016; March 28, 2016); and Due Process and Equal Protection, Sexuality, Conflicting Rights, and Marriage (February 21, 2016).

Fighting the Tofu: Law and Politics in Scholarship and Adjudication, 14 *Cardozo Pub. L., Pol'y & Ethics J.* 91 (2015).

Is the Constitution Laissez Faire? The Framers, Original Meaning, and the Market, 81 *Brook. L. Rev.* 1 (2015); SSRN's Top Ten Download List for Constitutions and Constitutional Design; and Comparative Political Institutions and Development (March 2, 2016).

Free Speech and Free Press, in *Oxford Handbook of the U.S. Constitution* 629 (Mark Tushnet, Sanford Levinson, & Mark Graber eds., Oxford University Press, 2015).

The End of the Cold War: Can American Constitutionalism Survive Victory?, 41 *Ohio N.U. L. Rev.* 261 (2015).

The Interpretation of Constitutional History, or Charles Beard Becomes a Fortuneteller (With an Emphasis on Free Expression), 29 Const. Commentary 323 (2014).

Supreme Court Alchemy: Turning Law and Politics Into Mayonnaise, 12 Geo. J. L. & Pub. Pol'y 57 (2014).

Constitutional Interpretation and History: New Originalism or Eclecticism?, 28 B.Y.U. J. Pub. L. 283 (2014); SSRN's Top Ten Download List for Constitutions and Constitutional Development (March 24, 2015; March 5, 2015).

Great Expectations: Antisemitism and the Politics of Free-Speech Jurisprudence, 3 Global Antisemitism: Past and Present 97 (2013), *reprinted in* Global Antisemitism: A Crisis of Modernity 291 (Charles A. Small ed., Koninklijke Brill NV, 2013).

Hate Speech and Democracy, 32 Criminal Justice Ethics 78 (2013).

Chief Justice Roberts's *Marbury* Moment: The *Affordable Care Act Case (NFIB v. Sebelius)*, 13 Wyo. L. Rev. 335 (2013) (presented as the Housel/Arnold Lecture).

Democracy and Dissent: Strauss, Arendt, and Voegelin in America, 89 Denv. U. L. Rev. 671 (2012) (in Symposium on Constitutionalism and Revolutions).

Do the Right Thing: Understanding the Interest-Convergence Thesis, 106 Nw. U. L. Rev. Colloquy 248 (2012).

Conservative Eras in Supreme Court Decision Making: *Employment Division v. Smith*, Judicial Restraint, and Neoconservatism, 32 Cardozo L. Rev. 1791 (2011) (in Symposium on *Smith* and Free Exercise).

Modernity, Religion, and the Public Sphere, 45 Tulsa L.Rev. 845 (2010) (in Book Review Symposium).

Divided We Fall: Religion, Politics, and the *Lemon* Entanglements Prong, 7 First Amendment L. Rev. 253 (2009).

Postmodernism and Law, *in* 4 Oxford International Encyclopedia of Legal History 362 (Stanley N. Katz ed., Oxford University Press, 2009).

Do Supreme Court Nominees Lie? The Politics of Adjudication, 18 S. Cal. Interdisc. L.J. 17 (2008).

Freedom of Speech, *in* 2 Encyclopedia of the Supreme Court of the United States 268 (David S. Tanenhaus ed., Macmillan Reference, 2008).

Sociological Jurisprudence, *in* 4 Encyclopedia of the Supreme Court of the United States 421 (David S. Tanenhaus ed., Macmillan Reference, 2008).

Free Expression and Education: Between Two Democracies, 16 *Wm. & Mary Bill Rts. J.* 999 (2008) (in Symposium: Conflicts 101: Higher Education and the First Amendment), *reprinted in* *The First Amendment Law Handbook* 766 (Rodney A. Smolla ed., 2008-2009).

Free Speech, World War I, and Republican Democracy: The Internal and External Holmes, 6 *First Amendment L. Rev.* 192 (2008).

Unenumerated Rights in Different Democratic Regimes, 9 *U. Pa. J. Const. L.* 47 (2006) (in Symposium: The Future of Unenumerated Rights).

Empiricism, Religion, and Judicial Decision Making, 15 *Wm. & Mary Bill Rts. J.* 43 (2006) (in Symposium: Religion, Division, and the Constitution).

The Theory and Politics of First-Amendment Protections: Why Does the Supreme Court Favor Free Expression Over Religious Freedom?, 8 *U. Pa. J. Const. L.* 431 (2006) (in Symposium: Law and Religion): translated into Portuguese.

The Bad Tendency Test, *in* *Encyclopedia of American Civil Liberties* 96 (Paul Finkelman ed., Routledge, 2006).

Religious Symbols on Public Property, *in* *Encyclopedia of American Civil Liberties* 1312 (Paul Finkelman ed., Routledge, 2006).

The Problem of Critique: Triangulating Habermas, Derrida, and Gadamer Within Metamodernism, 4 *Contemp. Pol. Theory* 296 (2005).

The Rule of Law or the Rule of Politics? Harmonizing the Internal and External Views of Supreme Court Decision Making, 30 *L. & Soc. Inquiry* 89 (2005).

The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too), 54 *J. Legal Educ.* 471 (2004).

Religious Minorities and the First Amendment: The History, the Doctrine, and the Future, 6 *U. Pa. J. Const. L.* 222 (2003).

Jews in the United States, *in* *Encyclopedia of Religious Freedom* 235 (Catharine Cookson et al. eds., Berkshire/Routledge Publishing, 2003).

History and Interpretation, 38 *Tulsa L. Rev.* 595 (2003) (in Symposium: The Scholarship of Sanford V. Levinson).

History and Law, *in* *The Oxford Companion to American Law* 361 (Kermit L. Hall ed., Oxford University Press, 2002).

An Arrow to the Heart: The Love and Death of Postmodern Legal Scholarship, 54 Vand. L. Rev. 2351 (2001).

How to Be Critical, 76 Chi.-Kent L. Rev. 893 (2000) (in Symposium: Philosophical Hermeneutics and Critical Legal Theory).

Critical Questions in Law and Religion: An Introduction, *in* Law and Religion: A Critical Anthology 1 (Stephen M. Feldman ed., New York University Press, 2000).

A Christian America and the Separation of Church and State, *in* Law and Religion: A Critical Anthology 261 (Stephen M. Feldman ed., New York University Press, 2000).

The Supreme Court in a Postmodern World: A Flying Elephant, 84 Minn. L. Rev. 673 (2000).

Made For Each Other: The Interdependence of Deconstruction and Philosophical Hermeneutics, 26 Phil. & Soc. Criticism 51 (2000).

Playing With the Pieces: Postmodernism in the Lawyer's Toolbox, 85 Va. L. Rev. 151 (1999).

From Premodern to Modern American Jurisprudence: The Onset of Positivism, 50 Vand. L. Rev. 1387 (1997).

The Politics of Postmodern Jurisprudence, 95 Mich. L. Rev. 166 (1996), *reprinted in* Gadamer and Law 65 (Francis J. Mootz ed., Ashgate Publishing, 2007).

From Modernism to Postmodernism in American Legal Thought: The Significance of the Warren Court, *in* The Warren Court: A Retrospective 324 (Bernard Schwartz ed., Oxford University Press, 1996).

Principle, History, and Power: The Limits of the First Amendment Religion Clauses, 81 Iowa L. Rev. 833 (1996).

Diagnosing Power: Postmodernism in Legal Scholarship and Judicial Practice (With an Emphasis on the *Teague* Rule Against New Rules in Habeas Corpus Cases), 88 Nw. U. L. Rev. 1046 (1994).

The Persistence of Power and the Struggle for Dialogic Standards in Postmodern Constitutional Jurisprudence: Michelman, Habermas, and Civic Republicanism, 81 Geo. L.J. 2243 (1993).

Whose Common Good? Racism in the Political Community, 80 Geo. L.J. 1835 (1992).

Republican Revival/Interpretive Turn, 1992 Wis. L. Rev. 679.

The New Metaphysics: The Interpretive Turn in Jurisprudence, 76 Iowa L. Rev. 661 (1991).

An Interpretation of Max Weber's Theory of Law: Metaphysics, Economics, and the Iron Cage of Constitutional Law, 16 L. & Soc. Inquiry 205 (1991), translated into Chinese, *reprinted in Chinese in German Legal and Political Philosophy: Selected Essays* (Wu Yan, ed.).

Exposing Sunstein's Naked Preferences, 1989 Duke L.J. 1335.

Felix S. Cohen and His Jurisprudence: Reflections on Federal Indian Law, 35 Buff. L. Rev. 479 (1986).

Preemption and the Dormant Commerce Clause: Implications for Federal Indian Law, 64 Or. L. Rev. 667 (1986).

Indigents in the Federal Courts: The In Forma Pauperis Statute—Equality and Frivolity, 54 Fordham L. Rev. 413 (1985) (cited by U.S. Supreme Court in *Neitzke v. Williams*, 490 U.S. 319 (1989)).

Scope of Judicial Review: Extreme Hardship and the Whipsaw of Illegal Aliens, 36 Admin. L. Rev. 27 (1984).

Comment, The Developing Test for State Regulatory Jurisdiction in Indian Country: Application in the Context of Environmental Law, 61 Or. L. Rev. 561 (1982).

PUBLICATIONS: Fiction

The Phone Call (a short story coauthored with Laura L. Feldman): The Bluebird Word (April 25, 2023) <<https://thebluebirdword.com/the-phone-call-by-laura-and-stephen-feldman/>>.

Law and Disorder (a short story): Suspense Magazine, Volume 89 (Summer 2020).

Abortion Provokes (a short story): Passengers Journal, Volume I, Issue 2 (August 2020).

Red, White, and Blue (a short story): J.J. Outré Review, Volume V, Issue 2 (April 2020).

PUBLICATIONS: Blogs, Review Essays, and Other Short Works

Overcome a Reactionary Court, Tikkun.org (August 5, 2022).

Review of J. David Holcomb, *Guardian of the Wall: Leo Pfeffer and the Religion Clauses of the First Amendment* (2021), 63 J. Church & State 741 (2021).

Democrats Should Pack the Court, Tikkun.org (August 12, 2021).

The Top Five Reasons to Pack the Supreme Court, North Philly Notes (Temple University Press blog (August 11, 2021).

Review of Steven K. Green, *The Bible, the School, and the Constitution: The Clash that Shaped Modern Church-State Doctrine*, 118 *American Historical Rev.* 526 (2013).

What I'm Reading (discussing Ann Patchett's *Magician's Assistant*): In Relation to the Publication of *Neoconservative Politics and the Supreme Court: Law, Power, and Democracy* (New York University Press, 2013), posted on Writers Read, and Campaign for the American Reader (November 28, 2012).

Supreme Court Health Care Ruling Decision: Did *NFIB v. Sebelius* Betray Conservative Principles?, posted on *From the Square* (N.Y.U. Press blog) (July 2, 2012).

Review of Gary L. McDowell, *The Language Of Law and the Foundations of American Constitutionalism*, 21 *The Law and Politics Book Review* 500 (September 2011).

History, Neoconservatism, and *Citizens United*, posted on *Balkinization* (January 27, 2010).

The Matrix: Democracy and Free Expression (in Three Dimensions), posted on *Balkinization* (January 19, 2010).

Review of Owen M. Fiss, *Troubled Beginnings of the Modern State, 1888-1910*, 17 *The Law and Politics Book Review* 44 (January 2007).

Review of Isaac Kramnick & R. Laurence Moore, *The Godless Constitution: A Moral Defense of the Secular State*, 15 *The Law and Politics Book Review* 1010 (November 2005).

Review of Mark Weitz, *Clergy Malpractice in America: Nally v. Grace Community Church of the Valley*, 46 *Am. J. Legal Hist.* 84 (2004).

Review of John R. Hall, *Cultures of Inquiry: From Epistemology to Discourse in Sociohistorical Research*, 31 *Contemporary Sociology* 495 (2002).

Promoting Religious Pluralism, 10 *The Good Society* 62 (2001).

Review of Catharine Cookson, *Regulating Religion: The Courts and the Free Exercise Clause*, 11 *The Law and Politics Book Review* 366 (August 2001).

Review of Kenneth R. Craycraft, *The American Myth of Religious Freedom*, 10 *The Law and Politics Book Review* 318 (May 2000).

Is the World Flat?, *Jurist: Books-on-Law* (Vol. 2, no. 7, Sept. 1999).

Intellectual History in Detail, 26 *Reviews in Am. Hist.* 737 (1998).

PRESENTATIONS, PAPERS, INTERVIEWS, AND CONFERENCES

Interview with Brent Cooper, Executive Director of The Abs*Tract Organization-Metamodern Think Tank: Discussing metamodernism and my article, The Problem of Critique: Triangulating Habermas, Derrida, and Gadamer Within Metamodernism, 4 Contemp. Pol. Theory 296 (2005).

Interview (by email) with Jayla Whitfield-Anderson, Yahoo News 360: On Court packing, leading to article: Should the Supreme Court be Expanded? Calls to Pack the Court Grow After Recent SCOTUS Rulings (July 11, 2023).

Interview with Molly Burke, Medill News Service, Northwestern University: Discussion of Supreme Court Expansion and its Likely Repercussions (April 20, 2023).

Interview with Newsweek reporter, Khaleda Rahman: Implications of Transgender Women Joining Sororities (April 20, 2023).

Discussion of Court Packing After the Supreme Court's Term: Podcast interview with Hunter Savery and Kate Seltzer, University of Maryland (July 20, 2022).

A Brief History of Changing Conservative (Judicial) Politics, and the Transformation of Supreme Court Religious Freedom Cases: Law vs. Antisemitism Conference, University of Indiana at Indianapolis (March 2022).

The Roberts Court's Transformative Religious Freedom Cases: Loyola University Chicago Constitutional Law Colloquium, held at George Washington University Law School (November 2021).

Television Interview on Freethought Matters TV Show, with Dan Barker and Annie Laurie Gaylor: Discussion of the Supreme Court, Political Conservatism, and Court Packing (November 5, 2021).

Discussion of Court Packing and Religious Freedom: Freethought Radio and Podcast, interview with Dan Barker and Annie Laurie Gaylor (October 21, 2021).

Author Spotlight: Stephen M. Feldman Makes the Case for Packing the Court: D.C. Bar Blog, interview with Jeremy Conrad (Oct. 8, 2021) <<https://www.dcbbar.org/news-events/news/author-spotlight-stephen-m-feldman-makes-the-case->>.

Discussion of Court Packing: radio interview, The Michelangelo Signorile Show (Sept. 23, 2021).

The Case for Court Packing as a Way to Promote Democracy: radio interview with Michel Martin, All Things Considered, NPR (Sept. 5, 2021) <<https://www.npr.org/2021/09/05/1034494416/the-case-for-court-packing-as-a-way-to-promote-democracy>>.

Podcast Interview on Pack the Court, Temple University Press Podcast (Sept. 3, 2021)
<<https://open.spotify.com/episode/5IjU96MlePCcegL7EE8a3F>>.

Trump's Supreme Court Just Showed Why Court-Packing is Necessary to Save U.S. Democracy: interview with Amanda Marcotte, Salon.com (Aug. 27, 2021).

Podcast Interview on Court Packing: Keeping Democracy Alive with Burt Cohen (August 19, 2021).

Justice Ginsburg, Judge Barrett, and Court-Packing: American Constitution Society, University of Wyoming: discussion (through Zoom) with students (October 2020).

Court Packing: American Constitution Society, University of Wyoming: discussion (through Zoom) with students (April 2020).

Free-Speech Formalism and Social Injustice: William & Mary School of Law Symposium, First Amendment Marketplace Morass (February 2020).

Podcast Interview on Religious Freedom: Atheist Underground Podcast with Rob Moore (February 2020).

Free-Speech Formalism Is Not Formal: Drexel Law School Symposium, Not Your Father's First Amendment (November 2019).

Panel Discussion of film, Marshall (about Thurgood Marshall): MLK Days of Dialogue, University of Wyoming (February 2, 2018).

Radio Interview on IdeaSphere: A Platform for Today's Voices, produced by Guy Rathbun, for PRX (Public Radio Exchange): discussing my book, The New Roberts Court, Donald Trump, and Our Failing Constitution (September 19, 2017).

Radio Interview on What's the 411, with Sharon Kay, WFSK-FM: discussing current politics and my book, The New Roberts Court, Donald Trump, and Our Failing Constitution (September 6, 2017).

Radio Interview on The Brian Thomas Morning Show, 55KRC: discussing current politics and my book, The New Roberts Court, Donald Trump, and Our Failing Constitution (August 30, 2017).

Radio Interview on The Mike Siegel Show, Genesis Communications Network: discussing current politics and my book, The New Roberts Court, Donald Trump, and Our Failing Constitution (August 24, 2017).

Radio Interview on The Josh Tolley Show, "with over 20 million listeners in 160 countries and in all 50 states:" discussing current politics and my book, The New Roberts Court, Donald Trump, and Our Failing Constitution (August 22, 2017).

Nothing New Under the Sun: The Law-Politics Dynamic in Supreme Court Decision Making: Pepperdine University School of Law (April 2017).

Fighting the Tofu: Law and Politics in Scholarship and Adjudication: Loyola University Chicago Constitutional Law Colloquium (November 2015).

Nationwide Legalization of Same-Sex Marriage—Panel Discussion (Moderator): University of Wyoming (October 2015).

Reimagining Free Expression in the Digital Age: A Self-Emergence Rationale: Third Annual Yale University Free Expression Scholars Conference (May 2015).

Discussant for Alexander Tsesis's Balancing Free Speech: Third Annual Yale University Free Expression Scholars Conference (May 2015).

Equal Protection and Same-sex Marriage: interview with National Public Radio (October 2014).

Same-sex Marriage in Wyoming: interview with Wyoming Public Radio (October 2014).

Supreme Court Justice Ruth Bader Ginsburg Constitutional Conversation, Discussion Facilitator: University of Wyoming, American Heritage Center (September 2014).

Originalism and the Constitutionalization of Inequality: Law and Society Conference, Minnesota (May 2014).

Constitution Betrayed: Free Expression, the Cold War, and the End of Democracy: Second Annual Yale University Free Expression Scholars Conference (May 2014).

The Interpretation of Constitutional History, or Charles Beard Becomes a Fortuneteller (With an Emphasis on Free Expression): University of Virginia Conference, 100 Years of Charles Beard's *An Economic Interpretation of the Constitution* (October 2013).

Law and Politics in the *Affordable Care Act Case*: Chief Justice Roberts's *Marbury* Moment: University of Wyoming Consumer Issues Conference, Keynote Speaker (October 2013).

Free Speech, Democracy, and Political Conservatism: Two Ironies of Conservative Free-Speech Jurisprudence: Yale University Free Expression Scholars Conference (May 2013).

Chief Justice Roberts's *Marbury* Moment: The *Affordable Care Act Case* (*NFIB v. Sebelius*): University of Wyoming Housel/Arnold Lecture (for CLE credit) (November 2012).

The Changing World of Law Review Publishing: University of Wyoming (September 2012).

Non-Belief and the Establishment Clause: University of Wyoming Presentation to Religious Studies Class on Non-Belief (April 2012).

Introduction to Law and Religion: University of Wyoming Focus on the First Amendment Conference (April 2011).

Conservative Eras in Supreme Court Decision Making: *Employment Division v. Smith*, Judicial Restraint, and Neoconservatism: Cardozo Law School Conference (October 2010).

Free Expression on College Campuses—Panel Discussion (Moderator): University of Wyoming (September 2010).

Great Expectations: Antisemitism and the Politics of Free-Speech Jurisprudence: Yale University (August 2010).

Free Expression and the University: interview with CNN Radio (April 2010).

Neocons in Exile: University of Wyoming (November 2009).

Examining the Hollywood Ten: University of Wyoming, American Heritage Center (October 2009).

Free Expression and Democracy in America: The National Archives, Washington, D.C. (presented in partnership with the First Amendment Center/Freedom Forum) (May 2009).

Polarization and the Constitution: Georgetown/Maryland Discussion Group on Constitutionalism (fall 2008) (held at University of Oregon).

Constitutional Interpretation: University of Wyoming (November 2007).

Student Free-Expression Rights and Democracy: William and Mary First-Amendment Conference (October 2007); University of Wyoming (October 2007).

Unenumerated Rights: University of Pennsylvania Conference (February 2006).

Empiricism, Religion, and Judicial Decision Making: AALS Annual Conference, Law and Religion Section (January 2006).

Radio Panelist Discussing Difference Between “Happy Holidays” and “Merry Christmas”: RadioWest Show, on National Public Radio affiliate KUER, Salt Lake City (December 12, 2005).

The Tenth Amendment Cases: University of Wyoming (November 2005).

On Antisemitism—Panel Discussion: University of Wyoming (March 2005).

Free Expression and Religious Freedom: University of Pennsylvania Conference (February 2005); University of Wyoming (January 2005).

Potential Implications of the Presidential Election—Panel Discussion (Moderator): Wyoming Students for Progressive Action (October 2004).

Law, Religion, and the Death Penalty—Panel Discussion: Laramie Interfaith Alliance (October 2004).

Democracy and Free Expression in the Nineteenth Century: University of Wyoming (February 2004).

Free Speech and Democracy: A History: University of Wyoming (October 2003).

The Sacred Balance of Law and Religion—Panel Discussion: University of Wyoming (October 2003).

On Legal Scholarship: University of Wyoming (September 2003).

Workshop/Conference on Law and Religion, Program in Law and Public Affairs: Princeton University (February 2003).

Judicial Review and Republican Democracy: In Celebration of *Marbury v. Madison*: University of Wyoming (February 2003).

Radio Interview on Christmas and the Separation of Church and State: Dave Rutherford Show (Canada) (December 13, 2002).

Radio Interview on Christmas Symbols in Public Places: Ken Van Lith Show (Canada) (December 12, 2002).

Doctrinal Innovations, Religious Minorities, and the Future of First Amendment Jurisprudence: University of Colorado (fall 2002).

Panel Discussion on Religious Freedom and the *Scopes* Trial: University of Wyoming (fall 2002).

The Special Status of Religion in American Constitutionalism: A Historical Perspective: AALS Annual Conference, Law and Religion Section (January 2002).

The Constraints of Judicial Minimalism: University of Texas at Austin (fall 2001); University of Tulsa College of Law Faculty (fall 2001).

The Development of Religious Freedom as a Constitutional Norm: University of Denver School of Law (spring 2001); University of Tulsa College of Law Faculty (spring 2001).

The United States Supreme Court and Conservative Postmodernism: Conference on Legal Theory at the Fin de Siècle, Birkbeck College, University of London, England (fall 1999).

A Christian America and the Separation of Church and State: American Bar Association Conference on Law and Religion, San Antonio (spring 1999).

The Rehnquist Court and Jurisprudence: Rehnquist Court Conference, University of Tulsa (fall 1998).

Ideology From a Postmodern Perspective: Philosophy and Social Science Conference, Institute of Philosophy of the Czech Academy of Sciences, Prague, Czechoslovakia (spring 1998).

Antisemitism and the Separation of Church and State: Law and Society Conference, Colorado (spring 1998); Law, Culture, and the Humanities Conference, D.C. (spring 1998); Law and Society Conference, St. Louis (spring 1997); Judaic Studies Conference, University of Arizona (spring 1997).

The Hardest Question in Constitutional Law: Georgetown/Maryland Discussion Group on Constitutionalism (fall 1995).

A Critical History of the Separation of Church and State: University of Tulsa College of Law Faculty (fall 1995).

From Modernism to Postmodernism in American Legal Thought: Warren Court Conference, University of Tulsa (fall 1994); University of Tulsa College of Law Faculty (fall 1994).

Why Take a Postmodern Approach to Power?: 1994 Mid-South Philosophy Conference, Memphis State University (spring 1994).

Power, Religion, and the First Amendment: Georgetown/Maryland Discussion Group on Constitutionalism (fall 1993).

Whose Common Good? Racism in the Political Community: Conference on Policy in the 1990s, Harvard and Northeastern Law Schools (spring 1992); University of Tulsa College of Law Faculty (spring 1992); Georgetown/Maryland Discussion Group on Constitutionalism (fall 1991).

Republican Revival/Interpretive Turn: Wednesday Evening Faculty Discussion Group, University of Tulsa, Political Science Department (spring 1991).

Commentary on Oliver Wendell Holmes, Jr.: Faculty Colloquium on Holmes, University of Tulsa College of Law (fall 1990).

A Structural Tension in the History of American Legal Thought: University of Tulsa College of Law Faculty (fall 1987).

DEGREES

J.S.M., Stanford University, 1986.

J.D., University of Oregon, 1982 (Order of the Coif; Articles Editor, Oregon Law Review).

B.A., Hamilton College, Philosophy, 1977.

EXPERIENCE

Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science
University of Wyoming; 2002 to present; subjects: Constitutional Law, Jurisprudence.

Visiting Scholar
Harvard Law School; fall 2016.

Professor of Law and Associate Member of Political Science
University of Tulsa; 1996 to 2002 (Professor of Law: 1993-1996; Associate Professor of Law: 1988-1993; Visiting Assistant Professor of Law: 1986-1988); subjects: Constitutional Law, Jurisprudence, Federal Courts, Native American Law, Legal History.

Professor in Residence, Semester in London Program
University of Tulsa; fall 1999.

National Endowment for the Humanities Fellow
Research Fellowship; winter 1998.

Teaching Fellow
Stanford University School of Law; 1984-1986.

Judicial Clerk and Division Chief, Ninth Circuit
United States Court of Appeals for the Ninth Circuit, Office of Staff Attorneys, San Francisco, California (Division Chief: 1983-1984; supervised and trained attorneys and externs, and served as judicial clerk to all judges on Ninth Circuit); (Judicial Clerk: 1982-1983; served as judicial clerk to all judges on Ninth Circuit).

HONORS AND AWARDS

SSRN's Top Ten Percent Total New Downloads List for last 12 months (March 15, 2021; February 15, 2021; January 18, 2021; December 14, 2020; October 12, 2020; September 14, 2020; August 17, 2020; July 14, 2020; June 15, 2020; May 18, 2020; April 14, 2020; March 16, 2020; February 17, 2020; January 13, 2020; December 16, 2019; November 18, 2019; October 24, 2019; September 23, 2019; August 20, 2019; July 28, 2019; June 19, 2019; May

22, 2019; April 22, 2019; March 20, 2019; February 25, 2019; January 29, 2019; December 30, 2018; November 20, 2018; October 23, 2018; September 20, 2018; August 30, 2018; July 17, 2018; June 19, 2018; May 15, 2018; April 17, 2018; March 20, 2018; February 22, 2018; January 22, 2018; December 18, 2017; October 23, 2017; September 28, 2017; August 22, 2017; July 25, 2017; June 20, 2017; May 22, 2017).

SSRN's Top Ten Percent Total All-Time Downloads List (August 2, 2023; February 6, 2023; January 9, 2023; December 6, 2022; November 7, 2022; September 6, 2022; August 8, 2022; June 13, 2022; April 14, 2022; March 8, 2022; February 9, 2022; December 6, 2021; November 9, 2021; October 12, 2021; September 6, 2021; August 9, 2021; July 6, 2021; June 10, 2021; May 10, 2021; April 5, 2021; March 8, 2021; February 8, 2021; January 11, 2021; December 7, 2020; October 5, 2020; September 7, 2020; August 10, 2020; July 6, 2020; June 8, 2020; May 11, 2020; April 6, 2020; March 9, 2020; February 13, 2020; January 7, 2020; December 9, 2019; November 11, 2019; September 16, 2019; August 12, 2019; July 22, 2019; June 12, 2019; May 16, 2019; April 16, 2019; March 11, 2019; February 18, 2019; January 21, 2019; December 18, 2018; November 6, 2018; October 2, 2018; September 6, 2018; August 8, 2018; July 5, 2018; June 4, 2018; May 3, 2018; April 4, 2018; March 6, 2018; February 9, 2018; January 22, 2018; December 13, 2017; November 16, 2017; October 12, 2017; September 14, 2017; August 15, 2017; July 18, 2017).

SSRN's Top Ten Download List for AARN: Sexuality (Sub-Topic) (August 15, 2019); Feminist Theory & Philosophy eJournal; LSN: Constitutional Claims (Topic) (August 15, 2019); Sexuality & Gender Studies eJournal (August 15, 2019); WGSRN: Family Law, Gender & Sexual Difference (Topic) (August 15, 2019); WGSRN: Feminist Philosophy (Topic) (August 15, 2019); WGSRN: Non-Binary Gender & Sexuality Studies (Topic) (August 15, 2019); and WGSRN: Religion, Marriage, & Motherhood (Sub-Topic) (August 15, 2019): Having Your Cake and Eating It Too? Religious Freedom and LGBTQ Rights, 9 Wake Forest J. of Law & Policy 35 (2018).

SSRN's Top Ten Download List for The Judiciary & Judicial Process (July 18, 2018; July 9, 2018), and Federal Courts and Jurisdiction eJournal (July 29, 2018; July 21, 2018): Nothing New Under the Sun: The Law-Politics Dynamic in Supreme Court Decision Making, 2017 Pepp. L. Rev. 43.

SSRN's Top Ten Download List for Post-Modern (Topic) (June 8, 2018), and Political Theory: History of Political Thought eJournal (June 8, 2018): Postmodern Free Expression: A Philosophical Rationale for the Digital Age, 100 Marquette L. Rev. 1123 (2017).

Visiting Scholar: Harvard Law School (fall semester 2016).

SSRN's Top Ten Download List for Impact of Judiciary (April 1, 2016; March 28, 2016), and Due Process and Equal Protection, Sexuality, Conflicting Rights, and Marriage (February 21, 2016): (Same) Sex, Lies, and Democracy: Tradition, Religion, and Substantive Due Process (With an Emphasis on *Obergefell v. Hodges*), 24 Wm. & Mary Bill Rts. J. 341 (2015).

SSRN's Top Ten Download List for Constitutions and Constitutional Design, and Comparative Political Institutions and Development (March 2, 2016): Is the Constitution Laissez Faire? The Framers, Original Meaning, and the Market, 81 Brook. L. Rev. 1 (2015).

SSRN's Top Ten Download List for Constitutions and Constitutional Development (March 24, 2015; March 5, 2015): Constitutional Interpretation and History: New Originalism or Eclecticism?, 28 B.Y.U. J. Pub. L. 283 (2014).

First Amendment Center/National Archives Book Forum (May 2009): Free Expression and Democracy in America: A History (University of Chicago Press, 2008).

American Booksellers Foundation for Free Expression Book of the Month (January 2009): Free Expression and Democracy in America: A History (University of Chicago Press, 2008).

Kate Stoneman Visiting Professorship in Law and Democracy: Albany Law School (selected for position, but never visited).

Finalist for 2001 Oklahoma Book Award.

Josephine Yalch Zekan Prize: 1999 (for a publication in law and religion).

National Endowment for the Humanities Fellowship: winter 1998.

University of Tulsa Summer Development Fellowships and College of Law Summer Research Grants: 1988, 1990, 1992, 1993, 1995-2001.

ORGANIZATIONS AND ACTIVITIES

Faculty Adviser: American Constitution Society Student Chapter, since 2012.

American Constitution Society, member since 2012.

American Civil Liberties Union, Wyoming Chapter, Legal Panel, 2007-2011.

National Endowment for the Humanities Fellowship Review Committee, summer 2000.

Foundations of Knowledge: on-line "Infography," on separation of church and state, since 1999.

Contributor to ABA Focus on Law Studies: Books in Review, 1999.

American Political Science Association, member since 1997.

U.S. Association of Constitutional Law, member since 1996.

Secretary, Executive Committee, Association of American Law Schools Jurisprudence Section, 1993-1994; Member, Executive Committee, AALS Jurisprudence Section, 1992-1993; Moderator, 1993 AALS Jurisprudence Section Meeting.

Law and Society Association, member since 1993.

American Society for Political and Legal Philosophy, member 1993-2009, and again since 2020.

American Bar Association, member since 1987.

State Bar of California, admitted 1982.

REFERENCES: on request