

WE THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILITY, PROVIDE FOR THE COMMON DEFENCE, PROMOTE THE GENERAL WELFARE, AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY, DO hereby CONSTITUTE and ordain this CONSTITUTION.



The *Ohio State Law Journal* presents

Originalism and the Jury

with Keynote Address by U.S. Supreme Court Justice Antonin Scalia

Co-sponsored by The Ohio State University Moritz College of Law and University of Illinois College of Law

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Originalism has increasingly entered the landscape of constitutional litigation. For instance, recently in the landmark case of *District of Columbia v. Heller*, both the majority and dissenting opinions dedicated the bulk of their ink to attempting to discern the original meaning of the Second Amendment. Recently, originalism has also played a prominent role in shaping the mechanics of the American jury system.

The Sixth Amendment guarantees the right to a jury trial in criminal cases. In *Blakely v. Washington* (2004), the Supreme Court held that, in mandatory sentencing systems, the Sixth Amendment prohibits judges from enhancing criminal sentences based on facts other than those decided by the jury or admitted by the defendant. Justice Scalia's opinion for the Court in *Blakely* cited to multiple 18th century sources to support the assertion that "just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." Similarly, Justice Scalia relied on historical sources in *Crawford v. Washington*, one of the most important cases about the Confrontation Clause of the Sixth Amendment.

While the Supreme Court has used originalism to curb judicial power in favor of jury power under the Sixth Amendment, the Court has not acted similarly with respect to the Seventh Amendment civil jury trial right. This difference has occurred despite the language of the Seventh Amendment, the only part of the Constitution to refer explicitly to the "common law," and even though the Supreme Court has directed that common law in the Seventh Amendment is the English common law in 1791. Using originalism, scholars debate whether procedures such as summary judgment and the motion to dismiss are unconstitutional and examine under what conditions a civil jury trial right exists, including whether such a right exists in complex cases.

These are some of the issues the *Ohio State Law Journal* will address in its upcoming symposium, Originalism and the Jury. The symposium will feature Justice Scalia as the keynote speaker.

PANELS & SCHEDULE

Tuesday, November 17, 2009

Saxbe Auditorium, Drinko Hall
The Ohio State University

8 a.m. **Registration and Coffee**

8:30 a.m. **Opening Remarks**

8:45 a.m. **The Framers & The Jury**

Moderator:

Bruce P. Smith, *Dean and Guy Raymond Jones Faculty Scholar,*
University of Illinois College of Law

Joan L. Larsen, *University of Michigan Law School*

William E. Nelson, *Judge Edward Weinfeld Professor of Law,*
New York University School of Law

Gene C. Schaerr, *Partner, Winston & Strawn LLP; Co-Founder Con Source*

10:15 a.m. **Seventh Amendment Civil Jury Trial**

Moderator:

Deborah Jones Merritt, *John Deaver Drinko-Baker Hosteler Chair in Law, The Ohio*
State University Moritz College of Law

Brian T. Fitzpatrick, *Assistant Professor of Law, Vanderbilt University Law School*

James C. Oldham, *St. Thomas More Professor of Law, Georgetown University Law Center*

Suja A. Thomas, *Professor of Law and Mildred Van Voorhis Faculty Scholar,*
University of Illinois College of Law

11:30 a.m. **Lunch**

1 p.m. **Sixth Amendment Criminal Jury Trial**

Moderator:

Alan C. Michaels, *Dean and Edwin M. Cooperman Professor of Law,*
The Ohio State University Moritz College of Law

Douglas A. Berman, *William B. Saxbe Designated Professor of Law,*
The Ohio State University Moritz College of Law

Stephanos Bibas, *Professor of Law and Criminology, University of Pennsylvania Law School*

Judge Nancy Gertner, *U.S. District Court for the District of Massachusetts*

Orin S. Kerr, *Professor of Law, George Washington University Law School*

2:30 p.m. **Originalism in Advocacy**

Moderator:

Judge Jeffrey S. Sutton, *U.S. Court of Appeals for the Sixth Circuit*

Michael Dreeben, *Deputy Solicitor General of the United States*

Jeffrey L. Fisher, *Associate Professor of Law, Stanford Law School*

Carter Phillips, *Partner, Sidley Austin LLP*

3:45 p.m. **Keynote Address**

The Honorable Antonin Scalia

4:45 p.m. **Closing and Reception with Justice Scalia**

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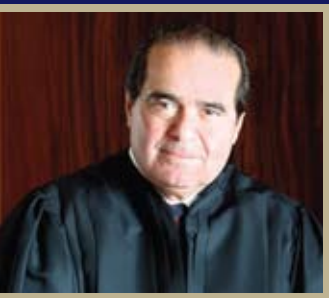
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Antonin Scalia was born on March 11, 1936, in Trenton, New Jersey, and raised in Queens, Long Island. He graduated from Georgetown University in 1957 and Harvard Law School in 1960.

Scalia moved to Cleveland, Ohio, and practiced at the law firm Jones Day until 1967, when he joined the faculty of the University of Virginia Law School. In 1971, Scalia became General Counsel of the White House Office of Telecommunications Policy. He was chairman of the Administrative Conference of the United States from 1972 to 1974. Scalia was appointed Assistant Attorney General of the Office of Legal Counsel in the Department of Justice in 1974. Scalia returned in 1977 to teaching at the University of Chicago Law School. He was also visiting professor at the law schools of Georgetown and Stanford Universities. President Ronald Reagan appointed Scalia to the United States Court of Appeals for the District of Columbia Circuit in 1982. Four years later, on June 24, 1986, President Reagan nominated Scalia to the Supreme Court of the United States. The Senate confirmed the nomination on September 17, 1986.

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Registration Form:

To register for the symposium, please detach and mail the registration form along with the appropriate fee to: *Ohio State Law Journal*, The Ohio State University, Moritz College of Law, 55 West 12th Avenue, Columbus, OH 43210-1391. Registration is also available online at: moritzlaw.osu.edu/lawjournal

Name: _____

Institution: _____

Address: _____

City/State: _____

Zip Code: _____

Daytime Telephone: _____ Fax: _____

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Please note spaces are limited and will be assigned in the order registrations are received.

Registrations received after space allotments are exceeded will be returned.

CLE Credit:

Pending approval, 6 Ohio CLE credits can be obtained by attending the symposium. For more information, contact the *Ohio State Law Journal* at (614) 292-6829 or oslj.symposium.2009@gmail.com.

Accommodations:

For information on lodging in downtown Columbus near the conference, please contact the Greater Columbus Convention and Visitors Bureau at (800) 354-2657 or visit www.experiencecolumbus.com. A suggested listing of hotel accommodations is also listed on our web site: moritzlaw.osu.edu/lawjournal.

Parking:

Parking is available in the Gateway Parking Garage located one block east of High Street between 9th and 11th avenues. Please visit, www.southcampusgateway.com.

Cancellation Policy:

Registrations cancelled by November 10, 2009, will receive a 50 percent refund by mail. Registrants unable to attend the symposium may designate a substitute.

Special Accommodations:

The *Ohio State Law Journal* would like to do everything within its power to satisfy the needs of each symposium participant. Please inform us of any special accommodation requests at (614) 292-6829 or oslj.symposium.2009@gmail.com.

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Select from below:

General Participant, plus CLE credit (pending approval)

- All-day (includes 6 credits, pending approval): \$200
- Panel I, Panel II, and Lunch (includes 3 credits, pending approval): \$100
- Panel III, Panel IV, Keynote Address, and Lunch (includes 3 credits, pending approval): \$125

Bar Registration Number _____

Nonprofit Participant, plus CLE credit (pending approval)

- All-day (includes 6 credits, pending approval): \$100
- Panel I, Panel II, and Lunch (includes 3 credits, pending approval): \$50
- Panel III, Panel IV, Keynote Address, and Lunch (includes 3 credits, pending approval): \$75

Bar Registration Number _____

General Participant without CLE credit

- All-day: \$75
- Panel I, Panel II, and Lunch: \$37.50
- Panel III, Panel IV, Keynote Address, and Lunch: \$50

Ohio State Faculty & Students: FREE

(Please note that free OSU registrants may be assigned to overflow rooms, if necessary.)

- All-day: Free
- Panel I, Panel II, and Lunch: Free
- Panel III, Panel IV, Keynote Address, and Lunch: Free

Please designate whether you are:

- Moritz Faculty
- Non-Moritz OSU Faculty
- Moritz Student
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