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PROFESSIONAL

COLUMBIA LAW SCHOOL, New York, N.Y. Charles Evans Hughes Professor of Law (2010-). Principal courses taught: Property, Administrative Law, Legislation and Regulation, Seminar on Property Theory, 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. Co-Reporter, Restatement (Fourth) of Property

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

THE *CHEVRON* DOCTRINE: ITS RISE AND FALL, AND THE FUTURE OF THE ADMINISTRATIVE STATE (Harvard U. Press, 2022).

PROPERTY: PRINCIPLES AND POLICIES (Fourth Edition, Foundation Press, 2022) (with Henry E. Smith and Maureen E. Brady). Previous editions (with Henry E. Smith) published in 2007, 2012, and 2017).

LAKEFRONT: PUBLIC TRUST AND PRIVATE RIGHTS IN CHICAGO (Cornell U. Press, 2021) (with Joseph D. Kearney).

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

PROPERTY: TAKINGS (Foundation Press, 2002) (with David Dana).

BOOK CHAPTERS

The Restatement of Property: The Curse of Incompleteness, in *The American Law Institute; A Centennial History* (Oxford U. Press, Andrew Gold and Robert W. Gordon eds, 2023).

Private and Public Law, in *THE OXFORD HANDBOOK OF THE NEW PRIVATE LAW* (Oxford U. Press, Andrew S. Gold et al. eds 2021).

The Architecture of Property, in *RESEARCH HANDBOOK ON PRIVATE LAW THEORY* (Edward Elgar, Hanoch Dagan & Benjamin Zipursky eds. 2020) (with Henry E. Smith).

Jerry Mashaw, the Due Process Revolution, and the Limits of Judicial Power, in *ADMINISTRATIVE LAW FROM THE INSIDE OUT* (Cambridge U. Press, Nicholas Parillo ed. 2017).

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* (Edwardd Elgar, 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 (Foundation Press, 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 (American Enterprise Institute, 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 (Carolina Academic Press, Roger Crampton & Paul Carrington eds. 2006).

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

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

PRINCIPAL ACADEMIC ARTICLES

The New Public Nuisance: Illegitimate and Dysfunctional, 132 YALE L. J. FORUM 985 (2023).

The Essential Meaning of the Rule of Law, 17 J. L., ECON. & POL'Y 673 (2022).

Re-Reading *Chevron*, 70 DUKE L. J. 1153 (2021).

Classical Liberal Property and the Question of Institutional Choice, 50 J. Legal Stud. S9 (2021).

The Compensation Constraint and the Scope of the Takings Clause, 96 NOTRE DAME L. REV. 1421 (2021).

Legitimate Interpretation –Or Legitimate Adjudication?, 105 CORNELL L. REV. 1395 (2020).

The Economics of Leasing, 12 J. LEGAL ANALYSIS 1 (2020).

Fair and Impartial Adjudication, 26 GEO. MASON L. REV. 897 (2019).

Choice of Law in Takings Cases, 8 BRIGHAM-KANNER PROPERTY RIGHTS J. 45 (2019).

Interpreting an Unamendable Text, 71 VAND. L. REV. 547 (2018).

The Public Trust Doctrine: Some Jurisprudential Variations and Their Implications, 38 HAW. L. REV. 261 (2016).

Presidential Administration and the Traditions of Administrative Law, 115 COLUM. L. REV. 1953 (2015).

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

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

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OTHER SELECT WRITINGS

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417 (2017).

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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).

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

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

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

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

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. ENV'TL L. REV. 110 (2002).

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

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).

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).

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

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

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*).

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

PERSONAL

Married to Kimberly Evans Merrill.

Three daughters: Jessica (42), Margaret (40) m. Jeffrey Alleva, Elizabeth (37) m. Mattis Krasberg; six grandchildren.