
RECENT PUBLICATIONS

THE END OF INEQUALITY: ONE PERSON, ONE VOTE AND THE TRANSFORMATION OF AMERICAN POLITICS. By Stephen Ansolabehere and James M. Snyder, Jr. New York, N.Y.: W.W. Norton & Co. 2008. Pp. xii, 320. \$18.75. The principle of “one person, one vote” is considered by most Americans to be fundamental to democracy (p. 273). In this powerful and engaging new book, Professors Stephen Ansolabehere and James M. Snyder, Jr. deftly weave together a compelling narrative of the inner workings of the Supreme Court and a meticulous analysis of historical data to show how the Court breathed life into this bedrock principle. The book focuses on a series of cases, beginning with the contentious 1962 case of *Baker v. Carr*, which mandated equal representation in state legislatures for all citizens. *The End of Inequality* illustrates these Supreme Court decisions’ concrete effects on the distribution of power between wealthy cities and poor rural counties, liberals and conservatives, blacks and whites, and Democrats and Republicans. Ultimately, Professors Ansolabehere and Snyder conclude that the results of the transformation caused by *Baker* and its progeny are a “resounding endorsement of the simple, indeed naïve, theory of democracy. . . . Equal votes mean equal power” (p. 277).

ENVIRONMENTAL LAW, POLICY, AND ECONOMICS: RECLAIMING THE ENVIRONMENTAL AGENDA. By Nicholas A. Ashford and Charles C. Caldart. Cambridge, Mass.: MIT Press. 2008. Pp. xxxv, 1088. \$90.00. Part undergraduate textbook and part legal treatise, *Environmental Law, Policy, and Economics* aims to attract a diverse audience. Professors Nicholas Ashford and Charles Caldart guide the reader through topics ranging from the nature and origins of environmental contamination, through the major American pollution control statutes, to alternative forms of governmental intervention. Thoughtful and generous introductory materials make this broad array surprisingly accessible: More than twenty pages on the common law and the basic functions of the tort system precede a discussion of environmental torts. An entire chapter on administrative law appears before the introduction of the various statutes administered by the EPA. Throughout, the authors support their position that “there is much to be gained when government provides clear, stringent legal requirements for environmental improvements and for technological transformations . . . coupled both with flexible means to achieve environmental targets and with meaningful stakeholder participation” (p. xxxiv). Students across many disciplines will benefit from this thorough and fair-minded survey of a still-evolving field.

JUSTICE ACROSS BORDERS: THE STRUGGLE FOR HUMAN RIGHTS IN U.S. COURTS. By Jeffrey Davis. New York, N.Y.: Cambridge University Press. 2008. Pp. xi, 303. \$29.99. In 1980, the Second Circuit decided the landmark case of *Filártiga v. Peña-Irala*, using the then-little-known Alien Tort Statute (ATS) to award \$10 million in damages to the family of a Paraguayan who was tortured and killed by the Paraguayan police. Since *Filártiga*, ATS litigation has become one of human rights lawyers' primary tools in their efforts to seek justice for those killed and tortured by oppressive regimes abroad. In this interesting and arresting book, Professor Jeffrey Davis details both the legal maneuverings of ATS plaintiffs in U.S. courts and the tragic circumstances that lead them there in the first place. Professor Davis frames his analysis around the numerous players — from the Supreme Court and the executive branch to NGOs and private corporations — whose interactions in the U.S. legal system have shaped modern ATS case law. He succeeds in painting a detailed and instructive portrait of the role these various entities can play in human rights litigation, and he provides a thoughtful analysis of the many complex legal issues that such litigation entails. In the end, Professor Davis's project is a hopeful one, detailing how U.S. courts in the wake of *Filártiga* have provided a real and meaningful forum for many victims who had no opportunity in their home countries to bring their oppressors to justice.

LIBERTY'S BLUEPRINT: HOW MADISON AND HAMILTON WROTE THE *FEDERALIST PAPERS*, DEFINED THE CONSTITUTION, AND MADE DEMOCRACY SAFE FOR THE WORLD. By Michael I. Meyerson. New York, N.Y.: Basic Books. 2008. Pp. xiv, 309. \$26.95. Professor Michael Meyerson's vivid and informative book is both a historical primer on the creation of the *Federalist Papers* and an analysis of their significance and continued relevance. Part I outlines the history of the writing of the *Federalist Papers*, cataloguing the partnership of James Madison and Alexander Hamilton as well as the subsequent disintegration of their relationship. As Professor Meyerson explains, "*The Federalist* . . . represents a unique moment in American history . . . a never-again-to-be-seen cohesiveness between competing visions for America" (p. 145). Part II turns to the content of the *Federalist Papers*, using examples from American history that range from desegregation to the war against terrorism to underscore the wisdom of the essays on issues such as the separation of powers and federalism. In its presentation of the compelling historical and intellectual reasons to continue to hold the *Federalist Papers* in high regard, *Liberty's Blueprint* provides an accessible and eloquent companion to that foundational set of documents.

A MODERN LEGAL ETHICS: ADVERSARY ADVOCACY IN A DEMOCRATIC AGE. By Daniel Markovits. Princeton, N.J.: Princeton University Press. 2008. Pp. xii, 361. \$29.95. In a refreshing break from the positivist battle over the moral function of lawyers in an adversary system of adjudication, *A Modern Legal Ethics* investigates whether it is even possible for lawyers to occupy an ethical role in modern society. Professor Markovits acknowledges that lawyers face systemic ethical pressures regardless of professional rules, and therefore focuses on redefining the lawyer's role in a way that preserves the integrity of the profession. In a chapter sure to inspire practicing readers, Professor Markovits argues that such a role is possible because of the lawyerly virtues that attend the lawyerly vices — most importantly, lawyers exercise strict fidelity to clients' interests, and their work lends legitimacy to our political system. However, Professor Markovits warns that in the United States, escalating moral pressures from outside the legal profession may prevent lawyers from redefining their role as ethically positive. This unique perspective on the legal profession is informed by a combination of legal literature and political philosophy that is sure to capture the attention of academics and practicing lawyers alike.

THE NATURE AND AUTHORITY OF PRECEDENT. By Neil Duxbury. New York, N.Y.: Cambridge University Press. 2008. Pp. xv, 189. \$45.00. In his recent book, Professor Neil Duxbury examines the concept of precedent and the various justifications for its constraint on judges. He argues that the authority now granted to precedent began to emerge in England as “the focal point of the trial [shifted] from the pleadings to the decision” (p. 52), forcing judges to provide published reasons for legal decisions after the trial, rather than oral mediation advice to the parties before it. This focus pushed judges to provide judgments that were “consistent with the law as a whole” (p. 49). Professor Duxbury sketches out both consequentialist and deontological arguments for following precedent, but he ultimately makes the case that for precedents to serve their function in a common law system, they must, sometimes, be disregarded. Asserting that the doctrine of precedent involves “both constraint and creativity,” Professor Duxbury lauds the act of distinguishing a case as “contribut[ing] to the growth of the common law” and contends that overruling precedent is “peculiarly supportive of *stare decisis*” (p. 27). In the end, Professor Duxbury admits that the justifications for following precedent are neither unitary nor airtight: “The reasons for following precedents . . . are, like precedents themselves, always defeasible” (p. 30).

TORT WARS. By Joel Levin. New York, N.Y.: Cambridge University Press. 2008. Pp. x, 247. \$29.99. In *Tort Wars*, Professor Joel Levin offers an insightful analysis of the American tort system, tracing it from its historical origins through to its present status as a highly politicized field of law that “cut[s] across a myriad of issues” (p. 6). In Professor Levin’s estimation, tort law’s numerous and varied doctrinal threads distinguish it from other areas of law. These constituent threads, each riddled with moral, economic, and systemic problems, make cogent discussion of tort law at large a cumbersome enterprise. While *Tort Wars* does not purport to create a stylized theoretical model transforming the vast field of tort into a coherent whole, it does address different facets of tort using a consistent analytical framework. The author’s lens of choice is a decidedly philosophical one, substantiated with frequent reference to pertinent case law. Professor Levin reasons that the inconsistencies and inadequate justifications within the tort system, when considered in the broader context of “measuring ideals against results” (p. 8), do not prevent the tort system from promoting private and public peace. Indeed, though *Tort Wars* is candid about tort law’s manifold flaws, it ultimately recognizes that litigating is better than fighting and that “flawed tort wars are better than [the] bloody real ones” (p. 228) that would occur in tort law’s absence.

TRIAL OF MODERNITY: JUDICIAL REFORM IN EARLY TWENTIETH-CENTURY CHINA, 1901–1937. By Xiaoqun Xu. Stanford, Cal.: Stanford University Press. 2008. Pp. xiii, 378. \$65.00. In the midst of an international power struggle in the early twentieth century, China overhauled its entire legal system. In *Trial of Modernity*, Professor Xiaoqun Xu undertakes a detailed study of the nature and meaning of Chinese judicial reform during this era. Analyzing the relationship between the initiatives designed by the central government and those carried out by local officials, as well as the interaction between the judicial and administrative branches of the state, Professor Xu provides a sophisticated account of the negotiations and compromises that established formal legal institutions and procedures, or “judicial modernity” (p. 5), in China. Professor Xu looks to pragmatic limitations and external pressures, which provided both the motivation for reform and the standards used to judge its progress, to help explain the setbacks and failures that reformers faced as they worked to translate exogenous ideals of formality and standardization into local practice. As the first book to be written in English on this era of Chinese law, *Trial of Modernity* not only provides a glimpse into a fascinating period of history, but also sheds useful light on the post-Mao reforms that have shaped modern Chinese law.

WHO OWNS THE SKY?: THE STRUGGLE TO CONTROL AIRSPACE FROM THE WRIGHT BROTHERS ON. By Stuart Banner. Cambridge, Mass.: Harvard University Press. 2008. Pp. 353. \$29.95. The first response of Charles B. Moore, a lawyer and employee of the Edward Thompson Law Book Company, to news of the birth of air travel was that any attempt to travel through the air would inevitably constitute trespassing. With this wry comment on the legal profession, Professor Stuart Banner begins his history of the property rights of the sky. Professor Banner proceeds to explore how airplanes, and later spacecraft, changed legal understandings regarding ownership of the air. Addressing the history of such pressing questions as whether airplane travel over private land is trespass and what right nations have to control the flight of aircraft over their territory, Professor Banner not only traces the evolution of a set of interesting legal issues concerning air travel, but also investigates the relationship between technological change and legal change more generally, emphasizing the role that transaction costs in implementing new technologies can play in driving legal change. Professor Banner's narrative takes flight not only via legal history, but also through amusing accounts of the series of colorful characters who shaped the first century-plus of aviation law.

THE ZONING OF AMERICA: *EUCLID V. AMBLER*. By Michael Allan Wolf. Lawrence, Kan.: University Press of Kansas. 2008. Pp. xiv, 188. \$16.95. Professor Michael Allan Wolf's book, *The Zoning of America*, offers a heavily detailed but thoroughly readable narrative of the history of *Village of Euclid v. Ambler Realty Co.*, the Supreme Court decision upholding the constitutionality of local zoning ordinances. By the time the case was decided in 1926, zoning had become a "popular form of regulating property use" (p. 120). Professor Wolf illuminates the complex social and political forces that made the case so important, while simultaneously providing a textured account of the personal histories that shaped the perspectives of *Euclid's* most important players. The story weaves together a careful analysis of the history of land use law with a coherent explanation of the competing legal doctrines and political ideologies that animated the case. Professor Wolf goes on to urge the reader not to fault the case for the problems spawned by unwise and discriminatory planning, but instead to recognize that in the Village of Euclid, as in many other localities, "zoning was a good-faith, though certainly imperfect, effort to improve the quality of life for current residents and their future . . . neighbors" (p. 155). Whether one agrees with the decision in *Euclid* or not, the decision remains significant. As Professor Wolf reminds us, "most Americans . . . liv[e] in 'zoned' cities" today (p. 164).