



20th Annual

BRIGHAM-KANNER

Property Rights Conference

October 26–27

William & Mary Law School

WILLIAM & MARY LAW SCHOOL

THE BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE

The Brigham-Kanner Property Rights Conference, Prize, and *Journal* are named in recognition of Toby Prince Brigham and Gideon Kanner for their lifetime contributions to private property rights and their efforts to advance constitutional protection of property. The Brigham-Kanner Property Rights Conference began in 2004 at William & Mary Law School. The Conference is designed to bring together members of the bench, bar, and academia to explore recent developments in the law that affect property rights. The Prize is awarded each year to an individual whose work affirms that property rights are fundamental to protecting individual liberty.

The *Brigham-Kanner Property Rights Journal* was established in 2012 to provide a forum for scholarly debate on property rights issues. The *Journal* publishes papers presented at the annual conference with the goal of extending the debate to a wider audience. Through the *Journal*, the Property Rights Project ensures that the proceedings of the Conference and any accompanying nonconference articles selected for publication are preserved and made available on its website for all interested parties. The *Journal* is available in print and electronic form through the Project's website:

<https://law.wm.edu/academics/intellectuallife/researchcenters/property-rights-project/b-k-journal/index.php>

SCHEDULE OF EVENTS

Thursday, October 26, 2023

6:30pm – 9:00pm

Great Hall

Presentation of the 2023 Brigham-Kanner Prize

William & Mary, Wren Building

Friday, October 27, 2023

This event will be held in person. For virtual attendees, the conference will be broadcasted via Zoom:

<https://cwm.zoom.us/j/94102312372?pwd=Y1RtRGczVFd3QkhNdytPR3EvMDJtQT09>

Password: 199275

Access the CLE reading packet:

<https://app.box.com/folder/228872390250?s=upzoo56ytuwehc0uyipt121v5fmbvmjk>

8:00am – 9:00am

Lobby

Registration and Continental Breakfast

William & Mary Law School

9:00am – 10:30am

Room 119

Property and Propriety (or a Well-Ordered Society): A Tribute to Gregory S. Alexander

Professor Gregory S. Alexander has focused much of his scholarship on how property can best serve multiple values that are important to a well-ordered society. Using Alexander’s work as a springboard, this panel will discuss the value structure underlying various theories of property and whether those theories would promote a well-ordered society.

Opening Remarks: Gregory S. Alexander, A. Robert Noll Professor of Law, Emeritus, Cornell Law School, “Propriety Redux”

Panelists

James E. Krier, Earl Warren DeLano Professor of Law, Emeritus, University of Michigan Law School

Carol M. Rose, Gordon Bradford Tweedy Professor of Law, Emeritus, Yale Law School; Professor of Law, Emerita, and Lohse Chair in Water and Natural Resources, Emerita, University of Arizona James E. Rogers College of Law

James Burling, Vice President of Legal Affairs, Pacific Legal Foundation

Lior Strahilevitz, Sidley Austin Professor of Law, University of Chicago Law School

Moderator

Lynda L. Butler, Chancellor Professor, Emerita, Director, Property Rights Project, Emerita, William & Mary Law School

10:30am – 10:45am

Lobby

10:45am – 12:00pm

Room 119

Networking Break

Equity's Role in Defining Property Rights

Equity has long had an influence on the delineation and development of property rights. In addition to defining the extent of property rights and influencing a court's choice of remedies, equity has played a role in governing or managing the impact of property rights on other interests. This panel will discuss these and other topics related to the role of equity in property law, including the relationship of that role with constitutional protection of property rights.

Panelists

Henry E. Smith, Fessenden Professor of Law and Director for the Project on the Foundations of Private Law, Harvard Law School

Samuel L. Bray, John N. Matthews Professor of Law, Notre Dame Law School

Robert H. Thomas, Joseph T. Waldo Visiting Chair in Property Rights Law, William & Mary Law School; Director, Property Rights Litigation, Pacific Legal Foundation

Timothy Sandefur, Vice President for Legal Affairs, Goldwater Institute

Moderator

James Y. Stern, Professor of Law, and Director, Property Rights Project, William & Mary Law School

12:00pm – 1:00pm

Lobby

Lunch Break

1:00pm – 2:00pm

Room 119

Roundtable: Emerging Issues

Among other matters, the Roundtable will consider the home equity theft issue raised in *Tyler v. Hennepin County*, recent Supreme Court cases on the Takings Clause, and the role of state governments in protecting property rights.

Panelists

Christina M. Martin, Senior Attorney, Pacific Legal Foundation

Michael Allan Wolf, Professor of Law and Richard E. Nelson Eminent Scholar Chair in Local Government, University of Florida Levin College of Law

Jessica Asbridge, Associate Professor of Law, Baylor University School of Law

Moderator

Andrew Brigham, Managing Partner, Brigham Property Rights Law Firm, PLLC

2:00pm – 2:15pm

Lobby

Networking Break

2:15pm – 3:30pm

Room 119

The Restatement's Impact on Property Rights

The draft Restatement Fourth of Property may be the most comprehensive Property Restatement yet, covering a wide range of property topics. This panel will examine how the draft could shape the nature of property rights and impact the balance or fit between the institution of property and political, economic, and socioecological systems.

Panelists

Maureen E. Brady, Louis D. Brandeis Professor of Law, Harvard Law School

David Callies, Benjamin A. Kudo Professor of Law, Emeritus, University of Hawai'i at Mānoa

Andrew Gold, Professor of Law, Brooklyn Law School

Steven Weise, Partner, Proskauer Rose LLP

Moderator

Joshua Baker, Partner, Waldo & Lyle

3:30pm – 3:45pm

Lobby

Networking Break

3:45pm – 5:00pm

Room 119

The Scalability of Property Rights (or the extent to which interests in property are or should be constitutionally protected)

How property rights are defined and scaled over various dimensions like time, space, place, and socioecological systems affects whether the rights are divisible, can be aggregated, concentrated, or merged, are vulnerable to or tools of exploitation, and can be reasonably regulated without any takings liability. Legally recognized interests in real and tangible property traditionally were the prime focus of the Takings Clause, while interests in intangible property, intellectual property, and contract-based interests in property (e.g., licenses and servitudes) were not usually protected under the Takings Clause. To what extent can or should interests in property be scaled (either up or down) without takings liability to avoid disconnects with natural resources and physical realities (e.g., water shortages), mismatches between owners and users (e.g., landlord/tenant or housing shortages), and transformative effects on socioecological systems (e.g., environmental disasters)?

Panelists

Lee Anne Fennell, Max Pam Professor of Law, University of Chicago Law School

Jessica A. Shoemaker, Steinhart Foundation Distinguished Professor of Law, University of Nebraska College of Law

James W. Ely, Jr., Milton R. Underwood Professor of Law, Emeritus, and Professor of History, Emeritus, Vanderbilt University

John Groen, Executive Vice President and General Counsel, Pacific Legal Foundation

Moderator

Katherine Mims Crocker, Associate Professor of Law, William & Mary Law School

5:00pm

Lobby

Celebratory 20th Anniversary Reception

Champagne, cake, and other refreshments will be served to celebrate the 20th anniversary of the Brigham-Kanner Property Rights Conference.

THE BRIGHAM-KANNER

PROPERTY RIGHTS PRIZE

Every year during the Brigham-Kanner Property Rights Conference, the Property Rights Project presents the Brigham-Kanner Prize to an outstanding figure in the field. The Prize is named in recognition of Toby Prince Brigham and Gideon Kanner for their lifetime contributions to private property rights, their efforts to advance constitutional protections of property, and their accomplishments in preserving the important role that private property plays in protecting individual and civil rights. Toby Prince Brigham was a founding partner of Brigham Moore, LLP, in Florida and, prior to his retirement, practiced eminent domain and property rights law for more than fifty years. Gideon Kanner is Professor of Law, *Emeritus*, at Loyola Law School in Los Angeles, California.

This year, the Brigham-Kanner Prize will be awarded to Gregory S. Alexander for his outstanding contributions as a property rights scholar.

Gregory S. Alexander



Gregory S. Alexander taught at Cornell Law School from 1984 until his retirement from full-time teaching in 2018 as the A. Robert Noll Professor of Law. Since then, he has been a regular visiting professor at the University of California, Berkeley, Law School. A graduate of Northwestern University School of Law, he clerked on the U.S. Court of Appeals for the Sixth Circuit. He also received a B.A. from the University of Illinois Urbana-Champaign and a Ph.D. in Philosophy from the University of Chicago. He was a Bigelow Fellow at the University of Chicago Law School. Professor Alexander has been a fellow at the Center for Advanced Study in the Behavioral Sciences in Palo Alto, California and at the Max Planck Institutes for Comparative Law in Hamburg and Heidelberg, Germany. He has taught at UCLA, Virginia, and Harvard Law Schools and was the Herbert Smith Distinguished Visiting Fellow at Cambridge University. Alexander is a prolific writer and the winner of the American Publishers Association's 1997 Best Book of the Year in Law award for his work, *Commodity and Propriety*:

Competing Visions of Property in American Legal Thought (Chicago). His other books include *The Global Debate Over Constitutional Property: Lessons for American Takings Jurisprudence* (Chicago), *Community & Property* (with Eduardo Peñalver) (Oxford), and *Properties of Property* (with Hanoch Dagan) (Aspen). His most recent books are *An Introduction to Property Theory* (with Eduardo Peñalver) (Cambridge) and *Property and Human Flourishing* (Oxford). In addition to all of these books, he is a co-author on the leading Property casebook with James Krier, Michael Schill, and Lior Strahilevitz. Alexander has delivered named lectures at many law schools, both in the United States and around the world.

PAST RECIPIENTS

OF THE BRIGHAM-KANNER PRIZE



2004

Frank I. Michelman

Frank I. Michelman is the Robert Walmsley University Professor, *Emeritus*, at Harvard University, where he taught from 1963 to 2012. He is the author of *Brennan and Democracy* (1999) and has published widely in the fields of property law and theory, constitutional law and theory, comparative constitutionalism, South African constitutionalism, local government law, and general legal theory. Professor Michelman is a fellow of the American Academy of Arts and Sciences and a past President (1994-1995) of the American Society for Political and Legal Philosophy. He has served on the Committee of Directors for the annual Prague Conference on Philosophy and the Social Sciences, the Board of Directors of the United States Association of Constitutional Law, and the National Advisory Board of the American Constitution Society. In 2005, Professor Michelman was awarded the American Philosophical Society's Phillips Prize in Jurisprudence and, in 2004, the Brigham-Kanner Property Rights Prize. In January 1995, and again in January 1996, Professor Michelman served as a co-organizer and co-leader of Judges' Conferences sponsored by the Centre on Applied Legal Studies of the University of the Witwatersrand, devoted to matters of constitutional law in South Africa. In December 2011, Professor Michelman delivered the keynote address for a multi-day conference on "The 20th Anniversary of Israel's Human Rights Revolution," at a session held at the Knesset, Jerusalem.



2005

Richard A. Epstein

Richard A. Epstein is the inaugural Laurence A. Tisch Professor of Law at the New York University School of Law. He is also the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, and the James Parker Hall Distinguished Service Professor of Law, *Emeritus*, and Senior Lecturer at the University of Chicago Law School. He is an Adjunct Scholar at the Cato Institute, and a Visiting Scholar at the Manhattan Institute. He has served as editor of the *Journal of Legal Studies* and the *Journal of Law and Economics*. He has written on a wide range of legal and interdisciplinary topics and is the author of numerous works including *The Classical Liberal Constitution: The Uncertain Quest for Limited Government* (Harvard University Press 2014), *Design for Liberty: Private Property, Public Administration, and the Rule of Law* (Harvard University Press 2011), *Skepticism and Freedom: A Modern Case for Classical Liberalism* (University of Chicago Press 2003), *Simple Rules for a Complex World* (Harvard University Press 1995), *Bargaining with the State* (Princeton University Press 1993) and *Takings: Private Property and the Power of Eminent Domain* (Harvard University Press 1985). He was inducted into the American Academy of Arts and Sciences in 1985 and was awarded the Bradley Prize in 2011.



2006

James W. Ely, Jr.

James W. Ely, Jr., is the Milton R. Underwood Professor of Law, *Emeritus*, and Professor of History, *Emeritus*, at Vanderbilt University. He has written about a wide range of topics in legal history and is the author of numerous works including *The Guardian of Every Other Right: A Constitutional History of Property Rights* (Oxford University Press 3rd ed. 2008), *American Legal History: Cases and Materials* (Oxford University Press 4th ed. 2011) (with Kermit L. Hall and Paul Finkelman), *The Fuller Court: Justices, Rulings, and Legacy* (ABC-CLIO 2003), *Railroads and American Law* (University Press of Kansas 2001), and *The Chief Justiceship of Melville W. Fuller, 1888–1910* (1995) (paperback edition 2012). His most recent book is *The Contract Clause: A Constitutional History* (2016). Ely served as assistant editor of the *American Journal of Legal History* from 1987 to 1999.



2007

Margaret Jane Radin

Margaret Jane Radin is the Henry King Ransom Professor of Law at the University of Michigan Law School and Faculty of Law Distinguished Research Scholar at the University of Toronto. Prior to joining the Michigan faculty in fall 2007, she was the William Benjamin Scott and Luna M. Scott Professor of Law at Stanford University, and director of Stanford Law School's Program in Law, Science, and Technology. She also has been on the faculty of the University of Southern California Law Center and has been a visiting professor at UCLA, NYU, Berkeley, and

Harvard. Radin has published prolifically on property rights theory and institutions, commodification, intellectual property, and cyberlaw, as well as on contracts and legal theory. Highlights of her property scholarship include *Contested Commodities* (Harvard University Press 1996) and *Reinterpreting Property* (University of Chicago Press 1993). Radin is a Fellow of the American Academy of Arts and Sciences.



2008

Robert C. Ellickson

Robert C. Ellickson is the Walter E. Meyer Professor of Property and Urban Law, *Emeritus*, at Yale Law School. Prior to joining the Yale faculty in 1988, he was a member of the law faculties at the University of Southern California and Stanford University. Professor Ellickson's books include *The Household: Informal Order Around the Hearth* (Princeton University Press 2008), *Order Without Law: How Neighbors Settle Disputes* (Harvard University Press 1991), *Land Use Controls* (with Vicki L. Been) (Aspen Law and Business 3rd ed. 2005), and *Perspectives on Property Law* (with Carol M. Rose and Bruce A. Ackerman) (Aspen Law and Business 3rd ed. 2002). He is a fellow of the American Academy of Arts and Sciences and was President of the American Law and Economics Association in 2001.



2009

Richard E. Pipes

Richard E. Pipes was the Frank B. Baird, Jr., Professor of History, *Emeritus*, at Harvard University. Among his appointments, he served as director of Harvard University's Russian Research Center from 1968–1973, as chairman of the CIA's "Team B" to review Strategic Intelligence Estimates in 1976, and as director of East European and Soviet Affairs in President Ronald Reagan's National Security Council from 1981–1982. Professor Pipes's books include *Formation of the Soviet Union: Communism and Nationalism, 1917–1923* (Russian Research Center Studies 1954, 1964, 1998), *Struve: Liberal on the Left, 1870–1905* (Russian Research Center Studies 1970) (v. 1), *Russia under the Old Regime* (Penguin History 1974), *Struve: Liberal on the Right, 1905–1944* (Russian Research Center Studies 1980) (v. 2), *The Russian Revolution* (Vintage 1990), *Russia under the Bolshevik Regime* (Vintage 1994), *Property and Freedom* (Vintage 1999), *Communism: A History* (Modern Library 2001), *Vixi: The Memoirs Property and the Power of Eminent Domain* (Harvard University Press 1985). Professor Pipes was a 2007 recipient of the National Humanities Medal.



2010

Carol M. Rose

Carol M. Rose is the Gordon Bradford Tweedy Professor of Law and Organization, *Emerita*, at Yale Law School and the Ashby Lohse Professor of Water and Natural Resource Law, *Emerita*, at the University of Arizona Law College. Her research focuses on the history and theory of property, and on the relationships between property and environmental law. Her writings include four books: *Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms* (with R. R. W. Brooks, 2013); *El Derecho de Propiedad en Clave Interdisciplinaria* (2010) [The Right to Property in an Interdisciplinary Key]; *Property and Persuasion* (1994); and *Perspectives on Property Law* (4th ed. 2014, with R.C. Ellickson and H. E. Smith), as well as numerous articles on traditional and modern property regimes, environmental law, natural resource law, and intellectual property. Her work has appeared in journals and anthologies in other countries and has been translated into other languages, particularly Italian, Spanish, and Chinese. She has degrees from Antioch College (B.A. Philosophy), the University of Chicago (M.A. Political Science, J.D. Law), and Cornell University (Ph.D. History), and an Honorary Degree from the Chicago-Kent College of Law. She is a member of the American Law Institute, as well as a member of the American Academy of Arts and Sciences.



2011

Justice Sandra Day O'Connor

Justice Sandra Day O'Connor received the 2011 prize at the eighth annual conference, which was held in Beijing. The 2011 conference was co-sponsored by Tsinghua University School of Law and was a featured event during the university's celebration of the hundredth anniversary of its founding. Justice O'Connor served as an associate justice of the Supreme Court from 1981 to 2006 and as Chancellor of the College of William & Mary from 2005 until 2011. In May 2010, the William & Mary Law School faculty awarded her its highest honor, the Marshall-Wythe Medallion, in recognition of her exceptional accomplishments and leadership. Justice O'Connor served as an Arizona assistant attorney general from 1965 to 1969, when she was appointed to a vacancy in the Arizona Senate. In 1974, she ran successfully for trial judge, a position she held until she was appointed to the Arizona Court of Appeals in 1979. Eighteen months later, on July 7, 1981, President Ronald Reagan nominated her to the Supreme Court.



2012

James E. Krier

James E. Krier, Earl Warren DeLano Professor of Law, *Emeritus*, at University of Michigan Law School, was awarded the 2012 Brigham-Kanner Property Rights Prize at the ninth annual conference. He taught courses on property, trusts and estates, behavioral law and economics, and pollution policy. His research interests are primarily in the fields of property and law and economics, and he is the author or co-author of several books, including *Environmental Law and Policy* (with R.B. Stewart) (Bobbs-Merrill Co. 1978), *Pollution and Policy* (with E. Ursin) (University of California Press 1977) and *Property* (Aspen Publishing 9th ed. 2018). His most recent articles have been published in *Harvard Law Review*, *Supreme Court Economic Review*, *UCLA Law Review*, *Cornell Law Review*, and *William & Mary Law Review*. A professor of law at UCLA and Stanford before joining the Michigan Law faculty in 1983, he has been a visiting professor at both Harvard University Law School, Cardozo School of Law, and the University of Alabama School of Law.



2013

Thomas W. Merrill

Thomas W. Merrill is the Charles Evans Hughes Professor of Law at Columbia Law School. He is a preeminent property law scholar. Merrill served as the deputy solicitor general for the Department of Justice in the late 1980s. For several years, he worked for the firm Sidley, Austin, Brown & Wood in Chicago. He has also worked as an investment analyst for the National Bank of Detroit from 1973 to 1974. Merrill has previously taught at Northwestern Law School from 1981 to 2003 and at Yale Law School from 2008 to 2010. He is a member of the American Academy of Arts & Sciences. He clerked for the Honorable David L. Bazelon, U.S. Circuit Court of Appeals for the District of Columbia, and for the Honorable Harry A. Blackmun on the Supreme Court. Merrill writes widely in the fields of property and administrative law. In property, he has authored—with Henry Smith of Harvard University—a series of articles relating to the structure of property rights to information costs in *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, Yale Law Journal, 2000. He also wrote a leading casebook, *Property: Principles and Policies*, 2012, along with a series of studies with Joseph Kearney of Marquette on the role of public property rights in the development of the Chicago lakefront, *The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central*, University of Chicago Law Review, 2004. His variety of writings are focused on constitutional property. In administrative law, he has written a number of pieces about the history of administrative law and about judicial review of agency interpretations of law. He graduated from the University of Chicago Law School, where he

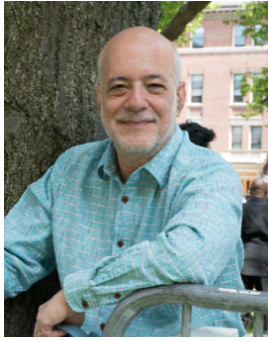
was articles editor of the *Law Review* in 1977. In 1973, he graduated from the University of Oxford, where he was a Rhodes Scholar, and Grinnell College in 1971.



2014

Michael M. Berger

Michael M. Berger is one of the top eminent domain and land use lawyers in the United States. His appellate practice at Manatt, Phelps & Phillips has involved condemnation, due process, and equal protection. He is the first practicing lawyer to receive the Brigham-Kanner Property Rights Prize and is considered by his peers to be among the best takings lawyers in the nation. Mr. Berger has argued four cases before the U.S. Supreme Court, as well as cases before appellate courts throughout California, numerous federal courts of appeal, and several state supreme courts. He is also a frequent author of amicus curiae briefs in various appellate courts, particularly the U.S. Supreme Court, pressing client interests in important pending cases. His energetic defense of property owners contributed major decisions to Fifth Amendment jurisprudence in cases such as *Tahoe-Sierra* (where Mr. Berger's opposing counsel was John Roberts, who is now Chief Justice of the United States), *Del Monte Dunes, Preseault*, and *First English*. After attending Brandeis University, Mr. Berger received his J.D. from Washington University School of Law and his LL.M. (in real property) from the University of Southern California.



2015

Joseph William Singer
Joseph William Singer has long been recognized as one of the nation’s foremost theorists in property law. In addition to a casebook and treatise on property

law, he is the author of *Entitlement: The Paradoxes of Property* (Yale University Press 2000), *The Edges of the Field: Lessons on the Obligations of Ownership* (Beacon Press 2000), and *No Freedom without Regulation: The Hidden Lesson of the Subprime Crisis* (Yale University Press 2015). Singer, who joined the Harvard Law School faculty in 1992, was appointed Harvard’s Bussey Professor of Law in 2006. Prior to that, he taught at Boston University School of Law, practiced law in Boston, and served as a law clerk to Justice Morris Pashman of the Supreme Court of New Jersey. In addition to books on property law and federal Indian law, he has published more than seventy law review articles. He received his law degree and master's degree (Political Science) from Harvard and is a graduate of Williams College.



2016

Hernando de Soto
Hernando de Soto is the author of *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere*

Else (Basic Books 2000); *The Other Path: The Economic Answer to Terrorism* (Basic Books 2002), which includes a new updated preface, “The Other Path after Ten Years”; and *Swiss Human Rights Book Volume 1: Realizing Property Rights* (2006), co-authored with Francis Cheneval. He has received numerous international recognitions and honors, including,

for example, the Adam Smith Award (Association of Private Enterprise Education), BearingPoint, Inc.–*Forbes Magazine* Compass Award for Strategic Direction, the CARE Canada Award for Outstanding Development Thinking, *The Economist* magazine’s Innovation Award, the Freedom Prize (Max Schmidheiny Foundation), and the Milton Friedman Prize for Advancing Liberty (Cato Institute).



2017

David L. Callies
A prolific scholar whose work explores land use, property, and state and local government law, Professor David L. Callies has lectured around the world, and

authored or collaborated on more than ninety articles and twenty books. He is the Benjamin A. Kudo Professor of Law, *Emeritus*, at the University of Hawai’i at Mānoa. He is an elected member of the College of Fellows, American Institute of Certified planners; a member of the American College of Real Estate Lawyers; and a member of the American Law Institute since 1990. Prior to entering academia, he was an attorney in private practice and an assistant state’s attorney. Callies’ recognitions include the Owners’ Counsel of America’s Crystal Eagle Award, the Lambda Alpha International Member of the Year Award, the Jefferson Fordham Lifetime Achievement Award, which is conferred by the ABA’s Section of State and Local Government Law, and the Fourteenth Annual Brigham-Kanner Property Rights Prize. He was awarded a University of Hawai’i Regents Medal for Excellence in Teaching in 2009.



2018

Stewart E. Sterk

Professor Stewart E. Sterk is the H. Bert and Ruth Mack Professor of Real Estate Law and Director of the Center for Real Estate Law

& Policy at the Benjamin Cardozo School of Law of Yeshiva University in New York City. His publications include a number of articles on takings law and the law of servitudes, but he has written in a wide variety of areas, ranging from property and land use regulation to trusts and estates, copyright, and conflict of laws. A member of the American Law Institute, Sterk served as an advisor in the preparation of the *Restatement (Third) of Property (Servitudes)*. He has co-authored casebooks on trusts and estates and on land use, and he also edits the *New York Real Estate Law Reporter*, a monthly newsletter published with the assistance of Cardozo students. The winner of a number of teaching awards at Cardozo, Sterk has taught as a visiting professor at Columbia and at the University of Pennsylvania, and has also taught at N.Y.U.



2019

Steven J. Eagle

Steven J. Eagle is Professor of Law, *Emeritus*, at the Antonin Scalia Law School, George Mason University. His

teaching focuses on property, land use planning, and constitutional law. He is the author of *Regulatory Takings*, the leading treatise on the subject, and *The Four-Factor Penn Central Regulatory Takings Test*, which was cited by the Supreme Court of the United States in *Murr v. Wisconsin*. Professor Eagle also is the author of numerous other scholarly and popular works on

the nature of property rights and land use regulation, and lectures extensively on these topics.



2020

Henry E. Smith

Henry E. Smith is the Fessenden Professor of Law at Harvard Law School, where he directs the Project on the Foundations of Private Law. Smith has written and taught primarily

in the areas of property, intellectual property, natural resources, remedies, and law and economics. Prior to joining the Harvard faculty in 2008, Smith taught at the Northwestern University School of Law and was the Fred A. Johnston Professor of Property and Environmental Law at Yale Law School. He holds an A.B. from Harvard, a Ph.D. in Linguistics from Stanford, and a J.D. from Yale. After law school he clerked for the Honorable Ralph K. Winter, United States Court of Appeals for the Second Circuit. Smith has written primarily on the law and economics of property and intellectual property, with a focus on how property-related institutions lower information costs and constrain strategic behavior. From 2015 to 2016, Smith served as the President of the Society for Institutional and Organizational Economics, and in 2014, the American Law Institute named him Reporter for a Fourth Restatement of Property.



2021

Vicki Been

Vicki Been is the Judge Edward Weinfeld Professor of Law at NYU School of Law, an Affiliated Professor of Public Policy of the

NYU Wagner Graduate School of Public Service, and a Faculty Director of NYU's Furman Center for Real Estate and Urban Policy. Her scholarship focuses on the interplay of land use, urban policy and housing. Her work with Bob Ellickson and others on a leading land use casebook, *Land Use Controls* (5th ed. 2021), has made basic land use concepts accessible to many law students, shaping property law by instructing future practitioners. Her many articles have explored such topics as inclusionary zoning, historic preservation, mortgage foreclosure, environmental justice, constitutional protection of property rights, and racial and economic integration. She often uses the City of New York as her laboratory. From May 2019 until the end of 2021, Been was on leave from NYU, serving as Deputy Mayor for Housing and Economic Development for the City of New York.



2022

James Burling

James Burling is Pacific Legal Foundation's Vice President of Legal Affairs in Sacramento, California, and litigates property rights cases

nationwide. In 2001, he argued *Palazzolo v. Rhode Island* before the Supreme Court. He received a master's degree in geological sciences from Brown University, an undergraduate degree from Hamilton College, and his Juris Doctor from the University of Arizona College of Law in 1983. Burling is a member of the Federalist Society's Environmental Law and Property Rights Practice Group's Executive Committee, a member of the American College of Real Estate Lawyers, and an honorary member of Owners' Counsel of America, an organization comprised of eminent domain attorneys who represent property owners. The Owners' Counsel awarded Burling its Crystal Eagle award in 2013. In 2022, Burling was awarded the Brigham-Kanner Property Rights Prize at the William & Marry Law School.

PANELISTS AND MODERATORS

BIOGRAPHIES



Jessica Asbridge

Jessica Asbridge is an Associate Professor of Law at Baylor Law School, joining the faculty in 2020. Her scholarship focuses on property law and constitutional law. Her recent articles have

addressed private delegations of the eminent domain power, the excessive fines implications of *Tyler v. Hennepin County*, and the U.S. Supreme Court's distinction between appropriations and regulations with respect to the Takings Clause. Prior to teaching, she clerked for the Honorable Frank M. Hull and the Honorable Peter T. Fay, both of the U.S. Court of Appeals for the Eleventh Circuit, and she practiced in the airline group at FordHarrison LLP.



Joshua Baker

Joshua Baker is the managing partner at Waldo & Lyle, P.C. He limits his practice to representing property owners in eminent domain

proceedings and defending their private property rights. Mr. Baker is a frequent author and speaker on eminent domain issues and is involved in a wide range of activities to litigate and advocate on behalf of property owners and the safeguarding of private property rights at large. Mr. Baker is a "Best Lawyer" and is a Virginia member of Owners' Counsel of America, a nationwide network of eminent domain attorneys.



Maureen E. Brady

Maureen "Molly" E. Brady is the Louis D. Brandeis Professor of Law at Harvard Law School, where she teaches property law and related subjects. She has received multiple awards for teaching at

both Harvard and her prior institution, the University of Virginia, and her articles have won both the Association of American Law Schools' Scholarly Papers Prize and the American Society for Legal History's Cromwell Article Prize for the best work in the preceding year by an early career scholar. Professor Brady received an A.B. summa cum laude in history from Harvard and a J.D. and Ph.D. from Yale. She is an Associate Reporter for the Fourth Restatement of Property.



Samuel L. Bray

Samuel L. Bray is the John N. Matthews Professor of Law at the University of Notre Dame. His primary areas of research are remedies

and equity. He is a faculty fellow of the Notre Dame Program on Private Law, and is a McDonald Distinguished Fellow at the Center for the Study of Law and Religion at Emory University. He is also an elected member of the American Law Institute, and an adviser on the Restatement (Third) of Torts: Remedies.



Andrew Brigham

Andrew Brigham is a third-generation trial lawyer with experience in complex, high-profile cases. He is best known for work throughout Florida representing property owners in eminent domain proceedings. His energetic style of practice reflects his view that it is a privilege to protect the civil right of private ownership, and that law practice is a high, professional calling. See <http://www.propertyrights.com>.



Lynda Butler

Lynda Butler is Chancellor Professor of Law, *Emerita*, and Director of the Property Rights Project, *Emerita*, at William & Mary Law School. She specializes in property rights and property law, land and water use, and environmental policy. Her recent scholarship focuses on property as a system and on its relationship with problems of extremes. She received her J.D. from the University of Virginia and her B.S. from the College of William & Mary. Prior to joining the faculty at William & Mary Law School, she practiced at Wilmer, Cutler & Pickering in Washington, D.C.



Katherine Mims Crocker

Katherine Mims Crocker's scholarship concentrates on federal courts, civil-rights litigation, and structural constitutional law. She has published in the *Duke Law Journal*, the *Michigan Law Review*, the *Notre Dame Law Review*, and the *Virginia Law Review*, among other journals. She previously held a fellowship at Duke Law School and practiced appellate litigation at McGuireWoods LLP. She clerked for Justice Antonin Scalia of the Supreme Court of the United States and Judge J. Harvie Wilkinson III of the U.S. Court of Appeals for the Fourth Circuit. She graduated first in her class from the University of Virginia School of Law and earned her undergraduate degree from Harvard University.



Lee Anne Fennell

Lee Anne Fennell is the Max Pam Professor of Law at the University of Chicago Law School, where she has taught since 2007. Her teaching and research interests include property, torts, land use, housing, social welfare law, state and local government law, and public finance. She is the author of *The Unbounded Home: Property Values Beyond Property Lines* (Yale University Press 2009) and *Slices and Lumps: Division and Aggregation in Law and Life* (University of Chicago Press, 2019), as well as many articles and essays.



Andrew Gold

Andrew Gold is professor of law at Brooklyn Law School and is associate director of the Center for the Study of Business Law and Regulation, and director of its

Program on Private Law. He teaches corporations and torts, as well as seminars in equity, tort theory, and fiduciary law. His primary research interests address private law theory, fiduciary law, and the law of corporations. Professor Gold is the co-editor of *The American Law Institute: A Centennial History* (Oxford University Press, 2023) (with Robert Gordon). His recent book, *The Right of Redress* (Oxford University Press, 2020), offers a new theory of private law. His work has appeared in the *Michigan Law Review*, *Northwestern University Law Review*, *University of Toronto Law Journal*, *Law and Philosophy*, the *American Journal of Jurisprudence*, and *Ethics*. He is also co-editor of multiple books on fiduciary theory, including *Philosophical Foundations of Fiduciary Law* (Oxford University Press, 2014) (with Paul Miller), and a co-editor of *The Oxford Handbook of The New Private Law* (Oxford University Press, 2020) (with John Goldberg, Dan Kelly, Emily Sherwin, and Henry Smith). Professor Gold previously was the Bruce W. Nichols Visiting Professor at Harvard Law School; an HLA Hart Visiting Fellow at the University of Oxford; and a Fulbright Visiting Research Chair at McGill University. He is a co-founder of the North American Workshop on Private Law Theory and is a member of the American Law Institute.



John M. Groen

John Groen has extensive experience in public interest litigation before all levels of federal and state courts. He joined Pacific Legal Foundation (“PLF”) in 1987 and nine

years later founded Groen Stephens & Klinge LLP, in Bellevue, Washington, where he litigated land use issues and takings claims. In 2015, John returned to PLF and is now Executive Vice President and General Counsel. On behalf of the Murr family, he argued *Murr v. Wisconsin* at the United States Supreme Court. He is also a Lecturer on Constitutional Litigation in Property Rights at Berkeley Law.



Christina M. Martin

Christina Martin is a Senior Attorney at Pacific Legal Foundation where she litigates to protect property rights. Christina's victories for property owners as

lead counsel include *Tyler v. Hennepin County* in the U.S. Supreme Court, *Hall v. Meisner* in the Sixth Circuit, and *Rafaeli, LLC v. Oakland County* in the Michigan Supreme Court. She also served as second chair in *Knick v. Township of Scott*, a landmark Supreme Court case that opened federal courthouse doors to takings plaintiffs.



Timony Sandefur

Timothy Sandefur is the Vice President for Legal Affairs at the Goldwater Institute’s Scharf-Norton Center for Constitutional Litigation and holds the Duncan Chair in Constitutional Government. He

litigates to promote economic liberty, private property rights, free speech, and other crucial values in states across the country. Timothy is the author of eight books, including most recently *Freedom’s Furies: How Isabel Paterson, Rose Wilder Lane, and Ayn Rand Found Liberty in an Age of Darkness* (2022), and *Frederick Douglass: Self-Made Man* (2018), as well as more than 50 scholarly articles on subjects ranging from Indian law and antitrust to copyright law, the constitutional issues involved in the Civil War, and the political philosophy of Shakespeare, ancient Greek drama, and *Star Trek*. A frequent guest on radio and television, he is well known to radio audiences as “Tim the Lawyer” on *The Armstrong & Getty Show*, and his writings have appeared in *Reason, National Review, The Weekly Standard, The Wall Street Journal, and The Objective Standard*, where he is a contributing editor. He has taught classes at Pepperdine University, McGeorge School of Law, George Mason University’s Antonin Scalia Law School. He is an Adjunct Scholar with the Cato Institute and is a graduate of Hillsdale College and Chapman University School of Law.



Jessica A. Shoemaker

Jessica A. Shoemaker (Steinhart Foundation Distinguished Professor of Law, University of Nebraska College of Law) is a recent Andrew Carnegie Fellow working on issues of

agricultural land ownership across the American countryside, with particular focus on racial and environmental justice. She previously served as Fulbright Canada Research Chair in Aboriginal Legal and Resource Rights at the University of Alberta (studying Indigenous-led land reforms) and Skadden Fellow with Farmers’ Legal Action Group (working on diverse food and energy matters). She is a Founding Fellow of the Rural Futures Institute and currently co-directs The Rural Reconciliation Project at the University of Nebraska.



James Y. Stern

James Y. Stern is Professor of Law and Director of the Property Rights Project at William & Mary Law School. He writes on

property, intellectual property, privacy, and private law. He received his undergraduate degree from Harvard and his J.D. from the University of Virginia. He clerked for Judge J. Harvie Wilkinson and Justice Anthony Kennedy, and he served as Deputy General Counsel at the U.S. Department of the Treasury, in which capacity he was responsible for substantial Takings Clause and other property-related cases brought against the federal government.



Lior Strahilevitz

Lior Strahilevitz is the Sidley Austin Professor of Law at the University of Chicago, where he has taught since 2002. His research focuses on property law and privacy law. Along with Greg Alexander,

Jim Krier, Mike Schill, and the late Jesse Dukeminier, he is the author of the most widely adopted Property law casebook in the United States. He has authored dozens of law review articles, and his research in property law has focused on understanding the scope and limits of property rights, analyzing thorny issues in Takings Clause jurisprudence, and exploring the relationship between property law and residential demographic homogeneity. Strahilevitz was elected to the American Law Institute in 2015. He is a two-time winner of the Graduating Students’ Award for Teaching Excellence at Chicago.



Robert H. Thomas

Robert H. Thomas (LL.M., Columbia Law; J.D., University of Hawaii Law School) serves as the Joseph T. Waldo Visiting Chair in Property Rights Law at William & Mary Law School and is the

Director of Property Rights Litigation at Pacific Legal Foundation. For more than three decades, he was in private practice in Hawai’i and California where he focused on appellate law, regulatory takings, land use, and eminent domain. He is an elected member of the American Law Institute, past Chair of the ABA’s Section of State and Local Government Law, and the Planning co-chair of ALI-CLE’s long-running Eminent

Domain & Land Valuation Litigation Conference. He writes and publishes <https://www.inversecondemnation.com>, a widely read blog on takings, property, and land use.



Steven Weise

Steven Weise is a partner at Proskauer Rose LLP and specializes in commercial law, including the Uniform Commercial

Code. He is a member of the Permanent Editorial Board for the UCC and has been a member of several drafting committees for UCC revisions, including drafting of the 2022 UCC Amendments (Emerging Technologies). He is a member of the Council of the American Law Institute, was co-chair of the ALI–European Law Institute Principles for a Data Economy, and actively participates in several current Restatement projects, including Consumer Contracts, Property, and Conflict of Laws. He has been active in UNCITRAL and UNIDROIT commercial law projects. Weise received his B.A. from Yale University in 1971 and his J.D. from the University of California, Berkeley, in 1974.



Michael Allan Wolf

Michael Allan Wolf joined the University of Florida Levin College of Law in 2003 and is the first occupant of the

Richard E. Nelson Eminent Scholar Chair in Local Government. For the last forty years he has written and taught in the areas of property, land use, constitutional, takings, environmental, and local government law, as well as American constitutional and legal history. He has written several books, including two treatises—Powell on Real Property and Land Use Law (with Daniel Mandelker)—and his articles have appeared in leading law and law-related journals.

WILLIAM & MARY

LAW SCHOOL

Legal education began at William & Mary in 1779 at the urging of Thomas Jefferson. He was governor of Virginia at the time and a member of the College’s Board of Visitors. Jefferson believed that aspiring members of the profession should be trained to be citizen lawyers—passionate legal advocates and honorable human beings. The College’s Board created the first Chair of Law in the United States in that year, naming George Wythe as its first occupant. Students of Wythe included Thomas Jefferson, John Marshall, James Monroe, and Henry Clay. The growth of the law school was halted by the beginning of the Civil War in 1861. Sixty years later, the study of law was revived in a modern program that attracts students from all regions of the nation.

William & Mary Law School has hosted the Brigham-Kanner Property Rights Conference since 2004. In 2011 William & Mary co-sponsored the Conference with Tsinghua Law School in Beijing, China, and then in 2016 with the Grotius Center of International Legal Studies in The Hague, the Netherlands.

THE COLLEGE OF

WILLIAM & MARY

Chartered in 1693 by Queen Mary II and King William III of England, The College of William and Mary is the second oldest institution of higher learning in the country. The College’s student body has about 9,654 full-time (graduate and undergraduate) students with a thirteen to one student/faculty ratio. *U.S. News and World Report: Best Colleges 2024* ranks the College twenty-third among top public schools in the country. Known as “the alma mater of a nation,” William & Mary has educated three American presidents—Thomas Jefferson, James Monroe and John Tyler—and George Washington served as its first chancellor.

Katherine A. Rowe was sworn in as the twenty-eight president of William & Mary on July 1, 2018, becoming the first female president of William & Mary in its 330-year history. Before assuming her current post, she served as provost and dean of faculty at Smith College in Massachusetts.

