

Curriculum Vitae of DAN T. COENEN

University Professor, Josiah Meigs Distinguished Teaching Professor,
and Harmon W. Caldwell Chair in Constitutional Law
University of Georgia School of Law

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EMPLOYMENT

- University of Georgia School of Law, Professor of Law (1996-present); Associate Professor (1991-96); Assistant Professor (1987-91); Associate Dean for Faculty Development (2011-13).
 - Named University Professor (2005) (This designation is awarded to no more than one professor at the University of Georgia per year; it recognizes faculty “who have had a significant impact on the University in addition to fulfilling their normal academic responsibilities” and “whose actions as change agents have improved the quality with which the University serves its missions.”)
 - Named Josiah Meigs Distinguished Teaching Professor in 2004 based on previous receipt in 1998 of the University-wide Josiah Meigs Award for Excellence in Teaching (This designation is the highest honor for teaching excellence bestowed by the University of Georgia.)
 - Named J. Alton Hosch Professor of Law in 1997 and Harmon W. Caldwell Chair in Constitutional Law in 2008.
- Robinson, Bradshaw & Hinson, P.A., Charlotte, N.C. Joined firm as an associate (June 1981); named a firm shareholder (1985).
- Law Clerk for Hon. Harry A. Blackmun, Associate Justice, Supreme Court of the United States, Washington, D.C. (1979-80).
- Law Clerk for Hon. Clement F. Haynsworth, Jr., Chief Judge, United States Court of Appeals for the Fourth Circuit, Greenville, S.C. (1978-79).
- Research Director, Cornell Institute on Organized Crime, Ithaca, N.Y. (Summer 1978); Research Assistant to Professor Robert S. Summers in preparing Uniform Commercial Code Hornbook, Cornell Law School, Ithaca, N.Y. (Spring 1978);

Summer Associate, Mayer, Brown & Platt, Chicago, Illinois (Summer 1977); Law Clerk for Hon. Gordon Myse, Wisconsin Circuit Court, Appleton, Wis. (Summer 1976); Assistant to Director of Marketing, Valley Bancorporation, Appleton, Wis. (1975); Powdered Milk Bagger, Consolidated Badger Cooperative, Appleton, Wis. (Summers 1971-74).

EDUCATION

- Cornell Law School, Ithaca, N.Y., J.D., *magna cum laude*, 1978.
 - Editor-in-Chief, Cornell Law Review, Vol. 63 (1977-78); Associate Editor, Cornell Law Review, Vol. 62 (1976-77).
 - Co-Recipient of the Fraser Prize (awarded upon vote of the graduating class, among nominees selected by the faculty based on academic performance, to two class members "who have most fully evidenced high qualities of mind and character").
 - Winner of Corpus Juris Secundum Award for scholarship during second academic year; winner of American Jurisprudence Prize for highest grade in Trusts & Estates; Cornell Legal Aid Clinic; First Year Moot Court; Intramural Athletics; Elected to Cornell Chapter of Order of the Coif and Phi Kappa Phi.
- University of Wisconsin, Madison, Wis., B.S., Journalism, 1975.
 - Phi Beta Kappa; Phi Kappa Phi; Wisconsin Honor Scholarship; Harry J. Grant Journalism Scholarship; Legislative Aide for State Senator; School Newspaper; Intramural Athletics.
- Xavier High School, Appleton, Wis.
 - Student Council President and Vice-President; participated in many additional school activities.

PUBLICATIONS

Books

- PRINCIPLES OF CONSTITUTIONAL STRUCTURE (West Academic, Concise Hornbook Series 2022) (with Michael Coenen)
- THE STORY OF THE FEDERALIST: HOW HAMILTON AND MADISON RECONCEIVED AMERICA (Twelve Tables Press 2007).

- CONSTITUTIONAL LAW: THE COMMERCE CLAUSE (Foundation Press, Turning Point Series 2004).

Major Articles

- *Constitutional Text, Founding-Era History, and the Independent-State-Legislature Theory*, 57 GA. L. REV. ___ (forthcoming, spring 2023)
- *Reconceptualizing Hybrid Rights*, 61 B.C. L. Rev. 2355-2417 (2020).
- *Quiet-Revolution Rulings in Constitutional Law*, 99 B.U. L. REV. 2061-2138 (2019).
- *Free Speech and the Law of Evidence*, 68 DUKE L.J. 639-708 (2019).
- *Free Speech and Generally Applicable Laws: A New Doctrinal Synthesis*, 103 IOWA L. REV. 435-505 (2017).
- *Freedom of Speech and the Criminal Law*, 97 B.U. L. REV. 1529-1602 (2017).
- *Two-Time Presidents and the Vice-Presidency*, 56 B.C. L. REV. 1287-1344 (2015).
- *The Commerce Power and Congressional Mandates*, 82 GEO. WASH. L. REV. 1052-1117 (2014).
- *The Filibuster and the Framing: Why the Cloture Rule Is Unconstitutional and What To Do About It*, 55 B.C. L. REV. 39-92 (2014).
- *The Originalist Case Against Congressional Supermajority Voting Rules*, 106 NORTHWESTERN U. L. REV. 1091-1152 (2012).
- *Where United Haulers Might Take Us: The Future of the State-Self-Promotion Exception to the Dormant Commerce Clause Rule*, 95 IOWA L. REV. 541-629 (2010).
- *The Pros and Cons of Politically Reversible "Semisubstantive" Constitutional Rules*, 77 FORDHAM L. REV. 2835-91 (2009).
- *The Supreme Court's Municipal Bond Decision and the Market-Participant Exception to the Dormant Commerce Clause*, 70 OHIO ST. L.J. 1179 (2009).
- *A Rhetoric for Ratification: The Argument of The Federalist and Its Impact on Constitutional Interpretation*, 56 DUKE L.J. 469-543 (2006).

- *The Rehnquist Court, Structural Due Process, and Semisubstantive Constitutional Review*, 75 S. CAL. L. REV. 1281-1406 (2002).
- *Congressional Power over Presidential Elections: Lessons From the Past and Reforms for the Future*, 43 WM. & MARY L. REV. 851-926 (2002) (with E. Larson).
- *Institutional Arrangements and Individual Rights: A Comment on Professor Tribe's Critique of the Modern Court's Treatment of Constitutional Liberty*, 2001 U. ILL. L. REV. 1159-1205.
- *A Constitution of Collaboration: Protecting Fundamental Values with Second-Look Rules of Interbranch Dialogue*, 42 WM. & MARY L. REV. 1575-1870 (2001).
- *Business Subsidies and the Dormant Commerce Clause*, 107 YALE L.J. 965-1053 (1998).
- *Suspect Linkage: The Interplay of State Taxing and Spending Measures in the Application of Constitutional Antidiscrimination Rules*, 95 MICH. L. REV. 2167-2233 (1997) (with W. Hellerstein).
- *State User Fees and the Dormant Commerce Clause*, 50 VAND. L. REV. 795-842 (1997).
- *Commerce Clause Restraints on State Business Development Incentives*, 81 CORNELL L. REV. 789-878 (1996) (with W. Hellerstein).
- *The Impact of the Garcia Decision on the Market-Participant Exception to the Dormant Commerce Clause*, 1995 U. ILL. L. REV. 727-59.
- *Priorities in Accounts: The Crazy Quilt of Current Law and a Proposal for Reform*, 45 VAND. L. REV. 1061-1184 (1992).
- *The Constitutional Case Against Intracircuit Nonacquiescence*, 75 MINN. L. REV. 1339-1444 (1991).
- *Untangling the Market-Participant Exemption to the Dormant Commerce Clause*, 88 MICH. L. REV. 395-488 (1989).
- *To Defer or Not To Defer: A Study of Federal Circuit Court Deference to District Court Rulings on State Law*, 73 MINN. L. REV. 899-1021 (1989).
- *Controlling the Contemporary Loanshark: The Law of Illicit Lending and the Problem of Witness Fear*, 65 CORNELL L. REV. 127-289 (1980) (with R.

Goldstock).

Essays

- *Originalism and the “Individual Mandate”*: Rounding out the Government’s Case for Constitutionality, 107 NW. U. L. COLLOQUY 55 (2012) (providing shortened treatment of Dan T. Coenen, *The Originalist Case for the “Individual Mandate”*: Rounding out the Government’s Argument in the Health Care Case, UGA Legal Studies Research Paper No. 2012-05, available at <http://ssrn.com/abstract=2053795>).
- *Structural Review, Pseudo-Second-Look Decision Making, and the Risk of Diluting Constitutional Liberty*, 42 WM. & MARY L. REV. 1881 (2001) (replying to Mark Tushnet, *Subconstitutional Constitutional Law: Supplement, Sham, or Substitute?*, 42 WM. & MARY L. REV. 1871 (2001)).
- *Of Pitcairn's Island and American Constitutional Theory*, 38 WM. & MARY L. REV. 649 (1997).

Encyclopedia Articles

- *Fifteen Momentous Supreme Court Cases from Georgia* in THE NEW GEORGIA ENCYCLOPEDIA (2004) (essay which, together with 15 break-out essays on individual cases, appears in the first comprehensive computerized encyclopedia concerning a single state).
- *The Dormant Commerce Clause* in ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (Levy, Karst & Winkler ed.).
- *Implied Powers and Holding* in ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES.

Symposium & Festschrift Pieces

- *Why Wynne Should Win*, 67 VAND. L. REV. EN BANC 217 (2014) (solicited essay published as part of a collection of treatments of *Maryland State Comptroller of the Treasury v. Wynne*).
- *The Future of Footnote Four*, 41 GA. L. REV. 797 (2007) (solicited essay for an issue honoring Professor Milner Ball).
- *Eldred v. Ashcroft: Intellectual Property, Congressional Power, and the Constitution*, 36 LOY. L.A. L. REV. 99-122 (2002) (with Paul Heald) (published as

part of a major symposium on the *Eldred* case).

- *The Curious Role of Interpretive Formality in American Constitutional Law*, reprinted in *PRESCRIPTIVE FORMALITY AND NORMATIVE RATIONALITY IN MODERN LEGAL SYSTEMS*, Festschrift for Robert S. Summers 425 (1994).
- *Justice Blackmun, Federalism, and Separation of Powers*, 97 *DICK. L. REV.* 541-600 (1993) (solicited for issue honoring Justice Harry A. Blackmun).
- *Rights As Trumps*, 27 *GA. L. REV.* 463 (1993) (solicited essay for a symposium focused on a new work by Professor Richard Fallon).

Short Pieces

- *The Blue Jay: An Odd Ode to "A Uniform System of Citation,"* 50 *GA. L. REV.* page v (2016).
- *Four Essentials of Effective Teaching*, in *CHALK TALK: TEACHING TIPS FROM THE UGA TEACHING ACADEMY* (L. Johnson, ed. 2010).
- *Fifteen Curious Facts About the Federalist Papers*, *The Georgia Advocate*, Vol. 42, No. 1, p. 2 (Fall 2007/Winter 2008).
- *Socratic Teaching in Constitutional Law and Otherwise*, in *TEACHING IN THE LAW SCHOOL CURRICULUM* (S. Friedland and G. Hess, eds., Carolina Academic Press 2004) (solicited contribution).
- *Fifteen Famous Supreme Court Cases from Georgia*, *The Georgia Advocate*, Vol. 38, No. 2, p. 10 (Spring/Summer 2004).
- *What Makes the Rehnquist Court Tick--Reflections on the Current Court's Overarching Philosophies and the 2001-02 Term* (materials for Supreme Court Update Program, Atlanta, Ga., Sept. 6, 2002).
- *Teaching "Outside the Box,"* in *EXTRAORDINARY TEACHERS* (Fred Stephenson ed., Andrews McMeel pub., 2001) (solicited contribution).
- *Federalism and Second-Look Rules in the Supreme Court's 1999-2000 Term* (materials for Supreme Court Update Program, Atlanta, Ga., Sept. 8, 2000).
- *The 1998 Term: The Supreme Court's Great Constitutional Adventure with the Fundamental Postulates of State Sovereign Immunity* (materials for Supreme Court Update Program, Atlanta, Ga., Sept. 9, 1999).

- *Constitutional Business-Law Cases from the 1997-98 Term: The Tale of Three Decisions* (materials for Supreme Court Update Program, Atlanta, Ga., Sept. 11, 1998).
- *Some Major Happenings in the Law of Federalism During the 1995 Supreme Court Term* (materials for Supreme Court Update Program, Atlanta, Ga., Sept. 27, 1996).
- *Will the Court Overrule Garcia?*, *The Georgia Advocate*, Vol. 30, No. 1, p. 28 (Fall 1995).
- *The Supreme Court's Key "Federalism" Decisions of the 1994-95 Term* (materials for Supreme Court Update Program, Atlanta, Ga., Sept. 22, 1995).
- *Commerce Clause Decisions of the Supreme Court During the 1993-94 Term and Beyond* (materials for Supreme Court Update Program, Atlanta, Ga., Sept. 23, 1994).

Monograph

- EXTORTIONATE CREDIT TRANSACTIONS (1978) (with R. Goldstock and reprinted with minor revisions in 65 CORNELL L. REV. 127 (1980)).

Book Review

- *Review of H.W. Perry, Jr., Deciding To Decide: Agenda Setting in the United States Supreme Court*, Harvard Univ. Press 1991, 10 CONST. COMM. 180 (1993).

Teaching Materials

- AMERICAN CONSTITUTIONAL LAW: AN INTRODUCTION (materials for a one-hour introductory course on constitutional law).
- AMERICAN CONSTITUTIONAL FEDERALISM: AN INTRODUCTION (materials for a short course on the scope of congressional power and other issues of constitutional federalism).

Student Work

- *Special Project, The Priority Rules of Article Nine of the Uniform Commercial Code*, 62 CORNELL L. REV. 834-987 (1977) (with three co-authors).

Works in Progress

- THE WISDOM OF HAMILTON, MADISON AND JAY: QUOTATIONS IN CONTEXT FROM THE FEDERALIST PAPERS (partially completed book manuscript).
- *Means-Ends Analysis in Constitutional Law* (three partial drafts of articles on means-related styles of challenging laws on constitutional grounds).
- The Originalist Case for the Dormant Commerce Clause

Congressional Testimony & Submissions

- Testimony and Prepared Statement on "Intracircuit Nonacquiescence" and Proposed Revision of H.R. 1544 '707 (with explanatory notes), reprinted in *Hearing on H.R. 1544 Before the Subcomm. on Commercial and Administrative Law of the Comm. on the Judiciary*, U.S. House of Reps., 105th Cong. 72-78, 96-102 (May 22, 1997).

Non-Legal Writing

- Co-author, with Michael Coenen, of THE COUNTY BUNNY AND THE LITTLE GOLD SHOES, a full-length musical for children's theatre, including 17 major musical numbers, based on the book of the same name by DuBose Heyward.

PROFESSIONAL AND PERSONAL INFORMATION

Memberships and Service

- Member, American Law Institute (1994-present; designated a life member in 2019).
- Board of Directors, Athens Area Habitat for Humanity (2020-present)
- Board of Directors, Athens-Area Homeless Shelter (2016- 2020).
- Board of Directors, Community Connection (2003-07).
- Board of Directors, Athens Grow Green Coalition (including as member of founding board) (2002-04).
- Board of Directors, Oconee River Land Trust (1999-2003).
- Board of Directors of Sandy Creek Nature Center: Vice President (1993-94); Member (1992-95).
- Member of Athens/Clarke County Criminal Justice Task Force (charged with

making recommendations with regard to local jail facilities and operations, as well as judicial processes with regard to pretrial aspects of the criminal justice system) (2008-09).

- Advisory Committee Member for the Athens Justice Coalition of Care (a program of Family Counseling Services, of Athens, Inc.) (2015).
- Invited participant in, and UGA scholarship recipient for, "Leadership Athens" (1997-98); Member of Leadership Athens Selection Committee (2001).
- Annual Fund Campaign, Parents Division Chair, Athens Academy (1997-98, 1998-99); Co-Chair, Athens Academy Greenway Project (2000-01).
- Member of Citizens SPLOST Advisory Committee, appointed by Mayor to help oversee implementation of projects in Athens/Clarke County funded by Special Purpose Local Option Sales Tax (1996-2000); Member of Citizens Panel appointed to advise Athens/Clarke County Government on proper use of up to \$64 million in revenues from Special Purpose Local Option Sales Tax; chair of Panel's Project Review Subcommittee; Member, Decisionmaking Procedures Subcommittee (1994); Member of "SPLOST '94" (Campaign Committee formed to support passage of November 1994 referendum on Special Purpose Local Option Sales Tax) (1994).
- Volunteer Coach, Athens-Clarke County Recreation Department Basketball Program (1990-2000) (coached one, two or three teams per year during this period).
- Longtime Volunteer, Naturaland Trust (Greenville, S.C.) and Nancy Travis Childcare Project.
- Designated by Hon. Clement F. Haynsworth, Jr. as one of six literary executors of his personal papers, housed in the Library of Congress.
- Member of the Board of Directors of ECO, a Charlotte-based nonprofit organization that provides family support and job placement services to prisoners and ex-offenders (1985-87).
- Counsel and consultant for (and member of law-firm winner of American Bar Association Pro Bono Public Award for representation of) plaintiffs in statewide social security class action, Hyatt v. Heckler (1994-2000).
- Member of numerous UGA Law School Committees, including Admissions Committee (1992-95, 1997-2003), Faculty Recruitment Committee (1987-99, 2007-08, 2009-2013, including as chair in 1994-96), Academic Affairs Committee

(2003-07, including as chair 2004-07), Ad Hoc Committees Regarding Law School Staff Pay (1991, 2009, 2016), and Law School Self-Study Committee (1991-92, 2004-05, 2011-12); elected by faculty colleagues to serve on five-member Dean's Advisory Committee (1990-91, 1993-94, 1995-96, 1997-98; 1999-2000; election to consecutive terms not permitted; elective system discontinued in 2000); Chair of the Law School's Strategic Planning Committee (2008-09).

- University Service has included membership on the President's Faculty Advisory Committee (2000-03; 2005 (on an interim basis); 2015 to present including as chair upon selection by faculty colleagues in 2016-17 and 2017-18); University Promotion and Tenure Review Committee (2014-15); Provost Search Committee (2009); Law School Dean Search Committee (2014); chairmanship of Special Faculty Awards Review Committee (2002-04) (appointed by Provost to review major university-wide professorships and teaching awards); membership on the University Special Professorships Selection Committee (2005-08), including as chair of the committee (2006-07 and 2007-08); co-chairmanship of septennial Program Review Team for Department of Political Science of the School of Public and International Affairs (2004-05); chairmanship of three University Faculty Appeals Panels convened to review proposed disciplinary actions against students (1989-92); extensive work with the UGA Teaching Academy (2001-present), including as a member of its Executive Committee (2002-05, 2014-17)); membership on the Josiah Meigs Award Selection Committee (2000-01, 2004-05, 2017-19), including as chair of the committee (2000-01 and 2017-2018); participation in the Lilly Teaching Fellows Program as a Faculty Mentor (1999-2000).
- Co-chair (with my wife, Sally) of the Board of Friends of UGA's Willson Center for the Arts and Humanities (2019-2022)
- Participant over many years in the UGA Foundation Fellows program, including as a selection team member and faculty mentor; have also worked extensively with the Honors College in selecting undergraduate students to represent UGA as candidates for the Rhodes, Marshall, Truman, Goldwater, Schwartzman and other major graduate-program scholarships as well as in preparing students for selection-committee interviews (2001-present)
- President and Vice President of the UGA chapter of Phi Beta Kappa (Vice President 2005-07; President 2007-09).
- Admitted to the Bars of North Carolina, the United States District Court for the Western and Middle Districts of North Carolina, the United States Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States.

Member, American Bar Association.

Awards and Recognitions as Law School Faculty Member

- Recipient of the University Professorship (2005).
- Recipient of the Josiah Meigs Award for Excellence in Teaching (1998); named Josiah Meigs Distinguished Teaching Professor pursuant to UGA's redesignation of the Award as a Professorship (2004).
- Recipient of the Student Bar Association Faculty Book Award, which was supplemented by the C. Ronald Ellington Teaching Award beginning in 2007, and is conferred upon vote of the third-year class "to the faculty member who most effectively conveys his/her knowledge and understanding of what the law is and inspires his/her students to think analytically and critically about what the law can become" (1989-90, 1994-95, 1998-99, 2003-04, 2005-06, 2007-08, 2016-17; co-recipient in 2018-19).
- Recipient of the John C. O'Byrne Memorial Faculty Award, awarded upon student vote to that faculty member who makes "significant contributions furthering student-faculty relations" (1989-90, 1992-93, 2001-02, 2018-19).
- Recipient of the Professional Responsibility Award, awarded upon student vote in "recognition of that Professor who best succeeds in conveying and inspiring professional responsibility and service to the community through his/her instruction and his/her example" (1991-92).
- Elected by the classes of 1990, 1991, 1993, 1995, 2001, 2002, 2003, 2007, 2008, 2012, 2019, and 2020 to serve as an honorary grand marshal at law school graduation ceremony (with one other faculty member also selected in each of those years).
- Recipient of an Outstanding Professor Recognition from the UGA Student Government Association upon nomination by undergraduate students (2004).
- Recognized by UGA Student Government Association as an "Outstanding Teacher for Having a Profound Effect on a Student Leader" (based on selection by undergraduate student) (2000).
- Selected to join the inaugural class of the University of Georgia Teaching Academy (2002).
- Selected as a UGA Senior Teaching Fellow (one of eight Senior Fellows

selected campus-wide) (1999-2000), and as a Senior Faculty Fellow for the Foundation Fellows Program (one of four faculty members selected in 2001 to serve in this role, including as an advisor to undergraduate scholarship award winners).

- Recipient of recognition for Outstanding Contributions to the Law Review (presented by the William & Mary Law Review, Apr. 5, 2002).
- Recognized by UGA Black Law Students Association for assistance in developing problem for 1992 National Frederick Douglass Moot Court Competition (1994) and as a recipient of one of three BLSA Faculty Appreciation Awards (2012).
- Selected by the Georgia Law Review to serve as faculty advisor (1992-2000).
- Selected by Georgia Journal of International and Comparative Law to serve as interim faculty advisor (1991-92).
- Recipient of the inaugural University of Georgia Law School Faculty Research Award based on a refereed review of recently published faculty work in 2020; received the award again in 2021.

PERSONAL INFORMATION

- Address: 760 Rambling Road, Athens, Ga. 30606
- Born: Nov. 10, 1952, in Dubuque, Iowa; raised in Appleton, Wisconsin
- Married to Sara Wyche Coenen from Greenville, S.C.; our children are Michael (born in 1983), Amy (born in 1984), and Claire (born in 1987).