

## **Richard Steven Kay**

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### ***Employment***

- 1974- Wallace Stevens Professor Emeritus and Oliver Ellsworth Research Professor, University of Connecticut School of Law, Hartford, Connecticut. (Assistant Professor 1974-77, Associate Professor 1977-78, Professor 1978-92, William J. Brennan Professor 1992-99, George and Helen England Professor 1999-2006, Wallace Stevens Professor 2006-2016, Associate Dean for Research and Faculty Development 2014-16). Subjects taught: Contracts, Commercial Law, Comparative Constitutional Law (Seminar), Constitutional Law, Constitutional Theory (Seminar), European Human Rights, Evidence, Sales, Secured Transactions.
- Fall, 2000 Visiting Professor of Law, Boston College Law School, Newton, Massachusetts. Subjects taught: Evidence, Secured Transactions.
- Fall, 1996 Visiting Professor of Law, University of San Diego, San Diego, California. Subjects taught: European Human Rights Law, Evidence.
- Fall, 1985 Visiting Professor, University of Exeter (England). Subjects taught: Contracts; Constitutional Law.
- Fall, 1982 Visiting Professor of Law, Boston University School of Law, Boston, Massachusetts. Subjects taught: Commercial Paper, Evidence.
- 1973-1974 Law Clerk, Hon. Paul C. Reardon, Supreme Judicial Court of Massachusetts.
- Summer or Short Term Teaching Western New England College, School of Law; University of San Diego, School of Law; Tilburg University (Netherlands); University of Puerto Rico, School of Law; Penn. State- Dickinson School of Law (Florence, Italy, Vienna, Austria), University of Coimbra (Portugal).

### ***Education***

- 1970-1973 Harvard Law School, Cambridge, Massachusetts. J.D. *magna cum laude*. Harvard Law Review, Editor, 1971-73.

- 1968-1969 Yale University Graduate School, New Haven, Connecticut, Department of Economics, M.A. (awarded 1974).
- 1964-1968 Brandeis University, Waltham, Massachusetts, A.B. *cum laude*. Phi Beta Kappa.

**Bar Membership** Admitted, Massachusetts, December 1973.

## ***Publications***

### *Books*

#### MONOGRAPHS

**Adjudicating Revolution: Courts and Constitutional Change** (2022, Edward Elgar Publishing) (with Joel Colón-Rios).

**The Glorious Revolution and the Continuity of Law** (2014, Catholic University of America Press).

#### CASEBOOK

**European Human Rights Law** (3d edition 2008, Oxford University Press,) (with Anthony W. Bradley and Mark Janis) (1<sup>st</sup> edition 1995) (2d ed. 2000) Russian translation, Constitutional and Legislative Policy Institute, Moscow, 1997; Ukrainian translation, Constitutional and Legislative Policy Institute, Kiev, 1997; Macedonian translation, Mi-An Publishing, 2002).

#### EDITED COLLECTION

**Standing to Raise Constitutional Issues: Comparative Perspectives** (Bruylant, 2005)

### *Articles*

*Normative Systems and Human Rights*, 71 **Emory L. J.** 1583-1610 (2022).  
( <https://scholarlycommons.law.emory.edu/elj/vol71/iss7/10> )

*Remembering Dean Phillip Blumberg*, 54 **Conn. L. Rev.** 591-596 (2022).

*Response to the Contributors*, 52 **Conn. L. Rev.** 1719-1761 (2021).

*Updating the Constitution: Amending, Tinkering, Interpreting*, 67 **Drake L. Rev.** 887-907 (2019)

*Democracy, Mixed Government and Judicial Review* in Lisa Burton Crawford, Patrick Emerton & Dale Smith, **Law Under a Democratic Constitution: Essays in Honour of Jeffrey Goldsworthy**, 199-226 (Hart, 2019)

*Formal and Informal Amendment of the United States Constitution*, 66 **Am. J. Comp. L.** 243-268 (2018)

*Examining Constitutional Transitions* (Symposium Introduction), 37 **Nat'l J. of Const. L.** (Canada) 35-41 (2017)

*Construction, Originalist Interpretation and the Complete Constitution*, 19 **U. Pa. J. of Const. L. Online** 1-25 (2017)  
([http://www.pennjournalconlaw.com/uploads/4/7/7/5/47752841/kay\\_final.pdf](http://www.pennjournalconlaw.com/uploads/4/7/7/5/47752841/kay_final.pdf) )

*Constitutional Change and Wade's Ultimate Political Fact*, 35 **U. Queensland L.J.** 31-46 (2016).

*Two Ways to Rewrite the Constitution*, 2015 **Wis. L. Rev. Online** 25  
( <http://wisconsinlawreview.org/wlr-online/wisconsin-law-review-online-volume-2015> ).

*Retroactivity and Prospectivity of Judgments in American Law*, in Eva Steiner, ed., **Comparing the Prospective Effect of Judicial Rulings Across Jurisdictions** (Springer, 2015)  
(abridged version published at 62 **Am. J. Comp. L.** 37-68 (2014)  
( [http://works.bepress.com/richard\\_kay/13](http://works.bepress.com/richard_kay/13) ).

*Changing the United Kingdom Constitution: The Blind Sovereign*, in Richard Rawlings, Peter Leyland and Alison Young, eds., **Sovereignty and the Law: Domestic, European and International Perspectives** (Oxford University Press, 2013).

*Constituent Authority*, 59 **Am. J. Comp. L.** 715 (2011) ( <http://ssrn.com/abstract=1703378> )  
(Turkish Language Version in O. Ergul, ed., **Constitution Making and Constitutional Change: Prospects for Constitutional Change in Turkey** (Türkiye Barolar Birliği Yayinlari, 2011))

*Constitutional Courts as "Positive Legislators "in the United States*, 58 **Am. J. Comp. L.** 479-504 (2010) (with Laurence Claus).

*Original Intention and Public Meaning in Constitutional Interpretation*, 103 **NW U. L. Rev.** 703 (2009) ( <http://ssrn.com/abstract=1259867> ).

*Judicial Policy Making and the Peculiar Function of Law*, 26 **U. Queensland L.J.** 237-54 (2007)  
(Revised Version at 40 **Conn. L. Rev.** 1261-1286 (2008)) ( <http://ssrn.com/abstract=1333222> )

*Causing Death for Compassionate Reasons in American Law*, 54 **Am. J. Comp. L.** 693-716 (2006) (Supplement) ( <http://ssrn.com/abstract=890207> ) (reprinted in **Euthanasia in International and Comparative Perspective** (M. Groenhuijsen & F van Laanen, eds. Wolf Legal Publishers 2006) and in **Right to Life and Right to Death: A Study** (A, Menon, ed. Icfai University Press-Amicus Books, 2007)).

*Canada's Constitutional Cul-de-Sac* (Review Essay of Peter Russell, Canada=s Constitutional Odyssey: Can Canadians Become a Sovereign People? (3d ed. 2005)) 35 **American Review of Canadian Studies** 705-14 (2006)( <http://ssrn.com/abstract=1119319> ).

*Standing to Raise Constitutional Issues: A Comparative Analysis* in R. Kay (ed.) **Standing to Raise Constitutional Issues: Comparative Perspectives** 1-40 (Bruylant, 2005) (<http://ssrn.com/abstract=891186>) (reprinted in **Convergence of Legal Systems in the 21<sup>st</sup> Century** (Bruylant, 2006)).

*The European Convention on Human Rights and the Control of Private Law*, 2005 **European Human Rights Law Review**, 466-479 (2005) (<http://ssrn.com/abstract=1118482>).

*Michael Perry's Right to Religious Freedom*, 10 **Roger Williams L. Rev.** 427-38 (2005).

*Sir Thomas Jenner (1638–1707)*, **Oxford Dictionary of National Biography**, (Oxford University Press, 2004); online ed, Jan 2008 (<http://www.oxforddnb.com/view/article/14753>).

*William Oldys (1636–1708)*, **Oxford Dictionary of National Biography**, (Oxford University Press, 2004); online ed, Jan 2008 (<http://www.oxforddnb.com/view/article/20698>).

*Rights, Rules and Democracy* in T. Campbell, J. Goldsworthy and A. Stone. (eds.) **Protecting Human Rights: Instruments and Institutions**, 117-34 (Oxford University Press, 2003) (revised version at 13 **Rev. Espaço Jurídico**. 151-67 (2012)).

*The Secession Reference and the Limits of Law*, 10 **Otago L. Rev.** 327-344 (2003) (<http://ssrn.com/abstract=1113482>).

*The European Human Rights System as a System of Law*, 6 **Colum. J. Eur. L.** 55-71 (2000)

*William III and the Legalist Revolution*, 32 **Conn. L. Rev.** 1645-1664 (2000).

*Constitutional Chrononomy*, 13 **Ratio Juris** 31-48 (2000).

*The Constitutionalization of Law in the United States*, 46 **Am. J. Comp. L.** 437-462 (1998, Supplement) (with William B. Fisch).

*American Constitutionalism*. in L. Alexander (ed.) **Constitutionalism: Philosophical Foundations**, 16-63 (Cambridge University Press, 1998).

*Sovereignty in the New Hong Kong*, 114 **Law Quarterly Rev.** 189-193 (1998).

*The Creation of a Legal System: European Human Rights*, in **Memory, History and Critique. European Identity at the Millennium**. (Proceedings of the 6<sup>th</sup> International ISSEI Conference at the University for Humanist Studies, Utrecht, The Netherlands, August, 1996) (CDROM, F. Brinkhuis & S. Talmor eds. 1998)

*Legal Rhetoric and Revolutionary Change*, 7 **Carib. L. Rev.** 161-213 (1997) (<http://ssrn.com/abstract=1266425>).

*Jus Tertii Standing and Constitutional Review in Canada*, 7 **Nat'l J. Const. L.** (Canada) 129-169 (1997).

*"Originalist" Values and Constitutional Interpretation*, 19 **Harv. J. L. & Pub. Pol.** 335-41 (1996).

*The Legitimacy of the Constitutional Judge and Theories of Interpretation in the United States*, 42 **Am. J. Comp. L.** 517-553 (1994, Supplement) (with William B. Fisch).

*The State Action Doctrine, The Public-Private Distinction, and the Independence of Constitutional Law*, 10 **Const. Comm.** 329-360 (1993).

*The European Convention on Human Rights and the Authority of Law*, 8 **Conn. J. Int'l L.** 217-225 (1993).

*The Canadian Constitution and the Dangers of Establishment*, 42 **DePaul L. Rev.** 361-71 (1992).

*Comparative Constitutional Fundamentals*, 6 **Conn. J. Int'l L.** 445-475 (1991).

*Substance and Structure As Constitutional Protections: Centennial Comparisons*, 1989 **Public Law** 428-439.

*Original Intentions, Standard Meanings and the Legal Character of the Constitution*, 6 **Const. Comm.** 39-50 (1989).

*Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses*, 82 **Nw. U. L. Rev.** 226-292 (1988).

*The Illegality of the Constitution*, 4 **Const. Comm.** 57-80 (1987).

*Fairness and Function in the New York Tax Appeal System: Proposals for Reform*, 49 **Alb. L. Rev.** 352-402 (1985) (with Richard Pomp and Robert Plattner).

*The Jurisprudence of the Connecticut Constitution*, 16 **Conn. L. Rev.** 667-680 (1984).

*The Creation of Constitutions in Canada and the United States*, 7 **Can.-U.S. L.J.** 111-163 (1984).

*Courts as Constitution-Makers in Canada and the United States*, 4 **Sup. Ct. L. Rev.** 23-41 (1982).

*Preconstitutional Rules*, 42 **Ohio St. L. J.** 187-207 (1981).

*The Equal Protection Clause in the Supreme Court, 1873-1903*, 29 **Buff. L. Rev.** 667-725 (1980).

*Property Tax Exemptions and Alternatives: Constitutional Considerations*, in R. Pomp (ed.), **Property Tax Exemptions for Non-Profit Institutions: Problems and Proposals** 20-27 (1978).

*Making Sense of the Prejudgment Seizure Cases*, 64 **Ky. L. J.** 705-727 (1976) (with Harold Lubin).

*The Rule-Making Authority and Separation of Powers in Connecticut*, 8 **Conn. L. Rev.** 1-43 (1974).

*The Role of the Attorney in Juvenile Proceedings*, 61 **Geo. L. J.** 1401-1424 (1973) (with Daniel Segal).

### *Book Reviews*

*Book Review* [on Frankenberg, **Comparative Constitutional Studies: Between Magic and Deceit** (2018)], 67 **American Journal of Comparative Law**, 694-99 (2018)

*Book Review* [on Rawls, **The Law of Peoples** (1999)], 7 **The European Legacy** 247-48 (2002).

*Book Review* [on McAfee, **The Written Constitution and Popular Sovereignty: The Founders' Understanding** (2000)], 44 **American Journal of Legal History** 430-32 (2000).

*Book Review* [on Elazar, **Covenant and Constitutionalism: The Great Frontier and the Matrix of Federal Democracy** (1998)], 5 **The European Legacy** 305-06 (2000).

*Book Review* [on Manfredi, **Judicial Power and the Charter: Canada and the Paradox of Liberal Constitutionalism** (1993)], 23 **American Review of Canadian Studies** 624-27 (1993).

*Book Review* [on Ackerman, **We the People (Vol. I): Foundations** (1991)], 59 **J. Southern History** 349-51 (1993).

*Book Review* [on Stager, **Lawyers in Canada** (1990)], 22 **American Review of Canadian Studies** 619-621 (1992).

*Book Review* [on Jillson, **Constitution-Making: Conflict and Consensus in the Federal Convention of 1787** (1988)], 8 **Const. Comm.** 515-521 (1991).

*Book Review* [on Caplan, **Constitutional Brinkmanship: Amending the Constitution by National Convention** (1990)], 7 **Const. Comm.** 434-441 (1990).

*The Bork Nomination and the Definition of 'The Constitution'* [reviewing Bork, **The Tempting of America: The Political Seduction of the Law** (1990)], 84 **Nw.U. L. Rev.** 1190-1202 (1990).

*Constitutional Cultures: Constitutional Law* [reviewing Nagel, **Constitutional Cultures** (1989)] 57 **U. Chic. L. Rev.** 311-325 (1990).

*Moral Knowledge and Constitutional Adjudication* [reviewing Perry, **Morality, Politics and**

**Law** (1988)], 63 **Tulane L. Rev.** 1501-1515 (1989).

*Book Review* [on Swinfen, **Imperial Appeal: The Debate on the Appeal to the Privy Council: 1833-1986** (1987)], 4 **Conn. J. Int'l Law** 239-250 (1988).

*Book Review* [on Newmyer, **Supreme Court Justice Joseph Story: Statesman of the Old Republic** (1985)], 18 **Conn. L. Rev.** 207-219 (1985).

*Book Review* [on Ely, **Democracy and Distrust** (1980)], 13 **Conn. L. Rev.** 203-214 (1980).

*Book Review* [on Berger, **Government by Judiciary** (1977)], 10 **Conn. L. Rev.** 801-810 (1978).

*Book Review* [on Cover, **Justice Accused** (1975)], 12 **Harv. Civ. Rt. - Civ. Lib. L. Rev.** 219-228 (1977).

### *Popular*

*Dying With Dignity: The Legal Landscape*, **UConn Today** (October 7, 2015)  
( <http://today.uconn.edu/2015/10/dying-with-dignity-the-legal-landscape/> )

*A Higher Power*, **Hartford Courant** (September 17, 2006)

*Filibuster Flap Threatens Legislative Process*, **Hartford Courant** (May 24, 2005)

*High Court Mustn't Be Politicized*, **Providence Journal** (October 15, 2000)

*Procrastination May Be a Virtue*, **Toronto Star** (August 6, 1991).

*A Reverence for the Rule of Law*, **Hartford Courant** (November 1, 1987).

*Letting 'We the People' Speak*, **The New Leader** (July 13-27, 1987).

*For a Constitutional Convention*, **Hartford Courant** (November, 1986).

*The Law As A Symbol*, **Boston Globe** (July 27, 1981).

*Constitution-Making in Canada*, **Worldview** (May, 1981)

*Benched by Seniority*, **New York Times** (May 1, 1977) (Connecticut Weekly).

### ***Memberships, etc.***

University of Connecticut Senate, 2005-2006, 2011

Past Chair, Past member of Executive Committee, Constitutional Law Section, American

Association of Law Schools

International Academy of Comparative Law

Board of Directors, American Society of Comparative Law, Member Executive Committee, 2003-2022, Treasurer, 2005-2013, Vice-President, 2016-2018, President, 2018-2020

Board of Editors, American Journal of Comparative Law, Member Executive Editorial Committee, 2003-2005

Association for the Study of Canada in the United States

Middle Atlantic and New England Conference of Canadian Studies, Executive Counselor-at-Large, 2006-2014

***Occasional consultant to various state agencies, private companies and law firms***

***Invited panelist or speaker at numerous academic programs and conferences***

***Recipient of grants and fellowships from the University of Connecticut Research Foundation, National Endowment for the Humanities, American Philosophical Association, Folger Shakespeare Library, The Huntington Library, Government of Canada, Canada-United States Law Institute and United States Information Agency***

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