Yale Law School

Yale – Humboldt Consumer Law Lectures

Friday, June 15, 2018, 2-7 p.m.
Humboldt-University, Senatssaal

Prof. Judith Resnik
Arthur Liman Professor of Law, Yale Law School
"The functions of publicity and of privatization in courts and their replacements (from Jeremy Bentham to #MeToo and Google Spain)"

Prof. Reva Siegel
Nicholas deB. Katzenbach Professor of Law, Yale Law School
"Conscience Wars: Religious Refusals to Serve in Health Care and Commercial Settings"

Prof. Robert C. Post
Sterling Professor of Law, Yale Law School
"Data Privacy, Dignitary Privacy, and the Right to be Forgotten"

In the "Yale – Humboldt Consumer Law Lectures", professors from Yale Law School and other leading US law schools present their recent research in the field of consumer law at Humboldt Law School every spring.

The lecture series is organized by Prof. Susanne Augenhofer, LL.M. (Yale). Participation in the event is free of charge.
However, we kindly ask you to register at: https://yhcll2018.eventbrite.de by June 1, 2018.

Prof. Dr. Susanne Augenhofer, LL.M. (Yale)
Lehrstuhl für Bürgerliches Recht und Europäisches Privatrecht, Rechtsvergleichung und Marktregulierung durch Verbraucher- und Wettbewerbsrecht
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Program

2.00 p.m.	Welcome by Professor Susanne Augenhofer and the Vice President for Research of the Humboldt University, Professor Peter A. Frensch
2.15 p.m.	*"The functions of publicity and of privatization in courts and their replacements (from Jeremy Bentham to #MeToo and Google Spain)"* Professor Judith Resnik, Yale Law School
3.15 p.m.	Coffe break
3.45 p.m.	*"Conscience Wars: Religious Refusals to Serve in Health Care and Commercial Settings"* Professor Reva Siegel, Yale Law School
4.45 p.m.	Break
5.00 p.m.	*"Data Privacy, Dignitary Privacy, and the Right to be Forgotten"* Professor Robert C. Post, Yale Law School
6.00 p.m.	Panel Discussion

The event will be followed by a reception.

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Judith Resnik

Judith Resnik is the Arthur Liman Professor of Law at Yale Law School. Her scholarship focuses on the impact of democracy on government services, from courts and prisons to post offices, on the relationships of states to citizens and non-citizens, on the forms and norms of federalism, and on equality and gender.

Professor Resnik now chairs Yale Law School's Global Constitutional Law Seminar, a part of the Gruber Program on Global Justice and Women's Rights. She is the editor of the volumes, published as e-books, from 2012 forward, including Reconstituting Constitutional Orders (2017), and The Reach of Rights (2015). Professor Resnik's books include Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms (with Dennis Curtis, Yale University Press, 2011).

She has chaired the Sections on Procedure, on Federal Courts, and on Women in Legal Education of the American Association of Law Schools. Professor Resnik is a Managerial Trustee of the International Association of Women Judges. She served as a founder and, for more than a decade, as a co-chair of Yale University's Women Faculty Forum, begun in 2001.

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"The functions of publicity and of privatization in courts and their replacements (from Jeremy Bentham to #MeToo and Google Spain)"

Judith Resnik

This paper explores both the doctrinal commitments to and normative foundations of "openness" in courts in the context of changing dispute resolution processes in which "alternatives" to court (including online dispute resolution techniques) are coming to the fore. In the ADR/ODR literature, little attention has been paid to the role and the function of an audience, serving not only in Benthamite terms as the "tribunal of public opinion" but also as a required participant in resolutions of disputes having the force of law within democratic political orders. #MeToo is one reminder of Bentham's arguments that publicity has disciplinary functions, while Google Spain illustrates not only the harms of the too-easy access to information that delisting aims to buffer against but also how corporations function as courts, deciding tens of thousands of claims and balancing public and private interests.

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Reva Siegel

Reva Siegel is the Nicholas deB. Katzenbach Professor of Law at Yale Law School. Professor Siegel's writing draws on legal history to explore questions of law and inequality and to analyze how courts interact with representative government and popular movements in interpreting the Constitution.

Professor Siegel received her B.A., M. Phil. and J.D. from Yale University, clerked for Judge Spottswood Robinson on the D.C. Circuit, and began teaching at the University of California at Berkeley.

She is a member of the American Academy of Arts and Sciences and an honorary fellow of the American Society for Legal History, and serves on the board of the American Constitution Society and on the General Council of the International Society of Public Law.

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"Conscience Wars: Religious Refusals to Serve in Health Care and Commercial Settings"

Reva **Siegel**

The basic question concerns religious exemptions from laws of general applicability—more specifically, whether a health care provider or a business can claim a religious conscience-based refusal to serve a patient or a customer. Under the ECHR, are there any limits on laws authorizing doctors to refuse to perform abortions, or laws requiring pharmacists to sell contraception? (P. and S. v. Poland; Pichon and Sajous v. France) Can an inn refuse to serve a same-sex couple? (Bull v. Hall-UK) This year courts are deciding two high-profile cake cases that raise religious refusal questions. Can a business claim exemption from antidiscrimination laws and refuse to sell a wedding cake to a same-sex couple (Masterpiece Cakeshop-US) or a cake that says "Support Gay Marriage" (Lee v. Ashers Baking Co.-UK)?

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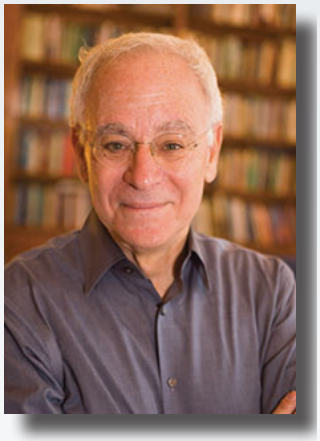
Robert C. **Post**



Robert Post is a Sterling Professor of Law at Yale Law School, and served as the School's 16th dean, from 2009 until 2017. Before coming to Yale, he taught at the University of California at Berkeley School of Law. Post's subject areas are constitutional law, First Amendment, legal history, and equal protection. He has written and edited numerous books, including Citizens Divided: Campaign Finance Reform and the Constitution, which was originally delivered as the Tanner Lectures at Harvard.

He is a member of the American Philosophical Society and the American Law Institute and a fellow of the American Academy of Arts and Sciences as well as a former member of the Board of Directors of the American Constitution Society.

Professor Post has an A.B. and a Ph.D. in History of American Civilization from Harvard University and a J.D. from Yale Law School.

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"Data Privacy, Dignitary Privacy, and the Right to be Forgotten"

Robert C. **Post**

Norms of privacy are grounded in social practices. When social practices are unsettled and rapidly evolving, as they are in digital space, these norms are subject to confusion and uncertainty. A good example is the recent decision of European Court of Justice ("CJEU") in Google Spain SL v. Agencia Española de Protección de Datos ("AEPD") ("Google Spain"), which created the "right to be forgotten." The CJEU derived the right to be forgotten from (the former) Directive 95/46/EC ("Directive"), which is arguably the most influential privacy document in the world. The Directive imagines digital data as stored in a space of instrumental reason, as it is when data is compiled and processed by large bureaucratic organizations. The Directive protects data privacy in order to maximize the control of data by data subjects. But the CJEU applied the right to be forgotten to public discourse in the public sphere. The instrumental logic of data privacy is inappropriate to the communicative action of the public sphere, as is the value of "control." Instead the CJEU should have conceptualized the right to be forgotten to safeguard the dignitary privacy that courts have applied to public discourse for more than a century. Dignitary privacy ensures civility within public debate. It focuses on communicative acts, rather than data. And it requires an assessment of harm to public discourse. All of these concepts are foreign to the analytic framework of data privacy. The CJEU's confusion between data privacy and dignitary privacy leads to inconsistencies and logical deficiencies in its opinion, which are unlikely to have occurred were the court to have focused on the ordinary print media of the public sphere.

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