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**PROFESSIONAL
EXPERIENCE**

Warren Distinguished Professor of Law,
University of San Diego, 2002- present

Robert and Marion Short Professor, Notre Dame Law School, 1998-2002

William M. Lile Visiting Professor, University of Virginia School of Law,
Fall 2001

University of Colorado
Associate Professor, 1987-1989
Professor, 1989-1998
Byron R. White Professor, 1995-1998

Visiting Professor of Law, University of Michigan Law School, Winter
1995

Temporary Honorary Associate, Centre for Criminology and the Social
and Philosophical Study of Law, University of Edinburgh, Winter 1994

Associate Professor of Law, University of Idaho, 1984-1987

Teaching Fellow, Stanford Law School, 1983-1984

Associate, Rooker, Larsen, Kimball & Parr, Salt Lake City, Utah, 1980-
1983

Law clerk to Judge Joseph T. Sneed, United States Court of Appeals for
the Ninth Circuit, San Francisco, California, 1979-1980

Summer Associate, Covington & Burling, Washington, D.C., 1979

Summer Associate, Cravath, Swaine & Moore, New York City, 1978

Summer Associate, Van Cott, Bagley, Cornwall & McCarthy, Salt Lake City, Utah, 1977

EDUCATION

Yale Law School. J.D. 1979.

Activities/Distinctions: Board of Directors, Yale Moot Court. First runner-up, Benjamin Cardozo Brief-writing Competition, 1977-78. Finalist (of 4), Harlan Fiske Stone Moot Court Competition, Spring 1978. Finalist (of 4), Thomas Swan Barristers' Union Competition, Fall 1978.

Brigham Young University. B.A., summa cum laude with highest honors, 1976. Valedictorian, College of Social Sciences. David O. McKay Scholar. University Scholar.

PUBLICATIONS

Books

The Disintegrating Conscience: a tragedy in three acts (Notre Dame Press, forthcoming 2023).

Fictions, Lies, and the Authority of Law (Notre Dame Press 2021).

Pagans and Christians in the City: Culture Wars from the Tiber to the Potomac (Eerdmans 2018).

The Rise and Decline of American Religious Freedom (Harvard University Press 2014).

The Disenchantment of Secular Discourse (Harvard University Press 2010).

Law's Quandary (Harvard University Press 2004; reprinted in paper 2007).

Getting Over Equality: A Critical Diagnosis of Religious Freedom in America (NYU Press 2001).

The Constitution and the Pride of Reason (Oxford University Press, 1998).

Against the Law (co-authored with Paul Campos and Pierre Schlag) (Duke University Press 1996).

Foreordained Failure: The Quest for a Constitutional Principle of Religious Freedom (Oxford University Press 1995; reprinted in paper 1999).

Articles and essays

Christianity and the Law of Religious Freedom, in *The Oxford Handbook on Christianity and Law* (John Witte, Jr. and Rafael Domingo eds. forthcoming).

The Constitution, the Leviathan, and the Common Good (review essay), __ *Const. Comm.* __ (forthcoming).

Michael Perry: Prophet of Progressive Collapse, __ *J. Contemp. Legal Issues* __ (forthcoming).

Presently Absent or Absently Present: The Curious Condition of Natural Law (review essay), *American J. Jurisprudence* (2022), <https://academic.oup.com/ajj/advance-article-abstract/doi/10.1093/ajj/auac003/6576066>.

The Resurgence of (Immanent) Religion and the Disintegration of the Secularization Hypothesis, in *Secularization, Desecularization, and Toleration* 135-151 (Vyacheslav Karpov & Manfred Svenson eds. 2020).

One Step Enough, 47 *Pepperdine L. Rev.* 549 (2020).

The Case of the Exemption Claimants: Religion, Conscience, Identity, – *Brigham Young University Law Review*, 2019 *Brigham Young University Law Review* 339 (2019).

Fixed Star or Twin Star: The Ambiguity of Barnette, 13 *FIU Law Review* 801(2019).

Against Civil Rights Simplism, in *Religious Freedom, LGBT Rights, and the Prospects for Common Ground* (Cambridge University Press, Robin Wilson and William Eskridge eds. 2019).

Equality, Religion, and Nihilism, in *Research Handbook on Law and Religion* (Edward Elgar, Rex Adhar ed. 2018).

A Guide through the Perplexity: Corporate Religious Liberty Amidst the

Din of Cultural Struggle, in *The Cambridge Companion to the First Amendment and Religious Liberty* (Cambridge, Owen Anderson ed. 2018).

The Jurisdictional Conception of Church Autonomy, in
Corporate Religious Liberty (Oxford University Press,
Micah Schwartzman et al. eds. 2016).

Judicial Activism and "Reason," in *Judicial Activism: Perspectives on a Contested Theme* (Luis Pereira Coutinho et al. eds. 2015).

Die and Let Live? The Asymmetry of Accommodation, 88 Southern Cal. L. Rev. 703 (2015).

The Last Chapter?, 41 Pepperdine L. Rev. 903 (2014).

Situating Ourselves in History, 41 Pepperdine L. Rev. 983 (2014).

The Precarious Freedom of the Church, in *Conscience of the Institution* (Helen Alvare ed. 2014).

Is God Irrelevant?, 94 B.U. Law Rev. 1339 (2014).

The Jurisprudence of Denigration, 48 UC Davis L. Rev. 675 (2014).

The Plight of the Secular Paradigm, 88 Notre Dame L. Rev. 1409 (2013).
Religious Symbols and Secular Government, 46 Israel L. Rev. 193 (2013).

The Constitution and the Goods of Religion, in *Dimensions of Goodness* (Vittorio Hosle ed., Cambridge Scholars Publishing 2013).

Freedom of Religion or Freedom of the Church?, in *Legal responses to Religious Practices in the United States* (Austin Sarat ed., Cambridge University Press 2012).

The Establishment Clause and the "Problem of the Church," in *Challenges to Religious Liberty in the Twenty-First Century* 3 (Gerard V. Bradley ed. 2012).

Law as Language?, 63 Mercer L. Rev. 891 (2012).

That Old-Time Originalism, in *The Challenge of Originalism: Essays in Constitutional Theory* (Grant Huscroft ed.), (Cambridge U Press 2012).

Religious Freedom and Its Enemies, 32 Cardozo L. Rev. 2033 (2011).

Constitutional Divide: The Transformative Significance of the School Prayer Decisions, 38 Pepperdine L. Rev. 945 (2011).

Nonestablishment, Standing, and the Soft Constitution, 85 St. Johns L. Rev. 407 (2011).

Book Review 122 Ethics 203 (2011) (reviewing Jean Porter, *Ministers of the Law: A Natural Law Theory of Legal Authority*).

Lawyering Religious Liberty (reviewing Douglas Laycock, *Religious Liberty: Overviews and History*), 89 Tex. L. Rev. 917 (2011).

Lessons from Lincoln: A Comment on Levinson, 38 Pepperdine L. Rev. 915 (2011).

A Response to Nicholas Wolterstorff, 40 Christian Scholar's Review 101 (2010).

Kent Greenawalt's Elusive Constitution (reviewing Kent Greenawalt, *Religion and the Constitution: Establishment and Fairness*), 25 Const. Comm. 301 (2009).

Originalism and the (Merely) Human Constitution, 27 Const. Comm. 189 (2010).

Persons All the Way Up, 55 Villanova L. Rev. 1177 (2010).

Why Is Government Speech Problematic? The Unnecessary Problem, the Unnoticed Problem, and the Big Problem, 87 Denv. L. Rev. 945 (2010).

Discourse in the Dusk: The Twilight of Religious Freedom (review essay), 122 Harv. L. Rev. 1869 (2009).

Educating for Liberalism, 42 U.C. Davis L. Rev. 1039 (2009).

Playing Around With Religion's Constitutional Joints, 157 U. Penn. L. Rev. PENNumbra 123 (2008).

Our Agnostic Constitution, 83 NYU L. Rev. 120 (2008).

Toleration and Liberal Commitments, in NOMOS XLVIII: Toleration and Its Limits 243 (2008).

De-Moralized: *Glucksberg* in the Malaise, 106 Mich. L. Rev. 1571 (2008).

What Does Constitutional Interpretation Interpret?, in *Expounding the Constitution: Essays in Constitutional Theory* (Cambridge University Press, 2008).

How is America "Divided by God?", 27 Miss. C. L. Rev. 141 (2007-08).

Persons Pursuing Goods, 13 Legal Theory 285 (2007).

"Hollow Men"? Law and the Declension of Belief, in *Civilizing Authority* (Patrick McKinley Brennan ed. 2007).

Stare Decision in a Classical and Constitutional Setting: A Comment on the Symposium, 5 Ave Maria L. Rev. 153 (2007).

(Mis)understanding Good-Behavior Tenure, 116 Yale L. J. 159 (2006) (with Saikrishna Prakash).

That Old (But Not So Old) Time Jurisprudence, 51 Amer. J. Juris. 191 (2006).

Science, Humanity, and Atrocity: A Lawyerly Examination, 104 Michigan L. Rev. 1305 (2006).

What Doth It Profit? Pelikan's Parallels, 90 Minn. L. Rev. 727 (2006).

The (Always) Imminent Death of the Law, 44 U. San Diego L. Rev. 47 (2007)

How to Remove a Federal Judge, 116 Yale L.J. 72 (2006) (with Saikrishna Prakash).

Metaphysical Perplexity?, 55 Catholic U. L. Rev. 639 (2006).

Is the Harm Principle Illiberal?, 51 Amer. J. Juris. 1 (2006).

Hart's Onion: The Peeling Away of Legal Authority, 16 S. Cal. Interdisc. L.J. 97 (2006).

Taxes, Conscience, and the Constitution, 23 Const. Comm. 365 (2006).

The Jurisdictional Establishment Clause: A Reappraisal, 81 Notre Dame L. Rev. 1843 (2006).

What Does Religion Have to Do with Freedom of Conscience?, 76 U.

Colorado L. Rev. 910 (2005).

The Tenuous Case for Conscience, 10 Roger Williams L. Rev. 325 (2005).

Cracks in the Coordination Account, 50 Amer. J. Juris 249 (2005).

The Donald A. Gianella Memorial Lecture: Nonestablishment “Under God”? The Nonsectarian Principle, 50 Villanova L. Rev. 1 (2005).

The Iceberg of Religious Freedom: Sub-Surface Levels of Nonestablishment Discourse, 38 Creighton L. Rev. 799 (2005).

The Pluralist Predicament: Contemporary Theorizing in the Law of Religious Freedom, 10 Legal Theory 51 (2004).

Legal Scholarship as Resistance to “Science,” 41 U. San Diego L. Rev. 1775 (2004).

The Academy, the Courts, and the Culture of Rationalism, in *That Eminent Tribunal: Judicial Supremacy and the Constitution* 97 (Christopher Wolfe ed., Princeton University Press 2004).

Recovering (from) Enlightenment?, 41 San Diego L. Rev. 1263 (2004), reprinted in *America and Enlightenment Constitutionalism* (Gary L. McDowell and Johnathan O’Neill eds.)

Conciliating Hatred, First Things 17 (June 2004).

Interrogating Thomas More: The Conundrums of Conscience, 1 St. Thomas L.J. 580 (2003).

Barnette’s Big Blunder, 78 Chicago-Kent L. Rev. 625 (2003).

The Promise and Perils of Conscience, 2003 BYU L. Rev. 1057.

Intramural Dialogue and the Malaise of Religious Freedom, 35 Vand. J. Trans. Law 359 (2002).

Separation as a Tradition, 18 J. Law & Politics 215 (2002) (from paper read at conference at University of Virginia on “Beyond Separatism,” February 2002)

Believing Persons, Personal Believings: The Neglected Center of the First Amendment, 2002 U. Ill. L. Rev. 1233.

Missing Persons, 2 Nevada L. Rev. 590 (2002) (from colloquium given at UNLV Law School).

Expressivist Jurisprudence and the Depletion of Meaning, 60 Maryland L. Rev. 506 (2001) (from paper presented at conference on "The Expressive Dimension of Governmental Action," University of Maryland, October 2000).

"The Religious," "the Secular," and "the Moral": What Are We Talking About?, 36 Wake Forest Law Rev. 487 (2001) (from paper presented at conference on "Religiously Grounded Morality: Its Proper Role in American Law and Public Policy," Wake Forest University, October 2000).

Law as a Religious Enterprise: Legal Interpretation and Scriptural Interpretation, in *Law and Religion* (Oxford University Press) (from paper read at conference on "Law and Religion", University College London, July 2000).

Religion, Democracy, and Autonomy: A Political Parable, 43 Wm. & Mary L. Rev. (2000) (from paper read at conference on "Religion in the Public Square" at Bill of Rights Institute).

Religious Freedom in America: Three Stories, in *Law and Religion: A Critical Anthology* 15 (Stephen M. Feldman ed. NYU Press 2000).

Blooming Confusion: Madison's Mixed Legacy, 75 Ind. L.J. 61 (2000) (from paper read at conference on "Religious Freedom at the Dawn of a New Millennium," University of Indiana-Bloomington, April 1999).

Believing Like a Lawyer, 40 B.C.L. Rev. 1041 (1999).

Augustinian Liberal, 74 Notre Dame L. Rev. 1673 (1999).

The Religion Clauses in Constitutional Scholarship, 74 Notre Dame L. Rev. 1033 (1999).

The Constitution in the Cave, 30 McGeorge L. Rev. 97 (1998) (from talk given at AALS national conference), *adapted and reprinted in* 103 First Things 12 (May 2000).

Mother May We?, 21 Cardozo L. Rev. 501 (1999).

Separation and the Fanatic, 85 Virg. L. Rev. 213 (1999).

Book Review (reviewing Paul J. Weithman, ed., Religion and Contemporary Liberalism), 109 Ethics 464 (1999).

Legal Discourse and the De Facto Disestablishment, 81 Marq. L. Rev. 203 (1998) (from a paper read at Marquette conference on "Religion and the Judicial Process").

Losing Jerusalem-- RFRA and the Vocation of Legal Crusader, 39 Wm.&Mary L. R. 907 (1998) (part of symposium on Boerne v. Flores).

Wisconsin v. Yoder and the Unprincipled Approach to Religious Freedom, 25 Cap. Rev. 805 (1997) (from a paper read at conference at Capital University on 20th anniversary of Wisconsin v. Yoder).

Is a Coherent Theory of Religious Freedom Possible? 15 Const. Comm. 73 (1998) (based on talk given at Law & Religion section, AALS national convention, January 1997).

Unprincipled Religious Freedom, 7 J. Contemp. Leg. Issue 497 (1996) (from paper read at 1996 JCLI Religion Symposium, University of San Diego, February 1996).

The Writing of the Constitution and the Writing on the Wall, 19 Harv. J. Law & Public Policy 391 (1996) (from paper read at national conference of the Federalist Society, Northwestern University).

Book Review (reviewing Rethinking Abortion), 13 Const. Comm. 357 (1996).

Religion, Politics, and the Claims of Reason (from paper read at conference at Eden Theological Seminary on The Meaning of Religious Freedom, by Franklin Gamwell), 12 J. Law & Relig. 573 (1995-1996).

Nonsense and Natural Law, 3 S. Cal. Interdisc. L.J. 583 (1995) (from paper read at Symposium on Natural Law, University of Southern California, November 1994).

Radically Subversive Speech and the Authority of Law, 94 Mich. L. Rev. 348 (1995).

Brown v. Board of Education: A Revised Opinion, 20 S. Ill. Law Journal 41 (1995) (from paper read at conference on *Brown v. Board of Education*, Southern Illinois University, October 1995).

Free Exercise Doctrine and the Discourse of Disrespect, 65 Colo. L. Rev.

519 (1994).

Idolatry in Constitutional Interpretation, 79 Virg. L. Rev. 583 (1993).

Moral Realism, Pluralistic Community, and the Judicial Imposition of Principle: A Comment on Perry, 88 Nw. U. L. Rev. 183 (1993).

The Politics of Free Speech, 64 U. Colo. L. Rev. 959 (1993).

Book Review (reviewing Natural Law Theory: Contemporary Essays), 10 Const. Comm. 489 (1993).

In Defense of Traditional Legal Scholarship: A Comment on Schlegel, Weisberg, and Dan-Cohen, 63 Colo. L. Rev. 627 (1992).

The Rise and Fall of Religious Freedom in Constitutional Discourse, 140 U. Penn. L. Rev. 1419 (1991).

Reductionism in Legal Thought, 91 Colum. L. Rev. 68 (1991).

Book Review (reviewing Equal Separation: Understanding the Religion Clauses of the First Amendment and Articles of Faith, Articles of Peace: The Religious Liberty Clauses and the American Public Philosophy), 8 Const. Comm. 546 (1991).

The Bork Phenomenon, 1991 The Public Interest Law Review 197.

The Pursuit of Pragmatism, 100 Yale L.J. 409 (1990).

The Restoration of Tolerance, 78 Calif. L. Rev. 305 (1990).

Separation and the "Secular": Reconstructing the Disestablishment Decision, 67 Tex. L. Rev. 955 (1989).

Law Without Mind, 88 Mich. L. Rev. 104 (1989).

Book Review (reviewing Separation of Church and State: Historical Fact and Current Fiction and Christianity and the State), 6 Const. Comm. 541 (1989).

Book Review (reviewing Freedom of Speech), 5 Const. Comm. 497 (1988).

Why Should Courts Obey the Law?, 77 Georgetown L.J. 113 (1988).

Symbols, Perceptions, and Doctrinal Illusions: Establishment Neutrality

and the “No Endorsement” Text, 86 Mich. L. Rev. 266 (1987).

The Critics and the “Crisis”: A Reassessment of Current Conceptions of Tort Law, 72 Cornell L. Rev. 765 (1987).

Skepticism, Tolerance, and Truth in the Theory of Free Expression, 60 S. Cal. L. Rev. 649 (1987).

Courts, Creativity, and the Duty to Decide a Case, 1985 U. Ill. L. Rev. 573 (1985).

Rhetoric and Rationality in the Law of Negligence, 69 Minn. L. Rev. 277 (1984).

