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Brigham-Kanner Property Rights Conference

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19th Annual Brigham-Kanner Property Rights Conference (program)

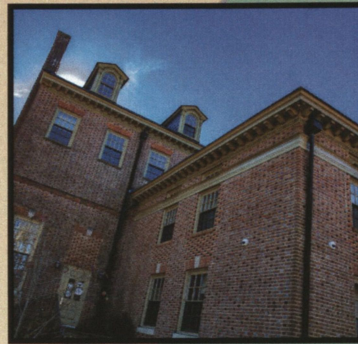
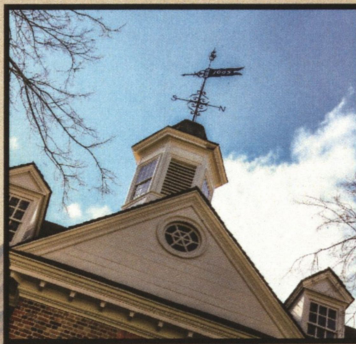
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September 29–30, 2022



19th
Annual

BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE

and presentation of the
2022 Brigham-Kanner Prize to
James Burling
Vice President of Legal Affairs
Pacific Legal Foundation

Sponsored by
William & Mary Law School

Presented by the
William & Mary Property Rights Project



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

SCHEDULE

OF EVENTS

Thursday, September 29, 2022

6:30pm – 9:00pm

PRESENTATION OF THE 2022 BRIGHAM-KANNER PRIZE

William & Mary, Wren Building, Great Hall

Friday, September 30, 2022

8:00am – 9:00am

REGISTRATION AND CONTINENTAL BREAKFAST

Lobby

William & Mary Law School

9:00am - 10:30am

The Importance of Property Rights: A Tribute to James S. Burling

Room 119

For the whole of his professional career, James Burling has devoted his practice to protecting and advancing private property rights. From rent control and inclusionary zoning to government-authorized seizures, flooding, and the meaning of “public use,” James has worked vigorously to reaffirm private property as fundamental to individual liberty, shoring up the “boundaries” of property, in both a physical and economic sense. Using James’ work as a springboard, this panel probes the boundaries of property rights and the extent to which courts and commentators disagree about property’s reach.

Opening Remarks: James Burling, Vice President of Legal Affairs, Pacific Legal Foundation

Panelists

Vicki Been, Judge Edward Weinfeld Professor of Law, NYU School of Law

Michael Berger, Senior Counsel, Manatt, Phelps & Phillips, LLP

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

Eric Claeys, Professor of Law, Antonin Scalia Law School, George Mason University

Moderator

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

10:30am - 10:45am

Networking Break

Lobby

10:45am - 12:00pm

Reshaping the Framework: Protecting Property Under the Roberts Court

Room 119

The Roberts Court has announced a number of decisions expanding the importance of property under the Constitution. In addition to reshaping takings jurisprudence in decisions such as *Knick*, *Cedar Point*, *Horne*, *Koontz*, and other decisions, the Court has shown a willingness to apply a property lens to other constitutional provisions. This panel explores the impact of the Roberts Court on the constitutional framework protecting property.

Panelists

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

Timothy M. Mulvaney, Professor of Law, Texas A&M University School of Law

David Owen, Professor of Law, UC Hastings College of Law

Robert Thomas, Joseph T. Waldo Visiting Chair in Property Rights Law, William & Mary Law School, and Senior Attorney, Pacific Legal Foundation

Moderator

James Stern, Professor of Law, William & Mary Law School

12:00pm – 1:00pm

Lunch Break

Lobby

1:00pm - 2:00pm

Roundtable: Emerging Issues in Takings and Property Rights Litigation

Room 119

Panelists

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

Leslie Fields, Executive Director, Owners' Counsel of America

Chris Kieser, Attorney, Pacific Legal Foundation

Moderator

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

2:00pm - 2:15pm

Lobby

Networking Break

2:15pm - 3:30pm

Room 119

Choosing a Property Regime

Some view property primarily as a choice between public and private rights. Others envision the institution of property as having a more complex array of arrangements. Those other arrangements might, for example, include open access (e.g., ocean fisheries), semi-commons (such as shared pasture lands), and inherently public property (navigable waters), with the choice depending on the nature of the resource, the context, and core societal and political values. This panel considers the efficacy of different property regimes for various situations, exploring the factors that affect the choice of a regime for particular resource and social settings and the role of core political and social values in making the choice.

Panelists

Gregory S. Alexander, Robert Noll Professor of Law, *Emeritus*, Cornell Law School

Bethany Berger, Wallace Stevens Professor of Law, University of Connecticut Law School

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

Randall A. Smith, Founder and Managing Partner, Smith & Fawer, LLC

Moderator

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

3:30pm – 3:45pm

Lobby

Networking Break

3:45pm – 5:00pm

Room 119

Property Rights in Times of Scarcity and Crisis

How resilient are property rights in times of prolonged resource scarcities and serious environmental crises? Under what circumstances would private rights holders support efforts to reform the law governing their interests? How much change could a private property system absorb and remain stable? This panel explores these questions and more in the context of recent efforts to address severe droughts, wildfires, and other environmental disasters.

Panelists

Holly Doremus, James H. House and Hiram H. Hurd Professor of Environmental Regulation, Berkeley Law School

Hertha L. Lund, Attorney/Founder, Lund Law, PLLC

Vanessa Casado Perez, Associate Professor of Law, Texas A&M University School of Law

Terry L. Anderson, John & Jean DeNault Senior Fellow, Hoover Institution, Stanford University

Moderator

Joshua Baker, Partner, Waldo & Lyle

5:00pm – 5:30pm

Lobby

Reception

Light refreshments – including soda, water, beer, and wine – will be served, along with snacks, to thank everyone for their participation and attendance at 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 James Burling for his outstanding contributions as a practitioner and scholar.

James Burling

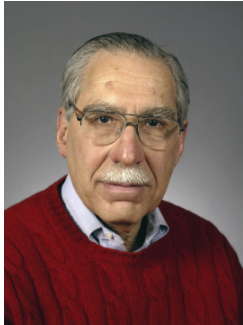


James Burling is Pacific Legal Foundation's Vice President of Legal Affairs in Sacramento, California, and litigates property rights cases nationwide. In 2001, he argued *Palazzolo v. Rhode Island* before the Supreme Court. He received a master's degree in geological sciences from Brown University, an undergraduate degree from Hamilton College, and his Juris Doctor from the University of Arizona College

of Law in 1983. 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, an organization comprised of eminent domain attorneys who represent property owners. The Owners' Counsel awarded James its Crystal Eagle award in 2013.

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, commodi-

fication, 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 on the Board of Editors of the Foundation Press and is a member of the American Academy of Arts and Sciences.



2011

Justice Sandra Day O'Connor

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



2012

James E. Krier

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.

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.



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

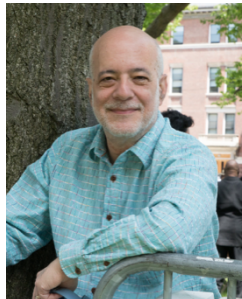


2014

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 Smith

Henry Smith is the Fessenden Professor of Law at Harvard Law School. Smith directs the Project on the Foundations of Private Law at Harvard

Law School. Previously, Smith taught at the Northwestern University School of Law and was the Fred A. Johnston Professor of Property and Environmental Law at Yale Law School. He holds an A.B. from Harvard, a Ph.D. in Linguistics from Stanford, and a J.D. from Yale. After law school he clerked for the Hon. Ralph K. Winter, United States Court of Appeals for the Second Circuit. Smith has written primarily on the law and economics of property and intellectual property, with a focus on how property-related institutions lower information costs and constrain strategic behavior. He teaches primarily in the areas of property, intellectual property, natural resources, remedies, and law and economics. In 2015–16, Smith served as the President of the Society for Institutional and

Organizational Economics, and in 2014, the American Law Institute named him Reporter for a Fourth Restatement of Property.



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.

PANELISTS AND MODERATORS

BIOGRAPHIES



Gregory S. Alexander

Gregory S. Alexander taught at Cornell Law School from 1984 until his retirement from full-time teaching in 2018. 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 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*. 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). He has delivered named lectures at many law schools, both in the United States and around the world.



Terry L. Anderson

Terry L. Anderson is the John and Jean DeNault Senior Fellow at the Hoover Institution, Stanford University; past president of the Property and Environment Research Center, Bozeman, MT; and Professor Emeritus at Montana State. Much of his career focused on developing the idea of *Free Market Environmentalism* (3rd edition). He has authored or edited 42 books, including *Adapt and Be Adept: Market Response to Climate Change*. He lives in Montana with his wife, Monica, where they enjoy fishing, hunting, horseback riding, and skiing in Big Sky Country.



Joshua E. Baker

Joshua E. Baker is the managing partner at Waldo & Lyle, P.C. He limits his practice to representing property owners in eminent domain proceedings and defending their private property rights. Mr. Baker is a frequent author and speaker on eminent domain issues and is involved in a wide range of activities to litigate and advocate on behalf of property owners and the safeguarding of private property rights at large. Mr. Baker is a “Best Lawyer” and is a Virginia member of Owners’ Counsel of America, a nationwide network of eminent domain attorneys.



Bethany Berger

Bethany Berger is the Wallace Stevens Professor at the University of Connecticut School of Law. A widely read scholar, she is a co-author of leading casebooks in Property Law and American Indian Law and amicus briefs to the U.S. Supreme Court in both fields. Before entering academia, Professor Berger was the director of the Native American Youth Law Project at DNA-Peoples Legal Services on the Navajo and Hopi Nations. She has served as a visiting professor at Harvard Law School and the University of Michigan and as a judge for the Southwest Intertribal Court of Appeals.



Andrew Prince Brigham

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



Lynda L. Butler

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



Eric Claeys

Eric Claeys is Professor of Law at Antonin Scalia Law School, George Mason University. Professor Claeys has published extensively on property law, property theory, and eminent domain law. He justifies property as a legal institution securing natural rights consistent with traditional principles of natural law, and he is the author of *Natural Property Rights* (forthcoming, Cambridge University Press, 2023).



**Katherine Mims
Crocker**

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



Holly Doremus

Holly Doremus is an elected fellow of the American Association for the Advancement of Science and a member of the Board of Directors of Defenders of Wildlife. She holds a Ph.D. in plant physiology from Cornell University and a J.D. from UC Berkeley. The intersection between property rights and environmental regulation has been a major focus of her scholarship.



Leslie Fields

Leslie Fields is Executive Director of Owners' Counsel of America, a national business association consisting of the leading eminent domain lawyers in the country. OCA members devote a significant portion of their practice representing and defending private property owners. Prior to becoming Executive Director of OCA, Leslie practiced at Faegre Baker Daniels, where she served on the firm's management board and became a national expert on eminent domain and property rights issues, co-chairing for many years the ALI-CLE conference on eminent domain and land valuation. Over 33 years of practice, Leslie was involved in every major governmental project in the state of Colorado, argued precedent-setting cases before the Colorado Court of Appeals and the Colorado Supreme Court, and authored the leading textbook *Colorado Eminent Domain Practice*. In recognition of her trial experience and expertise, Leslie was inducted into the American College of Trial Lawyers.



Chris Kieser

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

a Supreme Court victory in *Cedar Point Nursery v. Hassid*. Chris clerked for the Honorable Daniel A. Manion of the United States Court of Appeals for the Seventh Circuit and the Honorable Thomas D. Schroeder of the United States District Court for the Middle District of North Carolina. He graduated magna cum laude from Notre Dame Law School, where he was an articles editor of the *Notre Dame Law Review*.



Hertha L. Lund

Hertha Lund has been defending landowners’ rights for more than thirty years. She has trial experience and has prevailed in high value cases involving property rights. Hertha has appeared before the

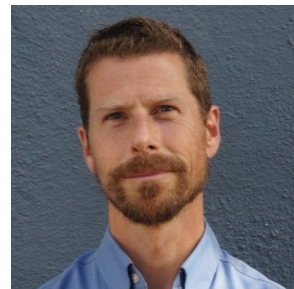
Montana Supreme Court, the Federal District Court of Montana, the Ninth Circuit Court of Appeals, the United States Court of Federal Claims, and the United States Supreme Court. In 1995, she clerked for Chief Judge Loren A. Smith of the United States Court of Federal Claims. Hertha is the founder and owner of Lund Law PLLC and is the Montana member in the Owners’ Counsel of America. She practices in the areas of property rights litigation, eminent domain, water rights and other general litigation. Hertha grew up on several large cattle ranches in Montana. Currently, Hertha lives on a cattle ranch with her husband, several cow dogs, many cows, and a few horses near Lennep, Montana.



Timothy M. Mulvaney

Timothy M. Mulvaney is a Professor of Law at Texas A&M University School of Law. He writes and teaches in the

areas of the property, land use, and environmental law. His most recent works include *Under Property Taxes*, 123 *Columbia Law Review* (forthcoming 2023); *Essential Property*, 107 *Minnesota Law Review* (forthcoming 2022) (co-authored with Joseph W. Singer); *Property’s Compulsory Terms*, 116 *Northwestern University Law Review* (forthcoming 2022); *Takings Localism*, 121 *Columbia Law Review* 215 (2021) (co-authored with Nestor Davidson); and *Walling Out*, 94 *Southern California Law Review* (2021).



Dave Owen

Dave Owen teaches courses in environmental, water, land use, energy, and administrative law at UC Hastings. He

went to Berkeley Law, where he served as editor-in-chief of *Ecology Law Quarterly*, clerked, and practiced water law. In 2007, he began teaching at the University of Maine. He joined the Hastings faculty in 2015. His research focuses primarily on water resource management, and recent projects have addressed environmental regulatory negotiations, takings litigation, groundwater-surface water interactions, the environmental consulting industry, the roles of federal regional offices, stream protection under the Clean Water Act, and policies to expedite dam removals and hydropower upgrades.



Vanessa Casado Perez

Vanessa Casado Pérez is a Professor and Dean's Research Chair at Texas A&M School of Law and

a Research Associate Professor at Texas A&M Department of Agricultural Economics. Her scholarship focuses on property and natural resources law. She was the Pace-Haub Environmental Law 2021-22 Distinguished Junior Scholar and the 18th Wallace Stegner Center Young Scholar at the University of Utah S.J. Quinney College of Law. Her research has been published, among others, by *NYU Law Review*, *Northwestern Law Review*, *Iowa Law Review*, and the *University of Southern California Law Review*.



Jessica A. Shoemaker

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

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



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 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 Hawai'i Law School) serves as the Joseph T. Waldo Visiting Chair in

Property Rights Law at William & Mary Law School and is a senior attorney at Pacific Legal Foundation where he leads the property rights program. Before joining PLF, he was in private practice in Hawaii 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.

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.

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 9,517 full-time (graduate and undergraduate) students with a twelve to one student/faculty ratio. *U.S. News and World Report: Best Colleges 2022* ranks the College tenth among top public schools in the country. Known as “the alma mater of a nation,” William & Mary has educated three American presidents—Thomas Jefferson, James Monroe and John Tyler—and George Washington served as its first chancellor.

Katherine A. Rowe was sworn in as the twenty-eight president of William & Mary on July 1, 2018, becoming the first female president of William & Mary in its 328-year history. Before assuming her current post, she served as provost and dean of faculty at Smith College in Massachusetts.

