

Michigan Law Review

Volume 117 | Issue 2

2018

Front Matter

University of Michigan Law School

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

Recommended Citation

University of Michigan Law School, *Front Matter*, 117 MICH. L. REV. i (2018).

Available at: <https://repository.law.umich.edu/mlr/vol117/iss2/1>

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. 117, No. 2

November 2018

CONTENTS

ARTICLES

INTELLECTUAL PROPERTY IN EXPERIENCE *Madhavi Sunder* 197

THE CONSENSUS MYTH IN
CRIMINAL JUSTICE REFORM *Benjamin Levin* 259

ESSAY

ARGUING WITH FRIENDS *William Baude*
Ryan D. Doerfler 319

NOTE

THE “BROADEST REASONABLE INTERPRETATION”
AND APPLYING ISSUE PRECLUSION
TO ADMINISTRATIVE PATENT
CLAIM CONSTRUCTION *Jonathan I. Tietz* 349

COMMENT

REMEMBERING FINANCIAL CRISES:
THE RISK IMPLICATIONS OF THE RISE OF
INSTITUTIONAL INVESTORS IN
PROJECT FINANCE *David J. Park* 383

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) copies identify the author, the *Michigan Law Review*, the volume, the number of the first page, and the year of the publication; and (iii) 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 Library, 801 Monroe St., Ann Arbor, Michigan 48109-1210; 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 University of Michigan Law Library, 801 Monroe St., Ann Arbor, Michigan 48109-1210.

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* (20th ed. 2015) and *The Chicago Manual of Style* (17th ed. 2017). Please see our website for submission instructions.

MICHIGAN LAW REVIEW ONLINE

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 the *Michigan Law Review Online*.

Michigan Law Review Online publishes short articles and op-ed style pieces 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.

Michigan Law Review Online prefers submissions under 6,000 words inclusive of footnotes and can only very rarely accept longer pieces. 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 *Michigan Law Review Online* at
www.michiganlawreview.org.

Please send questions and comments to the
Executive Online Editors at
mlr.online@umich.edu

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

2018 SURVEY OF BOOKS
RELATING TO THE LAW
published April 2018

The 2018 Survey presents reviews of law-related
books published in 2015, 2016, and 2017.

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.

New *from* Chicago



AMERICA, COMPROMISED LAWRENCE LESSIG

America, Compromised Lawrence Lessig

Through case studies of Congress, finance, the academy, the media, and the law, Lessig shows how institutions are drawn away from higher purposes and toward money, power, quick rewards—the first steps to corruption. He brings copious, damning detail gleaned from years of research, building a case that is all but incontrovertible: America is on the wrong path.

Cloth \$24.00

How to Save a Constitutional Democracy

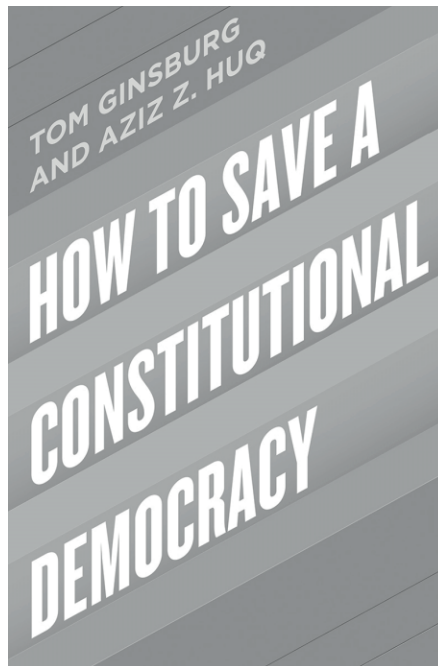
Tom Ginsburg and Aziz Z. Huq

“This is an important book—probably the most impressive marshaling of comparative literatures I have seen on this crucial set of issues.

Using a wide range of examples, Ginsburg and Huq show how healthy democracies can mutate into autocratic or oligarchic systems, and they offer an incisive account of how this might happen in the United States.”—Jack M.

Balkin, Yale Law School

Cloth \$35.00



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. Clyde 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*

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.

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

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 Scamecchia, 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 Vetorello, 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.

MICHIGAN LAW REVIEW

Vol. 117, No. 2

November 2018

EDITORIAL BOARD

Editor-in-Chief

MEGAN L. BROWN, *of Georgia*

Managing Editor

KRISTIN L. FROEHLE, *of Indiana*

Executive Articles Editor

ABIGAIL E. DEHART, *of Michigan*

Articles Editors

ALISON A. DOYLE, *of California*
CAROLINE H. HOWE, *of Massachusetts*
SALVATORE M. MANCINA, *of Michigan*
JAMILA A. ODEH, *of Michigan*
HAILEY L. SUGGS, *of Texas*

Executive Editors

ARIANNA M. DEMAS, *of New York*
PATRICK KENNEDY, *of Massachusetts*
PATRICK G. MAROUN, *of Massachusetts*
STEPHEN M. REES, *of Illinois*
MICHAEL S. SMITH, *of Illinois*
JONATHAN I. TIETZ, *of Ohio*

Executive Development Editor

HANNA T. ALL, *of North Carolina*

Executive Notes Editor

MICHAEL R. ABRAMS, *of Maryland*

Notes Editors

AVIV S. HALPERN, *of California*
RYAN M. MAROSY, *of New Jersey*
SARAH A. MEZERA, *of Wisconsin*
JUN HA PARK, *of California*
CAROLINA I. VELARDE, *of Panama*

Book Review Editors

EVA RICHARDSON, *of Maryland*
NEIL K. TIWARI, *of Alabama*

Executive Online Editors

JOSHUA M. GOLDMAN, *of Massachusetts*
JORGE E. MANCILLAS, *of Arizona*
JOSEPH D. MOSES, *of Michigan*

Executive Production Editor

M DEVON MOORE, *of New Jersey*

Senior Editors

NADINE H. ABDALLAH, *of Michigan*
CHRISTIAN A. BASHI, *of Michigan*
JAMES D. COATSWORTH, *of Washington*
ERIN EDGERTON, *of Michigan*
GAIL L. ENGMANN, *of Connecticut*
DOMINIC A. FARCHIONE III, *of Michigan*
LORI J. INTERLICCHIO, *of New York*
HILLARY F. JOHN, *of Massachusetts*
LESLIE R. KAN, *of Nevada*
DREW S. KRAMER, *of New York*
ERICA L. LIGNELL, *of Michigan*
LISA LIMB, *of New York*
SHAY D. LONGTAIN, *of Colorado*

MAX LUBIN, *of New York*
HUNTER MCWINN, *of Texas*
TRAVIS R. MILLER, *of Washington*
EMILY A. MINTON-MATTSON, *of Washington*
AKASH PATEL, *of Oklahoma*
NICHOLAS L. PERRY, *of Massachusetts*
CHRISTOPHER R. SCHWARTZ, *of Michigan*
THOMAS J. STANDIFER, *of California*
MICAH I. TELEGEN, *of Massachusetts*
HINH D. TRAN, *of California*
EDNA R. TURAY, *of Virginia*
ANNEMARIE C. YALDO, *of Michigan*

Associate Editors

TEZIRA A. ABE, *of Texas*
EMILY M. ARNOLD, *of Pennsylvania*
PATRICK BALKE, *of Michigan*
BENJAMIN J. BIRCOLL, *of Georgia*
CADE C. BOLAND, *of Illinois*
ANDREW T. BULOVSKY, *of Wisconsin*
NINA C. CAHILL, *of Michigan*
TYLER P. CARROLL, *of Massachusetts*
GABRIELLA M. D'AGOSTINI, *of Michigan*
MONICA L. DAEGELE, *of California*
CARRIE J. DARDEN, *of Iowa*
SARAH F. DU, *of Washington*
HALEY DUTCH, *of Tennessee*
JONATHAN S. EDELMAN, *of Florida*
JACKSON M. ERPENBACH, *of South Dakota*
DAVID L. FEGLEY, *of Maryland*
BRYCE T. FREEMAN, *of Florida*
LENA GANKIN, *of California*
ALEXANDRA R. GENORD, *of Michigan*
SOPHIA M. GONZALEZ, *of Florida*
JILLIAN L. GRAY, *of Michigan*
AARON C. JONES, *of Iowa*
DON YA KHADEM, *of Wisconsin*
JOSEPH J. KIESSLING, *of Michigan*
DAVID KIM, *of New Jersey*
ANDREW LANHAM, *of Ohio*
CHAD F. LEE, *of Nevada*

STACIA LEE, *of Washington*
MATTHEW S. LISCOVITZ, *of Maine*
NICHOLAS J. LOFTUS, *of Virginia*
DAVID N. LOUISON, *of New York*
ELENA MALIK, *of Pennsylvania*
KALEB T. MARTIN, *of Idaho*
AIDAN D. MCCARTHY, *of California*
SARAH M. McDONALD, *of Wyoming*
GILLIAN MCGANN, *of New York*
SEAN P. MULLOY, *of Arizona*
TARA F. OGUONDE, *of Pennsylvania*
MARK C. PRIEBE, *of Wisconsin*
CHRISTOPHER I. PRYBY, *of Georgia*
CHELSEA I. RINNIG, *of California*
ALESSANDRA N. ROSALES, *of Florida*
LAUREN SCHUSTERMAN, *of Colorado*
FARAZ SHAHIDPOUR, *of Illinois*
CLAIRE A. SHIMBERG, *of Florida*
ADAM B. SHNIDERMAN, *of Texas*
JONATHAN B. SNAVELY, *of Michigan*
ANGELA I. THEODOROPOULOS, *of Illinois*
MAGGIE M. TURNER, *of North Carolina*
CURTIS W. VICTOR, *of Maryland*
ADAM J. WALLSTEIN, *of Vermont*
HAYATO WATANABE, *of Massachusetts*
TOMMY ZAINO, *of Ohio*

Manager

JESSICA L. PASQUALE

Editorial Assistants

JESSICA KEELER
CONNIE M. SWINDLE