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ORIGINAL ARTICLE

Stanley N. Katz, Scholar and Citizen: An Introduction

Felicia Kornbluh

University of Vermont, Burlington, VT, USA
Email: fkornbluh@gmail.com

Felicia Kornbluh, "Introduction."

I first interviewed Stanley N. Katz in the fall of 2020. I had returned to teaching after a fellowship year at Princeton University with the Program in Law and Public Affairs. That year was interrupted by the outbreak of COVID-19, which drove me home to Vermont from New Jersey—but not before I had the opportunity to present my research on the New York State-based origins of the constitutional abortion rights ultimately endorsed in *Roe v. Wade*. Katz confirmed my sense of the importance of the late-1960s and early-1970s New York story, and more general emphasis on the state-level and statutory origins of *Roe*, by commenting that when he was teaching at the University of Chicago Law School, advocates of expanded abortion access like himself looked to New York as the model for what they might be able to achieve in Illinois. "We never," he said, "expected the Supreme Court to bail us out."[1]

Katz's comment kind of blew my mind. It indicated, first, that my socio-legally historical way of thinking about the way battles over *Roe* had distorted historical memory—and led almost everyone to forget the social-movement, advocacy, and (for at least 95% of the relevant history) non-federal-court centered legal history of abortion decriminalization—was probably right. Second, that one comment indicated that I didn't know Katz, in my mind a legal-historical eminence, the first Class of 1921 Bicentennial Professor in the History of American Law and Liberty at Princeton and former President of the American Council of Learned Societies, at all. The eminence clearly had a past as an advocate for legal and social change that was completely unknown to scholars of my generation, and seems to have been unique among the modern founders of our field. The interview was an effort to draw him out on the context in

[1] Felicia Kornbluh, *A Woman's Life is a Human Life: My Mother, Our Neighbor, and the Journey from Reproductive Rights to Reproductive Justice* (New York: Grove Press, 2023), 12.

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which he and his colleagues had observed the campaign for abortion law reform that had become my fixation. Following my curiosity, I also asked him about his political work and commitments, and began to learn about his intellectual biography and early career.

The interview was far more wide-ranging than I had initially thought it would be. Katz told me that his opinions about abortion law reform developed when he was teaching legal history at the University of Chicago Law School (with coursework from Harvard Law School but without a J.D.) and volunteering with the Illinois branch of the American Civil Liberties Union (ACLU). Learning by practice, his volunteer efforts with the ACLU taught him how to write a legal brief as he joined the team that argued for the Nazis' right to march in the Holocaust survivor-heavy town of Skokie, Illinois. A highlight of his later advocacy work involved confronting Phyllis Schlafly ("the smartest person I ever debated") and other anti-feminists in Catholic church basements around Chicago over the merits of the Equal Rights Amendment. At the University of Chicago, Katz said, he taught the first-ever course on "Sex and the Law"—after the famously formidable Soia Mentschikoff, the only woman on the law school faculty, and a primary author of the Uniform Commercial Code who was hardly an expert in the then-barely-nascent field of feminist legal studies, told him to "fuck off" when he asked her to do it.[2] Katz then took the heat when the students who had learned about sex discrimination in his course filed a complaint against the law school with the Equal Employment Opportunities Commission.

Katz also spoke movingly about the debt he felt to the person who provided his most personal link to the ACLU, his wife's grandfather, Rev. John Jaynes Holmes. Holmes, he recalled, when Katz first met him, was a retired Unitarian minister with decades of involvement in the same reform politics in New York City that my research discovered was the soil from which the abortion campaign emerged. A onetime head of New York's Liberal Party, Holmes was what Katz called a "genteel socialist," a founder of the NAACP (the National Association for the Advancement of "Colored" People) as well as of the ACLU, and a longtime member of the ACLU board. Katz remembered seeing him frequently "in the very last years of his life…. [And he] made a big impression on me and his career," as a participant in and critic of mainstream Democratic politics, and "in some ways of course has been a model for me."

I spoke with Katz only briefly about his intellectual biography. But I did start to learn about his time teaching in the History Department at the University of Wisconsin–Madison during the era when the modern field of U.S. legal history and the interdisciplinary field of Law and Society were both emerging. He described some of his own research, and a long-term emphasis in teaching on constitutional law, as in some ways fitting awkwardly with the work of Willard Hurst, who was the leader of the new wave of legal historians in Madison, and some of his colleagues. Where Hurst and others generally studied local legal

[2] Jason Kelly, "Legal Light," *University of Chicago Magazine*, Winter, 2019, https://mag.uchicago.edu/law-policy-society/legal-light [accessed January 1, 2025]. Thanks to Professor Mary Anne Case at the University of Chicago for a bit of additional background on the late Soia Mentschikoff.

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developments and were largely averse to studying elite courts and constitutional law, Katz wound up taking a different road. "That," the tension between these approaches, he commented, has "been one of the central problems for legal historians in the course of my career." However, Katz also said that he "consider[s] myself thoroughly a member of the Hurst wing of the party." Moreover, he explained, his "major intellectual interest as an historian used to be in the history of private law and not public law.... [A] lot of my teaching early on was in the history of private law, but that's not the best material to teach. And it's not what undergraduates are interested in. So the longer I taught this subject, the more I moved into public law. And although I made a very conscious effort to try to get away from constitutional law, I found for various reasons that was hard to do. But I was certainly in the stream of constitutional historians that are trying to take a Hurstian and social history approach to it."[3]

The interview was so interesting that it inspired me to ask Katz to talk with me a second time, with this forum in mind. Having gotten a glancing sense of where he fit into the development of the legal history field, and his perspectives on its trajectories since he started teaching and publishing, I returned to learn more. Having asked about his engagement with the ACLU and with questions of women's and reproductive rights, I returned to ask about other aspects of his life as a political actor as well as a scholar and mentor.

What follows is a brief capsule biography of Professor Katz, followed by an edited version of the transcript of that second interview, from the fall of 2022. It is followed by two brief commentaries on it and on Katz's career by Professor Hendrik Hartog, who succeeded Katz in his Princeton professorship, and by Professor Cornelia Dayton, who worked principally with Katz, as well as Professor John Murrin, when she was a graduate student and has remained a close colleague of his throughout her career.

Neither the transcript nor these brief remarks can do justice to the many contributions of this remarkable scholar and citizen. My hope is that they give today's legal historians enough of a hint that they read and learn more of his work.

[3] The *Journal of American Constitutional History*, dedicated to offering an alternative to "law office history" and providing a haven for "scholarship that tries to understand the past, rather than distort it to influence present controversies," takes a Katzian approach to the subject – but had its first issue only in Winter of 2023. Its editor-in-chief is Professor David Schwartz of the University of Wisconsin Law School. See the journal's self-description at https://jach.law.wisc.edu/ [accessed December 31, 2024].

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