

William George Merkel

Associate Professor of Law, Washburn Law School
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B.A. Johns Hopkins, J.D. Columbia, D. Phil. (history) Oxford
Member New York, District of Columbia, and United States Supreme Court Bars

ACADEMIC APPOINTMENTS

Washburn University School of Law, Topeka, Kansas
Associate Professor of Law, August 2005 – Present (tenure track)

- * Courses include Constitutional Law I & II, Comparative Constitutional Law, Public International Law, International Criminal Law and the Law of War; voted William O. Douglas Professor of the Year (2007-2008); co-taught Comparative Judicial Enforcement of Constitutional and Human Rights at the University of Utrecht in the Netherlands (2008 Washburn summer session).

University of North Dakota School of Law, Grand Forks, North Dakota
Visiting Associate Professor of Law, August – December, 2009

- * Taught Constitutional Law I and Constitutional History and delivered University Lecture.

Columbia Law School, New York, New York
Associate in Law, August 2003 – July 2005

- * Co-taught Comparative Introduction to American Law course for foreign LL.M. students and led class sections of fifty to sixty-five students under supervision of Professor George P. Fletcher during fall semesters, while devoting spring and summer months to research and writing toward J.S.D. degree (anticipated 2011).

PUBLICATIONS

Books:

- * *THE MILITIA AND THE RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT* (with Professor H. Richard Uviller), 334 page monograph published by Duke University Press as part of the Constitutional Conflicts Series in conjunction with the Institute of Bill of Rights Law at the College of William and Mary (2003); reviewed by Robert Shalhope in 108 *AMERICAN HISTORICAL REVIEW* 1442 (2003).

Articles & Book Chapters:

- * *Heller as Hubris, and How McDonald v. Chicago May Well Change the Constitutional World As We Know It*, 50 *SANTA CLARA LAW REVIEW* 1221 (2010).
- * *The District of Columbia v. Heller and Justice Scalia's Perverse Sense of Originalism*, 13 *LEWIS AND CLARK LAW REVIEW* 349 (2009) (cited by Justice Steven Breyer, dissenting, in

McDonald v. Chicago).

- * *Jefferson's Failed Anti-Slavery Proviso of 1784 and the Nascence of Free Soil Constitutionalism*, 38 SETON HALL LAW REVIEW 555 (2008) (selected for the 2006 Stanford/Yale Junior Faculty Forum as best submission in constitutional history).
- * *Parker v. the District of Columbia and the Hollowness of Originalist Claims to Principled Neutrality*, 18 GEORGE MASON CIVIL RIGHTS LAW REVIEW 251 (2008).
- * *Mandatory Gun Ownership, The Militia Census of 1806, and Background Assumptions Concerning the Early American Right to Arms: A Cautious Response to Robert Churchill*, 25 LAW & HISTORY REVIEW 187 (2007).
- * *A Cultural Turn: Reflections on Recent Historical and Legal Writing on the Second Amendment*, 17 STANFORD JOURNAL OF LAW AND POLICY 671, (2006).
- * *Scottish Factors and the Origins of the Second Amendment: Some Reflections on David Thomas Konig's Rediscovery of the Caledonian Background to the American Right to Arms* (with Professor H. Richard Uviller), 22 LAW & HISTORY REVIEW, 169 (2004).
- * *Authors Reply to Commentaries on, and Criticisms of The Militia and the Right to Arms, Or, How the Second Amendment Fell Silent* (with H. Richard Uviller), 12 WILLIAM & MARY BILL OF RIGHTS LAW JOURNAL, 357 (2004) (by invitation in symposium on Uviller & Merkel's MILITIA AND THE RIGHT TO ARMS).
- * *To See Oneself as the Target of Justified Revolution: Thomas Jefferson and Gabriel's Uprising*, 4 AMERICAN NINETEENTH CENTURY HISTORY, 1-33 (2003) (peer reviewed).
- * *Muting the Second Amendment: The Disappearance of the Constitutional Militia* (with Professor H. Richard Uviller), in Carl N. Bogus ed. THE SECOND AMENDMENT IN LAW AND HISTORY, 148-178 (published by The New Press, 2001).
- * *The Second Amendment in Context: The Case of the Vanishing Predicate* (with Professor H. Richard Uviller) 76 CHICAGO-KENT LAW REVIEW, 403-600 (2000).

Book Reviews & Encyclopedia Entries

- * 'McDonald v. City of Chicago' and 'District of Columbia v. Heller,' two entries in GUNS IN AMERICAN SOCIETY: AN ENCYCLOPEDIA OF HISTORY, POLITICS, CULTURE, AND THE LAW, 2^d ed., forthcoming, 2011.
- * *Book Review: Peter Charles Hoffer, 'A Nation of Laws: America's Imperfect Pursuit of Justice'* in __ AMERICAN JOURNAL OF LEGAL HISTORY __ (2010).
- * *Book Review: Stephen P. Halbrook, 'The Founders' Second Amendment: Origins of the Right to Bear Arms'* in 114 AMERICAN HISTORICAL REVIEW, 1074 (2009).
- * 'The Second Amendment' and 'The Power to Raise Armies,' two entries in the MACMILLAN ENCYCLOPEDIA OF THE SUPREME COURT, (2008).
- * *Book Review: Saul Cornell, 'A Well Regulated Militia: The Founding Fathers and the Origins of Gun Control in America'* in 112 AMERICAN HISTORICAL REVIEW 847 (2007).

PLANNED PUBLICATIONS

- * *Original Meaning or Tea Party Fantasy? McDonald v. City of Chicago & the Supreme Court's New Gun Rights Jurisprudence*, to be submitted to law journals 2011.
- * *Republicanism, Liberalism, & Bi-Polarity on the Roberts Court: The Teachings of Caperton*,

Citizens United, and McDonald, to be submitted to law journals 2011.

* *Slavery, Natural Law, and Jefferson's Revolutionary Rights Talk*, to be submitted 2011.

* *Race-Based Classifications in Jefferson's Declaration of Independence*, to be submitted 2011 or 2012.

* *Time for Originalism to End?* to be submitted 2012.

* **AMBIGUOUS BEGINNINGS: THOMAS JEFFERSON, SLAVERY, AND THE FOUNDATIONS OF AMERICAN CONSTITUTIONALISM** (monograph based on expanded Oxford D. Phil. thesis; have received unsolicited expressions of interest from University Press of Virginia and University of North Carolina Press, anticipated submission to publishers in 2013).

* **FROM CIVIC DUTY TO PRIVATE SELF-DEFENSE: THE TRANSFORMATION OF THE SECOND AMENDMENT** (monograph based on Columbia J.S.D. dissertation, anticipated submission to publishers 2012 or 2012).

* *War-Time Presidents and the Supreme Court: Detention and Trial of Enemies and Aliens from the Quasi War to the War on Terror* (long term interest).

* *From Piracy to Nuremberg to the ICC: The Rise of Extra-Territorial Jurisdiction in Anglo-American, German, and International Criminal Law* (long term interest).

EDUCATION

Columbia University School of Law, New York, New York

* J.D. May 1996, Associate in Law 2003-2005, and J.S.D. candidate (degree anticipated 2011, thesis comprises my articles on the Second Amendment and a new essay exploring the transition of Second Amendment discourse from a civic republican paradigm focused on the lawfully established militia to a private rights paradigm focused on individual self-defense).

* Harlan Fiske Stone Scholar, 1994-95 and 1995-1996.

* Foreign Language and Area Studies (FLAS) Scholar, 1995-1996 (full scholarship for final year of J.D. program awarded by U. S. Department of Education, funding designed to encourage American contact with foreign governments and businesses; while FLAS scholar studied German business and politics in conjunction with law school program; wrote German language paper on Reunification's effect on German constitutional law).

* Westmoreland Davis Fellow, 1995-1996.

* President Criminal Law Society, 1994-1995 (re-founded society, organized police ride along program and panel discussion on police and prosecutor).

University of Oxford (Lady Margaret Hall), Oxford, England

* D. Phil. in Modern History, November 2007.

* Doctoral dissertation: *Liberty, Racism, and the Law: Thomas Jefferson and Slavery, 1770-1800* (Supervisors Professor Daniel W. Howe and the late Dr. Duncan J. MacLeod; Examiners Professors Richard Carwardine (internal) and Colin Bonwick (external)).

Johns Hopkins University, Baltimore, Maryland

* B.A. in History with departmental honors, May 1988.

GRADUATE STUDENT TEACHING EXPERIENCE

Columbia University School of Law, New York, New York, August, 2003-June 2005.

Associate in Law: Two year full time academic appointment; co-taught "Comparative Introduction to American Law" course for foreign LL.M. students and lead class sections of fifty to sixty-five students while pursuing J.S.D. degree (expected 2011).

University of Oxford, Division of Continuing Education, Oxford England, July, 2003.

Tutor: Taught "Law and Society," intensive 3 week summer course of my own design, exploring relationship between constitutional development and history in Germany, U.K., and U.S, with special reference to current issues in constitutional and international criminal law.

University of Oxford, Oxford, England, 2001-2002.

Tutor: Taught undergraduates from Brasenose, Greyfriars, Lady Margaret Hall, Keble, St. John's, St. Hugh's, Wadham and New Colleges weekly tutorials on General History XV (U.S. 1600-1830), General History XVI (U.S. from 1815), and the American Revolution and Constitution Further Subject Course.

PROFESSIONAL EMPLOYMENT AND INTERNSHIPS

Wiley, Rein & Fielding, Washington, DC, Oct., 1997-Nov., 1998.

Associate: Attorney in the litigation practice group of a large law firm, practice focused on insurance coverage disputes concerning environmental damage claims, drafted appellate brief, summary judgment motion, replies to complaints, and discovery papers, coordinated with local counsel regarding removal and other motions; also worked extensively on securities fraud case, drafted *Wells Statement* convincing SEC not to proceed against our client, and on matter related to insurance of communications satellite launches.

Chambers of the Honorable Peter K. Leisure, U.S. Dist. Judge - SDNY, spring, 1996.

Intern: Performed clerk's function 15 hours per week during final semester of law school, drafted three memoranda and orders for Judge's review and signature in response to criminal and civil petitions.

New York State Commission of Investigation, spring, 1995.

Intern: Performed 100 hours pro-bono service during fourth semester of law school, drafted memorandum supporting reform of New York law governing sealing of records in child abuse cases.

Federal Highways Administration, Washington DC, Feb.-Sep. 1989.

Freedom of Information Act Analyst: Answered requests pursuant to FOIA, developed and implemented automated tracking system for the Administration's FOIA case load.
Head File Clerk in Contracting and Procurement Office.

Public Defender's Office, Baltimore MD, Jan. - May, 1986.

Mayor's Fellowship Intern: Interviewed juveniles and summarized cases for attorneys.

RESEARCH POSITIONS AND FELLOWSHIPS

International Center for Jefferson Studies, Monticello, Virginia, May-August 2009.

Residential Fellow: Two-month stipendiary residential fellowship; worked on

forthcoming book on Jefferson, slavery, and the law.

International Center for Jefferson Studies, Monticello, Virginia, May –August, 2005
 Residential Fellow: Four month stipendiary residential fellowship, worked on D. Phil. thesis on Jefferson, slavery, and the law.

Columbia Law School, New York, New York, August 2003-July 2005.
Associate in Law: Held two-year appointment as Associate in Law; co-taught Comparative Introduction to American Law course for foreign LL.M. students and leading class sections of fifty to sixty-five students during the fall semesters, while devoting spring and summer months to research and writing towards J.S.D. degree.

Columbia Law School, New York, New York, Dec.2002-March 2003.
Research Assistant: Worked full-time with Professor George P. Fletcher to prepare a second edition of his *Rethinking Criminal Law* for publication, performed background research in English- and German language sources related to the doctrinal evolution of the criminal law from biblical times to the present; also translated German criminal and constitutional cases into English for printing in course materials.

International Center for Jefferson Studies, Monticello, Virginia, Nov. 2002.
One Month Residential Fellow: Stipendiary Batten Fellowship, conducted archival research on Jefferson and slavery, presented paper to Fellows while in residence.

New-York Historical Society, New York, New York, Aug.-Sep. 2002.
One Month Residential Fellow: Stipendiary Delmas Fellowship, conducted archival research on Jefferson and slavery, the American response to the Haitian Revolution, and the *Somerset* case, in which Lord C. J. Mansfield held that, absent legislative sanction, slavery was illegal at common law.

Columbia University School of Law, New York, New York, Jan.-April 2001.
Research Assistant: Conducted research for Professor H. Richard Uviller and collaborated with him on revising and editing the manuscript of *THE MILITIA AND THE RIGHT TO ARMS* for publication.

PAPERS PRESENTED

- * *Original Meaning or Tea Party Fantasy? The Supreme Court's New Gun Rights Jurisprudence*, Washburn University School of Law, Inaugural Washburn Law Journal Faculty Scholarship Presentation at Washburn Law School, Topeka, Kansas, February 2, 2011.
- * *Originalism v. Legal Process Theory: Bi-Polarity on the Roberts Court*, Faculty Forum at the University of Kansas School of Law, Lawrence, Kansas, February 1, 2011.
- * *Original Meaning or Tea Party Fantasy? The Supreme Court's New Gun Rights Jurisprudence* Faculty Scholarship Presentation at the University of the Pacific, McGeorge School of Law, Sacramento, California, January 20, 2011.
- * *Heller as Hubris, and How McDonald v. Chicago May Well Change the Constitutional World as We Know It*, presented at "Bearing Arms: Policy, Policing, and Incorporation after Heller," at Santa Clara Law School, Santa Clara, California, January 21, 2010.
- * *The Supreme Court, the States, and the Right to Arms: Placing McDonald v. Chicago in Historical Context*, a University Lecture, November 19, 2009 at the University of North Dakota School of Law.
- * *Guns on Campus? The New Understanding of the Rights to Bear Arms: The Dorothy L.*

- Thompson Civil Rights Lecture*, a debate with Professor Ray Diamond of Louisiana State University at Kansas State University, September 16, 2009.
- * *Jefferson, Natural Law, and the Problem of Slavery during the Revolutionary Period*, workshop paper presented to members of the University of Virginia Early American History Seminar and other guests August 21, 2009 at the Jefferson Library at Monticello, Virginia.
 - * *Jefferson and Slavery: Legal and Constitutional Ideas, 1801-1809*, a Fellow's Forum August 21, 2009 at Jefferson Library at Monticello, Virginia.
 - * *Incorporation of the Second Amendment Right to Arms?* at the Southeastern Association of Law Schools (SEALS) annual conference at Palm Beach, Florida, August 2009.
 - * *The District of Columbia v. Heller and Justice Scalia's Perverse Sense of Originalism* at the Midwestern Law Schools Junior Faculty Forum, Washington University, St. Louis, October 3, 2008.
 - * *Dubious Originalism and the Supreme Court's Second Amendment Decision* at a faculty symposium at the University of Houston Law Center, September 8, 2008.
 - * *The Supreme Court, Popular Constitutionalism, and the Right to Guns*, at Justice and Jury Trials in the USA Lectures, University of Parma Faculty of Law, Parma, Italy, 25 June, 2008.
 - * *Gun Rights, the Second Amendment, and the Coming Rapture*, at Law and Society Association annual meeting at Montreal May 29, 2008.
 - * Chaired "*Expounding the Constitution: Fulfilling the Founding Fathers' Ideal?*" panel session and commented on four papers on recent trends in American federalism at the European Association of American Studies annual meeting, Oslo, May 10, 2008.
 - * *Dubious Originalism and the Supreme Court's Impending Second Amendment Revolution*, British Association of American Studies (BAAS) annual conference at University of Edinburgh, March 29, 2008.
 - * *Dubious Originalism and the Second Amendment*, presented January 23, 2008 at U.C. Hastings Law School, and January 24, 2008 at University of San Francisco Law School.
 - * *Parker v. the District of Columbia' and the Hollowness of Originalist Claims to Principled Neutrality* at the George Mason University Civil Rights Law Journal Symposium, October 17, 2007.
 - * *Jefferson and Anti-Slavery Revisited* as a faculty workshop paper at the University of Kansas School of Law, February, 2007.
 - * *Jefferson, the Territorial Governance Act of 1784, and the Origins of Free Soil*, Fellow's Forum paper at the International Center for Jefferson Studies at Monticello, Charlottesville, Virginia July, 2006.
 - * *Jefferson's Failed Anti-Slavery Proviso of 1784 and the Nascence of Free Constitutionalism*, at the Yale/Stanford Junior Faculty Forum, in New Haven May 2006 (best paper submitted in constitutional history).
 - * *Judicial Review & Popular Politics During the Jeffersonian Era*, at BAAS annual conference at the University of Kent, Canterbury, England, April 22, 2006.
 - * *A Cultural Turn in Second Amendment Scholarship*, at Stanford Law School, Palo Alto, California, during symposium The Second Amendment: Old Problems, New Paradigms, September 16, 2005.
 - * *The New Contextual History of Marbury v. Madison*, at Oxford University Graduate Seminar in American History, Oxford, England, May 16, 2005.
 - * *The Supreme Court and the Guantanamo Detainees*, presented at BAAS annual conference, Manchester Metropolitan University, Manchester, England, April 16, 2004.

- * *Did the Fourteenth Amendment Change the Meaning of the Second Amendment?* Fellow's Forum at the Rothermere American Institute at Oxford, June 11, 2003.
- * *Was the Right to Arms Designed to Protect the Slave Patrols Against Disarmament by the Abolitionists?* at BAAS annual conference at the University of Wales in Aberystwyth, April 12, 2003.
- * *Response to Comment and Critique by Randy Barnett, Sanford Levinson, and Jonathan Simon*, presented at conference launching Uviller & Merkel's MILITIA AND THE RIGHT TO ARMS at Bill of Rights Law Institute at William and Mary Law School in Williamsburg, Virginia Jan. 24, 2003.
- * *Thomas Jefferson, the Doctrine of Justifiable Homicide, and Gabriel's Uprising*, faculty presentation at Washington & Lee Law Center, at Lexington, Virginia, Sep. 9, 2002.
- * *To See Oneself as the Target of a Justified Revolution: Thomas Jefferson and Gabriel's Uprising*, at BAAS annual conference at Oxford, April 7, 2002.
- * *The Sophists' Favorite Liberty: Locke, Blackstone, and the Constitutional Right to Armed Insurrection*, at Oxford University Research Seminar on American History, Oct. 29, 2001.
- * *The Second Amendment in Context* (with Professor H. Richard Uviller), at Chicago-Kent College of Law *Symposium on the Second Amendment: Fresh Looks* April 28, 2000.

PERSONAL INTERESTS & ACTIVITIES

Native fluency in German (strong background in business German), working knowledge of French (five years high school French), taught English as a Foreign Language; interests include law enforcement, history of crime, constitutional thought, comparative constitutionalism, public speaking (Virginia state champion in extemporaneous speaking during high school), outdoors, running, hiking, coaching and playing baseball (played two years in British National League), cooking and barbeque (prepared "Baltimore's Best Burgers" (City Paper, 1988-89) as cook in now defunct East Baltimore bar-restaurant, swing dancing, eclectic music from Hildegard von Bingen to Kool Moe Dee, Lady Ga Ga and beyond.

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PROFESSIONAL REFERENCES

- 1) Professor Alex Glashausser (supervisor and colleague at Washburn)
Associate Dean for Academic Affairs
Washburn Law School
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- 2) Professor Robert A. Ferguson (supervisor as J.S.D. candidate at Columbia)
George Edward Woodberry Professor in Law, Literature, and Criticism
Columbia University School of Law
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- 3) Professor George P. Fletcher (supervisor as Associate-in-Law at Columbia)
Cardozo Professor of Jurisprudence
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- 4) Professor Daniel W. Howe (D. Phil. supervisor)
Rhodes Professor of American History, University of Oxford (retired)
3814 Cody Road, Sherman Oaks CA 91403
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- 5) Professor Richard Carwardine (D. Phil. examiner)
Rhodes Professor of American History, University of Oxford
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- 6) Professor Saul Cornell (external assessor of scholarship for Washburn pre-tenure review)
Paul and Diane Guenther Chair in American History
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- 7) Professor Robert Rhee (Washburn colleague, 2005-2007)
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- 8) Professor Bradley T. Borden (Washburn colleague, 2005-2010)
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- 9) Professor Ali Khan (Washburn colleague)
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- 10) Dean Kelly Lynn Anders (Washburn colleague, Dean of Students 2005-2010)
Director of Communications and Assistant Professor of Conflict Resolution
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- 11) Professor Michael Hunter Schwartz (Washburn colleague)
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- 12) Professor Michael Kaye (Washburn colleague)
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- 13) Professor Linda E. Carter (colleague at Adv. Sem. on Eur. L. at Univ. of Parma, 2008)
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- 14) Dr. Christopher Howard (Oxford colleague)
President
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Tel. (434) 223-6110 Email choward@hsc.edu
- 15) Professor H. Richard Uviller (deceased) (co-author, law school mentor)
Arthur S. Levitt Professor of Law Emeritus, Columbia University School of Law
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435 W. 116th Street, New York, New York 10027 U.S.A.
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16) Dr. Gareth Davies, Faculty of Modern History (supervised my tutorial teaching at Oxford)
University Lecturer in American History, University of Oxford
St. Anne's College, Oxford OX2 6HS, England
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