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University of San Diego
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PRESENT EMPLOYMENT

Professor of Law (tenured)
University of San Diego School of Law

Subjects: Constitutional Law, Public International Law, Property,
Criminal Procedure, Civil Procedure

USD Institute for Law and Religion – Board of Directors
Thorsnes Prize for Excellence in Teaching, May 2000
Herzog Endowment Scholar, 1999 - 2000
Director, USD Institutes on International and Comparative Law:
Oxford (Summer 2004); Oxford (Summer 1986); USSR-Poland (Summer 1984)

VISITING AND PAST EMPLOYMENT

University of California San Diego, School of Global Policy and Strategy: Visiting Professor
(Spring 2017)

University of Paris/Sorbonne Faculty of Law: Visiting Professor (Autumn 2014, 2012, 2011,
and 2009)

Hebrew University Faculty of Law, Jerusalem: Visiting Professor of Law (Autumn 2009)

Rutgers University School of Law (Camden): Visiting Professor of Law (Spring 1996)

Benjamin N. Cardozo School of Law, New York, NY: Visiting Associate Professor (1981 - 1982)

U.S. Department of Justice, Washington, D.C.
Civil Rights Division

Trial Attorney (1976 to 1981)

Lead counsel in major employment discrimination lawsuits
in the U.S. District and Circuit Courts.

JOURNAL EDITORSHIP

Law and Philosophy: An International Journal for Jurisprudence and Legal Philosophy (Springer Publishers):

Book Review Editor (2005-2010) and Member, Editorial Board (2010 to present)

EDUCATION

Columbia Law School
Honours

Juris Doctor, 1976

James Kent Scholar, 1974-1975

Harlan Fiske Stone Scholar, 1973-74 and 1975-76

Teaching Fellow

Columbia Journal of Transnational Law

Columbia College,
Columbia University

B.A. 1973 Major in Philosophy

OTHER WORK EXPERIENCE

Summer 1975

Chadbourne Parke, New York, N.Y.

1969-1974

WKCR-FM, New York, N.Y.

News Director, 1970-1971

United Nations Correspondent, 1970-1974

White House Correspondent, 1971-1974

PUBLICATIONS

“Race Preferences, Diversity, and *Students for Fair Admissions: A New Day, A New Clarity*” (with Gail Heriot) 77 SMU Law Review 285 (2024).

“Conservatives Divide on Matters of Principle” 24 Journal of Contemporary Legal Issues 107 (2024).

“A Principled Constitution? Four Sceptical Views” (with Larry Alexander, James Allen, and Steven Smith) (Lexington Books 2022).

“Academic Admissions at Elite Universities and at Specialized Public High Schools: Déjà Vu All Over Again?” 49 Fordham Urban Law Journal 1187 (2022).

“Goodbye to All That: Three No-longer Quite Contemporary Theories of Equality and Something More Up-to-Date (and Worse)”, 23 Journal of Contemporary Legal Issues 403 (2022).

“A Dubious Expediency: How Race Preferences Damage Higher Education” (with Gail Heriot, eds) (Encounter Books 2021).

“Supplementary and Dissenting Statement on the Impact of Immigration Enforcement on Children in K-12 Schools”, Report of the California State Advisory Committee to the US Commission on Civil Rights p. 62 ff. (January 2021).

“Religious Exemption from Civil Laws and Free Exercise of Religion in the USA”, *in* “Law and Religion in the Liberal State”(Md Jahid Hossein Bhuiyan & Darryn Jensen eds) (Hart Publishing 2020).

“The Bureaucratic Takeover of Criminal Sentencing”, 49 *New Mexico Law Review* 93 (2019).

“Points of Crisis or, Is It All Over?” 56 *San Diego Law Review* 1069 (2019).

“Reply - and Gentle Dissent - to Michael Blake’s ‘Democracy and Deference’”, 56 *San Diego Law Review* 929 (2019).

“Political Questions and Judicial Power in the United States - Questões políticas e o poder judicial no Estados Unidos”, 5 *e-Publica* (Dezembro 2018) (080-092): <http://www.scielo.mec.pt/pdf/epub/v5n3/v5n3a08.pdf>

Roundtable on “LGBTQUIA Rights”, 41 *Thomas Jefferson Law Review* 177 (2019).

“Complicated – But Not Too Complicated: Sunset of EU Law in the UK After Brexit”, 39 *Cardozo Law Review* 905 (2018).

“Liberalism, Liberal and Illiberal”, 54 *San Diego Law Review* 299 (2017).

“Introduction: Steven Schwarzschild’s Rabbinical Reports from Post-War Berlin”, 62 *Leo Baeck Yearbook* 265 (2017).

“Do Religious Exemptions Save?” 53 *San Diego Law Review* 185 (2016).

“Judicial Activism, Judicial Independence, and Judicial Hubris: The Case of International Courts”, *in* “Judicial Activism: An Interdisciplinary Approach to the American and European Experiences” (Luis Pereira Coutinho, Maximo LaTorre, & Steven D. Smith, eds) (Springer 2015).

“Free Trade Then and Now, or Still Manchester United” 52 *San Diego Law Review* 1067 (2015).

“How Much Autonomy Do You Want?” 51 *San Diego Law Review* 1105 (2014).

“A Class Act? Social Class Affirmative Action and Higher Education” 50 *San Diego Law Review* 441 (2013).

“The Protection of Religious Liberty in the United States: The Supreme Court Jurisprudence” *in* *The Culture of Judicial Independence: Rule of Law and World Peace* (Shimon Shetreet, ed.) (Brill Nijhoff 2014). Published in somewhat different form: 14 *Conversations* 32 (Autumn 2012) (the *Journal of the Institute for Jewish Ideas and Ideals*).

“Race Matters” 29 *Constitutional Commentary* 31 (2013) (with Larry Alexander) (review of “Should Race Matter? Unusual Answers to the Usual Questions” by David Boonin).

“Judicial Independence and Judicial Hubris” *in* *The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges* (Shimon Shetreet and Christopher Forsyth, eds) (Martinus Nijhoff 2012).

“Was It Science, Not Religion?” 47 *San Diego Law Review* 1125 (2010) (symposium on freedom of conscience).

“How We Judge the Judges” 8 *Conversations* 83 (Autumn 2010) (*Institute for Jewish Ideas and Ideals*)

“Constitutional Law and Equality” *in* *Wiley-Blackwell’s Companion to Philosophy of Law and Legal Theory* 2nd Edition (2010)

“On This Side of the Law and On That Side of the Law” 46 *San Diego Law Review* 755 (2009) (symposium article on value pluralism, Sir Isaiah Berlin, and the law).

“The Ethics and Economics of American Legal Education Today” 17 *Journal of Contemporary Legal Issues* 3 (2008).

“Keeping It Private” 44 *San Diego Law Review* 677 (2007). Published in slightly different form as a symposium paper on the role of public policy in private law: “Keeping It Private”, 25 *University of Queensland Law Journal* 215 (2006).

“Civil Rights and Free Speech” *Encyclopedia of American Civil Liberties*, ed. Paul Finkelman (Routledge 2006)

“Marriage, Pluralism, and Change: A Response to Professor Wax” 42 *San Diego Law Review* 1115 (2005).

“Popular Initiatives and American Federalism, or, Putting Direct Democracy In Its Place” 13 *Journal of Contemporary Legal Issues* 531 (2004).

“*Grutter* or Otherwise: Racial Preferences and Higher Education” 21 *Constitutional Commentary* 101 (2004) (with Lawrence A. Alexander).

“Retribution, Deterrence, and the Death Penalty: A Response to Hugo Bedau”, 21 *Criminal Justice Ethics* 9 (2002).

“Acton’s Liberal Multiculturalism and Today’s” 12 *Journal of Contemporary Legal Issues* 887 (2002).

“Mad Dogmas and Englishmen: How Other People Interpret and Why” *in* *Legal Interpretation in Democratic States* (Jeffrey Goldsworthy and Tom Campbell, eds.) (volume in the Applied Legal Philosophy Series: Ashgate Publishing, Aldershot, England 2002).

“Pluralism, Conversation, and Judicial Restraint” 95 *Northwestern University Law Review* 961 (2001).

“The Uncertain Relationship between Libertarianism and Utilitarianism” 19 *Quinnipiac Law Review* 657 (2000) (with Lawrence A. Alexander).

“Value Pluralism and the Constitution” and “Rosenberger v. Rector” in *Macmillan’s Encyclopedia of the American Constitution* pp 2778 and 2294 (2nd ed. 2000).

“Subversive Thoughts on Freedom and the Common Good” (review-essay on Richard Epstein’s “Principles for a Free Society”) 97 *Michigan Law Review* 1813 (1999) (with Lawrence A. Alexander).

“The English Legal Professions: An Indeterminate Sentence” 10 *Federal Sentencing Reporter* 253 (1998).

“Ronald Dworkin, ‘Freedom’s Law’ (review) 108 *Ethics* 597 (Spring 1998).

"Pluralist Interpretation: From Religion to the First Amendment" 7 *Journal of Contemporary Legal Issues* 447 (1996).

"Equality" in *Blackwell's Companion to the Philosophy of Law and Social Theory* 156 (1996).

"Class, National Character, and the Bar Reforms in Britain: Will There Always Be an England?" 9 *Conn. Journal of International Law* 185 (1994).

"Epstein and Levmore: Objections from the Right?" 67 *Southern Calif. Law Rev.* 1451 (1994) (with Emily Sherwin)

"Religion and Public Debate in a Liberal Society: Always Oil and Water or Sometimes More Like Rum and Coca-Cola?" 30 *San Diego Law Rev.* 903 (1993).

"Speech, Crime, and the Uses of Language" (review-essay) 7 *Constitutional Commentary* 471 (1990).

"Value Pluralism and the Constitution: In Defence of the State Action Doctrine" 1988 *Supreme Court Review* 129 (1989), *reprinted in* Wojciech Sadurski, ed., *Constitutional Theory*, Ashgate Publishers, Aldershot, England 2005.

"Hard Law and Mandate for Justice" 6 Constitutional Commentary 87 (1989).

"Liberalism, Neutrality, and Equality of Welfare vs. Equality of Resources" 16 Philosophy and Public Affairs 85 (1987) (with Lawrence A. Alexander).

"Variations on an Enigma: Law in Practice and Law on the Books in the USSR" 99 Harvard Law Review 685 (1986).

"Consumer Boycotts and Freedom of Association: A Comment on a Recently Proposed Theory" 22 San Diego Law Review 555 (1985) (with Lawrence A. Alexander).

"Public Law by Private Bargain: Title VII Consent Decrees and the Fairness of Negotiated Institutional Reform," 1984 Duke Law Journal 887 (1984) - *cited at* 490 US 792 (1989) (Stevens J. dissenting) and 478 US 501, 523-24 (1986) (Brennan J.)

– Newspaper pieces, etc. –

"The Prop. 209 Debate Continues: Will the Law Be Put Into Practice?" The San Diego Union-Tribune, 14 September 1997 p. G-3 (op-ed piece).

"The English Bar" The Daily Telegraph (London), 31 March 1989 p. 31 (op-ed piece).

"Liberty and Autonomy for All," New York Times Sunday Book Review, 15 June 1986 p.27 (review of "Gender Justice" by David Kirp et al.).

"Ethnic America: An Exchange" (with Christopher Jencks and Thomas Sowell), The New York Review of Books, 16 June 1983 p. 47

CONFERENCE PANELS AND PRESENTATIONS (partial list)

Conference on "Educational Choice: The Legacy of *Meyer v. Nebraska* and *Pierce v. Society of Sisters*" co-sponsored by the Classical Liberal Institute, March 2024, NYU Law School, New York (chair and convener).

Roundtable on Religious Land Use, US Department of Justice, Civil Rights Division, March 2024, Chapman Law School, Orange, California (moderator).

Alaska Federal Bar Association, Annual Meeting, August 2023, Anchorage, Alaska:
Presentation: "Originalism, *Bruen*, and the Direction of SCOTUS"

AALS Program: "The Future of Race in Admissions", AALS Annual Meeting, January 2023, San Diego, California

Fordham Urban Law Journal Spring Symposium: “Testing the Limits: Admissions Exams in Urban Public Schools”, February 2022, Fordham University Law School, New York
Panel Presentation: “Lessons from Higher Education for K-12 Admissions”

International Conference on Judicial Independence: Global Challenges and Appropriate Remedies, June 2018, Queen Mary University, London
Panel Presentation: The Judicial Role in the US and the Political Question Doctrine

International Conference on The Return of Politics to Constitutional Law, May 2018, University of Lisbon Faculty of Law, Lisbon, Portugal
Paper: “Are There Non-Justiciable Constitutional Questions?”

AALS President’s Program on Diversity, AALS Annual Meeting, January 2017, San Francisco, CA:
Panel Presentation: Against Diversity

Conference on Managing Judges – Technology, History, and Separation of Powers, December 2016, University of Haifa, Haifa, Israel:
Paper: “Bureaucratic Takeover of Criminal Sentencing”

AALS Section on Jewish Law co-sponsored by Section on Islamic Law, AALS Annual Meeting, January 2015, Washington DC:
Panel Presentation on “Religious Beliefs and Political Agendas - What Role Should Faith Play in the Public Square?”

International Conference on Judicial Activism, May 2014, University of Lisbon Faculty of Law, Lisbon, Portugal:
Presentation: Judicial Activism, Judicial Independence, and Judicial Hubris”

Conference on the Ethics of Secrecy, May 2012, University of Pennsylvania Law School, Philadelphia, PA.

Conference on the Competing Claims of Law and Religion: Who Should Influence Whom? February 2012, Pepperdine University School of Law, Malibu, California
Presentation: “How Much Autonomy Do You Want?”

Conference on the Culture of Judicial Independence, August 2009, Clare College, Cambridge University, Cambridge, England:
Presentation: “Two Kinds of Independence, Two Kinds of Internationalism”

AALS Section on Scholarship, AALS Annual Meeting, January 2009, San Diego, CA:
Panel Presentation on Interdisciplinary Legal Scholarship and the Demography of the Legal Academy; *also* AALS Extended Program, Committee on Curriculum, Workshop on Redesigning Legal Education (another panel presentation).

Federalist Society, Annual Faculty Conference, January 2008, New York, NY:
Panel Presentation: “American Law Schools: Envy of the World or General Motors Before the Fall?”

Conference on Judicial Independence and International Law, June 2007, Hebrew University, Jerusalem (co-sponsored by Cambridge University Faculty of Law):
Paper and Panel Presentation “Common Law, Private Law, and Judicial Independence”

American Constitution Society, National Convention, June 2006, Washington DC
Panel Presentation: “The Media and National Security Disclosures”

Chair: AALS Section on Jewish Law and AALS Panel Moderator, January 2006, Washington DC:
“Ruling Over Others: The Religious Implications of Governing People of Other Faiths”

3rd International Conference on Culture of Peace, February 2004, Trento, Italy:
Panel Presentation: “Human Rights, Peace, and International Law - Harmony and Inconsistency”

Chair: AALS Section on Jurisprudence and AALS Panel Moderator, January 2002, New Orleans LA:
“Can Judges Be Philosophers? Should They Be”?

American Philosophical Association, Annual Meeting, December 2001, Atlanta GA:
Panel Presentation on the Death Penalty

Monash University and the Australian National University, December 2001, Melbourne:
“Constitutions and Human Rights”

AALS Section on Jewish Law, January 2001, San Francisco CA:
“Social Norms in Religious Communities” (panel presentation)

AMINTAPHIL National Conference, March 2000, San Diego, CA:
“Two Kinds of Globalism” (paper and presentation)

UNC Workshop in Law and Philosophy, National Humanities Center, October 1999:
“Epistemology and Evidence”

Byron White Center for American Constitutional Study, University of Colorado, November 1999, Boulder, CO:
“The Starr Chamber: The Clinton Scandal and the Constitution” (panel presentation)

International Conference on Civil Rights, Tel Aviv University, June 1997

BAR ADMISSION AND CALL

Admitted to the New York Bar, February 1977

Called to the Bar of England and Wales, Lincoln's Inn, May 1987

PROFESSIONAL ASSOCIATIONS

Associate Member of Barristers' Chambers: "Landmark Chambers", 180 Fleet Street,
London EC4, England

Affiliated Professor, University of Haifa: Haifa, Israel