

NICOLE STELLE GARNETT
3115 Eck Hall of Law, Notre Dame, Indiana 46556
(574) 631-3091 (w) | (574) 261-0628 (c) | ngarnett@nd.edu

PRIMARY ACADEMIC APPOINTMENTS

University of Notre Dame, Notre Dame, Indiana, 1999-Present

John P. Murphy Foundation Professor of Law

Courses: Property, Land Use Planning, Local Government Law, State Constitutional Law, Law of Education, Law of Higher Education, Urban Planning and Development

Fellow, Institute for Educational Initiatives, Fitzgerald Institute for Real Estate, Kellogg Institute for International Studies, deNicola Center for Ethics and Culture, Research Program on Law and Market Behavior, Center for Literacy Education

Senior Policy Advisor, Alliance for Catholic Education (since 2009)

Provost Fellow, 2008-2010 (part-time faculty appointment in Provost's Office)

OTHER ACADEMIC APPOINTMENTS

Manhattan Institute, New York, New York, *Adjunct Fellow*, since 2020

University of Chicago Law School, *Visiting Professor of Law*, Winter/Spring 2007

USC Gould School of Law, *Distinguished Visiting Professor of Law*, October 2007

Hoover Institution, *Visiting Scholar*, May 2010, June 2008, May 2005

Northwestern University School of Law, *Visiting Scholar*, Spring 2004

EDUCATION

Yale Law School, New Haven, Connecticut. J.D., 1995

Stanford University, Stanford, California. B.A., with distinction, Political Science, 1992

LEGAL EXPERIENCE

Law Clerk, Justice Clarence Thomas, Supreme Court of the United States, 1998-99

Law Clerk, Judge Morris S. Arnold, U.S. Court of Appeals for the Eighth Circuit, 1995-96

Staff Attorney, Institute for Justice, Washington, D.C., 1996-98

Participated in legal defense parental-choice programs, including the litigation culminating in *Zelman v. Simmons-Harris* (U.S. 2002). Assisted low-income entrepreneurs challenging regulatory barriers to entry.

BOOKS

Parents, School, and God: John Coons' Essays on Parental Choice (Nicole Garnett, Richard Garnett, and Ernest Morrell, eds.) (forthcoming Notre Dame University Press)

[*Lost Classroom, Lost Community: Catholic Schools' Importance in Urban America*](#) (with Margaret Brinig) (University of Chicago Press, 2014)

[*Ordering the City: Land Use, Policing, and the Restoration of Urban America*](#) (Yale University Press, 2010)

BOOK CHAPTERS

“Parental Choice and the Future of Faith-Based Schools” in *Oxford Handbook on the Future of K12 Education* (Kristine L. Bowman, ed., 2020)

“The Law of Parental Choice” (with John Schoenig) in *Handbook of Research on School Choice* (Mark Berends, et al., eds. 2019)

“Old Suburbs Meet New Urbanism,” in *Infinite Suburbia* (Princeton Architectural Press, Alan Berger and Joel Kotkin, eds., 2017)

“Land Use Regulation, Innovation, and Growth,” in *Rules for Growth: Promoting Innovation and Growth Through Legal Reform* (Kauffman Foundation on Entrepreneurship 2011)

“Mercantilism, American Style,” in *Hernando De Soto and Property in a Market Economy* (Ashgate, 2010)

SCHOLARLY PAPERS

“Religious Covenants,” with Patrick Reidy, c.s.c., in progress

“The Comparative Legal Landscape of Educational Pluralism,” 73 *Arkansas Law Rev.* 455 (2021) (solicited as 2020 Hartman Holtz Distinguished Lecture) ([SSRN](#))

“Religious Charter Schools: Legally Permissible? Constitutionally Required?” Manhattan Institute Policy Brief (December 2020) ([SSRN](#))

“A Case for Educational Pluralism,” 5 *Education Law and Policy Rev.* 35 (2019) ([SSRN](#))

“Post-Accountability Accountability,” 52 *Michigan Journal of Law Reform* 158 (2018) ([SSRN](#))

“Planning for Density: Promises, Perils and a Paradox,” 33 *Journal of Land Use & Environmental Law* 1 (2018) ([SSRN](#))

“Sector Agnosticism and the Coming Transformation of Education Law,” 70 *Vanderbilt Law Review* 1 (2017) ([SSRN](#))

“From and Muddle to a Mudslide: *Murr v. Wisconsin* and the Parcel-as-a-Whole Rule,” 2016-17 *CATO Supreme Court Review* 131 (2017) ([SSRN](#))

SCHOLARLY PAPERS, CONT.

- “Justice Scalia’s Rule of Law and Law of Takings,” 41 *Vermont Law Review* 717 (2017) ([SSRN](#))
- “Disparate Impact, Public-School Closures and Parental Choice,” 2014 *Chicago Legal Forum* 289 (2014) ([SSRN](#))
- “A Room of One’s Own? Accessory-Dwelling-Unit Reforms and Local Parochialism” (with Margaret Brinig), 45 *Urban Lawyer* 519 (2013) ([SSRN](#))
- “Redeeming Transect Zoning?” 78 *Brooklyn Law Review* 571 (2013) ([SSRN](#))
- “Managing the Urban Commons,” 160 *University of Pennsylvania Law Review* 1995 (2012) ([SSRN](#))
- “Are Charters Enough Choice? School Choice and the Future of Catholic Schools,” 87 *Notre Dame Law Review* 1892 (2012) ([SSRN](#))
- “Catholic Schools and Broken Windows,” with Margaret Brinig, 9 *Journal of Empirical Legal Studies* 347 (2012) ([SSRN](#))
- “Catholic Schools, Charter Schools, and Crime,” with Margaret Brinig, 79 *University of Chicago Law Review* 31 (2012) ([SSRN](#))
- “The People Paradox,” 2012 *University of Illinois Law Review* 43 ([SSRN](#))
- “2010 William J. Brennan Lecture—Restoring Lost Connections: Land Use, Policing, and Urban Vitality,” 36 *Oklahoma City Law Review* 253 (2011) ([SSRN](#))
- “Affordable Private Education and the Middle Class City,” 77 *University of Chicago Law Review* 205 (2010) ([SSRN](#))
- “Unbundling Homeownership: Regional Reforms from the Inside Out,” 119 *Yale Law Journal* 1904 (2010) ([SSRN](#)) (reviewing Lee Anne Fennell, *The Unbounded Home: Property Values Beyond Property Lines*, Yale University Press, 2009).
- “Catholic Schools, Urban Neighborhoods, and Education Reform” (with Margaret Brinig), 85 *Notre Dame Law Review* 887 (2010) ([SSRN](#))
- “Governing? Gentrifying? Seceding? Real-Time Answers to Questions about BIDS,” 3 *Drexel Law Review* 35 (2010) ([SSRN](#))
- “The Order Maintenance Agenda as Land Use Policy,” 24 *Notre Dame Journal of Law, Ethics, and Public Policy* 131 (2010) ([SSRN](#))
- “‘But for the Grace of God, There Go I’: Justice Thomas and the Little Guy,” 4 *NYU Journal of Law & Liberty* 626 (2010) (invited tribute to Justice Clarence Thomas) ([SSRN](#))
- “Private Norms and Public Spaces,” 18 *William & Mary Bill of Rights Journal* 183 (2009) (invited tribute to Robert C. Ellickson) ([SSRN](#))
- “No Taking without a Touching?’ Reflections of an Armchair Originalist,” 45 *San Diego Law Review* 761 (2008) ([SSRN](#))

SCHOLARLY PAPERS, CONT.

- “Suburbs as Exit, Suburbs as Entrance,” 106 *Michigan Law Review* 277 (2007) ([SSRN](#))
- “Planning as Public Use,” 34 *Ecology Law Quarterly* 443 (2007) ([SSRN](#))
- Selected as one of the five best land use articles published in 2007 and reprinted in the *Land Use and Environmental Law Review*
 - Selected as one of the most important land use articles published in 2007 and reprinted in West 2008 *Zoning and Planning Law Handbook*
- “The Neglected Political Economy of Eminent Domain,” 105 *Michigan Law Review* 101 (2006) ([SSRN](#))
- “Save the Cities, Stop the Suburbs?,” 117 *Yale Law Journal* 599 (2006) ([SSRN](#)) (reviewing Robert Bruegmann, *Sprawl: A Compact History* (Univ. of Chicago Press 2005) and Joel Kotkin, *The City: A Global History* (Modern Library Chronicles 2005)).
- “Relocating Disorder,” 91 *Virginia Law Review* 1075 (2005) ([SSRN](#))
- Selected as one of the most important land use articles in 2005 and reprinted in West’s 2006 *Zoning and Planning Law Handbook*
- “Unsubsidizing Suburbia,” 90 *Minnesota Law Review* 459 (2005) ([SSRN](#))
- Reviewing Richardson Dilworth, *The Urban Origins of Suburban Autonomy*, Harvard University Press 2005.
- “Ordering (and Order in) the City,” 57 *Stanford Law Review* 1 (2004) ([SSRN](#))
- “The Public Use Question as a Takings Problem,” 71 *GW Law Review* 934 (2003) ([SSRN](#))
- “Trouble Preserving Paradise?” 87 *Cornell Law Review* 158 (2001) ([SSRN](#))
- “On Castles and Commerce: Zoning Law and the Home Business Dilemma,” 42 *William & Mary Law Review* 1191 (2001) ([SSRN](#))
- Selected as one of the most important land use articles in 2001 and reprinted in West’s 2002 *Zoning and Planning Law Handbook*
- “The Road from Welfare to Work: Informal Transportation and the Urban Poor,” 38 *Harvard Journal on Legislation* 173 (2001) ([SSRN](#))
- “School Choice, the Constitution, and Justice,” 4 *Texas Journal of Law and Public Policy* 303 (2000) (with Richard Garnett)

SHORTER WORKS

- “[Why We Still Need Catholic Schools](#),” *City Journal*, Summer 2020
- “[Just Compensation and the Jury](#),” *Property JOTWELL*, July 13, 2020
- “[Metes and Bounds: A Revisionist History](#),” *Property JOTWELL*, September 11, 2018
- “[To Help, Not to Hurt: Justice Thomas’s Equality Canon](#),” *Yale Law Journal Forum*, August 2, 2017 (with William Consovoy)

SHORTER WORKS, CONT.

- [“Can Transferable Development Rights \(TDRs\) Be Taken?”](#) *Property JOTWELL*, November 8, 2017
- [“Does Compensation Deter Takings? New \(and Surprising\) Evidence,”](#) *Property JOTWELL*, Sept. 28 2016
- [“The Elusive Quest for Government ‘Success.’”](#) *The Regulatory Review*, January 6, 2016
- Reviewing Peter Schuck, *Why Government Fails so Often: And How It Can Do Better* (Princeton University Press 2014)
- [“Three Things: A Tribute to Judge Morris Sheppard Arnold,”](#) 18 *Green Bag 2d* 255 (2015)
- [“The Legal Landscape of Parental Choice Policy,”](#) American Enterprise Institute, Nov. 2015
- [“School Closures as Education Reform: New Evidence from Chicago and Ohio,”](#) 9 *Journal of School Choice* 649 (2015)
- “Accessory Dwelling Unit Reforms: Death by Thousand Paper Cuts?” *Zoning & Planning Law Report*, April 2014
- [“A Winn for Educational Pluralism,”](#) 121 *Yale Law Journal Pocket Part* 31 (2011)
- [“Property In-Laws,”](#) 156 *University of Pennsylvania Law Review PENNumbra* 279 (2007) (response to Eduardo Moisés Peñalver & Sonia N. Katyal, “Property Outlaws,” *University of Pennsylvania Law Review* 1095 (2007))
- [“Save the Cities, Stop the Suburbs?”](#) 116 *Yale Law Journal Pocket Part* 192 (2006)

LECTURES, PRESENTATIONS, CONFERENCES

- “Takings, Forbearance, and our (post) Urban Future,” Brigham-Kanner Property Rights Conference, William & Mary Law School, October 2, 2020
- “Religious Charter Schools: Legally Possible and Politically Advisable?” Manhattan Institute, August 2, 2020
- “Public Financing of Confessional Schools,” Pontifical Universidad Católica de Chile, July 10, 2020
- “The Comparative Legal Landscape of Educational Pluralism”
- Cornell Law School, April 24, 2020
 - Chicago-Kent Law School, November 5, 2019
- “The Case for Educational Pluralism,” Washington University-St. Louis School of Law, September 5, 2019
- “Educational Pluralism in the U.S.: The Critical Contribution of Catholic Schools,” at Australian Catholic University, May 23, 2019

LECTURES, PRESENTATIONS, CONFERENCES, CONT.

- “The Natural Law Case for Educational Pluralism,” U.C. Berkeley School of Law, April 9, 2019
- “The Levers of Educational Pluralism,” AALS Annual Meeting, Section on Education, New Orleans, Louisiana, January 4, 2019
- “Educational Autonomy in the US,” Freedom, Autonomy, and Accountability in the U.S. and Chile, Pontifical Universidad Católica de Chile, Dec. 2018
- “The Case for Educational Pluralism,” Giannella Lecture, Villanova Law School, October 30, 2018
- Commencement address, Holy Cross College, Notre Dame, Indiana, May 19, 2018
- “Upscaling the Neighborhood,” Regulation and Rule of Law Workshop, Hoover Institution, Stanford University, April 13, 2018
- “Justice Thomas and the Little Guy,” Justice Thomas: 25 Years on the Supreme Court, Yale Law School, February 11, 2017
- “Sector Agnosticism and the Coming Transformation of Education Law,” Florida State University College of Law, February 2, 2017
- “Planning for Density: Promises, Perils, and Paradoxes,” Spring 2017 Environmental Law Distinguished Lecture, Florida State University College of Law, February 1, 2017
- “Justice Scalia, the Rule of Law, and the Law of Takings,” the 19th Annual Conference on Litigating Takings Challenges, Tulane Law School, November 4, 2016
- “Old Suburbs Meet New Urbanism,” 100 Years of Zoning, University of Florida Levin College of Law, September 23, 2016
- “The Governments’ Powers and Willingness to Acquire Land and Manage Development: A U.S. Perspective,” at *Cityscapes: A Conference on Comparative Land Use Law*, Yale Law School, April 1, 2016
- A Crisis of Community: Catholic School Closures and Urban Neighborhoods* (book events)
- University Club of Chicago, June 26, 2014
 - Metropolitan Club of Washington D.C., September 17, 2014
 - University of Pennsylvania, September 18, 2014
 - Chicago History Museum, November 20, 2014
 - Archdiocese of Baltimore, December 16, 2014
 - Archdiocese of Washington, D.C., December 16, 2014
 - Archdiocese of Houston, March 5, 2015
 - Institute for Advanced Catholic Studies, USC, November 5, 2015
- “Planning as a Public Use Safe Harbor,” at *Kelo v. New London: A Decade Later*, University of Connecticut School of Law, March 20, 2015

LECTURES, PRESENTATIONS, CONFERENCES, CONT.

The Future of K-12 Catholic Education: National and Milwaukee Perspectives,
Marquette Law School, November 19, 2014 (conference built around *Lost Classroom, Lost Community*)

“Charter Schools, Catholic Schools, and the ‘Crowding-Out’ Problem,” at roundtable discussion of Peter Schuck, *Why Government Fails So Often: And How it Can Do Better* (Princeton University Press, 2014), Chicago, Illinois, October 24, 2014 (conference organizer)

“Converging Urban-Suburban Land Use Regulations,” AALS Annual Meeting, Joint Session of the Property and Real Estate Sections, January 4, 2014

“Was Jane Jacobs Wrong? Confronting the Paradoxes of Mixing Land Uses,” Distinguished Gifford Lecture in Real Property, William S. Richardson School of Law, University of Hawaii, November 18, 2013

“Public-School Closures as a Land-Use Problem,” Yale Law, Economics and Organization Workshop, Yale Law School, March 28, 2012

Red Mass Lecture, Archdiocese of Houston, October 25, 2012

“School Closures and Urban Neighborhoods: Lessons from Chicago’s Catholic Schools,” 2012 Gage Lecture, UMKC School of Law, October 4, 2012

“Redeeming Transect Zoning?” Brooklyn Law School, February 10, 2012.

“Managing the Urban Commons” at

- University of Pennsylvania Law School, Conference on Property Theory, November 6, 2011
- George Washington University Law School, faculty workshop, February 13, 2012

“Are Charters Enough Choice?” *Notre Dame Law Review* symposium on “Law and Educational Innovation,” November 18, 2011.

“Catholic Schools, Charter Schools, and Urban Neighborhoods,” *University of Chicago Law Review* symposium, June 18, 2011

“Catholic Schools and Broken Windows” 2010 Conference on Empirical Legal Studies, Yale Law School, November 6, 2010

“Land Use Planning, Innovation, and Growth” Kauffman Foundation Summer Legal Institute, Dana Point, California, July 7-11, 2010.

“Restoring Lost Connections: Land Use, Policing, and Urban Vitality,” William J. Brennan Distinguished Lecture, Oklahoma City University School of Law, April 8, 2010.

“Governing? Gentrifying? Seceding? Real-Time Answers to Questions about BIDs” symposium on “Business Improvement Districts and the Evolution of Urban Governance,” Drexel University School of Law, January 22, 2010

LECTURES, PRESENTATIONS, INVITED CONFERENCES, CONT.

“Catholic Schools, Urban Neighborhoods, and Education Reform,” at

- Midwest Law and Economics Association, Annual Meeting, October 9, 2010
- American Law and Economics Association, Annual Meeting, May 15, 2009

“Affordable Education and the Middle Class City,” *University of Chicago Law Review* symposium on “Reassessing the State and Local Government Law Toolkit,” University of Chicago Law School, June 19, 2009

“‘But for the Grace of God, There Go I;’ Justice Thomas and the Little Guy,” symposium on “The Unknown Justice Thomas,” NYU Law School, March 2, 2009

“Reordering the City,” Association of American Law Schools, Annual Conference, State and Local Government Law Section, January 8, 2009

“Mercantilism, American Style,” Association of American Law Schools, Annual Conference, Property Law Section, January 7, 2009

“Private Norms and Public Spaces,” 2008 Brigham-Kanner Property Rights Conference (honoring Robert Ellickson), William & Mary Law School, October 17, 2008

“The Order-Maintenance Agenda as Land Use Policy”

- University of Minnesota Law School, Faculty Workshop Series, October 23, 2008
- Seton Hall Law School, Faculty Workshop Series, September 8, 2008
- 2008 Property Works in Progress Conference, June 14, 2008
- Emory Law School, Faculty Workshop Series, February 12, 2008

“No Taking without a Touching? Reflections of an Armchair Originalist,” University of San Diego School of Law, November 16, 2007

“Suburbs as Exit, Suburbs as Entrance,”

- USC Gould School of Law, October 5, 2007
- University of Chicago Law School, March 1, 2007
- Social Science History Association, Minneapolis, Minnesota, Nov. 3, 2006

“The Neglected Political Economy of Eminent Domain,”

- University of Michigan Law School, March 20, 2007
- Northwestern University School of Law, April 18, 2006
- UCLA School of Law, February 13, 2006
- University of Florida, Levin College of Law, Nelson Symposium on Local Government, November 18, 2005
- J. Reuben Clark Law School, Brigham Young University, September 7, 2005
- “Eminent Domain Reform: Is More Money the Answer?” at the AALS Annual Meeting, Property and Local Government Law Sections, January 6, 2006

“A Four Category Taxonomy of Disorder,” at Colloquium on the Law, Economics, and Politics of Urban Affairs, NYU School of Law, February 7, 2007

“Planning as Public Use,” UC Berkeley School of Law, October 26, 2006

LECTURES, PRESENTATIONS, CONFERENCES, CONT.

“Relocating Disorder”

- University of Alabama School of Law, April 18, 2005
- Wake Forest University School of Law, October 28, 2004
- University of St. Thomas School of Law (Minneapolis), October 18, 2004

“Ordering (and Order in) the City”

- University of Illinois College of Law, October 5, 2004
- Northwestern University School of Law, March 9, 2004

Property Regulation and the Public Order”

- University of San Diego School of Law, September 19, 2003
- The College of Law at Arizona State University, September 15, 2003
- Georgetown University Law Center, Environmental Law Workshop, Sept. 11, 2003
- University of Virginia School of Law, July 22, 2003

“Property, Race, and Poverty,” NYU Law School, Florence, Italy, July 13-16, 2003

HONORS AND GRANTS

- Doctor of Humane Letters, *Honoris Causa*, Holy Cross College, 2018
- Kellogg Institute for International Studies, University of Notre Dame, Research Cluster Grant (co-PI) for inter-disciplinary study of Catholic Schools in the Global South (2017, renewed 2020)
- 2016 Reinhold Niebuhr Award (given annually to ND “faculty member or administrator whose body of academic work and life promote or exemplify the area of social justice in modern life”)
- University of Notre Dame Outstanding Faculty Member, recognized at Notre Dame v. Navy football game, November 2, 2013
- 2009 Paul M. Bator Award (honoring legal academic under 40)
- “Planning as Public Use” selected by *Land Use and Environmental Law Review* as one of five best scholarly articles on land use planning published in 2007
- “Planning as Public Use” selected for publication in *West’s 2008 Zoning and Planning Law Handbook*
- “Relocating Disorder” selected for publication in 2006 *Zoning and Planning Law Handbook*
- “On Castles and Commerce” selected for publication in 2002 *Zoning & Planning Law Handbook*

UNIVERSITY SERVICE

- Search Committee for Director of Institute for Educational Initiatives, 2019-21
- Provost Advisory Committee, 2017-2020 (university committee on tenure and promotion)
- Institute for Educational Initiatives, Faculty Committee, since 2010
- Alliance for Catholic Education, Executive Committee, since 2010
- Fitzgerald Institute for Real Estate, Faculty Committee, since 2018
- Notre Dame Institute for Advanced Studies, Selection Committee, 2013-18
- Provost Review Committee (reviewing Provost's performance), 2014-15
- Laetare Medal Selection Committee, 2008-2014 (Notre Dame's highest honor)
- External Review of Graduate School (internal member of review committee), 2011
- Academic Council (University's academic governing body), 2006-2009
 - Executive Committee, 2007-2009; Chair, Faculty Affairs Subcommittee, 2007-2009
- Chair, Notre Dame Task Force on Collaborative Hiring, 2008-2009
- Chair, Academic Articles Decennial Review, 2007-2009
- Notre Dame Task Force on the Future of K-12 Catholic Schools, 2005-2006

LAW SCHOOL SERVICE

- Faculty Sponsor, *Notre Dame Law Review* (2018-present); Married Law Students Association (2000-present); Education Law Forum (2015-present); Federalist Society (1999-2009)
- Clerkship Committee, 2020-21 (chair), 2000-2009
- Appointments Committee, 2016-20 (chair, 2018-19)
- Admissions Committee for International Programs, 2019-20
- Promotions Committee, 2013-15 (chair, 2013-14), 2011
- Faculty Development Committee, 2014-16
- Curriculum Committee, 2015-16; 2009-2012; 2004-06 (chair, 2015-16, 2010-11)
- Faculty Colloquium Committee, 2014-15; 2001-2005
- Dean Search Committee, 2008-2009
- Strategic Planning Committee, 2007-2008
- Law Librarian Search Committee, 2005-2006
- ABA Self-Study Committee, 2002-2003
- Admissions Committee, 2000-2003, 2012-13

OTHER SERVICE

- Consultant, U.S. Conference of Catholic Bishops, Education Committee (2017-2019)
- Peer Reviewer, Yale University Press, University of Chicago Press, Oxford University Press, various law journals

OTHER SERVICE, CONT.

- Editorial Board, *International Journal of Education Law and Policy*
- Contributor, *Property JOTWELL, City Journal*
- The Federalist Society
 - Faculty Steering Committee (since 2019)
 - Selection Committee, Joseph Story Award (since 2017)
 - Selection Committee, Olin-Searle Fellowship (since 2019)
- Circle of Scholars, Lumen Christi Institute, Chicago, Illinois, since 2006
- National Prison Rape Elimination Commission, 2004-2006
- AALS Constitutional Law Section, Executive Committee, 2002-2003 and 2007-2008

PERSONAL

Married to Richard W. Garnett (1994) | Mother of four: Margaret Clare (1999), Thomas William (2001), Elizabeth Ann (2004) and John Joseph (2012) | Parishioner, St. Joseph Catholic Church, South Bend, Indiana | Proud Kansan | Decent Cook