
Except where otherwise expressly provided, the author of each piece of scholarship in this issue has granted permission for copies of that scholarship to be made in whole or in part by nonprofit institutions for educational use, including distribution to students, provided that (i) copies are distributed at or below cost; (ii) copies identify the author, the journal, the volume, the number of the first page, and the year of the publication; (iii) proper notice of copyright is affixed to each copy, attributing copyright to the author.

The University of Michigan Journal of Law Reform is published quarterly by students of the University of Michigan Law School. Printed by Joe Christensen, Inc., Lincoln, Nebraska 68521.

The University of Michigan Journal of Law Reform
The University of Michigan Law Library
801 Monroe Street
Ann Arbor, MI 48109-1210
JLR-Business@umich.edu
http://www.mjlr.org/

Publication Policy

The journal seeks to improve the law and its administration by providing a forum for discussion that identifies contemporary issues for reform efforts, proposes concrete means to accomplish change, and evaluates the impact of law reform. As contributions to this discussion, the journal also welcomes multidisciplinary and empirical work.

We encourage the submission of unsolicited manuscripts for publication via Scholastica or to jlrsubmissions@umich.edu. Articles should generally conform to The Bluebook: A Uniform System of Citation (20th ed. 2015) and The Chicago Manual of Style (16th ed. 2010).

Views expressed in the journal are those of the authors and not necessarily those of the editorial staff.

Subscriptions

The current subscription rate is $40.00 domestic and $45.00 foreign. All business inquiries should be made to JLR-Business@umich.edu. Subscribers should report the nonreceipt of copies within six months of the mailing date.

Individual and Back Issues

Copies of individual issues from the current volume can be obtained directly from the journal for $15.00 each.

Back issues in complete sets, volumes, or single issues can be obtained from William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, New York 14068—Telephone (716) 882-2600. The journal is also available on microfilm through ProQuest, 300 North Zeeb Road, Ann Arbor, Michigan 48106-1346—Telephone (800) 521-0600. Back issues are also available in PDF format through HeinOnline at http://heinonline.org.

Indexes

The journal is indexed in the Current Law Index, Index to Legal Periodicals, Legal Resource Index, and PAIS Bulletin.

ISSN 0033-1546
UNIVERSITY OF MICHIGAN LAW SCHOOL

Administrative Officers
Mark Schlissel, B.A., M.D., Ph.D., President of the University
Martin A. Philbert, B.Sc., Ph.D., Provost and Executive Vice President for Academic Affairs
Mark D. West, B.A., J.D., Nippon Life Professor of Law, Dean
Bridgette Carr, B.A., J.D., Clinical Professor of Law, Associate Dean for Academic Affairs
Daniel Halberstam, B.A., J.D., Eric Stein Collegiate Professor of Law, Associate Dean for Faculty and Research, Director of European Legal Studies Program
Debra Chopp, B.A., J.D., Clinical Professor of Law, Associate Dean for Experiential Education
David Santacroce, B.A., J.D., LL.M., Clinical Professor of Law, Associate Dean for Experiential Education
Gil Seinfeld, A.B., J.D., Professor of Law, Associate Dean for Academic Programming
Michael Dubin, B.S., M.A., Assistant Dean for Development and Alumni Relations
Theresa Kaiser-Jarvis, B.A., B.S.J., Ed.M, J.D., Assistant Dean for International Affairs
Ramji Kaul, B.A., J.D., Assistant Dean for Career Planning
Bayreex Marti, B.A., J.D., Assistant Dean for Student Life
Lindsey Stetson, B.A., J.D., Assistant Dean for Financial Aid
Sarah C. Zearfoss, B.A., J.D., Senior Assistant Dean for Admissions, Financial Aid, and Career Planning

Professors Emeriti of Law
Layman E. Allen, A.B., M.P.A., LL.B.
David L. Chambers, A.B., LL.B.,
Wade H. McCre, Jr. Collegiate Professor of Law
Edward H. Cooper, A.B., LL.B.,
Thomas M. Cooley Professor of Law
Donald N. Duquette, B.A., J.D.
Clinical Professor of Law
Philip M. Frost, B.A., J.D.
Clinical Professor of Law
Thomas A. Green, B.A., Ph.D., J.D.,
John Philip Darrow Collegiate Professor of Law
Samuel R. Gross, A.B., J.D.,
Thomas G. and Mabel Long Professor of Law
Jerold H. Israel, B.A., LL.B.,
Aline and Allan F. Smith Professor of Law
Douglas A. Kahn, B.A., J.D.,
Paul G. Kauper Professor of Law
Yale Kamisar, A.B., LL.B., LL.D.,
Clarence Darrow Distinguished University Professor of Law
Thomas E. Kauper, A.B., J.D.,
Henry M. Butzel Professor of Law
Richard O. Lempert, A.B., J.D., Ph.D.,
Eric Stein Distinguished University Professor of Law and Sociology
Sallyanne Payton, B.A., LL.B.,
William W. Cook Professor of Law
Margaret Jane Radin, A.B., M.F.A., J.D., LL.D.,
Henry King Ransom Professor of Law
Terrance Sandalow, A.B., J.D.,
Edson R. Sunderland Professor of Law
E. Philip Soper, B.A., M.A., J.D., Ph.D.,
James V. Campbell Professor of Law
Theodore J. St. Antoine, A.B., J.D.,
James E. and Sarah A. Degan Professor of Law
Joseph Vining, B.A., M.A., J.D.,
Harry Burns Hutchinson Collegiate Professor of Law
Lawrence W. Waggoner, B.B.A., J.D., D.Phil.,
Lewis M. Simes Professor of Law
Peter K. Westen, B.A., J.D.,
Frank G. Millard Professor of Law
James Boyd White, A.B., A.M., LL.B.,
L. Hart Wright Collegiate Professor of Law
James J. White, B.A., J.D.,
Robert A. Sullivan Professor of Law

Professors of Law
Kate Andrias, B.A., J.D.
Reuven S. Avis-Yonah, B.A., A.M., Ph.D., J.D.,
Irwin I. Cohn Professor of Law
Samuel Bagenstos, B.A., J.D.,
Frank G. Millard Professor of Law
Nicholas Bagley, B.A., J.D.,
Michael S. Barr, B.A., M.Phil., J.D.,
Roy F. and Jean Humphrey Proftt Professor of Law
Laura N. Beny, B.A., M.A., J.D., Ph.D.
Evan H. Caminker, B.A., J.D.,
Branch Rickey Collegiate Professor of Law
Sherman J. Clark, B.S., J.D.,
Kirkland and Ellis Professor of Law
Daniel Crane, B.A., J.D.,
Frederick Paul Farthing, Sr. Professor of Law
Steven P. Croley, A.B., J.D., Ph.D.,
Harry Burns Hutchinson Collegiate Professor of Law
Kristina Daugirdas, A.B., J.D.,
Rebecca S. Eisenberg, B.A., J.D.,
Robert and Barbara Luciano Professor of Law
Phoebe C. Ellsworth, A.B., Ph.D.,
Frank Murphy Distinguished Professor of Law and Psychology
Richard D. Friedman, B.A., J.D., D.Phil.,
Alene and Allan F. Smith Professor of Law
Bruce W. Frier, A.B., Ph.D.,
John and Teresa D'Arms Distinguished University Professor of Classics and Roman Law
Monica R. Hakimi, B.A., J.D.
Daniel Halberstam, B.A., J.D.,
Eric Stein Collegiate Professor of Law
James C. Hathaway, LL.B., LL.M., J.S.D.,
James E. and Sarah A. Degan Professor of Law
Scott Hershovitz, A.B., M.A., D.Phil., J.D.
Donald J. Herzog, A.B., A.M., Ph.D.,
Edson R. Sunderland Professor of Law
James Hines Jr., B.A., M.A., Ph.D.,
L. Hart Wright Collegiate Professor of Law
Nicholas C. Howson, B.A., J.D.,
Eilen D. Katz, B.A., J.D.,
Ralph W. Aigler Professor of Law
Vikramaditya S. Khanna, B.C.A., LL.B., S.J.D.,
William W. Cook Professor of Law
James E. Krier, B.S., J.D.,
Earl Warren DeLano Professor of Law
Jessica D. Litman, B.A., M.F.A., J.D.,
John F. Nickoll Professor of Law
Kyle D. Logue, B.A., J.D.,
Wade H. and Dores M. McCree Collegiate Professor of Law
Catharine A. MacKinnon, B.A., J.D., Ph.D.,
Elizabeth A. Long Professor of Law
Nina A. Mendelson, A.B., J.D.
Joseph L. Sax Collegiate Professor of Law
William I. Miller, B.A., Ph.D., J.D.,
Thomas G. Long Professor of Law
Julian Davis Mortenson, A.B., J.D.
William Novak, B.A., M.A., Ph.D.
Charles F. and Edith J. Clyne Professor of Law
John A.E. Pottow, A.B., J.D.
John Philip Dawson Collegiate Professor of Law
James J. Prescott, B.A., J.D., Ph.D.
Eve Brensike Prinus, B.A., J.D.
Richard A. Prinus, A.B., D.Phil., J.D.
Theodore J. St. Antoine Collegiate Professor of Law
Adam C. Pritchard, B.A., M.P.P., J.D.
Frances and George Skestos Professor of Law
Steven R. Ratner, A.B., M.A., J.D.,
Bruno Simma Collegiate Professor of Law
Donald H. Regan, A.B., LL.B., B.Phil., Ph.D.,
William W. Bishop, Jr. Collegiate Professor of Law
Mathias W. Reimann, Dr.Iur., LL.M.,
Hessel E. Yntema Professor of Law
Veronica Santarosa, LL.B., B.A., M.A., LL.M., Ph.D
Margo Schlanger, B.A., J.D.
Henry M. Batiel Professor of Law
Carl E. Schneider, A.B., J.D.,
Chauncey Stillman Professorship for Ethics, Morality, and the Practice of Law
Rebecca J. Scott, A.B., M.Phil., Ph.D.,
Charles Gibson Distinguished University Professor of History
Gil Seinfeld, A.B., J.D.
Bruno Simma, Doctorate of Law
Sonja B. Starr, A.B., J.D.
Christina B. Whitman, A.B., M.A., J.D.,
Francis A. Allen Collegiate Professor of Law
Maureen Carroll, B.S., J.D.
Nicolas Cornell, A.B, Ph.D., J.D.
Edward Fox, B.A., J.D., Ph.D.
W. Nicholson Price, II, A.B., J.D., Ph.D.
Gabriel Rauterberg, B.S., J.D.
Clinical Professors of Law
Alicia Alvarez, B.A., J.D.
Nicole Appleberry, A.B., J.D., LL.M.
Edward R. Becker, B.A., J.D.
Howard Bronberg, B.A., J.D., J.S.M.
David A. Morán, B.S., B.A., M.A., M.S., J.D.
Mark K. Osbeck, A.B., M.A., J.D.
Paul D. Remington, B.A., J.D.
Nicholas J. Rine, B.A., J.D.
Vivek Sankaran, B.A., J.D.
Suellyn Scarmecchia, B.A., J.D.
Kimberly A. Thomas, B.S., J.D.
Dana Thompson, B.S., J.D.
Frank E. Vandervort, B.A., J.D.
Nancy Vettorello, B.A., M.U.P., J.D.
Beth H. Wilensky, B.A., J.D.
Clinical Assistant Professors of Law
Matthew Andres, B.A., J.D.
Patrick Barry, B.A., J.D., Ph.D
Elizabeth Campbell, B.A., J.D.
Paul H. Falon, B.A., M.A., J.D.
Steve Gray, B.A., J.D.
David Guenther, B.A., M.A., J.D.
Margaret Hannon, B.A., J.D.
Joshua Kay, B.A., M.A., J.D.
Sanny Mansour, B.A., J.D.
Timothy Pinto, B.A., J.D.
Oday Salim, B.A., J.D., LL.M.
Amy Sankaran, B.A., J.D.
Imran Syed, A.B., J.D.
Professors from Practice
J. Phillip Adams, B.A., J.D., LL.M.
Timothy L. Dickinson, B.A., J.D., LL.M.
Jennifer Havranka, B.A., M.A., J.D.
Robert Hischon, B.A., J.D.
Frank G. Millard Professor from Practice
Barbara McQuade, B.A., J.D.
Leonard Nietsch, B.A., J.D.
David Uhlmann, B.A., J.D.
Jeffrey F. Liss Faculty Development Professor from Practice, Director of Environmental Law and Policy Program
William W. Cook Global Law Professors
Susanne Baer, LL.M.
Paul Brand, B.A., M.A., D.Phil
Christine Chunkin, LL.B., LL.M., Ph.D.
John G. H. Hudson, M.A., D.Phil
Haw-Jin Kim, B.S., Dr. Jur., LL.M.
J. Christopher McCrudden, LL.B., LL.M., D.Phil
Anne Peters, LL.M.
CONTENTS

Articles

Jury Selection in the Weeds: Whither the Democratic Shore?
Jeffrey Abramson .................................................. 1

Agency Pragmatism in Addressing Law’s Failure: The Curious Case of Federal “Deemed Approvals” of Tribal-State Gaming Compacts
Kevin K. Washburn .................................................. 49

Accusers as Adjudicators in Agency Enforcement Proceedings
Andrew N. Vollmer .................................................. 103

Post-Accountability Accountability
Nicole Stelle Garnett .................................................. 157

Notes

Ensuring That Punishment Does, in Fact, Fit the Crime
Meredith D. McPhail .................................................. 213

You Can’t Say That!: Public Forum Doctrine and Viewpoint Discrimination in the Social Media Era
Micah Telegen .................................................. 235