

Kermit Roosevelt III

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Philadelphia PA 19104
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- Experience** UNIVERSITY OF PENNSYLVANIA LAW SCHOOL, Philadelphia, PA: Professor of Law (Conflict of Laws, Constitutional Law) 2007-; Assistant Professor 2002-2007.
- MAYER, BROWN & PLATT, Chicago, IL: Associate, appellate litigation. (2000-2002)
- JUSTICE DAVID H. SOUTER, Washington, DC: Law Clerk (1999-2000)
- YALE LAW SCHOOL, New Haven, CT: Senior Research Scholar, Yale Law School. Resident Fellow, Information Society Project (1998-1999)
- JUDGE STEPHEN F. WILLIAMS, Washington, DC: Law Clerk (1998-1999)
- Admissions** United States Supreme Court; United States Courts of Appeals for the Fifth and Seventh Circuits; United States District Court for the Central District of Illinois; New York; Illinois.
- Education** YALE LAW SCHOOL, New Haven, CT
J.D., 1997
- Israel H. Peres Prize, 1997
- Senior Editor, Yale Law Journal
- Editor, Yale Journal on Regulation, 1995
- HARVARD UNIVERSITY, Cambridge, MA
A.B., Philosophy, 1993
- Summa cum laude
- Phi Beta Kappa (Junior Election)
-
- Academic Publications** *CONFLICT OF LAWS: CASES—COMMENTS—QUESTIONS* (West, 8th ed. 2010) (with David Currie, Herma Hill Kay, and Larry Kramer)

Books

CONFLICT OF LAWS: CONCEPTS AND INSIGHTS (Foundation Press 2010)

THE MYTH OF JUDICIAL ACTIVISM: MAKING SENSE OF SUPREME COURT DECISIONS (Yale University Press, 2006)

**Law Review
Articles**

Choice of Law in Federal Courts
Forthcoming NORTHWESTERN L. REV. 2012

Not as Bad as You Think: Why Garcetti v. Ceballos Makes Sense
14 U. Pa. J. Const. L. 631 (2012)

Detention and Interrogation in the Post-9/11 World (Donahue Lecture), 42 SUFFOLK U. L. REV. 1 (2008)

Justice Scalia's Constitution—and Ours,
8 J. L. & SOC. CHANGE 27 (2005)

Constitutional Calcification: How the Law Becomes What the Court Does
91 VIRGINIA L. REV. 1649 (2005)

Resolving Renvoi: The Bewitchment of Our Intelligence by Means of Language
80 NOTRE DAME L. REV. 1821 (2005)

Exhaustion Under the Prison Litigation Reform Act: The Consequence of Procedural Error
52 EMORY L. J. 1771 (2003) (cited in *Woodford v. Ngo*, 548 U.S. 1 (2006))

Defeating Class Certification in Securities Fraud Actions
22 REV. OF LIT. 405 (2003)

Extrajurisdictional Takings After SWANCC
31 ENVTL. L. REP. 11225 (2001) (with Timothy S. Bishop)

Understanding Lockups: Effects in Bankruptcy and the Market for Corporate Control
17 YALE J. ON REG. 94 (2000)

The Myth of Choice of Law: Rethinking Conflicts
97 MICH. L. REV. 2448 (1999)

A Little Theory is a Dangerous Thing: The Myth of Adjudicative Retroactivity

31 CONN. L. REV. 1075 (1999)

The Newest Property: Reproductive Technologies and the Concept of Parenthood

39 SANTA CLARA L. REV. 79 (1998)

Essays and Symposia

What if Slaughterhouse Had Been Decided Differently?

Forthcoming INDIANA L. REV. 2011

Interpretation and Construction: Originalism and its Discontents

34 HARV. J. L. & PUB. POL'Y 99 (2011)

Originalism Judicial Supremacy, Judicial Activism: Cooper v. Aaron and Parents Involved

52 ST. LOUIS U. L. J. 1191 (2008)

Polyphonic Stare Decisis: Listening to Non-Article III Actors

83 NOTRE DAME L. REV. 1303 (2008)

A Retroactivity Retrospective, With Thoughts for the Future: What the Supreme Court Learned from Paul Mishkin and What It Might

95 CAL. L. REV. 1677 (2007)

Forget the Fundamentals: Fixing Substantive Due Process

8 U. PA. J. CON. L. 983 (2006)

(cited in *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010))

Guantanamo and the Conflict of Laws: Rasul and Beyond

153 U. PENN. L. REV. 2017 (2005)

States as Speakers

14 THE GOOD SOCIETY 62 (2005)

Light From Dead Stars: The Procedural Adequate and Independent State Ground Reconsidered

103 COLUM. L. REV. 1888 (2003)

Note, *The Costs of Agencies: Waters v. Churchill and the First Amendment in the Administrative State*

106 YALE L.J. 1233 (1997)

(Winner, Israel H. Peres Prize)

-
- Shorter** *Cooper v. Aaron*, Oxford Encyclopedia of American Political, Policy, and Legal History (2011)
- Articles:**
- Judicial Activism and Judicial Restraint*, Encyclopedia Britannica (2010)
- Clerking for Justice Souter*, Journal of Supreme Court History (2010)
- Justice Cincinnatus*, Slate, May 2, 2009
(winner, Green Bag Exemplary Legal Writing Award 2009)
- Deal or No Deal*, Law Leaders Quarterly, Summer 2009
- Walter Wheeler Cook*, in the Yale Biographical Dictionary of American Law (Yale U. Press, Roger K. Newman, ed., 2009)
- Originalism and the Living Constitution: Reconciliation*, Advance: The Journal of the ACS Issue Groups, 57 (2007)
(Winner, Green Bag Exemplary Legal Writing Award 2007)
- Judicial Activism and Its Critics*, 155 U. Pa. L. Rev. PENNumbra 112 (2007).
- Aspiration and Underenforcement*, 119 Harv. L. Rev. Forum 193 (2006)
- Fong Yue Ting v. United States; Regents of the University of California v. Bakke; *The Japanese Internment Cases*; *The Compelling State Interest*; Boy Scouts of America v. Dale, all in The Encyclopedia of American Civil Liberties (Routledge, Paul Finkelman, ed., 2006) (invited contributions)
- The Rehnquist Legacy* Legal Affairs Vol. 4, No. 2 at 36 (2005)
- Filtering the Internet: A Best Practices Model*, in *Protecting our Children on the Internet: Towards a New Culture of Responsibility* (Jens Walterman and Marcel Machill, eds., Bertelsmann Foundation Publishers) (2000) (with J.M. Balkin and Beth Simone Noveck)
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Book Reviews:

The Indivisible Constitution, 25 CONST. COMMENT. 321 (2009)
(reviewing Laurence Tribe, *The Invisible Constitution*)

Sending Up the Supremes, Philadelphia Inquirer, September 14,
2008 (reviewing Christopher Buckley, *Supreme Courtship*)

Judge Not, Democracy: A Journal of Ideas, June 2008 (reviewing
Ronald Dworkin, *Justice in Robes*, and Richard Posner, *How
Judges Think*)

The Death of Innocence, 9 Green Bag 403 (2006) (reviewing
Wilkie Collins, *The Dead Alive*)

Op-Eds:

Why the Individual Mandate is Constitutional, Encyclopedia
Britannica Blog, September 20, 2011

*Three Bully Lessons in Leadership for President Obama from
Teddy Roosevelt*, Constitution Daily, September 14, 2011,
reprinted in Huffington Post, September 18, 2011
(<http://www.huffingtonpost.com/kermit-roosevelt/>)

Obama and DOMA, Christian Science Monitor, February 25,
2011

Free Enterprise and the Judge, CBS.com, December 2, 2010

Do We Really Trust Corporations More Than Elected Officials?
Christian Science Monitor, January 22, 2010

Judicial Activism Explains Little, CBS.com, July 8, 2009
(reprinted in *Opposing Viewpoints: Judicial Activism*, vol. 1
(Gale 2011))

The Ricci Riddle and the Law's Limits, Christian Science
Monitor, June 30, 2009

Military Commissions: Still a Bad Idea, CBS.com, May 19, 2009

Fill Souter's Shoes with a Genial Persuader, Christian Science
Monitor, May 4, 2009

California's Same-Sex Marriage Case Affects All of Us, Christian Science Monitor, November 14, 2008

Knee-Jerk Reactions Misunderstand the Law, Albany Times-Union, June 22, 2008

Judges' Opinions Off the Bench, Christian Science Monitor, October 12, 2007

Test Case, The Guardian, October 4, 2007

How to Judge the Roberts Supreme Court, Christian Science Monitor, July 6, 2007

Marriage, Loving, and the Law Washington Post, June 3, 2007

Activist Judges? Where? The Philadelphia Inquirer, December 5, 2006

Why Guantanamo? Jurist, October 4, 2006

The Myth of Judicial Activism, L.A. Times October 2, 2006.

Union to Union, Philadelphia Inquirer Feb. 22, 2004.

Who Is Protected by Our Constitution?, South Florida Sun-Sentinel, March 29, 2004

One Cheer for Roe, Washington Post Jan. 22, 2003.

Fiction:

IN THE SHADOW OF THE LAW, Farrar, Straus & Giroux (2005)
(Christian Science Monitor Best Book of the Year; national campus bestseller; winner, Philadelphia Athenaeum Literary Award; New York Times Book Review Editors' Choice selection; ABA Journal 30 Lawyers/30 Books selection)
Fright to Guaranty, New York Stories volume 1, number 5 (2000)

Film and Video:

The Right to Remain Silent (The Documentary Group: The Constitution Project, 2012) (expert commentator on *Miranda*)
Mapp v. Ohio (The Documentary Group, 2011) (expert commentator on *Mapp*)

The Life of James (2010) (screenwriter for movie about capital punishment)

Jury Selection: Edmonson v. Leesville Concrete, The Documentary Group (2010) (expert commentator on constitutionality of race-based peremptory challenges)

The Role of the Supreme Court, Binghamton NY July 12, 2009 (debate with Curt Levey, pilot episode of *You Defend It!* TV series)

Korematsu and Civil Liberties, The Documentary Group (2009) (expert commentator on *Korematsu v. United States*)

Dangerous Dynasty: The Bush Legacy (2008) (expert commentator in Sean Stone documentary)

Capitol Law (2005) (consultant for TV pilot)

Selected Presentations

Law Without a Lawmaker, William & Mary School of Law, Williamsburg VA, February 2012; Brooklyn Law School, March 2012

Choice of Law and the General Law, AALS Annual Meeting, Section on Conflict of Laws, Washington DC, January 2012

Ten Years after 9/11: Looking Forward, Looking Back, Drexel University, Earle Mack School of Law, September 14, 2011

What if Slaughterhouse Had Been Decided Differently?, Minnesota Law School, February 17, 2011

Choice of Law in Federal Courts, Northwestern University Law School, Chicago Il., October 25, 2010; AALS Annual Meeting, San Francisco, January 2011; Minnesota Law School, February 17, 2011

Citizens United: Judicial Activism, Campaign Finance Reform, and First Amendment Theory, Penn Law Alumni Association, Wilmington, Del., October 21, 2010; Penn Law Alumni Weekend, Philadelphia PA (May 14, 2010).

Nine Years Later: Civil Rights and Civil Liberties in Post-9/11 America, University of Pennsylvania South Asian Center, September 28, 2010 (Panelist)

Rule of Law Reform in Iraq and Afghanistan, University of Pennsylvania Law School, September 24, 2010 (Panelist)

Changing the Constitution, National Constitution Center Annenberg Summer Teacher Institute, Reagan Library, Simi Valley CA (June 2010)

Leaving A Legacy: The Departure and Replacement of Justice John Paul Stevens, National Constitution Center, May 6, 2010

The Exchange (national webcast), National Constitution Center, Philadelphia PA, March 18, 2010

Originalism 2.0, Federalist Society National Symposium, Philadelphia PA, February 27, 2010

Replacing Justice Souter: President Obama's First Pick and the Future of the Supreme Court, Philadelphia PA, July 9, 2009 (panelist at American Constitution Society event)

After Guantanamo, University of Pennsylvania Faculty Club, March 23, 2009

The Invisible Constitution, National Constitution Center, Philadelphia PA, November 2008 (with Laurence Tribe)

Counselor, National Constitution Center, summer 2008 (with Ted Sorensen).

Constitutional Theory Today, AALS mid-year conference, Cleveland OH, June 2008

Detention and Interrogation in the Post-9/11 World, Suffolk University Law School (Donahue Lecture) , February 28, 2008.

Judicial Supremacy, Judicial Activism, St. Louis University Law School (commentary on Childress Lecture), October 5, 2007

Stare Decisis and Non-Article III Actors, Notre Dame Law School, March 30, 2007; University of Pennsylvania Law School, July 2008

Judicial Independence, Third Circuit Judicial Conference, April 2008; National Asian-Pacific American Bar Association, Philadelphia PA, November 10 2006

Congress, the President, and the Courts, University of Pennsylvania Model Congress (keynote), Philadelphia PA, February 8 2007

Originalism and the Living Constitution, Federalist Society Annual Meeting, faculty chapter, Washington DC, January 2007

War By Other Means, National Constitution Center, Philadelphia PA, November 14, 2006 (with John Yoo)

Choice of Law Issues in the Nonprofit Arena, New York University Law School, November 3, 2006

A Retroactivity Retrospective, Boalt Hall School of Law, October 27, 2006

The Myth of Judicial Activism, Georgetown University Law Center, October 2006; Georgia State School of Law, October 2006; NYU School of Law, October 2006; 9th Circuit Courthouse (Seattle), November 2006; American Constitution Society (Dallas Lawyer Chapter), November 2006; American Constitution Society (Philadelphia Lawyer Chapter) November 2006; 3d Circuit Courthouse (Philadelphia), March 2007; University of Michigan Law School, April 2007; The Philadelphia Club, May 2007, Phi Beta Kappa Chapter of Northern California, Asilomar, February 18, 2008; Harvard Law School, November 2008

Keeping Faith with the Constitution in Changing Times, Vanderbilt Law School, Nashville TN October 6, 2006

In the Shadow of the Law, University of San Francisco, December 2005; Court of Federal Claims Annual Judicial Conference (dinner speaker), November 2005; New York City Bar Association (May 2007)

The Future of Choice of Law, Yale Law Faculty Workshop, New Haven, CT November 2005

Constitutional Calcification, Michigan Law Legal Theory Workshop, Ann Arbor MI, October 2005; Penn Law Faculty Retreat (presenter), Philadelphia, PA fall 2005

The Living Constitution, The Union League Club 2005

Guantanamo and the Conflict of Laws: Rasul and Beyond
(presenter), Penn Law Symposium (November 2004)

Activities:

Legal Advocacy: Author of law professors' amicus brief in *Strauss v. Horton*,
Constitutional law consultant in *Abdulzaher v. Gates*
Author of law professors' amicus brief in *Woodford v. Ngo*, 548
U.S. 81 (2006)
Co-Counsel in *Burbank v. Rumsfeld*
Lead Counsel in *Thomas v. Doyle*, 39 Fed. Appx. 373 (7th Cir.
2002)
Lead Counsel in *Jones v. United States*, 20 Fed. Appx. 520 (7th
Cir. 2001)

Committees: Appointments 2010-11
Clerkship committee 2002-03; 03-04; 04-05 (chair); 05-06
(chair); 06-07; 07-08 (chair); 08-09; 09-10; 10-11
Constitutional Law Workshop series co-convenor 2006-07; 07-
08; 08-09; 09-10; 11-12
Academic Freedom and Responsibility, 2008-09, 09-10, 10-11;
11-12
Book Symposia organizer 2007-08; 08-09
Ad hoc workshops co-convenor 2004-05; 05-06
Public Service committee 2006-07
Advisor, Journal of Constitutional Law 2008-09; 09-10, 10-11;
11-12
Advisor, Levy Scholars Program 2008-09
Leebron Prize Coordinator 2007-08; 08-09; 09-10; 10-11
Member, ad hoc search committee for senior lecturer in legal
writing, 2009-10

Service: Faculty Senate Executive Committee 2007-08; 08-09
Faculty Senate Committee on Academic Freedom and
Responsibility 2007-08; 08-09; 09-10
Ad Hoc Peer Reviewer: *Journal of Empirical Legal Studies*;
Public Administration Review; *Polity*; *Social Problems*; Yale
University Press; Oxford University Press; Aspen; West.
Editorial Board, MDPI Laws
Chair-Elect, AALS Section on Conflict of Laws, 2009-10; Chair,
10-11; Executive Board 10-11

Membership: American Law Institute

Advisory Board, *Law Leader Quarterly*
Advisory Board, Roosevelt Institution
Trustee, Theodore Roosevelt Association, 2008-11