John Fabian Witt

April, 2013

JOHN FABIAN WITT
127 Wall Street Box 208215
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Positions

YALE LAW SCHOOL

Allen H. Duffy Class of 1960 Professor of Law, February 2010- present
Guggenheim Fellow, 2010-2011
Professor of History, July 2009 – present
Professor of Law, January 2009-February 2010

COLUMBIA UNIVERSITY

George Welwood Murray Professor of Legal History. July 2008 to July 2009
Professor of Law and History. July 2005 to July 2008
Associate Professor of Law, July 2001 to July 2005
Visiting Associate Professor, Harvard Law School, Spring 2005
Harrington Faculty Fellow, University of Texas at Austin, Fall 2004

JUDGE PIERRE N. LEVAL, U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

Law Clerk. August 1, 2000 to August 1, 2001

Education

YALE UNIVERSITY

Ph.D., History, December 2000

Winner of the John Addison Porter and George Washington Egleston dissertation prizes

YALE LAW SCHOOL

J.D., June 1999. Senior Editor, *Yale Law Journal*; Judge William E. Miller Prize for the best paper on the Bill of Rights, 1998-1999; Coker Teaching Fellow, 1998-1999; Legal History Fellow, 1998-1999

YALE COLLEGE

B.A., *summa cum laude*, History, May 1994

Phi Beta Kappa; Thomas E. Bergin Prize for Character and Scholarship in the Humanities

John Heinz Memorial Government Service Fellowship

Publications

BOOKS

Lincoln's Code: The Laws of War in American History (The Free Press, 2012)

Bancroft Prize for distinguished work in American history
Finalist for the Pulitzer Prize in History
New York Times Notable Book for 2012
American Bar Association Silver Gavel Award
New York Times Book Review Editor's Choice
J. Willard Hurst Award for the Best Work in Sociolegal Legal History
Kirkus Reviews Best Nonfiction of 2012 – "The Top 25"

Patriots and Cosmopolitans: Hidden Histories of American Law (Harvard University Press, 2007)

The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law (Harvard University Press, 2004)

William Nelson Cromwell Prize from the American Society for Legal History
J. Willard Hurst Book Prize from the Law and Society Association
Thomas J. Wilson Prize at Harvard University Press
Firestone Library Noteworthy Book in Industrial Relations and Labor Economics
Chinese edition, Lei Tian, trans., Shanghai Joint Publishing Co., 2008)

ARTICLES

"The Dismal History of the Laws of War," 1 *U.C. Irvine L. Rev.* 895 (2012)

"War and Law in America," 115 *American Historical Review* 768 (2010)

"Form and Substance in the Law of Counterinsurgency Damages," 41 *Loyola Law Review* 1455 (2008)

"The Metaphysics of Mind and the Practical Science of the Law," 26 *Law & History Review* 161 (2008) (with Sarah A. Seo)

"Contingency, Immanence, and Inevitability in the History of Accident Law," 1 *Journal of Tort Law* (no. 2, 2007)

"Empire and the Crisis of the Legal Frame (Will the Real British Empire Please Stand Up?)," 120 *Harvard Law Review* 754 (2007)
Winner of The Green Bag's "Exemplary legal writing" prize, 2007

"Bureaucratic Legalism, American Style," 56 *DePaul Law Review* 261 (2007)

"The Long History of State Constitutions and American Tort Law," 36 *Rutgers Law Journal* 1159 (2005)

"The Internationalist Beginnings of American Civil Liberties," 54 *Duke Law Journal* 705 (2004)

"The Inevitability of Aggregated Settlement: An Institutional Account of American Tort Law," 57 *Vanderbilt Law Review* 1571 (2004) (with Samuel Issacharoff)

"Narrating Bankruptcy / Narrating Risk," 98 *Northwestern University Law Review* 303 (2003)

"Speedy Fred Taylor and the Ironies of Enterprise Liability," 103 *Columbia Law Review* 1 (2003)

"Toward a New History of American Accident Law: Classical Tort Law and the Cooperative First-Party Insurance Movement," 114 *Harvard Law Review* 690 (2001)

"From Loss of Services to Loss of Support: The Wrongful Death Statutes, the Origins of Modern Tort Law, and the Making of the Nineteenth-Century Family," 25 *Law & Social Inquiry* 717 (2000)

"Rethinking the Nineteenth-Century Employment Contract, Again," 18 Law & History Review 627 (2000)

"Making the Fifth: The Constitutionalization of American Self-Incrimination Doctrine, 1791-1903," 77 *Texas Law Review* 825 (1999)

"The Transformation of Work and the Law of Workplace Accidents, 1842-1910," 107 *Yale Law Journal* 1467 (1998)

BOOK CHAPTERS

"The Secret History of the Chief Justice's Obamacare Decision," in Persily, Metzger, & Morrison eds., *The Health Care Case* (Oxford University Press, 2013)

"Two Conceptions of Suffering in War," in *Knowing the Suffering of Others* (Austin Sarat ed., forthcoming)

"The Political Economy of Pain: An Essay from the Archives in Honor of William E. Nelson," in volume in honor of William E. Nelson (Bernstein & Hulsebosch eds., forthcoming)

"The Social Histories of International Law," in William Dodge, Michael Ramsay, & David Sloss eds, *The U.S. Supreme Court* and *International Law: Continuity or Change?* (Cambridge University Press, 2011)

POPULAR PRESS

"Debunking a Progressive Constitutional Myth; or, How Corporations Became People, Too," *Balkinization Blog*, November 15, 2012

"Freedom and Restraint," *New York Times*, September 21, 2012

"The Secret History of the Chief Justice's Obamacare Decision," *Balkinization Blog*, June 29, 2012

"The Legal Fog Between War and Peace," *New York Times*, June 10, 2012

"All Things Considered on Corporate Personhood," *National Public Radio*, October 24, 2011
http://www.npr.org/2011/10/24/141663195/what-is-the-basis-for-corporate-personhood

"Lincoln's Laws of War," *Slate*, February 11, 2009

"History Lesson: Ye Olde Gitmo," *Slate*, December 9, 2008

"A Declaration the President Ignores," *Washington Post*, July 4, 2007

"First, Rename All the Lawyers," *New York Times*, October 24, 2006

"Tactical Withdrawal: The Easy Way Out for the Supreme Court on 'Don't Ask Don't Tell,'" *Slate*, December 5, 2005 (with Ariela R. Dubler), http://www.slate.com/id/2131465/

"Can Chinese Industry Be Made Safe?," *The Korea Herald*, May 8, 2004; *The Pakistan Daily Times*, May 8, 2004; *The Jakarta Post*, May 8, 2004; *Taipei Times*, May 10, 2004; *The Singapore Straits Times*, May 7, 2004; *The Bangkok Post* (May 8, 2004)

ENTRIES, SHORT REVIEWS, ETC.

Review of Jamie Bronstein, *Caught in the Machinery: Workplace Accidents and Injured Workers in Nineteenth-Century Britain* (Stanford 2008), in *British Journal of Sociology* (June 2011)

Review of Kal Raustiala, *Does the Constitution Follow the Flag?* (Princeton, 2009), 28 *Law & History Review* 569 (2010)

Review of Kenneth S. Abraham, *The Liability Century: Torts and Insurance from the Progressive Era to 9/11*, in *Law & History Review* (Fall 2009)

Review of Sally H. Clarke, *Trust and Power: Consumers, the Modern Corporation, and the Making of the United States Automobile Market*, in Law & History Review (Fall 2009)

"Elias Hill," in *African American National Biography* (Oxford University Press, 2008)

"Tort Law," in Stanley N. Katz ed., *The Oxford International Encyclopedia of Legal History* (Oxford University Press, 2009)

Review of Laura Kalman, *Yale Law School and the Sixties: Revolt and Reverberations* (University of North Carolina Press, 2005), in *New England Quarterly*, September, 2006, pp. 347-49

"Bureaucratic Legalism, American Style: Private Bureaucratic Legalism and The Governance of Tort System," 56 *DePaul Law Review* 261 (2006)

"Internationalism and the Dilemmas of Strategic Patriotism," 41 *Tulsa Law Review* 787 (2006)

"Workers' Compensation," in Eric Arnesen et al. eds., *Encyclopedia of U.S. Labor and Working-Class History* (Routledge, 2007) (with Jean-Denis Grèze)

Review of George I. Lovell, Legislative Deferrals: Statutory Ambiguity, Judicial Power, and American Democracy (Cambridge University Press, 2003), in 45 Labor History 390-92 (2004)

"Lessons from History: State Constitutions, American Tort Law, and the Medical Malpractice Crisis," Pew Charitable Trusts Project on Medical Liability in Pennsylvania (March 2004)

"The Federal Employers' Liability Act," in *Major Acts in Congress* (Macmillan Publishers 2003)

"Thinking Historically about American Accident Law," *Columbia Law Report*, Fall 2002

"The Klan on Trial," 106 *Yale Law Journal* 1611 (1997)

PAPERS AND PRESENTATIONS

"Constructing the Story of the Union Blockade, 1861-1865: A Case Study in the Tactical Utility of International Law," Engaging the Writings of Martti Koskenniemi 2013 Laura H. Carnell Chair Workshop, Temple University, April 12, 2013.

"Lincoln's Code," Library of Congress Center for the Book, Washington, DC, April 9, 2013.

"'Emancipation: The Moral Pivot of American History," Gilder-Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University, April 8, 2013.

"Lincoln's Code," International Security Studies and Grand Strategy Lecture, Yale University, April 2, 2013.

Seminar Leader on "The Supreme Court in the Age of Holmes and Brandeis," New York Historical Society, February 7, 2013.

"Creating War Crimes," Panelist, Gruber Program for Global Justice and Women's Rights, Yale January 29, 2013.

"Two Conceptions of Suffering in War," Fordham Law School Faculty Workshop, January 17, 2013.

"Law and the Modern American Warfare State," Moderator, American Society for Legal History Annual Meeting, St. Louis, MO, November 9, 2012.

"Two Conceptions of Suffering in the Laws of War," Harvard Law School International Law Workshop, November 1, 2012.

"Emancipation's Hidden Legacy: Lincoln and the Laws of War," Proclaiming Emancipation Symposium, University of Michigan, October 26, 2012.

"Lincoln's Code: The Laws of War in American History," Yale Law Library Book Talk: October 23, 2012.

"Sherman at Atlanta: The Moral Structure of the Laws of War," Project on War and Security in Law, Culture and Society, Emory University School of Law, October 22, 2012.

"Lincoln's Code," Center for International & Comparative Law/Center for Law, Ethics, and National Security Lecture, Duke Law School, Durham, NC, October 9, 2012.

"Lincoln's Code," International Criminal Law Colloquium, Columbia Law School, New York, NY, October 5, 2012.

"Lincoln in Afghanistan: The Laws of War and Emancipation's Global Legacy," Sealy Lecture, University of Texas School of Law, , Austin, TX, October 1, 2012.

"The Health Care Case: The Supreme Court's Decision and its Implications," Columbia Law School, New York, NY, September 28, 2012.

"The Great Playground Debate: Tort Law and the American Playground," Yale Law School, New Haven, CT, September 21, 2012.

"Connecting Foreign Relations and Domestic Law in the Early Republic," Society for Historians of American Foreign Relations Annual Meeting, Hartford, CT, June 29, 2012.

"Two Humanitarianisms," University of Alabama Law School, March 30, 2012

"Legacies of the Civil War," David Brion Davis Lecture, Gilder Lehrman Center for the Study of Slavery, Yale University, March 29, 2012

"Symposium on G. Edward White," Law in American History, University of Virginia Law School, Feb. 27, 2012

"Schools of Misrule," debate with Walter Olson, Yale Law School Federalist Society, Feb. 22, 2012

"Lincoln's Code," Columbia Human Rights Law Seminar, Feb. 21, 2012

"Lincoln's Code," Stanford Law School Legal History Colloquium, Feb. 6, 2012

"Francis Lieber and the Laws of War," University of Connecticut School of Law Faculty Workshop, Jan. 25, 2012

"Emancipation and the Laws of War," American Association of Law Schools, Jan. 7, 2012

"The Origins of the Modern Laws of War," Yale Law School Annual Meeting at the American Association of Law Schools, Jan. 5, 2012

"Francis Lieber, Abraham Lincoln, and the Laws of War," Yale International History Conference, Nov. 29, 2011

"Drones and Targeted Killings," Yale Law School Federalist Society, Nov. 16, 2011

"Prosecuting Terrorists: Military Commissions," September 28, 2011 (with Gene Fidell), Yale Law School American Constitution Society, New Haven, Connecticut,

"The Civil War and the Law of War," American Society for International Law, Washington, D.C., May 18, 2011

"Rules of Wrong: The Crime-War Boundary and the American Invention of the War Crime, 1815-1848," Stanford Law School Legal Studies Seminar, April 7, 2011

"Inventing the War Crime," Zocalo Public Square, Los Angeles, California, March 14, 2011

"Lincoln's Code: The Puzzling History of the Laws of War," Harvard Law School Legal History Workshop, March 3, 2011

"Lincoln's Code: The Puzzling History of the Laws of War," Allen H. Duffy Class of 1960 Inaugural Lecture, February 28, 2011

"Emancipation and the Laws of War," Princeton University Politics Department, February 10, 2011

"Balancing Acts: 20th Century Democracies and Respect for the Law," American Society for Legal History annual meeting in Philadelphia, "November 19, 2010

"A False Feeling of Mercy: The Laws of War in the Age of Jackson," University of Michigan Law School, November 8, 2010

"The Future of Gun Control," Yale Law School Federalist Society, October 2010

"Reflections on the Laws of War in American History," University of California at Irvine, April 2010

"The Political Economy of Pain," Conference in Honor of William E. Nelson, NYU School of Law, May 2010

"The Constitution and the Economy," Seminar at the New York Historical Society, co-leader with James Surowiecki, February to March 2010

"Powers of War and Peace: The Laws of War in Early America," NYU Golieb History Colloquium, February 16, 2010

Moderator, The Medical Malpractice Debate, Yale Law School / American Constitution Society, December 7, 2009

"The Problem of International Law in America," Yale Law School / American Constitution Society, December 1, 2009

"The Social Histories of International Law," Santa Clara University, November 6, 2009

"Learned Puffendorffs and Jacksonian Soldiers: The Laws of War in American History," Yale Human Rights Workshop, September 24, 2009

"Humanity in America,"
Harvard International Law Workshop, October 18, 2008
Yale Law School Faculty Workshop, October 2008
Cornell Public Law Workshop, April 2009
University of Chicago Legal History Workshop, April 2009
NYU Public Law Workshop, October 19, 2009

"Values and Assumptions in American Labor Law," University of Buffalo, September, 2008

"The Political Economy of Pain," The Common Good / Brookings conference on The Boundaries of Litigation, April 12, 2008

"The Law of Counterinsurgency Damages," University of Chicago Public Law Workshop, April 8, 2008

Commentator, Alberico Gentili Conference, NYU School of Law, March 14, 2008

"The Law of Counterinsurgency Damages," Loyola Law School conference on the Frontiers of Tort Law, January 2008

Patriots and Cosmopolitans, Treasury Executive Institute and United States Department of the Treasury, November 28, 2007

Patriots and Cosmopolitans, George Washington University, April 9, 2007

Patriots and Cosmopolitans, Fordham Law School Faculty Workshop, March 2007

Commentor, "Governing Globalism: The U.S. and the World," American Society for Legal History, Baltimore, November 17, 2006

"The King and the Dean," Boalt Hall Faculty Workshop, November, 2006

"The Law of the Erie Canal," Historical Society of the Courts of the State of New York, Buffalo, New York, October 4, 2006

"The Little Dictatorship of the Plaintiffs' Lawyer: Rules of Law and the Rule of the Market in American Tort Law," Clifford Symposium, Depaul University, April 2006

"The Organization of the American Plaintiffs' Bar," New York Law School Symposium on the Plaintiffs' Bar, March 2006

"The King and the Dean: Melvin Belli, Roscoe Pound, and the Common Law Nation," Yale Legal History Workshop, January 31, 2006

Commentor, "The Early History of the International Law of Occupation," Columbia Center for International History, November 18, 2005

Annenberg Distinguished Speakers' Series, University of Pennsylvania History Department, October 27, 2005

"The King and the Dean: Melvin Belli, Roscoe Pound, and the Common Law Nation,"
Columbia History Department Faculty-Graduate Seminar, December 1, 2006
University of California at Berkeley, November 8, 2006
Columbia Law School Faculty Paper Series, September 29, 2005
Stanford Law School Legal Theory Workshop, September 22, 2005

"Internationalism and the Dilemmas of Strategic Patriotism," University of Tulsa Legal Scholarship Symposium honoring the work of Nadine Strossen, September 19, 2005

"The Pyramid and the Machine: James Wilson's American Founding," New York University School of Law Legal History Colloquium, August 31, 2005

"An Institutional Account of American Tort Law," Baldy Center for Law & Social Policy, SUNY Buffalo, Mar. 25, 2005

"The Internationalist Beginnings of American Civil Liberties," Yale Legal Theory Workshop, Jan. 27, 2005

"The Inevitability of Aggregated Settlement: An Account of American Tort Law"
New York Law School Workshop on "Master Trends in the Law," November 16, 2004
Brooklyn Law School Mass Torts Series, November 22, 2004
Institute for Law and Economic Policy, Miami, April 24, 2004
New York City Torts Group Brown Bag Series, April 7, 2004
Columbia Law School Faculty Lunch Series, April 1, 2004

"State Constitutions and American Tort Law: A History," Columbia Law School Public Law and Legal Theory Working Paper 04-67 (March 7, 2004)

"Add Women and Stir? The Internationalist Beginnings of American Civil Liberties," National Women's History Month Presentation to the Columbia Law Women's Association, March 2004

"Crystal Eastman and the Internationalist Beginnings of American Civil Liberties"
Law & Society Association Meeting, Las Vegas, June 2005
American Society for Legal History Annual Conference, October 30, 2004
USC Legal Theory Workshop, October 2004
University of Texas Faculty Colloquium, September 2004
UCLA Law School Legal History Workshop, November 20, 2003
Columbia Law School Faculty Workshop, November 6, 2003
Brooklyn Law School Legal Theory Workshop, November 13, 2003
University of Kyoto, May 18, 2004
University of Tokyo, May 19, 2004

"The Passion of William Werner," Harvard Law School Faculty Workshop, November 17, 2003

"The Accidental Republic: Contingency and Risk in the Making of American Accident Law," American Society for Legal History, Washington, D.C., November 15, 2003

Participant in the Robert Levi Leadership Symposium on Compensation for Victims of Terrorism, Johns Hopkins University, November 13-14, 2003

"Some Thoughts on Interdisciplinary Legal Scholarship," Law & Humanities Conference, Columbia Law School, June 1, 2003

"The Passion of William Werner," University of Michigan Law School Legal History Workshop, March 28, 2003

"The Passion of William Werner," Boston University Legal History Workshop, February 28, 2003

"An Evolutionary History of the September 11th Victim Compensation Fund," paper presented at the Insurance Section of the American Association of Law Schools annual meetings, January 2003

"From Free Labor to Actuarial Risk: Workmen's Compensation and the Statistical Revolution in American Law," paper presented at the American Society for Legal History, San Diego, November 2002

"Some Historical Thoughts on the Appearance of Distributive Justice in American Tort Law," paper presented at "Law and the Disappearance of Class in Twentieth-Century America," University of Pennsylvania Law School, November 2002

"Accidents and the Statistical Revolution in American Law," paper presented to the Columbia Law School Society for Law and Ideas, November 2002

"The Passion of William Werner," Columbia Law School Faculty Retreat, October 2002

"Workmen's Compensation and the Logics of Social Insurance," Columbia Law School, Pub. Law Research Paper No. 02-41, April 2002

"Workmen's Compensation and the Logics of Social Insurance," presented at the N.Y.U. Legal History Colloquium, April 2002

"Commentary on Douglas Hay, 'Master and Servant in the British Empire,'" presented at the Columbia Law School Legal History Series, April 2002

"Accident Law, the Family Wage, and the Gendered Structure of the American Welfare State," presented at the American Society for Legal History, Chicago, October 2001

BRIEFS

Boumediene v. Bush, 128 S. Ct. 2229 (2008), Brief of Legal Historians as Amici Curiae

Ramroop v. Flex-Craft Printing, Inc., 896 N.E.2d 69 (N.Y. 2008), Brief of New York Labor and Employment Law Professors as Amici Curiae

FAIR v. Rumsfeld, 547 U.S. 47 (2006), Brief Amici Curiae of 56 Columbia Law School Faculty Members

FELLOWSHIPS and HONORS

Organization of American Historians Distinguished Lecturer, 2013

Guggenheim Fellow, 2010-11

Visiting Lecturer, University Of Tokyo, May 2004

Samuel I. Golieb Research Fellow In Legal History, 1999-2000, New York University School Of Law

Littleton-Griswold Fellowship, American Historical Association, 1999-2000

Larry J. Hackman Research Residency, New York State Archive Partnership Trust, 1999-2000.

Legal History Fellow, Yale Law School, 1998-1999

John M. Olin Fellow, Yale Law School Center For Law And Economics, August 1998

Coker Fellow and Assistant-in-Instruction to Professor Jed Rubenfeld, Yale Law School, Fall 1998

Teaching Fellow, Yale University Department Of Political Science, Professor Rogers Smith, Spring 1998

PROFESSIONAL SERVICE

Board of Directors, Yale Law Journal Company, May 2011- present

Commissioned to co-author (with Robert Post) the Oliver Wendell Holmes Devise History of the United States Supreme Court volume on the William Howard Taft Court

Academic Advisory Board, New-York Historical Society Institute for Constitutional History, 2007-

Editorial Board, Law and History Review

Editorial Board, Law & Social Inquiry

Co-director, Columbia Law School Program in Legal History (with Ariela Dubler), 2001-2009

Chair of the Program Committee for the American Society for Legal History, 2006 Annual Meeting

Publications Committee, American Society for Legal History

Co-organizer (with William E. Forbath) of "Empire, Human Rights, and Transnational Contexts in the History of American Law," conference held October 28, 2004 at the University of Texas School of Law

Editorial Board Member of *Labor History*, 2003-2007

Program Committee for the American Society for Legal History, 2005 Annual Meeting

Program Committee for the American Society for Legal History, 2003 Annual Meeting

BAR ADMISSION

New York

OTHER SERVICE

Board of Directors, Yale Law School Early Learning Center