CONTENTS

VOLUME 83

Subject Index ........................................ iii
Articles ........................................ vi
Authors of Articles ............................... vii
Book Reviews — Authors ....................... viii
Book Reviews — Reviewers ................... x

Copyright 1986

By THE MICHIGAN LAW REVIEW
ASSOCIATION
SUBJECT INDEX

(a) after a reference indicates a leading article; (c) a comment; (n) a note

ADMINISTRATION OF JUSTICE
See also Civil Procedure, Criminal Procedure.
Black innocence and the white jury (a) 1611-708
Motions for appointment of counsel and the collateral order doctrine (n) 1547-70

ANTITRUST LAW
Distinction between the scope of section 2(a) and sections 2(d) and 2(e) of the Robinson-Patman Act, The (n) 1584-602

APPEAL AND ERROR
See Administration of Justice.

BANKRUPTCY
Exemption of ERISA benefits under section 522(b)(2)(A) of the Bankruptcy Code (n) 214-36

BOOKS
See also Book Reviews, pp. viii, x.
New list of recommended reading for prospective law students, A 663-69
1985 survey of books relating to the law 670-1221
Reviews and notes of current books on law and related subjects 257-58, 471, 657, 1445-50, 1603-04, 1798-99, 1971-72

CHARITIES
See Taxation.

CHILD CUSTODY
See Divorce & Separation.

CIVIL PROCEDURE
Relief from final judgment under rule 60(b)(1) due to judicial errors of law (n) 1571-83
Self-critical analysis privilege and discovery of affirmative action plans in title VII suits, The (n) 405-32

CONSOLIDATION AND MERGER
See Corporations.

CONSTITUTIONAL LAW
See also Family Law, Jurisprudence.
Administrative regulation of the high school press (n) 625-56
Availability of jury trials in copyright infringement cases: limiting the scope of the seventh amendment (n) 1950-70
Backing off Bivens and the ramifications of this retreat for the vindication of first amendment rights (a) 269-340
Consequences of Supreme Court decisions upholding individual constitutional rights (a) 1-212
Second death of federalism, The (c) 1709-33
Two models of the fourth amendment (a) 1468-501

CONTRACTS
Efficiency of specific performance: toward a unified theory of contract remedies, The (a) 341-403
Heartbalm statutes and deceit actions (n) 1770-97

COPYRIGHT
See Constitutional Law, Legal History.

CORPORATIONS
Second generation state takeover legislation: Maryland takes a new tack (n) 433-70

CORPORATIONS: FOREIGN
See Discrimination: Job.

CRIMINAL PROCEDURE
See also Administration of Justice, Constitutional Law.
I cannot tell a lie: the standard for new trial in false testimony cases (n) 1925-49
RICO nexus requirement: a "flexible" linkage, The (n) 571-96

DELEGATION OF POWERS
Delegation doctrine: could the Court give it substance?, The (a) 1223-90

DISCOVERY
See Civil Procedure.

DISCRIMINATION: JOB
See also Civil Procedure.
Yankees out of North America: foreign employer job discrimination against American citizens (n) 237-56
DISCRIMINATION: RACE
See Administration of Justice.

DISCRIMINATION: SEX
See Civil Procedure.

DIVORCE AND SEPARATION
Rethinking the substantive rules for custody disputes in divorce (a) 477-569

FAMILY LAW
Moral discourse and the transformation of American family law (a) 1803-79

FEDERAL COURTS
On the threshold of Wainwright v. Sykes: federal habeas corpus scrutiny of state procedural rules and rulings (n) 1393-427

FEDERALISM
See Constitutional Law.

FIRST AMENDMENT
See Constitutional Law.

FREEDOM OF THE PRESS
See Constitutional Law.

HABEAS CORPUS
See Federal Courts.

INCOME TAX: DEDUCTIONS
See Taxation.

INTERNATIONAL LAW
Claims of dual nationals in the modern era: the Iran-United States Claims Tribunal (n) 597-624
Thinking about the Elgin Marbles (a) 1880-1923

INTERNATIONAL RELATIONS
See International Law.

JUDICIAL REVIEW

JURIES
See Administration of Justice, Constitutional Law.

JURISDICTION
See Federal Courts.

JURISPRUDENCE
Anti-formalism in recent constitutional theory (n) 1502-44

LABOR LAW
Participatory management under sections 2(5) and 8(a)(2) of the National Labor Relations Act (n) 1736-69

LAW IN ARTS AND LITERATURE
See International Law.

LEGAL HISTORY
Rise of the Supreme Court reporter: an institutional perspective on Marshall Court ascendency, The (a) 1291-391

MARRIAGE
See Contracts.

NATIONALITY
See International Law.

PARENT AND CHILD
See Divorce & Separation.

PENSIONS
See Bankruptcy.

PERIODICAL INDEX
Index to recent articles and comments appearing in leading reviews 259-67, 472-75, 658-61, 1451-57, 1605-10, 1800-02, 1973-77

MARCUS L. PLANT
Tributes 1459, 1461, 1463, 1465, 1466

RACKETEERING
See Criminal Procedure.

REMEDIES
See Contracts.

RIGHT TO COUNSEL
See Administration of Justice.

SEARCH AND SEIZURE
See Constitutional Law.

SPECIFIC PERFORMANCE
See Contracts.

STATE LEGISLATION
See Corporations.

TAXATION
Does charity begin at home? The tax status of a payment to an individual as a charitable deduction (n) 1428-44
Index

TRIALS
See Criminal Procedure.

UNITED STATES: SUPREME COURT
See Constitutional Law.
### ARTICLES

<table>
<thead>
<tr>
<th>Title</th>
<th>Author</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anti-Formalism in Recent Constitutional Theory</td>
<td>Mark V. Tushnet</td>
<td>1502-44</td>
</tr>
<tr>
<td>Backing Off Bivens and the Ramifications of This Retreat for the Vindication of First Amendment Rights</td>
<td>Joan Steinman</td>
<td>269-340</td>
</tr>
<tr>
<td>Black Innocence and the White Jury</td>
<td>Sheri Lynn Johnson</td>
<td>1611-708</td>
</tr>
<tr>
<td>Consequences of Supreme Court Decisions Upholding Individual Constitutional Rights</td>
<td>Jesse H. Choper</td>
<td>1-212</td>
</tr>
<tr>
<td>Delegation Doctrine: Could the Court Give It Substance?</td>
<td>David Schoenbrod</td>
<td>1223-390</td>
</tr>
<tr>
<td>Efficiency of Specific Performance: Toward a Unified Theory of Contract Remedies</td>
<td>Thomas S. Ulen</td>
<td>341-403</td>
</tr>
<tr>
<td>Moral Discourse and the Transformation of American Family Law</td>
<td>Carl E. Schneider</td>
<td>1803-79</td>
</tr>
<tr>
<td>Rethinking the Substantive Rules for Custody Disputes in Divorce</td>
<td>David L. Chambers</td>
<td>477-569</td>
</tr>
<tr>
<td>Rise of the Supreme Court Reporter: An Institutional Perspective on Marshall Court Ascendancy, The</td>
<td>Craig Joyce</td>
<td>1291-391</td>
</tr>
<tr>
<td>Second Death of Federalism, The</td>
<td>William W. Van Alstyne</td>
<td>1709-33</td>
</tr>
<tr>
<td>Thinking About the Elgin Marbles</td>
<td>John Henry Merryman</td>
<td>1880-1923</td>
</tr>
<tr>
<td>Two Models of the Fourth Amendment</td>
<td>Craig M. Bradley</td>
<td>1468-501</td>
</tr>
</tbody>
</table>
AUTHORS OF ARTICLES

BRADLEY, CRAIG M. — Two Models of the Fourth Amendment 1468-501
CHAMBERS, DAVID L. — Rethinking the Substantive Rules for Custody Disputes in Divorce 477-569
CHOPER, JESSE H. — Consequences of Supreme Court Decisions Upholding Individual Constitutional Rights 1-212
JOHNSON, SHERI LYNN — Black Innocence and the White Jury 1611-708
JOYCE, CRAIG — The Rise of the Supreme Court Reporter: An Institutional Perspective on Marshall Court Ascendancy 1291-391
MERRYMAN, JOHN HENRY — Thinking About the Elgin Marbles 1880-1923

SCHNEIDER, CARL E. — Moral Discourse and the Transformation of American Family Law 1803-79
SCHOENBROD, DAVID — The Delegation Doctrine: Could the Court Give It Substance? 1223-90
STEINMAN, JOAN — Backing Off Bivens and the Ramifications of This Retreat for the Vindication of First Amendment Rights 269-340
TUSHNET, MARK V. — Anti-Formalism in Recent Constitutional Theory 1502-44
ULEN, THOMAS S. — The Efficiency of Specific Performance: Toward a Unified Theory of Contract Remedies 341-403
VAN ALSTYNE, WILLIAM W. — The Second Death of Federalism (comment) 1709-33
BOOK REVIEWS — AUTHORS

ACKERMAN: Reconstructing American Law (Frederick Schauer) 1141
BARBER: On What the Constitution Means (Student Review) 1094
BARDACH & KAGAN: Going by the Book: The Problem of Regulatory Unreasonableness (Richard L. Abel) 772
BERMAN: Law and Revolution: The Formation of the Western Legal Tradition (William Chester Jordan) 670
BROWN: Mabel Walker Willebrandt: A Study of Power, Loyalty and Law (Student Review) 1057
CAPLAN: ABSCAM Ethics: Moral Issues and Deception in Law Enforcement (Louis Michael Seidman) 1199
Carp & Rowland: Policymaking and Politics in the Federal District Courts (Student Review) 965
CARSON: The Other Price of Britain's Oil: Safety and Control in the North Sea (Richard L. Abel) 772
CURRY: The Black Book of Polish Censorship (Student Review) 1040
DORSEN: Our Endangered Rights: The ACLU Report on Civil Liberties Today (Student Review) 1098
DREW: Politics and Money: The New Road to Corruption (Sanford Levinson) 939
EPSTEIN: The Political Theory of the Federalist (Student Review) 1088
FLOOD: Barristers’ Clerks, the Law’s Middlemen (Stephan Landsman) 1105
FORER: Money and Justice: Who Owns the Courts? (Student Review) 1150
Furtwangler: The Authority of Publius (Student Review) 1088
GERALD: News of Crime: Courts and Press in Conflict (Student Review) 977
GOLD: A Dialogue on Comparable Worth (Student Review) 902
GOULD: Japan’s Reshaping of American Labor Law (Jennifer Friesen) 982
GROSS: Of Foxes and Hen Houses: Licensing and the Health Professions (Student Review) 974
HARTOG: Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870 (Jon C. Teaford) 690
HASTIE, PENROD & PENNINGTON: Inside the Jury (Stephen Saltzburg) 1120
HAWKINS: Environment and Enforcement: Regulation and the Social Definition of Pollution (Albert J. Reiss, Jr.) 813
HOFFER & HULL: Impeachment in America, 1635-1805 (Student Review) 713
JOHNSON: The Making of International Agreements: Congress Confronts the Executive (Student Review) 969
KADISH: Encyclopedia of Crime and Justice (Shirley S. Abrahamson) 1157
KAKALIK & ROSS: Costs of the Civil Justice System: Court Expenditures for Various Types of Civil Cases (Edward Brunet) 916
KATES: Firearms and Violence: Issues of Public Policy (Franklin E. Zimring) 954
KINOY: Rights on Trial: The Odyssey of a People’s Lawyers (Aryeh Neier) 1053
KUNEN: “How Can You Defend Those People?” The Making of a Criminal Lawyer (Student Review) 1153
LAFAYE & ISRAEL: Criminal Procedure (Charles F.C. Ruf) 1193
LEINEN: Black Police, White Society (Student Review) 900
McClosky & Brill: Dimensions of Tolerance: What Americans Believe About Civil Liberties (Student Review) 907
McNEIL: Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights (Collins J. Seitz) 1046
MOORE: Law and Psychiatry: Rethinking the Relationship (Christopher Slobogin) 820
NARDIN: Law, Morality, and the Relations of States (Student Review) 755
NELKIN & BROWN: Workers at Risk: Voices from the Workplace (Richard L. Abel) 772
NEWMAN: Just and Painful: A Case for Corporal Punishment of Criminals (Student Review) 1214
PHILLIPS: The Dilemmas of Individualism: Status, Liberty, and American Constitutional Law (Student Review) 763
PRICE: America’s Unwritten Constitution: Science, Religion, and Political Responsibility (Student Review) 758
RAEFF: The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600-1800 (Student Review) 707
Index

SHELLEY: Lawyers in Soviet Work Life (Student Review) 1033

SIMPSON: Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strange Legal Proceedings to Which It Gave Rise (Student Review) 702

SOPER: A Theory of Law (Joseph Raz) 732

SOWELL: Civil Rights: Rhetoric or Reality? (Paul R. Dimond & Gene Sperling) 1065

SPRINGER: The International Law of Pollution: Protecting the Global Environment in a World of Sovereign States (Student Review) 1036

STERN: Judgment in Berlin (Andreas F. Lowenfeld) 1000

STRUM: Louis D. Brandeis: Justice for the People (Student Review) 1061

SUMMERS: Lon L. Fuller (Paul A. LeBel) 717

TAYLOR: Born to Crime: The Genetic Causes of Criminal Behavior (Student Review) 1218

TREBACH: The Heroin Solution (Student Review) 910

UNGER: Passion: An Essay on Personality (Student Review) 768

VAN DEN HAAG & CONRAD: The Death Penalty — A Debate (Jan Gorecki) 1180

WATSON: Sources of Law, Legal Change, and Ambiguity (Student Review) 750

WEIR: Selective Nontreatment of Handicapped Newborns (Student Review) 894

WHITE: When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community (Peter Read Teachout) 849

WOLTERS: The Burden of Brown: Thirty Years of School Desegregation (Student Review) 1101

WRIGHT, ROSSI & DALY: Under the Gun: Weapons, Crime and Violence in America (Franklin E. Zimring) 954
BOOK REVIEWS — REVIEWERS

ABEL, RICHARD L. — Bardach & Kagan: Going by the Book: The Problem of Regulatory Unreasonableness
— Carson: The Other Price of Britain's Oil: Safety and Control in the North Sea
— Nelkin & Brown: Workers at Risk: Voices from the Workplace

ABRAHAMSON, SHIRLEY S. — Kadish: Encyclopedia of Crime and Justice

BRUNET, EDWARD — Kakalik & Ross: Costs of the Civil Justice System: Court Expenditures for Various Types of Civil Cases

DIMOND, PAUL R. & SPERLING, GENE — Sowell: Civil Rights: Rhetoric or Reality?

FRIESEN, JENNIFER — Gould: Japan’s Reshaping of American Labor Law

GORECKI, JAN — van den Haag & Conrad: The Death Penalty — A Debate

JORDAN, WILLIAM CHESTER — Berman: Law and Revolution: The Formation of the Western Legal Tradition

LANDSMAN, STEPHAN — Flood: Barristers’ Clerks, the Law’s Middlemen

LEBEL, PAUL A. — Summers: Lon L. Fuller


LEWIN, ANDREAS F. — Stern: Judgment in Berlin

NEIER, ARYEH — Kinoy: Rights on Trial: The Odyssey of a People’s Lawyer

RAZ, JOSEPH — Soper: A Theory of Law

REISS, ALBERT J., JR. — Hawkins: Environment and Enforcement: Regulation and the Social Definition of Pollution

RUFF, CHARLES F.C. — LaFave & Israel: Criminal Procedure

SALTZBURG, STEPHEN — Hastie, Penrod & Pennington: Inside the Jury

SCHAUER, FREDERICK — Ackerman: Reconstructing American Law

SEIDMAN, LOUIS MICHAEL — Caplan: ABSCAM Ethics: Moral Issues and Deception in Law Enforcement

SEITZ, COLLINS J. — McNeil: Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights


SLOBOGIN, CHRISTOPHER — Moore: Law and Psychiatry: Rethinking the Relationship

SPERLING, GENE & DIMOND, PAUL R. — Sowell: Civil Rights: Rhetoric or Reality?

STUDENT REVIEWS — Barber: On What the Constitution Means
— Brown: Mabel Walker Willebrandt: A Study in Power, Loyalty and Law
— Carp & Rowland: Policymaking and Politics in the Federal District Courts
— Curry: The Black Book of Polish Censorship
— Epstein: The Political Theory of the Federalist
— Forer: Money and Justice: Who Owns the Courts?
— Furtwangler: The Authority of Publius
— Gold: Dialogue on Comparable Worth
— Gross: Of Foxes and Hen Houses: Licensing and the Health Professions
— Hoffer & Hull: Impeachment in America, 1635-1805
— Johnson: The Making of International Agreements: Congress Confronts the Executive
— Leinen: Black Police, White Society
— McClosky & Brill: Dimensions of Tolerance: What Americans Believe About Civil Liberties
— Nardin: Law, Morality, and the Relations of States
— Newman: Just and Painful: A Case for Corporal Punishment of Criminals
— Phillips: The Dilemmas of Individualism: Status, Liberty, and American Constitutional Law
— Price: America’s Unwritten Constitution: Science, Religion, and Political Responsibility
— Raeff: The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600-1800
— Shelley: Lawyers in Soviet Work Life
— Simpson: Cannibalism and the Common Law: The Story of the Tragic Last Voyage
<table>
<thead>
<tr>
<th>Author</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>of the Mignonette and the Strange Legal Proceedings to Which It Gave Rise</td>
<td>702</td>
<td></td>
</tr>
<tr>
<td>Springer: The International Law of Pollution: Protecting the Global Environment in a World of Sovereign States</td>
<td>1036</td>
<td></td>
</tr>
<tr>
<td>Strum: Louis D. Brandeis: Justice for the People</td>
<td>1061</td>
<td></td>
</tr>
<tr>
<td>Taylor: Born to Crime: The Genetic Causes of Criminal Behavior</td>
<td>1218</td>
<td></td>
</tr>
<tr>
<td>Trebach: The Heroin Solution</td>
<td>910</td>
<td></td>
</tr>
<tr>
<td>Unger: Passion: An Essay on Personality</td>
<td>768</td>
<td></td>
</tr>
<tr>
<td>Watson: Sources of Law, Legal Change, and Ambiguity</td>
<td>750</td>
<td></td>
</tr>
<tr>
<td>Weir: Selective Nontreatment of Handicapped Newborns</td>
<td>894</td>
<td></td>
</tr>
<tr>
<td>Wolters: The Burden of Brown: Thirty Years of School Desegregation</td>
<td>1101</td>
<td></td>
</tr>
<tr>
<td>Teachout, Peter Read — White: When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community</td>
<td>849</td>
<td></td>
</tr>
<tr>
<td>Teaford, Jon C. — Hartog: Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870</td>
<td>690</td>
<td></td>
</tr>
</tbody>
</table>