

18th

BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE

and presentation of the
2021 Brigham-Kanner Prize
to

Vicki Been

*Judge Edward Weinfeld Professor of Law
NYU School of Law*

Sponsored by
William & Mary
Law School



WILLIAM & MARY
LAW SCHOOL

Presented by the
William & Mary
Property Rights
Project

September 30 – October 1, 2021

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

SCHEDULE

OF EVENTS

Thursday, September 30, 2021

6:30 pm **PRESENTATION OF THE 2021 BRIGHAM-KANNER PRIZE**

Broadcasted via Zoom from the Great Hall, Wren Building (to receive a link, register here: <https://www.eventbrite.com/e/2021-brigham-kanner-property-rights-conference-tickets-165160141429>)

Friday, October 1, 2021

(Please note that besides the in-person locations listed below, the Conference will also be broadcasted via Zoom. To receive a link, register here: <https://www.eventbrite.com/e/2021-brigham-kanner-property-rights-conference-tickets-165160141429>)

8:00 am **REGISTRATION AND CONTINENTAL BREAKFAST**

William & Mary Law School (Please note that the continental breakfast will be under the tent in front of the Law School. All food and drink must be eaten outside.)

9:00 am – 9:15 am **Remembering Toby Brigham**

Joseph Waldo, Waldo & Lyle, PC, Norfolk, Virginia

9:15 am – 10:45 am **Panel 1: *The Role of Empirical Research in Defining the Scope of Constitutionally Pro- tected Property Rights: A Tribute to Been***

Empirical research can provide invaluable insights into the interaction of property rights and land use policies with social and economic systems. Using Professor Been's work as a springboard, panelists will discuss the role of empirical research in testing property theories and land use policies through real-life experiences and explore the role of such research on the scope and meaning of property rights.

Opening Remarks, Vicki Been, Judge Edward Weinfeld Professor of Law, NYU School of Law, a Faculty Director of NYU's Furman Center for Real Estate and Urban Policy, and Deputy Mayor for Housing and Economic Development, City of New York

Panelists

Carol Rose, Gordon Bradford Tweedy Professor of Law and Organization, Emerita, Yaw Law School, and Ashby Loshe Professor of Water and Natural Resource Law, Emerita, University of Arizona Law College

Robert Ellickson, Walter E. Meyer Professor of Property and Urban Law, Emeritus, Yale Law School

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

William Fischel, Professor of Economics and Robert C. 1925 and Hilda Hardy Professor of Legal Studies, Emeritus, Dartmouth College

Moderator

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

10:45 am – 11:00 am Networking Break

11:00 am – 12:15 pm Panel 2: *The Relationship between Eminent Domain and Social and Racial Injustice*

The power of eminent domain has been used for a variety of urban renewal and infrastructure projects. Older buildings are demolished to create more appealing downtown business areas, dilapidated residential areas are torn down to make way for improved public infrastructure, and entire communities are condemned after being declared blighted. Panelists will discuss the extent to which the exercise of eminent domain has adversely affected minorities or otherwise led to social injustices, as well as ways to remedy the injustices.

Panelists

Thomas Mitchell, 2020 MacArthur Fellow, Professor of Law and Co-Director, Program in Real Estate and Community Development Law, Texas A&M University

Julia Mahoney, John S. Battle Professor of Law, University of Virginia School of Law

Robert Thomas, Senior Attorney, Pacific Legal Foundation

Robert McNamara, Senior Attorney, Institute for Justice

Moderator

Joseph Waldo, Waldo & Lyle, PC, Norfolk, Virginia

12:15 pm – 1:00 pm Lunch Break
William & Mary Law School, Tent in Front of Law School

1:00 pm – 2:00 pm Roundtable: *Just Compensation Issues, Changing Public Uses, and Other Recent Developments*

Panelists

Thomas Merrill, Charles Evans Hughes Professor of Law, Columbia University

Joshua Baker, Partner, Waldo & Lyle, PC, Norfolk, Virginia

Randall Smith, Senior Managing Partner, Smith & Fawer, LLC, New Orleans, Louisiana

Moderator

Anthony DellaPelle, McKirdy Riskin Olson & DellaPelle, PC, Morris Plains, New Jersey

2:00 pm – 2:15 pm Networking Break

2:15 pm – 3:30 pm Panel 3: *The Interdependence of Property and First Amendment Rights*

The relationship between property rights and the First Amendment can, at times, be mutual, commensal, or negative (even, at times, exploitative). How should language in documents creating property rights be interpreted when forced speech later repudiated by the property owner would result (e.g., if General Lee's statue must remain on government land)? What balance should be drawn between ownership rights and the First Amendment rights of others (e.g., if the landowner decides to deny access to those legitimately on the owner's land because of the nature of the First Amendment rights)? What should be the role of property in protecting First Amendment Rights (e.g., when protesters project their message onto private property)? These and other questions will be addressed by the panel.

Panelists

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

Richard Schragger, Perre Bowen Professor of Law, Martha Lubin Karsh & Bruce A. Karsh Bicentennial Professor of Law, University of Virginia School of Law

Christopher Kieser, Attorney, Pacific Legal Foundation

John Echeverria, Professor of Law, Environmental Law Center, Vermont Law School

Moderator

Davison M. Douglas, John Stewart Bryan Professor of Jurisprudence, William & Mary Law School

**3:30 pm – Networking Break
3:45 pm**

**3:45 pm – Panel 4: *The Distribu-*
5:00 pm *tional Implications of*
 *Land Use Regulation***

For a century, local governments have defined the urban landscape through their land use regulations. Much of this regulation occurs without a good understanding of its distributional consequences. How does zoning affect the affordability of housing, the availability of open space and undeveloped land, the distribution of different types of housing or economic development, or the impact of the built environment on public health? Panelists will address these and other issues.

Panelists

Sara Bronin, Professor, Cornell College of Architecture Art & Planning and Associate Member of the Cornell Law School Faculty

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

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

Christopher Serkin, Elisabeth H. and Granville S. Ridley Jr. Chair in Law, Vanderbilt University Law School

Moderator

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

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 Vicki Been for her outstanding contributions as a practitioner and scholar.

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. Been is currently on leave from NYU, serving as Deputy Mayor for Housing and Economic Development for the City of New York.

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

Professor 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.

Professor 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

Professor 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

Professor 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 (BA Philosophy), the University of Chicago (MA Political

Science, JD Law), and Cornell University (Ph.D. History), and an Honorary Degree from the Chicago-Kent College of Law. She is on the Board of Editors of the Foundation Press and is 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

Professor 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 coauthor 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 writing about 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.



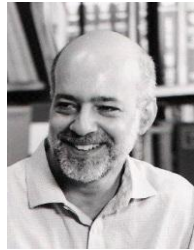
2014

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.

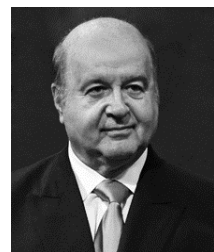


2015

Joseph William Singer

Professor 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 focused 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 Smith

Professor Henry Smith is the Fessenden Professor of Law at Harvard Law School. Smith directs the Project on the Foundations of Private Law at Harvard Law School. Previously, 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 Hon. 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. He teaches primarily in the areas of property, intellectual property, natural resources, remedies, and law and economics.

In 2015–16, 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.

PANELISTS AND MODERATORS

BIOGRAPHIES



Joshua Baker

Joshua E. 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 has been repeatedly named as a “Rising Star” by Virginia Super Lawyers. Mr. Baker is the Virginia Member of Owners’ Counsel of America, a nationwide network of eminent domain attorneys.



James Burling

James Burling is Pacific Legal Foundation’s Vice President for 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.



Andrew Prince Brigham

Andrew Prince 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 www.propertyrights.com.



Lynda L. Butler

Lynda Butler is Chancellor Professor of Law, *Emerita*, and Director of the Property Rights Project 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.



Sara Bronin

Sara Bronin is an architect and a professor of planning and law at Cornell University. Her interdisciplinary research focuses on creating more equitable, sustainable, well-designed, and connected places. Among her current projects are the Connecticut Zoning Atlas, the land use volume of the Fourth Restatement of Property, and Key to the City (W.W. Norton Press) about how zoning shapes our lives.

Anthony F. DellaPelle



Anthony F. DellaPelle is managing shareholder of McKirdy, Riskin, Olson & DellaPelle, P.C., in New Jersey. He is a Certified Civil Trial Attorney by the NJ Supreme Court and limits his practice to eminent domain and property tax matters. Tony is a member of Owners Counsel of America and the Counselors of Real Estate®. He received his undergraduate degree from Franklin & Marshall College, and his law degree from Seton Hall University.

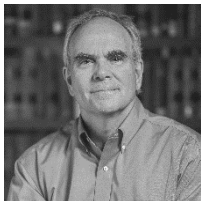
**Davison M. Douglas**

Davison M. Douglas is the John Stewart Bryan Professor of Jurisprudence at the William & Mary Law School. He has been a member of the William & Mary law faculty since 1990 and served as

Dean of the Law School from July 2009 through June 2021 before returning to teaching.

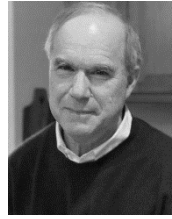
Douglas graduated summa cum laude from Princeton University and received a law degree, a Ph.D. in history, and a master's degree in religion from Yale University.

One of the nation's leading constitutional historians, he is the author or editor of seven books on American constitutional law and history. He has lectured on American constitutional law and history at universities throughout the United States and in Africa, Asia, Australia, and Europe.

**John Echeverria**

John Echeverria is a Professor of Law at Vermont Law School where he teaches Property, Water Resources, and other environmental and natural resource law courses. Prior to joining the Vermont Law School faculty in 2009, he served for 12 years as Executive Director of the Georgetown Environmental Law & Policy Institute at Georgetown University Law Center. He also was General Counsel of the National Audubon Society and General Counsel and Conservation Director of American Rivers, Inc.

Professor Echeverria has written several books and numerous scholarly articles on environmental and natural resource law topics, and has represented state and local governments, environmental organizations, and planning groups in a variety of legal matters at all levels of the federal and state court systems. Professor Echeverria received the Jefferson Fordham Advocacy Award from the American Bar Association to recognize outstanding excellence within the area of state and local government law over a lifetime of achievement. In addition to teaching at Vermont Law School, he has served as a Visiting Professor at Harvard Law School and Georgetown University Law Center. He was the author of a property law professors brief in the *Cedar Point Nursery v. Hassid* case.

**William Fischel**

Since 1973, Bill Fischel has taught at Dartmouth College, where he is professor of economics and holds the Hardy Chair in Legal Studies, emeritus. He received his PhD from Princeton and his BA from Amherst

College. Fischel's scholarship focuses on the law and economics of local government. He is the author of *The Economics of Zoning Laws* (Hopkins, 1985), *Regulatory Takings* (Harvard, 1995), *The Homevoter Hypothesis* (Harvard, 2001), *Making the Grade* (Chicago, 2009), and *Zoning Rules! The Economics of Land Use Regulation* (Lincoln Institute, 2015). Since his retirement in 2019, Bill has resumed his service on the zoning board of Hanover, NH.

**Chris Kieser**

Chris Kieser is an attorney at Pacific Legal Foundation. His practice focuses on property rights and equality before the law. He was a member of the PLF team that achieved a Supreme Court victory

in *Cedar Point Nursery v. Hassid*.

Chris clerked for the Honorable Daniel A. Manion of the United States Court of Appeals for the Seventh Circuit and the Honorable Thomas D. Schroeder of the United States District Court for the Middle District of North Carolina. He graduated magna cum laude from Notre Dame Law School, where he was an Articles Editor of the *Notre Dame Law Review*.

**Julia Mahoney**

Julia D. Mahoney is the John S. Battle Professor of Law at the University of Virginia, where she teaches courses in Property and Constitutional Law. Her

scholarship includes articles on eminent domain, land preservation, and regulatory takings. A member of the American Law Institute, she serves as an adviser to its Restatement of the Law: Property project.

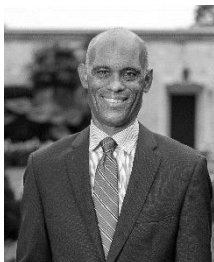


Robert McNamara

Robert McNamara serves as a senior attorney with the Institute for Justice. He joined the Institute in August 2006 and litigates cutting-edge constitutional cases protecting free speech, property rights, economic liberty, and other individual liberties in both federal and state courts.

Robert's work has resulted in court victories for property owners fighting eminent domain abuse, tour guides fighting unconstitutional restrictions on their speech, taxi drivers seeking the right to own their own business, and many others. Robert also litigates in defense of innovation and entrepreneurship in medical care and was co-counsel in *Flynn v. Holder*, IJ's landmark challenge to the federal prohibition on compensating bone marrow donors.

Robert's writing has been published by outlets including *The New York Times*, *The Wall Street Journal*, *The Washington Post* and dozens more nationwide.



Thomas Mitchell

Thomas Wilson Mitchell received a BA (1987) from Amherst College, a JD (1993) from Howard University School of Law, and an LLM (1999) from the University of Wisconsin Law School, where he served as a William H. Hastie Fellow. From 2000 to 2016, Mitchell served as a professor at the University of Wisconsin Law School. He joined the faculty of Texas A&M University in 2016, where he is currently a professor in the School of Law and co-director of the Program in Real Estate and Community Development Law. Mitchell's articles have appeared in journals such as *Northwestern University Law Review*, *Alabama Law Review*, *Wisconsin Law Review*, *Florida State University Law Review*, and in American Bar Association and USDA publications, among others. He has also served as an editor and contributor to the first volume of *The New Legal Realism: Translating Law-and-Society for Today's Legal Practice* (2016). Photo © John D. and Catherine T. MacArthur Foundation – used with permission.



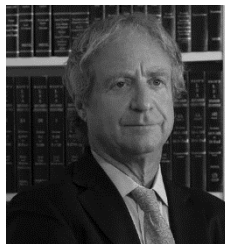
Richard Schragger

Richard Schragger is the Perre Bowen Professor at the University of Virginia School of Law and a Senior Academic Fellow at the Miller Center for Public Affairs. His scholarship focuses on the intersection of constitutional law and local government law, federalism, and urban policy. He is the author of *City Power: Urban Governance in a Global Age*, along with numerous articles and book chapters.



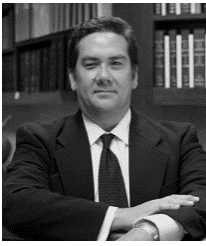
Chris Serkin

Christopher Serkin writes in the area of property and land use law. His articles have appeared in the *Chicago*, *Columbia*, *Michigan*, *New York University*, *Notre Dame* and *Northwestern University* law reviews, among others. He has served as the Associate Dean for Research and for Academic Affairs.



Randall Smith

Randall Smith is a veteran trial lawyer who has handled a variety of complex litigation, including takings/eminent domain matters for business and property owners. He is the sole Louisiana representative and past Chair of the Owners' Counsel of America, a national organization of property rights' attorneys. He has taught annually at the ALI national seminar on eminent domain for the last 10 years, in addition to serving as an Adjunct Professor of Law at Loyola for almost 30 years. A graduate of Yale Law School, who began his career as a federal law clerk and then an associate and partner at Stone Pigman, he has been the Managing Partner of Smith & Fawer, LLC for the last 25 years.

**Robert H. Thomas**

Robert H. Thomas (LL.M., Columbia Law; J.D., University of Hawaii Law School) has, for more than three decades, been in private practice in Hawaii and California. He recently joined Pacific Legal Foundation, where

he continues to focus on appellate law, regulatory takings, and eminent domain. He also serves as the Joseph T. Waldo Visiting Chair in Property Rights Law at William & Mary Law School. 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 inversecondemnation.com, a widely read blog on takings, property, and land use.

**Joseph T. Waldo**

The founder of the Brigham-Kanner Property Rights Conference, Joe Waldo has practiced law since graduating from William & Mary Law School. He obtained his B.A. from the University of North Carolina at Chapel Hill. In

1998, he founded Waldo & Lyle, P.C., the only law firm in Virginia exclusively dedicated to representing property owners in eminent domain proceedings. He has tried over 100 cases on behalf of property owners facing the exercise of the power of eminent domain. He is an elected member of the American Law Institute where he is an adviser on the Restatement (Fourth) of Property. He lectures, writes and frequently makes appearances to advocate for the defense of individual property rights, drawing the connection to individual liberty and human dignity.

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 just over 8,939 full-time (graduate and undergraduate) students with a twelve to one student/faculty ratio. *U.S. News and World Report: Best Colleges 2022* ranks the College tenth 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 328-year history. Before assuming her current post, she served as provost and dean of faculty at Smith College in Massachusetts.

