

Mark D. Rosen
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ACADEMIC APPOINTMENTS AND RELATED MATTERS

Chicago-Kent College of Law

University Distinguished Professor
Professor
Professor and Freehling Scholar
Associate Professor (with tenure)
Assistant Professor

Fall 2016-present
Fall 2009-Fall 2016
Spring 2005- Fall 2009
Spring 2003 to Spring 2005
Fall 1999 to Spring 2003

Northwestern University School of Law

Visiting Professor

Spring 2007

University of Minnesota Law School

Visiting Professor
(received offer to join at rank of tenured professor)

Fall 2005 – Spring 2006

Special Academic Honors

Winner, Outstanding Scholarly
Paper Award (Association of
American Law Schools, 2006)

Subjects Taught

Constitutional Law
Election Law
Conflict of Laws
Civil Procedure
State & Local Government Law
Indian Law
Contracts

The University of Chicago Law School

Bigelow Fellow and Lecturer-in-Law

Fall 1997 to Summer 1999

EDUCATION

Harvard Law School
Cambridge, Massachusetts

Articles Editor – *Harvard Law Review*

J. D., *cum laude* – 1993

Yale College
New Haven, Connecticut

Economics and Political Science

B. A., *magna cum laude* - 1986

ADDITIONAL PROFESSIONAL EXPERIENCE

Frequent commentator on television (*e.g.*, ABC7, Channel 5, FOX News, First Business, CLTV), for newspapers (*e.g.*, Chicago Tribune, Chicago Sun Times, Christian Science Monitor, Chicago Daily Law Bulletin), and radio (including National Public Radio)

Numerous consulting projects on behalf of the federal government, states, municipalities, Indian tribes, and private clients, 1999-present

Litigation Associate, Foley, Hoag & Eliot (Boston, Massachusetts), appellate and complex litigation, 1994-97

Clerk, The Honorable Bruce M. Selya, United States Court of Appeals for the First Circuit, 1993-94

PUBLICATIONS

Legislatures and Constitutions in Times of Severe Financial Crisis
chapter in *CONSTITUTIONALISM AND FINANCIAL CRISIS* (Cambridge University Press,
forthcoming 2019)

Congress and Constitutional Decisionmaking
40 *CARDOZO LAW REVIEW* xx (forthcoming 2019)

Making Sense of Equality (book review of Jeremy Waldron, *One Another's Equals*)
35 *CONSTITUTIONAL COMMENTARY* x (forthcoming 2019)

Marijuana, State Extraterritoriality, and Congress
58 *B.C. L. REV.* 1013 (2017) (invited symposium contribution)

Two Ways of Conceptualizing the Relationship Between Equality and Religious Freedom
4 *JOURNAL OF RELIGION, LAW AND THE STATE* 117 (2016) (invited symposium contribution)

Can Congress Play a Role in Remediating Dysfunctional Political Partisanship?
50 *INDIANA LAW REVIEW* 265 (2016) (invited symposium contribution)

What Qualifies as a Compelling Government Interest? Judicial Inputs in Constitutional Rights Adjudication
48 *LOYOLA UNIVERSITY CHICAGO LAW JOURNAL* 487 (2016) (invited symposium contribution)

Choice-of-Law as Non-Constitutional Federal Law
99 *MINNESOTA LAW REVIEW* 1017 (2015)

When Are Constitutional Rights Non-Absolute? McCutcheon, Conflicts, and the Sufficiency Question
56 *WILLIAM & MARY LAW REVIEW* 1535 (2015) (invited symposium contribution)

The New Governancism?
59 *SAINT LOUIS UNIVERSITY LAW JOURNAL* 1079 (2015) (invited symposium contribution)

Religious Institutions, Liberal States, and the Political Architecture of Overlapping Spheres

2014 UNIVERSITY OF ILLINOIS LAW REVIEW 737

Why Broccoli? Limiting Principles and Popular Constitutionalism in the Health Care Decision

61 UCLA LAW REVIEW 66(2013) (with Christopher W. Schmidt)

Beyond Interpretation: The “Cultural Approach” to Understanding Extra-Formal Change in Religious and Constitutional Law

2 JOURNAL OF LAW, STATE AND RELIGION 200(2013) (invited symposium contribution)

The Unfortunate Parochialism of the SPEECH Act

52 VIRGINIA JOURNAL OF INTERNATIONAL LAW 99 (2012) (invited symposium contribution)

The Structural Constitutional Principle of Republican Legitimacy

54 WILLIAM & MARY LAW REVIEW 371 (2012)

The Educational Autonomy of Illiberal Religious Groups in a Liberal State

1 JOURNAL OF LAW, STATE AND RELIGION 16 (2012) (invited symposium contribution)

Congress’ Primary Role in Determining What Full Faith and Credit Requires: An Additional Argument

41 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL 7(2011)(invited symposium contribution)

Reframing Professor Statman’s Inquiry: From History to Culture

THE JOURNAL OF TEXTUAL REASONING (2011) (invited on-line symposium contribution, viewable at

http://etext.virginia.edu/journals/tr/volume6/number1/TR06_01_rosen.html)

Evaluating Tribal Courts’ Interpretations of the Indian Civil Rights Act, chapter in THE INDIAN CIVIL RIGHTS ACT AT 40 (Angela Riley, Matthew Fletcher & Kristin Carpenter, eds.)

From Exclusivity to Concurrence

94 MINNESOTA LAW REVIEW 1051(2010)

State Extraterritorial Powers Reconsidered

85 NOTRE DAME LAW REVIEW 1133 (2010)

Contextualizing Preemption

101 NORTHWESTERN UNIVERSITY LAW REVIEW 781 (2008) (invited symposium contribution)

Was Shelley v. Kraemer Incorrectly Decided? – Some New Answers

95 CALIFORNIA LAW REVIEW 451 (2007) – Winner, Outstanding Scholarly Paper Award (Association of American Law Schools, 2006)

Revisiting Youngstown: Against the View that Jackson’s Concurrence Resolves the Relation Between Congress and the Commander-In-Chief

54 UCLA LAW REVIEW 1703 (2007) (invited symposium contribution)

Hard or Soft Pluralism? – Positive, Normative, and Institutional Considerations of States’ Extraterritorial Powers

51 SAINT LOUIS UNIVERSITY LAW JOURNAL 714 (2007) (INVITED CONTRIBUTION FOR COMMENTARY TO ENDOWED LECTURE)

Why the Defense of Marriage Act is Not (Yet?) Unconstitutional: Lawrence, Full Faith and Credit, and the Many Societal Actors That Determine What the Constitution Requires

90 MINNESOTA LAW REVIEW 915 (2006)

The Surprisingly Strong Case for Tailoring Constitutional Guarantees

153 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1513 (2005)

Institutional Context in Constitutional Law

21 JOURNAL OF LAW AND POLITICS 223 (2005)

(invited symposium contribution: *Democracy in Action: The Law and Politics of Local Governance*)

Modeling Constitutional Doctrine

49 SAINT LOUIS UNIVERSITY LAW JOURNAL 691 (2005)

(invited symposium contribution: *On Teaching Constitutional law*)

Testimony of Mark D. Rosen, Associate Professor, Chicago-Kent College of Law, on the Subject of Congressional Power to Enact H.R. 1755, the "Child Custody Protection Act," before the Committee on the Judiciary Constitution Subcommittee

CHILD CUSTODY PROTECTION ACT: HEARING ON H.R. 1755 BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE HOUSE COMMITTEE ON THE JUDICIARY, 108th Cong., 2d Session 817 (2004)

Exporting the Constitution

53 EMORY LAW JOURNAL 171 (2004)

Should "Un-American" Foreign Judgments Be Enforced?

88 MINNESOTA LAW REVIEW 783(2004)

Do Codification and Private International Law Leave Room for a New Law Merchant? (invited symposium contribution)

5 CHICAGO JOURNAL OF INTERNATIONAL LAW 83 (2004)

Searching for the Peaceable Kingdom (review of CAROL WEISBROD, EMBLEMS OF PLURALISM: CULTURAL DIFFERENCES AND THE LAW)

21 CONSTITUTIONAL COMMENTARY 611 (2004)

Establishment, Expressivism, and Federalism (symposium contribution)

78 CHICAGO -KENT LAW REVIEW 669 (2003)

Extraterritoriality and Political Heterogeneity in American Federalism

150 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 856 (2002)

The Radical Possibility of Limited Community-Based Interpretation of the Constitution
43 WILLIAM & MARY LAW REVIEW 927 (2002)

“Illiberal” Communities, Liberalism, and American Constitutionalism (symposium)
12 JOURNAL OF CONTEMPORARY LEGAL ISSUES 803 (2002)

Multiple Authoritative Interpreters of Quasi-Constitutional Federal Law: Of Tribal Courts and the Indian Civil Rights Act
69 FORDHAM LAW REVIEW 479 (2000)

Nonformalistic Law in Time and Space (invited symposium contribution)
66 UNIVERSITY OF CHICAGO LAW REVIEW 622 (1999)

Our Nonuniform Constitution: Geographical Variations of Constitutional Requirements in the Aid of Community
77 TEXAS LAW REVIEW 1129 (1999)

The Outer Limits of Community Self-Governance in Residential Associations, Municipalities and Indian Country: A Liberal Theory
84 VIRGINIA LAW REVIEW 1053 (1998)

Rationalizing Product Liability for Prescription Drugs: Implied Preemption, Federal Common Law, and Other Paths to Uniform Pharmaceutical Safety Standards (co-authored with David R. Geiger)
45 DE PAUL LAW REVIEW 395 (1996)

What Has Happened to the Common Law? – Recent American Codifications, and their Impact on Judicial Practice and the Law’s Subsequent Development
1994 WISCONSIN LAW REVIEW 1119

Defrocking the Courts: Resolving ‘Cases or Controversies,’ Not Announcing Transcendental Truths (symposium)
17 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 715 (1994)

How Communal are Reasonable People? – Book Note (review of Stephen Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism*)
104 HARVARD LAW REVIEW 1943 (1991)

Case Comment (review and analysis of *EEOC v. Arabian American Oil Co.*, 111 S. Ct. 1227 (1991))
105 HARVARD LAW REVIEW 369 (1991)

SELECTED SPEAKING ENGAGEMENTS

Delivered Talk, *Can Congress Play a Role in Remediating Dysfunctional Political Partisanship?*, University of Indiana School of Law, Indianapolis, Indiana (November 6, 2015)

Delivered Talk, *Two Ways of Conceptualizing the Relationship Between Equality and Religious Freedom*, Bar-Ilan University School of Law, Tel Aviv, Israel (June 9, 2015)

Delivered Talk, *The New Governancism?*, St. Louis University School of Law, St. Louis,

Missouri (October 24, 2014)

Delivered Talk, *A Cultural Approach to Change in Jewish Law and Constitutional Doctrine*, DePaul University School of Law, Chicago, Illinois (April 3, 2014)

Delivered Paper, “Religious Institutions and Liberal Polities,” American Political Science Association, Chicago, Illinois (August 30, 2013)

Testified before Senate Executive Committee, Illinois Senate, Springfield, Illinois, **“Pension Reform: Constitutional Considerations” (March 13, 2013)**

Delivered Paper (“Analyzing the 2012 Election from the Perspective of Republican Legitimacy”), University of Texas School of Law, Is America Governable? (January 25, 2013)

Testified before Personnel and Pensions Committee, Illinois House of Representatives, Springfield, Illinois, **“The Constitutionality of Proposed Pension Reform” (January 7, 2013)**

Delivered Paper (“Why Partisan Gerrymandering May Be Justiciable After All”), Loyola University Chicago School of Law (November 2, 2012)

Delivered Paper (“The Complex Relationship Between Religious Institutions and the Liberal State”), University of San Diego School of Law, Freedom of the Church (October 12, 2012)

Delivered Paper (**“Beyond Interpretation: The ‘Cultural Approach’ to Understanding Extra-Formal Change in Religious and Constitutional Law”**), **The Interpretation of Religious Legal Texts**, New York University Law School (September 11, 2012)

Delivered paper (“Is a Non-Neutral Liberal State an Oxymoron?”), Law & Religion Conference, Pepperdine School of Law (February 23, 2012)

Delivered talk (comment on papers concerning Professor Nathan Issacs), AALS Conference, Jewish Law Section (January 5, 2012)

Delivered talk (“Anti-Shaaria Legislation and the Appropriate Limits on Religious Expression,”) Chicago-Kent College of Law, Chicago, Illinois (November 15, 2011)

Delivered talk (“Judicial Takings and Living Originalism”), Chicago-Kent College of Law, Chicago, Illinois (October 18, 2011)

Delivered talk (“Why (and to what extent) Political Liberalism Should Accommodate Religious Perfectionists”), John Cabot University, Rome, Italy (December 17, 2010)

Delivered talk (“Republican Legitimacy and Tempered Politics”) at Loyola University (Chicago), (November 5, 2010)

Delivered talk (**“Religious Education in a Democratic State”**), Bar-Ilan University School of Law, Israel (June 7, 2010)

Delivered Talk (“Congress’ Primary Role in Determining What Full Faith and Credit Requires”), California Western Law School (March 19, 2010)

Delivered talk (“Democratic Integrity and Tempered Politics”), Loyola University Los

Angeles (March 11, 2010)

Delivered talk (“**Democratic Integrity and Tempered Politics**”), University of Illinois at Chicago (October 21, 2009)

Delivered talk (“What the Constitution Does, and Does Not Do”), Chicago-Kent College of Law (September 16, 2009)

Delivered talk (“From Exclusivity to Concurrence”), Columbia University School of Law (November 24, 2008)

Delivered talk (“From Exclusivity to Concurrence”), Brooklyn Law School (November 20, 2008)

Delivered talk (“From Exclusivity to Concurrence”), Chicago Bar Association, Civil Rights Section (November 14, 2008)

Delivered talk (*Crawford* and Voting Rights), American Constitutional Society, Chicago chapter (October 28, 2008)

Delivered talk (“From Exclusivity to Concurrence”), Chicago-Kent College of Law, (September 17, 2008)

Delivered comments at conference, (“Contextualizing Preemption”), Northwestern University School of Law, (April 5, 2007)

Delivered talk (“Congress and the Commander-in-Chief: The ‘Coordinacy’ Theory), Southwestern University School of Law (March 15, 2007)

Delivered talk (“Congress and the Commander-in-Chief: The ‘Coordinacy’ Theory”), University of California at Los Angeles School of Law (February 2, 2007)

Delivered talk (“Was *Shelley v. Kraemer* Incorrectly Decided?”), Northwestern University School of Law (October 24, 2006)

Delivered talk, (“Hard or Soft Pluralism? – Positive, Normative, and Institutional Considerations of States’ Extraterritorial Powers”), St. Louis University School of Law (October 13, 2006)

Delivered talk (“A Critique of the Hamdan Decision”), Chicago-Kent College of Law (October 5, 2006)

Delivered talk (“2006 Supreme Court Roundup”), American Constitution Society, Chicago, Illinois (July 13, 2006)

Delivered talk (“Congressional Power and the Commander-in-Chief: A Suggested Approach”), Chicago-Kent College of Law (March 22, 2006)

Delivered talk (“Exercising Political Power over Others: A Perspective from Jewish Law”) at national meeting of the Association of American Law Schools, Washington, D.C. (January 5, 2006)

Delivered talk (“Was Shelley v. Kraemer Correctly Decided? – Some New Answers”) at national meeting of the Association of American Law Schools, Washington, D.C. (January 5, 2006)

Delivered talk (“Was *Shelley v. Kraemer* Correctly Decided? – Some New Answers”) at the University of Minnesota Law School (September 22, 2005)

Delivered talk (“2005 Supreme Court Roundup”), American Constitution Society, Chicago, Illinois (July 1, 2005)

Delivered talk (“The Surprisingly Strong Case for Tailoring Constitutional Principles”) at the University of Pennsylvania School of Law (February 7, 2005)

Delivered talk (“Institutional Context in Constitutional Law”) at symposium on Local Government Law at the University of Virginia School of Law (January 28-29, 2005)

Delivered talk (“The Surprisingly Strong Case for Tailoring Constitutional Principles”) at the William & Mary School of Law (September 21, 2004)

Delivered talk before the Civil Rights Committee of the Anti-Defamation League (“2004 Supreme Court Review”) (July 21, 2004)

Testified before the House of Representatives, Subcommittee on the Constitution, Committee on the Judiciary, concerning the constitutionality of H.R. 1755 (July 20, 2004)

Delivered talk (“**Why the DOMA is Not (Yet) Unconstitutional: *Lawrence*, Full Faith and Credit, and the Many Societal Actors That Determine What the Constitution Requires**”) as part of symposium at the Catholic University School of Law (May 20, 2004)

Delivered talks (“Was *Shelley v. Kraemer* Wrongly Decided? -- Four Answers”), at Law and Society Conference (May 28, 2004) and Chicago-Kent College of Law (March 2, 2004)

Delivered talks before the Decalogue Society, December 17, 2003 and the Jewish Law Section of the AALS, January 5, 2004 (War and Jewish Law)

Commentator at symposium on The Empirical and Theoretical Underpinnings of the Law Merchant, The University of Chicago School of Law, October 17, 2003

American Constitution Society, “2003 Supreme Court Preview,” Panelist, October 7, 2003

Delivered talk before the Civil Rights Committee of the Anti-Defamation League, August 26, 2003 (“Roundup of Recent Supreme Court Decisions”)

Delivered talk at the University of Illinois College of Law, March 6, 2003 (“The Surprisingly Strong Case for Sizing Constitutional Guarantees”)

Delivered Talk at the Northwestern University School of Law, November 26, 2002 (“Un-American Foreign Judgments, the Constitution, and the Hague Convention on Private International Law”)

Delivered talk at the University of Chicago School of Law, November 25, 2002 (“Un-American Foreign Judgments, the Constitution, and the Hague Convention on Private International Law”)

Delivered Talk at the Indian University School of Law, November 7, 2002 (“Sizing the Constitution”)

Delivered Talk at the St. Louis University School of Law (“Sizing the Constitution”),
October 16, 2002

Delivered Talk (“Expressivism, Establishment, and Federalism”) as part of symposium,
Chicago-Kent College of Law, September 17, 2002

Delivered Talk (“Exporting the Constitution: Foreign Judgments and the First Amendment”),
University of Chicago Law School, February 21, 2002

Delivered Talk (“Extraterritoriality and Political Heterogeneity in American Federalism”),
University of Texas School of Law, March 9, 2001

Delivered Talk (“Extraterritoriality and Political Heterogeneity in American Federalism”),
Marquette University School of Law, February 29, 2001

Delivered Talk (“The Possibility of Limited Community-Based Interpretation of the Constitution”) as part of symposium, University of San Diego School of Law, February 1, 2001

Panelist on forum concerning Bush-Gore Litigation, Chicago-Kent College of Law,
(televised), December 1, 2000

Panelist on Newsmakers, “Zero Tolerance Policies,” (televised), October 12, 2000

Delivered Talk (“Multiple Authoritative Interpreters of Quasi-Constitutional Federal Law”),
Georgetown University School of Law, March 7, 2000

Commentator, “An Originalism for non-Originalists,” Chicago-Kent College of Law,
November 1, 1999

Commentator, “Formalism Revisited,” The University of Chicago Law School, February 5,
1999

REFERENCES AVAILABLE UPON REQUEST