

Kurt T. Lash

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ACADEMIC APPOINTMENTS

University of Richmond School of Law

E. Claiborne Robins Distinguished Chair in Law (2017-)

University of Illinois College of Law

Guy Raymond Jones Chair in Law (2013-2017)

Co-Director, Program in Constitutional Theory, History and Law (2011-)

Alumni Distinguished Professor of Law (2010-13)

Northwestern University School of Law

Visiting Professor of Law (Fall 2012)

Pepperdine University School of Law

D & L Straus Distinguished Visiting Professor (Fall 2008)

Loyola Law School, Los Angeles, CA.

James P. Bradley Professor of Constitutional Law (2008-2010)

W. Joseph Ford Fellow (1999)

Professor of Law (1996); Assistant Professor (1993).

EDUCATION

J.D. Yale Law School, New Haven Connecticut;

B.A. Whitman College, Walla Walla Washington.

COURSES

Constitutional Law; First Amendment; Constitutional Theory; The Reconstruction Amendments; Supreme Court Seminar; American Legal History; Law & Religion.

BOOKS

THE RECONSTRUCTION AMENDMENTS: ESSENTIAL DOCUMENTS (two volumes)
(under contract with University of Chicago Press).

THE FOURTEENTH AMENDMENT AND THE PRIVILEGES OR IMMUNITIES OF AMERICAN
CITIZENSHIP (Cambridge University Press, 2014).

THE AMERICAN FIRST AMENDMENT IN THE TWENTY-FIRST CENTURY: CASES AND MATERIALS
(with William W. Van Alstyne) (5th ed., Foundation Press, 2014).

THE LOST HISTORY OF THE NINTH AMENDMENT (Oxford University Press, 2009).

ARTICLES & ESSAYS

Enforcing the Rights of Due Process: The Original Relationship Between the Fourteenth Amendment and the 1866 Civil Rights Act (forthcoming Georgetown Law Journal).

George Washington's Constitution: A Review of Saikrishna Prakash, IMPERIAL FROM THE BEGINNING: THE CONSTITUTION OF THE ORIGINAL EXECUTIVE (Yale, 2015), *The New Rambler Review* (2016).

The Sum of All Delegated Power, 124 Yale Law Journal Forum 180 (2014), <http://www.yalelawjournal.org/forum/the-sum-of-all-delegated-power>.

Originalism All the Way Down?, 30 Constitutional Commentary 149 (2014).

The Cost of Judicial Error: Stare Decisis and the Role of Normative Theory, 89 Notre Dame Law Review 5 (2014).

Inkblot: The Ninth Amendment as Textual Justification for Judicial Enforcement of the Right to Privacy, 80 Chicago Law Review Dialogue 219 (2013).

The Constitutional Referendum of 1866: Andrew Johnson and the Original Meaning of the Privileges or Immunities Clause, 101 Georgetown Law Journal 1275 (2013).

Resolution VI: The Virginia Plan and Authority to Resolve Collective Action Problems Under Article I, Section 8, 87 Notre Dame L. Rev. 2123 (2012).

Federalism, Individual Rights and Judicial Engagement, 19 Geo. Mason L. Rev. 873 (2012).

The Origins of the Privileges or Immunities Clause, Part II: John Bingham and the Second Draft of the Fourteenth Amendment, 99 Georgetown Law Journal 329 (2011).

Beyond Incorporation, 18 Journal of Contemporary Legal Issues (2010).

The Origins of the Privileges or Immunities Clause, Part I: "Privileges and Immunities" as an Antebellum Term of Art, 98 Georgetown Law Journal 1241 (2010).

--Cited by United States Supreme Court, *McDonald v. Chicago* (2010).

Leaving the Chisholm Trail: The Eleventh Amendment and the Background Principle of Strict Construction, 50 William & Mary Law Review 1577 (2009).

Originalism as Jujitsu, 25 Constitutional Commentary 521 (2009).

The Original Meaning of an Omission: The Tenth Amendment, Popular Sovereignty and "Expressly" Delegated Power, 83 Notre Dame Law Review 101 (2008).

Federalism, Freedom and the Founders' View of Retained Rights, 60 Stanford Law Review 969 (2008).

A Textual-Historical Theory of the Ninth Amendment, 60 Stanford Law Review 895 (2008).

The Inescapable Federalism of the Ninth Amendment, 93 Iowa Law Review 801 (2008).

Of Inkblots and Originalism: Historical Ambiguity and the Case of the Ninth Amendment, 31 Harvard Journal of Law and Public Policy 467 (2008).

Three Myths of the Ninth Amendment, 56 Drake Law Review, 101 (2008).

Originalism, Popular Sovereignty and Reverse Stare Decisis, 93 Virginia Law Review 1437 (2007).

Minority Report: John Marshall and the Defense of the Alien and Sedition Acts, 68 Ohio St. L.J. 435 (2007) (with Alicia Harrison).

Tucker's Rule: St. George Tucker and the Limited Construction of Federal Power, 47 William & Mary L. Rev. 1343 (2006).

James Madison's Celebrated Report of 1800: The Transformation of the Tenth Amendment, 74 Geo. Wash. L. Rev. 165 (2006).

The Lost Jurisprudence of the Ninth Amendment, 83 Tex. L. Rev. 597 (2005).

The Lost Original Meaning of the Ninth Amendment, 83 Tex. L. Rev. 331 (2004).

The Constitutional Convention of 1937: The Original Meaning of the New Jurisprudential Deal, 70 Fordham L. Rev. 459 (2001).

Separating Church and State: Roger Williams and Religious Liberty, 16 J.L. & Religion 569 (2001) (Book Review).

Two Movements of a Constitutional Symphony: Akhil Amar's The Bill of Rights, 33 U. Rich. Law Review 485 (1999).

Power and the Subject of Religion, 59 Ohio St. L.J. 1069 (1998).

The Status of Constitutional Religious Liberty at the End of the Millennium, 32 Loy. L.A. L. Rev. 1 (1998).

Civilizing Religion, 65 Geo. Wash. L. Rev. 1100 (1997).

The Second Adoption of the Establishment Clause: The Rise of the Non-Establishment Principle, 27 Ariz. St. L.J. 1085 (1995).

Cited by United States Supreme Court in *Greece v. Galloway* (2014).

Excerpts of this article are reprinted in *The Establishment Clause: An Anthology* (Alan Brownstein ed.)(Prometheus, 2007).

Rejecting Conventional Wisdom: Federalist Ambivalence in the Framing and Implementation of Article V, 38 Am. J. Legal Hist. 197 (1994)

The Second Adoption of the Free Exercise Clause: Religious Exemptions Under the Fourteenth Amendment, 88 Nw. U. L. Rev. 1106 (1994).

BOOK CHAPTERS & ENCYCLOPEDIA ENTRIES

The Ninth Amendment, subject entry in The Encyclopedia of the Supreme Court of the United States (2008).

Unenumerated Rights, subject entry in The Encyclopedia of the Supreme Court of the United States (2008).

Government Aid to Religion, Encyclopedia of the American Constitution, Supplement II (1999).

School Choice, Encyclopedia of the American Constitution, Supplement II (1999).

Religion and Secularism in Constitutional Interpretation and Democratic Debate, Encyclopedia of the American Constitution, Supplement II (1999).

Five Models of Church Autonomy: An Historical Look at Religious Liberty Under the United States Constitution, in Church Autonomy: A Comparative Survey (Gerhard Robbers, ed. 2001, Peter Lang Publishers).

JUDICIAL CLERKSHIPS

Judge Robert R. Beezer, United States Court of Appeals, Ninth Circuit (1992-1993).

AWARDS

Wayne R. LaFave Award for Excellence in Faculty Scholarship (book) (2015)

Carroll P. Hurd Award for Excellence in Faculty Scholarship (article) (2011).

Peterson Prize for Writing on Federalism and the Tenth Amendment, Willamette Center for Law and Government for "*James Madison's "Celebrated Report" of 1800: The Transformation of the Tenth Amendment.*" (2005)

REFEREE

Cambridge University Press (USA)
Oxford University Press (USA)
Oxford University Press (UK)

Harvard Law Review
Yale Law Journal
Stanford Law Review

SERVICE

University of Illinois College of Law:

Dean Search Committee
Promotion and Tenure Committee
Endowed Chairs and Professorships (2x Chair)
Appointments Committee (entry-level and lateral)
Strategic Planning Committee
Law Review (faculty advisor)
Speakers Committee
Faculty Scholarship Awards Committee
Curriculum Committee.

PROFESSIONAL MEMBERSHIP AND ACTIVITIES

American Law Institute (elected member, 2016)

Association of American Law Schools

Section on Constitutional Law
Chair: 2008
Executive Committee: 2007
Section on Law and Religion
Chair: 1996
Executive Committee 1994

American Bar Association

Washington State Bar

American Society for Legal History

International Association of Constitutional Law

SELECTED PUBLIC LECTURES, COLLOQUIA AND PRESENTATIONS

Reconstruction and The Fourteenth Amendment, panel presentation, 2018 Annual Conference, Association of American Law Schools (AALS).

On the Anniversary of the Fourteenth Amendment, Stranahan Lecture, University of Toledo College of Law (Spring 2018) (endowed lecture)

The Two Thirteenth Amendments, Drake Law School Distinguished Speaker Series, Des Moines, IA (2017) (endowed lecture)

Corpus Linguistics and Legal Interpretation, Federalist Society Annual Faculty Conference, San Francisco, CA (2017) (panel moderator)

The Due Process Understanding of the 1866 Civil Rights Act, University of Richmond School of Law, Faculty Colloquium (2016)

The Due Process Understanding of the 1866 Civil Rights Act, Notre Dame, London Program on Constitutional Interpretation (2016)

The Due Process Understanding of the 1866 Civil Rights Act, Center for the Study of Constitutional Originalism, University of San Diego School of Law (2016) (with commentary by John Harrison)

Ending Slavery: The Two Versions of the Thirteenth Amendment, Investiture, Guy Raymond Jones Endowed Chair, University of Illinois College of Law (2015)

Incorporation, Unenumerated Rights and The Fourteenth Amendment, Stanford University Law School, Center for Constitutional Law (2015)

The Privileges and Immunities of American Citizenship, Princeton University Program on Constitutional Theory (2014)

Federalism as an Individual Right, Alpheus T. Mason Lecture, Princeton University (2014) (endowed lecture).

American Privileges and Immunities (faculty workshop), Florida International University School of Law (2014)

American Privileges and Immunities (faculty workshop) University of Notre Dame School of Law (2013)

The Three (Partial) Revolutions in American Constitutional Law (invited public lecture) University of Notre Dame School of Law (2013).

Series Expert, PBS's "Constitution USA with Peter Sagal" (four part television mini-series), interviewed in episodes III & IV (episodes airing Spring 2013).

The Constitutional Referendum of 1866 (faculty workshop), Northwestern University School of Law (2012).

The Constitutional Referendum of 1866, Georgetown Law Center, Constitutional Theory Colloquium (2012).

The History of the Privileges or Immunities Clause, Stanford University Law School, Center for Constitutional Law (2012) (debate with Philip Hamburger).

HHS v. Florida: The Oral Arguments, "On Point with Tom Ashbrook" (hour long discussion with Jeffrey Rosen and David Cutler), NPR (Boston).

McCulloch and the Thirteenth Amendment, Notre Dame School of Law (2012) (invited commentary on conference paper).

Judicial Enforcement of the People's Retained Rights, George Mason School of Law (2012).

Resolution VI: The Virginia Plan and Congressional Power Under Article I, Section 8, University of San Diego School of Law, (2012).

John Bingham and the Second Draft of the Fourteenth Amendment, Northwestern University Law School Constitutional Law Colloquium (2011).

John Bingham and the Second Draft of the Fourteenth Amendment, Boston University School of Law Faculty Colloquium (2010).

Privileges and Immunities as an Antebellum Term of Art, University of San Diego, Center for the Study of Constitutional Originalism (2010).

The Origins of the Privileges or Immunities Clause, Part I: "Privileges and Immunities" as an Antebellum Term of Art, University of Illinois School of Law Faculty Workshop (2009).

The Origins of the Privileges or Immunities Clause, Part I: "Privileges and Immunities" as an Antebellum Term of Art, University of Southern California Legal History Workshop (2009).

Beyond Incorporation, Invited Paper for Conference on the Incorporation of the Bill of Rights, Center for the Study of Constitutional Originalism, University of San Diego School of Law (January 2009).

The Eleventh Amendment and the Background Principle of Strict Construction, University of Minnesota School of Law Faculty Workshop (December 2008).

The Eleventh Amendment and the Background Principle of Strict Construction, University of San Diego School of Law Faculty Workshop (November 2008).

The Eleventh Amendment and the Background Principle of Strict Construction, Pepperdine School of Law Faculty Workshop (Fall 2008).

The Eleventh Amendment and the Background Principle of Strict Construction, William and Mary School of Law Faculty Workshop (Fall 2008).

The Interlocking Ninth, Tenth, and Eleventh Amendments, Boyd School of Law, UNLV (October 2008).

The Eleventh Amendment and the Background Principle of Strict Construction, UCLA Law Faculty Colloquium (Fall 2008).

The Eleventh Amendment and the Background Principle of Strict Construction, University of Notre Dame Faculty Colloquium (Fall 2008).

The Forgotten Amendment (to an Amendment), invited paper for Conference on "The Forgotten Constitutional Amendments," James Madison Constitutional Law Center, Drake University School of Law (April 2008).

The Original Meaning of an Omission: The Tenth Amendment, Popular Sovereignty and "Expressly Delegated Power," University of Washington School of Law Faculty Workshop (2007).

Originalism, Popular Sovereignty, and Reverse Stare Decisis, Advanced Constitutional Theory Workshop, Georgetown University Law Center (Spring 2007).

John Marshall and the Defense of the Alien and Sedition Acts, UCLA Legal History Workshop (spring 2007).

Originalism, Popular Sovereignty and Reverse Stare Decisis, Pepperdine Law School's Speakers Workshop (Spring 2007).

The Lost History of the Ninth and Tenth Amendments, Talk presented as keynote speaker, Constitution Day, University of Montana School of Law (2006).

Comprehensive Originalism and the Second Amendment, Stanford Criminal Justice Center, Stanford University (2005).

The Lost History of the Ninth Amendment, UCLA School of Law Faculty Workshop Series (Feb. 2005)

"Tucker's Rule": St. George Tucker and the Textual Basis of Federalism, Institute of Bill of Rights, William & Mary School of Law (Feb. 2005).

One Nation Under God, Clavigerri Society Annual Retreat, Napa Valley, California (2004).

Restoring the Lost Constitution, panel discussion with Professor Randy Barnett, Loyola Law School (2004).

Death Penalty Litigation and the Use of International Law to Interpret the Constitution, International Law Weekend West (2003).

Religious Liberty and the Current Supreme Court, Orange County ADL (2001).

Discretionary Separationism and Aid to Religious Schools, Paper Presented at Thomas Jefferson School of Law (Oct. 2000).

The Status of Constitutional Religious Liberty at the End of the Millennium, Paper presented for 1998 Burn's Lecture, Loyola Law School (panel included Supreme Court Justice Antonin Scalia).

Power and the Subject of Religion, paper presented at Chapman Law School, 1998.

Five Models of Church Autonomy: An Historical Look at Religious Liberty Under the United States Constitution, Paper presented at International Association on Religious Freedom, Trier Germany, 1999.

The Constitutionality of Proposed Religious Freedom Amendments to the California Constitution, Testimony before State Legislative Subcommittee on the Judiciary, 1997.

Professional references available on request.