

#### APPOINTMENTS

<b>Professor of Law</b> William S. Boyd School of Law, UNLV Constitutional Law I & II, Constitutional Theory, Law & Religion, Jurisprudence	<b>2016 - present</b>
<b>Associate Professor of Law</b> William S. Boyd School of Law, UNLV Constitutional Law I & II, Constitutional Theory, Law & Religion, Jurisprudence	<b>2011-2016</b>
<b>Assistant Professor of Law</b> Drake Law School, Des Moines, Iowa Constitutional Law I & II, Constitutional Theory, Law & Religion	<b>2009-2011</b>
<b>Irving S. Ribicoff Fellow in Law</b> Yale Law School, New Haven, Connecticut Research and Teaching Fellow Supervisor: Akhil Reed Amar	<b>2008-2009</b>
<b>Visiting Assistant Professor</b> Vermont Law School, South Royalton, Vermont Environmental Writing I & II; Director of Masters Internships	<b>2005-2007</b>

#### EDUCATION

<b>Yale Law School, LL.M</b>	<b>2008</b>
<b>Vermont Law School, J.D. <i>summa cum laude</i></b>	<b>2003</b>
<b>Hamilton College, B.A. History</b>	<b>1995</b>

#### TEACHING AND RESEARCH INTERESTS

I teach Constitutional Law I & II and seminars in Law & Religion, Constitutional Theory, and Jurisprudence. My research interests are in constitutional history and theory, the Establishment Clause, and constitutional education. My long-term project is a book about the practical norms governing constitutional contestation.

#### AWARDS/HONORS

2010 Steven Gey Paper in Constitutional Law (AALS).  
Faculty Speaker, William S. Boyd School of Law Convocation (2015) (student selection).

## WORKS IN PROGRESS

### *The Contested Constitution* (book project)

This project explores the norms that give rise to constitutional meaning in contested cases. Meaning is only possible as a function of shared interpretive practices, and I explore the ideas and arguments that shape our practices. Chapters include discussions of the “historical constitution”; the “rhetorical constitution”; the “moral constitution”; and the “political constitution”; among others.

### *An Intellectual History of Judicial Review*

This article explores the intellectual history of the American judiciary. I contend that we must merge two political theory traditions—separation of powers and popular sovereignty—to understand fully our founding conception of judicial power. The paper begins with a summary of classical, medieval, and Enlightenment ideas. It then explores the state constitutions before moving on to the federal convention. I then undertake an in-depth look at the Virginia Ratifying Convention—which discussed Article III more than any other—before assessing practical liquidation in the early years of the republic.

### *Constitutional Vigilantism*

This article attempts to provide an account of vigilantism, generally, and what the phenomenon can teach us about the nature of law. It attempts both to provide a definition of vigilantism and to categorize it by type. The paper then moves on to explore the possibility of “constitutional vigilantism”: private activity that either justifies law-breaking on constitutional grounds, or which justifies (on moral grounds) violating the Constitution itself.

## PUBLICATIONS

### Book Contribution:

*The Modalities of Constitutional Argument: A Primer*, in READINGS IN PERSUASION: BRIEFS THAT CHANGED THE WORLD 203-15 (Linda Edwards, ed., Wolters Kluwer 2012)

### Journals:

*Searching for Cliven Bundy: The Constitution and Public Lands*, 2 NEV. L. J. FORUM 67 (2018).

*Justice as Fair Division* (with Peter Otto & Kathryn Nyman), 45 PEPPERDINE L. REV. 531 (2018).

*Wittgenstein’s Poker: Contested Constitutionalism and the Limits of Public Meaning Originalism*, 10 WASH. U. JURISPRUDENCE REV. 29 (2017).

*James Wilson and the Moral Foundations of Popular Sovereignty* 64 BUFF. L. REV. 225 (2016).

*Two Dogmas of Originalism*, 7 WASH. U. JURISPRUDENCE REV. 157 (2015).

*The Tragedy of Religious Freedom (Book Review)*, 57 J. OF CHURCH & STATE 173 (2015).

*The Ninth Circuit’s Treatment of Sexual Orientation: Defining Rational Basis with Bite*, 112 MICH. L. REV. FIRST IMPRESSIONS 142 (2014).

*The Curious Case of Legislative Prayer: Town of Greece v. Galloway*, 108 N.W. U. L. REV. ONLINE 219 (2014).

*Religion and the Restatements*, 79 BROOK. L. REV. 579 (2014).

*Constitutional Value Judgments and Interpretive Theory Choice*, 40 FLA. ST. U. L. REV. 259 (2013).

*Originalist Ideology and the Rule of Law*, 15 U. PENN J. CONST. L HEIGHT. SCRUTINY 1 (2012).

*The Ministerial Exception and the Problem of Religious Sovereignty, Where Law & Religion Meet* – Online Journal of the Emory Center for the Study of Law and Religion (July 22, 2012).

*Nonpublic Reasons and Political Paradigm Change*, 85 ST. JOHN'S L. REV. 473 (2011).

*Religion and Race: The Ministerial Exception Reexamined*, 106 NW. U. L. REV. COLL. 191 (2011).

*Constitutional Rights and Judicial Independence: Lessons from Iowa*, 88 WASH. U. L. REV. 1047 (2011).

*Thoughts on the Divergence of Promise and Contract*, 34 CAN. J. L. & JURIS. 225 (2011).

*Salazar v. Buono: Sacred Symbolism and the Secular State*, 104 NW. U. L. REV. 1653 (2011)

*Constructing the Constitutional Canon: The Metonymic Evolution of Federalist 10*, 27 CONST. COMMENT. 9 (2010).

*The Constitutional Canon As Argumentative Metonymy*, 18 WM. & MARY BILL OF RTS. J. 327 (2009).

*Same-Sex Marriage in the Heartland: The Case for Legislative Minimalism in Crafting Religious Exemptions*, 108 MICH. L. REV. FIRST IMPRESSIONS 8 (2009).

*Pleasant Grove v. Sumnum: Losing the Battle to Win the War*, 95 VA. L. REV. IN BRIEF 43 (2009).

*Of Historiography and Constitutional Principle: Jefferson's Letter to the Danbury Baptists*, 51 J. OF CHURCH & STATE 102 (2009).

*Metaphors and Modalities: Meditations on Bobbitt's Theory of the Constitution*, 17 WM. & MARY BILL OF RTS. J. 157 (2008).

*The Political Origins of Secular Public Education: The New York School Controversy 1840-1842*, 3 N.Y.U. J. LAW & LIBERTY 267 (2008).

*The Constitutional Structure of Disestablishment*, 2 N.Y.U. J. LAW & LIBERTY 311 (2007).

Note, *Paradise Lost: Good News Club, Charitable Choice, and the State of Religious Freedom*, 27 VT. L. REV. 177 (2002).

### Other Publications

*Cliven Bundy Doesn't Understand the Constitution*  
LAS VEGAS REVIEW-JOURNAL, Guest Column (April 27, 2014).

*Health Care Reform Constitutional and Necessary*  
THE DES MOINES REGISTER, Guest Column (March 23, 2011)

*Don't Simply Dismiss O'Donnell's Point on Church and State*  
THE DES MOINES REGISTER, Guest Column (Nov. 8, 2010)

*Salazar v. Buono: Sacred Symbolism and the Secular State,*  
THE LEGAL WORKSHOP, online law review consortium (Sept. 19, 2010)

#### **SELECTED PRESENTATIONS**

*Judge Kavanaugh and the Second Amendment*  
American Constitution Society – Constitution Day 2018  
William S. Boyd School of Law, UNLV  
(August 30, 2018)

*Cliven Bundy: The Constitution and Public Lands,*  
United States State Department International Visitors Program  
Land Rights Project  
(Aug. 13, 2018)

*An Intellectual History of Article III*  
University of Arizona Constitutional Law Symposium  
(March 2, 2018)

*An Intellectual History of Article III*  
Loyola Chicago Constitutional Law Colloquium  
(November 3, 2017)

*Collective vs. Individual Liberty*  
Federalist Society Symposium (with Joshua Blackman & Leslie Griffin)  
Boyd Law School, UNLV  
(October 24, 2017)

*Justice as Fair Division*  
The Supreme Court: Law, Politics, and Reform  
Pepperdine Law Review Symposium  
(April 9, 2017)

*Wittgenstein's Poker: Contested Constitutionalism and the Limits of Public Meaning*  
(comments by Steven Mailloux & Francis Mootz)  
West Coast Legal Rhetoric Workshop  
Boyd Law School, UNLV  
(November 12, 2016)

*Voting Rights in 2016*

American Inns of Court, Las Vegas Presentation  
(October 18, 2016)

*Originalism After Scalia*

University Forum Lecture  
University of Nevada, Las Vegas (Sept. 7, 2016).

*The Past and Future of Miranda,*

Clark County Law Library/ Nevada Bar Association Lecture  
Nevada Law Day (May 1, 2016).

*James Wilson and the Moral Foundations of Popular Sovereignty,*  
Loyola (Chicago) Constitutional Law Colloquium (November 2015)

*Two Dogmas of Originalism* (comments by Lawrence Solum)  
Sixth Annual Hugh & Hazel Darling Works In Progress Symposium  
University of San Diego School of Law (Feb. 20, 2015)

*James Wilson and the Moral Foundations of Popular Sovereignty,*  
(comments by Derek Bambauer)  
Rocky Mountain Junior Scholars Forum  
S.J. Quinney College of Law, University of Utah (Nov. 20, 2014).

*Two Dogmas of Originalism* (comments by Francis Mootz)  
West Coast Legal Rhetoric Workshop  
William S. Boyd School of Law, UNLV (Nov. 14-15, 2014)

*Two Dogmas of Originalism* (comments by Adam Candeub)  
Junior Faculty Symposium  
Michigan State University Law School (Nov. 1, 2013).

*Two Dogmas of Originalism*  
Faculty Workshop Presentation  
S.J. Quinney College of Law, University of Utah (April 3, 2013).

*Religion and the Restatements*  
“Restatement Of ...” Conference  
Brooklyn Law School (Jan. 12, 2013)

*The Roots of Originalist Ideology*  
Loyola (Chicago) Constitutional Law Colloquium (Nov. 2, 2012)

*Modern Originalist Ideology*  
American Constitution Society Lecture  
Drake Law School (Oct. 5, 2012)

*Religion and the Restatements*  
“Restatement Of ...” Conference  
Brooklyn Law School (Jan. 12, 2013)

*Constitutional Values and Interpretive Theory Choice* (comments by William Araiza)  
Junior Scholars Workshop  
Southeastern Association of Law Schools Annual Conference (Aug. 1, 2012)

*The Constitutional Challenge to the Affordable Care Act*  
American Constitution Society Lecture  
William S. Boyd School of Law, UNLV (Mar. 27, 2012)

*Hosanna-Tabor and the Problem of Religious Sovereignty*  
The Competing Claims of Law and Religion, Symposium  
Pepperdine School of Law (Feb. 21, 2012).

*Religion and Race: The Ministerial Exception Reexamined*  
The Federalist Society Lecture  
William S. Boyd School of Law, UNLV (Feb. 2, 2012)

*Constitutional Values and Interpretive Theory Choice* (comments by Mark Graber)  
Faculty Workshop Presentation  
University of Maryland, Francis King Carey School of Law (Jan. 19, 2012).

*Constitutional Values and Interpretive Theory Choice*  
Annual Colloquium on Constitutional Law  
Loyola University (Chicago) School of Law (Oct. 21, 2011)

*Identifying Constitutional Values*  
William S. Boyd School of Law, UNLV  
American Constitution Society, Constitution Day Speaker (September 17, 2011)

*The Advocate*, WDEO Radio  
Featured Guest on Ave Maria Law School radio show discussing state efforts to limit or ban elective abortion. (May 2011)

*The Constitutionality of the Patient Protection and Affordable Care Act*,  
Drake University Law School  
American Constitution Society Lecture (April 28, 2011)

*The Great Health Care Debate: Is the Affordable Care Act Constitutional?*  
Washington University School of Law, St. Louis  
American Constitution Society Debate with Attorney Thor Hearne of Arent Fox (March 29, 2011)

*The Exchange*, Iowa Public Radio (Feb. 21, 2011)  
Featured guest on IPR's political talk show discussing Iowa bills aimed at abortion.

*The Iowa Judicial Retention Election: What Happened and Where Do We Go From Here?*  
Moderator, American Constitution Society Panel on Iowa Retention Election (Dec. 2, 2010).

*Faction In the Age of Facebook*  
Panelist, Loyola (Chicago) Law School Constitutional Law Colloquium (Nov. 6, 2010)

*Voting for Nonpublic Reasons: Conscience and Political Evolution*  
Panelist, St. John's Law School Law and Religion Theory Symposium (Nov. 5, 2010)

*Salazar v. Buono: Sacred Symbolism and the Secular State*

Northwestern Law Review Colloquy on *Salazar v. Buono*, John Marshall Law School (Oct. 15, 2010).

*Conscientious Objectors and Health Care Reform*

William S. Boyd Law School, University of Nevada Las Vegas  
American Constitution Society/ Federalist Society Debate with Professor Lynn Wardle (Oct. 7, 2010).

Moderator, *Dwight D. Opperman Lecture: Justice Samuel Alito*

Drake Constitutional Law Center Distinguished Lecture Series (Sept. 30, 2010).

*Constitutional Conversations: Constitutional Ethos* (with Miguel Schor)

Constitution Day lecture at Drake Law School (Sept. 17, 2010)

Moderator, *The Same-Sex Marriage Divide*

Drake Constitutional Law Center Symposium (Apr. 10, 2010)  
Andrew Koppleman, Maggie Gallagher, Mark Strasser, Lynn Wardle, Lee Badgett, and Douglas Allen.

*Thoughts on the Divergence of Contract and Promise*

Creighton Law School Faculty Workshop (March 22, 2010).

*The Constitutional Canon As Argumentative Metonymy,*

Steven Gey Paper in Constitutional Law, American Association of Law Schools,  
2010 Annual Meeting, New Orleans, Louisiana (Jan 9, 2010).

Panelist, *Same-Sex Marriage Forum*

OneIowa forum on same-sex marriage concerns in Ottumwa, Iowa (Nov. 13, 2009)

*Constitutional History and Constitutional Law: An Introduction to Gordon Wood's Lecture*

"Citizens Arise: From the Founding of a Nation to the Crisis of the Union"

Cowles Library, Drake University (Nov. 11, 2009)

*The Constitution and Its Canon*

Drake University Humanities Colloquium (Oct. 23, 2009)

*Protestant Disestablishment in Non-Christian Cultures*

American University, Washington College of Law (Oct. 10, 2008)  
Sixth Annual Baha'i Conference on Religion and Governance

*Of Historiography and Constitutional Principle*

Yale Law School Graduate Forum (Oct. 2, 2008)

*Metaphors and Modalities: Max Black and Philip Bobbitt* (comments by Bruce Ackerman)

Yale Law School: Next Generation of Legal Scholars Symposium (March 28, 2008)

*The Vermont Supreme Court and Judicial Activism*

Vermont Bar Association Winter Meeting (Jan 13, 2007).

**REPRESENTATIVE MEDIA COMMENTARY**

**Print:** New York Times, Washington Post, L.A. Times, Time Magazine, Boston Globe, Associated Press, USA Today, Huffington Post, Washington Times, Las Vegas Review Journal, Des Moines Register, The Oregonian

**Television:** NBC, CBS, PBS, Hong Kong Phoenix

**Radio:** National Public Radio, Bloomberg Radio, Capital Public Radio, CBS Radio, Fox News Radio, Public News Service, Radio New Zealand, Radio Busan (South Korea), Nevada Public Radio, Iowa Public Radio, KSNV, KNXT, KBOI