

# Nicholas R. Parrillo

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## Academic Employment

Yale University

- William K. Townsend Professor of Law, 2021 to present
- Professor of History (secondary appointment), 2014 to present
- Professor of Law, 2014-2020
- Associate Professor of Law, 2008-2013

## Principal Publications

["A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New Evidence from the Federal Tax on Private Real Estate in the 1790s," \*Yale Law Journal\* 130 \(2021\): forthcoming.](#)

- Selected for review in [Jotwell](#) (Administrative Law)
- Related research findings appear in a [supplemental paper](#) to this article

"The Administrative Law of Central Banking," *Yale Journal on Regulation* 38 (2021): forthcoming (with Peter Conti-Brown and Yair Listokin).

["Should the Public Get to Participate Before Federal Agencies Issue Guidance? An Empirical Study," \*Administrative Law Review\* 71: 57-125 \(2019\).](#)

["Negotiating the Federal Government's Compliance with Court Orders: An Initial Exploration," \*North Carolina Law Review\* 97: 899-932 \(2019\).](#)

["Federal Agency Guidance and the Power to Bind: An Empirical Study of Agencies and Industries," \*Yale Journal on Regulation\* 36 \(2019\): 165-271.](#)

- Served as the focal point for an [online symposium](#) about guidance
- Selected for review in [Jotwell](#) (Administrative Law)

"Fiduciary Government and Public Officers' Incentives," in [\*Fiduciary Government\*](#), ed. Evan J. Criddle et al. (Cambridge, UK: Cambridge University Press, 2018), 146-160.

["The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power," \*Harvard Law Review\* 131 \(2018\): 685-794.](#)

- Discussed in [USA Today](#)
- Selected for review in [Jotwell](#) (Jurisprudence)

["Federal Agency Guidance: An Institutional Perspective," Final Report to the Administrative Conference of the United States \(Oct. 12, 2017\).](#)

- Based on author's interviews with 135 individuals across agencies, industry, and NGOs
- Served as the basis for the Conference's [best practices](#) for agency use of guidance, published in [82 Fed. Reg. 61734-38 \(Dec. 29, 2017\)](#); these were partly extended to cover interpretive rules in [best practices](#) on that subject, [84 Fed. Reg. 38,927 \(Aug. 8, 2019\)](#)

["Jerry Mashaw's Creative Tension with the Field of Administrative Law" in \*Administrative Law from the Inside Out: Essays on Themes in the Work of Jerry Mashaw\*, ed. Nicholas R. Parrillo \(Cambridge, UK: Cambridge University Press, 2017\).](#)

*Against the Profit Motive: The Salary Revolution in American Government, 1780-1940* (New Haven: Yale University Press, 2013).

- [Annual Scholarship Award](#) (American Bar Association Section on Administrative Law) for the year's best book or article on administrative law
- [Hurst Award](#) (Law and Society Association) for the year's best book on legal history
- Visit the [Book Webpage](#) and read the [Introductory Chapter](#); watch a [Talk](#) about the book
- Extended Reviews in [The Boston Review](#) and the [Harvard Law Review](#)
- Featured in symposium on [Balkinization](#) and in "[On the Take](#)," an episode of the radio program *Back Story with the American History Guys* (30:00 mark)

["Leviathan and Interpretive Revolution: The Administrative State, the Judiciary, and the Rise of Legislative History, 1890-1950," \*Yale Law Journal\* 123 \(2013\): 266-411.](#)

- [Cromwell Article Prize](#) (American Society for Legal History) for the year's best article on American legal history by an early-career scholar

"Testing Weber: Compensation for Public Services, Bureaucratization, and the Development of Positive Law in the United States," in [\*Comparative Administrative Law\*](#), ed. Susan Rose-Ackerman and Peter L. Lindseth (Cheltenham, UK: Edward Elgar, 2010).

["The De-Privatization of American Warfare: How the U.S. Government Used, Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century," \*Yale Journal of Law and the Humanities\* 19 \(2007\): 1-96.](#)

["The Government at the Mercy of Its Contractors': How the New Deal Lawyers Reshaped the Common Law to Challenge the Defense Industry in World War II," \*Hastings Law Journal\* 57 \(2005\): 93-197.](#)

"Lincoln's Calvinist Transformation: Emancipation and War," *Civil War History* 46 (2000): 227-253.

- republished in [\*On Lincoln\*](#), ed. John T. Hubbell (Kent, OH: Kent State University Press, 2014), volume 3 of *Civil War History Readers* ("a multivolume series reintroducing the most influential articles published in the journal")

## **Casebook**

[\*Administrative Law: The American Public Law System: Cases and Materials\*, 8th ed. \(St. Paul, MN: West, 2019\) \(with Mariano-Florentino Cuéllar, M. Elizabeth Magill, Jerry L. Mashaw, Richard A. Merrill, and Peter M. Shane\).](#)

## **Edited Volume**

*Administrative Law from the Inside Out: Essays on Themes in the Work of Jerry Mashaw*, ed. Nicholas R. Parrillo (Cambridge, UK: Cambridge University Press, 2017).

## **Congressional Testimony**

[Written Testimony](#) Before the United States House of Representatives Committee on Oversight and Government Reform, "Shining Light on the Federal Regulatory Process," March 14, 2018

- [Video of Hearing](#) (Parrillo opening statement at 36:45)

## **Government Service**

Administrative Conference of the United States

- [Public Member](#), 2016 to present
- Consultant, project on federal agency guidance, 2016-17

## **Courses Taught**

Large Courses:

Administrative Law  
Advanced Administrative Law  
American Legal History  
Legislation  
Remedies

Seminars:

American Legal History: Research Seminar  
Bureaucracy  
Privatization

## **Teaching Award**

Yale Law School Faculty Excellence Award, 2016

- conferred by Yale Law Women according to a competitive vote of the student body

## **Short Pieces**

["The Contempt Finding and Sanctions Against Secretary DeVos and the Department of Education," \*Notice & Comment Blog\*, Oct. 30, 2019](#)

["The New Executive Orders on Guidance: Initial Reactions," \*Notice & Comment Blog\*, Oct. 10, 2019](#)

[Review of \*Inventing American Exceptionalism\*, by Amalia D. Kessler, \*Law and History Review\* 36 \(2018\): 1101-03.](#)

["Understanding and Addressing Controversies About Agency Guidance," \*Regulatory Review\*, March 5, 2018 \(with Lee Liberman Otis\)](#)

["Challenges Agencies Face in Communicating by Guidance," \*Notice & Comment Blog\*, Jan. 31, 2018](#)

["68th Plenary Preview: Agency Guidance," \*Administrative Fix Blog\* \(Administrative Conference of the United States\), December 7, 2017](#)

["The Fate of the Clean Power Plan Case: Hold in Abeyance, or Remand?" \*Notice & Comment Blog\*, May 5, 2017](#)

["Holding the Federal Government in Contempt of Court: What Powers Do Judges Have Over an Administration?" \*Just Security Blog\*, March 2, 2017](#)

["Bureaucratic Power and the Rule of Law," review of \*Tocqueville's Nightmare\*, by Daniel Ernst, \*Reviews in American History\* 43 \(Sept. 2015\): 544-49.](#)

["Administrative Constitutionalism and Administrative Power," \*RegBlog\*, Symposium on Sophia Lee's \*The Workplace Constitution\*, April 1, 2015](#)

"Remarks Accepting the Section's 2014 Annual Scholarship Award for *Against the Profit Motive*," *Administrative & Regulatory Law News*, 40, no. 2 (Winter 2015): 7-9.

[Review of \*Making the Modern American Fiscal State\*, by Ajay Mehrotra, \*Journal of American History\* 101 \(March 2015\): 1225-26.](#)

["The Salary Revolution and the Marks of Government's Distinctness: A Response to Jon Michaels," \*Harvard Law Review Forum\* 128, no. 99 \(Feb. 10, 2015\)](#)

["The Banishment of the Profit Motive from American Government—and Its Return?" \*Balkanization\*, June 12, 2014.](#)

["American Fiscal State-Building, Crisis, and Contingency," \*PrawfsBlawg\*, Symposium on Ajay Mehrotra's \*Making the Modern American Fiscal State\*, June 10, 2014.](#)

["What Is the Future of Scholarly Books in the Digital Age?" \*Legal History Blog\*, Nov. 26, 2013.](#)

["Researching State Legislative Records: The Biggest Obstacle in American Legal History," \*Legal History Blog\*, Nov. 13, 2013.](#)

"Impartial Decisionmaker," in [\*Encyclopedia of American Civil Liberties\*](#), ed. Paul Finkelman (New York: Routledge, 2006), 2: 798-801.

## **Education**

### Yale Law School

- J.D., 2004
- Scharps Prize (best paper by a 3L), Townsend Prize (best paper by a 2L); Parker Prize (best paper on legal history); *Yale Law Journal* Articles Editor

### Yale University Graduate School

- Ph.D., American Studies, 2012
- Committee: Jean-Christophe Agnew, Robert W. Gordon, Jerry Mashaw, Stephen Skowronek
- Awarded distinction by all three dissertation readers
- Whiting Fellowship, Yale Graduate School, 2007-08; Golieb Fellowship, NYU Law School, 2006-07; Cromwell Research Fellowship, Cromwell Foundation, 2006-07

### Harvard College

- A.B., *summa cum laude*, History and Literature, 2000
- Cumming Prize (best thesis in History and Literature), Hoopes Prize (outstanding thesis), Phi Beta Kappa

## **Clerkship**

Judge Stephen F. Williams, U.S. Court of Appeals for the D.C. Circuit, 2005-06

## **Presentations and Conferences (since 2016)**

“A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New Evidence From the Federal Tax on Private Real Estate in the 1790s,” University of San Diego Faculty Workshop, October 2, 2020 (virtual)

Conference Organizer and Commenter on Shalini Bhargava Ray’s “Abdication Through Enforcement,” Administrative Law New Scholarship Roundtable, September 18, 2020 (converted from live conference to series of virtual mini-roundtables)

Session Co-Leader, “Understanding the Reach and Potential Impact of the Nondelegation Doctrine,” Workshop on Climate Policy and Potential Constitutional Limits on Agency Delegation, Resources for the Future and UCLA School of Law, July 23-24, 2020 (virtual)

“A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New Evidence From the Federal Tax on Private Real Estate in the 1790s,” George Mason University Nondelegation Roundtable, May 2020 (converted from live event to exchange of comments)

“The Administrative Law of Central Banking” (with Peter Conti-Brown and Yair Listokin), Yale Law School Faculty Workshop, April 20, 2020 (virtual)

“A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New Evidence From the Federal Tax on Private Real Estate in the 1790s,” Fordham Constitutional History Workshop, April 1, 2020 (virtual)

“A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New Evidence From the Federal Tax on Private Real Estate in the 1790s,” Harvard Public Law Workshop, March 4, 2020

Invited Panelist, “How Easily Can Agencies Change Regulatory Policy in Immigration & Civil Rights?” Association of American Law Schools, Washington, DC, January 5, 2020

Invited Panelist, “Lessons from the Life of Administrative Law: What Experience Teaches About How the APA Can Be Improved,” [U.S. Department of Justice Summit on Modernizing the Administrative Procedure Act](#), Washington, DC, December 6, 2019

Chair, Panel on “Law, Equity, and Accountability in the Early Republic,” American Society for Legal History, Boston, MA, November 23, 2019

Invited Participant, Roundtable on Jed Stiglitz’s *The Reasoning State*, Cornell Law School, November 8, 2019

Invited Commentator, Roundtable on Bureaucracy and Presidential Administration, Antonin Scalia Law School, George Mason University, September 24, 2019

Organizing Committee Member and Commentator on Rebecca Ingber’s “Congressional Administration of Foreign Affairs,” Administrative Law New Scholarship Roundtable, University of Wisconsin Law School, June 10, 2019

“Transparency and Legal Reason: The Administrative Law of Central Banking” (with Peter Conti-Brown and Yair Listokin), University of Pennsylvania Public Law Workshop, April 23, 2019

“Appropriations and Federal Agency Compliance with Court Orders,” Conference on Congress’s Power of the Purse in a Polarizing Era, UC-Hastings Law School, March 15, 2019

Invited Panelist, “Equity in the Modern World,” Association of American Law Schools, New Orleans, LA, January 3, 2019

Invited Participant, Workshop on Eric Posner’s *American Demagogue*, Georgia State University College of Law, December 17, 2018

Invited Commentator, “Administering OIRA: A Conversation with Susan Dudley,” Yale Law School Federalist Society, November 27, 2018

“How Central Banks Should Interpret Their Statutes: Transparency, Legitimacy, and Statutory Interpretation at the Federal Reserve” (with Peter Conti-Brown and Yair Listokin), Brookings Institution, Washington, DC, November 19, 2018

Invited Panelist, “Does Agency Regulatory Power Extend Beyond its Formal Power, and Should It?” Federalist Society National Lawyers’ Convention (Showcase Panel), Washington, DC, November 17, 2018

Panel Organizer and Moderator, “Deregulation: Past and Present,” ABA Section of Administrative Law Conference, Washington, DC, November 2, 2018

Panel Organizer and Moderator, “Debating Administrative Constitutionalism: Practice,” University of Pennsylvania Law Review Symposium, October 20, 2018

Panel Organizer and Moderator, “The History and Origins of the Administrative State,” Second Circuit Judicial Conference, Saratoga Springs, NY, June 14, 2018

Organizing Committee Member and Commentator on Rory Van Loo’s “Regulatory Police,” Administrative Law New Scholarship Roundtable, University of Michigan Law School, June 12, 2018

Organizer and Moderator, “Deregulation: Past and Present,” ABA Section of Administrative Law Teleconference, June 8, 2018

Invited Panelist, “Can an Intelligible Distinction Between Legislative Rules and Guidance be Articulated?” District of Columbia Bar Program, April 26, 2018

Invited Participant, Workshop on New Edition of Robert Kagan’s *Adversarial Legalism*, Georgia State University College of Law, April 24, 2018

“Federal Agency Guidance and the Power to Bind: An Empirical Study of Agencies and Industries,” University of Texas-Austin School of Law Faculty Colloquium, April 5, 2018

“Federal Agency Guidance and the Power to Bind: An Empirical Study of Agencies and Industries,” Conference on New Frontiers in the Empirical Study of Agency Policymaking, University of Wisconsin-Madison, March 23, 2018

“Federal Agency Guidance and the Power to Bind: An Empirical Study of Agencies and Industries,” St. John’s Law Faculty Workshop, March 19, 2018

“Federal Agencies’ Use of Guidance,” District of Columbia Bar Program, March 15, 2018

“Federal Agency Guidance and the Power to Bind: An Empirical Study of Agencies and Industries,” Fordham Legislation Roundtable, March 2, 2018

“The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power,” Association of American Law Schools, San Diego, CA, January 5, 2018 [prevented from attending conference by inclement weather; presentation read aloud by panel chair]

“Federal Agency Guidance: An Institutional Perspective,” Administrative Conference of the United States

- Meetings of the Committee on Judicial Review, Washington, DC, October 2, 17, 31, 2017
- Conference Plenary Session, Washington, DC, December 14, 2017

“Negotiating Governmental Compliance with Court Orders: A Preliminary Discussion,” Conference titled “Beyond Deference: Emerging Issues in Judicial Review of Agency Action,” Center for the Study of Administrative State, Antonin Scalia Law School, George Mason University, December 6, 2017

Invited Commentator on Christopher DeMuth, “The Trump Administration and the Administrative State,” Yale Law School Federalist Society, October 23, 2017

“The Endgame of Administrative Law: Governmental Disobedience and the Judicial Contempt Power,” ABA Section of Administrative Law Conference, Washington, DC, October 19, 2017

“Federal Agency Guidance: An Institutional Perspective,” ABA Section of Administrative Law Conference, Washington, DC, October 19, 2017

Invited Commentator on Blake Emerson’s “The Democratic Spirit of the New American State,” Administrative Law New Scholarship Roundtable, Ohio State University Moritz College of Law, June 27, 2017

“Fiduciary Government and Public Officers’ Incentives,” Conference on Fiduciary Government, UCLA School of Law, June 7, 2017

“Federal Agency Guidance from the Ground Up: A Preliminary Discussion,” Vanderbilt Law School Faculty Workshop, March 27, 2017

Invited Panelist, “Challenges to the Administrative State,” 33rd Meeting of the Committee on Science, Technology, and Law of the National Academy of Sciences, Pasadena, CA, March 9, 2017

Invited Participant, Roundtable on Cristina Rodriguez and Adam Cox’s *The President and Immigration Law*, NYU Law School, December 15, 2016

“Compliance, Administrative Law, and Bureaucratic Process,” Center for Compliance Studies Symposium, Loyola University Chicago School of Law, September 23, 2016

“The Endgame of Administrative Law: Disobedient Agencies and the Judicial Contempt Power,” Yale Law School Faculty Workshop, August 29, 2016

Invited Commentator, Panel on “Government Institutions and Civic Ideals,” Society for the History of the Early American Republic, New Haven, CT, July 22, 2016

Invited Commentator on Yoon-Ho Alex Lee's "Beyond Agency Core Mission," Yale-Harvard-Stanford Junior Faculty Forum, June 29, 2016

"The Endgame of Administrative Law: Disobedient Agencies and the Judicial Contempt Power," University of Chicago Public Law Workshop, May 17, 2016

Invited Participant, Conference on William Novak's *A New Democracy: Law and the Creation of the Modern American State, 1866-1932*, Georgia State University College of Law, May 3, 2016

Invited Commentator, Conference on "Taking Stock of the State in Nineteenth-Century America," Yale Center for the Study of Representative Institutions, April 15, 2016

Moderator, "The Second Hoover Commission's 60th Anniversary: Lessons for Regulatory Reform," Hoover Institution, Washington, DC, March 16, 2016

"The Endgame of Administrative Law: Disobedient Agencies and the Judicial Contempt Power," American Bar Foundation Research Seminar, Chicago, IL, March 2, 2016

"The Endgame of Administrative Law: Disobedient Agencies and the Judicial Contempt Power," IIT Chicago-Kent College of Law Faculty Workshop, March 1, 2016

### **Referee**

Cambridge University Press  
Columbia Law Review  
Harvard Law Review  
Institute for Advanced Study, Princeton, NJ  
Journal of Policy History  
Law and History Review  
Law and Social Inquiry  
Law and Society Review  
Oxford University Press  
William and Mary Quarterly  
Yale Law Journal

### **Selected Institutional Service**

Yale Law School

- Appointments Committee, Spring 2015, Spring 2017, AY 2017-18 (junior search chair)
- Chair, Law-Teaching Placement Committee, 2015-2016
- Co-Supervisor, Legal History Forum, AY 2011-2012, 2012-2013, 2020-2021

Yale History Department

- Ph.D. Admissions Committee, 2017-18

Yale Center for Historical Enquiry and the Social Sciences

- Senior Search Committee, 2016-17
- Associate Director, Spring 2015
- Steering Committee, 2013 to present



## **Memberships**

ABA Section on Administrative Law and Regulatory Practice

- Chair, Committee on History of Administrative Law, 2015-2018

American Society for Legal History

- Finance Committee, 2016 to present
- Reid Prize Committee, 2014-2016
- Program Committee, 2013

## **Bar Admission**

New York (2007)