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W. R. Irby Chair and Rutledge C. Clement, Jr. Professor in Constitutional Law
Professor of Law, 1997-present
Associate Professor, 1989-1997 (tenure awarded 1995)

Interim Dean, 2009-10
Vice Dean of Academic Affairs, 2001-04; 2006-09

Courses: Constitutional Law I, Fourteenth Amendment, Jurisprudence, Foreign
Affairs and the Constitution, Constitutional History, Law of Democracy
Seminars: Constitutional Theory;
American Constitutional Theory, co-taught at Yale Law School, Fall 2020

Other Law School Teaching Positions

Visiting Associate Professor, University of Texas Courses: Constitutional Law I and II, Constitutional Theory	Fall 1996 & Summer 1993
Bigelow Fellow and Lecturer in Law University of Chicago	1988-1989
Research Instructor in Law New York University	1986-1988

PUBLICATIONS – Books

Broken Trust: Dysfunctional Government and Constitutional Reform (University Press of
Kansas, 2015)

Long Wars and the Constitution (Harvard University Press, 2013)

American Constitutionalism: From Theory to Politics
(Princeton University Press, 1996)

*Selected as a *Choice* Outstanding Academic Book of 1997

*Italian translation: *Il costituzionalismo americano* (Il Mulino, 2003)

PUBLICATIONS – Edited Collections

Co-Editor, *Constitutional Theory: Arguments and Perspectives*, 4th edition

(Lexis, 2013)

Co-Editor, *Radical Critiques of the Law* (University Press of Kansas, 1997)

PUBLICATIONS – Book Chapters

“The Executive Power,” in *The Oxford Handbook of the U.S. Constitution* 343 (Mark Graber, Sanford Levinson and Mark Tushnet eds., 2015)

“Constitutional Change in the United States,” in *How Constitutions Change*, edited by Dawn Oliver and Carlo Fusaro 357 (Hart Publishing, 2011)

“Constituent Power and Constitutional Change in American Constitutionalism,” in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, edited by Martin Loughlin and Neil Walker 49 (Oxford University Press, 2007)

“The Age of Marbury: Judicial Review in a Democracy of Rights,” in *Arguing Marbury v. Madison*, edited by Mark Tushnet 104 (Stanford University Press, 2005)

“The Idea of Judicial Review in the Marshall Era,” in *Marbury v. Madison: Documents and Commentary* 61 (CQ Press, 2002)

“Constitutional Theory Transformed,” in *Constitutional Culture and Democratic Rule* 288 (Cambridge University Press, 2001)

“The Nominee Is...Article V,” in *Constitutional Stupidities, Constitutional Tragedies* 51 (New York University Press, 1998)

“Constitutionalism in the United States: From Theory to Politics,” in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment* 37 (Princeton University Press, 1995)

“Toward a Public Values Philosophy of the Constitution,” in *Philosophical Dimensions of the Constitution* 119 (Westview Press, 1988)

PUBLICATIONS – Articles

“Optimistic Originalism and the Reconstruction Amendments,” 95 *Tulane Law Review* 281 (2021)

“Against Historical Practice: Facing Up to the Challenge of Informal Constitutional Change,” 35 *Constitutional Commentary* 79 (2020)

“War Powers: Congress, the President, and the Courts – A Model Casebook Section,” published on SSRN (2020)(co-authored with Matthew Waxman)

“Presidential Impeachment in Tribal Times: The Historical Logic of Informal Constitutional Change,” 51 *Connecticut Law Review* 413 (2019)

- “Trump, Trust, and the Future of the Constitutional Order,” 77 Maryland Law Review 161 (2017)
- “Analyzing War Powers After 9/11,” 64 Drake Law Review 961 (2016)
- “Justice Scalia: Affirmative or Negative?,” 101 Minnesota Law Review Headnotes 52 (2016)
- “Understanding Informal Constitutional Change,” 1 Journal of Institutional Studies 1 (2015) (*Revista Estudos Institucionais*, Brazil)
- “Zeisberg’s Relational Conception of War Authority: Convergence and Divergence in Achieving a New Understanding of War Powers,” 95 Boston University Law Review 1235 (2015)
- “A Bibliography of Executive Branch War Powers Opinions Since 1950,” 87 Tulane Law Review 649 (2013)
- “Watergate and Vietnam: The Cold War Origins of a Constitutional Crisis,” 16 Chapman Law Review 31 (2012)
- “The National Security Constitution and the Bush Administration,” 120 Yale L.J. Online 367 (2011)
- “California Constitutionalism: Trust in Government and Direct Democracy,” 11 Univ. of Pennsylvania Journal of Constitutional Law 551 (2009)
- “Rebooting Originalism,” 2008 University of Illinois Law Review 1185
- “Stop Federalism Before It Kills Again: Reflections on Hurricane Katrina,” 21 St. John’s Journal of Legal Commentary 527 (2007) (invited article)
- “Judicial Supremacy and Equal Protection in a Democracy of Rights,” 4 University of Pennsylvania Journal of Constitutional Law 281 (2002) (invited article)
- “Scholars and Public Debates: A Reply to Devins and Farnsworth,” 82 Boston University Law Review 227 (2002)
- “Presidential Immunity from Criminal Process,” 5 Widener Law Symposium Journal 49 (2000) (invited article)
- “Constitutional Theory Transformed,” 108 Yale Law Journal 2115 (1999)
- “Judicial Review and Democracy Revisited,” 95 APA Newsletter on Philosophy and Law 64 (Spring 1996) (guest editor for this issue)

- “The Problem of Constitutional Change,” 70 *Tulane Law Review* 2121 (1996)
- “Constitutional Rights and Democracy in the U.S.A.: The Issue of Judicial Review,” 8 *Ratio Juris* 180 (1995) (co-author)
- “The Nominee Is...Article V,” 12 *Constitutional Commentary* 171 (1995)
- “Political Philosophy Versus Political Theory: The Case of Rawls,” 69 *Chicago-Kent Law Review* 691 (1994)
- “Pluralism in Constitutional Interpretation,” 72 *Texas Law Review* 1753 (1994)
- “Bringing the State Into Constitutional Theory: Public Authority and the Constitution,” 16 *Law & Social Inquiry* 659 (1991) (the subject of a symposium in this issue)
- “How to Analyze the American State,” 16 *Law & Social Inquiry* 731 (1991)
- “Constitutionalism in the United States: From Theory to Politics,” 10 *Oxford Journal of Legal Studies* 200 (1990) (*Honorable Mention*, 1989 AALS Scholarly Paper Competition)
- “Politics and the Supreme Court: The Case of the Bork Nomination,” 5 *Journal of Law and Politics* 551 (1989)
- “What is Constitutional Theory? The Newer Theory and the Decline of the Learned Tradition,” 62 *Southern California Law Review* 493 (1989)
- “A Right of Press Access to U.S. Military Operations,” 21 *Suffolk University Law Review* 989 (1987) (co-author)
- “Reconstructing Rawls's Theory of Justice,” 62 *New York University Law Review* 715 (1987)

PUBLICATIONS – Book Reviews

- “How Do We Redeem the Time? Review of Jack Balkin’s *Constitutional Redemption* and *Living Originalism*,” 91 *Texas Law Review* 101 (2012)
- “What is Wartime?,” 48 *Tulsa Law Review* 215 (2012)
- “Levinson and Constitutional Reform: Some Notes,” 67 *Maryland Law Review* 14 (2007)
- “Barnett and the Constitution We Have Lost,” 42 *San Diego Law Review* 283 (2005)

“Has the Hour of Democracy Come Round at Last? The New Critique of Judicial Review,” 17 *Constitutional Commentary* 683 (2000)

“Review Essay: Legal Liberalism at Yale,” 14 *Constitutional Commentary* 535 (1997)

“Review of Rex Martin's *A System of Rights*,” 68 *Tulane Law Review* 1689 (1994)

“Mending the Regulatory State,” 11 *Law and Philosophy* 291 (1992)

Works in Progress

“A Theory of Constitutional Change in Four Case Studies,” article and book proposal project

Organized Symposia

“Understanding Constitutional Change: The State of the Field,” Conference at Tulane Law School, October 13-14, 2017

Organizer, “Proposal to AALS for Joint AALS/APSA Conference on Constitutional Law” (approved by AALS September 2000, held June 5-8, 2002 in Washington, D.C.)

Organizer, “Moments of Change: Transformation in American Constitutionalism,” Yale Law School, September 26-27, 1998

Co-Editor, “Symposium on John Rawls's *Political Liberalism*,” 69 *Chicago-Kent Law Review* 549 (1994)

Presentations and Conference Papers

“Historical Understanding and the Supreme Court,” presented at Symposium on “The Article III Judiciary: Democracy’s Last Line of Defense,” Loyola Law School, March 10, 2023

“Against Historical Practice,” presented at “Amending America’s Unwritten Constitution,” Boston College Law School, May 16-17, 2019

“Optimistic Originalism Meets the Unfortunate Nineteenth Century,” presented at Georgetown Colloquium on Constitutional Law, January 29, 2019; Arizona Conference of Constitutional Law Scholars, March 9, 2019; University of San Diego Law School Originalism Works in Progress Conference, February 2020

- “Thinking Like a Framers: A Design Perspective on Contemporary American Constitutionalism,” 22nd John W. Hager Distinguished Lecture at University of Tulsa College of Law, November 15, 2018
- “The Swing Justice: Reflections on the Career of Justice Anthony Kennedy,” panelist at Georgia State University College of Law, October 5, 2018, remarks transcribed in 35 *Georgia State University Law Review* 1003 (2019)
- “How Perilous Is the State of the Contemporary Union?,” panel at American Political Science Association, Boston, MA, September 1, 2018
- “Presidential Impeachment in Partisan Times: The Historical Logic of Informal Constitutional Change,” presented at National Conference of Constitutional Law Scholars, Tucson, AZ, March 16-17, 2018
- “Unbuilding the American State: The Problem of Constitutional Development Before the New Deal,” presented at Saloom Chair Speaker Series, University of Louisiana, Lafayette, November 2-3, 2016
- “Liberty versus Security or Democracy and Security,” presented at War Powers and the Constitution: 15 Years After 9/11, Drake University Law School Constitutional Law Center, April 9, 2016
- “Executive Power,” presented at An Argument Open to All: Reading The Federalist in the 21st Century Conference, University of Texas Law School, January 21-23, 2016
- “Race, Federalism, and Constitutional Change,” presented at The Present and Future of Civil Rights Movements: Race and Reform in 21st Century America, Duke Law School, November 20-21, 2015
- “Constitutional Change and Reform,” panel presentation at 2015 meeting of the American Political Science Association
- “Long Wars and the Constitution,” presentations at Boston University School of Law Symposium on “War Powers and the Constitution,” October 30, 2014; APSA Roundtable, August 2014; Georgetown Law Center, March 2014; Emory Law School, September 2013; Woodrow Wilson Center, August 2013 and conference on “Is America Governable?,” University of Texas School of Law, January 2013
- Commentary on Frank Cross’s *The Failed Promise of Originalism*, colloquium at University of Texas School of Law, February 7, 2014
- “The State of Constitutional Theory,” panel presentation at 2013 meeting of the American Political Science Association

- “The Tragic Pattern of the War Power: Presidential Decisions for War since 1945,” paper accepted for the 2012 meeting of the American Political Science Association [APSA meeting cancelled due to Hurricane Isaac] and 2013 meeting of Midwest Political Science Association
- “Watergate and Vietnam,” invited paper for conference on “The 40th Anniversary of Watergate,” Chapman University School of Law, January 26-27, 2012
- “The Legal Justification for the Vietnam War: The Case of Nicholas deB. Katzenbach,” invited paper for “The American Experience in Southeast Asia, 1946-1975,” conference at U.S. Department of State, September 29-30, 2010
- “The National Security Constitution and the Bush Administration,” invited paper for conference on *A Republic of Statutes* at Yale Law School, December 10-11, 2010
- “War Powers and Constitutional Change,” presented at 2009 meeting of the American Political Science Association; Tulane Murphy Institute Faculty Seminar; Cornell Constitutional Theory Colloquium, October 2009; University of Texas Colloquium, February 2010; University of Kansas Workshop, February 2011
- Organized and chaired panel, “The Bush Presidency and the Constitution” and gave panel presentation on Sanford Levinson’s “Our Undemocratic Constitution,” at 2007 AALS meeting
- “Reflections on Hurricane Katrina,” Symposium on Federalism Past, Federalism Future, St. John’s University School of Law, March 2006
- “Constituent Power and Constitutional Change in American Constitutionalism,” Conference on Constituent Power and Constitutional Form, European University Institute, Florence, Italy, March 2006
- “Trust in Government as a Constitutional Problem,” Law and Public Affairs Seminar, Princeton University, November 2005
- “Barnett and the Constitution We Have Lost,” panel presentation at 2004 AALS meeting
- “The State of Constitutional Theory,” panel discussion at 2004 meeting of the American Political Science Association
- “Constitutional Law Outside the Courts,” presented at June 2002 AALS/APSA Conference on Constitutional Law, Washington, D.C.
- Organized and chaired panel, “Marbury and the Consequences of Judicial Supremacy,” at 2002 meeting of the American Political Science Association; presented paper, “The Age of Marbury”

“Judicial Review in a Democracy of Rights,” presented at February 2001 Symposium on Equal Protection at the University of Pennsylvania Law School

Organized panel on “Judicial Review and the Normative Implications of the New Institutionalism” and presented paper “Judicial Review in a Democracy of Rights” at the 2000 meeting of the American Political Science Association

“Historicism and Constitutional Interpretation in the United States,” presented at the 19th IVR World Congress, June 1999, New York City

Organizer and chair, “Roundtable on the Clinton Crisis and the Presidency,” presented at the 1999 meeting of the American Political Science Association

“Affirmative Action in History and Theory,” presented at the Brendan F. Brown Conference on Race and American Constitutionalism, Loyola University School of Law, March 1997, New Orleans

Participated as discussant on panel “The Judiciary in the Constitutional Order” and on panel “What’s So Great About Constitutionalism” at the 1997 meeting of the American Political Science Association

“On the Very Idea of Judicial Review,” presented at the 1996 meeting of the American Political Science Association

“Understanding American Constitutionalism,” presented at the 1995 Murphy Institute of Political Economy Conference on “Constitutions and Constitutionalism II”

“Constitutional Rights and Democracy in the U.S.A.: The Issue of Judicial Review,” presented at the 17th IVR World Congress, June 1995 in Bologna, Italy (co-author)

“The Constitution and State-Centered Theories of American Politics,” presented at the 1995 meeting of the American Political Science Association

“The Hardest Questions in Constitutional Law: A Brief Catalog,” presented at the 1995 meeting of the Georgetown Discussion Group on Constitutional Law

“The Problem of Constitutional Change in the United States,” presented at the 1994 Murphy Institute of Political Economy Conference on “Constitutions and Constitutionalism”

“Judicial Review and Democracy Revisited,” presented at the 1993 meeting of the American Political Science Association

“State and Constitution in the United States,” presented at the 1992 meeting of the Southwestern Political Science Association

“Can a Conception of Political Right Adjudicate Between Conflicting Conceptions of the Good?,” presented at the 1990 Amintaphil Conference on Liberalism and Community

Short Contributions

“We, the Independent Counsel,” *Legal Times*, February 17, 1997, p. 21

“See No Evil, Report No Evil,” *Legal Times*, May 11, 1998, p. 31

“What’s So Great About American Constitutionalism?” 8 *The Good Society* 58 (1998)

“On the Very Idea of Judicial Review,” *Tulane Lawyer*, Fall/Winter 1998-99

“Clinton Case: Unconstitutional Crisis,” *Times-Picayune*, February 24, 1999

“Constitutional Strategy and the Clinton Crisis,” *Law and Courts*, Winter 1999

“To the Members of the Florida Legislature: Statement of 48 Constitutional Scholars Opposing the Legislative Designation of Electors for the 2000 Election”

“Constitutional Theory As I Found It,” 13 *The Good Society* 25 (2004)

“The Last Hierarchy: Confronting the Tenure Process as Vice Dean,” 73 *UMKC Law Review* 289 (2004)

Review of *The Great Tradition* by Anthony Brundage and Richard A. Cosgrove, *Journal of American History* 564 (Sept. 2008)

“The Bush Presidency and Theories of Constitutional Change,” *Tulane Lawyer*, Summer 2009

“Dean’s Letter Opposing Louisiana Senate Bill 549,” April 2010

“Tribute to Sandy Levinson,” *Law and Courts*, Summer 2010

“Defending Ginsburg,” *USA Today*, July 14, 2016 (op-ed)

[The Democracy Constitution : Democracy Journal](#) (co-author of a new U.S. Constitution)

“Problems That Have Festered Too Long...” in 31 *Democracy: A Journal of Ideas* Summer 2021

EDUCATION

New York University School of Law General LL.M., 1986	1985-1986
University of Kansas School of Law J.D., 1983 Finalist, First Year Moot Court Competition First Prize, Robinson Philosophy Essay Competition	1980-1983
University of California, San Diego Graduate study in philosophy Instructor, Humanities Program	1979-1980
University of Kansas B.G.S. in Philosophy and English, 1979 Third Place, 1979 National Debate Tournament President, University of Kansas Forensics 1977-1979	1975-1979

MEMBERSHIPS, WORK EXPERIENCE, AND SERVICE

District of Columbia Bar (admitted 1983) Associate, Washington, D.C. law firm 1983-1985	
AALS Planning Committee for Workshop on Democratic Governance, 2005 Annual Meeting	
Chair, AALS Section on Constitutional Law, 2006	
AALS Planning Committee for 2008 Conference on Constitutional Law	
International Association for the Philosophy of Law and Social Philosophy (IVR) Chair of Program Committee, 1992 American section Conference	
Member: American Political Science Association; American Society for Political and Legal Philosophy; American Society for Legal History; American Bar Association; U.S. Association for Constitutional Law	
Tulane Law School Service (as Chair): Appointments Committee, 2000-01; Self-Study Committee, 2001-02 and 2007-08; Academic Affairs Committee, 2002-03; Legal Writing Committee, 2003-04; Strategic Planning Committee, 2006, 2012-13; Appointments Committee 2013-14; Promotion and Tenure Committee, 2011-12, 2014-15; Faculty Participation Committee, 2016-17, 2018-19; Appointments Committee, 2017-18; Intellectual Life Committee, 2019-20; Chairs Committee, 2021-22	
Director, Trinity College Summer Program, Cambridge, UK, 2008-13, 2017-23	

University Service: Provost's Higher Education Environmental Scan Committee, 2012-13; Dean's Review Committee, 2014-15

Reviewer: *Presidential Studies Quarterly*; Yale University Press; Cambridge University Press; Oxford University Press; University Press of Kansas

AWARDS AND HONORS

Sumter Davis Marks Research Excellence Award for Scholarship, 1999-2000

Felix Frankfurter Distinguished Teaching Award, 2002 and 2022

W. R. Irby Chair, awarded 2015