

# Kermit Roosevelt III

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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 (1997-1998)
- 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, 9<sup>th</sup> ed. 2013) (with Herma Hill Kay and Larry Kramer)
- Books**
- CONFLICT OF LAWS: CONCEPTS AND INSIGHTS* (Foundation Press, 2<sup>nd</sup> ed. 2015)

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

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**Law Review  
Articles**

*Bait and Switch: Why United States v. Morrison is Wrong About Section 5*, 100 CORNELL L. REV. 630 (2015)

*Brainerd Currie's Contribution to Choice of Law: Looking Back, Looking Forward*, 65 MERCER L. REV. 501 (2014)

*Valid Rule Due Process Challenges: Bond v. United States and Erie's Constitutional Source*  
54 WM. & MARY L. REV. 987 (2013)

*Aspirations*

J. L. & INTERDISCIPLINARY STUD. (2013)

(<http://web.law.und.edu/jlis/essays/roosevelt-essay.html>)

*Choice of Law in Federal Courts: From Erie and Klaxon to CAFA and Shady Grove*  
106 NORTHWESTERN L. REV. 1 (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**

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*The Ironies of Affirmative Action*, 17 U. PENN. J. CON. L. 729  
(2015)

*Legal Realism and the Conflict of Laws*  
163 U. PA. L. REV. ONLINE 325 (2015).

*What if Slaughterhouse Had Been Decided Differently?*  
45 INDIANA L. REV. 61 (2011)

*Interpretation and Construction: Originalism and its Discontents*  
34 HARV. J. L. & PUB. POL'Y 99 (2011)

*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)

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**Book Chapters:** *Justice Souter and His Law Clerks*, in Todd Peppers *OF COURTIER  
AND KINGS: MORE STORIES OF SUPREME COURT LAW CLERKS AND THEIR  
JUSTICES* (2015).

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**Shorter** *Choice of Law in Federal Courts*, The Legal Workshop 2012  
(available at

**Articles:** <http://legalworkshop.org/2012/07/13/choice-of-law-in-federal-courts-from-erie-and-klaxon-to-cafa-and-shady-grove>

*Joseph Story's Commentaries on the Constitution* (Quid Pro Books 2013) (foreword)

*Cooper v. Aaron*, Oxford Encyclopedia of American Political, Policy, and Legal History (2011)

*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 Waltermann and Marcel Machill, eds., Bertelsmann Foundation Publishers) (2000) (with J.M. Balkin and Beth Simone Noveck)

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**Book Reviews:**

*Reconstruction and Resistance*, 91 TEX. L. REV. 121 (2012)  
(reviewing Jack Balkin, *Living Originalism and Constitutional Redemption*)

*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*)

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**Op-Eds:**

*Paris and the Past*, Roanoke Times, 11/20/15

*Birthright Citizenship Is a Core Constitutional Principle*,  
Washington Times, 11/2/15

*Being Tough, Doing Wrong*, Pittsburgh Post-Gazette, 10/25/15

*A Medal for Mitsuye Endo*, The Hill Congress Blog, 10/21/15

*Can Texas Defy Supreme Court's Same-Sex Marriage Ruling*,  
CNN, July 1, 2015

*Equality Marches On*, Casetext, June 30, 2015

*It's Not About Religious Liberty*, The Hill, April 4, 2015.

*The Constitution Protects Us All*  
New York Daily News, April 24, 2013

*On Health Care Law, Who's the Judicial Activist?*,  
Politico, April 3, 2012

*Why the Court is Spending Six Hours on Health Care*,  
New York Times Room for Debate, March 26, 2012

*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.

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**Fiction:** *ALLEGIANCE*, ReganArts (2015)

*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)

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**Film and Video:** *Introduction to American Constitutional Law*(online  
constitutional law course via Annenberg Public Policy School  
and Coursera)

*Magna Carta and Due Process* (The Documentary Group: The  
Constitution Project, 2015) (expert commentator).

*Guantanamo* (The Documentary Group: The Constitution Project,  
2013) (expert commentator).

*The Right to Bear Arms*, (The Documentary Group: The  
Constitution Project, 2013) (expert commentator).

*The Second Amendment* (James Dann) (expert commentator).

*The Commerce Clause* (The Documentary Group, 2012)  
(expert commentator)

*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)

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**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 (7<sup>th</sup> Cir. 2002)  
Lead Counsel in *Jones v. United States*, 20 Fed. Appx. 520 (7<sup>th</sup> Cir. 2001)

**Committees:** Academic Careers 2015-16  
Appointments 2010-11; 2014-15  
Clerkship committee 2002-03; 03-04; 04-05 (chair); 05-06 (chair); 06-07; 07-08 (chair); 08-09; 09-10; 10-11; 11-12; 12-13; 13-14  
Constitutional Law Workshop series co-convenor 2006-07; 07-08; 08-09; 09-10; 11-12; 12-13; 13-14; 14-15; 15-16  
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; 12-13; 13-14; 14-15; 15-16  
Advisor, Levy Scholars Program 2008-09

Leebron Prize Coordinator 2007-08; 08-09; 09-10; 10-11; 11-12; 12-13; 13-14; 14-15

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*; *Stanford Journal of Complex Litigation*; *Harvard Law Review*; *Yale Law Journal*; 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; 11-12

**Membership:**

American Law Institute (Reporter, Third Restatement of Conflict of Laws)

Advisory Board, *Law Leader Quarterly*

Advisory Board, Roosevelt Institute Campus Network

Advisory Board, Coalition of Freedom, National Constitution Center

Fellow, Yale Information Society Project

Distinguished Research Fellow, Annenberg Public Policy Center, University of Pennsylvania

Honorary Advisor, Pine Jog Environmental Education Center

Trustee, Theodore Roosevelt Association, 2008-16

Scholars Advisory Panel, National Constitution Center

Member, Board of Directors, Presidential Scholar Foundation