
RECENT PUBLICATIONS

FIGURING OUT THE TAX: CONGRESS, TREASURY, AND THE DESIGN OF THE EARLY MODERN INCOME TAX. By Lawrence Zelenak. New York, N.Y.: Cambridge University Press. 2018. Pp. ix, 306. \$110.00. How did the American income tax turn out the way it has, in its oft-criticized, much-maligned form? In this meticulously researched book, Professor Lawrence Zelenak examines the early development of the U.S. income tax system. He dives into the history behind several of the most consequential — and in some cases, most controversial — features (or, arguably, errors) of our income tax system: the step-up in basis at death, the charitable deduction for unrealized appreciation, the marriage penalty and bonus, and more. The fascinating narrative recounts the inception of each of these errors as well as efforts to fix them, showing that efforts to reform loopholes (or, some might say, features) of the tax system tend to fail “if the federal government can afford to leave the error in the Internal Revenue Code” (p. 6). Though the topic of this book might at first seem obscure, anyone interested in thinking about tax policy or tracing the development of a complicated legislative scheme — or anyone who has ever looked at a tax casebook and wondered, “Why did they do that?!” — will have a solid basis for appreciating this timely and thoughtful work.

STORIES FROM TRAILBLAZING WOMEN LAWYERS: LIVES IN THE LAW. By Jill Norgren. New York, N.Y.: New York University Press. 2018. Pp. xiv, 287. \$30.00. Since the late nineteenth century, women in the United States have faced countless personal and professional hurdles in the quest to pursue legal careers of their choosing. *Stories from Trailblazing Women Lawyers* tells the story of those women who dared challenge the status quo. In 2005, the American Bar Association’s Commission on Women in the Profession called for an oral history project through which one hundred prominent senior women lawyers would be interviewed by their younger colleagues. The topics of these discussions spanned from stories about their childhoods to major cases they argued late in their careers. Professor Jill Norgren identified patterns in the oral histories and compiled summaries and takeaways in this book. The personal anecdotes included range from what initially drew former National Labor Relations Board Chair Betty Murphy to law school to how Barbara Aronstein Black became the first woman dean of an Ivy League law school. Despite the extensive strides women have made in the field, roadblocks to success still exist for women in the profession. This illuminating book provides stories about how far women have come while presenting a path forward for the next generation of women in the law.

MAKING HABEAS WORK: A LEGAL HISTORY. By Eric M. Freedman. New York, N.Y.: New York University Press. 2018. Pp. viii, 197. \$45.00. Much of the modern conversation surrounding habeas corpus inheres in formalities. The writ's contemporary recipe — a heavy helping of complex statutory language, coupled with dense judicial interpretation, laid atop an incompletely theorized foundation — makes for a virtually impenetrable, highly mechanized legal right. In *Making Habeas Work: A Legal History*, Professor Eric Freedman charts a new habeas path: one that goes both backward and forward. According to Freedman, in order to return habeas to its former glory, we need a broader, more functional understanding of its purpose. Drawing upon primary sources from the colonial and early national periods, Freedman uncovers a largely ignored history of habeas corpus: so-called “Functional Habeas Cases” (p. 15). Though these decisions lack the formal “habeas corpus” designation, Freedman argues that they contain all the ingredients necessary to be understood as pieces of the habeas canon. And when these decisions are added to our conventional habeas history, the writ takes on a more pragmatic figure. Armed with this broader understanding of habeas's past, Freedman argues that judges and scholars will be better equipped to chart its future.

BLOCKCHAIN AND THE LAW: THE RULE OF CODE. By Primavera De Filippi & Aaron Wright. Cambridge, Mass.: Harvard University Press. 2018. Pp. 300. \$35.00. The disintermediated and transnational nature of blockchain technology has given rise to what the authors call *lex cryptographica*, an autonomous system of regulation embedded directly into the technological system. The dual nature of blockchain technology is that it can both support and undermine existing laws and regulations. *Blockchain and the Law* explores this dichotomy, describing how blockchain-based systems and *lex cryptographica* create regulatory challenges that call into question the balance society should seek to strike between the rule of law and rule of code. The authors provide an overview of how blockchain technology works and explain how it can drive both significant advantages and new regulatory risks in payment systems, contractual arrangements, the trading of securities and derivatives, and information systems such as the government storage and transfer of public records. They argue that although blockchain technology decreases the use of intermediaries in specific transactions, governments can still regulate the intermediaries necessary to maintain blockchain-based networks and the people and miners who ultimately manage the blockchains and are motivated by economic incentives. Additionally, governments can explore the intersection of the rule of law and the rule of code and consider working with private actors to establish a self-executing, code-based regulatory system.

GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM. By Libby Adler. Durham, N.C.: Duke University Press. 2018. Pp. xi, 271. \$99.95. The LGBT movement has enjoyed some high-profile victories in recent years, including strengthening antidiscrimination laws and achieving nationwide marriage equality. In *Gay Priori*, however, Professor Libby Adler complicates this narrative. Inspired by critical legal studies and drawing on queer theory, she highlights the reforms the movement has not achieved — and, she argues, the critical goals it has neglected. Adler explains how and why prominent LGBT advocates and organizations have focused on a somewhat narrow set of reforms that tends to benefit the comparatively more privileged segments of the community. She draws attention to the most marginalized members of the community — including trans and gender-nonconforming people, homeless LGBT individuals, and queer people of color — who have been left behind by the movement’s focus on equal rights discourse. Adler calls for advocates to shift their priorities toward a broader (and largely redistributionist) range of reforms, including police practices, child support regulations, labor laws, and welfare policies. *Gay Priori* makes the case that this reconceptualization of LGBT legal objectives will help the movement pursue and realize change that will benefit the full LGBT community, including its members who need change the most.

NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD. By Samuel Moyn. Cambridge, Mass.: The Belknap Press of Harvard University Press. 2018. Pp. xii, 277. \$29.95. Following up on his influential work in *The Last Utopia*, Professor Samuel Moyn offers another “rewrite of the history of human rights” (p. xi), this time charting the shrinking ambitions of the human rights movement over the twentieth century. Moyn argues that “the spirit of human rights and the political enterprise with which people associate them has shifted from nationally framed egalitarian citizenship to a globally scaled subsistence minimum” (p. 6). The reason for this shift, in Moyn’s eyes, has been the decision by human rights activists and philosophers to focus their efforts on only those goals that are consistent with the prevailing neoliberal global economic order. The timescale of Moyn’s inquiry is ambitious, stretching from the French Jacobin state of the 1790s to the recent “ruckus” caused by the publication of Professor Thomas Piketty’s *Capital in the Twenty-First Century* (p. 207). Looking to the future, Moyn contends that “[t]here is no reason for human rights ideals to continue the accommodating relationship they have had with market fundamentalism and unequal outcomes” (p. 10). Rather, the elimination of inequality should reclaim its place as a major objective of those working to reform the current world economic order. The current aspirations of the human rights movement, in other words, are not enough.