

SAMPLE COVER LETTER

**FRANCES
PERKINS**

333 Rose Walk ♦ New Haven, CT 06510 ♦ (203) 333-3333 ♦ fperkins@wk.edu

August 30, 2020

Prof. Eleanor Roosevelt
Presidential University School of Law
P.O. Box 1933
Anytown, NY 20000

Dear Professor Roosevelt:

I am writing to express my strong interest in an entry-level faculty position at Presidential University School of Law. My principle fields of research include American legal history, employment discrimination, family law, and constitutional law. I also have research and teaching interests in property, trusts and estates, employment and labor law, and disability law, among other fields.

Since graduating from Yale Law School in 20--, I have clerked for Judge Marge Simpson of the U.S. Court of Appeals for the Sixth Circuit and served as a fellow in legal history at both Big School of Law and Bigger Law School. I am currently a Ph.D. candidate in the Department of History at Wellknown University and expect to complete my doctoral degree this year. Beyond my research, I have derived tremendous satisfaction from my experiences as a teaching assistant for an introductory constitutional law course and two undergraduate courses in American history.

My dissertation describes the sea change in the relationship between motherhood and women's labor market participation in the United States, during the late twentieth century. I argue that legal feminists in the 1960s, 1970s, and 1980s never laid claim to strictly formal equality as the dominant scholarly narrative suggests. Instead, legal feminists pursued anti-discrimination laws and jurisprudence that would accommodate women's biological difference and social-welfare entitlements that would transform childrearing structures. The politics of both women's employment and motherhood generated a split among conservatives over the legal feminist agenda. While activists on the religious right advocated for social protection for motherhood, economic conservatives opposed regulation that would increase businesses' labor costs and states' fiscal burdens. Law and policy evolved in the crucible of heated debates in courts, legislatures, administrative agencies, and popular culture. In the workplace, legal feminists achieved considerable success in realizing women's right to formal equal treatment and to a minimal standard of accommodation for pregnancy. The power of economic and social opposition, however, foreclosed more profound changes for which feminists advocated: a more equitable division of childrearing labor between men and women within the home and the sharing of the costs of reproduction between the family and society. I plan to publish my research in book form.

I am particularly interested in the law school's Center for the Interdisciplinary Study of This and That. I would be thrilled to have the opportunity to contribute to the Center's research on gender and society and the boundaries between paid work and home life.

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Enclosed please find my *curriculum vitae*, a research agenda, my recent published work which appears in the August 20-- issue of *Law & History Review*, and an article forthcoming in the *Yale Journal of Law & Feminism*. I can also provide a work in progress that will serve as the basis for my job talk paper, titled "The Anti-Stereotyping Principle and the Costs of Reproduction," upon request.

Sincerely
Frances Perkins

SAMPLE COVER LETTER

August 10, 2020

Professor Chloe Olgavie
Chair, Hiring Committee
South King School of Law
500 King Boulevard
Rockville, California 95000

Dear Professor Olgavie,

I am writing to express my interest in a position on the faculty of the South King School of Law. My areas of teaching interest include civil procedure, legislation, federal courts, conflicts, and other courses related to legal process and institutions.

I am currently a Law Fellow at ABC Law School. Since graduating from Yale Law School in 20-- I have spent two years as a judicial clerk, two years as a practicing litigator at Rogers & Hammerstein LLP in New Haven, Connecticut, and just over a year at ABC, where I pursue my research agenda and teach the legal research and writing course.

Although I have submitted a Faculty Appointment Register form and will be participating in the AALS Faculty Recruitment Conference, I write to you directly because I am especially interested in Rockville. My family and I have extensively visited the area and are now looking to settle there permanently.

I have enclosed a *curriculum vitae*, list of references, research agenda, and a working draft of my forthcoming publication, *Making the Grade: Publication Practices of International Courts*. I would welcome an opportunity to meet with you at the Faculty Recruitment Conference, or at the school, to further discuss my candidacy.

Sincerely,

Tom Muchmore

Enclosures

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DAVID D. ABACUS

6800 Earth Street ♦ Washington, DC 22222 ♦ 703-697-8888(w) ♦ 703-697-3333(h)
david.abacus@gmail.com

August 27, 2020

Professor James Jingle
Chair, Appointments Committee
The University of Arkansas School of Law
Box 888888
Tulamazoo, Arkansas 33333

Dear Professor Jingle:

I would like to be considered for a position on the faculty at The University of Arkansas School of Law. Since serving as an Associate Professor of Law at the Judge Advocate General's School in Charlottesville, Virginia, I have developed a keen desire to help shape the future of the legal profession by teaching, training, and mentoring law students to seek professional excellence, scholarly achievement, and public service. I would be thrilled to fulfill my long-term career goal of becoming a law professor by pursuing my teaching and research interests at Arkansas.

Since graduating from the Yale Law School in 20--, I have served as an Army lawyer in many capacities worldwide. I am currently working as a Legislative Counsel in the Office of the Chief of Legislative Liaison in Washington, D.C. Previously, while serving in the Criminal Law Department at the Judge Advocate General's School, I taught all substantive criminal law courses, published a number of scholarly articles, and provided extensive trial advocacy seminars and skills training for the LL.M. program and all other resident and nonresident continuing legal education courses. My primary teaching and scholarly interests include criminal law, evidence, trial advocacy, criminal procedure, and professional responsibility. I am also willing to teach international law, military law, legislation, or any first-year courses as needed.

Enclosed please find my *curriculum vitae* and a list of references. I have registered with the AALS for the Faculty Recruitment Conference and would welcome an opportunity to meet with you there, or at the school, to further discuss my candidacy.

Sincerely,

David D. Abacus

Enclosure

SAMPLE COVER LETTER

PENELOPE CRUZ
95 Looper St. 9A
Los Angeles, CA 10000
(646) 333-9999
Penelope.cruz@yahoo.com

August 7, 2020

Allen D. Tweed
Dean, Hollywood University School of Law
121 Hollywood University Drive
Hollywood, CA 11111

Dear Dean Tweed:

I would like to be considered for a position on the faculty at Hollywood University School of Law. My experience, course of study, and research are focused on legislative and regulatory processes, with an emphasis in the environmental area. Since graduating from the Yale Law School in 20-- I have spent two years as a judicial clerk, and two years practicing environmental law and litigation at Arnold & Palmer, LLP. Prior to attending law school I worked in the United States Senate as an advisor on natural resource policy, and during law school I studied and taught environmental law.

In light of the nationally recognized strength of the environmental programs at Hollywood it would be a wonderful fit for my research and teaching interests. In addition, the possibility of partnership with the Hollywood University Environmental Engineering program is of particular interest to me.

Enclosed please find a *curriculum vitae*, list of references, and recent published work, *Harnessing the Treaty Power in Support of Environmental Regulation: Recognizing the Realities of the New Federalism*, 22 GA. ENVTL. L. J. 167 (2018), for your review. I also submitted a Faculty Appointments Register form with 2011 Distribution 1, which is available through the AALS website.

Sincerely,

Penelope Cruz

Enclosures

SAMPLE COVER LETTER

September 9, 2020

Prof. Peter L. Parker
Chair, Appointments Committee
University of Arkansas—Little Rock
William H. Bowen School of Law
Holiday 307, 65 Elizabeth St.
Little Rock, AR 09105-0000

Dear Prof. Parker:

I would like to be considered for an assistant professor position at the UALR William H. Bowen School of Law. I am currently a Robert M. Cover Fellow at the Yale Law School. My areas of teaching interest include criminal law clinics as well as procedure, civil rights, prisoners' rights, and professional ethics. This year, I am helping to co-teach the Supreme Court Advocacy Clinic, and to co-teach an ethics course.

My most recent scholarly writing has been in the area of criminal procedure. A former colleague and I have co-authored an article entitled *Manson v. Brathwaite Revisited: Towards a New Rule of Decision for Due Process Challenges to Eyewitness Identification Procedures*, which is forthcoming in Villanova University Law Review in October 2020. Our article seeks to spark debate about replacing the outdated *Manson* test with a new standard for judging the admissibility of out-of-court identifications—one based on current social science research.

I am particularly interested in how procedural rules mediate access to court for incarcerated people and criminal defendants, especially the implications of those rules for broader issues of federalism, separation of powers, and fundamental liberties. My scholarly work in progress focuses on a series of recent Supreme Court cases about the Prison Litigation Reform Act (PLRA). I am looking at how these decisions alter the nature of the Section 1983 vehicle for civil rights suits by incarcerated people.

With the help of YLS students, I authored an amicus brief in one of these PLRA cases, *Woodford v. Ngo*, which surveyed inmate grievance policies nationwide, and which is available at www.law.yale.edu/woodford. In a second set of consolidated PLRA exhaustion cases to be argued in October—*Jones v. Bock* and *Williams v. Overton*—Yale students and I contributed research to an amicus authored primarily by the ACLU National Prison Project. Through the Supreme Court Advocacy Clinic, we are also organizing a moot for the prisoner's attorney.

I have registered with the AALS for the Faculty Recruitment Conference and would welcome an opportunity to meet with you there, or at the school, to further discuss my candidacy. I enclose my CV and a copy of my forthcoming article for your review.

Sincerely,

Joseph Shaw
415 Chapel Ct.
Chester, CT 06666
Day (203) 444-1111
Evening (203) 444-1111
Joseph.Shaw@gmail.com

SAMPLE CLINICAL COVER LETTER

William Jackson

444 T Street, NW, Suite 306, Washington, DC 20001
(202) 666-999 / abc@gmail.com

September 1, 2020

Professor Teresa Risel
Chair, Clinical Faculty Appointments Committee
Queens University School of Law
275 Mountain Avenue
South Harsoot, CT 06555

Dear Professor Risel:

I write to apply for a Clinical Faculty position in the Civil Clinic at Queens University School of Law. I am currently a Teaching Fellow and Supervising Attorney in the Appellate Litigation Clinic at the Georgetown University Law Center. In this position, I co-teach an appellate litigation seminar and supervise students pursuing appeals in the U.S. Courts of Appeals for the D.C. Circuit, Fourth Circuit, and Ninth Circuit, and in the Board of Immigration Appeals. As teaching and supervising in a general appellate clinic has exposed me to a wide variety of subject matters, I am excited by the broad range of clinical opportunities that the Queens University School of Law offers. I would be thrilled to join Queens' clinical program.

I have been interested in clinical teaching since my days as a clinical student at Yale Law School. Under the supervision of Robert Solomon in Yale's Community Legal Services clinic, I successfully represented two individuals challenging the denial of child care benefits. I later served as a student director in the clinic, in which I helped supervise other students with their cases. The mentorship I received from my supervisors gave me confidence to advocate effectively for my clients and showed me how much law students can accomplish and learn when given the opportunity. At Georgetown, I have relished the opportunity to provide similar guidance to law students in helping them develop both the skills and values that will benefit them in their legal careers.

Both my teaching and prior practice experience sharpened my scholarly interest in exploring the effectiveness of the civil justice system in vindicating the rights of individuals. My current research examines why private entities that perform state functions should not be exempt from vicarious liability for constitutional torts committed by their employees, despite several judicial decisions to the contrary. My focus on these questions came after litigating cutting-edge civil rights and consumer protection cases at Trial Lawyers for Public Justice, and clerking on the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the Ninth Circuit.

Enclosed please find my CV, which provides more information about my background and qualifications. I have registered with the AALS for the Faculty Recruitment Conference and would welcome an opportunity to meet with you then, or at your convenience, to further discuss my candidacy.

Sincerely,

William Jackson

SAMPLE CLINICAL COVER LETTER

SAMANTHA STONE

111 Separatist St., Queens, NY 11111
(111) 222-3333 (h) / (444) 555-6666 (w) / sstone@law.hofstra.edu

Prof. Bruce Berger
Co-Chair Clinical Programs Committee
Boston University School of Law
120 Treefaire Street
Boston, MA 02108

August 14, 2020

Dear Prof. Berger:

I write to apply for a Clinical Professor of Law position at Boston University School of Law. I am currently the Director of the Hofstra Interdisciplinary Center for Family and Child Advocacy and Adjunct Associate Professor of Law at Hofstra Law School. In this position I teach classroom courses, supervise students on policy projects, and manage the operations of a research and advocacy institute. I would be thrilled to join the clinical program at Boston University.

I have been teaching and supervising law students since I was one myself. As a third year student at Yale Law School, I was a student director of the Community Legal Services Clinic helping Kathleen Sullivan supervise two second year students and helping the faculty chart the overall direction of the Clinic. In the Immigration Legal Services Clinic, under the supervision of Jean Koh Peters, I represented two (successful) applicants for asylum. That is when I decided that my long-term career goal was to become a law teacher.

Since completing a clerkship in the Southern District of New York, my legal career has been focused exclusively on public service in general and on vindicating the rights of poor and disadvantaged children and families in particular. At the Legal Aid Society, I represented over 500 children in dependency, delinquency, and status offense cases while designing and developing training sessions for law students and paralegals. At Children's Rights, I represented foster children in federal class action lawsuits around the country while running the student internship program. At Hofstra I am leading a number of policy initiatives while restructuring and developing an interdisciplinary university department and teaching Children and the Law (this semester) and Family Law (in the spring).

In each of my positions, my most enjoyable days have been those in which I worked closely with students and was able to take a step back from practice to think deeply about the issues in my cases. I am proud of the work student interns have done under my supervision—from testifying at trial, to writing significant portions of important briefs, to coordinating complicated research projects. It gives me great pleasure to include scholarly articles authored by four of my former students on my current syllabus for Children and the Law.

My own scholarship has focused on issues of direct relevance to the practice of representing children in juvenile court proceedings. Most recently, I have made the case for children's constitutional right to counsel in dependency cases. The article is forthcoming in the Temple Political and Civil Rights Law Review.

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Attached please find my CV, the manuscript for the Temple article, and another article I have coming out in the Nevada Law Journal this fall. I will be interviewing at the AALS conference and would very much welcome the opportunity to speak to you then, or at your convenience.

Sincerely,

Samantha Stone

SAMPLE PARLAY LETTER

41 Ash Drive
Guilford, CT 06444
Buffy.Summers@gmail.com

November 20, 2020

Professor Ian Smith
Chair, Appointments Committee
University of Wichita School of Law
433 Wichita Avenue
Wichita, KS 07777

Dear Professor Smith:

I am grateful for the opportunity to present myself at the AALS conference as a candidate for a tenure track position at the University of Wichita School of Law. I really enjoyed discussing (issue) with you and your colleagues. I have started to schedule on-campus interviews with a number of schools and am interested in whether your committee has determined a timeline for potential interviews. I would welcome the opportunity to meet with you again at the law school.

Thank you for your consideration.

Sincerely,

Buffy Summers

SAMPLE SCHOLARLY AGENDA

RESEARCH AND TEACHING AGENDA

Horatio Caine

My major scholarly interests lie at the intersection of civil rights and criminal defense. In my work, I have returned numerous times to questions about how procedural rules affect access to justice—the dividing line between habeas and civil rights actions, the limits of habeas jurisdiction, and procedural barriers to civil rights suits for incarcerated people. As my scholarship matures, I hope to connect these doctrinal themes to broader issues of federalism, separation of powers, and fundamental liberties, and to situate them in the context of historical trends, such as mass incarceration and the war on terror. I also hope to continue to incorporate social science research into my scholarship, as I did in my forthcoming article on challenges to the admission of out-of-court identifications.

In my current project, I am looking at the effects of a series of Supreme Court decisions regarding procedural aspects of the Prison Litigation Reform Act (PLRA) on the nature of the civil rights vehicle 42 U.S.C. § 1983 for incarcerated people. My working thesis is that the procedural rules being engrafted onto the PLRA fundamentally alter the nature of § 1983 in the prison and jail context. While § 1983 was enacted during Reconstruction to provide a vehicle to vindicate federal rights when state officials would not, courts are interpreting the PLRA in such a way as to leave the availability of relief in local corrections officials' hands. For example, in *Woodford v. Ngo*, in which I authored an amicus brief filed by our clinic, the Supreme Court interpreted the PLRA exhaustion requirement to include a procedural default component. As a result, if a prisoner misses a corrections grievance deadline (as short as 2-5 days in some jurisdictions), he is forever barred from bringing his claim in federal court—potentially even if his suit alleges constitutional violations by the officials administering the grievance system. This fall, a number of consolidated cases are being argued at the Supreme Court that will decide three additional PLRA procedural issues (our clinic also has joined an amicus in those cases). In my paper, I am looking at the broader implications of these cases: how engrafting habeas or administrative law doctrines on § 1983 eviscerates its role in our federal system. I also want to situate the PLRA cases within the context of historically high incarceration rates; prisoners' access to courts is being unduly restricted even as more people are behind bars.

Pedagogically, I hope to continue to enrich my classroom teaching with real-world experience and case studies. I plan to design a seminar in which students study criminal defendants' or prisoners' cases currently in the courts of appeals, and do mock briefs and moots as exercises. Such cases can provide a window onto the criminal justice system, civil and habeas procedure, and appellate litigation. If appropriate, in a companion clinic, students could litigate a small number of prisoners' appeals.

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RESEARCH AGENDA

Susan O. Smith

My research focuses on the institutional processes of litigation and how legal doctrine, court structure, and procedural rules interact to shape the substance of the law. I focus primarily on lower courts because they have often been overlooked by legal scholars, even though they do far more practical lawmaking than do higher courts. In particular, I aim to augment scholarly understanding of lower courts and institutions of civil justice as they interact with other actors in lawmaking process, including other courts, legislatures, administrative agencies, and legal scholars.

I became interested in these areas as a result of my own experience as a litigator in Connecticut, where my work focused on complex civil litigation, including in the areas of municipal law, products liability, and insurance law, and as a law clerk, first in the District of Connecticut and then at the Second Circuit. Unlike my experience as an appellate clerk, as a district court clerk I quickly learned that the law in action bears little relationship with the law that I learned in law school. My time as a civil litigator only strengthened this impression and convinced me that the role and design of lower courts and related institutions is an area that is under examined in American legal scholarship and that presents excellent research opportunities.

I have begun to explore these themes with my publications to date. My first article, *Is There a Bias Against Education in the Jury Selection Process?*, 38 Conn. L. Rev. 325 (2009) (coauthored with John W. Emerson), was inspired by my work as a clerk in the district court. Sitting through jury selection one day, I wondered how the selection process and the rules and guidelines that govern it shape the composition of the jury, arguably the central institution in American litigation (at least in the public perception). I focused on juror education levels, a central issue for jury reformers, and my research revealed that the scholarly debate was wholly uninformed by empirical evidence. I began to design a study to track the selection process, but recognized the value of an interdisciplinary approach and the need for expertise in statistics methodologies. Thus was born my partnership with John Emerson, a statistics professor at Yale University.

Together we designed a study to determine whether the jury selection process in Connecticut federal court yields juries that are undereducated relative to the pools from which they are drawn. Surprisingly, we found no evidence to support the conventional wisdom among scholars, reformers, and the general public that the jury selection process yields relatively undereducated juries, and we concluded that this was partially a result of the design of jury selection procedures in the district of Connecticut. We also found that legal scholarship on this issue had lost touch with the practice of law. Key to this conclusion was our discovery that legal scholarship on jury selection did not appear to be aware of, or engaged with, the extensive literature written by and for legal practitioners on the subject. Indeed, in some cases, the practical literature challenged some of the baseline assumptions that scholars relied upon in developing the theory of the relatively undereducated jury.

My second publication, a book review forthcoming in the *Stanford Law Review*, continues to explore the design of procedural rules and their effect on substantive outcomes and the litigation experience. I first encountered the issue of choice of law in a case I worked on as a practicing litigator. The question for the court was what law should apply to a products liability lawsuit in Connecticut regarding a helicopter crash in Canada. Fifty, or even twenty years ago, the answer to this question would have been simple: the law of the site of the accident applies. Today, however, as a result of the revolution in choice of law doctrine and the introduction of

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various “modern approaches” to choice of law, the answer, if there is one, is incredibly complex—and costly to litigate, as I learned.

In my book review, I argue that legal practice and legal scholarship no longer speak to one another in the choice of law field. The changes to the law in this obscure procedural field—changes that were the direct result of academic critiques of the traditional doctrine—have wreaked havoc on the litigation process, a fact that has gone almost unnoticed by scholars in the field. Indeed, even the best empirical scholarship in the field neither can, nor attempts to, address and assess the practical role of choice of law in shaping litigation. As a result, we cannot meaningfully evaluate the field or make normative assessments of the proper direction for future developments. I conclude the piece by suggesting that because of limitations on available data, quantitative studies may not be the most effective way to fill this gap. Instead, I suggest that scholars should reestablish contact with practitioners through qualitative empirical work, in order to develop a better and more holistic view of the practical implications of the doctrine.

My current work in progress is on *Making the Law: Unpublication in the District Courts*. In recent years, legal scholars concerned about the opacity of courts have focused on the systematic unpublication of judicial opinions by the appellate courts. Curiously, amid all of the talk about unpublication by the appellate courts and the larger issues of accessibility, accountability, and transparency that it implicates, the practice of unpublication by the district courts—between 80% and 95% of written district court opinions go unpublished—has escaped the attention of scholars.

I argue that unpublication at the district court level is deeply problematic. First, it erects serious epistemological barriers for legal scholars because, unlike the vast majority of unpublished appellate court opinions, unpublished district court opinions are not meaningfully accessible for research. As a result, we cannot accurately describe, let alone assess, the law as it really is. This, in turn, has led to an unduly formalistic and distorted account in the legal academy both of the law itself and of the district courts. Further, there are fundamental problems with a system that creates a body of law and norms that are unknowable to the people they govern. The result is a legal vacuum in our district courts that impoverishes the corpus of the common law and deprives litigants, other district court judges, and appellate court judges of important information. Worse, a close examination suggests that unpublication in the district courts potentially operates to disadvantage already marginalized groups. I conclude the Article by arguing that existing technology allows us to move beyond this problem, but that we must make careful choices in utilizing the new technology, because the process we adopt is likely to shape the substance of adjudication.

Going forward, I have a number of projects in the works or planned that will continue to focus on procedure and process from an institutional perspective. First, I and my coauthor plan to revisit the representativeness of juries with respect to education. We will broaden our focus to courts in jurisdictions with different selection procedures and demographic characteristics. Our goals are to draw comprehensive conclusions about the representativeness of juries with respect to education, and to determine whether and how procedural rules influence jury makeup. We are currently collecting information about jury selection procedures from across the country in order to determine which jurisdictions to focus on.

Second, I will explore how district judges push parties to settle through the use of procedural mechanisms. Beyond the well-known authority to direct litigants to alternative dispute programs, judges can use a range of tools, from the timing, tone, and presentation of rulings and orders to the substance of the rulings and orders, to pressure litigants to settle. While there is a

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rich scholarly literature addressing the move towards managerial judging and the push to settle, the subtle use of procedure by trial judges has not been sufficiently studied.

In addition, I intend to return to choice of law with a series of projects. First, I am interested in addressing why choice of law has remained strictly the province of scholars and judges, whereas other doctrinal areas of the law that were concurrently pioneered and restated by the realists were subject to codification. My instinct and early research on this question suggests that the speed with which the scholarly critique in the area of choice of law was adopted by courts and translated into doctrine, together with the obscurity of the topic, served to disincentivize legislatures from intervening. I will explore the ways in which this approach affected the development of the doctrine, deprived the area of oversight, and stunted its evolution. This project will also allow me to begin to explore the relationship between legislatures and courts.

Second, I will revisit the challenge I lay out in my book review on choice of law and investigate the effect of the choice-of-law revolution on the experience of litigating. As part of this project, I will confront the issue of “expectations” in choice of law. The modern doctrines rest, in part, on fundamental assumptions about what law parties and potential parties to litigation “want” or “expect” will govern any particular lawsuit. But what if these assumptions are wrong? That is, what if the traditional approach adequately reflects the expectations of potential parties, or at least does so no less than any of the other possible choices of law in difficult cases? Were that true, as I believe is likely, then the scholarly and doctrinal debate must either choose to ignore party expectations, or reassess the doctrine altogether to better account for them.

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Statement of Research Interests

My work begins from a central question: how have American legal and moral traditions shaped each other in the past, and how might they do so today? While broad, this question defines my interests in three ways. First, I assume that the lines of influence point in both directions. In one sense the law serves as society's ever-evolving answer to the central question of social ethics: how should we live? It offers a far from exhaustive answer—and what it does say is tentative, contested, and incomplete—but law often mirrors our shared moral commitments. At the same time, law has tremendous power to shape the moral identity of persons living under it. Aristotle does not by accident conclude his *Nicomachean Ethics* by introducing his *Politics*. “It is difficult to get from youth up a right training for excellence if one has not been brought up under the right laws.” Law shapes character, he believes, and the right laws are constitutive of human flourishing. In addition, I also approach law and morality as traditions. In MacIntyre's sense, they are “historically extended, socially embodied argument[s],” in part about the fundamental question of what goods constitute the tradition. Of course law and morality reflect a diversity of traditions that fracture and intersect in multiple ways. Nonetheless, these traditions embody an ongoing argument, extended over decades, centuries, or millennia. My research includes both a historical focus, examining how these traditions have developed and intersected in the past, as well as a normative focus, considering how these traditions might shape each other today.

Finally, I am most interested in pursuing this question in the American context. The United States represents from its inception a radical new social ordering born out of a distinct moral vision. While America has always been home to a plurality of moral traditions, religious and otherwise, a shared moral sense infused the nation's political and legal structures. The Declaration of Independence was the seminal statement—as much for what it came to represent as for what it meant in 1776. No court would ever recognize a cause of action arising under the Declaration, yet its moral vision has profoundly shaped the law.

My writing to this point in time has raised this central question in two areas. One area concerns the state's decision to use force. The particular challenge I have taken up in the past few years is the United States' claim to a right of preemptive (or better, preventive) force. In [one article], and in my forthcoming book on the same topic, I approach the normative question by examining how the longstanding moral tradition on the just war shaped international norms governing the use of preemptive force today. This moral tradition, I argue, resonates with moral commitments implicit in American democracy, and its norms represent something near a consensus in America today about when and how wars should be fought. Tracing a distinct conversation on the use of preemptive force in the moral tradition, from Vitoria in the sixteenth century to Daniel Webster in the nineteenth and on to today, I make a case for carefully expanding the right to use preemptive force on grounds immanent to the moral and legal traditions. Making this argument, I suggest, is crucial to achieve moral legitimacy for an expanded right and to ensure that revision can preserve moral commitments long resident in the laws of war.

A second area where I have raised my central question is law and religion. Once a primary means of social ordering and a principle source of law, religion continues to wield enormous influence in American society. On account of religious and cultural pluralism in the United States, and because faith often places a total claim upon the believer's life, religious and legal traditions sometime collide. In [another article] I take up a particular point of contact: the tax exemption for houses of worship and the accompanying restriction on “political intervention” in the tax code. Considering the rationale for the prohibition, and offering a descriptive account of faith in which the claims of faith are often total and the practice of faith communal, I argue that the current law may tend to silence religious communities as they discern how to live out their faith in the world. Institutions sustain moral traditions, and their health in part depends on the laws that govern them.

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Over the next few years I hope to continue research in these and in one or two new areas, as well. Although I do not intend to devote my career to writing solely on the law of war and its moral context, I may have another book on the subject. I would take up this question: since the Founding, how has America's national identity—a peculiar nationalism rooted not in blood and soil but, at its best, in the universal values of liberty and equality—shaped both Americans' understanding of the normative constraints on using force and the national and international institutions in which these norms are embedded? This book would spend considerable time in historical materials, with the aim of identifying a tradition of restraint integral to American self-understanding. In addition, I would like to expand my current focus on preemption and the laws of war to include other pressing issues that arise at the nexus of law and national security. Lastly, after a year of teaching torts I would like to start writing in this area, as well. Tort law is especially fruitful for the inquiries that interest me, as it represents a long-established legal tradition about how we should address our conflicts with others, often strangers. At various points the common law of torts illuminates, enforces, and perhaps ignores what the moral traditions we inhabit tell us about how we should resolve the harms we give and take. Issues concerning human freedom, what we owe to strangers and what is supererogatory, and the remedial demands of justice are all deeply resident in the centuries of legal reasoning that lie behind the common law. In addition, tort law also raises for me the question of how moral traditions do and should function as alternative forms of social control. I would like to examine when, and to what extent, courts should provide a legal remedy for a harm that a present or emerging moral norm might also mitigate.

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FRANCES PERKINS

333 Rose Walk ♦ New Haven, CT 06510 ♦ (203) 333-3333 ♦ fperkins@wk.edu

RESEARCH AGENDA

My primary research interests lie at the intersection of American legal history, employment discrimination, family law, and constitutional law and theory. I also have secondary research interests in trusts & estates and property law, with a focus on how these fields shape the family as a legal institution. My current projects use history to reveal how the law regulates the boundaries between the family, market, and state. More specifically, I perform research in primary source historical materials to investigate how social, economic, and legal concepts and categories change over time. My research method leads me to analyze trial transcripts, appellate briefs, judicial decisions, organizational archives, individual records, periodicals, and oral histories. My theoretical interests extend to the uses of history in legal argumentation, the relationship between antidiscrimination law and social-welfare entitlements, and the comparative effect of different legal institutions on social mobilization.

DISSERTATION AND BOOK PROJECT

The Law of Work and Family: Feminism and the Transformation of the American Workplace at Century's End

My dissertation describes the sea change in the relationship between motherhood and women's labor market participation in the United States, during the late twentieth century. I argue that legal feminists in the 1960s, 1970s, and 1980s never laid claim to strictly formal equality as the dominant scholarly narrative suggests. Instead, legal feminists pursued antidiscrimination laws and jurisprudence that would accommodate women's biological difference and social-welfare entitlements that would transform childrearing structures. The politics of both women's employment and motherhood generated a split among conservatives over the legal feminist agenda. While activists on the religious right advocated for social protection for motherhood, economic conservatives opposed regulation that would increase businesses' labor costs and states' fiscal burdens. Law and policy evolved in the crucible of heated debates in courts, legislatures, administrative agencies, and popular culture. In the workplace, legal feminists achieved considerable success in realizing women's right to formal equal treatment and to a minimal standard of accommodation for pregnancy. The power of economic and social opposition, however, foreclosed more profound changes for which feminists advocated: a more equitable division of childrearing labor between men and women within the home and the sharing of the costs of reproduction between the family and society. I plan to publish my research in book form.

The dissertation makes three contributions to the social and legal history of women's rights. First, I show how the meaning of sex equality as both a judicial doctrine and political concept came to be defined in the sixties and seventies. The resurgence of a mass feminist movement during the civil rights era sparked new challenges to gender-protective liberalism. Since the New Deal era, reformers had constructed law and social-welfare policy in accordance with the theory that women's role as mothers should yield a differential citizenship status. The post-war increase in maternal employment, the passage of Title VII of the Civil Rights Act of 1964, and the legalization of birth control, however, intensified the commitment to equal-rights liberalism within the women's movement. Legal feminists in the late sixties and seventies appropriated to their own ends a distinction between biological sex and the social construction of gender, which psychologists and sociologists had begun to articulate in the mid-1950s. They sought to define laws that differentiated between men and women on the basis of categorical sex differences as

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valid and laws based on gender stereotypes as invalid. The equal-rights liberalism embraced by legal feminists, however, entailed much more than formal equal treatment. Contrary to the prevailing narrative, I show that legal feminists in the sixties and seventies did not seek merely to replace social protection with same treatment for men and women. Rather, legal feminists recognized early on that substantive equality required taking childbearing (women's biology) and childrearing (gender roles) into account. Legal feminists sought to deconstruct the family-wage system: a cultural ideal reinforced by legal and socio-economic structures that the nuclear family should consist of an independent, male breadwinner and dependent, female caregiver and children. Government reformers, intellectuals, attorneys, and activists endeavored to achieve equal employment opportunity for women, to redistribute childrearing labor between men and women, and to shift the costs of reproduction from the private family to the larger society. Feminists succeeded in invalidating employment policies that excluded pregnant women from the workplace and in reclassifying pregnancy as a temporary disability under Title VII. Social opposition from advocates of traditional gender roles, economic opposition from opponents of an enlarged welfare state, as well as the constraints posed by judicial doctrine, foreclosed more ambitious elements of the feminist agenda. These had included the extension of genuinely protective labor laws to men and legislation to enact universal childcare.

Second, I revise the scholarly and popular consensus about the meaning of *Roe v. Wade* for liberal politics by exploring the consequences of *Roe* outside the abortion context. Although disagreement exists regarding the mechanisms and effects of backlash, the dominant narrative is that *Roe* has fueled conservatism and acted as an albatross around the neck of Democrats, at the polls and in judicial confirmation hearings. While this narrative is certainly correct, it is incomplete. My dissertation demonstrates that *Roe*, and abortion politics more broadly, also produced a split between economic and social conservatives regarding the legal feminist agenda and a tenuous alliance of interests between feminists and antifeminists, who both supported greater state entitlements attached to mothering. In the mid-1970s, there raged doctrinal and political debates about how the law should allocate the economic costs associated with pregnancy and childbirth among individual women, the private family, employers, and the state. As a consequence of *Roe*, these legal and political controversies yielded some surprising political alliances and rhetorical strategies. The business lobby, which had long opposed the classification of pregnancy as a temporary disability out of economic interest, now appropriated liberal rhetoric regarding reproductive rights and choice to oppose pregnancy-disability benefits. They argued that because the legalization of birth control and abortion made pregnancy a voluntary choice, pregnancy did not warrant public support. At the same time, abortion politics induced social conservatives to join feminists in a national coalition lobbying for Congressional enactment of the Pregnancy Discrimination Act of 1978 (PDA). Antiabortion activists traced the logic of the Supreme Court's infamous decision in *General Electric Co. v. Gilbert*, which held that the singular exclusion of pregnancy from an otherwise comprehensive temporary disability insurance scheme did not violate Title VII, back to that of *Roe*. General Electric had argued that because *Roe* had made pregnancy voluntary, the company had no obligation to include pregnancy within temporary disability insurance. Thus, the politics of women's employment and reproductive rights contributed to the waning of the traditional gender norm that the private family should assume sole responsibility for the costs of reproduction, as well as the rise of social conservative support for antidiscrimination laws and social-welfare entitlements related to motherhood.

Third, I analyze the historical paths by which the United States, virtually unique among industrialized nations, developed an antidiscrimination rather than social-welfare framework for resolving work-family conflict. I illuminate both the achievements and limitations of this system. The temporary disability paradigm enshrined in the PDA satisfied many of the goals of secondwave feminists by mandating the treatment of pregnant workers as individuals rather than

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as a class, dodging the pitfalls of protective legislation, and distinguishing women's role in biological reproduction from their social assignment of responsibility for childrearing. The PDA, however, accommodated only the biological dimensions of reproduction and did not offer socio-economic entitlements related to childrearing. Thus, the PDA advanced women's access to equal employment opportunity during pregnancy but did not enable them to better reconcile mothering with paid employment. With the passage of the Family and Medical Leave Act of 1993, advocates finally realized their dual commitments to equal employment opportunity and socioeconomic protections for caretaking. But opposition constrained the law's scope, and its enactment has illustrated the limits as well as the capacity for the law to influence gendered structures of care.

CURRENT ARTICLE PROJECTS

Recovering the LaFleur Doctrine

I am currently revising this article, forthcoming in the *(date)* issue of *Journal Name* which discusses the social and legal history of the landmark 1974 U.S. Supreme Court case of *Cleveland Board of Education v. LaFleur*. Today, legal scholars debate whether the Equal Protection Clause or the Due Process Clause offers the most promise to secure women's rights to full citizenship. In the early 1970s, labor and legal feminists argued for equality and liberty as mutually dependent, necessary conditions for women to realize the status of rights-holding persons under the Fourteenth Amendment. I argue that on the path to intermediate scrutiny for sex-based classifications, the Supreme Court in *LaFleur* contemplated a richer conception of the relationship between women's equality and reproductive liberty than is recognized under contemporary equal protection jurisprudence.

The Anti-Stereotyping Principle and the Costs of Reproduction

This article, in process, will serve as the basis for my job talk. Recent scholarship has demonstrated that legal feminists during the 1960s, 1970s, and 1980s did not seek to eradicate classification on the basis of sex per se, but rather endeavored to end the law's imposition of sex-role stereotypes rooted in the family-wage system. I argue that legal feminists developed a cost-sharing principle as a corollary to the anti-stereotyping principle: Combating sex-role stereotypes would require sharing the costs of pregnancy, childbirth, and childrearing, both between men and women within the family and throughout society. The history of feminist mobilization for the cost-sharing principle, anti-feminist counter mobilization, and incremental legal change illuminates the origins of contemporary debates regarding work-family conflict, as well as the normative values at stake in these debates. The article concludes by discussing current legal reforms that might render sex stereotypes less indelible by more equitably sharing the costs of reproduction.

FUTURE PROJECTS

The Role of Legal Forums in Determining Social Movement Identity

In a future project, I plan to use history to analyze how the legal forums targeted by modern social movements have shaped these movements' identities: the contours of their political imagination, organizing models, and strategic objectives. In researching my dissertation, I observed that the feminist movement's definition of gender equality changed when movement leaders shifted their attention between Congress and the courts. When pursuing legislative campaigns, legal feminists laid claim to affirmative social-welfare entitlements, built broad coalitions, and argued for the state's role in transforming familial relations commonly understood as private. By contrast, when pursuing legal change via antidiscrimination law, legal feminists restricted their claims to negative rights, divided over doctrinal strategies, and posed less profound challenges to the public/private divide. That observation has sparked a broader curiosity

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about how the institutional foci of various social movements have influenced the character and shape of these movements.

My proposed project would focus on how social movements' definition of equality changed as a result of movements' decisions to target federal and state courts, administrative agencies, and legislatures. My hypothesis is that the institutional target of social movements' campaigns for legal reform not only affected the outcomes of these campaigns but also the way in which movements conceived of social and legal equality. I will test my hypothesis using three historical case studies: the second-wave feminist movement, the disability rights movement, and the movement for gay liberation and equality. Because these movements overlapped and also built on each other's precedents from the sixties through the eighties, they offer the opportunity to study larger historical patterns. The project will either take the form of a series of articles or a book.

The Constitution of the Family

This project will investigate how statutes, common law, and constitutional jurisprudence came to constitute the family over the course of the twentieth century. I will examine change over time in the legal regulation of who comprises a family as well as the obligations that family members hold to one another. The project will discuss the constitution of the family in multiple arenas including trusts and estates, tax, and property as well as marriage, divorce, and child custody. Some narrative strands in the history of twentieth-century family law are familiar: the demise of common-law marriage, the rise of no-fault divorce, and the complex problems that new reproductive technologies posed for determining child custody. Important questions, however, remain unexplored by either social or legal historians, and I will focus on those regarding the definition of the family as an economic institution. Why do spousal rights differ at divorce and death, with a widow more likely to receive a greater share of marital property if her Marriage ends by divorce than by the death of her husband? What are sources of the obligation present in both child custody and intestacy law to support children, and how have ideas about this obligation changed over time? Has the concept of donor's intent, central to the law of trusts and estates, followed the paradigm shift from status to contract that historians have identified in other aspects of family law? This will likely take the form of a book project.

Historical Amici Curiae and the Law's Relation to the Past

The idea for this article derives from my participation in a panel discussion at an American Society for Legal History Annual Meeting, on "When History Meets Law: The Role of Amici Curiae." Although disagreement exists regarding the degree of influence that amicus briefs have on the Supreme Court, these briefs represent a fruitful arena to explore the fraught relationship between historical and normative legal argument. While historians are cautious about drawing presentist conclusions from their research, lawyers mine the historical record—doctrinal precedent and legislative debates—in search of answers to contemporary legal questions. This article will seek to develop new paradigms for considering the relationship between history and legal change. I will use recent examples of historical amici curiae to evaluate whether advocates may effectively use history, not only to urge fidelity to the original intent of legislatures and the Framers, but also to encourage courts to depart from the past.