



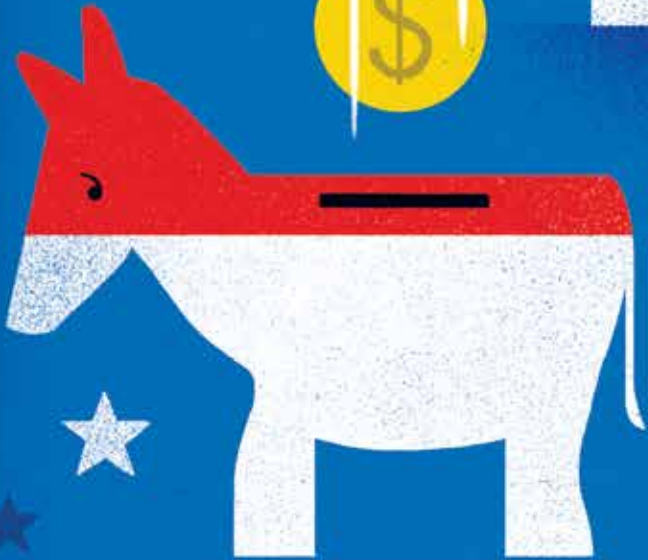
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LAW AND GOVERNMENT

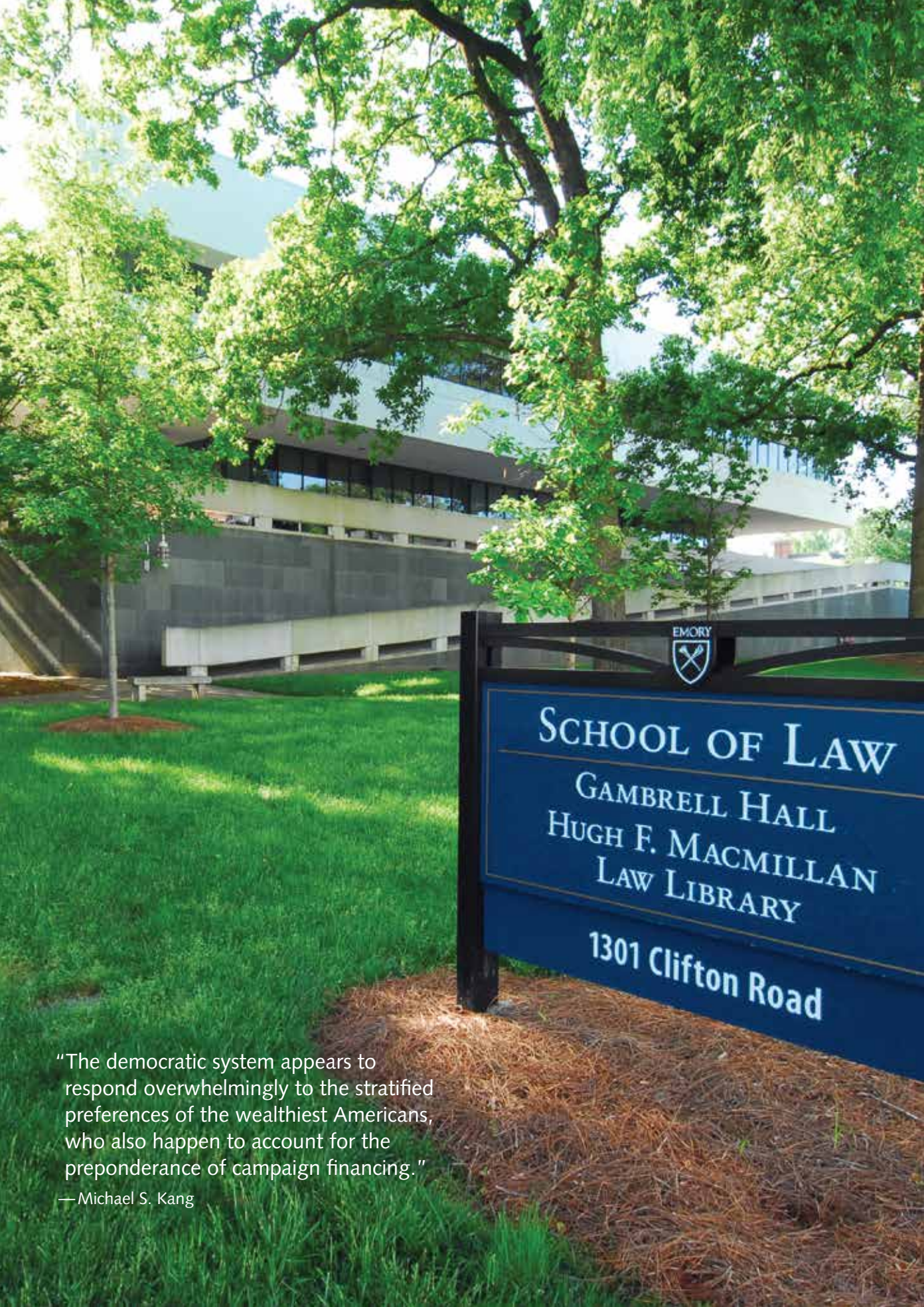
The Brave New World of Campaign Finance Law

Michael Kang on the
Endgame for Election
Contributions



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“The democratic system appears to respond overwhelmingly to the stratified preferences of the wealthiest Americans, who also happen to account for the preponderance of campaign financing.”

—Michael S. Kang



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About Emory Law Insights

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The State of Law and Governance

Every day, Americans turn to democratically elected legislators, executive branch officials, and judges for the redress of their claims and grievances. In this issue, Professors Michael Kang and Joanna Shepherd consider the influences that impact the election of those officials—including political action groups, individual and corporate donors, the Democratic and Republican parties, and large sums of money.

Our lead article by Professor Kang examines the endgame of the federal campaign finance system. *Citizens United v. FEC* allowed unlimited contributions by unions and corporations for electioneering. Limits on contributions to political parties may be the next restriction to fall, as the Roberts Court effectively dismantles the framework the Rehnquist Court put in place to prevent political malfeasance, Kang says.

Today, regulation of individual level quid pro quo isn't enough, Kang argues, as campaign finance is no longer so simple.

"The contemplation of group level quid pro quo better maps the realities of campaign finance where the major parties pervasively coordinate both campaign finance and lawmaking," Kang writes. "The court's conception of corruption, in which individual candidates and officeholders operate entirely in isolation from others, is absurdly simplistic given the major parties' comprehensive involvement in nearly every aspect of American politics."

Professor Jonathan Nash's window into the very different politics of a not-too-distant past is similarly revealing. It's New York in 1977, and US Senators Daniel Patrick Moynihan, a Democrat, and Jacob Javits, a liberal Republican, reach an understanding.

"They had an agreement to divide appointments to the district courts in the state: The senator who shared party affiliation with the president would be allocated three of every four appointments, while the 'out-of-party' senator would be allocated the rest," Nash writes.

Previously, district court recommendations had been used as a form of patronage, Nash says. Yet when Senator Alphonse D'Amato took Javits' seat, he continued the new arrangement.

A third article, co-written by Professors Shepherd and Kang, analyzes two decades of state judicial elections and financing. Nine of 10 state court judges are elected, and it's been that way for some time. But as judges began to rely more heavily on election war chests, races became more volatile.

"In 1980, just 26.3 percent of incumbent judges were defeated, but by 2000 45.5 percent of incumbent judges failed to win reelection," Shepherd and Kang write. Conscious of that vulnerability, political parties today gather the wagons around preferred judges and pour the money in.

In the 1989–1990 election cycle, state supreme court candidates raised less than \$6 million. Twenty years later, candidates for those seats raised more than \$38 million. In three of the past six election cycles, candidates raised more than \$45 million.

We conclude with Professor Mary Dudziak's chapter on how law influences foreign relations. "In the context of state-building, the expansion of American empire, the management of American public diplomacy, and the arena of armed conflict, we might see law as simply a tool that accomplishes goals that are ultimately driven by the more fundamental determinants of power and interest. In this sense, perhaps law is simply a means to an end," she writes.

But Dudziak disagrees. "The impact of law is not limited in this way," she says. "Law is not simply an immediate tool. It creates and structures future opportunities." To illustrate, she quotes US Supreme Court Justice Robert Jackson on the difference between a military decision and judicial ratification:

"A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the court for all time has validated [it]. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

The Endgame for Election Contributions



Michael S. Kang

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Professor Kang's research focuses on issues of election law, voting and race, shareholder voting, and law and politics. His work has been published by the *Yale Law Journal*, *New York University Law Review*, and *Michigan Law Review*, among others. Kang also serves as coeditor of the book series *Cambridge Studies in Election Law and Democracy*, and coauthored a chapter for the first book in the series *Race, Reform, and Regulation of the Electoral Process*. Kang visited Cornell Law School during spring 2008 and Harvard Law School in spring 2009. He clerked for Judge Michael S. Kanne of the US Court of Appeals for the Seventh Circuit and worked in private practice at Ropes & Gray in Boston before joining Emory Law in 2004.

SELECTED PUBLICATIONS

Articles

The Long Shadow of *Bush v. Gore*, 68 *Stanford Law Review* (forthcoming 2016) (with Joanna M. Shepherd)

Attacking Judicial Elections, 114 *Michigan Law Review* (forthcoming 2016) (with Joanna M. Shepherd)

Sore Loser Laws and Congressional Polarization, 39 *Legislative Studies Quarterly* 299 (2014) (with Barry Burden & Bradley Jones)

The Partisan Foundations of Judicial Campaign Finance, 86 *Southern California Law Review* 1239 (2013) (with Joanna M. Shepherd)

Shareholder Voting as Veto, 88 *Indiana Law Journal* 1299 (2013)

The End of Campaign Finance Law, 98 *Virginia Law Review* 1 (2012)

The Partisan Price of Justice: An Empirical Analysis of Campaign Contributions and Judicial Decisions, 86 *New York University Law Review* 69 (2011) (with Joanna M. Shepherd)

Sore Loser Laws and Democratic Contestation, 99 *Georgetown Law Journal* 1013 (2011)

Voting as Veto, 108 *Michigan Law Review* 1221 (2010)

To Here from Theory in Election Law, 87 *Texas Law Review* 787 (2009)

Race and Democratic Contestation, 117 *Yale Law Journal* 734 (2008)

Excerpt: The Brave New World of Party Campaign Finance Law

Michael S. Kang

Jim Bopp, the conservative campaign finance lawyer coordinating the ongoing deconstruction of the federal campaign finance system, predicted confidently in a recent interview that, “We’re in the endgame. . . .It’s already begun.” It is hard to argue with him. A Rehnquist Court that routinely upheld campaign finance regulation against constitutional challenges has given way to a Roberts Court that consistently strikes down nearly every kind of campaign finance regulation it has reviewed, from aggregate contribution limits, to restrictions on corporate electioneering, to public financing. This methodical dismantling of campaign finance law, orchestrated by the tag team of Jim Bopp and Justice Anthony Kennedy, has narrowed the government’s regulatory interest in campaign finance to little more than restrictions on candidates and parties. Now, their crosshairs may target one of the final remaining categories of regulation—restrictions on party campaign finance.

Given the Roberts Court’s skepticism about campaign finance regulation, it might seem inevitable that judicial deregulation of party campaign finance ends up a final piece in Jim Bopp’s putative endgame. Indeed, the constitutional analysis that would authorize party-sponsored Super PACs also could prove an existential threat to campaign finance reform, leaving almost nothing left of the federal campaign finance system in the end. Arguments that did not gain traction with the Rehnquist Court found their audience with the Roberts Court intent on cabining the government’s anticorruption interest to a narrow view of quid pro quo exchange.

However the Roberts Court proceeds, a strict view of quid pro quo corruption under *Buckley v. Valeo* does not necessarily compel the deregulation of party campaign finance. This article presents a simple extension of the court’s approach to quid pro quo corruption that would encompass the regulation of party campaign finance. The court’s paradigmatic framing of quid pro quo exchanges envisions them occurring in pairwise fashion between an individual contributor and individual officeholder, with officeholders each acting alone and exclusively positioned to offer the necessary quids in exchange for campaign money. The article builds on the basic premise that what can be plausibly exchanged between an individual contributor and individual officeholder can similarly be exchanged between a contributor and a group of officeholders who agree to cooperate. To the extent that the government can regulate the risk of the former quid pro quo exchange at the individual level, the government should be able to reasonably regulate the risk of the latter quid pro quo exchange

involving a group of officeholders acting together at a collective level.

In fact, the contemplation of group level quid pro quo better maps the realities of campaign finance where the major parties pervasively coordinate both campaign finance and lawmaking. The court’s conception of corruption, in which individual candidates and officeholders operate entirely in isolation from others, is absurdly simplistic given the major parties’ comprehensive involvement in nearly every aspect of American politics. The major parties are constituted at their core by candidates and officeholders and have as their *raison d’etre* the efficient coordination of their candidates’ and officeholders’ campaign finance and lawmaking activity. The formal party committees regulated by campaign finance law are essentially a collection of party candidates and officeholders who largely raise the committees’ funds, direct their spending, and coordinate their activity with other aspects of party business. Even though group-level, party-mediated corruption does not characterize all of what parties do, just so individual level corruption does not necessarily characterize a great deal of what individual candidates and officeholders do. Nonetheless, the plausible risk of corruption provides a constitutional basis for the reasonable regulation of both.

Part of campaign finance law’s failure to track contemporary campaign finance is the ironic result of the Rehnquist Court’s earlier sympathy for the government’s interest in regulating campaign finance. By eagerly adopting broader expansions of the government’s regulatory interest beyond the paradigm of quid pro quo corruption, the Rehnquist Court obviated the need to complicate the core conception of quid pro quo corruption. Now that the Roberts Court has rejected those broader expansions, the Roberts Court retreats to a core conception of quid pro quo corruption that is underdeveloped and does not track contemporary concerns about modern campaign finance. A group-based approach to quid pro quo corruption offers a new path forward for a future court less hostile to campaign finance reform and willing to build on intellectual groundwork that can be set forth now.

This article demonstrates how such an approach would apply to several pressing issues of party campaign finance law the Court will soon confront. I explain that the federal prohibition on contributions by federal contractors, as well as similar state pay-to-play laws, rely implicitly on a group-level intuition about quid pro quo corruption. These prohibitions target a specific class of potential contributors with concrete private gains to be immediately realized

through quid pro quo corruption. As such, the blanket prohibitions draw from the intuition that party relationships require broader prohibitions to cut off party-related campaign finance, which might consummate quid pro quo deals through the party relationships intrinsic to federal lawmaking. I next revisit the federal prohibition on party soft money, which is under similar criticism and legal challenge as the federal pay-to-play law. I argue that the Rehnquist Court was justified in upholding the federal soft money ban but could have relied on a group level theory of corruption more faithful to the original *Buckley* conception of quid pro quo exchanges. Finally, I criticize the arrival of the party-sponsored Super PAC, at least as it has been introduced at the state level and advocated at the federal level. I explain that the constitutional analysis that might shield a party Super PAC from government restriction opts for reflexive formalism over a sensible understanding of the government's interest in campaign finance regulation. The same analysis could lead ultimately to campaign finance law that regulates only direct contributions to candidates themselves and almost nothing else.

In the end, however, the push for deregulating party campaign finance might be more political than constitutional. Not long ago, the policy question whether to deregulate party campaign finance would have been addressed on its merits within a larger context of a fully functional federal campaign finance system. But today, any policy question about campaign finance law occurs within a campaign finance system that already has been thoroughly deregulated under the Roberts Court. *Citizens United v. FEC* helped usher in the nearly complete deregulation of independent electioneering, free of source restrictions on corporations that had applied nearly a century long and of contribution limits on nonconnected committees since the Federal Election Campaign Act (FECA) amendments. Following such rapid transformation of the campaign finance ecosystem, political consensus about the proper direction of regulation has dissolved.

The normative case now for the traditional campaign finance regulation of parties is far less clear than it was within the comprehensively regulated system of not long ago. Today, commentators from the political left and right are pushing for deregulating party campaign finance based on the shifting balance of power between the major parties and outside groups, including nonconnected Super PACs and 501(c) organizations deregulated since *Citizens United*. These outside groups boast nearly unlimited fundraising capacity but come without the same level of political accountability and responsibility as the major parties. Commentators hope that giving party committees similar fundraising capacity through deregulation would increase their influence *vis-à-vis*

outside groups and reverse the decentralization of party politics in this Super PAC era. So too, the formal party committees might exploit their deregulation to reposition themselves more firmly in the center of today's campaign finance world that has shifted centrifugally so far in the direction of outside groups. Centralizing campaign finance back in the formal parties might moderate partisan polarization against countervailing sources of fragmentation and ideological extremism.

A worrisome empirical literature is documenting how the democratic system appears to respond overwhelmingly to the stratified preferences of the wealthiest Americans, who also happen to account for the preponderance of campaign financing.

The normative concern with this analysis is that it focuses too heavily on this balance of power among political elites to the neglect of basic distributional concerns about representation. It is difficult to believe that deregulating the parties to engage in the same type of courting and solicitation of the very wealthy as Super PACs does much to mitigate the ongoing distributional shift of the political system toward the interests of the very wealthy. A worrisome empirical literature is documenting how the democratic system appears to respond overwhelmingly to the stratified preferences of the wealthiest Americans, who also happen to account for the preponderance of campaign financing. Allowing parties to engage in deregulated campaign finance, focused on fundraising ever-larger amounts from the same very wealthy donors, may do more good than harm in this sense. A party Super PAC, for instance, could encourage parties to behave more Super PAC than party, given the influence and ideological preferences of the few wealthy donors on whom it would depend.

—from *The Brave New World of Party Campaign Finance Law*, 101 *Cornell Law Review* 531 (2016)

The Age of Tolerance in New York



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The study of federal courts and jurisdiction is one of Professor Nash's specialties, along with courts and judges, and domestic and international environmental law. Before coming to Emory Law, Nash served as the Robert C. Cudd Professor of Environmental Law at Tulane University. He has served as a visiting professor at the University of Chicago Law School and Hofstra University School of Law and also has been a visiting scholar at Columbia Law School. His work has been published in *Columbia Law Review*, *Cornell Law Review*, *Iowa Law Review*, *Michigan Law Review*, *NYU Law Review*, *Northwestern University Law Review*, *Notre Dame Law Review*, *Stanford Law Review*, *Southern California Law Review*, *Vanderbilt Law Review*, and *Virginia Law Review*, among others. His scholarship has been cited by numerous courts, including the United States Courts of Appeals for the Sixth, Eighth, and Ninth Circuits.

SELECTED PUBLICATIONS

Articles

A Functional Theory of Congressional Standing, 114 *Michigan Law Review* 339 (2015)

Environmental Law in Austerity, *Pace Environmental Law Review* (2015) (with James Salzman & J.B. Ruhl)

Expertise and Opinion Assignment on the Courts of Appeals: A Preliminary Investigation, 66 *Florida Law Review* 1599 (2014)

Standing's Expected Value, 111 *Michigan Law Review* 1283 (2013)

Rethinking the Principal-Agent Theory of Judging, 99 *Iowa Law Review* 331 (2013) (with Rafael I. Pardo)

On the Efficient Deployment of Rules and Standards to Define Federal Jurisdiction, 65 *Vanderbilt Law Review* 509 (2012)

Does Ideology Matter in Bankruptcy? Voting Behavior on the Courts of Appeals, 53 *William & Mary Law Review* 919 (2012) (with Rafael I. Pardo)

Prosecuting Federal Crimes in State Courts, 97 *Virginia Law Review* 243 (2011) (with Michael G. Collins)

The Institutional Dynamics of Transition Relief, 85 *New York University Law Review* 391 (2010) (with Jonathan S. Masur)

Null Preemption, 85 *Notre Dame Law Review* 1015 (2010)

Excerpt: Interparty Judicial Appointments

Jonathan R. Nash

The dominant view in legal, economic, and political science literature is that the ideology of a lower federal court judge is largely predicted by the ideologies of the nominating president and the relevant state's senators who are of the same political party as the president. This view finds support in what is assumed to be the practice of arriving at federal judicial nominees: The president makes the nomination, but determines the identity of the nominee only after having consulted with the senator, or senator, of the same party from the state in which the judge will sit. (If there is no such senator, then the president is free to nominate whom he pleases.)

At the same time, a competing literature questions the dominant approach and its theoretical underpinnings. This literature advances instead the nominating president's ideology alone as the better predictor of a lower federal court judge's ideological leaning. Commentators argue that, especially in recent years, the White House has exerted greater control over the selection of lower federal court judges. Moreover, whatever recommendations arrive at his desk, it is the president who decides whether or not to put a name in nomination. Thus, it is reasonable to expect a judge would owe great allegiance to the president who nominated her.

I evaluate these competing theories empirically. To do so, I rely upon a natural experiment that arose in the state of New York from 1977 to 1998. During that time, New York was represented in the Senate by one Democrat (Daniel Patrick Moynihan throughout the period) and one Republican (Jacob Javits from 1977–1980, and Alfonse D'Amato from 1981–1998). Throughout that 22-year period, the two senators had an agreement to divide appointments to the district courts in the state: The senator who shared party affiliation with the president would be allocated three of every four appointments, while the "out-of-party" senator would be allocated the rest.

The original allocation of district court judicial nominees between New York senators of different parties originated in 1977 as an arrangement between Senator Daniel Patrick Moynihan, a Democrat, and Senator Jacob Javits, a liberal Republican. That arrangement persisted during the four years—1977–1980—that Senators Moynihan and Javits served jointly in the Senate.

Alfonse D'Amato defeated Senator Javits in the Republican primary, and then won the general election in 1980. He quickly announced that he would continue the practice that Senators Moynihan and Javits had established, in response to which Senator Moynihan commented: "This is extremely

gracious of Senator-elect D'Amato, and I thank him."

From his election, Senator Moynihan employed a judicial screening panel to sort through and identify suggestions for nomination. The panel was of bipartisan composition and purported to select nominees based upon merit. Senator D'Amato adopted a similar practice when elected, although he reserved for himself the final call on any suggestions passed along to the president.

The Moynihan-D'Amato arrangement persisted over the years. One bump in the road was Moynihan's 1985 suggestion that President Ronald Reagan nominate William E. Hellerstein to the Southern District of New York. President Reagan rejected Hellerstein, leaving Moynihan to fume that Reagan did not want to appoint individuals with backgrounds in legal aid. Though Moynihan claimed that the decision "corrupts the system of appointment," the episode did not affect the Moynihan-D'Amato relationship; indeed, D'Amato had joined Moynihan in recommending Hellerstein's nomination. Other episodes when presidents declined to follow through on the suggestion of a senator from the opposing party similarly did not derail the practice.

Over the years, each senator would fight for the other senator's nominees. In fact, it was Senator D'Amato who "helped push through a vote" on President Bill Clinton's elevation of Judge Sonia Sotomayor to the Second Circuit, in the face of Republican opposition.

The Moynihan-D'Amato arrangement lasted as long as both men served jointly in the Senate. It (like its predecessor arrangement between Senators Moynihan and Javits) was unusual.

One might ask why the senators agreed to enter into this arrangement. Three answers suggest themselves, each drawn from three goals senators might have in choosing nominees for the district courts: having federal judges who fulfill certain political aims, choosing prospective judges based on merit, and handing out patronage positions to political allies.

Consider first the notion that senators try to have judges appointed who will fulfill certain ideological goals. Such an understanding undergirds at least one major way that political scientists use to predict how a judge will perform on the bench. If this assumption is accurate, why would Senators Javits and Moynihan have entered into the original agreement, and why would Senators Moynihan and D'Amato have agreed to continue it in 1981? One answer, offered by Senator D'Amato in Senate testimony, is that the *(continued on following page)*

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senators shared a wish for a more balanced judiciary. It is unclear, however, why (from a self-interested perspective) a senator would want to achieve such a goal. The explanation also begs the question why, if indeed each senator had such a goal in mind, he or she might not implement on his or her own, by simply recommending prospective judges with different political attitudes. Perhaps a better way to think of the strategy is that, over time, each senator would like to ensure that at least some judges will share his or her political beliefs and that, on that basis, one senator might be willing to surrender judicial selections now in order to receive some in the future. Still, the question remains why the majority party senator would agree to such an arrangement without knowing whether he or she would ever find herself a member of the Senate minority. (As it turned out, Senator D'Amato enjoyed 12 years with a Republican president and six with a Democrat.)

Second, consider that Senators Javits, Moynihan, and D'Amato all employed judicial merit selection committees. To the extent that merit dominated the selection process, perhaps political differences would not impede an arrangement to allow the minority party senator to recommend judicial nominees. And, consistent with this story, the two senators' selection panels sometimes had overlapping membership. Still, if merit truly was the goal to the exclusion of politics, one wonders why the two senators wouldn't simply have created a unified merit selection panel.

Third, consider that senators may like to award appointments to politically powerful allies. Historically, district court recommendations were a form of patronage. While political considerations have been found to play a larger role in judicial selection in the years beginning with the Carter administration, that remains less so with respect to district court selections. On this logic, senators might agree to a power sharing arrangement on the ground that more judges would owe their jobs to them, and/or to ensure them some opportunities for patronage appointments even when their party was not in power in the White House.

Finally, the arrangement seems to have continued, and flourished, under Senators D'Amato and Moynihan in no small part because of the close relationship between the two. An interview with Senator D'Amato confirmed the high esteem in which Senator D'Amato held Senator Moynihan.

In the end, some combination of these explanations is probably closest to the truth. Neither Senator Javits, nor Senator Moynihan, nor Senator D'Amato was particularly partisan. Senator Javits was a liberal Republican. Senator Moynihan had substantial roles in the Kennedy, Johnson, Nixon, and Ford administrations; his first recommendation

to President Clinton for a district court appointment was a liberal Republican whom Senator Javits had unsuccessfully advanced years earlier. Senator D'Amato has a reputation for relying upon substantial political patronage. Moreover, his political loyalties often cross party lines. He has recommended Democrats for the district court bench; more recently, rumor has it that he worked to forestall a serious Republican challenge to his former intern—and now Democratic New York Senator—Kirsten Gillibrand's election bid. In this sense, merit and political considerations, as well as personal relationships, may have complemented ideological considerations in selecting prospective district court judges.

To conduct the analysis, I constructed a novel dataset of all successful nominees to the federal district court benches in New York from 1977 to 1998. I look to how those judges meted out sentences in criminal cases as a proxy for ideological leaning, and then examine how the ideologies of nominating presidents and recommending senators predicted judicial ideological leanings in decision making.

The empirical analysis finds no evidence that senatorial ideology has a statistically significant effect on district judge decision making. At the same time, it finds that indeed the nominating president's ideology does have a statistically significant effect. The findings thus are consistent with the second (minority) view of district judges' ideological leanings.

The case study is valuable in at least three ways. First, insofar as the study finds no evidence of senators' influence on district court decision making, the study draws at least somewhat in question the dominant view today that federal judges' ideological leanings are best estimated by the ideologies of the president and recommending senator(s). If the theory is accurate at all, then one surely would have expected a senator from an opposing party to have an influence on judges he recommends for the district courts.

Second, most extant empirical studies of the federal courts focus on the Supreme Court, and next on the federal courts of appeals, rather than the district courts. This study sheds greater light on the understudied confirmation practices involving district court nominees, and on predictors of ideological influences on district judges' decision making.

Third, the study highlights how important it can be to drill down into particular practices that senators may have used at certain times in determining who was nominated for the district courts, and how their nominations fared.

—from *Interparty Judicial Appointments*, 12 *Journal of Empirical Legal Studies* 664 (2015)

The Cost of Winning a Judicial Race



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Much of Professor Shepherd's research focuses on topics in law and economics, especially on empirical analyses of legal changes and legal institutions. Her recent work has examined issues related to the healthcare industry, tort reform, employment law, litigation practice, and judicial behavior. Her work has been published in the *Michigan Law Review*, *Vanderbilt Law Review*, *Southern California Law Review*, *New York University Law Review*, *Duke Law Journal*, and *UCLA Law Review*, among others. Shepherd teaches torts, law and economics, analytical methods for lawyers, statistics for lawyers, and legal and economic issues in health policy. Before joining the Emory law faculty, Shepherd was an assistant professor of economics at Clemson University. In addition to her position at the law school, she also serves as an adjunct professor in Emory University's Department of Economics.

SELECTED PUBLICATIONS

Articles

The Long Shadow of *Bush v. Gore*, 68 *Stanford Law Review* (forthcoming 2016) (with Michael Kang)

Attacking Judicial Elections, 114 *Michigan Law Review* (forthcoming 2016) (with Michael Kang)

The Prescription for Rising Drug Prices: Competition or Price Controls?, *Health Matrix: Journal of Law and Medicine* (forthcoming 2016)

State Consumer Protection Acts: An Economic and Empirical Analysis, *Antitrust Law Journal* (forthcoming 2016) (with James Cooper)

Deterring Innovation: *NY v. Actavis* and the Duty to Subsidize Competitors' Market Entry, *Minnesota Journal of Law, Science, and Technology* (forthcoming 2016)

Uncovering the Silent Victims of the American Medical Liability System, 67 *Vanderbilt Law Review* 151 (2014)

The Partisan Foundations of Judicial Campaign Finance, 86 *Southern California Law Review* 1239 (2013) (with Michael Kang)

Products Liability and Economic Activity: An Empirical Analysis of Tort Reform's Impact on Businesses, Employment, and Production, 66 *Vanderbilt Law Review* 257 (2013)

Excerpt: Partisanship in State Supreme Courts: Campaign Contributions and Judicial Decision Making

Joanna M. Shepherd & Michael S. Kang

While roughly nine of 10 state court judges must be elected by voters, judges elected under partisan systems are uniquely tied to political parties. In partisan elections, parties influence judicial decision making in at least two ways. First, they selectively recruit candidates and provide their critical support to candidates who they believe are committed ideologically to their favored positions. Second, the importance of this party support in future elections also looms prospectively over sitting judges' decision making and incentivizes them to decide cases in ways that attract, or at worst do not alienate, their respective parties. Through either of these channels—a selection effect or biasing effect—political parties can influence judicial decision making. Indeed, the nature of partisan election systems inevitably causes judges' decisions to be shaped by political parties. As Justice Sandra Day O'Connor once explained, "Partisan judicial elections are specifically *designed* to infuse politics into the law."

In this article, we advance new methodological approaches to inform our understanding of partisan voting among state supreme court judges. Despite the critical role of parties in partisan judicial elections, very little is understood about the empirical relationship between political parties and judicial decision making. In a recent book studying the behavior of federal judges, Epstein, Landes, and Posner (2013) detail the influences on federal judges' partisan decision making. Our analyses explore the empirical relationship between the political influences of judicial elections and judicial campaign finance—both unique to the state level—and judicial decision making by the state supreme courts.

For these analyses, we employ two different measures of partisanship. Our first measure of partisanship in judicial decision making is ideological voting—voting for conservative or liberal litigants in cases that seem especially likely to reveal divisions between conservative and liberal judges. Our second measure of partisanship is party cohesiveness—the reluctance of judges to vote in opposition to the majority of judges from their party.

Our first analysis finds that campaign contributions from a political party are related to judicial voting in cases in the party-preferred ideological direction. Republican judges are significantly more likely to vote in favor of conservative litigants, and Democratic judges are significantly more likely to vote in favor of liberal litigants. Moreover, we find that the amount of money the judges receive from the Republican Party is positively associated with the likelihood of voting for a conservative litigant. That is, although Republican judges are already significantly more likely to favor

conservative litigants, this preference for conservative litigants is greater in proportion to the amount of money received from the Republican Party. In contrast, the relationship between political party contributions and ideological voting is weaker among Democratic judges.

As we emphasize here and in earlier work, our analyses do not focus on untangling selection and biasing effects. The positive association between Republican Party contributions and ideological voting may occur because party money is disproportionately directed toward more conservative judicial candidates such that greater party contributions are associated with more extreme ideological voting. The positive association may occur because campaign finance considerations bias judicial candidates and sitting judges into anticipating party sponsors and attracting party money by deciding cases in the party-preferred ideological direction. In this article, we make little effort to parse these two potential causal pathways. We believe that either explanation is likely to worry those concerned about judicial campaign finance, albeit in potentially varied directions with different policy prescriptions.

Our second analysis explores the relationship between party campaign contributions and a different measure of partisanship in judicial decision making—party cohesiveness. We find evidence that Republican judges are more likely than Democratic judges to vote with other judges in their party. Campaign contributions from the Republican Party appear to reinforce this party cohesiveness. Money received by Republican judges from the Republican Party is negatively associated with a likelihood of casting votes in opposition to those of other Republican judges.

In sum, our empirical analyses find that party campaign contributions are associated with both measures of partisanship in judicial decision making by partisan-elected state supreme court judges. However, we also find that the results are generally stronger and more consistent for Republican judges and campaign contributions from the Republican Party across the board. The Republican Party appears better able than the Democratic Party to leverage its campaign finance contributions to produce party-preferred voting by partisan-elected judges. Democrats have the long-standing reputation of being less organized and cohesive than their Republican counterparts. We find that this stereotype about the major parties may contain some truth when it comes to judicial decision making and party campaign finance.

Judicial Elections, Partisan Politics, and Campaign Finance

Today, judicial elections, partisan politics, and campaign finance interact as never before, but major political parties have always played an important role in the history of American judicial elections. States have experimented with different forms of judicial selection throughout American history, adapting to perceived threats from party politics and money to strike the right balance between independence and accountability in a cycle of evolution that continues today.

Although there is great variation in judicial selection methods today, all state judges at the nation's founding were initially appointed to the bench by the state legislature or executive. It was not until the 1840s that worries about political influence on the judiciary led to the adoption of judicial elections in many states. Reformers in these states hoped that judicial elections would produce more politically independent judges than did executive or legislative appointment because popular elections might "insulate the judiciary ... from the branches that it was supposed to restrain." Every state that entered the Union from 1846 until 1959, more than a century later, adopted judicial elections.

However, by the turn of the 20th century, Progressive Era reformers found that judicial candidates needed party nominations to be electorally competitive and thus relied on party support to win judicial elections. As a result, by 1927, 12 states switched from partisan elections to nonpartisan elections with the hope of removing the partisan influences on judges. Still other states opted for the merit selection plan, also known as the Missouri Plan after Missouri became the first state to adopt it in 1940. Under merit selection, a bipartisan commission compiles a list of qualified applicants for judgeships from which the governor appoints candidates who then in turn face only unopposed retention elections on a nonpartisan basis. By 1980, 21 states and the District of Columbia had adopted merit selection for selecting some or all of their judges.

Today, almost 90 percent of state appellate judges must regularly be reelected by voters, but states are divided across four different principal systems of judicial selection and retention: partisan elections, nonpartisan elections, gubernatorial appointment, and merit plans. Only three states grant their highest-court judges permanent tenure. Judicial election is even more common in the selection of lower-court judges, with 19 states using partisan elections to name judges to their trial courts or lower appellate courts, if not their supreme court, and another 21 states using nonpartisan elections for at least some judicial positions.

State judicial elections over the past 20 years, however, have once again become more politicized.

Only 4.3 percent of incumbents were defeated in nonpartisan elections during the 1980s, but this figure nearly doubled by 2000, with 8 percent of incumbents defeated in these elections. Partisan judicial elections became more competitive, even more so than elections for congressional and state legislative incumbents over the same period of time. In 1980, just 26.3 percent of incumbent judges were defeated, but by 2000 45.5 percent of incumbent judges failed to win reelection.

With the new competitiveness of judicial elections, campaign spending has likewise increased dramatically. For comparison, state supreme court candidates raised less than \$6 million in the 1989–90 election cycle. For the 2009–10 election cycle, candidates raised more than \$38 million, and in three of the last six election cycles, candidates raised more than \$45 million. As a result, elected judges describe increasing pressure to raise campaign contributions during election years. Levels of campaign spending are particularly high for partisan judicial elections. From 2000 to 2009, campaign spending on judicial races was roughly three times greater for states with partisan elections, with candidates raising about \$153.8 million across nine states, compared with \$50.9 million in 13 states with nonpartisan elections.

With the competitiveness and expense of judicial elections, political party support has again become important for judicial candidates, but in today's media-heavy election world, a newly important element of this party support comes in the form of campaign finance contributions. Table 1 reports the average contributions of political parties to state supreme court candidates from 1989 to 2010. The data capture only direct contributions from the parties to the judicial candidates' campaigns; they do not capture independent expenditures and issue advocacy. As a result, the data certainly underestimate the total spending of political parties on judicial campaigning and do not include spending by party-allied groups and contributors. Parties not only contribute money directly to their judicial candidates but, just as important, also connect their candidates to sympathetic party financiers and a deep network of lawyers and advisers to help them succeed in judicial campaign finance (see Streb 2007, for a description of the support provided by political parties to judicial campaigns). Parties are in the business of winning offices, and campaign finance is another means of advancing their nominees' electoral prospects and achieving their political ends.

—from *Partisanship in State Supreme Courts: The Empirical Relationship between Party Campaign Contributions and Judicial Decision Making*, 44 *Journal of Legal Studies* 161 (2015) (with Michael Kang)

Law's Role in US Foreign Relations



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Professor Dudziak is a leading US legal historian whose research examines the intersection of domestic law and international affairs, including the impact of Cold War foreign affairs on civil rights policy and other topics in recent US legal history. In 2012, she created the Project on War and Security in Law, Culture, and Society. Prior to joining Emory Law, Dudziak was the Judge Edward J. and Ruey L. Guirado Professor of Law, History and Political Science at USC's Gould School of Law; the John Hope Franklin Visiting Professor of American Legal History at Duke; and the William Nelson Cromwell Visiting Professor of Law at Harvard. Dudziak was a law clerk for US Circuit Judge Sam J. Ervin III. Her next book is *Going to War: An American History*, and is under contract with Oxford University Press.

SELECTED PUBLICATIONS

Books

War-Time: An Idea, Its History, Its Consequences (Oxford University Press 2012)

Book Chapters

Targeted Killings and Secret Law: Drones and the Atrophy of Political Restraints on the War Power, in *Drone Warfare: Ethical, Legal, Strategic and Human Rights Implications* (David Cortright, Kristen Wall & Rachel Fairhurst eds., 2015)

A Sword and a Shield: The Uses of Law in the Bush Administration, in *The Presidency of George W. Bush: A First Historical Assessment* (Julian Zelizer ed., 2010)

Articles

War and Peace in Time and Space, 13 *Seattle Journal for Social Justice* 381 (2015)

Ferguson from Afar: How the World Sees the Protests, *Foreign Affairs* (2014)

'The Future' as a Concept in National Security Law, 42 *Pepperdine Law Review* 591 (2014)

Law, Power, and 'Rumors of War': Robert Jackson Confronts Law and Security After Nuremberg, 60 *Buffalo Law Review* 367 (2012)

Toward a Geopolitics of the History of International Law in the Supreme Court, 105 *Proceedings of the American Society for International Law* 532 (2011)

Law, War, and the History of Time, 98 *California Law Review* 1669 (2010)

Excerpt: Legal History as Foreign Relations History

Mary L. Dudziak

“Why did the law matter?” an eminent diplomatic historian once asked of a legal historian. Wouldn’t an episode in US international history have turned out the same way even if law had not been part of the story?

This kind of question has been central to the traditional divide between legal and foreign relations history. Skepticism about law as a causal force is the common justification for not focusing on law. That skepticism is based on methodological assumptions about what drives diplomatic history. But just as legal historians have not always been clear enough about the reasons their subject matters, foreign relations historians have been lax in their justifications for neglecting law, even as the role of law and lawyers in foreign relations history has expanded through the 20th century and after.

Law does not follow after American encounters with the world. It is part of the way the world is imagined and understood.

This divide is driven, in part, though limitations in the way historians sometimes view law, and the way lawyers sometimes view history. At times, law is thought to be rather one-dimensional: if the law requires X, and X doesn’t happen, then law has not had an impact. As I will explain, this way of thinking about law is too simple. In some contexts, lawyers (though generally not legal historians) approach history in a parallel, oversimplified way. History is reified into a stable and knowable past, as compared to the webs of evidence that historians sift and interpret. In the context of constitutional originalism, for example, if the past is knowable in a finite way, then past understandings can constrain the present, enabling “history” to be an anchor protecting against contemporary judicial activism. Neither law nor history is as stable as these approaches suggest. And even though it can often be argued that law, by itself, did not produce a particular outcome, this can be said of many important variables in the history of foreign relations.

In this chapter, I will show that law is already present in some aspects of foreign relations history. Using human rights as an example, I will explore

the way in which periodization of legal histories is tied to assumptions and arguments about causality. I will illustrate the way law has worked as a tool in international affairs, and the way law makes an indelible mark, or acts as a legitimizing force, affecting what historical actors imagine to be possible. Influential work on the methodology of legal history shows the way law can help to constitute the social and political context within which international affairs are conducted. And I will argue that the presence of law and lawyers in the history of US foreign relations can no longer be ignored. . . .

Law as a Constitutive Force

In the context of state-building, the expansion of American empire, the management of American public diplomacy, and the arena of armed conflict, we might see law as simply a tool that accomplishes goals that are ultimately driven by the more fundamental determinants of power and interest. In this sense, perhaps law is simply a means to an end. When useful, law is relied upon to accomplish a goal. Viewed this way, perhaps the answer to the question about what law does in diplomatic history is modest, and perhaps skeptics about law are correct that the most important features of the history of foreign relations lay elsewhere.

The impact of law is not limited in this way, however. Law is not simply an immediate tool. It creates and structures future opportunities. Robert Jackson is again helpful, this time in his role as US Supreme Court Justice. He described the impact of law in his dissent in the World War II internment case *Korematsu v. United States* (1944). It is one thing for military authorities to take harsh action, he noted. Judicial ratification can have more lasting harm.

A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the court for all time has validated [it]. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.

Legal precedent extends a ruling beyond the context that gave rise to it. Jackson continued: “Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. . . . (continued on following page)

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[I]t has a generative power of its own, and all that it creates will be in its own image."

Leading legal historian Robert Gordon explains the generative power of law in an influential article "Critical Legal Histories." "Law" and "society" have often been thought of as separate domains, with law responding to changes in society. But Gordon argues that the social context is not separate from law. Instead, law helps to create it.

It is just about impossible to describe any set of "basic" social practices without describing the legal relations among the people involved—legal relations that don't simply condition how the people relate to each other but to an important extent define the constitutive terms of the relationship, relations such as lord and peasant, master and slave, employer and employee, ratepayer and utility, and taxpayer and municipality.

For example, it would be hard to argue that law was unimportant to a slave society because slavery itself "is a legal relationship: It is precisely the slave's bundle of jural rights (or rather lack of them) and duties *vis-a-vis* others (he can't leave, he can't inherit, he has restricted rights of ownership, he can't insist on his family being together as a unit, etc.) that makes him a slave." Gordon argues that "understanding the constitutive role of law in social relationships is often crucial not only in characterizing societies but in accounting for major social change."

Lauren Benton describes the dynamic relationship between law and its social context in *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. In the context of European colonialism, she writes, "every collection of travelers or settlers operated on the assumption of a legal relationship binding subject and sovereign, and every group recognized a formal division of authority between lower and higher levels of legal authority." Often the "law" that mattered was not the formal legal code found in law books, but the law as remembered or practiced in colonial settings. Law's impact on sojourners and settlers "was grounded in their knowledge about past legal practice as well as suppositions about possible future legal entanglements." Various kinds of "inventive applications of law" were "a familiar kind of strategic cultural practice." As ship captains and others built law into their communications, law "represented an important epistemological framework for the organization and evaluation of evidence of all kinds." Benton argues that what might have looked like "an empty box of lawlessness, a legal void, was in fact full of law."

In Benton's work, it is law and geography that are tangled together in a "malleable epistemological foundation." What about law and foreign relations? Like the slaves in Gordon's example and the ship

A military order, however unconstitutional, is not apt to last longer than the military emergency. . . . But once a judicial opinion rationalizes such an order ... the principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need.

captains in Benton's, American diplomats, military officers, political leaders, migrants, and others operate with an understanding of the world, and of their own status, that is shaped in part by law. Law does not follow after American encounters with the world. It is part of the way the world is imagined and understood. The law that matters is not always formal law "on the books." To borrow from Benton, it is also the law that is remembered, "grounded in their knowledge about past legal practice as well as suppositions about possible future legal entanglements." As this chapter has shown, even American national identity itself is generated and understood in part through law.

Perhaps a danger of this formulation is that if law seems to be everywhere, perhaps it is too amorphous to do actual work in foreign relations history. But as we have seen in the example of law on the battlefield, the practice of lawfare shows that even armed conflict is mixed up with law. There is no "non-law" component to remove from it. Law is more than a tool, to be used or ignored. It marks the terrain of battle; it crafts the pathway of the bullet.

—from *Legal History as Foreign Relations History*, in *Explaining the History of American Foreign Relations* (3rd ed., Frank Costigliola & Michael J. Hogan eds., 2016)

Recent Scholarship



Ahdieh

Robert B. Ahdieh

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Book Chapter

Agency Coordination as Agency Action, in *Developments In Agency Procedure* (Russell L. Weaver et al., eds., forthcoming 2016)

Articles

From FedSpeak to Forward Guidance: Regulatory Dimensions of Central Bank Communications, 50 *Georgia Law Review* 213 (2015)

Coordination and Conflict: The Persistent Relevance of Networks in International Financial Regulation, 78 *Law and Contemporary Problems* 75 (2015)



An-Na'im

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Charles Howard Candler Professor of Law

Book Chapters

The Individual and Collective Self-Liberation Model of Ustadh Mahmoud Mohamed Taha, in *Beyond the Secular West* (Akeel Bilgrami ed., 2016)

Islamic Politics and the Neutral State: A Friendly Amendment to Rawls?, in *Rawls and Religion*, (Tom Bailey & Valentina Gentile eds., 2015)

Article

The Spirit of Laws is not Universal: Alternatives to the Enforcement Paradigm for Human Rights, *Tilburg Law Review* (forthcoming 2016)



Brown

Dorothy A. Brown

Professor of Law

Book

Federal Income Taxation: Cases, Problems and Materials (6th ed., West Academic 2016) (with Joel S. Newman)

Article

Diversity and the High-Tech Industry, 6 *Alabama Civil Rights and Civil Liberties Law Review* 95 (2014)



Dinner

Deborah Dinner

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Book Chapter

Equal by What Measure? The Lost Struggle for Universal State Protective Labor Standards, in *Vulnerability, Employment And Labor* (Martha Albertson Fineman & Jonathan Fineman eds., forthcoming 2016)

Articles

The Divorce Bargain: The Fathers' Rights Movement and Family Inequalities, 102 *Virginia Law Review* 79 (2016)

Beyond "Best Practices": Employment Discrimination Law in the Neoliberal Era, 92 *Indiana Law Journal* (forthcoming 2017)

Martha Albertson Fineman

Robert W. Woodruff Professor of Law

Articles

Homeschooling: Choosing Parental Rights over Children's Interests, *University of Baltimore Law Review* (forthcoming 2016) (with George B. Shepherd)

Equality and Difference—The Restrained State, 66 *Alabama Law Review* 609 (2015)

Vulnerability and LGBT Youth, 23 *Temple Political and Civil Rights Law Review* 307 (2015)

Richard D. Freer

Robert Howell Hall Professor of Law

Articles

Exodus from and Transformation of American Civil Litigation, 65 *Emory Law Journal* (forthcoming 2016)

Front-Loading, Avoidance, and Other Features of the Supreme Court's Recent Class Action Jurisprudence 47 *Akron Law Review* 721 (2015)

Some Specific Concerns with the New General Jurisdiction 15 *Nevada Law Journal* 1161 (2015)



Fineman



Freer

Recent Scholarship



Holbrook

Timothy Holbrook

Professor of Law

Articles

Patent Disclosures and Time, *Vanderbilt Law Review* (forthcoming 2016)

The Supreme Court's Quiet Revolution in Induced Patent Infringement, 91 *Notre Dame Law Review* 1007 (2016)

Expressive Eligibility, 5 *UC Irvine Law Review* 973 (2015) (with Mark D. Janis)



Levine

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Articles

Evidence Laundering in a Post-*Herring* World, *Journal of Criminal Law and Criminology* (forthcoming 2016)

Prosecutor Risk, Maturation and Wrongful Conviction Practice, *Law and Social Inquiry* (forthcoming 2016)

The Cure for Young Prosecutor's Syndrome, 56 *Arizona Law Review* 1065 (2014)



Pardo

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Robert T. Thompson Professor of Law

Book Chapter

Self-Representation and the Dismissal of Chapter 7 Bankruptcy Cases, in *Beyond Elite Law: Access to Civil Justice in America* (Samuel Estreicher & Joy Radice eds., 2016)

Article

Taking Bankruptcy Rights Seriously, 91 *Washington Law Review* (forthcoming 2016)



Price

Polly J. Price

Professor of Law, Professor of Global Health

Book Chapter

Jus Soli and Statelessness: A Comparative Perspective from the Americas, in *Citizenship in Question: Evidentiary Birthright and Statelessness* (Benjamin N. Lawrance & Jacqueline Stevens, eds., 2016)



Ruskola

Articles

Epidemics, Outsiders, and Local Protection: Federalism Theater in the Era of the Shotgun Quarantine, 19 *University of Pennsylvania Journal of Constitutional Law* (forthcoming 2016)

Infesting the Body Politic: Observations on Health Security and the "Undesirable" Immigrant 63 *Kansas Law Review* 916 (2015)

Teemu Ruskola

Professor of Law

Book Chapters

Corporation Law in Late Imperial China, in *Research Handbook on the History of Corporate and Company Law* (Harwell Wells ed., forthcoming 2017)

China in the Age of the World Picture, in *Oxford Handbook of the Theory of International Law* (Florian Hoffman & Anne Orford eds., 2016)

Postscript: Labor Rights in China's Changing Political Economy, in *Fundamental Labour Rights in China: Legal Implementation and Cultural Logic* (Chen Yifeng & Ulla Liukkunen eds., 2016)

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Professor of Law

Book Chapters

Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property, in *Nussbaum And Law: Philosophers And Law* (Robin West ed., 2015)

"Beastly Morality: Untangling Possibilities," in *Beastly Morality: Animals as Moral Agents* (Jonathan K. Crane, ed., 2015) (with Lori Marino & Cynthia Willett)

Article

Fragmentation After Health Care Reform, 15 *Houston Journal of Health Law & Policy* 173 (2015)



Satz

Recent Scholarship



Seaman

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Articles

Winning Arguments 41 *Law & Psychology Review* (forthcoming 2017)

Your Brain on Lies: Deception Detection in Court, in *Routledge Handbook of Neuroethics* (L. Syd M. Johnson & Karen Rommelfanger eds., forthcoming 2017)



Shepherd

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Articles

Failed Experiment: *Twombly*, *Iqbal*, and Why Broad Pretrial Discovery Should Be Further Eliminated, 49 *Indiana Law Review* 465 (2016)

Homeschooling's Harms: Lessons from Economics, *Akron Law Review* (forthcoming 2016)

Homeschooling: Choosing Parental Rights over Children's Interests, *University of Baltimore Law Review* (forthcoming 2016) (with Martha Albertson Fineman)



Velikonja

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Articles

Distortion Other Than Price Distortion, 92 *Washington University Law Review* (forthcoming 2016)

Reporting Agency Performance: Behind the SEC's Enforcement Statistics, 101 *Cornell Law Review* 901 (2016)

Waiving Disqualification: When Do Securities Violators Receive a Reprieve?, 103 *California Law Review* 1081 (2015)



Vertinsky

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Article

Pre-Competition, *North Carolina Law Review* (2016) (with Jorge L. Contreras)



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Articles

The Contested Place of Religious Freedom: Finding a Better Way, *Illinois Law Review* (2016) (with Joel A. Nichols)

A New Magna Carta for the Early Modern Common Law: An 800th Anniversary Essay, 30 *Journal of Law and Religion* 428 (2015)

Why Two in One Flesh: The Western Case for Monogamy Over Polygamy, 62 *Emory Law Journal* 1675 (2015)

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Professor of Law

Book

Tort Law in a Postmodern Age, *Cambridge University Press* 2017

Articles

High Prices in the US for Life Saving Drugs: Collective Bargaining Through Tort Law? 17 *Marquette Benefits and Social Welfare Law Review* (forthcoming 2016)

Social Media and Conflict Mapping in Syria: Implications for International Criminal Prosecutions and for TRC Processes, 30 *Emory International Law Review* 169 (2015)

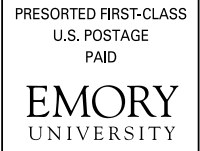


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ALSO INSIDE

“Today, judicial elections, partisan politics, and campaign finance interact as never before, but major political parties have always played an important role in the history of American judicial elections.”

—Joanna Shepherd and Michael Kang