

Michigan Law Review

Volume 114 | Issue 2

2015

Front Matter

Michigan Law Review

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



Part of the [Law Commons](#)

Recommended Citation

Michigan Law Review, *Front Matter*, 114 MICH. L. REV. (2015).

Available at: <https://repository.law.umich.edu/mlr/vol114/iss2/5>

This Front Matter is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

MICHIGAN LAW REVIEW

Vol. 114, No. 2

November 2015

CONTENTS

ARTICLES

- ARE UNIONS A CONSTITUTIONAL ANOMALY? *Cynthia Estlund* 169
- DELEGATING TAX *James R. Hines Jr.*
Kyle D. Logue 235

NOTES

- HOLDING ON TO CLARITY:
RECONCILING THE FEDERAL KIDNAPPING
STATUTE WITH THE TRAFFICKING
VICTIMS PROTECTION ACT *Benjamin Reese* 275
- STANDING IN THE WAY OF THE FTAIA:
EXCEPTIONAL APPLICATIONS OF *ILLINOIS BRICK*. . . . *Jennifer Fischell* 309

Except where otherwise expressly provided, the author of each Article, Essay, and Note in this issue has granted permission for copies of that Article, Essay, or Note to be made for educational use, provided that (i) copies are distributed at or below cost; (ii) the author and the *Michigan Law Review* are identified; (iii) prior written notice of the use is given to the Michigan Law Review Association; and (iv) proper notice of copyright is affixed to each copy, attributing copyright to the author.

Michigan Law Review (ISSN 0026-2234) is published in October, November, December, February, March, April, May, and June. Subscriptions: United States, \$60 per year in advance, eight numbers; Foreign, \$70. Editorial and Business Offices: University of Michigan Law School, 625 S. State St., Ann Arbor, Michigan 48109-1215; MLR-business@umich.edu (Business); 734/647-5817 (Fax). Website: <http://www.michiganlawreview.org>. Periodicals postage paid at Ann Arbor, Michigan and additional mailing offices. POSTMASTER: send address changes to Michigan Law Review, 625 S. State St., Ann Arbor, Michigan 48109-1215.

Printed at Joe Christensen, Inc., Lincoln, Nebraska 68521.

Recent Volumes: Single Issues \$10, Book Review \$16, and Special Issues \$12, postpaid, at Editorial and Business Offices.

Volumes 1 through 112, as well as single issues in those volumes, are available in print and microform from William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, New York 14068.

Because back stock of the *Review* is turned over to a dealer, back numbers are available to the *Review* for a short time only. We must therefore ask that subscribers report the nonreceipt of copies within six months of the mailing date.

We gladly consider unsolicited manuscripts for publication via Scholastica. Citations in manuscripts should follow the form prescribed in *The Bluebook: A Uniform System of Citation* (19th ed. 2010) and *The Chicago Manual of Style* (16th ed. 2010). Please see our website for submission instructions.

FIRST IMPRESSIONS
The Online Companion of the *Michigan Law Review*

Call for Submissions

The editors of the *Michigan Law Review* invite essay submissions on current areas of legal thought and research for *First Impressions*, our online publication.

First Impressions publishes op-ed style articles by academics, judges, practitioners, and law students, as well as timely responses to articles in the print journal of the *Michigan Law Review*. Our online companion quickly disseminates the legal community's initial impressions of important judicial decisions and legislative developments.

First Impressions prefers submissions under 3,000 words and cannot accept essays over 3,500 words. Submissions should be written in a style accessible to a general audience of practitioners and policymakers. Pieces will be published on an expedited production schedule.

Visit *First Impressions* at
www.michiganlawreview.org.

Please send questions and comments to the
Executive Editors of *First Impressions* at
mlr.fi@umich.edu.

LEGAL STUDIES from CHICAGO



BETTER BANKERS, BETTER BANKS

Promoting Good Business through Contractual Commitment

CLAIRE A. HILL & RICHARD W. PAINTER

BETTER BANKERS, BETTER BANKS

Promoting Good Business through Contractual Commitment

Claire A. Hill and Richard W. Painter

"A game-changer for the financial regulatory reform. Its proposal for 'covenant banking' is a serious formula for restoring trust in the financial services industry by requiring bankers to have skin in the game. Hill and Painter have figured out how to recreate the reputational benefits of general partnerships in an age of giant incorporated banks."

—Adam J. Levitin, Georgetown University Law Center

Cloth \$26.00

Second-Best Justice



The Virtues of Japanese Private Law

J. MARK RAMSEYER

SECOND-BEST JUSTICE

The Virtues of Japanese Private Law

J. Mark Ramseyer

"A highly contextualized takedown of the common belief that low litigation rates in Japan indicate that the Japanese legal system is fundamentally flawed. Ramseyer offers an alternative, ingeniously nuanced explanation for why Japanese don't sue: the system aims for good, not perfection."

—Mark D. West, University of Michigan Law School

Cloth \$50.00

THE FUTURE OF HEALTHCARE REFORM IN THE UNITED STATES

Edited by Anup Malani and Michael H. Schill



THE FUTURE OF HEALTHCARE REFORM IN THE UNITED STATES

Edited by Anup Malani and Michael H. Schill

"This outstanding book presents many of the issues facing U.S. policymakers as they seek to provide more Americans with basic access to affordable, high-quality health care despite fundamental ideological disagreements and substantial practical hurdles."—Aaron Kesselheim, Harvard Medical School

Cloth \$60.00

Now in Paperback

FREE EXPRESSION AND DEMOCRACY IN AMERICA

A History

Stephen M. Feldman

"Feldman is to be congratulated for his rigorous blending of judicial history, American history, and constitutional jurisprudence."

—*Law and Politics Book Review*

Paper \$40.00

FREE EXPRESSION and DEMOCRACY in America



THE UNIVERSITY OF CHICAGO PRESS www.press.uchicago.edu

The editors of the *Michigan Law Review*
are pleased to announce

2015 SURVEY OF BOOKS
RELATING TO THE LAW
published April 2015

The 2015 Survey presents reviews of law-related books
published in 2012, 2013, and 2014.

Please address inquiries to:

Michigan Law Review
University of Michigan Law School
Attn: Book Review Editors
625 S. State St.
Ann Arbor, MI 48109-1215

Visit our website at
www.michiganlawreview.org

UNIVERSITY OF MICHIGAN LAW SCHOOL

Fall 2015

Administrative Officers

MARK SCHLISSEL, B.A., M.D., PH.D., *President of the University*
MARTHA E. POLLACK, A.B., M.S.E., PH.D., *Provost and Executive Vice President for Academic Affairs*
MARK D. WEST, B.A., J.D., *Nippon Life Professor of Law, Dean*
DANIEL CRANE, B.A., J.D., *Frederick Paul Furth, Sr. Professor of Law, Associate Dean for Faculty and Research*
MONICA R. HAKIMI, B.A., J.D., *Professor of Law, Associate Dean for Academic Programming*
DAVID SANTACROCE, B.A., J.D., LL.M., *Clinical Professor of Law, Associate Dean for Experiential Education*
DAVID H. BAUM, B.A., J.D., *Assistant Dean for Student Affairs*
SARAH C. ZEARFOSS, A.B., J.D., *Assistant Dean and Director of Admissions*
TODD BAILY, B.A., *Assistant Dean for Development and Alumni Relations*
ROOPAL R. SHAH, B.A., J.D., *Assistant Dean for International Affairs*
JEREMY BLOOM, B.A., J.D., *Assistant Dean for Financial Aid*

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
WHITMORE GRAY, A.B., J.D., LL.D.
THOMAS A. GREEN, B.A., PH.D., J.D.,
John Philip Dawson Collegiate Professor of Law
JEROLD H. ISRAEL, B.B.A., LL.B.,
Alene and Allan F. Smith Professor of Law
JOHN H. JACKSON, B.A., J.D.,
Hessel E. Yntema Professor of Law
CHARLES W. JOINER, A.B., J.D.
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. LEMPFT, 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
JOHN W. REED, A.B., LL.B., LL.M.,
JUR.SC.D., LL.D.,
Thomas M. Cooley 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

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
EDWARD H. COOPER, A.B., LL.B.,
Thomas M. Cooley 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
ALICIA DAVIS, B.S., J.D., M.B.A.
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
SAMUEL R. GROSS, A.B., J.D.,
Thomas G. and Mabel Long Professor of 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.

DOUGLAS A. KAHN,* B.A., J.D.,
Paul G. Kauper Professor of Law
 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
 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
 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.
 MARK D. WEST, B.A., J.D.,
Nippon Life Professor of Law
 CHRISTINA B. WHITMAN, A.B., M.A., J.D.,
Francis A. Allen Collegiate Professor of Law

Assistant Professors of Law

KATE ANDRIAS, B.A., J.D.
 KRISTINA DAUGIRDAS, A.B., J.D.

GABRIEL MENDLOW, A.B., PH.D., J.D.
 VERONICA SANTAROSA, LL.B., B.A., M.A.,
 LL.M., PH.D.

Clinical Professors of Law

ALICIA ALVAREZ, B.A., J.D.
 EDWARD R. BECKER, B.A., J.D.
 BRIDGETTE CARR, B.A., J.D.
 DONALD N. DUQUETTE,* B.A., J.D.
 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.
 DAVID A. SANTACROCE, B.A., J.D., LL.M.
 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.

Clinical Assistant Professors of Law

NICOLE APPLEBERRY, A.B., J.D., LL.M.
 MICHAEL BLOOM, B.A., J.D.
 HOWARD BROMBERG, B.A., J.D., J.S.M.
 ELIZABETH CAMPBELL, B.A., J.D.
 DEBRA CHOPP, 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.
 MICHAEL MURRAY, B.A., J.D.
 BRYCE PILZ, B.S., J.D.
 TIMOTHY PINTO, B.A., J.D.
 AMY SANKARAN, B.A., J.D.
 IMRAN SYED, A.B., J.D.
 NANCY VETTORELLO, B.A., M.U.P., J.D.
 BETH H. WILENSKY, B.A., J.D.

Affiliated LSeA Faculty

MARTHA S. JONES, B.A., J.D.

Professors from Practice

J. PHILLIP ADAMS, B.A., J.D., LL.M.
TIMOTHY L. DICKINSON, B.A., J.D., LL.M.
ROBERT HIRSHON, B.A., J.D.
Frank G. Millard Professor from Practice

LEONARD NIEHOFF, A.B., J.D.
DAVID UHLMANN, B.A., J.D.,
*Jeffrey F. Liss Faculty Development Professor
from Practice*

William W. Cook Global Law Professors

PAUL BRAND, B.A., M.A., D.PHIL
CHRISTINE CHINKIN, LL.B., LL.M., PH.D.

JOHN HUDSON, M.A., D.PHIL
J. CHRISTOPHER MCCRUDDEN, LL.B, LL.M., D.PHIL
HWA-JIN KIM, B.S., DR.JUR., LL.M.

MICHIGAN LAW REVIEW

Vol. 114, No. 2

November 2015

EDITORIAL BOARD

Editor-in-Chief

MEGAN DEMARCO, *of New Jersey*

Managing Editor

SOMMER H. ENGELS, *of Massachusetts*

Executive Articles Editor

MARY E. MILLER, *of Massachusetts*

Articles Editors

JONATHAN L. BACKER, *of Wisconsin*

CHRISTINE J. CHOI, *of Virginia*

JENNIFER E. FISCHELL, *of New Jersey*

W. BENJAMIN REESE, *of Ohio*

MATTHEW P. SAPPINGTON, *of Illinois*

Executive Editors

BRIAN T. APEL, *of Idaho*

JARRETT H. GROSS, *of Illinois*

ROBERT G. KING, *of Maine*

DANIEL C. MONTGOMERY, *of Ohio*

EMMA NOTIS-MCCONARTY, *of Massachusetts*

JESSICA M. ROLL, *of New York*

Executive Notes Editor

DANIELLE KALIL-MCLANE, *of California*

Notes Editors

KATHERINE R. CANNY, *of New York*

S. CHANCELLOR HILL, *of Colorado*

ANDREW C. ROBB, *of Missouri*

RYAN S. ROTT, *of Michigan*

Book Review Editors

WILLIAM H. MARTIN, *of Washington*

JENNIFER W. STONE, *of Illinois*

Executive Editors of First Impressions

DONOVAN C. MCCARTY, *of Michigan*

ANDREW XUE, *of California*

Executive Development Editor

STEVEN J. ALIZIO, *of New York*

Executive Production Editor

JENNIFER R. TURCHYN, *of Michigan*

Contributing Editors

SARAH ALSADEN, *of Michigan*

MICHAEL C. BAKER, *of North Carolina*

TURNER BINKLEY, *of Michigan*

BREEANNA N. BREWER, *of California*

JOSEPH C. CELENTINO, *of California*

LINDSEY L. CHANDLER, *of Connecticut*

AVI EMANUEL, *of Illinois*

LISA A. FOLKERTH, *of Ohio*

DANIEL FONG, *of California*

RYAN K. HEBERT, *of Washington*

ERIC M. KIM, *of New York*

ALISON B. LISI, *of Michigan*

CHRISTOPHER R. MACCOLL, *of Maine*

JARED D. MAHER, *of Ohio*

JOAN E.G. MARTINEZ, *of the Philippines*

JOHN C. MUHS, *of Michigan*

KENNETH R. POWELL, *of Michigan*

TIMOTHY H.P. SMITH, *of Ohio*

RYAN J. SPILLE, *of Minnesota*

PATRICK A. TIGHE, *of Arizona*

MARTIN C. TOPOL, *of New Hampshire*

RACHAEL L. WESTMORELAND, *of Georgia*

ANNE R. YEARWOOD, *of New York*

ERIC D. YFF, *of Kentucky*

Associate Editors

ANDREA AMULIC, *of New York*

ALEXIS M. BAILEY, *of Michigan*

KATHERINE STALLINGS BAILEY, *of Illinois*

EVAN J. BALLAN, *of New York*

DON W. BLEVINS, *of Michigan*

FACUNDO BOUZAT, *of Ohio*

MADELINE E. BUCK, *of Minnesota*

CORY M. CARONE, *of Michigan*

DANNY S. CHAMI, *of Michigan*

ERIN R. CHAPMAN, *of Ohio*

DAVID J. CHO, *of New York*

ADELE A. DANIEL, *of Kansas*

MARIEL A. EBEN, *of Illinois*

KEVIN J. ELLIS, *of Michigan*

EMMA ELLMAN-GOLAN, *of New York*

MATTHEW GEISENDORFER-LINDGREN, *of Minnesota*

ERIKA L. GIROUX, *of Michigan*

ASHLEY P. GROLIG, *of Maryland*

RACHEL L. HAMPTON, *of Michigan*

EMILY HANTVERK, *of New York*

CHRISTIAN HOKANS, *of Michigan*

STEPHEN J. HOUCK, *of Virginia*

RICHARD S. HUBER, *of Florida*

JONATHAN HUBERMAN, *of New York*

KATIE M. HURRELBRINK, *of North Carolina*

AVERY M. JOHNSON, *of Minnesota*

ELIZABETH H. JONES, *of California*

ANDREW T. KRAMER, *of California*

CLAIRE M. LALLY, *of Illinois*

KATE F. LAMBERT, *of Michigan*

ERICA J. LEE, *of California*

EVAN C. LUM, *of Hawaii*

GREG MARGOLIS, *of North Carolina*

THOMAS F. MARTECCHINI, *of Connecticut*

ALYSHA M. NAIK, *of New York*

JENNA N. NEUMANN, *of Michigan*

ALEXANDRA PEACOCK, *of California*

MARISSA K. PERRY, *of Michigan*

ALEXANDRA M. PETERSON, *of Illinois*

JOSEPH M. PILIGIAN, *of California*

ALEXANDRA L. REED, *of Illinois*

ANDREA L. SCANLAN, *of Idaho*

SARAH R. SCHEINMAN, *of New York*

SACHI SCHURICHT, *of California*

JULIE T. SIEGEL, *of Japan*

HALLAM STANTON, *of England*

BROOKE THEODORA, *of California*

MATTHEW M. WALLACE, *of California*

CYNTHIA P. WEAVER, *of California*

DANIEL R. WHITMAN, *of New York*

Manager

JESSICA L. HANES

Editorial Assistants

CATHERINE T. LEGGIERI

BARBARA I. VIBBERT

