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## RECENT PUBLICATIONS

**STEM CELL CENTURY: LAW AND POLICY FOR A BREAKTHROUGH TECHNOLOGY.** By Russell Korobkin with Stephen R. Munzer. New Haven, Conn.: Yale University Press. 2007. Pp. xiii, 322. \$29.95. Few medical endeavors can claim as many passionate supporters or as many fierce critics as can stem cell research. Although stem cell science offers the potential for significant medical breakthroughs, it also brings with it considerable moral dilemmas. In this new book, Professors Russell Korobkin and Stephen Munzer set out to convince readers that the benefits of stem cell science far outweigh the costs. In the process, they cover a remarkably broad swath of issues, including the scope of research patents, governmental funding, financial compensation of donors, therapeutic cloning, and regulatory shields against tort litigation. And although they clearly stand on the side of less regulation and more free-market development, the authors nonetheless argue for a default rule of no payment for human tissue donations, and for the rejection of samples when one of the parties involved no longer wishes to participate. Experts in the field may find opposing viewpoints inadequately addressed, but for readers untrained in the science of stem cell research, Professors Korobkin and Munzer's clear prose and straightforward explanations make the book an ideal introduction to this complex area.

**WEAK COURTS, STRONG RIGHTS: JUDICIAL REVIEW AND SOCIAL WELFARE RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW.** By Mark Tushnet. Princeton, N.J.: Princeton University Press. 2007. Pp. xvi, 272. \$29.95. Judicial review comes in two forms: the American, or "strong-form," system, in which courts can invalidate unconstitutional legislation and may enforce their judgments through executive branch power, and the "weak-form" system, in which courts lack the power to strike down legislation but can interpret statutes and weigh them against constitutional principles. In this thoughtful examination of constitutional systems, Professor Mark Tushnet brings comparative constitutional design to bear on judicial enforcement of positive constitutional rights. Courts cannot help but consider these positive rights because of their intersection with existing property, contract, and tort rights, regardless of the judicial review system within which they operate; but, Professor Tushnet argues, weak-form judicial review enables elected representatives to participate in the constitutional debate. Indeed, the South African experience has shown that weak-form review can enforce welfare rights without dictating budgetary priorities to the other branches. Professor Tushnet refrains from taking a position on whether judges should enforce social and economic rights, but makes a powerful case that it is possible for them to do so even under the weak-form model.

THE ORIGINS OF REASONABLE DOUBT: THEOLOGICAL ROOTS OF THE CRIMINAL TRIAL. By James Q. Whitman. New Haven, Conn.: Yale University Press. 2008. Pp. ix, 276. \$40.00. Interpreting and applying the phrase “reasonable doubt” poses a considerable challenge to legal scholars, judges, and jurors. This meticulous historical account traces the origins of the reasonable doubt standard through centuries of theological history — from premodern notions of judgment through medieval trial by ordeal and up to the development of modern Continental procedures and common law jury trials. Professor Whitman presents an older world that is far more concerned with the dangers of passing judgment than the need for factual certainties: in this world, jurors fearing eternal damnation for convicting a defendant were reluctant to pass judgment at all, even in cases of clear guilt. Professor Whitman contends that spiritual advisors developed the reasonable doubt standard to “comfort, coax, and prod anxious and reluctant Christians” to “overcome their squeamish qualms” (p. 206) and convict defendants. *The Origins of Reasonable Doubt* offers the surprising conclusion that the standard is difficult to understand today because, having become unmoored from its original purpose of appeasing fearful jurors and facilitating conviction, it has been misappropriated as a factual rule of proof designed to protect liberty and impede conviction.

WORST-CASE SCENARIOS. By Cass R. Sunstein. Cambridge, Mass.: Harvard University Press. 2007. Pp. 340. \$24.95. In this thoughtful take on how individuals and governments approach low-probability, high-risk “worst-case scenarios,” Professor Cass Sunstein provides a model that balances the extremes of paranoid overreaction and apathetic neglect. While its discussion is anchored in potential responses to the risks of climate change and terrorism, the book also deals with an array of disasters ranging from ozone layer depletion to avian flu and offers broad lessons about how and when societies are likely to respond to worst-case scenarios. Professor Sunstein challenges the coherence of the influential Precautionary Principle and proposes an alternative Catastrophic Harm Precautionary Principle, emphasizing consideration of both the scale and likelihood of harm. Although he uses cost-benefit analysis, Professor Sunstein recognizes that when the goal is well-being and willingness to pay is dependent upon wealth, such analysis may be insufficient. The book concludes by tackling the controversial question of how to value the future, arguing for a Principle of Intergenerational Neutrality that requires vigilant contemplation of the consequences of contemporary decisions for future generations. While Professor Sunstein offers no easy answers, he presents a framework for decisionmaking that is worth the consideration of everyday citizens and government leaders alike.