

“National Sovereignty and Allegiance in the Age of Mass Migration”
Panel Proposal for the American Society for Legal History Annual Meeting, 2009

Panel Members: [Contact person: Lucy Salyer]

William Forbath, University of Texas: Chair and Commentator [wforbath@law.harvard.edu]

Lucy E. Salyer, University of New Hampshire: “Exits: Forming International Rules on Expatriation” [Lucy.Salyer@unh.edu]

Matthew Lindsay, Climenko Fellow, Harvard Law School: “A Power “Inherent in Sovereignty and Essential to Self-Preservation”: National Security and the Origins of the Federal Immigration Power” [mlindsay@law.harvard.edu]

Candice Bredbenner, University of North Carolina, Wilmington: “Pacifists, Naturalization, and the Rebirth of the ‘Attachment’ Standard” [bredbennerc@uncw.edu]

Panel Abstract

This panel asks how the “unsettling” of much of Europe and Asia in the nineteenth and early twentieth centuries, when millions of individuals immigrated to the United States, shaped United States’ policies toward immigration and citizenship and its development as a modern nation state. Each paper highlights the creative legal mechanisms and interpretations employed by administrative officials and judges to enhance national sovereignty over immigrants and citizens in the effort to police the physical and political borders of the United States. Lucy Salyer’s paper analyzes the novel Naturalization Treaties the United States negotiated with a number of European powers in the nineteenth century which guaranteed the rights of migration and expatriation, that is, the right to change one’s allegiance. Though the new treaties, informed by the liberalism of international law pioneers such as Francis Lieber, seemed to privilege the individuals’ right to change their political homes, Salyer argues that the Naturalization Treaties and the “rules of exit” they specified actually served to bolster the power of emerging nation states to delineate their jurisdiction and assert their sovereignty more clearly. In the final decade of the nineteenth century, the Naturalization Treaties found a counterpart in a newly robust and exclusive federal immigration power. Matthew Lindsay argues that the architects of that power believed that unchecked immigration had created a state of national emergency, and forged the immigration power into an instrument of national self-defense inherent in the nation’s sovereignty, essential to the preservation of republican government, and insulated against judicially enforceable constitutional constraints. Increasingly, only those immigrants who were willing to fight and shed blood for the American republic were deemed worthy as new citizens, as Candice Bredbenner reveals. In the aftermath of World War I and the passage of the nation’s most restrictive immigration policies, government officials, argues Bredbenner, zealously guarded the gates of citizenship by insisting that the naturalization requirement that prospective citizens be “attached to the principles of the Constitution” justified the denial of naturalization to pacifists who refused to bear arms to defend the country.

PAPER ABSTRACTS:

“Exits: Forming International Rules on Expatriation”

Lucy E. Salyer, Associate Professor, University of New Hampshire

In this paper, I explore a major development in the international law of citizenship: the recognition of the right to give up one’s citizenship and pledge allegiance to a new sovereign. In the 1860s and 1870s, the United States signed naturalization treaties with a number of European countries – most importantly, with the North German Confederation in 1868 and England in 1870 – which, for the first time, recognized the rights of individuals to migrate and change their political allegiance. I analyze the expanding recognition of the right of expatriation as related to the effort of emerging nation states in the mid-nineteenth century to delineate their jurisdiction and assert their sovereignty, especially in the wake of massive emigration. As historian Nancy L. Green argues, the little studied “rules of exit” developed in new expatriation policies and treaties were as significant as immigration laws in deploying state strategies for managing populations, forging national identities, and building modern nation states.

While countries might allow – and at times encourage – their subjects to emigrate, they did not relinquish their claims to the emigrants’ allegiance and often refused to recognize their natives’ new status as naturalized American citizens. Diplomatic tensions flared when nation states made competing claims to the same citizen/subject, pressing them into military service, or forbidding them from leaving. This chapter analyzes movements to create new international rules on naturalization and expatriation to avoid such messy disputes and eliminate dual nationality and the conflicting allegiances it engendered. A modern era of nation states, advocates argued, demanded modern theories of citizenship. The paper looks at the architects of these new understandings of citizenship and the modern nation state, focusing in particular upon Francis Lieber, the German-born American intellectual who is best known for formulating the international law of warfare. I argue that the new naturalization treaties affirmed the rights of free migration and expatriation, drawing on the rhetoric of liberal nationalism, but ultimately served to bolster the concrete strategic interests and power of rising nation states.

A Power “Inherent in Sovereignty and Essential to Self-Preservation”:

National Security and the Origins of the Federal Immigration Power

Matthew J. Lindsay, Climenko Fellow, Harvard Law School

In this paper, I examine the historical origins of the modern federal immigration power’s constitutional exceptionalism. Immigration exceptionalism was born in the final decades of the nineteenth century, from an intensifying conflict between the nation’s cherished republican political-economic principles, and the unprecedented social and economic dislocations wrought by the industrialization of the northern economy. A diverse range of policymakers, judges, labor spokesmen, and economists developed a diagnosis of this conflict that centered less on broad structural economic forces, than on the quality of immigrants and immigration. These men reimagined the American polity as a social and political body whose health depended less on the vitality of its political and economic values and institutions, than on the collective natural endowments of its constituent members. European and Chinese laborers’ degraded standards of

living, willingness to work for starvation wages, inability to assimilate, and racial unfitness, they concluded, threatened to destroy the foundations of republican government.

Amid this atmosphere of national emergency, the Supreme Court created an immigration power adapted not to the regulation of labor, economic dependency, or crime—issues that, then as now, characterize most immigration lawmaking—but rather to the defense of the nation against foreign aggression. In concert with Congress and a host of influential policy critics, the Court forged the immigration power into an instrument of national self-defense, to be deployed against invading armies of politically unassimilable, economically degraded, and racially suspect foreign laborers. Though such immigrants were citizens of ostensibly “friendly” nations, policymakers and judges re-imagined them as enemy aliens. This was a form of federal regulatory authority that operated—and still operates today—much as an extension of Congress’ power to conduct foreign affairs and preserve national security. The Court thus transformed the prevailing theory of national sovereignty, from a domain of federal authority defined by specific, constitutionally enumerated powers, to one unmoored from the Constitution, “essential to self-preservation,” and buffered against judicially enforceable constitutional constraints.

Pacifists, Naturalization, and the Rebirth of the ‘Attachment’ Standard

Candice Bredbenner, Associate Professor, University of North Carolina Wilmington

In the 1920s, post-war anxiety over the capacity of American society to assimilate its growing foreign-born population imparted new urgency to debates over the value of citizenship to the individual and the value of the citizen to the state. The most formal expression of these reflections came in the shape of new naturalization laws and policies that reaffirmed the contractual nature of citizenship through their emphasis on the reciprocal responsibilities binding the citizen and the state. In this paper, I will explore a significant development in this interwar history of naturalization, one that highlighted the role of the Bureau of Naturalization and the U. S. Supreme Court in promoting a concept of substantive citizenship that prized action over knowledge and civic conformism over personal conviction.

The earliest manifestation of this policy trend was the Bureau’s introduction of a more exacting standard of evidence for demonstrating “attachment to the principles on the Constitution,” a basic naturalization requirement that had maintained an otherwise inconsequential role in the disposition of citizenship cases since its appearance in 1795. Between 1920 and 1926, the Bureau’s efforts to make more visible the deference to authority implicit in the “attachment” requirement yielded the rejection of over 30,000 citizenship petitions. One striking example of this intensifying scrutiny of naturalization petitioners’ beliefs and actions was the denial of U. S. citizenship to pacifist men and women on the grounds that their convictions represented a repudiation of a fundamental Constitutional principle—the government’s power to raise an army. The four pacifist naturalization cases considered by the Supreme Court between 1929 and 1941 will be the main focus of my paper. I will examine how each petitioner’s case, while sharing the same fate and fatal reasoning, highlighted different aspects of the federal government’s employment of naturalization policies to promote obedience to the state through the articulation and enforcement of a common set of civic duties.

LUCY E. SALYER

Department of History
Horton Social Science Center
University of New Hampshire
Durham, NH 03824

(603) 862-3021 (W)
(603)436-5273 (H)
Fax: 603-862-0178
e-mail: Lucy.Salyer@unh.edu

EDUCATION

Ph.D., Jurisprudence and Social Policy, University of California, Berkeley, 1989
M.A., Jurisprudence and Social Policy, University of California, Berkeley, 1983
B.A., University of California, San Diego, 1979

PROFESSIONAL EXPERIENCE

Associate Professor, University of New Hampshire, Department of History, 1995-present
Assistant Professor, University of New Hampshire, Department of History, 1989-95

HONORS AND AWARDS

Law & Society Association, Award for Best Article in Sociolegal Studies, July 2005
Radcliffe Institute for Advanced Study, Fellowship, 2003-04
American Council for Learned Societies, Fellowship, 2003-04
Arthur K. Whitcomb Professor, University of New Hampshire, 2002-05
Senior Faculty Fellow, Center for the Humanities, University of New Hampshire, 1996-97
Theodore Saloutos Memorial Book Award in American Immigration History, 1995
(for Laws Harsh as Tigers)
National Endowment for the Humanities, Fellowship, 1991-92
National Endowment for the Humanities, Summer Stipend, 1991 (declined)
American Council for Learned Societies, Fellowship for Recent Recipients of the Ph.D.,
1991-92 (declined)
Judicial Conference of the United States, Committee for the Bicentennial of the Constitution,
Summer Stipend, 1991
Louis Pelzer Memorial Award, Organization of American Historians, 1988
(Prize for the best essay in American History written by a graduate student)

PUBLICATIONS

Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law,
University of North Carolina Press, 1995 (awarded Theodore Saloutos Memorial Book
Award by the American Society for Immigration and Ethnic History)

“*Chew Heong v. United States: Chinese Exclusion and the Federal Courts*,” in *Federal Trials
and Great Debates in United States History*, Federal Judicial History Office, Federal
Judicial Center, 2006 <<http://www.fjc.gov/history/home.nsf>>; Reprinted in *Social
Education*, Nov/Dec. 2007

[SALYER, cont'd]

“Wong Kim Ark and the Battle over Birthright Citizenship,” in Immigration Law Stories, ed. David Martin and Peter Schuck, (Foundation Press, 2005).

“Baptism by Fire: Race, Military Service, and U.S. Citizenship Policy, 1918-1935, Journal of American History 91 (December 2004).

“A Progressive Judiciary: The California Supreme Court and Judicial Reform in the Progressive Era,” California Supreme Court Historical Society Yearbook, 1996-97 (1998): 103-20.

"Interdisciplinary Team Teaching: Women, Law and Culture," co-authored with Lisa MacFarlane, Focus on Law Studies 10 (Spring 1995): 8.

"Captives of Law: Judicial Enforcement of the Chinese Exclusion Laws, 1891-1905," in Charles McClain, ed., Asian Immigrants and American Law: Historical and Contemporary Perspectives (Garland Publishing Co., 1994).

"Laws Harsh as Tigers': Enforcement of the Chinese Exclusion Laws, 1891-1924," in Entry Denied: Exclusion and the Chinese Community in America, 1882-1943, ed. Sucheng Chan, Temple University Press, 1991.

"The Constitutive Nature of American Law," Legal Studies Forum, v. 15 no. 1, 1991.

"Captives of Law: Judicial Enforcement of the Chinese Exclusion Laws, 1891-1905," Journal of American History, v. 76 no. 1, June 1989.

Numerous book reviews in Journal of American History, Journal of Southern History, Law and History Review.

PROFESSIONAL ACTIVITIES

Board of Trustees, Law & Society Association, 2009-2012

Board of Directors, American Society for Legal History, 2002-2005

Editorial Board, Law and History Review, 1995-present

Advisory Board, University Press of New England, 1998-present

Membership Committee, Organization of American Historians, 1992-96

Member, American Society for Legal History, Organization of American Historians, and the Immigration History Society

MATTHEW J. LINDSAY

Harvard Law School, Griswold 1 North
1525 Massachusetts Avenue
Cambridge, MA 02138
617-496-4660(o) / 617-595-6605(m) / 617-498-0707(h)
mlindsay@law.harvard.edu

EDUCATION

Yale Law School, New Haven, CT

J.D., 2002

Yale Law Journal, Senior Editor; *Yale Journal of Law and Feminism*, Editor;
Research Assistant for Professor Owen Fiss; Teaching Assistant for Professor Robert
Gordon

University of Chicago, Chicago, IL

Ph.D., History, June 2009 (expected)

Dissertation: "Preserving the Exceptional Republic: Law, Sovereignty and the
Origins of the American Immigration Power" (Director: Amy Dru Stanley)
Honors: Winning Essay, *Law and Social Inquiry* Graduate Student Essay Contest,
1998; Departmental Fellowship Award, 1995-1998
Activities: Committee to Improve Writing Instruction in the Social Sciences; Legal
History Workshop; Gender and Society Workshop, Co-Coordinator

M.A., History, 1995

Honors: Departmental Fellowship Award, 1994-1995

University of California, Irvine, Irvine, CA

B.A., triple major in History, Philosophy, and Comparative Literature, 1993

Honors: *Cum Laude*; Phi Beta Kappa

EXPERIENCE

Harvard Law School, Cambridge, MA, 2007-present

Climenko Fellow and Lecturer on Law. Taught "Legal Research and Writing" to
first-year law students; researched the federal immigration power.

Foley Hoag LLP, Boston, MA, 2005-2007

Associate. Practiced patent litigation and administrative law, with a specialty in
federal regulation of medical technologies.

American Academy of Arts and Sciences, Cambridge, MA, 2003-2005

Program Director, Program on Congress and the Courts (2004-2005). Coordinated
research projects on statutory interpretation, the career paths of federal judges, and
the constitutional dimensions of the United States' national security policy.

[LINDSAY]

Visiting Scholar (2003-2005). Awarded a post-J.D. fellowship in support of research on the meaning of racial equality in the post-civil-rights era, and the federalization of American immigration law.

The Honorable Louis H. Pollak, Senior U.S. District Judge, E.D. Pa., Philadelphia, PA, 2002-2003

Judicial Clerk. Researched and drafted a wide variety of trial- and appellate-level memoranda, orders, and opinions.

Dechert LLP, Philadelphia, PA, Summer 2002.

Summer Associate. Researched and drafted memoranda, litigation motions, and briefs on libel and intellectual property law.

Yale Law School, New Haven, CT, 2000-2002

Research Assistant for Professor Owen Fiss. Prepared memoranda and edited article manuscripts on residential desegregation and free speech.

Teaching Assistant for Professor Robert Gordon. Led weekly discussions, advised students on their writing, and graded essays and exams for “American Legal History.”

University of Chicago, Department of History, Chicago, IL, 1998

Lecturer in History. Delivered lectures, led class discussions, and designed assignments and exams on the history of the United States in the colonial and revolutionary periods.

PUBLICATIONS AND WORKS IN PROGRESS

How Antidiscrimination Law Learned to Live with Racial Inequality, 74 UNIVERSITY OF CINCINNATI LAW REVIEW 87 (2006)

Preserving the Exceptional Republic: Race, Economic Pathology, and the Federalization of American Immigration Law, 17 YALE JOURNAL OF LAW & HUMANITIES 181 (2005)

Reproducing a Fit Citizenry: Dependency, Eugenics, and the Law of Marriage in the United States, 1860-1920, 23 LAW AND SOCIAL INQUIRY 541 (1998)

“A Power ‘Inherent in Sovereignty and Essential to Self-Preservation’: National Security and the Origins of the Federal Immigration Power” (article in progress)

“Preserving the Exceptional Republic: Law, Sovereignty, and the Origins of the Federal Immigration Power” (Ph.D. dissertation in progress, University of Chicago)

BAR ADMISSION

Massachusetts

CANDICE BREDBENNER

Morton Hall
Department of History
University of North Carolina Wilmington
601 South College Road
Wilmington, North Carolina 28403
bredbennerc@uncw.edu

EDUCATION

1990	University of Virginia	Ph.D., History
1983	University of Virginia	M.A., History
1978	Russell Sage College	B.A., History

ACADEMIC APPOINTMENTS

2008-	Associate Professor	University of North Carolina Wilmington
1996-2008	Associate Professor	Arizona State University
1990-1996	Assistant Professor	Arizona State University
1987-1989	Instructor	University of Virginia

ADMINISTRATIVE APPOINTMENTS

2002-2007	Associate Dean Interdisciplinary Arts and Sciences	Arizona State University
2001-2002	Assistant Dean Arts and Sciences	Arizona State University
2002-2007	Director M.A. in Interdisciplinary Studies	Arizona State University
2000-2001	Co-Chair American Studies Department	Arizona State University
1999-2000	Programs Coordinator American Studies Department	Arizona State University

PUBLICATIONS

BOOKS

A Nationality of Her Own: Women, Citizenship, and the Politics of Marriage (University of California Press, 1998) *Choice* Outstanding Academic Book, 1998 (U. S. Politics)

REFEREED JOURNALS

"Defining the Woman Citizen: Marriage As a Measure of Feminine Patriotism," Cañon: The Journal of the Rocky Mountain American Studies Association, Vol.1 (Spring 1994) 29-39

"The Case of the `Lovelorn Jewish Wives': Gender Bias and the Response to Immigration in the Great Depression," Prologue. Quarterly of the National Archives and Records Administration, Vol. 31 (Spring, 1999) 37-51

[**BREDBENNER**, cont'd]

PUBLISHED PROCEEDINGS

"The Burden of Dependency: The Origins of Sex Discrimination in U. S. Immigration Policy." The Proceedings of the Third Women's Policy Research Conference, "Exploring the Quincentennial: The Policy Challenges of Gender, Diversity, and International Exchange" (1994).

"Toward Independent Citizenship. Married Women's Nationality in the United States," presented at the Virginia Humanities Conference, Ashland, VA, April, 1987. Published in the Proceedings of the Virginia Humanities Conference on Citizenship and the Humanities, 1987.

OTHER

Contributor to The Encyclopedia of the Supreme Court of the United States (Macmillan/Gale, forthcoming), Dictionary of Virginia Biography (Virginia State Library, 1998), and The Oxford Companion to Women's Writing in The United States (Oxford University Press, 1995)

2008-9 CONFERENCES

"Military Service and the Obligations of U. S. Citizenship: The Interwar Years," presented at the Joint Annual Meeting of the Law and Society Association and the Canadian Law and Society Association, Montreal, Canada, June, 2008

2008-9 PUBLIC PRESENTATIONS

"The 'W' Legacy," Byline Wilmington, WILM-TV, January 18, 2009

"Women and the Constitution," UNCW-TV interview for Constitution Day, September 12, 2008

"Victoria Woodhull, Presidential Candidate," in conjunction with photographic exhibit, "Women and Politics," UNCW Randall Library, AAUW meeting, September 13, 2008

PROFESSIONAL SERVICE

Manuscript reviews for: University of Illinois Press; *Journal of American History*; *Journal of Women's History*; *Journal of Ethnic and Migration Studies (JEMS)*; *Law, Culture, and the Humanities*; *Polity*; *Journal of American Ethnic History*

William E. Forbath
Lloyd M. Bentsen Chair in Law & Professor of History, UT Austin
wforbath@law.harvard.edu

Education

Ph.D. (American Studies), Yale University, 1992
J.D. Yale Law School, 1983
M.A. (Social and Political Sciences), Trinity College, Cambridge University, 1976
A.B. (English and American History and Literature), Harvard College, 1974

Academic Employment

UT Austin School of Law, Austin, Texas
Visiting Professor of Law, 1995-96
Angus Wynne, Sr. Professor of Law & Professor of History, 1997-2002
Lloyd M. Bentsen Chair in Law & Professor of History,
2002-present

Harvard Law School, Cambridge, MA
Charles Warren Visiting Professor of Legal History
2008-09

Columbia Law School, NY, NY
Visiting Professor of Law, 2001-02

UCLA School of Law, Los Angeles, CA
Professor of Law, 1989-96
Acting Professor of Law, 1984-89

Teaching Fields

Constitutional Law, Legal and Constitutional History, Comparative Constitutional Law

Publications

Books

RECLAIMING THE CONSTITUTION: SOCIAL AND ECONOMIC RIGHTS IN
THE AMERICAN GRAIN (Harvard University Press, Cambridge, MA, forthcoming
2009)

LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT (Harvard
University Press, 1991)

[FORBATH]

THE UNQUIET YEARS, vol. 19 in THE AMERICAN DESTINY: A HISTORY OF THE UNITED STATES (Henry Steele Commager, ed., 1986) (with E. J. Dionne).

Selected Book Chapters, Articles and Reviews - Since 2001

Politics, State-Building, and the Courts, 1870-1920 in Volume II THE CAMBRIDGE HISTORY OF LAW IN AMERICA 643-96, 813-20 (M. Grossberg & C. Tomlins, eds., 2008)

Social and Economic Rights: A Brief Guide to the Constitution of Work and Livelihoods, 11 WORKING USA: J. LABOR & SOC'Y 145-56 (2008)

The Politics of Race, Rights, and Needs – and the Perils of a Democratic Victory in Post-Welfare America: Some Reflections on the Work of Felicia Kornbluh, 20 Yale J. of Law & Feminism 195-211 (2008)

Social and Economic Rights in the American Grain, in THE CONSTITUTION IN 2020 (Jack Balkin & Reva Siegel, eds. Yale U Press, forthcoming 2008) [available on SSRN]

Popular Constitutionalism in the 20th Century: Reflections on the Dark Side, the Progressive Constitutional Imagination, and the Enduring Role of Judicial Finality in Popular Understandings of Popular Self-Rule, 81 CHICAGO-KENT LAW REVIEW 967-90 (2006)

The Long Life of Liberal America: Law and State-Building in England and the U.S., 24 LAW & HISTORY REVIEW 179-92 (2006)

Social Rights, Courts and Constitutional Democracy: Welfare Rights and Poverty in the U.S., 12 DEMOCRATIZATION 5 (2005)

Not So Simple Justice: Theories of Social Rights and the American Constitution, in THEORIES OF SOCIAL AND ECONOMIC JUSTICE 72 (Andre Van der Walt ed.; Stellenbosch, South Africa: African Sun Media, 2005)

The White Court (1910-1921): A Progressive Court?, in THE UNITED STATES SUPREME COURT: THE PURSUIT OF JUSTICE 172 (Christopher Tomlins ed.; Boston: Houghton Mifflin, 2005)

Sarah H. Cleveland, Karen Engle, William Forbath, Barbara Hines, William Powers & Gerald Torres, *Working Borders: Linking Debates About Insourcing and Outsourcing of Capital and Labor* [conference proceedings], 40 TEXAS INTERNATIONAL LAW JOURNAL 663 (2005) (with several others)

[FORBATH]

Labor, in THE OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES (Kermit L. Hall ed.; New York: Oxford University Press, 2005) (with Craig Becker)

Social Rights, Courts, and Constitutional Democracy: Poverty and Welfare Rights in the United States, 12 DEMOCRATIZATION 725 (2005)

The White Court (1910-1921): A Progressive Court? in READER'S COMPANION TO THE SUPREME COURT (Christopher Tomlins, ed. Houghton-Mifflin, 2005)

David Brion Davis and the Historian as Moralist, in Steven Mintz, ed., THE PROBLEM OF EVIL: SLAVERY, RACE, AND THE AMBIGUITIES OF REFORM (U. Mass. Press, 2005)

Social Citizenship in England and America: A Comparative Constitutional History, Oxford J. of Legal Studies (forthcoming)

Social Rights and the Constitution, UT LAW 24 (Winter, 2005)

Comparative Avenues in Constitutional Law, 82 Texas L. Rev. 1653 (2004) (with Larry Sager)

Not So Simple Justice: Frank Michelman on Social Rights, 1969-Present, 39 Tulsa L. Rev. 597 (2004) [Symposium on the Scholarship of Frank Michelman]

Lincoln, the Declaration, and the 'Grisly, Undying Corpse of States' Rights': History, Memory and Imagination in the Constitution of a Southern Liberal, 92 Georgetown Law Journal 709 (2004) [Symposium in Honor of Charles Black]

Rights Stuff (Review of Cass Sunstein, *The Second Bill of Rights* (2004)), American Prospect (Sept. 1, 2004)

Review of George Lovell, *Legislative Deferrals: Statutory Ambiguity, Judicial Power and American Democracy* (2003), 91 Journal of American History 1057 (2004)

The Smart Road Out of Redistricting Quagmire, AUSTIN AMERICAN-STATESMAN, July 19, 2003, at A17.

The Politics of Constitutional Design: Obduracy and Amendability—A Comment on Ferejohn and Sager, 81 Texas L. Rev. 1965 (2003)

Antitrust Laws, Clayton Act, Labor Provisions, Danbury Hatters' Case, Hague v. Committee on Industrial Organizations, International Labor Organization, Labor Injunction, Right to Work Laws, Taft-Hartley Act in Dictionary of American History (Stanley Kutler, ed., 2003)

[FORBATH]

The New Deal Constitution in Exile, 51 Duke Law Journal 165 (2001)

Constitutional Welfare Rights: A History, Critique and Reconstruction in The Constitution and the Good Society (Symposium Issue) 69 Fordham Law Review 1821 (2001)

Work-in-Progress

Realizing a Constitutional Social Right: Cultural Transformation, Deep Institutional Reform, and the Roles of Advocacy and Adjudication in STONES OF HOPE: AFRICAN LAWYERS USE HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY (J. Perelman & L. White, eds. forthcoming) - 65 pp posted on SSRN:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1292879

COURTING THE STATE: LAW AND THE MAKING OF THE MODERN AMERICAN STATE (Cambridge University Press)

RECLAIMING THE CONSTITUTION: SOCIAL AND ECONOMIC RIGHTS IN THE AMERICAN GRAIN (Harvard University Press)