COLORADO LAW
FACULTY SCHOLARSHIP
2017–18
Scholarship at Colorado Law

The faculty at the University of Colorado Law School are prolific legal scholars and social commentators whose work pushes the boundaries of theory, doctrine, and practice.

At a time when many legal standards and social norms seem to be in flux, scholarship serves as a tool for critical reflection and generation of ideas. Scholarship also allows us to engage with our communities, examine complex and urgent issues, and gain new insights that can benefit society.

Above all, scholarship is an important agent for change. At its core, scholarship helps to ensure that law is proving true to its function to serve society; and, in some cases, it challenges the law to shift as a result of its findings. In the pages that follow, you will see how my colleagues at Colorado Law are producing path-breaking scholarship that is not only shaping local, national, and international conversation but is also helping to develop more creative, informed, and effective lawyers.

S. James Anaya, Dean and University Distinguished Professor
Single-authored books
(published and forthcoming)


Casebooks and treatises


MARK LOEWENSTEIN: *Agency and Partnership Law* (with Robert W. Hillman) (Edward Elgar, 2018) (research review)
Casebooks and treatises cont.


#29 Colorado Law’s national ranking for scholarly impact of law faculties, 2018 Sisk Report
Articles, chapters, and opinion essays

S. James Anaya
Dean and University Distinguished Professor
International Human Rights Indigenous Peoples’ Law and Policy
International Law

Articles

Book chapters

Other publications
The Declaration Needs Greater Awareness, Cultural Survival Quarterly, September 2017

Brad Bernthal
Associate Professor and Director, Silicon Flatirons Center Entrepreneurship Initiative
Entrepreneurial Law Clinic
Entrepreneurial Law
Venture Capital
Early Stage Finance
Innovation Policy

Articles


Alexia Brunet Marks
Associate Professor
International Economic Law
Food Law
Civil Litigation

Articles
Feeding the Eco-Consumer, 42 Vermont Law Review 3 (2018)

A Right to Regulate (Cooperatively), 38 University of Pennsylvania Journal of International Law 1 (2017)

Frederic Bloom
Professor
Civil Procedure
Evidence
Federal Courts

Articles
Character Flaws, 89 University of Colorado Law Review (forthcoming 2018)

Paul Campos
Professor
Constitutional Law
Legal Philosophy
Legislative Process
Property

Articles

Opinion essays
Deborah Cantrell
Professor and Director of Clinical Education

Sustainable Community Development Clinic
Legal Ethics
Legislation and Regulation

Articles
Celebrating Mundane Conflict, 18 Pepperdine Dispute Resolution Law Journal 139 (2018)

Kristen A. Carpenter
Council Tree Professor

Property
Cultural Property
American Indian Law
Indigenous Peoples in International Law

Book chapters

Ming H. Chen
Associate Professor and Director, Immigration Law and Policy Program

Immigration Law and Citizenship Law
Administrative Law
Legislation and Regulation
Law and Politics

Book chapters

Richard B. Collins
Professor

Constitutional Law
Indian Law
Property

Articles

MING H. CHEN
Associate Professor and Director,
Immigration Law and Policy Program

Constructing Citizenship for Noncitizens
Stanford University Press, forthcoming

The U.S. has long taken a laissez-faire approach toward immigrant integration and has focused almost exclusively on enforcement of formal immigration status for the last decade: preventing unlawful entry, detaining those lacking documentation, and deporting for a range of status violations. Based on theoretical, empirical, and normative analysis, Chen finds that the enforcement bias has negative effects for the outcomes and meaning of citizenship. Legal noncitizens with a pathway to citizenship naturalize only half the time, and when they do, they view citizenship as a means to an end. This undermines the pathways to citizenship and stymies the possibilities of integration, even for the select subgroups of vulnerable immigrants where the federal government invests in integration. Undocumented noncitizens who lack a pathway to citizenship are even more negatively impacted than legal noncitizens. The result of the laissez-faire approach is a socially disintegrated polity rather than a socially cohesive one fueled by shared civic purpose. The book promotes an alternative vision for immigration policy premised on stronger state-sponsored pathways to full citizenship and prescribes affirmative integration for noncitizens seeking to adjust their status at each stage of the journey to full membership: from newcomer to resident to citizen.
Justin Desautels-Stein
Associate Professor

Conflict of Laws
Critical Race Theory
Law and Economic Development
International Law
Jurisprudence

Edited collections
Searching for Contemporary Legal Thought (co-edited with Christopher Tomlins, Cambridge University Press, 2017)

Book chapters


“After the End of Legal Thought,” in Searching for Contemporary Legal Thought, Justin Desautels-Stein and Christopher Tomlin, eds. (Cambridge University Press, 2017)

Carla F. Fredericks
Associate Clinical Professor, Director of the Indian Law Clinic, Director of the American Indian Law Program

American Indian Law

Articles


Kristelia A. García
Associate Professor and Director, Content Initiative, Silicon Flatirons Center

Copyright
Trademark
Property

Articles
Copyright Arbitrage,107 California Law Review (forthcoming 2019)

Improving the Quality & Consistency of Copyright Infringement Analysis in Music, Berkeley Technology Law Journal Commentaries (January 23, 2018)


Book chapters

“Afterword: Contemporary Legal Thought As…” in Searching for Contemporary Legal Thought, Justin Desautels-Stein and Christopher Tomlin, eds (Cambridge University Press, 2017)
In the contemporary domain of American legal thought, there is a dominant way in which lawyers and judges craft their argumentative practice. More colloquially, this is a dominant conception of what it means to “think like a lawyer.” Despite the widespread popularity of this conception, it is rarely described in detail or given a name. Desautels-Stein tells the story of how and why this happened, and why it matters. Drawing upon and updating the work of Harvard Law School’s first generation of critical legal studies, Desautels-Stein develops what he calls a jurisprudence of style. In doing so, he uncovers the intellectual alliance, first emerging at the end of the 19th century and maturing in the last third of the 20th century, between American pragmatism and liberal legal thought. Applying the tools of legal structuralism and phenomenology to real-world cases in areas of contemporary legal debate, this book develops a practice-oriented understanding of legal thought.

**Erik F. Gerding**
Professor and Wolf-Nichol Fellow

Securities
Banking Law
Regulation of Financial Markets, Products, and Institutions
Payment Systems
Corporate Governance

**Other publications**
*Can Technology Solve Information Overload and Complexity in Securities Disclosure?*, The CLS Blue Sky Blog, January 17, 2017

**Amy Griffin**
Associate Dean for Instructional Development

Legal Writing

**Articles**
*Dethroning the Hierarchy of Authority*, 97 Oregon Law Review (forthcoming 2018)
Today’s young feminists are preoccupied with men’s sexual misbehavior and call for swift reform and punishment. But they also object to racialized mass incarceration and recognize that the U.S. has the ignoble distinction of being the most punitive nation on Earth. The many #MeToo devotees who believe criminal law is racially fraught and know that inequality is caused by larger social forces, not just individual bad actors, are well positioned to end the feminism-criminal law alliance. Gruber speaks to this cohort, explaining how feminists, in their past efforts to secure women’s protection from domestic violence and rape, became soldiers in the late-20th-century war on crime and complicit in the rise of mass incarceration. She demonstrates through a granular analysis of feminist criminal reform over several decades that policing and punishment are dangerous weapons to be used only as a last resort and sketches a way forward.
Lakshman Guruswamy
Nicholas Doman Professor of International Environmental Law & International Energy Programs

International Law
International Environmental Law
International Energy Law

Book chapters

Jennifer S. Hendricks
Professor and Co-Director of the Juvenile and Family Law Program

Family Law
Feminist Legal Theory
Civil Procedure
Constitutional Law and Theory

Articles

Essays
The Wages of Genetic Entitlement: The Good, the Bad, and the Ugly in the Rape Survivor Child Custody Act, 112 Northwestern University Law Review Online 75 (2017)

Melissa Hart
Professor

Access to Justice
Education and the Constitution
Employment Discrimination
Legal Ethics and Professionalism

Articles
Envisioning 100% Access to Justice in Colorado (with Daniel M. Taubman), University of Colorado Law Review (January 2017)

Deep Impact: The Consequences of Defunding LSC, Colorado Lawyer, August/September 2017

Peter H. Huang
DeMuth Chair and Professor

Business Law
Law and Emotions
Law and Neuroscience
Law and Mindfulness
Derivative Securities
Securities Enforcement, Litigation, and Regulation

Book chapters


Articles

Boost: Improving Mindfulness, Thinking, and Diversity, 10 William and Mary Business Law Review 1 (forthcoming 2018)


Sharon B. Jacobs
Associate Professor

Administrative Law
Advanced Topics in Energy Law
Energy Law and Regulation
Legislation and Regulation
Regulation and Innovation

Articles


Opinion essays
Saving Coal: A Tale of Two Agencies, Harvard Law Review Blog, January 26, 2018


Margot Kaminski
Associate Professor

Privacy, Speech, and Online Civil Liberties
International Intellectual Property Law

Articles
Authorship, Disrupted: AI Authors in Copyright and First Amendment Law, 51 UC Davis Law Review 589 (2017)

Averting Robot Eyes (with Matthew Reuben, William D. Smart, and Cindy M. Grimm), 76 Maryland Law Review 983 (2017)

Copyright’s Framing Problem (with Guy A. Rub), 64 UCLA Law Review 1102 (2017)


Opinion essays

Craig Konnoth
Associate Professor

Property
Health Care Law
Bioethics
Privacy
Torts

Book chapters


Articles
An Expressive Theory of Privacy Intrusions, 102 Iowa Law Rev. 1533 (2017)

Health Information Equity, 165 University of Pennsylvania Law Review 1317 (2017)

Opinion essays
Any FCC Action Against Colbert Would Be Unwise, Huffington Post, May 8, 2017


Sarah Krakoff
Moses Lasky Professor of Law and Associate Dean for Faculty Affairs and Research
American Indian Law
Natural Resources and Public Land Law
Environmental Justice

Articles

Opinion essays and other publications
Just Transitions? Law & Political Economy Blog, January 25, 2018

Benjamin Levin
Associate Professor
Criminal Law
Criminal Procedure: Adjudicative Process
Advanced Criminal Justice

Articles
Criminal Employment Law, 39 Cardozo Law Review (forthcoming 2018)

Other publications

Mark J. Loewenstein
Monfort Professor of Commercial Law and Associate Dean for Curricular Affairs
Business Associations
Agency Law and Securities Law
Corporate Governance

Articles
Benefit Corporation Law, 85 University of Cincinnati Law Review 381 (2017)

Suzette Malveaux
Provost Professor of Civil Rights Law and Director, Byron R. White Center for the Study of American Constitutional Law
Civil Procedure
Civil Rights

Articles

Robert M. Linz
Associate Director and Head of Public Services of the William A. Wise Law Library
Colorado Legal Research
Opinion essays
Travel Ban Case Reveals Next Battleground—The Fate of National Injunctions, Bloomberg Law, July 24, 2018

Scott A. Moss
Professor and Schaden Chair in Experiential Learning
Federal Litigation
Employment Law
Law and Economics
Constitutional Law

Articles


Christopher B. Mueller
Henry S. Lindsley Professor of Procedure and Advocacy
Evidence
Civil Procedure
Complex Litigation
Class Action

Articles
“Make Him an Offer He Can’t Refuse”—Mezzanatto Waivers as Lynchpin of Prosecutorial Overreach, 82 Missouri Law Review 1023 (2017)


Susan Nevelow Mart
Associate Professor and Director of the William A. Wise Law Library
Legal Information Policy
National Security and Libraries
Access to Information

Book chapters
Foreword, in Environmental Information: Research, Access, and Environmental Decisionmaking, Sarah Lamdan (Environmental Law Institute, 2017)

Robert F. Nagel
Professor Emeritus, Rothgerber Professor of Constitutional Law

Articles
Conservatives and the Court, National Affairs (Winter 2017)

Helen L. Norton
Professor and Ira C. Rothgerber Jr. Chair in Constitutional Law

Archival essays
Two Pedagogies in Search of Synergy (with Lisa Schultz), AALL Spectrum (March/April 2018)
Every Algorithm Has a POV, AALL Spectrum (September/October 2017)

Research Algorithms Have a Point of View: The Effect of Human Decision Making on Your Search Results, University of Colorado Law Review (November 2017)
Governments have been speaking for as long as there have been governments. New expressive technologies empower government to speak in new ways through Twitter and other social media postings, webcasts, blogs, wikis, virtual worlds, and more. Through its speech, the government can inform, deceive, shame, inspire, scapegoat, silence, empower, challenge, comfort, distress, and distract. This raises important and interesting questions about the constitutional value and harms posed by the government’s speech. Norton’s book explores how the government’s speech sometimes performs constitutionally valuable functions, as well as examines the dark side of the government’s speech by posing questions such as, “Under what circumstances does the government’s speech threaten equality or liberty such that it offends the Equal Protection or Due Process clauses?” and, “Under what circumstances, if any, does the Constitution prohibit our government from lying to us?”
Checking the Government’s Deception Through Public Employee Speech, JOTWELL, September 25, 2017 (reviewing Heidi Kitrosser, The Special Value of Public Employee Speech)

Does Alexa Have Free Speech Rights? (with Toni M. Massaro and Margot E. Kaminski), Slate, March 22, 2017


What We Learn From Government Speech About Hate (with Danielle Keats Citron), LAWFARE, August 15, 2017

Scott R. Peppet
Professor and Wolf-Getches Fellow
Contracts
Legal Negotiation
Advanced Legal Negotiation
Counseling Family Enterprises


What We Learn From Government Speech About Hate (with Danielle Keats Citron), LAWFARE, August 15, 2017

Carolyn B. Ramsey
Professor
Criminal Law
Criminal Procedure
Domestic Violence
Legal History
Gender and Criminal Justice
Gender, Law, and Public Policy

Articles
Firearms in the Family, 78 Ohio State Law Journal 1257 (2017) (lead article)

Blake E. Reid
Associate Clinical Professor; Director, Samuelson-Glushko Technology Law & Policy Clinic; Faculty Director, Silicon Flatirons Center; Faculty Advisor, Colorado Technology Law Journal
Technology Policy
Telecommunications Law
Intellectual Property
Disability Law

Articles

William Pizzi
Professor Emeritus
Criminal Law and Procedure
Comparative Law

Pierre Schlag
University Distinguished Professor and Byron R. White Professor of Law
Jurisprudence
Constitutional Law
Legal Philosophy
Tort Law

Book chapters

“Textualist and Purposivist Interpretation (Challenges and Problems),” in The Transformation or Reconstitution of Europe: The Critical Legal Studies Perspective on the Role of the Courts in the European Union, Tamara Persin and Sinisa Rodin, eds. (Bloomsbury, 2018)


Articles and essays
“Reason” (October 12, 2017), in Fundamental Concepts for International Law, Jean d’Aspremont and Sahib Singh, eds. (Edward Elgar, forthcoming 2018)

Andrew A. Schwartz
Professor
Corporate, Securities, and Contract Law
Securities Crowdfunding

Book chapters

Articles
Equity Crowdfunding in New Zealand, New Zealand Law Review (forthcoming 2018)


Other publications

Scott Skinner-Thompson
Associate Professor
Constitutional Law
Civil Rights
LGBTQ Rights
Privacy Law

Articles
Privacy’s Double Standards, 93 Washington Law Review (forthcoming)


Performatve Privacy, 50 UC Davis Law Review 1673 (2017)

Opinion essays
Federal Courts Are Standing Up for the Sanctity of Transgender Lives, Slate, June 21, 2018

Masterpiece Cakeshop Is Not a License to Discriminate, Slate, June 4, 2018

Animus, Not Readiness: Trump & Mattis Move Full Speed Ahead on Unconstitutional Trans Military Ban, Just Security, September 1, 2017

How Trump May Inadvertently Advance Transgender Rights, Slate, November 30, 2017

Trump’s Anti-Trans Animus, Unmasked, Take Care, November 6, 2017

Anna Spain Bradley
Associate Professor and Assistant Vice Provost for Faculty Development and Diversity, University of Colorado Boulder
International Law
International Human Rights
International Dispute Resolution
Peace and Security
Law and Neuroscience

Book chapters

Articles


Told through the lens of historical accounts and original interviews, the book charts groundbreaking decision moments in international law—from to the bombing of Hiroshima, to the Rwandan genocide, to the intervention into Libya—and reveals how certain people, and their emotions, biases, and beliefs, shaped global outcomes in powerful yet unexamined ways. Drawing upon insights from neuroscience, Spain Bradley offers a theory of how individual choice—involving emotion, empathy, and bias—has affected the development of international law and introduces a novel approach for understanding the role of human cognition and choice in global decision making.

Other publications
Articles
Presidents Lack the Authority to Abolish or Diminish National Monuments (with Eric Biber, Nicholas Bryner, and Sean B. Hecht), 103 Virginia Law Review (2017)

Opinion essays
The Looming Battle over the Antiquities Act, Harvard Law Review Blog, January 6, 2018

Don’t Blame Water Markets for Trouble with Western Rivers, Water Deeply, June 16, 2017

The Endangered Antiquities Act (with John D. Leshy), The New York Times, March 31, 2017


Taxpayers Deserve a Fair Return from Our Public Coal Resources, The Casper Star Tribune, Oct. 5, 2017
Harry Surden
Associate Professor
Patent Law
Intellectual Property
Privacy Law
Computer Science and Law
Artificial Intelligence and Law

Articles

What to Teach Law Students About Artificial Intelligence and Law? Northwestern Law Review Online (Bridges II) (2017)

Ahmed White
Nicholas Rosenbaum Professor
Criminal Law
Labor and Employment Law
Forced Labor
Critical Legal Studies
Marxism and Law

Book chapters


Articles


Other publications
International Spectrum Workshop Report (with Gabor Molnar and Eric Brosseau), Silicon Flatirons Center, 2017

Book reviews

Review of Stephan Epp-Koop, We’re Going to Run This City: Winnipeg’s Political Left After the General Strike, Labor: Studies in Working Class History (March 2017)

Philip J. Weiser
Hatfield Professor of Law and Telecommunications, and Executive Director of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship

Telecommunications Law
Internet Law
Antitrust Law
Intellectual Property
Constitutional Law

Articles


Other publications
International Spectrum Workshop Report (with Gabor Molnar and Eric Brosseau), Silicon Flatirons Center, 2017

Ahmed White
Nicholas Rosenbaum Professor
Criminal Law
Labor and Employment Law
Forced Labor
Critical Legal Studies
Marxism and Law

Book chapters


Articles


Other publications
International Spectrum Workshop Report (with Gabor Molnar and Eric Brosseau), Silicon Flatirons Center, 2017

Charles Wilkinson
Distinguished Professor of Law Emeritus and Moses Lasky Professor of Law Emeritus

History and Society in the American West
Indian Law
Public Land Law
Water Law

Book chapters

Articles
“At Bears Ears We Can Hear the Voices of Our Ancestors in Every Canyon and on Every Mesa Top”: The Creation of the First Native National Monument, 50 Arizona State Law Journal 317 (2018)

Colorado Law continues to build on its tradition of excellence and innovation in legal education, research, and professional engagement, while making a positive impact on humanity locally and globally. We want to be leaders and train leaders in the law. We will lead in Colorado, the country, and the world.