

## RECENT PUBLICATIONS

**CRIMES OF THE HOLOCAUST: THE LAW CONFRONTS HARD CASES.** By Stephan Landsman. Philadelphia: University of Pennsylvania Press. 2005. Pp. ix, 304. \$49.95 (cloth). At first glance, Justice Holmes's oft-cited observation that "hard cases make bad law" serves as an odd introduction to a book that deals with the law's response to the atrocities of the Holocaust — has history ever produced a more one-sided case? In *Crimes of the Holocaust*, Professor Stephan Landsman explains why the prosecution of genocide presents real difficulties for a judicial system that remains committed to justice. Professor Landsman begins with a detailed account of the international tribunal at Nuremberg, where "Nazism itself was put on trial" (p. 15). In describing a proceeding that understandably favored the prosecution, the author points to the difficulty inherent in an adversarial event that serves to determine guilt and innocence and at the same time attempts to establish a detailed historical record of the atrocities at issue. This tension is further explored in the discussion of Israel's trial of Adolf Eichmann, and the picture of Holocaust trials is made complete with chapters detailing the proceedings against John Demjanjuk and Imre Finta. Professor Landsman does an admirable job assembling this coherent treatment of the Holocaust trials from the heretofore scattered historical record.

**PRESCRIPTIVE LEGAL POSITIVISM: LAW, RIGHTS AND DEMOCRACY.** By Tom Campbell. London: UCL Press. 2004. Pp. vii, 329. \$47.50 (cloth). For over twenty years a giant in legal and political philosophy, Professor Tom Campbell here collects some of his most engaging works. Organized around the application of Professor Campbell's "prescriptive legal positivism" to the core concepts of law, rights, and democracy, this work is both a powerful polemic and a necessary resource for any serious student of legal and political philosophy. Professor Campbell breathes new life into the often-dismissed values of legal positivism, illustrating with precise and powerful logic their continued relevance to human rights and democracy.

**SAVING OUR ENVIRONMENT FROM WASHINGTON: HOW CONGRESS GRABS POWER, SHIRKS RESPONSIBILITY, AND SHORTCHANGES THE PEOPLE.** By David Schoenbrod. New Haven: Yale University Press. 2005. Pp. x, 296. \$28.00 (cloth). Through a captivating series of anecdotes drawn from decades of service as an environmental advocate, Professor David Schoenbrod provocatively argues that the federalization of environmental regulation in the United States has served neither the environment nor the democratic principles of American government. In the final installment of a trilogy of volumes arguing that administrative government undermines

legislative accountability, Professor Schoenbrod maintains that the broad scope of the Environmental Protection Agency and its statutory mandate permit legislators to shift blame for environmental regulation rather than face the difficult choices concomitant to sound environmental policy. Identifying the roots of federal environmental regulation in the political climate of the early 1970s, *Saving Our Environment* argues that the EPA is saddled with impracticable statutory objectives that obscure the difficult and inherently political balance between industrial progress and environmental protection. Turning conventional regulatory wisdom on its ear, Professor Schoenbrod contends that the indeterminacy of environmental science further undermines the basis for an administrative approach to environmental policymaking, and argues that legislators ought be held to account for such decisions. Drawing from his work as a litigator for the Natural Resource Defense Council, Professor Schoenbrod points out that federal regulators often fail to appreciate the effects of their decisions on the ground — and argues that this problem is particularly acute in the field of environmental regulation, in which the expertise of state officials and the localized effects of most environmental harm counsel only occasional federal intervention. Essential reading in the environmental policy canon, *Saving Our Environment* reinvigorates the regulatory debate by introducing a nuanced conception of federalism to a discipline long dominated by federal agency rulemaking.

**LEGAL REASON: THE USE OF ANALOGY IN LEGAL ARGUMENT.** By Lloyd L. Weinreb. New York: Cambridge University Press. 2005. Pp. viii, 184. \$60.00 (cloth). Analogical arguments are so prominent in legal reasoning “that they are regarded as its hallmark” (p. 4). However, analogical argument has faced searing academic scrutiny and has been attacked by a number of scholars who believe that its use as a legal tool is “logically flawed,” “pernicious,” or even a “phantasm.” Even some defenders of the use of analogies discount their argumentative importance, believing that analogies have no independent rational force. Seeking to “explain the prominence of analogical arguments in legal reasoning” (p. 37) and to restore legitimacy to their use in legal arguments, Professor Lloyd Weinreb effectively and engagingly shows that “analogical argument is a valid . . . form of reasoning that stands on its own and has its own credentials” (p. 12). Professor Weinreb attempts to explain and criticize analogical reasoning and then counters these claims through a fascinating analysis of several seminal cases, dealing with everything from steamboats to broadcast transmissions to electronic eavesdropping. The author displays a rare ability to be concise and convincing, precise and gripping, ensuring that this book will serve as both a thought-provoking work to those familiar with legal thought and jurisprudence, and as an approachable book to legal novices.

THE PRACTICE OF LIBERAL PLURALISM. By William A. Galston. New York: Cambridge University Press. 2005. Pp. x, 205. \$65.00 (cloth). In this lucid and thoughtful venture, Professor William Galston tackles with equal gusto and success both liberal pluralism's philosophical underpinnings and its practical implications for public action. Professor Galston's latest work is a sequel to his 2002 work, *Liberal Pluralism*, and is born out of the concession that the prior work "failed to take the argument far enough" (p. 5). It is a concession for which readers should be grateful, because *The Practice of Liberal Pluralism* is a welcome and necessary addition to contemporary discussions regarding the reach of pluralism and its implications for the good life. Defining liberal pluralists as those who "endorse the minimum conditions of public order, such as the rule of law and a public authority with the capacity to enforce it" (p. 3), Professor Galston elaborates the "three key concepts" to understanding the limits to government — political pluralism, value pluralism, and expressive liberty. He then situates these theoretical concepts within the present historical moment, focusing in particular on how they interact with modern markets and economic life. Although the work is clearly a response to the critics of his prior effort — and indeed he devotes two full chapters to specific critiques — *The Practice of Liberal Pluralism* is much more than a mere reply; it is sure to start new conversations altogether regarding the philosophy and practice of liberal pluralism.

A PLACE ON THE TEAM: THE TRIUMPH AND TRAGEDY OF TITLE IX. By Welch Suggs. Princeton, N.J.: Princeton University Press. 2005. Pp. vii, 283. \$27.95 (cloth). Title IX was an historic piece of legislation with a very simple message: "If boys get to play sports, then girls do, too." (p. 3). Welch Suggs tells the story of Title IX's imperfect but ultimately successful course, using portraits of those involved in women's sports as well as absorbing descriptions of the law's evolution. Title IX has not been without shortcomings, and for Mr. Suggs, the tragedy of Title IX is that female athletes and their coaches have fallen prey to the high-stakes, highly commercialized model of men's sports that has developed over the past century. In the process, they have lost sight of many of the ideals that inspired early female sports leaders. However, Mr. Suggs's message is ultimately a gripping story of Title IX's triumph.

MASTERING BOSTON HARBOR: COURTS, DOLPHINS, & IMPERILED WATERS. By Charles M. Haar. Cambridge, Mass.: Harvard University Press. 2005. Pp. 380. \$35.00 (cloth). On one level, *Mastering Boston Harbor* is an inspiring tale about the environmental resuscitation of one of America's great historic harbors, relayed by a man who played an active role in every step of the revitalization proc-

ess. Indeed, as “Special Master” appointed by district court Judge Paul Garrity, Professor Charles Haar played a leading, if not the predominant, role in the decades-long litigation and mediation that led to the eventual cleanup of Boston Harbor. But more fundamentally, Professor Haar’s book is a lesson in the power of the judiciary to achieve social progress in the face of political gridlock and special-interest domination of the political branches of government. Professor Haar lauds Judge Garrity’s “judicial activism” and makes a powerful case for an expanded role for the judiciary in fixing long-festered social and environmental problems whose solutions have eluded elected officials. Professor Haar’s book will be valued not merely for its recounting of this important tale of urban and environmental rescue, but for the seminal contribution it makes to the primary, passionate, and perennial debate regarding the proper role of an unelected judiciary in a democratic society.

**RIGHTS FROM WRONGS: A SECULAR THEORY OF THE ORIGINS OF RIGHTS.** By Alan Dershowitz. New York: Basic Books. 2004. Pp. ix, 261. \$24.00 (hardcover). In his latest work, prolific author Alan Dershowitz, Felix Frankfurter Professor of Law at Harvard Law School, argues for a new theory of the origin of rights: the experience of past injustice. At a time when rights are threatened by both terrorism and governments exploiting the threat of terrorism, Professor Dershowitz rejects the traditional theories of rights that locate their origin either in nature or law alone. Instead, he develops a theory of rights from the bottom up, rather than from the top down. This approach, he argues, avoids the problem of reaching a consensus on what a perfect — or even a good — society looks like. It is more realistic, in his opinion, for society to reach consensus about what types of historical events it does not want to repeat, such as slavery or the Holocaust, and to develop a system of rights accordingly. In short, “rights come from wrongs” (p. 9). Because there are no guarantees with his dynamic approach to rights, Professor Dershowitz recognizes that the challenge is “to persuade the citizenry that experience teaches us that it is generally preferable to change certain fundamental rights in the direction of expansion and adaptation rather than contraction or inertia” (p. 11). This engaging and timely account should interest everyone from legal scholars to casual observers.