

BETHANY R. BERGER
Wallace Stevens Professor of Law
University of Connecticut School of Law
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ACADEMIC APPOINTMENTS

University of Connecticut School of Law, 2006 to present. Chaired Professor 2013 to present, Professor, 2008 to present

Teach American Indian Law, Property, Tribal Justice Systems, and Conflict of Laws
Service: Faculty Appointments Committee, 2016-2017, 2014-2015, 2012-2013, 2009-2010 (chair); Clerkship Committee, 2014-2017 (chair); University Academic Vision Committee, 2013-2014 (Law School Representative); Promotion Advisory Committee Working Group, 2012-2014; Dean Search Committee, 2012-2013 (faculty chair); Admissions Committee, 2011-2012 (chair); Diversity Advisory Committee 2007-2009 (chair)

Visiting Professorships:

University of Michigan Law School, Fall 2011

Harvard Law School, Fall 2008-Spring 2009

University of Iowa Law School, Summer 2005

Pre-Law Summer Institute, American Indian Law Center, Summer 2004

Wayne State University Law School, Assistant Professor, August 2004 to May 2006

University of Connecticut School of Law, Research Professor, Sept. 2001 to May 2004

EDUCATION

Yale Law School, New Haven, CT, J.D. 1996

Yale Journal of Law and Feminism

Schell Fellowship for Human Rights

Student Director, *Jerome N. Frank Legal Services Organization*, Prison Clinic

Research Assistant for Lea Vandervelde and Michael Reisman

Wesleyan University, Middletown, CT, B.A. 1990

Phi Beta Kappa, Honors in Government

PUBLICATIONS

BOOKS

Property Law: Rules, Policies and Practices (with Joseph William Singer, Nestor Davidson &

Eduardo Peñalver) (Aspen 6th Ed. 2014)

American Indian Law: Cases and Commentary (with Robert Anderson, Philip Frickey & Sarah Krakoff) (West Publishing, 1st ed. 2008, 2d ed. 2010, 3d ed. 2015)

Co-Author and Member of Editorial Board, FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (LexisNexis 2012 & 2005 eds.)

ARTICLES AND BOOK CHAPTERS

The Illusion of Fiscal Illusion in Regulatory Takings, American University Law Review (forthcoming)

Birthright Citizenship on Trial: Elk v. Wilkins and United States v. Wong Kim Ark, 37 CARDOZO LAW REVIEW 1185 (2016)

Discussed in Fred Barbash, *Donald Trump meet Wong Kim Ark, the Chinese American cook who is the father of 'birthright citizenship'*, Washington Post, Aug. 31, 2015

In the Name of the Child: Race, Gender, and Economics in Adoptive Couple v. Baby Girl, 67 FLORIDA LAW REVIEW 295 (2015)

Reprinted in part in Juan Perea, Richard Delgado, Angela Harris, Jean Stefanic & Stephanie Wildman, RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA (2015)

Elouise Cobell: Bringing the United States to Account, in "OUR CAUSE WILL ULTIMATELY TRIUMPH": PROFILES FROM THE AMERICAN INDIAN SOVEREIGNTY MOVEMENT (Tim Alan Garrison ed. Carolina Academic Press 2014)

Paul and Lorena Williams: Sheep, Sovereignty and the Supreme Court, in "OUR CAUSE WILL ULTIMATELY TRIUMPH": PROFILES FROM THE AMERICAN INDIAN SOVEREIGNTY MOVEMENT (Tim Alan Garrison ed. Carolina Academic Press 2014)

Race, Descent, Tribal Citizenship and Federal Indian Law and Policy, 4 CAL. L. REV. CIR. 23 (2013)

Williams v. Lee and the Debate over Indian Equality, 109 MICH. L. REV. 1463 (2011)

The Anomaly of Indian Citizenship, in HUMAN RIGHTS IN THE UNITED STATES: BEYOND EXCEPTIONALISM (Cambridge U. Press 2011)

The Story of Williams v. Lee: Sheep, Sovereignty, and the Supreme Court, in INDIAN LAW STORIES (Carole Goldberg, Kevin Washburn, & Philip Frickey eds., Foundation Press 2011)

Reconciling Equal Protection and Federal Indian Law, Festschrift for Philip Frickey, 98 CAL. L. REV. 1165 (2010)

What Owners Want and Governments Do—Lessons from the Oregon Experiment, 78 FORDHAM L. REV 1282 (2009)

Red: Racism and the American Indian, 56 UCLA L. REV. 491 (2009)
Reprinted in part in RACISM AND EQUALITY LAW (Angela Harris ed. 2013)

It's Not About the Fox: The Untold History of Pierson v. Post, 55 DUKE LAW JOURNAL 1089 (2006)

Discussed in Jesse Dukeminier, James Krier, Gregory Alexander & Michael Schill, Property (7th Ed. 2010); Thomas W. Merrill & Henry E. Smith, Property: Policies and Principles (2007); Joseph William Singer, Property: Rules, Policies and Practices (5th Ed. 2010); James Charles Smith & John Copeland Nagle, Property: Cases and Materials (2008); John G. Sprankling & Raymond Coletta, Property: A Contemporary Approach (2009), et al.

Liberalism and Republicanism in Federal Indian Law, Symposium Issue, 38 UNIVERSITY OF CONNECTICUT LAW REVIEW 813 (2006)

American Indian Law in Michigan, in Michigan Law and Practice Encyclopedia (Lexis 2005)

Justice and the Outsider: Jurisdiction Over Non-Members in Tribal Legal Systems, 37 ARIZONA STATE LAW JOURNAL 1047 (2005)

Selected for 2005 Stanford/Yale Junior Faculty Forum
Reprinted in materials for 2006 Federal Bar Association Indian Law Annual Conference
Cited in several briefs to the Supreme Court and congressional testimony

“Power Over this Unfortunate Race”: *Race, Power and Indian Law in U.S. v. Rogers*, 45 WILLIAM & MARY LAW REVIEW 1957 (2004)

Indian Policy and the Imagined Indian Woman, Symposium Issue, 14 KANSAS JOURNAL OF LAW AND POLICY 103 (2004)

U.S. v. Lara as a Story of Native Agency, Symposium Issue, 40 TULSA LAW REVIEW 5 (2004)
Reprinted in materials for 2005 Federal Bar Association Indian Law Annual Conference

After Pocahontas: Indian Women and the Law, 1830-1934, 22 AM. INDIAN L. REV. 1 (1997)
Reprinted in part in Michael Higginbotham, Race and the Law: Cases and Materials (2005); Mixed Race America and the Law (Kevin R. Johnson ed., 2003); Gender and the Law: Cases and Materials (Katherine Bartlett et al. eds., 2002); and Race and Races: Cases and Resources for a Diverse America (Juan Perea et al. eds., 2000)

SHORTER PUBLICATIONS

Reclaiming Lone Wolf, Review of Michalyn Steele, Plenary Power, Political Questions, and Sovereignty in Indian Tribes, 63 UCLA L. Rev. 666 (2016), Jotwell (forthcoming 2016)

Kelo and the Constitutional Revolution that Wasn't, 48 Conn. L. Rev. ____ (2016)

Kelo: A Decade Later, 47 Conn. L. Rev. 1433 (2015) (published conference proceedings, with Wesley Horton, Thomas J. Londregan & Clark Neily)

Kelo—A Decade Later, TitleNews (June 2015)

Diversely Native, Federal Lawyer (June 2015)

Review of Colin Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History*, 33 L. HIST. REV. 478 (2015)

Not So Schizophrenic: Review of Gregory Ablavsky, Beyond the Indian Commerce Clause, Jotwell (May 2015)

Lexis Nexis Emerging Issues Analysis, *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak* (2012)

Review of Ariela Gross, *What Blood Won't Tell: A History of Race on Trial in America*, 25:2 CONTINUITY AND CHANGE 348 (2010)

Laws Governing Native American Children, in CHICAGO COMPANION TO THE CHILD (U. Chicago Press 2009)

Review of Deborah A. Rosen, *American Indians and State Law: Sovereignty, Race and Citizenship 1790-1880*, 33:1 AMERICAN INDIAN CULTURE AND RESEARCH JOURNAL 143 (2009)

The New Realism: The Next Generation of Scholarship in American Indian Law, 32 AM. INDIAN L. REV. 1 (2007) (published conference proceedings)

Preview of Wagon v. Richards, ABA Supreme Court Preview (Oct. 2005)

Now Comes the Hard Part for Eastern Pequots, Hartford Courant (July 5, 2002)

Nipmucs a Nation, Nonetheless: 'Gaming' Wrongly Taints Tribal Status, Providence Journal-Bulletin (Oct. 31, 2001)

Treat Terrorism Not as Warfare But As Disease, Hartford Courant (Sept. 28, 2001)

SELECTED BRIEFS

Co-Author Amicus Brief in *Nebraska v. Parker*, 136 S.Ct. 1072 (2016) (concerning Indian country boundaries)

Co-Author Amicus Brief in *Wyoming v. EPA*, Nos. 14-9512 and 14-9515 (10th Cir.) (concerning Indian country boundaries)

Author on behalf of ACLU, Application for Leave to Appeal to Michigan Supreme Court in *Muller v. Muller* (Mich. Ct. App. 2005) (concerning prohibition on visitation by children when father's partner sleeping at their shared home)

Co-Author, Amicus Brief in *Native Village of Eyak v. Evans*, No. 02-36155 (9th Cir. July 12,

2004) (concerning aboriginal fishing rights of Alaska Native village)

Co-Author, Amicus Brief in *In re Steven M.*, 826 A.2d 156 (Conn. 2003) (concerning transfer of juvenile offender to adult prison)

NON-ACADEMIC LEGAL EXPERIENCE

Judge, Southwest Inter-Tribal Court of Appeals, 2005 to 2011

Judge for Appellate Court deciding appeals for several southwestern tribes

Managing Attorney, Advocates for Children of New York, Inc., New York, NY, July 2000-August 2001, Senior Attorney, October 1999-July 2000

Supervising attorney at education law and policy non-profit; Conducted impact litigation and policy reform work concerning special education and other educational rights of children.

Director, Native American Youth Law Project, DNA-People's Legal Services, Window Rock, AZ, September 1996 to October 1999

Director of project using law to significantly impact lives of children on or near the Navajo and Hopi reservations; Conducted litigation challenging discrimination against Indian children; Drafted and secured the passage of tribal laws affecting children; Worked with community group to create a Navajo alternative to detention program.

PROFESSIONAL ASSOCIATIONS AND ACTIVITIES

American Society for Legal History, Conference Co-Chair 2016, Conference Committee, 2015

American Law Institute, elected 2014

Peer reviews for *Law and Social Inquiry*, *Law and History Review*, *Journal of Southern Legal History*, and *Journal of Law, Culture, and the Humanities*

American Association of Law Schools: Indian Nations and Indigenous Peoples Section, 2014-2016 Executive Committee; 2004-2005 Chair
2005 Wayne State Faculty Representative

Bar Member: State of New York; State of Arizona (inactive); U.S. District Courts for the Eastern District of New York, Southern District of New York, and District of Arizona; Cheyenne River Sioux Tribe; Navajo Nation (1997-2000)

SELECTED PRESENTATIONS

Organizer and Speaker, 21st Gallivan Conference: Opportunity Everywhere—Affirmatively Furthering Fair Housing to Transform Communities (June 2016)

Indigenous (In)Justice: From Natural Resources to Marriage Equality, *American Society for Law, Culture, and the Humanities* (April 2016)

Savage Equalities, UConn Injustice League (February 2016)

Keynote, Tribal Courts in Perspective, Meeting of the Mashantucket Pequot Bar Association and Connecticut Association Indian Law Section (October 2015)

Elouise Cobell, Seminar on Indigenous Women, University of Mass-Boston (October 2015)

Taxation of Indians and Indian Country, Conference of State Tax Judges, Lincoln Land Institute (October 2015)

Constitution Day Speech, Birthright Citizenship—Indigeneity and Immigration, Wesleyan University (September 2015)

Citizenship in Red and Yellow, UC Irvine Native Studies Colloquium Series (March 2015)

Organizer and Moderator, Kelo: A Decade Later, Twentieth Annual Gallivan Conference, UCONN Law (March 2015)

Citizenship Talk, American Society for Law, Culture, and Humanities, Annual Meeting (March 2015)

Progressive Property Conference, Moderator, Northeastern University School of Law (May 2014)

Organizer and Moderator, 19th Annual Gallivan Conference: Climate Resilience—Envisioning a New Way Forward, UConn Law (April 2014)

Race, Gender, and American Indians: From Pocahontas to Baby Veronica, UMass-Boston (April 2014)

Keynote Speech, Tribal Practice: Going Back to Go Forward, Combined Annual Meeting Law Librarians of New England and Southern New England Law Librarians Association, UConn Law (April 2014)

Tribal Environmental Law, New Directions for Environmental Law Conference, Yale Law School (March 2014)

VAWA Amendments, S.A.G.E. Conference, University of Pennsylvania Law School (Feb. 2014)

Recent Supreme Court Cases: The Bad, The Ugly, the Really Ugly . . . Any Good? NALSA Conference, Stanford Law School (Feb. 2014)

Adoptive Couple v. Baby Girl, American Association of Law Schools Annual Conference (Jan. 2014)

Tribal Citizenship Choices in Historical Perspective, Tribal Citizenship Conference, William Mitchell College of Law (Nov. 2013)

Adoptive Couple v. Baby Girl, Tribal Relations Committee, Conference of Chief Justices of State Supreme Courts (June 2013)

Moderator, Progressive Property Conference, New Orleans, Louisiana (June 2013)

Citizenship in Red and Yellow, Annual Conference, Law and Society Association (May 2013)

The Indian Problem in Federal Legal History, American Society for Legal History (Nov. 2012)

Equality Conflicts in Federal Indian Law, NALSA Workshop, Yale Law School (Nov. 2012)

Doing Justice in Indian Country, Thelton Henderson Center, Berkeley Law School (Oct. 2012)

Property Works in Progress Conference, Fordham Law School (June 2012)

Progressive Property Conference, Harvard Law School (May 2012)

Human Rights Workshop, Yale Law School (April 2012)

Faculty Workshop, University of Miami Law School (Feb. 2012)

Faculty Workshop, University of Michigan Law School (Nov. 2011)

Plenary Speaker, Tribal Law and Order Act and Beyond, Michigan State University (Oct. 2011)

Plenary Speaker, CRS Symposium on Race and Sovereignty, UCLA Law School (April 2011)

Faculty Workshop, Boston University Law School (Dec. 2010)

Faculty Workshop, Tulsa University Law School (Oct. 2010)

Sovereignty and Identity of Indian Tribes and Indigenous Peoples, Wesleyan University (May 2010)

Critical Race Colloquium, UCLA Law School (March 2010)

American Law Property and Society 2010 Meeting, Georgetown Law School (March 2010)

Stein Public Interest Program, Presentation on American Indian Law, Fordham Law School (Feb. 2010)

SALT Robert M. Cover Public Interest Retreat, Peterborough, New Hampshire (Feb. 2010)

The Anomaly of Indian Citizenship, at Human Rights in the USA, University of Connecticut (Nov. 2009)

Clason Faculty Enrichment Speaker, Western New England College of Law (Sept. 2009)

Progressive Property Working Group, Cornell Law School (June 2009)

What Owners Want and Governments Do: Evidence from the Oregon Experiment, Annual Conference of the Law and Society Association (May 2009)

Williams v. Lee: Sheep, Sovereignty and the Supreme Court, Harvard University Native American Program (May 2009)

Frickeyfest, Festschrift for Professor Philip Frickey, UC Berkeley School of Law (April 2009)

Tribal Justice: The Supreme Court and the Future of Indian Law, Harvard Law School (April 2009)

Indian Nations and Institution Building, American University-Washington College of Law (February 2009)

Williams v. Lee and the Understanding of Indian Equality, Harvard Faculty Workshop (December 2008)

Williams v. Lee and the Understanding of Indian Equality, Annual Conference of the American Society for Legal History (November 2008)

Red: Racism and the American Indian, University of Michigan Law School (October 2008)

Presenter and Commentator, Denver University-Colorado University Indian Law Works in Progress Conference (Aug. 2008)

Defining Indian Equality: Tribal Rights, Civil Rights, and *Williams v. Lee*, Annual Conference on Law and Society, Montreal, Canada (May 2008)

Roundtable, Property and Indigenous Peoples, Annual Conference on Law and Society, Montreal, Canada (May 2008)

Presenter, Conference on the Legacy of Felix Cohen, Michigan State University (March 2008)

Arizona State University Indian Law Colloquium, Tempe, Arizona (Oct. 2007)

Race-ing the Tribe, American Society for Legal History, Tempe, Arizona (Oct. 2007)

Federal Indian Law Update, Mashantucket Pequot Bar Association (Oct. 2007)

Red: Theorizing American Indian Race, Annual Conference on Law and Society, Berlin, Germany (July 2007)

Commenter, Graduate Program Works-in-Progress Symposium, Yale Law School (April 2007)

Global Conversations—The Constitutional Status of Indigenous Peoples, Yale Law School (Mar. 2007)

Conference co-organizer and speaker, *The New Realism: The Next Generation of Scholarship in Federal Indian Law*, Berkeley, California (Nov. 2006)

Connecticut Bar Association, Pro Bono Indian Law Training (Nov. 2006)

Academic Law Teaching, Yale Law School (Nov. 2006)

Organizer and Presenter, *Interrogating Pierson v. Post*, Annual Conference, Association for the Study of Law and Society (July 2006)

Tribal Leader/Scholar Forum, National Congress of American Indians Mid-Year Conference (June 2006)

Howard H. Rolapp Presentation, University of Utah (March 2006)

Faculty Enrichment Speaker, Florida State University (Feb. 2006)

Liberalism and Republicanism in Federal Indian Law, Indian Law Symposium, University of Connecticut Law Review (Oct. 2005)

Challenges in Developing Indigenous Legal Institutions, Plenary Section, LatCrit South/North Exchange (May 2005)

Criminal Jurisdiction in Indian Country, Plenary Section, Federal Bar Association Indian Law Section Annual Conference (April 2005)

Moderator, *American Indian Law Day*, University of Michigan (April 2005)

Feminism and Culture, Annual Conference, American Association of Law Schools (Jan 2005)

Indigenous Peoples in International and Comparative Law, Annual Conference, American Association of Law Schools (January 2005)

Issues in Indian Law: State and Property Taxation, Annual Conference of State Tax Judges (Oct 2004)

The Problem of Justice: The View from the Reservation, Annual Conference, Association for the Study of Law, Culture, and the Humanities (March 2004)

Incorporating Tribal Law in the Law School Curriculum, Annual Conference, American Association of Law Schools (January 2004)

Indian Country & the Judiciary, Indian Country in the New Millennium: A 50 Year Retrospective, Mashantucket Pequot Museum and Research Center (October 2003)

Indian Policy and the Imagined Indian Woman, Symposium, Tribal Law and Governance, University of Kansas School of Law (October 2003)

Justice and the Outsider: Tribal Court Adjudication of Nonmember Rights, Annual Conference, Law and Society Association (June 2003)

“Power over this Unfortunate Race”: *U.S. v. Rogers, Race, Power & Indian Law*, Annual Conference, American Society for Legal History (November 2002)

Back to the Future on Indian Jurisdiction, Conference of the Association of Native Americans at Yale University, Plenary Session Panel (October 2002)

The Indian Child Welfare Act: Practice and Implementation, Annual Conference of Virginia District Court Judges, Plenary Session (August 2002)

Indian Child Welfare Act, Conference of State Supreme Court Justices, Tribal Affairs Committee (July 2002)

Jurisprudence of the Navajo Supreme Court, 1998-99, Annual Conference, Navajo Nation Bar Association, Plenary Session (June 1999)