Good Reads

By the full-time faculty. January 1, 2006 through December 31, 2006. (Short pieces have been omitted.)

BOOKS

Cunningham, Noël B.
The Logic of Subchapter K: A Conceptual Guide to the Taxation of Partnerships. 3rd edition. St. Paul: Thomson/West, 2006 (with Laura Cunningham).

Dreyfuss, Rochelle C.
Editor. *Intellectual Property Stories.* New York: Foundation Press, 2006 (with Jane C. Ginsburg).

Dworkin, Ronald M.
Is Democracy Possible Here?: Principles for a New Political Debate. Princeton: Princeton University Press, 2006.

Justice in Robes. Cambridge, MA: Belknap Press, 2006.

Feldman, Noah
What We Owe Iraq: War and the Ethics of Nation Building. Princeton: Princeton University Press, 2006.

Geistfeld, Mark
Principles of Products Liability. New York: Foundation Press, 2006.

Gillers, Stephen
Regulation of Lawyers: Statutes and Standards. 2006 edition. New York: Aspen, 2006 (with Roy D. Simon).

Holmes, Stephen
Editor. *The State After Communism: Governance in the New Russia.* Lanham, MD: Rowman & Littlefield, 2006 (with Timothy J. Colton).

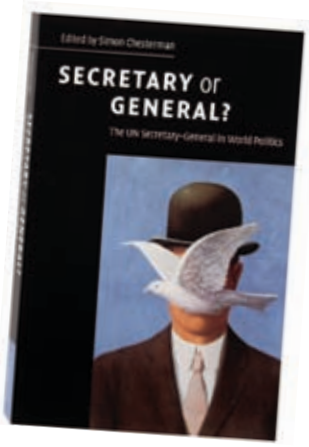
Issacharoff, Samuel
Party Funding and Campaign Financing in International Perspective. Oxford: Hart Publishing, 2006 (with K. D. Ewing).

Jacobs, James B.
Mobsters, Unions, and Feds: The Mafia and the American Labor Movement. New York: New York University Press, 2006.

Lowenfeld, Andreas
International Litigation and Arbitration. 3rd edition. St. Paul: Thomson/West, 2006.

Reporter. *Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute.* Philadelphia: American Law Institute, 2006 (with Linda Silberman).

Secretary or General?: The U.N. Secretary-General in World Politics



EDITED BY SIMON CHESTERMAN

"Quite apart from whether the Secretary-General is intended to be a secretary or a general, the appointment process is designed to avoid selecting either: it is a political rather than professional process, but one that is geared to choosing the weakest rather than the strongest candidate. This is not to disparage the various incumbents, but those who have stood tallest in the role have been those who most exceeded expectations.

Even within the two dominant functions of the position, the Secretary-General frequently lacks sufficient internal authority to be an effective administrator of the organization, while also lacking the resources to exercise his or her external functions with credibility. Each Secretary-General, on assuming office, has found that his room for discretion in administrative matters is sharply circumscribed by the micromanagement of the General Assembly and its committees.... This is not much ameliorated by the Charter's proviso prohibiting states from seeking to...influence him in the discharge of his responsibilities....

These apparent design flaws are far from accidental. Nor, in many ways, are they improper: the legitimacy of a Secretary-General derives, ultimately, from the member states that constitute the United Nations. Whether the office can go beyond that foundation, acquiring a legitimacy independent of those states, has been the source of the gravest challenges to the men who have held it."

Published by Cambridge University Press, 2007. From the chapter "Resolving the contradictions of the office" by Simon Chesterman and Thomas M. Franck.
Except where noted, book excerpts are cited in the index above.

The Matador's Cape: America's Reckless Response to Terror

BY STEPHEN HOLMES

"The American invasion and occupation of Iraq has led to the deaths of tens and perhaps hundreds of thousands of Iraqi civilians who never harmed America or Americans. This hellish toll of death and destruction is nevertheless a nonissue in U.S. domestic politics, perhaps on the principle—if it is a principle—that out of sight is out of mind.... And the American public, having applauded its own willingness to liberate a brutally abused nation, now seems oddly indifferent to the cruel suffering it has inflicted on people for whose sake this 'war of liberation' is purportedly being waged.... Whatever this tells us about American political culture more generally, it also leads us to ask about the role of liberal intellectuals in the run-up to the Iraq war. Humanitarian intervention has probably never had so many passionate advocates as it had in the 1990s. Their commitment to stopping genocide at all costs made them willing to bypass the U.N. system in order to 'end evil' by sending American soldiers to topple tyrants inside nominally sovereign states that had not attacked the United States. This posture seemed less morally ambiguous in the 1990s than it has come to seem after March 2003.... Anti-totalitarian activists and humanitarian interventionists bear no responsibility for the Administration's reckless response to 9/11, but they did help muffle liberal outrage at the decision to invade Iraq. Their moral lapse was not to peer more deeply into the twisted motivations and limited capacities of the public officials who were going to be carrying out the policies that they, the liberal hawks, were embellishing with their good intentions."

Published by Cambridge University Press, 2007.

Meron, Theodor
The Humanization of International Law. Leiden; Boston: Martinus Nijhoff, 2006.

Pildes, Richard
Editor. *The Future of the Voting Rights Act.* New York: Russell Sage Foundation, 2006 (with David Epstein, Rodolfo O. de la Garza and Sharyn O'Halloran).

Shaviro, Daniel
Taxes, Spending, and the U.S. Government's March Toward Bankruptcy. New York: Cambridge University Press, 2006.

Silberman, Linda
Civil Procedure: Theory and Practice. 2nd edition. New York: Aspen Publishers, 2006 (with Allan Stein and Tobias Wolff).

Reporter. *Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute.* Philadelphia: American Law Institute, 2006 (with Andreas Lowenfeld).

Stewart, Richard B.
Editor. *Administrative Law and Regulatory Policy: Problems, Text and Cases.* 6th edition. New York: Aspen Publishers, 2006 (with Cass R. Sunstein, Adrian Vermeule and Stephen G. Breyer).

Subin, Harry
The Practice of Federal Criminal Law: Prosecution and Defense. St. Paul: Thomson/West, 2006 (with Barry H. Berke and Eric A. Tirschwell).

CHAPTERS AND SUPPLEMENTS

Adler, Amy
"Child Pornography Law and the Proliferation of the Sexualized Child," in *Censoring Culture: Contemporary Threats to Free Expression*. Robert Atkins and Svetlana Mintcheva, editors. New York: The New Press, 2006.

Alston, Philip
"'Core Labour Standards' and the Transformation of the International Labour Rights Regime," in *Social Issues, Globalisation and International Institutions: Labour Rights and the E.U., ILO, OECD and WTO.* Virginia A. Leary and Daniel Warner, editors. Boston: Martinus Nijhoff, 2006.

Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur to the U.N. Commission on Human Rights, U.N. Doc. E/CN.4/2006/53. March 2006.

Extrajudicial, Summary or Arbitrary Executions: Report to the U.N. General Assembly, U.N. Doc. A/61/311. September 2006.

Extrajudicial, Summary or Arbitrary Executions in Lebanon and Israel, U.N. Doc. A/HRC/2/7. October 2006.

Extrajudicial, Summary or Arbitrary Executions in Nigeria. U.N. DocE/CN.4/2006/53/Add.4. January 2006.

Extrajudicial, Summary or Arbitrary Executions in Sri Lanka. U.N. Doc. E/CN.4/2006/53/Add.5. March 2006.

Transparency and the Imposition of the Death Penalty. U.N. Doc. E/CN.4/2006/53/Add.3. March 2006.

Arlen, Jennifer
"Private Contractual Alternatives to Malpractice Liability, Chapter 13," in *Medical Malpractice and the U.S. Health Care System: New Century, Different Issues.* William M. Sage and Rogan Kersh, editors. New York: Cambridge University Press, 2006.

Davis, Kevin E.
"The Demand for Bijurally Trained Canadian Lawyers" in *Bijuralism: An Economic Approach*. Albert Breton and Michael J. Trebilcock, editors. Aldershot, U.K.: Ashgate Publishing, 2006 (to be published in French by Les Editions ESKA, Paris) (with Michael Trebilcock).

Dorsen, Norman
"The Selection of U.S. Supreme Court Justices," *The Future of the European Justice System in a Comparative Perspective.* Patricia Stöbener, editor. Baden-Baden: Nomos Verlag, 2006.

Dreyfuss, Rochelle C.
Intellectual Property: Trademark, Copyright and Patent Law: Cases and Materials. 2006 Supplement (with Roberta R. Kwall and Katherine J. Strandburg).

"Patenting Science: Protecting the Domain of Accessible Knowledge," in *The Future of the Public Domain: Identifying the Commons in Information Law.* L. Guibault and P. B. Hugenholtz, editors. Alphen aan den Rijn: Kluwer Law International, 2006 (with Graeme Dinwoodie).

"State Street or Easy Street: Is Patenting Business Methods Good for Business?" in *U.S. Intellectual Property Law and Policy.* Hugh C. Hensen, editor. Cheltenham, U.K.; Northampton, MA: Edward Elgar, 2006.

Dworkin, Ronald M.
"Assisted Suicide: The Brief of the Amici Curiae" and "The Justice of Affirmative Action," in *Social Ethics: Classical and Applied.* Thomas C. Carroll Jr., editor. Dubuque, IA: Kendall Hunt Publishing, 2006.

Edwards, Harry T.
"Judicial Norms: A Judge's Perspective," in *Norms and the Law.* John N. Drobak, editor. New York: Cambridge University Press, 2006.

Estlund, Cynthia
"The Story of *Price Waterhouse v. Hopkins*," in *Employment Discrimination Stories.* Joel W. Friedman and Stephen F. Befort, editors. New York: Foundation Press, 2006.

Estreicher, Samuel
"The Story of *Griggs v. Duke Power Co.*," in *Employment Discrimination Stories.* Joel W. Friedman and Stephen F. Befort, editors. New York: Foundation Press, 2006.

Fox, Eleanor M.
"Comment: Abuse of a Dominant Position: The Americanization of European Competition Law? The Critical Role of Perspective," in *The Evolution of European Competition Law: Whose Regulation, Which Competition?* Hanns Ullrich, editor. Cheltenham, U.K.; Northampton, MA: Edward Elgar, 2006 (with Peter Behrens).

Garland, David
"Postcards from the Edge: Photographs of Torture in Abu Ghraib and the American South," in *Kreminalitäts-Geschichten Band* 41. R. Behr, H. Cremer-Schafer and S. Scheerer, editors. Hamburg: Lit Verlag, 2006.

Gillers, Stephen
"In the Pink Room," in *Legal Ethics Stories.* Deborah Rhode and David Luban, editors. New York: Foundation Press, 2006; also issued in pamphlet format.

Gillette, Clayton
"Comment: Compared to What? Tiebout and the Comparative Merits of Congress and the States in Constitutional Federalism," in *The Tiebout Model at Fifty: Essays in Public Economics in Honor of Wallace Oates.* W.A. Fischel, editor. Cambridge, MA: Lincoln Institute of Land Policy, 2006.

Hills, Roderick
"Compared to What? Tiebout and the Comparative Merits of Congress and the States in Constitutional Federalism," in *The Tiebout Model at Fifty: Essays in Public Economics in Honor of Wallace Oates.* W.A. Fischel, editor. Cambridge, MA: Lincoln Institute of Land Policy, 2006.

Holmes, Stephen
"Conjuring Up a Battlefront in the War on Terror," in *World Order After Leninism.* Vladimir Tismaneanu, Marc Morje Howard and Rudra Sil, editors. Seattle: University of Washington Press, 2006.

"Plato's Dogs: Reflections on the University After 9/11," in *To Restore American Democracy: Political Education and the Modern University.* Robert E. Calvert, editor. Lanham, MD: Rowman & Littlefield, 2006.

"The State of the State in Putin's Russia," in *The State After Communism: Governance in the New Russia.* Timothy J. Colton and Stephen Holmes, editors. Lanham, MD: Rowman & Littlefield, 2006.

Hulsebosch, Daniel
"The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence," in *The Accession of James I: Historical and Cultural Consequences.* Glenn Burgess, Rowland Wymer and Jason Lawrence, editors. New York: Palgrave Macmillan, 2006.

Issacharoff, Samuel
"Compensation for the Victims of September 11," in *The Handbook of Reparations.* P. De Grieff, editor. New York: Oxford University Press, 2006 (with Anna Morawiec Mansfield).

"Does Section 5 of the Voting Rights Act Still Work?" in *The Future of the Voting Rights Act.* Richard Pildes, David Epstein, Rudolfo O. de la Garza and Sharyn O'Halloran, editors. New York: Russell Sage Foundation, 2006.

Reporter. *Principles of the Law of Aggregate Litigation.* 4th draft. Philadelphia: American Law Institute, 2006.

Jacobs, James B.
"Banning Hand Guns Is Not a Practical Option," in *The Right to Bear Arms.* Robert Winters, editor. Farmington Hills, MI: Greenhaven Press/Thomson Gale, 2006.

"The Criminology and Jurisprudence of Drunk Driving," in *Kriminalitäts-Geschichten: Ein Lesebuch über Geschäftigkeiten am Rande der Gesellschaft.* Rafael Behr et al editors. Wiesbaden: Lit Verlag 2006.

Malamud, Deborah
"The Story of *United Steelworkers of America v. Weber,*" in *Employment Discrimination Stories.* Joel W. Friedman and Stephen F. Befort, editors. New York: Foundation Press, 2006.

Pildes, Richard
"Political Competition and the Modern VRA," in *The Future of the Voting Rights Act.* Richard Pildes, David Epstein, Rudolfo O. de la Garza and Sharyn O'Halloran, editors. New York: Russell Sage Foundation, 2006.

Schenk, Deborah H.
Federal Income Taxation, Principles and Policies. 5th edition. 2006 Supplement. New York: Foundation Press (with Michael Graetz).

Federal Taxation of S Corporations. 2006 Supplement. New York: Law Journal Seminars-Press.

Schulhofer, Stephen
"*Miranda v. Arizona*: A Modest but Important Legacy," in *Criminal Procedure Stories.* Carol S. Steiker, editor. New York: Foundation Press, 2006.

Waldron, Jeremy
"Did Dworkin Ever Answer the Crits?" in *Exploring Law's Empire: The Jurisprudence of Ronald Dworkin.* Scott Hershovitz, editor. Oxford: Oxford University Press, 2006.

"Kant's Theory of the State," in *Immanuel Kant: Toward Perpetual Peace and Other Writings on Politics, Peace and History.* Pauline Kleingeld, editor. New Haven: Yale University Press, 2006.

"Mr. Morgan's Yacht," in *The Egalitarian Conscience: Essays in Honour of G.A. Cohen.* Christine Sypnowich, editor. New York: Oxford University Press, 2006.

"Principles of Legislation," in *The Least Examined Branch: The Role of Legislatures in the Constitutional State.* New York: Cambridge University Press, 2006.

"Secularism and the Limits of Community," in *Globalization Challenged: Conviction, Conflict, Community.* George Rupp, editor. New York: Columbia University Press, 2006.

Weiler, Joseph
"The Essential (and Would-Be Essential) Jurisprudence of the European Court of Justice: Lights and Shadows Too," in *The Future of the European Justice System in a Comparative Perspective.* Patricia Stöbener, editor. Baden-Baden: Nomos Verlag, 2006.

Zimmerman, Diane L.
"Story of *Bleistein v. Donaldson Lithographing Company*: Originality as a Vehicle for Copyright Inclusivity," in *Intellectual Property Stories.* Rochelle C. Dreyfuss and Jane C. Ginsburg, editors. New York: Foundation Press, 2006.

ARTICLES

Alston, Philip
"Reconceiving the U.N. Human Rights Regime: Challenges Confronting the New U.N. Human Rights Council," 7 *Melbourne Journal of International Law* 185 (2006).

"Richard Lillich Memorial Lecture: Promoting the Accountability of Members of the New U.N. Human Rights Council," 15 *Journal of Transnational Law and Policy* 49 (2005).

Party Funding and Campaign Financing in International Perspective

EDITED BY K.D. EWING AND SAMUEL ISSACHAROFF

"'Money, like water, will always find an outlet.' So informs the lead opinion of Justices Stevens and O'Connor in the Supreme Court's latest pronouncement on campaign finance regulation. And so it undoubtedly will. In light of the developments of the 25 years following *Buckley v. Valeo*, the Court's confidence that it can predict how the latest regulatory endeavor will play out is dramatically shaken. The 1974 rendition of the Federal Election Campaign Act, truncated by the Buckley divide between contributions and expenditure regulation, yielded an innovative array of 'outlets,' first in the form of the trickles of PACs and finally in the torrents of soft money....

In light of the most recent combination of the Bipartisan Campaign Reform Act and a surprisingly pliant Supreme Court, the regulatory environment has shifted again, this time to some remove from the overarching strictures of the Constitution.... While the new regulatory regime unfolds in practice, it is possible to examine *McConnell v. FEC* not so much for how it will play out in the cold-blooded world of political influence but for how the Court came to its conclusion.... When taken as a lens through which to gauge the Court's jurisprudence of the political process, *McConnell* unfortunately yields at least three competing, somewhat coherent, yet largely incompatible approaches to the constitutional law of politics, thereby carrying forward the central and unreconciled tensions in this entire area of law."

This excerpt is taken from the chapter "Throwing in the Towel: The Constitutional Morass of Campaign Finance" by Samuel Issacharoff.

Bar-Gill, Oren
"Bundling and Consumer Misperception," 73 *University of Chicago Law Review* 33 (2006).

"The Evolution and Persistence of Optimism in Litigation," 22 *Journal of Law, Economics and Organization* 490 (2006).

"The Market for Corporate Law," 162 *Journal of Institutional and Theoretical Economics: JITE* 134 (2006) (with Michal Barzuza and Lucian Bebchuk).

"Plea Bargains Only for the Guilty," 49 *Journal of Law & Economics* 353 (2006) (with Oren Gazal Ayal).

"Quantifying Foreseeability," 33 *Florida State University Law Review* 619 (2006).

Barkow, Rachel
"Delegating Punitive Power: The Politics and Economics of Sentencing Commission Formation," 84 *Texas Law Review* 1973 (2006) (with Kathleen O'Neill).

"Originalists, Politics, and Criminal Law on the Rehnquist Court," 74 *George Washington Law Review* 1043 (2006)

"The Political Market for Criminal Justice," 104 *Michigan Law Review* 1713 (2006).

"Separation of Powers and the Criminal Law," 58 *Stanford Law Review* 989 (2006).

Batchelder, Lily
"Efficiency and Tax Incentives: The Case for Refundable Tax Credits," 59 *Stanford Law Review* 23 (2006) (with Fred T. Goldberg Jr. and Peter R. Orszag).

Been, Vicki
"Takings," 18 *Yale Journal of Law & the Humanities* 141 (2006 special issue).

Chase, Oscar
Book Review. "*German Civil Justice* by Peter L. Murray," 25 *Civil Justice Quarterly* 275 (2006).

Choi, Stephen
"Behavioral Economics and the Regulation of Public Offerings," 10 *Lewis & Clark Law Review* 85 (2006).

"Contract as Statute," 104 *Michigan Law Review* 1129 (2006) (with Mitu Gulati).

"An Empirical Study of Securities Disclosure Practice," 80 *Tulane Law Review* 1023 (2006) (with Mitu Gulati).

"Rat Race as an Information-Forcing Device," 81 *Indiana Law Journal* 53 (2006) (with Scott Baker and Mitu Gulati).

"Securities Litigation and Its Lawyers: Changes During the First Decade After the PSLRA," 106 *Columbia Law Review* 1489 (2006) (with Robert B. Thompson).

Davis, Kevin E.
"The Demand for Immutable Contracts: Another Look at the Law and Economics of Contract Modification and Renegotiation," 81 *New York University Law Review* 487 (2006).

"Law Making in Small Jurisdictions," 56 *University of Toronto Law Journal* 151 (2006).

"The Role of Nonprofits in the Production of Boilerplate," 104 *Michigan Law Review* 1075 (2006).

Dorsen, Norman
"The Selection of U.S. Supreme Court Justices," 4 *International Journal of Constitutional Law* 652 (2006).

Dreyfuss, Rochelle C.
"Pathological Patenting: The PTO as a Cause or Cure," 104 *Michigan Law Review* 1559 (2006).

"Reflections on the Science and Law of Structural Biology, Genomics, and Drug Development," 53 *UCLA Law Review* 871 (2006) (with Helen M. Berman).

Dworkin, Ronald M.
"Hart and the Concepts of Law," 119 *Harvard Law Review Forum* 95 (2006).

Edwards, Harry T.
"Renewing Our Commitment to the Highest Ideals of the Legal Profession," 84 *North Carolina Law Review* 1421 (2006).

Estlund, Cynthia
"The Death of Labor Law?" 2 *Annual Review of Law & Social Sciences* 105 (2006).

"Is the National Labor Relations Act an Outmoded Statute in the 21st Century?" 57 *Labor Law Journal* 148 (2006).

Estreicher, Samuel
"Disunity Within the House of Labor: Change to Win or Stay the Course?" 27 *Journal of Labor Research* 505 (2006).

"In Defense of Theory: Notes on the Production of Legal Scholarship," 10 *Green Bag 2d* 49 (2006).

"The Limits of *Hamdan v. Rumsfeld*," 9 *Green Bag 2d* 353 (2006) (with Diarmuid O'Scannlain).

Feldman, Noah
"Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy," 75 *Fordham Law Review* 883 (2006) (with Roman Martinez).

Fox, Eleanor M.
"The European Court's Judgment in *GE/Honeywell*—Not a Poster Child for Comity or Convergence," 20 *Antitrust* 77 (Spring 2006).

"The WTO's First Antitrust Case—Mexican Telecom: A Sleeping Victory for Trade and Competition," 9 *Journal of International Economic Law* 271 (2006).

Franck, Thomas M.
"Collective Security and U.N. Reform: Between the Necessary and the Possible," 6 *Chicago Journal of International Law* 597 (2006).

"The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium," 100 *American Journal of International Law* 88 (2006).

"The Unbearable Unimportance of the Catholic Moment in Supreme Court History," 20 *Notre Dame Journal of Law, Ethics, & Public Policy* 447 (2006).

Friedman, Barry
"Pulling Punches: Congressional Constraints on the Supreme Court's Constitutional Rulings, 1987-2000," 31 *Legislative Studies Quarterly* 533 (2006) (with Anna Harvey).

"Taking Law Seriously," 4 *Perspectives on Politics* 261 (2006).

"Toward a Political Theory of Constitutional Default Rules," 33 *Florida State University Law Review* 825 (2006) (with John Ferejohn).

Garland, David
"Concepts of Culture in the Sociology of Punishment," 10 *Theoretical Criminology* 419 (2006).

Geistfeld, Mark
"The Doctrinal Unity of Alternative Liability and Market-Share Liability," 155 *University of Pennsylvania Law Review* 448 (2006).

"Due Process and the Determination of Pain and Suffering Tort Damages," 55 *DePaul Law Review* 331 (2006).

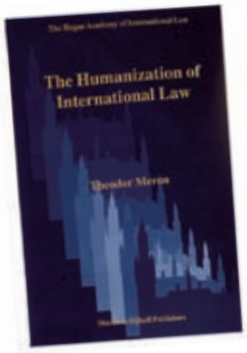
Gillers, Stephen
"In the Pink Room," 124 *Tri-Quarterly* 257 (2006).

"Monroe Freedman's Solution to the Criminal Defense Lawyer's Trilemma Is Wrong as a Matter of Policy and Constitutional Law," 34 *Hofstra Law Review* 821 (2006).

Gillette, Clayton P.
"The Political Economy of International Sales Law," 25 *International Review of Law and Economics* 446 (2005) (with Robert E. Scott).

Golove, David
"Leaving Customary International Law Where It Is: Goldsmith and Posner's 'The Limits of International Law,'" 34 *Georgia Journal of International and Comparative Law* 33 (2006).

Guggenheim, Martin
"How Children's Lawyers Serve State Interests," 6 *Nevada Law Journal* 805 (2006).



The Humanization of International Law

BY THEODOR MERON

"The tremendous progress in the humanization of the law of war brings into sharp relief the stark contrast between promises made in treaties and declarations and the rhetoric often accompanying their adoption, on the one hand, and the harsh, often barbaric practices actually employed on the battlefield. Bosnia, Kosovo, Sierra Leone, Congo, Somalia, and earlier Afghanistan, Cambodia, Kuwait and other situations present a picture of massacres, rapes and mutilations. The gap between the norms and the practice in war has always been wide; but never before have we had such a rich arsenal of norms accompanied by an emerging system of international criminal courts."

"Ratify the U.N. Convention on the Rights of the Child, but Don't Expect Any Miracles," 20 *Emory International Law Review* 43 (2006).

Hershkoff, Helen
"The New Jersey Constitution: Positive Rights, Common Law Entitlements, and State Action," 69 *Albany Law Review* 553 (2006).

Hills, Roderick
"Federalism as Westphalian Liberalism," 75 *Fordham Law Review* 769 (2006).

"The Individual Right to Federalism in the Rehnquist Court," 74 *George Washington Law Review* 888 (2006).

"The Pragmatist's View of Constitutional Implementation and Constitutional Meaning," 119 *Harvard Law Review Forum* 173 (2006).

Hulsebosch, Daniel
"A Discrete and Cosmopolitan Minority: The Loyalists, the Atlantic World, and the Origins of Judicial Review," 74 *Chicago-Kent Law Review* 101 (2006).

"Nothing But Liberty: *Somerset's Case* and the British Empire," 24 *Law and History Review* 647 (2006).

Issacharoff, Samuel
"Backdoor Federalization," 53 *UCLA Law Review* 1353 (2006) (with Catherine M. Sharkey).

"Credit Card Accountability," 73 *University of Chicago Law Review* 157 (2006) (with Erin F. Delaney).

"Getting Beyond Kansas," 74 *UMKC Law Review* 613 (2006).

"Settled Expectations in a World of Unsettled Law: Choice of Law After the Class Action Fairness Act," 106 *Columbia Law Review* 1839 (2006).

Jacobs, James B.
"Mass Incarceration and the Proliferation of Criminal Records," 3 *University of St. Thomas Law Journal* 387 (2006).

Kahan, Marcel
"The Demand for Corporate Law: Statutory Flexibility, Judicial Quality, or Takeover Protection?" 22 *Journal of Law, Economics and Organization* 340 (2006).

Kingsbury, Benedict
"Introduction: Global Governance and Global Administrative Law in the International Legal Order," 17 *European Journal of International Law* 1 (2006) (with Nico Krisch).

Kumm, Mattias
"Beyond Golf Clubs and the Judicialization of Politics: Why Europe Has a Constitution Properly So Called," 54 *American Journal of Comparative Law* 505 (2006).

"Constitutionalising Subsidiarity in Integrated Markets: The Case of Tobacco Regulation in the European Union," 12 *European Law Journal* 503 (2006).

Lowenfeld, Andreas
"Harold Maier, Comity, and the Foreign Relations Restatement," 39 *Vanderbilt Journal of Transnational Law* 1415 (2006).

Meron, Theodor
"Centennial Essays—Reflections on the Prosecution of War Crimes by International Tribunals," 100 *American Journal of International Law* 551 (2006).

Miller, Geoffrey P.
"Ex Ante Choices of Law and Forum: An Empirical Analysis of Corporate Merger Agreements," 59 *Vanderbilt Law Review* 1975 (2006) (with Theodore Eisenberg).

"Global Administrative Law: The View from Basel," 17 *European Journal of International Law* 15 (2006) (with Michael S. Barr).

"Incentive Awards to Class Action Plaintiffs: An Empirical Study," 53 *UCLA Law Review* 1303 (2006) (with Theodore Eisenberg).

"Rethinking Certification and Notice in Opt-Out Class Actions," 74 *UMKC Law Review* 637 (2006).

Taxes, Spending, and the U.S. Government's March Toward Bankruptcy

BY DANIEL N. SHAVIRO

"The English writer Saki once observed: 'When one's friends and enemies agree on any particular point they are usually wrong.' So it was this time. The point of agreement between supporters and opponents of President Bush's tax policy, that the tax cuts were a step toward smaller government, reflected a shared misunderstanding of what 'smaller government' means. More specifically, it rested on spending illusion, or confusing the amount of the nominal dollar flows between individuals and the government with the actual size of government. Once we really examine the idea of government size, we can see that the tax cuts may well, on balance, prove to have been a step toward larger government, because their main effect may be to increase economic distortion, along with wealth redistribution from younger to older Americans.

The flawed fiscal language that encouraged the Bush Administration to view large-scale wealth transfers to older generations as a march to smaller government was as vital to its fiscal policy as faulty intelligence information was vital to its Iraq policy. However, the truly Enron-style aspect related to the long-term fiscal picture. And here the misunderstandings, while equally bipartisan, have been more deliberate. Both parties are averse to long-term fiscal measures that would make the unsustainable character of their preferred policies more evident. Better to rely on annual cash-flow deficits and surpluses, even though they reflect the use of an accounting method that would lead to jail time for any corporate executive who tried to use it."

Morawetz, Nancy
"Back to Back to the Future? Lessons Learned from Litigation over the 1996 Restrictions on Judicial Review," 51 *New York Law School Law Review* 113 (2006).

Narula, Smita
Book Review. "*The Wheel of Law: India's Secularism in Comparative Constitutional Context* by Gary Jeffrey Jacobsohn," 4 *International Journal of Constitutional Law* 741 (2006).

"The Right to Food: Holding Global Actors Accountable Under International Law," 44 *Columbia Journal of Transnational Law* 691 (2006).

Nelson, William
"Government by the Judiciary: The Growth of Judicial Power in Colonial Pennsylvania," 59 *SMU Law Review* 3 (2006).

Neuborne, Burt
"Spheres of Justice: Who Decides?" 74 *George Washington Law Review* 1090 (2006).

Pildes, Richard
"The Constitution and Political Competition," 30 *Nova Law Review* 253 (2006).

"The Future of Voting Rights Policy: From Anti-Discrimination to the Right to Vote," 49 *Howard Law Journal* 741 (2006).

"Separation of Parties, Not Powers," 119 *Harvard Law Review* 2311 (2006) (with Daryl Levinson).

Revesz, Richard
"The Central Oversight of the Regulatory State," 106 *Columbia Law Review* 1260 (2006) (with Nicholas Bagley).

Richards, David A. J.
"Ambivalent Assimilation," 68 *Review of Politics* 336 (2006).

Rodríguez, Cristina
"Language and Participation," 94 *California Law Review* 687 (2006).

"Language Diversity in the Workplace," 100 *Northwestern University Law Review* 1689 (2006).

Rosenbloom, H. David
"U.S. Source Rules: Building Blocks of Cross-Border Taxation," 60 *Bulletin for International Fiscal Documentation* 386 (2006).

Sager, Laura
"Why Civil Rights Lawyers Should Study Tax," 22 *Harvard BlackLetter Law Journal* 1 (2006) (with Stephen Cohen).

Satterthwaite, Margaret
"Extraordinary Rendition and Disappearances in the 'War on Terror,'" 10 *Gonzaga Journal of International Law* 70 (2006).

Schenk, Deborah H.
"The Circular 230 Amendments: Time to Throw Them Out and Start Over," 110 *Tax Notes* 1311 (2006).

"The Cuno Case: A Comparison of U.S. Subsidies and European State Aid," 1/2006 *European State Aid Law Quarterly* 43 (2006).

"Tax Reform DOA: If Not Now, When?" 112 *Tax Notes* 15 (2006).

Schulhofer, Stephen
"The New World of Foreign-Intelligence Surveillance," 17 *Stanford Law & Policy Review* 531 (2006).

Shaviro, Daniel
"Households and the Fiscal System," 23 *Social Philosophy and Policy* 185 (2006).

"Welfare, Cash Grants, and Marginal Rates," 59 *SMU Law Review* 835 (2006).

Silberman, Linda
"Transnational Litigation: Is There a 'Field'? A Tribute to Hal Maier," 39 *Vanderbilt Journal of Transnational Law* 1427 (2006).

Sitkoff, Robert
"The Lurking Rule Against Accumulations of Income," 100 *Northwestern University Law Review* 501 (2006).

"Perpetuities or Taxes? Explaining the Rise of the Perpetual Trust," 27 *Cardozo Law Review* 2465 (2006) (with Max M. Schanzenbach).

Stevenson, Bryan
"Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases," 41 *Harvard Civil Rights-Civil Liberties Law Review* 339 (2006).

Stewart, Richard B.
"The Global Regulatory Challenge to U. S. Administrative Law," 37 *NYU Journal of International Law & Politics* 695 (2006).

Taylor-Thompson, Kim
"Girl Talk—Examining Racial and Gender Lines in Juvenile Justice," 6 *Nevada Law Journal* 1137 (2006).

Thompson, Anthony
"Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction," 30 *New York University Review of Law and Social Change* 585 (2006) (with Michael Pinard).

"Permitting a New Start for People with Criminal Records," 40 *Clearinghouse Review* 124 (with Debbie A. Mukamal).

Waldron, Jeremy
"Are Constitutional Norms Legal Norms?" 75 *Fordham Law Review* 1697 (2006).

"The Core of the Case Against Judicial Review," 115 *Yale Law Journal* 1346 (2006).

"'Dead to the Law:' Paul's Antinomianism," 28 *Cardozo Law Review* 301 (2006).

"Safety and Security," 85 *Nebraska Law Review* 454 (2006).

"What Can Christian Teaching Add to the Debate About Torture?" 63 *Theology Today* 330 (2006).

Zimmerman, Diane L.
"Daddy, Are We There Yet? Lost in *Grokster*-Land," 9 *New York University Journal of Legislation & Public Policy* 74 (2006).

MISCELLANEOUS

Barkow, Rachel
"Tribute to Justice Antonin Scalia," 62 *New York University Annual Survey of American Law* 15 (2006).

Batchelder, Lily
Reforming Tax Incentives into Uniform Refundable Tax Credits. Brookings Institution Policy Brief #156 (August 2006) (with Fred T. Goldberg Jr. and Peter R. Orszag).

Bell, Derrick
"Charles Ogletree: The 'Go To' Guy," 22 *Harvard BlackLetter Law Journal* 151 (2006).

Cohen, Jerome A.
"China's Legal Reform at the Crossroads," 169 *Far Eastern Economic Review* 23 (2006).

Dworkin, Ronald M.
"A New Map of Censorship," 35 *Index on Censorship* 130 (2006).

"The Right to Ridicule," 53 (6) *New York Review of Books* 24 (2006).

"Three Questions for America," 53 (14) *New York Review of Books* 24 (2006).

"The Strange Case of Judge Alito," 53 (3) *New York Review of Books* 14 (2006).

Estreicher, Samuel
"Collective Employment Actions in Securities Industry Arbitration," *New York Law Journal,* August 24, 2006 (with Steven C. Bennett).

"Preliminary Reinstatement Under Sarbanes-Oxley," *New York Law Journal,* May 9, 2006 (with Wendy C. Butler).

"'Public Policy' Limits on Punitive Damage Clauses," *New York Law Journal,* July 11, 2006 (with Steven C. Bennett).

"Public Workers' Job-Related Speech: First Amendment Guards Lifted," *New York Law Journal,* July 17, 2006.

"Recent Rulings on Class-Action Waivers in Arbitration Agreements," *New York Law Journal,* June 5, 2006 (with Steven C. Bennett).

"Religion and the U.S. Workplace," 33 (3) *Human Rights* 17 (2006) (with Michael J. Gray).

"Sanctions for 'Frivolous' Appeals of Arbitration Awards," *New York Law Journal,* November 2, 2006 (with Steven C. Bennett).

"Untimely Arbitration Awards," *New York Law Journal,* March 28, 2006 (with Steven C. Bennett).

Garland, David
"Punishment, Social Control and Modernity," *Justice Reflections,* Issue 12 (August 2006).

"Punishment, Social Control and Modernity," *Prison Service Journal,* Issue 164 (March 2006).

Hertz, Randy
"Charles J. Ogletree Jr.: Role Model, Mentor, Teacher," 22 *Harvard BlackLetter Law Journal* 117 (2006).

Holmes, Stephen
"After the Neo-Cons," 28 (19) *The London Review of Books* 13 (2006) (with Francis Fukuyama).

"John Yoo's Tortured Logic," 282 (17) *The Nation* 31 (May 1, 2006).

Murphy, Liam B.
Book Review. "*Moral Animals* by Catherine Wilson," 116 *Ethics* 618 (2006).

Nagel, Thomas
"The Fear of Religion," 235 (17) *The New Republic* 25 (October 23, 2006).

"Good Value," *Times Literary Supplement*, October 20, 2006, p. 6.

"The Many in the One," 234 (7) *The New Republic* 30 (February 27, 2006).

"Progressive But Not Liberal," 53 (9) *New York Review of Books* 45 (May 25, 2006).

"Philosophy as a Humanistic Discipline," 28 (9) *The London Review of Books* 8 (2006) (with Bernard Williams).

Waldron, Jeremy
Book Review. "*Courting the Abyss: Free Speech and the Liberal Tradition* by John Durham Peters," 28 (14) *London Review of Books* (2006).

Book Review. "*Justice in Robes* by Ronald Dworkin," 53 (10) *New York Review of Books* 54 (2006).

Plan for the Future

A planned gift can help you:

- **Generate a high and secure income for life**
- **Realize a substantial income tax deduction**
- **Reduce the tax burden on your estate**
- **Avoid large capital gains taxes**

Bequests, life-income gifts, charitable trusts, and gifts of real estate or life insurance can benefit you while at the same time supporting the Law School's mission.

To discuss these options, please contact Marsha Metrinko at (212) 998-6485 or marsha.metrinko@nyu.edu.