EXTINCTION AND THE LAW: PROTECTION OF RELIGIOUSLY-MOTIVATED BEHAVIOR  
Fred P. Bosselman  15

By imagining a utopian world, we can see important elements of environmental protection which need further development. These include pollution prevention, integrated pollution control, and environmental risk assessment. Further, our environmental regulatory scheme should incorporate a civil rights element, recognize claims of future generations, encourage recycling to a greater degree, establish a life cycle planning mechanism, recognize many more substances as pollutants that need to be regulated, and find out much more about the generation, persistence, health effects, and clean-up techniques for pollutants.

THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS IN THE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW  
A. Dan Tarlock  61

Non-Governmental Organizations (NGOs) lack a legal status in classic international law, but they exert considerable influence over the establishment of international environmental priorities. International environmental law is primarily science-driven, and the NGOs have the ability to shape policy debates because of their access to useful information. This Essay examines the different roles that NGOs play in protecting the global
environment and argues that ultimately they should be subject to legal standards of performance.

TOPICS IN JURISPRUDENCE

POSITIVE AND NEGATIVE LIBERTY

Steven J. Heyman

This Essay explores the concept of liberty in classical English and American political thought. Rejecting Isaiah Berlin’s view that liberty was understood strictly in negative terms (as immunity from coercion or restraint), the Essay argues for a richer, more complex view that includes both negative and positive freedom (or self-determination), exercised both by the individual and by the community.

THE PHILOSOPHY OF PERSONAL IDENTITY AND THE LIFE AND DEATH CASES

Linda R. Hirshman

This Essay analyzes the debate over treatment of very sick patients as an example of conflicting theories of personal identity. It criticizes utilitarian and deontological approaches as inadequate to the complexity and richness of the problem and concludes that narrative theories of personal identity capture best what it means to be an honorific person, when confronting the ultimate issues of life and death.

THE LAWYER’S FALLACY

James Lindgren

This Essay identifies and discusses the lawyer’s fallacy. In its various forms, the lawyer’s fallacy assumes that lay people experience the world in legal categories or understand legal experiences as lawyers would. We commit the lawyer’s fallacy if we see people knowingly separating themselves into neat legal categories—and then climbing into pigeonholes where we can easily find them.

THE DISTRIBUTIVE AND CORRECTIVE JUSTICE CONCERNS IN THE DEBATE OVER EMPLOYMENT AT-WILL: SOME PRELIMINARY THOUGHTS

Martin H. Malin

The employment at-will rule has come under extensive attack from commentators and has experienced considerable erosion in the courts. This Essay explores the arguments over the rule and characterizes each as appealing to concerns of corrective or distributive justice. It finds that the recently developed tort of retaliatory discharge reflects an effort by the courts to distribute power in the workplace based on the mediatory criteria of employer need and social utility of employee conduct. It concludes that those courts which reject the tort on the ground that such protection is best left to the legislature are correct, because bipolar litigation is ill-suited for evaluating the employee’s social utility. It suggests an alternative formulation of the tort grounded in traditional judicial concerns for corrective justice. It further suggests that the empirical reality of today’s workplaces supports a presumption in contract law that employment contracts are terminable only for cause. Finally, it criticizes judicial refusal to give legal effect to this reality as an inappropriate and unfounded redistribution of workplace power from employees to employers.

INCOMMENSURABILITY AS A JURISPRUDENTIAL PUZZLE

Richard Warner

Reasons are incommensurable when they are not comparable in strength. In hard cases courts often have to choose among alternatives supported by incommensurable reasons. The puzzle is to explain the proper way for courts to proceed in such cases.
INTERNATIONAL LAW

REGIONAL INTEGRATION AND THE ENVIRONMENT:  
THE EVOLUTION OF LEGAL REGIMES  Frederick M. Abbott 173

This Essay takes note of the trend toward regional integration and considers the implications of this trend for environment-related regulation. It outlines the evolution of the environmental regimes of the European Community (EC) and the emerging North American Free Trade Agreement (NAFTA), and considers whether and how the lessons of the Community may inform the NAFTA. It suggests that limitations inherent in the emerging NAFTA environmental regime will give rise to demands for closer approximation to the Community system which encompasses the goal of harmonization and incorporates central decision-making institutions.

THE PROTECTION OF HUMAN RIGHTS IN  
DISINTEGRATING STATES: A NEW CHALLENGE  Bartram S. Brown 203

Under the existing “state-centric” international legal order there is an implicit assumption that a local regime can act to protect human rights, but where this is not the case the negation of state authority can result in the negation of human rights. Thus the disintegration of a state or of state authority presents a special challenge to a legal order which has recognized that human rights violations raise issues of international law, but has not developed effective international mechanisms to implement these rights. This Essay considers how the recent practice of states and of international organizations indicates that political, diplomatic, and even military forms of intervention have come to be seen as necessary and legal means for the protection of human rights in disintegrating states. It argues that the conceptual challenge which is presented by these events provides an impetus for changes not only in specific doctrines applicable to the disintegration of states, but also for more general changes in the state-centric nature of the international legal order itself.

INTEGRATION, DISINTEGRATION AND THE  
PROTECTION OF COMPETITION: OF IMAGES, 
STORIES AND MYTHS  David J. Gerber 229

This Essay explores the apparent conflict between disintegration in Eastern Europe (including the former Soviet Union) and integration in Western Europe. It concludes that the processes are not contradictory and that both are guided by the same powerful image of the relationship between law and economic competition and the same story of law's role in the economic and political restructuring of postwar Western Europe.

LEGAL EDUCATION I

EDUCATING FOR PROFESSIONAL COMPETENCE  
in the Twenty-First Century:  
EDUCATIONAL REFORM AT CHICAGO-KENT  College of Law  Gary S. Laser 243

Before lawyers can fully assume their roles as members of the legal profession, they need to know more than the traditionally-taught legal doctrine, legal method, and legal research and writing. They need to have knowledge of all the fundamental lawyering skills and values. And they must also know the art of lawyering, an additional body of knowledge used by lawyers when applying legal doctrine, skills, and values in the real world of practice. Because real world problems contain elements of uncertainty, uniqueness, or value conflict, knowledge of the art of lawyering is required for their solution.

Lawyers must learn legal doctrine, all the fundamental skills and values, and the art of lawyering during law school. They should be educated to become reflective practice-
ers, with a lawyering identity developed in law school that incorporates high standards of competence, ethics, and social responsibility. Legal doctrine, skills, and values can be taught in the classroom or by simulation. In contrast, the art of lawyering must be learned through reflective, live-client clinical education in a realistic in-house setting, and under the close supervision of clinical educators who are also master practitioners.

Chicago-Kent’s new three year program, Dispute Resolution: Litigation and its Alternatives, stresses the connection between legal doctrine, skills, and values, and the art of lawyering. Participating students receive a comprehensive and balanced legal education. Their reflective, live-client clinical education takes place in the Chicago-Kent teaching law firm, a fee-generating office staffed by experienced practitioner-educators.

AN ESSAY ON ELECTRONIC CASEBOOKS: MY PURSUIT OF THE PAPERLESS CHASE

This Essay discusses electronic teaching materials in law with a special focus on the most common teaching tool in American law schools today: the casebook. The Essay describes the technology setting in law from which an electronic casebook might emerge and offers a pedagogical vision that points to important advantages that might be expected of electronic casebooks linked to other electronic texts. It describes the progress of efforts at Chicago-Kent to build and use electronic teaching materials in law. These efforts have culminated in a course taught with a computer-based casebook in a networked classroom without a printed casebook of any kind.

LEGAL EDUCATION II

A LETTER TO A FEMALE COLLEAGUE

This Essay examines the unique challenges facing women law professors—challenges created by the women themselves and by the academy. It argues that if women professors can succeed in improving the number and quality of their positions they can thereby improve life in the academy in general.

LAW PROFESSORS OF COLOR AND THE ACADEMY: OF POETS AND KINGS

This Essay argues that the many pressures on law professors of color may encourage only the quiet pursuit of their scholarship. However, they, much like the dissident poet challenging the king, must risk upsetting established power in order to further the goal of social transformation.

STORYTELLING AND LEGAL SCHOLARSHIP

Traditional legal scholarship generally has been presented in a neutral and objective voice. This Essay suggests that scholarship implicitly contains the stories of the author. It argues that bringing the author's narrative and those of the subjects of the scholarship to the forefront enriches the power of the writing.

A LEGAL SAMPLER

BRITISH BANKS’ ROLE IN U.K. CAPITAL MARKETS SINCE THE BIG BANG

Focusing on the capital needs of medium and smaller businesses, this Essay examines the activities of British banks in their domestic capital markets before and after the "Big Bang" events of 1986. The drive of Britain’s biggest banks to become more active in the international capital markets has contributed to a decreased availability of funds for Britain’s own smaller firms.
ADAM, EVE AND THE FIRST AMENDMENT:
SOME THOUGHTS ON THE OBSCENE AS SACRED

Sheldon H. Nahmod 377

The conventional First Amendment approach to obscene speech considers it to be of little or no value in the marketplace of ideas. This Article, inspired by Mircea Eliade's book, The Sacred and the Profane, and by Elaine Pagels' book, Adam, Eve and the Serpent, inverts this conventional approach. It maintains that interesting insights into the First Amendment and the right of privacy can be derived from considering obscene speech to be sacred, and thus of the highest value.

A VIEW FROM THE BOX:
THE LAW PROFESSOR AS JUROR

Richard H. McAdams 393

This Essay reports on the author's recent experience as a juror in a four-day personal injury trial in a Cook County Circuit Court.

WOMEN, MEDICAL CARE, AND
MASS TORT LITIGATION

Joan E. Steinman 409

This Essay observes that women seem to be disproportionately injured by drugs and medical devices ostensibly made to enhance their well-being. It argues that economic and attitudinal factors of the kind that disadvantage women in the corporate and scientific spheres perpetuate and exacerbate the disadvantages to women when they are forced to resort to the legal system for protection and for the redress of injuries. It proposes empirical inquiries that would shed additional light on these matters and proposes some alterations in the legal system to help respond to the problem.

FEDERALISM AND SUPREMACY: CONTROL OF
STATE JUDICIAL DECISION-MAKING

Margaret G. Stewart 431

This Essay argues that governmental authority to regulate primary conduct is separate and distinct from governmental authority to enforce such regulation. As a result, while Congress may regulate certain kinds of conduct, which regulation is binding on the states, within the constraints of the due process clause the states remain free to enforce such regulation according to their own, nondiscriminatory procedures.

NOTES

EXTENDING FAMILY BENEFITS TO
GAY MEN AND LESBIAN WOMEN

Mary N. Cameli 447

In this Note, Ms. Cameli describes the scope of discrimination suffered by gay and lesbian families, provides an overview of current remedies, and then assesses domestic partnership ordinances. She concludes that these ordinances are at best a bridge to a complete remedy.

KOTECKI V. CYCLOPS WELDING CORP.:
THE EFFICACY OF A LIMITED CONTRIBUTION
RULE AND ITS EFFECT ON GOOD
FAITH SETTLEMENTS

Nicholas B. Clifford, Jr. 479

By artificially placing a limit on employer contribution liability equal to the amount of the employer's workers' compensation payments, the Kotecki decision fundamentally changes the landscape for employer liability in suits brought by injured employees. This Comment concludes that the limit represents a satisfactory, though strained, balance between the competing interests in the statutory contribution and workers' compensation
systems. Furthermore, while the *Kotecki* rule will not directly affect the current standard for establishing a good faith settlement, the change in the scope of employer liability will dramatically impact the likelihood and terms of such settlements in the future.

**DUTIES OF ATTORNEYS ADVISING FINANCIAL INSTITUTIONS IN THE WAKE OF THE S&L CRISIS**  
*Christopher G. Sablich*  517

This Note analyzes the duties and standard of care to which financial institution attorneys are being held by the receivers and regulators of failed financial institutions. It concludes that financial institution attorneys are not subject to a higher standard of duty than other corporate counsel. However, the scope of their duty may be broader because of the public's interest in a safe banking system and the higher standards of duty to which bank directors are held.

**ONE JURY INDIVISIBLE: A GROUP DYNAMICS APPROACH TO VOIR DIRE**  
*Tracy L. Treger*  549

The selection of jurors may be critical to the outcome of a trial. However, voir dire is an inexact science fraught with stereotypes and guesswork. This Note explains how consideration of the dynamics of the jury as a whole can aid attorneys conducting voir dire.