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## RECENT PUBLICATIONS

**THE TRIALS OF ACADEME: THE NEW ERA OF CAMPUS LITIGATION.** By Amy Gajda. Cambridge, Mass.: Harvard University Press. 2009. Pp. x, 334. \$35.00. In this well-written new book, Professor Amy Gajda delves into the explosion of university-related litigation and questions why judges have moved away from their previous willingness to allow the academy to regulate itself. Gajda argues persuasively that this litigiousness creates a strange academic environment in which “[c]ollege administrators may . . . wish to check with counsel before assigning teaching packages” (p. 104). Of particular note is the incredible range of subjects touched on by campus litigation — most of which receive their own chapters in this work — including lofty subjects such as free speech, tort law, and privacy, but also more absurd claims seeking the regrading of papers or promissory estoppel actions to prevent expulsion. Gajda lays blame for this trend fairly evenly at the feet of litigants, legislators, and courts, decrying the ultimate outcome: a “trajectory of court decisions [that] . . . encourages and channels ever more campus controversies into court” (p. 109). While ultimately a work of retrospection and not a prescription for the future, this book is a useful primer on the legal challenges facing higher education.

**THE SOUL OF CREATIVITY: FORGING A MORAL RIGHTS LAW FOR THE UNITED STATES.** By Roberta Rosenthal Kwall. Stanford, Cal.: Stanford University Press. 2010. Pp. xviii, 247. \$24.95. American copyright law attempts to strike a balance between protecting author’s rights and preserving the public domain. In an insightful new book, Professor Roberta Rosenthal Kwall offers a new perspective to this ongoing conversation. Reacting to the traditional economic paradigm in which copyright law seeks to provide optimal incentives to promote creativity, Professor Kwall argues that the law “fails to afford authors, in an explicit fashion, comprehensive moral rights such as the right to have their works attributed to them or the right to have their works maintained and presented in a manner consistent with their artistic vision” (pp. 25–26). Choosing these rights — collectively called textual integrity — as her primary focus, Professor Kwall first compares and contrasts the protections afforded by foreign and American copyright law, especially the Visual Artists Rights Act (VARA). She then discusses three categories of works for which it is particularly challenging for authors to maintain textual integrity: works with low originality, works not written by a single known author, and celebrity “personas.” Professor Kwall concludes by advocating that VARA be modified to allow for broader attribution rights and more tailored integrity rights. This engaging book will undoubtedly encourage people to reconceptualize author’s rights in a more holistic fashion.

THE IMMIGRATION BATTLE IN AMERICAN COURTS. By Anna O. Law. New York, N.Y.: Cambridge University Press. 2010. Pp. xiii, 266. \$90.00. Over time, the federal court system and immigration law have evolved considerably in breadth and complexity. In this timely book, Professor Anna Law scrutinizes how the two have informed each other. Through the prism of immigration law, she explores how developments in the federal judiciary have led to the “rise of two courts” and a “sharpening division of labor” between a prestigious Supreme Court focused on policy over individual merits and error-correcting courts of appeals that serve as the true courts of last resort (p. 54). Drawing on interviews with sitting judges, the developmental history of the courts, and analysis of the modes and use of legal reasoning, Professor Law employs both an expertise in political science and a robust understanding of legal analysis to illuminate the impact these extrajudicial institutional factors have on the ultimate merits decision of a case. By tracing the judicial response to the recent explosion in immigration appeals, Professor Law sketches a divided federal court system where the de facto final oversight of the courts of appeals render them more sympathetic to the facts of a case than the policy-driven Supreme Court. As Professor Law notes, these institutional effects have implications far beyond the confines of immigration law and merit consideration by any student of the courts.

THE LANGUAGE OF LAW AND THE FOUNDATIONS OF AMERICAN CONSTITUTIONALISM. By Gary L. McDowell. New York, N.Y.: Cambridge University Press. 2010. Pp. xvi, 409. \$99.00. For most of American history, constitutional interpretation involved a search for the proper meaning of the constitutional text in light of the Framers’ original intentions. Since the end of the nineteenth century, however, there has been a shift away from the text and intention as the source of constitutional meaning, and toward “an evolutionary interpretive approach” that emphasizes judges’ moral intuitions over the Constitution’s original meaning. In his new book, Professor Gary L. McDowell vigorously defends originalism, arguing that adherence to the text of the “Founders’ Constitution” is the only legitimate mode of interpretation. Professor McDowell makes an impassioned plea for a return to original intention — what he calls “the most sound approach to judicial interpretation under our constitution of enumerated and limited powers and liberties” (p. 8). Drawing on hundreds of years of history and political philosophy, he traces originalism from its roots in the common law and modern liberal thought, through the Founding Era, and then through the constitutional jurisprudence of Chief Justice John Marshall and Justice Story. Professor McDowell offers a compelling account of why “permanence of constitutional meaning” is the only thing “that stands between the people and arbitrary, capricious, and unjust government” (p. 378).