

# **SAMUEL ISSACHAROFF**

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## **ACADEMIC EXPERIENCE**

### ***New York University School of Law***

- Bonnie and Richard Reiss Professor of Constitutional Law (2005 - )
- Visiting Professor (2004-2005)

### ***Harvard Law School***

- Samuel Williston Visiting Professor (Fall 2008)

### ***Columbia Law School***

- Harold R. Medina Professor in Procedural Jurisprudence (2001 - 2005)
- Professor (1999 - 2001)
- Visiting Professor (1998-1999)

### ***Oxford University***

- Astor Visiting Lecturer (June 2005)

### ***Tel Aviv University***

- Visiting Professor (May-June 2006)

### ***University of Texas School of Law***

- Joseph D. Jamail Centennial Chair in Law (1998-1999)
- Charles Tilford McCormick Professor in Law (1994-1998)
- Professor and Preston Shirley Faculty Fellow (1993-94)
- Assistant Professor (1989-1993)

### ***University of Pennsylvania Law School***

- Lecturer in Law (1986-1989)

### ***Gerzensee Center for Law and Economics, Switzerland***

- Visiting Lecturer on Constitutional Law (May 2008)

***University of Toronto School of Law***

- Full Professor Status Only (2011- 2014) (Dissertation reviewer)

***University of Melbourne School of Law***

- Senior Fellow (2011)

*Courses Taught:* Civil Procedure, Employment Law, Law of Democracy, Constitutional Law, Comparative Constitutional Law, Complex Litigation, Legal Process, Profession of Law

**EDUCATION**

***Yale Law School, J.D. 1983***

- Editor, Yale Law Journal.

***Graduate Center, City University of New York***

- Graduate studies in Labor History (1976-77); University Fellowship.

***Universite de Paris, 1975-76***

***State University of New York at Binghamton, B.A. 1975***

- Major in History.

**PROFESSIONAL EXPERIENCE**

- ***Guerrieri, Edmond & James, Washington, D.C. (1988-1989)***  
Of counsel, handling special litigation for labor law firm.
- ***Lawyers' Committee for Civil Rights Under Law, Washington, D.C. (1985-1988)***  
Staff attorney with Voting Rights Project (served as Acting Director of Voting Rights Project, 1985-86). Conducted voting rights litigation and other civil rights case work throughout the U.S.
- ***Kirschner, Walters, Willig, Weinberg & Dempsey, Associate, Phila., PA. (1985)***  
Union labor law practice representing public and private employees in court, arbitration and administrative proceedings.
- ***Lawyers' Committee for International Human Rights (1984)***  
Received J. Roderick MacArthur Fellowship to represent Lawyers' Committee in Argentina and Uruguay. Worked with Centro de Estudios Legales y Sociales in Buenos Aires on issues concerning transition from dictatorship to civilian government and prosecutions of former military rulers.
- ***United States Court of Appeals for the Third Circuit (1983-84)***  
Law Clerk to Honorable Arlin M. Adams.

## PUBLICATIONS

### Articles

- *Democracy's Deficits*, \_\_\_ U. CHICAGO L. REV. \_\_\_\_ (forthcoming 2018).
- *Die Defizite Der Demokratie*, 56 DER STAAT 1-27 (2017)(overlapping German translation).
- *What Is Puerto Rico?*, \_\_\_\_\_ (2018) (with Alexandra Bursak, Russell Rennie & Alec Webley) (under submission).
- *Participatory Class Actions*, 92 N.Y.U. L. REV. 846 (2017) (with Elizabeth J. Cabraser).
- *Outsourcing Politics: The Hostile Takeover of Our Hollowed Out Political Parties*, 54 HOUSTON L. REV. 845 (2017).
- *Tribute to Judge Jack B. Weinstein*, 72 N.Y.U. ANN. SURV. AM. L. 19 (2017).
- *Voter Welfare: An Emerging Rule of Reason in Voting Rights Law*, 92 IND. L. J. 299 (2016).
- *Living to Fight Another Day: Judicial Deferral in Defense of Democracy*, 2016 WISC. L. REV. 683 (with Rosalind Dixon).
- *Constitutional Implications of the Cost of War*, 83 U. CHICAGO L. REV. 169 (2016) (with Lucas Issacharoff)
- *Voting Rights at 50*, 67 ALA. L. REV. 387 (2016).
- *Ballot Bedlam*, 64 DUKE L. J. 1363 (2015).
- *The Australian Alternative: A View From Abroad of Recent Developments in Securities Class Actions*, 34 U. NEW SOUTH WALES L. REV. 179 (2015) (with Thad Eagles).
- *Constitutional Courts and Consolidated Power*, 62 AM. J. COMP. L. 585 (2014).
- *The Democratic Risk to Democratic Transitions*, 5 CONSTIT. COURT REV. 1 (2014).
- *The BP Oil Spill Settlement and the Paradox of Public Litigation*, 74 L.S.U. L. REV. 397 (2014) (with D. Theodore Rave).
- *Market Intermediaries in the Post-Buckley World*, 89 NYU L. REV. ONLINE 105 (2014)
- *Litigation Funding and the Problem of Agency Cost in Representative Actions*, 66 DEPAUL L. REV. 561 (2014).
- *Beyond the Discrimination Model on Voting*, 127 HARV. L. REV. 95 (2013).
- *Assembling Class Actions*, 90 WASH. U. L. REV. 699 (2013).

- *Targeted Warfare: Individuating Enemy Responsibility*, 88 N.Y.U. L. REV 1521 (2013) (with Richard H. Pildes)
- *The Governance Problem in Aggregate Litigation*, 81 FORDHAM L. REV. 3165 (2013).
- *An Information Forcing Approach to the Motion to Dismiss*, J. LEGAL ANALYSIS (June 5, 2013) <http://jla.oxfordjournals.org/content/early/2013/06/05/jla.lat002.full>. (with Geoffrey P. Miller).
- *Special Interests After Citizens United: Access, Replacement, and Interest Group Response to Legal Change*, 9 ANNUAL REV. L. & SOC. SCIENCE 185 (2013) (with Jeremy Peterman).
- *Federalized America: Reflections on Erie v. Tompkins and State-Based Regulation*, 10 J. ECON. LAW & POL'Y 199 (2013).
- *Prologue: Argentina's Electoral Reforms*, 11 ELECTION L. J.529 (2012).
- *Fairness in Aggregation*, 9 U.S.-CHINA L. REV. 477 (2012).
- *Class Actions and State Authority*, 44 LOY. U. CHI. L. J.370 (2012).
- *Acciones de Clase y Autoridad Estatal*, 219 REVISTA DE PROCESSO.153 (2013)(Brazil, translation).
- *10 X 10*, 10 INT'L J. CONSTIT. L. 778 (2012).
- *Clarity About Super PACs, Independent Spending, and Citizens United*, 2 J.L.469 (2012).
- *Disclosure, Agents, and Consumer Protection*, 167 J. OF INSTITUTIONAL & THEORETICAL ECON. 56 (2011)
- *Constitutional Courts and Democratic Hedging*, 99 GEORGETOWN L. J. 961 (2011)
- *On Political Corruption*, 124 HARV. L. REV. 118 (2010)
- *Judging in Times of the Extraordinary?*, 47 HOUSTON L. REV. 533 (2010)
- *Citizens United and the American Law of Party Funding*, 30 QUADERNI COSTITUZIONALI 392 (2010) (in Italian)
- *Pragmatic Originalism?*, 5 N.Y.U. J. OF LAW & LIBERTY 517 (2010)
- *The Public Value of Settlement*, 78 FORDHAM L. REV. 1177 (2009) (with Robert H. Klonoff).
- *Political Safeguards in Democracies at War*, 2009 OXFORD J. LEGAL STUDIES 1
- *The Constitutional Logic of Campaign Finance Regulation*,36 PEPPERDINE. L. REV. 373 (2009).
- *Will Aggregate Litigation Come to Europe?*, 62 VANDERBILT L. REV. 179 (2009) (with Geoffrey P. Miller).

- *Private Claims, Aggregate Rights*, 2008 SUPREME COURT REV. 183
- *Meriwether Lewis, the Air Force, and the Surge: The Problem of Constitutional Settlement*, 12 LEWIS & CLARK L. REV. 649 (2008).
- *Class Action Settlements Under Attack*, 156 U. PENN L. REV. 1649 (2008)(with Richard A Nagareda).
- *Democracy and Collective Decisionmaking*, 6 INT’L J. CONSTITUTIONAL LAW 231 (2008).
- *Fragile Democracies*, 120 HARV. L. REV. 1405 (2007).
- *Protected from Politics: Diminishing Margins of Electoral Competition in U.S. Congressional Elections*, 68 OHIO ST. L. REV. 1121 (2007)(with Jonathan Nagler).
- *Regulating After The Fact*, 56 DEPAUL L. REV. 375 (2007).
- *Backdoor Federalization*, 53 UCLA L. REV. 1353 (2006)(with Catherine M. Sharkey).
- *Credit Card Accountability*, 73 UNIV. CHICAGO L. REV.157 (2006)(with Erin F. Delaney).
- *Settled Expectations in a World of Unsettled Law*, 106 COLUM. L. REV. 1839 (2006).
- *Getting Beyond Kansas*, 74 UMKC L. REV. 613 (2006).
- *Law, Rules and Presidential Selection*, 120 POLITICAL SCIENCE QUARTERLY 113(2005).
- *Collateral Damage: The Endangered Center in American Politics*, 46 WILLIAM & MARY L. REV. 415 (2004).
- *The American Law of Repose*, 23 CIVIL JUSTICE QUARTERLY 324 (2004).
- *Where to Draw the Line: Judicial Review of Political Gerrymanders*, 153 PENN L. REV. 541 (2004)(with Pamela S. Karlan).
- *The Elusive Search for Constitutional Integrity: A Memorial for John Hart Ely*, 57 STANFORD L. REV.727 (2004).
- *Is Section 5 of the Voting Rights Act a Victim of Its Own Success?*, 105 COLUM. L. REV. 1710 (2004).
- *The Inevitability of Aggregate Settlements: An Institutional Account of American Tort Law*, 57 VANDERBILT L. REV.1571 (2004)(with John Fabian Witt).
- *Constitutionalizing Democracy in Fractured Societies*, 82 TEXAS L. REV. 1861 (2004).
- *Constitutionalizing Democracy in Fractured Societies*, 58 JOURNAL OF INTERNATIONAL AFFAIRS 73 (2004)(version of prior entry).
- *Throwing in the Towel: The Constitutional Morass of Campaign Finance*, 3 ELEC. L. J. 259 (2004).
- *Emergency Contexts Without Emergency Powers: The United States’ Constitutional Approach to*

- Rights During Wartime*, 2 INT'L JOURNAL OF CONSTITUTIONAL LAW 296 (2004)(with Richard H. Pildes).
- *Between Civil Libertarianism and Executive Unilateralism: An Institutional Process Approach to Rights During Wartime*, 5 THEORETICAL INQUIRIES IN LAW 1 (2003)(with Richard H. Pildes)(overlaps with prior article).
  - *Owen Fiss and the Warren Court Legacy: Politics, Law, and the Struggle for Equal Protection*, 58 MIAMI. L. REV. 35 (2003)(with Pamela S. Karlan).
  - *The Enabling Role of Democratic Constitutionalism: Fixed Rules and Some Implications for Contested Presidential Elections*, 81 TEX. L. REV. 1985 (2003).
  - *Regulation for Conservatives: Human Decision Making and the Case for "Asymmetric Paternalism,"* 151 PENN. L. REV. 1211 (2003)(with Colin Camerer, George Loewenstein, Ted O'Donoghue, and Matthew Rabin).
  - *Gerrymanders and Political Cartels*, 116 HARV. L. REV. 593 (2002).
  - *Why Elections?*, 116 HARV. L. REV. 684 (2002).
  - *Preclusion, Due Process, and the Right to Opt Out of Class Actions*, 77 NOTRE DAME L. REV. 1057 (2002)
  - *The Content of Our Casebooks: Why Cases Get Litigated*, 29 FL. ST. L. REV. 1265 (2002).
  - *The Two Sides of Freedom of Expression*, 1 REVISTA DE DERECHO 79 (Universidad de Montevideo – 2002).
  - *"Shocked": Mass Torts and Aggregate Asbestos Litigation After Amchem and Ortiz*, 80 U. TEX. L. REV. 1925 (2002).
  - *Law and Misdirection in the Debate Over Affirmative Action*, 2002 UNIV. CHI. LEGAL FORUM 11.
  - *The Difficult Path From Observation to Prescription*, 77 N. Y. U. L. REV 36 (2002).
  - *Behavioral Decision Theory at the Court of Public Law*, 87 CORNELL L. REV. 671 (2002).
  - *Political Judgments*, 68 U. CHI. L. REV. 637 (2001).
  - *Can Process Theory Constrain Courts?*, 72 U. COL. L. REV. 923 (2001)(with Michael C. Dorf).
  - *Race and Campaign Finance Reform*, 79 N. CAR. L. REV. 1523 (2001).
  - *Private Parties With Public Purposes: Political Parties, Associational Freedoms, and Partisan Competition*, 101 COLUM. L. REV. 274 (2001).
  - *Introduction to Symposium: The Structures of Democratic Governance*, 100 COLUM. L. REV. 593 (2000).

- *Oversight of Regulated Political Markets*, 24 HARV. J. L & PUB. POL'Y 91 (2000).
- *The Vexing Problem of Reliance in Consumer Class Actions*, 74 TULANE. L. REV. 1633 (2000).
- *Discrimination with a Difference: Can Employment Discrimination Law Accommodate the Americans with Disabilities Act?*, 79 NORTH CAROLINA L. REV. 307 (2001)(with Justin Nelson).
- *Governance and Legitimacy in the Law of Class Actions*, 1999 SUPREME COURT REVIEW 187.
- *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1999)(with Pamela Karlan).
- *Governing through Intermediaries*, 85 VIRGINIA L. REV. 1627 (1999)(with Daniel Ortiz).
- *Group Litigation of Consumer Claims: Lessons of the American Experience*, 34 TEX. INT'L L. J. 135 (1999).
- *Not By 'Election Law' Alone*, 32 LOYOLA L. REV. 1173 (1999)(with Richard Pildes).
- *Standing and Misunderstanding in Voting Rights Law*, 111 HARV. L. REV. 2276 (1998)(with Pamela Karlan).
- *Can Affirmative Action Be Defended?*, 59 OHIO ST. L. J. 669 (1998).
- *Can There Be a Behavioral Law and Economics?*, 51 VANDERBILT L. REV. 1729 (1998).
- *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STANFORD L. J. 643 (1998)(with Richard Pildes).
- *Creating Convergence: Debiasing Biased Litigants*, 22 J. OF LAW AND SOCIAL INQUIRY 913 (1998)(with Linda Babcock and George Loewenstein).
- *Is Age Discrimination Really Age Discrimination?: The ADEA's Unnatural Solution*, 72 N.Y.U. L. REV. 780 (1997)(with Erica Worth Harris).
- *Class Action Conflicts*, 30 U. C. DAVIS L. REV. 805 (1997).
- *Racial Gerrymandering in a Complex World: A Reply to Judge Sentelle*, 45 CATH. U. LAW REV. 1257 (1996).
- *The Constitutional Contours of Race and Politics*, 1995 SUPREME COURT REVIEW 45.
- *Contracting For Employment: The Limited Return of the Common Law*, 74 TEXAS LAW REVIEW 1783 (1996).
- *Identifying the Harm in Racial Gerrymandering Claims*, 1 MICH. J. OF RACE & LAW 47 (1996)(with Thomas C. Goldstein).
- *Supreme Court Destabilization of Single-Member Districts*, 1995 UNIV. OF CHICAGO LEGAL FORUM 205.

- *Unintended Consequences of Mandatory Disclosure*, 73 TEXAS L. REV. 753 (1995)(with George Loewenstein).
- *Groups and the Right to Vote*, 44 EMORY L. J. 869 (1995)
- *Women and the Workplace: Accommodating the Demands of Pregnancy*, 95 COL. L. REV. 2154 (1994)(with Elyse Rosenblum).
- *Race and Redistricting: Drawing Constitutional Lines after Shaw v. Reno*, 92 MICHIGAN LAW REVIEW 588 (1993)(with T. Alexander Aleinikoff).
- *Biased Judgments of Fairness in Bargaining*, 85 AMERICAN ECONOMIC REVIEW 1337 (1995)(with L. Babcock, G. Loewenstein, and C. Camerer).
- *Judging Politics: The Elusive Quest for Judicial Review of Political Fairness*, 71 TEXAS LAW REVIEW 1643 (1993).
- *Source Dependence in the Valuation of Objects*, 7 JOURNAL OF BEHAVIORAL DECISIONMAKING 157 (1994)(with G. Loewenstein)
- *Polarized Voting and the Political Process: The Transformation of Voting Rights Jurisprudence*, 90 MICH. L. REV. 1833 (1992).
- *When Substance Mandates Procedure: Martin v. Wilks and the Rights of Vested Incumbents in Civil Rights Consent Decrees*, 77 CORNELL L. REV. 189 (1992).
- *Self-Serving Assessments of Fairness and Pretrial Bargaining*, 22 JOURNAL OF LEGAL STUDIES 135 (1992)(with George Loewenstein, Colin Camerer, Linda Babcock).
- *The Census Undercount and Minority Representation: The Constitutional Obligation of the States to Guarantee Equal Representation*, 13 REVIEW OF LITIGATION 1 (1993)(with Allan J. Lichtman).
- *Administering Damage Awards in Mass-Tort Litigation*, 10 REV. OF LITIG. 463 (1991).
- *Black/White Voter Registration Disparities in Mississippi: Legal and Methodological Issues in Challenging Bureau of Census Data*, 7 J. LAW & POLITICS 525 (1991)(with Allan J. Lichtman).
- *Second Thoughts About Summary Judgment*, 100 YALE L.J. 73 (1990)(with George Loewenstein).
- *Dictatorship on Trial: Prosecution of Human Rights Violations in Argentina*, 10 YALE J. INT'L LAW 118 (1985) (with E. Mignone and C. Estlund).
- *Note, Making the Violation Fit the Remedy: The Intent Standard and Equal Protection Law*, 92 YALE L.J. 328 (1982).

### **Review Essays**

- *Bearing the Costs*, Review of M. Kelman, STRATEGY OR PRINCIPLE?: THE CHOICE BETWEEN REGULATION AND TAXATION, 53 STAN. L. REV. 519 (2000).



- *Contractual Liberties in Discriminatory Markets*, Review of R. Epstein, FORBIDDEN GROUNDS, 70 TEX. L. REV. 1219 (1992).
- *Reconstructing Employment*, Review of P. Weiler, GOVERNING THE WORKPLACE: THE FUTURE OF LABOR AND EMPLOYMENT LAW, 104 HARV. L. REV. 607 (1990).

### **Books**

- FRAGILE DEMOCRACIES: CONTESTED POWER IN THE ERA OF CONSTITUTIONAL COURTS (Cambridge Univ. Press, 2015).
- CIVIL PROCEDURE (Foundation Press, 2005).
- CIVIL PROCEDURE (Foundation Press, 2d. edition, 2008).
- CIVIL PROCEDURE (Foundation Press, 3d. edition, 2011).
- CIVIL PROCEDURE (Foundation Press, 4th edition, 2017).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 1998).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 2d. edition, 2001).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 3d. edition, 2007).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan and Richard Pildes)(Foundation Press, 4<sup>th</sup>. edition, 2012).
- THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (with Pamela Karlan, Richard Pildes, and Nathaniel Persily)(Foundation Press, 5<sup>th</sup>. edition, 2016).
- WHEN ELECTIONS GO BAD: THE LAW OF DEMOCRACY AND THE PRESIDENTIAL ELECTION OF 2000 (with Pamela Karlan and Richard Pildes)(Foundation Press, 2001).
- WHEN ELECTIONS GO BAD: THE LAW OF DEMOCRACY AND THE PRESIDENTIAL ELECTION OF 2000 (with Pamela Karlan and Richard Pildes)(Foundation Press, 2d. edition, 2001).
- PARTY FUNDING AND CAMPAIGN FINANCING IN INTERNATIONAL PERSPECTIVE (with K.D. Ewing) (Hart Press, Oxford, 2006).

## **Book Chapters**

- *Populism versus Democratic Governance*, in CONSTITUTIONAL DEMOCRACY IN CRISIS?, (Mark Graber, Sanford Levinson and Mark Tushnet, eds., Oxford University Press, forthcoming 2018).
- *What Does the Supreme Court Do?*, in U.S. CONSTITUTIONAL LAW IN THE OBAMA ERA: A TRANSATLANTIC PERSPECTIVE (Anna-Bettina Kaiser, Niels Petersen & Johannes Saurer, eds., Routledge, forthcoming 2018).
- *Embattled Democracy*, in TBD (Kiron Skinner & Russell Berman, eds., Hoover Press, forthcoming 2018).
- *Collective Action and Class Action*, in THE CLASS ACTION EFFECT: FROM THE LEGISLATOR'S IMAGINATION TO TODAY'S USES AND PRACTICES, (Catherine Piché, ed., Éditions Yvon Blais, forthcoming 2018).
- *Comparative Constitutional Law as a Window on Democratic Institutions*, in MODERN COMPARATIVE CONSTITUTIONAL LAW (Rosalind Dixon & Erin F. Delaney, eds., forthcoming 2018).
- *Due Process in Law*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES, 2nd ed. 696 (James D. Wright, ed., Oxford: Elsevier, 2015).
- *Citizens United y la Regulacion del Financiamiento a Partidos Politicos en los Estados Unidos de American*, in SENTENCIAS RELEVANTES DE CORTES EXTRANJERAS 153 (Tribunal Electoral del Poder Judicial de la Federacion, Mexico, 2013).
- *Drones and the Dilemma of Modern Warfare*, in DRONES AND THE PROMISE OF LAW: HOW ADVANCES IN MILITARY TECHNOLOGY ARE TRANSFORMING ARMED CONFLICT AND CHALLENGING POLICY AND PRACTICE (P. Bergen & D. Rothenberg, eds) (Cambridge Univ. Press, 2014) (with Richard H. Pildes).
- *Epilogue: Bush v. Gore and the Constitutional Right to Vote*, in ELECTION ADMINISTRATION IN THE UNITED STATES: THE STATE OF REFORM AFTER BUSH V. GORE (M. Alvarez & B. Grofman, eds) (Cambridge Univ. Press, 2014) (with Richard H. Pildes).
- *Due Process in Law*, in INTERNATIONAL ENCYCLOPEDIA OF SOCIAL AND BEHAVIORAL SCIENCES, 2<sup>nd</sup> Ed. (Forthcoming 2015).
- *Managing Conflict Through Democracy*, in RIGHTS IN DIVIDED SOCIETIES COMPARADO 33 (Harvey & Schwartz, eds) (Hart Publishing 2012).
- *Antidiscrimination in Employment: The Simple, the Complex, and the Paradoxical*, in RESEARCH HANDBOOK ON THE ECONOMICS OF LABOR AND EMPLOYMENT LAW 385 (C. Estlund & M. Wachter, eds) (Edward Elgar Press 2012) (with E. Scharff).
- *Fairness in Aggregation*, in PROCESOS COLECTIVOS/CLASS ACTIONS: PROCEEDINGS OF 1<sup>ST</sup> INTERNATIONAL CONFERENCE ON PROCEDURAL LAW 31 (2012).
- *The Majoritarian Threat to Democracy: Constitutional Courts and the Democratic Pact*, in MAJORITY POLITICS 236 (S. Novak & J. Elster, eds) (2014).

- *Will Aggregate Litigation Come to Europe?*, in THE LAW AND ECONOMICS OF CLASS ACTIONS IN EUROPE: LESSONS FROM AMERICA 37 (J. Backhaus, A. Cassone & G. Ramello eds) (2012) (with Geoffrey Miller).
- *Party Funding and Campaign Finance Law in the United States*, in LA RESOLUCION DE LOS CONFLICTOS ELECTORALES: UN ANALISIS COMPARADO, (P. Biglino Campos & L. Delgado del Rincon, eds) (2010).
- *Facts, Investigation and the Role of Discovery*, in LITIGATION IN ENGLAND AND GERMANY: LEGAL PROFESSIONAL SERVICES, KEY FEATURES AND FUNDING 39 (P. Gottwald, ed)(2010).
- *Aggregating Private Claims*, in LITIGATION IN ENGLAND AND GERMANY: LEGAL PROFESSIONAL SERVICES, KEY FEATURES AND FUNDING 63 (P. Gottwald, ed)(2010).
- *The Institutional Dimension of Consumer Protection*, in NEW FRONTIERS OF CONSUMER PROTECTION: COMBINING PRIVATE AND PUBLIC ENFORCEMENT (F. Cafaggi & H.-W. Micklitz, eds) (2009)(with Ian Samuel).
- *Democracy and Electoral Processes*, in RESEARCH HANDBOOK ON LAW AND PUBLIC CHOICE 173 (D. Farber & A. J. O'Connell, eds) (2010)(with Laura E. Miller).
- *A Cosmopolitan Judge for a Cosmopolitan Era: An Essay in Honor of Carl Baudenbacher*, in ECONOMIC LAW AND JUSTICE IN TIMES OF GLOBALIZATION: FESTSCHRIFT FOR CARL BAUDENBACHER 131 (M. Monti, N. Liechtenstein, B. Vesterdorf, J. Westbrook, L. Wildhaber, eds)(2007).
- *Supreme Court Preemption: The Contested Middle Ground of Products Liability*, in FEDERAL PREEMPTION: STATES' POWERS, NATIONAL INTEREST 194 (Richard A. Epstein & Michael S. Greve, eds.) (2007) (with Catherine Sharkey).
- *Does Section 5 of the Voting Rights Act Still Work?*, in THE FUTURE OF THE VOTING RIGHTS ACT (D. Epstein, R. Pildes, R. de la Garza, S. O'Halloran, eds., Russell Sage, 2006).
- *Compensation for the Victims of September 11* in THE HANDBOOK OF REPARATIONS (P. De Grieff, ed., Oxford 2006) (with Anna Morawiec Mansfield).
- *Legal Regulation of Conflict of Interest*, in CONFLICTS OF INTEREST: PROBLEMS AND SOLUTIONS IN LAW, MEDICINE, AND ORGANIZATIONAL SETTINGS (M. Bazerman, G. Loewenstein, & D. Moore, eds., Cambridge Univ. Press, 2005).
- *Baker v. Carr in Context*, in CONSTITUTIONAL LAW STORIES 297-323 (M. Dorf, ed., Foundation Press, 2004) (with Stephen Ansolabehere).
- *Due Process in Law*, in INTERNATIONAL ENCYCLOPEDIA OF SOCIAL AND BEHAVIORAL SCIENCES 3894-97 (Elsevier Ltd., 2001) (2d ed. 2012).
- *Too Much Lawyering, Too Little Law*, in THE REFORM OF CIVIL PROCEDURE, (A.A.S. Zuckerman & R. Cranston, eds., Oxford Univ. Press, 1995).

- *Bargaining Impediments and Settlement Behavior* (with Charles Silver and Kent Syverud), in DISPUTE RESOLUTION: BRIDGING THE SETTLEMENT GAP, Anderson, ed., JAI Press, 1996).
- *The Redistricting Morass*, in AFFIRMATIVE ACTION AND REPRESENTATION, (A. Peacock, ed., Carolina Acad. Press, 1997).
- *Litigating for Equality of Political Opportunity*, in J. Lobel, ed., CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Clark, Boardman, 1987).

### ***Reports, Other Publications, and Current Manuscripts***

- “The Frayed Pillars of Democracy,” Defining Ideas, Hoover Institute, <http://www.hoover.org/research/frayed-pillars-democracy>, May 10, 2017.
- “Safeguarding Democratic Institutions,” Verfassungsblog Debated on Constitutional Courts and Populism, <http://verfassungsblog.de/safeguarding-democratic-institutions/> April 28, 2017.
- “Plebiscite Options on the Status of Puerto Rico,” Report prepared for the Governor of Puerto Rico and the Partido Popular Democrático October 8, 2015 (Updated February 6, 2016).
- “It’s Still a Struggle,” REVIEW OF ARI BERMAN, GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA, The American Prospect, Fall 2015, at 92.
- “Keep Shining the Light on ‘Dark Money,’” POLITICO (April 12, 2015) (with Robert F. Bauer)
- “The Future of Voting Rights 17 N.Y.U. J. LEGIS. & PUB.POL’Y (2014) (symposium contribution).
- “Where Parties Get Their Money From” The Indian Express, June 7, 2013.
- “Iraq and Afghanistan, Who Is an Enemy Combatant?” Los Angeles Times, June 4, 2010.
- “Fear Not, Critics of *Citizens United*, A Constitutionally Tested Solution is at Hand,” American Lawyer, April 2010.
- “Party Funding and Campaign Finance Law in the United States,” Report for the Venice Commission of the Council of Europe (2009).
- “The Impact of Politics and Constitutional Law on Mass Litigation: The Evolution of Civil Liability in the U.S. and Beyond,” 12<sup>th</sup> International Liability Forum 14 (Munich Re Group) (2008).
- “The Law of Politics,” 95 GEO. L. J. 1369 (2007).
- “Declarative Sentences: Congress Has the Power to Make and End War – Not Manage It,” SLATE MAGAZINE, March 5, 2007 (with Noah Feldman).
- “Create a National Voter Registration List,” BOSTON REVIEW, Vol. 31, No. 5, Sept-Oct. 2006, at 21.

- “Democracy Isn’t Built On One Election Alone,” WASHINGTON POST, Jan. 23, 2005, at B01.
- “In Real Elections, There Ought to Be Competition,” NEW YORK TIMES, Feb. 16, 2002, at A19.
- "The Court’s Legacy for Voting Rights," NEW YORK TIMES, DEC. 14, 2000, at A39.
- “Charles Alan Wright: The Scholar as Lawyer,” in A TRIBUTE: CHARLES ALAN WRIGHT, THE MAN AND THE SCHOLAR (2000).
- "Due Process," INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES (2000).
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- "Electoral Districting, Fairness and Judicial Review,” ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (1998).
- "Age Discrimination," ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (1998)(with E. Harris).
- "The Destruction of Public Funding," TEXAS LAWYER, May 12, 1997, at 20 (with David Horan).
- "All for One," THE NEW REPUBLIC, Nov. 18, 1996, at 10 (with Richard Pildes).
- "No Place for Political Gerrymandering," TEXAS LAWYER, Aug. 5, 1996 (with Richard Pildes).
- "Should There Be Rules of Procedure?," Leiden University, Institute of Anglo-American Law, Clifford Chance Distinguished Lecture Series (Feb. 1995).
- "Conference: The Supreme Court, Racial Politics, and the Right to Vote: *Shaw v. Reno* and the Future of the Voting Rights Act, 44 AMERICAN UNIV. L. REV. 1 (1994).
- "A Highly Visible Bloodletting," AUSTIN AMERICAN STATESMAN, Oct. 2, 1994 (Op-ed piece on redistricting).
- "Race and Redistricting," 2 RECONSTRUCTION, No. 3 (1994).
- "The State of Voting Rights Law," 3 ISSUES IN NATIONAL AFFAIRS No. 1 (1993)(Paper prepared for the American Jewish Committee).
- "Remedial Options for the Selection of the Texas Judiciary," Report prepared for settlement negotiations in *LULAC/Houston Lawyers' Association v. State of Texas*, Jan. 14, 1993,
- "Adjusting Census Data For Reapportionment: An Independent Role for the States," TEXAS LAWYER, March 18, 1991 (with A. Lichtman).
- "The 37.5 Percent Solution: 'Limited Voting' Could Rescue Judiciary," TEXAS LAWYER, March 5, 1990.

- "The Texas Judiciary and the Voting Rights Act: Background and Options," Report prepared for the Texas Policy Research Forum (1989).
- "The Generals Give Back Uruguay," Human Rights Report of the Lawyers' Committee for International Human Rights (1985)(with C. Estlund).

### AMERICAN LAW INSTITUTE

- Reporter, Principles of the Law: Aggregate Litigation (2010)

### SELECTED LECTURES

- UNIVERSITY OF HOUSTON SCHOOL OF LAW, THE FRANKEL ENDOWED LECTURE, November 4, 2016: *Outsourcing Politics: The Hostile Takeover of Our Hollowed-Out Political Parties*
- INDIANA UNIVERSITY SCHOOL OF LAW, THE JEROME HALL ENDOWED LECTURE, February 18, 2016: *The Emerging Rule of Reason in Voting Rights Law*
- DUKE UNIVERSITY SCHOOL OF LAW, THE BRAINERD CURRIE MEMORIAL LECTURE, February 19, 2014: *Ballot Bedlam*
- UNIVERSITY OF HOUSTON LAW CENTER, THE JOHN R. BROWN MEMORIAL LECTURE, March 1, 2010: *Judging in the Time of the Extraordinary*
- BROWN UNIVERSITY, THE JANUS LECTURE, September 17, 2008: *Was the New Deal A Good Deal? New Deal Constitutionalism Reexamined*
- OXFORD UNIVERSITY, THE HART MEMORIAL LECTURE, May 6, 2008: *Democracy in Times of War*
- LEWIS & CLARK LAW SCHOOL, HIGGINS LECTURE, March 19, 2008: *Meriwether Lewis, the Air Force, and the Surge: The Problem of Constitutional Settlement*
- DRAKE LAW CENTER CONSTITUTIONAL LAW DISTINGUISHED LECTURE, November 8, 2007: *Democracy at War*
- JULIUS ROSENTHAL FOUNDATION SERIES LECTURES, Northwestern University School of Law, March 28 and 29, 2007: *Fragile Democracies, and Contested Visions of Democracy*
- ASTOR VISITING LECTURE, Oxford University, June 8, 2005: *When Rights Break Down: U.S. Constitutional Responses in Times of National Security Crisis.*
- JAMES GOULD CUTLER LECTURE, William and Mary University School of Law, Feb. 19, 2004: *The Endangered Center in American Politics.*
- SIBLEY LECTURE, University of Georgia School of Law, March 16, 2000: *Political Parties, the Constitution and Democratic Competition.*

- MASON LADD LECTURE, Florida State University School of Law, March 15, 2000: *Why Do Cases Get Litigated?*

## SELECTED PROFESSIONAL ACTIVITIES

- SENIOR LEGAL COUNSEL, Obama for America Campaign, 2008, 2012.
- FELLOW, American Academy of Arts and Sciences.
- COUNCIL, American Law Institute.
- REPORTER, Principles of Aggregate Litigation, American Law Institute.
- MEMBER, Editorial Board, Foundation Press.
- MEMBER, Advisory Committee Anxiety of Democracy Program, Social Science Research Council.
- CO-CHAIR, Working Group on Security, Anxiety of Democracy Program, Social Science Research Council.
- BOARD OF DIRECTORS, Brennan Center for Justice at NYU School of Law, 2006-2011.
- INTERNATIONAL ADVISORY BOARD, CIPPEC – Centro de Implementación de Políticas Públicas para la Equidad y el Crecimiento, Buenos Aires, Argentina, 2012-present.
- FUTURE CLAIMS REPRESENTATIVE, Bankruptcy Trust of TH Agriculture and Nutrition, Inc, Representative for future asbestos claimants in \$900 million bankruptcy trust.
- ADVISOR, Restatement Third Employment Law, American Law Institute.
- MEMBER, Judicial Selection Task Force of the Texas Commission on Judicial Efficiency (1995-1997).
- LEGAL CONSULTANT, National Research Council, Panel on Census Requirements in the Year 2000 and Beyond (1993-1995).
- COUNSEL, *Travelers v. Bailey*, U.S. Supreme Court, 2009. Argued for Respondents.
- CONSULTANT, State of Florida, *Johnson v. DeGrandy*, (1994) (Florida legislative redistricting litigation).
- COUNSEL to State of Texas for 1992 Redistricting in *Richards v. Terrazas*, No. 91-1270 (U.S. Supreme Court), and *Texas v. United States*, No. 91-2383 (D.D.C.). (1992-1993).
- SPECIAL MASTER TASKFORCE for Eastern District of Texas Asbestos Litigation, *Cimino v. Raymark Industries, Inc.*, 751 F.Supp. 649 (E.D. Tex. 1990). (1989-1990).
- BOARD OF DIRECTORS, Lawyers' Committee for Civil Rights Under Law of Texas. (1991-1995); Executive Committee of the Board of Directors (1993-1995).
- COUNSEL to State of Texas and University of Texas Law School in *Hopwood v. State of Texas and Regents of the University of Texas System*, No. 92 CA 563 (W.D. Texas, 1992)(challenge to School of Law affirmative action admissions practices)(1992-2001).



## AWARDS

- *Roscoe Pound Institute Appellate Advocacy Award 2015* (Inaugural Selection)
- *Podell Distinguished Teaching Award*, New York University School of Law 2009  
Annual student-selected award to four faculty members
- *Willis L. M. Reese Prize for Teaching*, Columbia Law School 2004  
Annual student-selected award to one faculty member
- *Texas Excellence Teaching Award in the School of Law*, Univ. of Texas School of Law, 1994  
Annual student-selected award to one faculty member
- *James W. Vick Texas Excellence Awards in Academic Advising*, Univ. of Texas, 1994  
University-Wide Award
- *Open Door Award*, Univ. of Texas School of Law 1992  
Law School Student Award

## PERSONAL

- *Born*: Sept. 15, 1954, Buenos Aires, Argentina
- *Married* to Prof. Cynthia Estlund, New York University School of Law
- *Children*: Jessica, Lucas