

## ERIC R. CLAEYS

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### EXPERIENCE

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Professor of Law, George Mason University, Arlington, Virginia. Associate Professor, 2007 – 2009; Professor, August 2009 – present.

My main teaching interests include Property, Torts, Jurisprudence, and Intellectual Property. I have also taught Remedies, Water Law, Estates and Trusts, Trade Secrets, Administrative Law, and several different Constitutional Law I courses.

Member, University Provost's ad hoc Law School Dean Retention Committee spring 2008, and ad hoc Law School Dean Search Committees 2014-15 and 2019-20. Chair of committees for faculty hiring (2008-09), promotion and tenure (2010-11).

Teacher of the Year, spring 2013 and spring 2015.

Visiting Professor, Harvard Law School, spring 2018. I taught Torts and Jurisprudence: Natural Law and Positivism.

Visiting Fellow, James Madison Program in American Ideals and Institutions, Princeton University, spring 2017.

Associate Professor of Law, Saint Louis University, 2006-07. Assistant Professor, 2001-2006.

Bigelow Teaching Fellow and Lecturer in Law, University of Chicago, 1999-2001.

Associate, Kirkland & Ellis, Washington, D.C., 1996-1999. Practiced appellate litigation.

Law Clerk to the Honorable William H. Rehnquist, Chief Justice of the United States, Washington, D.C., 1995-1996.

Law Clerk to the Honorable Melvin J. Brunetti, United States Court of Appeals for the Ninth Circuit, Reno, Nevada, 1994-1995.

Legislative Assistant to the Honorable Ronald C. Packard, Member of Congress (Oceanside, California), Washington, D.C., 1989-1991.

## **EDUCATION**

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University of Southern California, J.D. 1994.

Served as Editor-in-Chief of the *Southern California Law Review*, vol. 67, 1993-94.

Graduated Order of the Coif.

Princeton University, A.B. 1989.

Member, James Madison Society, James Madison Program in American Ideals and Institutions.

## **PUBLICATIONS AND WORKS IN PROGRESS**

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*Natural Property Rights*. New York: Cambridge University Press, forthcoming 2022. *Natural Property Rights* justifies property rights as legal rights securing natural rights grounded in basic principles of natural law and human flourishing. The justification offered compares favorably with other leading justifications for property, which rely on principles of autonomy, efficiency, or equality. The book focuses on cases and doctrines familiar from the law of real property, personal property, and water rights.

“Patent Injunctions, Economics, and Rights,” co-authored with Adam Mossoff, *Journal of Legal Studies* 49 (1) (forthcoming 2020), <https://www.ssrn.com/abstract=3197275>.

“Claim Communication in Intellectual Property: A Comment on *Right on Time*,” *Boston University Law Review* 100 (2020) 4-10.

“Property, Concepts, and Functions,” *Boston College Law Review* 60, no. 1 (2019): 1-72.

“Use and the Function of Property,” *American Journal of Jurisprudence* 63, no. 2 (2018): 221-58.

“Intellectual Property and Practical Reason,” *Jurisprudence* 9, no. 2 (2017): 251-75.

“Labor, Exclusion, and Flourishing in Property Law,” *North Carolina Law Review* 95, no. 2 (2017): 413-92.

“Sparks Cases in Contemporary Law and Economic Scholarship,” in *Encyclopedia of Austrian Law and Economics*, Todd J. Zywicki & Peter J. Boettke eds. (Northampton, MA: Edward Elgar Publishing, 2017), 233-60.

“Progressive Political Theory, Contemporary Politics, and the REINS Act,” in *Progressive Challenges to the Constitution: A New Republic*, Bradley S. Watson (ed.), Cambridge, UK: Cambridge University Press, 2017), 291-322.

## PUBLICATIONS AND WORKS IN PROGRESS (CONT'D)

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“The Case for Shale,” *National Affairs* 28, no. 2 (2016): 68-82.

Book Review, Adam J. MacLeod, *Property and Practical Reason*, *Modern Law Review* 79, no. 3 (2016): 751-56.

Panel Remarks from “Environmental Law: The Role of Congress in Environmental Law,” *Arizona Journal of Environmental Law & Policy* (2016), <http://www.ajelp.com/wp-content/uploads/Fed-soc-panel-congress-environment.pdf>.

“The Conceptual Relation Between IP Rights and Infringement Remedies,” *George Mason University Law Review* 22, no. 4 (2015): 825-64.

“On Corrective Justice and Rights in Property: A Comment on *Property Law and Social Morality*,” *Texas A&M Journal of Real Property Law* 2, no. 2 (2015): 205-28. Review of Peter Gerhart, *Property Law and Social Morality* (2014).

“On the ‘Property’ and ‘Tort’ in Trespass,” in *Philosophical Foundations of The Law of Torts*, ed. John Oberdiek (Oxford: Oxford University Press, 2014), 124-47.

“Productive Use in Acquisition, Accession, and Labor Theory,” in *Philosophical Foundations of Property Law*, ed. J.E. Penner & Henry E. Smith (Oxford: Oxford University Press, 2013), 13-45.

“Intellectual Usufructs: Trade Secrets, Hot News, and the Usufructuary Paradigm at Common Law,” in *Intellectual Property and the Common Law*, ed. Shyamkrishna Balganesh (Cambridge: Cambridge University Press, 2013), 424-48.

“On Cowbells in Rock Anthems (and Property in IP): A Comment on *Justifying Intellectual Property*,” *San Diego Law Review* 49, no. 4 (2012): 1033-67. Essay reviewing Robert Merges, *Justifying Intellectual Property* (2011).

“Exclusion and Private Law Theory: A Comment on *Property As the Law of Things*,” *Harvard Law Review Forum* 125, no. 7 (2012): 133-50. Comment on Henry E. Smith, *Property As the Law of Things*, 125 *Harvard Law Review* (2012): 1691.

“Rehnquist, William,” entry in the *Oxford Encyclopedia of American Political and Legal History*, ed. Donald Critchlow & Philip van der Meer (Oxford: Oxford University Press, 2012).

“Scalia, Antonin,” entry in the *Oxford Encyclopedia of American Political and Legal History*, ed. Donald Critchlow & Philip van der Meer (Oxford: Oxford University Press, 2012).

“Judicial Engagement and Civic Engagement: Four Case Studies,” *George Mason University Law Review* 19, no. 4 (2012): 887-907.

## **PUBLICATIONS AND WORKS IN PROGRESS (CONT'D)**

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- “Bundle-of-Sticks Notions in Legal and Economic Scholarship,” *Econ Journal Watch* 8, no. 3 (2011): 205-14.
- “Private Law Theory and Corrective Justice in Trade Secrecy,” *Journal of Tort Law* 4, no. 2, article 2 (2011), <http://www.bepress.com/jtl/vol4/iss2/art2/>.
- “Exclusion and Exclusivity in *Gridlock*,” *Arizona Law Review* 53, no. 1 (2011): 9-49. Review of Michael Heller, *The Gridlock Economy: How Too Much Ownership Wrecks Markets, Stops Innovations, and Costs Lives* (2008).
- “Obamacare and the Limits of Judicial Conservatism,” *National Affairs* 8 (Summer 2011): 56-76.
- “The Use Requirement at Common Law and Under the Uniform Trade Secrets Act,” *Hamline Law Review* 33, no. 3 (2010): 583-614.
- “Jefferson Meets Coase: Land-Use Torts, Law and Economics, and Natural Property Rights,” *Notre Dame Law Review* 85, no. 4 (2010): 1379-1446.
- “The Right to Exclude and the Shadow of the *Cathedral*: A Response to Parchomovsky and Stein,” *Northwestern University Law Review* 104, no. 1 (2010): 391-409. Response to Gideon Parchomovsky & Alex Stein, “Reconceptualizing Trespass,” *Northwestern University Law Review* 104 (2010): 391-409.
- “The Private Law and the Crisis in American Catholic Scholarship in the American Legal Academy,” *Journal of Catholic Social Thought* 7, no. 2 (2010): 253-87. Review of James Gordley, *Foundations of Private Law: Property, Tort, Contract, Unjust Enrichment* (2006).
- “Virtue and Rights in American Property Law,” *Cornell Law Review* 94, no. 4 (2009): 889-947. Response to Gregory S. Alexander, “The Social-Obligation Norm in American Property Law,” *id.* at 745-819, and Eduardo M. Peñalver, “Land Virtues,” *id.* at 821-88.
- “Property 101: Is Property a Thing or a Bundle?” *Seattle University Law Review* 32, no. 3 (2009): 617-50. Review of Thomas Merrill & Henry E. Smith, *Property: Principles and Policies* (2007).
- “Blackstone’s *Commentaries* and the Privileges or Immunities of United States Citizens,” *San Diego Law Review* 48, no. 3 (2008): 777-821.
- “The Private Society and Public Good in John Locke’s Thought,” *Social Philosophy and Policy*, 21, no. 2 (2008): 201-34.

## PUBLICATIONS AND WORKS IN PROGRESS (CONT'D)

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- “*Kelo*, the Castle, and Natural Property Rights,” in *Private Property, Community Development, and Eminent Domain*, ed. Robin Paul Malloy (Burlington, VT: Ashgate Publishing House, 2008): 35-55.
- “The National Regulatory State in Progressive Political Theory and Twentieth-Century Constitutional Theory,” in *Modern America and the Legacy of the Founding*, Ronald J. Pestritto & Thomas G. West eds. (Lanham, MD: Rowman & Littlefield Publishers, 2007), 35-74.
- “Justice Scalia and the Religion Clauses: A Reply to Professor Epps,” *Washington University Journal of Law & Policy*, 19, no. 1 (2006): 349-77. Response to “Some Animals Are More Equal Than Others: The Rehnquist Court and ‘Majority Religion,’” by Garrett Epps, *id.* at 323-47.
- “That ‘70s Show: Post-*Kelo* Eminent Domain Reform and the Administrative Law Revolution,” *Santa Clara Law Review*, 46, no. 4 (2006): 867-88.
- “The *Penn Central* Test and the Tension between Classical- and Modern-Liberal Theories of Property,” *Harvard Environmental Law Review*, 30, no. 2 (2006): 339-69.
- “*Takings*: An Appreciative Retrospective,” *William & Mary Bill of Rights Journal* 15, no. 2 (2006): 439-55. Comment on Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (1985).
- “*Raich* and Constitutional Conservatism at the Close of the Rehnquist Court,” *Lewis & Clark Law Review*, 9, No. 4: 791-822 (2005).
- “Zoning and Progressive Political Theory,” in *The Progressive Revolution in Politics and Political Science: Transforming the American Regime*, ed. Ken Masugi & John Marini (Lanham, MD: Rowman & Littlefield Publishers, 2005), 287-320.
- “Justice Sutherland and Commerce-Clause Federalism Before the New Deal,” *Publius: The Journal of Federalism*, 34, no. 4 (2004): 9-32.
- “Learning the Law,” *Claremont Review of Books*, 5, No. 2 (2005): 45-46. Review of Mark Warren Bailey, *Guardians of the Moral Order: The Legal Philosophy of the Supreme Court, 1860-1910* (2004).
- “The Telecommunications Act of 1996, the Takings Clause, and Tensions in Property Theory,” *Yale Journal on Regulation*, 22, No. 2 (2005): 205-41.
- “Don’t Waste a Teaching Moment: *Kelo*, Urban Renewal, and Blight,” *Journal of Affordable Housing & Community Development Law*, 15, no. 1: 14-19 (2005).

## PUBLICATIONS AND WORKS IN PROGRESS (CONT'D)

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- “Is the Future of Development Regulation Based in the Past? Toward a Market-Oriented, Innovation Friendly Framework,” *Journal of Urban Planning & Development* (2005). (Invited article, co-authored with primary author Samuel R. Staley.)
- “Progressive Political Theory and Separation of Powers on the Burger and Rehnquist Courts,” *Constitutional Commentary*, 21, no. 2 (2004): 405-44.
- “Public Use Limitations and Natural Property Rights,” *Michigan State Law Review*, 2004, no. 4: 877-928. (Symposium contribution.) Cited in *Kelo v. City of New London*, 125 S. Ct. 2655, 2679, 2681 (2005) (Thomas, J., dissenting).
- “*Euclid* Lives? The Uneasy Legacy of Progressivism in Zoning,” *Fordham Law Review*, 73, no. 2 (2004): 731-70.
- “Private Property and Takings on the Rehnquist Court,” *Northwestern Law Review*, 99, no. 1 (2004): 187-230.
- “The Food and Drug Administration and the Command-and-Control Paradigm,” *Saint Louis University Law Journal*, 49, no. 1: 105-29 (2004).
- “Takings, Regulations, and Natural Property Rights,” *Cornell Law Review*, 88, no. 6 (2003): 1549-1671.
- “The Limits of Empirical Political Science and the Possibilities of Living-Constitution Theory for a Retrospective on the Rehnquist Court,” *Saint Louis University Law Journal*, 47, no. 4 (2003): 737-52. Symposium commentary on Thomas W. Merrill, *The Making of the Second Rehnquist Court: A Preliminary Analysis*, *id.* at 569-658.
- “Rehnquist’s Court and the Living Constitution,” *Claremont Review of Books*, 3, no. 4 (2003), 20-22. Review of Herman Schwartz ed., *The Rehnquist Court: Judicial Activism on the Right* (2003), and Kenneth W. Starr, *First Among Equals: The Supreme Court in American Life* (2002).
- “The Living Commerce Clause: Federalism in Progressive Political Theory and the Commerce Clause after *Lopez* and *Morrison*,” *William & Mary Bill of Rights Journal*, 11, no. 1 (2002): 403-63.
- Note, “The Article III, Section 2 Games: A Game-Theoretic Account of Standing and Other Justiciability Doctrines,” *Southern California Law Review*, 67, no. 6: 1321-64 (1994).

## **PUBLIC SERVICE**

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Member, American Law Institute. Summer 2017 – present.

Adviser, American Law Institute, project on *Restatement (Fourth) of Property Law*, 2015 – present.

Member, Members' Consultative Group, project on *Restatement of Copyright*, summer 2017 – present.

Opinion-editorial: “Neil Gorsuch and the Natural Law,” *The Weekly Standard*, March 6, 2017, <http://www.weeklystandard.com/neil-gorsuch-and-natural-law/article/2007107>.

Testimony on the Regulations from the Executive in Need of Scrutiny Act, before the U.S. House of Representatives Judiciary Committee, March 5, 2013, and March 8, 2011.

Co-authored Brief of *Amicus Curiae* The Claremont Institute Center for Constitutional Jurisprudence in Support of Petitioners in *Kelo v. City of New London*, No. 04-108, United States Supreme Court (December 3, 2004). Argued for the rule of decision adopted by Justice Clarence Thomas in dissent, 125 S. Ct. 2655, 2677 (2005).

## **SELECTED PRESENTATIONS AND COMMENTARIES**

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“Composing Property Rights,” University of Illinois Urbana-Champaign College of Law, October 1, 2020 (virtual presentation).

“Property and Natural Rights in Nozick and in Anglo-American Legal Thought,” American Political Science Association Annual Meeting, Session on “Locke, the American Founding, and the Roots of Liberalism,” Washington D.C., fall 2019.

“Harms, Benefits, and Rights in Property Private Law,” Harvard Private Law Theory Workshop, October 25, 2017.

“Use and the Function of Property” and “Property, Concepts, and Functions.”

Property Works in Progress Conferences, Boston University School of Law, October 19, 2018, and Northeastern University, September 2017.

North American Workshop on Private Law Theory, Fordham University School of Law, November 5, 2016.

Presented lecture on “Exam Grading,” AALS Workshop for New Law School Teachers, June 27, 2008, and June 20, 2009, Washington, D.C.