PUBLICATIONS

Articles [65]


*Article III’s Public Rights Exception*, 82 Ohio St. L.J. __ (forthcoming 2021) (with Andrew Borrasso).


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).


The Simmering Debate Over Supplemental Jurisdiction, 2002 U. Ill. L. Rev. 1209-1231.


Marbury, Original Jurisdiction, and the Supreme Court’s Supervisory Powers, 101 Colum. L. Rev. 1515 (2001)

Once More Unto the Breach: Eleventh Amendment Scholarship and the Court, 75 NOTRE DAME L. REV. 817-842 (2000) (invited submission to symposium on state sovereign immunity after *Alden v. Maine*).


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


**Books [7]**


*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 [52]


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


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).


SUPREME COURT CITATIONS [28]

Brownback v. King, 141 S. Ct. 740, 745-6 (2021) (6)
Tanin v. Tanvir, 141 S. Ct. 486, 491 (2020)
Ortiz v. United States, 138 S. Ct. 2165, 2187 n.3 (2018)
Ziglar v. Abbasi, 137 S.Ct. 1843, 1872, 1878, 1880 (2017) (3)
Lance v. Dennis, 546 U.S. 459, 467* (2006)
Exxon Mobil v. Allapattah Services, 545 U.S. 546, 590, 592, 593 (2005) (3)

AMICUS BRIEFS [9]

Brief in Support of Respondents, Trump v. Sierra Club, Supreme Court of the United States (Docket No. 20-138) (January 19, 2021)


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

Federal Courts: Cases, Comments, and Questions (9th ed. 2022) (with Redish, Sherry, Gensler & Steinman)


Select Academic and Professional Presentations

Article III’s Public Rights Exception, University of Florida Levin School of Law (03.01.21)

The Past and Future of Procedure Scholarship, University of Pennsylvania Law Review Symposium (02.13.21) (honoring Stephen Burbank)

Going Rogue: The Supreme Court’s Hostility to Policy-Based Bivens Claims
Notre Dame Law Review Symposium (01.15.21) (with Schwartz & Reinert)

Equal Footing and the States “Now-Existing”: Slavery and State Equality Over Time
Fordham Symposium on the Federalist Constitution (10.02.20)
Faculty workshop, Northwestern Pritzker (06.22.20)

Common Law, Due Process, and Constitutional Remedies
David C. Baum Memorial Lecture, University of Illinois College of Law (2.19.20)

Cases Without Controversies: Uncontested Adjudication in Article III Courts
Indiana University, Indianapolis, IN (04.09.21)
University of Michigan Law School, Ann Arbor, MI (10.01.20)
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)

Law, Equity, and Accountability in the Early Republic, American Society Legal History, Boston, MA (11.22.19)

Commentator, Annual Civil Procedure Workshop, Austin, TX (10.25.19)

Conference Organizer, History and Originalism, Chicago, IL (10.04.19)

Commentator, Chicago Legal History Workshop, ABF, Chicago, IL (05.10.19)

*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 Tyler, 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)
  *Duke Roundtable on Historical Practice and the Federal Judicial Power, Durham, N.C. (10.23.15)*
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 U.S.-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)

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, Vanderbilt symposium on wealth transfer, 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)

Judicial Power in the Early Republic, American Society for Legal History, Atlanta, GA (10.12.11)

Developments in Class Action Law, Federal Bar Association, Chicago, IL (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 suability) (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, AALS, 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, Temple Political and Civil Rights Law Review, Philadelphia, PA (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)

Empirical Research and Civil Procedure, Civil Procedure Section, AALS, Washington, D.C. (01.04.03)

Civil Liberty and National Security, Center for Advanced Study, UIUC (12.04.02)

Class Actions: Fall Judicial Conference, West Virginia Supreme Court, Charleston, W.Va. (10.24.02)


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, National Conference of State Legislatures, Chicago, IL (07.19.00)

Mass Tort Litigation in Federal Courts: Second Judicial Conference, 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) Policy Soundings, UIUC (11.30.99)

The Etiquette of Intergovernmental Relations, 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 (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  Northwestern Law Review
Czech Science Foundation  Romanian Fulbright Commission
Law & History Review  University of Chicago Press
Law and Social Inquiry  Yale Law Journal
Journal of Empirical Legal Studies  Columbia Law Review

AWARDS AND HONORS

Outstanding First-Year Course Professor, Northwestern Pritzker School of Law (2020-21)
Invited Lecture, Baum Lecture on Civil Rights, University of Illinois College of Law (2020)
Recipient, Resolution Honoring 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 (2007-08).
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

TEACHING EXPERIENCE

Constitutional History  2019 (with Gordon Wood)
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 Accountability  2006, 2015
Suing the State  2009, 2015
SERVICE TO THE PRITZKER SCHOOL OF LAW

Member, Dean Search Committee (2020-21)
Chair, Academic Placement Committee (2019-21)
Member, Climate Survey Committee (2020-21)
Chair/Member, Personnel Committee (2007-08, 2011-12, 2014-15, 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, 2016-2021)
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)

PROFESSIONAL ASSOCIATIONS

ASSOCIATION OF AMERICAN LAW SCHOOLS
Chair, Program Committee (2019-20)
Member, Executive Committee, Section on Remedies (2020-21)
Member, Federal Courts Prize Committee (2013-14, 2020)
Member, Section on Committees and the Annual Meeting
Member, Executive Committee, Section on Federal Courts (1998-00, 2003-21)
Chair, Section on Federal Courts (2000-01)
Chair, Section on Civil Procedure (2002-03)
Member, Executive Committee, Section on Remedies (2020-21)

AMERICAN LAW INSTITUTE (MEMBER SINCE 1999)

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)

WITNESS, Invited Testimony to New Mexico Civil Rights Commission, Hearing on Qualified Immunity (House Judiciary Committee, Subcommittee on Courts (09.18.20)


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

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

WITNESS, Invited Testimony Before the House Judiciary Committee, Civil Liability Provisions of the Global Tobacco Settlement (02.05.98); Sensitive Tobacco Industry Documents, Testimony before the House Judiciary Committee (03.31.98)

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