

## GILLIAN E. METZGER

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### ACADEMIC AND LEGAL EMPLOYMENT

Columbia Law School (2001-present)

Stanley H. Fuld Professor of Law, 2011-present

Professor, 2007-2011; Assoc. Prof., 2001-2006

Faculty Director, Center for Constitutional Governance

Principal areas of teaching and research: federal courts, constitutional law, administrative law, federalism, and privatization.

Harvard Law School (Spring Term 2011)

Bruce Bromley Visiting Professor of Law

Brennan Center for Justice at NYU School of Law (1998-2001)

Staff Attorney

Conducted litigation and analyzed legislation on issues affecting democracy, with a particular focus on felon disenfranchisement and campaign finance reform.

Supreme Court of the United States (1997-1998)

Law Clerk to Associate Justice Ruth Bader Ginsburg

United States Court of Appeals, District of Columbia Circuit (1996-1997)

Law Clerk to Judge Patricia M. Wald

### EDUCATION

Columbia Law School, J.D. (February 1996)

Honors: James Kent Scholar

Pauline Berman Heller Prize 1996, awarded to the highest-ranked graduating female law student

E.B. Convers Prize 1995, awarded for best original essay on a legal subject

Negrone Prize 1995, awarded for best note on a gender-related topic

Charles H. Revson Law Student Public Interest Fellowship, Summer 1994

Activities: Executive Articles Editor, *Columbia Law Review*

Vice-President Community Grants, Public Interest Law Foundation at Columbia

Oxford University, B.Phil (Masters) in Philosophy (1990)

Honors: Overseas Research Scholarship

Thesis: Communitarianism, Interpretation, and Cultural Relativism

## **EDUCATION, cont.**

Yale University, B.A. (February 1988)

Honors: Magna cum laude with distinction in the major of political science

## **PUBLICATIONS**

### BOOKS:

THE HEALTH CARE CASE: THE SUPREME COURT'S DECISIONS AND ITS IMPLICATIONS (co-editor with Nathaniel Persily and Trevor Morrison) (Oxford 2013)

GELLHORN & BYSE'S ADMINISTRATIVE LAW: CASES AND COMMENTS, 11TH EDITION (co-editor with Peter L. Strauss, Todd D. Rakoff, and Cynthia R. Farina) (Foundation Press 2011)

2007 SUPPLEMENT TO GELLHORN & BYSE'S ADMINISTRATIVE LAW: CASES AND COMMENTS, REVISED 10TH EDITION (with Peter L. Strauss, Todd D. Rakoff, and Cynthia R. Farina) (Foundation Press 2007).

### ARTICLES AND BOOK CHAPTERS:

*Appointments, Innovation, and the Judicial-Political Divide*, 64 Duke L. J. \_\_ (forthcoming 2015)

*Administrative Law, Public Administration, and the Administrative Conference*, 83 Geo. Wash. L. Rev. \_\_ (forthcoming 2015).

*Through the Looking Glass to a Shared Reflection: The Evolving Relationship between Administrative Law and Financial Regulation*, 78 Law & Contemp. Probs. \_\_ (forthcoming 2015)

*The States as National Agents*, 59 St. Louis U. L. Rev. \_\_ (forthcoming 2015) (Remarks)

*Delegation, Accommodation, and the Permeability of Constitutional and Ordinary Law* in the Oxford Handbook on the Constitutional Law of the Administrative State (forthcoming 2015)

*The Constitutional Duty to Supervise*, 124 Yale L. J. 1836 (2015).

*Agency Inaction in U.S. Administrative Law*, in Procédure administrative et production de la décision publique (Thomas Perroud, ed. Forthcoming 2014)

*Administrative Constitutionalism*, 91 Tex. L. Rev. 1897 (2013).

*The Presumption of Constitutionality and the Individual Mandate*, (with Trevor Morrison), 81 Fordham L. Rev. 1715 (2013).

*To Tax, To Spend, To Regulate*, 126 Harv. L. Rev. 83 (2012).

*Foreword: Embracing Administrative Common Law*, 80 Geo. Wash. L. Rev. 1293 (2012).

*Federalism Under Obama*, 53 Wm. & Mary L. Rev 567 (2011).

*Federalism and Federal Agency Reform*, 111 Colum. L. Rev. 1 (2011).

*Ordinary Administrative Law as Constitutional Common Law*, 110 Colum. L. Rev. 479 (2010).

*Congressional Authority, and Constitutional Default Rules in the Horizontal Federalism Context*, in WHY THE LOCAL MATTERS: FEDERALISM, LOCALISM, AND PUBLIC INTEREST ADVOCACY (Joint Publication of the Liman Public Interest program at Yale Law School and the National Attorneys General Program at Columbia Law School, 2010).

*The Interdependent Relationship Between Internal and External Separation of Powers*, 59 Emory L. Rev. 423 (2009).

*Facial and As-Applied Challenges Under the Roberts Court*, 36 Fordham Urb. L. J. 773 (2009).

*The Constitutional Legitimacy of Freestanding Federalism*, 122 Harv. L. Rev. 98 (2009).

*Administrative Law As the New Federalism*, 57 Duke L. J. 2023 (2008).

*Congress, Article IV, and Interstate Relations*, 120 Harv. L. Rev. 1468 (2007).

*Abortion, Equality, and Administrative Regulation*, 56 Emory L. J. 865 (2007).

*Private Delegations, Due Process, and the Duty to Supervise*, in GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY (Martha Minow & Jody Freeman eds., Harvard University Press, 2009).

*From the Files of the Supreme Court: The Hidden Story of Vermont Yankee*, 31 Admin. & Reg. News No. 2 (Winter 2006).

*The Story of Vermont Yankee: A Cautionary Tale of Judicial Review and Nuclear Waste* in ADMINISTRATIVE LAW STORIES (Peter Strauss ed., Foundation Press, 2005).

*Facial Challenges and Federalism*, 105 Colum. L. Rev. 873 (2005).

*Privatization As Delegation*, 103 Colum L. Rev. 1367 (2003).

Excerpted in *Modern Constitutional Theory: A Reader* (John H. Garvey, T. Alexander Aleinikoff, & Daniel A. Farber, eds. 2004).

*Note, Unburdening the Undue Burden Standard: Orienting Casey in Constitutional Jurisprudence*, 94 Colum. L. Rev. 2025 (1994).

## **WORKS IN PROGRESS/PROJECTS**

*Polarization and Agencies*, article CLR Strauss Symposium

*Internal Guidance and Internal Administrative Law: The Law of Deferred Action in Immigration* (with Kevin Stack)

*Administrative Constitutionalism* (edited book project with Jeremy Kessler).

## **POPULAR PRESS/MEDIA**

*A Window into America's Administrative State*, REGBLOG, Mar. 31, 2015.

*The Soda Ban Decision: What It Really Means*, THE HUFFINGTON POST, June 27, 2014.

*Parasitic Federalism and the Ambiguities of Constitutional Structure*, BALKINIZATION, June 18, 2013.

*Reactions to the Health Care Ruling*, THE WALL STREET JOURNAL, June 28, 2012.

*Something for Everyone*, SCOTUSBLOG, June 28, 2012.

*Political Accountability and the Affordable Care Act*, PointofLaw.com, April 3, 2012.

*Facial Challenges and Judicial Consistency*, POINTOFLAW.COM, March 30, 2012.

*As-Applied Challenges, Severability and the Mandate*, BALKINIZATION, March 29, 2012.

*The Individual Mandate and the Tax Power*, POINTOFLAW.COM, March 28, 2012.

*Just the Facts: Health Economics and Constitutional Doctrine* (with Abbe Gluck), SCOTUSBLOG, Aug. 4, 2011.

*Cruel and All Too Usual*, NAT=L LAW JOURNAL, June 28, 1999.

## **SELECTED INVITED PRESENTATIONS (2001 TO PRESENT)**

Panelist, Federalist Society Executive Branch Review Conference, June 18, 2015.

Organizer, AALS New Law Teachers Conference, Washington D.C., June 3-5, 2015.

Organizer and participant, Workshop on Administrative Constitutionalism, Columbia Law School, May 29-30, 2015

Participant, Columbia-Ono Conference on Public and Private Regulation, Tel Aviv, Israel, May 19, 2015.

Organizer and Presenter, Symposium in Celebration of Peter Strauss, Columbia Law School, April 24, 2014

Participant, Joint Columbia-SFV Conference on Public and Private Law, Columbia Law School, April 17-18, 2014.

Organizer, Administrative Agencies in an Age of Dysfunction, Columbia Law School, April 13, 2014.

Panelist, The Spending Clause, National Association of Attorneys General Midwestern Region Meeting, Mar. 31, 2015.

Presenter, Is the Appointment Process Broken, Duke Law Journal 45<sup>th</sup> Annual Administrative Law Conference, Feb. 6, 2015.

Panelist, AALS Panel on Congressional Dysfunction and Executive Lawmaking, Jan. 7, 2015.

Panelist, The Executive Power to Not Enforce the Law, Federalist Society 17<sup>th</sup> Annual Faculty Conference, Jan. 3, 2015.

Commenter on the Childress Lecture, St. Louis University, Oct. 24, 2014.

Organizer and Participant, Administrative Constitutionalism: How Agencies Can, Do, and Should Interpret and Implement the Constitution, ABA Section on Administrative Law and Regulation, Oct. 16, 2014.

Participant, Interpreting the APA: Text and Common Law, ABA Section on Administrative Law and Regulation, Oct. 16, 2014.

Commenter, 7<sup>th</sup> Annual Junior Federal Courts Workshop, University of Georgia, Oct 10, 2014

Participant, Panel on Executive Power in a Time of Political Dysfunction, ACS Convention, June 20, 2014.

Organizer and Paper Presenter, Administrative Law and Financial Regulation Conference, Columbia Law School, February 21, 2014.

Participant, The Role of Custom, Convention, and Tradition in U.S. Constitutional Law, Duke Law School, Nov. 9, 2013.

Panelist, Speech, Symbols, and Obstacles, University of California Berkeley, Boalt Law School, October 4, 2013.

Keynote lecture at University of Montreal Conference on Common Law and Regulation, May 10, 2013.

Participant, Landis Conference, Harvard Law School, May 3-4, 2013.

Participant, Unwritten Law Roundtable, Notre Dame Law School, March 22, 2013.

Administrative Constitutionalism, @ Constitutional Foundations Symposium, University of Texas Law School, Feb. 15, 2013.

Constitutional Law Schmooze, LAPA Program, Princeton, Dec. 2012

Constitutional Status of Administration @:

Washington College of Law, American University, Nov. 1, 2013.

Northwestern University Law School, Nov. 5, 2012

Wharton Business School, Mar. 29, 2012

Panelist, Health Care and the Constitution, Fordham Law School, October 4, 2012.

Panelist, The Health Reform Cases: The Court Speaks on the Limits of Congressional Power, 2012 ABA Annual Meeting, Aug. 4, 2012.

Organizer and Panelist, Administrative Law Roundtable, Columbia Law School, Apr. 20, 2012.

Participant, The Supreme Court Considers the Constitutionality of the PPACA Individual Mandate, PointofLaw Forum, Manhattan Institute, Mar. 27-Apr. 2, 2012.

Embracing Administrative Common Law @:

Constitutional law Colloquium, University of Texas Law School, Feb. 16, 2012

Faculty Lunch Workshop, Columbia Law School, Jan. 26, 2012

Faculty Lunch Workshop, Vanderbilt Law School, Dec. 14, 2011

Panel, ABA Section on Administrative Law and Regulatory Practice, Fall Meeting, Nov. 17, 2011.

Panelist, The Constitutionality of the Affordable Care Act; Ideas from the Academy, Duke Law School, Sept. 16, 2011.

Panelist, Symposium on Constitutional Transformations: The State, the Citizen, and the Changing Role of Government, Feb. 25-26, 2011.

Moderator and Organizer, Administrative Law and Emergency Government, Administrative Law Section, Association of American Law Schools Annual Conference, January 8, 2011.

Panelist, Diagnosing the Constitutionality of Federal Health Care Reform, Council on State Governments National Conference, December 4, 2010.

AFederalism and Federal Agency Reform@:

Faculty Workshop, Harvard Law School, December 6, 2010

Faculty Workshop, Florida State University, September 2, 2010

Faculty Workshop, Columbia Law School, March 25, 2010

Federalism Roundtable, Vanderbilt Law School, February 26, 2010

Responder, Presidential Influence over Administrative Action: Recent Developments, Fordham Law School, November 12, 2010.

Panelist, The Executive in Crisis: Constitutional Capabilities and Constraints, Conference on The Constitution in the Financial Crisis, Stanford Law School, November 11, 2010.

Panelist, Constitutional Challenges to the Patient Protection and Affordable Care Act, University of Maryland Law School, November 4, 2010.

Panelist, Constitutionality of the Individual Mandate, Panel Hosted by the Federalist Society, Southeastern Association of Law Schools, August 5, 2010.

Panelist, *Free Enterprise Fund v. Public Company Accounting Oversight Board*: The Appointments Clause and the Constitutional Power of the President to Supervise Federal Agencies, ABA Administrative Law and Regulatory Practice Section Spring Meeting, May 14, 2010.

Ordinary Administrative Law as Constitutional Common Law:

Constitutional Law Colloquium, Northwestern University School of Law, Feb. 1, 2010

The View from the Curmudgeon=s Lair: A Celebration in Honor of Henry Paul

Monaghan, Columbia Law School, May 15, 2009

Panelist, AEI Legal Center for the Public Interest/Federalist Society, PCAOB: A Preview, Dec. 7, 2009.

Panelist, N.Y. Federalist Society, The Constitutionality of Healthcare Reform, Nov. 19, 2009.

Panelist, Symposium on the Future of Public Rights Litigation, Fordham Law School, Mar. 12, 2009.

Panelist, Tort Law in the Shadow of Agency Preemption, NYU Law School, Feb. 27, 2009.

Panelist, Executive Power: New Directions for the New Presidency? 2009 Randolph W. Throver Symposium, Thursday, Feb. 12, 2009, Emory University School of Law.

Panelist, Arbitrary and Capricious Review Revisited: *State Farm v. Vermont Yankee* At Last, 2008 Administrative Law Conference, ABA Section of Administrative Law and Regulatory Practice, Oct. 16, 2008.

Panelist, Transparency and Stare Decisis, NYU Annual Survey of American Law, Spring 2008 Symposium: Tradeoffs of Candor: Does Transparency Erode Judicial Legitimacy?, March 11, 2008. Remarks published, 64 NYU Annual Survey of American Law 459 (2009).

Panelist, Coordination Across States: Horizontal Federalism panel, 11<sup>th</sup> Annual Liman Public Interest Colloquium, Liman at the Local Level: Public Interest Advocacy and American Federalism, Yale Law School, March 7, 2008.

AAAdministrative Law As the New Federalism@:

Administrative Law, Federalism, and Preemption, Thirty-Eighth Annual Administrative Law Symposium, Duke Law Journal, April 15, 2008

Constitutional Law Workshop, University of Chicago Law School, February 21, 2008

Public Law Workshop, University of Minnesota Law School, November 1, 2007

Faculty Workshop, Columbia Law School, October 25, 2007

Faculty Workshop, University of Connecticut School of Law, October 10, 2007.

Workshop Participant, Agency Costs and Institutional Design: The Recipient of Power, Cardozo Law School, November 10, 2006.

ACongress, Article IV, and Interstate Relations@:

Public Law Workshop, Harvard Law School, September 29, 2006

Faculty Workshop, University of Virginia Law School, November 11, 2005

Faculty Workshop, Columbia Law School, October 28, 2005.

Invited Speaker, New York Supreme Court Judges Association and New York County Lawyers= Association, Law Day Ceremony, May 5, 2006.

AAbortion, Equality, and Administrative Regulation,@ Conference on Reproductive Rights and Equality, Columbia Law School, March 3-4, 2006.



**APrivate Delegations and Due Process@:**

Governance Workshop, University of Michigan Law School, April 6, 2005

Governance By Design Conference, Harvard Law School, March 24, 2005

American Association of Law Schools Annual Conference, Administrative Law Section

Panel: The Future of Adjudication, January 8, 2005

**AFacial Challenges and Federalism@:**

Faculty Workshop, Washington University School of Law, February 28, 2005

Junior Faculty Workshop, Fordham University Law School, December 3, 2004

**APrivatization As Delegation,@ Conference: Outsourcing the Government, National Academy of Public Administration, February 18, 2005.**

Conference on Section 1983 Litigation, National Campaign to Restore Civil Rights, February 6, 2004 (co-moderator).

**Institutional Reform Litigation: What Is the Role for the Court, Executive, and Legislature?**

Federal Bar Council Presentation, November 6, 2003 (panelist).

**APrivatization, Accountability, and Judicial Review,@ Symposium, New Forms of Governance:**

Ceding Public Power to Private Actors, UCLA Law Review Conference, UCLA Law School,

March 2002.

**Symposium, Redefining the Public Sector: Accountability and Democracy in the Era of**

Privatization, Fordham Urban Law Journal Conference, Fordham Law School, February 2001

(moderator).

**SELECTED PROFESSIONAL AND INSTITUTIONAL SERVICE**

Participant, Federal Bar Council Annual Supreme Court Review Program, Sept. 2013, 2014)

Public Member, Administrative Conference of the United States (2010 - )

American Association of Law Schools:

Member, New Law Teachers Conference Planning Committee, 2014-15

Chair, Administrative Law Chapter, AALS 2010 (Executive Committee member, 2005-2010)

Member, Center for Progressive Reform (2011 - )

Columbia Law School:

Chair, Lateral Appointments Committee, 2014-2015; committee member, 2007-2008

Vice Dean, 2011-2013

Chair, Entry Level Appointments, 2008-2010

Columbia University:

Member, Senate Rules Committee 2014-2015

## **BAR MEMBERSHIPS**

Supreme Court of the United States  
U.S. Courts of Appeals for the First Circuit and Third Circuit.  
New York, admitted 1997