

H. Jefferson Powell
Professor of Law
Duke University

Academic Address

Duke Law School
210 Science Drive
Box 90360
Durham NC 27708-0362
powell@law.duke.edu

Bar Admission North Carolina; various federal courts

Professional Employment

Professor of Law
Duke University
(7/1989 - 6/2010, 5/2012 - present)

Deputy Assistant Attorney General
Office of Legal Counsel
United States Department of Justice
(6/2011 - 4/2012)

Professor of Law
George Washington University
(8/2010 - 4/2012)

Special Government Employee
Office of Legal Counsel
United States Department of Justice
(6/94 - 12/95, 9/96 - 1/2000)

Principal Deputy Solicitor General
United States Department of Justice
(7/96 - 9/96)

Deputy Assistant Attorney General (or designate)
Office of Legal Counsel
United States Department of Justice
(6/93 - 6/94, 1/96 - 7/96)

Special Counsel to the Attorney General
State of North Carolina
(1/91 - 6/93)

Professor of Law
University of Iowa
(5/88 - 4/89)
Associate Professor
(6/84 - 5/88)

Research Associate
Yale Law School
(9/83 - 6/84)

Law Clerk to the Honorable Sam J. Ervin, III
United States Court of Appeals (4th Circuit)
(9/82 - 8/83)

Visiting Professor, Columbia (2014); George Washington (2009-10); North Carolina
(1991-92); Duke (1988-89); Visiting Associate Professor, Duke (1987-88); Yale
(1986-87).

Professional Experience (Litigation)

Supreme Court of the United States
U.S. Courts of Appeals (2nd, 4th, 5th, 6th, 9th and 11th Circuits)
U.S. District Courts
Supreme Court of North Carolina
North Carolina Court of Appeals
Supreme Court of Texas

Independent Expert, *Wells Fargo Bank Northwest v. Victorian Aircraft Leasing Ltd.*
(Victoria S.Ct. 2004)

Academic Training

B.A., St. David's University College, University of Wales, 1975
A.M., Duke University, 1977
M.Div., Yale Divinity School, 1979
J.D., Yale Law School, 1982
Ph.D., Duke University, 1991

Honors and Awards

St. David's University College

Part One Scholar, 1973; Salisbury & Van Mildert Scholar, 1974; Senior Scholar, W.D. Llewellyn Memorial Scholarship, 1974-1975; graduated *summa cum laude*; Rev. Principal Maurice Jones Prize (Greek Scholarship), Rev. Evan Jones Greek Testament Prize, 1975

Duke University

Guernsey Harris Kearns Fellow, 1975-77

Yale Divinity School

Mersick Prize, 1979

University of Iowa

Old Gold Fellow, 1985, 1986

Yale Law School

Senior Fellow, 1987-89

Duke University

University Research Council Major Grant, 1992-93
Excellence in Small Section Teaching Award, 1998-99
University Scholar/Teacher Award, 2001-02

Choice

Outstanding Academic Title, 1999 (awarded to *The Constitution and the Attorneys General*)

Aegis

Award of Excellence, 2002

Telly Awards

Finalist, 2002

Videographer Award

Award, 2002 (all awarded to *The Contracts Experience*)

Professional Publications

Books and Book Chapters

Languages of Power: A Source Book of Early American Constitutional History (Carolina Academic Press, 1991);

The Moral Tradition of American Constitutionalism: A Theological Interpretation (Duke University Press, 1993);

The Constitution and the Attorneys General (Carolina Academic Press, 1999);

The President's Authority over Foreign Affairs: An essay in constitutional interpretation (Carolina Academic Press, 2002);

William Howard Taft, *Our Chief Magistrate and His Powers* (orig. ed. 1916) (Carolina Academic Press, H. Jefferson Powell ed. 2002);

A Community Built on Words: The Constitution in History and Politics (University of Chicago Press, 2002; rev. ed. 2005);

Constitutional Conscience: The Moral Dimension of Judicial Decision (University of Chicago Press, 2008);

No Law: Intellectual Property in the Image of an Absolute First Amendment (Stanford University Press, 2009) (with David Lange);

William Rawle, *A View of the Constitution of the United States of America* (orig. ed. 1825; 2d ed. 1829) (Carolina Academic Press, H. Jefferson Powell ed. 2009);

Law and Democracy in the Empire of Force (University of Michigan Press, H. Jefferson Powell & James Boyd White ed. 2009) (my essay is entitled Law as a Tool);

Legal Affinities: Explorations in the Legal Form of Thought (Carolina Academic Press, Patrick McKinley Brennan, H. Jefferson Powell, & Jack Sammons ed. 2013) (my essay is entitled The Humanity of Law);

The President as Commander in Chief: An essay in constitutional vision (Carolina Academic Press, 2013);

Targeting Americans: The Constitutionality of the U.S. Drone War (Oxford University Press, 2016);

How the Constitution Structures Government: The Founders' Views, in *A Workable Government: The Constitution after 200 Years* (Burke Marshall ed. 1987);

Calder v. Bull, Higher Law, in *The Oxford Companion to the Supreme Court of the United States* (Kermit L. Hall ed. 1992; rev. ed. 2005);

Joseph Story, in *The Supreme Court Justices: A Biographical Dictionary* (Melvin I. Urofsky ed. 1994; rev. ed. 2006);

Creation as Apocalyptic: A Homage to William Stringfellow, in *Radical Christian and Exemplary Lawyer* (Andrew McThenia ed. 1995) (with Stanley Hauerwas) and in Hauerwas, *Dispatches from the Front: Theological Engagements with the Secular* (1995);

The Earthly Peace of the Liberal Republic, in *Christian Perspectives on Legal Thought* (Michael W. McConnell, Robert F. Cochran, Jr., & Angela Carmella ed. 2001);

Should Creed or Constitution Guide the Judiciary?, *Powerweb: Legal Environment of Business* (Fred H. Maidment ed. 2005);

Foreword, *Civilizing Authority: Society, State, and Church* (Patrick McKinley Brennan ed. 2007);

The Story of *Curtiss-Wright Export Corporation*, in *Presidential Power Stories* (Curtis A. Bradley & Christopher H. Schroeder ed. 2008);

William Bradford, Edmund Randolph & William Wirt, in *The Yale Biographical Dictionary of American Law* (Roger K. Newman ed. 2009);

William Rawle and Secession: Legal Rights and Political Wrongs, in *Union and States' Rights: 150 Years After Sumter, A Legal History of Interposition, Nullification, and Secession* (Neil H. Cogan ed. 2013);

Slow Reading and Living Speech: James Boyd White on what a constitutional law opinion is for, in *Living in a Law Transformed: Encounters with the Works of James Boyd White* (Julen Etxabe & Gary Watt ed. 2014).

Teaching Materials

The Contracts Experience (Contracts Video Project 2002) (with John Weistart & Girardeau A. Spann) (multi-media);

The Law of the United States Constitution: Cases and Materials (Duke Law School 2012-on);

Foundations of Law (Duke Law School 2013);

Constitutional Law: Historical Cases & Contemporary Controversies (Duke Law School 2016)

The Dignitary Torts: Cases and Materials (Duke Law School 2017).

Lectures

Constitutional Virtues, Sixth Annual Walter F. Murphy Lecture in American Constitutionalism (James Madison Program in American Ideals and Institutions, Princeton University, April 24, 2006);

On Not Being “Not an Originalist,” Second Annual University of St. Thomas Law Journal Lecture (University of St. Thomas School of Law, November 9, 2009);

The rise of the US constitutional tradition: 1292-1835, First Annual Authoritative Texts and Their Reception International Lecturer (National Research School on Textual Interpretation, University of Oslo Faculty of Theology, June 7, 2016).

Articles and Essays

The Byzantine Army, 2 *Miniature Parade* 17 (1969);

The Compleat Jeffersonian: Justice Rehnquist and Federalism, 91 *Yale L. J.* 1317 (1982);

The Original Understanding of Original Intent, 98 *Harvard L. Rev.* 885 (1985);

Joseph Story’s Commentaries on the Constitution: A Belated Review, 94 *Yale L. J.* 1285 (1985);

Parchment Matters: A Meditation on the Constitution as Text, 71 *Iowa L. Rev.* 1427 (1986);

Rules for Originalists, 73 *Virginia L. Rev.* 659 (1987);

The Gospel according to Roberto: A Theological Polemic, 1988 Duke L. J. 1013 and 5 Modern Theology 97 (1989);

Social Theory as Exegetical Tool, 5 Forum 27 (1989);

Transparency, Opacity and Openness in Narrative, 40 J. Legal Education 161 (1990);

The Oldest Question of Constitutional Law, 79 Virginia L. Rev. 633 (1993);

The Political Grammar of Early Constitutional Law, 71 N.C. L. Rev. 949 (1993);

Cardozo's Foot: The Chancellor's Conscience and Constructive Trusts, 56 Law & Contemporary Problems 7 (1993);

The Principles of '98: An Essay in Historical Retrieval, 80 Virginia L. Rev. 689 (1994);

Constitutional Investigations, 72 Texas L. Rev. 1731 (1994);

The Constitutionality of the Bank Bill: The Attorney General's First Constitutional Law Opinions, 44 Duke L. J. 110 (1994) (with Walter Dellinger);

Enumerated Means and Unlimited Ends, 94 Mich. L. Rev. 651 (1995);

The Attorney General's First Separation of Powers Opinion, 13 Constitutional Commentary 309 (1996) (with Walter Dellinger);

Loyalty to the Law: Politics and the Practice of Public Lawyering in the United States, 72 Notre Dame L. Rev. 78 (1996);

Laying it on the Line: A Dialogue on Line Item Vetoes and Separation of Powers, 47 Duke L.J. 1171 (1998) (with Jed Rubenfeld);

The Lawfulness of *Romer v. Evans*, 77 N.C. L. Rev. 241 (1998);

The President's Authority over Foreign Affairs: An Executive Branch Perspective, 67 Geo. Wash. L. Rev. 527 (1999);

The Founders and the President's Authority Over Foreign Affairs, 40 William & Mary L. Rev. 1471 (1999);

Marshall's Questions, 2 Green Bag 2d 367 (1999) (with Walter Dellinger);

Who's Afraid of Thomas Cromwell?, 74 Chicago-Kent L. Rev. 393 (1999);

With Disdain for the Constitutional Craft: The Proposed Victims' Rights Amendment, 78 N.C. L. Rev. 371 (2000) (with Robert P. Mosteller);

Convenient Shorthand: The Supreme Court and the Language of State Sovereignty, 71 U. Colorado L. Rev. 645 (2000) (with B.J. Priester);

William Wirt and the Invention of the Public Lawyer, 4 Green Bag 2d 297 (2001);

Attorney General Taney and the South Carolina Police Bill, 5 Green Bag 2d 75 (2001);

The Right to Self-Government after *Bush v. Gore*, Duke Legal Electronic Document Archive (December 2001), <http://www.law.duke.edu/pub/selfgov> (with Paul D. Carrington);

The Desirability of Politics, 5 Green Bag 2d 279 (2002);

Overcoming Democracy: Richard Posner and *Bush v. Gore*, 17 J. Law & Politics 333 (2002);

Reflections on a Conversation, 19 Georgia St. L. Rev. 931 (2003) (symposium on Powell, *The President's Authority over Foreign Affairs*);

American Insurance Assoc. v. Garamendi (2003),
<http://www.law.duke.edu/publiclaw/supremecourtonline/commentary/amevgar>;

The Three Independences, 38 U. Richmond L. Rev. 603 (2004);

Grand Visions in an Age of Conflict, 115 Yale L.J. 2067 (2006);

The Executive and the Avoidance Canon, 81 Ind. L.J. 1313 (2006);

Constitutional Virtues, 9 Green Bag 2d 379 (2006);

On Not Being "Not an Originalist," 7 U. St. Thomas L.J. 259 (2010);

Further Reflections on Not Being "Not an Originalist," 7 U. St. Thomas L.J. 288 (2010);

The Humanity of Law, 55 Villanova L. Rev. 1161 (2010);

Reasoning About the Irrational: The Roberts Court and the Future of Constitutional Law, 86 Washington L. Rev. 217 (2011);

The Regrettable Clause: *United States v. Comstock* and the Powers of Congress, 48 San Diego L. Rev. 713 (2011);

The Conflicted Assumptions of Modern Constitutional Law, 5 J. Law, Philosophy & Culture 167 (2011);

A Dialogue Between a Theologian and a Lawyer, 75 Law & Contemporary Problems 222 (2012) (with Stanley Hauerwas);

The Brokenness of *A Gift to the World*: Why the Episcopal Church should reject the recent proposal for full communion with the United Methodist Church,
http://anglicansonline.org/resources/essays/misc/broken_gift.html (June 16, 2017).

Comments: 29 William & Mary L. Rev. 169 (1987); 98 Yale L. J. 1703 (1988); 45 Wash. & Lee L. Rev. 467 (1989) (with others); 54 Albany L. Rev. 283 (1990); 72 Notre Dame L. Rev. 11 (1996) (symposium on Powell, *The Moral Tradition of American Constitutionalism*); 78 N.C. L. Rev. 1709 (2000); 132 USA Today (No. 2706) (2004); 63 Washington & Lee L. Rev. 14 (2006); 105 Mich. L. Rev. 1393 (2007); 58 Duke L.J. 1725 (2009);
<http://www.lawfareblog.com/2013/06/jeff-powell-on-targeted-killing-and-due-process/> (June 21, 2013);
<http://www.bostonglobe.com/opinion/2015/04/10/epa-plan-needs-debate-based-reason/wW31nArQHJ6MvrZN1kTSqM/story.html#> (April 11, 2015) (with others); 115 Colum. L. Rev. 790 (2015); <http://blog.oup.com/2016/09/targeted-killing-american-citizens/> (Sept. 22, 2016);
https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/07/21/can-accusation-of-lynching-be-ordered-taken-down-as-a-supposed-threat-of-lynching/?utm_term=.76d120842477 (July 21 & 25, 2017).

Book Reviews and Notes: 4 Law & Hist. Rev. 214 (1986); 80 Northwestern L. Rev. 1128 (1986); 1986 Duke L. J. 915; 65 Texas L. Rev. 859 (1987); 55 U. Chicago L. Rev. 1513 (1987); 67 Mich. L. Rev. 1527 (1989); 64 Notre Dame L. Rev. 767 (1989); 46 Wm. & Mary Q. (3d. Series) 828 (1989); 79 J. Amer. Hist. 1592 (1993); 49 Wm. & Mary Q. (3d series) 184 (1993); 106 Harv. L. Rev. 1197 (1993); 80 J. Amer. Hist. 1081 (1993); 83 J. Amer. Hist. 1561 (1996); 40 Amer. J. Leg. Hist. 377 (1996); 14 Modern Theology 160 (1998); 64 U. Chicago L. Rev. 365 (1998); 3 Jurist: Books-on-Law 2 (April 2000), <http://jurist.law.pitt.edu/lawbooks/reviews.htm>; 66 The Historian 832 (2004); 21 Modern Theology 532 (2005); 97 J. Amer. Hist. 499 (2010).

Editorial Work: I am the Series Editor of the Carolina Academic Press Legal History Series.