



Faculty Scholarship



CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY



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Dear Friends and Colleagues,

The success of the Benjamin N. Cardozo School of Law has been built in large part by the scholarship of our intellectually ambitious faculty. In 2012, Cardozo Law was ranked among the top 25 schools for scholarly impact, based on the number of citations faculty received from 2007 to 2011. The study* found Cardozo among the schools that “appear to be firing on all cylinders in scholarly pursuits...” Brett Frischmann, Myriam Gilles, Justin Hughes, Marci Hamilton, Barry Scheck, Anthony Sebok, Alex Stein, Stewart Sterk and Ed Zelinsky are among our most cited faculty members.

The impact of Cardozo's faculty extends far beyond what can, however, be discerned from citation studies. The culture at Cardozo encourages scholarship that focuses on big-picture issues and yields major payoffs—both in terms of shaping scholarship in a field of law and impacting the legal system. For example, Barry Scheck's pioneering work on DNA evidence, which led to the creation of the Innocence Project here at Cardozo, is transforming the criminal justice system around the country.

The following pages bring together the scholarly accomplishments of the Cardozo faculty from 2010 to 2012. They make clear that scholars at Cardozo are continuing to transform their fields in ways that are analogous to the impact of DNA evidence on the criminal justice system.

For example, Brett Frischmann's book *Infrastructure: The Social Value of Shared Resources* offers a new and interdisciplinary approach to evaluating infrastructure systems of all kinds, from highways and bridges to the Internet. It has generated a frisson of discussion as its implications are appreciated.

Marci Hamilton's book *Justice Denied* has produced legislative enactments and debate across the country concerning the role of institutions such as churches and schools in shielding sexual abusers of children. She has carried her work forward through involvement in litigation and legislative advocacy around the country.

Alexander Reinert is an accomplished civil rights litigator who argued *Ashcroft v. Iqbal* before the Supreme Court. His scholarship on how the *Iqbal* decision should be interpreted offers a persuasive analysis for states and lower courts that is now being adopted by court systems.

Michel Rosenfeld is recognized as a pioneer in comparative constitutional law and a preeminent scholar in legal philosophy whose work offers a new theory on constitutional secularism and comparative constitutionalism. He has formulated a disciplined approach to examining various problems that confront all constitutional democracies.

These are only a few examples of the groundbreaking work that is being generated by the faculty at Cardozo Law. The Cardozo faculty produces scholarship that poses hard questions and then answers them in ways that provoke discussion, debate and change. At the core of the school's mission is the promotion of justice and the improvement of our legal system.

On top of all this, Cardozo professors are known for their warm relationships with students and for their willingness to foster and participate in the robust intellectual life of the school. I invite you to explore this sampling of their recent scholarship.

Matthew Diller

Dean and Professor of Law

*Gregory Sisk et al., *Scholarly Impact of Law School Faculties in 2012: Applying Leiter Scores to Rank the Top Third* (Univ. of St. Thomas Legal Studies Research Paper No. 12-21, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2109815.



Featured Faculty Scholars



BRETT FRISCHMANN

Professor of Law

Director, Cardozo Intellectual Property & Information Law Program

B.A., 1995, M.A., 1997, Columbia University

J.D., 2000, Georgetown University

Brett Frischmann is an innovative and accomplished scholar in intellectual property and internet law. Professor Frischmann's casebook, *Cyberlaw: Problems of Policy and Jurisprudence in the Information Age* (4th ed. 2010) (with Patricia Bellia, Notre Dame, Paul Berman, University of Connecticut, and David Post, Temple University Beasley School of Law) is one of the leading works in the field.

Professor Frischmann's scholarship is heavily interdisciplinary, engaging scholars in law, economics, political science, and engineering. His most recent work focuses on the relationships between infrastructural resources, property rights, commons, and spillovers.

Professor Frischmann's work has been the focal point of serious and sustained engagement among scholars. For example, the *Review of Law and Economics* published an exchange between Frischmann and economist Harold Demsetz about Demsetz's seminal property rights article.

The work of Professor Frishmann also has served as the basis for several special-issue journals and

conferences. The *Cornell Law Review* published a special issue in 2010 dedicated to his article, *Constructing Commons in the Cultural Environment*, which he co-wrote with Michael Madison and Katherine Strandburg. The issue included commentary by renowned professors such as the late Elinor Ostrom, a Nobel Laureate in Economic Sciences. A major interdisciplinary conference held at New York University, with over two dozen experts in areas including law, political science, economics and anthropology, used the same article as its framework. In 2013, Oxford University Press will publish a book based on the *Constructing Commons* project and the work generated at the NYU conference.

As a scholar, one of the things that I'm most proud of is to have had others engage with my work directly in the literature. The deep, sustained, productive exchange and development of ideas shows me that I've contributed something meaningful, and helped to move the ball forward.

I enjoy interdisciplinary work. We tend to think and analyze things in silos. What I often do in my scholarship—and in my teaching—is cut across different areas that people keep analytically separate, and show that there are important lessons to be learned.

—Brett Frischmann

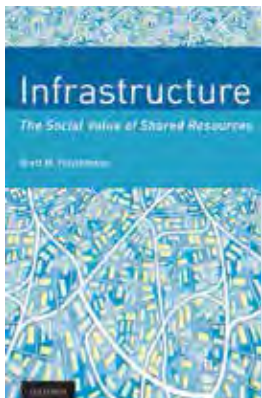
➤ RECENT PUBLICATIONS

Featured Book

INFRASTRUCTURE: THE SOCIAL VALUE OF SHARED RESOURCES (Oxford University Press 2012)

Infrastructure resources are the subject of many contentious public policy debates, including what to do about crumbling roads and bridges; whether and how to protect our natural environment; energy policy; even patent law reform, universal health care, network neutrality regulation, and the future of the Internet. Each of these involves a battle to control infrastructure resources, to establish the terms and conditions under which the public receives access, and to determine how the infrastructure and various dependent systems evolve over time.

Infrastructure: The Social Value of Shared Resources devotes much needed attention to understanding how society benefits from infrastructure resources and how management decisions affect a wide variety of interests. The groundbreaking book links infrastructure, a particular set of resources defined in



terms of the manner in which they create value, with commons, a resource management principle by which a resource is shared within a community. The infrastructure and commons ideas have broad implications for scholarship and public policy across many fields, such as environ-

mental economics, intellectual property, and Internet policy.

Review of *Infrastructure: The Social Value of Shared Resources*

“Frischmann’s new book provides essential guidance for the analysis of diverse types of infrastructure resources and how policies affect the effectiveness, efficiency, fairness, and sustainability of outcomes. Rarely can one find such a broad and useful foundation for digging in and understanding the complexities of modern infrastructures. An extraordinary book.”

—Elinor Ostrom, Indiana University, Co-Recipient, Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel, 2009

Other Recent Publications:

Compliance Institutions in Treaties, 7 *REVIEW OF LAW AND ECONOMICS* 89 (2011) (with James Hartigan, University of Oklahoma)

Intergenerational Progress, 2011 *WISCONSIN LAW REVIEW* 123 (with Mark McKenna, University of Notre Dame)

Constructing Commons in the Cultural Environment, 95 *CORNELL LAW REVIEW* 657 (2010) (with Michael Madison, University of Pittsburgh, and Katherine Strandburg, NYU)



MYRIAM E. GILLES

Professor of Law

B.A., 1993, Harvard University

J.D., 1996, Yale Law School

Myriam Gilles specializes in torts, class actions, and aggregate litigation. Professor Gilles is particularly interested in the dynamic, cooperative relationship between public and private models of civil law enforcement; the recent and significant restrictions in the rules governing the certification of both damages and injunctive classes; and the creation of new limitations upon standing, particularly in consumer class actions.

Professor Gilles has written extensively about challenges to class action waivers in arbitration agreements and has been critical of the Supreme Court’s decision in *AT&T Mobility v. Concepcion*, which upheld such waivers. She has also written about the Gulf Coast Claims Facility, which was established by British Petroleum in the aftermath of the 2011 Deepwater Horizon oil spill, and other private–public administrative compensation schemes in the Obama era.

All the doctrinal developments of recent years circumscribing the reach of class actions pale in import next to the Supreme Court’s game-changing decision in AT&T Mobility v. Concepcion—a decision that means that companies that touch consumers’ day-to-day lives will now place themselves beyond the reach of aggregate litigation by simply incorporating waiver language in their standard-form agreements. For me, the question is, where does this leave civil law enforcement in the United States? If the “private

attorney general" role assumed by class action lawyers over the past several decades is on the decline, what or who will fill the resulting enforcement gap? As I argued in a recent article, the role assumed by class action lawyers over the past several decades may give way to a world in which state attorneys general make unprecedented use of their *parens patriae* authority.

—Myriam E. Gilles

➤ RECENT PUBLICATIONS

After Class: Aggregate Litigation in the Wake of AT&T Mobility v. Concepcion, 79 UNIVERSITY OF CHICAGO LAW REVIEW 623 (2012) (with Gary Friedman)

Public-Private Approaches to Mass Tort Victim Compensation: Some Thoughts on the Gulf Coast Claims Facility, 61 DEPAUL LAW REVIEW 419 (2012) (Annual Clifford Symposium on Tort Law and Social Policy)

Procedure in Eclipse: Group-Based Adjudication in a Post-Concepcion World, 56 SAINT LOUIS LAW REVIEW (forthcoming 2012) (Richard J. Childress Memorial Lecture, Justice Systems Circa 2011: Public Courts, Military Commissions and Aggregate Processing)



MARCI A. HAMILTON

Professor of Law

Paul R. Verkuil Chair in Public Law

B.A., 1979, Vanderbilt University

M.A., 1982 (Philosophy), M.A., 1984 (English),

Pennsylvania State University

J.D., 1988, University of Pennsylvania

Marci A. Hamilton is one of the United States' leading First Amendment and church/state scholars and writes extensively on issues arising in clergy sex abuse and religious land use cases. Professor Hamilton has contributed bi-monthly columns on constitutional issues to the legal resources websites FindLaw.com and Justia.com for over 12 years. She was named one of the 2012 Women of the Year in Pennsylvania by *The Legal Intelligencer*, the oldest law journal in the United States.

For the past 15 years, Professor Hamilton's scholarship and advocacy has focused on fighting child sex abuse. She is the First Amendment and constitutional law advisor for victims in clergy abuse cases involving many religious institutions as well as in the related federal bankruptcy cases filed by the Milwaukee Archdiocese, Portland Archdiocese, Spokane Diocese, and San Diego Diocese. Currently, she is representing the first alleged victim to file civil charges against former Penn State Assistant Coach Jerry Sandusky; Second Mile, the charity he established; and Pennsylvania State University. She is also actively advocating for the passage of "window statutes" in various state legislatures to allow victims of sex abuse to bring claims that would otherwise be barred by statutes of limitations. So far, this effort has been successful in California, Delaware, Hawaii



and Guam, and is pending in Massachusetts, New York, Pennsylvania, and Wisconsin. Other notable advocacy achievements include her successful argument before the United States Supreme Court in *Boerne v. Flores*, a seminal federalism and church/state case holding the Religious Freedom Restoration Act unconstitutional. In September 2012 she received the 2012 Frank Carrington Champion of Civil Justice Award from the National Crime Victim Bar Association.

Professor Hamilton founded and directed the Cardozo Intellectual Property & Information Law Program, and established and advises Cardozo Advocates for Kids, a student-run group that organizes cutting-edge conferences on children's issues in the justice system.

Professor Hamilton clerked for Justice Sandra Day O'Connor of the United States Supreme Court and for Judge Edward R. Becker of the United States Court of Appeals for the Third Circuit.

I believe that as scholars it is our obligation to challenge false assumptions. We need to look at issues from a wide variety of angles, and challenge each other as well as society. Unfortunately, the academy too often follows an orthodoxy that obscures as much as it enlightens. When I first started writing about religious liberty issues, I joined the chorus of scholars who assumed that more religious liberty is good in itself. Over the years, though, I have learned that more religious liberty can also be a source of oppression and abuse. I wrote God vs. the Gavel: Religion and the Rule of Law to challenge the pervasive Pollyanna attitude toward religion. I have always followed my passion, whether it is the protection of authors and artists from overly aggressive publishers or children from sexual abuse in religious organizations. I am fortunate to be at Cardozo, which fosters original scholarship and the pursuit of justice in so many ways.

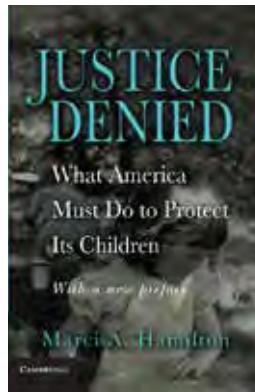
—Marci A. Hamilton

➤ RECENT PUBLICATIONS

Featured Book

JUSTICE DENIED: WHAT AMERICA MUST DO TO PROTECT ITS CHILDREN (Cambridge University Press 2012)

Professor Hamilton proposes the elimination of the arbitrary barrier that has kept survivors of childhood sexual abuse out of court: the statute of limitation. Removing this procedural barrier permits the millions of survivors to make public the identities of their perpetrators and to receive justice and much-deserved compensation. Standing in the way, however, are formidable opponents such as the



insurance industry and the hierarchy of the Roman Catholic Church. Professor Hamilton predicts a coming civil rights movement for children and explains why it is in the interest of all Americans to allow victims of childhood sexual abuse the chance to seek justice when they are ready.

Review of *Justice Denied: What America Must Do to Protect its Children*

“Professor Hamilton combines genuine sensitivity to the plight of survivors of childhood sexual abuse with in-depth expertise in the working of the legal system.”

—Barbara Bennett Woodhouse, Director, Center on Children and Families, Fredric G. Levin College of Law, University of Florida

Other Recent Publications:

Articles

RLUIPA Is a Bridge Too Far: Inconvenience Is Not Discrimination, *FORDHAM URBAN LAW JOURNAL* (forthcoming 2012)

Employment Division v. Smith at the Supreme Court: The Justices, the Litigants, and the Doctrinal Discourse, *35 CARDOZO LAW REVIEW* 1671 (2011)

The Endorsement Factor, *43 ARIZONA STATE LAW JOURNAL* 1 (2011)

The “Licentiousness” in Religious Organizations and Why It Is Not Protected Under Religious Liberty Constitutional Provisions, *18 WILLIAM AND MARY BILL OF RIGHTS JOURNAL* 889 (2010)

Op-Ed., *Time for the U.S. to Act Against Clerical Sex Abuse*, *THE NEW YORK TIMES*, July 16, 2010

Book

FUNDAMENTALISM, POLITICS AND THE LAW (Mark Rozell, co-ed., George Mason University, Palgrave Macmillan 2011)

Book Chapter

Lynch v. Donnelly and Allegheny County v. ACLU: Christ Is Not a Turkey, in *LAW AND RELIGION: CASES AND MATERIALS* (Foundation Press 2d ed. 2010)

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LELA P. LOVE

Professor of Law

Director, Kukin Program for Conflict Resolution

Director, Cardozo Mediation Clinic

B.A., 1973, Harvard University

M.Ed., 1975, Virginia Commonwealth University

J.D., 1979, Georgetown University

Lela Porter Love is nationally recognized as a pioneer in mediation. Along with two decades of teaching, training, consulting and writing in the dispute resolution field, Professor Love serves as a mediator, arbitrator, and dispute resolution consultant in a wide range of cases. She served as chair of the American Bar Association Section of Dispute Resolution and initiated the first International Mediation Leadership Summit at the Peace Palace in the Hague.

As the recipient of two prestigious Lifetime Achievement Awards conferred by the International Academy of Mediators (2012) and the American College of Civil Trial Mediators (2010), Professor Love has repeatedly garnered the recognition of her peers for her significant contributions toward promoting and strengthening the practice and public understanding of conflict resolution. In 1985, she founded Cardozo's Mediation Clinic, which was among the first clinical programs in the country to train law students to serve as mediators. Professor Love is a certified trainer for community dispute resolution centers in New York State. She has developed and delivered mediation theory and practice courses at a variety of domestic and international law schools; within the United States,

these courses typically satisfy state certification requirements for court-annexed mediation assignments.

Professor Love has co-authored three law school textbooks that are considered foundational within the field.

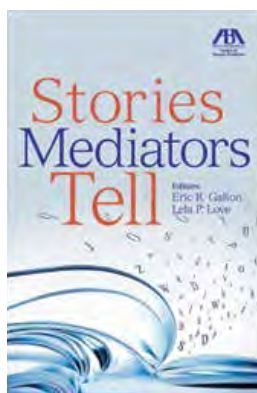
The underlying values and vision of the mediation process are as compelling and laden with potential as ever. Today's litigator must understand negotiation and mediation mindsets, strategies, and skills or else she will disserve her client. It is highly likely that the litigated case will settle before trial, and the quality of the settlement will be determined, in part, by the lawyer's mediation representation skills.

—Lela P. Love

➤ RECENT PUBLICATIONS

Featured Book

STORIES MEDIATORS TELL (Eric Galton co-ed., ABA Publishing 2012)



Professor Love's latest book is a collection of stories by prominent mediators that gives a window into the otherwise private mediation room. The authors are motivated by the belief that mediation is not well understood—even its practitioners are often limited to their own experiences,

particularly given confidentiality strictures.

Review of *Stories Mediators Tell*

"*Stories Mediators Tell* is a multi-faceted gem of concrete illustrations of the mediation process. Filled with 'aha' moments of insights from the best in the mediation field, mediators, lawyers, clients, disputants, and parties have a rare opportunity to look inside the 'black box' of mediation confidentiality and watch how the 'magic' happens with vivid descriptions of 'breakthrough moments' or more subtle moments of human interaction, empathy, understanding and practical problem solving. A must-read!"

—Carrie Menkel-Meadow, Chancellor's Professor of Law, University of California, Irvine School of Law

Other Recent Publications:

Book

DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL (Aspen Casebooks 2d ed. 2011) (with Carrie Menkel-Meadow, Georgetown University Law, Andrea Kupfer Schneider, Marquette University Law, and Jean Sternlight, UNLV–Boyd School of Law)

Book Chapters

On Generosity and Other Life Tested Religious Principles, in EDUCATING NEGOTIATORS FOR A CONNECTED WORLD, RETHINKING NEGOTIATION TEACHING SERIES, Vol. 4 (DRI Press forthcoming 2012) (with Sukhsimranjit Singh, Willamette University)

MEDIATION IN THE ESTATE PLANNING PROCESS (Susan Gary ed., ABA Publishing 2011) (with Stewart Sterk, Cardozo Law)

Article and Commentary

MEDIATION ETHICS: CASES AND COMMENTARIES (Ellen Waldman ed., Jossey-Bass 2011)

Trick or Treat: The Ethics of Mediator Manipulation, 17 DISPUTE RESOLUTION MAGAZINE 17 (Fall 2010) (with Jim Coben, Hamline University)

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DEBORAH PEARLSTEIN

Assistant Professor of Law

A.B. 1993, Cornell University

J.D. 1998, Harvard Law School

Deborah Pearlstein is a noted scholar working at the intersection of constitutional law and international law, focusing on U.S. foreign relations law. In the last two years, she has been published by four prestigious law reviews. She is a leading human rights advocate and has co-authored multiple reports on the human rights impact of U.S. national security policy, including *Command's Responsibility*, the first comprehensive accounting of detainee deaths in U.S. military custody since 2002. The report received extensive media attention worldwide.

Professor Pearlstein believes that upholding human rights in the pursuit of national security is a vital national interest. This conviction prompted her to take on the role of founding director of the Law and Security Program at Human Rights First, where she led the organization's efforts in research, litigation, and advocacy surrounding U.S. detention and interrogation operations. She also worked closely with members of the military and intelligence communities on projects including launching a series of off-the-record workshops designed to address key policy challenges in U.S. counterterrorism efforts. Still an active contributor to the field, Professor Pearlstein was appointed in 2009 to the ABA's Advisory Committee on Law and National Security.

Before embarking on a career in law, Professor Pearlstein served in the White House as a senior editor and speechwriter for President Clinton. She

clerked for Justice John Paul Stevens of the U.S. Supreme Court and for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit.

Historically, scholars and judges often assumed that the courts would—and should—play a limited role in cases implicating questions of foreign affairs and national security. But as some of the more troubling aspects of government counterterrorism efforts post-9/11 have become apparent, and as the volume of cases potentially included in the foreign relations category has expanded, it has become harder to insist that the judicial branch should opt out of all involvement. Cases involving domestic surveillance or detention—as well as cases involving the EPA's regulation of greenhouse gasses—all now implicate major questions of international affairs and national security. And in a half-dozen landmark cases in the past decade, the courts have not opted out. Rethinking what role the courts can most helpfully play in protecting individual rights, and in promoting effective and accountable government, is one of the great challenges for constitutional and international law in the coming decades. Much of my recent scholarship is focused on examining just such questions of the judicial role.

—Deborah Pearlstein

➤ RECENT PUBLICATIONS

Articles

The Soldier, the State, and the Separation of Powers, 90 TEXAS LAW REVIEW 797 (2012)

Detention Debates, 110 MICHIGAN LAW REVIEW 1045 (2012)

After Deference: Formalizing the Judicial Power in Foreign Relations Law, 159 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 783 (2011)

Justice Stevens and the Expert Executive, 99 GEORGETOWN LAW JOURNAL 1301 (2011)

Ratcheting Back: International Law as a Constraint on Executive Power, 26 CONSTITUTIONAL COMMENTARY 523 (2010)

Book Chapter

The Role of International Law in U.S. Courts, in THE JOURNALIST'S GUIDE TO NATIONAL SECURITY LAW (ABA Publishing 2012)

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ALEXANDER A. REINERT

Associate Professor of Law

A.B., 1994, Brown University

J.D., 1999, New York University

Alexander A. Reinert is a unique combination of scholar, litigator, advocate and organizer. He is an influential and prolific writer who conducts research on topics relating to access to justice. With widely recognized expertise in civil procedure, civil rights, constitutional law, criminal law and prisoners' rights, Professor Reinert is a frequent contributor to major conferences and panels, and a media consultant on civil procedure.

Professor Reinert takes a leadership role in civil rights litigation, study and advocacy. He argued *Ashcroft v. Iqbal* before the Supreme Court, and has appeared on behalf of parties and amicus curiae in significant civil rights cases. He serves as the chair of the Iqbal Project for the national public interest organization Public Justice, coordinating a committee devoted to researching the impact of *Ashcroft v. Iqbal* in lower courts and providing legal assistance in select cases. Professor Reinert is a leader in attorney education, serving as co-chair of the Prison Law Program for the Practising Law Institute. After serving for nearly a decade on the board of directors of the American Judicature Society, a national nonprofit organization dedicated to improving the quality of justice and ensuring judicial independence in the United States, he is now a member of its National Advisory Council.

Professor Reinert clerked for United States Supreme Court Justice Stephen G. Breyer and for the Honorable Harry T. Edwards, D.C. Circuit Court of Appeals.

My empirical work is focused on examining difficult questions about how law is applied and developed in courts that have not traditionally been the focus of much empirical literature. I'm more interested than most in the work of the district courts, and I think one can't really study that work unless one takes a close look at cases that never make it to reported databases such as Westlaw and Lexis.... This kind of work is important because a lot of legal doctrine is based on assumptions about what happens when particular doctrine is applied in courts and in lawsuits. I think many of those assumptions are incorrect. I try to use empirical work to test those assumptions. That's true about my work on heightened pleading, Bivens litigation, and my current project on the resolution of motions to dismiss after Iqbal and Twombly.

—Alexander A. Reinert

➤ RECENT PUBLICATIONS

Revisiting "Special Needs" Theory Via Airport Searches, NORTHWESTERN UNIVERSITY LAW REVIEW (forthcoming); 106 NORTHWESTERN UNIVERSITY LAW REVIEW COLLOQUY 207 (2012)

Release as Remedy for Excessive Punishment, WILLIAM AND MARY LAW REVIEW (forthcoming 2012)

Pleading as Information-Forcing, LAW AND CONTEMPORARY PROBLEMS (forthcoming 2012)

The Costs of Heightened Pleading, 86 INDIANA LAW JOURNAL 119 (2011)

Public Interest(s) and Fourth Amendment Enforcement, 2010 UNIVERSITY OF ILLINOIS LAW REVIEW 1461 (2010), adapted and reprinted in 38 SEARCH AND SEIZURE LAW REPORT 45 (2011)

Measuring the Success of Bivens Litigation and Its Consequences for the Individual Liability Model, 62 STANFORD LAW REVIEW 809 (2010), reprinted in CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Steven Saltzman & Barbara Wolvovitz eds., 2010)

Procedural Barriers to Civil Rights Litigation and the Illusory Promise of Equity, 78 UNIVERSITY OF MISSOURI-KANSAS CITY LAW REVIEW 931 (2010)

National Security and the Shadows of Judicial "Common Sense", 96 IOWA LAW REVIEW BULLETIN 1 (2010) (solicited essay in response to Peter Margulies, *Judging Myopia in Hindsight: Bivens Actions, National Security Decisions, and the Rule of Law*, 96 IOWA LAW REVIEW 195 (2010))

Exclusive Legal Workshop Editorial, *Accounting for the Limitations of Congress' Enforcement Power*, UNIVERSITY OF CHICAGO LAW REVIEW (2010) (solicited editorial in response to Richard Frankel, *Regulating Privatized Government through § 1983*, 76 UNIVERSITY OF CHICAGO LAW REVIEW 1449 (2009))



MICHEL ROSENFELD

Justice Sydney L. Robins Professor of Human Rights
Director, Program on Global and Comparative
Constitutional Theory

B.A., 1969, *M.A.*, 1971, *M.Phil.*, 1978, *Ph.D.*, 1991,
Columbia University
J.D., 1974, *Northwestern University*

Michel Rosenfeld is recognized throughout the world as a preeminent scholar in comparative constitutional law as well as a pioneer in legal philosophy working at the crossroads of continental philosophy, deconstruction, critical theory, and Anglo-American philosophy. Professor Rosenfeld writes about the relationship between law, ethics, and politics, and has articulated a theory of comprehensive pluralism.

Among his many honors, Professor Rosenfeld has received the French government's highest and most prestigious award, the Legion of Honor. In the spring of 2013, Professor Rosenfeld will be in residence at the University of Paris 1 Panthéon-Sorbonne as the Fulbright-Tocqueville Distinguished Chair. In 2007–2008, he held an International Blaise Pascal Distinguished Research Chair at the École Normale Supérieure in Paris, an honor also held by 20 Nobel

laureates; he is only the second legal scholar to be awarded this prestigious chair. He was a Distinguished Visiting Professor at the University of Toronto and held the Fresco Chair in Jurisprudence at the University of Genoa in 2007, and the Chaim Perelman Chair in Legal Philosophy at the Free University of Brussels in 2011.

Professor Rosenfeld is a prolific writer and is the co-author of one of the two principal casebooks of comparative constitutional law, the co-editor of *The*



Oxford Handbook of Comparative Constitutional Law, and the author of numerous books and articles, several of which have been translated into at least ten foreign languages. He is co-editor-in-chief of the *International Journal of Constitutional Law* (*I•CON*) and a former

president of the International Association of Constitutional Law (1999–2004). Professor Rosenfeld is currently president of the United States Association of Constitutional Law.

Professor Rosenfeld explains the genesis of his theory of comprehensive pluralism:

In dealing with the relationship between law and morals or ethics, I became convinced that no single conception of the good could convincingly emerge as the ultimate source of all normative validity and legitimacy, and, hence, I rejected all accounts that came under the rubric of philosophical monism. On the other hand, I found the proposition that each norm and value can be justified only from the standpoint of the conception of the good of those who are committed to it unconvincing and dangerous, thus refusing to embrace philosophical relativism. I sought, instead, to elaborate a systematic account of pluralism that avoided the pitfalls of both monism and relativism, and came up with a theory I labeled "comprehensive pluralism."

—Michel Rosenfeld

➤ RECENT PUBLICATIONS

Featured Book

LAW, JUSTICE, DEMOCRACY AND THE CLASH OF CULTURES: A PLURALIST ACCOUNT (Cambridge University Press 2011)

This book argues that a political and legal philosophy based on pluralism is best suited to confront the problems of the twenty-first century. Pointing out that monist theories such as liberalism have become inadequate and that relativism is dangerous, the book makes the case for pluralism from the standpoint of both theory and its applications. The book engages with thinkers such as Spinoza, Kant, Hegel, Rawls, Berlin, Dworkin, Habermas, and Derrida, and with subjects that are at the center of current controversies, including equality, group rights, tolerance, secularism confronting religious revival, and political rights in the face of terrorism.

Review of *Law, Justice, Democracy and the Clash of Cultures: A Pluralist Account*

"Michel Rosenfeld began a project more than a dozen years ago of articulating a doctrine of 'comprehensive pluralism' that could respond to the problems that liberal democratic societies face, given the facts of both reasonable and unreasonable challenges to the core values of the Enlightenment project. Sadly, events since 9/11 have made the political and normative task he set for himself even more urgent, a testament to the prescience of that early work. His new book tackles the problems of the present, exemplified in the confrontation between the West and the Muslim 'other,' with great frankness and clarity. Once again the reader is treated to the rare talent of a thinker who is genuinely himself pluralist, and who can thus show that mainstream political philosophy and constitutional and legal theory, on the one hand, and postmodern and social theories, on the other, are engaged in a common debate in which all have something valuable to contribute."

— David Dyzenhaus, Professor of Law and Philosophy, University of Toronto

Other Recent Publications:

Articles and Essays

The Constitutional Subject, Its Other, and the Perplexing Quest for an Identity of Its Own: A Reply to My Critics, 33 *CARDOZO LAW REVIEW* 1937 (2012) (a response to the October 25, 2010 Cardozo Symposium on Michel Rosenfeld's *THE IDENTITY OF THE CONSTITUTIONAL SUBJECT* (Routledge 2010))

Introduction: *Gender, Sexual Orientation, and Equal Citizenship*, 10 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW, 340 (2012) (Introduction to November 14, 2010 Cardozo Conference on Gender, Sexuality and Democratic Citizenship)

10 X 10 in Honor of Norman Dorsen, 10 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW, n.1 (forthcoming 2012)

Constitutional Versus Administrative Ordering in an Era of Globalization and Privatization: Reflections on Sources of Legitimation in the Post-Westphalian Polity, 32 CARDOZO LAW REVIEW 2339 (2011) (Symposium in Honor of Paul Verkuil)

Books

CONSTITUTIONAL SECULARISM IN AN AGE OF RELIGIOUS REVIVAL (Susanna Mancini co-ed., University of Bologna, Oxford University Press forthcoming 2012)

REPENSER LE CONSTITUTIONNALISME À L'ÂGE DE LA MONDIALISATION ET DE LA PRIVATISATION [RETHINKING CONSTITUTIONALISM IN THE AGE OF GLOBALIZATION AND PRIVATIZATION] (Hélène Ruiz-Fabri co-ed., Univ. Paris I, Panthéon-Sorbonne Press 2011)

THE IDENTITY OF THE CONSTITUTIONAL SUBJECT: SELFHOOD, CITIZENSHIP, CULTURE AND COMMUNITY (Routledge 2010)

COMPARATIVE CONSTITUTIONALISM: CASES AND MATERIALS (West Group 2d ed. 2010) (with Susanne Baer, University of Michigan, Norman Dorsen, NYU, and Andras Sajo, Central European University)

Book Chapters

Introduction, in OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW (2012) (with Andras Sajo)

Comparative Constitutional Analysis in United States Adjudication and Scholarship, in OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW (2012)

Constitutional Identity, in OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW (2012)

Unveiling the Limits of Tolerance: Comparing the Treatment of Majority and Minority Religious Symbols in the Public Sphere, in LAW, STATE AND RELIGION IN THE NEW EUROPE: DEBATES AND DILEMMAS (Lorenzo Zucca and Camil Ungureanu, eds.) (Cambridge University Press 2012) (with Susanna Mancini)

Repenser l'ordonnement constitutionnel à l'ère du pluralisme juridique et du pluralisme idéologique [Rethinking Constitutional Ordering in an Era of Legal and Ideological Pluralism], in REPENSER LE CONSTITUTIONNALISME À L'ÂGE DE LA MONDIALISATION ET DE LA PRIVATISATION (Hélène Ruiz-Fabri co-ed., Panthéon-Sorbonne Press 2011)

The Challenges of Constitutional Ordering in a Multilevel Legally Pluralistic and Ideologically Divided Globalised Polity, in THE LAW OF THE FUTURE AND THE FUTURE OF LAW (Sam Muller et al. eds., Torkel Opshal Academic Publishers 2011)

➤ RECENT PUBLICATIONS

Review of The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community (Routledge 2010)

"The challenge of pluralism, writes Michel Rosenfeld, is to forge a political structure held together by a fixed set of norms while leaving room for an accommodation with those who do not accept those norms. The promise and the difficulties of this necessary project are the subjects of Rosenfeld's magisterial synthesis of political, psychological, theological and theoretical perspectives on the subject of constitutionalism. The result is a trenchant and historically nuanced exploration of issues no one and no nation can afford to ignore."

—Stanley Fish, Professor of Humanities and Law, Florida International University





ANTHONY SEBOK

Professor of Law

B.A., 1984, Cornell University

M.Phil., 1986, Oxford University

J.D., 1991, Yale Law School

Ph.D., 1993, Princeton University

Anthony Sebok is a respected expert on mass torts, litigation finance, comparative tort law, and legal philosophy. Professor Sebok's casebook, *Tort Law: Responsibilities and Redress* (3d ed. 2012) (with John Goldberg, Harvard University, and Benjamin Zipursky, Fordham University), has been widely adopted by many leading law schools. He also has become one of the nation's leading experts on (and advocates for) third-party investment in litigation.

Professor Sebok writes extensively about litigation finance and mass restitution litigation involving tobacco, handguns and slavery reparations. He studies the way that tort law expands and contracts in different social and political contexts. This has led him to study the influences affecting tort reform and various substitutes for tort law, such as the 9/11 Victims Compensation Fund. In addition, Professor Sebok studies how political culture and values influence tort law in the United States as compared to other countries, such as Germany. He is currently writing a book with Mauro Bussani of the University of Trieste on comparative tort law, looking at how political culture informs the rules of tort liability.

*Right now I'm interested specifically in the tension between two very distinct parts of American political culture—the current suspicion that Americans sue too much and more deeply rooted popular faith in markets. These collide when a plaintiff tries to sell a piece of her lawsuit to a third-party investor. About half the states allow outside investors to purchase a partial interest in the outcome of litigation. At the same time, there is a growing reaction against this market. The critics of investment in litigation admit that they are paternalists who want to deny people the right to sell one kind of property—all or some of the damages resulting from the successful conclusion of a lawsuit. I think the arguments made against investment in litigation are, despite the sincerity of those who make them, in tension with Americans' central faith in markets—so much so that I have come to suspect that the arguments against investment in litigation are an expression of an irrational taboo that I simply do not share. I am interested in what motivates the critics of investment in litigation. I think, in the end, that the critics think of lawsuits as qualitatively different from other forms of property—that a plaintiff's interest in a damage award is not like her interest in intellectual property, or land, or a business venture. They reject the idea of the commodification of litigation. In my article, *The Inauthentic Claim*, I defend the idea that a lawsuit is just property.*

—Anthony Sebok

➤ RECENT PUBLICATIONS

Articles

The Failed Promise of a General Theory of Pure Economic Loss: An Accident of History?, 61 DEPAUL LAW REVIEW (forthcoming 2012) (Festschrift for Robert Rabin)

What is Wrong About Wrongdoing?, 38 FLORIDA STATE UNIVERSITY LAW REVIEW (2012)

The Inauthentic Claim, 64 VANDERBILT LAW REVIEW 61 (2011)

Betting on Tort Suits After the Event: From Champerty to Insurance, 60 DEPAUL LAW REVIEW 453 (2011) (Symposium on Uncertainty in Tort Law)

Book Chapters

The U.S. Supreme Court's Theory of Common Law Punitive Damages: An Inauspicious Start, in THE POWER OF PUNITIVE DAMAGES: IS EUROPE MISSING OUT? (Lotte Meurkens & Emily Nordin eds., Intersentia Press 2012)

Adversarial Legalism and the Emergence of a New European Legality: A Comparative Perspective, in *IMAGINING NEW LEGALITIES: PRIVACY AND ITS POSSIBILITIES IN THE 21ST CENTURY* (Austin Sarat et al. eds., Stanford University Press 2012) (with Lars Trägårdh, Ersta Sköndal University College)

Report

ABA Commission on Ethics 20/20 Informational Report on Alternative Litigation Finance (2012) (academic co-reporter)



ALEX STEIN

Professor of Law

LL.B., 1983, *LL.M.*, 1987, *Hebrew University of Jerusalem*
Ph.D., 1990, *University of London*

Alex Stein specializes in evidence, economic analysis of law-enforcement mechanisms, and medical malpractice. As a leading scholar and prolific writer in these areas, he is widely cited in academic literature, called upon for expert opinion in court, and invited to present his work at conferences and symposia around the world. Professor Stein is currently on the editorial board of the *International Journal of Evidence & Proof* and was among the founding editors of *Theoretical Inquiries in Law*.

Professor Stein's celebrated book *Foundations of Evidence Law* broke new ground in the understanding of the law of evidence, arguing that evidence law is not geared toward the ascertainment of truth, but instead allocates the risk of error in fact-finding. The book changed the focus of evidence scholarship and

became the most reviewed book in the field, as well as one of the most reviewed books in law generally.

Professor Stein's newest publication addresses a critical, but hitherto unacknowledged, problem of our legal system:

*Theodore Roosevelt famously captured the fundamental tenet of our free society by saying that "No man is above the law and no man is below it." Unfortunately, many people in our free society are "below the law" as our legal system—with all its outstanding achievements—delivers justice predominantly to those who can afford paying for good attorney representation. The article, *The Relational Contingency of Rights*, which I will soon be publishing in the *Virginia Law Review* (together with Professor Gideon Parchomovsky from Penn Law School), demonstrates that rights afford their holders meaningful protection only against challengers who face higher litigation costs than the rightholder. Contrariwise, challengers who can litigate more cheaply than a rightholder can force the rightholder to forfeit the right and thereby render the right ineffective. This phenomenon is disturbing, and the article offers ways to fix it.*

—Alex Stein

Review of *Foundations of Evidence Law* (Oxford University Press 2005)

"Stein's book has much to commend it: [it] makes a robust argument that the modern tendency toward minimizing the regulation of evidence is ill-conceived and that evidence law should develop in exactly the opposite direction; articulates an elegant unified theory of evidence law, whose central component is the principle of maximal individualization; [and] uses these various ideas to resolve some of the troubling paradoxes of the law of evidence, well captured by the famous blue bus hypothetical. ... From these theoretical perspectives, he brilliantly critiques various evidentiary rules, sometimes justifying and sometimes condemning those rules [and] provides a creative theoretical foundation for both civil and criminal litigation."

—Professor Ronald Allen, Wigmore Chair, Northwestern University Law School and leading evidence scholar in the United States

➤ RECENT PUBLICATIONS

Are People Probabilistically Challenged?, 111 *MICHIGAN LAW REVIEW* (forthcoming 2013) (reviewing DANIEL KAHNEMAN, *THINKING, FAST AND SLOW* (Farrar, Straus and Giroux 2011))

The Relational Contingency of Rights, 98 VIRGINIA LAW REVIEW (forthcoming 2012) (with Gideon Parchomovsky, University of Pennsylvania Law School)

Toward a Theory of Medical Malpractice, 97 IOWA LAW REVIEW (forthcoming 2012)

Corrupt Intentions: Bribery, Unlawful Gratuity, and Honest-Services Fraud, 75 LAW AND CONTEMPORARY PROBLEMS (forthcoming 2012)

The Flawed Probabilistic Foundation of Law & Economics, 105 NORTHWESTERN UNIVERSITY LAW REVIEW 199 (2011)

The Distortionary Effect of Evidence on Primary Behavior, 124 HARVARD LAW REVIEW 518 (2010) (with Gideon Parchomovsky, University of Pennsylvania Law School)

Strategic Enforcement, 94 MINNESOTA LAW REVIEW 9 (2010) (with Margaret Lemos, Duke Law School)

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STEWART E. STERK

H. Bert and Ruth Mack Professor of Real Estate Law
B.A., 1973, J.D., 1976, Columbia University

Stewart Sterk's scholarship spans a wide variety of areas, ranging from property and land use regulation to trusts and estates, copyright, and the conflict of laws. Professor Sterk's casebooks *Land Use Regulations, Cases and Materials* and *Estates and Trusts, Cases and Materials* have been widely adopted in leading law schools.

A member of the American Law Institute, Professor Sterk served as an advisor in the preparation of the

Restatement (Third) of Property (Servitudes). He also edits the *New York Real Estate Law Reporter*, a monthly newsletter published with the assistance of Cardozo students. He is a prolific writer in numerous areas and an award-winning teacher.

Professor Sterk clerked for Chief Judge Charles D. Breitell of the New York Court of Appeals.

Property scholarship often assumes that information about property rights—the scope of rights, the boundaries between them, their value, how to transfer them—is nearly costless. In a world where they are costless, market transactions often ensure efficient allocation of property resources, and the role of law is largely to provide the right incentives and deterrents to make people use the market. Otherwise, law should stay out of the way. Much of my scholarship, however, explores areas where determining who owns what property rights, or how those rights should be transferred, is costly. As the cost of ascertaining property rights increases, rules that reinforce market allocations can often punish people who cannot reasonably be expected to bear those costs. My scholarship explores the ways in which current legal doctrine protects people who reasonably forego the cost of learning more about property rights, and suggests that property law should more often take account of the cost of learning about property rights.

—Stewart Sterk

➤ RECENT PUBLICATIONS

Articles

Strict Liability and Negligence in Property Theory, UNIVERSITY OF PENNSYLVANIA LAW REVIEW (forthcoming 2012)

Zoning Finality: Reconceptualizing Res Judicata Doctrine in Land Use Cases, 63 FLORIDA LAW REVIEW 1139 (2011) (with Kimberly Brunelle)

Structural Obstacles to Settlement of Land Use Litigation, 91 BOSTON UNIVERSITY LAW REVIEW 227 (2011)

How Prudent is the Modern Prudent Investor Rule?, 95 CORNELL LAW REVIEW 851 (2010)

Books

LAND USE REGULATION, CASES AND MATERIALS (Foundation Press 2011) (with Eduardo M. Peñalver, Cornell University)

ESTATES AND TRUSTS, CASES AND MATERIALS (Foundation Press 4th ed. 2011) (with Melanie Leslie, Cardozo Law, and Joel Dobris, UC Davis)

TRUSTS AND ESTATES (Concepts and Insights Series, Foundation Press 2d. ed. 2011) (with Melanie Leslie)



Recent Faculty Scholarship



MICHELLE ADAMS

Professor of Law

Co-Director, Floersheimer Center for Constitutional Democracy

Constitutional Law, Civil Rights Law

B.A., 1985, Brown University

J.D., 1989, City University of New York

LL.M., 1994, Harvard University

Michelle Adams' scholarship focuses on racial equality and the law, with an emphasis on affirmative action and integration. Professor Adams clerked for Magistrate Judge James C. Francis IV of the United States District Court for the Southern District of New York. She codirects the Floersheimer Center for Constitutional Democracy and serves on the board of directors of The Innocence Project.

⇒ RECENT PUBLICATIONS

Racial Inclusion, Exclusion and Segregation in Constitutional Law, 28 CONSTITUTIONAL COMMENTARY (forthcoming 2012)

Is Integration a Discriminatory Purpose?, 96 IOWA LAW REVIEW 837 (2011)



PARIS R. BALDACCI

Clinical Professor of Law

Director, Housing Rights Clinic

Director, LGBT Litigation and Leadership Practicum

Family Law, Elder Law

B.A., 1965, University of Scranton

Ph.D., 1974, Marquette University

J.D., 1987, City University of New York

Paris Baldacci has developed and coordinated significant cases in the areas of landlord/tenant law and public housing entitlements, and advocated for judicial reforms to assure access to justice for unrepresented litigants. He lectures and writes on tenant succession rights and access to justice issues.

⇒ RECENT PUBLICATIONS

Litigating Succession Rights Cases of Non-Traditionally Recognized Families in Rent-Regulated Apartments in New York State, LEGAL SERVICES OF NEW YORK CLE SERIES (December 2011)



RICHARD BIERSCHBACH

Associate Professor of Law

Criminal Law, Administrative Law

B.A., 1994, J.D., 1997, University of Michigan

Richard Bierschbach's scholarship focuses on the intersection of criminal law and procedure, with an emphasis on the relationship of procedural and institutional design to substantive criminal law concerns. Professor Bierschbach clerked for Judge A. Raymond Randolph of the U.S. Court of Appeals for the D.C. Circuit, and for U.S. Supreme Court Justice Sandra Day O'Connor. He co-chairs the Amicus Practice Committee of the American Bar Association's Criminal Justice Section.

⇒ RECENT PUBLICATIONS

Proportionality and Parole, 160 UNIVERSITY OF PENNSYLVANIA LAW REVIEW (forthcoming 2012)

Notice-and-Comment Sentencing, 97 MINNESOTA LAW REVIEW (forthcoming 2012) (with Stephanos Bibas)



J. DAVID BLEICH

Herbert and Florence Tenzer Professor of Jewish Law and Ethics

Jewish Law, Ethics

B.A., 1960, Brooklyn College

M.A., 1968, Columbia University

Ph.D., 1974, New York University

Dr. Bleich is a world-renowned expert on Talmudic jurisprudence and family law.

➤ RECENT PUBLICATIONS

Featured Book

CONTEMPORARY HALAKHIC PROBLEMS, VOLUME VI (KTAV Publishing 2012)

As part of a series analyzing the application of Jewish law to current social, political, technological, and religious problems, this volume examines the use of torture as a weapon against terrorism, sacrificing human lives for the protection of society, enforcement of *heter iska* agreements (permissible ventures in lieu of interest bearing loans) in American courts, malpractice liability, contemporary medical questions, and other societal issues.

Other Recent Publications:

Articles

Zayin Tuvei ha-Ir be-Iram ke-Bet

Din o ke-Melekh be-Irma [Seven

Trustees of the City: Is Their

Authority that of a Court or of a

Monarch?], SHA'AREI ZEDEK, VOL.

XV (forthcoming 2012)

Support of Non-Biological Children, INTERNATIONAL JOURNAL OF THE JURISPRUDENCE OF THE FAMILY (forthcoming 2012)

Be-Geder Hezkat Hiyjuv [Regarding the Nature of the Presumption of Non-Satisfaction of a Financial Obligation], BET YITZHAK (forthcoming 2012)

Video Surveillance, TRADITION (forthcoming 2012)

Substitution of Lottery Tickets, TRADITION (Spring 2012)

Product Liability, TRADITION (Spring 2012)

Piscatorial Parasites, TRADITION (Spring 2011)

Entering a Non-Jewish House of Worship, TRADITION (Summer 2011)

May a Sabbath-Desecrator Drink Wine?, TRADITION (Fall 2011)

Spontaneous Generation and Halakhic Inerrancy, TRADITION (Winter 2011)

Bizu'a u-Pesharah shel Aharon [Mediation and Arbitration of Aaron], BET YITZHAK (2010)

Gemirat Da'at al-pi Nihuta de-Mizvah ve-al-pi Dina de-Malkhuta [Finality of Interest Due to Satisfaction in Performing a Mitzvah or Due to the Law of the Land], BET YITZHAK (2010)

Halva'ah Tzemudah Le-Hityakrut Haba'ah Mahmat Ribuy Shtarei Kessef [Debt Indexed to Inflation Attributable to Increase in Money Supply], BET YITZHAK (2011)

Sacrificing the Few to Save the Many, TRADITION (Spring 2010)

The Metaphysics of Property Interests in Jewish Law: An Analysis of Kinyan, TRADITION (Summer 2010)

Laser Circumcision, TRADITION (Fall 2010)

Family Values in the Jewish Tradition, INTERNATIONAL JOURNAL OF THE JURISPRUDENCE OF THE FAMILY (2010)

Book

BE-NETIVOT HA-HALAKHAH [IN THE PATHWAYS OF JEWISH LAW], VOLUME IV (Yeshiva University Press 2011)

Book Chapters

Jewish Law, in CAMBRIDGE COMPANION TO CONTEMPORARY LAW (Mauro Bussani ed., Cambridge University Press 2012) (with Arthur Jacobson, Cardozo Law)

Sacrificing the Few to Save the Many, in CONTENTING WITH CATASTROPHE: JEWISH PERSPECTIVES ON SEPTEMBER 11TH (Michael J. Broyde ed., K'hal Publishing 2011)

The Infinite Value of Jewish Life in Judaism, in THE VALUE OF HUMAN LIFE: CONTEMPORARY PERSPECTIVES IN JEWISH MEDICAL ETHICS (Refoel Guggenheim et al. eds., Feldheim Publishers 2010)

Pre-Implantation: Genetic Diagnosis and Jewish Law, in THE VALUE OF HUMAN LIFE: CONTEMPORARY PERSPECTIVES IN JEWISH MEDICAL ETHICS (Refoel Guggenheim et al. eds., Feldheim Publishers 2010)

Heter Iska, the Permissible Venture: A Device to Avoid the Prohibition Against Interest-Bearing Loans, in THE OXFORD HANDBOOK OF JUDAISM AND ECONOMICS (Aaron Levine ed., Oxford University Press 2010)

The Problem of Identity in Rashi, Rambam and the Tosafists, in BETWEEN RASHI AND MAIMONIDES: THEMES IN MEDIEVAL JEWISH THOUGHT, LITERATURE AND EXEGESIS (Ephraim Kanarfogel & Moshe Sokolow eds., KTAV Publishing 2010)

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LESTER BRICKMAN

Professor of Law

Ethics, Torts, Litigation

*B.S., 1961, Carnegie Mellon University
J.D., 1964, University of Florida
LL.M., 1965, Yale University*

Lester Brickman is nationally recognized for his expertise in legal ethics, contingency fees, mass torts, and asbestos litigation. He is a sought-after featured speaker and presenter at legal and business conferences. Professor Brickman's writings are widely cited and he is frequently quoted in the press.

➤ RECENT PUBLICATIONS

Featured Book

LAWYER BARONS: WHAT THEIR CONTINGENCY FEES REALLY COST AMERICA (Cambridge University Press 2011)

Professor Brickman examines how contingency fees distort our civil justice system, influence our political system, and endanger democratic governance. Although some believe that lawyers manipulate the justice system to serve their own ends, few are aware of the high costs that come with contingency fees. This book sets out to change that, providing a window into the underworld of contingency fees that the bar and the courts not only tolerate but even nurture and protect. Contrary to a broad academic consensus,

the book argues that the financial incentives for lawyers to litigate are so inordinately high that they perversely impact our civil justice system and impose other unconscionable costs.

Review of *Lawyer Barons: What Their Contingency Fees Really Cost America*

"Lester Brickman is a man with a mission: To expose the waste and fraud that permeates the system of tort liability as it has grown up over the past forty years in the United States. Brickman is an indefatigable researcher who understands the keys to unlocking the secrets of the tort system. What is truly striking about *Lawyer Barons* is not just the massive amount of evidence presented but the tenacity with which he tracks down just about every scrap of available evidence on a particular problem and melds it into a compelling narrative that reads as a coherent whole.... Anyone who reads this book will quickly conclude that tort reform belongs back on the national agenda."

—Richard Epstein, Lawrence A. Tisch Professor of Law, NYU Law School, Peter and Kirsten Bedford Senior Fellow, Hoover Institution

Other Recent Publications:

Articles

Anatomy of an Aggregate Settlement: The Triumph of Temptation Over Ethics, 79 *GEORGE WASHINGTON LAW REVIEW* (2011)

Unmasking the Powerful Force that has Mis-Shaped the American Civil Justice System, 4 *GLOBAL COMPETITION LITIGATION REVIEW*, no. 3, 169 (2010)



MICHAEL BURSTEIN

Assistant Professor of Law

Intellectual Property Law, Corporate Law

*B.A., 1999, Yale University
J.D., 2004, New York University*

Michael Burstein is an emerging scholar in the field of patent law. His background in molecular biophysics and biochemistry, ethics, politics, economics and law are foundational to his research on the institutional structures—both private and public—that shape innovation. Professor Burstein clerked for Judge A. Raymond Randolph of the U.S. Court of Appeals for the District of Columbia Circuit, and served as a Bristow Fellow in the Office of the Solicitor General, U.S. Department of Justice.

➤ RECENT PUBLICATIONS

Exchanging Information Without Intellectual Property, 91 *TEXAS LAW REVIEW* (forthcoming 2012)

Rules for Patents, 52 *WILLIAM & MARY LAW REVIEW* 1747 (2011)

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DAVID G. CARLSON

Professor of Law

Bankruptcy Law, Commercial Law, Legal Theory

B.A., 1974, University of California, Santa Barbara

J.D., 1977, Hastings College of Law, University of California

David Carlson is a prolific writer and noted specialist in bankruptcy, jurisprudence, and commercial law.

➤ RECENT PUBLICATIONS

Featured Book

CONSUMER BANKRUPTCY (Vandeplas Publishing 2d ed. 2011)

Professor Carlson's second edition

of *Consumer Bankruptcy* is a casebook focusing solely on the unique issues that arise under the United States Bankruptcy Code when an individual with primarily consumer debts files for bankruptcy. The book fully explores the complexities introduced in 2005 with the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act, legislation that clearly sets out consumer bankruptcy as a very technical subspecialty in the field of bankruptcy. Covered in this book are the barriers to entry by a consumer into chapter 7 liquidation, issues relating to discharge of debt, chapter 13 plans, and chapter 13 cases converted to chapter 7 cases.

Other Recent Publications:

Articles

Legal Positivism and Russell's Paradox, 5 WASHINGTON UNIVERSITY JURISPRUDENCE REVIEW (forthcoming 2012)

Where Corporations Are: Why Casual Visits to New York are Bad for Business, 76 ALBANY LAW REVIEW

(forthcoming 2012) (with Jeanne L. Schroeder, *Cardozo Law*)

Cars in Chapter 13: Does Negative Equity Destroy the Jurisdiction of the Hanging Paragraph, 20 AMERICAN BANKRUPTCY INSTITUTE LAW REVIEW (forthcoming 2012)

Money as Measure, 33 *CARDOZO LAW REVIEW* (2012)

Tax Warrants in New York, 75 *ALBANY LAW REVIEW* (2011) (with Carlton Smith, *Cardozo Law*)

The Federal Rules of Bankruptcy Procedure in Reorganization Cases: Do They Have a Constitutional Dimension?, 84 AMERICAN BANKRUPTCY INSTITUTE LAW JOURNAL 251 (2010)

The Role of Valuation in the Federal Bankruptcy Exemption Process: The Supreme Court Reads Schedule C, 18 AMERICAN BANKRUPTCY INSTITUTE LAW REVIEW 461 (2010)

Book

THE LAW OF DEBTORS AND CREDITORS (Vandeplas Publishing 2010)



ANONYMITY & IDENTITY IN THE INFORMATION AGE

On May 4, 2012, Cardozo's Intellectual Property & Information Law Program hosted scholars from a variety of disciplines, across computer science and law, to analyze questions of anonymity and identity, focusing on three areas in particular: anonymity and online speech, government access to identity information, and identifiability in databases. Professor Felix Wu organized the conference. From left, Vitaly Shmatikov, associate professor of computer science, University of Texas at Austin; Bradley Malin, associate professor of biomedical informatics & computer science, Vanderbilt University; Barbara Evans, professor of law, University of Houston; Harlan Yu, Center for Information Technology Policy, Princeton University; Peter P. Swire, C. William O'Neill Professor in Law and Judicial Administration, Moritz College of Law, Ohio State University; Felix Wu, assistant professor of law, Benjamin N. Cardozo School of Law.



SUSAN CRAWFORD

Professor of Law

Information Law and Intellectual Property Law

B.A., 1984, J.D., 1989, Yale University

Susan Crawford is a leading expert on intellectual property and information law. Currently, she is a columnist for Bloomberg View and Wired.com and is a member of Mayor Bloomberg's New York City Council on Technology and Innovation. She also served as Special Assistant to the President for Science, Technology, and Innovation Policy (2009) and co-led the FCC transition team between the Bush and Obama administrations.

➤ RECENT PUBLICATIONS

Articles

The Communications Crisis in America, 5 HARVARD LAW & POLICY REVIEW 245 (2011)

The Looming Cable Monopoly, 29 YALE LAW AND POLICY REVIEW INTER ALIA 34 (2010)

Op-Eds

BLOOMBERG VIEW

When We Wage Cyberwar, the Whole Web Suffers, (Apr. 26, 2012), <http://www.bloomberg.com/news/2012-04-25/when-we-wage-cyberwar-the-whole-web-suffers.html>

Verizon to the Cable Industry: Let's Be Friends, (Mar. 20, 2012), [http://www.bloomberg.com/news/2012-](http://www.bloomberg.com/news/2012-03-20/verizon-to-the-cable-industry-let-s-be-friends.html)

[03-20/verizon-to-the-cable-industry-let-s-be-friends.html](http://www.bloomberg.com/news/2012-03-20/verizon-to-the-cable-industry-let-s-be-friends.html)

The Case for Publicly Owned Internet Service, (Feb. 14, 2012), <http://www.bloomberg.com/news/2012-02-15/the-case-for-publicly-owned-internet-service-commentary-by-susan-crawford.html>

Google Plays Both Sides in the Web Piracy Fight, (Jan. 20, 2012), <http://www.bloomberg.com/news/2012-01-20/google-plays-both-sides-in-the-web-piracy-fight-susan-crawford.html>

Name-Calling on the Internet Is Serious Business, (Jan. 5, 2012), <http://www.bloomberg.com/news/2012-01-06/name-calling-on-the-internet-is-serious-business-susan-crawford.html>

Cybersecurity Requires Patches, Not a Vast Bill, (Nov. 28, 2011), <http://www.bloomberg.com/news/2011-11-29/cybersecurity-demands-patches-not-vast-bill-commentary-by-susan-crawford.html>

Political Ad Funders Must Not Dodge Scrutiny, (Oct. 27, 2011), <http://www.bloomberg.com/news/2011-10-27/political-ads-funders-must-not-dodge-scrutiny-susan-crawford.html>

Phone, Web Clampdowns in Crises Are Intolerable, (Sept. 25, 2011), <http://www.bloomberg.com/news/2011-09-26/phone-web-clampdowns-in-crises-are-intolerable-susan-crawford.html>

U.S. Falls Behind in Race Toward Open Government, (Aug. 23, 2011), <http://www.bloomberg.com/news/2011-08-24/u-s-falls-behind-in-race-toward-open-government-susan-crawford.html>

Cyberwar Hysteria Aids Consultants, Hurts U.S., (Jul. 24, 2011), <http://www.bloomberg.com/news/2011-07-25/cyberwar-hysteria-aids-consultants-hurts-u-s-susan-crawford.html>

WIRED.COM

Be Very Afraid: The Cable-ization of Online Life Is Upon Us (Apr. 26, 2012), <http://www.wired.com/epicenter/2012/04/opinion-crawford-cableization/>

The House GOP Plan to Gut the FCC, (Mar. 22, 2012), <http://www.wired.com/epicenter/2012/03/opinion-crawford-gut-fcc/>

Water, Internet Access, and Swagger: These Guys Are Good, (Mar. 9, 2012), <http://www.wired.com/epicenter/2012/03/opinion-crawford-comcast-internet/>

Geo-Location, Geo-Location, Geo-Location: The Tragedy of LightSquared, (Feb. 23, 2012), <http://www.wired.com/epicenter/2012/02/pipeline-crawford-telecomm-goliath/>

The Pandora's Box of Privacy, (Feb. 2, 2012), <http://www.wired.com/epicenter/2012/02/column-crawford-vppa-video/>

THE NEW YORK TIMES

A Compromise Makes Sense, (Jan. 18, 2012), <http://www.nytimes.com/roomfordebate/2012/01/18/whats-the-best-way-to-protect-against-online-piracy/a-compromise-makes-sense>

The New Digital Divide, (Dec. 4, 2011), http://www.nytimes.com/2011/12/04/opinion/sunday/internet-access-and-the-new-divide.html?_r=2

An Internet for Everybody, (Apr. 10, 2010), <http://www.nytimes.com/2010/04/11/opinion/11crawford.html>

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LAURA CUNNINGHAM

Professor of Law

Tax Law

B.S. 1977, University of California, Davis
J.D., 1980, Hastings College of Law, University of California
LL.M., 1988, New York University

Professor Cunningham’s scholarship focuses on issues arising in the federal taxation of partners and partnerships, and on the federal wealth transfer taxes.

➤ RECENT PUBLICATIONS

Featured Book

THE LOGIC OF SUBCHAPTER K: A CONCEPTUAL GUIDE TO THE TAXATION OF PARTNERSHIPS (West 4th ed. 2011) (with Noël Cunningham, NYU)

This book avoids neither the hard questions nor the conceptual difficulties, providing readers with a firm understanding of partnership taxation. Each chapter begins with a basic explanation of the relevant provisions and the roles that they play in the overall structure of Subchapter K and includes an increasingly detailed discussion of the specific rules, incorporating multiple illustrative examples. Each chapter builds on the earlier chapters, leading readers through Subchapter K’s seamless web.

Other Recent Publications:

Article

FLPs, the Transfer Taxes and the Income Tax, 127 TAX NOTES 805 (May 17, 2010)

Book Chapter

Tax Reform Paul McDaniel Style: The Repeal of the Grantor Trust Rules (with Noël Cunningham), in THE PROPER TAX BASE: STRUCTURAL FAIRNESS FROM AN INTERNATIONAL AND COMPARATIVE PERSPECTIVE—ESSAYS IN HONOR OF PAUL MCDANIEL (Yariv Brauner & Martin J. McMahon Jr. eds., Wolters Kluwer 2012)



MITCHELL L. ENGLER

Professor of Law

Tax Law, Contracts

B.A., 1987, J.D. 1990, LL.M. 1991, New York University

Mitchell Engler studies current issues surrounding tax law, tax policy, and contracts. Professor Engler is a frequent contributor to policy organizations and has been published by major newspapers and legal journals, including *The Wall Street Journal*.

➤ RECENT PUBLICATIONS

The Untaxed King of South Beach: LeBron James and the NBA Salary Cap, 48 SAN DIEGO LAW REVIEW 601 (2011)

The Missing Elements of Contract Damages, 84 TEMPLE LAW REVIEW 119 (2011) (with Susan B. Heyman, Cardozo Law)



PETER GOODRICH

Professor of Law

Director, Law and Humanities

Contracts, Jurisprudence, Film and Law, Gender and Law

LL.B., 1975, University of Sheffield
Ph.D., 1984, University of Edinburgh

Peter Goodrich has written extensively in legal history and theory in the areas of law and literature and semiotics. He is managing editor of *Law and Literature* and he is on the editorial board of *Law and Critique*.

➤ RECENT PUBLICATIONS

Featured Book

THE SCENE OF THE MASS CRIME: HISTORY, FILM, AND INTERNATIONAL TRIBUNALS (Christian Delage co-ed., Routledge 2012)

The Scene of the Mass Crime takes up the unwritten history of the peculiar yet highly visible form of war crimes trials. These trials are the first and continuing site of the interface of law, history, and film. From Nuremberg to the contemporary trials in Cambodia, film, in particular, has been crucial both as evidence of atrocity and as the means of publicizing the proceedings. Drawing on a fascinating diversity of public trials and filmic

responses, from the Trial of the Gang of Four to the Gacaca local courts of Rwanda to the filmic symbolism of 9/11, from Soviet era show trials to Nazi People's Courts, leading international scholars address the theatrical, political, filmic and symbolic importance of show trials in making history, legitimating regimes and, most surprising of all, in attempting to heal trauma through law and through film.

Other Recent Publications: Articles

The Foolosophy of Justice and the Enigma of Law, 24 *YALE JOURNAL OF LAW AND HUMANITIES* 101 (2012)

Specters of Law: Why the History of the Legal Spectacle Has Not Been Written, *UC IRVINE LAW REVIEW* 101 (2012)

The Theatre of Emblems: On the Optical Apparatus and the Investiture of Persons, 8 *LAW, CULTURE AND THE HUMANITIES* 47 (2012)

Disciplines and Jurisdictions, 48 *ENGLISH LANGUAGE NOTES* 176 (2011)

Theatres of the Book: On Covering, Flaunting and Marketing Author and Text, 14 *LAW TEXT CULTURE* 357 (2010)

Legal Enigmas: Antonio Nebrija, The Da Vinci Code, and the Emendation of Law, 30 *OXFORD JOURNAL OF LEGAL STUDIES* 71 (2010)

The Open Tomb: Post-Critical Legal Hermeneutics, 10 *NEVADA LAW JOURNAL* 607 (2010)

In Flagrante Depicto, 31 *CARDOZO LAW REVIEW* 971 (2010)

Book Chapters

Interstitium and Non-Law, in *METHODS OF COMPARATIVE LAW* (P.G. Monateri ed., Elgar, Edward Publishing 2012)

Flores quae faciunt coronam or The Flowers of Common Law, in *LAW AND ART* (Oren Ben-Dor ed., Routledge 2011)

Postmodern Justice, in *LAW AND THE HUMANITIES* (Austin Sarat, et al. eds., Cambridge University Press 2010)

Law, in *CRITICAL TERMS FOR MEDIA STUDIES* (W.J.T. Mitchell & Mark B.N. Hansen eds., Chicago University Press 2010)



MALVINA HALBERSTAM

Professor of Law
International Law

B.A., 1957, Brooklyn College
J.D., 1961, M.I.A., 1964, Columbia University

Malvina Halberstam is a member of Cardozo's founding faculty, and has extensive experience in issues

involving individual rights, international law, the application of the constitution to the conduct of foreign affairs and the administration of criminal justice. She clerked for Judge Edmund Palmieri of the U.S. District Court for the Southern District of New York, served as an assistant district attorney under Frank Hogan, was a reporter for the American Law Institute (Model Penal Code Project), and served as counselor on international law in the U.S. Department of State, Office of the Legal Advisor.

➤ RECENT PUBLICATIONS

Requiring Miranda Warnings for the Christmas Day Bomber and Other Terrorists, 2 *UNIVERSITY OF DENVER CRIMINAL LAW REVIEW* 1 (2012)

Judicial Review, a Comparative Perspective: Israel, Canada, and the United States, 31 *CARDOZO LAW REVIEW* 2393 (2010) (Ed.)

Application of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation to Piracy Off Somalia, *PROCEEDINGS OF THE 104TH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW* (2009)





MICHAEL E. HERZ

Arthur Kaplan Professor of Law
Co-Director, Floersheimer Center for
Constitutional Democracy
Administrative Law, Environmental Law
B.A., 1979, Swarthmore College
J.D., 1982, University of Chicago

Michael Herz writes on a variety of public law topics and is noted for his expertise on administrative law. He clerked for Associate Justice Byron R. White of the U.S. Supreme Court and for Chief Judge Levin H. Campbell of the U.S. Court of Appeals for the First Circuit. Professor Herz is a public member of the Administrative Conference of the United States and was the chair of the ABA's Section of Administrative Law and Regulatory Practice from 2011 to 2012.

➤ RECENT PUBLICATIONS

Featured Book

THE CONTENT AND CONTEXT OF HATE SPEECH: RETHINKING REGULATION AND REMEDIES (Peter Molnar, Central European University, co-ed., Cambridge University Press 2012)

The contributors to this volume consider whether it is possible to establish carefully tailored hate speech policies that are cognizant of the varying traditions, histories, and values of different countries. Throughout, there is a strong comparative emphasis, with examples (and authors) drawn

from around the world. All the authors explore whether or when different cultural and historical settings justify different substantive rules in light of the concern that such cultural relativism can be used to justify content-based restrictions and so endanger freedom of expression.

Other Recent Publications: Books

ADMINISTRATIVE LAW AND REGULATORY POLICY: PROBLEMS, TEXT, AND CASES (Wolters Kluwer 7th ed. 2011) (with Stephen Breyer, Richard Stewart, NYU, Cass Sunstein, Harvard Law, and Adrian Vermeule, Harvard Law)

ELEMENTS OF LAW (Lexis Nexis 2d ed. 2010) (with Eva Hanks, Cardozo Law, and Steven S. Nemerson, University of Minnesota)



JUSTIN HUGHES

Professor of Law
Intellectual Property Law
B.A., 1982, Oberlin College
J.D., 1986, Harvard University

Justin Hughes' work focuses on copyright and related rights, trademarks, geographical indications, and international intellectual property issues; he is also the founder and faculty director of the law school's Indie Film Clinic, the first of its kind. He clerked for the Lord President of the Malaysian Supreme Court in Kuala Lumpur.

Since November 2009, Professor Hughes has served as Senior Advisor to the Undersecretary of Commerce for Intellectual Property. In June 2012 he led the U.S. delegation at the World Intellectual Property Organization's (WIPO) Diplomatic Conference in Beijing. The conference successfully adopted the Beijing Treaty on Audiovisual Performances, which provides a platform for the harmonization of actors' rights globally. Professor Hughes was widely credited with resuscitating efforts for the treaty after major negotiation breakdowns occurred in both 1996 and 2000.

➤ RECENT PUBLICATIONS

The Photographer's Copyright—Photograph as Art, Photograph as Database, 25 HARVARD JOURNAL ON LAW AND TECHNOLOGY (2012)

A Short History of "Intellectual Property" in Relation to Copyright, 33 CARDOZO LAW REVIEW (2012)



KYRON J. HUIGENS

Professor of Law
Criminal Law, Legal Theory
A.B., 1981, Washington University
J.D., 1984, Cornell University

Kyron Huigens brings his experience as a prosecutor and criminal defense attorney to his scholarly study of theories of punishment. He is frequently published in major law journals including the *Harvard Law*

Review, the California Law Review, and the Georgetown Law Journal, among others.

➤ RECENT PUBLICATIONS

Article

Provocation at Face Value, MARQUETTE LAW REVIEW (forthcoming)

Book Chapter

Motivating Intentions, Reciprocal Specification of Ends, and the Assessment of Responsibility, in LAW, VIRTUE AND JUSTICE (Ho Hock Lai & Amalia Amaya eds., Hart Publishing 2011)

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ARTHUR JACOBSON

Max Freund Professor of Litigation & Advocacy

Legal Theory, Jewish Law

B.A., 1969, J.D., 1974, Ph.D., 1978, Harvard University

Arthur Jacobson's scholarly work has focused on the idea of dynamic jurisprudence. He co-edited, along with internationally acclaimed scholar Bernhard Schlink, *Weimar: A Jurisprudence of Crisis*, recognized by many legal theorists as an invaluable overview of the perils and promise of constitutional development in states that lack an entrenched tradition of constitutionalism.

➤ RECENT PUBLICATIONS

Article

Outsourcing Incompetence, 32 CARDOZO LAW REVIEW 1225 (2011)

Book Chapters

Hate Speech and Self-Restraint, in REGULATING HATE SPEECH: CONTENT, CONTEXT, AND REMEDIES (Michael Herz & Peter Molnar eds., Cambridge University Press 2010) (with Bernhard Schlink)

The Jewish Legal Tradition, in THE CAMBRIDGE COMPANION TO COMPARATIVE LAW (Mauro Bussani & Ugo Mattei eds., Cambridge University Press 2010) (with J. David Bleich, Cardozo Law)

Reason's Prophet, in SPINOZA NOW (Dimitris Vardoulakis ed., University of Minnesota Press 2010)

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MELANIE B. LESLIE

Professor of Law

Trusts and Estates, Nonprofit Law

B.A., 1983, University of Oregon
J.D., 1991, Benjamin N. Cardozo School of Law

Melanie Leslie's scholarship focuses on wills, trusts and fiduciary duties in the trust, corporate and nonprofit contexts. Professor Leslie clerked for Justice Gary S. Stein of the New Jersey Supreme Court.

➤ RECENT PUBLICATIONS

Featured Book

TRUSTS AND ESTATES (Concepts and Insights Series, Foundation

Press 2d ed.2011) (with Stewart E. Sterk, Cardozo Law)

The Second Edition of *Trusts and Estates* makes complex doctrinal rules easier to understand by exploring the history and rationale behind those rules. The analysis is thorough, and focuses both on common law doctrines and statutory reforms with an emphasis on the Uniform Probate Code (including the 2008 amendments). Each substantive chapter closes with a set of exam-like problems designed to test understanding of the material included in the chapter. The authors also include thorough solutions to each of these problems. This is the only book in the field that combines thorough doctrinal analysis with more than 60 review problems, each with complete solutions.

Other Recent Publications:

Book

ESTATES AND TRUSTS, CASES AND MATERIALS (Foundation Press 4th ed. 2011) (with Stewart E. Sterk, Cardozo Law, and Joel C. Dobris, UC-Davis Law)

Articles

Why Directed Trusts Are Not Inconsistent with New York's Prohibition of Exoneration Clauses, TRUST DOCUMENTS, TRUSTS AND ESTATES LAW SECTION NEWSLETTER (New York State Bar forthcoming 2012)

The Wisdom of Crowds? Groupthink and Nonprofit Governance, 62 FLORIDA LAW REVIEW 1179 (2010)

Lessons From Trust Law: Reconsidering Fiduciary Duty Law for Nonprofit Corporations, 85 CHICAGO-KENT LAW REVIEW 551 (2010)

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and Insights Series, Foundation



PETER L. MARKOWITZ

Associate Clinical Professor of Law
Director, Kathryn O. Greenberg
Immigration Justice Clinic

Immigration Law

B.A., 1994, Wesleyan University
J.D., 2001, New York University School
of Law

Peter Markowitz's research, scholarship and teaching is focused at the cutting edge of immigration rights and policy reform. He founded the school's Katherine O. Greenberg Immigration Justice Clinic; the clinic's work has received national media coverage through such major news outlets as *The New York Times*.

➤ RECENT PUBLICATIONS

Deportation Is Different, 13
UNIVERSITY OF PENNSYLVANIA
JOURNAL OF CONSTITUTIONAL LAW
1299 (June 2011)

Secure Communities by the Numbers: An Analysis of Demographics and Due Process, Research Report, Warren Institute, University of California, Berkeley Law School (Oct. 2011) (with Aarti Kohli, UC-Berkeley Law, and Lisa Chavez)

Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings, 33 CARDOZO LAW REVIEW 357 (2011) (co-authored)



SHERI ROSENBERG

Assistant Clinical Professor of Law
Director, Program in Holocaust and
Human Rights Studies
Director, Human Rights and Genocide
Clinic

Human Rights Law, International Law

B.A., 1989, New York University
J.D., 1994, Benjamin N. Cardozo
School of Law
LL.M., 2003, Columbia University

Sheri Rosenberg has worked with the United Nations and the U.S. government in the areas of civil rights and international human rights with a specific focus on issues of discrimination, equality and genocide. She founded the Human Rights and Genocide Clinic and directs the Human Rights Program. She was lead counsel for the plaintiff in the landmark case before the Grand Chamber of European Court of Human Rights which ruled in 2009 that the exclusion of Jews and Roma from Bosnia's highest state offices is unlawful discrimination. The Human Rights Program has received several prestigious research grants.

➤ RECENT PUBLICATIONS

Articles

Genocide by Attrition, in GENOCIDE MATTERS: NEW PERSPECTIVES AND CHALLENGES (Ernesto Verdeja & Joyce Apse eds., Routledge Press forthcoming 2013)

Genocide Is a Process, Not an Event, 7 GENOCIDE STUDIES AND PREVENTION 16 (2012)

Healing the Wounds: Speech, Identity & Reconciliation in Rwanda and Beyond, RESEARCH REPORT (2010) (co-authored)

Policy Brief

A Common Standard for Applying the Responsibility to Protect (R2P), APC R2P Brief, Vol. 2 No. 6 (2012)



JESSICA ROTH

Assistant Professor of Law
Criminal Law, Evidence

B.A., 1992, Harvard-Radcliffe College
J.D., 1997, Harvard University

Jessica Roth's interest in criminal law scholarship is founded on her work as an assistant U.S. attorney in the Southern District of New York where she often served as lead prosecutor. She clerked for the Honorable Denise Cote of the U.S. District Court for the Southern District of New York and for the Honorable John M. Walker, Jr., of the U.S. Court of Appeals for the Second Circuit.

➤ RECENT PUBLICATIONS

Alternative Elements, 59 UCLA LAW REVIEW 170 (2011)



DAVID RUDENSTINE

Sheldon H. Solow Professor of Law
Constitutional Law

B.A., 1963, M.A.T., 1965, Yale
University
J.D., 1969, New York University

David Rudenstine is a widely recognized constitutional scholar and author; he was dean of Cardozo Law from 2001–2009. Professor Rudenstine is the author of the critically acclaimed *The Day the Presses Stopped: A History of the Pentagon Papers Case*. He is the primary author of *Prison Without Walls: Report on New York Parole* and author of *Rights of Ex-Offenders*. Professor Rudenstine spent two years as a Peace Corps volunteer in Uganda.

➤ RECENT PUBLICATIONS

The Irony of a Faustian Bargain: A Reconsideration of the Supreme Court's 1953 United States v. Reynolds Decision, CARDOZO LAW REVIEW (forthcoming 2013)

Roman Roots for an Imperial Presidency: Revisiting Clinton Rossiter's 1948 Constitutional Dictatorship: Crisis Government in the Modern Democracies, CARDOZO LAW REVIEW (forthcoming 2013)

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PROPORTIONALITY IN THEORY AND PRACTICE: INTERNATIONAL AND INTERDISCIPLINARY PERSPECTIVES

This conference held in September 2011 examined the concept of proportionality in different contexts, including philosophy, administrative and constitutional law, economics, and military affairs. Panelists included Professor Rainer Forst, Johan Wolfgang-Goethe-University; Professor Bernhard Schlink, Humboldt University; Hon. Andras Sajó, European Court of Human Rights; and Professor Joseph Raz, Oxford University and Columbia University. From left, Professor Bodo Pieroth, Westfälische Wilhelms-Universität-Institut für Öffentliches Recht und Politik, Germany; Professor Martin Loughlin, London School of Economics; Professor Michael Herz, Cardozo School of Law.



LESLIE SALZMAN

Clinical Professor of Law
Director, Cardozo Bet Tzedek Legal Services

Alternative Dispute Resolution, Client Interviewing and Counseling, Disability Law, Elder Law

B.A., 1978, Tufts University
J.D., 1981, New York University

Leslie Salzman's scholarship and advocacy efforts revolve around the rights of individuals with physical and mental disabilities.

➤ RECENT PUBLICATIONS

Guardianship for Persons with Mental Illness—A Legal and Appropriate Alternative?, 4 SAINT LOUIS UNIVERSITY JOURNAL OF HEALTH LAW AND POLICY 279 (special issue, 2011)

Rethinking Guardianship (Again): Substituted Decision Making as a Violation of the Integration Mandate of Title II of the Americans with Disabilities Act, 81 UNIVERSITY OF COLORADO LAW REVIEW 157 (2010)

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BARRY C. SCHECK

Professor of Law
Co-Director, Innocence Project
Criminal Law, Forensic DNA

B.S., 1971, Yale University
J.D., M.C.P., 1974, University of California, Berkeley

Barry Scheck is known for his landmark litigation setting standards for forensic applications of DNA technology. His work has shaped the course of case law across the country, leading to an influential study by the National Academy of Sciences on forensic DNA testing, as well as to important state and federal legislation. Since founding the Innocence Project in 1992 with Peter Neufeld at Cardozo School of Law, 292 people have been exonerated through DNA testing in the United States, including 17 who were at one time sentenced to death. Professor Scheck is a commissioner on New York's Forensic Science Review Board, a body that regulates the state's crime and forensic DNA laboratories. He is first vice president of the National Association of Criminal Defense Lawyers and serves on the board of the National Institute of Justice's Commission on the Future of DNA Evidence. In 2000, Professor Scheck and Peter Neufeld co-authored with Jim Dwyer *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted* (Doubleday 2000).

➤ RECENT PUBLICATIONS

Opinion, *How to Rein in Rogue Prosecutors*, THE WALL STREET JOURNAL, March 15, 2012

Making Forensic Science More Scientific, NATURE, March 18, 2010

Professional and Conviction Integrity Programs: Why We Need Them, Why They Will Work, and Models for Creating Them, 31 CARDOZO LAW REVIEW 6 (2010)

Opinion, *Capital Punishment and Human Fallibility*, THE WALL STREET JOURNAL, November 27, 2010

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JEANNE L. SCHROEDER

Professor of Law
Corporate Law, Legal Theory

B.A., 1975, Williams College
J.D., 1978, Stanford University

Jeanne Schroeder's scholarly interests range from commercial law doctrine to feminist jurisprudential theory. Her current work is on recent developments in the law of money and payment systems to Article 8 of the Uniform Commercial Code and in developing a feminist theory of law and economics incorporating the political philosophy of G. W. F. Hegel and the psychoanalytic theories of Jacques Lacan.

➤ RECENT PUBLICATIONS

Articles

Where Corporations Are: Why Casual Visits to New York Are Bad for Business, ALBANY LAW REVIEW (forthcoming 2012) (with David Carlson, Cardozo Law)

Mad Money: Wall Street's Obsession with Bonuses, CARDOZO LAW REVIEW (forthcoming 2012)

Book Chapter

Unnatural Rights: Hegel's Theory of Personality and Intellectual Property, in CRITICAL CONCEPTS IN INTELLECTUAL PROPERTY (Christopher Yoo ed., Edward Elgar Press 2011)

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CARLTON M. SMITH

Clinical Associate Professor of Law
Director, Tax Clinic

Tax Law

B.A., 1978, J.D., 1981, Harvard University

Carlton Smith, director of Cardozo Law's Tax Clinic since 2003, has written amicus briefs on important tax controversy issues in the Third, Fifth, Ninth, and Federal Circuit Courts of Appeals and in the Supreme Court. His amicus brief in *Mayo Foundation v. U.S.* (2011) was cited and addressed by the Supreme Court. Tax Analysts, Inc. named him one of the ten tax persons-of-the-year for 2011 for his litigation and advocacy on behalf of low-income

taxpayers. Professor Smith clerked for the Honorable Arthur L. Nims III, of the U.S. Tax Court.

➤ RECENT PUBLICATIONS

Articles and Notes

Cracks Appear in the Code's "Jurisdictional" Time Provisions, TAX NOTES (forthcoming 2012)

Tax Court Should Reject Twombly/Iqal Plausibility Pleading, 136 TAX NOTES 835 (Aug. 13, 2012)

Dealing with DOMA: Federal Non-Recognition Complicates State Income Taxation of Same-Sex Relationships, COLUMBIA JOURNAL OF GENDER AND LAW (forthcoming 2012) (with Edward Stein, Cardozo Law)

New York Tax Warrants: In the Strange World of Deemed Judgments, 75 ALBANY LAW REVIEW 671 (2011/2012) (with David Carlson, Cardozo Law)

The Tax Court Keeps Growing Its Collection Due Process Powers, 133 TAX NOTES 859 (Nov. 14, 2011)

Innocent Spouse: Let's Bury that "Inequitable" Revenue Procedure, 131 TAX NOTES 1165 (Jun. 13, 2011)

Friedland: Did the Tax Court Blow Its Whistleblower Jurisdiction?, 131 TAX NOTES 843 (May 23, 2011)

Tax Court Collection Due Process Cases Take Too Long, 130 TAX NOTES 403 (Jan. 24, 2011) (with T. Keith Fogg, Villanova Law)

Equitably Tolling Innocent Spouse and Collection Due Process Periods, 126 TAX NOTES 1106 (Mar. 1, 2010).

Does Collections Due Process Violate the Appointments Clause?, 126 TAX NOTES 777 (Feb. 8, 2010)

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EDWARD D. STEIN

Vice Dean

Professor of Law

Director, Gertrud Mainzer Program in Family Law, Policy, and Bioethics

Family Law, Sexual Orientation/Gender and Law

B.A., 1987, Williams College

Ph.D., 1992, Massachusetts Institute of Technology

J.D., 2000, Yale University

Ed Stein has been Cardozo's Vice Dean since 2009. He is the author of numerous articles, chapters and books on legal, philosophical, and scientific topics and is a frequent

lecturer and conference participant. His current research focuses on issues at the intersection of family law and sexual orientation, and gender and the law. Professor Stein has contributed to Huffington-Post.com and FindLaw.com and has written a blog for the American Constitution Society Blog. He clerked for Judge Dolores Sloviter, Court of Appeals for the Third Circuit.

➤ RECENT PUBLICATIONS

Articles

Dealing with DOMA: Federal Non-Recognition Complicates State Income Taxation of Same-Sex Relationships, 24 COLUMBIA JOURNAL OF LAW AND GENDER 29 (2012) (with Carlton Smith, Cardozo Law)

The Topography of Legal Recognition of Same-Sex Relationships, 50 FAMILY COURT REVIEW 181 (2012)

The Treatment of Gender-Variant and Gender-Dysphoric Children and Adolescents: Common Themes and

Ethical Reflections, 50 JOURNAL OF HOMOSEXUALITY 480 (2012)

Sexual Orientations, Rights, and the Body: Immutability, Essentialism, and Nativism, 78 SOCIAL RESEARCH: AN INTERNATIONAL QUARTERLY 633 (2011)

Looking Beyond Full Relationship Recognition for Couples Regardless of Sex: Abolition, Alternatives, and/or Functionalism, 28 JOURNAL OF LAW AND INEQUALITY 345 (2010)

Book Chapters

Sexual Orientation, in THE ENCYCLOPEDIA OF ETHICS (Ruth Chadwick ed., vol. 4, 2012)

Spousal Secrets, in SECRETS OF LAW (Austin Sarat et al. eds., Stanford University Press, 2012)

Seeing Sexual Orientation Through the Lens of Gender, in QUEER PHILOSOPHY: PRESENTATIONS OF THE SOCIETY OF LESBIAN AND GAY PHILOSOPHY (Raja Halwani ed., Rodopi forthcoming)

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PROSECUTORIAL OVERSIGHT: A NATIONAL DIALOGUE IN THE WAKE OF CONNICK V. THOMPSON

In February 2012, panelists from all aspects of the criminal justice system discussed the issue of prosecutorial misconduct in the wake of the U.S. Supreme Court's decision in *Connick v. Thompson*. From left, Shauna Friedman and Ross E. Firsenbaum, senior associates at WilmerHale; Ellen Yaroshefsky, professor of law and director, Jacob Burns Center for Ethics in the Practice of Law at Cardozo School of Law; Hon. Richard Buchter, New York Supreme Court; Sarah Jo Hamilton, Principal at Scalise & Hamilton, LLP; Hon. Elisa Koenderman, New York Supreme Court Judge; John Thompson, founder and director of Resurrection After Exoneration and Voices of Innocence; and Maddy deLone, executive director of the Innocence Project.



MARTIN STONE

Professor of Law

Legal Theory, Law and Humanities

B.A., Brandeis University

J.D., Yale University

B. Phil., Oxford University

Ph.D., Harvard University

Martin Stone is one of the nation's leading scholars of the philosophy of law. He has written widely on torts, Wittgenstein, formalism, and interpretation. In addition to his scholarly pursuits, Professor Stone is an accomplished pianist.

➤ RECENT PUBLICATIONS

Planning Positivism and Planning Natural Law, 25 CANADIAN JOURNAL OF LAW AND JURISPRUDENCE 219 (2012)

Anscombe on Expression of Intention: An Exegesis (with Richard Moran, Harvard University), in *ESSAYS ON ANSCOMBE'S INTENTION* (Anton Ford et al. eds., Harvard University Press 2011)

Legal Positivism as an Idea About Morality, 61 UNIVERSITY OF TORONTO LAW JOURNAL 313 (2011)



SUZANNE L. STONE

Professor of Law

University Professor of Jewish Law and Contemporary Civilization

Director, Center for Jewish Law and Contemporary Civilization

Law and Humanities, Jewish Law

B.A., 1974, Princeton University

J.D., 1978, Columbia University

Suzanne Stone writes and lectures on the intersection of Jewish thought, legal theory, and the humanities. Professor Stone is the co-editor-in-chief of *Diné Israel*, a peer review journal of Jewish law, co-edited with Tel Aviv Law School. She is also on the editorial boards of the *Jewish Quarterly Review* and of *Hebraic Political Studies*. She clerked for Judge John Minor Wisdom of the Fifth Circuit Court of Appeals.

➤ RECENT PUBLICATIONS

Book Chapters

The Jewish Law of War: The Turn to International Law and Ethics, in *JUST WARS, HOLY WARS, AND JIHAD* (Sohail Hashmi ed., Oxford University Press 2012)

Law Without Nation or Law Without State: The Case of Halakha, in *LAW WITHOUT NATIONS* (Austin Sarat et al. eds., Amherst Series in Law, Jurisprudence, and Social Thought 2010)



JULIE C. SUK

Professor of Law

Comparative Law, Gender and Law

A.B., 1997, Harvard University

J.D., 2003, Yale University

M.Sc., D.Phil., 2004, University of Oxford

Julie Suk is an eminent scholar of comparative equality law. Her research has developed a transnational perspective on the theory and practice of antidiscrimination law. She clerked for Judge Harry T. Edwards of the U.S. Court of Appeals for the D.C. Circuit.

➤ RECENT PUBLICATIONS

Articles

Preventive Health at Work: A Comparative Approach, 59 AMERICAN JOURNAL OF COMPARATIVE LAW 1089 (2011)

Gender Parity and State Legitimacy: From Public Office to Corporate Boards, 10 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW 449 (2012)

Are Gender Stereotypes Bad for Women? Rethinking Antidiscrimination Law and Work-Family Conflict, 110 COLUMBIA LAW REVIEW 1 (2010)

Book Chapters

New Approaches to Work-Family Balance and Gender Equality: Pension Reform and Antidiscrimination Law, in *EMPLOYMENT REGULATION AFTER THE DEMISE OF THE STANDARD EMPLOYMENT CONTRACT: THE NEED FOR INNOVATIONS IN REGULATORY DESIGN* (Harry Arthurs

& Katherine Stone eds., Russell Sage Publications forthcoming 2012)

Denying Experience: Holocaust Denial and the Free Speech Theory of the State, in *THE CONTENT AND CONTEXT OF HATE SPEECH* (Peter Molnar & Michael Herz eds., Cambridge University Press 2012)

The Moral and Legal Consequences of Wife-Selling in The Mayor of Casterbridge, in *SUBVERSION AND SYMPATHY: GENDER, LAW, AND THE BRITISH NOVEL* (Alison LaCroix & Martha Nussbaum eds., Oxford University Press forthcoming 2012)

Preventive Health at Work: A Comparative Approach, in *THE COMPARATIVE LAW & SOCIETY READER* (David S. Clark ed., Elgar forthcoming 2012)

Symposia/Invited Contributions

European Gender Quotas and the Work-Family Conflict, *MICHIGAN STATE UNIVERSITY LAW REVIEW* (forthcoming 2012)

From Antidiscrimination to Equality: Stereotypes and the Life-Cycle in the United States and Europe, 60 *AMERICAN JOURNAL OF COMPARATIVE LAW* 75 (2012)

Shorter Pieces

The Limits of Racial Solidarity, Room for Debate Blog, *THE NEW YORK TIMES*, September 21, 2011

From Interest Convergence to Solidarity, *COLUMBIA JOURNAL OF RACE AND THE LAW ONLINE SPECIAL FEATURE* (2012) (Symposium on Derrick Bell)

Featured Expert (An Interview/Conversation with Professor Suk), in *La discrimination en droit du travail comparé: mises en perspective américaines* (forthcoming 2012)

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PETER TILLERS

Professor of Law

Evidence

A.B., 1966, Yale College
J.D., 1969, LL.M., 1972, Harvard Law School

Peter Tillers' scholarship focuses on evidential inference and fact investigation in legal settings. He maintains that multiple methods of marshaling and analyzing evidence are important in trials, in pretrial investigation and informal fact discovery, and in other domains.

➤ RECENT PUBLICATIONS

Articles

Introduction, 11 *LAW, PROBABILITY, AND RISK* (special issue on artificial evidence and evidential inference law) (forthcoming 2012) (also guest editor)

The Structure and the Logic of Proof in Trials, 10 *LAW, PROBABILITY AND RISK* 1 (2011)

Trial by Mathematics—Reconsidered, 10 *LAW, PROBABILITY AND RISK* 167 (2011)

Bayes Wars Redivivus—An Exchange, 8 *INTERNATIONAL COMMENTARY ON EVIDENCE* 1 (2010)

Book Chapters

Are There Universal Principles or Forms of Evidential Inference? Of Inference Networks and Onto-Epistemology, in *EVIDENCE, INFERENCE AND ENQUIRY* (William Twining et al. eds., Oxford University Press/British Academy 2011)



RICHARD WEISBERG

Walter Floersheimer Professor of Constitutional Law

Constitutional Law, Law and Humanities, Human Rights Law

B.A., 1965, Brandeis University
Ph.D., 1970, Cornell University
J.D., 1974, Columbia University

Richard Weisberg is an internationally renowned scholar, litigator and professor. He was the founding director of the law school's Program on Holocaust/Human Rights Studies and the Floersheimer Center for Constitutional Democracy. Professor Weisberg is also a pioneer in the growing Law and Literature movement worldwide; his stagings of legal dilemmas in great fictional works have won notices from *The New York Times*, the *National Law Journal*, and *The New Yorker* magazine. Recently, he was sworn in as the White House appointee to the U.S. Commission on the Preservation of America's Heritage Abroad by Supreme Court Justice Stephen Breyer. In 2008, Professor Weisberg was awarded the French Legion of Honor by President Nicolas Sarkozy.

➤ RECENT PUBLICATIONS

Articles

In Defense of Flexiphobia, *CARDOZO LAW REVIEW* (forthcoming 2012)

Two Wrongs Almost Make a "Right," 2010 *CARDOZO LAW REVIEW DE NOVO* 345 (2010)

The First Amendment Degraded: Milkovich v. Lorain and a Continuing Sense of Loss on Its 20th Birthday, 62 SOUTH CAROLINA LAW REVIEW 157 (2010)

Book

RECHTSGESCHICHTEN (German translation of THE FAILURE OF THE WORD AND POETHICS) (Suhkamp forthcoming 2012) (preface by Bernhard Schlink, Cardozo Law)

Book Chapters

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➤ RECENT PUBLICATIONS

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➤ RECENT PUBLICATIONS

Discovery About Discovery: Sampling Practice and the Resolution of Discovery Disputes in an Age of Ever-Increasing Information (forthcoming 2012) (with Nick Landsman-Roos, Stanford Law School), available at http://works.bepress.com/charles_yablon/1

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➤ RECENT PUBLICATIONS

Articles

Legal Vices and Civic Virtue, 6 CRIMINAL LAW AND PHILOSOPHY (forthcoming 2012)

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➤ RECENT PUBLICATIONS

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➤ RECENT PUBLICATIONS

Featured Book

THE ORIGINS OF THE OWNERSHIP SOCIETY: HOW THE DEFINED CONTRIBUTION PARADIGM CHANGED AMERICA (Oxford University Press 2012)

Professor Zelinsky examines a fundamental reality that baby boomers face as they plan for their retirements, finance their children's educations, and provide for their families' medical expenses: America today is a defined contribution society. His book describes the defined contribution revolution, its causes, and its implications. For lawyers, the book provides useful insights into the network of individual accounts that are now central features of the U.S. income tax for retirement, medical and health

savings. For those concerned about public policy, the book provides useful guidance regarding our options in providing for the retirement of the mass numbers of baby boomers, and in preparing young Americans for the medical costs of their older years.

Review of *The Origins of the Ownership Society*

"This is an extraordinarily important, very well-written and thoroughly researched book. It is probably also the most insightful pension book of the decade. Zelinsky is exactly right when he says that there has been a paradigm shift from traditional defined benefit plans to defined contribution plans. Of special note, this book is technically stout: Zelinsky discusses all of the important ideas relating to pensions and cites virtually all of the key literature."

—Jonathan Barry Forman, Alfred P. Murrah Professor of Law, University of Oklahoma College of Law

Other Recent Publications:

Do Religious Tax Exemptions Entangle in Violation of the Establishment Clause? The Constitutionality of the Parsonage Allowance Exclusion and the Religious Exemptions of the Individual Health Care Mandate and the FICA and Self-Employment Taxes, 33 CARDOZO LAW REVIEW (forthcoming 2012)

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