PUBLICATIONS

Articles [58]


Scalia’s Legacy: Originalism and Change in the Law of Standing, 6 BRIT. J. AM. LEG. STUD. 85-107 (2017) (invited submission to special issue on Justice Scalia’s legacy).

A Non-Contentious Account of Article III’s Domestic Relations Exception, 92 NOTRE DAME L. REV. 117-165 (2016) (with Emily Damrau).


In Search of the Probate Exception, 67 VAND. L. REV. 1533-1580 (2014) (invited submission to symposium on federal law in private wealth transfers) (with Michael Downey).


Bivens, the Judgment Bar, and the Perils of Dynamic Textualism, 8 U. ST. THOMAS L. REV. 417-476 (2011-12) (with Neil Aggarwal) (invited submission to symposium on civil liability of federal government).


Rethinking the Supreme Court's Original Jurisdiction in State-Party Cases, 82 CAL. L. REV. 555-659 (1994).


Books [6]


CONSTITUTIONAL TORTS AND THE WAR ON TERROR (Oxford University Press 2017).


Book Chapters and Encyclopedia Entries [11]


Suits Against Officeholders in CAMBRIDGE COMPANION TO THE U.S. CONSTITUTION (Karen Orren & John Compton eds. 2018).

Non-Contentious Jurisdiction in the Courts of the United States in VOLUNTARY (NON-CONTENTIOUS) JURISDICTION AROUND THE WORLD (Alexey Argounov ed. 2017)

Article III in ENCYCLOPEDIA OF AMERICAN GOVERNANCE (Stephen L. Schechter ed. 2016).

The Story of Bivens v. Six Unknown Named Agents of the Federal Narcotics Bureau (invited chapter in FEDERAL COURTS STORIES 275-99 (V. Jackson & J. Resnik eds. 2010)).


ESSAYS, OP-EDS & PODCASTS [51]


Making Sense of Plurality Judgments, JOTWELL (November 2015) (reviewing Ryan Williams, Questioning Marks) (available http://courtslaw.jotwell.com/making-sense-of-plurality-decisions/)

James Wilson, the Committee of Detail, and the Federal Judiciary, JOTWELL (October 8, 2013) (reviewing William Ewald, The Committee of Detail, 28 Const. Comment. 197 (2012)),


Court Stripping and Scotland, Chicago Daily L. Bull. (11.23.10).


Two Cultures, Chicago Daily Law Bull. (07.2010).


Reigniting Interest in Corporate Citizenship, Chicago Daily L. Bull. 6 (03.18.10).

One Step Forward, Two Steps Back, Chicago Daily L. Bull. 5 (02.19.10).


Time to Bring Back the Capitol Jail? Chicago Tribune, (08.01.07) (op-ed with Abner J. Mikva).

After You, Says the President, LEGAL TIMES, May 22, 2006 (with Abner J. Mikva).
The Playmate and the Probate Exception, 94 ILL. BAR J. 320 (05.2006).

The Geography of Class Litigation, 94 ILL. BAR J. 148 (03.2006).

Avery Raises Doubts About the Class Action Fairness Act, 93 ILL. BAR J. 648 (12.2005).

Standing on Shaky Ground, 93 ILL. BAR J. 480 (09.2005).

Adding Insult to Overseas Injury: A Failure of the Forum Non Doctrine, 93 ILL. BAR J. 314 (06.2005).

The Substance and Procedure of Class Action Reform, 93 ILL. BAR J. 144 (03.2005).


Charles was First: England’s Charles I Introduced the World to Terror, LEGAL AFFAIRS (May/June 2004).

The Multiparty, Multiforum Trial Jurisdiction Act of 2002, 48 TRIAL BRIEFS no. 6 at 3 (02.2003).

An Illinois Lawyer in Romania’s Constitutional Court 48 TRIAL BRIEFS, no. 4, at 4 (11.2002).

The House of Terror: Reflection and Reconciliation in the Wake of Hungary’s Recent Election (published in Deci? Law Students Ass’n, Faculty of Law, University of Bucharest).

Overlapping Class Actions and the Proposed Amendments to Rule 23, 47 TRIAL BRIEFS, no. 3 (11.2001).

Y2K Legislation Alters Class Action Jurisdiction, 45 TRIAL BRIEFS, no. 2 (10.1999).

Fessin’ Up Didn’t Hurt Lincoln, CHICAGO TRIBUNE, (09.01.99), at 13 (op-ed page).

The Eleventh Amendment, Seminole Tribe, and the Litigation of Federal Question Claims before the Illinois Court of Claims, 43 Trial Briefs, no. 4 (03.1998).


Accident Reconstruction: Further Turns in the Road, 42 TRIAL BRIEFS, no. 1 (07.1996).


AMICUS BRIEFS [7]

Brief in Support of Petitioners, West v. Winfield, Supreme Court of the United States (Docket No. 19-899) (February 20, 2020).

Brief in Support of Petitioners, Hernandez v. Mesa, Supreme Court of the United States (Docket No. 17-1678) (August 8, 2019)

Brief in Support of Petitioners, McDonough v. Smith, Supreme Court of the United States (Docket No. 18-485) (March 4, 2019)

Brief in Support of Petitioners, Hernandez v. Mesa, Supreme Court of the United States (Docket No. 15-118) (December 9, 2016).


Brief in Support of Appellees, Vance v. Rumsfeld, United States Court of Appeals for the Seventh Circuit (Docket Nos. 10–1687, 10–2442)

WORKS IN PROGRESS

CASES WITHOUT CONTROVERSIES: NON-CONTENTIOUS JURISDICTION IN THE FEDERAL COURTS
(under contract with Oxford University Press, forthcoming 2021)

Standing by the Rules: A New Synthesis After Lexmark

SELECT ACADEMIC AND PROFESSIONAL PRESENTATIONS

Cases Without Controversies: Non-Contentious Jurisdiction in the Federal Courts

University of Pennsylvania Law School, Philadelphia, PA (2.06.20)
Duke University School of Law, Durham, NC (3.08.18)
Cornell Law School, Ithaca, NY (10.05.18)

Commentator, Annual Civil Procedure Workshop, Austin, TX, October 25-6, 2019

Commentator, Chicago Legal History Workshop, ABF, Chicago, IL, May, 2019

The Common Law Origins of Ex parte Young
Northwestern Pritzker Faculty Workshop (11.4.19)
American Society for Legal History (11.23.19)
Notre Dame Roundtable on Equity (9.14.19)
Scotland and the Judicial Institutions of the United States
    British Legal History Conference, St. Andrews, UK (7.10.19)

Judge Johnson and Equitable Remedies,
    Notre Dame Roundtable on Remedies (6.20.19)
    Conference on Judge Frank Johnson, Tuscaloosa, AL (1.25.19)

The Myth of Personal Liability: Who Pays When Bivens Claims Succeed
    Northwestern Pritzker Faculty Workshop (10.19.18)
    Institute for Justice, Washington, D.C. (10.18.18)

The Individual Right to Petition the US Supreme Court, Conference Sponsored by the Constitutional Court of the Kingdom of Morocco, Marrakech, Morocco (9.26-28.18)

Certified Questions in the Federal Courts, U.S. Court of Appeals for the Second Circuit (4.19.18)

Symposium on Habeas Corpus in Wartime, Berkeley Law (4.6.18)

Dicey’s Nightmare: An Essay on the Rule of Law
    Law & Society Annual Meeting, Toronto, CA (6.8.18)
    University of California-Berkeley, CA (02.08.18)
    University of Texas-Austin, TX (09.14.17)

Remedies Against the Executive, AALS Section on Federal Courts, San Diego, CA (01.05.18)

The Contested History of Article III’s Case-or-Controversy Requirement, UNC, Chapel Hill, NC (09.28.17)

Commentator, American Society of Comparative Law Workshop, Champaign, IL (04.15.16)

Remedies and the Supreme Court’s New Equity, Section on Federal Courts, AALS, New York (1.5.16)

Constitutional Torts and the War on Terror (Oxford University Press 2017)
    Pennsylvania State University Law School, State College, PA (10.27.16)
    University of Minnesota School of Law, Minneapolis, MN (10.13.16)
    Northwestern Pritzker law faculty workshop series, Chicago, IL (7.12.16)

Standing to Sue: Lessons from Scotland’s Actio Popularis
    Scottish Legal History Group, Edinburgh (10.1.16)
    Tel Aviv University Faculty of Law, Tel Aviv, Is (12.21.15)
    American Society for Legal History, Washington, D.C. (10.30.15)


Festschrift in Honor of Henry Monaghan, Villanova Law School, Philadelphia, PA (10.16.15)
Litigation US-Style and the Prospects for Cross-Border Harmonization

Charles University Faculty of Law, Prague, CZ (8.13-14.15)

Principle and Pragmatism in the Federal Judiciary of the Early Republic

Judicial Conference of the U.S. Court of Appeals for the Second Circuit (6.11.15).

The Contested History of Article III’s Case-or-Controversy Requirement

American Bar Foundation, Chicago, IL (2.18.15)
University of San Diego, Conference on Originalism (2.20.15).
Georgetown University Law Center (3.30.15)

Non-Contentious Jurisdiction and Inquisitorial Judging in the United States

University College Dublin, Ireland (12.03.14)
University of Edinburgh, Scotland (11.25.14)

Disaggregating Sovereign Immunity: Lessons from the Commonwealth

University of Auckland Faculty of Law, Auckland, New Zealand, (05.13.14)
University of Otago Faculty of Law, Dunedin, New Zealand, (05.05.14)

Article III, the Adverse-Party Requirement, and Non-Contentious Jurisdiction

University of Virginia School of Law, Charlottesville, VA (04.18.14)
Cardozo University School of Law, New York NY (03.19.14)
University of Nevada-Las Vegas School of Law (03.13.14)

In Search of the Probate Exception, symposium on private wealth transfers, Nashville, TN (02.21.14)

The Anti-Injunction Act and the Problem of Federal-State Jurisdictional Overlap

University of Missouri School of Law, Columbia, MO (09.13.13)
Loyola LA College of Law, Los Angeles, CA (03.26.13)
University of Pennsylvania School of Law, Philadelphia, PA (10.02.13)
St. Louis University School of Law, St. Louis, MO (09.20.13)

The Chief Justice, the Appointment of Inferior Officers, and the “Court of Law” Requirement

Florida International University, Miami, FL (01.17.12)

Defining Judicial Power in the Early Republic: Civil Law and the Limits of Article III

American Society for Legal History, Atlanta, GA (10.12.11)

Developments in Class Action Law, Federal Bar Association, Chicago (09.08.11)
Bivens, the Judgment Bar, and the Perils of Dynamic Textualism

University of Kansas School of Law, Lawrence, KS (04.22.11)
University of St. Thomas, Minneapolis, MN (conference on government liability) (03.18.11)

Resolving the Qualified Immunity Dilemma, Brooklyn Law School, Brooklyn, NY (04.14.11)

Qualified Immunity and the Roberts Court

Conference, Fordham Law School, New York, NY (04.08.11)
Section on Federal Courts, Ass’n of American Law Schools, San Francisco, CA (01.08.11)

Article III and the Scottish Judiciary

Chicago Legal History Seminar, American Bar Foundation, Chicago, IL (01.31.11)
University of Illinois constitutional law and history colloquium, Champaign, IL (11.15.10)

Democracy and the Qualifications of Article III Judges

Loyola University, How Democratic is the Constitution, Chicago, IL (11.05.10)

Judge-Made Law in Constitutional Litigation, Penn State School of Law, Carlisle, PA (03.26.10)

Public Wrongs and Private Bills: Indemnification and Government Accountability in the Early Republic

Faculty workshop at Harvard Law School, Cambridge, MA (11.19.09)
American Society for Legal History, Dallas, TX (11.14.09)

Roundtable on Third Party Financing of Litigation, Searle Center, Chicago, IL (09.24.09)

Disaggregating Sovereign Immunity: Lessons from the Commonwealth

Tel Aviv University Buchmann Faculty of Law (12.31.08)
University of Haifa Faculty of Law (11.12.08)
Radzyner School of Law, IDC, Herzliya, Israel (11.11.08)

Establishing a (More) Uniform Rule of Naturalization, University of California, Hastings School of Law, San Francisco, CA (09.23.08)

Judicial Compensation and the Definition of Judicial Power

Chicago Legal History Seminar, American Bar Foundation, Chicago, IL (09.18.08)
American Society for Legal History, Tempe, AZ (10.25.07)
Northwestern University School of Law (08.28.07)

Moderator, Panel on Originalism and Precedent, Northwestern Law Review Conference on Originalism, (04.24.08)
Forum Shopping and the Infrastructure of Federalism, keynote address to the symposium on federalism, Temple Political and Civil Rights Law Review, (10.20.07)

Federal Supremacy, State Court Inferiority, and the Constitutionality of Jurisdiction Stripping

University of Georgia Law School, Athens, GA (03.09.07)
University of Chicago Law School, Chicago, IL (11.09.06)
Northwestern University School of Law (11.02.06)
Washington University School of Law, St. Louis, MO (02.10.06)

Conference on Chinese Reforms in Comparative Perspective, UIUC, Champaign, IL (03.08.07)

Territorialism and Jurisdictional Conflict, Comparative Law Workshop, UIUC, Champaign, IL (02.10.07)

Protective Jurisdiction, Minimal Diversity, and Aggregate Litigation, Conference in honor of Paul Mishkin, University of California, Berkeley, CA (10.28.06)

Presidential Power and Foreign Relations, Cline Symposium Roundtable Discussion, Department of Political Science, UIUC, Champaign, IL (04.18.06)

The Limits of Habeas Jurisdiction and the Global War on Terror

Faculty workshop, Northwestern University School of Law, (09.14.05)
Cornell Law Review, Developments in the Law of Habeas Corpus, Ithaca, NY (04.02.05)

The Historical Underpinnings of Judicial Independence, Illinois Judicial Academy, Champaign, IL (06.06.05)

Balancing Freedom and Security: Cline Symposium, Champaign, IL. (04.14.05)

Article I Tribunals, Article III Courts, and the Judicial Power of the United States
Capital University Law School, Columbus, OH (11.10.04)
University of Missouri Law School, Columbia, MO (09.30.04)

Disaggregating Sovereign Immunity University of Melbourne, Australia (08.23.04)

Köbler v. Austria: Europe’s Evolving Conception of Member State Liability

British Institute of International and Comparative Law, London, England (03.31.04)
Chicago-Kent College of Law colloquium on comparative law, Chicago, IL (03.05.04)

Article I Tribunals, Article III Courts, and the Judicial Power of the United States

University of Houston Law Center, Houston, TX (02.12.04)
Indiana University School of Law, Indianapolis, IN (02.05.04)

Member State Liability and Constitutional Change in the United States and Europe

University of Illinois College of Law, Champaign, IL (05.09.03)
Case Western Reserve School of Law, Cleveland, OH (11.11.02)
Free Speech and Social Responsibility, Moderator of campus-wide panel discussion convened by Office of Chancellor, University of Illinois at Urbana-Champaign (04.03.03)


Civil Liberty and National Security, Moderator of panel discussion, Center for Advanced Study, UIUC (12.04.02)


The Law and September 11, host of Afternoon Magazine, on WILL AM 580, Urbana, IL (09.12.02)

Constitutional Courts in Comparative Perspective

Orientalism and Occidentalism, University of Bucharest, Romania (06.08.02)
Cultural Passages Conference, Lucian Blaga University Sibiu, Romania, (05.24.02)

Fifty Years of Federal Courts, AALS workshop on Federal Courts (05.18.02)

Marbury and Judicial Review in Comparative Perspective, Faculty of Law, University of Bucharest

Liberty, Equality, and Individual Rights Under the Law, University of Bucharest American Studies Program and the Romanian-American Fulbright Commission, Bucharest, Romania (01.31.02)

Overlapping and Duplicative Class Actions, Class Action Conference of the Federal Advisory Committee on Civil Rules, University of Chicago Law School, Chicago, IL (10.23.01)

Academic Lawyers, lecture as Prentice H. Marshall Professor of Law, Champaign, IL (10.2001)

Marbury, Original Jurisdiction, and the Supreme Court’s Supervisory Power

Columbia University School of Law, New York, NY (03.29.01)
University of Arizona College of Law, Tucson, AZ (01.12.01)

Class Actions and Judicial Federalism: Who Should Decide? Annual Meeting of the National Conference of State Legislatures, Chicago, Illinois (07.19.00)

Mass Tort Litigation in Federal Courts: Forum Selection, Annual Meeting of the Second Judicial Circuit of the United States, Lake George, New York (06.16.00)

Jurisdiction Stripping and the Supreme Court’s Power to Supervise Inferior Tribunals

Notre Dame Law School, South Bend, IN (03.03.00)
Texas Law Review symposium on jurisdiction stripping; Austin, TX (10.16.99)


Devolution: The Role of Congress and the Court (with Abner J. Mikva) (recorded audio tape commentary on federalism for the program, Policy Soundings, IGPA, UIUC (11.30.99)

Civil Liability Provisions of the Global Tobacco Settlement, Invited testimony before the House Judiciary Committee, (02.05.98)

Sensitive Tobacco Industry Documents, Testimony before the House Judiciary Committee, (03.31.98)

The Etiquette of Intergovernmental Relations: Recent Developments in Constitutional Federalism, The New Federalism, UIC, Chicago, IL, (Fall 1996)


Sovereign Immunity and the Right to Petition, UIUC College of Law, (10.1995)

The Judicial Role in Health-Care Reform, Conference on Health Care Reform and the Role of the States, Chicago, Illinois (04.1994)

Rethinking the Supreme Court’s Original Jurisdiction in State-Party Cases, UIUC College of Law, Champaign, IL. (06.93)

Environmental Federalism in Europe and the United States: A Comparative Assessment, Conference on Environmental Policy, UIUC, Champaign, IL (10.1993)

Section 301 Preemption: Recent Developments, NLRB Conference, Peoria, IL (12.1990)

Referee (Selected)

American Political Science Review
Czech Science Foundation
Harvard Law Review
Law & History Review
Law and Social Inquiry
Journal of Empirical Legal Studies
Northwestern Law Review
Romanian Fulbright Commission
Stanford Law Review
University of Chicago Press
Yale Law Journal

Awards and Honors

Invited Lecture, Baum Lecture on Civil Rights, University of Illinois College of Law (Fall 2019)
Recipient, Resolution in Honor of Service to Committee on Federal-State Jurisdiction (2014)
Dean’s Teaching Award, Northwestern Pritzker School of Law (2008; 2010).
Outstanding First-Year Course Professor, Northwestern University School of Law (2007).
Carroll P. Hurd Award for Excellence in Faculty Scholarship, University of Illinois (2005).
Fulbright Senior Scholar, University of Bucharest, Bucharest, Romania (Spring 2002).
PRIOR POSITIONS

Fall 2015 Visiting Professor of Law, Tel Aviv University
Fall 2009 Charles Fairchild Visiting Professor of Law, Harvard Law School
Fall 2008 Visiting Professor, Radzyner School of Law, Herzliya, Israel
2001 - 2007 Prentice H. Marshall Professor, University of Illinois College of Law
Spring 2001 Visiting Professor, Columbia University Law School, New York
1994 - 2001 Professor, University of Illinois College of Law
1988 - 1994 Assistant-Associate Professor, University of Illinois College of Law
1983-88 Associate, Rogovin, Huge & Lenzner, Washington, D.C.
1982-83 Law Clerk to Levin H. Campbell, U.S. Court of Appeals for the First Circuit

TEACHING EXPERIENCE

Constitutional History 1999
Constitutional Law Colloquium 2009-11, 2013-18
European Union Law 2000-04
International Civil Litigation 2006, 2012
Remedies 2019
Seminar on Brown v. Board 2004
Seminar on Gov’t Accountability 2006, 2015
Suing the State 2009, 2015

SERVICE TO THE PRITZKER SCHOOL OF LAW

Chair, Personnel Committee (2011-12) (elected by vote of the faculty); (2017-18)
Faculty Advisor, Northwestern Law Review (2015 to present)
Member, Workshop Committee (2016-17)
Chair, Ad Hoc Personnel Committee (2016-17)
Member, Curriculum Working Group (2013-14)
Chair, Strategic Planning Committee (2012-13)
Chair/Member, Faculty Advisory Committee (2011-12; 2014-16) (elected by vote of the faculty)
Member, Ad Hoc Committee on Use of GMAT in Admissions (2011)
Chair, Tenure and Promotion Subcommittee (2009-10; 2014-15)
Chair/Member, Judicial Clerkship Committee (2008-09, 2010-11, 2016-2020)
Member, Personnel Committee (2007-08, 2010-11, 2014-15)
Member, Ad Hoc Voting Rules Committee (2007-08)
Member, Ad Hoc Committee on Law Journals (2014)
Director, Academic Placement (2019-2020)
PROFESSIONAL ASSOCIATIONS

AMERICAN LAW INSTITUTE (MEMBER SINCE 1999)

ASSOCIATION OF AMERICAN LAW SCHOOLS

Chair, Program Committee (2019-20)
Member, Federal Courts Prize Committee (2013-14)
Member, Section on Committees and the Annual Meeting
Member, Executive Committee, Section on Federal Courts (1998-00, 2003-16)
Program Chair, Section on Federal Courts (1999-2000)
Chair, Section on Federal Courts (2000-01)
Chair, Section on Civil Procedure (2002-03)
Member, Executive Committee, Section on Civil Procedure (2001-03)

BAR ASSOCIATIONS AND ADMISSIONS

American Bar Association
Admitted to practice: D.C. Court of Appeals, Supreme Court of the United States.

PUBLIC AND PROFESSIONAL SERVICE

MEMBER, Advisory Committee on Project to Study State Courts’ Role in Administering Federal Law, National Center on State Courts (Fall 2019 and continuing)


MEMBER, BOARD OF DIRECTORS, CHICAGO APPLESEED (2013 to present)

MEMBER, BOARD OF DIRECTORS, CHICAGO LAWYERS’ CHAPTER, AMERICAN CONSTITUTION SOCIETY (2015 to 2018)

EDUCATION

UNIVERSITY OF VIRGINIA SCHOOL OF LAW, Charlottesville, Virginia; J.D.
Articles Editor, Virginia Law Review
Law School Alumni Award for Academic Excellence
Order of the Coif; Raven Society; Shannon Award

UNIVERSITY OF MISSOURI, Columbia, Missouri; B.A. Economics
Vice President, Missouri Students Association
QEBH; Mortar Board; Omicron Delta Kappa; Sigma Rho Sigma

16