

HENRY E. SMITH

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EDUCATION

Yale Law School, New Haven, Connecticut

J.D., June 1996

Grades: All Honors

Award: Benjamin Scharps Prize for best third-year paper

Activities: Articles Editor, *Yale Law Journal*
Student Director, Jerome N. Frank Legal Services
Organization, 1995-1996
Temporary Restraining Order Project, Fall 1993

Stanford University, Stanford, California

Ph.D., Linguistics 1992

A.M., German 1987

Harvard University, Cambridge, Massachusetts

A.B., German 1986 (3rd year graduation)

Honors: *magna cum laude*

Phi Beta Kappa

Activities: Editor, *Crimson*

EXPERIENCE

2009 -

Harvard Law School

Fessenden Professor of Law, 2010-

Director, Project on the Foundations of Private Law, 2010-

Professor of Law, 2009-2010

Courses: Property, Remedies, Restitution, Natural Resources Law, Law and Equity, Private Law Workshop, Theories of Private Law, Theories of Property and Unjust Enrichment

Service: Entry-Level Appointments Committee, 2009-2013; Lateral Appointments and Tenure Committee, 2013-2018

2002 - 2008

Yale Law School

Fred A. Johnston Professor of Property and Environmental Law, 2006-2008

Professor of Law (2002-2006) (and of Cognitive Science, since 2005)

Courses: Property, Introduction to Intellectual Property, Patent Law, Natural Resources Law Seminar, Remedies, Theories of Intellectual Property Seminar

Service: Budget Committee, Fall 2002, 2004-2005
Yale Law Journal Committee, Fall 2002

Appointments Committee, Spring 2004, 2006-2007
Advisory Committee on Investor Responsibility, Spring 2004-
Summer 2005
Committee on Cooperative Research, 2004-2005, 2006-

1997 - 2002

Northwestern University School of Law

Professor, 2001-2002

Associate Professor, 2000-2001

Assistant Professor, 1997-2000

Dean's Teaching Award 1997-1998

Courses: Contracts, Federal Income Taxation, Property, Contract
Theory Seminar, Theories of Property Seminar

Service: Co-Chair, Judicial Clerkship Committee, 1997-1999

Faculty Advisory Committee, 1998-2000

Library & Technology Committee, 1998-2000

J.S.D. Policy Committee, Summer 1998-2000

Spring 2006,
Spring 2008

Harvard Law School

William K. Jacobs, Jr. Visiting Professor of Law (2006)

Austin Wakeman Scott Visiting Professor of Law (2008)

Courses: Property, Law and Cognitive Science

2001 - 2002

Yale Law School

Visiting Professor

Courses: Property, Federal Income Taxation, Theories of Property

Fall 2000

University of Chicago Law School

Visiting Professor

Courses: Natural Resources Law, Theories of Property

Fall 1999

University of Virginia School of Law

Scholar-in-Residence

1996 - 1997

Judge Ralph K. Winter, U.S. Court of Appeals, Second Circuit

Law Clerk

Spring 1996

Yale Law School

Research Assistant for Professor Robert C. Ellickson

Summer 1995

Covington & Burling, Washington, D.C.

Summer Associate

Summer 1994

Jerome N. Frank Legal Services Organization, Yale Law School

Law Student Intern

Yale Law School

Research Assistant for Professor James Q. Whitman

1992 - 1993 **Indiana University**, Germanic Studies, Bloomington, Indiana
Visiting Assistant Professor

Winter 1992 **University of Chicago**, Linguistics Department
Visiting Lecturer

OTHER AWARDS AND ACTIVITIES

2014 - **Reporter**, American Law Institute, Restatement (Fourth) of Property

2013 - 2018 **Member**, Working Group on Intellectual Property, Innovation, and Prosperity,
Hoover Institution, Stanford University

2012 - 2015 **Member**, Board of Directors, American Law and Economics Association

2011 - 2016 **Member**, Board of Directors, International Society for New Institutional
Economics; President Elect, 2014 – 2015; President, 2015 – 2016.

2003, 2010, 2012 **Area Organizer** for Property, American Law and Economics Association
Annual Meeting, Program Committee Member 2014

2009 - **Member**, Board of Directors, Program on Economics, Law, and the
Environment, University of Arizona

2008 - 2013 **Member**, Taskforce on Property Rights, Freedom, and Prosperity, Hoover
Institution, Stanford University

2007 - **Member**, Research Group for Natural Resources, Energy, Environmental and
Property Law, University of Oslo

2011, 2007, 2003 **Referee**, Stanford-Yale Junior Faculty Forum

2004 - **Member**, Board of Advisors, Journal of Law, Economics & Policy

2003 **American Academy in Berlin**
Berlin Prize Fellowship, January - May

2001 **Co-Organizer**, Conference on the Evolution of Property Rights,
Northwestern University School of Law, April 21-22

2000 **University of Southern California Law School**
Scholar-in-Residence (September 11-15)

1999 - 2000 **John M. Olin Foundation Faculty Fellowship**

1989 **Fulbright Scholar**, University of Oslo, Oslo, Norway
1986 - 1990 **University Fellow**, Stanford University

PROFESSIONAL AFFILIATIONS

Illinois Bar

American Law and Economics Association

Society for Institutional and Organizational Economics

PUBLICATIONS

Law

Books

PRINCIPLES OF PATENT LAW: CASES AND MATERIALS, Sixth Edition (with John M. Golden, F. Scott Kieff, & Pauline Newman), Foundation Press, 2018

PROPERTY: PRINCIPLES AND POLICIES (with Thomas W. Merrill), Foundation Press, Third Edition, 2017

TEACHER'S MANUAL TO PROPERTY: PRINCIPLES AND POLICIES (with Thomas W. Merrill), Foundation Press, Third Edition, 2017

PERSPECTIVES ON PROPERTY LAW (ed., with Robert C. Ellickson & Carol M. Rose), Aspen, 2014

PHILOSOPHICAL FOUNDATIONS OF PROPERTY LAW (ed., with James Penner), Oxford University Press, 2013

PROPERTY: PRINCIPLES AND POLICIES (with Thomas W. Merrill), Foundation Press, Second Edition, 2012

TEACHER'S MANUAL TO PROPERTY: PRINCIPLES AND POLICIES (with Thomas W. Merrill), Foundation Press, Second Edition, 2012

RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW (ed., with Kenneth Ayotte), Edward Elgar, 2011

THE OXFORD INTRODUCTIONS TO U.S. LAW: PROPERTY (with Thomas W. Merrill), Oxford University Press, 2010

PROPERTY: PRINCIPLES AND POLICIES (with Thomas W. Merrill), Foundation Press, 2007

TEACHER'S MANUAL TO PROPERTY: PRINCIPLES AND POLICIES (with Thomas W. Merrill), Foundation Press, 2007

PRINCIPLES OF PATENT LAW: CASES AND MATERIALS, Sixth Edition (with F. Scott Kieff, Pauline Newman, & Herbert F. Schwartz), Foundation Press, 2013

PRINCIPLES OF PATENT LAW: CASES AND MATERIALS, Fifth Edition (with F. Scott Kieff, Pauline Newman, & Herbert F. Schwartz), Foundation Press, 2011

PRINCIPLES OF PATENT LAW: CASES AND MATERIALS, Fourth Edition (with F. Scott Kieff, Pauline Newman, & Herbert F. Schwartz), Foundation Press, 2008

Articles & Chapters

Complexity and the Cathedral: Making Law and Economics More Calabresian
____ *European Journal of Law and Economics* ____,
<https://doi.org/10.1007/s10657-018-9591-x>

Equitable Defences as Meta-Law, in DEFENCES IN EQUITY 17-39 (Paul S. Davies, Simon Douglas & James Goudkamp, eds., Hart, 2018)

Experimental Analysis of the Effect of Standards on Compliance and Performance, 12 REGULATION & GOVERNANCE 277-98 (with Constantine Boussalis and Yuval Feldman)

Comment: Property as Complex Interaction, 13 JOURNAL OF INSTITUTIONAL ECONOMICS 809 (2017)

The Economics of Property Law, in THE OXFORD HANDBOOK OF LAW AND ECONOMICS, VOLUME 2: PRIVATE AND COMMERCIAL LAW 148-77 (Francesco Parisi ed., Oxford University Press, 2017)

Fusing the Equitable Function in Private Law, in PRIVATE LAW IN THE 21ST CENTURY 173-95 (Kit Barker, Karen Fairweather, and Ross Grantham, eds., Hart, 2017)

Semicommons in Fluid Resources, Eighteenth Annual Honorable Helen Wilson Nies Memorial Lecture, 20 MARQUETTE INTELLECTUAL PROPERTY LAW REVIEW 195-212 (2016)

Equity and Administrative Behavior, in EQUITY AND ADMINISTRATION 326-66

(P.G. Turner, ed., Cambridge University Press, 2016)

The Numerus Clausus Principle, Property Customs, and the Emergence of New Property Forms, 100 IOWA LAW REVIEW 2275-2308 (2015) (with Yun-chien Chang)

The Persistence of System in Property Law, 163 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 2055-2083 (2015)

The Elements of Possession, in: *Law and Economics of Possession* 65-102 (Yun-Chien Chang, ed., Cambridge University Press, 2015)

Property, Equity, and the Rule of Law, in *PRIVATE LAW AND THE RULE OF LAW* 224-46 (Lisa Austin & Dennis Klimchuk eds., Oxford University Press, 2015)

Foreword: Letter from America (Private law in the UK Supreme Court), 6 THE UK SUPREME COURT YEARBOOK 169-76 (2015) (with John C.P. Goldberg)

The Thing about Exclusion, 3 BRIGHAM-KANNER PROPERTY RIGHTS JOURNAL 95-123 (2014)

Why Fiduciary Law Is Equitable, in *PHILOSOPHICAL FOUNDATIONS OF FIDUCIARY LAW* 261-84 (Andrew S. Gold & Paul B. Miller, eds., Oxford University Press, 2014)

Behavioral Equity, 170 JOURNAL OF INSTITUTIONAL AND THEORETICAL ECONOMICS 137-59 (2014) (with Yuval Feldman)

Why Restate the Bundle?: The Disintegration of the Restatement of Property, 79 BROOKLYN LAW REVIEW 681-708 (2014) (with Thomas W. Merrill) (Symposium: "Restatement of ...")

Property as Platform: Coordinating Standards for Technological Innovation, 9 JOURNAL OF COMPETITION LAW AND ECONOMICS 1057-89 (2013)

Emergent Property, in *PHILOSOPHICAL FOUNDATIONS OF PROPERTY LAW* 320-38 (James Penner & Henry E. Smith, eds., Oxford University Press, 2013)

Equitable Intellectual Property: What's Wrong With Misappropriation?, in *INTELLECTUAL PROPERTY AND THE COMMON LAW* 42-62 (Shyamkrishna Balganes, ed., Cambridge University Press, 2013)

Custom in American Property Law: A Vanishing Act, 48 TEXAS INTERNATIONAL LAW JOURNAL 507-22 (2013).

An Economic Analysis of Civil versus Common Law Property, 88 NOTRE DAME LAW REVIEW 1-55 (2012) (with Yun-chien Chang)

On the Economy of Concepts in Property, 160 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 2097-2128 (2012)

Property as the Law of Things, 125 HARVARD LAW REVIEW 1691-1726 (2012)

The Supreme Court's Accidental Revolution? The Test for Permanent Injunctions, 112 COLUMBIA LAW REVIEW 203-49 (2012) (with Mark P. Gergen and John M. Golden)

The Equitable Dimension of Contract, 45 SUFFOLK UNIVERSITY LAW REVIEW 897-914 (2012)

Commentary on "Playing by Different Rules? Property Rights in Land and Water," by Richard A. Epstein, in PROPERTY IN LAND AND OTHER NATURAL RESOURCES 356-67 (Daniel H. Cole & Elinor Ostrom, eds., Lincoln Institute of Land Policy 2012)

The Nature of Coasean Property, 59 INTERNATIONAL REVIEW OF ECONOMICS 145-55 (2012) (with Brian Angelo Lee)

Making Coasean Property More Coasean, 54 JOURNAL OF LAW AND ECONOMICS S77-104 (2011) (with Thomas W. Merrill)

Modularity and Morality in the Law of Torts, 4 JOURNAL OF TORT LAW, Issue 2, Article 5 (2011). <http://www.bepress.com/jtl/vol4/iss2/art5>

Property Is Not Just a Bundle of Rights, 8 ECON JOURNAL WATCH 279-91 (2011)

Rose's Human Nature of Property, 19 WILLIAM AND MARY BILL OF RIGHTS LAW JOURNAL 1047-55 (2011)

Introduction, in RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW 1-8 (Kenneth Ayotte & Henry E. Smith, eds., Edward Elgar 2011)

Toward an Economic Theory of Property in Information, in RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW 104-24 (Kenneth Ayotte & Henry E. Smith, eds., Edward Elgar 2011)

Standardization in Property Law, in RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW 148-73 (Kenneth Ayotte & Henry E. Smith, eds., Edward Elgar 2011)

Preventing the Misuse of Preventive Adjudication: A Response to Bray, The Legal Workshop, The University of Chicago Law Review, Apr. 4, 2011, <http://legalworkshop.org/2011/04/04/smith>

Differential Formalism in Claiming Intellectual Property: A Response to Fromer, The Legal Workshop, The University of Chicago Law Review, Feb. 22, 2010, <http://legalworkshop.org/2010/02/22/2123>

Ellickson's Extraordinary Look at the Ordinary, 18 WILLIAM AND MARY BILL OF RIGHTS LAW JOURNAL 207-12 (2009)

Institutions and Indirectness in Intellectual Property, 157 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 2083-2133 (2009)

Mind the Gap: The Indirect Relation between Ends and Means in American Property Law, 94 CORNELL LAW REVIEW 959-89 (2009)

Does Equity Pass the Laugh Test?: A Response to Oliar and Sprigman, 95 VIRGINIA LAW REVIEW IN BRIEF 9 (2009), <http://www.virginialawreview.org/inbrief/2009/04/20/smith.pdf>.

Community and Custom in Property, 10 THEORETICAL INQUIRIES IN LAW 5-41 (2009), available at: <http://www.bepress.com/til/default/vol10/iss1/>

Law and Economics: Realism or Democracy?, 32 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 127-45 (2009)

Governing Water: The Semicommons of Fluid Property Rights, 50 ARIZONA LAW REVIEW 445-78 (2008)

Intellectual Property as Property: Delineating Entitlements in Information, 116 YALE LAW JOURNAL 1742-1822 (2007)

Intellectual Property as Property: Delineating Entitlements in Information, 117 YALE L.J. POCKET PART 87 (2007), <http://yalelawjournal.org/2007/10/10/smith.html>.

The Morality of Property, 48 WILLIAM AND MARY LAW REVIEW 1849-95 (2007) (with Thomas W. Merrill)

Modularity in Contracts: Boilerplate and Information Flow, 104 UNIVERSITY OF MICHIGAN LAW REVIEW 1175-1222 (2006)

Self-Help and the Nature of Property, 1 JOURNAL OF LAW, ECONOMICS & POLICY 69-107 (2005)

Governing the Tele-Semicommons, 22 YALE JOURNAL ON REGULATION 289-314 (2005)

Property and Property Rules, 79 NEW YORK UNIVERSITY LAW REVIEW 1719-98 (2004)

Exclusion and Property Rules in the Law of Nuisance, 90 VIRGINIA LAW REVIEW
965-1049 (2004)

The Language of Property: Form, Context, and Audience, 55 STANFORD LAW REVIEW
1105-91 (2003)

Exclusion versus Governance: Two Strategies for Delineating Property Rights, 31
JOURNAL OF LEGAL STUDIES S453-87 (2002)

Structured Settlements as Structures of Rights, 88 VIRGINIA LAW REVIEW 1953-74
(2002)

What Happened to Property in Law and Economics?, 111 YALE LAW JOURNAL 357-98
(2001) (with Thomas W. Merrill)

The Property/Contract Interface, 101 COLUMBIA LAW REVIEW 773-852 (2001)
(with Thomas W. Merrill)

Optimal Standardization in the Law of Property: The Numerus Clausus Principle, 110
YALE LAW JOURNAL 1-70 (2000) (with Thomas W. Merrill)

Ambiguous Quality Changes from Taxes and Legal Rules, 67 UNIVERSITY OF
CHICAGO LAW REVIEW 647-723 (2000)

Semicommon Property Rights and Scattering in the Open Fields, 29 JOURNAL OF
LEGAL STUDIES 131-69 (2000)

Intermediate Filing in Household Taxation, 72 SOUTHERN CALIFORNIA LAW REVIEW
145-245 (1998)

The Harm in Blackmail, 92 NORTHWESTERN UNIVERSITY LAW REVIEW 861-915 (1998)

The Modern Privilege: Its Nineteenth-Century Origins, in R.H. HELMHOLZ ET AL.,
THE PRIVILEGE AGAINST SELF-INCRIMINATION: ITS ORIGINS AND
DEVELOPMENT (Chicago: University of Chicago Press 1997)

In Draft:

Systems Theory: Emergent Private Law (forthcoming in Oxford Handbook of New
Private Law, Andrew Gold, John C.P. Goldberg, Daniel B. Kelly, Emily
Sherwin & Henry E. Smith, eds.)

*Convergence and Divergence in Systems of Property Law: Theoretical and Empirical
Analyses* (forthcoming, 92 Southern California Law Review, No. 4, 2019)
(with Yun-chien Chang)

Equity in Private Fiduciary Law (forthcoming in Oxford Handbook of Fiduciary Law, Evan J. Criddle, Paul B. Miller & Robert H. Sitkoff eds., Oxford University Press)

Restating the Architecture of Property (forthcoming, Modern Studies in Property Law, Sinéad Agnew & Ben McFarlane eds., Hart)

Fusion of Law and Confusion of Equity (forthcoming in Philosophical Foundations of the Law of Equity, Dennis Klimchuk, Irit Samet & Henry E. Smith eds., Oxford University Press)

Governing Intellectual Property (forthcoming in Research Handbook on the Economics of Intellectual Property Law, P. Menell, D. Schwartz & B. Depoorter, eds., Edward Elgar Publishing)

Scaling Up Legal Relations (with Andrew S. Gold) (forthcoming in The Legacy of Wesley Hohfeld: Edited Major Works, Select Personal Papers, and Original Commentaries, Shyamkrishna Balganesh, Ted Sichelman & Henry E. Smith, eds., Cambridge University Press)

Wrongful Fusion: Equity and Torts (with John C.P. Goldberg) (forthcoming in Equity and Law: Fusion and Fission, John C.P. Goldberg, Peter Turner & Henry E. Smith, eds., Cambridge University Press)

Equity as Second-Order Law: The Problem of Opportunism

Sizing Up Private Law (with Andrew S. Gold)

A Safety-Valve Model of Equity as Anti-Opportunism (with Kenneth Ayotte and Ezra Friedman)

Modeling Legal Modularity (with Ted Sichelman)

Linguistics

Book

RESTRICTIVENESS IN CASE THEORY (Cambridge: Cambridge University Press 1996)

Articles

“Dative Sickness” in Icelandic, 12 NAT. LANG. & LING. THEORY 675-736 (1994)

Linking Changes in Icelandic, in HISTORICAL LINGUISTICS 1989 (Philadelphia: John Benjamins 1993)

Arguments From Language Change, 29 J. LING. 431-47 (1993), with Elizabeth Closs Traugott

Brevity in Pāṇini, 20 J. INDIAN PHILOSOPHY 133-47 (1992)

Dative Sickness and Abstractness in Icelandic, in ON GERMANIC LINGUISTICS: ISSUES AND METHODS (Irmengard Rauch, Gerald F. Carr, & Robert L. Kyes, eds.; Berlin: Mouton de Gruyter 1992)