

RECENT PUBLICATIONS

BLACK ROBES, WHITE COATS: THE PUZZLE OF JUDICIAL POLICYMAKING AND SCIENTIFIC EVIDENCE. By Rebecca C. Harris. New Brunswick, N.J.: Rutgers University Press. 2008. Pp. viii, 200. \$24.95. In *Black Robes, White Coats*, Professor Rebecca C. Harris undertakes a quantitative analysis of judicial “gatekeeping decisions” on the admissibility of scientific evidence, with an eye toward identifying the factors that explain state-by-state variations. Professor Harris first introduces several explanatory “clues” to divergent judicial gatekeeping outcomes, including variation in legal admissibility standards, the political preferences of judges, and structural political factors. She then evaluates the relevance of these clues through a systematic empirical analysis of state supreme court decisions on the admissibility of DNA forensic evidence, polygraph results, and battered woman and rape trauma syndromes. Although this analysis suggests that a state’s governing legal standards play a significant role in explaining variation in admissibility decisions, it also leads Professor Harris to the noteworthy observation that “political variables have a great deal more to do with gatekeeping than scientific variables” (p. 134). Although this conclusion may not surprise legal realists, it is a significant finding regarding the intersection of science and law — two fields purportedly predicated on objectivity and neutrality.

THE INVISIBLE CONSTITUTION. By Laurence H. Tribe. New York, N.Y.: Oxford University Press. 2008. Pp. xxi, 278. \$19.95. To prove the existence of the invisible Constitution, Professor Laurence Tribe has taken a novel approach. Professor Tribe lists numerous propositions so fundamental and well-accepted (such as the inability of states to secede) that it seems they *must* be in the Constitution somewhere — but none are apparent from the Constitution’s plain text. Professor Tribe uses this disparity to peel back the familiar “clothes” of the written text of the Constitution and reveal a solid but invisible body of precepts, principles, and priorities that support and animate the written words. This is not another book about the much-covered “unwritten Constitution,” for instead of focusing on the laws and policies that have emerged around the Constitution, Professor Tribe argues that these principles are actually *in* the Constitution (p. 10). He makes a convincing case while whisking readers through an exciting variety of arguments and examples. The intuitive, accessible nature of the book allows Professor Tribe to engage in the occasional flight of fancy, such as a multicolored, glossy section with six hand-drawn visualizations depicting the invisible constitution in wildly varying forms, including “gravitational” and “gyroscopic” constructions. A book this arresting and original demands — and deserves — to be read, pondered, and discussed.

LAW, MARRIAGE, AND SOCIETY IN THE LATER MIDDLE AGES: ARGUMENTS ABOUT MARRIAGE IN FIVE COURTS. By Charles Donahue, Jr. New York, N.Y.: Cambridge University Press. 2007. Pp. xix, 672. \$140.00. In this thorough study of the application of canon law to marriage proceedings by later medieval ecclesiastical courts, Professor Charles Donahue investigates hundreds of cases from the courts of York, Ely, Paris, Cambrai, and Brussels. Through a mixture of numerical analysis of cases in bulk and detailed consideration of specific stories, Professor Donahue identifies trends of the period while maintaining a connection to the human element central to marital disputes. The book moves from the surprisingly egalitarian rules laid down by Pope Alexander III, and the rules and procedures of marriage law more generally, to tales of four well-recorded cases — revealing battles of the sexes and machinations to effect illegal divorces, to statistical and case-level evaluations of litigation in the five courts, and finally to the additional substantive issues of separation, consanguinity, and affinity. *Law, Marriage, and Society in the Later Middle Ages* provides a comprehensive view of medieval marriage and the laws that governed it, and Professor Donahue offers an instructive model for when and how legal history can give insights into past cultures.

PATENT FAILURE: HOW JUDGES, BUREAUCRATS, AND LAWYERS PUT INNOVATORS AT RISK. By James Bessen and Michael J. Meurer. Princeton, N.J.: Princeton University Press. 2008. Pp. xi, 331. \$29.95. Rising above simplistic theoretical arguments between critics and supporters of the modern patent system, Professors James Bessen and Michael J. Meurer use historical and statistical research to determine whether the legal enshrinement of patent rights inspires socially valuable innovation. They conclude that patents benefit chemical and pharmaceutical firms, but that the patent system does not provide predictability in property rights to the average firm in other industries. Although patents offer direct benefits to individual patent holders, the explosion of patent litigation since the 1990s has effectively eliminated these benefits in many fields. As these costs are a consequence of the legal uncertainties associated with patents, the authors suggest that the system can be improved by increasing transparency, discouraging vague claims, and repairing or mitigating the harms caused by inadequate notice of preexisting patents. *Patent Failure* offers a rigorous, albeit abstract, account of the tradeoffs associated with the legal enforcement of patent rights. The authors do not pretend to provide a straightforward path to optimizing the current system, but instead both delineate a useful framework through which the efficacy of property rights protection should be managed and apply that framework to the most pertinent aspects of the modern patent system.