



1-1-2013

Cover

Pacific McGeorge School of Law

Follow this and additional works at: <http://digitalcommons.mcgeorge.edu/mlr>

Recommended Citation

Pacific McGeorge School of Law, *Cover*, 44 McGeorge L. Rev. (2014).
Available at: <http://digitalcommons.mcgeorge.edu/mlr/vol44/iss4/1>

This Front Matter is brought to you for free and open access by the Law Review at Pacific McGeorge Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized administrator of Pacific McGeorge Scholarly Commons. For more information, please contact msharum@pacific.edu.

UNIVERSITY OF THE PACIFIC

McGEORGE LAW REVIEW

Member, National Conference of Law Reviews

BOARD OF EDITORS * VOLUME 44

ALLISON L. CROSS
Editor-in-Chief

ANTHONY BENTO
Chief Legislation Editor

MARK FREEMAN
Chief Comment Editor

CHRISTINA BUCCI
Chief Technical Editor

AMBER DUVALL
Chief Managing Editor

RONAK PATEL
Chief Articles Editor

JEFF DODD
Chief Symposium Editor

EDITORIAL STAFF

SARA ARFMANN
ERIC BONNETT
STEVEN THOMAS FAZZI
PETER HANDY
ALEXANDER HOGUE
REBECCA SEM
HUNTER STARR
Legislation Editors

SARA ARFMANN
REVITAL BRAUN
ANDREW DUCART
PETER HANDY
EAMON JAFARI
REBECCA SEM
HUNTER STARR
REBECCA TATUM WHITE
Managing Editors

SUNI ALEXANDER
RUSSELL COOPER
ANDREW DUCART
ANDREW HSIEH
STEVEN THOMAS FAZZI
AMY ODENS
SAMIRA SHOKRGOZAR
Comment Editors

REVITAL BRAUN
JUSTIN GIOVANNETTONE
ALEXANDER HOGUE
Articles & Symposium Editors

STAFF MEMBERS

CHRISTOPHER BLAU
MICHELLE CHESTER
NICHOLAS CLAIR
MICHAEL COLEMAN
WILLIAM CRONICAN
ANNAKARINA DE LA
TORRE-FENNELL
REBECCA DIEL
SCOTT DYLE
CAMERON EASTERLING
ROMAN EDWARDS

BENJAMIN GRIMES
KAILEY HACKBARTH
KEVIN HEITZ
JOSH HUNSUCKER
AMANDA ILER
SHAUN JOYCE
NATALIE KUFFEL
DANIELLE LENTH
SEAN O'DOWD
KATHERINE PANKOW
RAYMOND QUIGLEY
MATTHEW READ

RYAN REY REYES
ZACHARY SCALZO
MICHELLE SCHEINMAN
ANTHONY SCHIAVO
THERESA SCHRIEVER
SYDNEY SMITH
ELIZABETH SMUTZ
MYLES TAYLOR
HAYLEY THOMAS
KENTON TRIGGER
DAVID VIDAL

RACHAEL E. SALCIDO
Faculty Advisor

PAULINE RODRIGUEZ
Computer Publishing Specialist

FACULTY OF LAW

- RAQUEL ALDANA, B.A., J.D.
Director, Inter-American Program
Professor of Law
- LEXIS M. ALLEN, B.A., J.D.
Adjunct Professor of Law
- LOUIS J. ANAPOLSKY, B.A., J.D.
Adjunct Professor of Law
- JOHN BALAZS, B.S., J.D.
Adjunct Professor of Law
- RACHELLE BARBOUR, B.A., J.D.
Adjunct Professor of Law
- KAREN BETTENCOURT, B.A., J.D.
Adjunct Professor of Law
- ANNE BLOOM, B.A., J.D., PH.D.
Associate Dean for Scholarship
Professor of Law
- CARY A. BRICKER, B.A., J.D.
Professor of Law
Professor of Law
Professor of Law
- THOMAS D. BRIERTON, B.B.A., J.D.
Adjunct Professor of Law
- MELISSA BROWN, B.A., J.D.
Associate Professor of Law
Professor of Law
Professor of Law
Director, Capital Certificate in Public Law & Policy Program; Director, Capital Commendation for Public Service
- GERALD M. CAPLAN, B.A., M.A., J.D.
Professor of Law
- MARTIN D. CARR, B.A., J.D.
Adjunct Professor of Law
- LINDA E. CARTER, B.A., J.D.
Co-Director, Global Center
Professor of Law
- MICHAEL COLATRELLA, B.A., J.D., LL.M.
Associate Professor of Law
- RAYMOND R. COLETTA, A.B., J.D.
Professor of Law
- KEVIN R. CULHANE, B.A., J.D., J.S.M.
Judge, Sacramento Superior Court
Adjunct Professor of Law
- WALTER DAHL, B.A., J.D.
Adjunct Professor of Law
- OMAR M. DAJANI, B.A., J.D.
Professor of Law
- JULIE ANNE DAVIES, B.A., J.D.
Professor of Law
- HECTOR DE AVILA GONZALEZ, LL.B., LL.M.
Adjunct Professor of Law
- ANTHONY DICCE, B.S., J.D.
Adjunct Professor of Law
- MATTHEW DOWNS, B.A., M.S.L.S., J.D., LL.M.
Assistant Dean, Library Resources & Program Support
Lecturer in Law
- MONA EBRAHIMI, B.A., J.D.
Adjunct Professor of Law
- LAURA ENDERTON-SPEED, B.A., J.D.
Adjunct Professor of Law
- GLENN A. FAIT, B.A., J.D.
Associate Dean, Special Programs
Lecturer in Law
- STEVEN H. FELDERSTEIN, B.A., J.D.
Adjunct Professor of Law
- MARJORIE FLORESTAL, B.A., J.D.
Professor of Law
- ERIC M. FOGEL, B.A., M.A., M.B.A., J.D.
Visiting Professor of Law
- GRETCHEN FRANZ, B.A., J.D.
Professor Global Lawyering Skills
- REX FRAZIER, B.A., M.P.P., J.D.
Adjunct Professor of Law
- KATHLEEN FRIEDRICH, B.A., J.D.
Adjunct Professor of Law
- FRED A. GALVES, B.A., J.D.
Professor of Law
- EMILY GARCIA UHRIG, B.A., J.D.
Professor of Law
- STEVEN M. GEVERCER, B.A., J.D.
Judge, Sacramento Superior Court
Adjunct Professor of Law
- FRANKLIN A. GEVURTZ, B.S., J.D.
Co-Director, Institute for Global Business and Development
Distinguished Professor and Scholar
Professor of Law
- JENNIFER A. GIBSON, B.A., J.D.
Adjunct Professor of Law
- LESLIE GIELOW JACOBS, B.A., J.D.
Director, Capitol Center for Public Law & Policy
Professor of Law
- WALTER HANSPETER, B.S., M.S., J.D.
Adjunct Professor of Law
- JENNIFER HARDER, B.A., J.D.
Adjunct Professor of Law
- LINDA HARTER, B.A., J.D.
Adjunct Professor of Law
- ROBERT A. HAWLEY, B.A., J.D., LL.M.
Adjunct Professor of Law
- PAUL HOWARD, B.A., J.D., M.L.S.
Head of International Services/Librarian
Adjunct Professor of Law
- WILLIAM D. JEFFREY, B.A., J.D.
Adjunct Professor of Law
- RUTH JONES, A.B., J.D.
Professor of Law
- WARREN A. JONES, B.A., J.D.
Professor of Law
- CHARLES D. KELSO, A.B., J.D., LL.M., LL.D., J.S.D.
Professor of Law

J. CLARK KELSO, B.A., J.D.
Professor of Law
Sr. Counsel, Capital Center for Public Law & Policy

JUSTICE ANTHONY M. KENNEDY, A.B., LL.B.
Associate Justice, Supreme Court of the United States
Adjunct Professor of Law

KATHARINE KILLEEN, B.A., J.D.
Adjunct Professor of Law

AMY LANDERS, B.F.A., J.D.
Director, Intellectual Property Concentration
Professor of Law

BRIAN K. LANDSBERG, B.A., J.D.
Distinguished Professor and Scholar
Professor of Law

DOROTHY S. LANDSBERG, B.A., J.D.
Associate Dean for Academic Affairs

R. STEVEN LAPHAM, B.A., J.D.
Adjunct Professor of Law

THOMAS J. LEACH, B.A., M.A.T., J.D.
Director, Advocacy Certificate Program
Professor of Law

COURTNEY G. LEE, B.A., J.D.
Director, Academic Success
Associate Professor of Lawyering Skills

JAMES L. LEET, A.B., J.D., LL.M.
Adjunct Professor of Law

MIRANDA LEKANDER, B.A., J.D.
Adjunct Professor of Law

GINA LERA, B.A., J.D.
Adjunct Professor of Law

LAWRENCE C. LEVINE, B.A., J.D.
Professor of Law

STEVEN A. LEWIS, A.B., J.D.
Adjunct Professor of Law

DREW LIEBERT, B.A., J.D.
Adjunct Professor of Law

ALBERT LOCHER, A.B., J.D.
Adjunct Professor of Law

HETHER CLASH MACFARLANE, A.B., M.A., J.D.
Professor of Lawyering Skills
Faculty Advisor, Int'l. Legal Studies Certificate Program

C. EMMETT MAHLE, B.S., M.B.A., J.D.
Adjunct Professor of Law

MICHAEL P. MALLOY, B.A., J.D., PH.D.
Distinguished Professor and Scholar
Professor of Law

AMBER R. MALTBIE, B.A., J.D.
Adjunct Professor of Law

CHRISTINE MANOLAKAS, B.A., J.D., LL.M.
Director, Tax Concentration
Professor of Law

CAITLIN MANOOGIAN, B.A., J.D.
Adjunct Professor of Law, Global Lawyering Skills

SAMUEL MCADAM, B.A., M.P.P., J.D.
Judge, Yolo County Superior Court
Adjunct Professor of Law

STEPHEN C. MCCAFFREY, B.A., J.D., DR., IUR.
Distinguished Professor and Scholar

ERIC MCELWAIN, B.A., J.D., LL.M.
Adjunct Professor of Law

MICHAEL MCMANUS, B.A., J.D.
Judge, U.S. Bankruptcy Court, Eastern District of California
Adjunct Professor of Law

GREGORY T. MEATH, B.A., J.D.
Adjunct Professor of Law

DAVID W. MILLER, A.B., J.D.
Professor Emeritus

MICHAEL S. MIRELES, B.S., J.D., LL.M.
Professor of Law

RYAN MOORE, B.A., J.D.
Adjunct Professor of Law

FRANCIS J. MOOTZ III, B.A., A.M., J.D.
Dean
Professor of Law

MAUREEN MORAN, B.A., J.D., M.L.I.S.
Instructional Services & Legal Research Librarian
Adjunct Professor of Law

MARY-BETH MOYLAN, B.A., J.D.
Director, Global Lawyering Skills
Professor of Lawyering Skills

ROBERT E. MURPHY, B.A., J.D.
Adjunct Professor of Law

JOHN E. B. MYERS, B.S., J.D.
Professor of Law
Director, Criminal Justice Concentration

TIMOTHY E. NACCARATO, B.A., J.D.
Assistant Dean for Academic Programs
Lecturer in Law

PAULINE NGUYEN, B.A., J.D.
Adjunct Professor of Law

BLAKE C. NORDAHL, B.A., J.D.
Supv. Attorney, Immigration Clinic
Instructor of Law

THOMAS J. NUSSBAUM, B.A., J.D.
Adjunct Professor of Law

RAINER PALMSTORFER, LL.M.
Visiting Professor of Law
University of Salzburg

ELIZABETH RINDSKOPF PARKER, B.A., J.D.
Professor of Law

PAUL D. PATON, B.A., LL.B., M.PHIL
J.S.M., J.S.D.
Vice-Provost
Director, Ethics Across the Professions Initiative
Professor of Law

JOHN P. PEZONE, B.A., J.D.
Adjunct Professor of Law

MICHAEL L. PINKERTON, B.A., J.D.
Adjunct Professor of Law, Global Lawyering Skills

JEFFREY E. PROSKE, B.A., J.D.
Associate Professor of Lawyering Skills

KIRUPA PUSHPARAJ, B.S., M.S., J.D.
Adjunct Professor of Law

DANIEL RAINEY, B.A., M.A., PH.D.
Adjunct Professor of Law

CLAUDE D. ROHWER, A.B., J.D.
Professor Emeritus

C. ATHENA ROUSSOS, B.A., J.D.
Adjunct Professor of Law

WANDA HILL ROUZAN, B.A., J.D.
Adjunct Professor of Law

RACHAEL E. SALCIDO, B.A., J.D.
*Director, Sustainable Dev. Inst., Director,
Environmental Law Concentration,
Advisor, McGeorge Law Review
Professor of Law*

RONALD SARGIS, A.B., J.D.
*Judge, U.S. Bankruptcy Court,
Eastern District of California
Adjunct Professor of Law*

RICHARD SCHICKELE, B.A., M.A., J.D.
Adjunct Professor of Law

GLENDALEE SCULLY, B.A., J.D.
Professor Emeritus

JED SCULLY, B.A., J.D.
Professor Emeritus

MEGAN SHAPIRO, B.A., J.D., LL.M.
Adjunct Professor of Law

MONICA SHARUM, B.S., J.D., M.L.S.
*Head Library Technology & Instructional
Support
Adjunct Professor of Law*

DAVID SHAW, B.A., J.D.
Adjunct Professor of Law

JOHN CARY SIMS, A.B., J.D.
*Sr. Editor, Journal of National Security &
Policy
Professor of Law*

ANTHONY M. SKROCKI, J.D., LL.M.
Professor Emeritus

BRIAN G. SLOCUM, B.B.A., J.D.
Professor of Law

JOHN G. SPRANKLING, B.A., J.D., J.S.M.
*Distinguished Professor and Scholar
Professor of Law*

GEORGIANA SULLIVAN, B.A., J.D.
Adjunct Professor of Law

B.J. SUSICH, B.S., M.B.A., J.D.
Adjunct Professor of Law

MARY SWANSON, B.S., J.D.
*Director, Institute for Administrative Justice
Lecturer in Law*

JOSEPH E. TAYLOR, J.D., M.B.A.
Professor of Law

EDWARD H. TELFEYAN, B.A., J.D.
*Professor of Lawyering Skills
Director, Moot Court Program*

STEPHANIE THOMPSON, B.A., J.D.
Professor of Lawyering Skills

R. STEVEN THARRATT, M.D., MPVM, FACP
Adjunct Professor of Law

PATRICIA TWEEDY, B.A., J.D.
Adjunct Professor of Law

COLLEEN TRUDEN, B.A., J.D., LL.M.
*Director, Field Placement
Lecturer in Law*

WINFRIED VAN DEN MUIJSENBURG, Dr. Jur.
Visiting Professor of Law

MICHAEL VITIELLO, B.A., J.D.
*Director, Center for Advocacy and
Dispute Resolution
Distinguished Professor and Scholar
Professor of Law*

LESLIE WALKER, B.A., J.D.
Adjunct Professor of Law

GREGORY S. WEBER, A.B., J.D.
*Director, Water Resources Law Program
Professor of Law*

PHILIP WILE, A.B., J.D.
Professor Emeritus

ANTHONY WILLIAMS, B.A., J.D.
Adjunct Professor of Law

JAMES WIRRELL, B.A., M.C.S., LL.B., J.D.,
M.S.L.I.S.
*Head of Access Services/Sr. Reference
Librarian
Adjunct Professor of Law*

DONALD WOLLETT, J.D.
Professor Emeritus

JARROD WONG, B.A., LL.M., J.D.
Associate Professor of Law

RYAN WOOD, B.A., J.D.
Adjunct Professor of Law

JULIE YAP, B.A., J.D.
*Adjunct Professor of Law, Global Lawyering
Skills*

KOJO YELPAALA, B.L., LL.B., M.B.A., M.Sc., J.S.D.
Professor of Law

Note from the Editor-in-Chief

Like legal education, scholarship certainly has its critics. Not-so-hushed whispers—and, ironically, a number of articles—assert that scholarship has no impact on the legal community, editors bludgeon the English language into illegible pomposity, and authors engage in nothing more than stockpiling footnotes. However, for those of us who take pleasure in scholarship, it provides a forum for creativity in a profession often devoid of any. It is written by and for the legal community, inviting debate and discussion. On behalf of the *McGeorge Law Review*, it is my pleasure to introduce our final issue of this volume. We invite you to join the discussion, and hope you enjoy these pieces as much as we do.

In this issue's lead article, Thomas J. Horton reconsiders the oft-held notion that fairness and antitrust law are like oil and water; ultimately rejecting such a notion, Professor Horton recommends that antitrust begin reincorporating fairness norms into its analyses. Then, Lindsey D. Blanchard seeks to clarify the Supreme Court's *Goodyear* "essentially at home" test for general jurisdiction, using as persuasive authority the *Hertz* "principal place of business" test for subject matter jurisdiction, to present a reasoned interpretation of the Court's first personal jurisdiction case in several years. Jeremy Patrick next empirically examines constitutions enacted since the year 2000 to determine whether, and to what degree, liberal constitutionalism has been supplanted by theocratic constitutionalism and concludes that most constitutions have some evidence of both. And in a mediation piece, recognizing the inherent tension between mediators' duty to conduct mediation and parties' decision-making rights, Omer Shapira delineates the decision-making powers of each and identifies areas in which mediators may impose restrictions on the parties' decision-making rights.

In the first of this issue's comments, Mark Freeman, on the heels of *Graham* and *Miller*, examines the constitutionality of sentencing juvenile non-homicide offenders to sentences exceeding a juvenile offender's life expectancy, or a "de facto LWOP." Andrew Hsieh discusses workplace discrimination against psychologically disabled persons, the shortcomings of remedies available to them, and proposes existing common-law causes of action for appropriate plaintiff recovery. Then, in the first of two California-specific pieces, Amy Odens argues that despite a tug-of-war between food producers and energy producers over the use of agricultural lands, both seemingly conflicting interests can be balanced by simply using our space more effectively. Finally, bringing our forty-fourth volume to a close, Hunter Starr examines the unyielding sentencing regime for unlawful marijuana cultivation in a state where marijuana is legal in limited situations and proposes sentencing unlawful marijuana cultivation as a wobbler to allow large-scale cultivators to be punished more severely than lesser offenders.

Although it does not begin to cover the extent of our gratitude, we offer a warm and hearty thank-you to the staff of the *McGeorge Law Review*, our publication extraordinaire, Pauline Rodriguez, and our dedicated advisor, Professor Rachael Salcido.

Allison L. Cross
Editor-in-Chief
McGeorge Law Review,
Volume 44

UNIVERSITY OF THE PACIFIC

McGEORGE LAW REVIEW

Member, National Conference of Law Reviews

VOLUME 44

ISSUE 4

ARTICLES

- Fairness and Antitrust Reconsidered: An Evolutionary Perspective
Thomas J. Horton.....823
- Goodyear* and *Hertz*: Reconciling Two Recent Supreme Court
Decisions
Lindsey D. Blanchard.....865
- Religion and New Constitutions: Recent Trends of Harmony and
Divergence
Jeremy Patrick903
- A Theory of Sharing Decision-Making in Mediation
Omer Shapira923

COMMENTS

- Meaningless Opportunities: *Graham v. Florida* and the Reality of de
Facto LWOP Sentences
Mark T. Freeman961
- The Catch-22 of ADA Title I Remedies for Psychiatric Disabilities
Andrew Hsieh989
- A New Crop for Agricultural Land: The Renewable Energy
Mandate and Its Potential to Turn Farm Lands into Energy Fields
Amy Odens1037
- The Carrot and the Stick: Tailoring California's Unlawful Marijuana
Cultivation Statute to Address California's Problems
Hunter E. Starr.....1069