



*21st Annual*

BRIGHAM-KANNER  
PROPERTY RIGHTS  
CONFERENCE

September 12-13, 2024



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/intellecтуallife/researchcenters/property-rights-project/b-k-journal/index.php>

# SCHEDULE OF EVENTS

Access the CLE reading packet:

[https://drive.google.com/drive/folders/1zRS7RPSAhGuVFYxnAhwgCE36IQCot?usp=drive\\_link](https://drive.google.com/drive/folders/1zRS7RPSAhGuVFYxnAhwgCE36IQCot?usp=drive_link)

## THURSDAY, SEPTEMBER 12

6:30pm – 9:00pm

The Great Hall  
The Wren Building

Reception & Dinner

Presentation of The Brigham-Kanner Property Rights Prize

## FRIDAY, SEPTEMBER 13

8:00am – 9:00am

William & Mary Law School

Registration & Continental Breakfast

9:00am – 9:15am

Room 119

Welcome & Gideon Kanner Remembrance

9:15am – 10:30am

Room 119

SESSION 1

Restructuring Property: A Tribute to Lee Fennell

A recurring theme in Professor Lee Fennell's work is an interest in how property rights are structured and imagined, and the implications that different possibilities hold for the allocation of resources and the way societies are organized. She has cast these issues in terms like "slices" versus "lumps," "unbounded" homes, "half-torts," and "streaming property." This panel will discuss the impact of her scholarship on contemporary property thinking and explore some of the major ideas she has developed in her writings.

**Maureen E. Brady**

*Deputy Dean  
Louis D. Brandeis Professor of Law  
HARVARD LAW SCHOOL*

**Carol M. Rose**

*Gordon Bradford Tweedy Professor Emerita of Law & Organization  
YALE LAW SCHOOL*

*Ashby Lohse Professor Emerita of Water & Natural Resource Law  
UNIVERSITY OF ARIZONA ROGERS COLLEGE OF LAW*

**Yun-chien Chang**

*Jack G. Clarke Professor in East Asian Law  
CORNELL LAW SCHOOL*

**David N. Schleicher**

*Walter E. Meyer Professor of Property & Urban Law  
YALE LAW SCHOOL*

MODERATOR

**James Y. Stern**

*Professor of Law and Director, Property Rights Project, William & Mary Law School*

10:30am – 10:45am

BREAK

10:45am – 12:00pm

Room 119

SESSION 2

### Background Principles, General Law, & Constitutional Property

The Constitution constrains changes to property rights established under background law principles while at the same time relying on background legal principles to limit the scope of the protection afforded. *Lucas v. S.C. Coastal Council* carved out a Takings exception based on “background principles” of property, and more recently *Cedar Point v. Hassid* drew on that idea to shield “common law privileges to access private property” from Takings scrutiny. This panel will discuss some of central issues surrounding background principles and similar ideas: What kinds of legal principles qualify? How is their content determined? And what role should they play in different doctrinal areas?

**Jessica Asbridge**

*Associate Professor of Law*  
BAYLOR LAW SCHOOL

**Timothy M. Mulvaney**

*Professor of Law*  
TEXAS A&M SCHOOL OF LAW

**Thomas W. Merrill**

*Charles Evans Hughes Professor of Law*  
COLUMBIA LAW SCHOOL

**Kady Valois**

*Attorney*  
PACIFIC LEGAL FOUNDATION

MODERATOR

**Lynda L. Butler**

*Chancellor Professor of Law, Emerita, William & Mary Law School*

12:00pm – 1:00pm

Lobby

LUNCH

1:00pm – 2:00pm

Room 119

ROUNDTABLE

### Unfinished Business & Emerging Issues

The Supreme Court once again stepped into the Takings arena in *De villier* and *Sheetz*, but then stopped short of resolving the major doctrinal issues those cases presented. The roundtable will discuss the current state of play on those issues and highlight emerging problems and topics likely to be at the forefront of Takings litigation in the years ahead.

**Randall A. Smith**

SMITH & FAWER, LLC

**Michael M. Berger**

MANATT, PHELPS & PHILLIPS

**Justin Hodge**

MARRS ELLIS HODGE

MODERATOR

**Andrew Brigham**

BRIGHAM PROPERTY RIGHTS LAW FIRM, PLLC

2:00pm – 2:15pm

BREAK

2:15pm – 3:30pm  
Room 119

**SESSION 3**  
**Property Rights and Housing in Crisis**

Shelter is a fundamental human need, and housing is a major component of the U.S. economy. Home ownership has been considered a cornerstone institution of civic life, closely linked with the American dream. Over the last 50 years, median house prices in the U.S. have more than doubled in real terms, significantly outpacing wage growth, and more recently, the residential rents have also substantially outpaced inflation and wages, prompting declarations of a housing crisis. This panel will examine issues connected with the present state of housing in the United States and the role property rights can and should play when it comes to housing.

**James Burling**  
*Vice President of Legal Affairs*  
PACIFIC LEGAL FOUNDATION

**James W. Ely, Jr.**  
*Milton R. Underwood Professor of Law, Emeritus*  
*Professor of History, Emeritus*  
VANDERBILT UNIVERSITY

**Gerald S. Dickinson**  
*Vice Dean & Associate Professor of Law*  
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

**John Infranca**  
*Professor of Law & Director of Faculty Scholarship & Research*  
SUFFOLK UNIVERSITY LAW SCHOOL

MODERATOR

**Robert H. Thomas**  
*Joseph T. Waldo Visiting Professor of Property Rights Law, William & Mary Law School*  
*Director, Property Rights Litigation, Pacific Legal Foundation*

3:30pm – 3:45pm

**BREAK**

3:45pm – 5:00pm  
Room 119

**SESSION 4**  
**Government Trespass: The Fourth Amendment “Open Fields” Doctrine Turns 100**

One hundred years ago, the Supreme Court held that the Fourth Amendment’s protections against unreasonable searches and seizures do not protect “open fields,” so that government agents do not need a warrant to enter private land. This panel will consider the foundations of the open fields doctrine and the role of property rights in structuring Fourth Amendment protection.

**Jeffrey Bellin**  
*Mills E. Godwin, Jr., Professor of Law*  
WILLIAM & MARY LAW SCHOOL

**Michael Pollack**  
*Associate Dean for Faculty Development, Professor of Law, & Co-Director, Floersheimer Center for Constitutional Democracy*  
BENJAMIN N. CARDZO SCHOOL OF LAW

**Laura Donohue**  
*Scott K. Ginsburg Professor of Law*  
*& National Security*  
GEORGETOWN UNIVERSITY LAW CENTER

**Joshua Windham**  
*Attorney and Elfie Gallun Fellow in Freedom*  
*& the Constitution*  
INSTITUTE FOR JUSTICE

MODERATOR

**Margaret Hu**

*Taylor Reveley Research Professor and Professor of Law, William & Mary Law School*

5:00pm

Lobby

#### CLOSING RECEPTION

Join us for refreshments to conclude this year's 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 **Lee Anne Fennell** for her outstanding contributions as a property rights scholar.

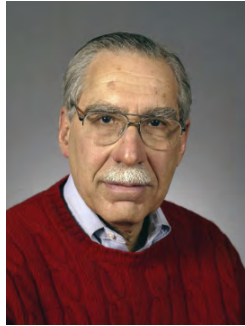


**Lee Anne Fennell**

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.

# 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.

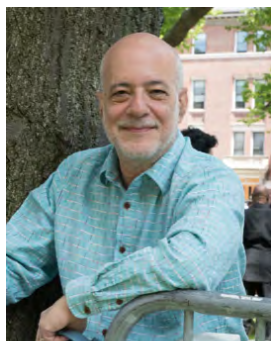


**2014**

**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.





**2023**

**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

## PANELISTS AND MODERATORS

# BIOGRAPHIES



### **Jessica Asbridge**

Jessica Asbridge is an Associate Professor of Law at Baylor Law School. Her most recent article, *Fines, Forfeitures, and Federalism*, is forthcoming in the *Virginia Law Review*

and examines the relationship between exactions and fines. Her other recent articles have addressed private delegations of the eminent domain power, the excessive fines implications of *Tyler v. Hennepin County*, and the boundary between regulations and appropriations with respect to the Takings Clause. She is passionate about teaching Property I & II and was the sole recipient of Baylor University's 2023-2024 Award for Outstanding Teaching Among Tenure-Track Faculty. Prior to teaching, she clerked for the Honorable Frank M. Hull and the late Honorable Peter T. Fay, both of the U.S. Court of Appeals for the Eleventh Circuit.



### **Jeffrey Bellin**

Jeffrey Bellin is the Mills E. Godwin, Jr., Professor at William & Mary Law School where he teaches criminal procedure and evidence. He is the author of *Mass Incarceration Nation:*

*How the United States Became Addicted to Prisons and Jails and How it Can Recover* (Cambridge Univ. Press 2023) and the article, *Fourth Amendment Textualism*, 118 Mich. L. Rev. 233 (2019).



### **Maureen E. Brady**

Maureen E. "Molly" 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.

**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.

**Yun-chien Chang**

Prof. Yun-chien Chang is Jack G. Clarke Professor in East Asian Law at Cornell Law School and also directs the Clarke Program in East Asian Law & Culture. Prof. Chang is an Associate Reporter on American Law Institute's Restatement of the Law Fourth, Property. His current academic interests focus on economic, empirical and comparative analysis of private law (particularly property law), as well as empirical studies of the judicial system. His monograph *Property Law: Comparative, Empirical, and Economic Analyses* was published in June 2023 by Cambridge University Press and is widely reviewed. Prof. Chang published a dozen other books.

**Jerry Dickinson**

Professor Jerry Dickinson serves as Vice Dean of the University of Pittsburgh School of Law. Vice Dean Dickinson's teaching and scholarship specialize in constitutional law. His scholarly works focus on the constitutional politics of the U.S. Supreme Court, the relationship of federal and state courts in the federalist system, state constitutional law, judicial federalism, civil rights and civil liberties, law and democracy, and race and the law.



**Justin Hodge**

Justin Hodge represents landowners in condemnation lawsuits. He teaches eminent domain at the University of Houston School of Law (2016-2024). He has co-

chaired the CLE International's Houston Eminent Domain Conference (2016-24), served on faculty ALI-CLE eminent-domain conferences (2015-16, 2020, and 2024), and served as a board member for the Brigham-Kanner Property Rights Conference (2020-22). Mr. Hodge's family has lived in Texas for two centuries and is listed as Sons of the Republic of Texas. He received his B.S. in Agriculture and Applied Economics from Texas Tech University (1999) and J.D. from the University of Texas School of Law (2002).

**Margaret Hu**

Margaret Hu is the Taylor Reveley Research Professor and Professor of Law, and Director of the Digital Democracy Lab, at William & Mary (W&M) Law School. She is a Faculty Affiliate with

the Global Research Institute and Data Science at W&M, and a Research Affiliate with Pennsylvania State University's Institute for Computational and Data Sciences. Her research focuses on the intersection of civil rights, national security, cybersurveillance, and AI. She is author of several notable works, including *Biometric Cyberintelligence and the Posse Comitatus Act*, *Algorithmic Jim Crow*, and *Biometrics and an AI Bill of Rights*. She is editor of *Pandemic Surveillance: Privacy, Security, and Ethics* (Elgar Publishing 2022). She previously served as

Special Policy Counsel in the Civil Rights Division of the U.S. Department of Justice. She holds degrees from the University of Kansas and Duke Law School.

**John Infranca**

John Infranca is a Professor of Law at Suffolk University Law School. His teaching and scholarship focus on land use regulation,

affordable housing policy, property theory, law and religion and election law. His recent work has focused on the intellectual and legal history of single-family zoning and the role of administrative discretion in land use regulation. He also recently edited the *Elgar Research Agenda for Land Use and Planning Law* and serves as the lead researcher for the *Massachusetts Zoning Atlas*. In Spring 2024 Infranca served as a Florence Rogatz Visiting Professor of Law at Yale Law School.

**Michael Pollack**

Michael Pollack is a Professor of Law and the Associate Dean for Faculty Development at the Benjamin N. Cardozo School of Law. He previously

served as a law clerk to Justice Sonia Sotomayor of the U.S. Supreme Court and to Judge Janice Rogers Brown of the U.S. Court of Appeals for the D.C. Circuit, as an attorney in the Federal Programs Branch of the U.S. Department of Justice, and as a Bigelow Fellow at the University of Chicago Law School. Pollack is a graduate of the NYU School of Law and Swarthmore College.

**David Schleicher**

David Schleicher is the Walter E. Meyer Professor of Property and Urban Law at Yale Law School and is an expert in local government law, land use, federalism, state and local finance, and urban development. His work has been published widely in academic journals and popular outlets. He recently released a new book, *In a Bad State: Responding to State and Local Fiscal Crises*, and has co-authored leading casebooks about local government and property law. Professor Schleicher is also the co-host of the hit podcast, “Digging a Hole: The Legal Theory Podcast.” Professor Schleicher has been called “the ideal legal scholar of cities” (Edward Glaeser, Harvard University), “the leading lawyer on state and city governments” (Lt. Gov. Richard Ravitch), and “one of the most brilliant and far-ranging political thinkers of his generation.” (Benjamin Wallace-Wells, *The New Yorker*). In the press, he has been called “the most important thinker we have on the subject of local government” and “ingenious” by *National Review* and one of the “most interesting writers on land use” by *Washington Monthly*. His work has been described as “great but old fashioned” by *Vox*, “interesting” by *The Nation*, “clever” by *The Economist*, “neat” by *Slate*, “startling” by *City Observatory*, “excellent” by *Forbes*, and discussed extensively in *The New York Times*, *The New Yorker*, *The Atlantic*, *National Affairs* and *Reuters*, among a number of other places. Schleicher was previously an Associate Professor of Law at George Mason University School of Law, where he won the university’s Teaching Excellence Award. He has also taught at Georgetown, Harvard, and New York University. He is a 2004 graduate of Harvard Law School. He also holds an MSc in Economics from the London

School of Economics and an AB in Economics and Government from Dartmouth College.

**Randall A. Smith**

A graduate of Yale Law School, having been raised in Geneva, Switzerland and Washington, DC, Randall Smith is a veteran trial lawyer who has successfully handled a variety of civil, commercial, and white-collar criminal matters. His litigation practice today focuses primarily on business and property litigation, including a concentration in takings/ eminent domain litigation exclusively on behalf of private property owners. While obtaining many multi-million dollar judgments, Mr. Smith has earned a reputation as an assertive, creative and focused trial counsel. Mr. Smith has been the sole Louisiana member of the Owners Counsel of America and served as its Chair from 2017-2019.

**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.

**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.

**Kady Valois**

Kady Valois joined Pacific Legal Foundation in the summer of 2020 after finishing a judicial clerkship with Florida's Fourth District Court of

Appeal. Kady practices primarily in PLF's property rights group, where she defends individuals' rights to use their private property free from burdensome regulations. Kady has litigated numerous cases before both federal and state appellate courts. Her law review article, "We Don't Talk About Palazzolo", was also recently published in the Brigham-Kanner Property Rights Journal. When she is not litigating, you can find Kady traveling around Florida with her

crazy golden retriever, reading science fiction novels, or, during the college football season, rooting for the Baylor Bears!

**Joshua Windham**

Joshua Windham is an attorney and Elfie Gallun Fellow in Freedom and the Constitution at the Institute for Justice, and the co-director of IJ's Fourth Amendment Project. Josh

litigated *Rainwaters v. Tennessee Wildlife Resources Agency* (2024), in which the Tennessee Court of Appeals held the Tennessee Constitution rejects the Fourth Amendment "open fields" doctrine. He is the author of *The Open Fields Doctrine Is Wrong* (GMU forthcoming), which argues the open fields doctrine is wrong as a matter of Fourth Amendment law, and the co-author of *Good Fences? Good Luck* (Regulation), an empirical study that quantifies the open fields doctrine's real-world impact.

# 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.



