



22nd *Annual*
BRIGHAM-
KANNER
Property Rights Conference

October 23-24
William & Mary Law School



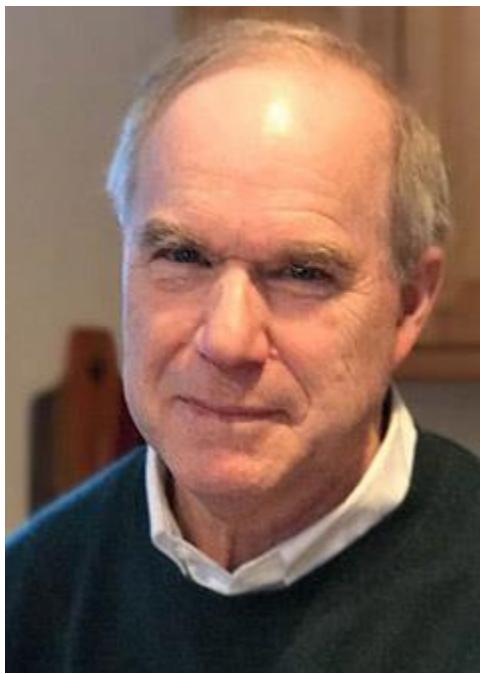
WILLIAM & MARY LAW SCHOOL

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 BRIGHAM-KANNER PROPERTY RIGHTS PRIZE



William A. Fischel is Professor of Economics and Hardy Professor of Legal Studies, Emeritus, at Dartmouth College, where he taught for nearly fifty years. A leading authority on local government, his scholarship bridges economics, law, and political science, with a recurring focus on how local institutions shape and are shaped by property values.

Professor Fischel has authored five books, edited another, and published nearly one hundred articles, reviews, and essays, exploring issues including regulatory takings law, property taxation, zoning and land use controls, and school finance. His landmark book *The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (Harvard 2001) sought to demonstrate how homeowners' concern for the value of their property influences local government decisions on zoning, schools, and public services. Other books include *The Economics of Zoning Laws: A Property*

Rights Approach to American Land Use Controls (Johns Hopkins), *Regulatory Takings: Law, Economics, and Politics* (Harvard), *Making the Grade: The Economic Evolution of American School District* (U. Chicago), and *Zoning Rules!: The Economics of Land Use Regulation* (Lincoln Institute).

A 1967 graduate of Amherst College, he received his Ph.D. in economics from Princeton University and has taught or visited the economics departments at the University of California at Davis and Santa Barbara, the Graduate School of Public Affairs at the University of Washington, and at the Vermont and U.C. Berkeley Law Schools. He has served in a variety of other related roles, including as an editorial board member for numerous academic journals, as an appointee to the New Hampshire Judicial Council, as an advisor to the drafters of the Restatement (Fourth) of Property, and as chair of the Hanover (N.H.) Zoning Board.

SCHEDULE OF EVENTS

THURSDAY OCTOBER 23

6:30pm – 9:00pm CONFERENCE RECEPTION & DINNER
ALUMNI HOUSE
500 Richmond Road

FRIDAY, OCTOBER 24

8:00am – 8:45am REGISTRATION & CONTINENTAL BREAKFAST
William & Mary Law School

8:45am – 9:00am WELCOME
ROOM 119

9:00am – 10:30am SESSION 1
ROOM 119
Property & Governance: A Tribute to William Fischel

William Fischel, this year's recipient of the Brigham-Kanner Property Rights Prize, has reshaped the study of land use and zoning through his writings on "homevoter" democracy and the larger political economy of local government. This panel will consider Fischel's impact across law, economics, and planning, as well as the continuing relevance of his work in debates over housing policy and property rights.

Vicki Been
Judge Edward Weinfeld Professor of Law and Co-Director, Furman Center for Real Estate & Urban Policy
NYU SCHOOL OF LAW

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

Lee Anne Fennell
Max Pam Professor of Law
UNIVERSITY OF CHICAGO LAW SCHOOL

James Burling
Vice President of Legal Affairs
PACIFIC LEGAL FOUNDATION

Roderick M. Hills Jr.
William T. Comfort III Professor of Law
NYU SCHOOL OF LAW

William A. Fischel
Professor of Economics and Robert C. 1925 and Hilda Hardy Professor of Legal Studies, Emeritus
DARTMOUTH COLLEGE

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
***Kelo* at 20: Public Use & Private Benefit**

Two decades ago, the Supreme Court ruled in its controversial *Kelo v. City of New London* decision that economic development can qualify as a “public use” under the Takings Clause. This panel will revisit the decision’s reasoning and aftermath, including the legal foundations for the decision in the Constitution’s text and history, political backlash and state-level reforms, and ongoing debates over the limits of eminent domain.

Julia D. Mahoney
John S. Battle Professor of Law
UNIVERSITY OF VIRGINIA SCHOOL OF LAW

Donald J. Kochan
Professor of Law and Exec. Director, Law & Economics Center
ANTONIN SCALIA LAW SCHOOL
GEORGE MASON UNIVERSITY

Thomas W. Merrill
Charles Evans Hughes Professor of Law
COLUMBIA LAW SCHOOL

Dana Berliner
Senior Vice President and Litigation Director
INSTITUTE FOR JUSTICE

MODERATOR
Andrew Prince Brigham
Senior Partner
BRIGHAM PROPERTY RIGHTS LAW FIRM

12:00pm – 1:00pm
LOBBY

LUNCH

1:00pm – 2:00pm
ROOM 119

ROUNDTABLE
Emerging Issues & English Law

This roundtable will include a look at emerging issues in property rights litigation and a comparative law presentation on aspects of English property doctrine.

David L. Callies
Benjamin A. Kudo Professor of Law, Emeritus
RICHARDSON SCHOOL OF LAW
UNIVERSITY OF HAWAII

Brett S. Tensfeldt '16
Partner
BRIGHAM PROPERTY RIGHTS LAW FIRM

MODERATOR
Joshua E. Baker '06
Partner
WALDO & LYLE

2:00pm – 2:15pm

BREAK

2:15pm – 3:30pm
ROOM 119

SESSION 3
Property Rights & Abundance

In recent years, a variety of commentators have endorsed an “abundance agenda,” seeking to expand prosperity by lowering legal and regulatory barriers to building more

housing, infrastructure, and clean energy. This panel examines that agenda through the lens of property rights, asking how land use law, permitting regimes, and ownership structures shape the possibilities for growth. The discussion will situate the abundance agenda within longstanding debates over the purposes of property law and its role in securing the benefits of sound resource use.

M. Nolan Gray

Senior Director of Legislation & Research
CALIFORNIA YIMBY

Clint Schumacher

Partner
DAWSON & SODD

Gregory H. Shill

Professor of Law and Dean's Fellow
SANDRA DAY O'CONNOR COLLEGE OF LAW
ARIZONA STATE UNIVERSITY

Michael Allan Wolf

Richard E. Nelson Eminent Scholar Chair in Local Government
LEVIN COLLEGE OF LAW
UNIVERSITY OF FLORIDA

MODERATOR

Jonathan Adler

Cabell Research Professor and Tazewell Taylor Professor of Law, William & Mary Law School

3:30pm – 3:45pm

BREAK

3:45pm – 5:00pm

ROOM 119

SESSION 4

Public Safety, Private Property, & Just Compensation

Property damage resulting from police investigations and emergency responses by public officials is common, but the role of the Constitution in securing compensation for such damage remains unsettled. The Supreme Court recently declined to consider the issue in *Baker v. City of McKinney*, with two justices calling it a “serious question” that would “benefit from further percolation in the lower courts.” This panel will consider what has been called the “necessity exception” to the just compensation guarantee.

Jeffrey Redfern

Senior Attorney
INSTITUTE FOR JUSTICE

Patrick E. Reidy

Associate Professor of Law
NOTRE DAME LAW SCHOOL

Shelley Ross Saxer

Laure Sudreau Endowed Professor of Law
CARUSO SCHOOL OF LAW
PEPPERDINE UNIVERSITY

Robert H. Thomas

Joseph T. Waldo Visiting Chair in Property Rights Law
WILLIAM & MARY LAW SCHOOL
Director, Property Rights Litigation
PACIFIC LEGAL FOUNDATION

MODERATOR

Emma Herber '26

Toby Prince Brigham Property Rights Fellow and Third-Year Student, William & Mary Law School

5:00pm

PENNY COMMONS

CLOSING RECEPTION

Join us for refreshments to conclude this year's conference.

The William & Mary Real Estate Law Society

Special Pre-Conference Moot

3:00pm – 6:00pm

MCGLOTHLIN COURTROOM
William & Mary Law School

KELO RE-ARGUED

Has Twenty Years Changed the Eminent Domain Debate?

This year marks the twentieth anniversary of *Kelo v. City of New London*, one of the most famous and controversial Supreme Court decisions on eminent domain. To revisit this landmark case, leading advocates will reargue the case before a panel of distinguished judges, followed by a discussion with the audience. The session will explore whether two decades of legal, political, and public debate have reshaped how we think about the meaning of “public use” under the Fifth Amendment.

ADVOCATES

FOR PETITIONER SUZETTE KELO

Jeffrey Redfern

Senior Attorney

INSTITUTE FOR JUSTICE

FOR RESPONDENT NEW LONDON DEVELOPMENT CORP.

Robert H. Thomas

Joseph T. Waldo Visiting Chair in Property Rights Law

WILLIAM & MARY LAW SCHOOL

Director, *Property Rights Litigation*

PACIFIC LEGAL FOUNDATION

JUSTICES

Lynda L. Butler

Chancellor Professor of Law, Emerita

WILLIAM & MARY LAW SCHOOL

Paul G. Henry

Partner

HENRY/MEURET

Donald J. Kochan

Professor of Law and Exec. Dir., Law & Economics Center

ANTONIN SCALIA LAW SCHOOL

GEORGE MASON UNIVERSITY

Shelley Ross Saxer

Laure Sudreau Endowed Professor of Law

CARUSO SCHOOL OF LAW

PEPPERDINE UNIVERSITY

Brian R. Wall '11

Associate Dean for Student Affairs & Academic Support

WILLIAM & MARY LAW SCHOOL

Tessa K. Wild '26

Moot Court Team

WILLIAM & MARY LAW SCHOOL

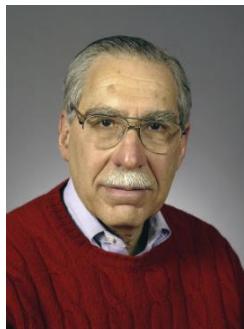
MODERATOR

Katherine Pappas '26

Founder and President, Real Estate Law Society, William & Mary Law School

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.

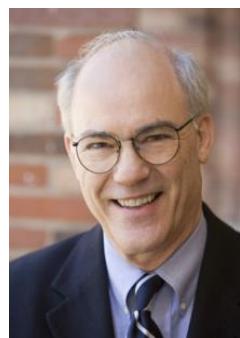


2007

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 Pipe'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.

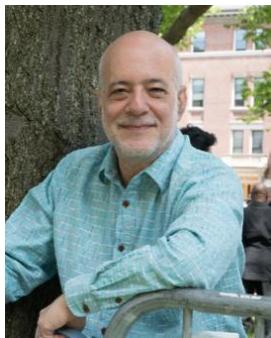


2014

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.

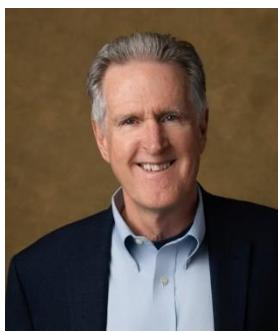


2021

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.

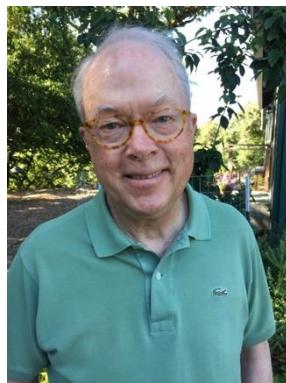


2022

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

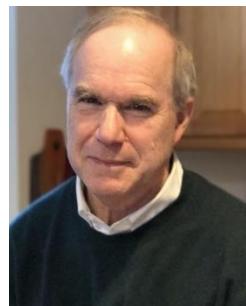


2024 LEE ANNE FENNELL

A prolific scholar of property rights, Lee Fennell is Max Pam Professor of Law at the University of Chicago Law School, where she has taught since 2007. She has been a Ronald H. Coase Research Scholar, Co-Director of the Kreisman Initiative on Housing Law and Policy, a Herbert and Marjorie Fried Research Scholar, and a Bigelow Fellow. She previously served on the faculties of the University of Texas School of Law and the University of Illinois College of Law, and she has taught at the law schools at Yale, NYU, and the University of Virginia. Professor Fennell has written two books—*The Unbounded Home: Property Values Beyond Property Lines* (Yale) and *Slices and Lumps: Division and Aggregation in Law and Life* (Chicago)—edited two more, and published more than eighty articles, book chapters, essays, reviews, and comments on property and other topics including tort, land use, housing, state and local government, and public finance law.

She received her J.D. *magna cum laude* from Georgetown University Law Center and B.A. *summa cum laude* from Baylor University. She also holds an M.F.A. from the University of

Virginia. Before entering academia, Professor Fennell practiced law at Pettit & Martin, the State and Local Legal Center, and the Virginia School Boards Association.



2025 William A. Fischel

William A. Fischel is Professor of Economics and Hardy Professor of Legal Studies, Emeritus, at Dartmouth College, where he taught for nearly fifty years. A leading authority on local government, his scholarship bridges economics, law, and political science, with a recurring focus on how local institutions shape and are shaped by property values.

He has authored five books, edited another, and published nearly one hundred articles, reviews, and essays, exploring issues including regulatory takings law, property taxation, zoning and land use controls, and school finance.

A graduate of Amherst College, he received his Ph.D. in economics from Princeton University, and he taught or visited the economics departments at the University of California at Davis and Santa Barbara, the Graduate School of Public Affairs at the University of Washington, and at the Vermont and U.C. Berkeley Law Schools. He has served in a variety of other related roles, including as an editorial board member for numerous academic journals, as an appointee to the New Hampshire Judicial Council, as an advisor to the drafters of the Restatement (Fourth) of Property, and as chair of the Hanover (N.H.) Zoning Board.

PANELISTS AND MODERATORS

BIOGRAPHIES



Vicki Been

Vicki Been, Weinfeld Professor of Law at NYU School of Law, is also 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. She was New York City's deputy mayor for housing and economic development from May 2019 until the end of 2021, and commissioner of housing from 2014 to 2017, designing and implementing many of the land use and housing policy reforms that her scholarship explores, so she brings both practical experience and theoretical grounding to debates about housing and land use policy.



Dana Berliner

Dana Berliner serves as Senior Vice President and Litigation Director at the Institute for Justice, where she has worked as a lawyer since 1994. Dana's litigation, speaking,

and writing have focused on property rights, particularly eminent domain. Along with co-counsel Scott Bullock, she represented the homeowners in the infamous decision *Kelo v. New London* and worked with legislatures afterward to change state statutes and state constitutions. She successfully represented owners challenging condemnations at the Ohio

Supreme Court, the California Court of Appeal, among others.



Andrew Brigham

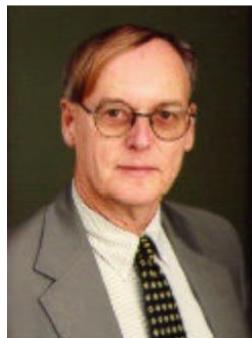
Andrew Brigham is a third-generation trial lawyer with experience in complex, high-profile cases. He is best known for work throughout Florida representing property owners in eminent domain proceedings. His energetic style of practice reflects his view that it is a privilege to protect the civil right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



James Burling

James Burling has worked with Pacific Legal Foundation since 1983, litigating cases from Alaska to Florida. He 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. The Owners Counsel awarded James its Crystal Eagle award in 2013. In 2022, James was awarded the Brigham-Kanner Property Rights Prize at the William & Mary College of Law. In 2001, James successfully argued a major property rights case, *Palazzolo v. Rhode Island*, before the United States Supreme Court, a case which affirmed that rights in regulated property do not disappear when land is bought and sold. He has written extensively on all aspects of property rights and environmental law and frequently speaks on these

subjects throughout the nation. James is the author of "Nowhere to Live: The Hidden Story of America's Housing Crisis."



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), *The Chief Justiceship of Melville W. Fuller, 1888–1910* (University of South Carolina Press 1995) (paperback edition 2012), and *The Contract Clause: A Constitutional History* (University Press of Kansas 2016).

His most recent book is *The Bill of Rights in Modern America* (Indiana University Press 3rd ed. 2022) (with David J. Bodenhamer, eds.) Ely served as assistant editor of the *American Journal of Legal History* from 1987 to 1999. He was the recipient of the Brigham-Kanner Property Rights Prize in 2006.



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.



Emma Herber

Emma Herber is a third-year law student at William & Mary Law School and the President of its Student Bar Association. She is the Tony Prince Brigham Property Rights Fellow to Professor James Y. Stern, helping organize the Brigham-Kanner Property Rights Conference and serving as Deputy Editor of its corresponding journal.

She worked as the sole Legal Extern for the Muscarelle Museum of Art, developing a deaccession policy and navigating legal issues at the intersection of property, copyright, and cultural heritage for 2024-2025. Currently, she serves as the Symposium Editor for Environmental Law & Policy Review, a Teaching Assistant for Professor Adam Gershowitz's Criminal Law course and is a Teaching Assistant to Professor Allison Orr Larsen's Constitutional Law Class. Committed to service and leadership, she was chosen to serve as Dean's Associate for Dean A. Benjamin Spencer. Herber spent the summer of 2024 as a Judicial Intern for Justice Douglas M. Fasciale of the Supreme Court of New Jersey.

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 several 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.



Jeffrey Redfern

Jeffrey Redfern is a senior attorney at the Institute for Justice, where he litigates property rights and First Amendment cases. He secured the first ever federal court decision

holding that innocent owners are entitled to compensation when SWAT teams destroy their homes while pursuing fugitives. He is a graduate of Harvard Law School and Carleton College, and he clerked for the late Judge Laurence Silberman on the D.C. Circuit.



Rev. Patrick E. Reidy

Rev. Patrick E. Reidy, C.S.C. serves as an Associate Professor of Law at the University of Notre Dame, a Faculty Director for the Church Properties Initiative within the Fitzgerald Institute for Real Estate, and a priest of the Congregation of Holy Cross. He is also a Regent of the University of Portland.

After graduating from Yale Law School, Father Pat clerked for Judge Thomas M. Hardiman on the U.S. Court of Appeals for the Third Circuit in Pittsburgh, Pennsylvania, and for Justice Brett M. Kavanaugh on the U.S. Supreme Court. Between clerkships, Father Pat returned to Yale as a

Visiting Lecturer in Law and Fellow in Private Law.

In his research, Father Pat explores the intersection of property law and religion. Two principal inquiries guide his research: (1) how legal institutions comprehend religion when evaluating property claims, owners, and instruments; and (2) how property doctrines and devices enable, or inhibit, religious practice. While contributing to private law theory, Father Pat also seeks to address practical questions faced by faith communities in their ownership of real and personal property.



Shelley Ross Saxer

Professor Saxer has been teaching at the Caruso School of Law for over thirty-years and is a co-author of *Contemporary Property*, American Casebook Series, Thomson West (5th ed. with Colleen

Medill, Grant S. Nelson, and Dale A. Whitman) and *Land Use*, American Casebook Series, Thomson West (8th ed. with David L. Callies, Robert H. Freilich, and Ashira Pelman Ostrow). She is also a co-author with Jonathan Rosenbloom on Social Ecological Resilience & Sustainability, Wolters Kluwer (2018).

Saxer has written over thirty law review articles on topics such as eminent domain, regulatory takings, water law, law and religion, disaster law, climate resiliency, nuisance, and state action. While in law school, Professor Saxer served as the chief managing editor of the *UCLA Law Review*. Upon graduation, she clerked for the Honorable Wm. Matthew Byrne, Jr. of the Federal District Court for the Central District of California and then worked briefly as a corporate associate for the Century City law offices of

O'Melveny & Myers. She is a member of the Order of the Coif, the American Bar Association, and the California State Bar. She has also been admitted to practice before the U.S. Supreme Court.



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 a widely read blog on takings, property, and land use.
<https://www.inversecondemnation.com>



Michael Allan Wolf

Michael Allan Wolf is the Richard E. Nelson Eminent Scholar Chair in Local Government at the University of Florida Levin College of Law. He has been teaching and writing for more than four decades in the fields of property, land use, takings, constitutional, environmental, and economic development law, and constitutional history. He is the author of dozens of articles (many appearing in leading law reviews) and several books, including *Powell on Real Property* and *The Zoning of America: Euclid v. Ambler*.

