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The Problem with *Hobby Lobby*: Neoliberal Jurisprudence and Neoconservative Values

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Abstract This article explores the relationship between neoconservative values and neoliberalism in American jurisprudence through a critique of the US Supreme Court's *Hobby Lobby* decision. The article uncovers how the Court imposes market-oriented logic on religious expression and in the process spiritualizes economic activity. In this way neoliberal rationality is intertwined with neoconservative values. For example, exercising religion through corporatization can be understood as a neoconservative moderation of the corrupting influence of excessive neoliberal individualism. Finally, while the decision furthers employer control of workers' reproduction, the Court's proposed workaround—a direct government contraceptives program—would undermine that control and points to another, more emancipatory response to the problems of neoliberalism.

Keywords Health care · Family values · Neoconservatism · Neoliberal jurisprudence · Religious freedom · Reproduction

> It is, in my opinion, as absurd to praise the profit motive—i.e., economic action based on self-interest—as it is to condemn it. The human impulse to such action is, like the sexual impulse, a natural fact. So far from being a virtue, self-interested action (again, like sexual action) is an intrinsic aspect of human nature that falls under the shadow of 'original sin.'
> —Irving Kristol (2013), "No Cheer for the Profit Motive"

Hobby Lobby is included in *Forbes'* annual list of America's largest private companies. While Hobby Lobby continues to grow steadily, the company carries no long-term debt.

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> We believe that it is by God's grace and provision that Hobby Lobby has endured. God has been faithful in the past, and we trust Him for our future.
> —Hobby Lobby, "Our Story"[1]

Introduction

Hobby Lobby is a craft store chain with over 600 stores in the United States and about 28,000 employees. As the epigraph indicates, it is both profitable and, in the view of its owners, guided and blessed by God. It is owned by a single family, the Greens, and they are "committed to… [p]roviding a return on the family's investment" and "sharing the Lord's blessings with our employees."[2] Hobby Lobby's owners are also pro-life and object to several FDA-approved contraceptives on the grounds that they act as abortifacients. The company thus sued the federal government to avoid complying with the Affordable Care Act's (ACA) contraceptive mandate, which would require it to provide insurance for all FDA-approved contraceptives without cost-sharing for employees. In the 2014 case of *Burwell v. Hobby Lobby*,[3] the United States Supreme Court sided with Hobby Lobby and the two other closely held corporations that joined the suit.[4] In the process the Court held that closely held corporations are persons for the purposes of the Federal Religious Freedom Restoration Act of 1993 (RFRA). As such, they can exercise religion and cannot be compelled to abide by the contraceptive mandate.

The Court's decision exemplifies neoliberal jurisprudence in that it both furthers neoliberal goals and employs neoliberal rationality. In particular, the decision accomplishes neoliberal goals of deregulation and increased corporate power. The Court employs neoliberal rationality in that it uses market-oriented logic and reasoning to evaluate the religious claims and values the case raises. I argue that in doing so, the Court both *economizes religious expression* and *spiritualizes economic activity*.[5] The value of religious expression is cast in economic, market-oriented terms at the same time that the market is understood in a spiritual way, as a realm for the free expression of religion.

This article provides a sustained analysis of the neoliberal jurisprudence of *Hobby Lobby*, as well as a discussion of how the decision values particular religious beliefs concerning women's use of contraceptives and the meaning of "life" and abortion. The fact that this case revolved around these questions is crucial to understanding its significance. I argue that the neoliberal jurisprudence of *Hobby Lobby* intersects with and upholds key neoconservative values concerning the family and women's role, as well as the place of those values in society and the

[1] Hobby Lobby, "Our Story", http://www.hobbylobby.com/about-us/our-story (Accessed July 19, 2016).

[2] *Supra* n 1.

[3] *Burwell v. Hobby Lobby*, 573 US __ (2014).

[4] To be classified as a "closely held corporation" at least half of the company's stock has to be owned by five or fewer individuals.

[5] Thank you to an anonymous reviewer and an editorial board member for the important insight that not only does the Court economize religion, it also spiritualizes economic activity.

economy. In fact, although the Court exhibits neoliberal rationality in valuing religious expression in economic terms, exercising religion through the corporate form can be understood as a neoconservative moderation of the corrupting influence of excessive neoliberal individualism and the profit motive that is expressed in the above quote from Irving Kristol. The Court implicitly places heavy weight on the value and perhaps rightness of Hobby Lobby's beliefs about contraceptives and the meaning of life. Therefore, the religious moralism that the Court injects into the corporate form and corporate decisions is not an abstract commitment to allowing corporations the ability to exercise religion, but a specific commitment to the importance of a particular conservative religious belief about reproduction, women, fetal life, and contraceptives. To support this thesis, this article examines the Court's analysis of how the ACA burdens religious exercise, as well as the Court's appeal to family values.

This article's critique of one of the most significant US Supreme Court decisions of the past several years provides an avenue by which to investigate broader questions of the entanglement of neoliberalism and neoconservatism, especially as it concerns corporate power, religion, reproductive freedom, and the conditions of work. Even as neoliberalism challenges state power in certain domains, its advancement often depends on the state and legal action. Law is thus essential to neoliberalism and is a crucial site in which to uncover and critique neoliberalism (see Blalock 2014; Brown 2015). While others have noted how neoliberalism economizes everything and how *Hobby Lobby* in particular gives religious rights to capital (Cruz and Brown 2016; Sepper 2015) attention has not been paid to how this move in turn spiritualizes the economic sphere or to the precise relation between neoliberalism and neoconservatism in the decision. By focusing on reproduction, moreover, this article investigates how neoliberal jurisprudence is refiguring the questions and values at stake in reproductive law and politics. Although the law is also a crucial domain in which battles over reproduction are fought, little research exists on the intersection of neoliberalism and reproductive jurisprudence.[6] And while it is commonplace to include family values in lists of neoconservative commitments, careful attention to how these values are intertwined with neoliberalism and expressed in jurisprudence receive less attention.[7]

Given the recent surge of legal restrictions on contraceptive and abortion access in the United States, it is especially important to understand and critique the relationship between neoliberalism and neoconservatism. Moreover, understanding this overlap in this context allows us to see a way to challenge the reproductive control at work that the decision justifies. The final section of this article focuses on how the *Hobby Lobby* Court justifies intensified hierarchy at work and corporate control of employees' reproduction. Interestingly, *Hobby Lobby* points the way toward a partial solution to the problems it reflects and reinforces in the form of a government program to provide direct access to free contraceptives for some

[6] The limited scholarship on this includes Denbow (2015) and Mihic (2008).

[7] For an enlightening discussion of earlier reproductive rights jurisprudence and neoconservatism, see Eisenstein (1991). For a helpful exploration of neoconservatism and Supreme Court jurisprudence generally, see Feldman (2013).

women. I employ Kathi Weeks's (2011) feminist anti-work scholarship to argue for the importance of reproductive health services being divorced from employment. Not only could such a program provide more reproductive freedom and more freedom from employers, but it would also counter the neoliberal slashing of public welfare programs.

Hobby Lobby's Neoliberal Jurisprudence: Deregulation, the Economization of Religious Expression, and the Spiritualization of the Market

Neoliberalism is described in a multitude of ways, but I take its expression in the United States to involve the upward redistribution of wealth, increased corporate power, deregulation, privatization, and the shrinking of the welfare state.[8] Importantly, racialized and gendered anxieties are often deployed to garner support for neoliberal reforms, which in turn further racialized and gendered hierarchies. For example, the figure of the "welfare queen," which Dorothy Roberts describes as "the lazy mother on public assistance who deliberately breeds children at the expense of taxpayers" (1997, 17), was central to the push to gut US welfare support in the 1990s. This figure, which was coded as black, was presented as making bad individual choices that led to poverty and having more children to collect more government money; the correct policy response, then, was to limit welfare benefits and thereby stop subsidizing and incentivizing these poor choices (see Roberts 1997; Solinger 2001). To reckon with neoliberalism, then, we must understand how economic and cultural issues are intertwined in the neoliberal project (Duggan 2003). The case of *Hobby Lobby* provides an example of how cultural and economic issues are joined.

As explained above, I use the term neoliberal jurisprudence to refer to two different but related moves. The term refers to judicial reasoning that furthers neoliberal aims such as upward redistribution of wealth, deregulation, and increased corporate power. Following Wendy Brown, it also refers to neoliberal juridical rationality. As Brown explains: "More than simply securing the rights of capital and structuring competition, neoliberal juridical reason recasts political rights, citizenship, and the field of democracy itself in an economic register" (2015, 151–152). I extend her idea of neoliberal rationality to show how the jurisprudence in *Hobby Lobby* both economizes religion and spiritualizes economic activity. Under neoliberal rationality, religious expression is intelligible as an economic practice that is valued for its role in corporate business practices. As used here, then, neoliberal jurisprudence involves the deployment of a type of judicial reasoning in which market logic governs "the sayable, the intelligible, and the truth criteria" of an increasing array of domains (Brown 2006, 693). Yet it is also the case that the Court spiritualizes economic activity in that corporate decisions become moral, religious decisions. In order to substantiate these claims, it is necessary to examine the *Hobby Lobby* decision closely.

[8] For overviews of neoliberalism see Harvey (2005) and Duggan (2003).

The key legal question in the *Hobby Lobby* decision was whether the ACA's contraceptive mandate violated the RFRA.[9] The RFRA prevents the "Government [from] substantially burden[ing] a *person's* exercise of religion" unless the government can satisfy a least restrictive means test.[10] This test requires the government to demonstrate that the action "is in furtherance of a compelling governmental interest" and is also "the least restrictive means of furthering" that interest.[11] In passing the RFRA, Congress was reacting to the 1990 case, *Employment Division v. Smith*.[12] In *Smith*, the Court held that Oregon's denial of public benefits to Native Americans who used peyote as part of their spiritual practice did not violate those individuals' Constitutional right to free exercise of religion. In doing so, the Court departed from its previous jurisprudence and applied a rational basis review to the state action, which gives strong deference to the state. With the passage of the RFRA, then, Congress reinstated a statutory strict scrutiny standard for religious freedom cases.

In *Hobby Lobby*, the Court says it assumes that providing contraceptive coverage is a compelling state interest, but nonetheless concludes that the mandate substantially burdens the corporations' exercise of religion and is not the least restrictive means of achieving the state interest. I will examine closely the moves in Justice Alito's opinion, not for the purposes of determining the best RFRA test or making a strictly doctrinal point about the RFRA, but for the purposes of illustrating the decision's economization of religion and spiritualization of the market.

The first important move in Justice Alito's majority opinion is his characterization of corporations as persons for the purposes of the RFRA. The Court comes down firmly on the side of those who see the corporate form as simply a vehicle to further the interests of its owners, rather than as an entity with its own interests that do not amount simply to the sum of the interests of its owners (see Carbone and Levitt 2017). He acknowledges that understanding a corporation as a person, which he justifies using the Dictionary Act, is a legal fiction.[13] As he puts it, "this fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends."[14] Moreover, "[w]hen rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people."[15] Once it holds that corporations are merely instruments to advance owners' interests and thus like persons, it is an easy move for the Court to conclude that corporations, like people, can exercise religion. Much

[9] In objecting to the ACA's contraceptive mandate, Hobby Lobby argued that the mandate violated the company's First Amendment Free Exercise Clause rights and the Federal Religious Freedom Restoration Act (RFRA) of 1993. Because the Court resolved the case on RFRA grounds, it did not reach the Constitutional question.

[10] Emphasis mine.

[11] 42 U.S.C. § 2000bb-1(a). This test parallels the strict scrutiny test that the Court applies in some civil rights and equality cases.

[12] 494 US 872 (1990).

[13] See Justice Ginsburg's dissent, *Burwell v. Hobby Lobby* 573 U.S. ___ (2014) (slip opinion), 13–20 for a persuasive response to the claim that corporations are persons for RFRA purposes.

[14] *Hobby Lobby* at 18.

[15] *Hobby Lobby* at 18.

like *Citizens United v. F.E.C.* (2010) cast corporate spending on campaigns as political speech, *Hobby Lobby* turns corporate decisions into religious exercise. While neoliberal rationality has extended to the individual in that we are called on to invest in ourselves and expected to seek to maximize our return on that investment as though we are corporations, *Hobby Lobby*'s logic accomplishes the inverse: it individualizes corporations.[16] This conflation of corporations and individuals reflects the economic orientation of neoliberal rationality and sets the stage for the Court's economization of religion and spiritualization of economic activity.

Another crucial question the Court must resolve is whether the ACA imposes a substantial burden on the objecting corporations' religious exercise. The Court has "little trouble concluding that it does."[17] In deciding that the contraceptive mandate substantially burdens the corporations' exercise of religion, the Court notes that if the companies continue to provide insurance without coverage for the contraceptives, they will incur a tax of $100 a day for each employee affected by the lack of contraceptive coverage. The companies could instead cease to provide health insurance altogether, though this could also lead to penalties "if at least one of their full-time employees were to qualify for a subsidy on one of the government-run exchanges."[18] Justice Alito notes that there is conflicting evidence about which course of action would be most expensive for the corporations.[19] However, the Court contends that even if the penalties would be less of an economic burden than providing insurance, the lesser economic impact of compliance would not be dispositive. This is because the companies "have religious reasons for providing health-insurance coverage" and provide health insurance "in part because their religious beliefs govern their relations with their employees."[20] Thus, corporate decisions become an expression of religious values. Justice Alito concludes that Congress could not have meant "to put family-run businesses to the choice of violating their sincerely held religious beliefs or making all of their employees lose their existing healthcare plans."[21]

The Court is making somewhat contradictory claims here. First, it is asserting that a government regulatory penalty substantially burdens corporate exercise of religion because it imposes extra costs on businesses with certain religious beliefs. As Justice Alito mentions at one point, a law that "'make[s] the practice of… religious beliefs more expensive' in the context of business activities imposes a burden on the exercise of religion."[22] Second, the Court is contending that the economic burden is somewhat irrelevant because the corporations have a right to express their religion through their corporate decisions, whether or not those decisions maximize profit. Thus, while religion has been economized, it also has not

[16] The reasoning and implications of *Hobby Lobby*'s equation of corporations and persons for legal purposes parallels the Court's reasoning in *Citizens United v. F.E.C.*, 558 U.S. 310 (2010).

[17] *Hobby Lobby* at 31.

[18] *Hobby Lobby* at 32.

[19] *Hobby Lobby* at 32–33.

[20] *Hobby Lobby* at 33–34.

[21] *Hobby Lobby* at 35.

[22] *Hobby Lobby* at 21, quoting *Braunfield v. Brown*, 366 U.S. 599 (1961).

been fully contained within the profit-driven market. Hobby Lobby's corporate decisions come to blend religious moralism and profit-seeking.

Under the banner of protecting religious freedom, the Court, in neoliberal fashion, undermines the state's regulatory power, which has long been used to levy fines and impose costs on corporations.[23] The significance of the point that a government regulatory fine can substantially burden corporate religious exercise is apparent if we examine *Smith*, the case to which Congress was reacting when it enacted the RFRA. As mentioned above, *Smith* rejected Native Americans' claims that Oregon's denial of public benefits to them because of their peyote use violated their Constitutional right to free exercise of religion. That case did, of course, have implications for the economic well-being of the Native Americans who were denied benefits. By providing them with a choice between practicing their religion or getting public benefits, the Court's decision made the exercise of religion more costly. However, there is an important distinction between denying public benefits to actual people on the margins of society and imposing extra costs on corporations for harming third parties—namely, employees with uteruses who would use certain contraceptives—by not adhering to generally applicable regulations.

Hobby Lobby's interpretation of corporations as persons akin to the Native Americans in *Smith*, entails the application of a strict scrutiny standard to corporations. State action that hinders corporate religious exercise is thus likened to government action that abridges the civil and equality rights of individuals. Construing corporations as people for RFRA purposes results in extending a protected status to corporations that originated in civil rights jurisprudence, as though corporations are vulnerable and politically marginalized.[24] *Hobby Lobby* neglects the power of corporations, both in the economy and society generally, and also in their relationships with employees. The religious corporation becomes the victim of government oppression.[25]

At one point Justice Alito likens the corporate furtherance of religious objectives to corporations "tak[ing] costly pollution-control and energy-conservation measures" or providing working conditions "that go beyond what the law requires."[26]

[23] This is a move that Elizabeth Sepper calls "free exercise Lochnerism" because the Court is incorporating the key tenets of *Lochner*-era freedom of contract jurisprudence into religious free exercise jurisprudence. In *Lochner v. New York* in 1905, the Court struck down a New York law that set maximum work hours for bakers as a violation of employees' freedom of contract. Lochnerism or the *Lochner*-era refers to the era of Supreme Court jurisprudence from this decision until the New Deal when the Court eventually turned decisively away from freedom of contract jurisprudence. In *Hobby Lobby* and other cases, as Sepper describes it, recent free exercise jurisprudence has returned to applying "stringent judicial scrutiny of economic regulation informed by a baseline of private ordering and a skepticism toward redistribution" that marked the *Lochner*-era (Sepper 2015, 1464). I depart from Sepper in emphasizing the specifically neoliberal logic and the neoconservative values of the Court's decision, which are not simply a reiteration of Lochnerism.

[24] On how *Citizens United* extends strict scrutiny to corporations and is rather explicit about corporate vulnerability, see Brown (2015, 164–66).

[25] In a similar vein, Douglas NeJaime and Reva Siegel point out that "seeking religious exemptions from laws of general application" allows religious actors to "shift from *speaking as a majority* seeking to enforce traditional morality to *speaking as a minority* seeking exemptions from laws that offend traditional morality" (2015, 2552–2253).

[26] *Hobby Lobby* at 23.

Not only does this comparison sidestep a crucial question that this cases raises (how should these religious objections be valued or weighed?), it also neglects the fact that the law does not, and indeed cannot, require religious practices. The comparison conflates religious exercise that curtails employees' access to contraceptives with corporate practices that have less objectionable effects. The law does not set a floor for religious exercise, like it does for environmental or labour regulations, above which corporations can go. The comparison of corporate investment in energy conservation to denying employees access to contraceptives disingenuously suggests that withholding contraceptive coverage is "going beyond what the law requires" when it is actually contravening the legal requirement.

The Court points out that corporations can and often do organize themselves in order to "further religious objectives."[27] But the Court goes further to protect this business promotion of religion, even when it would impose harms on third parties. Corporate religious objectives then become something a corporation can impose, against a legal mandate, on employees. The conflation of corporations and people, along with this protection for corporate religious expression, entails that organizing as a corporation can itself be a means of exercising religion. On this thinking, individuals who do not have capital or own corporations lack an avenue to exercise their religion. *Hobby Lobby* suggests an economic hierarchy of religious exercise as a statutory right.

The *Hobby Lobby* decision obscures its deregulatory effect while presenting the corporations' goals as noble. Yet it is important to underscore how *Hobby Lobby*'s economization of religious expression and spiritualization of economic decisions is used to undermine state regulation. The spiritual is expressed in economic terms and decisions, such as the decision to organize as a corporation. Because of this, restrictions on corporate decisions can violate religious freedom. Thus, an anti-regulatory neoliberal stance becomes spiritualized. In other words, the corporate religious objection to the ACA serves as a vehicle to express a spiritual and neoliberal anti-regulatory impulse. It is significant that one of the primary political objections to the ACA is that it impinges on the free market.

The Importance of Neoconservative Values

Part of what is distinct and important about *Hobby Lobby*, apart from its neoliberal jurisprudence, is the way it lends credence to neoconservative "family values." Yet in reading Justice Alito's opinion, one can almost forget that he is taking sides in the "culture wars" and that his decision upholds a Christian right view of the family, women, and contraceptives. This is in part because of the opinion's neoliberal rationality, which is so pervasive in American society that it is sometimes taken for granted. It is also because his decision appeals to widely shared values regarding religious freedom. However, the furthering of so-called "family values" that the decision accomplishes cannot be seen as either trivial or incidental. It is in fact central. The pro-life movement has actively used religious freedom claims to curtail

[27] *Hobby Lobby* at 23.

women's access to reproductive health services.[28] Although presenting itself as neutral on the issue of the morality of abortion and the contraceptives at issue, the Court actually gives great deference to the pro-life worldview.[29]

Another important aspect of *Hobby Lobby*, then, is that neoliberal rationality is joined, not just to religion in general, but specifically to neoconservative family values and, consequently, the condemnation of abortion.[30] In her comments on early abortion jurisprudence, Zillah Eisenstein writes: "Neoconservatives hope to *re*contain the privacy rights of individuals *and* curtail the responsibilities of the state in actualizing individual rights" (1991, 99). This neoconservative hope is clearly expressed in *Hobby Lobby*: women's putative Constitutional privacy right to abortion and contraceptives is contained as the role of the state in regulating employer-provided contraceptive access is undermined. This does not, however, mean that there is no role for the state: though neoconservatism is fractured and opportunistic, it often relies on religious moralisms and turns to the state and law to guide the nation's morality (Brown 2006, 697).

Substantially Burdening Religious Exercise

Consistent with neoconservatism's strong role for law and the state in setting the country's moral compass, the *Hobby Lobby* Court implicitly decides that "life" is more important than women's equality. To fully explore this facet of the decision, it is necessary to foray back into the Court's determination that the ACA contraceptive mandate imposes a substantial burden on the corporations' exercise of religion. The point of this close examination of the Court's reasoning is to uncover the relation between the Court's neoliberal jurisprudence and neoconservative values. The argument here is parallel to the argument above about neoliberal rationality. I argue both that neoliberalism is used to uphold neoconservative values and that neoconservatism is deployed to uphold neoliberalism.[31]

The Court's decision regarding the substantial burden rests on its acceptance not only of the *sincerity* of the corporations' beliefs about the contraceptives, as Justice Alito claims, but also of their *truthfulness*. The corporations' religious objection rests on the belief that the four FDA-approved contraceptives to which they object—Plan B, ella, and two kinds of intrauterine devices (IUDs)—act as abortifacients. The American College of Obstetricians and Gynecologists (ACOG) and other medical professional organizations contended in their joint amicus brief

[28] For example, the movement has sought conscience-based exemptions to providing healthcare services, such as abortion and contraceptive prescriptions, to which healthcare workers might object. More broadly, the evangelical right is increasingly using claims of religious freedom to pursue their anti-abortion and anti-same sex marriage agenda. See NeJaime and Siegel (2015, 2554–2558).

[29] As other scholars have pointed out, neoliberalism is often furthered through the culture wars. See Duggan (2003).

[30] Anne Norton describes this as a neoconservative encouragement of "family values and the praise of older forms of family life" (2005, 178).

[31] Thank you to an anonymous reviewer and an editorial board member for the insight that the relation between neoliberalism and neoconservatism here goes both ways.

that these contraceptives do not act as abortifacients.[32] Even if the Court accepted the corporations' non-standard definition of abortifacient, which includes the prevention of implantation of a fertilized egg but not fertilization, scientific evidence regarding two of the contraceptives contravenes their belief that those contraceptives act past the point of fertilization.[33] Thus, the Court adheres to a neoconservative view of truth as originating from, as Brown describes, "inner conviction or certainty that no amount of facticity or argument can counter" (2006, 707). In assuming the truth of the corporations' claims, this decision is consistent with a recent trend in reproductive jurisprudence in the US to accept contested medical claims about abortion that support pro-life views (see Ahmed 2015).

In addition to failing to assess the factual basis of the corporations' beliefs, the Court fails to assess critically the corporations' claim that the ACA mandate meaningfully burdens their religious exercise. While it may seem obvious that, as the corporations contend, the action mandated under the ACA would facilitate access to the contraceptives, this rather narrow conclusion does not resolve two more crucial questions: Is there a meaningful connection between the government-compelled corporate action and the use of the contraceptives? And, relatedly, does the government mandate *substantially* burden the corporations' exercise of religion? That is, the Court does not explore the crux of the connection between the contraceptive mandate and the acts that more clearly violate religious beliefs: preventing implantation of a fertilized egg. This is a crucial aspect of the case.[34]

Both the Department of Health and Human Services (HHS), in its argument to the Court, and Justice Ginsburg's dissent make the point that the contraceptive mandate does not impose a substantial burden on the corporations' exercise of religion. In response to this argument, Justice Alito claims this objection actually addresses the question of "whether the religious belief asserted in a RFRA case is reasonable." This, he says, is a "question that the federal courts have no business addressing" because this issue raises the philosophical, moral, and religious question of "the circumstances under which it is wrong for a person to perform an

[32] The brief stated that "Respondents' claim that Plan B and ella prevent implantation is not supported by current scientific data or evidence." Rather, ACOG referenced scientific evidence to conclude that those contraceptives work by "inhibiting or postponing ovulation," not by preventing implantation. Quoted in *Hobby Lobby* at 9.

[33] ACOG also notes the medical distinction between the meaning of "contraceptive" and "abortifacient." Since abortifacient refers to the termination of a pregnancy, ACOG argues that "[c]ontraceptives that prevent fertilization from occurring, or even prevent implantation, are simply not abortifacients regardless of an individual's personal or religious beliefs or mores" (quoted in Barnes 2013). This point elides the fact that the main contention over the contraceptives centers on the interpretation of and value placed on fertilization and implantation.

[34] For example, could an employer refuse to pay a woman her wages if it knew that she was going to use them to procure an IUD or an abortion? Could an employer fire an employee for taking a sick day to procure an abortion? Such cases may seem obviously different from the one in *Hobby Lobby*, but in either one the employer could argue that, if the government prevents it from withholding wages in the first case or firing the employee in the second case, the government compels it to facilitate access to a procedure or device to which the employer has religious objections. Thus, such a corporation could argue that the government action substantially burdened the corporation's religious exercise. For an explanation of the ways in which the Court should, and has in the past, inquired into how much religious freedom is burdened by complying with government mandates, see Sepper (2016).

act that is innocent in itself but that has the effect of enabling or facilitating the commission of an immoral act by another."[35] He contends that that question is for the corporations to answer for themselves, not the Court. This position amounts to letting corporations, rather than the Court, decide what substantially burdens their exercise of religion. The Court thus abdicates to the corporations' own interpretation of judicial questions. This move is key to upholding the evangelical view of the contraceptives at issue. While framing that view as beyond or outside judicial consideration, Justice Alito actually gives it judicial backing.

Furthermore, the Court implicitly places heavy emphasis on the particular beliefs at issue: that the named contraceptives terminate the life of a fetus and that abortion is morally wrong. That Justice Alito is not just accepting that the corporations' religious beliefs are hindered but is also placing heavy weight on the *importance* of the particular religious beliefs that are allegedly burdened is evident when he narrows the ruling. He writes:

> Our decision should not be understood to hold that an insurance-coverage mandate must necessarily fall if it conflicts with an employer's religious beliefs. Other coverage requirements, such as immunizations, may be supported by different interests (for example, the need to combat the spread of infectious diseases) and may involve different arguments about the least restrictive means of providing them.[36]

If an employer sincerely objected to providing coverage for vaccinations or blood transfusions (another example Justice Alito mentions), it is difficult to see why the same workarounds that the Court proposes in *Hobby Lobby* would not work for such cases. In the case of the contraceptive mandate, the Court suggests that a less restrictive means for the government to achieve its objective would be for either the government to provide access to the contraceptive services directly or for the government to allow the corporations to follow the same workaround it provides to religious non-profits.[37] The hypothetical vaccination and blood transfusion cases cannot be clearly distinguished from the instant one unless the Court is implicitly doing one or both of the following. The Court could be according the religious belief that prohibits vaccines or blood transfusions less weight or importance than the belief that certain contraceptives are abortifacients and abortion is morally wrong. Alternatively, or in addition, the Court could be according more weight to the state interest of, say, "combat[ting] the spread of infectious diseases" than to that of furthering gender equality.[38] The Court appears to do both.

[35] *Hobby Lobby* at 36.

[36] *Hobby Lobby* at 46.

[37] *Hobby Lobby* at 41–45.

[38] As noted above, part of what is at stake in this case is how the state's interest is framed in this case. Is it a relatively narrow interest of providing contraceptive coverage without cost-sharing or is it the broader interest in women's liberty or equality? Furthermore, it should be noted that after *Hobby Lobby*, the Court ordered rehearings in light of *Hobby Lobby* in cases in which companies expressed religious objections to any type of contraceptive. See *Autocam Corp. v. Burwell*, 134 S. Ct. 2901 (2014), *Gilardi v. Department of Health and Human Services* 124 S. Ct. 2902 (2014), and *Eden Foods v. Burwell* 134 S.Ct. 2902 (2014).

Although Justice Alito's opinion assumes that the state interest is compelling, his opinion in fact diminishes the importance of the state interest. When he discusses the state's purported interest in "promoting 'public health' and 'gender equality,'" he minimizes their importance, claiming that they are "couched in very broad terms."[39] Justice Alito thus frames the state interest as marginal even as his analysis assumes it satisfies the compelling interest prong of the standard.[40]

More than that, however, the Court makes a decision about the meaning of life and in doing so upholds a key neoconservative value. In other words, this is not just a disinterested judicial decision that accepts the sincerity of the religious belief; it goes much further to accept the truthfulness and importance of a particular neoconservative value. In accepting Hobby Lobby's own determination of the meaning of contraceptives, the Court injects a specific moral and religious value into its neoliberal logic.

A subsequent ruling, *Wheaton College v. Burwell*,[41] provides support for the claim that the Court diminishes the importance of the state interest and inflates the importance of the religious belief. In that 2014 case, the Court suggested that even one of the workarounds that it proposes in *Hobby Lobby* as a less restrictive means to achieving the government interest imposes an unconstitutional burden. In *Wheaton College*, the Court issued a temporary injunction allowing Wheaton College not to submit the paperwork the ACA requires of religious non-profits that assert a religious objection to contraceptive coverage. Wheaton argued that the form it is required to submit under the ACA to notify insurers of the institution's objections, and which thus allows the insurer to cover the contraceptives directly, violated its religious freedom. In granting the injunction, the Court suggested that one of the very workarounds that it mentioned in *Hobby Lobby* as a less restrictive alternative may be too much of a burden on religious exercise.[42] Since filling out a one-page form is trivial, the Court seems to be placing substantial value on the substance of the belief itself: that, from the point of fertilization, an embryo has (not unlike a corporation) the moral value of a person.

The Court appears to weigh the value of the religious belief at stake and the value of women's access to contraceptive coverage against one another.[43] Given that many recent Supreme Court cases have accorded substantial weight to the protection of foetal life, it is unsurprising that the Court rules in favour of the religious belief and accepts the corporations' claim that the ACA provision substantially hinders their exercise of religion. The Court accomplishes something similar to what Khiara Bridges (2013) has described in much recent abortion jurisprudence. As she notes, "when the Court plugs 'life' into a balancing test—that is, when the Court weighs the state's interest in protecting fetal 'life' against the

[39] *Hobby Lobby* at 39.

[40] NeJaime and Siegel (2015) also point out that the Court fails to acknowledge the dignitary, as opposed to purely material, harms that the corporate practice imposes on women who use certain contraceptives.

[41] 573 U.S. ___ (2014).

[42] The Court's three female justices—Justices Sotomayor, Ginsburg, and Kagan—chronicled their objections in a lengthy dissent from the Court's short opinion on the order.

[43] For a discussion of the Court's balancing tests, see Alienkoff (1987) and Bridges (2013).

woman's liberty interest in obtaining an abortion—the test is guaranteed to protect the abortion right ineffectively" (2013, 1286).

Corporate Family Values

While neoliberal rationality plays an important role in *Hobby Lobby*, it is joined with neoconservative tendencies to supplement rather than supplant the religious value at the core of the decision: the meaning of "life" and all that goes along with it. As I have argued, the Court determines that organizing as a corporation and contracting with employees on its religiously determined terms are ways of exercising religion. It simultaneously accepts the weightiness and perhaps rightness of the corporations' religious beliefs about the moral status of embryos and contraceptives. In this conjunction, the Court's opinion joins neoliberalism and neoconservatism.[44] The *Hobby Lobby* Court's neoconservative embrace of family values is neatly imbricated with the neoliberal economic program. This relationship between neoliberalism and neoconservatism goes both ways. Neoconservative values are deployed to uphold neoliberal policy prescriptions such as undermining redistributive policies, furthering the interests of the family-owned businesses, and setting the stage for perhaps larger gains for corporate power. At the same time, neoliberal jurisprudence is used to uphold neoconservative "family values." I use the term corporate family values to refer to this two-way relationship, to the intertwining of neoliberalism and neoconservatism that is evident in *Hobby Lobby*.

It is noteworthy that Justice Alito generally refers to the plaintiffs, not as Hobby Lobby, Mardel, and Conestoga—the names of the business entities that are actually the named parties to the suit— but as "the Greens and the Hahns"—the names of the families who own each company. This naming represents the companies as small family-owned businesses and conflates the families and their corporations. Both corporations *and families* are presented as "persons" who can exercise religion. The decision therefore blurs the distinctions, not just between corporations and individuals, but also among corporations, individuals, and families.

Hobby Lobby's corporate family values ethos can be read as a way of injecting traditional moralism into the "original sin" of "the profit motive" as Irving Kristol (2013, 155), the oft-called godfather of neoconservatism, put it. As he wrote in 1979: "The evolution of capitalist apologetics from [Adam] Smith's day to our own has witnessed a gradual 'liberation' of the capitalist idea from its Judeo-Christian moorings" (2013, 158). Along similar lines, though from a different political perspective, David Harvey (2005) sees the rise of neoconservatism as a response to the contradictions of neoliberalism. Neoconservatives' "aim is to counteract the dissolving effects of the chaos of individual interests that neoliberalism typically produces" (2005, 83). In particular, neoconservatives "seek[] to restore a sense of moral purpose" that includes the restoration of "family values and right-to-life issues" (2005, 83–84).

[44] Anne Norton describes something like this conjunction when she writes: "The neoconservative economic program speaks to the concerns of small businesses, small property owners, and working people. The appeals to ordinary people are matched by benefits given to the extraordinary: the wealthiest individuals and corporations. They combine populist rhetoric with a corporatist strategy" (2005, 179).

If aspects of neoconservatism counter the individualistic, profit-driven ethos of neoliberalism, the Court's focus on the social and religious goods that corporations can promote serves as recognition of how the problems of capitalism can be addressed, not through government regulation, but through the infusion of religious values. This kind of *religious capitalism* overlaps with the idea of "conscious capitalism." The cofounder and co-CEO of Whole Foods Market, John Mackey (2013), has popularized the idea of conscious capitalism. He writes in his book, *Conscious Capitalism: Liberating the Heroic Spirit of Business* (2013, 20):

> The myth that profit maximization is the sole purpose of business has done enormous damage to the reputation of capitalism and the legitimacy of business in society. We need to recapture the narrative and restore it to its true essence: that the purpose of business is to improve our lives and to create value for stakeholders (2013, 20).

The corporations that object to the ACA contraceptive mandate on religious grounds, as well as Justice Alito, are spouting a specifically religious iteration of conscious capitalism. The purpose of businesses, construed as persons, is to further religious goals and values if the owners so choose. And this is not just because it is good for business, but also because there is a kind of religious or moral imperative to supplement the profit motive.

Hobby Lobby is also emblematic of the neoliberal outsourcing of government social programs and state aid to religiously based groups. Former President Barack Obama continued the practice of his predecessors like George W. Bush of funnelling substantial government money to faith based organizations to provide aid that the government is not providing (Hackworth 2012). Jason Hackworth describes neoliberals as "venerat[ing] religion in general and religiously oriented charities as suitable alternatives to the state, following the ideas of thinkers like Milton Friedman and Friedrich Hayek" (2012, 8). In *Hobby Lobby*, this veneration reaches to religious corporations. Conscious capitalism of the religious variety maintains that providing health insurance on a corporation's own terms is an important expression of religious freedom. What is unsaid is that the government's failure to provide universal health care is what necessitates this compassionate religious corporatism.

In underscoring how corporations can organize around religious beliefs and asserting their right to do this against government regulation, the Court's reasoning reflects what William E. Connolly (2008) calls "the evangelical-capitalist resonance machine." On Connolly's view, economic practice has a collective spirituality embedded within it and the varied interests of evangelicals and capitalists in this machine "are connected across [their] differences by bonds of spirituality" (2008, 8). *Hobby Lobby* makes this spiritual resonance between capitalism and evangelicalism quite clear. Corporate economic decisions about healthcare are spiritual decisions, at least when they involve evangelical views of contraceptives.

This spirituality may also extend to the consumption of those who buy Hobby Lobby's goods. Predictably, the public response to *Hobby Lobby* was bifurcated: some on the left who support contraceptive access boycotted Hobby Lobby and

many on the religious right supported it by pledging to buy more from the chain.[45] In either case, the consumption or withholding of consumption takes on a political and moral tone. In the case of the religious supporters of the craft chain, consumption can become a matter of religious and spiritual practice.[46] Hobby Lobby seems to court exactly this spiritual view of its business, when, for example, it proclaims on its website that it operates "in a manner consistent with Biblical principles."[47] If the corporate practice takes on spiritual and religious tones, the ordinary government regulation of corporations that would curb that practice becomes an attack on religion and religious capitalism.

By injecting a sense of moral purpose into capitalism and neoliberalism, neoconservatism often intertwines with and furthers neoliberalism.[48] If the neoconservative moral agenda has been entwined with the expansion of corporate power and the dismantling of the welfare state, then there is also a connection between dismantling both patriarchal moral values and neoliberalism.[49] As I have argued, *Hobby Lobby* closely links the fight to undermine reproductive health access to deregulation and the consolidation of corporate power. As such, it has provided an opportunity to explore how to dismantle the corporate family values that it upholds. Ironically, *Hobby Lobby* itself also offers a suggestion for how to challenge the very neoliberal neoconservatism that it embodies. The next section takes up this suggestion after a discussion of the reproductive control over employees that the Court's decision authorizes.

Freedom from Employer Evangelicalism

Hobby Lobby and subsequent rulings extend the power relations between employer and employed to include access to contraceptives. In this way, these decisions intensify hierarchical control of workers. As feminist political theorists like Carole Pateman (1988) and Kathi Weeks (2011) have argued, employment is a relationship of power and control, and the supposedly voluntary employment contract authorizes

[45] See, for example, the "Boycott Hobby Lobby" facebook page. https://www.facebook.com/boycotthl (Accessed July 19, 2016). The National Catholic Register reported that "[m]ore than 64,000 people" pledged to support Hobby Lobby (Bauman 2013).

[46] This is something like what Lucia Hulsether (2013) calls the "spiritual politics of neoliberalism." She explains that neoliberalism is "a mode of belonging, where ritual acts of consumption initiate individuals into a global community of consumer agents… [C]onsumer transactions and corporate expansion are recast as forms of spiritual purification and missionary practice."

[47] Hobby Lobby, "Our Story," http://www.hobbylobby.com/about-us/our-story (Accessed July 19, 2016).

[48] Neoliberalism and neoconservatism also collide, but my focus here is on the ways they are intertwined with one another in *Hobby Lobby*.

[49] As Harvey writes, "[t]he organic link between such cultural struggles [called the 'culture wars'] and the struggle to roll back the overwhelming consolidation of ruling-class power calls for theoretical and practical exploration" (2005, 205). In another register, Connolly argues that in order to counter the "[state-capital-Christian assemblage,] each time a particular theology and religious sensibility is engaged, specific cultural resentments, economic priorities, political programs, and constituency exclusions linked to it must be addressed" (2008, 35).

the employer's control of workers. This hierarchy at work is naturalized through the commonplace understanding of work as "a private space, the product of a series of individual contracts rather than a social structure, the province of human need and sphere of individual choice rather than a site for the exercise of political power" (Weeks 2011, 4). Figuring work as a matter of individual choice exercised through employment contracts helps to legitimize this relationship of power. The Court's decision is consistent with American society's naturalization and acceptance of employment as a relationship of command and obedience. In other words, the Court's reasoning neglects the power of corporations, including how that power is exercised over employees and, in particular, over employees' reproduction.

Like it does with the employment contract in *Hobby Lobby*, Supreme Court jurisprudence has often figured decisions about reproduction and access to reproductive services like abortion and contraceptives as a matter of privacy and individual choice rather than politics and power.[50] Given this tradition of casting reproduction and employment as matters of individual choice, it is unsurprising that the Court failed to view its decision as one that would intensify the reproductive control of employers over employees. Yet an adequate response to the Court's decision to intensify the reproductive control that some employers exert over workers must engage with a critique of the conditions of employment and reproduction in the United States.

Once the employment contract is opened to critical inquiry, we can see it as the precondition of the religious employers' control and exploitation of their employees' (reproductive) labor. *Hobby Lobby* lays bare just how intimate the relationship of power and control that the employment contract legitimizes can be.[51] In fact, the *Hobby Lobby* decision has ramifications for the power of employers over employees' reproduction and thus over the management of life itself. The decision employs neoliberal rationality biopolitically. As Michel Foucault described it, biopolitics is that politics which is "situated and exercised at the level of life" (1981, 137). In this case a certain market logic is deployed to give employers greater ability to manage, not just the lives of their workers at work, but their very ability to reproduce life. The employment contract enables the imposition on employees of the employer's evangelical ethos and beliefs about family, women, and foetuses.

It must be noted that this intensification of power at work is possible only because of the peculiar American norm of tying access to health insurance to paid employment. The entanglement of the workplace and healthcare is what enables employers in this case to exert control over employee reproduction. Furthermore, employer control over contraceptive insurance is only visible because the government mandated contraceptive coverage. Ultimately, undoing the entanglement of employment and health insurance would be a more substantial reform than making employers provide contraceptive access through private insurance.

[50] See, for example, *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Roe v. Wade*, 410 U.S. 113 (1973). The most recent Supreme Court decision on abortion, *Whole Women's Health*, does not use the language of privacy, but only speaks generally of abortion as a "constitutionally protected personal liberty." *Whole Women's Health v. Hellerstedt*, 579 U.S. ___ (2016), 20 (slip opinion).

[51] Hobby Lobby imposes its evangelical ethos on its employees in other ways as well. According to a former employee, the chain's employee handbook contains biblical references (Posner 2013).

Interestingly, one of the Court's suggested workarounds to the contraceptive mandate could make employees less dependent on employers for health insurance. The *Hobby Lobby* majority suggests that one alternative to the contraceptive mandate for employers such as Hobby Lobby would be fully government-provided contraceptives without cost. In examining the least restrictive means prong of the RFRA standard, the Court notes that "[t]he most straightforward way of [furthering the compelling government interest] would be for the Government to assume the cost of providing the four contraceptives at issue to any women who are unable to obtain them under their health-insurance policies due to their employers' religious objections."[52] This is arguably an expansive interpretation of the RFRA: the possibility of an extension of direct federal health services undermines the Government's argument that the contraceptive mandate satisfies the least restrictive means test. Nonetheless, it is also somewhat promising, especially when considered in the broader context of ACA jurisprudence.

As discussed above, after the ruling in *Hobby Lobby*, the Court preliminarily ruled that even the paperwork a religious non-profit has to file indicating that it has religious objections to contraceptives substantially burdens the institution's religious freedom. On the Court's logic, perhaps the only way for the government to achieve its compelling state interest in ensuring access to contraceptives without a co-pay is to provide them directly to individuals and completely bypass employers. Jack Jackson (2016) makes a similar point in discussing the dissent in *N.F.I.B. v. Sebelius*,[53] the case in which the Court narrowly upheld the ACA under the Federal Government's taxing and spending power. Jackson comments that "the dissent comes near to an either/or logic with respect to future Federal action: spend directly or do nothing." The *Hobby Lobby* Court seems to approach this same either/or logic in its understanding of the ACA's contraceptive mandate and religious freedom. The only clear least restrictive means available is for the government to provide contraceptive coverage directly to at least the employees of institutions with religious objections to contraceptives.

This option would relax the power of employers over employees. It also could lead, along the lines of the dissent in *Sebelius*, to a more robust expansion of nationalized (contraceptive) health care. Such a possibility would be emancipatory in two ways: it would provide many individuals greater control over their own reproduction and more independence from work.[54] The more publicly provided free and low-cost health care that is available and unconnected to employment, the more freedom people have to leave current employers or not work at all. This, as Weeks argues, would be a crucial step for left politics, precisely because employment is a condition of command and obedience that undermines freedom. As Jackson (2016) puts it, "freedom requires less work and a criterion of judgment about the existence

[52] *Hobby Lobby* at 41.

[53] *N.F.I.B. v. Sebelius* 567 U.S. 1 (2012).

[54] Cornell (1995, especially chapter 2), provides a compelling and theoretically robust defence of women's control over their reproduction as a matter of equality and freedom.

and expansion of the welfare state should be the extent to which it transforms that goal into a material reality."[55]

While in some sense government-provided contraceptive access as a response to *Hobby Lobby* appears to cede the realms of work and economics as sites of religion, such a program does not preclude other advocacy to challenge work as a site for the expression of religious values and their imposition on employees. Moreover, such a public contraceptive program would in fact challenge the relation between neoconservative values and neoliberalism. In other words, if neoconservative anti-contraceptive values are used to uphold neoliberalism and vice versa, demands for full government-provided contraceptives challenge this intertwining. It would be a victory against both anti-contraceptive neoconservative views and the neoliberal shrinking of the welfare state that affects marginalized communities especially harshly. Moreover, it is important to underscore that government-provided contraceptives would be more liberatory than continuing to make access to health care so dependent on employment.

Enacting a government program to provide free contraceptives either through universal health care, a contraceptive-only plan, or the extension of Title X would be difficult, especially since Republicans and the Trump administration are attacking the ACA as a whole.[56] However, it is important to highlight that, though flawed, the ACA itself accomplishes several notable reforms that cut against neoliberal objectives, including increased regulation of the insurance industry and the expansion of Medicaid. It is important to try to build on these reforms rather than to succumb to the neoconservative moralism and corporatism of *Hobby Lobby*. In fact, a program to provide contraceptives could be framed as a way to counter neoliberal cuts to public assistance and increased corporate power.

Direct government provided contraceptives would relax the power of employer over employee that *Hobby Lobby* enables and could set the stage for a broader expansion of government health care. This potential is important to highlight, though not for the purposes of ignoring the very real effects of the decision on workers.[57] If only a full government-provided contraceptive program with no burden whatsoever on an employer to notify the government or insurers of their objection would satisfy the Court, then, until such a program exists, thousands of employees will be harmed and subjected to their employers' religious beliefs. Yet, the Court's signal that an expanded government program that provides contraceptives would satisfy the legal requirements should not go unnoticed.

[55] Also, Carole Pateman (2004) sees the ability not to be unemployed as an important aspect of individual freedom and democracy.

[56] For a good discussion of the problems with these alternatives, see Sepper (2015, 1491–1495).

[57] A year after the *Hobby Lobby* decision, Nelson Tebbe (2015) reported that Hobby Lobby employees still lacked full contraceptive coverage.

References

Ahmed, Aziza. 2015. Medical evidence and expertise in abortion jurisprudence. *American Journal of Law and Medicine* 41 (1): 85–118.

Alienkoff, T. Alexander. 1987. Constitutional law in the age of balancing. *Yale Law Journal* 96 (5): 943–1005.

Barnes, Robert. 2013. Supreme court to review contraceptive coverage mandate in health-care law. *The Washington Post*, 26 November. https://www.washingtonpost.com/politics/supreme-court-to-review-contraceptive-coverage-mandate/2013/11/26/e9627f5a-56bc-11e3-8304-caf30787c0a9_story.html?utm_term=.7232f2d36f32. Accessed 19 July 2016.

Bauman, Michelle. 2013. Tens of thousands pledge to support Hobby Lobby. *National Catholic Register*, 7 January. http://www.ncregister.com/daily-news/tens-of-thousands-pledge-support-for-hobby-lobby/hobbylobby.com. Accessed 19 July 2016.

Blalock, Corinne. 2014. Neoliberalism and the crisis of legal theory. *Law and Contemporary Problems* 77 (4): 71–103.

Bridges, Khiara M. 2013. 'Life' in the balance: Judicial review of abortion regulations. *University of California, Davis Law Review* 46: 1285–1338.

Brown, Wendy. 2015. *Undoing the demos: Neoliberalism's stealth revolution*. New York: Zone Books.

Brown, Wendy. 2006. American nightmare: Neoliberalism, neoconservatism, and de-democratization. *Political Theory* 34 (6): 690–714.

Carbone, June, and Nancy Levitt. 2017. The death of the firm. *Minnesota Law Review* 101: 963–1029.

Connolly, William E. 2008. *Capitalism and Christianity, American Style*. Durham: Duke University Press.

Cornell, Drucilla. 1995. *The imaginary domain: Abortion, pornography, and sexual harassment*. New York: Routledge.

Cruz, Katie, and Wendy Brown. 2016. Feminism, law, and neoliberalism: An interview and discussion with Wendy Brown. *Feminist Legal Studies* 24 (1): 69–89.

Denbow, Jennifer M. 2015. *Governed through choice: Autonomy, technology, and the politics of reproduction*. New York: NYU Press.

Duggan, Lisa. 2003. *The twilight of equality? Neoliberalism, cultural politics, and the attack on democracy*. Boston: Beacon Press.

Eisenstein, Zillah. 1991. Privatizing the state: Reproductive rights, affirmative action, and the problem of democracy. *Frontiers: A Journal of Women's Studies* 12 (1): 98–125.

Feldman, Stephen M. 2013. *Neoconservative politics and the supreme court*. New York: NYU Press.

Foucault, Michel. 1981. *The history of sexuality 1: The will to knowledge*. New York: Penguin Books.

Hackworth, Jason. 2012. *Faith based: Religious neoliberals and the politics of welfare in the United States*. Athens: University of Georgia Press.

Harvey, David. 2005. *A brief history of neoliberalism*. Oxford: Oxford University Press.

Hulsether, Lucia. 2013. TOMS shoes and the spiritual politics of neoliberalism. *Religion and Politics* 1 October. http://religionandpolitics.org/2013/10/01/toms-shoes-and-the-spiritual-politics-of-neoliberalism/#sthash.SL8g0g2N.dpuf. Accessed 19 July 2016.

Jackson, Jack. 2016. Not yet an end: Neoliberalism, the jurisprudence of Obamacare, and the welfare-state left. *Theory and Event* 19(2).

Kristol, Irving. 2013. No cheer for the profit motive. In *The neoconservative persuasion*. New York: Basic Books.

Mackey, John. 2013. *Conscious capitalism: Liberating the heroic spirit of business*. Cambridge: Harvard Business Review Press.

Mihic, Sophia Jane. 2008. Neoliberalism and the jurisprudence of privacy: An experiment in feminist theorizing. *Feminist Theory* 9 (2): 165–184.

NeJaime, Douglas, and Reva Siegel. 2015. Conscience wars: Complicity-based conscience claims in religion and politics. *The Yale Law Journal* 124: 2516–2591.

Norton, Anne. 2005. *Leo Strauss and the politics of American Empire*. New Haven: Yale University Press.

Pateman, Carole. 2004. Democratizing citizenship: Some advantages of a basic income. *Politics and Society* 32 (1): 89–105.

Pateman, Carole. 1988. *The sexual contract*. Stanford: Stanford University Press.

Posner, Sarah. 2013. More than a Hobby. *The American Prospect*. 18 July. http://prospect.org/article/more-hobby. Accessed 20 July 2016.
Roberts, Dorothy. 1997. *Killing the black body: Race, reproduction, and the meaning of liberty*. New York: Vintage.
Sepper, Elizabeth. 2016. Substantiating the burdens of compliance. *University of Illinois Law Review* 2016: 53–61.
Sepper, Elizabeth. 2015. Free exercise Lochnerism. *Columbia Law Review* 115: 1453–1520.
Solinger, Rickie. 2001. *Beggars and choosers: How the politics of choice shapes adoption, abortion, and welfare in the United States*. New York: Macmillan.
Tebbe, Nelson. 2015. Hobby Lobby's bitter anniversary. *Balkinization Blog*. 30 June. http://balkin.blogspot.com/2015/06/hobby-lobbys-bitter-anniversary.html. Accessed 20 July 2016.
Weeks, Kathi. 2011. *The problem with work: Feminism, marxism, antiwork politics, and postwork imaginaries*. Durham: Duke University Press.