

# University of Michigan Journal of Law Reform

---

Volume 52

---

2018

## Front Matter

Journal of Law Reform

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>

---

### Recommended Citation

Journal of Law Reform, *Front Matter*, 52 U. MICH. J. L. REFORM i (2018).

Available at: <https://repository.law.umich.edu/mjlr/vol52/iss1/1>

This Front Matter is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mLaw.repository@umich.edu](mailto:mLaw.repository@umich.edu).

U N I V E R S I T Y   O F   M I C H I G A N

---

JOURNAL *of* LAW REFORM

---

VOLUME 52 • ISSUE 1

FALL 2018

UNIVERSITY OF MICHIGAN  
LAW SCHOOL  
ANN ARBOR, MICHIGAN



Cite as: 52 U. MICH. J.L. REFORM \_\_\_\_ (2018)

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 [jlr-submissions@umich.edu](mailto:jlr-submissions@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](mailto: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  
**JOURNAL of LAW REFORM**

---

Editorial Board

Volume 52 • 2018–2019

*Editor-in-Chief*

EMILY S. P. BAXTER

*Managing Editor*

MARINA R. PINO

*Managing Executive Editor*

B. GRAVES LEE

*Managing Articles Editor*

ROSS MACPHERSON

*Managing Notes Editor*

JULIE M. AUST

*Executive Editors*

JOHN BUZZARD  
JOAN HAYNER  
AMANDA KENNER  
EMILY J. KIM  
KYLE D. SMITH

*Articles Editors*

MICHAEL BATTEN  
MATTHEW BINDER  
CIARA M. DAVIS  
KELLY EHRENREICH  
CHARLOTTE MCEWEN  
NIKHIL A. SETHI

*Notes Editors*

STEPHANIE A. BENJAMINI  
CAMILLE DANVERS  
NICHOLAS R. HAZEN  
MICHAEL PERIATT  
BENJAMIN TAYLOR

*Managing Symposium Editor*

KARA A. NASEEF

*Managing Operations Editor*

BLAIR HOTZ

*Managing Development Editor*

HANNAH RUBASHKIN

*Symposium Editors*

ASHLYN E. ANGELL  
MEREDITH D. MCPHAIL

*Comments Editors*

INGRID EICHER  
TREVOR N. PARKES

DEVIN ABNEY  
ODELE BET-YONAN  
MONICA BROWNER

*Contributing Editors*

AYLIN R. DALDAL  
BRANDI DOBBS  
JONATHAN GILMARTIN  
EVAN JOHNSON

NICHOLAS KARP  
CHRISTOPHER POLLACK  
LAUREN G. SMITH

*Associate Editors*

MATTHEW W. ARROW  
ALLISON L. BELFIELD  
AMBER G. BENNETT  
MATTHEW E. CATALLO  
ALEXANDER CHAFETZ  
HOLLY A. CLANCY  
JOSEPH D. CONDON  
KENDAL J. CORKLE  
TAYLOR V. DAILY  
SPENCER J. DAVENPORT  
GUUS DUINDAM  
CASEY A. FARRINGTON  
STEPHEN F. FEDEROWICZ  
ROBERT M. FERNANDES  
PATRICK J. FORTE  
TRINI GAO  
THOMAS F. GARRITY

ALEXANDRA J. GILEWICZ  
GRIFFIN S. HARDY  
ELIZABETH P. HELPLING  
JENNIFER HILL  
MARGARET M. HLOUSEK  
NICOLE E. HOEHLE  
SAMUEL G. JAKSA  
CHLOE JASPER  
RUSSELL JOHN LAWSON  
JEFFREY P. LEVICKI\*  
HETALI M. LODAYA  
SEAN R. MAGILL  
REBECCA J. MARSTON\*  
J. WILLIAM MCCARTNEY  
KIANNA L. MOORE  
TIRZA A. MULLIN  
DHRUTI J. PATEL  
ADAM J. PIJANOWSKI

LYDIA T. PINCSAK  
ANDREW J. PLAGUE  
JAELE RICHARDSON  
TONY RUSSO  
COURTNEY E. RYGALSKI  
MARY KATHLIN SICKEL\*  
SARAH Q. SMITH  
MCKENZIE SOUTHWORTH  
ADAM T. STEINHILBER  
KATE C. SWAIN  
CLAIRE M. TUFFEY  
ARLYN M. UPSHAW  
ANDREW VIERRA  
DREW O. WALBECK  
LAURA K. WILLENBRING  
ANNA C. WILLIFORD\*  
SARAH E. YOUNG

*Publication Center Advisor*

JESSICA L. PASQUALE

*Publication Center Staff*

JESSICA KEELER  
CONNIE M. SWINDLE

*\* Associate Symposium Editor*

# 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 Strategic Initiatives*  
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*  
Bayrex 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. McCree, 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 Dawson Collegiate Professor of Law*  
Samuel R. Gross, A.B., J.D.,  
*Thomas G. and Mabel Long Professor of Law*  
Jerold H. Israel, B.B.A., LL.B.,  
*Alene 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 Hutchins 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. Avi-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 Proffitt 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 Furth, Sr. Professor of Law*  
Steven P. Croley, A.B., J.D., M.A., Ph.D.  
*Harry Burns Hutchins 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, B.A., 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.  
Ellen 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*  
Gabriel Mendlow, A.B., Ph.D., J.D.  
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 Primus, B.A., J.D.  
Richard A. Primus, 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. Butzel 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*

*Assistant Professors 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 Bromberg, B.A., J.D., J.S.M.  
David A. Moran, B.S., B.A., M.A., M.S., J.D.  
Mark K. Osbeck, A.B., M.A., J.D.  
Paul D. Reingold, B.A., J.D.  
Nicholas J. Rine, B.A., J.D.  
Vivek Sankaran, B.A., J.D.  
Suellyn Scarnecchia, 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., Ph.D., J.D.  
Sammy 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 Haverkamp, B.A., M.A., J.D.  
Robert Hirshon, B.A., J.D.  
*Frank G. Millard Professor from  
Practice*  
Barbara McQuade, B.A., J.D.  
Leonard Niehoff, A.B., 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 Chinkin, 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.



U N I V E R S I T Y   O F   M I C H I G A N

# JOURNAL *of* LAW REFORM

---

VOLUME 52 • ISSUE 1

FALL 2018

## 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 Discrimi-  
nation in the Social Media Era  
*Micah Telegen*. . . . . 235