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**PROFESSIONAL**

COLUMBIA LAW SCHOOL, New York, N.Y. Charles Evans Hughes Professor of Law (2010- ). Principal courses taught: Property, Torts, Legislation, Administrative Law, Seminar on Takings Clause.

YALE LAW SCHOOL, New Haven, CT. Professor of Law (2008- 2009).

COLUMBIA LAW SCHOOL, New York, N.Y. Charles Keller Beekman Professor of Law (2003- 2008).

NORTHWESTERN UNIVERSITY SCHOOL OF LAW, Chicago, Illinois. John Paul Stevens Professor of Law (1993-2003); Professor (1986-1993; on leave 1987-1990); Associate Professor (1984-85); Assistant Professor (1981-1984).

U.S. DEPARTMENT OF JUSTICE, Washington, D.C. Deputy Solicitor General (1987-1990).

SIDLEY & AUSTIN, Chicago, Illinois. Counsel (1981-1987, 1990-2005). Previously Associate (1979-81).

Law Clerk to HON. HARRY A. BLACKMUN, Associate Justice, U.S. Supreme Court, 1978-79.

Law Clerk to HON. DAVID L. BAZELON, Chief Judge, United States Court of Appeals, D.C. Circuit, 1977-78.

NATIONAL BANK OF DETROIT, Detroit, Michigan. Investment Analyst, Trust Department, 1973-74.

**EDUCATION**

UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, Illinois.  
J.D. Cum Laude. Articles Editor, Law Review, 1974-77.

OXFORD UNIVERSITY, Oxford, England. B.A. with First Class Honors, Philosophy, Politics, and Economics, 1971-73.

GRINNELL COLLEGE, Grinnell, Iowa. B.A. in History with Honors, 1967-71.

## **POSITIONS, FELLOWSHIPS AND HONORS**

Fellow, American Law Institute, 2015-present.

Brigham-Kanner Prize for Property Scholarship, William and Mary Law School, 2013.

Visiting Professor, University of Tel Aviv Law School, Dec. 2010-Jan. 2011.

Roscoe Pound Visiting Professor of Law, Harvard Law School, 2008 (spring).

Robert D. McLean Visiting Professor of Law, Yale Law School, 2007 (fall).

Board of Editors, Foundation Press, 2005-present.

Fellow, American Academy of Arts and Sciences, 2004 -present.

ABA Section on Administrative Law Award for Distinguished Scholarship, November 2003 (with Kathryn Watts).

Visiting Scholar, University of Chicago Law School, 2003 (winter and spring).

Stephen and Barbara Friedman Visiting Professor of Law, Columbia University, 2002.

Ewald Visiting Professor of Law, University of Virginia, 1999.

Honorary Doctor of Laws, Grinnell College, May 1995.

ABA Section on Administrative Law Award for Distinguished Scholarship, October 1993.

General Motors Corporation, Legal Scholar In Residence, May-August 1990.

Order of the Coif, 1977.

Rhodes Scholarship, 1971-73.

Danforth Fellowship, 1971-77.

Phi Beta Kappa, 1971.

## PUBLICATIONS

### ***BOOKS***

**PROPERTY: PRINCIPLES AND POLICIES** (Second Edition, Foundation Press 2012) (with Henry E. Smith).

**THE OXFORD INTRODUCTIONS TO U.S. LAW: PROPERTY** (Oxford U. Press 2010) (with Henry E. Smith).

**PROPERTY: PRINCIPLES AND POLICIES** (Foundation Press 2007) (with Henry E. Smith).

**PROPERTY: TAKINGS** (Foundation Press Turning Point Series 2002) (with David Dana).

### ***BOOK CHAPTERS***

**Ownership and Possession**, in **LAW AND ECONOMICS OF POSSESSION** (Cambridge U. Press, Yun-Chien Chang ed. 2015).

**Property and Fire**, in **WILDFIRE POLICY: LAW AND ECONOMICS PERSPECTIVES** (Resources for the Future, Karen M. Bradshaw and Dean Lueck eds. 2012).

**Private Property and Public Rights**, in **RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW** 75-103 (Kenneth Ayotte and Henry E. Smith eds. 2011).

**The Story of *Chevron USA Inc. v. Natural Resources Defense Council, Inc.* (1984): Sometimes Great Cases are Made Not Born**, in **STATUTORY INTERPRETATION STORIES** 164-194 (William N. Eskridge, Jr., Philip P. Frickey, Elizabeth Garrett eds., 2011); reprinted in 66 **ADMIN. L. REV.** 253 (2014).

**Preemption in Environmental Law: Formalism, Federalism Theory, and Default Rules**, in **FEDERAL PREEMPTION: LAW AND POLITICS** 166-193 (Richard Epstein & Michael Greve eds. 2007).

**Internal Dynamics of Term Limits for Justices**, in **REFORMING THE COURT: TERM LIMITS FOR SUPREME COURT JUSTICES** 225-48 (Roger Crampton & Paul Carrington eds. 2006).

**The Story of *Chevron*: the Making of an Accidental Precedent**, in **ADMINISTRATIVE LAW STORIES** 398-428 (Peter Strauss, ed. 2006).

**The Story of *SWANCC*: Federalism and the Politics of Locally Unwanted Land Uses**, in **ENVIRONMENTAL LAW STORIES** 283-319 (Richard Lazarus & Oliver Houck, eds. 2005), reprinted in *The Environmental Forum*, vol. 23 no. 1 (Jan/Feb 2006).

***PRINCIPAL ACADEMIC ARTICLES***

**Anticipatory Remedies for Takings**, 128 HARV. L. REV. 1630 (2015).

**Step Zero After *City of Arlington***, 83 FORD. L. REV. 753 (2014).

**Dodd-Frank Orderly Liquidation Authority: Too Big for the Constitution?**, 163 U. PA. L. REV. 165 (2014) (with Margaret L. Merrill).

**Property and the Right to Exclude II**, 3 BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE J. 1 (2014).

**Why Restate the Bundle?: The Disintegration of the Restatement of Property**, 79 BROOKLYN L. REV. 681 (2014) (with Henry E. Smith).

**The Shale Oil and Gas Revolution, Hydraulic Fracturing, and Water Contamination: A Regulatory Strategy**, 98 MINN. L. REV. 145 (2013) (with David M. Schizer); reprinted as condensed 45 ENV. L. REPTR.10734 (2015).

**Contested Shore: Property Rights in Reclaimed Land and the Battle for Streeterville**, 107 NW. U. L. REV. 1057 (2013) (with Joseph D. Kearney).

**The Property Strategy**, 160 U. PA. L. REV. 2061 (2012).

**Making Coasean Property More Coasean**, 54 J. L. & ECON. S77 (2011) (with Henry E. Smith).

**Private Rights in Public Lands: The Chicago Lakefront, Montgomery Ward, and the Public Dedication Doctrine**, 105 NW. U. L. REV. 1417 (2011) (with Joseph D. Kearney).

**Article III, Agency Adjudication, and the Origins of the Appellate Review Model of Administrative Law**, 111 COLUM. L. REV. 939 (2011).

**Is Public Nuisance a Tort?** 4 J. TORT L. ISSUE 2, Article 4 (B.E. Press, 2011).

***Melms v. Pabst Brewing Co.* and the Doctrine of Waste in American Property Law**, 94 MARQUETTE L. REV. 1055 (2011).

**Faithful Agent, Integrative, and Welfarist Interpretation**, 14 LEWIS & CLARK L. REV. 1565 (2010).

**Direct Voting by Property Owners**, 77 U. CHI. L. REV. 275 (2010).

**Energy Policy for an Economic Downturn: A Proposed Petroleum Fuel Price Stabilization Plan**, 27 YALE J. ON REG. 1 (2010) (with David M. Schizer).

**Accession and Original Ownership**, 1 J. LEGAL ANALYSIS (2009).

**Preemption and Institutional Choice**, 102 NW. U. L. REV. 727 (2008).

**The Morality of Property**, 48 WM & MARY L. REV. 569 (2007) (with Henry E. Smith).

**The *Accardi* Principle**, 74 GEO. WASH. L. REV. 569 (2006).

***Marbury v. Madison* as the First Great Administrative Law Decision**, 37 JOHN MARSHALL L. REV. 481 (2004).

**Rethinking Article I, Section 1: From Nondelegation to Exclusive Delegation**, 104 COLUM. L. REV. 2097 (2004).

**The Origins of the American Public Trust Doctrine: What Really Happened in *Illinois Central***, 71 U. CHI. L. REV. 799 (2004) (with Joseph D. Kearney).

**The Making of the Second Rehnquist Court: A Preliminary Analysis** (Childress Lecture), 47 ST. LOUIS U. L.J. 569 (2003).

**The *Mead* Doctrine: Rules and Standards, Meta-Rules and Meta-Standards**, 54 ADMIN. L. REV. 807 (2002).

**Agency Rules with the Force of Law: The Original Convention**, 116 HARV. L. REV. 467 (2002) (with Kathryn Tongue Watts).

**What Happened to Property in Law and Economics?**, 111 YALE L. J. 357 (2001) (with Henry Smith).

**The Property/Contract Interface**, 101 COLUM. L. REV. 773 (2001) (with Henry Smith).

***Chevron's* Domain**, 89 GEO. L. J. 833 (2001) (with Kristin Hickman).

**The Landscape of Constitutional Property**, 86 VIR. L. REV. 885 (2000).

**Optimal Standardization in the Law of Property: The *Numerus Clausus* Principle**, 110 YALE L. J. 1 (2000) (with Henry Smith).

**The Influence of Amicus Curiae Briefs on the Supreme Court**, 148 U. PA. L. REV. 743 (2000) (with Joseph D. Kearney).

**Explaining Market Mechanisms**, 2000 U. ILL. L. REV. 275.

**The Constitution and the Cathedral: Prohibiting, Purchasing, and Possibly Condemning Tobacco Advertising**, 93 NW. U. L. REV. 1143 (1999).

**High-Level, “Tenured” Lawyers**, 61 LAW & CONTEMP. PROB. 83 (1998).

**The Great Transformation of Regulated Industries Law**, 98 COLUM. L. REV. 1323 (1998) (with Joseph D. Kearney).

**Property and the Right to Exclude**, 77 NEB. L. REV. 730 (1998).

**Capture Theory and the Courts: 1967-1983**, 72 CHICAGO-KENT L. REV. 1039 (1997).

**Golden Rules for Transboundary Pollution**, 46 DUKE L. J. 931 (1997).

***Dolan v. City of Tigard*: Constitutional Rights as Public Goods**, 72 DENVER U. L. REV. 859 (1995).

**Chief Justice Rehnquist, Pluralist Theory, and the Interpretation of Statutes**, 25 RUTGERS L. J. 621 (1994).

**Textualism and the Future of the *Chevron* Doctrine**, 72 WASH. U. L. REV. 351 (1994).

**Judicial Opinions as Binding Law and as Explanations for Judgments**, 15 CARDOZO L. REV. 43 (1993).

**Judicial Deference to Executive Precedent**, 101 YALE L. J. 969 (1992).

**The Constitutional Principle of Separation of Powers**, 1991 SUPREME COURT REV. 225.

**Public Contracts, Private Contracts, and the Transformation of the Constitutional Order**, 37 CASE W. RES. L. REV. 597 (1987).

**Bargaining in the Shadow of Eminent Domain: Valuing and Apportioning Condemnation Awards Between Landlord and Tenant**, 34 UCLA L. REV. 1083 (1987) (with Victor Goldberg and Daniel Unumb).

**The Economics of Public Use**, 72 CORNELL L. REV. 61 (1986).

**Property Rules, Liability Rules, and Adverse Possession**, 79 NW. U. L. REV. 1122 (1985).

**The Common Law Powers of Federal Courts**, 52 U. CHI. L. REV. 1 (1985).

**Trespass, Nuisance, and the Costs of Determining Property Rights**, 14 J. LEGAL STUD. 13 (1985).

**First Amendment Protection for Commercial Advertising: The New Constitutional Doctrine**, 44 U. CHI. L. REV. 205 (1976) (student comment).

***OTHER SELECT WRITINGS***

**A Comment on Metzger and Zaring: The Quicksilver Problem**, 78 LAW & CONTEMP. PROBS. No. 3 at 189 (2015).

**Four Questions About Fracking**, 63 CASE W. RES. L. REV. 971 (2013).

**Property as Modularity**, 125 HARV. L. REV. ONLINE (2012).

**Justice Stevens and the *Chevron* Puzzle**, 106 NW. U. L. REV. 551 (2012).

**The Character of the Governmental Action**, 36 VER. L. REV. 649 (2012).

**The Property Prism**, 8 ECON. JOURNAL WATCH 247 (2011).

**Why *Lingle* is Half Right**, 11 VER. J. ENV. L. 421 (2010).

**The Disposing Power of the Legislature**, 110 COLUM. L. REV. 452 (2010).

**Delegation and Judicial Review**, 33 HARV. J. L. & PUB. POL'Y 73 (2010).

**Public Use/Popular Constitutionalism**, 11 POWELL ON REAL PROPERTY WFL08-1-WFL08-16 (2008).

**The Conservative Case for Precedent**, 31 HARV. J. L. & PUB. POL'Y 977 (2008).

**Originalism, Stare Decisis and the Promotion of Judicial Restraint**, 22 CONST. COMM. 271-88 (2005).

**Rescuing Federalism After *Raich*: The Case for Clear Statement Rules**, 9 LEWIS & CLARK L. REV. 823-51 (2005).

**Global Warming as a Public Nuisance**, 30 COLUM. J. ENV'TL L. 293 (2005).

**The Property Clause**, in THE HERITAGE FOUNDATION GUIDE TO THE CONSTITUTION (2005).

**Private Property and the Politics of Environmental Protection**, 28 HARV. J. L. & PUB. POL'Y 69 (2004).

**Introduction: The Demsetz Thesis and the Evolution of Property Rights**, 31 J. LEGAL STUD. S331 (2002).

**Incomplete Compensation for Takings**, 11 N.Y.U. ENVT'L L. REV. 110 (2002).

**Beyond the Independent Counsel: Evaluating the Options**, 43 ST. LOUIS U. L. REV. 1047 (1999).

**Compensation and the Interconnectedness of Property**, 25 ECOLOGY L. Q. 327 (1998).

**Trespass and Nuisance**, in THE NEW PALGRAVE DICTIONARY OF ECONOMICS AND THE LAW (Peter Newman, ed.) (1998).

**Toward a Principled Interpretation of the Commerce Clause**, 22 HARV. J. L. & PUB. POL'Y 31 (1998).

**A New Age of Federalism?** 1 GREEN BAG 2d 153 (1998).

**Does the Constitution Require that We Kill the Competitive Goose? Pricing Local Phone Services to Rivals**, 73 N.Y.U. L. REV. 1122 (1998) (with William J. Baumol).

**Deregulatory Takings, Breach of the Regulatory Contract, and the Telecommunications Act of 1996**, 72 N.Y.U. L. REV. 1037 (1997) (with William J. Baumol).

**Does Public Choice Theory Justify Judicial Activism After All?**, 21 HARV. J. L. & PUB. POL. 219 (1997)

**Institutional Choice and Political Faith**, 22 LAW & SOC. INQ. 959 (1997) (review essay of N. Komesar, *Imperfect Alternatives*).

**Bork v. Burke**, 19 HARV. J. L. & PUB. POL. 509 (1996).

**Constitutional Limitations on Physician Price Controls**, 21 HASTINGS CONST. L. Q. 635 (1994).

**A Modest Proposal for a Political Court**, 17 HARV. J. LAW & PUB. POL'Y 137 (1994).

**Pluralism, the Prisoner's Dilemma, and the Behavior of the Independent Judiciary**, 88 NW. L. REV. 396 (1993).

**The Judicial Prerogative**, 12 PACE L. REV. 327 (1992).

**Zero-Sum Madison**, 91 MICH. L. REV. 1392 (1992) (review of J. Nedelsky, *Private Property and the Limits of American Constitutionalism*).

**Wealth and Property**, 38 UCLA L. REVIEW 489 (1990) (review of S. Munzer *A Theory of Property*).

**Rent Seeking and the Compensation Principle**, 80 NW. U. L. REV. 1561 (1986) (review essay of R. Epstein, *Takings: Private Property and the Power of Eminent Domain*).

## **PERSONAL**

Married to Kimberly Evans Merrill.

Three Daughters: Jessica (35), Margaret (32) m. Jeffrey Alleva, Elizabeth (30).