

Michigan Law Review

Volume 112 | Issue 6

2014

Front Matter

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



Part of the [Law Commons](#)

Recommended Citation

Front Matter, 112 MICH. L. REV. (2014).

Available at: <https://repository.law.umich.edu/mlr/vol112/iss6/17>

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. 112, No. 6

April 2014

2014 SURVEY OF BOOKS RELATED TO THE LAW

CONTENTS

FOREWORD

WHAT BOOKS ON LAW SHOULD BE *Richard A. Posner* 859

CLASSIC REVISITED

FROST FOR LAWYERS: "THE BEST THING THAT
WE'RE PUT HERE FOR'S TO SEE" *Sherman J. Clark* 867

REVIEWS

REGULATION THROUGH BOILERPLATE:
AN APOLOGIA. *Omri Ben-Shahar* 883

A PRAGMATIC REPUBLIC,
IF YOU CAN KEEP IT *William R. Sherman* 905

DIVERGING DESTINIES REDUX *Amy L. Wax* 925

INSTITUTIONAL AUTONOMY AND
CONSTITUTIONAL STRUCTURE. *Randy J. Kozel* 957

THE BANALITY OF WRONGFUL EXECUTIONS. . . . *Brandon L. Garrett* 979

RATIONALITY'S REACH *Adam B. Badawi* 993

LAW MATTERS,
EVEN TO THE EXECUTIVE. *Julian Davis Mortenson* 1015

IS RELIGIOUS FREEDOM IRRATIONAL? *Michael Stokes Paulsen* 1043

TAKING STATES (AND METAPHYSICS) SERIOUSLY.	<i>Sanford Levinson</i>	1071
MISSING McVEIGH	<i>Michael E. Tigar</i>	1091
LETTING GO OF OLD IDEAS	<i>William D. Henderson</i>	1111
RACIAL TEMPLATES.....	<i>Richard Delgado</i> <i>Juan F. Perea</i>	1133
PATERNALISTIC INTERVENTIONS IN CIVIL RIGHTS AND POVERTY LAW: A CASE STUDY OF ENVIRONMENTAL JUSTICE	<i>Anthony V. Alfieri</i>	1157

NOTICE

SOME KIND OF JUDGE: HENRY FRIENDLY AND THE LAW OF FEDERAL COURTS	<i>Aaron P. Brecher</i>	1179
---	-------------------------	------

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 111, 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

MICHIGAN LAW REVIEW

CALL FOR SUBMISSIONS

The Editors of the *Michigan Law Review* invite submissions in all areas of legal research and scholarship.

The *Michigan Law Review* strongly prefers manuscripts submitted through Scholastica. We are no longer accepting submissions through ExpressO.

We also accept manuscripts submitted by email to mlr.articles@umich.edu.

Manuscripts should follow *The Bluebook: A Uniform System of Citation* and *The Chicago Manual of Style*.

Our submissions policy is available on our website at www.michiganlawreview.org

UNIVERSITY OF MICHIGAN LAW SCHOOL

Spring 2014

Administrative Officers

MARY SUE COLEMAN, B.A., PH.D., *President of the University*
MARTHA E. POLLOCK, 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., *Associate Dean for Academic Programming*
DAVID SANTACROCE, B.A., J.D., LL.M., *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. 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
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

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.
MICHAEL S. BARR, B.A., M.PHIL., J.D.
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
 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.
 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.
 ADAM C. PRITCHARD, B.A., M.P.P., J.D.,
Frances and George Skestos Professor of Law
 MARGARET JANE RADIN, A.B., M.F.A., J.D., LL.D.,
Henry King Ransom 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.
 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
 JAMES J. WHITE, B.A., J.D.,
Robert A. Sullivan 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.
 NICHOLAS BAGLEY, B.A., J.D.
 KRISTINA DAUGIRDAS, A.B., J.D.

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

Clinical Professors of Law

ALICIA ALVAREZ, B.A., J.D.
 BRIDGETTE CARR, B.A., J.D.
 DONALD N. DUQUETTE, B.A., J.D.
 PHILIP M. FROST, B.A., J.D.
 DAVID A. MORAN, B.S., B.A., M.A., M.S., 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

EDWARD R. BECKER, B.A., J.D.
 HOWARD BROMBERG, B.A., J.D., J.S.M.
 DEBORAH BURAND, B.A., M.S.F.S., J.D.
 DEBRA CHOPP, B.A., J.D.
 PAUL H. FALON, B.A., M.A., J.D.

MARGARET HANNON, B.A., J.D.
 MARK K. OSBECK, A.B., M.A., J.D.
 TIMOTHY PINTO, B.A., J.D.
 NANCY VETTORELLO, B.A., M.U.P., J.D.
 BETH H. WILENSKY, B.A., J.D.

Affiliated LS&A Faculty

MARTHA JONES, B.A., J.D., M.A., M.PHIL, PH.D.

Public Service/Public Interest Faculty Fellows

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

Adjunct Professors

RICHARD "ERIK" GORDON, B.A., J.D.
 ROBERT HIRSHON, B.A., J.D.
Frank G. Millard Professor from Practice

JOAN L. LARSEN, B.A., J.D.
 LEONARD NIEHOFF, A.B., J.D.

Adjunct Clinical Assistant Professors

NICOLE APPLEBERRY, A.B., J.D., LL.M.
 MICHAEL BLOOM, B.A., J.D.
 ELIZABETH CAMPBELL, B.A., J.D.

JOSHUA KAY, B.A., M.A., PH.D., J.D.
 BRYCE PILZ, B.S., J.D.
 AMY SANKARAN, B.A., J.D.

*On leave for Spring/Summer 2014

MICHIGAN LAW REVIEW

Vol. 112, No. 6

April 2014

EDITORIAL BOARD

Editor-in-Chief

DAYNA J. ZOLLE, *of Colorado*

Managing Editor

ELIZABETH A. HOMAN, *of Missouri*

Executive Articles Editor

WILLIAM A. HARRIS, *of Tennessee*

Articles Editors

SETH R. BOWERS, *of Indiana*

ANDREW C. BUDZINSKI, *of New Jersey*

COLLEEN P. FITZHARRIS, *of Washington*

TAYLOR E. FRENCH, *of Kansas*

MICHAEL J. B. PITT, *of Illinois*

Executive Editors

RACHEL E. BRAVER, *of New York*

JENNIFER E. BRONSON, *of Illinois*

KEITH E. DIGGS, *of Virginia*

EMILY R. GOEBEL, *of Illinois*

STEPHANIE M. GOLDFARB, *of Ohio*

DEBORAH R. HUERTA, *of Michigan*

COLLIN D. RAY, *of Alabama*

MICHELLE A. SARGENT, *of New York*

Executive Notes Editor

ROBERT R. S. MANHAS, *of Washington*

Notes Editors

DAVID FRISO, *of Ohio*

STEPHEN T. MAYER, *of California*

JAKE J. PERKOWSKI, *of California*

ALLYSON R. TERPSMA, *of Michigan*

JOHN D. VANDEVENTER, *of Michigan*

Book Review Editors

JEFFREY D. EDWARDS, *of Utah*

JULIAN W. KLEINBRODT, *of California*

Executive Editors of First Impressions

MARGUERITE L. MOELLER, *of Iowa*

JUSTIN SILVER, *of New Jersey*

Executive Production Editor

KATELYN A. CANNELLA, *of New York*

Contributing Editors

AUSTIN V. ARNETT, *of Michigan*

JOSHUA H. AROCHO, *of Michigan*

ANANDA V. BURRA, *of India*

ASHLEY J. BUTLER, *of North Carolina*

BENJAMIN L. CAVATARO, *of Florida*

POLINA DEMINA, *of Kansas*

NATHANIEL L. FREELAND, *of California*

EZRA D. GEGGEL, *of Massachusetts*

CHARLIE GERSTEIN, *of New Jersey*

MATTHEW S. GREGORY, *of Oregon*

KELLY M. HAGEN, *of Ohio*

NICHOLAS T. HERRERA, *of California*

MATTHEW W. LANAHAN, *of Virginia*

DANIEL S. MAGY, *of Michigan*

JOSEPH X. MICHAELS, *of Michigan*

MATTHEW W. MUMA, *of Michigan*

ELIZABETH M. PHILLIPS, *of Connecticut*

KATHARINE A. ROLLER, *of Iowa*

ARIEL W. SCHEPERS, *of Michigan*

ELIZABETH A. SIMON, *of Michigan*

Associate Editors

CHRISTINE E. ADAMS, *of Illinois*

VALIAN A. AFSHAR, *of Delaware*

BRADLEY S. AHRENS, *of Michigan*

DANA R. ANGOOD, *of New Jersey*

JOEL C. BRYANT, *of Michigan*

CARI E. CARSON, *of Indiana*

DANIEL R. CELLUCCI, *of Massachusetts*

LEE ROSS CRAIN, *of Connecticut*

CHRISTIAN G. DESIMONE, *of Pennsylvania*

SARAH E. DUFFY, *of Illinois*

MATTHEW D. EVANS, *of Minnesota*

BRANDON R. FETZER, *of New York*

TIMOTHY J. FORD, *of Michigan*

SPENCER A. GOTTLIEB, *of New Jersey*

MAX A. GREENWALD, *of New York*

ANDREW R. GUY, *of Pennsylvania*

DANIEL HALAINEN, *of Pennsylvania*

DIANE R. HILLIGOSS, *of Indiana*

BRIAN D. HOWE, *of New York*

KURT A. JOHNSON, *of Michigan*

ANDREW J. JUNKER, *of Arizona*

THOMAS E. KADRI, *of England*

SAMANTHA A. KIRBY, *of California*

JARRED A. KLORFEIN, *of Georgia*

JESSICA A. KRAFT, *of Michigan*

SURYA KUNDU, *of California*

AVI KUPFER, *of Illinois*

SAMUEL C. LEIFER, *of Massachusetts*

CLAIRE V. MADILL, *of Michigan*

MATTHEW T. MCCURDY, *of California*

BIBEANE METSCH-GARCIA, *of New York*

LEAH A. MINTZ, *of Pennsylvania*

ERICA B. MITCHELL, *of Virginia*

EDWARD J. MROCZKOWSKI, *of Wisconsin*

DANIEL C. OSHER, *of Michigan*

JULIA K. POTTER, *of Wisconsin*

JOEL M. PRATT, *of Colorado*

EMILY A. ROSE, *of Colorado*

MARCEL T. ROSNER, *of New York*

ANDREW C. SAND, *of Georgia*

HANNAH S. SWANSON, *of Michigan*

ANDREA M. TAYLOR, *of Arizona*

ELI M. TEMKIN, *of Wisconsin*

BRIAN R. TENGEL, *of Ohio*

JENNIFER LEIGH UTRECHT, *of Florida*

KATHERINE C. WARREN, *of California*

NATHANIEL F. WEST, *of Minnesota*

ANGELA E. XU, *of California*

Manager

JESSICA L. HANES

Editorial Assistants

CATHERINE T. LEGGIERI

BARBARA I. VIBBERT