Eighth Annual

CONSTITUTIONAL LAW COLLOQUIUM

Keynote Speaker H. JEFFERSON POWELL
Professor of Law
Duke University School of Law

FRIDAY, NOVEMBER 3—SATURDAY, NOVEMBER 4, 2017
POWER ROGERS & SMITH CEREMONIAL COURTROOM

The Colloquium is supported by the research funds from the
RAYMOND AND MARY SIMON CHAIR IN CONSTITUTIONAL LAW.

Hosted by
Professor Barry Sullivan, Cooney & Conway Chair in Advocacy
and Professor Alexander Tsesis, Raymond and Mary Simon Chair in Constitutional Law
PRESENTERS

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University of Brasília

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Lamar University

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Brooklyn Law School

ENRIQUE ARMijo
Elon University

MARCO BASSINI
Università Commerciale Luigi Bocconi

CLAUDIA MARIA BARBOSA
Pontifical Catholic University of Paraná

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University of Cagliari

MIHAILIS DIAMANTIS
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DAVID DORSEN
Sedgwick Law

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Lamar University

ILTON ROBL FILHO
Federal University of Paraná

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NAVRAJ SINGH GHALEIG
Edinburgh Law School

ERICA GOLDBERG
University of Dayton School of Law

JOEL GOLDSTEIN
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University of St. Thomas School of Law

ALLEN KAMP
The John Marshall Law School

RODRIGO KANAYAMA
Federal University of Paraná

ROBERT KNOWLES
Valparaiso University Law School

DONALD KOCHAN
Chapman University School of Law

TOMASZ KONCEWICZ
Princeton University

KATYA KOZICKI
Pontifical Catholic University of Paraná

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Purdue University

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University of Richmond  
School of Law

HOLNING LAU  
University of North Carolina  
School of Law

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Fordham Law School

MYRISHA LEWIS  
Howard University  
School of Law

CHRISTOPHER LUND  
Wayne State University  
Law School

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School of Law

GARY MYERS  
University of Missouri  
School of Law

EANG NGOV  
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JULIE NICE  
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School of Law

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University of Kansas  
School of Law (Visiting)

MEG PENROSE  
Texas A&M University  
School of Law

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Pontificical Catholic University of Paraná

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Penn State Law

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UC Hastings  
College of the Law

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Texas A&M University  
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SHALEV ROisman  
Harvard Law School

HENRY ROSE  
Loyola University Chicago  
School of Law

SHARON RUSH  
University of Florida  
College of Law

MARGARET RYZNAR  
Indiana University  
McKinney School of Law

SUT SAKCHUCHAWAN  
Kean University

VINCENT SAMAR  
Loyola University Chicago  
School of Law

SHAAKIRRAH SANDERS  
University of Idaho  
College of Law

MIGUEL SCHOR  
Drake University  
School of Law

DAVID SCHRAUB  
University of California  
Berkeley School of Law

JOSHUA SEGEV  
Netanya Academic College School of Law

SCOTT SKINNER-THOMPSON  
University of Colorado  
Law School

DAVID SLOSS  
Santa Clara University  
School of Law

ITAI SNEH  
John Jay College  
of Criminal Justice,  
City University of New York

BRIAN SOUCEK  
U.C. Davis School of Law

GLEN STASZEWSKI  
Michigan State University  
College of Law

MATTHEW STEILEN  
University at Buffalo  
School of Law

LEE STRANG  
University of Toledo  
College of Law

JEREMY TELMAN  
Valparaiso University  
Law School

FABRICIO TOMIO  
Federal University of Paraná

ALEXANDER TSESIS  
Loyola University Chicago  
School of Law

DR. IAN TURNER  
University of Central  
Lancashire Law School

REBECCA ZIETLOW  
University of Toledo  
College of Law

Evan Zoldan  
University of Toledo  
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CHICAGO SCHOOL OF LAW FACULTY HOSTS

BARRY SULLIVAN  
Professor of Law and  
Cooney & Conway  
Chair in Advocacy

ALEXANDER TSESIS  
Professor of Law and  
Raymond and Mary Simon  
Chair in Constitutional Law

Powell has served in a variety of positions in federal and state government during his career. In addition to his recent tenure as deputy assistant attorney general in the Office of Legal Counsel, which provides legal advice to the president, the attorney general and other executive branch officers, he served in the U.S. Department of Justice in various capacities from 1993 to 2000, and in 1996, he was the principal deputy solicitor general. He has briefed and argued cases in both federal and state courts, including the Supreme Court of the United States. In the early 1990s, he was special counsel to the attorney general of North Carolina.

Powell’s academic career has included visiting positions at Columbia, Yale and the University of North Carolina at Chapel Hill, and he served as a professor of law at the University of Iowa prior to joining the Duke Law faculty. His scholarship has addressed the history and ethical implications of American constitutionalism, the powers of the executive branch, and the role of the Constitution in legislative and judicial decision-making, among other subjects. His recent books include Targeting Americans: The Constitutionality of the U.S. Drone War (2016), The President as Commander in Chief: An Essay in Constitutional Vision (2014), Constitutional Conscience: The Moral Dimension of Judicial Decision (2008) and No Law: Intellectual Property in the Image of an Absolute First Amendment (2009), which he co-authored with Duke Law Professor David Lange. Powell holds a bachelor’s degree from St. David’s University College (now Trinity St. David) of the University of Wales; a master’s degree and PhD from Duke University; and a Master’s of Divinity and JD from Yale University. He was a law clerk to Judge Sam J. Ervin III of the U.S. Court of Appeals for the Fourth Circuit. He has received numerous awards and honors including, in 2002, Duke University’s Scholar/Teacher Award.

Powell currently serves as series editor of the Carolina Academic Press Legal History Series.
Colloquium Agenda

FRIDAY, NOVEMBER 3, 2017

8:00–8:45 AM
CHECK-IN & CONTINENTAL BREAKFAST
Power Rogers & Smith Ceremonial Courtroom Lobby
10th Floor

8:45–9:00 AM
INTRODUCTION
Power Rogers & Smith Ceremonial Courtroom
Room 1040

9:00–10:30 AM
SESSION I
PANEL A: COMPARATIVE LAW
Room 1001
Katya Kozicki & William Pugliese
Pontifical Catholic University of Paraná
Constitutional Courts and Legal Interpretation in a Comparative Perspective

Itai Sneh
John Jay College of Criminal Justice,
City University of New York
Common Law and Civil Law Across the Ocean: Transnationalism and U.S. Constitutional Formation

Dr. Ian Turner
University of Central Lancashire Law School
Constitutionalism in Times of Crisis: A Comparative Assessment Between Codified and Uncodified Constitutions in the USA and the UK

PANEL B: PRESIDENTIAL LIMITS AND NORMS
11th Floor, Room 1102

Andy Grewal
University of Iowa College of Law
The Foreign Emoluments Clause and the Chief Executive

Neil Siegel
Duke University School of Law
Sustaining Collective and Effective Self-Governance: A Restraining Role Morality for Presidents and Members of Congress

Shalev Roisman
Harvard Law School
Presidential Factfinding

PANEL C: THE INTERSECTION OF HEALTH AND LAW
10th Floor, Room 1002

Geneva Brown
Valparaiso University Law School
Miranda and the Womb

Myrisha Lewis
Howard University School of Law
Halted Experimentation: The Expansion of Federal Jurisdiction over the Human Body and Medical Practice

Vincent Samar
Loyola University Chicago School of Law
Personhood under the Fourteenth Amendment

PANEL D: SEPARATION OF POWERS: LEGISLATIVE AND EXECUTIVE AUTHORITY
11th Floor, Room 1101

Zachary Price
UC Hastings College of the Law
Funding Restrictions and Separation of Powers

Matthew Steilen
University at Buffalo School of Law
How to Think Constitutionally About Prerogative

Rebecca Zietlow
University of Toledo College of Law
Fugitive Slaves, Undocumented Workers and Progressive Federalism
FRIDAY, NOVEMBER 3, 2017 cont’d.

10:30–10:45 AM
BREAK AND REFRESHMENTS
Power Rogers & Smith
Ceremonial Courtroom
Room 1040

10:45–12:15 PM
SESSION II
PANEL A: GOVERNMENT SPEECH
10th Floor, Room 1001

Wayne Batchis
University of Delaware
Academic Freedom and Free Speech at State Universities: Tenure as a Designated Limited Public Forum

Helen Norton
University of Colorado School of Law
The Past, Present, and Future of Government Speech – and Why It Matters

Lynne Rambo
Texas A&M School of Law
When Should the First Amendment Protect Judges from Their Unethical Speech?

PANEL B: HUMAN RIGHTS AND INTERNATIONAL LAW
10th Floor, Room 1002

David Sloss
Santa Clara University School of Law
The Constitutional Canon and the Universal Declaration of Human Rights

Gianmario Demuro
University of Cagliari
A EU Identity Based on Protection of Human Rights: An Inquiry into the Legal Elements of Legitimation of the EU

Melina Girardi Fachin
Federal University of Paraná
The (NEW) Constitutional Order and Human Rights: Dialogues and Interchange in the Judicial Decision-Making Process

PANEL C: EQUALITY
11th Floor, Room 1101

William Araiza
Brooklyn Law School
Animus and Its Discontents

Dara Purvis
Penn State Law
Teaching the Heckler’s Veto of Transgender Students

Steve Sanders
Indiana University Maurer School of Law
On Matters of Equality: When Is Judicial Deference Owed to the “Democratic Process”?

Joseph Landau
Fordham Law School
Animus Doctrines

12:15–1:15 PM
LUNCH
Power Rogers & Smith Ceremonial Courtroom Lobby
10th Floor

KEYNOTE ADDRESS
H. Jefferson Powell
Duke University School of Law
The United States as an Idea: Constitutional Reflections
1:15–3:15 PM
SESSION III
PANEL A: DEMOCRATIC PARTICIPATION
10th Floor, Room 1001
Claudia Maria Barbosa
Pontifical Catholic University of Paraná
Should We Talk about the Limits of the Liberal Constitutionalism?
Christine Chambers Goodman
Pepperdine School of Law
The Devolution of Democratic Citizenship
Daniel Capecchi
Federal University of Juiz de Fora
Notes on Dialogues with Citizenry: The Relationship between Public Institutions and Civil Society as a Path for Constitutional Interpretation
Marco Bassini
Università Commerciale Luigi Bocconi
The Rise of Populism and the Role of Anti-Party Parties. The Five Star Movement: The Italian Case Study

PANEL B: CRIMINAL PROCEDURE
10th Floor, Room 1002
Eang Ngov
Barry University School of Law
Police Ignorance and Mistake of Law: Contradictions of Law and Policy
Sanaz Alasti
Lamar University
Cruel and Unusual Punishments: Comparative Perspective
Russell Christopher
University of Tulsa College of Law
Against Rights Varying with Offense Severity
Jennifer Mason McAward
Notre Dame Law School
An Empirical Study of Violations of Brady v. Maryland

PANEL C: THE ONCE AND FUTURE COURT
11th Floor, Room 1101
Eric Berger
University of Nebraska College of Law
When Facts Don’t Matter
Allen Kamp
The John Marshall Law School
Rommel v. Patton = Warren v. Roberts
Meg Penrose
Texas A&M University School of Law
Verbosity: The Expanding Legacy of the Roberts Court
David Dorsen
Sedgwick Law
The Unexpected Scalia: Liberal Opinions by a Conservative Justice

PANEL D: FEDERALISM
11th Floor, Room 1102
Laura Cisneros
Golden Gate University School of Law
Messianic Federalism: Obergefell’s Production of Constitutional Time
Grant Christensen
University of North Dakota School of Law
Where Federalism and Preemption Meet: Rethinking the Supreme Court’s Tribal Tax Jurisprudence
Sharon Rush
University of Florida College of Law
Fundamental Rights, Congressional Power, and Federalism: Exploring the Court’s Mixed Signals
Joel Goldstein
St. Louis University School of Law
Senator Edmund S. Muskie and American Federalism
Colloquium Agenda

FRIDAY, NOVEMBER 3, 2017 cont’d.

3:15–3:30 PM
BREAK & REFRESHMENTS
Power Rogers & Smith Ceremonial Courtroom Lobby
10th Floor

3:30–5:30 PM
SESSION IV
PANEL A: CONSTITUTIONAL CONSTRUCTION
10th Floor, Room 1001

Lee Strang
University of Toledo College of Law
The Deference Conception of Constitutional Construction

Jeremy Telman
Valparaiso University Law School
Biblical and Constitutional Hermeneutics

Miguel Schor
Drake University School of Law
The Federalist as a Primer on Constitutional Design: A Critical Appraisal of Separation of Powers and Written Constitutionalism

Donald Kochan
Chapman University School of Law
The [Takings] Keepings Clause: An Analysis of Framing Effects from Labeling Constitutional Rights

PANEL B: NATIONAL AND INTERNATIONAL LAW
10th Floor, Room 1002

Navraj Singh Ghaleigh
Edinburgh Law School
The Constitutionalisation of the Climate: Hopes and Fears After the Paris Agreement

Robert Knowles
Valparaiso University Law School
Judicial Brickerism

Holning Lau
University of North Carolina School of Law
American Equal Protection & Global Convergence

Fernando Acunha & Juliano Benvindo
University of Brasilia
Threats to Liberal Constitutionalism and in Latin America: A Call for a New Approach

PANEL C: FIRST AMENDMENT AND DIGITAL CONNECTIVITY
11th Floor, Room 1101

Kyle Langvardt
University of Detroit Mercy School of Law
After the Marketplace of Ideas

Paul Gowder
University of Iowa College of Law
Beyond the Arab Spring: Digital Collective Action and the Rule of Law

Robert Kahn
University of St. Thomas School of Law
Blasphemy, Global Connectivity, and the Internet Revolution Lessons from the Sixteenth Century Shift from Script to Print

Alexander Tsesis
Loyola University Chicago School of Law
Social Media’s Responsibility for Terrorist Communications
PANEL D: GAUGING JUDICIAL REVIEW  
11th Floor, Room 1102

Joshua Segev
Netanya Academic College, School of Law
The Babysitter: Modeling Zubik v. Burwell

Evan Zoldan
University of Toledo College of Law
State Constitutional Restrictions on Special Legislation

Glen Staszewski
Michigan State University College of Law
A Deliberative Democratic Theory of Precedent

David Schraub
University of California Berkeley School of Law
Doctrinal Sunsets

6:00–8:30 PM  
DINNER FOR PRESENTERS
McCormick & Schmick’s
1 E. Wacker Dr.
Chicago, IL 60601

SUNDAY, NOVEMBER 5, 2017  
8:15–9:00 AM  
CONTINENTAL BREAKFAST
Power Rogers & Smith Ceremonial Courtroom Lobby
10th Floor

8:45–10:45 AM  
SESSION I
PANEL A: PARENTAL RIGHTS
10th Floor, Room 1001

Michael J. Higdon
University of Tennessee College of Law
Constitutional Parenthood

Margaret Ryznar
Indiana University McKinney School of Law
A Curious Parental Right

Jeffrey Parness
University of Kansas School of Law (Visiting)
Federal and State Constitutional Issues Arising from the New Model Uniform Acts on Parentage and Non-Parental Childcare

PANEL B: FIRST AMENDMENT
10th Floor, Room 1002

Scott Skinner-Thompson
University of Colorado Law School
Equal Protection Privacy

Clifford Fisher, Christopher Kulesza & Sut Sakchutchawan
Purdue University & Kean University

Gary Myers
University of Missouri School of Law
Trademarks & the First Amendment After Matal v. Tam

Erica Goldberg
University of Dayton School of Law
Competing Free Speech Values in an Age of Protest
Colloquium Agenda

SATURDAY, NOVEMBER 4, 2017 cont’d.

PANEL C: ARTICLE III/STANDING
11th Floor, Room 1103
Zachary Clopton
Cornell Law School
Justiciability, Federalism, and the Administrative State
Enrique Guerra-Pujol
University of Central Florida
Article III Range Voting
Rachel Bayefsky
Harvard Law School
Constitutional Injury and Tangibility
Ian Bartrum
University of Nevada Las Vegas
William S. Boyd School of Law
An Intellectual History of Article III

PANEL D: FOUNDING MOMENTS
3rd Floor, Room 305
Vera Karam De Chueiri
Federal University of Paraná
South-South Dialogue
Amir A. Fakhravar
Lamar University
Constitutionalism: From Cyrus the Great to Thomas Jefferson
Rodrigo Kanayama, Ilton Robl Filho & Fabricio Tomio
Federal University of Paraná
Comparative Studies of Constitutional Courts: The Role of Judicial Review at Consensualism in Decisional Process and in Democratic Stability
Tomasz Konciewicz
Princeton University
The Constitutional Courts and EU Accession as a Founding Moment: Of Judicial Comities, Vigilant Constitutionalism and Embracing “the other”

10:45–11:00 AM
BREAK & REFRESHMENTS
Power Rogers & Smith Ceremonial Courtroom Lobby
10th Floor

11:00–12:30 PM
SESSION II
PANEL A: FOURTH AMENDMENT
10th Floor, Room 1001
Daniel Clay
Elmira College
Standing on Principle: The Application of the Exclusionary Rule to Third Parties in order to Deter Constitutional Violations by Law Enforcement
Mihailis Diamantis
University of Iowa College of Law
This Is a Conversation Between A and B: How a Second-Party “Privilege” Might Save Us from the Third-Party Doctrine
Emily Berman
University of Houston Law Center
Minimization Procedures: They Aren’t Just for Wiretaps Anymore

PANEL B: JUDICIAL POLITICS
10th Floor, Room 1002
Christine Kexel Chabot
Loyola University Chicago School of Law
Do Justices Time Their Retirements Politically? An Empirical Analysis of the Timing and Outcomes of Supreme Court Retirements in the Modern Era
Angela Cassia Costaldello
Federal University of Paraná
Cultural Heritage: Similarities and Differences between the Decisions of the Constitutional Courts of Brazil and Italy
Sylvia Bonifácio
Pontifical Catholic University of Paraná
Judicialization of Politics in the Constitutional Courts of Colombia and Brazil: Institutional Factors
PANEL C: VOTING LAW
11th Floor, Room 1103

Corrina Barrett Lain
University of Richmond School of Law
Abolish Districts

Derek Muller
Pepperdine University School of Law
Weaponizing the Ballot

Henry Rose
Loyola University Chicago School of Law
How the Supreme Court Diminished Constitutional Protections of the Right to Vote and What Congress Can Do About It.

11:30–12:30 PM
SESSION III
PANEL A: ARTISTIC EXPRESSION
10th Floor, Room 1001

Enrique Armijo
Elon University School of Law
The Freedom of Non-Speech

Brian Soucek
U.C. Davis School of Law
Art Exemptions

PANEL B: PROTECTED CLASSES
10th Floor, Room 1002

Christopher Lund
Wayne State University Law School
Discrimination against Subsets

Julie Nice
University of San Francisco School of Law
Sex, Money, and Irrationality

PANEL C: MINOR’S FUNDAMENTAL RIGHTS
11th Floor, Room 1103

Teri Dobbins Baxter
University of Tennessee College of Law
Underage Marriage as a Denial of Fundamental Rights

Shaakirrah Sanders
University of Idaho College of Law
Child Martyrs: Parental Exercise of Religious Exemptions and a Minor’s Right to Life

12:30–1:45 PM
LUNCH
Power Rogers & Smith Ceremonial Courtroom Lobby
10th Floor