

# Michigan Law Review

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Volume 118 | Issue 6

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2020

## Editors' Note

Michigan Law Review

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### Recommended Citation

Michigan Law Review, *Editors' Note*, 118 MICH. L. REV. 935 (2020).

Available at: <https://repository.law.umich.edu/mlr/vol118/iss6/2>

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## EDITORS' NOTE

Forty odd years ago, the student editors of the *Michigan Law Review* had a problem: they had too few editors on staff, they were having “trouble getting first-rate articles,” and they worried that the *Michigan Law Review* lacked any particular distinguishing feature to help it stand out from all the other “perfectly respectable law review[s]” in a crowded field.<sup>1</sup> Their solution was to launch a book review issue, a stand-alone issue of the *Michigan Law Review* devoted solely to in-depth, long-form review essays about recently published books that illuminate the history, theory, and practice of the law. In their preface to that very first book review issue, in the spring of 1979, the editors promised “to print annually an entire issue which reviews books of which lawyers and legal scholars should be aware.”<sup>2</sup> Ever since, the *Michigan Law Review's* Annual Survey of Books Related to the Law has endeavored to bring together incisive reviewers and important books to explore and argue about the life of the law. We are thrilled to bring you this year's issue.

The Annual Survey is dedicated to the idea that books and book reviews matter. In his introductory essay for the inaugural issue in 1979, Professor David Cavers lamented that book reviews in law journals had become an endangered species, “dwindling away,” and he expressed hope that publishing more book reviews would foster a more robust marketplace of ideas.<sup>3</sup> He also expected that book reviews would make for a livelier, more entertaining reading experience than the typical academic fare: in contrast to the increasingly lengthy and “ponderous” articles published in law journals, it's the book reviews, he suggested, that can be taken “home for an evening's reading.”<sup>4</sup> The student editors in 1979 likewise wrote that they were trying to remedy the problem that “law reviews have generally ignored books,” but they also confessed that they launched the book review issue “for the fun of it,” because it let them “browse[] dissolutely through the *New York Review of Books* and the *Book Review* section of the *Sunday Times*” to find likely texts.<sup>5</sup> We certainly enjoyed choosing the books and the book reviewers for this year's issue, and we hope the essays we've chosen spark the kind of intellectual engagement that Professor Cavers described. We hope you have fun reading them, too.

The aim of the Annual Survey is just that: to provide a snapshot of the current moment in law and legal thought. It's a limited snapshot, to be sure.

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1. Carl E. Schneider, *The Book Review Issue: An Owner's Guide*, 96 MICH. L. REV. 1363, 1363–64 (1998).

2. *Editors' Preface*, 77 MICH. L. REV. (1979).

3. David F. Cavers, *Book Reviews in Law Reviews: An Endangered Species*, 77 MICH. L. REV. 327, 327, 333 (1979).

4. *Id.* at 334.

5. *Editors' Preface*, *supra* note 2.

This issue contains sixteen review essays, and we can't hope to have covered every topic and every pressing question in the field, let alone every viewpoint on those topics. But we have tried to fit together some of the most essential puzzle pieces to yield a picture of where law and legal discourse stand now—and where they might go next. The review essays in this issue ask a series of deep, complex, and profoundly important questions. What is the nature and history of state power, and how can the law tame it? What, exactly, is equality, and how can we protect and advance it? Who gets to be a citizen, with the right to participate fully in the democratic process of self-government? What does a commitment to the rule of law require of citizens and their political leaders alike? What does the U.S. Constitution mean, and how can we uphold it?

The first few essays in this issue tackle that last question, turning to the history of the Constitution and the institution that interprets it, the Supreme Court. Linda Greenhouse begins the issue with a review of Justice John Paul Stevens's memoir *The Making of a Justice*, which was published shortly before his passing. Greenhouse argues that we have only come to recognize the true value of Stevens's approach to the law—driven by facts, logic, and a non-ideological openness to persuasion—in the wake of his retirement from the Court, as American public life has become increasingly contentious, polarized, and plagued by alternative facts. A fitting tribute to Justice Stevens's memory and his long life of public service, Greenhouse's essay calls us all to civic engagement as we bring to life the Constitution under which we live.

From Justice Stevens's reflections on the processes of constitutional adjudication, we go back to the Constitution's very beginnings, tracing how it was read and used in the decades after ratification. Maeve Glass reviews Jonathan Gienapp's *The Second Creation*, examining how historical narratives about the making of America's Constitution differ depending on the temporal and spatial frames employed and offering a conceptual framework for reconciling competing constitutional creation stories. Jack Balkin reviews Lawrence Lessig's *Fidelity and Constraint*, showing how constitutional meaning has been shaped and reshaped over time by social and political movements and by changes in institutions and elite opinions. And David Schwartz reviews Eric Lomazoff's *Reconstructing the National Bank Controversy*, contending that the shifting conceptions of enumerated powers in the early Republic challenge both originalist constitutional theory and the idea of limited enumerated powers. Taken together, these review essays confront questions of original meaning, the gloss of history and practice, and the role of institutional authority and popular sovereignty in our constitutional democracy.

Having begun with the broad framework of democratic self-governance, this issue next turns to more specific histories of citizenship, equality, and inequality in American life. Aziz Huq reviews Robert Tsai's *Practical Equality*, arguing that public and juridical debates about the meaning of equality are crucial spaces for determining what equality requires of us, both legally and morally, today. Sam Bagenstos reviews Shep Melnick's *The Transformation of Title IX*, arguing that far from subverting democracy, administra-

tive agencies can be a “key locus of democratic deliberation over the scope of basic rights.” Danielle Citron reviews Nick Drnaso’s graphic novel *Sabrina*, using Drnaso’s all-too-accurate fictional depiction of violence on the internet to argue for a range of measures to regulate the web to combat violence and cyber stalking. Leah Litman’s review of *Reproductive Rights and Justice Stories*, edited by Melissa Murray, Katherine Shaw, and Reva Siegel, praises the volume’s goals of decentering courts and broadening the definition of reproductive rights and justice, but also reaffirms the importance of courts to reproductive justice. And Robert Tsai reviews Beth Lew-Williams’s *The Chinese Must Go*, a history of Chinese exclusion in late-nineteenth-century America, using the history that Lew-Williams has recovered to argue that we need to develop a more nuanced and historically complicated typology of the sorts of inequalities that shape American society.

One of the most salient issues of inequality and state power in contemporary politics is the question of criminal justice reform. As a prologue to reform, Alice Ristroph argues in her review of Sara Seo’s *Policing the Open Road*, we have to look back to the past. Ristroph reconstructs the history of policing in the nineteenth and early twentieth centuries, contending that tracing the development of racialized policing to the rise of the automobile obscures the longer history of racial bias in the institutions of criminal law and the elites who direct them. Turning his gaze to the future, Shon Hopwood reviews Rachel Barkow’s *Prisoners of Politics*, arguing that while the recently passed First Step Act is a good first step, systemic criminal justice reform remains to be achieved. To accomplish such reform, Hopwood argues, we should draw on expert planning, built on an expert agency model, rather than allow self-interested lobbying by prosecutors to guide criminal justice policy.

The last cluster of essays in this issue examines law’s larger role in shaping society, the economy, and international relations. Janice Nadler reviews Yuval Feldman’s *The Law of Good People*, drawing on research in behavioral ethics to argue that law should supplement the threat of punishment with an expressive function that deters negative actions by helping individuals recognize the full meaning of their actions. Clinton Wallace’s review of Camille Walsh’s *Racial Taxation* and Anthony Infanti’s *Our Selfish Tax Laws* contends that tax policy has an underappreciated impact on political power, racial and economic inequality, and social hierarchy and argues in favor of recalibrating tax policy to account for democratic values. Daniel Sokol reviews Tim Wu’s *The Curse of Bigness*, proposing that antitrust reformers shouldn’t overlook the value of antitrust law’s current institutional structure. And Monica Hakimi reviews Harold Koh’s *The Trump Administration and International Law*, arguing that while international law may be valuable partly because it helps produce desirable material outcomes, the real value of international law, like all law, is that it commits us to a particular way of arguing about and justifying the exercise of state power, forcing us to engage in an open and critical conversation with those who disagree. The argumentative practice of legal deliberation that Hakimi describes, we hope, infuses this entire issue, bringing the dialogical engagement of a Socratic classroom to

the pages of the *Michigan Law Review*, as scholars wrestle with each other's ideas.

We conclude with a brief review by a recent Executive Editor of the *Michigan Law Review*, as Jonathan Tietz discusses Benjamin Dreyer's *Dreyer's English*, a memoir-slash-style-guide by the longtime chief copy editor at Random House, filled with rules for elegant writing and amusing anecdotes about working with writers. Having himself spent a year editing the *Michigan Law Review* for grammar, substance, and style, Tietz draws on Dreyer's book to consider how writing style works in the legal profession—and to argue for clear, persuasive prose as a powerful tool for thinking about and making sense of the world.

All of the essays in this issue, and the books that they review, seek to offer just such clear, compelling, long-form prose engagements with the most difficult questions in law and society today. We hope you will enjoy reading the reviews that follow, as they ask us all to question what democracy and equality demand of us, and how those values can best be elevated and expressed in the law.