

The AALS PROPERTY LAW SECTION NEWSLETTER

November 2007

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SECTION OFFICERS

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AALS Annual Meeting New York, NY January 2-6, 2008

This year's AALS Annual Meeting in New York, NY will offer several programs of interest for property scholars. More information on these programs is included on Pages 4-6. Here are the day-by-day highlights:

Thursday, January 3

9:15 a.m. – 5:00 p.m.: **Workshop on Local Government at Risk: Immigration, Land Use, National Security and the Battle for Control**, a joint program of the Sections on Property Law, Real Estate Transactions, State and Local Government, and co-sponsored by the Section on Minority Groups.

12:30 p.m. – 2:00 p.m.: **AALS Workshop on Local Government at Risk Luncheon**

Saturday, January 5

7:00 a.m. – 8:30 a.m.: **The Property Section Breakfast.**

1:30 p.m. – 3:15 p.m.: **Section on Law and Anthropology, Cultural Properties: Minority Rights, and Commodification: New Perspective on Social Justice and Property Law**

3:30 p.m. – 5:15 p.m.: **Section on Property Law, The Biology of Property Law**

Sunday, January 6

9:00 a.m. – 10:45 a.m.: **Section on Property Law, Junior Scholars Works In-Progress**

A Note from the Incoming Chair

D. Benjamin Barros, Chair-Elect, Widener University School of Law

In my relatively short time in the legal academy, I have been impressed with the intellectual vigor and collegiality of the property professor community. I really enjoy the discussions on the Section listserv, especially the two most recurrent memes: the 4-5-6 credit debate and learned discussions of the classification of future interests. (*continued page 2*)

A Note from the Incoming Chair

D. Benjamin Barros, Widener University School of Law
(Continued from Page 1)

As the editor of the Property Prof Blog, I also have the opportunity to keep track of the property scholarship posted on SSRN and other on-line archives. Collectively, property professors are deeply engaged in their teaching and are producing fascinating scholarship. Every time I have the opportunity to meet other property profs in person, I always have a great time and learn a great deal.

It is therefore troubling to me that we don't have more opportunities to interact in person. We are in the planning stages of having a mid-year AALS meeting in the next few years, but that is a once- or twice-a-decade event. There are a handful of property conferences and symposia each year, but relative to our numbers and the terrific work that is being done, these seem to be too few. If you agree, how about organizing something yourself? Invite fifteen people to come to your school for a works-in-progress conference. Or put together a symposium on a property issue and get one of your school's journals to publish it. There are too many interesting people in the property law community for us to only have an opportunity to see each other once or twice a year.

Taking advantage of the opportunity that we have at the New York meeting, the Section has organized two exciting panels, both of which will be offering something a little different from the panels we have done in the past. First, on Saturday at 3:30 p.m., we will have a panel on the Biology of Property Law: What Evolutionary Theory and Cognitive Science Can Teach Us About Property Law. The panel will be moderated by Section Chair Ray Coletta, and will feature presentations by Oliver Goodenough of Vermont Law School and Jeff Stake of the University of Indiana, Bloomington about how evolutionary biology and cognitive neuroscience can shed light on human behavior as it relates to our property law system. (*continued 3*)

A Note from the Incoming Chair

**D. Benjamin Barros, Widener University School of Law
(Continued from Page 2)**

Then on Sunday at 9:00 a.m., we will have what we hope to be the first annual Property Section Junior Scholars Works-In-Progress panel. Junior property scholars were invited to submit papers for the panel, and from a very strong field two papers were selected by blind peer review to be presented. Nestor Davidson of the University of Colorado at Boulder will present *Standardization and Pluralism in Property Law*, and Lee Strang of Ave Maria School of Law will present *Damages as the Appropriate Remedy for "Abuse" of an Easement: Moving Toward Consistency, Efficiency, and Fairness in Property Law*. Links to both papers will be posted on the Property Prof Blog and circulated on the Section listerv in advance of the meeting. We hope that you will come and join in the discussion of these interesting papers.

Please also join us for the Property Section breakfast, which will be Saturday morning at 7:00 a.m. Also, please don't miss the Section's business meeting, which will immediately follow the Biology of Property Law panel on Saturday afternoon.

AALS Meeting Program

Thursday, 9:15 a.m. – 5:00 p.m.

Workshop on Local Government at Risk: Immigration, Land Use, National Security and the Battle for Control

9:30-10:45 a.m.

Cooperative or Clashing Federalism

Moderator: F. Michael Higginbotham, University of Baltimore School of Law

Speakers: David Jeremiah Barron, Harvard Law School

Jamin Ben Raskin, American University Washington College of Law

Natsu Taylor Saito, Georgia State University College of Law

Using immigration and related fields, the panel will discuss the complex intersection between national security, state sovereignty, and the fundamental hands-on force of municipal government. Local government jurisprudence is in flux, given the pressure on the states from the Patriot Act; constantly changing border control priorities; and the Supreme Court's shifting views of takings, individual rights, federalism, and separation of powers. We are challenged by the conclusion that citizenship at the national level has become blunt, negative, and exclusionary, while at the state and local level citizenship involves political, participatory, and educational dimensions. What are the legal issues and policy dynamics that permit transforming ideas about national political citizenship? About managing intensified conflict regarding immigration and national security at the state and local levels? Is there any chance of finding a balance between apparent ideologically driven federal policy imperatives and the rigid exercise of expanded police powers at the state and local level? When it comes to immigration, land use, and related fields, have we finally rendered impossible the federalism puzzle?

11:00 a.m. - 12:30 p.m.

Concurrent Sessions

- **Katrina Experience: Why Federalism Broke Down**

Disaster mitigation and response require cooperation among federal, state, and local governments. When Hurricane Katrina struck, the federal Department of Homeland Security had plans in place to cover both man-made and natural disasters. State and local government also were empowered to act. Why did these three levels of government fail to coordinate their efforts and execute an effective response? Why were elements of the federal National Response Plan executed ineffectively? What were the key failures at each level of government and what lessons can we learn from them? Is our federalist system of government, which was devised over two hundred years ago, resilient enough to meet the twenty-first century challenges posed by terrorism and natural disasters of an unprecedented scale such as Katrina?

- **Immigration Federalism**

This concurrent joins the contentious debate over the legal, practical, and moral dimensions of local government regulation of undocumented immigrants, with Hazelton, Pennsylvania's recent anti-immigrant foray at the center of the discussion.

AALS Meeting Program

12:30– 2:00 p.m

AALS Workshop Luncheon on Local Government at Risk

Speaker: The Honorable John Conyers, Jr., Member, United States Congress, 14th Congressional District of Michigan; Chair, House Committee on the Judiciary, Washington, DC

2:00–3:30 p.m.

Concurrent Sessions

- **Crimmigration**

The crimmigration concurrent examines the conflation of criminal law and immigration at the local level, focusing on the pressures for local government to partner with federal authorities to enforce immigration and War on Terror imperatives.

- **Land Use Federalism**

The exercise of land use controls continues to remain largely a local matter even though federal and state statutes in recent years have placed more restraints upon the exercise of many other local police powers. The interdependence of land uses and federal policy in such areas as transportation planning and hazardous flood mitigation has received widespread attention. Should the federal government play a stronger role in conditioning federal funding upon the implementation of land use controls that would better preserve the environment and mitigate the effect of natural disasters such as Hurricane Katrina? What role should the states play in effectuating sound land use policies? Should regional bodies, such as metropolitan planning organizations, be granted powers to enforce land use controls at the metropolitan level? Does Fifth Amendment takings jurisprudence or state statutory restrictions on eminent domain power in the wake of *Kelo v. City of New London* create barriers to the implementation of sound land use practices? If so, can these barriers be overcome? What guidance do we expect the U.S. Supreme Court will provide in the continuing debate over land use federalism

3:45 - 5:00 p.m.

Local Governments: Caught in the Middle

Moderator: Kevin R. Johnson, University of California at Davis School of Law

Speakers: Gerald E. Frug, Harvard Law School

Clare Huntington, University of Colorado School of Law

Michael Wishnie, Yale Law School

The final plenary panel will draw connections and conclusions from the preceding panels. Some of the issues that will be addressed are ways that supranational entities and international trade agreements and treaties are having notable effects on local governments; the Constitutional consequences of immigration exceptionalism; and state and local enforcement of civil immigration law, mandatory detention, labor trafficking, bilingual education and access to welfare.

AALS Meeting Program

Saturday, 7:00 a.m. – 8:30 a.m.

Property Section Breakfast

Saturday, 1:30 p.m. – 3:15 p.m.

Section on Law and Anthropology

Cultural Properties: Minority Rights, and Commodification: New Perspectives on Social Justice and Property Law

Moderator: Sonia K. Katyal, Fordham University School of Law

Speakers: Kristen A. Carpenter, University of Denver College of Law

Matthew L.M. Fletcher, Michigan State University College of Law

Angela R. Riley, Southwestern Law School

Susan Scafidi, Southern Methodist University Dedman School of Law

Gerald Torres, The University of Texas School of Law

Saturday, 3:30 p.m. - 5:15 p.m.

Section on Property Law

The Biology of Property: What Evolutionary Theory and Cognitive Science Can Teach Us about Property Law

Moderator: Raymond R. Coletta, University of the Pacific McGeorge School of Law

Speakers: Oliver R. Goodenough, Vermont Law School

Jeffrey Evans Stake, Indiana University School of Law-Bloomington

Evolutionary theory and cognitive science can provide numerous insights into why and how we structure our property laws as we do. There is a growing body of empirical studies that suggests that human notions of property may be based, in part, on certain genetic predispositions. Legal rules of possession may be grounded in evolutionary stable strategies; and many of these rules attempt to structure behavior that is geared to help solve the survival problems of our ancestors. New advances in cognitive neuroscience are enhancing our understandings of human thought and behavior and providing new insights into the bases of our property system. The panel will explore some of the biological bases of human behavior as they relate to property law.

Business Meeting at Program Conclusion

Sunday, 7:00 - 9:30 a.m.

AALS Workshop and Continental Breakfast for 2007 and 2008 Section Officers

Sunday, 9:00 - 10:45 a.m.

Section on Property Law

Junior Scholars Works-In-Progress

Recent Scholarship By Section Members

Frank S. Alexander (Emory Law School). *The Housing of America's Families: Control, Exclusion and Privilege*, 54 EMORY L. J. 1231-1270 (2005).

Frank S. Alexander, *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks*, (Local Initiatives Support Corporation & Fannie Mae Foundation, 2005), at www.lisc.org/content/publications/detail/793.

Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORDABLE HOUS. & COMMUNITY DEV. L. 140-169 (2005).

Gregory S. Alexander (Cornell Law School). *Demystologizing Property and the Illusion of Rules: A Response to Two Friendly Critics*, 92 Cornell L. Rev. 1275 (2007).

Jerry L. Anderson (Drake University Law School). *Countryside Access and Environmental Protection: An American View of Britain's Right to Roam*, 9 ENVIRONMENTAL LAW REVIEW (forthcoming 2007).

Jerry L. Anderson, *Britain's Right to Roam: Redefining the Bundle of Sticks*, 19 Geo. Int'l Envtl. L. Rev. 375 (2007).

Jerry L. Anderson, *Comparative Perspectives on Property Rights: The Right to Exclude*, 55 J. Legal Educ. 539 (2006).

Jerry L. Anderson & Dan Luebbering, *Zoning Bias II: A Study of Oregon's Zoning Commission Compensation Restrictions*, 38 Urb. Law. 63 (2006).

Melissa M. Berry, Donald J. Kochan, and Matthew J. Parlow, *Much Ado About Pluralities: Pride and Precedent Amidst the Cacophony of Concurrences, and Re-Percolation After Rapanos*, 15 Va. J. Soc. Pol'y & L. ___ (forthcoming 2008).

Michael Blumm (Lewis & Clark Law School). *From Martz to the 21st Century: A Half Century of Natural Resources Law Casebooks and Pedagogy*, 78 Colo. L. Rev. 647 (2006).

Michael Blumm, *The Mirage of Indian Reserved Water Rights and Western Streamflow Restoration in the McCarran Amendment Era: A Promise Unfulfilled*, 36 Envtl. L. 1157 (2006).

Michael Blumm, "Not Much Less Necessary Than the Atmosphere They Breathed:" *Salmon, Indian Treaties, and the Supreme Court--A Centennial Remembrance of United States v. Winans and Its Enduring Significance*, 46 Nat. Resources J. 489 (2006).

Michael Blumm, *Justice Kennedy and the Environment: Property, States' Rights, and a Persistent Search For Nexus*, 83 Wash. L. Rev. 665 (forthcoming 2007).

Michael Blumm, *Enacting Libertarian Property: Oregon's Measure 37 and Its Implications*, 85 Den. U. L. Rev. ___ (forthcoming 2008), at <http://ssrn.com/abstract=1005255>.

Carol Necole Brown & David S. Hill, *Basic Mortgage Law: Cases and Materials* (Carolina Academic Press 2d ed.) (2007).

Carol Necole Brown (UNC School of Law). *Drinking from a Deep Well: The Public Trust Doctrine and Western Water Law*, 34 Florida State University Law Review 1 (Fall 2006).

Carol Necole Brown & Serena M. Williams, *The Role of Public-Private Partnerships in New Orleans' Renewal*, 34 Fordham Urb. L.J. 689 (2007).

Carol Necole Brown, *Kelo v. City of New London and the Prospects of Development After a Natural Disaster*, in *Private Property, Community Development and Eminent Domain* (Robin Paul Malloy ed., Ashgate Publishing, forthcoming 2008).

Peter Byrne (Georgetown University Law Center). *Due Process Land Use Claims After Lingle*, 34 Ecology L.Q. 471 (2007).

Peter Byrne, *Affordable Housing, Land Tenure, and Urban Policy: The Matrix Revealed*, 34 Ford. Urb. L.J. 527 (2007).

Alejandro E. Camacho (Notre Dame Law School). *Can Regulation Evolve? Lessons from a Study in Maladaptive Management*, 55 UCLA L. Rev. 293 (forthcoming 2007). Daniel H. Cole, *Kelo's Legacy*, 37 Envt'l L.Rep. 10540 (June 2007).

Daniel H. Cole (Indiana University School of Law). *Political Institutions, Judicial Review, and Private Property: A Comparative Institutional Analysis*, 15 Sup. Ct. Econ. Rev. 141 (2007).

Recent Scholarship By Section Members

Daniel H. Cole, *Why Kelo is not Good News for Local Planners and Developers*, 22 Ga. St. U.L.Rev. 803 (2006).

Raymond R. Coletta (McGeorge School of Law). *Workbook on Estates and Future Interests*, (Thomson/West 2d ed.) (2007).

Jason J. Czarnecki & Mark L. Thomsen, *Advancing the Rebirth of Environmental Common Law*, 34 B.C. Envtl. Af. L. Rev. 1 (2007).

Mark Fenster (University of Florida Levin College of Law). *Regulating Land Use in a Constitutional Shadow: The Institutional Contexts of Exactions*, 58 Hastings L.J. 729-776 (2007).

Mark Fenster, *Takings, Version 2005: The Legal Process of Constitutional Property Rights*, 9 U. Pa. J. Const. L. 667-744 (2007).

Julia P. Forrester (SMU Dedman School of Law). *Still Crazy After All These Years: The Absolute Assignment of Rents in Mortgage Loan Transactions*, 59 Fla. L. Rev. 487 (2007).

Julia P. Forrester, *Still Mortgaging the American Dream: Predatory Lending, Preemption, and Federally-Supported Lenders*, 74 U. Cin. L. Rev. 1303 (2006).

Lynn Foster (UALR William H. Bowen School of Law). *Fifty One Flowers: Post-Perpetuities War Law and Arkansas's Adoption of USRAP*, 20 Univ. Ark. at Little Rock L. Rev. 411 (2007).

Jeffrey M. Gaba (SMU Dedman School of Law). *John Locke and the Meaning of the Takings Clause*, 72 Mo. L. Rev. 525 (2007).

Jeffrey M. Gaba, *Taking "Justice and Fairness" Seriously: Distributive Justice and the Takings Clause*, 43 Creighton L. Rev. 569 (2007).

Thomas P. Gallanis (University of Minnesota School of Law). *The Trustee's Duty to Inform*, 85 N.C. L. Rev. 1595 (2007).

Alice Kaswan (University of San Francisco School of Law). *The Domestic Response to Global Climate Change: What Role for Federal, State, and Litigation Initiatives?*, 42 U.S.F. L. Rev. ____ (forthcoming 2007).

Gregg W. Kettles, *Legal Responses To Sidewalk Vending: The Case Of Los Angeles, California, in Street Entrepreneurs: People, Place, & Politics in Local and Global Perspective*. (John Cross & Alfonso Morales, eds. London, Routledge 2007).

Gregg W. Kettles (Mississippi College School of Law). *Formal Versus Informal Allocation Of Land In A Commons: The Case Of The MacArthur Park Sidewalk Vendors*, 16 S. Cal. Interdis. L. J. (2006).

Browne Lewis (University of Detroit Mercy School of Law). *Children of Men: Balancing The Inheritance Rights Of Marital And Non-Marital Children*, 39 U. Tol. L. Rev. ____ (forthcoming Fall 2007).

Michael Lewyn (George Washington University Law School). *Five Myths About Sprawl*, 23 Harvard BlackLetter L.J. 81 (2007).

Michael Lewyn, *Shane Cralle, Planners Gone Wild: The Overregulation of Parking*, 33 Wm. Mitchell L. Rev. 613 (2007).

Michael Lewyn, *How Government Regulation Forces Americans Into Their Cars: A Case Study*, 16 Widener L.J. 839 (2007).

Michael Lewyn, *New Urbanist Zoning for Dummies*, 58 Ala. L. Rev. 257 (2006).

Michael Lewyn, *The Law of Sprawl: A Road Map*, 25 Quinnipiac L. Rev. 147 (2006).

Maureen E. Markey (Thomas Jefferson School of Law). *Ariadne's Thread: Leading Students Into and Out of The Labyrinth of The Rule Against Perpetuities*, 54 Clev. St. L. Rev. 337 (2006).

Juliet Moringiello, *False Categories in Commercial Law: The (Ir)Relevance of (In)Tangibility*, 35 Fla. St. U. L. Rev. ____ (forthcoming 2007).

Adam Mossoff (Michigan State University College of Law). *Patents as Constitutional Private Property: The Historical Protection of Patents under the Takings Clause*, 87 B.U. L. Rev. 689 (2007).

Recent Scholarship By Section Members

Adam Mossoff, *Who Cares What Thomas Jefferson Thought About Patents? Reevaluating the Patent "Privilege" in Historical Context*, 92 Cornell L. Rev. 953 (2007).

Carol M. Rose (University of Arizona Rogers College of Law). *What Federalism Tells Us About Takings Jurisprudence*, 54 UCLA L. Rev. 1681 (2007). Carol M. Rose, *The Moral Subject of Property*, 48 Wm. & Mary L. Rev. 1897 (2007).

Joseph William Singer (Harvard Law School). *Johan van der Walt, Law and Sacrifice: Toward Post-Apartheid Theory of Law*, 15 Soc. & Leg. Stud. 605 (2006) (book review).

Joseph William Singer, *After the Flood: Equality and Humanity in Property Regimes*, 52 Loy. L. Rev. 101 (2006).

Joseph William Singer, *Nine-Tenths of the Law: Title, Possession, and Sacred Obligations*, 38 Conn. L. Rev. 605 (2006).

Joseph William Singer, *The Ownership Society: Regulatory Takings and Just Obligations*, 30 Harv. Envtl. L.J. 309 (2006).

John G. Sprankling (McGeorge School of Law). *Understanding Property Law* (2d ed. 2007).

John G. Sprankling, *Property and Television*, 59 Rutgers L. Rev. 97 (2006).

John G. Sprankling, *Owning the Center of the Earth*, 55 UCLA L. Rev. ____ (forthcoming 2008).

Gregory M. Stein, Morton P. Fisher, Jr., & Marjorie Fisher, *A Practical Guide to Commercial Real Estate Transactions: From Contract to Closing* (American Bar Association; 2d edition forthcoming 2008).

Gregory M. Stein (University of Tennessee College of Law). *Mortgage Law in China: Comparing Theory and Practice*, __ Mo. L. Rev. ____ (forthcoming November 2007).

Gregory M. Stein, *The Chinese Land Use Right: Is It Property?*, 21 Probate and Property, No. 5, at 22 (Sept./Oct. 2007).

Gregory M. Stein, *Doomed to Re-Repeat History: The Triangle Fire, The World Trade Center Attack, and the Importance of Strong Building Codes*, 21 St. John's Journal of Legal Commentary 767 (2007).

Gregory M. Stein, *Acquiring Land Use Rights in Today's China: A Snapshot From on the Ground*, 24 UCLA Pacific Basin Law Journal 1 (2006).

Gregory M. Stein, *Nuance and Complexity in Regulatory Takings Law*, 15 William & Mary Bill of Rights Journal 389 (2006).

Aaron Schwabach (Thomas Jefferson School of Law). *Intellectual Property: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, 2007).

Aaron Schwabach, *Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere*, 2 Journal of International Media and Entertainment Law ____ (2007).

Liang Qinghua & Aaron Schwabach, *Measures to Protect the Tibetan Antelope under the CITES Framework*, 29 THOMAS JEFFERSON L. REV. 251 (2007).

Rose Cuison Villazor (SMU Dedman School of Law). *Blood Quantum and Equal Protection* (forthcoming California Law Review).