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## RECENT PUBLICATIONS

**THE DEATH OF THE AMERICAN TRIAL.** By Robert P. Burns. Chicago, Ill.: University of Chicago Press. 2009. Pp. 183. \$29.00. As the jury trial has become an endangered species within the American legal system, scholars and practitioners have sought to articulate the causes and significance of its decline. In *The Death of the American Trial*, Professor Robert Burns contributes insightfully to this discussion, appealing to the legal community and the citizenry at large to reconsider the importance of the trial to American civic vitality. Professor Burns begins by describing the jury trial as a dramatic event characterized by competing narratives working in tension with one another to “converge on the human truth of a situation” (p. 39). He next turns to the trial’s history as a tool both for reform and for the institutionalization of constitutional guarantees. Finally, Professor Burns details the potential causes and consequences of this landmark institution’s decline. In losing the jury trial, he argues, we will lose the ability to “tell [our] own stor[ies] publicly in a forum of power” (p. 113) and the valuable information that trials provide. This book, which focuses in part on the narrative aspects of the courtroom drama, is itself a compelling narrative of the rise, fall, endangerment, and continuing importance of the American jury trial.

**MAKING RIGHTS REAL: ACTIVISTS, BUREAUCRATS, AND THE CREATION OF THE LEGALISTIC STATE.** By Charles R. Epp. Chicago, Ill.: University of Chicago Press. 2010. Pp. viii, 358. \$24.00. In the 1970s and 1980s, a slew of activist groups, including the Civil Rights Movement more broadly, began using liability lawsuits in order to effect institutional reform. Successful liability lawsuits not only placed public and media pressure on bureaucracies, but also often resulted in court rulings that created internal law-based checks on administrative power, which in turn encapsulated certain rights in bureaucratic institutions. In this book, Professor Charles Epp details the phenomenon of liability lawsuits and the resulting legalistic state by focusing on three separate policy areas that utilized this approach to enact change — remedying workplace sexual harassment, improving playground safety, and combating policy brutality. He discusses the “ongoing tensions” between activists and reformists, who push for “greater bureaucratic fidelity to the norms of civil rights and safety,” and administrative professionals, who seek to sidestep the bureaucratic hurdles such rules and procedures can create (p. 29). This readable and thoughtful book provides an engaging overview of legalized accountability, and Professor Epp brings a fresh perspective to the desirability of such legal requirements, arguing that even within the administrative state many employees see these “red tape” procedures as a positive force for change and an expression of an increased commitment to individual dignity.

POPULATIONS, PUBLIC HEALTH, AND THE LAW. By Wendy E. Parmet. Washington, D.C.: Georgetown University Press. 2009. Pp. xii, 292. \$26.95. Crafting effective legal norms that protect public health presents complex challenges that require not only a clear assessment of the problems to be solved, but also critical thought about the methods employed to analyze those problems. In this wide-ranging work of interdisciplinary analysis, Professor Wendy Parmet suggests employing a “population-based legal analysis” (p. 2) that recognizes that legal issues of public health affect not only the individuals in particular litigation, but also vast sectors of the American — and even global — populace. Professor Parmet argues that the extensive focus of American law on individuals represents an “unrealistic atomism” (p. 56), insisting that the law should instead be “sensitive to the multiplicity of populations” (p. 273). She weaves this thread into an extensive discourse on the constitutional questions presented by public health law, considering how population-based analysis can both change and fit comfortably within our understandings of federalism, due process, and free speech. In addition to considering a range of legal issues, Professor Parmet tackles numerous current public health concerns, discussing the ways in which a focus on populations can affect debates on food safety, obesity, and pandemic preparation.

NEGOTIAUCTIONS: NEW DEALMAKING STRATEGIES FOR A COMPETITIVE MARKETPLACE. By Guhan Subramanian. New York, N.Y.: W.W. Norton & Co. 2010. Pp. xviii, 233. \$26.95. Professor Subramanian’s engaging book seeks to combine traditional negotiation and auction theory to provide practical insights for all stages of the form that most real-world dealmaking processes take — a middle ground he terms “negotiauctions.” The first half of the book surveys familiar aspects of negotiation and auction theory and lays out strategies for designing and participating in each. Real-world illustrations — from negotiations over TV contracts, to the TARP program, to the bidding process for baseball player Alex Rodriguez — ground the discussion and provide engaging context. The second part begins by showing that most dealmaking processes “bear only a vague resemblance to the pure models of auctions and negotiations that academics study and write about” (p. 124), and that most deals fall into the messy middle ground of “negotiauctions.” Negotiauctions present the opportunity to exert both “across-the-table” and “same-side-of-the-table” pressures, and Subramanian provides guidance on how and when to choose between these tactics, as well as specifics regarding various possible strategies for both process setters and process takers. The book concludes with a reminder of pesky “legal constraints” to keep in mind. By combining theoretical sophistication with practical illustrations and guidance, the book should appeal to, and be quite informative for, a wide range of audiences.

THE PEOPLE'S AGENTS AND THE BATTLE TO PROTECT THE AMERICAN PUBLIC. By Rena Steinzor & Sidney Shapiro. Chicago, Ill.: The University of Chicago Press. 2010. Pp. x, 269. \$45.00. Significant harms to American health and safety in recent years have arisen from the Food and Drug Administration's premature approval of the unsafe drug Vioxx in 1999 and the Consumer Product Safety Commission's inability to detect lead in Mattel toys in 2007. In their sharply critical new book, Professors Rena Steinzor and Sidney Shapiro place the responsibility for these and other failures on inadequate funding from Congress and stifling oversight by the White House and the courts. The authors direct particular ire at a succession of presidential administrations, which they believe have evinced disdain for bureaucrats and taken policymaking out of the hands of experts. Courts and the Office of Information and Regulatory Affairs should stop insisting on cost-benefit analysis, the authors urge, arguing that "[i]t is time for Felix Unger to stop harassing Oscar Madison and move out of the apartment" (p. 93). This indictment of the legal and political causes of regulatory failure makes a compelling case that, by adopting a series of administrative reforms, courts and the political branches could free federal agencies to solve problems which, the authors argue, only government is capable of addressing.

FIRST AVAILABLE CELL: DESEGREGATION OF THE TEXAS PRISON SYSTEM. By Chad R. Trulson & James W. Marquart. Austin, Tex.: University of Texas Press. 2009. Pp. xxii, 277. \$55.00. Fifty-six years ago, the Supreme Court's decision in *Brown v. Board of Education* struck down as unconstitutional the separate-but-equal doctrine, paving the way for the slow process of racial integration. In their new book, Professors Chad Trulson and James Marquart offer a detailed account of post-*Brown* racial integration in an underexplored context — the Texas prison system. Charting the history of living area and in-cell desegregation, *First Available Cell* uses the consequences of cross-racial inmate interaction to understand the implications of *Brown* for race relations outside the prison walls. Detailed accounts of post-*Brown* jurisprudence underscore the struggle to integrate the prison system and to give practical effect to a landmark Court case. The authors explain prison desegregation as the result of changes outside the prison system, changes that slowly influenced race relations in every aspect of prison life. Once a mirror of broader social trends, however, the Texas prison system of today has achieved a level of "race neutrality" still unseen in mainstream America (p. 222). By evaluating the success of desegregation in an uncharted context, the authors provide scholars and Americans in general with an original blueprint for understanding race relations and cultivating an integrated, cohesive, and egalitarian society.