
RECENT PUBLICATIONS

CITY BOUND: HOW STATES STIFLE URBAN INNOVATION. By Gerald E. Frug & David J. Barron. Ithaca, N.Y.: Cornell University Press. 2008. Pp. xvii, 260. \$35.00. It is conventional wisdom that democratic governments are responsive to pressures from their citizens. However, in *City Bound*, an exciting exploration of metropolitan government, Professors Gerald Frug and David Barron emphasize that “local government law” — the state legal structures that create and empower local governments — influences the policies and actions of city government at least as much as a city’s socioeconomic and democratic forces. The authors emphasize that there are many different conceptions of what a city should look like and the types of policies it should pursue, and that local government law makes it significantly easier for city governments to advance certain agendas rather than others. Focusing on four potential conceptions of cities, Professors Frug and Barron describe how local government law makes it far easier for cities to pursue a global or tourist city agenda than a middle class or regional city agenda. They argue that much of local government law is based on a mistrust of local decisionmaking. In order to ensure the continued vibrancy of American cities, we must fundamentally rethink local government law to allow cities to take the lead in planning their own futures.

THE COMMON LAW IN COLONIAL AMERICA, VOLUME I: THE CHESAPEAKE AND NEW ENGLAND, 1607–1660. By William E. Nelson. New York: Oxford University Press. 2008. Pp. ix, 198. \$35.00. In this, the first of four studies of the early legal culture of the American colonies, Professor William Nelson proposes to supplement the traditional focus on common law reception with comparisons among the colonies’ distinct legal systems. Professor Nelson emphasizes that the different people who founded each of the colonies shaped the legal systems that they created. Virginia’s economy and the profit-seeking motives of its early settlers produced a hierarchical legal system aimed at encouraging investment and extracting labor from servants. Maryland’s Catholic founders adopted the common law quickly in order encourage religious tolerance. New England colonists’ attempt to create a “Puritan utopia” (p. 49) created a less coercive set of laws intended to restrain the discretion of magistrates and protect local autonomy. These diverse early legal regimes gradually converged based on rule-of-law values, and despite some persistent differences, by 1660 the New England and Chesapeake colonies “shared a common commitment to govern under the rule of law and to extract governing law from their English legal heritage” (p. 129). Professor Nelson’s study is a thoroughly researched and innovative approach to an important period in American legal history.

THE CRIME OF REASON: AND THE CLOSING OF THE SCIENTIFIC MIND. By Robert B. Laughlin. New York, N.Y.: Basic Books. 2008. Pp. 186. \$25.95. The skyrocketing acceptance of knowledge as an economically valuable currency — as demonstrated by the strengthening of and increased emphasis on intellectual property rights in the modern world — suggests that the Information Age has truly arrived. Yet Professor Robert Laughlin, a Nobel-laureate physicist, calls the intellectual property bluff in this surprisingly light-hearted essay on the dangers of barricading valuable knowledge behind various forms of protection, both legal and otherwise. Using economics to connect kitchen knives to nuclear secrets and car salesmen, Professor Laughlin describes society's knowledge predicament and hypothesizes on its long-term effects. That predicament, he explains, includes a "legitimacy crisis" (p. 68) among rising generations who freely disregard intellectual property laws, and a thicket of patent owners waiting to stifle those who actually invent useful things. Although Professor Laughlin's vision of a lunar "patent-free zone" (p. 148) is unlikely to occur anytime soon, his tendency toward hyperbole makes more palatable his underlying, more serious message: today's decisions to hide knowledge have troubling implications, and society must either shoulder the cost and inconvenience of changing course now, or suffer more serious consequences in the future.

JUDGING RUSSIA: CONSTITUTIONAL COURT IN RUSSIAN POLITICS, 1990–2006. By Alexei Trochev. New York, N.Y.: Cambridge University Press. 2008. Pp. xii, 371. \$90.00. In *Judging Russia*, Professor Alexei Trochev offers the first comprehensive study of the emerging role of the Russian Constitutional Court and the political factors that drove both its creation and its gradually increasing influence. *Judging Russia* compares the successes and failures of the Committee on Constitutional Supervision (1990–1991), the first Russian Constitutional Court (suspended in 1993 by then-President Yeltsin), and the second Russian Constitutional Court (1995–2006), in establishing judicial review over the government and bureaucracy. By examining the role of these bodies in background political struggles, Professor Trochev sheds light on puzzles unexplained by traditional theories of judicial development. For instance, despite creeping authoritarianism under former President Putin, the Court has enjoyed the support of government, due in part to its pro-presidential positions on separation of powers issues. Although the Court has markedly increased its jurisdiction and powers, its continuing difficulty in mandating compliance, especially by lower courts and law enforcement agencies, has caused decreasing public confidence in the Court, a trend Professor Trochev believes is reversible with public education on the rule of law.

THE PUBLIC DOMAIN: ENCLOSING THE COMMONS OF THE MIND. By James Boyle. New Haven, Conn.: Yale University Press. 2008. Pp. xvi, 315. \$28.50. *The Public Domain* is highly accessible — both because its style and content assume no background knowledge and because it is freely available online under a Creative Commons license. Free access follows the book's main message that contemporary rules governing ideas are too protective and subvert "both the market and democracy" (p. 8). Professor James Boyle divides the realm of ideas into two types: controlled ideas and free ideas, or from a legal standpoint, intellectual property and the public domain. Using engaging case studies, illustrations, and analyses, Professor Boyle discusses how intellectual property law can both encourage and stifle creativity. He examines legal protections of music and other content on the Internet; explores the "mashup" journey from religious hymns to rap songs; and considers how copyright and patent categories have been "stretched" to accommodate software and biotechnology (p. 177). He stresses the need to base intellectual property policies on empirical evidence, a commonsense suggestion that has so far not been heeded in practice. In the book's conclusion, Professor Boyle emphasizes that those who would relax intellectual property protections have much to learn from environmentalism: just as environmentalism was galvanized by the central concept of the environment, so the preservation of free information requires awareness of and deliberation about the unifying concept of the public domain.

SPEECH OUT OF DOORS: PRESERVING FIRST AMENDMENT LIBERTIES IN PUBLIC PLACES. By Timothy Zick. New York, N.Y.: Cambridge University Press. 2009. Pp. xvi, 344. \$29.99. In this multidisciplinary examination of the past, present, and future of public expression, Professor Timothy Zick "identifie[s], describe[s], and examine[s]" different kinds of places "with reference to the manner in which speech and spatiality intersect" (p. 21). He provides a detailed study of "expressive topography" (p. 25), examining the traditional public fora, contested spaces like the lunch counters of the 1960s and abortion clinics of the 1990s, repressive tactics, campus speech, and the impact of the internet and surveillance on public speech. Professor Zick acknowledges the shift in the locus of discourse from the traditional public fora that are his focus to the growing Internet domain, but emphasizes the great potential for chilling speech in the new networked public spaces (pp. 307–10). He argues that these places can never really replace the expressive impact of public demonstration. In the end, he asserts, it is ultimately the job of citizens themselves to preserve "the public space in which First Amendment liberties may be exercised" (p. 5).

THE THEORY AND PRACTICE OF STATUTORY INTERPRETATION. By Frank B. Cross. Stanford, Cal.: Stanford University Press. 2009. Pp. x, 233. \$50.00. Although it is not the most glamorous legal topic, statutory interpretation dominates the work of judging. In *The Theory and Practice of Statutory Interpretation*, Professor Frank Cross offers a comprehensive theoretical analysis of this important field, with chapters highlighting four different approaches: textualism, legislative history, canons of interpretation, and pragmatism. But Professor Cross's primary contribution is his empirical research, categorizing over 120 Supreme Court cases involving statutory interpretation according to these four methods. The results are "roughly consistent with expectations and the justices' own pronouncements" — Justices Scalia and Thomas most often rely on textualism, whereas Justices Breyer and Stevens are the most likely to apply legislative intent or pragmatism (p. 149). Professor Cross also uses the data to determine whether certain statutory interpretation methods better constrain ideological voting. While textualism is typically associated with conservatives, Professor Cross finds the method "ideologically manipulable and incapable of constraining preferences" (p. 166), with liberals proving equally capable of reaching liberal results while claiming to adhere to the text. Professor Cross provides a succinct and readable overview of interpretive theories. And while his empirical conclusions will not surprise many readers, they undermine the notion that relying on any particular method of interpretation can constrain the personal preferences of judges.

WHEN IS SEPARATE UNEQUAL? A DISABILITY PERSPECTIVE. By Ruth Colker. New York, N.Y.: Cambridge University Press. 2009. Pp. xiv, 280. \$29.99. In this important contribution to disability law and equality theory, Professor Ruth Colker challenges the current emphasis on formal equality and integration in the field of disability discrimination. Rejecting the premise that "separate" necessarily means "unequal," she instead argues for an "anti-subordination" framework that encourages courts and policymakers to focus on substantive equality and consider a broad range of both integrated and segregated remedies. After articulating and forcefully defending this framework, Professor Colker applies her anti-subordination approach to several areas of law and policy, including employment, K-12 education, testing accommodations, and voting. Professor Colker concludes by turning her attention to racial equality, where she argues that school districts should be free to use certain race-conscious tools in order to attain substantive results. Analytically rigorous and refreshingly pragmatic, *When Is Separate Unequal?* provides not only a thoughtful response to current disability discrimination theory, but also concrete guidance for policymakers, courts, and disability advocates who wish to put Professor Colker's anti-subordination framework into practice.