

**JOHN OLDHAM MCGINNIS**  
**George C. Dix Professor of Law**  
**Northwestern University School of Law**  
**357 East Chicago Avenue**  
**Chicago, IL 60611-3069**

**WORK EXPERIENCE:**

**2002-Present Professor, Northwestern Law School**

**1991-2002 Assistant Professor ('91-'94), Associate Professor ('94-'95), (Professor '95-01)**  
**Benjamin N. Cardozo School of Law**

**Teaching Areas:**

**Administrative Law, Antitrust, Constitutional Law, International Trade,  
International Law**

**Spring 1998 Lee Distinguished Visiting Professor, Marshall-Wythe Law School at  
William and Mary**

**1987-1991 Deputy Assistant Attorney General**  
**Office of Legal Counsel, Department of Justice**

**The Office of Legal Counsel is the principal legal adviser to the Attorney General and, through him, to all departments and agencies in the executive branch. As a deputy to the head of this office, I helped supervise a staff of eighteen attorneys in providing advice on a wide range of legal issues with particular responsibility for advice on national security, trade, financial and regulatory issues as well as for the evaluation of the constitutionality of pending legislation.**

**1985-1987 Attorney-Adviser**  
**Office of Legal Counsel, Department of Justice**

**1984-1985 Litigation Associate**  
**Sullivan and Cromwell, New York**

**1983-1984 Law Clerk, Judge Kenneth W. Starr**  
**Court of Appeals, District of Columbia Circuit**

**1983 Summer Clerk**  
**Office of Solicitor General, Department of Justice, Washington, D.C.**

**EDUCATION:**

**1980-1983** Harvard Law School  
**J.D., *Magna Cum Laude***  
 Editor, *Harvard Law Review*

**1978-1980** Balliol College, Oxford  
**M.A., Philosophy and Theology**  
 Knox Fellow  
 Librarian and Secretary, Oxford Union Society  
 Best Speaker Award, 1979 and 1980

**1975-1978** Harvard College  
**B.A., *Magna Cum Laude*, Phi Beta Kappa**  
 Major: Classical Languages  
 Lamont Prize in Classics

**AWARDS:** 1997 Paul M. Bator Award (awarded annually by the Federalist Society to an "outstanding legal scholar" under forty.)

**BOOKS:** ORIGINALISM AND THE GOOD CONSTITUTION (with M. Rappaport) (Harvard University Press) (manuscript due March 15, 2012)

ACCELERATING DEMOCRACY (Princeton University Press) (manuscript due Nov. 30, 2011)

**ARTICLES and ESSAYS:**

*The Abstract Language Fallacy*, \_\_ U. ILL. L. REV. (with M. Rappaport) (2012)

*Accelerating AI*, 104 N.W.L. REV. 1253 (2010)

*Originalism and the Good Constitution*, 98 GEORGETOWN L. J. 1693 (2010) (with M. Rappaport)

*Medellin and the Future of International Delegation*, 118 YALE L. J. 1712 (2009)

*Original Methods Originalism: A New Theory of Interpretation and the Case against Construction*, 103 N. W. L. REV. 751 (2009) (with M. Rappaport) (Symposium)

*Reconciling Precedent with Originalism*, 103 N.W.L. Rev. 803 (2009) (with M. Rappaport) (Symposium)

*An Opinionated History of the Federalist Society*, 20 *Proceedings of the Samuel Griffith Society*, 163 (2009)

*Democracy and International Human Rights Law*, 84 NOTRE DAME L. REV. 1739 (2009) (with I. Somin)

*Losing the Law Wars*, 25 GEORGIA ST. L. REV 377 (2008) (endowed lecture)

*Judging Facts Like Law: The Courts versus Congress in Social Fact-Finding*, 25 CONST. COM. 69 (2008) (with C. Mulaney)

*The Condorcet Case for Supermajority Rules*, 16 SUP. ECON. REV. 39 (2008) (with M. Rappaport)

*The Federalist Approach to the First Amendment*, 31 HARV. J. L. PUB. POL. 127 (2008)

*Originalism and Supermajoritarianism Defending the Nexus*, 101 N.W. L. Rev. 1919 (2007) (with M. Rappaport)

*Original Interpretative Principles as the Core of Originalism*, 24 CONST. COM. (2007) (with M. Rappaport)

*Should International Law Be Part of Our Law*, 59 STAN L. REV. 1175 (2007) (with I. Somin)

*Majority and Supermajority Rule: Three Views of the Capitol*, 85 TEX. L. REV. 1115 (2007) (with M. Rappaport)

*A Pragmatic Defense of Originalism*, 100 N.W. L. REV. 383 (2006) (with M. Rappaport)

*Contemporary Foreign and International Law in Constitutional Construction*, 69 ALB. L. REV. 801 (2006) (Symposium)

*The Filibuster, the Median Senator and The Countermajoritarian Difficulty*, 2005 SUP. CT. REV. 257 (with M. Rappaport)

*The Patterns and Implications of Political Contributions by Elite Law School Faculty*, 93 GEO. L. J. 1167 (2005) (with M. Schwartz and B. Tisdell)

*Foreign to Our Constitution*, 100 N. W. L. REV. 303 (2005)

*Supermajority Rules and Judicial Confirmation*, 25 CARDOZO L. REV. 543 (2005) (with M. Rappaport) (Symposium)

*Lawrence v. Texas and Judicial Hubris*, 114 MICH. L. REV. 1555 (2004) (with N. Lund)

*Against Global Governance in the WTO*, 45 HARV. J. INT'L 353 (2004) (with M. Movsesian)

*Federalism v. States' Rights: A Defense of Judicial Review in a Federal System*, 99 N.W.L. REV. 89 (2004) (with I. Somin)

*The World Trade Organization as a Structure of Liberty*, 28 HARV. J. OF LAW AND PUB. POL. 81 (2004)

*Symmetric Entrenchment: A Constitutional and Normative Theory*, 89 VA. L. REV. 385 (2003) (with M. Rappaport)

*Decentralizing Provisions versus Judicial Oligarchy*, 20 CONST. COM. 39-59 (2003)

*The Political Economy and Global Multilateralism in the New Antitrust Paradox* (ed. Michael Greve 2003)

*Global Multilateral Treaties and Customary International Law: The Case of the WTO*, 44 VA. INT'L L. 229-285 (2003)

*Continuity and Coherence in the Rehnquist Court*, 47 ST. LOUIS L. REV. 875 (2003) (symposium)

*Lawyers as the Enemies of Truth*, 26 HARV. L. REV. & PUB. POL. 231 (2003) (symposium)

*Reviving Tocqueville's America: The Rehnquist Court's Jurisprudence of Social Discovery*, 90 CAL. L. REV. 485 (2002)

*Our Supermajoritarian Constitution*, 80 TEX. L. REV. 703 (2002) (with M. Rappaport)

*Presidential Review as Constitutional Restoration*, 51 DUKE L. J. 901 (2001)

*Popular Sovereignty and the Electoral College*, 29 FLA. ST. U. L. REV. 995 (2001) (symposium essay)

*World Trade Agreements: Advancing the Interests of the Poorest of the Poor*, 34 *IND. L. REV.* 1361 (2001) (AALS symposium)

*The World Trade Constitution*, 114 *HARV. L. REV.* 511-605 (2000) (with M. Movsesian)

*The Enlightenment Case for Vouchers*, 2000 *N.Y.U. ANN. SURV. AM. L.* 75-88 (symposium)

*Against the Scribes: Campaign Finance Reform Revisited*, 24 *HARV. J. L. & PUB. POL.* 25 (2000) (symposium)

*The Primacy of Nature*, *Harv. Rev. Phil.* (Occasional Paper No. 2 in Studies in Human Nature) (2000)

*The Political Economy of Global Multilateralism*, 1 *CHI. J. INT'L L.* 381 (2000)

*A New Agenda for International Human Rights: Economic Freedom*, 48 *CATH. U. L. REV.* 1029 (1999)

*The Inevitable Infidelities of Constitutional Translation: The Case of the New Deal*, 41 *WM & MY L. REV.* 177 (1999) (symposium)

*Justice Without Justices*, 16 *CONST. COMM.* 541 (1999)

*Impeachment: The Structural Understanding*, 67 *GEO. WASH. L. REV.* 650 (1999)

*In Praise of the Efficiency of Decentralized Traditions and Their Preconditions*, 77 *N. C. L. REV.* 523 (1999)

*Still a Solution: In Further Support of Spending Supermajority Rules*, 40 *WM & MARY L. REV.* 527 (1999) (with M. Rappaport)

*Supermajority Rules as a Constitutional Solution*, 40 *WM. & MARY L. REV.* 365 (1999) (with M. Rappaport)

*The Original Constitution and its Decline: A Public Choice Perspective*, 21 *HAR. J. L. & PUB. POL.* 195 (1997) (Symposium)

*The Rights of Legislators and the Wrongs of Interpretation: A Further Defense of the Constitutionality Legislative Supermajority Rules*, 47 *DUKE L. J.* 327 (1997) (with M. Rappaport)

*Executive Branch Interpretation in Great Britain and the United States: An Examination of the Essential Differences in CONSTITUTIONAL IMPLICATIONS OF EXECUTIVE SELF-REGULATION: THE NEW ADMINISTRATIVE LAW* (T. Daintith, ed. 1997)

*The Spontaneous Order & War Powers*, 47 CASE WEST. L. REV. 1317 (1997) (symposium)

*Constitutional Federalism: A Funeral Oration* 13 J. L. POLITICS 288 (1997) (Symposium remarks)

*The Human Constitution and Constitutive Law: A Prolegomenon*, 8 J. CONTEMP. LEG. ISSUES 211 (1997) (symposium)

*The Decline of the Western Nation State and the Rise of the Regime of International Federalism*, 18 CARDOZO L. REV. 903 (1996) (symposium)

*The Once and Future Property-Based Vision of the First Amendment*, 63 UNIV. CHI. L. REV. 49 (1996)

*The Original Constitution and Our Origins*, 19 HARV. J. L. & PUB. POL. 251 (1996) (symposium)

*The Constitutionality of Legislative Supermajority Requirements: A Defense*, 105 YALE L. J. 483 (1995) (with M. Rappaport)

*The Bar Against Challenges to Employment Discrimination Consent Decrees: A Public Choice Perspective*, 54 LA. L. REV. 1507 (1994) (symposium)

*The Partial Republican*, 35 WM. & MARY L. REV. 1751 (1994) (review essay)

*The Federal Litigator*, 56 REVIEW OF POLITICS 607 (1994) (reviewing Rebecca Salokar, *THE SOLICITOR GENERAL: THE POLITICS OF LAW*)

*Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers*, 56 LAW & CONTEMP. PROBS. 293 (1993)

*Models of the Attorney General's Opinion Function: A Normative, Historical and Descriptive Prolegomenon*, 15 CARDOZO L. REV. 377 (1993) (symposium)

*Another Word Against Consensus*, 71 TEX. L. REV. 675 (1993)

*The President, the Senate, the Constitution and the Confirmation Process: A Reply to Professors Strauss and Sunstein*, 71 TEX. L. REV. 633 (1993)

*Principle versus Politics: The Solicitor General's Office in Constitutional and Bureaucratic Theory*, 44 STAN. L.REV. 799 (1992) (review essay) *The Contract Clause: A Return to the Original Understanding*, 14 HASTINGS CON. L. Q. 525 (1987) (with D. Kmiec)

Comment, *The Exhaustion Doctrine in Section 1983 Actions: Patsy v. Board of Regents and Fair Assessment in Real Estate v. McNarty*, 96 HARV. L. REV. 207 (1983)

#### SELECTED SHORTER ESSAYS AND REVIEWS:

*Democracy and Information Technology*, \_\_NATIONAL AFFAIRS\_\_ (2011)

*Law is Class*, WALL STREET JOURNAL, March 21, 2011 (Reviewing Walter Olson's *Schools for Misrule*)

*The Case Against Public Sector Unions*, 162 POL. REV. 3 (2010) (with M. Schanzenbach)

*When Justice Comes Naturally*, WALL STREET JOURNAL, August 27, 2010, (reviewing Hadley Arkes' *Constitutional Illusions and Anchoring Truths*)

*Confidential Conundrum*, WALL STREET JOURNAL, June 4, 2010 (reviewing Gabriel Schoenfeld's *Necessary Secrets*)

*David Souter's Bad Constitutional History*, WALL STREET JOURNAL (June 14, 2010) (with M. Rappaport)

*A Blueprint for Obama*, WALL STREET JOURNAL, July 15, 2008 (reviewing Erwin Chemerinsky's, *Enhancing Government*)

*Who Will be President?* WALL STREET JOURNAL, July 6, 2008 (discussing prediction markets)

*Executive Power in the War on Terror* 146 POLICY REVIEW 63 (2008)

*Electoral College Debate* with Sandy Levinson and Daniel Lowenstein (2007)  
<http://www.pennumbra.com/debates/index.php?date=24087>

*Coming to Order*, WALL STREET JOURNAL, March 15, 2007 (Reviewing Janet Crawford Greenburg's *Supreme Conflict*)

*What Happens on Election Day*, WALL STREET JOURNAL, November 7, 2006

**(Reviewing Sanford Levinson's Our Undemocratic Constitution and Alan Wolfe's Does Democracy Still Work)**

*Executive Power in the War on Terror*, POLICY REVIEW, Dec.-Jan. 2007-2008

*Age of the Empirical*, POLICY REVIEW (JUNE-JULY 2006)

*Weighing a Justice*, WALL STREET JOURNAL, (Jan. 312 2006) (reviewing Ralph Rossum, *The Jurisprudence of Antonin Scalia*)

*Individualism and World Order*, THE NATIONAL INTEREST, 41-51 (Winter 2005)

*Confirming Judges: The Constitutional Option*, SAN DIEGO UNION-TRIBUNE, March 11, 2005 (with M. Rappaport)

*More Than a Penny for Their Thoughts* (reviewing Richard Vedder's *Going Broke by Degrees*) WALL STREET JOURNAL (November 17, 2004)

*Whose Constitution is it Anyway*, (Reviewing Larry Kramer's *The People Themselves*) WALL STREET JOURNAL (August 10, 2004)

*Hey Big Spenders, Here's a Law That Could Stop You*, WALL STREET JOURNAL, Feb. 25, 2004 (with M. Rappaport)

*From Bad to Worse*, NATIONAL REVIEW, Aug, 28, 2003

*Rehnquist Court Renewed Civic Virtues*, TIME MAGAZINE, June 30, 2003

*Free Trade Needs a Free Reign*, LOS ANGELES TIMES, July 30, 2001

*Trap Your Opponent, Look High-Minded Too* (Review of Andrew Starks' *Conflict of Interest in American Public Life*.) THE WALL STREET JOURNAL, October 30, 2000

*Sign Them Up* (with Neal Devins), LEGAL TIMES, July 24, 2000

*Too Much Vox Populi?* (Review of David S. Broder's *Democracy Derailed: Initiative Campaigns and the Power of Money*.)

*The Special-Interest State*, NATIONAL REVIEW, February 7, 2000

*The Case for Supermajority Rules* (with M. Rappaport), POLICY REVIEW, December, 1999 & January 2000

*Impeachable Defenses*, POLICY REVIEW, June & July 1999

*Unnatural Selection*, NATIONAL REVIEW, April 19, 1999

*Strong, Silent, Redundant* (Review of Lionel Tiger's *The Decline of Males*)  
WALL STREET JOURNAL, May 27, 1999

*Control and Command* (Review of James Bovard's *Freedom in Chains*),  
WALL STREET JOURNAL, February 16, 1999

*Tragic Justice*, NATIONAL REVIEW, December 7, 1998

*One Thing Blocks a Clinton Deal: The Constitution*, WALL STREET JOURNAL,  
October 1, 1998

*Post-Federal Case*, NATIONAL REVIEW, September 1, 1998

*To Each His Own* (Review of Tom Bethell's *The Noblest Triumph*) WALL  
STREET JOURNAL, August 18, 1998

*Don't Call High Court Conservative*, NEWSDAY, July 27, 1998

*Trigger Happiness*, NATIONAL REVIEW, July 20, 1998

*Debating Darwin*, NATIONAL REVIEW, March 9, 1998

*The Origin of Conservatism*, NATIONAL REVIEW, December 22, 1997

*The New Faith*, NATIONAL REVIEW, October 13, 1997

*What's Good for You and What Isn't* (Review of Richard Epstein's *Mortal  
Peril*) WALL STREET JOURNAL, July 16, 1997

*Keynesian Capers* (Review of Robert Kuttner's *The Virtues and Limits of  
Markets* and William Greider's *One World, Ready or Not*), NATIONAL  
REVIEW, May 5, 1997

*House Rules: Is a Supermajority Requirement for Tax Hikes Constitutional?*  
(with M. Rappaport), ABA JOURNAL, March 1997

*Legal Lawbreaking*, NATIONAL REVIEW, February 24, 1997

*Court Room Arguments* (Review of Antonin Scalia's *A Matter of  
Interpretation*) WALL STREET JOURNAL, February 4, 1997

*The Missing Candidate*, NATIONAL REVIEW, December 6, 1996

*Legal Monopoly*, NATIONAL REVIEW, September 30, 1996

*Class Action* (Review of Richard Kahlenberg's *The Remedy*), NATIONAL REVIEW, July 29, 1996

*The Revolution That Wasn't* (Review of David Frum's *What's Right*) WALL STREET JOURNAL, July 2, 1996

*Restraining Leviathan*, NATIONAL REVIEW, March 11, 1996

*Elderly Economics* (Review of Richard Posner's *Aging and Old Age*) WALL STREET JOURNAL, December 21, 1995

*Original Thomas, Conventional Souter: What Kind of Justices Should the Next President Pick*, POLICY REVIEW, Fall 1995

*The Republican Congress and the Constitution in Foreign and Military Affairs* COMMON SENSE, Summer 1995 (with C. Cooper)

*Welfare Reform and the Barriers to Work*, WASHINGTON TIMES, February 22, 1995

*The Left vs. Free Speech*, COMMENTARY, October 1994

*The 1991 Supreme Court Term: Review and Outlook*, 1993 PUBLIC INTEREST L. REV. 165

#### CONFERENCE COORDINATOR:

**The Effects of Public Sector Unions (2011)**

**The Legacy of Justice Stevens (2011)**

**The Rehnquist Court (2004)**

**The Decline of the Nation State: The Effect on International Economic and Constitutional Law (1996)**

**Executive Interpretation of the Law (1992)**

#### TESTIMONY BEFORE CONGRESS:

***Protecting Civil Liberties in a Time of Terrorism*, Hearing before Subcommittee on the Constitution, Federalism and Property Rights, Senate Judiciary Committee (October 2, 2001)**

***Federalism*: Hearing before the Senate Commerce Committee (May 5, 1999)**

***The Background and History of Impeachment*: Hearing before the Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives (November 9, 1998)**

***Constitutional Amendment Requiring a Supermajority to Raise Taxes*: Hearing before Senate Judiciary Committee (April 15, 1996) and Hearing before Subcommittee on the Constitution of House Judiciary Committee (March 6, 1996)**

***Campaign Finance Reform*: Hearing before the Senate Committee on Rules and Administration (March 13, 1991)**

***The Torture Victim Protection Act*: Hearing before the Subcommittee on Immigration and Refugee Affairs of the Senate Judiciary Committee (June 22, 1990)**

***Pocket Veto*: Hearing before the Subcommittee on Economic and Commercial Law of the Committee on the Judiciary (May 9, 1990)**

***Constitutional Amendments with Respect to the Impeachment of Judges*: Hearing before the Subcommittee of the Senate Judiciary Committee (March 21, 1990)**

***Constitutional Implementation of Binational Panel and Committee Decisions under the U.S.-Canada Free Trade Agreement*: Hearing before the Senate Judiciary Committee (May 20, 1988)**

## **SUPREME COURT BRIEFS:**

**Lee v. Weisman, 60 USLW 4723 (1992), amicus curiae for the United States**

## **COURSES TAUGHT**

**Administrative Law, Antitrust Law, Constitutional Law, International Trade Law, International Law (seminar), Law and Technology (seminar)**

**Dean's Teaching Award: 2009-2010**