Scholarship at Colorado Law

I am pleased to present you with this year’s collection of faculty scholarship produced by my colleagues at the University of Colorado Law School.

The scholarly works on the pages that follow are both wide-reaching and timely, serving as important change agents at the local, national, and international levels. Our faculty’s work appears in a range of platforms, from traditional law review articles and casebooks to single-authored books, opinion pieces, government reports, and blog posts. It is through this diverse array of platforms that we engage most effectively with our communities, exposing and examining complex and urgent issues, and ensuring that scholarship is relevant to the world.

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

MING H. CHEN: Pursuing Citizenship in the Enforcement Era,
(forthcoming 2020, Stanford University Press)

AYA GRUBER: The Feminist War on Crime
(forthcoming 2020, University of California Press)

HELEN NORTON: The Government’s Speech and the Constitution
(Cambridge University Press, 2019)

PIERRE SCHLAG and AMY GRIFFIN, How to Do Things With Doctrine
(forthcoming 2020, University of Chicago Press)

SCOTT SKINNER-THOMPSON: Privacy at the Margins
(forthcoming, Cambridge University Press)

ANNA SPAIN BRADLEY: The Impact of One: How Individual Choice Shapes International Law
(forthcoming, Cambridge University Press)

Casebooks and treatises

HAROLD BRUFF: Separation of Powers Law: Cases and Materials
(with Peter M. Shane and Neil J. Kinkopf)

RICHARD COLLINS: The Colorado State Constitution (2nd ed.)
(forthcoming, Oxford University Press)

RICHARD COLLINS: Colorado Government (2018 ed.)

LAKSHMAN GURUSWAMY: Using Legislation to Combat Energy Poverty
(Edward Elgar, forthcoming 2019)

(Carolina Academic Press, 10th ed. 2019)

SARAH KRAKOFF: Beyond Zero-Sum Environmentalism
(with Melissa Powers and Jonathan Rosenbloom eds.)
(Environmental Law Institute 2019)

SCOTT SKINNER-THOMPSON: AIDS and the Law (ed.)
Articles, chapters, and opinion essays

S. James Anaya
Dean and University Distinguished Professor

International Human Rights
Indigenous Peoples’ Law and Policy
International Law

Book chapters

Amy Bauer
Legal Writing Professor

Depositions Skills
Legal Writing
Transactional Drafting

Articles

Rabea Benhalim
Associate Professor

Civil Procedure
Evidence
Federal Courts

Articles

J. Brad Bernthal
Associate Professor

Entrepreneurial Law Clinic
Entrepreneurial Law
Venture Capital
Early Stage Finance
Innovation Policy

Articles

Teresa Bruce
Legal Writing Professor

Articles
“The problems of American Indian poverty and reservation living conditions have inspired various explanations. One response advanced by some economists and commentators, which may be gaining traction within the Trump Administration, calls for the ‘privatization’ of Indian lands. Proponents of this view contend that reservation poverty is rooted in the federal Indian trust arrangement, which preserves the tribal land base by limiting the marketability of lands within reservations. In order to maximize wealth on reservations, policymakers are advocating for measures that would promote the individuation and alienability of tribal lands, while diminishing federal and tribal oversight. Taking a different view, this Article complicates and challenges the narrative of Indian poverty and land tenure advanced by privatization advocates.”
Ming H. Chen
Associate Professor and Director, Immigration and Citizenship Law Program

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

Articles

Other publications

Justin Desautels-Stein
Associate Professor

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

Book chapters
“Structuralist and Post-Structuralist Legal History,” in The Oxford Handbook of Legal History 541 (Markus D. Dubber & Christopher Tomlins eds., Oxford Univ. Press 2018)

Kristel A. García
Associate Professor

Copyright
Trademark
Property
Law and Economics of Intellectual Property

Articles
“A Reconsideration of Copyright’s Term,” (with Justin McCrary) (71 Ala. L. Rev. __) (2019)

“Copyright Arbitrage,” 107 Calif. L. Rev. 199 (2019)

Book chapters

Carla Fredericks
Associate Clinical Professor

American Indian Law

Articles
“Responsible Resource Development: A Strategic Plan to Consider Social and Cultural Impacts of Tribal Extractive Industry Development,” (with Kate Finn, Erica Gajda, and Jesse Heibel), Harv. J.L. & Gender Online, Oct. 23, 2018

Amy Griffin
Associate Dean for Instructional Development

Legal Writing

Articles
“Dethroning the Hierarchy of Authority,” 97 Or. L. Rev. 51 (2018)
Aya Gruber
Professor
Criminal Law
Criminal Procedure
Feminist Legal Theory
Critical Race Theory

Articles

“Sex Wars as Proxy Wars,” 6 Critical Analysis L. 102 (2019)

Book chapters


“Governance Feminism in New York’s Human Trafficking Intervention Courts,” (with Amy J. Cohen) in Governance Feminism: Notes From the Field (Janet Halley, Prabha Kotiswaran, Rachel Rebouché & Hila Shamir eds., 2019)

Lakshman Guruswamy
Nicholas Doman Professor of International Environmental Law
International Law
International Environmental Law
International Energy Law

Articles


Book chapters

Jennifer Hendricks
Professor and Co-Director, Juvenile and Family Law Program
Family Law
Feminist Legal Theory
Civil Procedure
Constitutional Law and Theory

Articles

Peter Huang
DeMuth Chair and Professor
Business Law
Law and Emotions
Law and Neuroscience
Law and Mindfulness
Derivative Securities
Securities Enforcement, Litigation, and Regulation

Articles


Book chapters


“Public bathrooms have played a surprisingly prominent role in civil rights struggles. The late nineteenth century saw the first legal demands for public bathrooms for women; the prevalence of whites-only bathrooms restricted travel for African Americans up until at least the 1960s; and the need for bathroom access was a key aspect of the fight for the Americans with Disabilities Act. In recent years, bathrooms have been in the news in relation to the fight over transgender access.

“People face gendered choices when using any public bathroom, but schools have been flashpoints for this fight: a child is likely to make their bathroom choice in front of peers or authority figures who know the child’s assigned sex, and issues of children’s sexuality and gender identity are especially incendiary. In 2016, the U.S. Departments of Justice and Education told schools to allow every student to use the bathroom corresponding to their gender identity. That federal guidance has since been rescinded, but the substance of it remains the law or policy of many jurisdictions.”

Articles

Other publications
“Energy Emergencies vs. Manufactured Crises: The Limits of Federal Authority to Disrupt Power Markets,” (with Ari Peskoe)

Sharon Jacobs
Associate Professor
Administrative Law
Advanced Topics in Energy Law
Energy Law and Regulation
Environmental Law
Legislation and Regulation
Regulation and Innovation
and write (to yourself) questions:

Consider why you came to law school—why did you choose this path? Is that same interest/motivation you?
“Scholars and civil society groups on both sides of the Atlantic have been calling for algorithmic accountability: laws governing decision-making by complex algorithms, or AI. Algorithms can be used to make, or to greatly affect, decisions about credit, employment, education, and more. Algorithmic decision-making can be opaque, complex, and subject to error, bias, discrimination, in addition to implicating dignitary concerns. The literature in the United States has been largely speculative, operating in a policy vacuum. This is resolutely not, however, the case in the European Union.

“On May 25, 2018, the General Data Protection Regulation (GDPR) went into effect in the EU. The GDPR contains a significant set of rules on algorithmic accountability, imposing transparency, process, and oversight on the use of computer algorithms to make significant decisions about human beings. The GDPR may prove to be an example, both good and bad, of a robust algorithmic accountability regime in practice. However, to a U.S. audience, the recent vigorous debate around whether there is a ‘right to explanation’ in the GDPR may inspire confusion.”
“The Consensus Myth in Criminal Justice Reform”

“It has become popular to identify a ‘consensus’ on criminal justice reform, but how deep is that consensus, actually? This Article argues that the purported consensus is much more limited than it initially appears. Despite shared reformist vocabulary, the consensus rests on distinct critiques that identify different flaws and justify distinct policy solutions. The underlying disagreements transcend traditional left/right political divides and speak to deeper disputes about the state and the role of criminal law in society. The Article maps two prevailing, but fundamentally distinct, critiques of criminal law: (1) the quantitative approach (what I call the ‘over’ frame); and (2) the qualitative approach (what I call the ‘mass’ frame).”
Zero-Sum Frames,” in Beyond Zero-Sum Environmentalism (with Melissa Powers and Jonathan Rosenbloom eds.) (Environmental Law Institute 2019)

**Articles**


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**Benjamin Levin**

Associate Professor

Criminal Law

Criminal Procedure: Adjudicative Process

Advanced Criminal Justice

**Articles**


**Opinion essays**

“Elizabeth Warren’s Proposal to Imprison More Corporate Executives Is a Bad Idea,” (with Carissa Byrne Hessick), Slate, April 4, 2019

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**Mark Loewenstein**

Monfort Professor of Commercial Law and Associate Dean for Curricular Affairs

Business Associations

Agency Law and Securities Law

Corporate Governance

**Articles**

“Thinking Fast and Slow About the Concept of Materiality,” 71 SMU L. Rev. 853 (2018)

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**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

Employment Discrimination

Complex Litigation

**Articles**

“Preclusion Law as a Model for National Injunctions,” JOTWELL article review (Dec. 5, 2018)


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**Alexia Brunet Marks**

Associate Professor

International Professor

Economic Law

Food Law

Civil Litigation

**Articles**


**Book chapters**


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**Christopher B. Mueller**

Henry S. Lindsley Professor of Procedure and Advocacy Evidence

Civil Procedure

Complex Litigation

Class Action

**Articles**

Susan Nevelow Mart
Professor and Director of the William A. Wise Law Library

Legal Informatics
Legal Research

Articles
“Results May Vary,” A.B.A. J., Mar. 2018

(Nadav Orian Peer
Associate Professor

Financial Institutions
Bankruptcy
Property

Articles

Book chapters
“Your Grandfather’s Shadow Banking: Clearing and Call Loans in Gilded Age New York,” (forthcoming in Inside Money: Re-Theorizing Liquidity, Christine Desan ed.)

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

Constitutional Law
Civil Rights
Employment Discrimination Law

Articles

“Powerful Speakers and Their Listeners,” 90 U. Colo. L. Rev. 441 (2019)


“(At Least) Thirteen Ways of Looking at Election Lies,” 71 Okla. L. Rev. 117 (2018)

Book chapters
“Artificial Intelligence and the First Amendment,” (with Toni M. Massaro) in Research Handbook on the Law of Artificial Intelligence 353

Pierre Schlag
University Distinguished Professor and Byron R. White Professor of Law

Jurisprudence
Constitutional Law
Legal Philosophy
Tort Law

Book chapters

Kerri Rowe
Student Services and Outreach Librarian

Articles
“Researching Colorado Health Law,” Colo. Law., March 2018

Kerri Rowe
Student Services and Outreach Librarian

Articles

“Internet Architecture and Disability,” (forthcoming Ind. L.J.)

Blake E. Reid
Associate Clinical Professor

Technology Policy
Telecommunications Law
Intellectual Property
Disability Law

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

Articles  
“Mandatory Disclosure in Primary Markets,” 2019 Utah L. Rev. ___ (forthcoming)  

“Equity Crowdfunding in New Zealand,” 2018 N.Z. L. Rev. 243  


Book chapters  

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

Articles  
“Recording as Heckling,”  

Book chapters  

Opinion essays  

“Queering the Gay Agenda,” Slate, June 18, 2019  

“The Person is Political,” Slate, Oct. 23, 2018
“Much has been written recently about artificial intelligence (AI) and law. But what is AI, and what is its relation to the practice and administration of law? This article addresses those questions by providing a high-level overview of AI and its use within law. The discussion aims to be nuanced but also understandable to those without a technical background. To that end, I first discuss AI generally. I then turn to AI and how it is being used by lawyers in the practice of law, people and companies who are governed by the law, and government officials who administer the law.

A key motivation in writing this article is to provide a realistic, demystified view of AI that is rooted in the actual capabilities of the technology.”

Book chapters


“Restoring the Public Interest in Western Water Law,”  ____ Utah L. Rev. _____ (forthcoming 2020)

Book chapters
“The Remarkable Legacy of John Wesley Powell,” (with Cody Phillips & Travis Miller) in The Pioneers of Environmental Law, (Twelve Tables Press, 2020)
**Harry Surden**  
Associate Professor  
Patent Law  
Intellectual Property  
Privacy Law  
Computer Science and Law  
Artificial Intelligence and Law  

**Articles**  

**Book chapters**  

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

**Articles**  
With our roots in Colorado and a global outlook, we are a supportive and diverse educational and scholarly community in a place that inspires vigorous pursuit of ideas, critical analysis, contemplation, and civic engagement to advance knowledge about the law in an open, just society.