New Political Science

ISSN: 0739-3148 (Print) 1469-9931 (Online) Journal homepage: https://www.tandfonline.com/loi/cnps20

The Great American Rights Bake Off: Freedom of Religion v. Freedom from Discrimination

Chelsea Ebin & J. Ricky Price

To cite this article: Chelsea Ebin & J. Ricky Price (2019) The Great American Rights Bake Off: Freedom of Religion v. Freedom from Discrimination, New Political Science, 41:4, 588-603, DOI: 10.1080/07393148.2019.1686736

To link to this article: https://doi.org/10.1080/07393148.2019.1686736

NEW POLITICAL SCIENCE
2019, VOL. 41, NO. 4, 588–603
https://doi.org/10.1080/07393148.2019.1686736

Routledge
Taylor & Francis Group

ARTICLE

The Great American Rights Bake Off: Freedom of Religion v. Freedom from Discrimination

Chelsea Ebin[a] and J. Ricky Price[b]

[a]Department of Political Science, Rollins College, Winter Park, FL, USA; [b]Political Science Department, Hobart and William Smith Colleges, Geneva, NY, USA

ABSTRACT

Progressive actors are losing the battle to protect LGBT and reproductive rights from conservative claims of a right to religious discrimination. Increasingly, we are witnessing legal challenges premised on the ground that religious actors' First Amendment rights and women's and LGBT rights to equal protection and public accommodation are in conflict. This article contextualizes so-called "competing rights" claims within a longer political and legal history. We utilize a discursive institutionalist framework to assess the strategies used both by conservative political actors promoting a "competing rights" agenda and by LGBT activists focused on narrative change and marriage equality. Finding the limited strategy adopted by marriage equality activists cannot effectively withstand the legal challenge mounted by those claiming "competing rights," we propose a new strategy for resistance premised on a strict interpretation of church/state separation and suggest a strategy for preserving and expanding public accommodation law through the creation of intersectional coalitions.

Wedding Cakes and Competing Rights

Wedding cakes have emerged as a site of contestation, rather than celebration, in competing claims for equality, liberty, and rights in the United States. In *Masterpiece Cakeshop LTD. v. Colorado Civil Rights Commission*, a devout Christian baker charged that the Colorado Civil Rights Commission infringed on his First Amendment rights by forcing him to sell his "artistic expression" to a same-sex couple who offended his religious beliefs. The Supreme Court not only ruled that the Colorado Civil Rights Commission violated the Free Exercise clause by demonstrating hostility to the baker's religious beliefs, but also ruled that wedding cakes are an "expressive statement," which conveys a "wedding endorsement in his [the baker's] own voice and his own creation."[1]

In short, we have arrived at a political moment when religious actors are claiming a right to be exempted from anti-discrimination laws on the grounds of Free Exercise rights. The Equal Protection and Due Process rights of those seeking cover from discriminatory action are understood as conflicting with the First Amendment's Free Speech and

CONTACT Chelsea Ebin cebin@rollins.edu Department of Political Science, Rollins College, CSS Room 236, 1000 Holt Avenue, Winter Park, FL 32789, USA

[1]Masterpiece Cakeshop v. Colorado, 584 US ____ (2018).

Free Exercise rights of religious believers. This conflict was on clear display in the oral arguments presented when the Court heard *Masterpiece Cake v. Colorado* – and was advanced by the Court's decision in the case. The *Masterpiece* case hinges on the petitioner's claim that being forced to comply with anti-discrimination laws infringes on his First Amendment rights, on the grounds that cake-making is a form of expressive art and to be forced to bake a cake for a same-sex wedding would constitute a violation of his rights on Free Speech, Compelled Speech, and Free Exercise grounds. The Court's narrow decision was heralded as a win by both sides. However, Kennedy's majority opinion should be read as further empowering religious conservatives to claim their rights should be given primacy over the rights of others.

While generally regarded as a limited ruling, when viewed with a longer-range lens that surveys the rise of religious freedom claims against the backdrop of LGBTQ movements for marriage equality, the majority decision in *Masterpiece* dealt a devastating blow to equality and anti-discrimination claims. The decision not only left open the door to future legal battles, but it also gave credence to claims that there is a fundamental conflict between one (religious) man or woman's individual liberty and the political equality of a minority group. By entertaining the claim that religious free expression justifies overt discrimination, the *Masterpiece* decision undermines fundamental democratic values of equality and suggests that there is a hierarchy of rights. Within the hierarchy suggested by *Masterpiece*, the rights of LGBTQ people to live without discrimination and the rights of women to choose their reproductive choices fall well below those of proponents of religious liberty.

The "conflicting rights" paradigm creates a false dichotomy: religious conservatives pit Free Exercise claims against anti-discrimination protections in a zero-sum battle over equal treatment under the law. Advances in anti-discrimination protections for LGBT individuals and women are perceived as an attack on the rights of religious believers; more rights for some are understood as fewer rights for others. In the wake of the *Masterpiece* decision and ongoing religious Free Exercise claims,[2] how should we square the circle of the competing rights narrative? Does the protection of LGBT individuals, divorced and unmarried couples, single parents, and sexually active women necessarily infringe on the rights of religious believers? Alternatively, are religious believers seeking to radically reinterpret the scope of Free Exercise rights by claiming an entitlement to exemptions from the law in the public sphere?

We seek to demonstrate how affective claims of spiritual harm by religious actors, built in no small part by co-opting the success of affective claims of the marriage equality movement, pose serious material harm to women and sexual and racial minorities. Liberal rights campaigns for same-sex marriage, which focused on vague notions of private equality rather than substantive public rights, opened the door for the emergence of conflicting rights battles. We argue that the limited private sphere protections garnered through victories like *Roe v. Wade, Lawrence v. Texas*, and *Obergefell v. Hodges*[3] have paved the way for the Religious Right's recent successes, which are advanced on the grounds of spiritual harm caused by having to accommodate the rights of sexually active women and

[2]See, for example, recent developments allowing a privately operated, religiously affiliated but state-funded South Carolina adoption facility to discriminate against prospective parents on the basis of their religion. Don Byrd, "Lawsuit Challenges New Policy Allowing Religious Discrimination by Tax-Funded Agencies," *Baptist Joint Committee for Religious Liberty* (February 16, 2014), available online at: https://bjconline.org/lawsuit-challenges-new-policy-allowing-religious-discrimination-by-tax-funded-agencies/.

[3]*Roe v. Wade*, 410 U.S. 113 (1973); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 576 US ___ (2015).

sexual minorities publicly. How the Court decides competing rights in the near and long term has the potential to impact civil rights law and discourse for generations to come.

Although competing rights claims are anticipated to pose a continued and significant threat to women,[4] our primary focus in this article is on the relationship between the development of LGBT rights claims and religious freedom claims. We aim to advance a better understanding of how arguments for equality have moved from being the provenance of unprotected minority communities to the ground on which majoritarian claims of religious discrimination and disenfranchisement are staked. We examine the development and logics of an expansive conception of religious freedom, identify corollary developments and logic of equal rights for the LGBT community, and provide two brief illustrative studies in the application of these competing communicative and coordinative discourses.[5] We highlight how discrimination has come to be viewed as an expressive act protected by the First Amendment, which increasingly trumps anti-discrimination claims on the basis that compelling a private organization or group to include LGBT people would force them to endorse "a lifestyle" they find morally repugnant.

Many, if not all, of the political developments we trace can be conceptualized within the framework of discursive institutionalism.[6] While we take seriously the need to assess institutional constraints and opportunities afforded by the legislative and juridical systems from a historical vantage, we also contend that the conflict between religious freedom and equal rights advocates has played out on the battlefield of ideas using an array of discursive weapons. Competing rights claims speak to a fundamental conflict over normative political concepts and definitions of the nation's "deeper core of (third level) principles and norms of public life."[7] Religious freedom advocates believe the United States is a Christian nation and ascribe to an illiberal conception of rights that draws on the republican tradition. Anti-discrimination advocates, on the other hand, view the nation as necessarily pluralist and draw on democratic values of equality and an expansive conception of a broadly accessible liberal rights regime. Following Vivien Schmidt's classificatory scheme, we argue that both sides of this conflict have adopted coordinative discourses, consisting of the "creation, elaboration, and justification of policy and programmatic ideas," and communicative discourses, consisting of the "presentation, deliberation, and legitimation of political ideas to the general public," to advance their respective positions.[8]

This long view of legal battles points to the multiple ways that neoliberal practices use non-market institutions, like the law, to restructure social relations. As Ian Bruff notes in his work on the rise of authoritarian neoliberalism since 2007, " … formally nonmarket areas of social life took on a particularly important role in neoliberal ideology," thereby mobilizing " … institutional power in a variety of ways."[9] The extension of religious rights to corporations through *Hobby Lobby v. Burnell*, and the extension of free speech rights in the form of "corporate personhood" in *Citizens United v. FEC*, which we detail below, are prime examples of neoliberal

[4]The Public Rights/Private Conscience Project, "Unmarried and Unprotected: How Religious Liberty Bills Harm Pregnant People, Families, and Communities of Color" (New York, NY: Center for Gender and Sexuality Law, Columbia Law School, 2017).
[5]We borrow the idea of coordinative and communicative discourses from Vivien A. Schmidt's "Discursive Institutionalism: The Explanatory of Ideas and Discourse," *Annual Review of Political Science* 11 (2008), pp. 303–26, 310.
[6]Ibid., 304.
[7]Ibid., 307.
[8]Ibid., 310.
[9]Ian Bruff, "The Rise of Authoritarian Neoliberalism," *Rethinking Marxism* 26:1 (2014), p. 114.

practices using "nonmarket areas of social life"[10] to strengthen the power of corporations viz-a-viz the state. Corporations and Religious Right activists claiming they have a right to discriminate have turned the courts from a site of protection for sexual minorities and sexually active women into a battleground of competing rights claims. Bruff further notes that " … institutions that are viewed (by way of their genesis in previous eras) as a form of social protection against the often-wrenching nature of socioeconomic restructuring could well be the means by which such [neoliberal] change establishes itself."[11] Our work seeks to demonstrate how this process has actively transpired as the law increasingly is used to disenfranchise sexual minorities and sexually active women. Privacy and anti-discrimination legal protections, such as those granted by *Roe* and *Obergefell*, are now being mobilized against the very groups they initially set out to protect.[12]

We conclude by suggesting a possible way to combat the unchecked expansion of religious freedom as a tool for the eroding of minority rights. We propose that LGBT and women's rights advocates should work in coalition with one another to develop a coordinative discourse that advances the robust expansion of public accommodations law to preserve and expand codified protections for gender and sexuality discrimination. Additionally, we suggest activists eschew the neoliberal communicative discourse developed to advance marriage equality, which is premised on abstracted and privatized conceptions of equality. Instead, we propose utilizing material harm as the basis for producing a public sphere communicative discourse that can be used to challenge conflicting rights claims.

The Evolution of Competing Rights Claims

The First Amendment contains two clauses that delimit our Constitutional rights concerning the freedom of religious practice in American politics: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof … ." As the nineteenth century drew to a close, the First Amendment was interpreted as establishing what Jefferson termed a "wall of separation between church and state" that traversed federal, state, and local terrains. In 1878, the Supreme Court established a precedent that the government could circumscribe the exercise of private religious belief if the government's action was necessary for the maintenance of the state or the public good, and the action was not targeted toward any one specific religion.[13]

In the twentieth century, debates over the legal place of religion have tended toward two ideological poles: on one side are separationists, who believe that religion and government should remain independent and that religious action is subject to being regulated if it is in the government's compelling interest to do so. Separationists tend to be in favor of granting free exercise exemptions to individuals on the grounds that establishing a high wall of separation produces a mostly secular public and necessitates

[10]Ibid., 114.
[11]Ibid., 115.
[12]In more recent work on authoritarian neoliberalism Bruff and Cemal Burak Tansel, argue that there is a " … growing tendency to prioritize constitutional and legal mechanisms rather than democratic debate and participation." Our argument aligns with this viewpoint and the strategy we pose in the conclusion that seeks to rethink the ways progressive actors might combat these undemocratic moves. For more see: Ian Bruff and Cemal Burak Tansel, "Authoritarian Neoliberalism: Trajectories of Knowledge Production and Praxis," *Globalizations* 16:3 (2019), p. 234.
[13]*Reynolds v. United States* 98 U.S. 145 (1878).

special protections for religious minorities and the practice of religion in private. On the other side are accommodationists who advocate for the robust presence of religion in public life and allow for the non-preferential establishment of religion by government. Because accommodationists seek to carve out a more significant institutional role for religion in the public sphere, they have tended to view individual free exercise exemptions unfavorably, seeing them as unnecessary when majority religious rights are robustly – and unconditionally – upheld.[14]

While Supreme Court rulings tended to adopt a more separationist perspective for roughly forty years, from the 1940s through the 1980s, the Court took a decidedly more accommodationist turn in 1990 with its ruling in *Smith v. Employment Division*.[15] Beginning with William Rehnquist's appointment to Chief Justice in 1986, the Court initiated a slow and steady uptick in rulings that can be classified as accommodationist.[16] These decisions, on questions of equal access, material aid, and tuition vouchers, brought religion to the fore of public life and opened the door to increased government funding of religious education and groups.[17] The accommodationist turn was accompanied by what was perceived as a sudden and abrupt shift in attitude toward free exercise exemptions. In 1990, the Court backed away from a compelling interest test implemented in its 1963 *Sherbert* decision and ruled against a Free Exercise exemption in *Smith v. Employment Division*, setting off a national panic about the potential for religious freedom to be curtailed by government action.[18]

The *Smith* ruling concerned whether two Native Americans were entitled to consume peyote as part of a religious ceremony under the Free Exercise clause; the Court determined that they could not be exempted from generally applicable laws. The decision hinged on the ground that the state had a compelling interest in *not* granting the exemption, which seemingly complied with the Court's previous rulings. However, critics of the decision saw it as a red flag and seized on the possibility that the decision could be used to curtail religious freedom.[19] Within months of the decision, Congress proposed legislation to reestablish pre-*Smith* Free Exercise rights, and in 1993 the Restoration of Religious Freedom Act (RFRA) became law.[20] In 1997, the fight over Free Exercise moved to the states when the Court ruled that the RFRA did not apply to state and local laws in *City of Boerne v. Flores*. In light of this ruling, state legislatures began passing state-level or

[14]Kenneth D. Wald and Allison Calhoun-Brown, *Religion and Politics in the United States* (Lanham, MD: Rowman and Littlefield, 2011), pp. 63–104.

[15]*Employment Division, Department of Human Resources of Oregon v. Smith* 494 U.S. 872 (1990).

[16]Wald and Calhoun-Brown, *Religion and Politics*, p. 93.

[17]See, for example: *Board of Education of Westside Community Schools v. Mergens By and Through Mergens* 496 U.S. 226 (1990); *Mitchell v. Helms* 530 U.S. 793 (2000); *Good News Club v. Milford Central School* 533 U.S. 98 (2001); *Zelman v. Simon-Harris* 536 U.S. 639 (2002); *Hein v. Freedom from Religion Foundation* 551 U.S. 587 (2007).

[18]*Sherbert v. Verner* 374 U.S. 398 (1963).

[19]See, for example, Abner S. Greene, writing "I argue that the Establishment Clause should be read to forbid enacting legislation for the express purpose of advancing the values believed to be commanded by religion. *Precisely because religion should be excluded from politics in this way*, my argument continues, the Free Exercise Clause requires the recognition of religious faith as a ground for exemption from legal obligation. Thus, I reject *Smith's* implicit political predicate that all values may be offered for majority support to be enacted into law." Abner S. Greene, "The Political Balance of the Religion Clauses," 102 Yale L.J. 1611 (1992–1993)1613. For more on Smith, see, for example, William P. Marshall, "In Defense of Smith and Free Exercise Revisionism," *University of Chicago Law Review* 58:1 (1991); Richard J. Regan, "The Free Exercise of Religion," *The American Constitution and Religion* (Baltimore, MD: Catholic University Press of America, 2013); Brett G. Scharff, "Protecting Religious Freedom: Two Counterintuitive Dialectics in US Free Exercise Jurisprudence," in Paul Babi and Neville Rochow (eds), *Freedom of Religion under Bill of Rights*, (Adelaide, AU: University of Adelaide Press, 2012).

[20]Robert F. Drinan and Jennifer I. Huffman, "The Religious Freedom Restoration Act: A Legislative History," *Journal of Law and Religion* 10:2 (1993–1994), pp. 531–41.

mini-RFRAs. Over the past twenty years, twenty-one states have passed RFRAs that either replicate or expand the Free Exercise reach of the federal RFRA at the state and local level.[21] Some of these laws "significantly dilute the *substantial burden* requirement," while others go further in expanding coverage to "any act or inaction that is tangentially related to a person's religious beliefs" and by raising the bar the government must meet to justify strict scrutiny.[22] The vast majority of state RFRAs applied the logic of the federal RFRA rather than the conflicting rights logic, which has come to dominate state-based religious freedom legislation since the Court's 2014 ruling in *Burwell v. Hobby Lobby Stores, Inc*.[23]

The *Hobby Lobby* ruling granted corporations a religious exemption to the birth control mandate, a key component of the Affordable Care Act, on the basis that subsidizing birth control coverage would make the corporation complicit in sinful activity that violated their religious beliefs.[24] The *Hobby Lobby* decision is crucial for a number of reasons – among them its ascription of religious rights to corporations – but we want to foreground how the decision fits into the political development of religious freedom rights claims. The scope of the *Hobby Lobby* ruling itself was somewhat limited. But the decision provided legal precedent for continuing to argue that religious believers should be exempted from broadly applicable laws on the ostensible supremacy of the Free Exercise Clause.[25] By granting legal standing to the equality claims of religious believers seeking exemptions from broadly applicable secular law, the *Hobby Lobby* decision solidified the conservative co-optation of rights-based claims. It logically follows from the decision that conservatives would seek to advance more radical religious freedom legislation and legal challenges to the broad application of anti-discrimination laws.

The Court's *Hobby Lobby* decision applied RFRA to majoritarian religious claims and granted the Hobby Lobby corporation a ground-breaking exemption. In doing so, the Court collapsed accommodationist and separationist logics to simultaneously assert majoritarian religion belongs in the public sphere *and* should be exempted from broadly applicable law. The scope and depth of the claims staked by those seeking religious exemptions to anti-discrimination law belie a well-planned and proactive legal and political strategy that has its roots in the 1970s and early 1980s when the Religious Right emerged as a dominating political movement that secured incorporation in the Republican Party.[26] From its inception, the Religious Right instrumentalized anti-gay and anti-abortion issues as a means of establishing its moral bona fides and recruiting voters who were galvanized by single-issue politics that aimed to curtail sex. Over the course of a decade, these issues were incorporated into the Republican Party under the umbrella of

[21]For a comprehensive and frequently updated state-by-state list, see "State Religious Exemption Laws," Movement Advancement Project, available online at: http://LGBTmap.org/equality-maps/religious_exemption_laws.
[22]Terri R. Day and Danielle Weatherby, "LGBT Rights and the Mini-RFRA: A Return to Separate But Equal," *DuPaul Law Review* 65:3 (2016), pp. 919–20.
[23]*Burwell v. Hobby Lobby* 573 U.S. ___ (2014).
[24]See, for example, Amy J. Sepinwall, "Conscience and Complicity: Assessing Pleas for Religious Exemptions in 'Hobby Lobby's' Wake," *The University of Chicago Law Review* 82:4 (2015), pp. 1897–1980.
[25]For more on the impact of *Hobby Lobby* in relation to the conflicting rights paradigm, see, for example, Roman Sankoviych, "Supremacy of Law or Religion: Congress's Power to Amend the Constitution Bypassing Constraints of the Constitutional Process," *DePaul Business and Commercial Law Journal* 15:2 (2017); Sepinwall, "Conscience and Complicity"; Alisa Von Hagel and Daniela Mansbach, "The Battle for Recognition: Religious Freedom Post-Obergefell," *Law Culture and the Humanities* I:23 (2017).
[26]Daniel Schlozman, *When Movements Anchor Parties* (Princeton, NJ: Princeton University Press, 2015).

"Pro-Family" politics and, throughout the 1990s, we would come to associate gay and reproductive rights with the tense and hostile battles of the "culture wars."[27]

The long and detailed history of the Religious Right has received ample treatment elsewhere,[28] but several key events that help illuminate the development of "competing" LGBT and religious equality claims deserve our attention. The mainstream gay rights movement can be understood to have three central claims at its foundation: "freedom from criminalization of relationships and harassment by police; protection from discrimination in employment, housing, public accommodations, and government services; and civil protections for familial relationships, like the right to marry."[29] Each of these claims can, of course, be understood in terms of seeking legal equality. But in the 1970s, as the gay rights movement gathered steam, it entered into "a rapidly shifting scene of contest over the meanings of public and private."[30] The LGBT community sought privacy rights as well as the right to exist in public. Religious Right actors fought against LGBT people doing as they wished behind closed doors and their invasion of the public until the 1980s, when "they began slowly and unevenly to concede a right to privacy, but they defined privacy as a kind of confinement, a *cordon sanitaire* protecting 'public' sensibilities."[31]

While the 1986 *Bowers* ruling, which affirmed the criminalization of sodomy, denied a right to privacy to the LGBT community, the idea that gays could be tolerated as long as they remained private (and stayed inside the closet) began to gain acceptance and reached its pinnacle with the Department of Defense Directive "Don't Ask, Don't Tell" (DADT) enacted by President Clinton in 1993. Even as the Employment Non-Discrimination Act (ENDA) was introduced in 1994, debates about the rights of LGBT individuals and abortion continued to hinge on parsing the rights and meanings entailed by "privacy" and/or the "private" sphere. With the introduction of same-sex marriage as an issue, the conversation shifted to marriage equality. For roughly the next two decades, marriage equality was the central political aim of the mainstream gay rights movement, even as trans rights advocates and queer activists pushed back against the prevailing strategies of groups like the Human Rights Campaign and Marriage Equality USA. As the pro-marriage equality campaign advanced, conservative activists worked at the state level to pass state constitutional amendments that defined marriage as a strictly heterosexual institution. This strategy arguably reached its apex in 2004, as Republicans sought to bring religious conservatives to the polls by loading state ballots with anti-same-sex marriage referenda.[32]

[27]For a broader discussion on "Pro-Family" Politics, see: J. Brooks Flippen, *Jimmy Carter, The Politics of Family, and the Rise of the Religious Right* (Athens, GA: University of Georgia Press, 2011); Leo P. Ribuffo, "Family Policy Past as Prologue: Jimmy Carter, The White House Conference on Families, and the Mobilization of the New Christian Right," *Review of Policy Research* 23:2 (2006); Robert O. Self, *All in the Family* (New York, NY: Hill and Wang, 2012).

[28]See, for example: Randall Balmer, *Thy Kingdom Come* (New York, NY: Basic Books, 2006); Sara Diamond, *Not by Politics Alone: The Enduring Influence of the Christian Right* (New York: The Guilford Press, 1998); Sara Diamond, *Spiritual Warfare: The Politics of the Christian Right*, (Boston, MA: South End Press, 1989); Dan Gilgoff, *The Jesus Machine* (New York, NY: St. Martin's Griffin, 2007); Esther Kaplan, *With God on Their Side* (New York, NY: The New Press, 2004); Robert C. Liebman and Robert Wunthnow (eds), *The New Christian Right* (New York, NY: Aldine Publishing Company, 1983); David G. Bromley and Anson Shupe (eds), *New Christian Politics* (Macon, GA: Mercer, 1984); William Martin, W*ith God on Our Side* (New York, NY: Broadway Books, 1996); Daniel K. Williams, *God's Own Party* (Oxford, UK: Oxford University Press, 2010); Gary Wills, *Heart and Head: American Christianities* (New York, NY: The Penguin Press, 2007).

[29]Marcia McCormick, "Religious Privilege to Discriminate as Religious Freedom," *Washburn Law Journal* 56 (2017), p. 230.

[30]Lisa Duggan, *The Twilight of Equality?: Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston, MA: Beacon Press, 2003), p. 52.

[31]Duggan, *Twilight*, p. 53.

[32]John C. Green, Mark J. Rozell, and Clyde Wilcox, (eds), *The Values Campaign? The Christian Right and the 2004 Elections*, (Washington, DC: Georgetown University Press, 2006).

Equality-based claims continued to gain momentum on both sides of the political fence, and by the time the 2008 November election rolled around, Proposition 8 had secured a place on the California Ballot. A direct ballot initiative to enact a California state constitutional amendment defining marriage as a union between one man and one woman, Prop 8 deeply divided the state as proponents and opponents of the referendum sparred over its potential impact on the rights of individuals. As Melissa Murray has explained:

> In short, the Yes on 8 campaign co-opted its opponent's rights rhetoric. It did not dispute that same-sex marriage implicated rights, but it made clear that the rights at stake were not the civil rights of gays and lesbians. Instead, the campaign argues that state recognition of same-sex marriage implicated the rights of the rest of the state's populace. Accordingly, the campaign emphasized that state recognition of same-sex marriage would imperil the exercise of religious and personal beliefs, and importantly, would allow the state to introduce children to the concept of gay marriage in school, thereby challenging parental authority over children in the home.[33]

While Prop 8 would not survive judicial review in the California State Supreme Court, it significantly reframed national rights discourses. Just six weeks after the election, outgoing President George W. Bush advanced this new interpretation of religious rights by implementing a "Right of Conscience" administrative rule that "granted sweeping new protections to health workers who refuse to provide care that violates their personal beliefs."[34] Initially intended to exempt religious believers from having to perform abortions, the rule ended up including contraception, end-of-life care, and the provision of healthcare to unmarried, divorced, gay, lesbian, and transgender individuals and their children. While Obama repealed the Bush-era Conscience Clause in 2011, the stage was set for ongoing stand-offs over the "conflicting" rights of believers and those against whom they wished to discriminate.

If the game was set for the co-optation of rights discourses by Prop 8 and the "Right of Conscience" rule, the match point was delivered by the Court's ruling in *Burwell v. Hobby Lobby Stores, Inc*. Post-*Hobby Lobby*, both Arkansas and Indiana have garnered extensive attention for their attempts to pass much more far-reaching mini-RFRAs – both states eventually compromised on bills that more closely resembled the federal RFRA. Arguably the most impactful state legislation has come out of Mississippi. In 2016, House Bill 1523, also known as the *Religious Liberty Accommodations Act*, was enacted in Mississippi, which expressly protects the belief that marriage is between a man and a woman, that sexual relations should only take place in such a marriage, and that gender is immutable. Held up by court challenges for over a year, the law went into effect in October 2017.[35]

While the Mississippi law is by far the most aggressive state-based legislation aimed at expanding religious anti-discrimination exemptions, we may soon witness a similarly radical development at the federal level. Alongside Donald Trump's religious liberty executive order and issuance of new federal agency guidelines, both the proposed federal First Amendment Defense Act (FADA) and the Court's ruling in *Masterpiece Cakeshop, Ltd.*

[33]Melissa Murray, "Marriage Rights and Parental Rights: Parents, the State, and Proposition 8," *Stanford Journal of Civil Rights & Civil Liberties* 5 (2009), p. 359.
[34]Rob Stein, "Rule Shields Health Workers Who Withhold Care Based on Belief," *Washington Post* (December 19, 2008), available online at: http://www.washingtonpost.com/wp-dyn/content/article/2008/12/18/AR2008121801556.html?sub=AR.
[35]Religious Liberty Accommodations Act, Mississippi House Bill 1523 (2016).

v. Colorado Civil Rights Commission case have the potential to fundamentally alter the nation's understanding of and relationship to Free Exercise rights. Taken together, they represent a broad assault on minority rights and indicate a desire to codify the right to discriminate against LGBT individuals and their families, unmarried couples and single parents, women seeking reproductive health care, and others to private citizens, government and health-care workers, and businesses.[36] In the current context of battles over the legality of religious anti-discrimination exemptions, a hard line of demarcation between separationist/accommodationist positions has crystallized: those on the latter side are seeking to accommodate the religious beliefs of the country's majority Christian population through the legislation of broad exemptions that will trump anti-discrimination protections. On the separationist side of the fence, religious anti-discrimination exemptions are discounted as an over-extension of the Free Exercise Clause and a violation of the Establishment Clause due to the narrow scope of religious beliefs they seek to protect legislatively.[37]

Evolution of LGBT Protections

The contested political and legal terrain of LGBT rights plays an equally important role in establishing the foundations for "competing rights" claims in relation to religious freedom. Despite gains made by LGBTQ people in terms of social visibility, representation, and acceptance, sexuality is not a fundamentally protected category or class under the Constitution. To understand why, we must look at the dramatic reversal of opinion on sodomy laws from *Bowers* in 1986 to *Lawrence v. Texas*,[38] when the Court ruled the criminalization of sodomy unconstitutional, through the recent legal victories around marriage equality. In 1986, the court ruled, amid the HIV/AIDS crisis, that there was a compelling state interest in criminalizing acts of sodomy. The full reversal of this opinion in 2003 demonstrates how quickly public perceptions about LGBTQ communities changed in under twenty years, and how crucial this case was in the history of the state's relationship to sexuality.

We should understand *Lawrence* as a conservative victory, limiting the reach of the state into our private bedrooms, rather than a radical departure from precedent or practice. Legal scholar Nan D. Hunter notes, "In *Lawrence*, however, the Court reconstructs not only the law but also the social meaning of homosexuality."[39] Furthermore, as political scientist Susan Gluck Mezey notes in her book *Queers and the Court*, at the time of the Lawrence ruling a majority of the public thought sodomy laws were outdated and unnecessary, "Whatever the interpretation of *Lawrence* and its role in lifting the spirits of the gay community, most agree that it validates … the prevailing view of the public on consensual sodomy."[40] Hunter and Mezey show how the victory for LGBT rights heralded by *Lawrence v. Texas* did not grant protected status to lesbians and gays, but rather

[36]Movement Advancement Project, *Tipping the Scales: The coordinated Attack on LGBT People, Women, Parents, Children, and Health Care* (Boulder, CO: Movement Advancement Project, 2017); The Public Rights/Private Conscience Project, "Unmarried and Unprotected."
[37]Nancy J. Knauer, "Religious Exemptions, Marriage Equality, and the Establishment of Religion," *University of Missouri, Kansas City Law Review* 84:1 (2016), pp. 787–90.
[38]*Lawrence v. Texas*, 539 U.S. 558 (2003).
[39]Nan D. Hunter, "Living with Lawrence," *Georgetown Law Faculty Publications and Other Works* (2004), p. 1125.
[40]Susan Gluck Mezey, *Queers in Court Gay Rights Law and Public Policy* (Lanham, MD: Rowman & Littlefield, 2007), p. 19.

limited the power of the state to interfere in one's private sexual acts. The ruling, at best, equivocates between the competing demands of Equal Protection and Due Process. Do individuals have a fundamental right to sodomy? Alternatively, does the state have no compelling interest in regulating these acts in the first place?

The justification for overturning *Bowers* revolved less around the recognition of same-sex couples; rather, it was based on a false premise that, " . . . proscriptions against sodomy have ancient roots."[41] Kennedy revisits this history and claims that anti-sodomy laws were not simply anti-homosexual but anti-nonprocreative sex. The fact that these laws were primarily enforced only against LGBT couples and not straight couples represents the fulcrum of the court's ruling that these restrictions violate the Due Process Clause. The Georgia law in the *Bowers* case applied to all acts of sodomy – regardless of sexual orientation – whereas the Texas law at the center of *Lawrence* specifically targeted "homosexual" sodomy.

Bowers was overturned on precedent found in rulings that asserted a right to privacy (notably, the contraception and abortion cases *Griswold, Eisenstadt, Roe, Carey*, and *Planned Parenthood v Casey*). These rulings are fundamentally about *private behavior*, not *public expression*. Kennedy's majority decision refers not to LGBTQ communities or histories, but to "practicing homosexuals" and that, "[t]he case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle."[42] Kennedy further asserts that central to a right to privacy is the notion of *dignity*:

> Although the offense is but a minor misdemeanor, it remains a criminal offense with all that imports for the dignity of the persons charged, including notations of conviction on their records and job application forms, and registration as sex offenders under state law.[43]

Kennedy frames the decision in terms of *dignity* for the individual. However, we argue, as have generations of LGBTQ people, that these affective harms have historically led to material harm in the form of economic loss, violence, and criminalization. By confining this ruling to focus on the dignity of private individuals performing consensual sexual acts in their private bedrooms misses the way that sexuality operates in our shared social world. While many LGBTQ people may pass as heterosexual in daily life, this is hardly true for all LGBTQ people. Sexuality cannot simply be confined to the private sphere; it is integral to modern conceptions of identity, which is different than the descriptors Kennedy uses to describe LGBTQ people. Implicitly people are reduced to individual behavior or choice. Dignity for the individual, here, comes by omitting the connected and systemic oppression of sexual minorities through discrimination at work, in housing, and violence. While dignity is central to notions of equality and liberty, simply not being arrested for private sex acts is no replacement for full and equal treatment every day in the public sphere.

If *Lawrence* was, in part, decided on the basis of the dignity of the individual, the marriage equality cases were ruled on similarly affective terms. Kennedy's 2015 majority ruling in *Obergefell v. Hodges* declared that not recognizing same-sex marriages violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The basis

[41] *Lawrence v. Texas* 539 U.S. 558 (2003), p. 2.
[42] Ibid., 18.
[43] Ibid., 3.

for this ruling rested on how Kennedy understood the role of marriage in our society and how excluding same-sex couples from this institution impeded their liberty. He states, "The lifelong union of a man and a woman always has promised nobility and dignity to all persons, without regard to their station in life . . . [r]ising from the most basic human needs marriage is essential to our most profound hopes and aspiration."[44] He argues that the plaintiffs in the case are not seeking to undermine the institution of marriage, but, rather they, " . . . seek it [marriage] for themselves because of their respect – and need – for its privileges and responsibilities."[45] As with *Lawrence*, the driving argument is based on liberty, dignity, and autonomy.

The majority opinion then explores the stories of three of the same-sex couples who brought about this suit. One plaintiff married his partner as he fought a terminal illness by traveling to a state where marriage was legal, but he was not listed on the death certificate in his home state; another couple faced legal uncertainty when adopting because only one partner could legally adopt the child; the final couple's story concerned two men in the military who moved to a state that did not recognize same-sex marriage, unfairly stripping them of the rights and privileges of marriage.[46] These curated stories each have a material aspect to them (for example, inheritance, childcare, and safety), but the focus of Kennedy's ruling rests, primarily, on affective harm. He cites four central reasons why same-sex couples have a constitutional right to marry: personal autonomy, dignity of loving couples, stigmatization of children of same-sex parents, and that marriage is a keystone of social order.

The first two premises – individual autonomy and the dignity of loving couples – are deeply entwined. The premise of individual autonomy rests on the 1967 *Loving v. Virginia* decision (ending anti-miscegenation laws) and the Court's determination that individuals and couples have a right to make their own reproductive choices. The freedom to marry whomever you chose is not argued in terms of expression but rather in terms of "personal choice," which is based on the precedents cited implies a relationship to rights of privacy.

Dignity again plays a major role in the ruling, as in *Lawrence*, where Kennedy states, "There is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices."[47] He goes further and argues, "Marriage responds to the universal fear that a lonely person might call out and find no one there."[48] This argument is almost entirely framed in terms of affect: dignity, fear, loneliness, companionship, and autonomy. The material aspects of end of life care are omitted from the discussion. Neither in the stories of plaintiffs nor these initial premises are these material aspects noted.

The third and fourth premises touch on some of the material benefits of marriage, but they are not the direct focus of these rulings. The third premise rests on the idea that children suffer stigma when the state does not recognize their parents' union and additionally, "[t]hey [children] suffer the significant material costs of being raised by unmarried parents, relegated through no fault of their own to a more difficult and uncertain family life. The marriage laws at issue here thus harm and humiliate the children of same-sex

[44]*Obergefell v. Hodges* 576 U.S. ___ (2015), p. 3.
[45]Ibid., 4.
[46]Ibid., 4–6.
[47]Ibid., 13.
[48]Ibid.

couples."[49] While these material harms are not enumerated the lack thereof leads to stigma and "humiliation" of these innocent children. The fourth premise argues that " . . . marriage is a keystone of our social order."[50] At this point, Kennedy does enumerate the ways states have coupled material benefits to marriage from taxation to childcare to health insurance, and while this is an important aspect of the ruling, it is hardly central to the Court's reasoning. In terms of the argument for this article, we are demonstrating how these affective claims, dignity, stigma, humiliation, were central to the success of the marriage equality movement, and religious freedom advocates have taken notice.

Since neither the same-sex marriage rulings nor the decriminalization of sodomy confers a protected class on LGBTQ people, cases of expression versus anti-discrimination statutes are the grounds where sexual identity is adjudicated. Because of the rapid change in popular attitudes toward LGBTQ people over the past thirty years, the Court has been slow to keep up with evolving notions of sexual identity. The Supreme Court has ruled that private sexual behavior is protected from criminalization and that same-sex couples have the right to enter into marriages – but these are contracts and behaviors, not identities. The Court's rulings on speech and expression cases created the judicial space wherein merely having to accept same-sex relationships would be equivalent to an *endorsement* of homosexuality and therefore an infringement on the liberty of the religious group.

The roots of this logic stem from the 2000 case *Boy Scouts of American v. Dale*,[51] where the Court ruled in favor of the Boy Scouts' rights to exclude openly gay scoutmasters from their organization. The decision, which was argued three years before the decriminalization of sodomy in *Lawrence*, based its ruling on the idea that having to tolerate the expression of LGBT people within the Boy Scouts was a de facto endorsement of LGBT expression.[52] Fundamentally, this ruling pits anti-discrimination legislation against religious freedom. The ruling, therefore, set the stage for an interpretation that the discrimination against non-normative genders and sexualities is not counter to existing civil rights law.

Illustrative Case Studies

Two illustrative cases help elucidate how both sides deploy their communicative and coordinative discourses. Drawing on these cases, and the broader institutional developments outlined above, we further argue that religious freedom advocates have been more successful at both establishing and shaping discursive and legislative boundaries. If anti-discrimination advocates wish to hold the line against the further erosion of equal protection for minority groups, they would be well served by learning from religious freedom advocates.

Religious Freedom

While those who will be most affected by the advancement of competing rights claims belong to diverse and heterogeneous minority groups with a plurality of interests, religious freedom advocates represent a fairly homogenous and ideologically coherent

[49]Ibid., 15.
[50]Ibid., 16.
[51]*Boy Scouts of America et al. v. Dale* 530 U.S. 640 (2000).
[52]See, for example: Nan D. Hunter, "Interpreting Liberty and Equality Through the Lens of Marriage," *Georgetown Law Faculty Publications and Other Works* 6:107 (2015).

group. Another advantage for the religious freedom movement is that it has access to broad coalition and institutional structures – ranging from grassroots networks to Congressional caucuses – developed by earlier incarnations of the Religious Right. The movement has also developed new institutional networks to advance its agenda, most notably the Congressional Prayer Caucus Foundation (CPCF) and the First Freedom Coalition, which has produced and disseminated a package of religious freedom bills (Project Blitz) for state legislators to draw on.[53]

The CPCF's 2017 "Report and Analysis on Religious Freedom Measures Impacting Prayer and Faith in America" demonstrates both the communicative and coordinative discourses utilized by religious freedom actors. The report advances a streamlined coordinative discourse by providing legislative templates and instructions for the state- and national-level actors to follow in introducing legislative acts.

It further promotes a communicative discourse that legitimizes the right to discriminate on the basis of a revisionist history that claims the Founding Fathers sought to produce a Christian country and that minority-rights harm religious believers. The religious right to discriminate is marketed as a proactive entitlement: based on their assumed originary position, Christians have a right to a Christian country. We see this in CPFC's advancement of legislation "regarding our country's religious heritage," that "recognize[s] the place of Christian principles in our nation's history and heritage."[54]

CPFC – and its partners in the First Freedom Coalition – simultaneously advance a communicative discourse that Christians are an oppressed minority, victimized by an aggressive and repressive coalition of minority groups whose struggle for equal protection deprives Christians of their religious liberty. We see this clearly in the group's language surrounding "Religious Liberty Protection Legislation," which "protects the ability of citizens to speak and act upon their religious convictions."[55] This discourse obscures the movement's theocratic impulses and obscures the basic fact that Christians are the country's dominant and majority religious group.

This case exemplifies Bruff's argument that " … radical politics is currently being practiced most successfully by radical *Right* movements and parties."[56] Taken together, the coordinative and communicative discourses advanced by CPFC and its coalition partners serve to not only advance a discriminatory legislative agenda but also to assert a normative ideal of Christian entitlement and supremacy.

Marriage Equality USA

Marriage Equality USA (MEUSA) formed in 1996 and led the charge in the marriage equality movement. In 2017 the group ended their advocacy campaigns citing the victory of *Obergefell*. Their coordinative strategy coupled direct action, in the form of same-sex couples applying for marriage licenses in states prohibiting such partnerships and rallies,

[53]Congressional Prayer Caucus Foundation (CPCF), *Report and Analysis on Religious Freedom Measures Impacting Prayer and Faith in America* (Chesapeake, VA: CPC Foundation, 2017); Frederick Clarkson, "'Project Blitz' Seeks to do for Christian Nationalism What ALEC Does for Big Business," *Rewire News* (April 27, 2018), available online at: http://religiondispatches.org/project-blitz-seeks-to-do-for-christian-nationalism-what-alec-does-for-big-business/.
[54]CPCF, "Report and Analysis," p. 4.
[55]Ibid., 6.
[56]Ian Bruff, "The Rise of Authoritarian Neoliberalism," p. 126.

Table 1. Affective and Material Harm.

	LGBTQ & Reproductive Rights Campaigns	Religious Freedom Campaigns
Affirmative Harm	• Equality • Dignity • Stigma • Humiliation	• Spiritual Harm • Hostility toward religious people by anti-discrimination laws • Religious corporations offended by reproductive rights

Material Harm	• Anti-discrimination law
	  ○ Housing
	  ○ Jobs
	  ○ Education
	  ○ Access
	• Taxes/Inheritance
	• Anti-Violence
	• Expanded Access to reproductive health care
	• Spousal visits in hospitals and prisons
		• Potential economic loss from state restrictions, i.e., having to accommodate sexual minorities and women or risk facing penalties.

with an aggressive legal strategy were central to the success of their campaign. Their communicative strategy relied heavily on the use of personal stories of same-sex couples. All aspects of the campaign used these stories, which is exemplified by their projects "Getting to I Do" and the "Loving Quilt."

"Getting to I Do" is an interactive storytelling project to educate and move people's opinions on marriage equality. The project set out to share stories of the lives of LGBTQ couples who could not marry. Central to this strategy was "[s]haring the personal stories of our own dreams, ideals, and experiences with our families, friends, neighbors, colleagues, and communities is one of the most powerful ways to bring people to support civil marriage."[57] The stories uploaded to the website fall into three broad categories. First, stories directly from same-sex couples sharing the story of how they met, why they love each other, and how their commitment was equivalent to their straight counterparts. Second, central themes to many of the stories are notions of unfairness, inequality, and discrimination. Third, the stories are from allies and family members, videos with titles like "I love my Gay Best Friend" to "My two dads," which offered testimonials from a broader community affected by discriminatory marriage laws. The plaintiff stories cited by Kennedy in *Obergefell*, mirror the stories from this project.

"A Loving Quilt" began in 2006 as an homage to the fortieth anniversary of the *Loving* ruling. The project brought individuals and families together to build a quilt with images and stories. The quilt has developed into an ongoing exhibit, and it is being digitized as an archive of the movement.[58] This affective turn in LGBTQ politics, in contrast to previous generations of more militant activism centered on HIV/AIDS, police brutality, anti-violence, and discrimination was central to the rapid acceptance of same-sex marriage and ironically that tactic is now being employed by Religious Right organizations. In the table below, we have attempted to map these distinctions to emphasize further how legal and legislative strategies argued centrally on material harm offers a potential route to preventing further eclipsing of contingent rights of sexual minorities and women.

[57]Marriage Equality USA (MEUSA), "Getting to I Do," (2015), available online at: https://www.marriageequality.org/gettingtoido.
[58]Ibid.

Toward Material Rights Claims

As religious conservatives seek to legislate a right to discriminate on the grounds of religious belief, they also seek to institutionalize an illiberal hierarchy of rights, which asserts some people are more equal than others. While affective claims have proven to be successful in advancing anti-sodomy and marriage equality cases, they have also been highly effective in advancing claims for religious freedom and setting up the competing rights paradigm.

Since the election of Donald Trump in 2016, and the subsequent confirmation of two staunchly conservative Supreme Court Justices, the balance of the Court has undeniably shifted in favor of conservative interests. While the limited ruling in *Masterpiece Cake Shop* certainly could have been worse for members of the LGBT community, it nonetheless sent a message that the Court's conservative majority was sympathetic to the twinned discourses of "religious freedom" and "conflicting rights." Attuned to this fact, the Religious Right has leaned into the language of dignity (in relation to believers' spiritual wholeness) and continues to premise its claims on affective harm rather than material harm. While arguments for dignity may have previously secured wins for the LGBT and women's rights movements, political activists seeking to advance progressive causes need to recognize that these victories are not secure. Moreover, the strategy of turning to the courts for protection may be significantly less likely to return positive outcomes as the institution of the law increasingly becomes a tool that serves the needs of neoliberal authoritarianism.

In this article, we have identified the adoption of affective strategies in religious challenges to the basic accommodation of women's reproductive rights in the workplace (*Hobby Lobby v. Burwell)* and LGBTQ people at a cakeshop (*Masterpiece)*. Both cases redefine compliance with broadly applied secular anti-discrimination laws as harmful to the spiritual well-being of religious believers. The claim of *spiritual* harm by definition is not *material*, and that distinction is central to our argument. We do not believe progressive activists should cede the law to the Right, but we do argue that it is time for the Left to shift to a strategy that advances rights claims on the basis of material harm in the public sphere.

While religious objectors who advance conflicting rights claims charge they will be spiritually harmed by observing secular laws that prohibit discrimination, the form of harm they assert demands an overarching retooling of how we understand rights. The harm they assert is neither universal nor objectively factual insofar as it is predicated on subjective values and beliefs. On the other hand, the harm that stands to come from the passage of FADA or the application of Mississippi's HB 1532 will be undeniably material as people are denied the ability to satisfy their basic needs in the public sphere.

Capitulating to relativistic and particularistic rights claims that are premised on an equivocal notion of equality will likely consign women, single parents, and LGBT individuals to a position of permanent legal insecurity. But there remains potential to reframe the conflict between religious freedom advocates and sexual minorities and women.

There is no question that Title II of the Civil Rights Act, which codified public accommodation protections into law, was advanced on the basis of dignity. However, it was also premised on the recognition that economic and social harms were caused by racial discrimination.[59] We do not wish to decouple the connections between affective harm

[59]Harry T. Quick "Public Accommodations: A Justification of Title II of the Civil Rights Act of 1964," *Case Western Reserve Law Review* 16:3 (1965).

and material harm – they often go together – but rather to distinguish between communicative strategies that associate equality with feelings rather than demonstrable harms caused by a lack of access to basic protections and resources.

In terms of a legal strategy, we, therefore, propose the development of a communicative discourse that centers on demonstrable material harm. In order to push back against claims of a religious right to discriminate, and maintain a wall of church-state separation, we believe political actors should foreground the very real harm that would follow legalized discrimination from public services. The communicative discourse of conflicting rights seeks to gain the moral high ground by appealing to the potential threat of spiritual harm. Challenging this discourse on the grounds of the immediate material harm (for example, in access to housing, healthcare, employment, and education) that religious discrimination will cause removes us from the terrain of subjective feelings to create the institutional space necessary to preserve and expand existing legal protections.

On a political level, we believe that progressive activists should work to produce a broad base coalition that advances cross-cutting policies. While such a coalition may be difficult to forge and sustain, the history of collaboration between organized labor and Civil Rights activists, which has been persuasively documented by the political scientist Eric Schickler,[60] suggests that doing so is not only possible but highly desirable. Put another way, the Left should pursue a coordinative discourse that represents the overlapping constituencies that stand to be harmed by allowing for religious believers to discriminate. The expansion of religious freedom rights has the potential to cause significant harm to a broad array of intersecting groups; as such, there is potential to form a broad and diverse coalition of actors that can exercise considerably more political capital than any one group acting on its own. While we have primarily focused on the intersection of LGBT rights, we suggest that further work needs to be done to identify the multiple and overlapping points of vulnerability across and between women, parents, and members of the LGBT community.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes on contributors

Dr. Chelsea Ebin is a Visiting Assistant Professor at Rollins College who teaches a range of courses on American political behavior and institutions. Her research focuses broadly on American conservatism and more narrowly on the relationship between conservative religious groups and US politics. Chelsea is currently at work on research that examines how conservative Catholics and Protestants have formed an enduring coalition within the American Right.

Dr. J. Ricky Price is a Visiting Assistant Professor at Hobart and William Smith Colleges who teaches courses in American Political Development, Critical Identity Studies, and Science and Technology Studies. His research integrates the history of science, identities, and institutions as a way to understand how power is negotiated between our bodies and the state.

[60]Eric Schickler, *Racial Realignment: The Transformation of American Liberalism, 1932–1965* (Princeton, NJ: Princeton University Press, 2016).