

BARRY CUSHMAN

John P. Murphy Foundation Professor of Law
Concurrent Professor of History
Concurrent Professor of Political Science
University of Notre Dame
3105 Eck Hall of Law
Notre Dame, Indiana 46556
(574) 631-0662
bcushman@nd.edu

ACADEMIC APPOINTMENTS AND TEACHING EXPERIENCE

University of Notre Dame: John P. Murphy Foundation Professor of Law, since 2012; Concurrent Professor of History, since 2012; Concurrent Professor of Political Science, since 2012; John P. Murphy Foundation Visiting Professor of Law, Fall 2011

University of Virginia: James Monroe Distinguished Professor of Law, 2008-2012; Percy Brown, Jr. Professor of Law, 2003-2008; Professor of Law, 1998-2012; Professor of History, 2001-2012; David H. Ibbeken '71 Research Professor, 2010-2012; F. D. G. Ribble Research Professor, 2006-2009; F. Palmer Weber Research Professor, 2003-2006; Elizabeth D. & Richard A. Merrill Research Professor, 1999-2002; Visiting Professor, Fall 2014

New Zealand Centre for Public Law, Victoria University, Wellington, New Zealand: Visiting Scholar, March, 2016

George Washington University Law School, Professorial Lecturer (Institute for Constitutional History), January-February 2013

University of Chicago Law School: Visiting Scholar, July 2006

University of Muenster, Muenster, Germany: Visiting Professor of Law, June 2000

Faculte de Droit, d'Economie et de Gestion, Universite d'Orleans, Orleans, France: Visiting Professor of Law, December 1998

Washington University: Visiting Associate Professor of Law, Spring, 1998

St. Louis University: Associate Professor of Law, 1995-1998; Assistant Professor of Law, 1991-1995

Courses taught: American Legal History; American Constitutional History Before the Civil War; American Constitutional History From the Civil War to World War II; Colloquium in American Legal History; Trusts & Estates; Advanced Trusts & Estates; Estate & Gift Taxation; Estate Planning; Property; Constitutional Law; American Intellectual and Cultural History to 1865; various topical seminars in American Legal History, including Modern American Legal History; Judicial Biography; The Family in Nineteenth-Century America; The New Deal and the Transformation of the American Legal Order; The Constitution and Reform Movements; Slavery and the Law; American Expansion and American Law; Law and Political Economy in the Antebellum United States; The *Lochner* Era

FELLOWSHIPS AND AWARDS

Hughes-Gossett Award, Supreme Court Historical Society, 2024, for “Court-Packing in Context,” 48 *J. Sup. Ct. Hist.* 174-214 (2023)

Forbes Visiting Fellow, James Madison Program in American Ideals and Institutions, Princeton University, Spring 2012

All-University Outstanding Teaching Award, University of Virginia, 2003

Littleton-Griswold Prize in American Law and Society, American Historical Association, 1998, for *Rethinking the New Deal Court: The Structure of a Constitutional Revolution* (Oxford University Press, 1998)

Student Bar Association Teacher of the Year Award, St. Louis University School of Law, 1993, 1995

Thompson Coburn Faculty Scholarship Award, St. Louis University School of Law, 1995

Samuel I. Golieb Fellow in Legal History, New York University School of Law, 1990-1991

Philip Francis du Pont Fellow, Department of History, University of Virginia

PUBLICATIONS

Book

Rethinking the New Deal Court: The Structure of a Constitutional Revolution (Oxford University Press, 1998)

Book Chapters

“The Place of Economic Crisis in American Constitutional Law: The Great Depression as a Case Study,” in *Constitutions in Times of Financial Crisis* 95-116 (Tom Ginsburg, Mark Rosen, & Georg Vanberg, eds.) (Cambridge University Press, 2019)

“Federalism,” in *The Cambridge Companion to the United States Constitution* 185-223 (Karen Orren & John Compton, eds., 2018)

“The Clerks to Justices George Sutherland and Pierce Butler,” in *Of Courtiers and Kings: More Stories of Supreme Court Law Clerks and Their Justices* 100-34 (Todd C. Peppers & Clare Cushman, eds., University of Virginia Press, 2015)

“Ambiguities of Free Labor Revisited: The Convict-Labor Question in Progressive-Era New York,” in *Making Legal History: A Festschrift in Honor of William E. Nelson* 116-39 (Daniel J. Hulsebosch & R. B. Bernstein, eds., NYU Press, 2013)

“The Great Depression and the New Deal,” 3 *The Cambridge History of Law in America* 268-318 (Michael Grossberg & Christopher Tomlins, eds., 2008)

Articles

“Reforming Revocation by Physical Act,” 61 *Real Prop., Tr. & Est. L. J.* ____ (forthcoming, 2026)

“The Pathologies of Revocation by Physical Act,” 60 *Real Prop., Tr. & Est. L. J.* ____ (forthcoming, 2026)

“The *Erie* Scoop,” 28 *Green Bag 2d* ____ (forthcoming, 2025)

“Court-Packing in Context,” 48 *J. Sup. Ct. Hist.* 174-214 (2023)

“Tuesday Afternoons with Schlegel,” 69 *Buff. L. Rev.* 3-7 (2021) (Introduction to Symposium, “Serious Fun,” in honor of John Henry Schlegel)

“The Judicial Reforms of 1937,” 61 *William & Mary L. Rev.* 995-1051 (2020) (Institute of Bill of Rights Law Symposium, “The Role of Courts in Politically Charged Moments”)

“The Decline of Revocation by Physical Act,” 54 *Real Prop., Tr. & Est. L. J.* 243-74 (2020)

“Teaching the *Lochner* Era,” 62 *St. Louis U. L. J.* 537-67 (2018) (Teaching the Fourteenth Amendment Issue)

“Inside the ‘Constitutional Revolution’ of 1937,” 2016 *Sup. Ct. Rev.* 367-409 (2017)

“The Missing Justice in *Coleman v. Miller*,” 42 *J. Sup. Ct. Hist.* 67-76 (2017)

“Vote Fluidity on the Hughes Court: The Critical Terms, 1934-1936,” 2017 *U. Ill. L. Rev.* 269-306 (2017)

“Inside the Taft Court: Lessons from the Docket Books,” 2015 *Sup. Ct. Rev.* 345-410 (2016)

“Justice Brandeis and Substantive Due Process,” 19 *Green Bag 2d* 145-56 (2016)

“The Hughes Court Docket Books: The Late Terms, 1937-1940,” 55 *Am. J. Leg. Hist.* 361-432 (2015)

“The Hughes Court Docket Books: The Early Terms, 1929-1933,” 40 *J. Sup. Ct. Hist.* 103-32 (2015)

“The Clerks of the Four Horsemen, Part II,” 40 *J. Sup. Ct. Hist.* 55-79 (2015)

“Interpreting Secretary Perkins,” 18 *Green Bag 2d* 13-25 (2014)

“The Clerks of the Four Horsemen, Part I,” 39 *J. Sup. Ct. Hist.* 386-424 (2014)

“The Jurisprudence of the Hughes Court: The Recent Literature,” 89 *Notre Dame L. Rev.* 1929-2028 (2014) (Symposium, “The Evolution of Theory: Discerning the Catalysts of Constitutional Change”)

“Tax Recognition,” 58 *St. Louis U. L. J.* 825-46 (2014) (Teaching Trusts & Estates Issue)

“*NFIB v. Sebelius* and the Transformation of the Taxing Power,” 89 *Notre Dame L. Rev.* 133-98 (2013) (Constitution Day Lecture)

“*Carolene Products* and Constitutional Structure,” 2012 *Sup. Ct. Rev.* 321-77 (2013)

“Court-Packing and Compromise,” 29 *Const. Comm.* 1-30 (2013)

“The Court-Packing Plan as Symptom, Casualty, and Cause of Gridlock,” 88 *Notre Dame L. Rev.* 2089-2106 (2013) (Symposium, “The American Congress: Legal Implications of Gridlock”)

“The Man on the Flying Trapeze,” 15 *U. Pa. J. Const. L.* 183-263 (2012) (reviewing Jeff Shesol, *Supreme Power: Franklin Roosevelt vs. The Supreme Court*) (Symposium, “FDR and Obama: Are There Constitutional Law Lessons from the New Deal for the Obama Administration?”)

“The Hughes-Roberts Visit,” 15 *Green Bag 2d* 125-37 (2012)

“The Limits of the New Deal Analogy,” 15 *Green Bag 2d* 139-47 (2012)
 “Headline Kidnappings and the Origins of the Lindbergh Law,” 55 *St. Louis U. L. J.* 1293-1316 (2011)
 “The Securities Laws and the Mechanics of Legal Change,” 95 *Va. L. Rev.* 927-39 (2009)

 “The Structure of Classical Public Law,” 75 *U. Chi. L. Rev.* 1917-47 (2008) (reviewing Duncan Kennedy, *The Rise and Fall of Classical Legal Thought*)

 “Regime Theory and Unenumerated Rights: A Cautionary Note,” 9 *U. Pa. J. Const. L.* 263-79 (2006) (Symposium, “The Future of Unenumerated Rights”)

 “Some Varieties and Vicissitudes of Lochnerism,” 85 *B. U. L. Rev.* 881-1000 (2005) (Symposium on the Centennial of *Lochner v. New York*)

 “Clerking for Scrooge,” 70 *U. Chi. L. Rev.* 721-49 (2003) (reviewing *The Forgotten Memoir of John Knox: A Year in the Life of a Supreme Court Clerk in FDR’s Washington*, David J. Garrow & Dennis Hutchinson, eds.)

 “Continuity and Change in Commerce Clause Jurisprudence,” 55 *Ark. L. Rev.* 1009-54 (2003) (Symposium, “The Commerce Clause: Past, Present, and Future”)

 “Small Differences?” 55 *Ark. L. Rev.* 1097-1148 (2003) (Symposium, “The Commerce Clause: Past, Present, and Future”)

 “Mr. Dooley and Mr. Gallup: Public Opinion and Constitutional Change in the 1930s,” 50 *Buffalo Law Review* 7-101 (2002) (John McCormick Mitchell Lecture)

 “*Lochner*, Liquor, and Longshoremen: A Puzzle in Progressive Era Federalism,” 32 *J. Mar. L. & Com.* 1-58 (2001)

 “Formalism and Realism in Commerce Clause Jurisprudence,” 67 *U. Chi. L. Rev.* 1089-1150 (2000)

 “Lost Fidelities,” 41 *William & Mary L. Rev.* 95-145 (1999) (Institute of Bill of Rights Law Symposium, “Fidelity, Economic Liberty, and 1937”)

 “The Hughes Court and Constitutional Consultation,” 23-1 *J. Sup. Ct. Hist.* 79-111 (1998) (Supreme Court Historical Society Lecture)

 “The Secret Lives of the Four Horsemen,” 83 *Va. L. Rev.* 559-645 (1997)

 “Rethinking the New Deal Court,” 80 *Va. L. Rev.* 201-61 (1994)

 “Doctrinal Synergies and Liberal Dilemmas: The Case of the Yellow-Dog Contract,” 1992 *Sup. Ct. Rev.* 235-93 (1993)

"A Stream of Legal Consciousness: The Current of Commerce Doctrine from *Swift* to *Jones & Laughlin*," 61 *Fordham. L. Rev.* 105-60 (1992)

"Intestate Succession in a Polygamous Society," 23 *Conn. L. Rev.* 281-332 (1991)

Essays and Short Reviews

"A Most Powerful History," reviewing Stuart Banner, *The Most Powerful Court in the World*, in *Reviews in American History* (forthcoming)

Book Review, Karen M. Tani, *States of Dependency: Welfare, Rights, and American Governance, 1935-1972*, 35 *Law & Hist. Rev.* 271-73 (2017)

"The New Deal Constitutional Revolution," in 3 *American Governance* 330-33 (Stephen Schechter, ed., Macmillan, 2016)

Book Review, Amity Shlaes, *The Forgotten Man: A New History of the Great Depression*, 71 *Historian* 383-84 (2009)

"The Supreme Court Encounters the New Deal," 5 *Insights on Law & Society* 7-10 (Fall 2004)

"The Supreme Court," in 2 *Encyclopedia of the Great Depression* 951-56 (Robert S. McElvaine, ed., Macmillan, 2004)

"The Supreme Court 'Packing' Controversy," in 2 *Encyclopedia of the Great Depression* 957-59 (Robert S. McElvaine, ed., Macmillan, 2004)

"Homer Cummings," in 1 *Encyclopedia of the Great Depression* 221-22 (Robert S. McElvaine, ed., Macmillan, 2004)

"The New Deal's Constitutional Significance," in 4 *Encyclopedia of the American Constitution* 1797-98 (2d. ed.) (Leonard W. Levy, Kenneth Karst, and Adam Winkler, eds., Macmillan, 2000)

"Edward Terry Sanford," in *American National Biography* (John A. Garraty, ed., Oxford University Press, 1999)

"The Commerce Clause: The New Deal," in *The Constitution and Its Amendments* (Roger K. Newman, ed., Macmillan, 1999)

"John Hessin Clarke," in *The Supreme Court Justices: A Biographical Dictionary* (Melvin I. Urofsky, ed., Garland, 1994)

"Mahlon Pitney," in *The Supreme Court Justices: A Biographical Dictionary* (Melvin I. Urofsky, ed., Garland,

1994)

"Edward Terry Sanford," in *The Supreme Court Justices: A Biographical Dictionary* (Melvin I. Urofsky, ed., Garland, 1994)

Book Review, William Ross, *A Muted Fury: Populists, Progressives, and Labor Unions Confront the Courts, 1890-1937*, *Constitution Magazine* (Spring 1994)

Book Review, Herbert Hovenkamp, *Enterprise and American Law, 1836-1937*, 52 *J. Econ. Hist.* 968-69 (1992)

SELECTED SPEECHES & PRESENTATIONS

“FDR and the Court-Packing Showdown”

Hesburgh Lecture, Notre Dame Club of Kansas City, May 1, 2025

Hesburgh Lecture, Notre Dame Club of Southeastern Virginia, April 11, 2024

Hesburgh Lecture, Notre Dame Club of Chattanooga, Tennessee; and University of Tennessee at Chattanooga Departments of Psychology, Political Science & Public Service, History, and Social, Cultural & Justice Studies, September 18, 2023

Hesburgh Lecture, Notre Dame Club of Delaware; Spring Lecture, St. Thomas More Society, Catholic Diocese of Wilmington, Delaware; and Continuing Legal Education Lecture, Delaware State Bar, Wilmington, Delaware, June 14, 2023

Hesburgh Lecture, Notre Dame Club of Dayton, Ohio, October 6, 2022

Hesburgh Lecture, Notre Dame Club of Reno, Nevada, September 22, 2022

Hesburgh Lecture, Notre Dame Club of Washington, D.C., February 23, 2017

Commentator, Alon Jasper, “Governmental Control and the Road to Administrative Regulation,” American Society for Legal History/Notre Dame Graduate Legal History Colloquium, March 8, 2025

Panelist, “Should the Supreme Court be Reformed?”, Federalist Society, Notre Dame Law School, November 21, 2024

“Court-packing in Context,” for Faculti.net, recorded October 21, 2024, posted November 7, 2024

“Law as a Vocation,” Rotaract Club of University of Virginia, March 21, 2024

Commentator, “Authors Meet Readers: Felix Frankfurter, FDR, and the Court Packing Bill: Revising Revisions,” Annual Meeting of the American Society for Legal History, Philadelphia, Pennsylvania, October 28, 2023

“The Court-Packing Crisis Revisited,” Constitution Day Lecture, Taylor University, September 20, 2023

“FDR and Court Packing,” American Academy of Appellate Lawyers Virtual Spring Meeting, April 21, 2021

“Reforming Revocation by Physical Act”

Law & Society Association Global Meeting, Lisbon, Portugal, July 14, 2022 (via Zoom)
University of Georgia Law School Faculty Colloquium, March 6, 2019
University of Mississippi School of Law Faculty Workshop, March 4, 2019
University of Alabama School of Law Faculty Workshop, February 25, 2019

“The Judicial Reforms of 1937”

Institute of Bill of Rights Law Symposium, “The Role of Courts in Politically Charged Moments,”
William & Mary Marshall Wythe School of Law, February 22, 2019
Notre Dame Law School Faculty Colloquium, February 5, 2019

Commentator, Ian Williams, “James VI and I, *Rex et Iudex*: One Judge as King in Two Kingdoms,” at
Roundtable, “History and Theory in the Development of Public Law,” Notre Dame London Law Centre,
February 15, 2019

“A Constitutional Genealogy of the New Deal Securities Laws,” at Roundtable, “History and Theory in Legal
and Constitutional Development,” Notre Dame London Law Centre, February 9, 2018

Commentator, Michael Lobban, “Martial Law in Black and White,” at Roundtable, “History and Theory in
Legal and Constitutional Development,” Notre Dame London Law Centre, February 9, 2018

“The Decline of Revocation by Physical Act,” Notre Dame Law School Faculty Colloquium, December 5, 2017

“Constitutional Federalism and American Political Economy from the Gilded Age to World War II,” Office of
the Texas Attorney General’s Constitutional Law Conference, Austin, Texas, July 19, 2017

“The *Lochner* Era,” Interdisciplinary Summer Workshop for Junior Faculty, Institute for Constitutional History,
Stanford Constitutional Law Center, Stanford, California, July 9-14, 2017

“The Place of Economic Crisis in American Constitutional Law: The Great Depression as a Case Study”
Conference on “Liberal Democratic Constitutions during Severe Financial Crises,” Universidade Nova
de Lisboa, Lisbon, Portugal, May 23, 2017
Roundtable, “Continuity and Change in Public Law,” Notre Dame London Law Centre, February 17,
2017
Notre Dame Law School Faculty Colloquium, December 6, 2016

“Justice Brandeis and Substantive Due Process,” Touro Law Center and Jewish Law Institute conference,
“Louis D. Brandeis: An Interdisciplinary Retrospective,” March 31, 2016

“New Light on *Lochner*”

University of Victoria School of Law, Wellington, New Zealand, March 14, 2016
University of Otago School of Law, Dunedin, New Zealand, March 10, 2016
University of Auckland Law School, February 28, 2014

“Crime and Commerce between the World Wars”

University of Canterbury School of Law, Christchurch, New Zealand, March 2, 2016

University of Notre Dame Australia Law School (Fremantle), February 17, 2014

“The Constitutional Foundations of the New Deal Securities Laws”

Notre Dame Law School Faculty Colloquium, December 8, 2015

University of Virginia School of Law, November 2, 2015

“American Constitutional Federalism,” Notre Dame Law School Faculty Colloquium, October 6, 2015

“The Birth of Modern Family Law,” the 2015 Archbishop Edmond J. FitzMaurice Lecture, St. Thomas More Society, Catholic Diocese of Wilmington, Delaware; Hesburgh Lecture, Notre Dame Club of Delaware; and Continuing Legal Education Lecture, Delaware State Bar, Wilmington, Delaware, May 21, 2015

“Federal Power and Social Reform in the Progressive Era”

Queen Mary University of London School of Law, March 25, 2015

London Legal History Seminar, Institute of Advanced Legal Studies, University College London, February 27, 2015

Pembroke College, University of Oxford, February 5, 2015

Centre for Employment and Labor Relations Law, University of Melbourne Law School, February 25, 2014

“Slavery, Federalism, and the Reconstruction Amendments,” Kings College London Dickson Poon School of Law, March 3, 2015

Commentator, Allan Beever, “Administrativism and the Conceptualisation of Private Law,” Roundtable, “The Common Law in an Age of Regulation,” Notre Dame London Law Centre, February 6, 2015

“Inside the Taft Court: Lessons from the Docket Books,” “The Hughes Court Docket Books: The Early Terms, 1929-1933,” “The Hughes Court Docket Books: The Critical Terms, 1934-1936,” and “The Hughes Court Docket Books: The Late Terms, 1937-1940,” Notre Dame Law School Faculty Colloquium, September 19, 2014

“The Clerks of the Four Horsemen,” St. Louis University School of Law Faculty Workshop, April 2, 2014

Seminar for Early Career Researchers

University of Notre Dame Australia Law School (Fremantle), February 19, 2014

University of Notre Dame Australia Law School (Sydney), February 13, 2014

“*Carolene Products* and Constitutional Structure”

University of Michigan Legal History Workshop, November 5, 2013

Public lecture for Notre Dame Program on Constitutional Structure, October 27, 2011

“The Jurisprudence of the Hughes Court: The Recent Literature,” Notre Dame Law Review Symposium, “The Evolution of Theory: Discerning the Catalysts of Constitutional Change,” November 1, 2013

Panelist, “The New Deal Constitution at 75: Many Happy Returns?” American Enterprise Institute, Washington, D.C., April 25, 2013

Panelist, “Individual Rights v. Special Interest Litigation,” Federalist Society, George Washington University Law School, February 7, 2013

“The Court-Packing Plan as Symptom, Casualty, and Cause of Gridlock,” Notre Dame Law Review Symposium, “The American Congress: Legal Implications of Gridlock,” November 16, 2012

“Slavery, Federalism, and Justice,” Notre Dame Center for Ethics and Culture 13th Annual Fall Conference, “The Crowning Glory of the Virtues: Exploring the Many Facets of Justice,” November 9, 2012

“Obamacare, the Supreme Court, and the Lost Generation of Child Labor Reform,” Constitution Day Lecture, University of Notre Dame, September 18, 2012

“The Historiography of Substantive Due Process,” James Madison Program Symposium, “American Constitutionalism and the Legacy of Progressivism,” Princeton University, May 22, 2012

“The Man on the Flying Trapeze”

University of Pennsylvania Journal of Constitutional Law Symposium, “FDR and Obama: Are There Constitutional Law Lessons from the New Deal for the Obama Administration?,” January 20, 2012

Notre Dame Law & Humanities Workshop, November 29, 2011

“Irving Babbitt and the Legal Historian,” for Roundtable on Teaching American Legal History, Annual Meeting of the American Society for Legal History, Atlanta, Georgia, November 10, 2011

“*Lochner* Revisionism: A Guide for the Curious,” public lecture for Notre Dame Law & Humanities Forum, October 5, 2011

“Law, Politics, and *Supreme Power*,” Southeastern Association of Law Schools Annual Conference, Hilton Head Island, South Carolina, July 26, 2011

“Outlaws of Commerce”

Cardiff University Law School Faculty Seminar, October 27, 2010

London School of Economics Legal and Political Theory Forum, October 20, 2010

Edinburgh Centre for Constitutional Law, University of Edinburgh School of Law, October 18, 2010

“Headline Kidnappings and the Origins of the Lindbergh Law,” Comment on Lawrence M. Friedman, “Front Page: Notes on the Nature of the Headline Trial,” Childress Lecture, St. Louis University School of Law,

September 24, 2010

“Ambiguities of Free Labor Revisited: The Convict-Labor Question in Progressive-Era New York”

“Making Legal History: A Conference in Honor of William E. Nelson,” New York University School of Law, May 6, 2010

James Monroe Distinguished Professor Chair Lecture, University of Virginia School of Law, April 14, 2010

“Some Political Parameters of New Deal Regulation,” for the Thrower Symposium, “The New New Deal: From De-Regulation to Re-Regulation,” Emory University School of Law, February 11, 2010

Panel, “Judging the ‘New’ New Deal: The Constitution in Times of Economic Crisis,” Virginia Bar Association Annual Meeting, Williamsburg, Virginia, January 22, 2010

“The Aftermath of *Hammer v. Dagenhart*”

James Madison Program Senior Fellows Seminar, Princeton University, March 21, 2012

Notre Dame History Department Colloquium, December 5, 2011

Notre Dame Law School Faculty Colloquium, January 28, 2010

Ohio Legal History Seminar, Ohio State University, April 24, 2009

University of Minnesota Public Law Workshop, April 16, 2009

“Painful Duties”

University of San Diego School of Law Faculty Colloquium, February 2, 2007

UCLA Legal History Workshop, January 31, 2007

Pepperdine University School of Law Faculty Colloquium, January 30, 2007

Yale Legal History Forum, Yale Law School, November 7, 2006

Commentator, “Rethinking the Early Twentieth-Century U.S. Supreme Court,” Annual Meeting, American Society for Legal History, Baltimore, Maryland, November 18, 2006

“The Great Depression and the New Deal,” Notre Dame Law School Faculty Colloquium, October 6, 2006

Roundtable Discussion, “Too Many Disciplines? Expanding American Political Development,” Policy History Conference, Charlottesville, Virginia, June 2, 2006

“Fifth Amendment Federalism,” Washington & Lee University School of Law Legal History Workshop Series, April 7, 2006

“Some Varieties and Vicissitudes of *Lochnerism*”

Washington University Faculty Workshop Series, March 28, 2005

Boston University Law School Symposium on the 100th Anniversary of *Lochner v. New York*, October 16, 2004

University of Virginia Legal History Workshop, October 4, 2004

“Law and the American West,” University of Virginia Department of History, October 7, 2003

“Some Thoughts on the Writing of Intercultural Legal History,” for University of Virginia Chapter of the Federalist Society, February 5, 2003

“Vagaries and Varieties of *Lochnerism*,” for panel on “*Lochner* Revisionism,” Joint AALS/APSA Conference on Constitutional Law, Washington, D.C., June 7, 2002

“American Expansion and American Law,” University of Virginia Lewis & Clark Bicentennial Project Faculty Colloquium, April 26, 2002

“Mr. Dooley and Mr. Gallup: Public Opinion and Constitutional Change in the 1930s”

The 2002 John McCormick Mitchell Lecture, University of Buffalo Law School, April 5, 2002

Washington & Lee University School of Law Faculty Workshop Series, October 11, 2001

University of Virginia School of Law Constitutional History Conference, October 6, 2001

“Federal Power in the 1930s,” for conference on “The Commerce Clause: Past, Present, and Future,” University of Arkansas School of Law, March 14, 2002

“Recent Developments in the History of the New Deal,” University of Virginia School of Law Graduate Program for Judges, November 12, 2000

“*Lochner*, Liquor and Longshoremen,” Elizabeth Battelle Clark Legal History Series at Boston University School of Law, November 10, 2000

Commentator, Panel on Sarah Barringer Gordon, *The Mormon Problem: Faith, Polygamy, and Constitutional Conflict in Nineteenth Century America*, University of Virginia School of Law Program on Legal and Constitutional History, October 16, 2000

“Ethical Conflicts in American Constitutional History,” University of Virginia School of Law Alumni Weekend, May 6, 2000

“*Jensen* and the *Lochner* Analogy,” Joint Program of Sections of Legal History and Maritime Law, “The Many Faces of *Southern Pacific v. Jensen*,” 2000 AALS Annual Meeting, Washington, D.C., January 7, 2000

Commentator, “*Lochnerism* Redux: World War I and the Taft Court,” Annual Meeting, American Society for Legal History, Toronto, Canada, October 23, 1999

Commentator, Panel on Hendrik Hartog, *Man and Wife: A Legal History*, University of Virginia School of Law Program on Legal and Constitutional History, October 4, 1999

“Lost Fidelities”

University of Virginia School of Law Summer Faculty Workshop Series, June 8, 1999
William & Mary Institute of Bill of Rights Law Symposium, "Fidelity, Economic Liberty, and 1937,"
February 27, 1999

Panelist, "Garbage Wars: Communities, States, and the Constitution," University of Virginia Center for
Environmental Studies, February 22, 1999

"Constitutional Limitations on Public Finance of Economic Development in American History," Faculte de
Droit, d'Economie, et de Gestion, Universite d'Orleans, Orleans, France, December 17, 1998

"The Origins and Limits of Federal Judicial Power in the United States," Faculte de Droit, d'Economie, et de
Gestion, Universite d'Orleans, Orleans, France, December 16, 1998

"American Federalism before the Civil War," Faculte de Droit, d'Economie, et de Gestion, Universite
d'Orleans, Orleans, France, December 15, 1998

"The *Lochner* Era," Faculte de Droit, d'Economie, et de Gestion, Universite d'Orleans, Orleans, France,
December 8, 1998

"The Role of History in Constitutional Theory," University of Virginia School of Law, November 20, 1998

"Competing Approaches in Legal Historiography," University of Virginia Legal History Workshop, November
16, 1998

"Rethinking the New Deal Court," University of Texas Constitutional Studies Colloquium, November 5, 1998

Panelist, "Interpreting 1937," Meeting of the Section on Law and Interpretation, AALS 1998 Annual Meeting,
San Francisco, California, January 9, 1998

"The Hughes Court and Constitutional Consultation," for the Supreme Court Historical Society Lecture Series,
"The Chief Justiceship: The Role of the Nineteenth and Twentieth Century Chief Justices," Washington, D.C.,
November 19, 1997

Panelist, "Making Sense of the New Deal Constitutional Revolution," Annual Meeting of the American Society
for Legal History, Minneapolis, October 18, 1997

"The Secret Lives of the Four Horsemen," Annual Meeting of the Pacific Coast Branch of the American
Historical Association, San Francisco, August 9, 1996

"The Persistence of Memory," New York University Legal History Colloquium, February 21, 1996

"A New Trial for Justice Roberts," Virginia Legal Studies Workshop, January 19, 1996

"Justice Jackson's Struggle with Judicial Supremacy," Annual Meeting of the American Society for Legal
History, Houston, Texas, October 21, 1995

"Jurisdiction and Interbranch Conflict in the History of the U.S. Supreme Court," delivered to Justices of the Russian Constitutional Court, at St. Louis University School of Law, April 23, 1994

"The Early Years of the U.S. Supreme Court," delivered to Justices of the Russian Constitutional Court, at St. Louis University School of Law, November 21, 1992

"A Brief History of American Federalism," delivered to Justices of the Russian Constitutional Court, at St. Louis University School of Law, November 19, 1992

"Teaching Estate Planning in an Estate & Gift Tax Course," AALS Section on Donative Transfers, Fiduciaries and Estate Planning, at the AALS 1992 Annual Meeting, San Antonio, Texas, January 7, 1992

CONFERENCES ORGANIZED

"History and Theory in the Development of Public Law," Notre Dame London Law Centre, February 15, 2019

"History and Theory in Legal and Constitutional Development," Notre Dame London Law Centre, February 9, 2018

University of Virginia School of Law Constitutional History Conference, October 6, 2001

LAW SCHOOL SERVICE

University of Notre Dame

Appointments Committee (2017-2019)

Faculty Development Committee (2016-2017, 2021-2025)

London Program Scholarship Committee (Spring 2016)

Colloquium Committee (Spring 2015)

Promotions Committee (2013-14, 2019-2020)

Law Review Symposium Faculty Advisor (2013-14)

Curriculum Committee (2012-13, Fall 2015, 2021-2023)

Weber Writing Award Committee (2013, 2015, 2017, 2018, 2020, 2022-24)

Endowed University Chair Committee (2014, 2021-23)

Edward J. Kelly Memorial Prize in Elder Law Committee (2020-2024)

University of Virginia:

Entry Level Appointments Committee (Chair, 1999-2000), (Chair, 2008-2009)

Tenured and Lateral Appointments Committee (1999-2000), (Chair, Tenure Subcommittee, 2002-2003), (2007-2008, 2009-2010)

Director, Legal History Workshop and Program on Legal and Constitutional History (2001-2006)
 Director, Joint Degree Program in Legal History (2001-2006)
 Clerkships Committee (Chair, 2003-2006), (2006-2007)
 Academic Placement Committee (Chair, 2003-2004, 2006-2007), (1998-1999, 2002-2003, 2004-2006, 2009-2010)
 Graduate Program Committee (2001-2004, 2006-2007)
 Junior Faculty Development Committee (1998-1999, 2000-2003, 2006-2007, 2009-2010)
 Faculty Enrichment Committee (2003-2005)
 International Relations Committee (2001-2002, 2011-2012)
 Faculty Retreat Committee (1998-1999)
 Lectureships and Speakers Committee (Chair, 2000-2002), (2002-2003)
 Meador Lecture Committee (Chair, 2000-2001), (2002-2003)
 McCorkle Lecture Committee (Chair, 2002)
 Virginia Constitutional History Conference (Chair, 2001)
 Law and Legal Methodology Program (1999-2002)
 175th Anniversary Celebration Committee (2000-2001)
 Faculty Advisory Committee, Advocacy Clinic for the Elderly (2003)
 Ad Hoc Committee to Select Archivist/Reference Librarian (2003)
 Law Review Note-Writing Workshop (2003)
 Guest Speaker, Law Review Luncheon (August 19, 2008)
 Guest Speaker, Law Review Banquet (February 23, 2006)
 Law School Graduation Faculty Marshall (2001, 2002, 2004, 2005, 2006, 2010)

St. Louis University:

Academic Planning/Curriculum Committee (1992-93, 1994-1995, 1996-1998), (Chair, Subcommittee on Unified Curriculum, 1993-1994)
 Clerkships Committee (1993-95, 1996-98)
 Faculty Development Committee (1992-93)
 Library Committee (1991-1992)
 Faculty Advisor, *St. Louis University Public Law Review* (1993-1995, 1996-1998)
 Self-Study Committee (1997-1998)
 Law School Graduation Speaker (1993, 1995)

UNIVERSITY SERVICE

University of Notre Dame

University Committee on Appeals (2019-2020)
 University Research Vision Committee (2018-2020)
 Notre Dame Institute for Advanced Study Law/Legal Topics Review Committee (2013-2014)
 Search Committee for Director of Notre Dame Institute for Advanced Study (2012-2013)

University of Virginia:

Board of Directors, University of Virginia Press (2005-2008)
University Landscape and Arboretum Committee (2002-2003)
Lewis & Clark Bicentennial Project Faculty Colloquium (2003)

St. Louis University:

Faculty Development Committee of the Faculty Senate (1991-95, 1996-1998)

THESIS AND DISSERTATION SUPERVISION

University of Virginia:

- Benjamin Brady, "Regulating the World: American Law and International Business," Ph.D. 2016 (External reader)
- Peter Trentman, "Intergovernmental Tax Immunities, Dual Federalism, and the Constitutionality of the New Deal Municipal Debt Relief Acts," M.A. 2012 (Second reader)
- Brian Howard, "The Seventh Amendment in the Civil Context from *Slocum* to *Redman*," M.A. 2009 (Second reader)
- John Stuart Cooper, "Separationism and Standing: The Rise and Fall of *Flast v. Cohen*," M.A. 2008 (Second reader)
- Katherine Dickson, "The Eugenics Movement and Its Influence on the Law of Adoption," M.A. 2006 (Second reader)
- Sarah Teich, "Complicating the Historical Account of the Burger Court's Pragmatism: The Civil Rights Cases," M.A. 2006 (Second reader)
- Michael Toth, "Re-Inventing Self-Government: Jails, Taxes, and Progressive Lawmaking in Early-20th Century Virginia," M.A. 2006 (Director)
- Christopher Amar, "Building Up and Strengthening Glorious Institutions: Conservatism in Virginia from the Second Party System to the State Convention of 1861," M.A. 2005 (Second reader)
- Leslie Neeland Harvey, "The Negro Seamen's Acts and the South Carolina Association: The Role of the Citizenry in Articulating and Enforcing South Carolina's State Police Power Over Slavery in the 1820s," M.A. 2005 (Second reader)
- Jeremy Byrum, "A Court at the Crossroad: *Oregon v. Mitchell*, Original Understanding, and Congress's Fourteenth Amendment Enforcement Power," M.A. 2005 (Second reader)
- Charles Barzun, "Common Sense and Legal Science," M.A. 2005 (Second reader)
- Ragnhildur Helgadóttir, "'Not So in North America': The Influence of American Theories of Judicial Review in Nordic Constitutional Law," S.J.D. 2004 (Director)
- James Worthen, "The Organizational and Structural Development of Intermediate Appellate Courts in Texas, 1892-2003," LL.M. 2004 (Director)
- Ross Fisher, "From Republicanism to Moral Hazard: The Origins and Development of the Insurable Interest Doctrine in America, 1780-1880," M.A. 2004 (Director)
- Stephanie Hunter, "You Pay for What You Get: Fitting the U.S. Virgin Islands during the Period 1917-1936 Within the American Territorial Structure," M.A. 2004 (Second reader)
- Kurt Hohenstein, "Coining Corruption: Deliberative Democracy, the Constitution, and the Making of the American Campaign Finance System, 1876-1976," Ph.D. 2004 (Dissertation Committee)
- Carli Conklin, "Transformed, Not Transcended: The Role of Alternative Dispute Resolution in Antebellum Kentucky and New Jersey," M.A. 2003 (Director)
- John Blevins, "*Lyons v. Oklahoma*, the NAACP, and Coerced Confessions under the Stone and Vinson Courts," M.A. 2003 (Second reader)
- Steven Lobb, "The Legal Status of the Poor in Virginia, 1705-1783," M.A. 2003 (Second reader)
- Mary Ann McGrail, "Copyright and Nineteenth Century American Letters," M.A. 2002 (Second reader)

PROFESSIONAL AND PUBLIC SERVICE

Editorial Board, *Journal of Supreme Court History*, 2025-

Scholar Advisory Board, National Constitution Center, 2025-

Judge, 2025 Student Hughes-Gossett Award, Supreme Court Historical Society

Written testimony presented at request of the Presidential Commission on the Supreme Court of the United States, October 12, 2021

Indiana State Probate Code Study Commission, July 1, 2019 – June 30, 2021

Publications Referee: *Law & History Review*; *American Journal of Legal History*; *Law & Social Inquiry*; *Law & Society Review*; *Harvard Law Review*; *Yale Law Journal*; *Columbia Law Review*; *American Journal of Political Science*; *American Political Thought*; *Political Research Quarterly*; *Business History Review*; *Social Science History*; *Journal of Policy History*; *The Historian*; *Studies in Law, Politics, and Society*; Oxford University Press; Cambridge University Press; University of Virginia Press; University Press of Kansas; University of South Carolina Press; University of Missouri Press; Kent State University Press; Routledge Press

Tenure and Promotion Referee: Georgetown University Law Center; George Washington University School of Law; Marquette University School of Law; St. Louis University School of Law; University of Oklahoma School of Law; University of San Diego School of Law; University of Virginia Department of History; University of Louisville Department of History; Arizona State University School of Civic & Economic Thought and Leadership

Fellowship Referee: American Council of Learned Societies

American Society for Legal History: Board of Directors, 2003-2005; Executive Committee, 2003-2005; Program Committee, 2004 Annual Meeting

EDUCATION

UNIVERSITY OF VIRGINIA Ph.D., History, 1995; M.A., History, 1986; J.D., 1986

AMHERST COLLEGE B.A., Philosophy, 1982

OTHER EMPLOYMENT

Associate, Riordan & McKinzie, Los Angeles, CA, 1987-88

Law Clerk, Hon. Richard F. Neely, Justice, West Virginia Supreme Court of Appeals, Charleston, WV, 1986-87

BAR ADMISSIONS

California (1987)

West Virginia (1986)