

# OUR FACULTY



# Reproductive Rights and *Dobbs*

Reva Siegel is the Nicholas deB. Katzenbach Professor of Law at Yale Law School.



*Professor Reva Siegel's scholarship draws on legal history to explore questions of law and inequality and to analyze how courts interact with representative government and popular movements in interpreting the Constitution. She has often focused on reproductive justice. Her recent work has looked at the U.S. Supreme Court case Dobbs v. Jackson Women's Health Organization through the lenses of originalism and equal protection. Yale Law Report asked Siegel about the case.*

**Yale Law Report** You, along with coauthors Professors Melissa Murray '02 and Serena Mayeri '01, represented by Rachel Tuchman '17, filed an amicus brief in *Dobbs v. Jackson Women's Health Organization* arguing that the Equal Protection Clause provides a basis for abortion rights. Can you detail your argument?

**Reva Siegel** When the Supreme Court overturned *Roe* in *Dobbs*, Justice Kavanaugh claimed that “the Constitution is neutral on the issue of abortion.”

Abortion bans reflect judgments about women as well as the unborn. The Supreme Court has interpreted the Constitution's equal protection guarantee to prohibit sex discrimination and to impose limits on the ways that government can enforce family roles. Government may classify by sex to create equal opportunity or remedy inequality, but not, *United States v. Virginia* held, “to create or perpetuate the legal, social, and economic inferiority of women.” *Virginia* includes laws regulating pregnancy in this framework.

Mississippi banned abortion, compelling pregnancy, the state claimed, to protect health and life. But before protecting life by coercing motherhood, our brief argues, equal protection requires the government to show why it cannot achieve its ends by less restrictive means. Why coerce motherhood — rather than aid those who want to avoid parenthood and support those who want to raise children? Even as Mississippi was banning abortion, our brief shows the state chose against expanding health insurance, providing income and childcare assistance, and educating students about safe sex and contraception. Looking at a state's policy choices about protecting life and health *outside* the abortion context makes vivid the role of gender (and race and class) inside the abortion context.

There was no equal protection claim asserted in *Dobbs*, but before reversing *Roe*, Justice Alito stated, in dicta, that precedents foreclosed equal protection as a ground for abortion rights, citing our brief, without addressing any of the cases or arguments on which the brief relied. The equal protection claim is still open — and in the deepest sense the Court lacks the power to kill it. Equality challenges to abortion bans preceded *Roe*, and equality claims will persist, however the Court rules, in federal and state courts, legislatures, and in the court of public opinion.

Voters opposed the Court's decision in *Dobbs* in the 2022 election in many ways, adopting constitutional amendments in Vermont and Michigan that protect reproductive freedom by requiring the use of “least restrictive means.” Along with our brief, these amendments ask government to employ inclusive and supportive means to protect life and health before infringing a pregnant person's liberty and equality. In a forthcoming essay — “Equal Protection in *Dobbs* and Beyond: How States Protect Life Inside and Outside of the Abortion Context” — we ask hard questions about the kinds of laws that protect the health and life of future generations and that help families flourish.

**In a forthcoming *Texas Law Review* article, you discuss originalism as a political practice. What do you mean by that and how did it come into play in the *Dobbs* decision?**

Americans understand originalism as the opposite of dynamic or “living” forms of constitutional interpretation. Originalists claim to uncover the Constitution's meaning in the deep past — in the understandings of its ratifiers, or in laws said to reflect the nation's “history and traditions.”

Why interpret the Constitution in this backward-looking way? Originalists claim the method promotes democracy and judicial restraint. Justice Scalia wrote that looking to history “establishes a historical criterion that is conceptually quite separate from the preferences of the judge himself.”

But as a wide variety of critics have pointed out, originalists do not live up to their own claims. It is widely observed that practitioners are selective in applying their methods. I have been interested in illustrating

## JAMA®

**Anne Alstott '87, Christina Lepore, and Meredith McNamara** in “Scientific Misinformation Is Criminalizing the Standard of Care for Transgender Youth,” *JAMA Pediatrics*, Aug. 22, 2022:

“We trust the autonomy of TGNB [transgender and nonbinary] patients and their parents in the process of informed medical decision-making. We trust the integrity of the evidence and expert guidelines. In these unprecedented times, the medical community must answer a new call to advocate for the compassionate application of evidence-based medicine.”

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ways in which originalists practice the living constitutionalism they criticize. For example, in *District of Columbia v. Heller*, Justice Scalia reasons from the 20th-century gun rights movement. Even as there are academics who strive to practice originalism as a value-neutral method of interpretation, originalism is also a political practice, with values and goals. Originalism is the political practice of the conservative legal movement and one of its goals, since the days of the Reagan administration, has been the overturning of *Roe v. Wade*. In the political practice of originalism, claims on the past can conceal rather than constrain judicial discretion.

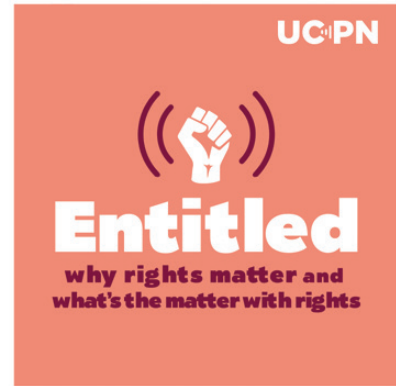
I offer this account of the political practice of originalism in “Memory Games: *Dobbs*’s Originalism as Anti-Democratic Living Constitutionalism — and Some Pathways for Resistance.” When one analyzes the politics of originalism through a realist lens, one can see that the conservative legal movement pursues constitutional change through executive branch judicial appointments, justified by appeals to the nation’s past. *Dobbs*’s originalism is a form of living constitutionalism, a masked expression of judicial values. And the Court’s turn to the past makes the constitutional order not more but *less* democratic in several key respects. *Dobbs*’s interpretation of the liberty and equality guarantees roots the Constitution in an era before recognition of women’s equal citizenship.



**Professor Hathaway Speaks at the Hague on ICC’s Jurisdiction**

In December, Gerard C. and Bernice Latrobe Smith Professor of International Law Oona A. Hathaway ’97 spoke at two panels at the Hague concerning the jurisdictional reach of the International Criminal Court (ICC), especially as it relates to Russia’s war against Ukraine.

Both panels were organized by the Permanent Mission of the Principality of Liechtenstein to the United Nations.



**Claudia Flores, Tom Ginsburg Explore Human Rights Debates in “Entitled” Podcast**

In a podcast now in its second season, Yale Law School Clinical Professor of Law Claudia Flores and the University of Chicago’s Tom Ginsburg, Leo Spitz Distinguished Service Professor of International Law, examine some of the most polarizing and complex questions around human rights today. *Entitled* seeks to contextualize contemporary debates about rights in hopes of fostering ways to work through disagreements and coming up with common goals for those who seek to protect and promote human rights.

AUDIO



**Dean Gerken Launches New Podcast Series**

A new podcast series launched by Dean Heather K. Gerken at the onset of her second term featured an in-depth look at the scholars, thinkers, teachers, and game changers of Yale Law School.

The Inside Yale Law School podcast pairs Gerken with members of the Law School’s trailblazing faculty in a series of conversations to discuss their scholarly work, teaching, and more. In each episode, Gerken speaks with one of the professors who make Yale Law School “so vibrant and unique.”

“One of the best parts of my job is the time spent talking about ideas with some of the most interesting people on the planet,” Gerken said. “This is a chance for others to tune into those conversations and even hear a little about the human beings behind the ideas.”

The Inside Yale Law School podcast will post with new episodes monthly. Find all episodes [law.yale.edu/insideyalelawschool](http://law.yale.edu/insideyalelawschool) or other podcast platforms.

## APPOINTMENTS



**Asli Ü.  
Bâli**



**Claudia  
Flores**



**Natasha  
Sarin**



**Ketan  
Ramakrishnan**

## Four New Faculty Members Appointed

**Yale Law School welcomed** four new faculty members to its staff during the 2022–23 academic year: Asli Ü. Bâli '99, Claudia Flores, Natasha Sarin, and Ketan Ramakrishnan '21.

Bâli joined YLS in July as a Professor of Law. She was a Professor of Law at UCLA School of Law, where she served as the founding Faculty Director of the Promise Institute for Human Rights. She has also served as the Director of the UCLA Center for Near Eastern Studies. Bâli's scholarship focuses on international law, human rights, and comparative constitutional law. Her current research examines questions of federalism and decentralization for the purposes of addressing self-determination demands and governance goals in the transitions underway in the Middle East. She has previously written on constitutional design in religiously divided societies, the nuclear non-proliferation regime, humanitarian intervention, the role of judicial independence in constitutional transitions, and race and empire in the formation, interpretation, and enforcement of international law.

Flores also joined in July as a Clinical Professor of Law. She was Clinical Professor of Law at the University of Chicago School of Law, where she taught since 2015. She also acted as Director of the Global Human Rights Clinic, which represents individuals and organizations advocating for human rights. Flores's research and advocacy focus on issues of inequality, governance, and the rule of law. She has lectured and written widely on constitution-making and reform processes, the rights of women and migrants, human rights, and policing. She has advised governments on state obligations under the Convention on All Forms of Discrimination Against Women (CEDAW) in constitutional and legislative drafting processes.

(Read a Q&A with Bâli and Flores on page 29.)

Sarin joined Yale Law School in January as an Associate Professor of Law. Previously an Assistant Professor at the University of Pennsylvania Carey Law School, she served as Deputy Assistant Secretary for Economic Policy at the United States Treasury Department, where her work focuses on narrowing the gap between the taxes owed by the American public

and those collected by the IRS. Sarin's teaching and research center on the intersection of empirical law and economics and on the question of how best to regulate large financial institutions. She has published widely on consumer finance and macroprudential risk management, using novel data sets to offer new insights into the field and contribute to contemporary policy debates.

Ramakrishnan also joined in January as an Associate Professor of Law. In addition to a law degree from Yale Law School, he completed his D.Phil. in economics at the University of Oxford. His teaching and research interests include torts, property, contracts, bankruptcy, restitution, and philosophy. Ramakrishnan has written a number of papers, including "Treating People as Tools" in *Philosophy & Public Affairs*. He is also the co-editor of two volumes, *Principles and Persons: The Legacy of Derek Parfit* and *Ethics and Existence: The Legacy of Derek Parfit*, both from Oxford University Press.



On Twitter

**Anika Singh Lemar**

@anikasinglemar

Sept. 2, 2022

My latest adventure in "teaching the classes I wish I could have taken in law school" starts today.

I'm pretty excited.

HOUSING CONNECTICUT:  
DEVELOPING HEALTHY AND SUSTAINABLE NEIGHBORHOODS  
Yale Urban Design Workshop, Yale University, Fall 2022  
Architecture 4294a / Law 30254 / Management 632

SYLLABUS AND COURSE INFORMATION

CONFERENCE

## Professor Rose-Ackerman's Scholarly Legacy

**On Aug. 26 and 27, Yale Law School** hosted a conference in honor of Susan Rose-Ackerman, Henry R. Luce Professor Emeritus of Law and Political Science at Yale Law School and the Department of Political Science. The conference convened scholars from around the globe for a series of panel discussions under the banner “Public Law, Political Economy, Corruption, and Development: Susan Rose-Ackerman’s Scholarly Legacy.”

The conference began with welcome remarks from Dean Heather K. Gerken, who described Rose-Ackerman as a pioneer in law, political science, and economics.

“Her scholarship has transformed the very tools that we use to understand how politics govern themselves and how the cycle of political corruption begins and ends,” Gerken said.

Rose-Ackerman first came to Yale as a graduate student in the 1960s, where she was one of very few women in the economics Ph.D. program. In 1974, after a stint at the University of Pennsylvania, she became one of the first women appointed as a full-time faculty member of the Yale Economics Department. After several years as a tenured professor of law at Columbia University, Yale enticed her back, and she

took up a joint appointment in Law and Political Science, becoming the first tenured woman in the Political Science department. In 1992, she was appointed to the Henry R. Luce Chair of Philosophy of Law.

Rose-Ackerman’s scholarship is both pragmatic and uncompromising, Gerken said, and the unvarnished practicality of her approach is what has led Rose-Ackerman to search for answers across fields and disciplines from political economy, to administrative law, to environmental sciences, as well as across national borders.

Friday featured four panels on the topics of “Comparative Administrative Law,” “Comparative Law,

Politics, and Economics,” “Political Economy, Corruption, and Development,” and “Corruption and State Capture.” Saturday featured two panels titled “Law and Development” and “Public Law: U.S. and Elsewhere.”

“The event was a wonderful celebration of my career that asked former students, co-authors, and colleagues to talk about their current research and to reflect on how I had influenced them as a mentor and advisor over several decades,” Rose-Ackerman said. “I felt proud to see how much they had accomplished, and I found it very moving to hear their genuine and heartfelt words.”



A conference in honor of Professor Susan Rose-Ackerman drew scholars from around the world, including many former students.

Photos by Harold Shapiro

## NEW FACULTY

## Q&A Professors Bâli and Flores on Teaching at Yale Law School

Professor of Law Asli Ü. Bâli '99 and Clinical Professor of Law Claudia Flores joined Yale Law School on July 1, 2022. (Read more about new faculty members on page 27.) Yale Law Report asked the pair to discuss their teaching and scholarship.

### Yale Law Report What are you most looking forward to about teaching at Yale Law School?

**Claudia Flores** I'm very excited to engage with the students here. During my visit in the spring semester, I met such thoughtful and inspired students with a clear passion for social justice and reform. I'm looking forward to working with them to address some of the many difficult and urgent human rights challenges we face today and hope to spark their creativity in reimagining a better future for the world's citizenry.

**Aslı Ü. Bâli** I am looking forward to having an opportunity to build relationships with students who are excited, even passionate, about international and comparative law both inside the classroom and beyond it. My most fulfilling experiences teaching have been ones where the classroom is a learning community in which I join the shared enterprise of studying a body of law — cases, doctrine, theories, and literatures — together with my students. I look forward to joining the vibrant learning community at YLS and having our conversations in the classroom radiate beyond it, spilling into the corridors after class and extending into independent study projects or research collaborations. The classes I hope to offer will add to the already extensive curriculum in international and comparative law at Yale, contributing perspectives from the Global South and the Middle East on how best to order systems of justice, whether domestically, transnationally, or internationally. I am excited to embark on a learning journey with the students at YLS and together study some of the most profound problems confronting the world community in order to pursue new approaches to tackling these challenges.



Claudia Flores



Aslı Ü. Bâli

informal labor sector, and human rights defenders. At the international level, I'm particularly interested in how international institutions and mechanisms can support global movements and alliances-building of disempowered individuals seeking national reform. At the domestic level, my past work has focused on constitutional reform processes as a recommitment to fundamental rights and equality.

**Bâli** I have two principal areas of research, one in international law and the other in the comparative law of the Middle East. With respect to international law, I work at the intersection of international human rights law and the law of the international security order — this encompasses questions relating to the laws of war, humanitarian intervention, arms control, economic sanctions, and the protection of human rights in an age of counterterrorism. I consider how international law is marked by legacies of colonialism and slavery that extend into the contemporary global order, which remains racially stratified and tied to imperial logics. In comparative law, I have been interested in the challenge of crafting a democratic constitution under conditions of deep disagreement over the state's religious or secular identity. More recently, I have also studied how decentralized institutional arrangements might provide avenues for realizing competing claims for self-determination within a single shared territory. My work in comparative law examines developments in countries that are understudied in the English-language literature, providing a critical assessment of constitutional and institutional innovations in authoritarian and democratizing contexts. Importantly, I believe lessons derived from these cases can be highly generative and generalizable, providing not only cautionary tales but also new design solutions for countries grappling with governance crises and identity conflicts. In each of my principal areas of research, I investigate how law and politics shape our conceptions of legitimacy, membership, identity, security and threat, and apply interdisciplinary methods drawing on both my legal education and doctoral training as a political scientist.

Middle East Studies Association 

In 2022, Aslı Ü. Bâli was elected President of the Middle East Studies Association, the premier scholarly association for the field of Middle East Studies.

### How would you describe your research to students and alumni?

**Flores** I've always been interested in issues of inequality — how we understand it, when and why we tolerate it, and how we can address it through law, policy, and institution-building. My work tends to center around inclusion and empowerment of disempowered communities such as migrants, women in the

*“I've always been interested in issues of inequality — how we understand it, when and why we tolerate it, and how we can address it through law, policy, and institution-building.”*

CLAUDIA FLORES

## Anniversary of Professor Judith Resnik’s Groundbreaking “Managerial Judges” Celebrated

**Harold Koh** was awarded the 2022 Louis B. Sohn Human Rights Award in recognition of his outstanding achievements in the field of human rights. This prestigious honor is given annually by the United Nations Association of the National Capital Area. Koh’s receipt of this award is particularly moving because the late Louis B. Sohn, the international law luminary in whose name the award is given, was Koh’s late father’s dissertation advisor.

**Yale Law School** recently hosted “Managerial Judges @ 40,” a conference honoring Arthur Liman Professor of Law Judith Resnik. Organized by several of Resnik’s former students who are now law professors, the Nov. 4 conference commemorated the 40th anniversary of Resnik’s groundbreaking *Harvard Law Review* article “Managerial Judges.”

In her article, Resnik described how the work of judges had become “case management” and noted that “no one — neither judges, court administrators, nor legal commentators — has assessed whether relying on trial judges for informal dispute resolution and for case management, either before or after trial, is good, bad, or neutral.”

The program began with welcome remarks from Dean Heather K. Gerken, who said that Resnik has “fundamentally changed the way that we understand civil procedure, the federal judiciary, the rule of law, and the relationship between democracy and the courts.”

The welcome continued with remarks from Alfred M. Rankin Professor of Law Abbe Gluck ’00, who took Federal Courts with Resnik as a student.

“I have been so lucky to call her teacher, mentor, friend, and colleague,” Gluck said, adding that the impact of Resnik’s article is not merely in how often it is cited by other scholars, but in how varied the citations are across fields of law.



**Judith Resnik**

Resnik welcomed the group with reflections on the experience of publishing “Managerial Judges” — her first law review article — in a male-dominated field in 1982. She recalled how she was pressured by the president of the *Harvard Law Review* to justify her methodology with a footnote, which she staunchly refused to do, a judgment call that has stood the test of time.

The event highlighted the resonance that Resnik’s paper still has today.

The event featured a roundtable discussion titled “What is Procedural Scholarship? Domains, Canons, and Conventions,” followed by three panel discussions on various aspects of judging. The program concluded with a conversation between Resnik and Supreme Court Associate Justice Sonia Sotomayor ’79.

Yale Law School faculty participating in the program included Owen Fiss, Sterling Professor Emeritus of Law, and Tom Tyler, Macklin Fleming Professor of Law. Alumni panelists included former U.S. District Court Judge Nancy Gertner ’71, U.S. District Court Judge Myron Thompson ’72, and Associate Justice of the California Supreme Court Goodwin Liu ’98.

“In addition to the warm gathering of diverse academics, judges, and lawyers — most of whom had not been my students — it was gratifying to see the use of this article as a prompt to understand current concerns about the role of judges and of courts,” Resnik said.



Professor Judith Resnik’s former students organized a conference commemorating the 40th anniversary of the article “Managerial Judges.”



## HONORS

## Douglas NeJaime and Stephen Bright Elected to the American Law Institute

**Douglas NeJaime**, the Anne Urowsky Professor of Law, and Stephen B. Bright, the Harvey L. Karp Visiting Lecturer in Law, have been elected to the American Law Institute (ALI). The new class includes 32 members who bring a range of perspectives and areas of expertise to ALI's work of serving the legal field through scholarship.



**Douglas NeJaime**

"The American Law Institute's mission to clarify and modernize the law continues to occupy an important space in today's legal landscape," said ALI President David F. Levi in an announcement. "The work that the Institute produces — to assist the judiciary, to aid legislative reform, and to assist the legal profession and the public — depends on the diverse knowledge and viewpoints of our members as well as their dedication, expertise, and wisdom."



**Stephen B. Bright**

The ALI's newest class also includes Yale Law School alumni Stephen E. Henderson '99, Peter Lee '05, Susan M. Lin '04, Bertrall L. Ross '06, Kevin S. Schwartz '06, and Nicholas O. Stephanopoulos '06.

## FEDERAL BRANCH

## Professor Liscow Appointed Chief Economist at White House Budget Office



**Zachary Liscow**

**Professor of Law** Zachary Liscow '15 joined the federal Office of Management and Budget (OMB) as its Chief Economist in August.

Liscow heads OMB's Office of Economic Policy and works on a wide range of issues, including tax policy, benefit-cost analysis of spending programs, and the economic assumptions underlying the budget. During his government service, Liscow will be on leave from Yale Law School for the 2022-23 academic year.

As part of the Executive Office of the President of the United States, OMB assists the President in overseeing the preparation of the federal budget and in meeting policy, budget, management, and regulatory objectives across the Executive Branch. OMB also oversees and coordinates the administration's procurement, financial management, information, and regulatory policies.

## PUBLIC INTEREST



## Professor Wishnie Receives Equal Access to Justice Award

**On June 21**, William O. Douglas Clinical Professor of Law Michael Wishnie '93 received the Equal Access to Justice Award from the New Haven Legal Assistance Association (LAA).

LAA established the Equal Access to Justice Award in 2004 to commemorate the 40th anniversary of its founding. The award honors individuals and organizations who best exemplify the ideal of access to justice for all who live in the New Haven community.



**Michael Wishnie**

At the ceremony, Wishnie was introduced by William O. Douglas Clinical Professor Emeritus of Law Stephen Wizner, who received the Equal Access to Justice Award in 2016.

At the Law School, Wishnie's teaching, scholarship, and law practice have focused on immigration, labor and employment, habeas corpus, civil rights, government transparency, veterans' law, and voting rights. For years, Wishnie and his students have represented low-wage workers, immigrants, veterans, and voters in federal, state, and administrative litigation. He and his students have also represented unions, churches, veterans' groups, and grassroots organizations in a range of legislative, media, and community education matters.

One of the award's two inaugural recipients was former Visiting Clinical Lecturer in Law Frank Dineen '61, who was instrumental in the founding of the LAA and served as its Deputy Director and Senior Counsel for decades.

Other Yale Law School faculty who have received the award include Sterling Professor of International Law Harold Koh, J. Skelly Wright Professor of Law James Forman Jr. '92, and Nathan Baker Clinical Professor of Law J.L. Pottenger Jr. '75.



## Gluck and Parrillo Appointed to Administrative Conference

**In August**, The Administrative Conference of the United States (ACUS) announced the appointment of seven new public members and seven new senior fellows. These included the appointment of Abbe R. Gluck '00 as a public member and Nicholas R. Parrillo '04 as a senior fellow.

The Administrative Conference of the United States is an independent federal agency dedicated to improving the administrative process through consensus-driven applied research and providing nonpartisan expert advice and recommendations for federal agency procedures.