

JOHN OLDHAM McGINNIS
George C. Dix Professor of Law
Northwestern University School of Law
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WORK EXPERIENCE:

- 2002-** **Present: Professor, Northwestern Law School Endowed Chair from 2012**
- 2016—** **Contributing Editor, City Journal**
2021-- **Contributing Editor, Law and Liberty**
- 2014 -** **Spring Visiting Professor, University of Virginia Law School**
- 1991-2002** **Assistant Professor ('91-'94), Associate Professor ('94-'95), (Professor '95-01)**
Benjamin N. Cardozo School of Law
- Spring 1998** **Lee Distinguished Visiting Professor, Marshall-Wythe Law School at William and Mary**
- 1987-1991** **Deputy Assistant Attorney General**
Office of Legal Counsel, Department of Justice
- The Office of Legal Counsel is the principal legal adviser to the Attorney General and, through him, to all departments and agencies in the executive branch. As a deputy to the head of this office, I helped supervise a staff of eighteen attorneys in providing advice on a wide range of legal issues with particular responsibility for advice on national security, trade, financial and regulatory issues as well as for the evaluation of the constitutionality of pending legislation.**
- 1985-1987** **Attorney-Adviser**
Office of Legal Counsel, Department of Justice
- 1984-1985** **Litigation Associate**
Sullivan and Cromwell, New York
- 1983-1984** **Law Clerk, Judge Kenneth W. Starr**
Court of Appeals, District of Columbia Circuit

1983 Summer Clerk
Office of Solicitor General, Department of Justice

EDUCATION:

1980-1983 Harvard Law School J.D.
Magna Cum Laude
Editor, *Harvard Law Review*

1978-1980 Balliol College, Oxford
M.A., Philosophy and Theology Knox Fellow
Librarian and Secretary, Oxford Union Society

1975-1978 Harvard College
B.A., *Magna Cum Laude*, Phi Beta
Kappa Major: Classical Languages
Lamont Prize in Classics

AWARDS:

1997 Paul M. Bator Award (awarded annually by the Federalist Society to an "outstanding legal scholar" under forty.)

Dean's Teaching Award 2009-2010

TEACHING AREAS:

**Administrative Law, Antitrust, Banking Law, Constitutional Law,
International Trade, International Law, Law and Technology**

BOOKS:

ORIGINALISM AND THE GOOD CONSTITUTION (with M. Rappaport)
(Harvard University Press) (2013)

ACCELERATING DEMOCRACY (Princeton University Press) (2013)

ACADEMIC ARTICLES, ESSAYS and BOOK CHAPTERS:

The Power of Interpretation: Minimizing the Construction Zone 96 NOTRE
DAME L. REV. 919 (2021) (with M. Rappaport)

Unifying Antitrust Enforcement in the Digital Age, 78 Wash. & Lee L. Rev. 305
(2021) (with L. Sun)

Gun Rights Delayed Can be Gun Rights Denied, 2020 Ill. L. Rev. Online 302

Protecting Originalism 42 HARVARD J. L. & PUB POL. 82(2019)

Unifying Original Intent and Public Meaning Originalism, 114 N.W. L. REV. 1371 (2019) (with M. Rappaport)

Bitcoin: Order without Law in the Digital World, 52 IND. L. J. 1497 (2019)(with K. Roche)

The Sharing Economy as an Equalizing Economy, 94 NOTRE DAME L. REV. 339 (2018)

The Constitution and the Language of the Law, 59 WM AND REV. 1321 (2018) (with M. Rappaport)

Predicting Litigation and Time to Litigate, PROCEEDINGS OF 16TH ANNUAL CONFERENCE OF THE INTERNATIONAL ASSOCIATION OF ARTIFICIAL INTELLIGENCE & LAW 257 (2017)(with P. Wongchaiswat & D. Klabjan)

Dworkinian Antitrust, 102 IOWA L. REV. 1 (2016) (with Andrew Meerkins)

Reforming Constitutional Review of State Economic Legislation, GEO. J. L. & PUB. Pol. 517 (2016)

The Duty of Clarity, 84 GEO. WASH. L. REV. 843 (2016)

Neutral Principles and Some Campaign Finance Problems, 56 WM. & MY. L.REV. 841(2015-2016).

How Innovation Makes Us More Equal, 39 HARV. J. L. & PUB. POL. 47 (2016)

Originalism, Hypothesis Testing, and Big Data, PROCEEDINGS OF 15TH ANNUAL CONFERENCE OF THE INTERNATIONAL ASSOCIATION OF ARTIFICIAL INTELLIGENCE & LAW 201 (2015) (with Branden Stein)

Public Choice Originalism: Bork, Buchanan and the Escape from the Progressive Paradigm, 10 J. L. & ECON. & Pol'y 669 (2015)

Law's Algorithm, 66 FLA. L. REV 991 (2015) (with S. Wasick)

The Great Disruption: How Machine Intelligence Will Transform the Market for Legal Services, 82 FORD. L. REV. 3041 (2014) (with R. Pearce)

An Undergraduate Option for Legal Education, 38 INT. REV. L. & ECON. 117 (2014) (with S. Mangas) *reprinted in* Jahrbuch der Rechtsdidaktik 2013/2014 Yearbook of Legal Education 141

The Abstract Language Fallacy, 2012 U. ILL. L. REV. 737 (2012) (with M. Rappaport)

Sosa and the Derivation of Customary International Law, INTERNATIONAL LAW IN THE SUPREME COURT: CONTINUITY AND CHANGE 481 (David Sloss et al., eds) (2011)

Laws for Learning in an Age of Acceleration, 53 WM. & MY. L. REV. 705 (2011)

Accelerating AI, 104 N.W.L. REV. 1253 (2010)

Originalism and the Good Constitution, 98 GEORGETOWN L. J. 1693 (2010) (with M. Rappaport)

Medellin and the Future of International Delegation, 118 YALE L. J. 1712 (2009)

Original Methods Originalism: A New Theory of Interpretation and the Case against Construction, 103 N. W. L. REV. 751 (2009) (with M. Rappaport)

Reconciling Precedent with Originalism, 103 N.W.L. Rev. 803 (2009) (with M. Rappaport)

Democracy and International Human Rights Law, 84 NOTRE DAME L. REV. 1739 (2009) (with I. Somin)

Losing the Law Wars, 25 GEORGIA ST. L. REV 377 (2008) (endowed lecture)

Judging Facts Like Law: The Courts versus Congress in Social Fact-Finding, 25 CONST. COM. 69 (2008) (with C. Mulaney)

The Condorcet Case for Supermajority Rules, 16 SUP. ECON. REV. 39 (2008) (with M. Rappaport)

The Federalist Approach to the First Amendment, 31 HARV. J. L. PUB. POL. 127 (2008)

Originalism and Supermajoritarianism: Defending the Nexus, 101 N.W. L. Rev. 1919 (2007) (with M. Rappaport)

Original Interpretative Principles as the Core of Originalism, 24 CONST. COM. (2007) (with M. Rappaport)

Should International Law Be Part of Our Law? 59 STAN L. REV. 1175 (2007) (with I. Somin)

Majority and Supermajority Rule: Three Views of the Capitol, 85 TEX. L. REV. 1115 (2007) (with M. Rappaport)

A Pragmatic Defense of Originalism, 100 N.W. L. REV. 383 (2006) (with M. Rappaport)

Contemporary Foreign and International Law in Constitutional Construction, 69 ALB. L. REV. 801 (2006)

The Filibuster, the Median Senator and The Countermajoritarian Difficulty, REV. 257 (with M. Rappaport)

The Patterns and Implications of Political Contributions by Elite Law School Faculty, 93 GEO. L. J. 1167 (2005) (with M. Schwartz and B. Tisdell) *Foreign to Our Constitution*, 100 N. W. L. REV. 303 (2005)

Supermajority Rules and Judicial Confirmation, 25 CARDOZO L. REV. 543 (2005) (with M. Rappaport)

Lawrence v. Texas and Judicial Hubris, 114 MICH. L. REV. 1555 (2004) (with N. Lund)

Against Global Governance in the WTO, 45 HARV. J. INT'L 353 (2004) (with M. Movsesian)

Federalism v. States' Rights: A Defense of Judicial Review in a Federal System, 99 N.W.L. REV. 89 (2004) (with I. Somin)

The World Trade Organization as a Structure of Liberty, 28 HARV. J. OF LAW AND PUB. POL. 81 (2004)

Symmetric Entrenchment: A Constitutional and Normative Theory, 89 VA. L. REV. 385 (2003) (with M. Rappaport)

Decentralizing Provisions versus Judicial Oligarchy, 20 CONST. COM. 39 (2003)

The Political Economy of Antitrust Harmonization, 45 WM. & MY. L. REV. 549 (2003)

Global Multilateral Treaties and Customary International Law: The Case of the WTO, 44 VA. INT'LJ. 229-285 (2003)

Continuity and Coherence in the Rehnquist Court, 47 ST. LOUIS L. REV. 875 (2003)

Lawyers as the Enemies of Truth, 26 HARV. L. REV. & PUB. POL. 231 (2003)

Reviving Tocqueville's America: The Rehnquist Court's Jurisprudence of Social Discovery, 90 CAL. L. REV. 485 (2002)

Our Supermajoritarian Constitution, 80 TEX. L. REV. 703 (2002) (with M. Rappaport)

Presidential Review as Constitutional Restoration, 51 DUKE L. J. 901 (2001)

Popular Sovereignty and the Electoral College, 29 FLA. ST. U. L. REV. 995 (2001)

World Trade Agreements: Advancing the Interests of the Poorest of the Poor, 34 IND. L. REV. 1361 (2001)

The World Trade Constitution, 114 HARV. L. REV. 511 (2000) (with M. Movsesian)

The Enlightenment Case for Vouchers, 2000 N.Y.U. ANN. SURV. AM. L. 75-88

Against the Scribes: Campaign Finance Reform Revisited, 24 HARV. J. L. & PUB. POL. 25 (2000)

The Political Economy of Global Multilateralism, 1 CHI. J. INT'L L. 381 (2000)

A New Agenda for International Human Rights: Economic Freedom, 48 CATH. U. L. REV. 1029 (1999)

The Inevitable Infidelities of Constitutional Translation: The Case of the New Deal, 41 WM & MY L. REV. 177 (1999)

Justice Without Justices, 16 CONST. COMM. 541 (1999)

Impeachment: The Structural Understanding, 67 GEO. WASH. L. REV. 650(1999)

In Praise of the Efficiency of Decentralized Traditions and Their Preconditions, 77 N. C. L. REV. 523 (1999)

Still a Solution: In Further Support of Spending Supermajority Rules, 40 WM & MARY L. REV. 527 (1999) (with M. Rappaport)

Supermajority Rules as a Constitutional Solution, 40 WM. & MARY L. REV. 365 (1999) (with M. Rappaport)

The Original Constitution and its Decline: A Public Choice Perspective, 21 HAR. J. L. & PUB. POL. 195 (1997)

The Rights of Legislators and the Wrongs of Interpretation: A Further Defense of the Constitutionality Legislative Supermajority Rules, 47 DUKE L. J. 327 (1997) (with M. Rappaport)

Executive Branch Interpretation in Great Britain and the United States: An Examination of the Essential Differences in CONSTITUTIONAL IMPLICATIONS OF EXECUTIVE SELF-REGULATION: THE NEW ADMINISTRATIVE LAW (T. Daintith, ed. 1997)

The Spontaneous Order & War Powers, 47 CASE WEST. L. REV. 1317 (1997)

Constitutional Federalism: A Funeral Oration 13 J. L. POLITICS 288 (1997)

The Human Constitution and Constitutive Law: A Prolegomenon, 8 J. CONTEMP. LEG. ISSUES 211 (1997)

The Decline of the Western Nation State and the Rise of the Regime of International Federalism, 18 CARDOZO L. REV. 903 (1996) (symposium)

The Once and Future Property-Based Vision of the First Amendment, 63 UNIV. CHI. L. REV. 49 (1996)

The Original Constitution and Our Origins, 19 HARV. J. L. & PUB. POL. 251 (1996)

The Constitutionality of Legislative Supermajority Requirements: A Defense, 105 YALE L. J. 483 (1995) (with M. Rappaport)

The Bar Against Challenges to Employment Discrimination Consent Decrees: A Public Choice Perspective, 54 LA. L. REV. 1507 (1994) (symposium)

The Partial Republican, 35 WM. & MARY L. REV. 1751 (1994) (review essay)

The Federal Litigator, 56 REVIEW OF POLITICS 607 (1994) (reviewing Rebecca Salokar, *THE SOLICITOR GENERAL: THE POLITICS OF LAW*)

Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers, 56 LAW & CONTEMP. PROBS. 293 (1993)

Models of the Attorney General's Opinion Function: A Normative, Historical and Descriptive Prolegomenon, 15 CARDOZO L. REV. 377 (1993)

Another Word Against Consensus, 71 TEX. L. REV. 675 (1993)

The President, the Senate, the Constitution and the Confirmation Process: A Reply to Professors Strauss and Sunstein, 71 TEX. L. REV. 633 (1993)

Principle versus Politics: The Solicitor General's Office in Constitutional and Bureaucratic Theory, 44 STAN. L.REV. 799 (1992) (review essay)

The Contract Clause: A Return to the Original Understanding, 14 HASTINGS CON. L. Q. 525 (1987) (with D. Kmiec)

Comment, *The Exhaustion Doctrine in Section 1983 Actions: Patsy v. Board of Regents and Fair Assessment in Real Estate v. McNarty*, 96 HARV. L.REV. 207 (1983)

SELECTED ESSAYS AND REVIEWS (Not Including Law and Liberty Essays):

Constitutional Fidelity, City Journal, Dec. 9, 2020)

Trump's Judges Will Bring America Together, WSJ (Sept. 24, 2020) (with M. Rappaport)

Justice-FTC Feud is the Wrong Kind of Competition, WSJ (Aug. 13, 2020) (with L. Sun)

Technology's Good War, City Journal (April 15, 2020)

Warren Hates Market Competiton or Does She? WSJ(Dec. 3, 2019)

Trump's "Emergency" Order, City Journal (February 19, 2019)

A Philosophy of Expedience, City Journal (June 11, 2018)

- Bridging C.C. Snow's Two Cultures*, City Journal (Spring 2018)
- Why Bitcoin is Booming*, WSJ (July 7, 2017)
- Gorsuch's Good Start*, City Journal (June 27, 2017)
- A Great Legal Pen* City Journal (Feb. 1, 2017)
- Scalia Made the Weather*, CITY JOURNAL (March 8, 2016)
- Liberals v. Political Speech*, CITY JOURNAL (Spring 2017)
- College Tenure Has Reached its Sell by Debate*, WSJ (Aug. 11, 2015)
(with Max Schanzenbach)
- John Roberts' Principled Mistake*, CITY JOURNAL (June 29, 2015)
- Staging Scalia*, CITY JOURNAL (May 24, 2015)
- Constitutional Revolution*, WSJ (reviewing Amanda Hollis-Brusky's
IDEAS WITH CONSEQUENCES) (March, 26, 2015)
- Why Progressives Mislead*, CITY JOURNAL (Winter 2015)
- Reviving Federalism*, NATIONAL REVIEW (reviewing James Buckley's
SAVING CONGRESS FROM ITSELF) (Feb. 23, 2015)
- How to End the Government Shut Down Option*, Wall Street Journal
(Dec. 29, 2015) (with M. Rappaport)
- Lawyers v. Machines*, CITY JOURNAL (Spring 2014)
- The Classical Liberal Constitution* (reviewing Richard Epstein's book of
the same name), WALL STREET JOURNAL) (March 23, 2014)
- Robert Bork: Intellectual Leader of the Legal Right*, 80 CHI. L. DIALOG. 235
(2013)
- Innovation and Inequality*, 11 NATIONAL AFFAIRS (Winter 2012)
- A Politics of Knowledge*, 10 NATIONAL AFFAIRS (Winter, 2011)
- Law is Class*, WALL STREET JOURNAL, March 21, 2011 (Reviewing Walter
Olson's *Schools for Misrule*)

When Justice Comes Naturally, WALL STREET JOURNAL, August 27, 2010, (reviewing Hadley Arkes' *Constitutional Illusions and Anchoring Truths*)

David Souter's Bad Constitutional History, WALL STREET JOURNAL (June 14, 2010) (with M. Rappaport)

Confidential Conuandrum, WALL STREET JOURNAL, June 4, 2010 (reviewing Gabriel Schoenfeld's *Necessary Secrets*)

The Case Against Public Sector Unions, 162 POL. REV. 3 (2010) (with M. Schanzenbach)

An Opinionated History of the Federalist Society, 20 PROCEEDINGS OF THE SAMUEL GRIFFITH SOCIETY 163 (2009)

A Blueprint for Obama, WALL STREET JOURNAL, July 15, 2008 (reviewing Erwin Chemerinsky's, *Enhancing Government*)

Who Will be President? WALL STREET JOURNAL, July 6, 2008 (discussing prediction markets)

Executive Power in the War on Terror 146 POLICY REVIEW 63 (2008)

Electoral College Debate with Sandy Levinson and Daniel Lowenstein (2007) <http://www.pennumbra.com/debates/index.php?date=24087>

Coming to Order, WALL STREET JOURNAL, March 15, 2007 (Reviewing Janet Crawford Greenburg's *Supreme Conflict*)

What Happens on Election Day, WALL STREET JOURNAL, November 7, 2006 (Reviewing Sanford Levinson's *Our Undemocratic Constitution* and Alan Wolfe's *Does Democracy Still Work*)

Executive Power in the War on Terror, POLICY REVIEW, Dec.-Jan. 2007-2008

Age of the Empirical, POLICY REVIEW (JUNE-JULY 2006)

Weighing a Justice, WALL STREET JOURNAL, (Jan. 31, 2006) (reviewing Ralph Rossum, *The Jurisprudence of Antonin Scalia*)

Individualism and World Order, THE NATIONAL INTEREST, 41-51 (Winter 2005)

Confirming Judges: The Constitutional Option, SAN DIEGO UNION-TRIBUNE, March 11, 2005 (with M. Rappaport)

More Than a Penny for Their Thoughts (reviewing Richard Vedder's *Going Broke by Degrees*) WALL STREET JOURNAL (November 17, 2004)

Whose Constitution is it Anyway, (Reviewing Larry Kramer's *The People Themselves*) WALL STREET JOURNAL (August 10, 2004)

Hey Big Spenders, Here's a Law That Could Stop You, WALL STREET JOURNAL, Feb. 25, 2004 (with M. Rappaport)

From Bad to Worse, NATIONAL REVIEW, Aug, 28, 2003

Rehnquist Court Renewed Civic Virtues, TIME MAGAZINE, June 30, 2003

Free Trade Needs a Free Reign, LOS ANGELES TIMES, July 30, 2001

Trap Your Opponent, Look High-Minded Too (Review of Andrew Starks' *Conflict of Interest in American Public Life.*) WALL STREET JOURNAL, October 30, 2000

Sign Them Up (with Neal Devins), LEGAL TIMES, July 24, 2000

Too Much Vox Populi? (Review of David S. Broder's *Democracy Derailed: Initiative Campaigns and the Power of Money.*), POLICY REVIEW (August, 2000).

The Special-Interest State, NATIONAL REVIEW, February 7, 2000

The Case for Supermajority Rules (with M. Rappaport), POLICY REVIEW, December, 1999 & January 2000

Impeachable Defenses, POLICY REVIEW, June & July 1999

Strong, Silent, Redundant (Review of Lionel Tiger's *The Decline of Males*) WALL STREET JOURNAL, May 27, 1999

Control and Command (Review of James Bovard's *Freedom in Chains*), WALL STREET JOURNAL, February 16, 1999

Tragic Justice, NATIONAL REVIEW, December 7, 1998
One Thing Blocks a Clinton Deal: The Constitution, WALL STREET JOURNAL, October 1, 1998

Post-Federal Case, NATIONAL REVIEW, September 1, 1998

To Each His Own (Review of Tom Bethell's *The Noblest Triumph*) WALL STREET JOURNAL, August 18, 1998

- Don't Call High Court Conservative*, NEWSDAY, July 27, 1998
- Trigger Happiness*, NATIONAL REVIEW, July 20, 1998
- The Origin of Conservatism*, NATIONAL REVIEW, December 22, 1997
- What's Good for You and What Isn't* (Review of Richard Epstein's *Mortal Peril*) WALL STREET JOURNAL, July 16, 1997
- Keynesian Capers* (Review of Robert Kuttner's *The Virtues and Limits of Markets* and William Greider's *One World, Ready or Not*), NATIONAL REVIEW, May 5, 1997
- House Rules: Is a Supermajority Requirement for Tax Hikes Constitutional?* (with M. Rappaport), ABA JOURNAL, March 1997
- Legal Lawbreaking*, NATIONAL REVIEW, February 24, 1997
- Court Room Arguments* (Review of Antonin Scalia's *A Matter of Interpretation*) WALL STREET JOURNAL, February 4, 1997
- The Missing Candidate*, NATIONAL REVIEW, December 6, 1996
- Legal Monopoly*, NATIONAL REVIEW, September 30, 1996
- Class Action* (Review of Richard Kahlenberg's *The Remedy*), NATIONAL REVIEW, July 29, 1996
- The Revolution That Wasn't* (Review of David Frum's *What's Right*) WALL STREET JOURNAL, July 2, 1996
- Restraining Leviathan*, NATIONAL REVIEW, March 11, 1996
- Elderly Economics* (Review of Richard Posner's *Aging and Old Age*) WALL STREET JOURNAL, December 21, 1995
- Original Thomas, Conventional Souter: What Kind of Justices Should the Next President Pick*, POLICY REVIEW, Fall 1995
- The Republican Congress and the Constitution in Foreign and Military Affairs*
COMMON SENSE, Summer 1995 (with C. Cooper)
- Welfare Reform and the Barriers to Work*, WASHINGTON TIMES, February 22, 1995
- The Left vs. Free Speech*, COMMENTARY, October 1994

The 1991 Supreme Court Term: Review and Outlook, 1993 PUBLIC INTEREST
L. REV. 165

CONFERENCE COORDINATOR:

The Legacy of Justice Stevens (2011)

The Rehnquist Court (2004)

The Decline of the Nation State: The Effect on International Economic and Constitutional Law (1996)

Executive Interpretation of the Law (1992)

TESTIMONY BEFORE CONGRESS:

***Protecting Civil Liberties in a Time of Terrorism*, Hearing before Subcommittee on the Constitution, Federalism and Property Rights, Senate Judiciary Committee (October 2, 2001)**

***Federalism*: Hearing before the Senate Commerce Committee (May 5, 1999)**

***The Background and History of Impeachment*: Hearing before the Subcommittee on the Constitution, Committee on the Judiciary, House of Representatives (November 9, 1998)**

***Constitutional Amendment Requiring a Supermajority to Raise Taxes*: Hearing before Senate Judiciary Committee (April 15, 1996) and Hearing before Subcommittee on the Constitution of House Judiciary Committee (March 6, 1996)**

***Campaign Finance Reform*: Hearing before the Senate Committee on Rules and Administration (March 13, 1991)**

***The Torture Victim Protection Act*: Hearing before the Subcommittee on Immigration and Refugee Affairs of the Senate Judiciary Committee (June 22, 1990)**

***Pocket Veto*: Hearing before the Subcommittee on Economic and Commercial Law of the Committee on the Judiciary (May 9, 1990)**

***Constitutional Amendments with Respect to the Impeachment of Judges*: Hearing before the Subcommittee of the Senate Judiciary Committee (March 21, 1990)**

***Constitutional Implementation of Binational Panel and Committee Decisions under the U.S.-Canada Free Trade Agreement*: Hearing before the Senate Judiciary Committee (May 20, 1988)**

SUPREME COURT BRIEFS:

Lee v. Weisman, 60 USLW 4723 (1992), amicus curiae for the United States