

PUBLICATIONS

BOOKS

1. DISASTER LAW (Elgar 2010) (with M. Faure) (editor).
2. RESEARCH HANDBOOK ON PUBLIC CHOICE AND PUBLIC LAW (Elgar 2010) (with A. O'Connell) (editor).
3. JUDGMENT CALLS: POLITICS AND PRINCIPLE IN CONSTITUTIONAL LAW (Oxford University Press 2008) (with S. Sherry) (Honorable Mention, 2010 Scribes Book Award).
4. SECURITY V. LIBERTY: CONFLICTS BETWEEN CIVIL LIBERTIES AND NATIONAL SECURITY IN AMERICAN HISTORY (Russell Sage 2008) (editor).
5. PUBLIC CHOICE AND PUBLIC LAW (Elgar 2007) (editor).
6. RETAINED BY THE PEOPLE: THE 'SILENT' NINTH AMENDMENT AND THE CONSTITUTIONAL RIGHTS AMERICANS DON'T KNOW THEY HAVE (Basic Books 2007).
7. DISASTER LAW AND POLICY (Aspen Publishers, 2006 [with J. Chen], 2d ed. 2010 [with R. Verchick, J. Chen, and L. Sun]).
8. MODERN CONSTITUTIONAL THEORY: A READER (West Pub. Co., 5th ed. 2004)(with J. Garvey and T. Aleinikoff).
9. LINCOLN'S CONSTITUTION (University of Chicago Press, 2003).
10. ECO-PRAGMATISM: MAKING SENSIBLE ENVIRONMENTAL DECISIONS IN AN UNCERTAIN WORLD (University of Chicago Press, 1999).
11. THE FIRST AMENDMENT (Foundation Press, 1998, 2d ed. 2003, 3d ed. 2010).
12. DESPERATELY SEEKING CERTAINTY: THE MISGUIDED QUEST FOR CONSTITUTIONAL FOUNDATIONS (University of Chicago Press 2002) [with S. Sherry].
13. BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN LAW (Oxford University Press, 1997) [with S. Sherry] [New York Times "Notable Book of the Year"].
14. CASES AND MATERIALS ON CONSTITUTIONAL LAW: THEMES FOR THE CONSTITUTION'S THIRD CENTURY (West Publishing Co. 1993, 2d ed. 1998; 3d ed. 2003, 4th ed. 2010; with annual Supplements; Teacher's Manuals 1993, 1998, 2003, 2010) [with W. Eskridge and P. Frickey], 5th ed. 2013 [with W. Eskridge and J. Schacter].
15. LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION (University of Chicago Press, 1991) [with P. Frickey].
16. A HISTORY OF THE AMERICAN CONSTITUTION (West Pub. Co., 1st ed. 1989, 2nd ed. 2005, 3d ed. 2013) [with S. Sherry].
17. ENVIRONMENTAL LAW IN A NUTSHELL (West Pub. Co., 1st ed. 1983, 2nd ed. 1988; 3rd ed. 1992; Japanese translation, 1992; 4th ed. 1995; 5th ed. 2000; 6th ed. 2003, 7th ed. 2008, 8th ed. 2010) [with R. Findley].
18. ENVIRONMENTAL LAW: CASES AND MATERIALS (West Pub. Co., 1st ed. 1981, 2nd ed. 1985, 3rd ed. 1991, 4th ed. 1995, 5th ed. 1999; with 1983, 1988, 1993, and 1997 Supplements; Teacher's Manuals 1992, 1995 and

1999) [with R. Findley], 6th ed. 2003 [with R. Findley and J. Freeman], 7th ed. 2006 [with J. Freeman and A. Carlson] (with 2008 Supplement), 8th ed. 2010 [with J. Freeman and A. Carlson], 9th ed. 2013 [with A. Carlson].

ARTICLES, ESSAYS, AND BOOK CHAPTERS

1. Climate Policy and the United States System of Divided Powers: Dealing with Carbon Leakage and Regulatory Linkage, 3 *Transnational Environmental Law* 31(2014) (peer reviewed)
2. Social, Economic, and Ethical Concepts and Methods (ch. 3), in Intergovernmental Panel on Climate Change, Working Group III – Mitigation of Climate Change (2014) (contributing author).
3. Catastrophic Risk, Climate Change, and Disaster Law, 16 *Asia Pacific J. Env. L.* 37 (2013) (peer reviewed).
4. The 14th Amendment and the Unconstitutionality of Secession, in Neil Cogan, *Union and States' Rights: A History and Interpretation of Interposition, Nullification, and Secession 150 Years After Sumter*(University of Akron Press 2013).
5. The Thirty Years War Over Federal Regulation, 92 *Tex. L. Rev.* 413 (2013) (review essay).
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REVIEWS AND COMMENTS

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35. The Death of Contra, 52 *Stanford L. Rev.* 889 (2000) (with Jim Chen) (under the name of “Gil Grantmore”).
36. Book Review, 17 *Const. Comm.* 137 (2000) (review of Stanley Fish, THE TROUBLE WITH PRINCIPLE).
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39. Book Review, *Shocking the Conscience: Pragmatism, Moral Reasoning, and the Judiciary*, 16 *Const. Comm.* 675 (1999) (review of Richard A. Posner, THE PROBLEMATICS OF MORAL AND LEGAL THEORY).
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42. Is American Law Inherently Racist? 15 *Cooley L. Rev.* 361 (1999) (with Richard Delgado).
43. Models of Reinvention, *Boston Review* (Oct./Nov. 1999) (reprinted in Charles Sabel, Archon Fung, and Bradley Karkkainen, BEYOND BACKYARD ENVIRONMENTALISM, 2000).
44. Legal Formalism and the Red-Hot Knife, 597 *U. Chi. L. Rev.* 597 (1999).

45. *Reserve Mining Revisited*, 83 *Minn. L. Rev.* 219 (1998).
46. Book Review, 15 *Const. Comm.* 571 (1998) (review of D. Rabban, *FREE SPEECH IN ITS FORGOTTEN YEARS*).
47. *Public Choice Revisited*, 96 *Mich. L. Rev.* 1715 (1998) (with P. Frickey) (review of Maxwell L. Stearns, *PUBLIC CHOICE AND PUBLIC LAW: READINGS AND COMMENTARY*).
48. *Constitutional Oddities*, 15 *Const. Comm.* 211 (1998).
49. *Saving Overton Park: A Comment on Environmental Values*, 146 *U. Penn. L. Rev.* 1671 (1998).
50. *Whither Socialism (Symposium: The New Private Law)*, 73 *Denver L. Rev.* 1011 (1996).
51. *The Coase Theorem and the Eleventh Amendment*, 13 *Const. Comm.* 141 (1996).
52. *The Hermeneutic Tourist*, 81 *Cornell L. Rev.* 513 (1996) (review of D. MacCormick and R. Summers, *INTERPRETING STATUTES: A COMPARATIVE STUDY*).
53. *The Dead Hand of the Architect*, 19 *Harv. J. of L. & Pub. Pol'y* 245 (1996).
54. *The Ages of American Formalism*, 90 *Nw. U. L. Rev.* 89 (1995).
55. *Poverty and Discrimination: Notes on AMERICAN APARTHEID*, 11 *Const. Comm.* 455 (1994-95).
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57. Comment, 21 *Ecology L.Q.* 549 (1994).
58. *Environmental Law as a Learning Experience*, 27 *Loyola L.A. L. Rev.* 791 (1994).
59. Review Essay: *Revitalizing Regulation*, 91 *Mich. L. Rev.* 1278 (1993).
60. *Wayne LaFave in the Classroom*, *U. Ill. L. Rev.* 177 (1983).
61. Book Review, 10 *Const. Comm.* 510 (1993) (review of Innes, *PRIVACY, INTIMACY, AND ISOLATION*).
62. Book Review, 76 *Public Choice* 384 (1993) (review of Paul, Miller, and Paul, *ECONOMIC RIGHTS*).
63. *The Scholarly Attorney as Lawyerly Judge: Stevens on Statutes*, 1992/1993 *Annual Survey of American Law* xxxviii (1993).
64. *The Jurisprudential Cab Ride*, 1992 *Brigham Young U.L. Rev.* 363 (reprinted in *Trial*, July, 1992 at 102).
65. "Terminator 2 1/2": *The Constitution in an Alternate World*, 9 *Const. Comm.* 59 (1992).
66. *Environmental Regulation, and Taking of Property*, in *ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION* (Supp., 1991).
67. *The Deconstructed Grocery List*, 7 *Const. Comm.* 213 (1990).
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69. Recurring Misses, 19 *J. Leg. Studies* 727 (1990).
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71. *Richmond* and Republicanism, 41 *U. Fla. L. Rev.* 623 (1989).
72. Democracy and Disgust: A Comment on Public Choice, 65 *Chi. Kent L. Rev.* 161 (1989).
73. Book Review, 6 *Const. Comm.* 564 (1989) (review of W. Nelson, THE FOURTEENTH AMENDMENT).
74. The Constitution and the U.C.C., 6 *Const. Comm.* 217 (1989).
75. The Bush Court, 6 *Const. Comm.* 13 (1989).
76. Integrating Public Choice and Public Law: A Reply to DeBow and Lee, 66 *Tex. L. Rev.* 1013 (1988) (with P. Frickey).
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78. Constitutional Scholarship: What Next?, 5 *Const. Comm.* 71 (1988).
79. Post-Modern Dental Studies, 4 *Const. Comm.* 219 (1987).
80. Two Cheers for Warren Burger, 4 *Const. Comm.* 1 (1987).
81. The Law and Economics Movement, in 4 *Research in Social Problems and Public Policy* 21 (M. Lewis & J. Miller, eds., 1987).
82. Gresham's Law of Legal Scholarship, 3 *Const. Comm.* 307 (1986).
83. Economic Analysis of Abortion, 3 *Const. Comm.* 1 (1986); reprinted in *The New Republic*, July 14, 1986 at 15.
84. Book Review, 3 *Const. Comm.* 282 (1986) (review of G. Calabresi, IDEALS, BELIEFS, ATTITUDES AND THE LAW).
85. Murray's Modest Proposal--Abolishing Welfare and Affirmative Action, 2 *Const. Comm.* 287 (1985).
86. Poverty, Earnings, and Discrimination, 2 *Const. Comm.* 13 (1985).
87. Book Review, 1 *Const. Comm.* 376 (1984) (review of J. Baer, EQUALITY UNDER THE CONSTITUTION).
88. Book Review, 67 *Minn. L. Rev.* 1328 (1983) (review of P. Bobbitt, CONSTITUTIONAL FATE).
89. Book Review, 77 *Nw. U. L. Rev.* 729 (1982) (review of A. Cox, FREEDOM OF EXPRESSION, and F. Haiman, SPEECH AND LAW IN A FREE SOCIETY).
90. Book Review, 66 *Minn. L. Rev.* 561 (1982) (review of C. Fried, CONTRACT AS PROMISE).
91. Commercial Speech and First Amendment Theory: A Critical Exchange, 75 *Nw. U. L. Rev.* 307 (1980).
92. Comment, Executive Privilege at the State Level, 1974 *U. Ill. L. F.* 631.
93. Comment, Federal Regulation of Pyramid Sales Schemes, 1974 *U. Ill. L. F.* 137.

NON-SCHOLARLY WRITINGS (Partial Listing)

1. The Court Revisits Preemption, *Environmental Forum* (April/May 2011).
2. White Paper, Making Good Use of Adaptive Management (Center for Progressive Regulation, 2011) (with Holly Doremus et al.).
3. A Typical Day of Environmental Suits, *Environmental Forum* (March/April 2011).
4. Changing Property, Changing Climate, *Environmental Forum* (Jan./Feb. 2011).
5. White Paper, California at the Cross-Roads: Proposition 23, A.B. 32, and Climate Change (Center for Law, Energy and Environment, UC Berkeley, 2010) (with Dan Kammen, et al.).
6. Litigating Climate Change Endangerment, *Environmental Forum* (Nov./Dec. 2010)
7. Proposition 23 and the Damage It would Do to California, *Los Angeles Times* (Oct. 4, 2010) (with R. Frank).
8. A Legal Framework for Climate Adaptation Assessment, *Resource for the Future Issue Brief* (2009).
9. Litigating Clean Air Endangerment, *The Environmental Forum*, Nov./Dec. 2010.
10. The “War Against Terrorism” and the Rule of Law, *Boalt Hall Transcript* 28 (Summer 2005).
11. And Welfare for All? *The Washington Monthly*, Sept. 2004, at 54.
12. Eco-Pragmatism: Environmental Regulation for the New Century, *University of Minnesota Law Alumni News* (Fall, 1999).
13. Book Review, *New York Times*, Apr. 19, 1999, at 18 (review of S. Holmes & C. Sunstein, THE COST OF RIGHTS).
14. The Miasma in Minnesota, *Trusteeship*, May/June, 1997, at 6.
15. Book Review, *New York Times*, Feb. 13, 1994, at 28 (review of R. Epstein, BARGAINING WITH THE STATE).
16. Supreme Court Columnist, *Trial Magazine* (1989-1992).
17. Corporate Punishment, *The New Republic*, Dec. 26, 1988, at 16.
18. Taking’ Liberties, *The New Republic*, June 27, 1988, at 19.
19. Book Review, *The New Republic*, Jan. 4, 1988, at 36 (review of M. Kelman, A GUIDE TO CRITICAL LEGAL THEORY).
20. A Case of Conflict: Religious Belief, Medicine and Civil Liability, 5 *Second Opinion* 58 (1987).
21. Book Review, *The Washington Monthly*, May 1987, at 52 (review of H. Schwartz, THE BURGER YEARS).
22. Environmental Law: Disdain for 17-Year-Old Statute Evident in High Court's Rulings, *National Law Journal*, May 4, 1987, at 18.

23. The Supreme Court in 2007: Charles Darwin Washoe III v. National Institute of Mental Health, *Minnesota*, March/April 1987, at 9; reprinted in R. Hardet, R. Cullen & L. Hardet, *SOCIOLOGICAL CONCEPTS: A LITERARY READER* (1986).
24. Too Clever By Half, *The New Republic*, Sept. 1, 1986, at 11.
25. Book Review, *Bench & Bar*, January 1986, at 37 (review of S. Ervin, *PRESERVING THE CONSTITUTION*).
26. Illinois Venue Law and the Consumer, 63 *Ill. B. J.* 440 (1975) (with H. Harper).

SELECTED PRESENTATIONS

1. "Discounting, Inequality, and Catastrophic Risks," University of Illinois (April 7, 2014).
2. "Climate Change and Property Rights," Florida State University (Feb. 28, 2014) (endowed lecture).
3. "The Lost World of Administrative Law," Florida State University (Feb. 27, 2014).
4. "'Beyond Our Imagination': Combatting Blindspots Regarding Catastrophic Risks, University of Michigan Law School" (Feb. 10, 2014).
5. "Climate Law in a System of Divided Powers," Meijing Gakuin University (Tokyo)
6. "The Use of Foreign Law in Constitutional Interpretation," Peking University (Nov. 14, 2013).
7. "Key Note Address: Constitutional Law in the 21st Century," Loyola (Chicago) Law School (Nov. 2, 2012)
8. "Key Note Address: Climate Change as an Extreme Sport," University of Sydney, Dec. 10, 2012.
9. "Disaster Law," AALS Workshop on Torts, Environment and Disaster, Oakland, CA, June 9, 2012.
10. "Cadenzas Constitucionais," 9th Congresso Internacional De Direito Constitucional, Natale, Brazil, Apr. 29, 2011.
11. "Citizenship, Secession, and the Fourteenth Amendment," Panel on Legal History, American Association of Law Schools, Jan. 8, 2011.
12. "Preemption Overview," Uniform Law Commissioners Conference on Federalism and State Law, Wash., D.C., Oct. 2010.
13. "Tightening the Focus for Adaptation Planning," Journal of Environmental Law Lecture, London, Dec. 6, 2010.
14. "Developments in the Law of Preemption." Uniform Law Commissioners, D.C., Oct. 29, 2010.
15. "Uncertainty," Cornell Law School, April 30, 2010.

16. "Uncertainty and Indirect Land Use Change," Conference on Biofuels and the Law, Energy Biosciences Institute, University of Illinois, April 9, 2010.
17. "Uncertainty," University of Chicago Law School, April 1, 2010.
18. "Climate Change Adaptation and Federalism," Association of American Law Schools Session on Environmental Law, New Orleans, Jan. 10, 2010.
19. "Global Warming in the Law," Office of the Judiciary, Thailand, August 6, 2009.
20. "Climate Adaptation: Issues of Governance Scale," University of Oslo, Sept. 25, 2009.
21. "American Climate Law," University of Oslo, Sept. 23, 2009.
22. "Energy Justice Research at Berkeley," Conference on Energy Justice, University of Colorado Center for Environment and Energy Security, Oct. 12, 2009.
23. "Introduction," Festschrift in Honor of Philip Frickey, UC Berkeley Law School, April 24, 2009.
24. "Habeas, the War on Terror and the Constitution," UC Davis Law School, Conference on the Honorable John Paul Stevens, March 6, 2009.
25. "Who had the Greater Impact on American Law: Lincoln or Darwin?," Pepperdine Law School, Feb. 2, 2009.
26. "The Authors' Perspective," Sherry-Farber Book Panel, Vanderbilt Law School, Oct. 23, 2009.
27. "Climate Change and Water Planning," 27th Annual ABA Water Law Conf., Feb. 29, 2009
28. "Climate Adaptation and Federalism," San Diego Climate and Energy Law Symposium, Feb. 20, 2009.
29. "Financing Adaptation and Innovation," University of Hastings College of Law, April 3, 2008
30. "Defining the Terms of Engagement," conference on "The American Presidency at War," UC Berkeley, Sept. 19, 2008.
31. "Disaster Law," Universidade Federal Do Parana-UFPR-Brazil, June 4, 2008.
32. "Tort Law and Catastrophic Risks," Waseda University (Tokyo), March 16, 2008
33. "Apportioning the Costs of Climate Change," UCLA Conference on Changing Climates, Jan. 25, 2008
34. "Constitutional Limits on State Climate Regulation," University of Arizona Rehnquist Center, Feb. 11, 2008
35. "Tort Law in the Age of Climate Change, 9/11, and Katrina," Quincy Endowed Lecture, University of Utah Law School, Feb. 12, 2008
36. "Environmental Cooperation and U.S. Federalism," in UC Berkeley Conference on EU-California Regulatory Cooperation, Feb. 23, 2008
37. "Bong Hits 4 the Constitution: Free Speech Rights of Students Today," Constitution Day Speakers Forum, Free Speech Movement Café, Sept. 18, 2007

38. "First Amendment Basics and Free Speech Issues at Large-Scale Events," Minnesota Civil Liberties Union, July 19, 2007
39. "Compensating the Victims of Climate Change," Okayama University, Oct. 13, 2007
40. "Rebuilding after Disasters," KGU University, Kobe, Japan Oct. 27, 2007
41. "Global Warming and the United States: Will America Act?," MGU University, Tokyo, Oct. 18, 2007
42. "Does Musharraf's Comparison to Lincoln Hold Up?," Op. Ed., National Public Radio, Nov. 6, 2007.
43. "State Initiatives: California and Regional Greenhouse Gas Initiatives," UC Berkeley Conference on "Cap and Trade as a Tool for Climate Change Policy: Design and Implementation," Feb. 23, 2007.
44. "Basic Compensation for Victims of Climate Change," University of Pennsylvania Law School, November 17, 2006.
45. "Ecosystems and Natural Disasters", ABA Standing Committee on Environmental Law, June 9, 2006.
46. "Reinventing Flood Control," Loyola University (New Orleans), August 25, 2006.
47. "The Need for Resilience," Conference on California Delta and Levee Risk, Sept. 28, 2006.
48. "Reinventing Flood Control," Tulane Law School, Oct. 13, 2006.
49. "Environmental Slippage," Tel Aviv University, Dec. 17, 2006.
50. "Equal Protection and Backward-Looking Statutes: The Case of Black Reparations," Fordham Law School, October 1, 2005.
51. "The Legal Dimensions of Hurricane Katrina," William Mitchell Law School, Dec. 8, 2005.
52. "Was *Roe v. Wade* Arbitrary and Capricious?" Vanderbilt University Law School, April 21, 2005.
53. "Desperately Seeking Certainty: The Misguided Quest for Constitutional Foundations," Institute for Governmental Studies (Berkeley), April 8, 2005.
54. "The Independent Counsel Case," Conference on the Rehnquist Legacy, Indiana University (Bloomington), April 2, 2005.
55. "Historical Perspectives on the War on Terror," Russell Sage Foundation, March 22, 2005.
56. "Environmental Enforcement and Compliance: An American Perspective," Daito Bunka Law School, Tokyo, March 21, 2005.
57. "Another View of the Quagmire: An Economic Perspective on the Unconstitutional Conditions Doctrine," Florida State University, March 15, 2005.
58. "Was *Roe v. Wade* Arbitrary and Capricious?" University of Missouri Law School, February 25, 2005.
59. "Lincoln's Constitutional Legacy," before the Abraham Lincoln Society, Springfield, Illinois, February 12, 2005.

60. "The Rule of Law and the War Against Terrorism," University College London, January 27, 2005.
61. "Conflicting Visions and Contested Baselines: Intellectual Property and Free Speech in the 'Digital Millennium,'" Symposium on Law, Information and Freedom of Expression, University of Minnesota Law School, October 22, 2004.
62. "Full Court Press," Boalt All-Alumni Reunion, October 2, 2004.
63. "U.S. Supreme Court, 2003-2004 Term: Review of Environmental Decisions," Environmental Law Section of the Bar of San Francisco, Sept. 30, 2004.
64. Visiting Lecturer: Catholic University, Lisbon (2007-2008); Bocconi University, Milan.(2005-2013)