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University of Texas at Austin
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Academic Positions

University of Texas at Austin

Dean	2006–
Alice Jane Drysdale Sheffield Regents Chair in Law	2002–

New York University

Robert B. McKay Professor of Law	1995–2002
Professor of Law	1974–1995
Associate Professor of Law	1972–1974

University of California at Los Angeles

Acting Professor of Law	1968–1971
Assistant Professor of Law	1966–1968

Visiting Appointments

Boston University
Harvard University
University of Michigan
Woodrow Wilson School, Princeton University

Publications

Religious Freedom and the Constitution (Harvard University Press;
forthcoming 2006) (with C. Eisgruber)

Justice in Plainclothes: a Theory of American Constitutional Practice
(Yale Univ. Press 2004)

Cool Federalism and the Life-Cycle of Moral Progress,
46 Wm. & Mary L. Rev. 1385 (2005)

Courting Disaster
73 Fordham L. Rev. 1361 (2005)

The Many As One: Integrity and Group Choice in Paradoxical Cases
32 Phil. & Pub. Affairs 249 (2004) (with L. Kornhauser)

- Comparative Avenues in Constitutional Law: An Introduction
82 Texas L. Rev. 1653 (2004) (with W. Forbath)
(Symposium: Comparative Avenues in Constitutional Law)
- The Why of Constitutional Essentials
72 Fordham L. Rev. 1421 (2004)
(Symposium: Rawls and the Law)
- Commitment and Constitutionalism
81 Texas L. Rev. 1929 (2003) (with J. Ferejohn)
(Symposium: Precommitment Theory in Bioethics and Constitutional Law)
- Civil Liberties in the Dragons' Domain: Negotiating the Blurred Boundary
between Domestic Law and Foreign Affairs after 9/11
in September 11 in History: A Watershed Moment?
(Duke University Press, 2003; Mary Dudziak, ed.) (with C. Eisgruber)
- Constitutional Justice
6 NYU Journal of Legislation and Public Policy 11 (2002-2003)
- Tiers of Scrutiny and Time Travel: A Reply to Dean Sullivan
90 Cal. L. Rev. 819 (Sym.) (2002)
- The Free Exercise of Culture: Doubts and Distinctions
Engaging Cultural Differences (R. Schweder, H. Markus, & M. Minnow,
eds.) (The Russell Sage Foundation, 2002)
(modification of prior essay in Daedalus)
- Thin Constitutions and the Good Society
69 Fordham L. Rev. 1989 (Sym.) (2001)
- The Birth Logic of a Democratic Constitution
Constitutional Culture and Democratic Rule (J. Ferejohn, J. Rakove and J.
Riley, eds.) (Cambridge Univ. Press) (2001)
- Equal Regard
Law and Religion: A Critical Anthology (S. Feldman, ed.)
(New York Univ. Press) (with C. Eisgruber) (2001)
- The Free Exercise of Culture: Doubts and Distinctions
149 Daedalus 193 (2000)
Religious Liberty and the Moral Structure of Constitutional Rights
6 Legal Theory 253 (2000) (with C. Eisgruber)
- A Letter to the Supreme Court Regarding the Missing Argument in *Brzonzkala v.*
Morrison
75 N.Y.U. L. Rev. 150 (2000)
- Impeachment and Constitutional Structure
5 Widener L. Sym. J. 249 (2000) (with C. Eisgruber)

Punishing The President: The use and abuse of impeachment
1 Punishment & Society 223 (1999) (with C. Eisgruber)

Forgetting and Advancing the Religious Liberty Vision of Justice Brennan
43 N.Y.L. Sch. L. Rev. 101 (1999) (Symposium)

The Domain of Constitutional Justice
Constitutionalism: Philosophical Foundations
(L. Alexander, ed.) (Cambridge Univ. Press) (1998)

Klein's First Principle: A Proposed Solution
86 Georgetown L. J. 2525 (1998) (Symposium)

Congress As Partner/Congress As Adversary
22 Harv. J.L. & Pub. Pol'y 85 (1998) (Symposium)

Protecting Without Favoring Religiously Motivated Conduct
2 Nexus 103 (1997) (with C. Eisgruber)

Special Exemptions? A compelling Case Against 'Compelling State Interest'?
93 Liberty 10 (November/December 1998)

Congressional Power and Religious Liberty After City of Boerne v. Flores
1997, Supreme Court Review (with C. Eisgruber)

Good Constitutions and Bad Choices
Constitutional Stupidities and Constitutional Tragedies (W. Eskridge &
Levinson, eds.) (1998) (with C. Eisgruber)

The Betrayal of Judgment
65 Fordham L. Rev. 1545 (1997)
(Symposium: Fidelity in Constitutional Theory)

Unthinking Religious Liberty
74 Texas L. Rev. 577 (1996) (Review Essay, with C. Eisgruber)

The Dead Hand and Constitutional Amendment
19 Harv J. Law & Pub. Pol'y 275 (1996) (Federalist Society Symposium:
Originalism, Democracy and the Constitution)

Why the Religious Freedom Restoration Act is Unconstitutional
69 NYU L. Rev. 437 (1994) (with C. Eisgruber)

The Vulnerability of Conscience: the Constitutional Basis for Protecting Religious
Liberty
61 U. Chi. L.Rev. 1245 (1994) (with C. Eisgruber)

Justice in Plain Clothes: Reflections on the Thinness of Constitutional Law
88 Nw. U. L. Rev. 410 (1993)
(Symposium: One Hundred Years of Judicial Review-The Thayer Cent.)

The One and the Many: Adjudication in Collegial Courts
81 Calif. L. Rev. 1 (1993) (with L. Kornhauser)

Memoirs of a General in the Inglorious Revolution
90 Mich. L. Rev. 1203 (1992) (Review Essay)

Federal Jurisdiction and Congressional Power
Encyclopedia of the American Constitution (1991-92 supp.)

The Incurable Constitution
65 NYU L. Rev. 893 (1990)

Back to Bork
New York Review of Books, 25 Oct 1990, 23

Righting Rights
10 Cardozo L. Rev. 1311 (1989)
(Symposium: Hegel and Legal Theory)

You Can Raise the First, Hide Behind the Fourth, and Plead the Fifth. But What
on Earth Can You Do With the Ninth Amendment?
64 Chi-Kent L. Rev. 239 (1988)
(Symposium: Interpreting the Ninth Amendment)

Just Lotteries
27 Social Science Info. 483 (1988) (with L. Kornhauser)

Unpacking the Court
96 Yale L. Rev. 82 (1986) (with L. Kornhauser)

Foreword: State Courts and the Strategic Space Between the Norms and Rules
Of Constitutional Law
63 Texas L. Rev. 959 (1985)
(Symposium: The Emergence of State Constitutional Law)

Some Observations About Race, Sex and Equal Protection
59 Tulane L. Rev. 928 (1985)

What's a Nice Court Like You Doing In a Democracy Like This?
36 Stan. L. Rev. 1087(1981) (Review Essay)

Foreword: Constitutional Limitations on Congress' Authority to Regulate the
Jurisdiction of the Federal Courts
95 Harv. L. Rev. 17 (1981)

Rights Skepticism and Process-Based Responses
56 NYU L. Rev. 417 (1981)

Constitutional Triage
81 Colum. L. Rev. 70 (1980) (Review Essay)

- Short-cuts to Outlawing Abortion
New York Review of Books, (?).
- Pareto Superiority, Consent, and Justice
8 Hofstra L. Rev. 913 (1980)
- Property Rights and the Constitution
XXII Nomos 376 (1980)
- Questions I Wish I Had Never Asked: The Burger Court and Exclusionary Zoning
11 Southwestern L. Rev. 509 (1979)
- Insular Majorities Unabated: Warth v. Seldin and Eastlake v. Forest City
Enterprises
91 Harv. L. Rev. 1373 (1978)
- Fair Measure: The Legal Status of Underenforced Constitutional Norms
91 Harv. L. Rev. 1212 (1978)
- The ALI Model Land Development Code, a Critique
29 Land Use Law and Zoning Digest 7 (1977)
- Burnt Bridges: The Retreat of the Federal Judiciary From Land Use Litigation
27 Land Use Law and Zoning Digest 7 (1976)
- Brief for Constitutional Lawyers' Committee on Undeclared War as Amicus
Curia, Massachusetts v. Laird
17 Wayne L. Rev. 67 (1976)
- Troubled Waters: Litigation in the Federal Courts Against Exclusionary Land Use
Restraints, in Exclusionary Land Use Litigation: Policy and Strategies For
the Future (Wash. D.C., NCDH 1975)
- Exclusionary Zoning: Constitutional Limitations on the Power of Municipalities To
Restrict the Use of Land
1972 Land-Use Controls Annual 153
- Tight Little Islands: Exclusionary Zoning, Equal Protection and the Indigent
21 Stanford L. Rev. 767 (1969)

Education

- Columbia University LL.B. 1966
Magna Cum Laude
Law Review
- Pomona College B.A. 1963
Distinguished Alumni Award