RECENT PUBLICATIONS

THE CONTENT AND CONTEXT OF HATE SPEECH: RETHINKING REGULATION AND RESPONSES. Edited by Michael Herz and Peter Molnar. New York, N.Y.: Cambridge University Press. 2012. Pp. xxiv, 544. $44.99. The regulation of hate speech raises controversial questions about the limits of government authority over public discourse. For now, at least, Europe appears firmly committed to prohibiting hate speech while the United States appears equally committed to a more libertarian stance. *The Content and Context of Hate Speech*, edited by Professor Michael Herz and Peter Molnar, is a timely new collection that explores these issues. Contributors include such leading practitioners as Floyd Abrams and Professors Ronald Dworkin, Jamal Greene, Frederick Schauer, Julie Suk, and Jeremy Waldron. The book's emphasis is comparative, with the authors drawing on examples from across the world. The collection explores not just broad issues related to hate speech laws but also the nuances, such as how hate speech should be defined. The clash among the various contributors over these issues is both lively and illuminating.

FAILING LAW SCHOOLS. By Brian Z. Tamanaha. Chicago, Ill.: University of Chicago Press. 2012. Pp. xvi, 235. $25.00. American legal education is in crisis. This is the message of Professor Brian Z. Tamanaha's provocative new book, which provides an insider's perspective on the underpinnings of a failing system — a system that churns out graduates with record levels of debt (close to $100,000 on average) even as their employment prospects and starting salaries fail to keep pace. The crux of the problem, Professor Tamanaha argues, is that "law schools are run *for* law professors" (p. 8). Law school accreditation standards, which require a three-year program and a tenure-based full-time faculty, serve the interests of professors at the expense of students, many of whom would be better off in more affordable two-year programs. As law professors enjoy rising salaries and historically low teaching loads, administrators seek new ways to boost tuition dollars (LL.M. programs, for instance, are "the new growth area for harvesting additional bodies," p. 64). In pursuit of the almighty *U.S. News & World Report* ranking, law schools have diverted scholarship money from need-based to merit-based recipients, inflated employment statistics, and even reported false LSAT scores. Professor Tamanaha offers several solutions to the current crisis, including abandoning uniform accreditation standards and tightening federal loan eligibility requirements. *Failing Law Schools* is part polemic, part rigorous exposé, and part mea culpa. While Professor Tamanaha's account will undoubtedly gratify some and infuriate others, it is required reading for anyone interested in the current state of American legal education.

WHEN THE STATE SPEAKS, WHAT SHOULD IT SAY?: HOW DEMOCRACIES CAN PROTECT EXPRESSION AND PROMOTE EQUALITY. By Corey Brettschneider. Princeton, N.J.: Princeton University Press. 2012. Pp. xi, 216. $35.00. Free speech scholars note a growing gap between speech regulations in the United States and in Europe. While European democracies criminalize hate speech as a threat to democratic egalitarianism, the United States has clung to a fiercely neutralist approach, protecting free speech rights regardless of the speaker's viewpoint. Advocates of neutralism criticize prohibitionists for trampling individual liberties; prohibitionists decry neutralists for protecting hateful speech inimical to their liberal political ideals. In a timely new book, Professor Corey Brettschneider suggests a third alternative: while continuing to uphold protections for individual hate speech in their regulatory capacities, governments in their expressive capacities should engage in a process of "democratic persuasion" that levies the state's pedagogical, symbolic, and spending powers to promote values of equality and tolerance (pp. 4–5). Avoiding the paralysis of the liberal democracy too committed to neutrality to resist its own ideological enemies, democratic persuasion aims at a political ideal of "value democracy": a political order that respects individual freedoms while taking a firm expressive stand on its preferred social values (pp. 24–25). Professor Brettschneider's book tackles a debate at the forefront of contemporary free speech scholarship with a clarity that should make it accessible to readers outside the legal academy.

WHEN STATES GO BROKE: THE ORIGINS, CONTEXT, AND SOLUTIONS FOR THE AMERICAN STATES IN FISCAL CRISIS. Edited by Peter Conti-Brown and David A. Skeel, Jr. New York, N.Y.: Cambridge University Press. 2012. Pp. xiii, 325. $99.00. Following the recent financial crisis and an unprecedented downgrade of U.S. credit, the country's focus has justifiably centered on national fiscal policy. What has flown under the radar, however, is the fact that the American states, independently participating as debtors in their governmental capacities, are in extraordinary debt. *When States Go Broke* is a collection of analyses that provides insight into the origins of the state-level fiscal crisis, offers a contextual backdrop against which to compare it, and describes a range of possible tools that states can use to alleviate it. The book pays particular attention to mechanisms that would allow states to restructure their debt in a manner similar to restructuring in bankruptcy, with the book's authors drawing on a range of political, legal, and financial expertise to inform those analyses. It remains to be seen whether the worst of the current financial crisis is over, but so long as states maintain their independent capacity to borrow money in the American federalist structure, state fiscal crises will inevitably recur. When they do, this collection should be a useful tool for academics, policymakers, and citizens alike.

CONSTITUTING ECONOMIC AND SOCIAL RIGHTS. By Katharine G. Young. Oxford, U.K.: Oxford University Press. 2012. Pp. xix, 355. $85.00. In *Constituting Economic and Social Rights*, Professor Katharine G. Young tackles a broad and compelling question: how can a society make human rights effective within a legal system? Recognizing that rights are interdependent and change over time, Professor Young argues that process is key. To constitute rights from social understandings rather than from legal mandates, her model reimagines traditional roles in the creation and enforcement of rights: private actors must build social movements to establish democratic bases for legal protections; all members of society must participate in processes of justification and consensus-building to interpret rights; and courts must be catalytic actors that engage in dialogue with other governmental bodies. Adopting an international and comparative law approach, Professor Young relies heavily on illustrative case studies involving institutions from nations ranging from Germany to India, Colombia to Ghana. She offers a particularly thorough analysis of post-apartheid South Africa, where the constitution explicitly guarantees rights to housing, health care, food, water, social security, and education, and where courts have expansive powers to grant equitable remedies. Urging increased transnational discourse and attention to international sources of law, Professor Young provides a powerful call to move from ideation to reality.

NO ESTABLISHMENT OF RELIGION: AMERICA'S ORIGINAL CONTRIBUTION TO RELIGIOUS LIBERTY. Edited by T. Jeremy Gunn and John Witte, Jr. New York, N.Y.: Oxford University Press. 2012. Pp. x, 415. $35.00. The First Amendment announces a succinct rule: "Congress shall make no law respecting an establishment of religion . . . ." Despite its brevity, the Establishment Clause is still ambiguous on its face. Many people turn to history to fill in the gaps, but all too often this search amounts to little more than selectively choosing favorable interpretations of competing historical accounts. *No Establishment of Religion* is a step forward in understanding the complex history of the Establishment Clause. This engaging collection of articles from a diverse group of authors moves the conversation beyond cherry-picking quotations from America's favorite Founding Fathers. Instead, each essay delves into the Clause's convoluted history, describing the establishments in the colonial period, the drafting and ratification of the First Amendment, the gradual disestablishment at the state level after the Founding, political disagreements over what constitutes an establishment, initial judicial forays into the topic, and modern fights between separationists and accomodationists. *No Establishment of Religion* introduces much-needed methodological rigor into modern debates on the Establishment Clause.

THE MORAL TARGET: AIMING AT RIGHT CONDUCT IN WAR AND OTHER CONFLICTS. By F.M. Kamm. New York, N.Y.: Oxford University Press. 2012. Pp. xiv, 260. $35.00. Although the moral philosophy of war is a not infrequent topic of discussion among modern philosophers, Professor F.M. Kamm manages to provide a unique and intellectually rich series of essays in *The Moral Target* that help clarify important moral issues in the context of war. *The Moral Target* comprises ten distinct essays, four of which have not been previously published. The essays roughly follow the chronology of warfare, first dealing with moral issues in the lead-up to war, then discussing issues that arise during and after war, and finally grappling with moral issues that arise outside the context of traditional war, such as terrorism and nuclear deterrence. Professor Kamm does not deal exclusively in the abstract netherworld of many philosophers. Instead, her writing engages the reader by dealing with real-world moral problems and related hypotheticals. For example, in her ninth essay, *Self-Defense, Resistance, and Suicide: The Taliban Women*, Professor Kamm examines reports that many women ruled by the Taliban have killed themselves under the oppressive control of Taliban men, and then grapples with the moral question of whether these women could morally have killed their repressors. By tying her analysis to such practical applications, Professor Kamm makes her writing both important for contemporary moral philosophers and accessible to the novice.

HUMAN CLONING: FOUR FALLACIES AND THEIR LEGAL CONSEQUENCES. By Kerry Lynn Macintosh. New York, N.Y.: Cambridge University Press. 2013. Pp. xvi, 307. $99.00. The prospect of human cloning has provoked a great deal of popular and legislative debate. In this succinct volume, Professor Kerry Lynn Macintosh argues that much of the debate over human cloning has rested on four related fallacies: the fallacy of identity, which assumes that a cloned person would be an identical copy of his or her donor parent; the artifact fallacy, which treats cloned people as manufactured products rather than as human individuals; the impostor fallacy, which assumes that cloned people will steal the lives and identities of their donor parents; and the resurrection fallacy, which treats a cloned person as a reincarnation of his or her donor parent. Underlying each of these fallacies, Professor Macintosh argues, is the deeper myth of psychological essentialism, which assumes that people and things have an intrinsic nature or essence. A donor's essence can be reproduced, according to the identity, impostor, and resurrection fallacies, or the process of cloning can rob the cloned person of his or her essential humanity, under the logic of the artifact fallacy. Professor Macintosh ably summarizes the current state of cloning technology and draws on an abundance of sources to illustrate and dispel these four myths.

AUTHORITARIAN RULE OF LAW: LEGISLATION, DISCOURSE AND LEGITIMACY IN SINGAPORE. By Jothie Rajah. New York, N.Y.: Cambridge University Press. 2012. Pp. xviii, 343. $29.99. Is political liberalism the inevitable result of democracy and the rule of law? In this detailed and thought-provoking volume, Professor Jothie Rajah tells the story of "the Singapore state's reconfiguration of the profoundly liberal concept of the 'rule of law' into an illiberal 'rule by law' through the state's manipulation of legislation and public discourse" (p. 267). Through case studies of notorious authoritarian statutes, Professor Rajah describes how Singapore maintains a broad public sense of legitimacy while consolidating power in a single-party regime. Employing tools of critical theory, Professor Rajah explains that Singapore "assumes an overtly pedagogical stance towards a population it discursively infantalises" (p. 63). A state-crafted national narrative of exceptionalism and perpetual national vulnerability, combined with economic liberalism and a strict adherence to procedure, preserve Singapore's repeated claims of adherence to the rule of law as it sharply curbs civil and political rights and dispenses corporal punishment. This authoritarian rule of law reaches particular relevance as it becomes a template for other nations seeking to achieve the same legitimacy without adopting the substance of Western liberal values.

NEW FRONTIERS IN THE PHILOSOPHY OF INTELLECTUAL PROPERTY. Edited by Annabelle Lever. New York, N.Y.: Cambridge University Press. 2012. Pp. xvi, 342. $120.00. The future of intellectual property rights will have major implications for medicine, music, and the broader economy. *New Frontiers in the Philosophy of Intellectual Property* is an impressive collection of essays from professors, lecturers, and researchers from around the world. As they consider various aspects of the philosophy of intellectual property, these authors reflect on the intersection of morality and legality. The book begins with two essays discussing whether autonomy or distributive justice may serve as justifications for intellectual property rights. After a consideration of the use of prizes as an alternative to patents, several authors question aspects of intellectual property from utilitarian and deontological perspectives. Two authors then consider copyright law, with one essay examining the implications of unauthorized publication while another relies on Kant to connect copyright to an ethics of communication. The book concludes with two chapters considering the morality of illegal file sharing and downloading, with particular attention paid to the unique attributes of the music market and the social significance of music itself. With writings accessible to a larger audience, *New Frontiers in the Philosophy of Intellectual Property* highlights many contemporary debates in the field of intellectual property in a nuanced and thoughtful manner.

MORE THAN FREEDOM: FIGHTING FOR BLACK CITIZENSHIP IN A WHITE REPUBLIC, 1829–1889. By Stephen Kantrowitz. New York, N.Y.: Penguin Press. 2012. Pp. 514. $36.00. In this engrossing historical work, Professor Stephen Kantrowitz traces the efforts of black and white activists in the Greater Boston area to promote black equality over the course of the nineteenth century. By painstakingly examining a range of written sources, Professor Kantrowitz brings to life the personal experiences, motivations, and views of lesser-known activists such as African American journalist William Cooper Nell and former slaves Lewis and Harriet Hayden, as well as some more well-known individuals like Charles Sumner. The book asserts that while abolition was certainly a goal of these activists, far more important to them was the establishment of "citizenship of the heart" (p. 6) — not just freedom from slavery or formal legal equality, but rather a warm welcome into all aspects of American life. The book's descriptions of the bitter disappointments of the postwar period provide a powerful implicit critique of the ability of the law to respond to entrenched racism. Professor Kantrowitz's book will be of particular interest to historians and historically oriented scholars of civil rights law.

EXECUTING DEMOCRACY, VOLUME TWO: CAPITAL PUNISHMENT & THE MAKING OF AMERICA, 1835–1843. By Stephen John Hartnett. East Lansing, Mich.: Michigan State University Press. 2012. Pp. xxiv, 342. $59.95. Debates over capital punishment, it is sometimes said, offer a window into larger questions about the relationships between law and morality and between the state and its citizens. In Volume Two of *Executing Democracy*, Professor Stephen John Hartnett further develops his study of the death penalty's role in American society through an examination of disputes over capital punishment in the antebellum United States. The new volume focuses on the public debates between pro–death penalty Calvinist minister George B. Cheever and celebrated opponent of capital punishment John L. O'Sullivan. Though these debates focused on the morality of capital punishment, they quickly became a *cause célèbre* that showcased the talents of many prominent intellectuals and foreshadowed the looming confrontation over slavery. Through a historical account of the debates and the post–Second Great Awakening philosophies from which they arose, Professor Hartnett tracks the development of rhetoric in the antebellum United States and its relationship to pathologies of violence. Collectively, the two volumes of Professor Hartnett's work shed light on the complex relationship between law, culture, and argumentation. Professor Hartnett's latest work is an elegantly written and meticulously researched account of a gripping, yet oft-overlooked, episode in American history that holds important lessons about the role of rhetoric and morality in the U.S. legal system.

THE TREASON TRIAL OF AARON BURR: LAW, POLITICS, AND THE CHARACTER WARS OF THE NEW NATION. By R. Kent Newmyer. New York, N.Y.: Cambridge University Press. 2012. Pp. xiv, 226. $28.99. The trial of Aaron Burr for treason is among American history's most prominent trials. The high-profile cast of characters involved, including President Jefferson, former Vice President Burr, and Chief Justice Marshall, made the trial especially dramatic and consequential for the new nation. Professor R. Kent Newmyer's narrative of the trial frames the exciting story from a distinctly legal perspective, shining a spotlight on the lawyers and the legal issues that drove its ultimate outcome. Making considerable use of the trial record and the contemporaneous observations of trial participants and observers, Professor Newmyer illuminates understandings of the definition of treason and of the constitutional questions of criminal law that developed out of the proceedings. Further, *The Treason Trial of Aaron Burr* offers insightful character studies of the major players in the controversy, even devoting an entire chapter to an examination of the conduct of Chief Justice Marshall throughout the trial. This engaging and readable work offers a new look at a major historical moment in an early period of the development of the U.S. legal system, and in doing so offers a fresh perspective on a much-studied subject.

LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT. Edited by Leslie C. Levin & Lynn Mather. Chicago, Ill.: University of Chicago Press. 2012. Pp. xi, 386. $39.00. Though law schools and bar associations place heavy emphasis on ethical rules of professional responsibility, discussions of those rules are often divorced from the context of lawyers' daily decisionmaking. In *Lawyers in Practice*, Professors Leslie C. Levin and Lynn Mather collect an interdisciplinary array of essays written by scholars who reach beyond academia to consider what influences attorneys as they apply professional ethics and legal doctrine in day-to-day legal practice. Covering wide-ranging practice areas like family and immigration law, personal injury law, corporate specialties, criminal law, and public interest lawyering, these essays present empirical research and real-world examples to demonstrate how lawyers in each area choose to resolve ethical dilemmas. Because different areas of legal practice have "[their] own particular norms and challenges" (p. 3), lawyers' decisionmaking methods vary from setting to setting in ways that ethical rules alone do not capture. In this thorough book, Professors Levin and Mather, along with the book's contributors, offer a persuasive case for situating and analyzing legal ethics and rules of professional responsibility in the specific contexts in which lawyers apply them.