

JAMES E. FLEMING

Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215-1401

(617) 353-2942 (phone)
(617) 353-3077 (fax)
jfleming@bu.edu (email)

EDUCATION

Princeton University, Ph.D., Politics, 1988; A.M., 1981
Ph.D. Dissertation: "Constitutional Constructivism" (nominated for Edward S. Corwin Award for best doctoral dissertation in 1988 in field of public law)
Fields: Constitutional Law; Political Theory; American Politics

Harvard Law School, J.D., *magna cum laude*, 1985

University of Missouri, A.B., *summa cum laude*, Political Science, 1977

EMPLOYMENT

Boston University School of Law
The Honorable Paul J. Liacos Professor of Law, 2015-present
Professor & The Honorable Frank R. Kenison Distinguished Scholar, 2007-2015
Associate Dean for Research and Intellectual Life, 2010-2016
Affiliated Faculty Positions in Departments of Political Science and Philosophy

Fordham University School of Law
Leonard F. Manning Distinguished Professor of Law, 2006-2007
Professor of Law, 1998-2006; Associate Professor of Law, 1991-1998

Cravath, Swaine & Moore
Attorney, Litigation, 1986-1991

Harvard University
Teaching Fellow, Moral Reasoning: Justice,
Professor Michael J. Sandel, Fall Semester 1984

Princeton University
Teaching Fellow, Constitutional Interpretation,
Professor Walter F. Murphy, Fall Semesters 1979 and 1980

RESEARCH FELLOWSHIPS

Princeton University
Faculty Fellow, Program in Law and Public Affairs, 2016-2017 Year

Harvard University
Faculty Fellow in Ethics, The Center for Ethics and the Professions, 1999-2000 Year

The Brookings Institution
Research Fellow, Governmental Studies Program, 1981-1982 Year

PUBLICATIONS

Books

AMERICAN CONSTITUTIONAL INTERPRETATION (Foundation Press, 5th ed., 2014) (with Walter F. Murphy, Sotirios A. Barber, and Stephen Macedo)

SECURING CONSTITUTIONAL DEMOCRACY: THE CASE OF AUTONOMY (University of Chicago Press, 2006)

CONSTITUTIONAL INTERPRETATION: THE BASIC QUESTIONS (Oxford University Press, 2007) (with Sotirios A. Barber) (nominated for the American Political Science Association's C. Herman Pritchett Award for the best book on law and courts written by a political scientist and published the previous year) (designated a *Choice* Outstanding Academic Title for 2008) (translated into Chinese and published by Peking University Press)

ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES (Harvard University Press, 2013) (with Linda C. McClain) (nominated for the American Political Science Association's C. Herman Pritchett Award for the best book on law and courts written by a political scientist and published the previous year)

FIDELITY TO OUR IMPERFECT CONSTITUTION: FOR MORAL READINGS AND AGAINST ORIGINALISMS (Oxford University Press, 2015)

GAY RIGHTS AND THE CONSTITUTION (Foundation Press, 2016) (with Sotirios A. Barber, Stephen Macedo, and Linda C. McClain)

Edited Books

NOMOS L: GETTING TO THE RULE OF LAW (Editor) (New York University Press, 2011)

NOMOS LII: EVOLUTION AND MORALITY (Editor, with Sanford Levinson) (New York University Press, 2012)

NOMOS LIII: PASSIONS AND EMOTIONS (Editor) (New York University Press, 2013)

NOMOS LV: FEDERALISM AND SUBSIDIARITY (Editor, with Jacob T. Levy) (New York University Press, 2014)

Articles

A Critique of John Hart Ely's Quest for the Ultimate Constitutional Interpretivism of Representative Democracy, 80 MICHIGAN LAW REVIEW 634 (1982)

Constructing the Substantive Constitution, 72 TEXAS LAW REVIEW 211 (1993), with a response by Cass R. Sunstein, *Liberal Constitutionalism and Liberal Justice*, 72

TEXAS LAW REVIEW 305 (1993)

We the Exceptional American People, 11 CONSTITUTIONAL COMMENTARY 355 (1994) (reprinted in CONSTITUTIONAL POLITICS: ESSAYS ON CONSTITUTION MAKING, MAINTENANCE, AND CHANGE 91 (Sotirios A. Barber & Robert P. George eds., Princeton University Press, 2001))

Securing Deliberative Autonomy, 48 STANFORD LAW REVIEW 1 (1995)

Fidelity to Our Imperfect Constitution, 65 FORDHAM LAW REVIEW 1335 (1997)

Original Meaning Without Originalism, 85 GEORGETOWN LAW JOURNAL 1849 (1997)

In Search of a Substantive Republic, 76 TEXAS LAW REVIEW 509 (1997) (with Linda C. McClain)

Constitutional Tragedy in Dying: Responses to Some Common Arguments Against the Constitutional Right to Die, 24 FORDHAM URBAN LAW JOURNAL 881 (1997)

Constitutional Tragedy in Dying: Or Whose Tragedy Is It, Anyway?, in CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES 162 (William N. Eskridge, Jr. & Sanford Levinson eds., New York University Press, 1998)

The Right of Privacy in Sandel's Procedural Republic, in DEBATING DEMOCRACY'S DISCONTENT 248 (Anita L. Allen & Milton C. Regan, Jr. eds., Oxford University Press, 1998) (with Linda C. McClain) (from *In Search of a Substantive Republic*)

We the Unconventional American People, 65 UNIVERSITY OF CHICAGO LAW REVIEW 1513 (1998)

Fidelity, Basic Liberties, and the Specter of Lochner, 41 WILLIAM & MARY LAW REVIEW 147 (1999)

Foreword: Legal and Constitutional Implications of the Calls to Revive Civil Society, 75 CHICAGO-KENT LAW REVIEW 289 (2000) (with Linda C. McClain)

Some Questions for Civil Society-Revivalists, 75 CHICAGO-KENT LAW REVIEW 301 (2000) (with Linda C. McClain)

The Constitution Outside the Courts, 86 CORNELL LAW REVIEW 215 (2000)

The Parsimony of Libertarianism, 17 CONSTITUTIONAL COMMENTARY 171 (2000)

The Canon and the Constitution Outside the Courts, 17 CONSTITUTIONAL COMMENTARY 267 (2000) (with Sotirios A. Barber)

The Natural Rights-Based Justification for Judicial Review, 69 FORDHAM LAW REVIEW

2119 (2001)

Fidelity to Natural Law and Natural Rights in Constitutional Interpretation, 69 FORDHAM LAW REVIEW 2285 (2001) (reprinted in ROBERT P. GEORGE, *THE CLASH OF ORTHODOXIES* 183 (ISI Press, 2001) and in *NATURAL LAW: THE INTERNATIONAL LIBRARY OF ESSAYS IN LAW AND LEGAL THEORY (SECOND SERIES)* (Robert P. George ed., Ashgate Publishing Co., 2003))

A Further Comment on Robert P. George's "Natural Law," 70 FORDHAM LAW REVIEW 255 (2001)

The Lawyer as Citizen, 70 FORDHAM LAW REVIEW 1699 (2002)

The Missing Selves in Constitutional Self-Government, 71 FORDHAM LAW REVIEW 1789 (2003)

Securing Deliberative Democracy, 72 FORDHAM LAW REVIEW 1435 (2004), with a response by T.M. Scanlon, *Adjusting Rights and Balancing Values*, 72 FORDHAM LAW REVIEW 1477 (2004)

Lawrence's Republic, 39 TULSA LAW REVIEW 563 (2004)

War, Crisis, and the Constitution, in *THE CONSTITUTION IN WARTIME* 232 (Mark Tushnet ed., Duke University Press, 2005) (with Sotirios A. Barber)

Judicial Review Without Judicial Supremacy: Taking the Constitution Seriously Outside the Courts, 73 FORDHAM LAW REVIEW 1377 (2005)

Constitutionalism, Judicial Review, and Progressive Change, 84 TEXAS LAW REVIEW 433 (2005) (with Linda C. McClain), with a response by Ran Hirschl, *Constitutionalism, Judicial Review, and Progressive Change*, 84 TEXAS LAW REVIEW 471 (2005) (reprinted in *CONSTITUTIONALISM* 130 (c.v. Mahesh Nath ed., The Icfai University Press, 2008))

"There Is Only One Equal Protection Clause": An Appreciation of Justice Stevens's Equal Protection Jurisprudence, 74 FORDHAM LAW REVIEW 2301 (2006)

The Place of History and Philosophy in the Moral Reading of the American Constitution, in *EXPLORING LAW'S EMPIRE: THE JURISPRUDENCE OF RONALD DWORKIN* 23 (Scott Hershovitz ed., Oxford University Press, 2006)

The New Constitutional Order and the Heartening of Conservative Constitutional Aspirations, 75 FORDHAM LAW REVIEW 537 (2006)

Rights, Responsibilities, and Reflections Upon the Sanctity of Life, in *RONALD DWORKIN* 109 (Arthur Ripstein ed., Cambridge University Press, 2007) (with Benjamin C. Zipursky)

The Incredible Shrinking Constitutional Theory: From the Partial Constitution to the Minimal Constitution, 75 *FORDHAM LAW REVIEW* 2885 (2007)

The Balkanization of Originalism, 67 *MARYLAND LAW REVIEW* 10 (2007)

Rewriting Brown, Resurrecting Plessy, 52 *SAINT LOUIS UNIVERSITY LAW JOURNAL* 1141 (2008)

The Odyssey of Cass Sunstein, 43 *TULSA LAW REVIEW* 843 (2008)

Toward a More Democratic Congress?, 89 *BOSTON UNIVERSITY LAW REVIEW* 629 (2009)

“Ronald Dworkin,” in *Yale Biographical Dictionary of American Law* 178, Roger K. Newman, ed., Yale University Press (2009)

“Natural Law: U.S. Law,” in 4 *The Oxford International Encyclopedia of Legal History* 217, Stanley N. Katz, ed., Oxford University Press (2009)

Comments on Robert T. Tsai, *Eloquence and Reason: Creating a First Amendment Culture*, <http://eloquenceandreason.blogspot.com/2009/05/jim-flemings-comments-on-book-at-aslch.html>

Constitutional Theory and the Future of the Unitary Executive, 59 *EMORY LAW JOURNAL* 459 (2010) (with Sotirios A. Barber)

Taking Responsibilities as well as Rights Seriously, 90 *BOSTON UNIVERSITY LAW REVIEW* 839 (2010)

Presidential Succession: The Art of the Possible, 78 *FORDHAM LAW REVIEW* 951 (2010)

Successful Failures of the American Constitution, in *THE LIMITS OF CONSTITUTIONAL DEMOCRACY* 29 (Jeffrey K. Tulis & Stephen Macedo eds., Princeton University Press, 2010)

“An Appreciation of Walter F. Murphy,” in *Law & Courts: Newsletter of the Law & Courts Section of the American Political Science Association* (Spring 2010), http://www1.law.nyu.edu/lawcourts/pubs/newsletter/LC_Newsletter_Spring_2010.pdf

Constitutional Theory, the Unitary Executive, and the Rule of Law, in *NOMOS L: GETTING TO THE RULE OF LAW* 156 (James E. Fleming ed., New York University Press, 2011) (with Sotirios A. Barber)

Respecting Freedom and Cultivating Virtues in Justifying Constitutional Rights, 91 *BOSTON UNIVERSITY LAW REVIEW* 1311 (2011) (with Linda C. McClain)

The Balkinization of Originalism, 2012 *UNIVERSITY OF ILLINOIS LAW REVIEW* 669

Living Originalism and Living Constitutionalism as Moral Readings of the American Constitution, 92 BOSTON UNIVERSITY LAW REVIEW 1171 (2012)

The New Originalist Manifesto, 28 CONSTITUTIONAL COMMENTARY 539 (2013)

Ordered Liberty: A Response to Three Views, 28 CONSTITUTIONAL COMMENTARY 435 (2013) (with Linda C. McClain)

Are We All Originalists Now? I Hope Not!, 91 TEXAS LAW REVIEW 1785 (2013)

Fit, Justification, and Fidelity in Constitutional Interpretation, 93 BOSTON UNIVERSITY LAW REVIEW 1283 (2013) (published in revised form in 9 PROBLEMA: YEARBOOK OF PHILOSOPHY AND THEORY OF LAW 151 (2015))

Ordered Liberty: Response to Michael Dorf, 93 BOSTON UNIVERSITY LAW REVIEW 1477 (2013) (with Linda C. McClain)

The Inclusiveness of the New Originalism, 82 FORDHAM LAW REVIEW 433 (2013)

Ordered Gun Liberty: Rights with Responsibilities and Regulation, 94 BOSTON UNIVERSITY LAW REVIEW 849 (2014) (with Linda C. McClain)

Dworkin's Perfectionism, in LAW AND DIGNITY: ESSAYS IN HONOUR AND MEMORY OF PROFESSOR RONALD DWORKIN (Lokendra Malik ed., Oxford University Press, forthcoming) (with Linda C. McClain)

The Myth of Strict Scrutiny for Fundamental Rights, 12 DARTMOUTH LAW JOURNAL 1 (2014)

Responses to comments on *Ordered Liberty: Rights, Responsibilities, and Virtues* (with Linda C. McClain) in book symposium on Balkinization blog, <http://balkin.blogspot.com/2013/03/symposium-on-fleming-and-mcclain.html>

Responses to comments on *Ordered Liberty: Rights, Responsibilities, and Virtues* (with Linda C. McClain) in book symposium on Concurring Opinions blog, <http://www.concurringopinions.com/archives/category/symposium-ordered-liberty>

Podcast discussing *Ordered Liberty: Rights, Responsibilities, and Virtues* (with Linda C. McClain) on New Books Network, <http://newbooksinpublicpolicy.com/2013/12/02/james-e-fleming-and-linda-c-mcclain-ordered-liberty-rights-responsibilities-and-virtues-harvard-up-2013/>

Fidelity, Change, and the Good Constitution, 62 AMERICAN JOURNAL OF COMPARATIVE LAW 515 (2014)

Introduction to the Symposium on Ronald Dworkin's *Religion without God*, 94 BOSTON UNIVERSITY LAW REVIEW 1201 (2014)

Fidelity to Our Living Constitution, 50 TULSA LAW REVIEW 449 (2014)

Is It Time to Rewrite the Constitution? Fidelity to Our Imperfect Constitution, 2015 WISCONSIN LAW REVIEW ONLINE 31

The Substance of Self-Government, 11 LAW, CULTURE, AND THE HUMANITIES 184 (2015)

Liberty, in THE OXFORD HANDBOOK OF THE UNITED STATES CONSTITUTION 479 (Mark Tushnet, Mark A. Graber, and Sanford Levinson eds., Oxford University Press, 2015) (with Linda C. McClain)

The Moral Reading All Down the Line, 95 BOSTON UNIVERSITY LAW REVIEW 1801 (2015)

The Moral Reading as a Practice: A Response to Three Comments on Fidelity to Our Imperfect Constitution, 96 BOSTON UNIVERSITY LAW REVIEW 1481 (2016)

Fidelity to Our Imperfect Constitution: A Reply to Six Views, 31 CONSTITUTIONAL COMMENTARY 479 (2016)

Fidelity to Our Imperfect Constitution: A Reply to Five Views, 9 PROBLEMA: YEARBOOK OF PHILOSOPHY AND THEORY OF LAW (forthcoming)

Comment on Amendment-Metrics: The Good, the Bad and the Frequently Amended Constitution, in THE FOUNDATIONS AND TRADITIONS OF CONSTITUTIONAL AMENDMENT (Richard Albert, Xenophon Contiades and Alkmene Fotiadou eds., Hart Publishing, forthcoming)

Rewriting Romer: From Illegitimate Emotions to Inadequate Reasons, in LAW AND EMOTION (Fabian Bernhardt and Hilge Landweer eds., forthcoming)

SCHOLARLY PRESENTATIONS AND CONFERENCES

“Constructing the Substantive Constitution,” presented at Association of American Law Schools Conference on Constitutional Law, June 12-16, 1993

“Constructing the Substantive Constitution,” presented at Fordham University School of Law Faculty Work-in-Progress Colloquium, September 24, 1993

“Constructing the Substantive Constitution,” presented at New York University School of Law Colloquium on Constitutional Theory, October 5, 1993

“We the Exceptional American People,” presented at Georgetown University Law Center Discussion Group on Constitutional Law, December 4-5, 1993

“We the Exceptional American People,” presented at Princeton University Conference on Constitutional Theory, May 12-13, 1995

- “Securing Deliberative Autonomy,” presented at Ohio State Legal Theory Workshop, April 8, 1994
- “Securing Deliberative Autonomy,” presented at Fordham University School of Law Faculty Work-in-Progress Colloquium, March 6, 1995
- “Securing Deliberative Autonomy,” presented portions at Georgetown University Law Center Discussion Group on Constitutional Law, December 9-10, 1995
- “Fidelity to Our Imperfect Constitution,” presented at Fordham University School of Law Symposium on “Fidelity in Constitutional Theory,” September 20-21, 1996
- “Fidelity to Our Imperfect Constitution,” presented in Western New England College School of Law Clason Speaker Series, October 3, 1996
- “Constitutional Tragedy in Dying: Or Whose Tragedy Is It, Anyway?,” presented at Association of American Law Schools Annual Meeting, panel on “Constitutional Tragedies,” January 4-7, 1997
- “Constitutional Tragedy in Dying: Responses to Some Common Arguments Against the Constitutional Right to Die,” presented at *Fordham Urban Law Journal* Symposium on “Health Care, Poverty and Autonomy,” February 26, 1997
- “In Search of a Substantive Republic,” presented portions at American Political Science Association Annual Meeting, panel on “Varieties of Constitutional Thinking for the Good Society,” August 28-31, 1997
- “Some Questions for Civil-Society Revivalists,” presented at Georgetown University Law Center Discussion Group on Constitutional Law, December 6-7, 1997
- “Some Questions for Civil-Society Revivalists,” presented at Boston University School of Law Faculty Workshop, March 5, 1998
- “We the Unconventional American People,” presented at Fordham University School of Law Faculty Work-in-Progress Colloquium, April 7, 1998
- “We the Unconventional American People,” presented at Georgetown University Law Center Discussion Group on Constitutional Law, December 5-6, 1998
- “The Parsimony of Libertarianism,” presented at Association of American Law Schools Annual Meeting, panel on “The Structure of Liberty,” January 6-10, 1999
- “Fidelity, Basic Liberties, and the Specter of *Lochner*,” presented at Conference on “Fidelity, Economic Liberty, and 1937,” February 27, 1999, William & Mary School of Law
- “Some Questions for Civil Society-Revivalists,” presented at Fordham University School of Law Faculty Workshop Series, April 15, 1999

- “The Canon and the Constitution Outside the Courts,” presented at Georgetown University Law Center Discussion Group on Constitutional Law, December 4-5, 1999
- “The Constitution Outside the Courts,” presented at Fordham University School of Law Faculty Workshop Series, February 18, 2000
- “The Constitution Outside the Courts,” presented at Harvard University Center for Ethics and the Professions Seminar, March 22, 2000
- “The Natural Rights-Based Justification for Judicial Review,” presented at Fordham University School of Law Conference on “The Constitution and the Good Society,” September 22-23, 2000
- “Fidelity to Natural Law and Natural Rights in Constitutional Interpretation,” presented at Fordham University School of Law Natural Law Colloquium, November 20, 2000
- “*Bush v. Gore*: Constitutionalist Though not Constitutional?” (with Sotirios A. Barber), presented at Georgetown/PEGS Discussion Group on Constitutional Law, March 9-10, 2001
- “The Lawyer as Citizen,” presented at Fordham University School of Law Legal Ethics Colloquium, November 8-9, 2001
- “Taking Rights Reasonably and Responsibly,” presented at Georgetown/PEGS Discussion Group on Constitutional Law, November 30-December 1, 2001
- “Are We All Originalists Now? I Hope Not!,” presented at AALS/APSA Conference on Constitutional Law, June 5-8, 2002
- “Are We All Originalists Now? I Hope Not!,” presented as the Alpheus T. Mason Lecture in Constitutional Law & Political Thought, James Madison Program in American Ideals and Institutions, Princeton University, September 19, 2002
- “The Missing Selves in Constitutional Self-Government,” presented in Symposium on “Theories of Constitutional Self-Government,” Fordham University School of Law, November 15, 2002
- “War and the Constitution” (with Sotirios A. Barber), presented at Georgetown/PEGS Discussion Group on Constitutional Law, December 6-7, 2002
- “The New Constitutional Order and the Heartening of Conservative Constitutional Aspirations,” presented at Georgetown/Maryland Discussion Group on Constitutional Law, April 4-5, 2003
- Invited Participant, First Annual Constitutional Theory Conference, Vanderbilt University Law School, April 11-12, 2003

- “Are We All Originalists Now? I Hope Not!,” presented at University of Illinois College of Law, September 25, 2003
- “*Lawrence’s Republic*,” presented in Conference on the Scholarship of Frank I. Michelman, University of Tulsa College of Law, October 9-10, 2003
- “Securing Deliberative Democracy,” presented at Fordham University School of Law Conference on “Rawls and the Law,” November 7-8, 2003
- “Are We All Originalists Now? I Hope Not!,” presented in Yale Legal Theory Workshop, Yale Law School, November 13, 2003
- “Natural Law: Its Plausible Scope and Relation to Public Reason – A Comment on Kent Greenawalt’s Lecture,” Fordham University School of Law Natural Law Colloquium, February 4, 2004
- “Are We All Originalists Now? I Hope Not!,” presented in Michigan State University College of Law Faculty Workshop, May 5, 2004
- “Interbranch Conflict and Constitutional Maintenance: The Case of Executive Prerogative,” Workshop on Democracy and the Rule of Law, University of Maryland, June 4, 2004
- “The Place of History and Philosophy in the Moral Reading of the American Constitution,” presented at Princeton University Conference, “Exploring Law’s Empire: The Jurisprudence of Ronald Dworkin,” September 18, 2004
- “Constitutional Decision Rules,” presented at Second Annual Constitutional Theory Conference, New York University School of Law, October 22-23, 2004
- “Judicial Review Without Judicial Supremacy,” presented in Symposium on “Theories of Taking the Constitution Seriously Outside the Courts,” Fordham University School of Law, November 19, 2004
- “Constitutionalism, Judicial Review, and Progressive Change” (with Linda C. McClain), presented at Georgetown/Maryland Discussion Group on Constitutional Law, March 4-5, 2005
- “Constitutional Interpretation: The Basic Questions” (with Sotirios A. Barber), presented in Fordham University School of Law Faculty Workshop Series, April 7, 2005
- “‘There Is Only One Equal Protection Clause’: An Appreciation of Justice Stevens’s Equal Protection Jurisprudence,” presented in Conference on “The Jurisprudence of Justice Stevens,” Fordham University School of Law, September 30-October 1, 2005
- “Constitutionalism, Judicial Review, and Progressive Change” (with Linda C. McClain), presented at Fordham University School of Law Faculty Workshop Series, October 28, 2005

- “Securing Constitutional Democracy: The Case of Autonomy,” presented at Association of American Law Schools Annual Meeting, author meets critics panel, January 7, 2006
- Moderator, conference on “The Internal Point of View in Law and Ethics,” Fordham University School of Law, February 9-10, 2006
- “Securing Constitutional Democracy: The Case of Autonomy,” presented at Georgetown/Maryland Discussion Group on Constitutional Law, March 3-4, 2006
- “The New Constitutional Order and the Heartening of Conservative Constitutional Aspirations,” presented in Conference on “A New Constitutional Order?,” Fordham University School of Law, March 24-25, 2006
- “Securing Constitutional Democracy: The Case of Autonomy,” presented at the Third Annual Constitutional Theory Conference, University of Pennsylvania School of Law, April 7-8, 2006
- “Constitutional Interpretation: The Basic Questions” (with Sotirios A. Barber), presented in Fordham University School of Law Faculty Workshop Series, September 21, 2006
- “Constitutional Interpretation: The Basic Questions” (with Sotirios A. Barber), presented at Maryland Discussion Group on Constitutional Law, December 1-2, 2006
- “The Incredible Shrinking Constitutional Theory: From the Partial Constitution to the Minimal Constitution,” presented in Symposium on “Minimalism versus Perfectionism in Constitutional Theory” (on my *Securing Constitutional Democracy: The Case of Autonomy* and Cass R. Sunstein’s *Radicals in Robes*), Fordham University School of Law, December 8, 2006
- “The Incredible Shrinking Constitutional Theory: From the Partial Constitution to the Minimal Constitution,” presented at University of North Carolina School of Law, January 16, 2007
- “Natural Law and Human Rights: A Comment on Michael J. Perry’s Lecture,” Fordham University School of Law Natural Law Colloquium, February 20, 2007
- “The Incredible Shrinking Constitutional Theory: From the Partial Constitution to the Minimal Constitution,” presented at Boston University School of Law, February 27, 2007
- “Constitutional Interpretation as Constitutional Maintenance,” Symposium on Walter F. Murphy’s *Constitutional Democracy*, Princeton University, March 2, 2007
- “What’s New About the New Originalism?,” presented at American Political Science Association Annual Meeting, August 30-September 2, 2007
- “Rewriting *Brown*, Resurrecting *Plessy*,” presented at the Richard J. Childress Memorial

Lecture and Conference, “*Cooper v. Aaron*: Little Rock and the Legacy of *Brown*,”
Saint Louis University School of Law, October 5, 2007

Moderator, conference on “The Role of the President in the 21st Century,” panel on “Sources
of Presidential Power,” Boston University School of Law, October 11-12, 2007

“Securing Constitutional Democracy: The Case of Autonomy,” presented in the Georgetown
University Law Center Seminar on Recent Books on the Constitution, October 15,
2007

“Successful Failures of the American Constitution,” presented at the Princeton University
Conference on “The Limits of Constitutional Democracy,” February 14-16, 2008

“Successful Failures of the American Constitution,” presented at the University of Maryland
Discussion Group on Constitutional Law, March 7-8, 2008

“Are We All Originalists Now? I Hope Not!,” Georgia State University College of Law
Faculty Lunch Series, March 13, 2008

“Securing Constitutional Democracy: The Case of Autonomy,” presented in the Brown
University Graduate Seminar on Democratic Theory and the Law, April 16, 2008

“Are We All Originalists Now? I Hope Not!,” Boston University School of Law Faculty
Workshop, April 24, 2008

Moderator, “Evolution and Morality: Perspective from Philosophy,” Annual Meeting of the
American Society for Political and Legal Philosophy, held in conjunction with
Annual Meeting of the American Political Science Association, August 28-29, 2008

“Securing Constitutional Democracy: The Case of Autonomy,” presented in the Harvard
University Department of Government Seminar on Judicial Review and Democracy,
October 27, 2008

“Toward a More Democratic Congress?,” presented in Conference on “The Most Disparaged
Branch: The Role of Congress in the 21st Century,” Boston University School of
Law, November 14-15, 2008

“Constitutional Theory and the Future of the ‘Unitary’ Executive,” presented at the Randolph
Thresher Symposium, “Executive Power: New Directions for the New Presidency?,”
Emory University School of Law, February 12, 2009

“Comments on Robert T. Tsai, *Eloquence and Reason: Creating a First Amendment
Culture*,” presented at the Annual Meeting of the Association for the Study of Law,
Culture and the Humanities, Boston, April 3, 2009

“Successful Failures of the American Constitution,” Boston University School of Law
Faculty Workshop, April 16, 2009

- “Are We All Originalists Now? I Hope Not!,” University of Chicago Constitutional Law Workshop, May 7, 2009
- “The Misconceived Quest for the Original Public Meaning,” presented in a panel on “The Original Meaning of the Privileges or Immunities Clause,” Annual Meeting of the Law and Society Association, Denver, May 28, 2009
- “Securing Constitutional Democracy: The Case of Autonomy,” presented in “The Complexities of Securing Rights and Democracy: A Roundtable on Corey Brettschneider’s *Democratic Rights: The Substance of Self-Government* and James E. Fleming’s *Securing Constitutional Democracy: The Case of Autonomy*,” Annual Meeting of the American Political Science Association, Toronto, September 5, 2009
- “Taking Responsibilities as well as Rights Seriously,” presented in “Justice for Hedgehogs: A Conference on Ronald Dworkin’s Forthcoming Book,” Boston University School of Law, September 25-26, 2009
- “Are We All Originalists Now? I Hope Not!,” presented at the University of Wisconsin Discussion Group on Constitutional Law, October 2-3, 2009
- Roundtable Leader, Conference on “The Place of Precedent in Objective Law,” University of Texas, October 16-17, 2009
- Commentator on Richard Epstein’s *Principles for a Free Society*, Boston University School of Law Federalist Society Program, November 6, 2009
- Moderator and Organizer, “Getting to the Rule of Law,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the Association of American Law Schools, January 6, 2010
- “Are We All Originalists Now? I Hope Not!,” University of San Diego Law School Works-in-Progress Conference on Originalism, February 5-6, 2010
- Commentator on Gerald J. Postema’s “Law’s Ethos: Reflections on a Public Practice of Illegality,” in “Rights, Equality, and Justice: A Conference Inspired by the Moral and Legal Theory of David Lyons,” Boston University School of Law, March 12-13, 2010
- Commentator, “Adequacy of Current Presidential Succession Law in Light of the Constitution and Policy Considerations,” Conference on “The Adequacy of the Presidential Succession System in the 21st Century: Filling the Gaps and Clarifying the Ambiguities in Constitutional and Extraconstitutional Arrangements,” Fordham University School of Law, April 16-17, 2010
- “Rights, Responsibilities, and Virtues,” chs. 1 & 2 (with Linda C. McClain), Boston University School of Law Faculty Workshop, April 29, 2010

An Appreciation of Walter F. Murphy, Princeton University Memorial Service for Walter F. Murphy, June 9, 2010

“Respecting Freedom and Cultivating Virtues in Justifying Constitutional Rights,” (with Linda C. McClain), Symposium on Michael J. Sandel’s *Justice: What’s the Right Thing to Do?*, Boston University School of Law, October 14, 2010

“Comments on Dorf & Morrison’s *Constitutional Law*,” Symposium on Michael C. Dorf & Trevor W. Morrison’s *Constitutional Law*, Cornell Law School, October 25, 2010

“The Myth of Strict Scrutiny for Fundamental Rights Under the Due Process Clause,” Wayne State University Law School Faculty Workshop, November 18, 2010

“The Myth of Strict Scrutiny for Fundamental Rights Under the Due Process Clause,” Princeton University Constitutional Law “Schmooze” on “Invisible Constitutions,” Princeton University Program in Law and Public Affairs, December 3-4, 2010

Moderator and Organizer, “Passions and Emotions,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the American Philosophical Association, Eastern Division, December 29, 2010

“Getting Some Traction on Slippery Slope Arguments: Some Questions for and Comments concerning Eugene Volokh’s ‘Slippery Slopes,’” Boston University School of Law Federalist Society Program, February 16, 2011

“The Myth of Strict Scrutiny for Fundamental Rights Under the Due Process Clause,” Boston Area Public Law Study Group, March 14, 2011

“The Balkinization of Originalism,” Symposium on Jack Balkin’s *Living Originalism*, University of Illinois College of Law, April 8-9, 2011

“Rights, Responsibilities, and Virtues,” ch. 6 (with Linda C. McClain), Boston University School of Law Faculty Workshop, April 14, 2011

Moderator and Co-Organizer, “Federalism and Subsidiarity,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the American Political Science Association, September 1-4, 2011

“The Constitution of Responsible Citizenship” (with Linda C. McClain), presented as the Constitution Day Lecture at Northeastern University, September 22, 2011

“Living Originalism and Living Constitutionalism as Moral Readings of the American Constitution,” presented at the Symposium on Jack M. Balkin’s *Living Originalism* and David A. Strauss’s *The Living Constitution*, Boston University School of Law, November 3, 2011

- “Re-Arguing *Roe v. Wade*: Privacy versus Equality or Privacy together with Equality?,” presented at the Women’s Law Association and the American Constitution Society Program on “Re-Arguing *Roe v. Wade*,” Boston University School of Law, January 26, 2012
- “The Myth of Strict Scrutiny for Fundamental Rights Under the Due Process Clause,” (with Linda C. McClain), Boston University School of Law Faculty Workshop, April 19, 2012
- Invited Participant, “Marriage, Morality, and the Law”: A Roundtable Workshop on Stephen Macedo’s Walter F. Murphy Lecture on “The Constitution and the Future of Marriage,” Princeton University Program in Law and Public Affairs, May 3-4, 2012
- “Fit, Justification, and Fidelity in Constitutional Interpretation,” presented at the Symposium on Abner S. Greene’s *Against Obligation* and L. Michael Seidman’s *On Constitutional Disobedience*, held at Boston University School of Law, November 8, 2012
- “The New Originalist Manifesto,” presented at University of Pennsylvania Law School Journal of Constitutional Law Symposium, January 25, 2013
- “Are We All Originalists Now? I Hope Not!,” presented at *Texas Law Review* Symposium, February 15-16, 2013
- “The Inclusiveness of the New Originalism,” presented at *Fordham Law Review* Symposium on “The New Originalism in Constitutional Law,” March 1-2, 2013
- “The New Originalist Manifesto,” presented at Boston University School of Law Faculty Workshop, March 28, 2013
- “*Roe*: 40 Years Later,” presented at Greater Boston Area American Constitution Society Symposium on “Constitutional Fidelity,” Boston University School of Law, April 13, 2013
- “The Present State of Constitutional Theory,” Annual Meeting of the American Political Science Association,” August 31, 2013
- New Scholars Panel: Commentator on William Partlett, “We the Mediated People,” and Claudia E. Haupt, “Active Symbols,” Boston College Law School, Clough Center on Constitutional Democracy, October 7, 2013
- “The Myth of Strict Scrutiny for Fundamental Rights,” Roger S. Aaron Lecture, Dartmouth College, Nelson A. Rockefeller Center for Public Policy and the Social Sciences, October 31, 2013
- “Ordered Gun Liberty: Rights with Responsibilities and Regulation,” (with Linda C. McClain), presented at Boston University School of Law Symposium, “America’s

Political Dysfunction: Constitutional Connections, Causes, and Cures,” November 15-16, 2013

Commentator on John McGinnis and Michael Rappaport, *Originalism and the Good Constitution*, Harvard Law School Federalist Society Event, November 21, 2013

“Fidelity and Change in Constitutional Interpretation,” AALS Annual Meeting Academic Symposium, “Comparative Constitutional Change: New Perspectives on Formal and Informal Amendment,” January 5, 2014

“Dworkin’s Perfectionism,” presented at International Conference in Honor of Ronald Dworkin,” National Autonomous University of Mexico (UNAM), Mexico City, February 13-14, 2014

Moderator, “Compromise,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the American Philosophical Association, Central Division, February 27-28, 2014

“Fidelity, Change, and the Good Constitution,” presented at Boston University School of Law Faculty Workshop, March 6, 2014

“Ordered Gun Liberty: Rights with Responsibilities and Regulation,” (with Linda C. McClain), presented at 2014 American Studies Summer Institute, John F. Kennedy Presidential Library and Museum and University of Massachusetts Boston, July 14, 2014

Moderator, conference on “Wealth,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the American Political Science Association, August 28-29, 2014

“Is Originalism the Law? Are We All Originalists Now?,” debate with William Baude, Yale Law School Federalist Society Event, October 7, 2014

“Fidelity to Our Living Constitution,” presented at Boston University School of Law Faculty Workshop, October 16, 2014

“Is It Time to Rewrite the Constitution? Fidelity Through Perfecting Our Imperfect Constitution,” University of Wisconsin Center for the Study of Liberal Democracy Symposium, November 7-8, 2014

“‘There Is Only One Equal Protection Clause’: An Appreciation of Justice Stevens’s Equal Protection Jurisprudence,” presented in Conference on “The Civil Rights Act of 1964 at 50,” Boston University School of Law, November 14-15, 2014

“Fidelity to Our Imperfect Constitution,” presented and featured in Conference on “Moral Readings versus Originalisms,” National Autonomous University of Mexico, February 16-17, 2015

- “Constitutionalism: The Backbone of Objective Law: A Comment,” debate with Tara Smith, Harvard Law School Federalist Society Event, March 5, 2015
- “Is It Time to Rewrite the Constitution? Fidelity Through Perfecting Our Imperfect Constitution,” presented at University of Houston Hobby Center for Public Policy Seminar on the Rule of Law, April 7, 2015
- “Fidelity and Change in Constitutional Interpretation,” Discussion Panel at Boston College Law School Clough Center for the Study of Constitutional Democracy, April 21, 2015
- “Fidelity to Our Imperfect Constitution: For Moral Readings and Against Originalisms,” presented at Kinder Forum on Constitutional Democracy, University of Missouri Law School, April 30, 2015
- “Democracy after Totalitarianism: The Historical Foundations of Juristocracy,” comment on Sung-Wook Paik’s Paper, Kinder Forum on Constitutional Democracy, University of Missouri Department of Political Science, April 30, 2015
- “Amendment-Metrics: The Good, the Bad, and the Frequently Amended Constitution,” comment on Xenophon Contiades & Alkmene Fotiadou’s paper, BC-IACL Workshop on Comparative Constitutional Amendment, Boston College Law School Clough Center for the Study of Constitutional Democracy, May 15, 2015
- “*Obergefell*, Constitutional Interpretation, and the Future of Marriage,” Constitution Day Lecture (sponsored by the Kinder Institute on Constitutional Democracy) and David Aldrich Nelson Lecture in Constitutional Jurisprudence (sponsored by the Alexander Hamilton Institute), University of Missouri, September 17, 2015 (with Linda C. McClain)
- Response to comments by Jack Balkin, Jamal Greene, and Gary Lawson in book symposium on my *Fidelity to Our Imperfect Constitution*, held at Boston University School of Law as a Constitution Day Program, September 24, 2015
- “*Obergefell*, Constitutional Interpretation, and the Future of Marriage,” Conference on Legal and Political Perspectives on the Recent US Supreme Court, Boston College, Clough Center for the Study of Constitutional Democracy, October 30, 2015
- “From *Griswold* to *Roe*,” presented in program on “The Fiftieth Anniversary of *Griswold v. Connecticut*,” Boston University School of Law, February 8, 2016
- “*Obergefell*, Constitutional Interpretation, and the Future of Marriage,” presented at Maryland Discussion Group on Constitutional Law, March 4-5, 2016
- “Fidelity to Our Imperfect Constitution: For Moral Readings and Against Originalisms,” presented at Seminar on Recent Books in Constitutional Law, Georgetown Law, March 15, 2016

“Was Justice Scalia Right about the Slippery Slope to ‘the End of All Morals Legislation’? After Same-Sex Marriage, Is Polygamy Next?” Inaugural Lecture as the Honorable Paul J. Liacos Professor, Boston University School of Law, April 4, 2016

“Fidelity to Our Imperfect Constitution: For Moral Readings and Against Originalisms,” presented at University of Houston Hobby Center for Public Policy Seminar on Judicial Review: What Does Morality Have to Do With It?, April 7, 2015

“Marriage Equality and the Slippery Slope to Polygamy,” International Society of Family Law North American Regional Conference, May 24, 2016

ORGANIZATION OF CONFERENCES AND SYMPOSIA

Co-Organizer, Conference on "Fidelity in Constitutional Theory," held September 20-21, 1996 and published in 65 FORDHAM LAW REVIEW 1247-1818 (1997)

Co-Editor, Symposium on “Legal and Constitutional Implications of the Calls to Revive Civil Society,” published in 75 CHICAGO-KENT LAW REVIEW 289-612 (2000)

Organizer, Conference on “The Constitution and the Good Society,” held September 22-23, 2000 and published in 69 FORDHAM LAW REVIEW 1569-2200 (2001)

Organizer, Symposium on “Theories of Constitutional Self-Government,” held November 15, 2002 and published in 71 FORDHAM LAW REVIEW 1721-1825 (2003) (on Christopher L. Eisgruber’s *Constitutional Self-Government* (2001) and Jed Rubenfeld’s *Freedom and Time: A Theory of Constitutional Self-Government* (2001))

Co-Organizer, Conference on “Integrity in the Law,” held February 7, 2003 and published in 72 FORDHAM LAW REVIEW 251-425 (2003)

Organizer, Conference on “Rawls and the Law,” held November 7-8, 2003 and published in 72 FORDHAM LAW REVIEW 1381-2175 (2004)

Organizer, Symposium on “Theories of Taking the Constitution Seriously Outside the Courts,” held November 19, 2004 and published in 73 FORDHAM LAW REVIEW 1341-1476 (2005) (on Larry D. Kramer’s *The People Themselves: Popular Constitutionalism and Judicial Review* (2004) and Lawrence G. Sager’s *Justice in Plainclothes: A Theory of American Constitutional Practice* (2004))

Organizer, Conference on “A New Constitutional Order?,” held March 24-25, 2006 and published in 75 FORDHAM LAW REVIEW 471-960 (2006)

Organizer, Conference on “The Most Disparaged Branch: The Role of Congress in the 21st Century,” held November 14-15, 2008 and published in 89 BOSTON UNIVERSITY LAW REVIEW 331-870 (2009)

Organizer, Conference on “Ronald Dworkin’s *Justice for Hedgehogs*,” held September 25-

26, 2009 and published in 90 BOSTON UNIVERSITY LAW REVIEW 465-1087 (2010)

Organizer, Conference on “Getting to the Rule of Law,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the Association of American Law Schools, January 6, 2010, published in *Nomos L: Getting to the Rule of Law* (New York University Press, 2011)

Co-Organizer, “Rights, Equality, and Justice: A Conference Inspired by the Moral and Legal Theory of David Lyons,” March 12-13, 2010 and published in 90 BOSTON UNIVERSITY LAW REVIEW 1667-1874 (2010)

Organizer, Conference on Michael J. Sandel’s *Justice: What’s the Right Thing To Do?*, held October 14, 2010 and published in 91 BOSTON UNIVERSITY LAW REVIEW 1301 (2011)

Organizer, Conference on “Passions and Emotions,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the American Philosophical Association, Eastern Division, December 29, 2010, published in *Nomos LIII: Passions and Emotions* (New York University Press, 2013)

Co-Organizer, “Federalism and Subsidiarity,” Annual Meeting of the American Society for Political and Legal Philosophy, held in conjunction with the Annual Meeting of the American Political Science Association, September 1-4, 2011, published in *Nomos LV: Federalism and Subsidiarity* (New York University Press, 2014)

Organizer, Symposium on “Originalism and Living Constitutionalism” (on Jack M. Balkin’s *Living Originalism* and David A. Strauss’s *The Living Constitution*), held at Boston University School of Law, November 3, 2011 and published in 92 BOSTON UNIVERSITY LAW REVIEW 1127 (2012)

Organizer, Symposium on “Constitutional Obligation and Disobedience” (on Abner S. Greene’s *Against Obligation* and L. Michael Seidman’s *On Constitutional Disobedience*), held at Boston University School of Law, November 8, 2012 and published in 93 BOSTON UNIVERSITY LAW REVIEW 1237 (2013)

Organizer, Conference on “America’s Political Dysfunction: Constitutional Connections, Causes, and Cures,” held at Boston University School of Law, November 15-16, 2013 and published in 94 BOSTON UNIVERSITY LAW REVIEW 575 (2014)

Organizer, Symposium on “Competing Theories of Federalism: Utopia as Dystopia” (on Sotirios A. Barber’s *The Fallacies of States’ Rights* and Michael Greve’s *The Upside Down Constitution*) held in conjunction with Conference on “America’s Political Dysfunction: Constitutional Connections, Causes, and Cures,” at Boston University School of Law, November 15-16, 2013 and published in 94 BOSTON UNIVERSITY LAW REVIEW 1357 (2014)

Organizer, Symposium on Ronald Dworkin's *Religion without God*, published in 94 BOSTON UNIVERSITY LAW REVIEW 1201 (2014)

Organizer, Symposium on "War Powers and the Constitution" (on Stephen M. Griffin's *Long Wars and the Constitution* and Mariah Zeisberg's *War Powers: The Politics of Constitutional Authority*), held at Boston University School of Law, October 30, 2014 and published in 95 BOSTON UNIVERSITY LAW REVIEW 1233 (2015)

Organizer, Symposium on Ran Hirschl's *Comparative Matters: The Renaissance of Comparative Constitutional Law*, to be held at Boston University School of Law, November 12, 2015 and published in 96 BOSTON UNIVERSITY LAW REVIEW (2016)

PROFESSIONAL ASSOCIATIONS

American Bar Association

American Political Science Association

American Society for Political and Legal Philosophy

Editor of *Nomos*, the annual book of the ASPLP, 2008-12

Vice President, Law, January 2013-present

Incoming President, January 2016 (three-year term)

Association of American Law Schools

Committee on the Political Economy of the Good Society (PEGS)