

# ARIZONA

---

## LAW REVIEW

---

VOLUME 63

2021

NUMBER 4

---

### CONTENTS

#### ARTICLES

- DIFFERENTIAL ETIOLOGY:  
INFERRING SPECIFIC CAUSATION IN THE LAW  
FROM GROUP DATA IN SCIENCE  
*Joseph Sanders, David L. Faigman,  
Peter B. Imrey, & Philip Dawid* 851
- ENSLAVED AGENTS:  
BUSINESS TRANSACTIONS NEGOTIATED  
BY SLAVES IN THE ANTEBELLUM SOUTH  
*Elizabeth C. Tippett* 923
- THE (POTENTIAL) LEGAL HISTORY  
OF INDIAN GAMING  
*William Wood* 969

#### ESSAYS

- WHY DO (SOME) ORIGINALISTS HATE AMERICA?  
*Andrew Koppelman* 1033
- SUNLIGHT IS THE BEST DISINFECTANT—OR IS IT?  
ANONYMITY AS A MEANS TO ENHANCE  
IMPARTIALITY  
*Eyal Zamir & Christoph Engel* 1063

## NOTES

HOW TO PROTECT THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA? TIME TO ASSERT A CLAIM IN FEDERAL COURT	<i>Darya Anderson</i>	1089
AVOIDING NO-POACH LIABILITY: MAKING REASONABLE CHOICES TO QUALIFY FOR THE RULE OF REASON	<i>Mitchell Anderson</i>	1111

# ARIZONA

---

## LAW REVIEW

2021–2022

*Editor-in-Chief*  
ADAM MCGOVERN

*Senior Articles Editor*  
DANIEL BOWMAN

*Senior Managing Editor*  
GARRETT HABLE

*Senior Note Editor*  
LAUREN SWOL

*Articles Editors*  
DARYA ANDERSON  
MITCHELL ANDERSON  
MARK ERCOLANO  
RACHEL MADORE  
LIAM MARTIN  
JACOB WASSENAAR

*Managing Editors*  
NICHOLAS BENNETT  
ALEXANDER BLEDSOE  
MEREDITH CARVELL  
ZACHARY JARVIS  
LAUREN LOFY  
GARO MOUGHALIAN

*Note Editors*  
NEAL BRUBAKER  
SAMARA DIAB  
NATALIE LACOURT  
CAITLIN LUJAN  
ANDREW O'KEEFE  
AMBER RUDNICK

*Articles Manager*  
ROSE MELTZER

*Business Manager*  
BLAIZE BOLES

*Online Manager*  
DOUGLAS WYKSTRA

*Marketing Manager*  
KYLE LOCHNER

*Events Manager*  
J. PAIGE RICKS

KRISTA AVENENTI  
DIRK BERNHARDT  
JAMES CERASIA  
GAYANE CHICHAKYAN  
THOMAS CORRIGAN  
RACHEL CRISLER  
PEARL DIXON  
ISAI ESTEVEZ  
GLORIA FARRISI  
BRIDGET FELDMAN  
MARLEY GROSSKOPF

*Members*  
ELIZABETH HANNAH  
JACOB ISRAELSEN  
KEVIN KENT  
ANGELA KIM  
SAVANNAH KNIGHT  
GABRIELLE MARTIN  
JUNO MCCALLUM  
DREW MINNICK  
CONNOR NOLAN  
TYLER OBERG  
AUSTIN QUICK

SIERRA RHODES  
CORY RODAS  
JAMES ROLLINS  
JOSEPH ROUSOS-HAMMOND  
MARTYNA SAWICKA  
AMBER SHEPARD  
ISABELLA STOUTENBURG  
ROBERT TEUTON  
EMILY THOMASON  
VINNY VENKAT  
BRYN WELLS-EDWARDS

*Faculty Advisors*  
ALBERTINA ANTOGNINI  
JASON KREAG

# JAMES E. ROGERS COLLEGE OF LAW

## THE UNIVERSITY OF ARIZONA

### ADMINISTRATION

ROBERT C. ROBBINS, B.S., M.D. ....	President, The University of Arizona
LIESL FOLKS, B.S., PH.D., M.B.A. ....	Senior Vice President for Academic Affairs and Provost
MARC L. MILLER, B.A., J.D. ....	Dean and Ralph W. Bilby Professor of Law
KAREN M. KOWALSKI, B.A., J.D., LL.M. ....	Associate Dean for Administration and Chief of Staff
KATHERINE BARNES, B.A., M.S., J.D., PH.D. ....	Associate Dean for Programs & Innovation, Professor of Law, and Associate Professor of Economics
ANDREW COAN, B.A., J.D. ....	Associate Dean for Research, Director, The William H. Rehnquist Center, and Professor of Law
JASON KREAG, B.A., M.A., J.D. ....	Associate Dean for Academic Affairs and Professor of Law
TERESA MIGUEL-STEARNS, B.A., J.D., M.A. ....	Associate Dean, Legal Information Innovation, Director, Law Library, and Professor of Law
MICHAEL BROOKS, B.S., J.D. ....	Assistant Dean for Academic Affairs and Registrar
CARY CLUCK, B.A., J.D. ....	Assistant Dean for Admissions and Financial Aid
WILLIE M. JORDAN-CURTIS, B.A., M.A., PH.D., J.D. ....	Assistant Dean for Student Affairs and Clinical Professor of Law
TRACY MUELLER, B.A. ....	Assistant Dean for External Communications & Marketing
GAIL NAZARENKO, B.M.E., M.B.A., C.M.A. ....	Assistant Dean for Finance and Administration
NANCY A. STANLEY, B.A., J.D. ....	Assistant Dean for Strategic Relations
SHANNON TREBBE, B.A., J.D. ....	Assistant Dean for Career Development and Professor of Practice
MICHAEL WAGENHEIM, B.A., M.S. ....	Assistant Dean of Information Technology and Online Learning
LEAH WON, B.A., J.D. ....	Assistant Dean for Phoenix Initiatives and Professor of Practice
PAUL D. BENNETT, B.A., J.D. ....	Director, Child and Family Law Clinic, Co-Director of Clinics and Clinical Professor
ALI BRIDGES, B.A., M.P.A. ....	Director, Communications
VANESSA BUCH, B.A., J.D. ....	Director, University of Arizona Innocence Project and Clinical Professor
STACY RUPPRECHT BUTLER, B.A., J.D. ....	Director, Innovation for Justice and Professor of Practice
LAUREN CHESEBRO, B.S., C.P.A. ....	Director, Finance and Administration
CHRISTOPHER GAST, B.A., J.D. ....	Director of Special Programs and Professor of Practice
SEANNA HOWARD, B.E.S., LL.B., LL.M. ....	Director, International Human Rights Advocacy Workshop and Professor of Practice
GINGER HUNT, B.A., M.E.T. ....	Senior Director, Online Learning and Instructional Design
KRISTINE HUSKEY, B.A., J.D. ....	Director, Veterans' Advocacy Clinic, Co-Director of Clinics and Clinical Professor
NEGAR KATIRAI, B.A., J.D. ....	Director, Domestic Violence Clinic and Clinical Professor
JOHN LACY, B.A., J.D. ....	Director, Global Mining Law Center and Professor of Practice
GAVIN MILCZAREK-DESAI, B.A. PH.D., J.D. ....	Executive Director, Intellectual Property Clinic and Professor of Practice
SHEFALI MILCZAREK-DESAI, B.A., M.A., J.D. ....	Director, Workers' Rights Clinic and Assistant Clinical Professor
MEGAN O'LEARY, B.A. ....	Senior Director of Development
JONATHAN ROTHSCHILD, B.A., J.D. ....	Director, Democracy and Leadership Initiative and Professor of Practice
TARA SKLAR, B.A., M.P.H., J.D. ....	Director, Graduate Health Sciences Programs and Professor of Health Law
PRIYA SUNDARESHAN, B.S., M.S., J.D. ....	Director, Natural Resource Use & Management Clinic and Professor of Practice
KEITH SWISHER, B.S., J.D., LL.M. ....	Director, Undergraduate and Master of Legal Studies Programs and Professor of Legal Ethics
SHANNON WALKER, B.A., M.P.A. ....	Senior Director, Career Development Office
CHARLES WANG, LL.B, J.D., LL.M. ....	Assistant Vice President for China Affairs, Director, China Law Program, and Professor of Practice
HEATHER WHITEMAN RUNS HIM, A.F.A., B.A.F.A., J.D. ....	Director, IPLP Tribal Justice Clinic and Associate Clinical Professor
AMANDA WOLFE, B.A., M.A. ....	Senior Director of Global Programs
ROBERT WOODS, B.F.A., M.F.A., J.D. ....	Director, University of Arizona Law Program, Ocean University and Professor of Practice

### FACULTY

ALBERTINA ANTOGNINI, B.A., J.D. ....	Professor of Law
DEREK BAMBAUER, B.A., J.D. ....	Professor of Law
JANE BAMBAUER, B.A., J.D. ....	Professor of Law
BARBARA BERGMAN, B.A., J.D. ....	Professor of Law and Director of Advocacy
ELLEN M. BUBBLICK, B.A., J.D. ....	Dan B. Dobbs Professor of Law
JOSÉ FRANCISCO CALÍ TZAY, B.A. ....	Law Lecturer; Associate Director, Indigenous Peoples Law and Policy Human Rights Programs
TESSA DYSART, B.A., J.D. ....	Clinical Professor of Law and Assistant Director of Legal Writing
KIRSTEN H. ENGEL, B.A., J.D. ....	Charles E. Ares Professor of Law and Director, Environmental Law, Science and Policy
CHRISTOPHER L. GRIFFIN, JR., B.S., M.PHIL, J.D. ....	Research Professor, Director of Empirical

	Policy and Research
JOY HERR-CARDILLO, A.B., J.D. ....	Associate Professor of Legal Writing and Associate Clinical Professor of Law
JAMES C. HOPKINS, B.A., LL.B., LL.M./I.T.P. ....	Associate Clinical Professor of Law
XIAOQIAN HU, LL.B., M.L., PH.D., LL.M., S.J.D. ....	Associate Professor of Law
MONA L. HYMEL, B.A., J.D., C.P.A. ....	Arthur W. Andrews Professor of Law
EUNICE LEE, B.A., M.A., J.D., PH.D. ....	Associate Professor of Law
SYLVIA LETT, B.A., J.D. ....	Associate Professor of Legal Writing and Assistant Clinical Professor of Law
LYNN MARCUS, B.A., J.D. ....	Clinical Professor and Director, Immigration Law Clinic
TONI M. MASSARO, B.S., J.D. ....	Regents Professor, Milton O. Riepe Chair in Constitutional Law, and Dean Emerita
SARAH MAUET, B.S., M.S. ....	Professor of Practice
ATHANASIOS MIHAKALOS, B.S., J.D., LL.M. ....	Global Professor of Practice in Law
ROBERT MUNDHEIM, B.A., LL.B., M.A. ....	Professor, Corporate Law and Finance
DIANA NEWMARK, B.A., J.D. ....	Assistant Clinical Professor of Law
LESLYE AMEDE OBIORA, LL.B., LL.M., J.S.D. ....	Professor of Law
CATHERINE GAGE O'GRADY, B.B.A., J.D. ....	Professor of Law
BARAK ORBACH, B.A., LL.B., LL.M., S.J.D. ....	Professor of Law
JUSTIN PIDOT, B.A., J.D. ....	Professor of Law
SERGIO PUIG, L.L.B., J.S.M., J.S.D. ....	Professor of Law, Director, International Trade and Business Law Program
SHALEV ROISMAN, B.A., J.D. ....	Associate Professor of Law
SUSAN SALMON, B.A., J.D. ....	Clinical Professor of Law and Director of Legal Writing
MICHAEL SAYLE, B.A., M.A. ....	Global Professor
SIMONE M. SEPE, J.D., LL.M., PH.D., M.Sc., J.S.D. ....	Professor of Law and Finance
ANDREW SHEPHERD, B.A., J.D. ....	Professor of Practice, Global Law, Deputy Director, Global Faculty
DIANA SIMON, B.A., J.D. ....	Associate Professor of Legal Writing and Assistant Clinical Professor of Law
WILLIAM K. SJOSTROM, B.S., J.D. ....	Professor of Law
ROY G. SPECE JR., B.A., J.D. ....	John D. Lyons Professor of Law
BRIAN SWANSON, B.A., J.D. ....	Global Professor of Practice in Law
MELISSA L. TATUM, B.A., J.D. ....	Research Professor of Law
REBECCA TSOSIE, B.A., J.D. ....	Regents Professor of Law and Faculty Co-Chair, Indigenous Peoples Law & Policy Program
TAMMI WALKER, B.B.A., M.Sc., J.D., PH.D. ....	Associate Professor of Law and Psychology
BRENT T. WHITE, B.A., J.D. ....	Vice Provost, Global Affairs, Dean, Global Locations, CEO, UA Global Operations, and Professor of Law
CAROLYN WILLIAMS, B.A., J.D. ....	Associate Professor of Legal Writing and Associate Clinical Professor of Law
ROBERT A. WILLIAMS JR., A.B., J.D. ....	Regents Professor, E. Thomas Sullivan Professor of Law & American Indian Studies, and Faculty Co-Chair, Indigenous Peoples Law & Policy Program
ANDREW KEANE WOODS, A.B., J.D., PH.D. ....	Professor of Law

## EMERITI FACULTY AND ADMINISTRATION

ARTHUR W. ANDREWS, B.A., LL.B., LL.M. ....	Rosenstiel Distinguished Professor of Law Emeritus
BARBARA ATWOOD, B.A., J.D. ....	Mary Anne Richey Professor of Law Emerita
WILLIAM E. BOYD, A.B., J.D., LL.M. ....	Chester H. Smith Professor of Law Emeritus
MICHAEL G. CHIORAZZI, B.A., J.D., M.L.L. ....	Beverly & James E. Rogers Professor of Law Emeritus
DAN B. DOBBS, B.A., LL. B, LL.M., J.S.D. ....	Regents Professor and Rosenstiel Distinguished Professor of Law Emeritus
DAVID A. GANTZ, A.B., J.D., J.S.M. ....	Samuel M. Fegty Professor of Law Emeritus
ROBERT J. GLENNON, A.B., J.D., M.A., PH.D. ....	Regents Professor and Morris K. Udall Professor of Law & Public Policy Emeritus
ROGER C. HENDERSON, B.B.A., LL.B., LL.M. ....	Ralph W. Bilby Professor of Law Emeritus
ROBERT ALAN HERSHEY, B.S., J.D. ....	Professor of Law Emeritus
KAY KAVANAGH, B.A., J.D. ....	Professor of Law Emerita
BORIS KOZOLCHYK, D.C.L., LL.B., LL.M., S.J.D. ....	Evo A. DeConcini Professor of Law Emeritus
THOMAS A. MAUET, A.B., J.D. ....	Milton O. Riepe Professor of Law Emeritus
SUZANNE M. RABÉ, B.A., J.D. ....	Clinical Professor of Law Emerita
JAMES R. RATNER, A.B., M.A., J.D. ....	Professor of Law Emeritus
CAROL M. ROSE, B.A., M.A., PH.D., J.D. ....	Lohse Chair in Water and Natural Resources Emerita and Professor of Law Emerita
SALLY RIDER, B.A., J.D. ....	Director Emerita, The William H. Rehnquist Center
THEODORE J. SCHNEYER, A.B., LL.B., J.S.M. ....	Milton O. Riepe Professor of Law Emeritus
ANDREW SILVERMAN, J.D. ....	Joseph M. Livermore Professor of Law Emeritus
JOHN STRONG, B.A., J.D. ....	Rosenstiel Distinguished Professor of Law Emeritus
JOHN A. SWAIN, A.B., J.D. ....	Chester H. Smith Professor of Law Emeritus
ELLIOTT J. WEISS, B.A., LL.B. ....	Charles E. Ares Professor of Law Emeritus
DAVID B. WEXLER, B.A., J.D. ....	Distinguished Research Professor of Law Emeritus
WINTON D. WOODS, A.B., J.D. ....	Professor of Law Emeritus