

THOMAS P. CROCKER

University of South Carolina School of Law, 1525 Senate Street, Columbia, SC 29208

Phone: (803) 777-4790. Email: crocketp@law.sc.edu.

EDUCATION

YALE LAW SCHOOL, New Haven, CT

J.D., June 2004

Activities: • *Yale Law Journal*, Book Reviews Editor (vol. 113); Editor (vol. 112)
 • *Yale Journal of Law and the Humanities*, Editor (2002-2004)

VANDERBILT UNIVERSITY, Nashville, TN

Ph.D., Philosophy, 2000

M.A., Philosophy, 1998

Dissertation: *The Human Aspect: Wittgenstein on the Ethical Point of View*

UNIVERSITY OF WALES, Saint David's University College, Lampeter, U.K.

M.A., Philosophy, 1994, with distinction

Thesis: *Persons and Personal Identity: What Really Matters*

MISSISSIPPI STATE UNIVERSITY, Starkville, MS

B.A., *summa cum laude*, Economics and Philosophy, 1992

University Scholarship (full tuition)

ACADEMIC APPOINTMENTS

UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW, Columbia, SC

N. Heyward Clarkson, Jr. Professor, 2019-present; *Professor of Law*, 2013-present; *School of Law Distinguished Professor*, 2013-2018; *Associate Professor of Law*, 2010-2013; *Assistant Professor*, 2005-2010.

Courses: Constitutional Law, Criminal Procedure, Free Speech & Democracy, National Security and the Constitution, Jurisprudence, Law & Literature, Seminar: How Institutions Fail (and Succeed).

VISITING FELLOWSHIPS AND APPOINTMENTS

JOHANN WOLFGANG GOETHE UNIVERSITÄT, Frankfurt am Main, Germany

DAAD Senior Research Fellow and Fellow Normative Orders Excellence Cluster May – July 2019.

Fulbright Senior Research Scholar, May 2011 – December 2011

Fellow Forschungskolleg Humanwissenschaften, May 2011 – December 2011

UNIVERSITY OF EDINBURGH, Edinburgh, Scotland

Visiting Fellow, School of Law, May-June 2017

MacCormick Visiting Fellow, School of Law, April-August 2015

Visiting Research Fellow, Institute for Advanced Studies in the Humanities, June-August 2013

VANDERBILT UNIVERSITY, Nashville, TN

Visiting Scholar, Department of Philosophy, August 2014-May 2015

AMERICAN ACADEMY OF ARTS & SCIENCES, Cambridge, MA

Visiting Fellow, 2010-2011

ST. LAWRENCE UNIVERSITY, Canton, NY: Visiting Assistant Professor of Philosophy, 2000-01

Courses: Ethics; Resistance, Rebellion, and the Human Condition; On Rationality; On Language

CLERKSHIP

HONORABLE CARLOS F. LUCERO, U.S. Court of Appeals for the Tenth Circuit, Denver, CO

Law Clerk: June 2004 – August 2005

RESEARCH INTERESTS

Constitutional Law and Theory, Democratic Theory and Free Speech, Criminal Procedure, Privacy, National Security Law, Legal and Political Philosophy, Ethics, Law & Literature, Human Rights, Wittgenstein

PUBLICATIONS

BOOK

- OVERCOMING NECESSITY: EMERGENCY, CONSTRAINT, AND THE MEANINGS OF AMERICAN CONSTITUTIONALISM (Yale University Press, 2020).
 - Awarded the 2020 Palmer Civil Liberties Book Prize
 - Named a 2021 *Choice* Outstanding Academic Title
 - New Books Series Interview: <https://newbooksnetwork.com/overcoming-necessity#:~:text=In%20Overcoming%20Necessity%3A%20Emergency%2C%20Constraint,without%20losing%20its%20normative%20bearings>

ARTICLES AND ESSAYS

- *What is Deeply Rooted in the Constitution?*, 50 *BYU L. REV.* ___ (2024).
- *The Fourth Amendment and the Problem of Social Cost*, 117 *NORTHWESTERN U. L. REV.* 473-548 (2022).
- *Equal Dignity, Colorblindness, and the Future of Affirmative Action Beyond Grutter v. Bollinger*, 64 *WILLIAM & MARY L. REV.* 1-81 (2022).
- *The Fourth Amendment at Home*, 96 *INDIANA L. J.* 167-221 (2020).
- *Constitutions, Rule Following, and the Crisis of Constraint*, 24 *LEGAL THEORY* 3-39 (2018) (with M. Hodges) (peer review).
- *Constitutive Visions: Sovereignty, Necessity, and Saramago's Blindness*, 24 *CONSTELLATIONS* 63-75 (2017) (peer review).
- *Free Speech and Terrorist Speech: An Essay on Dangerous Ideas*, 70 *VANDERBILT L. REV.* EN BANC 49 (2017).
 - Reprinted in *THE FIRST AMENDMENT LAW HANDBOOK* (Rodney A. Smolla ed., Thomson Reuters Publishers, 2017-2018 ed.).
- *Dystopian Constitutionalism*, 18 *UNIV. PENNSYLVANIA JOURNAL OF CONSTITUTIONAL LAW* 593-655 (2015).
- *Ubiquitous Privacy*, 66 *OKLAHOMA L. REV.* 791-829 (2014) (invited symposium).

- *Order, Technology, and the Constitutional Meanings of Criminal Procedure*, 103 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 685-744 (2013).
- *Who Decides on Liberty?*, 44 CONNECTICUT L. REV. 1511-1545 (2012) (invited).
- *Presidential Power and Constitutional Responsibility*, 52 BOSTON COLLEGE L. REV. 1551-1626 (2011).
- *The Political Fourth Amendment*, 88 WASHINGTON UNIV. L. REV. 303-379 (2010).
 - *Reprinted in* 27 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK 99-192 (Steven Saltzman, ed. 2011).
- *From Privacy to Liberty: The Fourth Amendment After Lawrence*, 57 UCLA L. REV. 1-69 (2009).
- *Torture, with Apologies*, 86 TEXAS L. REV. 569-613 (2008) (review essay).
- *Overcoming Necessity: Torture and the State of Constitutional Culture*, 61 SMU L. REV. 221-280 (2008).
- *Displacing Dissent: The Role of Place in First Amendment Jurisprudence*, 75 FORDHAM L. REV. 2587-2639 (2007).
 - *Reprinted in* THE FIRST AMENDMENT LAW HANDBOOK 736 (Rodney A. Smolla ed., Thomson West Publishers, 2007-2008 ed.).
- *Envisioning the Constitution*, 57 AMERICAN UNIV. L. REV. 1-71 (2007).
- *Still Waiting for the Barbarians: What Is New about Post-September 11 Exceptionalism?*, 19 LAW & LITERATURE 303-326 (2007) (peer review).
- *An American Novelist in the Philosopher King's Court*, 26 PHIL. & LITERATURE 57-74 (2002) (peer review).
- *Wittgenstein's Practices and Peirce's Habits: Agreement in Human Activity*, 15 HIST. PHIL. Q. 475-93 (1998) (peer review).

BOOK REVIEWS AND ENTRIES

- Review of JOHN T. PARRY AND L. SONG RICHARDSON, THE CONSTITUTION AND THE FUTURE OF CRIMINAL JUSTICE IN AMERICA, 49 LAW & SOC'Y REV. 287 (2015).
- *Whom Should You Trust? Plans, Pragmatism, and Legality*, 47 TULSA L. REV. 205-217 (2011) (reviewing SCOTT J. SHAPIRO, LEGALITY (2011)) (special issue edited by Sanford Levinson and Mark Graber).
- *Entries*, ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (David Tanenhaus et al. eds., Macmillan, 2008).
 - *Bush v. Gore*, 531 U.S. 98 (2000).
 - *Brentwood Academy v. Tenn. Secondary School Athletic Assoc.*, 531 U.S. 288 (2001).
 - *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990).
 - *Bd. of Educ. of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469 (1989).
- Review of ROBERT EAGLESTONE, THE HOLOCAUST AND THE POSTMODERN (2008), *in* 5 LAW, CULTURE & THE HUMANITIES 161-64 (2009).

- Review of MICHAEL SULLIVAN, LEGAL PRAGMATISM: COMMUNITY, RIGHTS, AND DEMOCRACY (2007), in 21 J. SPECULATIVE PHIL. 321-23 (2008).
- Review of JEAN BETHKE ELSHTAIN, WHO ARE WE? (2002), in 112 ETHICS 616-618 (2002).
- Review of OWEN FLANAGAN, SELF EXPRESSIONS (1996), in 109 MIND 900-904 (2000).
- Review of ERIC OLSON, THE HUMAN ANIMAL (1997), in 52 REV. METAPHYSICS 161-163 (1998).

POPULAR MEDIA

- *Affirmative Consideration, Not Affirmative Action*, AMERICAN CONSTITUTION SOCIETY EXPERT FORUM, Aug. 10, 2023, <https://www.acslaw.org/expertforum/affirmative-consideration-not-affirmative-action/>
- *The Case for Tribal Statehood*, THE NEW REPUBLIC, Nov., 8 2022 (with Marcia Zug), <https://newrepublic.com/article/168333/case-tribal-statehood>
- *Brett Kavanaugh and Neil Gorsuch Are Destroying Their Mentor's Legacy*, SLATE, June 24, 2022, <https://slate.com/news-and-politics/2022/06/brett-kavanaugh-neil-gorsuch-anthony-kennedy.html>
- *Don't Forget the First Half of the Second Amendment*, THE ATLANTIC, June 8, 2022, <https://www.theatlantic.com/ideas/archive/2022/06/second-amendment-gun-regulations/661208/>
- *From 9/11 to COVID-19: Overcoming Necessity Through Competing Conceptions of Presidential Power*, Yale University Press Blog, Dec. 2, 2020, <http://blog.yalebooks.com/2020/12/02/from-9-11-to-covid-19-overcoming-necessity-through-competing-conceptions-of-presidential-power/>
- *What Would Scalia Do?*, THE ATLANTIC, March 22, 2016, <https://www.theatlantic.com/politics/archive/2016/03/what-would-scalia-do/474771/>

SELECTED PRESENTATIONS

- *What is Deeply Rooted in the Constitution?*, Law and Society Annual Meeting, Denver, CO June, 2024.
- *The Paradox of Political Polarization and Constitutional Disagreement*, Philosophy and Social Science Conference, Prague, Czech Republic, May 2024.
- *Securing Hope Beyond Necessity, Comments on Moellendorf's Mobilizing Hope*, Philosophy, Politics, and Economics Society, New Orleans, Nov. 2-4, 2023.
- *The Case for Tribal Statehood*, Law and Society Annual Meeting, San Juan, Puerto Rico, June 1-5, 2023.
- *Constitutional Violence and the End of Democratic Discourse*, Philosophy and Social Science Conference, Prague, Czech Republic, May 10-14, 2023.
- (Invited) *The Dobbs Decision & The Changing Constitutional Right to Privacy*, Winthrop University, Constitution Day Speaker, September 16, 2023.
- (Invited) *Palmer Civil Liberties Prize Lecture: Overcoming Necessity*, Chicago Kent School of Law, Oct. 5, 2021.
- (Invited) *The President's Constitution: Madisonian Virtues, Norms, and the Substance of Executive Process*, Chicago Kent School of Law Faculty Workshop, Oct. 5, 2021
- *Author Meets Critics: Overcoming Necessity*, Law & Society Association, May 29, 2021 (with discussions by Amy Cohen; Heidi Kitrosser; Genevieve Lakier; Joe Margulies; and Jeff Powell).
- *The Constitution of Privacy: Community, Political Economy, and the Future of Democratic Citizenship*, Prague Philosophy and Social Science Colloquium, Virtual Conference, 2021, May 19-22.

- *The Constitution of the Public Sphere*, Philosophy and the Social Sciences Conference, Prague, Czech Republic, May 29-June 1, 2019.
- *The Constitution at Home*, Association for Law, Culture, and Humanities March 23-24, 2019, Ottawa, CA.
- Panelist, *Constitution Day Debate: Is Everything Commerce?*, Augusta University, Sept. 18, 2018.
- Commentary, *Terrorist Communications on Social Media*, Freedom of Expression Scholars Conference, Yale Law School, April 30-May 1, 2016.
- *Disagreement and Constitutional Vision*, Deep Disagreements Conference, Humboldt Universität, Berlin, Germany, June 11-13, 2015 (peer reviewed).
- (Invited) *Identity, Freedom, and Constitutional Constraint*, Centre for Constitutional Law, University of Edinburgh School of Law, May 12, 2015.
- (Invited) *Dystopian Constitutionalism*, Robert Penn Warren Center for the Humanities Seminar in Law and Literature, Vanderbilt University, Feb. 28, 2015.
- (Invited) *Identity, Necessity, and the Meanings of American Constitutionalism*, Social and Political Thought Workshop, Vanderbilt University, Nov. 19, 2014.
- (Invited) *Constitutive Visions: Sovereignty, Necessity, and Saramago's Blindness*, Robert Penn Warren Center for the Humanities Seminar on Law and Literature, Vanderbilt University, Oct. 2, 2014.
- *Criminal Procedure and the "Police State" Exemplar*, Association for the Study of Law, Culture, & Humanities, University of Virginia, March 10-11, 2014.
- (Invited) *Ubiquitous Privacy*, OKLAHOMA LAW REVIEW Symposium: Law Enforcement Access to Third Party Records, November 15, 2013.
- (Invited) *Normalizing Necessity Through Constitutional Practice*, Boston College Law School, Nov. 8, 2013.
- (Invited) *Character, Identity, and Public Necessity in the American Constitution*, Constitutional Law Discussion Group, University of Edinburgh Faculty of Law, July 30, 2013.
- *Can 'Necessitous Men' Ever be Politically Free? On Crisis, Rules, and Exceptions*, Czech Academy of Sciences Conference on Philosophy and the Social Sciences, Prague, Czech Republic, May 23-26, 2013.
- *Sources of the We*, Association for the Study of Law, Culture, & Humanities, Birkbeck College, University of London, March 22-23, 2013.
- (Invited) *Order, Technology, and the Constitutional Meanings of Criminal Procedure*, Northwestern University School of Law, JOURNAL OF CRIMINAL LAW & CRIMINOLOGY Symposium on Cybercrime, Feb. 1, 2013.
- (Invited) Panel Discussant, HARVARD LAW REVIEW Symposium: Privacy & Technology, Harvard Law School, Nov. 9, 2012.
- Commentary on Neal Richards, "Reading Privacy," Privacy Law Scholars Conference, George Washington University, June 7-8, 2012.
- *Speech, Authority, and the Public Sphere*, Czech Academy of Sciences Conference on Philosophy and the Social Sciences, Prague, Czech Republic, May 9-13, 2012.
- (Invited) *Necessity, 'the stuff of which dictatorships are made'*, Social and Political Thought Workshop Series, Vanderbilt University, Feb. 10, 2012.
- (Invited) *Can 'Necessitous Men' Ever Be Politically Free?*, Forschungskolleg Humanwissenschaften, Goethe Universität, Frankfurt am Main, Dec. 16, 2011.
- (Invited) *Constitutional Necessity and Emergency Power*, Public Law Faculty, Goethe Universität, Frankfurt am Main, Oct. 26, 2011.
- (Invited) *After Torture: Responsibility, Constraint, and the American Political Constitution*, Heidelberg Center for American Studies, Ruprecht-Karls-Universität Heidelberg, Germany July 14, 2011.
- (Invited) *Contesting Cultures of Law and the Pursuit of Foreign Policy*, University of Leipzig, American Studies Program, Leipzig, Germany July 7, 2011.
- (Invited) *The Meanings of American Constitutionalism*, American Academy of Arts & Sciences, April 24, 2011.
- (Invited) *Can "Necessitous Men" Ever be Free? Exigency, Security, and the American Political Constitution*, Clark Legal History Series, Boston University School of Law, November 17, 2010.
- (Invited) *Alexander Hamilton's Question: Liberty or Necessity in the American Political Constitution*, Political Theory Workshop, University of Chicago, November 15, 2010.
- Panelist, Privacy Law Scholars Conference, University of California, Berkeley, June 2-3, 2011.
- *The Constitution in Living Traditions*, Villanova University Law and Literature Symposium, October 2010.

- *Through a Glass Darkly: Sovereignty, Necessity and Evil*, Association for the Study of Law, Culture and Humanities, Brown University, March 19-20, 2010.
- (Invited) *The Political Fourth Amendment*, Florida State University, February 2010.
- *Through a Glass Darkly: Sovereignty, Necessity and Evil*, Villanova University Law, Literature, and Religion Symposium, October 2009.
- *Constitutional Meaning and Ethical Life*, Law and Society Association, Denver, CO, May 2009.
- *From Privacy to Liberty: The Fourth Amendment After Lawrence*, Univ. of Miami, Prawfsfest!, Dec., 2008.
- *A Constitutional Geography of Sharing*, Law and Society, Montreal, Canada, May 2008.
- *Guided By Theory: Vision, Human Rights, and Torture*, Association for the Study of Law, Culture and Humanities, University of California, Berkeley, March 28-29, 2008.
- *Normalizing Necessity*, Loyola Law School Prawfsfest!, Los Angeles, December, 2007.
- *Is Torture Necessary? Constitutional Culture in Crisis*, International Meeting of the Law and Society Association, Humboldt University, Berlin, Germany, July 25-28, 2007.
- *Sharing*, Association for the Study of Law, Culture and Humanities, Georgetown University Law Center, March 23-24, 2007.
- Respondent, *Panel: Observing the Politics of Terror*, Symposium: The New Exceptionalism: Law and Literature Since 9/11, Benjamin N. Cardozo School of Law, October 29, 2006.
- *The Role of Vision in the Theory and Practice of Justice*, Association for the Study of Law, Culture and Humanities, Syracuse University School of Law, March 17-19, 2006.
- Respondent, Martha Nussbaum, *Radical Evil in the Lockean State: The Neglect of the Political Emotions*, Knowlton Lecture, University of South Carolina, February 23, 2006.

ACADEMIC FELLOWSHIPS AND GRANTS

VISITING FELLOWSHIPS

- DAAD Senior Research Fellow Grant, for research at the Goethe Universität, Frankfurt am Main, with the Normative Orders Excellence Cluster, May—July 2019.
- MacCormick Visiting Fellow, School of Law, University of Edinburgh, April – July 2015 and May - July 2017.
- Visiting Research Fellow, University of Edinburgh, Institute for Advanced Studies in the Humanities, Edinburgh, Scotland, June 2013 – August 2013.
- Fulbright Fellowship as Senior Research Scholar, Goethe Universität, Frankfurt am Main, May 2011-December 2011.
- Fellow, Forschungskolleg Humanwissenschaften, Goethe Universität, Frankfurt am Main, May 2011-December 2011.
- Visiting Fellow, American Academy of Arts & Sciences, Cambridge, MA, 2010-2011 (Associate Fellow of the Harvard Humanities Center).
- Fellowship, NEH Summer Seminar for College Teachers, *Literature and Values*, University of North Carolina, Chapel Hill, June 11 – July 20, 2001.

MAJOR GRANTS

- Co-Principal Investigator, Mellon Foundation Higher Education Grant, “Civic Engagement, Voting Rights, and the Founding Documents” (3-year (2023-2026), \$500,000)

OTHER GRANTS AND SCHOLARSHIPS

- Southeastern Conference Faculty Travel Grant (for research at Vanderbilt University), Spring, 2015.
- Co-Principal Investigator, Research Excellence Program Grant, University of South Carolina, to initiate a “Program for Law, Value, and the Humanities.” (\$50,000).
- Faculty Grant for Summer Language Training, DAAD, Munich, Germany, June-July 2006.
- Burke Fellowship for Teaching Excellence, Department of Philosophy, Vanderbilt University: 1998-99.
- Dissertation Enhancement Grant, The Graduate School, Vanderbilt University – to fund research at the Wittgenstein Collection, Trinity College, Cambridge: Summer 1998.
- University Fellowship, Vanderbilt University: 1994-2000.
- Arts and Science Graduate Select Scholar, Vanderbilt University: 1994-98.
- University Scholarship (full tuition), Mississippi State University: 1988-92.

ACADEMIC AWARDS AND PROGRAMS

- 2020 Palmer Book Prize in Civil Liberties, University of Chicago-Kent.
- Faculty Award for Outstanding Book Publication, USC School of Law, 2021.
- Selected as a University of South Carolina Breakthrough Star, Spring 2013.
- Faculty Award for Outstanding Publication, USC School of Law, 2012 – *Presidential Power and Constitutional Responsibility*, 52 B.C. L. Rev. 1551 (2011).
- Faculty Award for Outstanding Publication, USC School of Law, 2010 – *From Privacy to Liberty: The Fourth Amendment After Lawrence*, 57 UCLA L. REV. 1 (2009).
- Selected to present *From Privacy to Liberty: The Fourth Amendment After Lawrence*, Law & Humanities Interdisciplinary Junior Scholar Workshop, June 2009, Georgetown Law Center.
- Participant, Cornell School for Criticism and Theory, *Torture and Dignity* Seminar led by Prof. Jay Bernstein, Summer 2008.
- Faculty Award for Outstanding Publication, USC School of Law, 2007 – *Displacing Dissent: The Role of Place in First Amendment Jurisprudence*, 75 FORDHAM L. REV. 2587 (2007).
- Participant, Vanderbilt Center for the Humanities Summer Seminars conducted by Jean Bethke Elshtain: *Politics and Embodiment*, 1997; *Politics, Ethics, and Terror*, 1996.

ADDITIONAL EXPERIENCE

STEPTOE AND JOHNSON, Washington D.C.
Summer Associate, 2003

YALE UNIVERSITY, New Haven, CT: Teaching Assistant for Prof. Tad Brennan, Dep’t. of Philosophy,
Fall 2003. *Course*: Ancient Philosophy.

HONORABLE DAVID NELSON, U.S. Court of Appeals for the Sixth Circuit, Cincinnati, OH
Summer Intern, 2002

VANDERBILT UNIVERSITY, Nashville, TN: Teaching Fellow, 1995-2000.
Courses (full responsibility): Ethics, Introduction to Philosophy, General Logic, English Composition.

SELECTED MEDIA APPEARANCES

- WFAE, Charlotte NPR, *Why is the book “Gender Queer” being removed from public school libraries, and is it “obscene?”* Nov. 18, 2021.
- John Monk, *Group tied to SC AG Alan Wilson urged ‘patriots’ to attend Trump pre-riot Rally*, THE STATE, Jan. 10, 2021.
- Wisconsin Public Radio, *Central Time*, April 21, 2016 (discussing Judge Garland nomination).

- MSNBC, Morning News hosted by Chris Jansing, Feb. 15, 2016 (discussing Supreme Court nomination process).
- ETV, THE BIG PICTURE, *The Supreme Court and the Election*, hosted by Rod Smolla, October, 4, 2012.

SERVICE

Referee

- Yale University Press, Columbia University Press, NYU Press, *Yale Law Journal*, *Constellations*, and *Law, Culture, and the Humanities*

University

- Selection Committee, Vice Provost for Faculty Affairs, 2024-25.
- Faculty Selection Committee, 2007-09; 2012-2014; 2015-16; 2017-18; 2018-19; 2024-25.
- Chair, Law School Library Committee, 2019-2021; Technology and Library Committee 2021-22.
- Chair, Knowlton Lecture Committee, 2014-2018.
- Schoeman Lecture Committee, 2009-10; Chair, 2015-16.
- USC Faculty Senate, 2006-09; 2012-2014.
- USC Press Committee, 2011-2016.
- Founding Faculty Advisor for the USC American Constitution Society student chapter.
- Dean's Executive Committee, 2009-2010.
- *Focus Carolina*, Research, Scholarship, and Creative Activities Committee, Spring 2009.
- Hollings Chair Search Committee, 2006-08.
- Provost's Interdisciplinary Task Force Committee, 2007-08.
- Law School Career Services Committee, 2005-2006.

Testimony

- South Carolina House Judiciary Committee, H.3101, February 6, 2013 (testifying on the constitutionality of a proposed "nullification" of the Affordable Care Act).
- South Carolina Senate Judiciary Committee, S.1070, February 6, 2008 (testifying regarding the constitutionality of a proposal to require candidates for public office to submit to a drug test).
- South Carolina Senate Judiciary Committee, H.3159, April 24, 2008. (testifying on the constitutionality of a "Foundations of American Law and Government" display that includes the Ten Commandments).

BAR MEMBERSHIP

New York