

DAVID FONTANA

George Washington University Law School
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EMPLOYMENT

GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Samuel Tyler Research Professor of Law

Recipient of undergraduate, graduate and law school teaching awards
Founder and organizer of annual Comparative Constitutional Law Roundtable, featuring participation by U.S. Supreme Court Justices and foreign constitutional court judges.
Regular member of Appointments Committee and University Research Committees.

HARVARD LAW SCHOOL

Daniel P.S. Paul Visiting Professor of Constitutional Law (spring 2023)

SHORT COURSES

Visiting Professor during the summer at Yale Law School with Steven Teles (Johns Hopkins University); Distinguished Visitor at Boise State University

CONSTITUTIONAL ASSISTANCE PROJECT

Provided expertise to drafters and nonprofit leaders revising constitutions in Libya and Tunisia and meet with visiting drafters from dozens of countries on behalf of the Department of State

HOUSE AND SENATE JUDICIARY COMMITTEES

Regularly brief Senate and House members and staffers and testify on constitutional issues and judicial nominations

**HON. DOROTHY W. NELSON, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,
LAW CLERK, 2005-2006**

ACADEMIC PUBLICATIONS

My research focuses on two primary themes. First, my research focuses on the constitutional dimensions of geographical concentrations of power. Second, my research focuses on the implications of public opinion for constitutional issues.

Books:

GOVERNMENT BY STRANGERS: HOW A FEW NEIGHBORHOODS CONTROL AMERICAN POLITICS AND WHY IT MATTERS (trade press forthcoming 2025)

- Anchored my front-page story for *The Washington Post Magazine*, which was their most widely read magazine story in years
- Served as the basis of stories in *The New York Times*, *The Washington Post*, *The Rolling Stone*, *The Atlantic Monthly*, *Buzzfeed*, *The Los Angeles Times*, *City Lab*, and *Slate*
- Article cited by one Senator on the floor of the Senate as “the constitutional idea for our time”
- Served as the basis for an article forthcoming in both political science and law review journals

Full-Length Articles:

Private Supreme Courts (with David Schleicher), ARIZONA LAW REVIEW (forthcoming 2024)

- Authored a popular version for *Slow Boring*
- Featured in National Basketball Association’s annual conference

Unsexung Pregnancy (with Naomi Schoenbaum), 119 COLUMBIA LAW REVIEW 309 (2019)

- Subject of a story in *The Washington Post* calling the article a needed “bigger solution” addressing gender inequality
- For essay responding to article, see Jessica Clarke, *Pregnant People*, 119 COLUMBIA LAW REVIEW ONLINE 173 (2019)

Federal Decentralization, 104 VIRGINIA LAW REVIEW 728 (2018)

- Served as the basis of my front-page story in *The Washington Post Magazine*, which was one of the most viewed *Washington Post Magazine* stories ever and the subject of radio and television coverage
- Covered in *The New York Times*, *The Washington Post*, *The Los Angeles Times*, *The Atlantic Monthly*, *The Washingtonian*, *City Lab*

Institutional Loyalties in Constitutional Law (with Aziz Z. Huq), 85 UNIVERSITY OF CHICAGO LAW REVIEW 1 (2017)

The Geography of Campaign Finance Law, 90 SOUTHERN CALIFORNIA LAW REVIEW 1247 (2016)

- Mentioned by *Slate* as the idea that “could upend the campaign finance landscape”
- Served as the basis of an amicus brief filed in a Ninth Circuit case and then the basis of the dissenting opinion by Judge Sidney Thomas accepting the position of the amicus brief and the article
- Served as the basis of a symposium at William & Mary Law School
- Currently motivating enacted state initiatives and city ordinances in five different jurisdictions

Judicial Backlash or Just Backlash? Evidence From A National Experiment (with Donald Braman), 112 COLUMBIA LAW REVIEW 731 (2012)

- Published results for popular press in *John Roberts Says People Want the “Democratic Process” to Decide Gay Marriage. He’s Wrong*, THE WASHINGTON POST, April 29, 2015 and *Supreme Anxiety*, THE NEW REPUBLIC, Jan. 11, 2012
- Cited in several Supreme Court briefs, newspaper stories and judicial opinions, and featured on National Public Radio, *All Things Considered*

- Awarded George Washington University Policy Research Scholar and University Facilitating Fund grants to complete experiments to apply for National Science Foundation funding

The Rise and Fall of Comparative Constitutional Law in the Post-War Era, 36 YALE JOURNAL OF INTERNATIONAL LAW 1 (2011)

- Translated into French and German
- Reprinted in COMPARATIVE CONSTITUTIONAL LAW (Mark Tushnet ed., forthcoming).

The Permanent and Presidential Transition Models of Political Party Policy Leadership, 103 NORTHWESTERN UNIVERSITY LAW REVIEW 1993 (2010)

Government in Opposition, 119 YALE LAW JOURNAL 548 (2009)

The Second American Revolution in the Separation of Powers, 87 TEXAS LAW REVIEW 1409 (2009)

The Current Generation of Constitutional Law, 93 GEORGETOWN LAW JOURNAL 1061 (2005)

Reforming the Administrative Procedure Act: Democracy Index Rulemaking, 74 FORDHAM LAW REVIEW 81 (2005)

Thomas Jefferson Counts Himself Into the Presidency (with Bruce Ackerman), 90 VIRGINIA LAW REVIEW 551 (2004)

- Published for popular press in *How Jefferson Counted Himself In*, THE ATLANTIC MONTHLY, March 2004

A Case for the Twenty-First Century Constitutional Canon: Schneiderman v. United States, 35 CONNECTICUT LAW REVIEW 35 (2002)

Refined Comparativism in Constitutional Law, 49 UCLA LAW REVIEW 539 (2001)

Symposium and Other Invited Shorter Articles:

The Problem with Washington as the Capital, THEORETICAL INQUIRES IN LAW (forthcoming 2022)

Destructive Federal Decentralization, WILLIAM & MARY BILL OF RIGHTS JOURNAL (2021)

What Do Constitutional Law Professors Do? 2020 WISCONSIN LAW REVIEW 317 (symposium)

The Promise of Experimental Constitutional Law, in HANDBOOK ON RESEARCH METHODS IN CONSTITUTIONAL LAW (Malcolm Langford and David Law, eds.) (forthcoming 2021)

Forgetting the Place of Politics, HARVARD LAW REVIEW BLOG (2018)

Unbundling Populism, 65 UCLA LAW REVIEW 1482 (2018) (symposium at UCLA Law School on the Trump Administration)

- Reviewed by Hoi Kong, *Clarifying Populism*, JOTWELL (Sep. 10, 2019)

How Do People Think About the Supreme Court When They Care? 93 NYU LAW REVIEW ONLINE 50 (2018) (symposium hosted at NYU Law School on the Trump Administration)

The Second Nature Moment for Originalism, in DIRITTO PUBBLICO COMPARATO ED EUROPEO (Italian public law journal) (dialogue on originalism with Lawrence Solum) (2018)

Nominations Accommodationism, 2017 WISCONSIN LAW REVIEW 285 (symposium on legacy of Obama Administration)

The Administrative Difference of Powers, 116 COLUMBIA LAW REVIEW SIDEBAR 81 (2016) (invited reply to article by Jon Michaels)

Placing the Government in Fragile Democracies, 50 WAKE FOREST LAW REVIEW 985 (2015) (symposium)

The Narrowing of Federal Power by the American Political Capital, 23 WILLIAM & MARY BILL OF RIGHTS JOURNAL 733 (2015) (symposium)

The People's Justice, 123 YALE LAW JOURNAL ONLINE 447 (2014) (symposium covering the jurisprudence of Justice Sonia Sotomayor and featuring Justice Sotomayor)

- Featured in *Sotomayor Finds Her Voice Among the Justices*, NEW YORK TIMES, May 6, 2014; *The People's Justice*, WALL ST. J., April 1, 2014; *This Week With George Stephanopoulos*, June 22, 2014
- Cited by Justice Sotomayor in several of her speeches

Executive Branch Legalities, 124 HARVARD LAW REVIEW FORUM 21 (2012) (essay exchange with Bruce Ackerman and Trevor Morrison)

The Comparative Constitutional Politics of Unenumerated Rights, in ISRAELI CONSTITUTIONAL LAW IN THE MAKING (Israeli Supreme Court Justices Aharon Barak and Daphna Barak-Erez, ed., 2013) (invited essay to book featuring contributions from Constitutional Court Justices and scholars)

Relational Federalism: An Essay In Honor of Heather Gerken, 48 TULSA LAW REVIEW 503 (2012) (symposium contribution honoring Heather Gerken)

Comparative Originalism, TEXAS LAW REVIEW SEE ALSO (2010) (invited reply to article by Jamal Greene)

Obama and the American Civil Religion from the Political Left, 41 GEORGE WASHINGTON UNIVERSITY INTERNATIONAL LAW REVIEW 909 (2010) (symposium)

Docket Control and the Success of Constitutional Courts, in HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW (2010) (Tom Ginsburg and Rosalind Dixon, editors)

The Imperialism of American Constitutional Law, 56 AMERICAN JOURNAL OF COMPARATIVE LAW 1085 (2008) (reviewing book by Ronald J. Krotoszynski, Jr.)

A Defense of the Supreme Court's Use of Foreign Law, 24 INTERNATIONAL LITIGATION QUARTERLY 8 (2008) (symposium)

The Next Generation of Transnational/Domestic Constitutional Law Scholarship: A Reply to Professor Tushnet, 38 LOYOLA OF LOS ANGELES LAW REVIEW 445 (2005)

Works-in-Progress:

Suppressing Local America (with Charles Hunt, Assistant Professor of Political Science at Boise State University) (reporting results of survey experiments testing whether citizens desire local candidates but are not given an opportunity to choose them) (recipient of several major sources of research funding) (under submission at political science journals)

The Sotomayor Style (with Christopher Krewson, Assistant Professor of Political Science at BYU) (theorizing about Justice Sonia Sotomayor's public appearances and presenting empirical results testing the effects of these appearances) (recipient of Fletcher Jones Research Award)

- Previewed arguments in *Can The Supreme Court Learn To Speak Up For Itself?* WASHINGTON POST MAGAZINE, February 26, 2020
- Reviewed by Paul Horwitz, *We Care*, JOTWELL (Nov. 4, 2022)

The Networked Constitution (examining how conservative and liberal constitutional law has proceeded differently because of the smaller and therefore tighter conservative legal network)

Testing the Countermajoritarian Difficulty (with Brandon Bartels, Professor of Political Science at George Washington University) (examining whether citizens respond differently to Supreme Court decisions invalidating statutes as opposed to otherwise identical decisions upholding statutes)

- Previewed arguments in *The Justices' Justice*, SLATE, June 29, 2015

POPULAR PUBLICATIONS (COMPLETE LIST AVAILABLE UPON REQUEST)

Approximately one hundred and seventy essays for popular press, including formerly as contributing writer for *The New Republic* and *The Huffington Post* and currently contributing writer for *The Washington Post Magazine*.

America's Hidden Criss of Place and Power, WASHINGTON POST MAGAZINE, Aug. 2, 2021 (reporting results of academic study on how much people are still defined by their places)

Can The Supreme Court Learn To Speak Up For Itself? WASHINGTON POST MAGAZINE, February 26, 2020 (reporting results of academic study on effects on public opinion of statement by

Chief Justice John Roberts responding to President Donald J. Trump) (with Christopher Krewson)

Capital Corporations: The Threat Amazon Poses to Washington, POLITICO MAGAZINE, April 19, 2019

Washington is Now A Cool City. That's Terrible News for American Democracy, WASHINGTON POST MAGAZINE, Cover Story, May 13, 2018

The Case for a Liberal Scalia, SLATE, Feb. 17, 2016 (with former White House Associate Counsel Ian Bassin)

John Roberts Says People Want the "Democratic Process" to Decide Gay Marriage. He's Wrong, THE WASHINGTON POST, April 29, 2015

The Big Money Politics Problems We Need To Talk About, THE HUFFINGTON POST, June 27, 2014

- One of most viewed essays on politics in THE HUFFINGTON POST in the second half of 2014
- Abridged version reprinted in several newspapers

Obama's Shocking Success On Judges Overturns Conventional Wisdom, THE DAILY BEAST, June 9, 2014

- Featured in *Politico's The Playbook* as "What The West Wing is Reading"

The Warren Court Generation is Dying: Who Is Taking Their Place?, SLATE, June 5, 2014

Obama Has Started Making Major Progress on Nominating Judges, and This Might Be His Most Important One Yet, THE NEW REPUBLIC ONLINE, May 13, 2014

- Discussed by Senator Charles Grassley (R-IA) during Senate Judiciary Committee hearings on June 24, 2014

Another Arab Spring Moment That Matters, THE HUFFINGTON POST, Aug. 1, 2013 (with Duncan Pickard)

- Translated into Arabic and reprinted in newspapers in Egypt, Libya and Tunisia

Sonia Sotomayor: How She Became the Public Face of the Supreme Court's Liberal Wing, THE NEW REPUBLIC ONLINE, June 29, 2011

- Featured on National Public Radio, *All Things Considered*

Making Democracy Work, THE WASHINGTON POST, Oct. 3, 2010

Elizabeth Warren for the Supreme Court, SLATE, Apr. 7, 2010 (with Seth Grossman)

Old World, THE NEW REPUBLIC ONLINE, July 17, 2009 (with Micah Schwartzman)

Whose Prisoners Are They, Anyway?, SLATE, Apr. 7, 2010 (with Justin Florence)

PRESENTATIONS (COMPLETE LIST AVAILABLE UPON REQUEST)

I have presented my scholarship to faculty workshops at forty-nine law schools, thirteen political science departments and five sociology departments. I have also presented my scholarship to universities in Australia, Canada, China, Germany, Israel, Libya, Norway, Portugal, Spain, Tunisia, Taiwan, and the United Kingdom. I am a regular participant in events at the American Constitution Society, the Brennan Center, and the Federalist Society.

OTHER PROFESSIONAL ACTIVITIES

Term Member, Council on Foreign Relations

Founding Board of Editors, Journal of Constitutional Law in the Middle East and North Africa

Referee for *Harvard Law Review*, *Yale Law Journal*, *University of Chicago Law Review*, *Stanford Law Review*, *Columbia Law Review*, *Virginia Law Review*, *American Political Science Review*, *American Journal of Political Science*, *Comparative Political Studies*, *Law & Social Inquiry*, *Law & Society Review*, *American Sociological Review*, as well as for Harvard University Press, Yale University Press, Oxford University Press and Cambridge University Press