
RECENT PUBLICATIONS

WELL-BEING AND FAIR DISTRIBUTION: BEYOND COST-BENEFIT ANALYSIS. By Matthew D. Adler. New York, N.Y.: Oxford University Press. 2012. Pp. xx, 635. \$85.00. Ever since President Reagan made cost-benefit analysis (CBA) the centerpiece of his centralized regulatory review process, CBA has been the tool of choice for welfarists seeking to maximize human well-being through public policy choices. Despite its prominence, however, some scholars have sharply criticized CBA for failing to take into account fairness and the distribution of costs and benefits. In *Well-Being and Fair Distribution*, Professor Matthew Adler develops a compelling alternative to CBA — the Social Welfare Function (SWF) — which expands upon and refines the welfarist framework to incorporate fairness and distributional concerns. In an impressive feat of interdisciplinary scholarship, Professor Adler begins by situating his argument within moral philosophy, then lays out a generic welfarist decisionmaking architecture, specifies his preferred SWF formulation, argues that SWF should be preferred to all other welfarist analyses, and considers ways to extend SWF to account for intertemporality and personal responsibility. The result is a creative and commanding (if technical) reconstitution of welfarist policy analysis that should give practitioners a useful new tool and academics a fresh perspective on an old debate.

THE INSANITY OFFENSE: HOW AMERICA'S FAILURE TO TREAT THE SERIOUSLY MENTALLY ILL ENDANGERS ITS CITIZENS. By E. Fuller Torrey. New York, N.Y.: W.W. Norton & Co. 2012. Pp. xvi, 284. \$16.95. America has struggled to develop a sensible and humane policy for treating people with severe mental illnesses. In *The Insanity Offense*, Dr. E. Fuller Torrey describes the failures of America's post-World War II policies and the two principal causes of those failures: deinstitutionalization and the legal profession. Fewer mental hospitals and treatment centers, combined with legal regimes that make it difficult to treat patients without their consent, have resulted in a large population of people who are mentally ill but cannot get treatment. At the same time, Dr. Torrey shows how families, friends, and communities lack the tools they need to treat this vulnerable and occasionally dangerous group. While civil libertarians may be suspicious of Dr. Torrey's suggested solutions — such as increased use of assisted outpatient treatment programs that require involuntary commitment of patients who refuse to take their medications — even the most hardened reader will be moved by the vivid accounts of the people affected by these policies. By connecting these personal stories with broader data, *The Insanity Offense* provides a compelling perspective on one of the most complex problems facing America today.

THE RIGHTS OF INDIANS AND TRIBES. By Stephen L. Pevar. New York, N.Y.: Oxford University Press. 2012. Pp. viii, 522. \$25.00. 4th Edition. In this updated edition of his landmark 1983 work, Stephen L. Pevar continues his decades-long effort to distill the intricacies of Indian law into an easy-to-understand format that will help Indian tribes vindicate their rights and their sovereignty. Mr. Pevar concisely explains important concepts in Indian law through a question-and-answer format, drawing on history, case law, legal scholarship, and sociology to explain not only what the state of Indian law is, but also why it has come to be that way, taking into account major recent developments in Indian law. While Mr. Pevar is proud of the progress Indian civil rights activists have made since the “termination era” of 1953 to 1968, which he describes in scathing terms, he also expresses fear for the future of Indian rights and sovereignty, which he views as threatened by a conservative Supreme Court and aggressive federal legislators (pp. 11–15). The book contains a number of useful maps, lists, and charts, as well as the texts of major Indian law statutes and over 130 pages of helpful footnotes. Mr. Pevar’s work will be of interest to legal scholars, historians, Indian law litigators, and Indian rights activists alike.

THE ETHICS OF CAPITAL PUNISHMENT: A PHILOSOPHICAL INVESTIGATION OF EVIL AND ITS CONSEQUENCES. By Matthew H. Kramer. New York, N.Y.: Oxford University Press. 2011. Pp. xii, 353. \$100.00. In this bold philosophical inquiry, Professor Matthew Kramer develops a justification for the death penalty as a *sui generis* concept: the “purgative rationale.” After grappling with and rebutting the standard justifications for capital punishment — deterrence, retributivism, incapacitation, and denunciation — Professor Kramer develops the purgative rationale, arguing that “a community is tainted — in other words, its moral integrity is lessened — by the continuing existence of anyone who has perpetrated some especially hideous crimes” (pp. 186–87). The removal of such a taint, he contends, therefore requires the execution of the person responsible. Moving beyond the purgative rationale’s Biblical heritage, Professor Kramer teases out the nature of evil and employs vivid examples to construct a coherent theoretical framework for capital punishment, including which sorts of crimes demand execution. Professor Kramer concludes by addressing problems of administration, arguing that liberal democracies must be more rigorous, both procedurally and conceptually, if they wish to retain the death penalty. The book’s provocative thesis, connecting moral philosophy with legal scholarship, will surely occupy a position of importance in ongoing debates within criminal law.