

## ***CURRICULUM VITAE***

**MARK G. KELMAN**

Born: August 20, 1951  
New York City

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### **EDUCATION AND HONORS**

- Harvard College, B.A. 1972, *summa cum laude* in Social Studies, Phi Beta Kappa
- Harvard Law School, J.D. 1976, *magna cum laude*
- American Academy of Arts and Sciences: named Fellow in 2008

### **WORK EXPERIENCE**

- Fund for the City of New York (1972-76, sporadic; full time 1976-77); consultant; Director of Criminal Justice Projects
- Rowley & Scott (summer 1975); law clerk
- Stanford Law School; 1977-present (Professor since 1982; William Nelson Cromwell Professor 1996-2007; James C. Gaither Professor, 2007- present, Academic Coordinator 1994-96; Associate Academic Dean 1999-2001; Vice-Dean, 2004-present)

### **PUBLICATIONS: BOOKS**

- *A Guide to Critical Legal Studies* (Harvard University Press, 1987) [portions reprinted in *Foundations of the Economic Approach to Law*, A. Katz ed. 1997]
- *Jumping the Queue: An Inquiry into the Legal Treatment of Students with Learning Disabilities* (with Gillian Lester) (Harvard University Press, 1997) [revised portions reprinted in *Left Legalism/Left Critique*, J. Halley and W. Brown eds. 2002]
- *Strategy or Principle? The Choice between Regulation and Taxation* (University of Michigan Press, 1999)
- *American Criminal Law: Cases, Statutes, and Comments* (with Markus Dubber) (Foundation Press, 2005; 2d. edition 2009)
- *The Heuristics Debate* (Oxford University Press, 2011)
- *What Is In a Name? Taxation and Regulation across Constitutional Domains* (Carolina Academic Press, 2019)
- *What Followed Was Pure Lesley* (fiction) (Saturday Review Press/Dutton, 1973)

## PUBLICATIONS: ARTICLES, BOOK CHAPTERS, ESSAYS

- "The social cost of inequality," in *The New Conservatives* (L. Coser and I. Howe, eds. 1974)
- "The ambiguities of tax reform," 6 Working Papers for a New Society 85 (1978)
- "The politics of explaining crime" (book review) 31 Stanford Law Review 527 (1979)
- "Consumption theory, production theory, and ideology in the Coase Theorem," 52 Southern California Law Review 669 (1979) [reprinted in *A Law and Economics Anthology* (K. Dau-Schmidt and T. Ulen eds. 1997)]
- "Choice and utility," 1979 Wisconsin Law Review 769
- "Personal deductions revisited: why they fit poorly in an ideal income tax and why they fit worse in a far from ideal world," 31 Stanford Law Review 831 (1979) [reprinted in the *International Library of Essays in Law and Legal Theory, Tax Law*, P. White ed. 1996; reprinted in *Federal Income Tax Anthology*, P. Caron, K. Burke and G. McCough eds. 1997]
- "Spitzer and Hoffman on Coase: A brief rejoinder," 53 Southern California Law Review 1215 (1980)
- "Interpretive construction in the substantive criminal law," 33 Stanford Law Review 591 (1981) [reprinted in *A Criminal Law Anthology*, A. Loewy ed. 1992; reprinted in *Philosophy of Law*, J. Feinberg and J. Coleman, eds. 1999; reprinted in *Criminal Law Conversations*, Paul Robinson ed. 2009]
- "The origins of crime and criminal violence," in *The Politics of Law* (D. Kairys ed. 1982)
- "Misunderstanding Social Life: A Critique of the Core Premises of Law and Economics," 33 Journal of Legal Education 274 (1983)
- "Strict Liability" in *Encyclopedia of Crime and Criminal Justice* (S. Kadish ed. 1983)
- "Time preference and tax equity," 34 Stanford Law Review 649 (1983), [reprinted in *International Library of Essays in Law and Legal Theory, Tax Law*, P. White ed. 1996]
- "The past and future of legal scholarship," 33 Journal of Legal Education 432 (1983)
- "Trashing," 36 Stanford Law Review 293 (1984) [reprinted in *Critical Legal Studies*, A. Hutchinson ed. 1989]
- "Comment on Hoffman and Spitzer's 'Experimental Law and Economics'" 85 Columbia Law Review 1037 (1985)
- "Taking Takings Seriously: An Essay for Centrists" (book review) 74 California Law Review 1829 (1986)
- "The necessary myth of objective causation judgments in liberal political theory," 63 Chicago-Kent Law Review 579 (1987) [reprinted in *The International Library of Essays in Law and Legal Theory, Tort Law*, E. Weinreb ed. 1991]
- "Three stages of economic libertarianism," 11 George Mason Law Review 35 (1988)
- "On democracy-bashing: A skeptical look at the theoretical and 'empirical' practice of the public choice movement" 74 Virginia Law Review 199 (1988)
- "The problem of false negatives," 27 Transaction: Social Science and Modern Society 21 (1990)
- "A critique of conservative legal thought," in *The Politics of Law* (D. Kairys ed., 2d ed. 1990)

- "A general framework for evaluating classification errors, with special reference to integrity testing," OTA Report
- "Concepts of discrimination in 'general ability' job testing," 104 Harvard Law Review 1157 (1991) [reprinted in *Foundations of Employment Discrimination Law*, J. Donohue ed. 1997]
- "Emerging centrist liberalism," 43 Florida Law Review 417 (1991)
- "Reasonable evidence of reasonableness," 17 Critical Inquiry 798 (1991) [reprinted in *Questions of Evidence* (J. Chandler, A. Davidson and H. Harootunian eds. 1994); portions reprinted in *Readings in Criminal Law*, (R. Weaver, J. Burkhoff, C. Hancock, A. Reed and P. Seago eds. 1997)]
- "Health care rights: distinct claims, distinct justifications," 3 Stanford Law & Policy Review 90 (1991)
- "Could lawyers stop recessions? Speculations on Law and Macroeconomics" 45 Stanford Law Review 1215 (1993)
- "Domestic partner benefits: a case study" (co-author, B. Fried principal author, 1993)
- "A Rejoinder to Cass Sunstein" in *Questions of Evidence* (J. Chandler, A. Davidson, and H. Harootunian eds. 1994)
- "Context-dependence in Legal Decision Making" (with Yuval Rottenstreich and Amos Tversky) 25 Journal of Legal Studies 287 (1996), [reprinted in *Behavioral Economics* (C. Sunstein ed. 2000)]
- "Progressive Vacuums", 48 Stanford Law Review 975 (1996) (review essay of Michael Piore's *Beyond Individualism*)
- "State Disparities in the Diagnosis and Placement of Pupils with Learning Disabilities" (with Gillian Lester) (30 Journal of Learning Disabilities 599, Issue No. 6, November/December 1997)
- Book Note (Cass Sunstein's *Free Markets and Social Justice*); 35 Journal of Economic Literature 2049 (1997)
- "(Why) Does Gender Equity in College Athletics Entail Gender Equality?" 7 Southern California Review of Law and Women's Studies 63 (1997)
- "Behavioral Economics as Part of a Rhetorical Duet: A Response to Jolls, Sunstein, and Thaler", 50 Stanford Law Review 1577 (1998)
- "Decomposing Hindsight Bias" (with David E. Fallas and Hilary Folger), 16 Journal of Risk and Uncertainty 251 (1998)
- "Does Disability Status Matter?" in *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Leslie Francis & Anita Silvers, eds. 2000) [reprinted in *The Library of Essays on Equality and Anti-Discrimination Law*, E. Emens & M. Stein eds., 2013)
- Book Note, (Margaret F. Brinig's *From Contract to Covenant: Beyond the Law and Economics of the Family*), 39 Journal of Economic Literature 153 (2001)
- "Market Discrimination and Groups," 53 Stanford Law Review 833 (2001)
- "The Moral Foundations of Special Education Law" in *Rethinking Special Education* (Thomas Fordham Foundation and Progressive Policy Institute, 2001)
- "Problematic Perhaps, but not Irrational," 54 Stanford Law Review 101 (2002)

- “Law and Behavioral Science: Conceptual Overviews” 97 Northwestern Law Review 1347 (2003). “Hedonic Psychology, Political Theory, and Law: Is Welfarism Possible?” 52 Buffalo Law Review 1 (2004)
- “Hedonic Psychology and the Ambiguities of ‘Welfare’” 33 Philosophy & Public Affairs 391 (2005)
- “Thinking About Sexual Consent” (review essay of Alan Wertheimer’s *Consent to Sexual Relations*) 57 Stanford Law Review 101 (2005)
- “Defining the Antidiscrimination Norm to Defend It” 43 San Diego Law Review 735 (2006)
- “Interpretive Construction in the Substantive Criminal Law: Comment on Responses” in Paul Robinson ed. *Criminal Law Conversations* (2009)
- “Saving Lives, Saving from Death, Saving from Dying: Reflections on ‘Over-Valuing’ Identifiable Victims” 11 Yale Journal of Health Policy, Law and Ethics 51 (2011)
- “Surgeon Age as *the* Major Factor in Recommendation of Uni-compartmental Knee Replacement versus High Tibial Osteotomy,” (with Frederick Dietz) 32 The Iowa Orthopaedic Journal 36 (2012)
- “Intuitions,” 65 Stanford Law Review 1291 (2013)
- “Moral realism and the heuristics debate” Journal of Legal Analysis 2013; doi: 10.1093/jla/lat004
- “Playing with Trolleys: Intuitions about the Permissibility of Aggregation,” (with Tamar Admati Kreps) 11 Journal of Empirical Legal Studies 197 (2014)
- “Does Class Size Reduce the Gender Gap? A Natural Experiment in Law” (with Daniel E. Ho) 43 Journal of Legal Studies 201 (2014)
- “The Choice Between Total Hip Replacement and Arthrodesis in Adolescent Patients: A Survey of Orthopedic Surgeons” (with David Studdert, John Callaghan, Monica S. Farid, Ashley Titan, and Frederick R. Dietz) 31 Journal of Arthroplasty 70 (2016)
- “Untangling *Horne*, Resuscitating *Nollan*,” 104 Cornell Law Review Online 50 (2018)
- “Hard Choices and Deficient Choosers” 19 Northwestern Journal of Law and Policy 191 (2019)

## WORKS-IN-PROGRESS

- *Injuries* [book length manuscript]
- “Form and Function in Justice Thomas’s *Kelo* Dissent”
- “The Inevitable Irrelevance of *Koontz*”
- “Testing the Irrelevance of the Abandonment Defense to Attempts”

## PUBLICATIONS (op ed, etc.)

- “Nickel and diming the poor” In these Times (Nov. 16-24, 1981)
- “The shift in twentieth century legal theory” 3 Humanities 12 (August 1982)
- “Lessons of the Thomas Affair”, The New Leader, (Nov. 4-18, 1991, p. 5)
- “Educated Choices” Stanford Lawyer, Spring 1996
- “Which Students Are ‘Special’?” (with Gillian Lester) Legal Times (April 20, 1998, p. 27)
- “Symposium Introduction” (Educational reform) 11:1 Stanford Law & Policy Review

- 220 (1999)
- “Introduction to the Disability Rights Symposium” 14:2 Stanford Law & Policy Review 235 (2003)
- “How Badly Could Trump Behave without Committing a Crime?” Legal Aggregate (May 1, 2019)

### **AMICUS BRIEFS**

- Co-wrote amicus brief in *Dolan v. City of Tigard*,
- Co-wrote amicus brief in *Yee v. City of Escondido*
- Co-wrote amicus brief in *Dukes v. Wal-Mart*

### **LECTURES AND INVITED PRESENTATIONS (excluding symposium and conference presentations)**

- USC Faculty Workshop (1980, 1997, 2005)
- Columbia Legal Theory Workshop (1982, 2008)
- AALS Annual Meeting: Plenary Session Addresses (1983, 1985); Section Addresses (1987, 1992, 2001, 2003)
- Yale Legal Theory Workshop (1986, 1996)
- University of Toronto Legal Theory Workshop (1990)
- Dunwoody Lecture (University of Florida, March 1991)
- Harvard Law School Legal Theory Workshop (1993)
- UCLA Faculty Workshop (1979, 1994, 2005, 2009)
- Santa Clara Faculty Workshop (1995)
- Cooley Lectures (University of Michigan, October 1997)
- Keynote Address: “Rethinking Special Education for the 21<sup>st</sup> Century” (2000)
- Berkeley Law School, legal theory workshop (2003, 2008, 2011)
- Harvard Law School, “Book Trouble” (2003); Public Law Workshop (2005): Law and Economics Workshop (1989)
- Yale Law School American Constitution Society: The Constitution in 2020 (2005)
- NYU Legal Theory Workshop (2007)
- Sibley Lecture (University of Georgia, March 2009)
- Keynote Address: Max Planck Institute Conference on Bounded Rationality (2012)
- Vanderbilt Law School Faculty Workshop (2015)