Columbus School of Law
The Catholic University of America

2014
CUA Law Scholarship
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# TABLE OF CONTENTS

Marshall J. Breger ................................................................. 4
Roger Colinvaux ................................................................. 6
Cara H. Drinan ................................................................. 7
Clifford S. Fishman ......................................................... 8
A.G. Harmon ................................................................. 10
Regina T. Jefferson ......................................................... 11
William A. Kaplin ......................................................... 12
Kathryn Kelly ................................................................. 13
Megan M. La Belle ......................................................... 15
Mary G. Leary ................................................................. 17
Lisa G. Lerman ................................................................. 19
David A. Lipton ................................................................. 20
Suzette M. Malveaux ....................................................... 21
Lisa V. Martin ................................................................. 22
Michael F. Noone Jr. ....................................................... 23
Raymond C. O’Brien ....................................................... 24
J.P. “Sandy” Ogilvy ......................................................... 25
Kenneth Pennington ....................................................... 26
Antonio Fidel Perez ......................................................... 27
Heidi M. Schooner ......................................................... 28
Lucia Ann Silecchia ......................................................... 29
George P. Smith, II ......................................................... 30
Victor Williams ............................................................... 33
Elizabeth Winston ......................................................... 34
Student Scholarship ....................................................... 35

Description:

Independent Agencies in the United States provides a full-length study of the structure and workings of federal independent regulatory agencies in the US, focusing on traditional multi-member agencies, such as the Securities and Exchange Commission, the Federal Communications Commission, the National Labor Relations Commission, and the Federal Trade Commission. It recognizes that the changing kaleidoscope of modern life has led Congress to create innovative and idiosyncratic administrative structures including government corporations, government sponsored enterprises governance, public-private partnerships, systems for "contracting out," self-regulation and incorporation by reference of private standards.

In the process, Breger and Edles analyze the general conflict between political accountability and agency independence. They provide a unique comparative review of the internal operations of US agencies and offer contrasts between US, EU, and certain UK independent agencies. Included is a first-of-its-kind appendix describing the powers and procedures of the more than 35 independent US federal agencies, with each supplemented by a selective bibliography.
Book Chapter


Description:

Going beyond the more usual focus on Jerusalem as a sacred place, this book presents legal perspectives on the most important sacred places of the Mediterranean. The first part of the book discusses the notion of sacred places in anthropological, sociological and legal studies and provides an overview of existing legal approaches to the protection of sacred places in order to develop and define a new legal framework. The second part introduces the meaning of sacred places in Jewish, Christian and Islamic thought and focuses on the significance and role that sacred places have in the three major monotheistic religions and how best to preserve their religious nature whilst designing a new international statute. The final part of the book is a detailed analysis of the legal status of key sacred places and holy cities in the Mediterranean area and identifies a set of legal principles to support a general framework within which specific legal measures can be implemented. The book concludes with a useful appendix for the protection of sacred places in the Mediterranean region.
Abstract:

The article considers the correct tax treatment of organized political activity by the tax system and discusses the problems that have arisen from political activity depending on whether the organization is a charity, a noncharitable exempt, or a political organization. The article then examines administrative and legislative options to the problems raised by political activity. Quantum-based solutions to the problem of political activity by noncharitable exempt do not provide a clear advantage over present law. Formally quantifying the “primarily” test would result in more certainty, but would also require that the Service be more, not less, involved in the regulation of political activity. If the policy goal is to curb political activity by noncharitable exempt, changing the test from “primarily” to something more restrictive like “substantially” or “exclusively” would be effective, but would create new categories of taxable nonprofits that are treated worse than political organizations for engaging in less political activity, which is irrational. Further, it is not clear, especially after the Citizens United decision, why as a matter of tax exemption the regulations decree that political activity may not further noncharitable exempt purposes. Before Citizens United, the political activity limits were not especially relevant, but at least helped to differentiate organization types. However, Citizens United largely rendered existing tax law limitations obsolete by making a new kind of multi-purpose organization possible. As a result, definitional political activity limits are no longer justified and should be eliminated, but only if the 527(f) tax on investment income remains viable and the differences in the disclosure regimes between political organizations and noncharitable exempt organizations are erased. In addition, Congress should affirm that the gift tax does not apply with respect to political contributions, but also extend the income tax to transfers of appreciated property to noncharitable exempts. Further, Congress should acknowledge that the increase in political speech by noncharitable exempt will lead to abuse of charitable organizations, and take steps to prevent the laundering of independent expenditures through the charitable form. Congress also should recognize that Citizens United has led to a need to develop a new tax baseline for political activity conducted “for profit” or outside of section 527.
MISCONSTRUING GRAHAM & MILLER
CARA DRINAN

INTRODUCTION
In the last three years, the Supreme Court has decreed a sea change in its juvenile Eighth Amendment jurisprudence. In particular, in Graham v. Florida and Miller v. Alabama, the Court struck down a majority of the states’ juvenile sentencing laws by outlawing life without parole (“LWOP”) for juveniles who commit non-homicide offenses and by mandating individualized sentencing for juveniles who commit even the most serious murders. An examination of state laws and sentencing practices since these rulings, however, suggests that the Graham and Miller rulings have fallen on deaf ears.

After briefly describing what these two decisions required of the states, in this Essay, I outline the many ways in which state actors have failed to comply with the Court’s mandate. Finally, I map out a path for future compliance that relies heavily upon the strength and agility of the executive branch.

GRAHAM & MILLER: A MANDATE FOR CHANGE
In its 2010 Graham decision, the Supreme Court held that the Eighth Amendment forbids the sentence of LWOP for juveniles who commit non-homicide offenses. In Graham, the Court struck down laws in thirty-six jurisdictions that permitted juveniles to receive LWOP for some non-homicide offenses. In addition, the Graham Court signaled that, whatever sentence is imposed on a juvenile offender, the juvenile must be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”

CARA DRINAN
ASSOCIATE PROFESSOR OF LAW
J.D. - Stanford Law School
M.A. - Oxford University
B.A. - Bowdoin College


Abstract:
In the last three years the Supreme Court has decreed a sea change in its juvenile Eighth Amendment jurisprudence. In particular, in its Graham v. Florida and Miller v. Alabama rulings, the Court struck down a majority of the states’ juvenile sentencing laws, outlawing life without parole for juveniles who commit non-homicide offenses and mandating individualized sentencing for those children who commit even the most serious crimes. An examination of state laws and sentencing practices, however, suggests that the Graham and Miller rulings have fallen on deaf ears. After briefly describing what these two decisions required of the states, in this Essay, I outline the many ways in which state actors have failed to comply with the Court’s mandate. Finally, I map out a path for future compliance that relies heavily upon the strength and agility of the executive branch.
ANNUAL SUPPLEMENT TO JONES ON EVIDENCE: CIVIL AND CRIMINAL (7th ed. 2004-Present).

Description:

*Jones on Evidence: Civil and Criminal* integrates coverage of the Federal Rules of Evidence and the latest revised Federal Rules of Procedure, and provides guidance on how to apply the rules. It also offers expanded coverage of exclusionary law. How-to outlines oversee every step and provide concise statements of each rule, including any variations.

This publication also serves as a reliable source on all areas of civil and criminal evidence, provides highlights of significant recent decisions, and contains cautions against presentation methods found to be inadmissible.
CLIFFORD S. FISHMAN

PROFESSOR OF LAW

J.D. - Columbia University Law School
B.A. - University of Rochester


Description:

*Wiretapping and Eavesdropping: Surveillance in the Internet Age* provides information and tactics for criminal and civil practitioners in situations where Internet, computer, phone (analog, digital, and cellular), or other monitored and recorded evidence issues arise. Special attention is given to problems commonly arising in matrimonial, employment, and other civil litigation; criminal proceedings; and criminal and civil statutes, penalties, and remedies.
interested, but not injured: the compromised status of qui tam plaintiffs under the amended false claims act and the return of the citizen suit, 34 PUB. CONTRACT B. J. 423 (2014).

abstract:

when defendants find themselves in lawsuits, they naturally want to know what they have done to aggrieve the opposing party. how has the plaintiff been hurt? in what way? did the defendant cause the alleged harm, and what remedy does the plaintiff propose as a remedy? these are natural determinants of any lawsuit from which litigants can assess the relative strengths and weaknesses of their adversaries’ case. any less than clear answers to these questions deprive the defendant, especially in criminal litigation, of the prerequisites for framing his or her defense. the answers to these questions, however, beg yet another question that is inextricably intertwined with the others and equally fundamental to the conflict: who exactly is the plaintiff? with any potential litigation, there are a limited number of people who can bring an action. only those whose profiles are brightly defined by the portrait painted in the statute can rightly raise a claim. only one who has been impermissibly touched can bring an action for battery. only one negligently injured can sue in tort. only the state, wronged by extortion, embezzlement, or other criminal action, can prosecute and deprive him of his freedom. those who do not meet such profiles cannot call the defendant into a court of law; they are disinterested at best, intermeddlers at worst. these things all seem forgone conclusions—the stuff of the most basic justiciability concerns model from which they can pattern their future approaches to a litigation matter, regardless of its type.

Abstract:

Part I of this Reflection describes and critiques the effectiveness of the existing nondiscrimination standards for encouraging increased coverage in the private retirement system. Part II examines current trends with respect to various segments of the working population and concludes that existing pension law and policies are providing inadequate retirement benefits to low- and middle-income workers participating in 401(k) plans. Part III proposes the following three recommendations for increasing participation rates in the current pension climate: (1) mandatory education programs for all 401(k) plans; (2) mandatory automatic features in 401(k) plans; and (3) an additional tax incentive to encourage greater participation of low- and middle-income employees, as measured by their vested accrued benefits.

Description:

Based on the fifth edition of the indispensable guide to the laws that bear on the conduct of higher education, this student edition provides an up-to-date textbook, reference, and guide for coursework in higher education law and programs preparing higher education administrators for leadership roles. This student edition contains a glossary of key terms and an appendix on how to read legal material for the non-law student. Each chapter is introduced by a discussion of key terms and ideas the students will encounter.
ANNUAL SUPPLEMENT TO COMPARATIVE NEGLIGENCE (5th ed. 2010-Present) (with Victor E. Schwartz).

Description:

Comparative Negligence, Fifth Edition fully discusses a doctrine that has been a major force of change in tort law over the past 20 years. Since its initial publication in 1974, it has become the leading reference covering the interaction of comparative negligence with every relevant tort doctrine.
ANNUAL SUPPLEMENT TO GUIDE TO MULTISTATE LITIGATION (1986-Present) (with Victor E. Schwartz & Patrick W. Lee).

Description:

Detailed analysis of the law governing multistate litigation, providing court-tested techniques and practice-oriented materials to enhance performance. Detailed section titles discuss: The Rise and Impact of Multistate Product Liability Litigation; Response of the Judicial System to the Rise of Multistate Litigation; Organizing In-House for Multistate Litigation; Outside Counsel; Jurisdiction and Venue: Limits on Multistate Forum Shopping; Coordinated Discovery and Discovery Response; Motions Practice on Common Issues; Jury Issues and Voir Dire; Development and Use of Technical Experts; Punitive Damages in Multistate Litigation; Collateral Estoppel; Relationships with Insurers; Settlements; Monitoring Ongoing Business Operations; Handling Publicity; and Government Involvement.
Against Settlement of (Some) Patent Cases

Megan M. La Belle


Abstract:

For decades now, there has been a pronounced trend away from adjudication and toward settlement in civil litigation. This settlement phenomenon has spawned a vast critical literature beginning with Owen Fiss’s seminal work, Against Settlement. Fiss opposes settlement because it achieves peace rather than justice, and because settlements often are coerced due to power and resource imbalances between the parties. Other critics have questioned the role that courts play (or ought to play) in settlement proceedings, and have argued that the secondary effects of settlement—especially the lack of decisional law—are damaging to our judicial system. Still, despite these criticisms, settlement remains the norm in civil litigation today.

This Article considers the settlement phenomenon in the context of patent litigation. In recent years, courts have seen an explosion of patent litigation. Consistent with the general trend in civil litigation, most of these patent suits have been settled. While scholars have studied and debated “reverse payment” or “pay for delay” patent settlements in depth, what is missing from the literature is a comprehensive treatment of the normative questions raised by the widespread settlement of conventional patent cases. Do conventional patent settlements necessarily promote the public good? Should courts encourage these patent disputes to settle? Are there certain types of patent cases that should be adjudicated rather than settled?

This Article seeks to answer these questions. It begins by contextualizing the antisettlement arguments of Fiss and other scholars within the framework of patent litigation. The Article then identifies some of the unique problems that patent settlements create, namely that settlement...
**Abstract:**

The banking industry and the patent system are longstanding American institutions whose histories date back to the founding of this country. Historically, however, the paths of these two institutions rarely crossed. Although financial firms have been increasing their innovative output for decades now, until recently they relied on trade secrecy, first mover advantages, and other business mechanisms to protect and monetize their intellectual property—not patents. Through a convergence of circumstances over the past several years, that pattern has changed. The shift began when the Federal Circuit decided that business methods—banks’ primary mode of innovation—are patentable subject matter. That decision triggered an increase in the number of business method patents issued by the PTO, and, correspondingly, a surge in patent infringement litigation targeting big banks. When the banks found little success in court, their powerful lobby persuaded Congress to include a special carve out for financial patents in the America Invents Act—the comprehensive patent reform legislation enacted in 2011. Meanwhile, as the financial industry sought legislative favor to ward off future infringement suits, many of the big banks built substantial patent portfolios of their own.

This Article explores this nascent relationship and considers some potential implications of growing bank involvement in our patent system. It suggests that the intersection of these institutions could yield some benefit, for example by improving the publicly available information regarding financial innovations. Yet, more pointedly, it warns of possible harms, especially if big banks use their political and economic power to disproportionately influence patent reform and innovation policy in the future.
Fighting Fire with Fire: Technology in Child Sex Trafficking

MARY GRAW LEARY

PROFESSOR OF LAW

J.D. - Georgetown University Law Center
B.A. - Georgetown University

Abstract:

This paper is a manifestation of a year of research in which researchers engaged in a comprehensive examination of available federal child sex trafficking opinions and press releases generated over the past twelve years. The research analyzed several hundred judicial opinions since the implementation of the TVPA to determine what, if any, trends could be observed. The paper is the first of a series to publish the results of this research, offering insight into the role of technology in the recruiting, advertising, selling, searching for, and purchasing of children for sex. This paper examines: (1) how traffickers use technology to advertise and sell child sex trafficking victims; (2) how purchasers of sex use technology to locate and complete the commercial transaction in buying a child for commercial sexual exploitation; and (3) how law enforcement use technology to detect and investigate child sex trafficking crimes. It offers important insight into technology’s role and critical evidence-based guidance for prevention and investigation of these cases. The article argues for altered prevention messaging and endorses proactive investigations which follow the guidelines suggested.
Book Chapter:

From the Streets to Cyberspace: The Effects of Technology on the Commercial Sexual Exploitation of Children and Adolescents in the United States, in Adolescent Sexual Behavior in the Digital Age: Considerations for Clinicians, Legal Professionals and Educators (Fabian Saleh et al. eds., 2014) (with Abigail M. Judge).

Description:

The nexus between the digital revolution and adolescent sexual behavior has posed significant challenges to mental health practitioners, attorneys, and educators. These digital technologies may facilitate dangerous behaviors and serious consequences for some youth. Adolescent Sexual Development in the Digital Age considers adolescent sexual behavior in both clinical and legal contexts and provides a basis for clinicians, legal professionals, educators, policy makers, parents and the general public to understand the impact that technology has on human growth and development. The book’s contributing authors are leading authorities in adolescent development, law, and ethics, fostering an interdisciplinary dialogue within the text.

New technology poses many opportunities for both normal and risky sexual behavior in youth; including "sexting," social networking, cyber-sexual harassment, commercial exploitation of children, and child pornography. Beyond just cataloging the various technologies impacting sexual behavior, this volume offers guidance and strategies for addressing the issues created by the digital age.

**Description:**

An indispensable tool for students taking courses in professional responsibility, *Ethical Problems in the Practice of Law: Model Rules, State Variations, and Practice Questions* contains only the essential resources: the ABA Model Rules of Professional Conduct and the official comments; a selection of the most distinctive state variations; and 116 practice questions, in the format used in the Multistate Professional Responsibility Examination (MPRE), together with answers and detailed analyses.
**Description:**

*Broker Dealer Regulation* provides a detailed description of the broker-dealer registration process. This timely survey of an increasingly complex and sensitive subject covers: Broker-dealer duties, Broker-dealer prohibitions, Broker-dealer disclosure requirements, Broker-dealer financial and record retention responsibilities, Broker-dealer sanctions for performance failures, Client/broker dispute resolution forums, Broker-dealer liability, The definition of an underwriter, State (blue sky) law, and Self-regulatory organization rules.
ANNUAL SUPPLEMENT TO CLASS ACTIONS AND OTHER MULTI-PARTY LITIGATION: CASES AND MATERIALS (3d ed. 2012-Present) (with others).

Description:

This casebook focuses on one of the most important and dynamic areas of modern federal civil practice - aggregate-party litigation, particularly class actions. The casebook covers the latest groundbreaking Supreme Court cases involving employment discrimination, arbitration and securities fraud. The book not only provides cutting edge cases, it explores litigation strategies used by practitioners and examines the theories underlying complex, multi-party litigation. As such, the book is ideal for scholars, lawyers and students.
Reconsidering Dual Consent, 82 UMKC L. Rev. 705 (2014).

Abstract:

Before a child may travel internationally, many countries require proof that both of the child’s parents consent. These “dual consent” requirements are aimed at preventing international child abduction, and many countries have adopted them as part of the coordinated effort to implement the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In recent years, international air carriers have been urged to impose similar requirements for all children traveling on international flights. Although well-intentioned, dual consent requirements pose significant harms, especially to children of single parents and parents subjected to domestic violence. This article explores the unintended consequences of dual consent requirements and proposes alternative approaches that mitigate the harms of dual consent while also protecting against child abduction.
MICHAEL F. NOONE JR.

RESEARCH ORDINARY PROFESSOR OF LAW

S.J.D.- George Washington University
LL.B., LL.M. - Georgetown University Law Center
B.S. - Georgetown University

Book Chapter:


Description:

Explore the relationship between the law and the U.S. fight against terrorism with The Fundamentals of Counterterrorism Law. This book covers the historical aspects of counterterrorism and also sets the foundation of understanding this dynamic area of law - by taking analysis of counterterrorism law to the next level.

Description:

This casebook contains the fundamentals for a lively, contemporary course in elder law. It emphasizes illustrative factual cases and statutes, and is supported by materials from elder law practitioners and statistical data. It is distinctive in its emphasis upon state and federal court decisions, not simply recitation of statutory provisions. Elder law is of burgeoning historical and social importance. Statistics indicate that by 2030 almost one-fifth of all Americans will be 65 or older. Among the legal issues pertinent to an aging population are estate planning objectives in the context of possible incapacity, integrating nonprobate and probate transfers, asset protection planning, philanthropy and dynasty options, and beneficial tax planning. Recently enacted statutes provide guidance in personal health care decision-making and designating guardians and surrogates to exercise authority when needed. And clients and institutions require legal assistance to navigate federal benefits such as Medicare, Social Security, Veterans Benefits, and the interaction of state-federal Medicaid opportunities. Statistics also indicate that almost two-thirds of all individuals over age 65 will need some form of long-term care. For many, the choices will involve home care or some form of institutional care, with payment derived from private funds, insurance, or government assistance. All of these options will involve legal parameters.

Abstract:

This volume is an effort to present a comprehensive set of guidelines for the self-evaluation of legal clinics and programs. The last time that guidelines were developed for legal clinics was in 1980 when a joint AALS and ABA Committee on Guidelines for Clinical Legal Education published its Guidelines for Clinical Legal Education. The present guidelines trace their lineage to the efforts of a group of clinicians working under the auspices of the CLEA-AALS Section on Clinical Legal Education Joint Task Force on Clinical Standards, which was formed in 1995 and was active for several years. These guidelines also draw inspiration from the Standards for the Provision of Civil Legal Aid (2006), which is the work of the ABA Standing Committee on Legal Aid and Indigent Defendants and reference the National Legal Aid and Defender Association’s Performance Guidelines for Criminal Defense Representation (2006). The volume first describes the history of this guidelines project. The balance of the volume is comprised of chapters focusing on guidelines for the Organization and Administration of Clinical Legal Education; Live-Client Clinics; Externships; and Simulation Courses. Although presented here in print form, the ultimate goal of the project is to create an editable Wiki document that can be updated and expanded by members of the clinical community to represent current thinking on best practices in experiential education.

Abstract:

The research on the pre-Vulgate manuscripts has been enormously interesting and, not surprisingly, has created areas of disagreement about aspects of Gratian’s life, work, and teaching. These scholarly debates have given birth to a fruitful and vigorous exploration into the teaching and development of law in the first half of the twelfth century. The issues are many. Perhaps the most important is the lack of consensus about how long Gratian worked on the Decretum and how long he taught. That will be the focus of this Essay.

Abstract:

Is the United States, as an international actor, different from all other international actors? If so, how is it different? What makes it different? How does American sovereignty fit into a larger conception of international law? These questions go back to the beginning of the Republic, and they remain pressing today. Many have debated this question in terms of the legacy of the Founding. Some find in the Founding the seeds of multilateralism and perhaps even cosmopolitanism; others, rejecting this interpretation, advance a nationalist and unilateralist account of the Founding. But the Founding is not the whole story.

This Article argues that our answers to these questions need to account for the Civil War, when the question whether the United States would survive as the continuation of the tradition commenced in 1776 was answered through an unprecedented and, since then, unprecedented violent transformation. The state reconstructed through that war arguably became a new kind of creature in international law, radically different from the arrangements that governed the antebellum regime, thus re-conceiving American sovereignty and refashioning American practice of international law in the image conceived by Abraham Lincoln’s rhetoric, statecraft, and worldview. Lincoln's achievement was to transform the plural United States from a sui generis institutional arrangement in the community of states into a singular nation-state performing a sui generis role in the community of states. This new role, the United States would serve as an exemplar of a particular kind of society and the kind of person Lincoln thought normatively superior, a vehicle for the formation of a kind of person he believed made such a society possible, and perhaps even a force in the world for the progressive and universal realization of those ideals. Much as Lincoln’s achievement was to refashion the American state, Lincoln’s vision of American sovereignty made possible and necessary an entirely new approach to international law in which the American state re-defined its relation to the world.

Abstract:

The banking industry and the patent system are longstanding American institutions whose histories date back to the founding of this country. Historically, however, the paths of these two institutions rarely crossed. Although financial firms have been increasing their innovative output for decades now, until recently they relied on trade secrecy, first mover advantages, and other business mechanisms to protect and monetize their intellectual property — not patents.

Through a convergence of circumstances over the past several years, that pattern has changed. The shift began when the Federal Circuit decided that business methods — banks’ primary mode of innovation — are patentable subject matter. That decision triggered an increase in the number of business method patents issued by the PTO, and, correspondingly, a surge in patent infringement litigation targeting big banks. When the banks found little success in court, their powerful lobby persuaded Congress to include a special carve out for financial patents in the America Invents Act — the comprehensive patent reform legislation enacted in 2011. Meanwhile, as the financial industry sought legislative favor to ward off future infringement suits, many of the big banks built substantial patent portfolios of their own.

This Article explores this nascent relationship and considers some potential implications of growing bank involvement in our patent system. It suggests that the intersection of these institutions could yield some benefit, for example by improving the publicly available information regarding financial innovations. Yet, more pointedly, it warns of possible harms, especially if big banks use their political and economic power to disproportionately influence patent reform and innovation policy in the future.
Book Chapter:


Description:

As Gerard V. Bradley, Professor of Law at the University of Notre Dame, asks in his foreword: What then should one expect to learn from a volume about American law from a Catholic perspective? His answer is a straightforward one: One should expect a critical guide to the moral evaluation of laws, noting of the essays collected in American Law from a Catholic Perspective: Through a Clearer Lens: The moral evaluative perspective which unfolds in succeeding pages illumines, justifies, and critiques America’s laws. Edited by Ronald J. Rychlak, American Law from a Catholic Perspective is one of the most comprehensive surveys of American legal topics by a gathering of major Catholic legal scholars. Contributors explore, among other subjects, bankruptcy, bioethics, corporate law, environmental law, ethics, family law, immigration, intellectual property, international human rights, labor law, legal education, legal history, military law, the philosophy of law, property, torts, and several different aspects of constitutional law, including religious freedom, privacy rights, and free speech. Here readers will find probing arguments that bring the critical perspective of Catholic social thought to bear on American legal jurisprudence. Essays include Lucia Silecchia’s examination of a Catholic understanding of stewardship with respect to environmental laws; and many others on major legal topics in American jurisprudence-and their intersection with Catholic social teaching. American Law from a Catholic Perspective: Through a Clearer Lens is essential reading for all Catholic lawyers, judges, and law students, as well as an important contribution to non-Catholic readers seeking guidance from a faith tradition on questions of legal jurisprudence. Based on well-developed and established ideas in Catholic social thought, the evaluations, suggestions, and remedies set forth offer ample food for thought and a basis for action in the realm of legal scholarship.
GEORGE P. SMITH, II

PROFESSOR OF LAW

LL.D. - Indiana University
LL.M - Columbia University
J.D. - Indiana University
B.S. - Indiana University

Book Chapter:


Description:

A multi disciplinary work that focusses on the interplay between law and public health, Law and Global Health covers a range of key topics in the legal and political debates surrounding global justice and health, including the content of the right to health, obligations to vulnerable populations, and health governance.

Current Legal Issues, like its sister volume Current Legal Problems (now available in journal format), is based upon an annual colloquium held at University College London. Each year leading scholars from around the world gather to discuss the relationship between law and another discipline of thought. Each colloquium examines how the external discipline is conceived in legal thought and argument, how the law is pictured in that discipline, and analyses points of controversy in the use, and abuse, of extra-legal arguments within legal theory and practice. Law and Global Health, the sixteenth volume in the Current Legal Issues series, offers an insight into the scholarship examining the relationship between global health and the law. Covering a wide range of areas from all over the world, articles in the volume look at areas of human rights, vulnerable populations, ethical issues, legal responses and governance.

Abstract:

Holistic Medicine traces its provenance to the foundational value or chism of the Society of Jesus of cura personalis which directs respect be given to all individuals and to their souls — especially whenever medical healing is required. Today, the notion of best patient care should include not merely attention to somatic issues of refractory pain management but, equally, to non-somatic or existential suffering. It is at the end-stage of life that palliative — as opposed to curative — care must be provided. When a condition is seen as medically futile, this Article advocates palliative or deep sedation — when consistent with patient values — should be accepted more fully as efficacious and humane end-of-life medical care. Roman Catholic moral theology supports the ideal that extraordinary medical measures need not be provided in order to preserve life at its end-stage. The International Association of Catholic Bioethicists acknowledged in 2011 that holistic interventions — when appropriate and consistent with best patient care — should seek to address existential or spiritual suffering by sedation.

Abstract:

Political ideologies and evolving notions of social justice have shaped public health policies throughout American history in a quest to find a point of balance between the collective good and economic realities. In pursuit of this balance, Congress enacted the Affordable Care Act in 2010. This Article first examines the new law through the lens of the social contract as envisioned by Rousseau and adopted by the Framers of the Constitution. Using economic data, public opinion, and information from the medical community, Smith and Gallena proceed to offer a frank appraisal of the state of health care in America and the future implications of the Act.

The Article then examines the structure, power, and mandate of the Independent Payment Advisory Board (IPAB). Created by the Affordable Care Act, the IPAB simultaneously concentrates legislative authority in an autonomous executive agency, while shielding its actions from judicial review. Smith and Gallena argue that the IPAB undermines the fundamental principle of the separation of powers, poses an inevitable threat to current and future Medicare beneficiaries, and may ultimately destabilize the state of healthcare in the United States. Finally, Smith and Gallena propose a model for allocating health care resources that comports with both the philosophical underpinnings of the social contract and social justice.
VICTOR WILLIAMS

CLINICAL ASSISTANT PROFESSOR OF LAW

LL.M. - George Mason School of Law
LL.M. - Columbia Law School
J.D. - Hastings College of Law
Ed.M. - Harvard University
M.A.T. - National College of Education
B.A. - Ouachita Baptist University


Abstract:

Federal judges should not monitor recess. The President’s recess appointment power is a textbook example of “the assignment of exclusive decision making responsibility to the non-judicial branches of the federal government.” Answers to political questions, such as those raised by the Republic’s constitutional processes of Senate impeachment trials and presidential recess appointments, should come only from elected political leaders. The Recess Appointment Clause’s textual mandate and structural logic recognize that only the President possesses the institutional competence to know when such discretionary appointment action is required to meet his Article II, Section 3 obligation: “[H]e shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.” Alexander Hamilton explained in Federalist 67 that Article II, Section 2, Clause 3 is “intended to authorize the President singly to make temporary appointments.” This Article argues that the Noel Canning challenge to the President’s use of his recess appointment authority presents a nonjusticiable political question. The work draws from arguments developed for this author’s Supreme Court amicus briefs in Noel Canning, other amicus briefs lodged during the past year for related actions in the Third, Fourth, Seventh, Ninth, and D.C. Circuits, and a variety of this author’s commentary on federal appointments.

Abstract:

Seeds are chattel. As such, seeds are protectable by the same tapestry of public and private ordering as other forms of chattel. However, the distinguishing characteristic of seeds, their method of propagation, and the history of seeds—traditionally viewed as a public good rather than chattel—distort that tapestry. The model of seed distribution thus needs to be refrained in light of the often disparate interests of innovators, producers, and consumers. As with all chattel, there is no single, correct model for distributing seeds, but law and contract may be woven together to strike a balance.
Columbus School of Law, The Catholic University of America

Student Scholarship
2014

CUA Law Student Scholar Series

- Zachary Navit, *Pennsylvania’s Educational Improvement Tax Credit and Opportunity Scholarship Tax Credit Programs: Businesses and Students Slip through a Crack in the School Choice Wall of Separation.*
- Kathryn Spates, *The Commerce Clause and the FDA Regulation of Stem Cells: Regenerative Sciences Serves as the Example.*

Non-CUA Law Journals


Catholic University Law Review

- Adam Hare, *Land Ho! Two Words an Injured Longshore or Harbor Worker Never Wants to Hear,* 64 CATH. U. L. REV. 161 (2014).

CommLaw Conspectus
♦ Julie Borna, Aereo: Cutting the Cord or Splitting the Circuit?, 22 COMMLAW CONSPECTUS 287 (2014).
♦ Kerry Gutknecht, Apple and Amazon’s Antitrust Antics: Two Wrongs Don’t Make a Right, But Maybe They Should, 22 COMMLAW CONSPECTUS 160 (2014).


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