

**Ethan J. Leib**  
**Fordham Law School**  
**150 West 62<sup>nd</sup> Street**  
**New York, NY 10023**  
**(212) 636-7490 / ethan.leib@law.fordham.edu**

## EXPERIENCE

**Fordham Law School**, New York, NY (Spring 2011-Present)  
*John D. Calamari Distinguished Professor of Law* (2017- Present)  
*Professor of Law* (September 2011-Present); *Visiting Professor of Law* (Spring 2011)  
Courses: Contracts; Legislation & Regulation; SJD Colloquium I & II  
•*Dean's Distinguished Research Award* (2015-16)  
•*Affiliated Faculty Member, Kadish Center for Morality, Law, and Public Affairs at UC-Berkeley Law* (September 2007-Present)

**Columbia Law School**, New York, NY (Spring 2015)  
*Adjunct Professor of Law* (Course: American Contract Law)

**University of California—Hastings College of the Law**, San Francisco, CA (July 2005-August 2011)  
*Professor of Law* (July 2010-August 2011); *Associate Professor of Law* (March 2007-June 2010); *Assistant Professor of Law* (July 2005-March 2007); voted tenure in November 2009  
Courses: Contracts; Constitutional Law I; Legislation  
•1066 Foundation Faculty Award (2008); Roger Traynor Scholarly Publication Award (2008, 2010)

**University of California—Berkeley Law (Boalt Hall)**, Berkeley, CA (Spring 2010)  
*Visiting Associate Professor of Law* (Course: Legislation)

**Columbia University**, New York, NY (Spring 2009)  
*Scholar-in-Residence*, Columbia Law School; *Visiting Scholar*, Dept. of Political Science

**Debevoise & Plimpton**, New York, NY (Fall 2004-Summer 2005; Summer 2002)  
*Litigation Associate*

**The Honorable John M. Walker, Jr., Chief Judge, United States Court of Appeals, Second Circuit**,  
New Haven, CT (2003-04)  
*Law Clerk*

## EDUCATION

### Yale University

**Yale Law School**, J.D., 2003  
Senior Editor, YALE LAW JOURNAL; Articles Editor, YALE JOURNAL OF LAW & THE HUMANITIES  
**Yale Graduate School**, Ph.D., Political Science, 2004  
Qualifying exams in Philosophy; International Relations; and Political Theory (with distinction)  
**Yale College**, B.A., *magna cum laude*, Philosophy (with distinction), 1997  
Phi Beta Kappa; The James S. Metcalfe Prize in Theater Studies

**University of Cambridge, Clare College**, M.Phil., Political Thought and Intellectual History, 1998

## PUBLICATIONS

### *Books*

LOYALTY IN LIFE, LAW, AND POLITICS (Oxford University Press forthcoming 2020) (with Stephen R. Galoob)

FRIEND V. FRIEND: THE TRANSFORMATION OF FRIENDSHIP – AND WHAT THE LAW HAS TO DO WITH IT (Oxford University Press 2011) (reviewed in THE NEW REPUBLIC; COMMONWEAL; CHOICE; ZÓCALO PUBLIC SQUARE; LAW LIBRARY JOURNAL)

PRIVILEGE OR PUNISH? CRIMINAL JUSTICE AND THE CHALLENGE OF FAMILY TIES (Oxford University Press 2009) (with Jennifer Collins & Dan Markel) (reviewed in YALE LAW JOURNAL; LAW & POLITICS BOOK REVIEW; HARVARD JOURNAL OF LAW & PUBLIC POLICY; NEW CRIMINAL LAW REVIEW)

THE SEARCH FOR DELIBERATIVE DEMOCRACY IN CHINA (Palgrave Macmillan 2006) (co-edited with Baogang He) (reviewed in PACIFIC AFFAIRS; PERSPECTIVES ON POLITICS; CHOICE) (new updated paperback edition 2010)

DELIBERATIVE DEMOCRACY IN AMERICA: A PROPOSAL FOR A POPULAR BRANCH OF GOVERNMENT (Penn State Press 2004) (reviewed in POLITICAL SCIENCE QUARTERLY; PERSPECTIVES ON POLITICS; PUBLIC ADMINISTRATION REVIEW; JOURNAL OF PUBLIC DELIBERATION; CHOICE; CHRONICLE OF HIGHER EDUCATION; POLITICAL STUDIES REVIEW; CAMPAIGNS & ELECTIONS; INTERNATIONAL JOURNAL OF PUBLIC OPINION RESEARCH) (paperback 2005) (Chinese edition 2008)

### *Articles*

*The Belt-and-Suspenders Canon*, 105 IOWA L. REV. \_\_\_\_ (forthcoming 2020) (with Jim Brudney)

*Fiduciary Constitutionalism: Implications for Self-Pardons and Non-Delegation*, 17 GEO. J.L. & PUB. POL’Y 463 (2019) (with Jed Shugerman)

*Faithful Execution and Article II*, 132 HARV. L. REV. 2111 (2019) (with Andrew Kent & Jed Shugerman) (winner of the 2019 Richard D. Cudahy Writing Competition)

*Contract Creep*, 107 GEO. L.J. 1277 (2019) (with Tal Kastner)

*Statutory Interpretation as “Interbranch Dialogue?”*, 66 UCLA L. REV. 346 (2019) (with Jim Brudney)

*Fiduciary Loyalty, Inside and Out*, 92 S. CAL. L. REV. 69 (2018) (with Stephen R. Galoob)

*Legislative Underwrites*, 103 VA. L. REV. 1487 (2017) (with Jim Brudney)

*Consumer Form Contracting in the Age of Mechanical Reproduction: The Unread and the Undead*, 2017 UNIV. ILL. L. REV. 65 (2017) (with Zev Eigen)

*Fiduciary Political Theory: A Critique*, 125 YALE L.J. 1820 (2016) (with Stephen R. Galoob)

*Local Judges and Local Government*, 18 N.Y.U. J. LEGIS. & PUB. POL’Y 707 (2015)

*Hail Marriage and Farewell*, 84 FORDHAM L. REV. 41 (2015) (invited symposium essay)

*Contra Proferentem and the Role of the Jury in Contract Interpretation*, 87 *TEMPLE L. REV.* 773 (2015) (with Steve Thel) (invited symposium essay)

*Regleprudence – at OIRA and Beyond*, 103 *GEO. L.J.* 259 (2015) (with Nestor M. Davidson)

*Intentions, Compliance, and Fiduciary Obligation*, 20 *LEGAL THEORY* 106 (2014) (with Stephen R. Galoob) (peer-reviewed)

*Fiduciary Principles and the Jury*, 55 *WM. & MARY L. REV.* 1109 (2014) (with Michael Serota & David L. Ponet) (invited symposium essay)

*A Fiduciary Theory of Judging*, 101 *CALIF. L. REV.* 699 (2013) (with David L. Ponet & Michael Serota), translated into Japanese at 20 *HOKKAIDO J. OF NEW GLOBAL L. & POL'Y* 1 (2013), available at [http://www.juris.hokudai.ac.jp/gcoe/journal/LPG\\_vol20/20\\_1.pdf](http://www.juris.hokudai.ac.jp/gcoe/journal/LPG_vol20/20_1.pdf).

*The Political Morality of Voting in Direct Democracy*, 97 *MINN. L. REV.* 1596 (2013) (with Michael Serota) (invited symposium essay)

*Localist Statutory Interpretation*, 161 *U. PENN. L. REV.* 897 (2013)

*Translating Fiduciary Principles into Public Law*, 126 *HARV. L. REV. F.* 91 (2013) (with David L. Ponet & Michael Serota)

*Elected Judges and Statutory Interpretation*, 79 *U. CHI. L. REV.* 1215 (2012) (with Aaron-Andrew Bruhl)

*Fiduciary Representation and Deliberative Engagement with Children*, 20 *J. POL. PHIL.* 178 (2012) (with David L. Ponet) (peer-reviewed)

*Why Party Democrats Need Popular Democracy and Popular Democrats Need Parties*, 100 *CALIF. L. REV.* 69 (2012) (with Chris Elmendorf)

*Work Friends*, 35 *WASH. U. J. L. & PUB. POL'Y* 149 (2011) (invited symposium comment)

*Fiduciary Law's Lessons for Deliberative Democracy*, 91 *B.U. L. REV.* 1249 (2011) (with David L. Ponet) (invited symposium essay)

*The Costs of Consensus in Statutory Construction*, 120 *YALE L.J. ONLINE* 47 (2010), [http://yalelawjournal.org/2010/7/30/leib\\_serota.html](http://yalelawjournal.org/2010/7/30/leib_serota.html) (with Michael Serota)

*Contracts and Friendships*, 59 *EMORY L.J.* 649 (2010), excerpted in RANDY BARNETT, *PERSPECTIVES ON CONTRACT LAW* (4<sup>th</sup> ed., Aspen 2010)

*Rethinking Criminal Justice and Family Status*, 119 *YALE L.J.* 1864 (2010) (with Dan Markel & Jennifer Collins)

*(When) Should Family Status Matter in the Criminal Justice System?*, 13 *NEW CRIM. L. REV.* 151 (2010) (with Jennifer Collins & Dan Markel) (faculty-edited)

*Friends as Fiduciaries*, 86 *WASH. U. L. REV.* 665 (2009)

*Voluntarism, Vulnerability, and Criminal Law: A Reply to Professors Hills and O'Hear*, 88 B.U. L. REV. 1449 (2008) (with Dan Markel & Jennifer Collins)

*Punishing Family Status*, 88 B.U. L. REV. 1327 (2008) (with Jennifer Collins & Dan Markel)

*Interpreting Statutes Passed Through Referendums*, 7 ELECTION L.J. 49 (2008) (peer-reviewed)

*Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDU. 166 (2008) (invited essay, faculty-edited)

*Democratic Principle and Electoral College Reform*, 106 MICH. L. REV. FIRST IMPRESSIONS 105 (2008), <http://www.michiganlawreview.org/firstimpressions/vol106/leibmark.pdf> (with Eli J. Mark)

*A Comparison of Criminal Jury Decision Rules in Democratic Countries*, 5 OHIO ST. J. CRIM. L. 629 (2008) (faculty-edited), *cited in* McDonald v. Chicago, 130 S.Ct. 3020, 3044 n.28 (2010)

*Why Supermajoritarianism Does Not Illuminate the Interpretive Debate Between Originalists and Non-Originalists*, 101 NW. U. L. REV. 1905 (2007)

*The Perpetual Anxiety of Living Constitutionalism*, 24 CONSTITUTIONAL COMMENTARY 353 (2007) (faculty-edited)

*Representation in America: Some Thoughts on Nancy Pelosi, Gavin Newsom, Tim Johnson, and Deliberative Engagement*, 16 THE GOOD SOCIETY 1 (2007) (with David L. Ponet) (faculty-edited)

*Friends and the Law: Can Public Policy Support the Institution of Friendship?*, 145 POL'Y REV. 55 (October & November 2007)

*Friendship & the Law*, 54 UCLA L. REV. 631 (2007)

*Criminal Justice and the Challenge of Family Ties*, 2007 UNIV. OF ILL. L. REV. 1147 (with Dan Markel & Jennifer Collins), *cited in* United States v. Corozzo, 256 F.R.D. 398, 402 (E.D.N.Y. 2008)

*Can Direct Democracy Be Made Deliberative?*, 54 BUFFALO L. REV. 903 (2006) (invited contribution)

*Responsibility and Social/Political Choices About Choice*, 25 LAW & PHIL. 453 (2006) (peer-reviewed)

*Supermajoritarianism and the American Criminal Jury*, 33 HASTINGS CON. L.Q. 141 (2006)

*On Collaboration, Organizations, and Conciliation in the General Theory of Contract*, 24 QUINNIPIAC L. REV. 1 (2005)

*Rorty's New School of American Pride*, 34 POLITY 175 (2004) (peer-reviewed)

*The Politics of Family and Friends in Aristotle and Montaigne*, 31 INTERPRETATION: J. POL. PHIL. 165 (2004) (peer-reviewed)

*Redeeming the Welshed Guarantee: A Scheme for Achieving Justiciability*, 24 WHITTIER L. REV. 143 (2002)

*Towards a Practice of Deliberative Democracy: A Proposal for a Popular Branch*, 33 RUTGERS L.J. 359 (2002)

*On the Sorites: Toward a Better Understanding of Chrysippus*, 21 *ANCIENT PHIL.* 147 (2001)  
(peer-reviewed)

### ***Chapters in Books***

*Fiduciary Principles and Public Office*, in *THE OXFORD HANDBOOK OF FIDUCIARY LAW* 303 (Evan Criddle, Paul Miller & Robert Sitkoff eds., 2019) (with Stephen R. Galoob)

*Fiduciary Political Theory and Legitimacy*, in *FIDUCIARY GOVERNMENT* 163 (Evan Criddle, Evan Fox-Decent, Andrew Gold, Sung Hui Kim, & Paul Miller eds., 2018) (with Stephen R. Galoob)

*The Core of Fiduciary Political Theory*, in *RESEARCH HANDBOOK ON FIDUCIARY LAW* 401 (D. Gordon Smith & Andrew Gold eds., 2018) (with Stephen R. Galoob)

*Deliberative Law*, in *THE OXFORD HANDBOOK OF DELIBERATIVE DEMOCRACY* 612 (André Bächtiger, Jane Mansbridge, Mark Warren & John Dryzek eds., 2018) (with David L. Ponet)

*Mapping Public Fiduciary Relationships*, in *THE PHILOSOPHICAL FOUNDATIONS OF FIDUCIARY LAW* 388 (Andrew Gold & Paul Miller eds., 2014) (with David L. Ponet & Michael Serota)

*What is the Relational Theory of Consumer Form Contract?*, in *REVISITING THE CONTRACTS SCHOLARSHIP OF STEWART MACAULAY: ON THE EMPIRICAL AND THE LYRICAL* 259 (Jean Braucher, John Kidwell & William Whitford eds., 2013)

*Citizen Representation and the American Jury*, in *IMPERFECT DEMOCRACIES: THE DEMOCRATIC DEFICIT IN CANADA AND THE UNITED STATES* 269 (Patti Lenard & Richard Simeon eds., 2012) (with David L. Ponet)

*Pragmatism in Designing Popular Deliberative Institutions in the United States and China*, in *THE SEARCH FOR DELIBERATIVE DEMOCRACY IN CHINA* 113 (Ethan J. Leib & Baogang He eds., 2006), *translated into Chinese in DEVELOPMENT OF DELIBERATIVE DEMOCRACY: A COLLECTION OF ESSAYS ABOUT CHINESE LOCAL AND DELIBERATIVE INSTITUTIONS* 161 (Chen Shengyong & Baogang He eds., 2006)

### ***Book Reviews***

*On Saul M. Olyan's FRIENDSHIP IN THE HEBREW BIBLE*, 138 *JOURNAL OF THE AMERICAN ORIENTAL SOCIETY* \_\_\_\_ (forthcoming 2019)

*Also, no. On Adrian Vermeule's LAW'S ABNEGATION*, 53 *TULSA L. REV.* 267 (2018)

*On Seow Hon Tan's JUSTICE AS FRIENDSHIP: A THEORY OF LAW*, 4 *AMITY: THE JOURNAL OF FRIENDSHIP STUDIES* 38 (2017)

*On Douglas A. Chalmers's REFORMING DEMOCRACIES*, 12 *PERSPECTIVES ON POL.* 219 (2014)

*On Daniel Martinez HoSang's RACIAL PROPOSITIONS: BALLOT INITIATIVES AND THE MAKING OF POSTWAR CALIFORNIA*, 5 *CAL. LEGAL HIST.* 367 (2010)

*Some New Empirical Work Targeting Deliberative Democracy*, 5 *PERSPECTIVES ON POL.* 154 (2007)

*Rooted Cosmopolitans*, 137 *POL'Y REV.* 89 (June & July 2006)

*On Seymour Martin Lipset and Jason M. Lakin's THE DEMOCRATIC CENTURY*, 120 POL. SCI. Q. 159 (2005)

*On Martin Loughlin's THE IDEA OF PUBLIC LAW*, 14 LAW & POL. BOOK REV. 458 (2004)

*On the Difficulty of Imagining an Aesthetic Politics*, 12 YALE J.L. & HUMAN. 151 (2000)

### ***Op-Eds and Popular Writing***

*Will the Supreme Court Hand Trump Even More Power?*, N.Y. TIMES, Oct. 8, 2019, at <https://www.nytimes.com/2019/10/08/opinion/trump-supreme-court-fed.html?smid=tw-nytopinion&smtyp=cur> (with Jed Shugerman)

*Mueller's Recourse*, SLATE, March 19, 2018, available at <https://slate.com/news-and-politics/2018/03/if-a-trump-official-fires-the-special-counsel-to-protect-trump-mueller-can-sue-to-keep-his-job.html> (with Jed Shugerman)

*This Overlooked Part of the Constitution Could Stop Trump from Abusing His Pardon Power*, WASHINGTON POST, March 14, 2016, available at <http://wapo.st/2pd0IzK> (with Jed Shugerman)

*Trump Can Save the Filibuster: Avoid the Nuclear Option by Expanding the Bench and Nominating Merrick Garland, Too*, U.S. NEWS & WORLD REPORT, April 6, 2017, at <https://www.usnews.com/opinion/debate-club/articles/2017-04-06/donald-trump-should-expand-the-supreme-court-to-save-the-filibuster> (with Tom Lee)

*Marriage for All? How About Marriage for None?*, L.A. TIMES, June 17, 2015, at A23, available at <http://www.latimes.com/opinion/op-ed/la-oe-leib-marriage-skeptics-20150617-story.html>

*Force Majeure*, TIKKUN, March 24, 2015, available at <http://www.tikkun.org/tikkundaily/2015/03/24/questions-of-masculinity-in-force-majeure/>

*Chris Christie's Choice: Duty or Politics*, L.A. TIMES, June 5, 2013, at A15 (with Michael Serota)

*The State of Contracts Scholarship in the United States*, 1 LAWS 64 (2012) (peer-reviewed), at <http://www.mdpi.com/2075-471X/1/1/64>

*Playing Double Jeopardy*, SLATE, June 19, 2012, at <http://hive.slate.com/hive/how-can-we-fix-constitution/article/playing-double-jeopardy> (with Dan Markel)

*The Laws of Friendship*, NEW YORK LAW JOURNAL, Feb. 1, 2012, at 6

*Friends in the Age of Facebook*, THE AMERICAN SCHOLAR 14 (Spring 2011)

*Friends-in-Law*, ZÓCALO PUBLIC SQUARE, Apr. 3, 2011, at <http://zocalopublicsquare.org/thepublicsquare/2011/04/03/friends-in-law/read/nexus/>

*Let Californians Vote on Two Budgets – 1 Red, 1 Blue*, S.F. CHRON., Feb. 11, 2011, at A12 (with Chris Elmendorf)

*Don't Focus Solely on the Constitution*, USA TODAY, June 30, 2010, at [http://www.usatoday.com/news/opinion/forum/2010-07-01-leib30\\_ST\\_N.htm](http://www.usatoday.com/news/opinion/forum/2010-07-01-leib30_ST_N.htm) (with Michael Serota)

*Budgets by the People, for the People*, NEW YORK TIMES, July 28, 2009, at A25 (with Chris Elmendorf)

*This is a Job for Superdelegates*, LEGAL TIMES, Feb. 25, 2008, at 50 (with David L. Ponet)

*The Ethics of Representative-Constituent Relations*, FINDLAW'S WRIT: LEGAL COMMENTARY, July 26, 2007, at [http://writ.news.findlaw.com/commentary/20070726\\_ponet.html](http://writ.news.findlaw.com/commentary/20070726_ponet.html) (with David L. Ponet)

*Democracy and Bicameralism in the U.S. and Britain: Term-Limits and the Legislation to Put House of Lords Members Up for Election*, FINDLAW'S WRIT: LEGAL COMMENTARY, April 13, 2007, at [http://writ.news.findlaw.com/commentary/20070413\\_ponet.html](http://writ.news.findlaw.com/commentary/20070413_ponet.html) (with David L. Ponet)

*PBS's "The Supreme Court": A Conventional View of the Cathedral*, FINDLAW'S WRIT: LEGAL COMMENTARY, February 6, 2007, at [http://writ.news.findlaw.com/commentary/20070206\\_leib.html](http://writ.news.findlaw.com/commentary/20070206_leib.html)

*Why Pelosi Should Leave Impeachment "On the Table"*, LEGAL TIMES, Nov. 6, 2006, at 60

*Why Not Dial-In Democracy, Too?*, WASHINGTON POST, May 28, 2006, at B02

*The Problem of Hung Juries – and How to Solve It*, FINDLAW'S WRIT: LEGAL COMMENTARY, May 12, 2006, at [http://writ.news.findlaw.com/commentary/20060512\\_leib.html](http://writ.news.findlaw.com/commentary/20060512_leib.html)

*Surprise Witness: Three Surprises from Alito's Testimony*, THE NEW REPUBLIC, Jan. 11, 2006, at <http://www.tnr.com/doc.mhtml?pt=R3Jo3lCfI%2BZi0JgvBGMXPpy%3D%3D>

*Alito and Abortion: Mixed Signals*, THE NEW REPUBLIC, Nov. 2, 2005, at <http://www.tnr.com/doc.mhtml?pt=j/k9mNmSlezWdZmsQT5JZW==>

*A Third Option on Gay Marriage*, S.F. CHRON., Sept. 20, 2005, at B7 (with Vikram Amar)

*The Overlooked Legal Option That Would Let Governor Schwarzenegger Fully Respect Proposition 22 and the Will of the People, Yet Also Sign the Gay Marriage Bill*, FINDLAW'S WRIT: LEGAL COMMENTARY, Sept. 16, 2005, at [http://writ.news.findlaw.com/commentary/20050916\\_leib.html](http://writ.news.findlaw.com/commentary/20050916_leib.html) (with Vikram Amar)

*A Man's Right To Choose: Men Deserve Voice in Abortion Decision*, LEGAL TIMES, Apr. 4, 2005, at 60

*Ugly White Districts: What Should Sandy Do?*, 7 J.L. & SOC. CHALLENGES 169 (2005) (invited contribution)

*The Chinese Communist Party and Deliberative Democracy*, 1 J. PUB. DELIBERATION 1 (2005) (invited contribution)

## **PROFESSIONAL ACTIVITIES**

Member, American Association for Political & Legal Philosophy

Member, New York Bar

Editorial Board, JOURNAL OF PUBLIC DELIBERATION (Essay Editor, 2005-10)

Guest Writer, *Freakonomics Blog* at the NEW YORK TIMES

Referee Reports Written (2011-18):

AMERICAN POLITICAL SCIENCE REVIEW, ASPEN, HARVARD LAW REVIEW, STANFORD LAW REVIEW, COLUMBIA LAW REVIEW, PUBLIC AFFAIRS QUARTERLY, EUROPEAN JOURNAL OF LAW AND ECONOMICS, UNIVERSITY PRESS OF KANSAS, OSGOODE HALL LAW JOURNAL, ELECTION LAW JOURNAL, LAW & SOCIAL INQUIRY, OXFORD UNIVERSITY PRESS, PUBLIC ADMINISTRATION REVIEW, PERSPECTIVES ON POLITICS, JOURNAL OF LAW & COURTS, ROUTLEDGE, COMPARATIVE POLITICAL STUDIES, SOCIAL SCIENCES AND HUMANITIES RESEARCH COUNCIL OF CANADA, RESEARCH GRANT COUNCIL OF HONG KONG, POLITICAL STUDIES, MCGILL LAW JOURNAL, UNIVERSITY OF CHICAGO PRESS