

Kermit Roosevelt III

University of Pennsylvania Law School
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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)
- Detur Prize

Academic Publications

THE CONSTITUTION DECODED (Contributing Editor) (Workman 2020)

CONFLICT OF LAWS: CASES—COMMENTS—QUESTIONS (West, 10th ed.

2018) (with David Franklin, Herma Hill Kay, and Larry Kramer)

Books

CONFLICT OF LAWS: CONCEPTS AND INSIGHTS (Foundation Press, 2nd ed. 2015)

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

Law Review

Mirror, Mirror, on the Wall: Disney Princesses' Reflections of Equal Protection, forthcoming 56 WAKE FOREST L. REV. – (2021) (with Abigail Tootell)

Articles

McCulloch v. Marbury,
34 CONST. COMMENT. 263 (2019) (with Heath Khan)

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**

Adrift on Erie: Characterizing Forum-Selection Clauses,

52 AKRON L. REV. 297 (2018) (with Bethan Jones)

The Draft Restatement (Third) of Conflict of Laws: A Response to Brilmayer & Listwa, 128 YALE L. J. FORUM 293 (2018) (with Bethan Jones)

What a Third Restatement Can Do

110 AJIL UNBOUND 139 (2016) (with Bethan Jones)

The Fight for Equal Protection: Reconstruction-Redemption Redux
83 U. CHI. L. REV. ONLINE 36 (2016) (with Patricia Stottlemeyer)

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)

- Book Chapters:** *Hamilton's America—and Ours*, in HAMILTON'S AMERICA (forthcoming Cornell University Press 2020)
- Certainty and Flexibility in the Conflict of Laws*, in PRIVATE INTERNATIONAL LAW: CONTEMPORARY CHALLENGES AND CONTINUING RELEVANCE (Franco Ferrari & Diego Fernandez Arroyo, eds.) (2019)
- Professor Brilmayer and the Third Restatement*, in RESOLVING CONFLICTS IN THE LAW: ESSAYS IN HONOR OF LEA BRILMAYER (Chiara Georgetti & Natalie Klein, eds) (2019)
- 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 Articles:** THE AMERICAN MUSEUM OF NATURAL HISTORY AND HOW IT GOT THAT WAY (foreword) (2019)
- Coming to Terms with Term Limits*, ACS Issue Brief (with Ruth-Helen Vassilas) June 29, 2017
- SUPREMELY PARTISAN (foreword) (James Zirin, 2016)
- Our National Parks: Independence Hall*, AARP Magazine, April/May 2016
- Choice of Law in Federal Courts*, The Legal Workshop 2012 (available at <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)

Book Reviews:

Richard A. Posner's Divergent Paths: The Academy and the Judiciary, New York Times, January 29, 2016

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*)

Op-Eds:

Climate Change Solutions Do Exist, The Hill, October 28, 2019

Supreme Court Justices Should Have Term Limits, CNN.com, September 30, 2019 (with Ruth-Helen Vassilas)

Democrats need to take a page from Republican playbook on the Supreme Court, Philadelphia Inquirer, September 18, 2019 (with Dan Cotter)

Despoiling Our National Parks Betrays Our Democracy, Newsweek 12/9/17 (with Robert Hanna)

America's Best Idea, Washington Times, 7/5/17 (with Robert Hanna)

Executive Order 13769: America at Its Best and Its Worst, FPRI E-notes, February 1, 2017

The Debate Over Japanese Internment is Fundamentally Flawed, Time Magazine, 11/21/2016

Theodore Roosevelt's Lessons for Today's Politics, Time Magazine, 7/25/16

Here's What's Wrong with Pat Toomey's Opposition to Merrick Garland, Patriot News 5/4/16

Donald Trump is Wrong about Torture, Time, 2/19/16

The Future of Abortion Rights and Regulation, Jurist, 2/8/16

Remembering our Resolution, The Hill 1/1/16

What I Learned Writing Historical Fiction, The Strand Blog, 1/10/16

Japanese Internment's Ugly Lessons, Daily Beast, 12/17/15

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.

Fiction:

The Tent (pilot), Audible Originals (writer) with Catherine McKenzie and Elyssa Friedland

First Street, Serial Box 2020 (writer), with Jasmine Guillory, Elyssa Friedland, Catherine McKenzie & Randy Susan Meyers

ALLEGIANCE, ReganArts (2015)
(Publishers Weekly starred review; Richmond Times Dispatch Favorite Books of the Year; National Law Journal top Supreme Court books of the year; runner-up, M.M. Bennetts Award for Historical Fiction; ABA Journal top ten Supreme Court novels; finalist, Harper Lee Prize for legal fiction; Foreign Policy Research Institute book of the week)

IN THE SHADOW OF THE LAW, Farrar, Straus & Giroux (2005)
(Publishers Weekly starred review; Christian Science Monitor Best Books 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:

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

The Nineteenth Amendment (The Documentary Group: The Constitution Project, 2018) (expert commentator)

The Supremacy Clause (The Documentary Group: The Constitution Project, 2017) (expert commentator)

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)

Activities:

Legal Advocacy: Author of law professors' amicus brief in *Qassim v. Trump*, D.D.C.
Author of law professors' amicus brief in *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009)
Constitutional law consultant in *Abdulzaheer 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: Academic Careers 2015-16; 2016-17
Appointments 2010-11; 2014-15; 2020-21
Building Committee 2019-20
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; 17-18
Constitutional Law Workshop series co-convenor 2006-07; 07-08; 08-09; 09-10; 11-12; 12-13; 13-14; 14-15; 15-16; 16-17; 17-18, 18-19, 19-20
University Fellowship Review Committee, 2018-19, 19-20, 20-21
Government and Public Affairs, 2017-19
Academic Freedom and Responsibility, 2008-09, 09-10, 10-11; 11-12
Book Symposia organizer 2007-08; 08-09
Tenure and Promotions, 2015-16
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; 16-17; 17-18
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; 15-16; 16-17; 17-18
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*; *Columbia Law Review*; *Stanford Law Review*; 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)

Fellow, Yale Information Society Project, Yale Law School
Distinguished Research Fellow, Annenberg Public Policy
Center, University of Pennsylvania
Trustee, Theodore Roosevelt Association, 2008-16
Member, Board of Directors, Presidential Scholar Foundation,
2015-2019
Member, Board of Directors, Theodore Roosevelt Library
Foundation 2017--
Member, Board of Directors, Circadium