



## ARTICLES

- Reforming Public Pensions 1  
*T. Leigh Anenson, Alex Slabaugh & Karen Eilers Lahey*
- Why State Prisons? 75  
*W. David Ball*
- Rights in Recession: Toward Administrative Antidiscrimination Law 119  
*Stephanie Bornstein*

## ESSAY

- The Uneasy Case Against *Auer* and *Seminole Rock* 175  
*Conor Clarke*

## NOTES

- Clean Is the New Green: Clean Energy Finance and Deployment Through Green Banks 197  
*Whitney Angell Leonard*
- Backstop Ambiguity: A Proposal for Balancing Specificity and Ambiguity in Financial Regulation 231  
*Julian J. Z. Polaris*

## COMMENT

- The Limits of Pledging Prosecutorial Discretion: The Ogden Memorandum's Failure to Create an Entrapment by Estoppel Defense 265  
*Samuel Kleiner*





# YALE LAW & POLICY REVIEW

vol. 33, no. 1

fall 2014

---

Yale Law School  
New Haven, Connecticut  
[yalelawandpolicy.org](http://yalelawandpolicy.org)

## YALE LAW & POLICY REVIEW

Yale Law School  
127 Wall Street  
New Haven, CT 06511

PHONE: (203) 432-4863

FAX: (203) 432-2592

SUBSCRIPTIONS: (203) 432-7652

ISSN: 0740-8048

<http://yalelawandpolicy.org>

[ylpr@yale.edu](mailto:ylpr@yale.edu)

The *Yale Law & Policy Review* is published twice each year by students of the Yale Law School. Third-class postage is paid at New Haven, Connecticut, and other mailing offices.

### PUBLICATION POLICY

The *Review* provides a forum for the discussion of a range of contemporary legal and policy issues. Views expressed in the *Review* are those of the authors and do not reflect the views of the Editorial Members.

The *Review* publishes solicited and unsolicited articles, book reviews, and student-written pieces. Please submit unsolicited manuscripts to the Submissions Editors according to the procedures described on the *Review's* website. Due to the large volume of submissions that we receive, the *Review* does not accept submissions in hard copy or via facsimile.

### SUBSCRIPTIONS AND SPECIAL ISSUES

The subscription rate for institutions is \$30.00 domestic and \$40.00 foreign. The subscription rate for individuals is \$20.00 domestic and \$30.00 foreign. Payments received by institution checks will be billed at institution rates. Subscriptions are automatically renewed unless the *Review* receives a request for cancellation. Issues not received will be supplied free of charge only if a claim for nonreceipt is made within one year after the scheduled mailing date. All requests concerning subscriptions and special issues should be addressed to the Subscriptions Department, *Yale Law & Policy Review*, at the above address. Back issues for Volume 1 to the current issue are available from the *Review*, at the above address, for \$20.00 domestic and \$25.00 foreign, including postage.

### COPYRIGHT AND REPRODUCTION

Articles published in the *Review* may be duplicated for classroom use provided that the author and the *Yale Law & Policy Review* are identified, each copy is distributed at or below cost with proper notice of the copyright affixed, and written notice of the use is given to the Managing Editor, *Yale Law & Policy Review*, at the above address or via e-mail.



---

# YALE LAW & POLICY REVIEW

vol. 33, no. 1

fall 2014

---

## EDITORS-IN-CHIEF

Allison Davido  
Ryan Cooper

## MANAGING EDITORS

Becca Loomis  
Chris Pagliarella

## EXECUTIVE EDITORS

Courtney Dixon  
David Simins  
Joe Sanderson  
Kate Harris  
Mark Kelley  
Nick Handler  
Sam Kleiner

## MANAGING DEVELOPMENT EDITOR

Rachel Judd

## ARTICLES EDITORS

Elizabeth Ingriselli  
Jonas Wang  
Katie Wynbrandt  
Michael Clemente

## NOTES EDITORS

Dustin Brockner  
Liz Deutsch

## POLICY EDITORS

Alice Wang  
Dena Adler  
Seguin Strohmeier

## COMMENTS EDITORS

Aaron Nathan  
Cara McClellan

## SUBMISSIONS EDITORS

Colson Lin  
Hava Mirell  
Jackie Delligatti  
Jaunita John  
Josh Divine  
Meg Houlihan  
Mitchell Nobel  
Noah Lindell

## YLPR *Inter Alia* EDITORS

Grace Hart  
Margaret Goodlander  
Zachary Blau

## PRODUCTION EDITORS

Hana Bajramovic  
Bradley Silverman

## SENIOR EDITORS

Zachary Blau  
Will Bruno  
Rebecca Counts  
Jon Endean  
Grace Hart  
Sathya B. Henderson  
Jillian Hewitt  
Katie Jones  
Veronica R. Jordan-Davis  
Melissa Legge\*

Carly Levenson  
Steven Levy  
Colson Lin  
Kirstin Maguire  
Lunar Mai  
Eric Margulies  
Alexa T. Milton  
Max Nardini  
Maya Hodis Nuland

Erika Nyborg-Burch  
Jane Ostrager  
Swapna Reddy  
Abigail Rich  
Carl William Rush  
Avinash Samarth  
Roseanna Sommers  
Jonathan Vogeler  
Ben Wallace  
Ted Wojcik

## EDITORS

Hillary Aidun  
Celina Aldape  
Matthew Ampleman  
Tiffany Bailey\*  
Bianca Bamgbade  
Ahsan M. Barkatullah\*  
Jason Berkenfeld  
Will Bloom  
Sarah Burack  
P. Ryan Burningham  
Eric Chung  
Rory Coursey  
Cassandra Crockett  
Lucas Croslow  
Nicholas S. Crown  
Diane de Gramont  
Charles Du  
Joseph Falvey  
Rhea Fernandes  
Allison Frankel  
Lucas George  
Jason W. Gilliland  
Aaron Goldzimer  
Natalie Hausknecht  
Brian Highsmith  
David Hoffman  
Eliska Holubova  
Olivia Horton\*

Kate Huddleston  
Erica James  
Amber Koonce  
Aaron Korthis  
Christine Kwon  
Emma Perlmuth Larson  
Hilary Ledwell  
Eliza Lehner  
Andrea Levien\*  
Diana Li  
Alina Belen Lindblom  
Steven J. Lindsay  
Elliott Lynn  
Joshua Macey  
David Manners-Weber  
Megan McGlynn  
Marian Messing  
Urja Mittal  
Anna Mohan\*  
Inho Andrew Mun  
McKaye L. Neumeister  
Joshua J. Nuni  
Leo O'Toole  
Rebecca Ojserkis  
Loren Oumarova  
Victoria Pasculli  
Peter Posada  
Joel Jacinto Ramirez

Alexander Resar  
Joshua Revesz  
Emma Roth\*  
Alexandra Saslaw  
Jane Shim  
Rachel Shur  
Bradley Silverman  
Carl Spilly  
Jake Elijah Struebing  
Ruth Swift  
Brandon Thompson\*  
Allison Tjemsland  
Spencer Todd\*  
Rachel Tuchman  
Jacobus van der Ven  
Hillary Vedvig  
R. Mitch Verboncoeur  
Joanna Vincent  
Sarah Weiner  
Amanda Weingarten\*  
Rachel B. Wilf  
Elizabeth Willis  
Ethan Wong  
Alice Xiang  
Youlin Yuan  
Elena Zarabozo  
Dennis Zeveloff\*  
Danyang Zhao\*

\* Lead Editor

# ADVISORY BOARD

ANNE L. ALSTOTT

*Jacquin D. Bierman Professor in Taxation*  
Yale Law School

DAN M. KAHAN

*Elizabeth K. Dollard Professor of Law*  
Yale Law School

JACK M. BALKIN

*Knight Professor of Constitutional Law and the First  
Amendment*  
Yale Law School

DOUGLAS KY SAR

*Deputy Dean and Joseph M. Field '55 Professor of Law*  
Yale Law School

ROSA BROOKS

*Professor*  
Georgetown University Law Center

JONATHAN R. MACEY

*Sam Harris Professor of Corporate Law, Corporate Finance,  
and Securities Law*  
Yale Law School

THE HONORABLE JOSÉ A. CABRANES

U.S. Court of Appeals  
Second Circuit

JERRY L. MASHAW

*Sterling Professor of Law*  
Yale Law School

OWEN M. FISS

*Sterling Professor of Law*  
Yale Law School

THE HONORABLE WILLIAM H. PRYOR

U.S. Court of Appeals  
Eleventh Circuit

PAUL GEWIRTZ

*Potter Stewart Professor of Constitutional Law and  
Director, The China Center*  
Yale Law School

PETER H. SCHUCK

*Simeon E. Baldwin Professor Emeritus of Law*  
Yale Law School

JACOB S. HACKER

*Stanley B. Resor Professor of Political Science and  
Director, Institution for Social and Policy Studies*  
Yale University

THE HONORABLE MYRON H. THOMPSON

U.S. District Court  
Middle District of Alabama

PAMELA HARRIS

*Visiting Professor of Law*  
Georgetown University Law Center

