

JONATHAN L. MARSHFIELD

Assistant Professor of Law
University of Nebraska College of Law
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ACADEMIC POSITIONS

University of Nebraska College of Law, Lincoln, NE

Appointments:

Assistant Professor of Law (tenure-track), 2019-present

Courses:

Civil Procedure I & II
Civil Rights Litigation
Remedies

Awards:

Professor of the Year (1L), 2020-21

Illustrative Service:

Pro Bono Committee, 2019-20, 2020-21
Curriculum Committee, 2020-21

University of Arkansas School of Law, Fayetteville, AR

Appointments:

Associate Professor of Law (with LRW tenure), 2018-2019
Associate Professor of Law (pre-tenure, LRW appointment), 2016-present
Assistant Professor of Law (tenure-track, LRW appointment), 2013-16

Courses:

Legal Research & Writing I & II
State & Local Government
Law of Constitutional Amendment (summer)
Law & Development (co-taught)
Cumulative teaching evaluations average 4.9 on five-point scale (5 highest)

Awards:

Outstanding University Faculty Member Top-Ten Finalist, 2015

Illustrative Service:

Member, Curriculum Committee, 2017-18, 2014-15
Member, Faculty Appointments Committee, 2016-17, 2015-16
Member, Dean Reappointment Committee, 2015-16
Member, International Legal Studies Committee, 2014-15
Faculty Advisor, Arkansas Law Notes (student publication), 2016-18
Faculty Advisor, Sports & Entertainment Law Society, 2015-18
Faculty Advisor, Hispanic Law Students Association, 2015-18

PUBLICATIONS

Law Review Articles

America's Misunderstood Constitutional Rights (work in progress, completed draft)

- Argues that although the Federal Bill of Rights operates as an important bulwark against abusive democratic majorities, state bills of rights are grounded in the belief that constitutional rights should protect democratic majorities from oppressive or evasive government.

Forgotten Limits on the Power to Amend State Constitutions, 114 NW. U. L. REV. 65 (2019).

- Argues that when state constitutions are amended outside of a convention, there are inherent substantive limits on amendment that courts should more readily enforce.

The Amendment Effect, 98 B.U. L. REV. 55 (2018).

- Theorizes and investigates whether frequent amendment of a constitution's text influences the practice of judicial review.

Amendment Creep, 115 MICH. L. REV. 215 (2016).

- Argues that although constitutional amendment rules are styled as procedural provisions, they are also repositories of important substance relevant to judicial resolution of many constitutional issues.

Decentralizing the Amendment Power, 19 LEWIS & CLARK L. REV. 963 (2016).

- Theorizes normative justifications for including subnational units in constitutional amendment processes and builds a taxonomy of decentralization mechanisms found in amendment rules around the world.

Models of Subnational Constitutionalism, 115 PENN ST. L. REV. 1151 (2011).

- Theorizes rationales for allowing subnational units in federal systems to draft constitutions and argues that subnational constitutions can facilitate broader constitutional engagement by making formal amendment more accessible.

Federalism and Political Competition in Emerging Democracies, 10 WASH. U. GLOB. STUD. L. REV. 297 (2011).

- Argues that federalism can promote constructive political competition by providing alternative forums for opposition parties and tests this hypothesis by examining political competition in post-apartheid South Africa.

Evaluating South Africa's Post-Apartheid Democratic Prospects through the Lens of Economic Development Theory, 9 RICH. J. GLOBAL L. & BUS. 431 (2010).

- Explores whether South Africa's post-apartheid financial data are consistent with economic conditions indicative of democratic stability.

Providing Meaningful Judicial Review of Municipal Redevelopment Designations: Redevelopment in New Jersey Before and After Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 40 RUTGERS L. J. 451 (2009) (with Hon. James R. Zazzali).

- Uncovers New Jersey's state constitutional history regarding economic redevelopment and identifies pressing state constitutional issues after *Kelo*.

Authorizing Subnational Constitutions in Transitional Federal States: South Africa, Democracy, and the KwaZulu-Natal Constitution, 41 VAND. J. TRANSNAT'L L. 585 (2008).

- Argues that subnational constitutions were critical in South Africa's transition to democracy and that they may be useful transitional institutions elsewhere.

Symposium Articles, Essays, and Book Chapters

Popular Regulation? State Constitutional Amendment and the Administrative State, 8 BELMONT L. REV. 342 (2021) (solicited symposium article).

- Argues that state constitutional amendments affect state agencies in significant but underappreciated ways that have no analog in federal administrative law and theory.

Professor Robert F. Williams – Teacher, Mentor, Scholar & Friend, 72 RUTGERS L. REV. 1219 (2020).

- Festschrift essay honoring career of Robert F. Williams.

State Constitutions and the Interaction between Formal Amendment and “Unwritten” Constitutions, in AMENDING AMERICA'S UNWRITTEN CONSTITUTION (Richard Albert, Ryan Williams, Yaniv Roznai, eds.) (forthcoming, solicited).

- Argues that even though state constitutions are easily and frequently amended, they are nevertheless supplemented by informal “unwritten” constitutions.

Political Functions and Limitations of Contemporary State Constitutions in the United States, in DOES QUEBEC NEED A WRITTEN CONSTITUTION? (Richard Albert ed., McGill-Queen's Univ. Press) (forthcoming, solicited).

- Argues that state constitutions in the United States serve important political functions that may be relevant and helpful to constitutional designers in other political systems.

Unpacking America's Constitutional Layers, 55 TULSA L. REV. 239 (2019).

- Solicited review of JEFFREY S. SUTTON, 51 IMPERFECT SOLUTIONS (2018) and LUCAS A. POWE, JR., AMERICA'S LONE STAR CONSTITUTION (2018).

The People and Their Constitutions, 71 RUTGERS L. REV. 1233 (2019).

- Solicited review of JOHN DINAN, STATE CONSTITUTIONAL POLITICS: GOVERNING BY AMENDMENT IN THE AMERICAN STATES (2018).

Courts and Informal Constitutional Change in the States, 52 NEW ENG. L. REV. (2018) (invited keynote article for paper symposium).

- Presents original data showing that although state constitutions are amended regularly, courts are more active in reforming rights than amendment actors.

Respecting the Mystery of Constitutional Change, 65 BUFF. L. REV. 1057 (2018) (solicited).

- Argues that there are many inter-related factors that influence whether constitutional reform manifests in formal amendment or informal change.

Improving Amendment, 69 ARK. L. REV. 477 (2016) (symposium).

- Proposes a new Jeffersonian model of state constitutional amendment that replaces the statewide referendum with debate and ratification by county legislative bodies.

Foreign Precedent in State Constitutional Interpretation, 53 DUQ. L. REV. 413 (2015) (solicited).

- Argues that concerns regarding the use of foreign precedent to interpret the United States Constitution may be inapplicable to state constitutional interpretation and that foreign precedent may have special salience for state constitutional interpretation.

Dimensions of Constitutional Change, 43 RUTGERS L.J. 593 (2013) (invited book review).

- Reviews CONSTITUTIONAL DYNAMICS IN FEDERAL SYSTEMS – SUBNATIONAL PERSPECTIVES (Michael Burgess & G. Alan Tarr eds. 2012).

A Tribute to Chief Justice James R. Zazzali: More Than a “Caretaker”, 59 RUTGERS L. REV. 667 (2007) (with Gregory L. Acquaviva & David M. Stauss).

- Provides a substantive tribute to the jurisprudence of the Chief Justice of the Supreme Court of New Jersey.

SELECT ACADEMIC PRESENTATIONS

Faculty Workshop, University of Kansas School of Law, April, 2021 (“America’s Misunderstood Constitutional Rights”).

Symposium Presentation, Belmont College of Law, January, 2021 (“Popular Regulation? State Constitutional Amendment and the Administrative State”)

Invited Presentation, Catholic University of Pernambuco, Recife, Brazil, September, 2019 (“The Structure and Application of Contemporary State Constitutional Rights”).

Invited Key-Note Address and Article, New England School of Law, Boston, MA, April 2018 (“Courts and Informal Constitutional Change in the States”).

Faculty Workshop, University of Oklahoma College of Law, Norman, OK, November, 2016 (“The Amendment Effect”).

Faculty Workshop, University of Arkansas, Fayetteville, AR, September, 2016 (“The Amendment Effect”).

Faculty Workshop, University of Memphis, Cecil C. Humphreys School of Law, Memphis, TN, February, 2016 (“Amendment Creep”).

Symposium Presentation, University of Arkansas School of Law, Fayetteville, AR, January 2016 (“Improving Amendment”, co-organizer of symposium with Richard Albert).

Faculty Workshop, University of Arkansas, Fayetteville, AR, September, 2015 (“Amendment Creep”).

Conference Workshop, ICON-S Conference on Public Law, New York University, New York, NY, July 2015 (“Amendment Creep”).

Junior Faculty Workshop, Washington University School of Law, St. Louis, MO, September, 2014 (“Decentralization in Constitutional Amendment Rules”).

Faculty Workshop, University of Arkansas, Fayetteville, AR, September, 2014 (“Decentralization in Constitutional Amendment Rules”).

Conference Workshop, International Association of Constitutional Law, University of Oslo, Oslo, Norway, June, 2014 (“Subnationalism and Processes of Constitutional Change”).

Symposium Presentation, The Dickinson School of Law at Penn State University, State College, PA, September, 2010 (“Models of Subnational Constitutionalism”).

CONSULTING & ACADEMIC SERVICE

Editorial Board Member – REVIEW OF CONSTITUTIONALISM AND CONSTITUTIONAL CHANGE (solicited inaugural member of new peer-reviewed journal focusing on constitutional change).

Referee: PUBLIUS – THE JOURNAL OF FEDERALISM (Oxford Journals), NATIONAL JOURNAL OF CONSTITUTIONAL LAW (Canada).

Constitutional Adviser – Advised foreign officials in Ukraine (in coordination with The Public International Law & Policy Group).

Constitutional Adviser – Advise the Arkansas Public Policy Center (provide assessments regarding proposed state constitutional changes).

Legislation Adviser – Advise the Arkansas Bar Association (provide assessments of state constitutional issues related to proposed legislation).

EDUCATION

New York University School of Law, New York, NY

LL.M. (Legal Theory), 2010

Thesis: *State Constitutionalism in Comparative and Normative Context*

Thesis advisers: Liam B. Murphy & Roderick M. Hills, Jr.

Rutgers University School of Law, Camden, NJ

J.D. (High Honors), 2006

Rutgers Law Journal, Notes Editor, 2005-06; Staff Editor, 2004-05

M. Donald Kepner Award (highest grade in Federal Courts)

First Year Property Award (highest grade in Property)

First Year Legal Writing Award

Research Assistant to Professors Robert F. Williams and Michael A. Carrier

Cedarville University, Cedarville, OH

B.A. (Honors), 2002

CLERKSHIPS

Hon. Robert B. Kugler, U.S. District Court for the District of N.J., Camden, NJ

Law Clerk, 2010-11

Hon. James R. Zazzali, N.J. Supreme Court, Trenton, NJ

Law Clerk, 2006-07

PRACTICE EXPERIENCE

Saul Ewing LLP, Princeton, NJ

Litigation Associate, 2007-09, 2010, 2012-13

Litigated broad range of complex commercial disputes in state and federal court; drafted motion and appellate briefs; took and defended expert and lay depositions as lead counsel; examined witnesses at hearings; developed litigation strategies directly with clients; managed junior attorneys and large-scale electronic discovery projects.

Litigation Examples:

In re September 11th Consolidated Cases (S.D.N.Y.) - represented multiple Cantor Fitzgerald entities against American Airlines regarding business losses stemming from acts of international terror on September 11, 2001.

BGC Partners, Inc. v. Board of Trade of the City of Chicago, Inc., et al. (N.Y. Sup. Ct.) - represented BGC Partners, Inc., a Cantor Fitzgerald affiliate, against the Chicago Board of Trade and the Chicago Mercantile Exchange regarding electronic trading platform licensing rights.

Latham & Watkins LLP, Newark, NJ

Litigation Associate, 2011-12

Litigated complex commercial and environmental matters; drafted briefs and research memoranda; defended depositions; worked directly with environmental consultants; managed the review and production of electronically stored information; represented multiple third-party defendants in environmental superfund litigation.

REFERENCES (Alphabetically)

Richard Albert
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Secretary General of ICON-S: The
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