Keeping Up with New Legal Titles*

Compiled by Creighton J. Miller, Jr.** and Annmarie Zell***

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Cahn, Naomi R. *Test Tube Families: Why the Fertility Market Needs Legal Regulation*. New York: New York University Press, 2009. 295p. $29.95.

Reviewed by Cheryl Kelly Fischer

¶1 Should fertility clinics be liable for genetic defects? Should gamete donors or gamete recipients be considered legal parents? Should the resulting children, once they reach the age of eighteen, have access to information about their biological donor parents? These questions exemplify three primary themes that author Naomi Cahn identifies and explores in *Test Tube Families*: *Why the Fertility Market Needs Legal Regulation*—"the market in gametes, the creation of familial relationships through [artificial reproductive technology], and the identity interests of the resulting children" (p.3).

¶2 Cahn writes *Test Tube Families* from the perspective of a lawyer, a family law scholar, and a participant in the fertility market whose first daughter was conceived through in vitro fertilization. A professor of law at George Washington University Law School and a senior fellow at the Evan B. Donaldson Adoption Institute, Cahn has previously coauthored books on the topics of adoption and infertility and has written law review articles on family law and other related topics.

¶3 Cahn discusses her themes in each of the book's four parts. In the first part, she offers background information on the current legal and cultural status of various infertility issues; the remaining three parts examine existing legal parameters, relevant theoretical frameworks, and Cahn's recommendations for future regulation.

¶4 The lengthiest of the book's four parts—Cahn's section on the legal parameters of marketization, parenthood, and children's identity—explains the extent to which legislatures, regulatory agencies, and courts have addressed fertility market

issues. Cahn reviews the reactive and piecemeal legislative approaches taken to-date, describing the uniform acts and current regulations (or the lack thereof) adopted by various states. She illustrates the judicial system's approach to fertility issues with compelling stories drawn from cases that have played out in the courtroom and news media. For instance, Cahn tells the story of the Parettas, a family who sued their reproduction center for providing a donor egg that tested positive for cystic fibrosis. Later, Cahn summarizes the Baby M. case, in which a surrogate refused to relinquish a child to the intended parents. This section of *Test Tube Families* is particularly thorough and well organized, and it should prove to be the section of most use to legal researchers.

¶5 Throughout *Test Tube Families*, Cahn builds convincing support for her final argument: a call for proactive and cohesive regulation, utilizing both federal and state regulatory agencies, that integrates all three of the major themes discussed in her book—marketization, parenthood, and children's identity. Such a combined approach, Cahn maintains, would prevent the need to "ask all the same questions each time we come across a new issue in the field" (p.235) and would provide players in the fertility game with legal default rules to "help . . . structure their transactions and to provide a safety mechanism for when these transactions fail" (p.235).

¶6 Cahn has a readable style that flows easily between story narratives, legal synopses, analyses, and recommendations, making the book both a work of rigorous scholarship and an enjoyable read. Fifty of the book's nearly three hundred pages are devoted to endnotes, with ample citations to primary law in the form of statutes, regulations, published cases, and news articles reporting on unpublished trial court actions. An array of citations to articles on the fertility market and related issues in legal and nonlegal journals should also prove useful for researchers in this area of law. A brief, five-page index appears at the end of the book. Index terms consist primarily of the names of individuals and agencies, but the popular names of statutes, case names, and topical entries (e.g., surrogacy, egg donation, etc.) are also included.

¶7 *Test Tube Families* provides a legally and personally informed account of the complex and difficult issues surrounding new reproductive technologies. Although ultimately a compelling advocacy vehicle for Cahn's proffered recommendations, *Test Tube Families* can also serve as an important reference resource. It balances Cahn's comprehensive look at the legal history and the current laws governing artificial reproductive technology with a thorough analysis of the business and cultural issues that emerge from the technology. The result is a book that will make a worthwhile addition to any law library that collects materials on reproductive technology or on family law in general.

Cross, Frank B. *The Theory and Practice of Statutory Interpretation*. Stanford, Calif.: Stanford Law Books, 2009. 233p. $50.

Reviewed by Frederick Frankel

¶8 Frank B. Cross is the Herbert D. Kelleher Centennial Professor of Business Law at the University of Texas at Austin. He is the author of several textbooks on business law and numerous scholarly articles on a wide range of legal topics. He has a particular interest in the use of empirical studies of judicial decision making

to shed light on questions of legal theory.[1] With this book, Professor Cross wades into a subject at the heart of the role of the judiciary in the American constitutional system: judges must apply statutory law to the particular conditions of individual cases, but the language of the law is not always clear and cannot address all possible circumstances. The craft of judging thus includes a necessary element of interpretation, but it also demands fidelity to the law, without which the very legitimacy of the federal judiciary comes into question.

¶9 Competing schools of thought conceive of the enterprise of statutory interpretation in different ways. Cross notes that theorists "have struggled for decades to bring some systematic structure to statutory interpretation, but this effort has largely failed" (p.viii). He also makes the obvious point that every approach must ultimately "depend in at least some measure upon a responsible judiciary that makes a good-faith effort to find the correct legal resolution of a dispute" (p.80). With these cautionary observations in mind, the author sets out to give an account of the leading theories, followed by an examination of how these theories have played out in the federal courts.

¶10 The organization of the book is straightforward and delivers on the promise of the title, to provide both "theory" and "practice." The first chapter gives an overview of the purposes of statutory interpretation and sets forth Cross's views on the nature of the relationship between Congress and the judiciary. Each of the next four chapters focuses on one of the major theoretical approaches to statutory interpretation: *textualism*, which regards the text of the law as the only legitimate source of meaning; various strands of *intentionalism* or *purposivism*, which frequently resort to legislative history as a method for discerning legislative intent; the traditional set of tools known as the *canons of interpretation*; and a cluster of theories associated with the term *pragmatism*. The remaining three chapters examine the actual practices of the federal courts, particularly those of the Supreme Court during the Rehnquist era.

¶11 Readers of every ideological persuasion will probably find something to criticize in this book. As one example, some will find the discussion of pragmatism, the author's favorite theory, unconvincing; it is hard to know what to make of an approach that simply encourages judges to make decisions based on "the best outcome for society" (p.102). Unsurprisingly, given the vagueness of this theory, even Professor Cross admits to difficulty accounting for the actual use of legal pragmatism by the courts.

¶12 Nevertheless, at least one clear fact emerges from the empirical studies that Cross recounts—judges may differ in their views on statutory interpretation, but very few are theoretical purists. Instead, they tend to make use of any and every tool of interpretation that seems to make sense in a given case. Given the unsettled nature of the theories, perhaps we should be relieved that judges take such a "pluralist" approach to resolving ambiguities in the law.

¶13 Readers of this book will find in it a carefully reasoned analysis of the strengths and weaknesses of the contemporary schools of statutory interpretation,

1. *See, e.g.*, Frank B. Cross & Stefanie A. Lindquist, *The Scientific Study of Judicial Activism*, 91 MINN. L. REV. 1752 (2007); Stefanie A. Lindquist & Frank B. Cross, *Empirically Testing Dworkin's Chain Novel Theory: Studying the Path of Precedent*, 80 N.Y.U. L. REV. 1156 (2005).

supplemented with a look at how courts are applying these theories. They will not find an overview of the historical development of the theories, a subject of obvious interest to anyone interested in American law and politics.[2] Nor will the book serve as a comprehensive toolbox for the legal practitioner—the judge or attorney working on a problem of statutory interpretation will first want to consult *Sutherland Statutory Construction*[3] for detailed guidance and citations to specific authorities. Lastly, the work does not address the related and even more ideologically charged question of constitutional interpretation, though it would be intriguing to see a follow-up study by Professor Cross that considers that topic using the same theoretical and empirical analysis found here.

¶14 *The Theory and Practice of Statutory Interpretation* is strongly recommended for academic law libraries. It should be seriously considered, as well, for libraries at courts and other governmental institutions and for law firms involved in practice before the federal courts. Readers need not always agree with the author's conclusions to benefit from his up-to-date analysis of the major schools of thought. At the very least, the book will draw its readers into the thick of the discussion and provide them with an overview of the strengths and weaknesses of each theoretical approach.

Feldman, Robin. *The Role of Science in Law*. New York: Oxford University Press, 2009. 222p. $75.

Reviewed by Lynne F. Maxwell

¶15 As a professor of law at the University of California Hastings and director of the Hastings Law and Bioscience Project, Robin Feldman is intimately familiar with the rocky courtship between law and science. Law seeks the certainty that a firm grounding in science appears to provide, while science unfolds within an environment governed by the law. This uneasy relationship shifts continually as new developments evolve in both disciplines. In fact, as Feldman so eloquently points out, the relationship between law and science in any given period mirrors the culture giving rise to both. Recounting the relevant history, she comes to the rather alarming, but altogether logical, conclusion that the attempt to marry law and science is both misguided and dangerous. Each chapter of this fascinating book is accessible to legal and scientific scholars, cultural historians, and philosophers of history and science, as well as to attorneys and lay readers. It should be read by all legal and scientific professionals, scholarly or practicing, whose work entails the intermarriage of law and science.

¶16 Organized in ten terse, yet cogent, chapters, *The Role of Science in Law* begins with a section entitled "The Allure of Science," in which Feldman sets forth her central argument. She maintains that the law mistakenly looks to science for certainty and for absolute rules that can provide the foundation for legal analysis. The problem with this unnatural reverence, however, is that science itself is no

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2. For a historical study, see William D. Popkin, Statutes in Court: The History and Theory of Statutory Interpretation (1999).

3. Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction (7th ed. 2007) (often referred to as "Sutherland," the name of its original author).

more than a series of shifting constructs. Thus, it provides no absolute principles that can imbue legal decisions with certain truth. Nonetheless, law craves the stature of science, with its comfortable illusion of empirical certainty. Alas, the particulars of scientific knowledge are transitory, and theories, as a consequence of this necessary flux, become obsolete. Ignoring this reality, law continues to cling to science, and we "craft legal rules based on . . . scientific jargon for shelter and comfort" (p.19). The need for "shelter and comfort," though, should not drive legal determinations.

¶17 In subsequent chapters, Feldman offers a profusion of evidence to bolster her argument. She discusses areas of law that attempt to internalize science. For example, law has incorporated science into the decision-making process when confronting such disparate issues as abortion, copyright, and gene patents, and often the results have been unsatisfactory and unhelpful. Even more alarming, though, is law's propensity for externalization—"defer[ring] to scientists and other experts, granting them the power to resolve uncomfortable legal issues" (p.37). When law abdicates its role, ceding responsibility to science, it invites critique of its fundamental principles. At the invitation of attorneys and judges, scientific expert witnesses regularly baffle juries with technical jargon that mystifies rather than clarifies the issues. Such practices diminish law, at times relinquishing its ultimate authority.

¶18 Despite the hazards of wedding law and science, these fields inevitably operate in close proximity. Feldman, does not, then, advocate a complete divorce; rather, she seeks an amicable separation, discouraging each discipline from merging with the other. Feldman urges that science play a supportive role in the legal process, helping "guide and illuminate policy, while allowing the law to operate within its own parameters" (p.159). A *sine qua non* for academic libraries, *The Role of Science in Law* is a powerfully argued polemic deserving of recognition by the legal and scientific communities.

Haviland, Carol P., and Joan A. Mullin, eds. *Who Owns This Text? Plagiarism, Authorship, and Disciplinary Cultures.* Logan, Utah: Utah State University Press, 2009. 196p. $22.95, paper.

Reviewed by Victoria J. Szymczak

¶19 When students are told to submit works "of their own" in pursuit of a passing grade, but subsequently find themselves reprimanded for plagiarism and failing their class, who is at fault? In most academic institutions, both undergraduate and graduate students sit through several sessions of instruction specifically designed to defeat this persistent problem. Do we really think that our students blatantly ignore such instruction and accept the peril of failing their classes? The authors and editors of *Who Owns This Text? Plagiarism, Authorship, and Disciplinary Cultures* maintain, instead, that faculty practices contribute to widespread student confusion over attribution and citation.

¶20 This slim volume reports the findings of a three-year project in which faculty members from seven disciplines in nine American universities were interviewed about their perceptions of scholarly ownership and plagiarism within their

specific fields. Each of the separately-authored chapters reports on a different academic discipline: computer science, chemistry and biology, archaeology and sociology, visual arts, and the more general category of higher education administrators. The interview questions (listed in appendix A of the book) focused on the types of intellectual property produced at different levels within each discipline.

¶21 In each area of study, the chapter authors found support for one common cause of student confusion over citation practices: a profound difference between what professors do and what professors tell their students to do. For example, medical doctors do not provide citations for ordinary pathological procedures in research papers. These procedures are considered *common knowledge* within the profession and, therefore, not worthy of acknowledgment. How might this convention among academic and professional colleagues affect students studying from these same research papers and taking classes in a related field of study? After all, students who mimic the citation practices used in these research papers for their own class work are likely to be reprimanded for failing to properly cite others' ideas or expressions.

¶22 The researchers also found that terms used to define plagiarism, such as the phrase *common knowledge* or the word *original*, have generic or legal definitions that conflict with academic practices. This clash of values yields concepts that are difficult for educators to explain and results in obtuse policy statements posted on university web sites. Editors Haviland and Mullin provide examples from some of these web sites to illustrate the variety of different approaches that schools use to adapt legal terms to academic norms. Attempts by school administrators to clarify such policies on plagiarism vary widely and do not seem to follow any uniform standard.

¶23 Although the book does not address legal education, readers from that discipline can gain a deeper understanding of how context changes the meaning of intellectual property norms in higher education. For example, archeologists identify their dig sites and field notes as "property" subject to protection through intellectual property laws. However, they do not necessarily extend the legal concept of "ownership" to collaborative articles written about the sites after excavation. Within legal education, in contrast, it is the article in which we recognize a property interest, not the field work associated with producing the article.

¶24 The book concludes with a chapter summarizing the authors' findings and demonstrating a surprising disconnect between faculty members' professional expectations and how professors discipline their students regarding citation practices. Recommendations include shifting away from confusing plagiarism policies on university web sites toward a more process-oriented system of instruction that is projected to have clear, long-lasting effects on students.

¶25 While this title provides no solutions to the dilemma of plagiarism, it is an interesting read with a unique premise. Readers will benefit from learning more about intellectual property values in the represented fields. I would recommend it to intellectual property scholars and administrators in higher education who are charged with monitoring plagiarism at their institutions. Libraries with strong intellectual property collections should definitely consider this title.

Head, John W. *China's Legal Soul: The Modern Chinese Legal Identity in Historical Context*. Durham, N.C.: Carolina Academic Press, 2009. 234p. $32, paper.

Reviewed by Isa Lang

¶26 Author John Head, who currently teaches international and comparative law at the University of Kansas, practiced international business law before becoming a professor. He has taught law in many countries, including China, and coauthored a 2005 book on Chinese dynastic codes. In *China's Legal Soul: The Modern Chinese Legal Identity in Historical Context*, Head draws upon research for his previous book to evaluate current law in China from a historical and philosophical perspective.

¶27 The word "legal" modifies two different nouns in the title of the book: *soul* and *identity*. Head defines a legal soul as a set of fundamental principles or values that gives a society its "unique spirit and character" (p.xiv), as the Bill of Rights does in our country. A society's legal soul is just one feature of its broader legal identity. Other features include its population, age, level of sophistication, and whether it adheres to a rule of law. A society that follows a rule of law applies the law equally to all people and respects personal autonomy. These definitions contextualize Head's examination of Chinese law in *China's Legal Soul*.

¶28 Chapter one, "Dynastic China's Legal Development," summarizes China's legal history during the country's long dynastic period, which ran from about the twenty-second century BCE into the twentieth century CE. Included in this chapter are a timeline and tables that detail legal highlights from the various dynasties and provide excerpts from the dynasties' codes. These dynastic codes, Head reports, embodied the principles of *li* (adherence to convention and ritual, politeness, and respect for superiors and elders) as interpreted by Confucius. Over time, principles of legalism, a more practical philosophy that meted out punishments for disobeying the law, were also incorporated into the dynastic codes. One important feature of the dynastic period was the establishment of a strong, centralized, bureaucratic government under the emperor's rule. High-level government officials prepared for the civil service examination at the Imperial Academy, founded in 124 BCE, where instruction followed Confucius's interpretation of *li* and students learned the theory of harmony based on *yin* (punishment for evildoing) and *yang* (a positive power much like *li*). This program of study was called Imperial Confucianism. In the author's view, Imperial Confucianism was dynastic China's legal soul, the set of fundamental principles that embodied the society's spirit and character.

¶29 Chapter two, "Modern China's Legal Development," begins with a detailed timetable chronicling Chinese legal and political developments from 1898 to 2008, with events listed for almost every year. During this period, China's exposure to foreign commerce and legal systems resulted in a legislative and regulatory frenzy and in the establishment of an educated body of attorneys and judges. Despite these developments, the Chinese government, Head reports, still filters external influences on China's legal and political culture.

¶30 Head devotes chapter three, "Rule of Law in China—Carefully Crossing the River," to an analysis of whether modern China follows a rule of law. He begins by asking who writes the laws. Head's answer is that China's laws are drafted by a small

group of powerful officials favored by those who exercise political control. Next, he asks to whom the laws are addressed. In keeping with a rule of law, modern Chinese laws are addressed to the general population and focus on issues arising in daily life. Based on these determinations, Head concludes, with one important reservation, that China does indeed have a rule of law; its laws are "publicly promulgated," "prospective in effect," and "understandable" (p.129). His reservation is that China's laws may not be applicable to its entire population, because powerful party officials can evade the effect of the law.

¶31 In chapter four, "China's Legal Ethics Today—Searching for a Modern Correlative to Imperial Confucianism," Head turns to the question underlying his book: what is the legal soul that gives Chinese law its unique spirit and character today? He considers several philosophies and movements that may embody China's legal soul, including Confucianism, Marxism, constitutionalism, and religion, and he examines the possibility that the country lacks a legal soul. The reader can sense Head's growing pessimism as he rejects each candidate in turn. Finally, Head settles on a harsh-sounding acronym that represents China's present-day legal identity: MOLECARP ("A Materialist-Oriented, Legitimate, Extroverted, China-Appropriate, Restorative Progressivism" (p.207)). Defined in chapter four's last section, MOLECARP describes a progressive and materialist culture that pursues world power and modern advances but guards against outside values and is subject to tight political control.

¶32 Head concludes *China's Legal Soul* with the observation that China's modern legal identity is more of an attitude or an orientation than a legal ideology or system of moral values. He appears to be disturbed by the lack of a legal soul or legal ethic in China, concluding that: "modern Chinese law, in my view, remains fragile. I find this troubling" (p.221).

¶33 Readers will be impressed by the wide variety of sources cited in *China's Legal Soul*'s footnotes and by the book's detailed tables. I am sure that readers will also appreciate the book's lovely cover photograph and two illustrations by Head's son, Austen, a talented artist. One of these illustrations is a representation of Head's acronym, MOLECARP, as an imaginative creature, half mole and half carp. Although the book would make difficult reading for members of the general public, it is appropriate for nonlawyers with an interest in legal philosophy or Chinese history and is recommended for university and law school libraries.

Katz, Stanley N., ed. *The Oxford International Encyclopedia of Legal History*. New York: Oxford University Press, 2009. 6 vols. 2,927p. $750.

Reviewed by Joel Fishman

¶34 *The Oxford International Encyclopedia of Legal History* is an extensive new work that should become an instant classic and an immediate contender for best legal history book of the year. The *Encyclopedia,* edited by renowned legal historian Stanley N. Katz of Princeton University with assistance from a board of eleven highly distinguished scholars, contains 950 signed articles written by 385 separate authors. Many of the authors are noted senior academics from universities throughout the world with extensive, specialized knowledge in particular fields of

legal history. The six-volume work is distinctly international in flavor, offering "a combination of broad and detailed coverage" (vol.1, p.xxiii) that touches on legal traditions from almost every corner of the globe. The deepest coverage, however, is concentrated on those regions and historical periods for which the most extensive scholarship exists, namely "the United States, Europe, Islam, and China" (vol.1, p. xxiii). In its approach to this subject matter, the *Encyclopedia* is expansive, following the "externalist approach to legal history" (vol.1, p.xxii) pioneered by University of Wisconsin law professor J. Willard Hurst in the middle of the twentieth century. As described by Professor Katz in his preface to the *Encyclopedia*, "The Hurstian approach . . . enlarged the conception of legal history, and compelled legal historians to study rules, institutions, and processes that had previously not been thought of as 'legal'" (vol.1, p.xxii).

¶35 The *Encyclopedia* consists of six large volumes, 8½" by 11" in size, printed with double columns of text. Articles are alphabetically arranged by main topic, but a 265-page, double-columned index in the final volume provides enhanced access to individual entries in the complete set. Also in volume six, further bibliographic access is provided through a topical outline that lists relevant entries and subentries within ten broad categories. A count of the number of entries listed under each category demonstrates something of the regional slant to the *Encyclopedia*: Ancient Greek Law (47 entries); Ancient Roman Law (38); Chinese Law (63); English Common Law (129); Islamic Law (99); Medieval and Post-Medieval Roman Law (104); South Asian, African, and Latin American Law (98); United States Law (98); Overviews and Other Legal Traditions (6); and Biographies (113). Also contained in volume six are a list of contributors and an index of legal cases that includes references to decisions from twenty different countries, though most are from Great Britain or the United States. More than 350 illustrations—portraits, manuscripts, photographs, and cartoons—appear throughout the work. Examples include a photograph of a stele containing the Code of Hammurabi (vol.1, p.168), a political cartoon entitled "The Rhodes Colossus" from an 1892 issue of *Punch* magazine (vol.1, p.78), and the handwritten decision from the Supreme Court's original minutes in *McCulloch v. Maryland*[4] (vol.6, p.47).

¶36 The articles in the *Encyclopedia* take a number of different forms. Some are topical, some biographical, and others provide in-depth histories for entire countries or regions. Each article is at least two or three paragraphs long, though many provide forty or fifty pages of extensive coverage. Every article includes at least one bibliographical reference—some have five or ten—that cite books and articles published as recently as 2006. Many references are annotated to provide guidance for further reading. All of the articles are in English, but a number are translations of material originally written in other languages.

¶37 Many of the articles are extensively subdivided, with each subdivision separately authored. The major country and regional histories are divided by time period and, sometimes, subject. Thus, the entry for "African Law, Sub-Saharan" includes three subdivisions: "The Precolonial Period," "The Colonial Period," and "After Independence." The entry for "Chinese Law" actually encompasses seventeen

4. 17 U.S. (4 Wheat.) 316 (1819).

distinct subdivisions. More topical articles are often comparative in nature, with subdivisions dedicated to the treatment of a topic within different legal traditions. For example, the entry for "Women" includes separate subdivisions dedicated to women under ancient Greek, ancient Roman, English, Islamic, Hindu, and United States law. Similarly, "Censorship" is covered through two subdivisions contrasting English and Islamic law.

¶38 The *Encyclopedia*'s biographies are particularly interesting. More than half of the entries address non-Europeans from Islamic countries, China, or elsewhere. Although there are entries for English luminaries like Bentham, Blackstone, Bracton, Coke, William Jones, and Henry Maine, the work surprisingly lacks entries for such major figures as John Selden and Frederick Maitland.

¶39 For this reviewer, whose expertise is in Anglo-American law, the *Encyclopedia*'s coverage of other countries, traditions, and peoples provided an outstanding introduction to areas of legal history with which I was previously unfamiliar. Because of the wide range and impressive depth of this coverage, I recommend this work for all types of law libraries. Everyone who worked on this set deserves our hearty thanks for putting together such a magnificent publication.

Malloy, Robin Paul, ed. *Law and Recovery from Disaster: Hurricane Katrina*. Burlington, Vt.: Ashgate Publishing Company, 2009. 252p. $89.95.

Reviewed by Lauren E. Schroeder

¶40 As a resident of Houston when Hurricane Ike made landfall early on September 13, 2008, I spent that particular night in my closet riding out the storm, and I witnessed the damage that Ike left in its wake. This experience gave me a personal interest in learning more about the even greater impact that Hurricane Katrina made in 2005 on the Gulf Coast and beyond. *Law and Recovery from Disaster: Hurricane Katrina*, part of Ashgate's Law, Property, and Society series, is dedicated to analyzing how the legal system and government "not only . . . survive such [natural] disasters but [are able] to effectively facilitate recovery" (p.vii). The book evolved from papers submitted to Syracuse University College of Law's third annual Property, Citizenship, and Social Entrepreneurism Workshop in November 2006, a meeting that focused on issues arising when natural disasters strike. The fifteen scholars who contributed to the book's eleven chapters draw from their academic, law firm, and judicial backgrounds to cover several of the effects wrought by Hurricane Katrina and, by extension, natural disasters in general, on the property and citizens in their paths.

¶41 The book begins with an introduction describing the text's subject matter and presenting the overarching view of every contributor: that Hurricane Katrina demonstrated "serious gaps in the legal system's ability to respond to natural disasters and other catastrophic events" (p.1). The second chapter explains how natural disasters can profoundly alter existing property relationships and reveals in the process how stronger relationships promote easier recovery after a disaster. Land use planning is covered in chapter three, which argues that planners' traditional considerations should be supplemented with stipulations about how land should be utilized in the future. The next two chapters highlight the effects that disasters

have on the physically and mentally disabled. Chapter four uses the concept of *place* to show how urban bias favors cities in the design of government programs and the allocation of funds, though rural areas actually suffer more poverty, and explains how much harder it was to evacuate and aid the rural disabled when Hurricane Katrina struck. A more global analysis in chapter five demonstrates how the needs of the disabled are often ignored in the development of government policies and the provision of humanitarian aid, with examples drawn from the activities of the U.S. government and the instruments of international organizations.

¶42 The book then shifts focus, transitioning to an analysis of compensation strategies and the concept of risk management. Chapter six describes in detail the complex relationship between homeowner's insurance and flood insurance. Nationwide risk management strategies are outlined in chapter seven. Small businesses along the Gulf Coast faced many difficulties after the hurricane, and chapter eight presents the results of a study of those victims' experiences after Katrina. The two subsequent chapters address discrimination as faced by New Orleans residents after the storm. Chapter nine examines obstacles that blocked renters with criminal or arrest records from reacquiring housing in the city. Chapter ten analyzes New Orleans' history of segregating its poor into the most low-lying geographic areas, and argues that this history justifies sharing the burden of rebuilding costs nationwide. The book concludes with a critique of the role played by New Federalism—a stance that demands strict separation between the jurisdictions of the federal and state governments—in delaying federal decision making before and after the hurricane, as government actors struggled to determine which level of government was responsible for various actions. In this section, the book makes the point that a natural disaster is both a local problem, initially affecting a specific and limited area, and a national problem, with wide-ranging societal and economic aftereffects.

¶43 Since this book is a collection of chapters by various authors about different facets of an overall concept, natural differences in writing styles and tone are found throughout, though all chapters are well written. Each of the contributors successfully presents a large amount of information in a relatively small number of pages. Due to the sheer number of issues discussed, however, the book's organizational scheme is not highly intuitive. A table of cases and a comprehensive index help somewhat in mitigating this organizational issue, but grouping the chapters into sub-parts arranged by particular topics might have improved navigation. The detailed bibliography found at the end of the book is also very helpful; it supplements the footnotes provided in each chapter and groups the source material alphabetically by format.

¶44 Although *Law and Recovery from Disaster* focuses on Hurricane Katrina, with its high cost in lives and property, the book's themes possess wider and more general applicability. The book is an appropriate choice for all types of law libraries, especially those in areas of the country that are prone to natural disasters.

Stoll-Debell, Kirstin, Nancy L. Dempsey, and Bradford A. Dempsey. *Injunctive Relief: Temporary Restraining Orders and Preliminary Injunctions.* Chicago: American Bar Association, 459p. $105, paper.

Reviewed by Jean L. Willis

¶45 The term injunctive relief covers two equitable remedies available under Rule 65 of the Federal Rules of Civil Procedure and similar provisions of state law: temporary restraining orders (TROs) and preliminary injunctions. Both remedies are designed to preserve the status quo by preventing a defendant from acting in a way that is harmful to the plaintiff until after a case can be tried fully in court. Injunctive relief can be sought in many different types of cases, including family law, labor law, intellectual property, business, real estate, and criminal law. Therefore, explanation and analysis of the steps needed to obtain injunctive relief are scattered throughout a diverse range of practice materials that cover injunctions as just one topic within broader subject areas. *Injunctive Relief: Temporary Restraining Orders and Preliminary Injunctions*, in contrast, focuses on injunctive relief as a single, general subject. The book's authors are all practicing attorneys with extensive litigation experience in many of the practice areas where injunctions are common. They have given their book impressive depth and breadth of coverage, and practitioners and self-represented litigants alike should find *Injunctive Relief* a welcome new resource.

¶46 The book begins with a brief exploration of the early history of injunctive relief under English common law and a discussion covering importation of the relief into the early United States. Although American law initially treated injunctive relief as a truly extraordinary remedy, more recent legal history has seen an increase in federal and state legislation either "authorizing or sometimes requiring courts to issue injunctions" (p.10). Additionally, in certain categories of cases, some courts now presume the existence of irreparable harm—an element required for obtaining injunctive relief—leaving injunctions less than extraordinary.

¶47 The authors next turn to current U.S. law. Part I of the book discusses, in impressive detail, the requirements demanded by federal and state courts when considering requests for preliminary injunctions and TROs. Standards for each federal circuit are laid out in chapter two, and chapter three includes a state-by-state list of relevant factors.

¶48 Part II of the book focuses on the numerous pre-filing considerations that parties must weigh before deciding either to file for an injunction or to oppose one. The authors urge counsel to consider carefully what will best serve the specific client in a particular case. For circumstances where injunctive relief is appropriate, the authors provide advice on choosing between the two forms of relief, address timing issues, and cover choice of venue. A flowchart at the end of chapter five is particularly useful for determining whether to seek a preliminary injunction or a TRO.

¶49 Part III of *Injunctive Relief* is devoted to procedural issues. Chapter eight covers various details surrounding pleadings, filings, notification requirements, hearings, evidence, and orders. Chapter nine—the only chapter in the book that does not address both the plaintiff's and the defendant's perspective—examines

procedural and substantive issues specific to defending against injunctions. Chapter eleven focuses on appeals of decisions regarding injunctive relief under both federal and state law, including a state-by-state listing of all relevant laws. The final chapter of the book analyzes the use of injunctions preceding arbitration.

¶50 The authors have organized the book in a logical fashion and have included value-added features like a detailed table of contents, a comprehensive index, and a number of useful tables and charts. Case law is cited extensively throughout the book, which should prove an aid to the practitioner's decision-making process. A table of cases and a brief bibliography round out the text.

¶51 I would recommend *Injunctive Relief* particularly to newer attorneys in small firms or solo practice, though the book should prove a useful addition to any law firm library. Academic law libraries that collect legal practice materials should strongly consider adding the title to their collections as well, especially as there are no current treatises that I could locate on the specific topic. Finally, self-represented litigants with advanced legal research abilities should find *Injunctive Relief* helpful, so I recommend that public law libraries acquire the book for their collections.

Thomson, David I. C. *Law School 2.0: Legal Education for a Digital Age*. Newark, N.J.: LexisNexis Matthew Bender, 2009. 158p. $22, paper.

Reviewed by Francis X. Norton, Jr.

¶52 What is the purpose of law school? Is it merely to train students to think like a lawyer, or is it to prepare students to practice law? Studies from the early Carnegie reports onward have considered these questions and recommended numerous changes to the system of legal education; most of these recommendations have been ignored.[5] Author David I.C. Thomson predicts a change in this trend. In the introduction to *Law School 2.0: Legal Education for a Digital Age*, Thomson states that "technology will both force change and can *facilitate* and *lubricate* its coming to legal education" (p.ix). Throughout the rest of the book, Thomson draws upon his experiences in academia and as a litigator to describe how and why such a metamorphosis will occur.

¶53 Criticism of legal education is not new. Thomson, a member of the faculty at the University of Denver School of Law, lays out many of the problems with modern legal education and summarizes several studies that have been conducted to address its deficiencies. Thomson reports that while other professional schools have modified their educational approach in response to criticism, legal education has not. For instance, studies in the early 1900s recommended that both law schools and medical schools add a practical component. Medical education responded by instituting residency programs. Now, medical students see real patients, while many law students still graduate without ever talking to a client.

5. The Carnegie Foundation for the Advancement of Teaching has issued a number of influential reports on the process of legal education. *See, e.g.,* William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (2007); Josef Redlich, The Common Law and the Case Method in American University Law Schools (Carnegie Foundation for the Advancement of Teaching Bulletin No. 8, 1914).

¶54 Thomson begins his argument in *Law School 2.0* with portraits of two law students. One attends a traditional law school with classroom instruction that emphasizes theory and the case method. The law student, disengaged by his third year, graduates without really learning actual research or lawyering skills and enters the profession essentially unprepared. The other, a millennial, attends a law school that, following the recommendations of *Law School 2.0*, employs interactive technologies, focuses on student autonomy, and teaches skills advocated by the MacCrate,[6] Carnegie, and similar reports. The entire experience is very positive, and she enters the profession ready to begin practicing law.

¶55 In Thomson's book, *technology* does not mean PowerPoint. Instead, it refers to the transformative tools that have arisen from Web 2.0 innovations, tools such as online classes, wikis, CaseMap software, digital books, and clickers. As Thomson points out, technology has transformed the practice of law—from online research to paperless discovery, electronic filing, and remote service of process. Law school classes that ignore this reality, Thomson argues, do a disservice to their students by inadequately preparing them for modern legal practice. Moreover, for the millennial generation, this technology is second nature, and millennial students expect educators to make use of it. Thomson contends that law faculty must quickly embrace new technologies or risk an even bigger disconnect with today's students. Technology can also leverage faculty time with students, by providing instant feedback and student assessments.

¶56 *Law School 2.0* offers abundant footnotes and suggestions for further reading in each of its chapters. Additional references for each chapter are located at the end of the book. Unfortunately, the book's index is rather poor and brief, little more than an afterthought. This book also comes with its own web site, containing a blog, links to referenced articles and to example technologies, a video, product reviews, and much more.[7]

¶57 *Law School 2.0: Legal Education for a Digital Age* is recommended for academic law libraries. Faculty serving on law school curriculum committees, many of which are now experimenting with their core curriculums, should find it particularly useful.

Welsh-Huggins, Andrew. *No Winners Here Tonight: Race, Politics, and Geography in One of the Country's Busiest Death Penalty States*. Athens, Ohio: Ohio University Press, 2009. 222p. $24.95, paper.

Reviewed by Mari Cheney

¶58 Can you guess the state to which the title refers? Did you guess Texas? Maybe Virginia? No. If you guessed Ohio, you are correct! The title of this book is cumbersome: it says too little with too many words. The book itself, however, is a

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6. Task Force on Law Schools and the Profession: Narrowing the Gap. Am. Bar Ass'n. Legal Education and Professional Development—An Educational Continuum (1992). The report is widely referred to as the "McCrate Report," for Robert McCrate, chair of the task force that authored the report.

7. Law School 2.0: Legal Education for a Digital Age, http://lawschool2.com (last visited Sept. 4, 2009).

quick and comprehensive overview of the history of the death penalty in Ohio and an examination of how and why capital punishment decisions are made.

¶59 Welsh-Huggins, a reporter with the Associated Press in Ohio, writes in refreshingly simple prose about his state's use of the death penalty from the practice's institution during the 1800s through the first decade of the twenty-first century. As a journalist who has reported on this subject for many years, Welsh-Huggins writes with expertise gleaned from numerous interviews, extensive case law and historical research, and consultations with law professors and attorneys familiar with capital punishment. His thesis—that the death penalty "is carried out unevenly," (p.3) both in Ohio and across the United States—is woven throughout the book's ten chapters, carefully supported by facts and stories about the inmates; their victims; the families; and the governors, judges, prosecutors, and defense attorneys involved in death penalty cases. Specifically, Welsh-Huggins maintains that the uneven application of capital punishment in Ohio is a result of several factors: the race of the criminal and the race of the victim; prosecutorial discretion that varies county-by-county; and the demographics of juries and judicial systems, which also vary across counties.

¶60 While this topic is ripe for an impassioned account based on the author's personal views, Welsh-Huggins makes the better choice of letting the reader decide for herself about capital punishment: "If the system is so imbalanced, both sides must ask, what is the purpose of the law to begin with?" (p.163). With his journalism background, the author presents the facts without telling the reader what to think—he simply presents from multiple sides the stories that led to particular applications and rejections of the death penalty. The reader is presented with accounts of criminals' and victims' lives and of the politics and emotions that played into various governors' decisions on clemency.

¶61 With a timeline of important dates; a selected bibliography; a detailed index; and citations to newspaper articles, interviews, court documents, and state and federal case law, this book is an excellent starting point for the researcher looking for materials relating to capital punishment, especially as it has been dealt with in Ohio. My only complaint with the book's organization is that the author uses references placed at the end of the book rather than footnotes for each chapter. This practice makes it difficult for the researcher to take notes on citations while reading.

¶62 This is not the best resource to choose for a detailed legal analysis of the pros or cons of the death penalty or an examination of why capital punishment is still used in the United States. However, it is an excellent overview of the death penalty as carried out in Ohio, with useful references to pertinent U.S. Supreme Court decisions, including the decision that commuted the death sentences of 120 inmates in Ohio.[8] For students studying capital punishment cases, the stories Welsh-Huggins has included provide interesting background to the characters that appear in often dry court opinions. I highly recommend this book to academic law

8. This result flowed from the Court's decision in *Lockett v. Ohio*, 438 U.S. 586 (1978), invalidating Ohio's then-recently rewritten death penalty statute (p.191).

libraries, especially those that support victim's rights clinics or innocence projects. I also recommend it for prison libraries.

Young, John Hardin, ed. *International Election Principles: Democracy and the Rule of Law*. Chicago: American Bar Association, 2009. 546p. $119.95, paper.

Reviewed by Sara Sampson

¶63 According to its introduction, the purpose of *International Election Principles: Democracy and the Rule of Law* is to help election observers, lawyers, and others involved in the election process understand the standards for a free and fair election and the complex political theories underlying such standards. The editor and authors have succeeded admirably in meeting their goal.

¶64 *International Election Principles* covers three main topics: electoral and democratic principles, election administration, and resolution of election-related disputes. The book's chapters, each written by a different author, focus on all aspects of election law. The authors are a mixture of practitioners and academics, and all are highly experienced in the area of election law. In general, chapters are written in a style that is accessible to readers with a basic understanding of law or government. Some chapters have numerous citations to primary authority, but others refer the reader only to widely available secondary sources, such as the online *CIA World Factbook*.[9] These latter citations may frustrate advanced readers or researchers, especially those who would like to find and read a particular country's actual election laws.

¶65 The book begins with an overview of the role that democracy and elections play in human and civil rights. Chapter one has copious footnotes to the fundamental international law texts on the subject. A beginner will find that this chapter provides an accessible overview to the area; more experienced researchers can use it as a guide to pertinent treaties and other documents. The second chapter focuses on the legal and policy questions surrounding representation. It reviews various representation schemes (e.g., geographic, ideological, and descriptive representation) and then discusses how each works in different countries. Chapter three explores the meaning of democracy and examines barriers to perfect democracy that exist in all countries.

¶66 Next, the authors turn to election procedures. Chapters address political parties, voter registration, ballots and the mechanics of voting, early and absentee voting, and election day procedures. Each chapter summarizes procedures used around the world, with examples and case studies from different countries. For example, chapter six, "From Intent to Outcome: Balloting and Tabulation Around the World," provides in-depth overviews of Brazil's voting system and of the 2005 Iraqi elections, as well as a review of innovations in the act of voting, including proxy voting in the United Kingdom, Internet voting in Estonia, expatriate voting in Italy, voter authentication in India, and identification and voter rolls in Yemen.

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9. Central Intelligence Agency, The World Factbook, *available at* https://www.cia.gov/library/publications/the-world-factbook (last visited July 11, 2009).

¶67 The final four chapters deal with election-related dispute resolution. The chapters on election recounts and contests deftly set out the basic law and theory at issue and also offer detailed case studies of three presidential elections: the 2000 election in the United States, the 2004 election in Ukraine, and the 2006 election in Mexico. Political finance and corruption and efforts to develop relevant regional and international standards are also analyzed.

¶68 The appendixes contain reproductions of many of the documents referenced in the main text. These include documents on elections from the United Nations, Council of Europe, the Organization of American States, and the Organization of African Unity. The index is thorough and, most importantly, allows researchers to identify all of the information on one particular country scattered amongst the various chapters.

¶69 *International Election Principles* fills an important hole in election law literature. With this one book, readers get a readily understandable examination of election law principles and exposure to the many different ways that countries around the world have implemented these principles. The wide array of case studies and examples found in the text also make the book useful as a reference work on foreign election laws. I highly recommend *International Election Principles* for all academic law libraries, law firm libraries that support a political law practice group, and other libraries serving patrons interested in democracy around the world.