

ERIC RAKOWSKI

School of Law (Boalt Hall)
University of California at Berkeley
Berkeley, CA 94720-7200

erakowski@law.berkeley.edu

- academic appointments** **UNIVERSITY OF CALIFORNIA AT BERKELEY SCHOOL OF LAW**
Halbach Professor of Trust & Estates Law 2001-2014; Chancellor's Professor, 1998 - 2001;
Professor since 1995; Assistant Professor, 1990 - 1995; Associate Dean, 1995 - 1996.
Director, Kadish Center for Morality, Law & Public Affairs, 2000 - 2007.
- HARVARD LAW SCHOOL**
Visiting Professor, 1998 - 1999.
- UNIVERSITY OF NEVADA AT RENO**
Lecturer, Master of Judicial Studies Summer Program, 1994 - 2001.
- subjects** Federal Income Taxation; Estates & Trusts; Health Law; Moral & Political Philosophy.
- law practice** **DAVIS POLK & WARDWELL** WASHINGTON, D.C.
Associate, Financial and Corporate Tax Law, 1989 - 1990.
Member, New York Bar Association.
- judicial clerkships** **JUSTICE WILLIAM J. BRENNAN, JR.** U.S. SUPREME COURT
1987-1989 **JUDGE HARRY T. EDWARDS** U.S. COURT OF APPEALS, D.C. CIRCUIT
- education**
1984-1987 **HARVARD LAW SCHOOL** CAMBRIDGE, MA
J.D., magna cum laude, 1987. Editor, Harvard Law Review. John M. Olin Fellow in Law and Economics. Legal Methods Instructor. Law Tutor at Currier House, Harvard College.
- 1981-1984** **UNIVERSITY OF OXFORD (Magdalen College)** OXFORD, ENGLAND
D.Phil. (Philosophy), 1984. B.Phil. (Philosophy), 1983. Marshall Scholar. Research on legal, political, and moral theory.
- 1980-1981** **UNIVERSITÄT HEIDELBERG** HEIDELBERG, GERMANY
Rotary Scholar. Research on Kant, Hegel, moral philosophy.
- 1976-1980** **HARVARD COLLEGE** CAMBRIDGE, MA
A.B. (Government), summa cum laude, 1980. Sophia Freund Prize (Highest Grade Point Average, class of 1980). The Palfrey Exhibition (for "Most Distinguished Scholar" at graduation). Carrier Prize (Best Dissertation in Political Philosophy). Phi Beta Kappa.
- languages** German (fluent), French (reading knowledge).
- born** June 5, 1958, in Buffalo, New York.

BOOKS

Equal Justice (Oxford University Press 1991), 385 pp.

Sets forth an egalitarian theory of distributive justice, advances principles for reforming property and tort law, and offers guidelines for allocating scarce medical resources.

[Portions of *Equal Justice* reprinted in: Louis Pojman & Robert Westmoreland (eds.), *Equality: Selected Readings* (Oxford University Press, 1997).]

The Trolley Problem Mysteries (Eric Rakowski, ed.) (Oxford University Press 2015), 256 pp.

Contains Frances Kamm's Berkeley Tanner Lectures of 2013 of the same title, with an introduction by Eric Rakowski, commentaries by Judith Jarvis Thomson, Thomas Hurka, and Shelly Kagan, and a reply to critics by Frances Kamm. The trolley problem is a famous moral philosophical quandary about the permissibility of killing: why is it permissible (if as most assume it is) to turn a runaway trolley headed for five people to a side track where it will kill one person instead, but not permissible to push one person in front of the trolley to save five, or to kill one healthy person to provide organs to save five sick people?

ARTICLES

“Calculating and Allocating Salvage Liability,” 99 Harvard Law Review 1896 - 1917 (1986).

Proposes a more just and economically efficient rule for determining the size of maritime salvage awards and for distributing those awards among salvors.

[Reprinted in: Robert Jarvis (ed.), *An Admiralty Law Anthology* (Anderson Publishing, 1995).]

“Posner’s Pragmatism,” 104 Harvard Law Review 1681 - 1704 (1991).

A critical review essay on Richard Posner’s book, *The Problems of Jurisprudence*.

“Taking and Saving Lives,” 93 Columbia Law Review 1063 - 1156 (1993).

Discusses situations in which it might be morally permissible or obligatory to kill some people to save others, and recommends clarifying or amending the state law criminal defense of necessity or choice-of-evils in light of those moral conclusions.

[Reprinted in: John Harris (ed.), *Bioethics* (Oxford University Press, 2001).

Portion reprinted in: Margaret P. Battin, Leslie Francis & Bruce M. Landesman (eds.), *Death, Dying and the Ending of Life* (Ashgate Publishing, 2005.)

“Harper and Retroactive Remedies: Why States’ Fears are Exaggerated,” 59 Tax Notes 555 - 63 (1993); reprinted in 4 States Tax Notes 983 - 90 (1993).

Analyzes an important argument against imposing retroactive liabilities on states for their violations of the doctrine of intergovernmental tax immunity under Davis v. Michigan Dep’t of Treasury, and proposes a remedy that might save states hundreds of millions of dollars now that the Supreme Court has declared its ruling in Davis retroactive.

Eric Rakowski

“What Purpose Does Intergovernmental Tax Immunity Serve?” 59 Tax Notes 1277-78 (1993).

Defends a crucial assumption of the preceding article: that the doctrine of intergovernmental tax immunity was designed to protect governments, not to create individual remedies except insofar as they serve the end of safeguarding one sovereign against discriminatory treatment by another.

“There’s More to Harper than Large Refund Payments,” 4 State Tax Notes 1318 - 19 (1993).

Responds to criticisms of the Tax Notes article on Harper.

“Harper and its Aftermath,” 1 Florida Tax Review 445 - 519 (1993).

Describes and criticizes the Supreme Court’s reasoning in Harper v. Virginia Dep’t of Taxation, assesses the remedial consequences of constitutional holdings in civil cases, details possible responses by states to the Court’s ruling, and considers state-law issues that might complicate states’ choice of remedies.

“Conceptual Interdependence and Comparative Competence,” 27 Georgia Law Review 391 - 413 (1993).

Comments on Professor Richard Fallon’s lead paper discussing the relationship between governmental powers and individual constitutional rights and speculating about the relative abilities of judges and other state actors to delimit the boundaries of rights and powers.

“The Sanctity of Human Life,” 103 Yale Law Journal 2049 - 2118 (1994).

An essay on Ronald Dworkin’s book, *Life’s Dominion*, focusing on Dworkin’s views about the intrinsic value of life and the regulation of abortion and euthanasia.

Eric Rakowski

“The Aggregation Problem,” 24 Hastings Center Report, July-August 1994, at 33 - 36.

Discusses how unequal benefits to different numbers of people should be weighed against one another in deciding which health care services to make available to a fixed population of recipients.

[Reprinted in: James & Hilde Lindemann Nelson, *Meaning and Medicine: A Reader in the Philosophy of Health Care* (Routledge, 1999).]

“Should Health Care Be Rationed by Age?” in Andrew Scharlach and Lenard Kaye (eds.), *Controversial Issues in Aging* 103 - 13 (Allyn & Bacon, 1997).

Argues that, other things equal, younger patients should generally be favored over older patients when rationing health care.

“Transferring Wealth Liberally,” 51 Tax Law Review 419 - 72 (1996).

Analyzes and questions recent claims that liberal egalitarians should advocate a progressive tax on consumption instead of income while opposing taxes on gifts and bequests.

[Portions of “Transferring Wealth Liberally” reprinted in: Paul L. Caron, Grayson M.P. McCouch, and Karen C. Burke (eds.), *Federal Wealth Transfer Tax Anthology* 426 - 34 (Anderson Publishing, 1998).]

“Estate Tax Reform and Charitable Giving,” 77 Tax Notes 463 - 75 (1997).

Examines recent statistical evidence and econometric studies to determine the likely effects of reducing wealth transfer taxes on charitable giving. The article concludes that 1997 changes to the estate tax will have little or no impact on charities and that even repealing estate taxes entirely would probably not lower overall charitable giving by more than 5%, mainly through a decrease in charitable bequests.

Eric Rakowski

“How Lowering Estate Taxes Will Affect Charitable Giving,” 19 Exempt Organization Tax Review 31 - 44 (1998).

A modified version of “Estate Tax Reform and Charitable Giving” analyzing the effects of proposed estate tax changes on contributions to tax-exempt organizations.

“Can Wealth Taxes Be Justified?,” 53 Tax Law Review 263 - 375 (2000).

Assesses arguments for imposing periodic net worth taxes and contends that wealth taxes are almost always unjustified as tools for funding government services or compensating people for natural or social disadvantages.

“Rechtslehre und -praxis in den U.S.A.: Wandel und Aussichten,” 2000 Juristische Schulung 525-31.

Explores recent developments in American legal education, legal scholarship, and law practice, offering tentative warnings and lessons for German academics and policy makers.

“Ronald Dworkin, Reverence for Life, and the Limits of State Power,” 13 Utilitas 33 - 64 (2001).

Analyzes and criticizes Ronald Dworkin’s views about the reasons why governments may regulate abortion and assisted suicide and the ways in which they may limit individual freedom to end a pregnancy or one’s own life.

[Reprinted in Justine Burley (ed.), *Ronald Dworkin and His Critics* (Basil Blackwell, 2004).]

Eric Rakowski

“Are Federal Income Tax Preferences for Ministers’ Housing Constitutional?” 95 *Tax Notes* 775 - 87 (Apr. 29, 2002); reprinted in 36 *Exempt Organization Tax Review* 359 - 70 (June 2002).

Reviews recent litigation surrounding the constitutionality of an income tax exclusion for ministers’ housing and argues that the exclusion is illegal and that courts should strike down I.R.C. § 107 rather than broaden its scope.

“The Parsonage Exclusion: New Developments,” 96 *Tax Notes* 429 - 37 (July 15, 2002); reprinted in 37 *Exempt Organization Tax Review* 461 - 69 (September 2002).

Replies to academic critics of my earlier article arguing that an income tax exclusion for ministers’ housing is unconstitutional and considers the appropriateness of the Ninth Circuit’s allowing an amicus to intervene in pending litigation to argue the constitutionality of that provision.

“Who Should Pay for Bad Genes?” 90 *California Law Review* 1345 - 1414 (October 2002).

Discusses the liability of parents and others to children who are genetically disadvantaged and the state’s duties to prevent the birth of children who are likely to lead difficult or miserable lives.

“Taxation: Estate and Gift Taxes,” in Kermit Hall (ed.), *The Oxford Companion to American Law* (Oxford University Press, 2002).

Summarizes the history and policy disputes surrounding estate and gift taxes in the United States.

“The Just Allocation of Mental Health Care,” in James Lindemann Nelson (ed.), *Rationing Sanity: Ethical Issues in Managed Mental Health Care* 79 - 96 (Georgetown University Press, 2003).

Describes the moral issues on which the distribution of mental health care ought to turn, and argues that a number of much-discussed moral problems should have no bearing on the allocation of mental health care.

Eric Rakowski

“The Future Reach of the Disembodied Will,” 4 Philosophy, Politics & Economics 91 - 130 (2005).

Analyzes the possible elimination of the Rule Against Perpetuities from consequentialist, libertarian, and liberal egalitarian perspectives and concludes that, on balance, temporal limits on private trusts probably should be eliminated, even if trust income and trust distributions should be taxed.

“The Estate Tax Compromise,” *The Economists’ Voice*, vol. 3, issue 1, Bepress, October 2006, published electronically at <http://www.bepress.com/ev/vol3/iss1/art7/>

Describes the political struggle over wealth transfer taxation and suggests positions that are normatively acceptable and politically achievable.

Eric Rakowski

BOOK REVIEWS

Michael Brint & William Weaver (eds.), Pragmatism in Law & Society, 103 Ethics 596 (1993).

Frederick Schauer, Playing by the Rules, 103 Ethics 828 (1993).

Barbara Goodwin, Justice by Lottery, 87 American Political Science Review 770 (1993).

David Lyons, Moral Aspects of Legal Theory, 36 Philosophical Books 133 (April 1995).

Larry S. Temkin, Inequality, 12 Economics & Philosophy 225 - 30 (October 1996).

F.M. Kamm, Morality, Mortality Vol. II, 107 Mind 492 - 98 (April 1998).

Eric Rakowski

HONORS & PROFESSIONAL MEMBERSHIPS

Rutter Award for Teaching Distinction (2010)

Elected Member, American Law Institute

Member, New York Bar Association

UNIVERSITY SERVICE (since last site visit)

Academic Senate Committee Service

Privilege & Tenure

Member, 2006-2007; Chair, 2007-2009

Serving on and then chairing the Committee on Privilege & Tenure is among the most demanding committee assignments on the Berkeley campus. We disposed of a sizable number of grievance cases brought by faculty members as well as some disciplinary cases brought by the campus administration against faculty. I did the great majority of the writing during my two years as chair, handled communications with faculty members who were parties to the proceedings and legal counsel, and ran an arbitration session in one disciplinary case.

Prizes

Member, 2011-2015; Chair, 2015-present

The Prizes Committee sets the Lili Fabilli & Eric Hoffer Prize essay topic each fall. More significantly, the Committee reads the 30-40 applications for the University Medal, the highest undergraduate award. The Committee discusses these applications, narrows the pool, interviews 5 finalists, and picks the winner, who receives a cash prize and speaks at commencement.

Mellon Foundation Sawyer Seminar on Speciesism

I co-lead this year-long seminar on speciesism in 2012, along with Brent Mishler (Integrative Biology), Kent Lightfoot (Archaeology), and David Hollinger (History). Funded by the Mellon Foundation, the seminar attracted around 40 graduate student and faculty participants over 9 sessions throughout the year with speakers and commentators. I helped organize and choose the topics and participated in the sessions.

Chancellor's Campus Ad Hoc Review Committees

I regularly accept appointments by the Vice Provost to ad hoc committees formed to review recommended personnel actions. I have served on a number of these ad hoc committees over the last several years.

Eric Rakowski

LAW SCHOOL SERVICE (since last site visit)

Faculty Appointments Committee

Member, 2008-2009, 2010-2012; Co-Chair, 2012-2013; Chair, 2013-2014

Each fall the FAC reviews over 700 applications filed with the Association of American Law Schools. We shrink that pool in stages, reading candidates' work and conferring with colleagues and fellow committee members. We then interview 12-15 candidates in Washington, D.C., and usually invite 4-6 candidates to Berkeley for job talks and faculty interviews. For lateral candidates, we generally task faculty subcommittees by specialty with preparing short lists of candidates for open positions. Committee members then read broadly, narrow the list of choices, and decide which finalists to invite to the campus for job talks and full interviews. Between 2011 and 2014, the Committee invited 17 entry-level candidates and 10 lateral candidates for job talks and interviews. If the FAC votes to bring a candidate to the full faculty, its members draft reports and recommendations. This job requires soliciting and incorporating internal reviews and outside letters. I have drafted many of these reports and have edited others. We offered professorships to 2 entry-level candidates and 9 lateral candidates over this 3-year period.

Ad Hoc Promotion Committees

In 2012 and 2014, I was a member of a committee charged with preparing a mid-career review and a tenure report for a junior faculty member.

I have contributed reviews of scholarly work and teaching for four junior faculty members the Law School has considered for advancement over the past five years.

Junior Faculty Mentor

I was appointed by the dean to serve as the faculty mentor for assistant professors Andrea Roth (2012 - present) and Erin Murphy (2006 - 10).

Academic Placement Committee

Member, 2014-2015

This committee assists Berkeley Law graduates and fellows secure academic positions, whether tenure-track jobs, lectureships, or fellowships. I provided one-on-one counseling and did two presentations at a day-long “boot camp” for students and graduates preparing to go on the academic market.

Building & Space Committee

Member, 2007-2008, 2013-2015

This committee devises policies and attempts to resolve sometimes sensitive disputes over the allocation of office space at the Law School.

Independently of any committee assignment, I have worked with Dean Choudhry to devise ways to move employees from four floors of a building we lease off campus into the Law School. This work entails numerous meetings to consider demolition and construction plans, to figure out which units can move where, and to reconsider policies on shared and separate offices for both faculty and staff.

LL.M. Admissions Committee

Member, 2005-2013

I read applications to the LL.M. program from lawyers who received their law degrees from university in former Commonwealth countries, including the United Kingdom. I made admissions decisions on 40-80 applications each year.

Student Grade Appeals Committee

Chair, 2010-2011

Member, 2014-2015

This committee adjudicates grievances brought by a student against an instructor. After reading written submissions from both sides, the committee may hold a formal hearing and discuss and decide the matter. I chaired a formal hearing in 2010 and drafted a lengthy report for the dean and the affected parties. Our committee will be considering another grade appeal later this month.

Disqualification Appeals Committee

Chair, 2009-2010, Member 2014-2015

Students who are academically disqualified may appeal their dismissal. When I chaired, I convened a committee to read a student's appeal documents and conducted two hearings. After the committee reached a decision, I wrote a report for the dean setting forth our collective recommendation. As a member in 2015, I drafted a report for the dean on the committee's behalf.

Kadish Center for Morality, Law, and Public Affairs

Director, 2001 - 2005, Chair, 2015 - present, Board Member, 2005 - present

The Center organizes an annual endowed lecture with commentators. It runs a work-in-progress lunch series for philosophers, political scientists, and legal academics that meets 2-3 times per term. It sponsors two seminar speaker series and ad hoc scholarly meetings (e.g., to discuss a new book by a Center affiliate). I have organized the annual Kadish Lecture since its inception in 2001 and have served as a commentator twice. In organizing the lecture, I was responsible for inviting speakers and commentators, inviting faculty and students to attend, and planning a dinner after the lecture.

Eric Rakowski

PROFESSIONAL SERVICE

Editor, Estate Planning & California Probate Reporter, Jan. 2012 - present

For nearly three years I have edited this bimonthly publication, which is widely read throughout California by trusts and estates lawyers and tax lawyers who specialize in estate planning. The Reporter is published by Continuing Education of the Bar-California, an organization created by and operating under the auspices of the University of California. For 28 years, the Reporter was edited by Edward Halbach, former dean of Berkeley Law and the person in whose honor the Halbach Chair was endowed. The editor's time-intensive job includes discussing, offering changes to, and sometimes writing summaries of and commentaries on recent cases and legislative developments in California and nationally (in the case of estate planning), primarily for the benefit of practicing attorneys.

Mutual Fund Independent Trustee

I serve as an independent trustee of four mutual fund complexes: AMG Funds (since 1999), Third Avenue Funds (since 2002), Harding Loevner Funds (since 2008), and Aston Funds (since 2010).

Manuscript Reviewer

I regularly review submitted manuscripts for several professional journals, including *Ethics*, *Utilitas*, *Economics & Philosophy*, and *Politics, Philosophy & Economics*.