

MARAH STITH MCLEOD
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ACADEMIC APPOINTMENTS

Notre Dame Law School

Professor of Law

2024 - present

Associate Professor

2016 - 2024

Columbia Law School

Associate in Law

2014 - 2016

ARTICLES

A Democratic Restraint on Incarceration, 76 FLA. L. REV. 1147 (2024) (arguing that the trial jury should establish the maximum prison term, if any, that a convicted defendant deserves and that judicial sentencing discretion should be confined within that upper bound)

Showing Mercy Through a Presumption of Retribution, 102 TEX. L. REV. 1365, 1473 (2024) (symposium) (arguing that a focus on retributive desert in sentencing allows space for virtuous mercy)

Preventing Undeserved Punishment, 99 NOTRE DAME L. REV. 493 (2023) (illuminating how current sentencing procedure invites over-punishment by asking sentencing courts to pursue both retribution and utility, without requiring them first to decide the upper limit of deserved punishment)

Communicating Punishment, 100 B.U. L. REV. 2263 (2020) (arguing that sentencing courts should explain to defendants the legitimate goals that their sentences are meant to serve, in order to engage with defendants as reasoning moral beings and to guard against sentencing excess and irrationality)

The Death Penalty as Incapacitation, 104 VA. L. REV. 1123 (2018) (exposing how scholars and courts have dismissed the incapacitation rationale for the death penalty based on flawed assumptions, an approach that has stymied debate and reform of a key driver of death sentences on the ground)

Does the Death Penalty Require Death Row? The Harm of Legislative Silence, 77 OHIO ST. L.J. 525 (2016) (contending that prison administrators lack authority to increase the punishment for capital crimes by automatically sending capital prisoners into solitary confinement on death row)

Immigration Control: A Catholic Dilemma?, 84 U. DET. MERCY L. REV. 73 (2007) (attributing the discordant views among vocal Catholic lawmakers and citizens on immigration control to differences in the prudential application of shared principles, and urging good-faith dialogue)

The Semblance of Autonomy: Treatment of Persons with Disabilities Under the Uniform Health-Care Decisions Act, 22 ISSUES L. & MED. 39 (2006) (warning that the model statute lethally empowers conflicted caregivers and preferences the views of the able-bodied over the disabled)

SHORTER WORKS

Making Sense of Sentences, 34 FED. SENT’G REP. 245 (2022) (urging that sentencing include direct, personal, reasoned explanation to the defendant of valid goals the penalty will serve)

A Humble Justice, 127 YALE L.J. F. 196 (2017) (arguing that Justice Clarence Thomas’s approach to criminal law issues reflects not callousness, as many critics claim, but judicial and personal humility)

White Paper of Democratic Criminal Justice, 111 NW. L. REV. 1693 (2017) (with eighteen co-authors) (urging reforms to enfranchise, inform, and empower laypeople in criminal justice)

A Plebiscitary Bargain, 1 LONDON L. REV. 497 (2005) (arguing that public input in criminal justice can be partially recaptured by requiring plea deals to be approved by lay review panels)

CLERKSHIPS

Hon. Clarence Thomas, United States Supreme Court, Law Clerk, 2009–2010

Hon. Diarmuid F. O’Sconnlain, Ninth Circuit Court of Appeals, Law Clerk, 2006–2007

EDUCATION

Yale Law School, J.D., 2006

- *Yale Law Journal*, Notes Editor
- Hillhouse Scholars Program, Director of Mentorship
- Initiative for Promoting Public Interest Employment, Executive Committee
- Greenhaven Prison Project

Harvard University, A.B. in Government (political theory), *magna cum laude*, 2002

- Thesis: *Is Moral Relativism Good for Democracy? A Practical View from Tocqueville’s America*
- Elizabeth Cary Agassiz Certificate of Merit, Harvard College Scholarship
- Harvard Motorcycle Club, Founder

PROFESSIONAL AND OTHER EXPERIENCE

Sidley Austin LLP, Chicago, Senior Litigation Associate, 2011 - 2014

- Handled civil litigation, negotiations, and appeals
- Represented three death-row prisoners seeking post-conviction relief in Alabama
- Received Thomas Morsch Pro Bono Award for work on non-capital federal habeas case

Office of Legal Counsel, United States Department of Justice, Attorney-Adviser, 2007 - 2009

- Advised President on constitutionality of executive actions and proposed legislation
- Drafted opinions arbitrating inter-agency disputes
- Counseled agencies on legality of proposals (e.g., for civil commitment, DNA collection)

Gibson, Dunn & Crutcher LLP, Washington, D.C., Summer Associate, 2005

- Drafted internal compliance procedures and advised clients under federal investigation

United States Attorney’s Office, Western District of Washington, Summer Law Clerk, 2004

- Wrote search warrant applications, suppression motion responses, and research memos

Daya Dan Orphanage, Kolkata, India, Caretaker of Orphans, 2002 - 2003

- Cared for mentally and physically disabled children taken in by Mother Teresa’s sisters

COURSES TAUGHT

Notre Dame Law School (2016 – present)

- Criminal Law
- Constitutional Criminal Procedure: Adjudication
- The Death Penalty
- Plea Bargaining
- Directed Readings: Death Penalty; Catholic Social Thought; Plea Bargaining; German Criminal Law

Columbia Law School (2014 – 2016)

- Legal Writing

LANGUAGES: German (advanced), Spanish (conversational)

PUBLIC SERVICE AND PROFESSIONAL ORGANIZATIONS

- **Notre Dame Law School**
 - Religious Liberty Initiative, Faculty Fellow 2023 - present
 - Admissions Committee 2025 - present
 - *Ad Hoc* Committee on Legal Writing Program 2023 - present
 - Appointments Committee 2024 - 2025
 - Clerkship Committee, Notre Dame Law School 2016 - 2023
- **University of Notre Dame**
 - DeNicola Center for Ethics and Culture
 - Culture of Life Initiatives Advisory Committee 2024 - present
 - Faculty Advisory Committee 2018 - present
 - Notre Dame Global – Faculty Advisory Committee for Ireland 2024-present
 - Democracy Initiative – Working Group 2021 - 2022
- **Catholic Criminal Justice Reform Network**
 - Executive Committee 2021 - present
- **American Association of Law Schools**
 - Member of the Criminal Justice Section 2017 - present
 - Annual Meeting Planning Committee 2021
- **Columbia University Justice Lab - Square One Project**
 - Collaborative on Reckoning & Justice 2023 - 2024
- **Fr. Michael J. McGivney Center of Hope & Healing,**
 - Board Member 2013 - 2014

BAR ADMISSIONS

New York
District of Columbia
Illinois
Supreme Court of the United States
Court of Appeals for the First Circuit
Court of Appeals for the Ninth Circuit
Northern District of Illinois

SELECTED PRESENTATIONS OUTSIDE NOTRE DAME

- ***“Crazy Criminal Cases in the United States and Germany: A Comparative Analysis”*** (joint lecture with Prof. Paul Krell), Bucerius Law School, Hamburg, Germany, June 24, 2024
- ***“The Problem of Undeserved Punishment in the United States,”*** University of Cologne, Germany, June 23, 2025
- ***“The Problem of Undeserved Punishment in the United States,”*** Bucerius Law School, Hamburg, Germany, June 16, 2025
- ***“The Problem of Undeserved Punishment,”*** Bucerius Law School, Hamburg, Germany, June 16, 2025
- ***“Catholic Teaching and the Death Penalty as Incapacitation,”*** Conference on “Religion and the Death Penalty,” University of Texas Law School, Austin, Texas, April 5, 2025
- ***“Showing Mercy Through a Presumption of Retribution”*** (paper presentation), Criminal Justice Roundtable, Columbia Law School, New York City, May 3, 2024
- ***“Rethinking the Great Writ”*** (invited presentation), Project on Constitutional Originalism and the Catholic Intellectual Tradition, Catholic Univ. of America, Washington D.C., April 2024
- ***“Showing Mercy Through a Presumption of Retribution”*** (invited presentation), Conference on the Law and Mercy, University of Texas Law School, Austin, January 19-20, 2024
- ***“Is the Principle of Desert Unprincipled in Practice?”*** Young Legal Scholars Paper Presentation (with commentary by Richard Epstein) (winner of Federalist Society Young Scholars Paper Competition), Annual Federalist Society Faculty Conference, San Diego, January 6, 2023
- ***“Undeserved Punishments and Jury Sentencing”*** (paper presentation), Criminal Law Theory Workshop, Northwestern University School of Law, Chicago, November 4, 2022
- ***“Is the Principle of Desert Unprincipled in Practice?”*** (paper presentation), Chicagoland Junior Scholars Conference, Loyola University Chicago Law School, November 30, 2022
- ***“Religious Thought in Criminal Law Scholarship & Advocacy”*** (panel presentation), Religiously Affiliated Law Schools Conference, Touro Law Center, Central Islip, September 15, 2022
- ***“Is the Principle of Desert Unprincipled in Practice?”*** (paper presentation), CrimFest, Cardozo School of Law, New York City, July 19, 2022
- ***“Ethical and Legal Frameworks for Evaluating Death-Row Practices”*** (panel presentation), Death Row Incarceration Conference, University of Texas Law School, Austin, April 8, 2022
- ***“A Catholic Approach to Reasoned Sentencing”*** (paper presentation), Colloquium on Catholic Perspectives on Criminal Justice Reform, Seattle University School of Law, October 8, 2021
- ***“Judging Desert”*** (paper presentation) Criminal Law Workshop (virtual), July 28, 2021
- ***“Judging Desert”*** (paper presentation), CrimFest (virtual), July 19, 2021
- ***“Communicating Punishment”*** (presentation of winning entry in paper competition), 2020

Junior Scholars Colloquium of the Federalist Society (virtual), June 26-27, 2020

- ***“Communicating Punishment”*** (paper presentation), American Association of Law Schools Criminal Justice Section, Works-in-Progress Panel, Washington, D.C., January 4, 2020
- ***“Communicating Punishment”*** (paper presentation), Works-in-Progress Panel, Federalist Society Annual Faculty Conference, Washington, D.C., January 3, 2020
- ***“Communicating Punishment”*** (paper presentation), Faculty Workshop, DePaul University School of Law, Chicago, October 3, 2019
- ***“Communicating Punishment”*** (paper presentation), Chicagoland Junior Scholars Conference, Loyola University Chicago Law School, October 5, 2018
- ***“Communicating Punishment”*** (paper presentation), Women in Law Teaching Works-in-Progress Workshop, University of Minnesota Law School, Minneapolis, July 25, 2018
- ***“The Death Penalty as Incapacitation”*** (paper presentation), Faculty Workshop, Northwestern University School of Law, Chicago, March 5, 2018
- ***“The Death Penalty as Incapacitation”*** (paper presentation), Faculty Workshop, Indiana University School of Law, Bloomington, January 31, 2018
- ***“Taking Incapacitation Seriously”*** (paper presentation), Works-in-Progress Panel, Federalist Society Annual Faculty Conference, San Diego, January 2018
- ***“Decisional Transparency in Plea Agreements”*** (paper presentation), CrimFest, Cardozo School of Law, New York City, July 21, 2015
- ***“Does the Death Penalty Require Death Row? The Harm of Legislative Silence”*** (paper presentation), Associates & Fellows Workshop, Columbia Law School, New York City, April 8, 2015
- ***“Does the Death Penalty Require Death Row? The Harm of Legislative Silence”*** (paper presentation), Faculty Colloquium, St. John’s University School of Law, New York City, March 2015
- ***“Does the Death Penalty Require Death Row?”*** (paper presentation), Works-in-Progress Panel, Federalist Society Annual Faculty Conference, Washington, D.C., January 3, 2015

SELECTED PRESENTATIONS AT NOTRE DAME

- ***“Desert and Retribution in Criminal Sentencing”*** (guest teacher), Institute for Social Concerns Mass Incarceration Research Lab, September 17, 2025 (upcoming)
- ***“Desert and Retribution in Criminal Sentencing”*** (guest teacher), Institute for Social Concerns Mass Incarceration Research Lab, March 17, 2025
- ***“Desert and Retribution in Criminal Sentencing”*** (guest teacher), Institute for Social Concerns Mass Incarceration Research Lab, March 27, 2024
- ***“Let Juries Prevent Undeserved Punishment,”*** (paper presentation), Kylemore Abbey Global Centre, Galway, Ireland, May 6, 2023
- ***“Criminal Justice and the Imago Dei”*** (panel presentation), deNicola Center for Ethics & Culture Conference, University of Notre Dame, November 12, 2022
- ***“Is the Principle of Desert Unprincipled in Practice?”*** (paper presentation), Faculty Workshop, Notre Dame Law School, September 28, 2022

- “*What We Owe to the Poor*” (panel presentation), deNicola Center for Ethics & Culture Conference, University of Notre Dame, January 13, 2021
- “*Plea Bargaining and Wrongful Convictions*” (panelist), Notre Dame Exoneration Project, Notre Dame Law School, October 9, 2020
- “*Communicating Punishment*” (paper presentation), Faculty Workshop, Notre Dame Law School, January 14, 2020
- “*The Death Penalty as Incapacitation*” (paper presentation), Faculty Workshop, Notre Dame Law School, February 27, 2018
- “*Solitary Confinement and the Death Penalty*” (panel presentation), University of Notre Dame, Oct. 30, 2017
- “*Mother Teresa and the Mission of Notre Dame*” (invited address), Meeting of the Notre Dame Law School Advisory Council, September 23, 2016
- “*Decisional Transparency in Plea Agreements*” (paper presentation), Faculty Roundtable, Notre Dame Law School, July 13, 2016

SELECTED CONFERENCES

- **Anglo-German Dialogue on Criminal Justice**, Fordham University Law School, New York, Sept. 26-27, 2025 (upcoming)
- **Chicagoland Junior Scholars Conference** (invited senior commentator), Loyola University Chicago Law School, September 27, 2024
- **Criminal Justice Roundtable, Columbia University** (invited presenter), May 3-4, 2024
- **Criminal Justice Reform**, Panel Discussion, Lumen Christi Institute, Chicago, Feb. 21, 2024
- **Conference on Law and Mercy, University of Texas Law School**, Austin, January 19-20, 2024
- **Square One Collaborative on Reckoning and Justice, Columbia University** (invited collaborator), New Orleans, Louisiana, October 12-14, 2023
- **Chicagoland Junior Scholars Conference** (invited senior commentator), Loyola University Chicago Law School, October 6, 2023
- **Criminal Law Conference/Workshop** (conference organizer), Kylemore Abbey Global Centre, Galway, Ireland, May 5-7, 2023
- **Square One Collaborative on Reckoning and Justice, Columbia University** (invited collaborator), New York City, April 27-29, 2023
- **The Past, Present, & Future of Religiously Affiliated Law Schools**, Touro Law Center, Central Islip, September 15-16, 2022
- **Inaugural Conference of the Catholic Criminal Justice Reform Network**, Georgetown University Law Center, Washington D.C., April 28-29, 2022
- **Conference on Death Row Incarceration**, Univ. of Texas Law School, Austin, April 8-9, 2022
- **Conference on Understanding Criminal Punishment** (sponsored by the Federalist Society/Liberty Fund), Phoenix, February 25-26, 2022
- **DeNicola Center for Ethics & Culture Conference, *The Dignity of the Sexed Body*:**

Asymmetry, Equality, and Real Reproductive Justice (moderator), University of Notre Dame, November 13, 2021

- **Colloquium on Catholic Perspectives on Criminal Justice Reform**, Seattle University School of Law, October 8, 2021
- **CrimFest Conference** (virtual), July 19, 2021
- **DeNicola Center for Ethics & Culture Conference**, University of Notre Dame, January 13, 2021
- **Symposium in Honor of Prof. Margaret Brinig: Pioneering Research in Empirical Legal Studies** (moderator), Notre Dame Law School, November 8, 2019
- **Colloquium on the English Origins of the American Constitution** (sponsored by the Federalist Society/Liberty Fund), Philadelphia, October 26-27, 2018
- **Women in Law Teaching Works-in-Progress Workshop**, University of Minnesota Law School, Minneapolis, July 24-25, 2018
- **CrimFest Conference**, Cardozo School of Law, New York City, July 21, 2015
- **Symposium on Democratizing Criminal Law** (hosted by the Northwestern University Law Review), Northwestern University School of Law, Chicago, November 18-19, 2016
- **Conference of the Next Generation of Legal Academics** (sponsored by the Federalist Society), Park City, September 15-17, 2017
- **Conference of the Tradition Project** (St. John's University), New York City, November 2-4, 2017
- **Conference on International Law, Foreign Law, and the U.S. Constitution** (sponsored by the Federalist Society/Liberty Fund), San Antonio, February 19-20, 2016
- **Conference on the Freedom of Assembly and Religious Liberty** (sponsored by the Federalist Society/Liberty Fund), Dallas, January 24-25, 2014

SELECTED INTERVIEWS

- *The Scourge of Opioid Addiction, and President Trump's Plan to Fix It* (commentator), WBUR, March 20, 2018 (analyzing whether death penalty could be constitutional for opioid dealers)