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# BOOK & PERIODICAL INDEX

## BOOKS RECEIVED

### ALIENS

ICONS AND ALIENS: LAW, AESTHETICS, AND ENVIRONMENTAL CHANGE. By *John J. Costonis*. Urbana: University of Illinois Press. 1989. Pp. xxi, 128. \$22.50.

### ATTORNEYS

See also *Legal Ethics*.

LAWYERS IN SOCIETY. Volume 2: THE CIVIL LAW WORLD. Edited by *Richard L. Abel & Philip S.C. Lewis*. University of California Press. 1988. Pp. xiv, 459. \$40.

### BUSINESS

FUNDAMENTALS OF MODERN BUSINESS. By *Robert W. Hamilton*. Boston: Little, Brown. 1989. Pp. xxiii, 629. Paper.

### CIVIL LAW

See *Roman Law*.

### CIVIL RIGHTS

See *Death Penalty*.

### COMMODITY TRADING

COMMODITIES REGULATION. 3 Vols. (2d ed.) By *Philip McBride Johnson & Thomas Lee Hazen*. Boston: Little, Brown. 1989. Pp. li, 492; li, 496; li, 499.

### COMMON LAW

LEGAL SECRETS: EQUALITY AND EFFICIENCY IN THE COMMON LAW. By *Kim Lane Scheppele*. Chicago: University of Chicago Press. 1988. Pp. xiii, 363. Cloth, \$54; paper, \$17.95.

### CONSTITUTIONAL HISTORY

DOCUMENTS OF AMERICAN CONSTITUTIONAL & LEGAL HISTORY. Vol. I: *From Settlement Through Reconstruction*; Vol. II: *The Age of Industrialization to the Present*. Edited by *Melvin I. Urofsky*. Philadelphia: Temple University Press. 1989. Pp. x, 550; x, 514. \$39.95 each.

### CONSTITUTIONAL LAW

See *Obscenity*.

### COURTS

See *Due Process of Law, Education, Federal Courts, Judges*.

### CRIMINAL LAW

See *Plea Bargaining*.

### DEATH PENALTY

DEATH & DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING. By *Samuel R. Gross & Robert Mauro*. Boston: Northeastern University Press. 1989. Pp. xvi, 268. \$30.

### DISCOVERY

DISCOVERY PRACTICE. (2d ed.) By *Roger S. Haydock & David F. Herr*. Boston: Little, Brown. 1988. Pp. xxiii, 804.

### DISCRIMINATION: RACE

See *Death Penalty*.

### DRUNKENNESS

DRUNK DRIVING: AN AMERICAN DILEMMA. By *James B. Jacobs*. Chicago: University of Chicago Press. 1989. Pp. xxii, 259. Cloth, \$39; paper, \$12.95.

### DUE PROCESS OF LAW

WHAT PROCESS IS DUE? COURTS AND SCIENCE-POLICY DISPUTES. By *David M. O'Brien*. New York: Russell Sage Foundation. 1987. Pp. xviii, 242. \$22.50.

### EDUCATION

THE COURTS AND AMERICAN EDUCATION LAW. By *Tyll van Geel*. Buffalo: Prometheus Books. 1987. Pp. 502.

### ENERGY RESOURCES

ENERGY LAW AND POLICY. By *Joseph P. Tomain & James E. Hickey, Jr.* with *Sheila S. Hollis*. Cincinnati: Anderson Publishing Co. 1989. Pp. x, 572. Paper.

### FEDERAL COURTS

See also *Politics*.

PUBLIC OPINION AND THE SUPREME COURT. By *Thomas R. Marshall*. Boston: Unwin Hyman. 1989. Pp. x, 214. Cloth, \$39.95; paper, \$14.95.

### FOREIGN LAW

THE LEGAL PROFESSION IN ENGLAND AND WALES. By *Richard L. Abel*. New York: Basil Blackwell. 1988. Pp. xxiii, 548. \$75.

### FREEDOM OF SPEECH

See *Obscenity*.

### HEALTH

See also *Prisons & Prisoners*.

PRIVATE ACTS, SOCIAL CONSEQUENCES: AIDS, AND THE POLITICS OF PUBLIC HEALTH. By *Ronald Bayer*. New York: Free Press/Macmillan. 1989. Pp. vi, 282. \$22.95.

### HISTORY

See *Legal History*.

### INTERNATIONAL LAW

See *Treaties*.

### JUDGES

JUDICIAL DISCRETION. By *Aharon Barak*. (Trans. from Hebrew by Yadin Kaufmann) New Haven: Yale University Press. 1987. Pp. xiv, 270. \$27.50.

MR. JUSTICE BLACK AND HIS CRITICS. By *Tinsley E. Yarbrough*. Durham: Duke University Press. 1988. Pp. xii, 323. \$45.

### JUVENILE DELINQUENTS

HARD-CORE DELINQUENTS: REACHING OUT THROUGH THE MIAMI EXPERIMENT. By *Seymour Gelber*. Tuscaloosa: University of Alabama Press. 1988. Pp. xix, 312. \$27.95.

### LAW AND ECONOMICS

MARKETS, MORALS AND THE LAW. By *Jules L. Coleman*. New York: Cambridge University Press. 1988. Pp. xix, 393.

### LAW AND SOCIETY

LITERACY, LAW, AND SOCIAL ORDER. By *Edward W. Stevens, Jr.* DeKalb: Northern Illinois University Press. 1988. Pp. xi, 278. \$28.50.

### LAW IN ARTS AND LITERATURE

INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER. Edited by *Sanford Levinson & Steven Mailloux*. Evanston: Northwestern University Press. 1988. Pp. xvi, 502. Cloth, \$62.95; paper, \$29.95.

### LAW SCHOOLS

See *Public Interest Law*.

### LEGAL EDUCATION

See also *Property*.

CRITICAL LEGAL STUDIES. Edited by *Arlan C. Hutchinson*. Totowa: Rowman & Littlefield. 1989. Pp. viii, 348. Cloth, \$45.95; paper, \$22.50.

### LEGAL ETHICS

LAWYERS AND JUSTICE: AN ETHICAL STUDY. By *David Luban*. Princeton: Princeton University Press. 1988. Pp. xxix, 440. Cloth, \$55; paper, \$12.95.

MORALITY AND THE LAW. Edited by *Robert M. Baird & Stuart E. Rosenbaum*. Buffalo:

Prometheus Books. 1988. Pp. 148. Paper, \$9.95.

### LEGAL HISTORY

See also *Constitutional History*.

THE COURAGE OF THEIR CONVICTIONS. By *Peter Irons*. New York: Free Press/Macmillan. 1988. Pp. xii, 420. \$22.95.

JACKSON'S MACHINERY OF JUSTICE. Edited by *J.R. Spencer*. New York: Cambridge University Press. 1989. Pp. xvi, 543. \$29.95.

THE MAGIC MIRROR: LAW IN AMERICAN HISTORY. By *Kermit L. Hall*. New York: Oxford University Press. 1989. Pp. ix, 404. Cloth, \$29.95; paper, \$14.95.

### LEGAL PHILOSOPHY

FORGIVENESS AND MERCY. By *Jeffrie G. Murphy & Jean Hampton*. New York: Cambridge University Press. 1988. Pp. xii, 194. \$29.95.

FRAGMENTS OF LEGAL COGNITION. By *Stig Jorgensen*. Aarhus, Denmark: Aarhus University Press. 1988. Pp. 60. Paper, \$13.35.

### LEGAL PROFESSION

See *Foreign Law*.

### LITERATURE

See *Law in Arts & Literature*.

### OBSCENITY

PORNOGRAPHY IN A FREE SOCIETY. By *Gordon Hawkins & Franklin E. Zimring*. New York: Cambridge University Press. 1988. Pp. xiii, 236. \$22.95.

### PLEA BARGAINING

THE TENOR OF JUSTICE: CRIMINAL COURTS AND THE GUILTY PLEA PROCESS. By *Peter F. Nardulli, James Eisenstein & Roy B. Flemming*. Urbana: University of Illinois Press. 1988. Pp. 469.

### POLITICS

See also *Health, Treaties*.

THE LIMITS OF JUDICIAL POWER: THE SUPREME COURT IN AMERICAN POLITICS. By *William Lasser*. Chapel Hill: University of North Carolina Press. 1988. Pp. x, 354. Cloth, \$32.95; paper, \$9.95.

### PRE-TRIAL PROCEDURE

See *Discovery*.

### PRISONS AND PRISONERS

CARE AND PUNISHMENT: THE DILEMMAS OF PRISON MEDICINE. By *Curtis Prout & Robert N. Ross*. Pittsburgh: University of Pittsburgh Press. 1988. Pp. x, 276. Cloth, \$29.95; paper, \$12.95.

**PROPERTY**

PROPERTY LAW AND LEGAL EDUCATION: ESSAYS IN HONOR OF JOHN E. CRIBBET. Edited by *Peter Hay & Michael H. Hoeflich*. Urbana: University of Illinois Press. 1988. Pp. 234. \$24.95.

**PUBLIC INTEREST LAW**

MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL. By *Robert V. Stover*. Urbana: University of Illinois Press. 1989. Pp. xxviii, 146. \$19.95.

**PUBLIC LEGAL SERVICE**

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**PUNISHMENT**

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**REHABILITATION OF CRIMINALS**

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**ROMAN LAW**

THE CHARACTER AND INFLUENCE OF THE ROMAN CIVIL LAW: HISTORICAL ESSAYS. By *Peter Stein*. Ronceverte: Hambledon Press. 1988. Pp. ix, 450. \$50.

THE ROMAN LAW OF TRUSTS. By *David Johnston*. New York: Clarendon Press/Oxford University Press. 1988. Pp. xiii, 306. \$64.

**SCIENCE**

See *Due Process of Law*.

**SENTENCING**

See *Death Penalty*.

**SEPARATION OF POWERS**

See *Politics*.

**SOCIOLOGY**

SOCIOLOGICAL JUSTICE. By *Donald Black*. New York: Oxford University Press. 1989. Pp. x, 179. \$19.95.

**TREATIES**

TREATY CONFLICT AND POLITICAL CONTRADICTION: THE DIALECTIC OF DUPLICITY. By *Guyora Binder*. New York: Praeger. 1988. Pp. viii, 226. \$39.95.

**TRUSTS AND TRUSTEES**

See *Roman Law*.

**WOMEN**

THE FEMALE BODY AND THE LAW. By *Zillah R. Eisenstein*. Berkeley: University of California Press. 1988. Pp. x, 235. \$25.

FEMINIST THOUGHT: A COMPREHENSIVE INTRODUCTION. By *Rosemarie Tong*. Boulder: Westview Press. 1989. Pp. xiv, 305. Cloth, \$36.95; paper, \$14.95.

## SUBJECT INDEX

This index includes *articles*, *comments*, and some of the longer *notes* and *recent developments* that have appeared in leading reviews since the publication of the last issue of this *Review*.

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Collateral estoppel effects of administrative agency determinations: where should federal courts draw the line? 73 *Cornell L. Rev.* 817-51 (May).

Nonacquiescence by federal administrative agencies. Samuel Estreicher & Richard L. Revesz. 98 *Yale L.J.* 679-772 (Feb.).

**ADMINISTRATIVE LAW**

Congress, the Supreme Court, and the quiet revolution in administrative law. Sidney A. Shapiro & Robert L. Glicksman. 1988 *Duke L.J.* 819-78 (Nov.).

Progressive law and economics — and the new administrative law. Susan Rose-Ackerman. 98 *Yale L.J.* 341-68 (Dec.).

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Protecting the parties' bargain after *Misco*: court review of labor arbitration awards. Douglas E. Ray. 64 *Ind. L.J.* 1-41 (Winter).

Public policy exception to the general rule of judicial deference to labor arbitration awards. 57 *U. Cin. L. Rev.* 819-46 (No. 2).

**ARTS**

Art and law, at home and abroad. Douglass G. Boshkoff. 64 *Ind. L.J.* 83-95 (Winter).

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**BANKS AND BANKING**

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The myth of competition in the dual banking system. Henry N. Butler & Jonathan R. Macey. 73 *Cornell L. Rev.* 677-718 (May).

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Custody denials to parents in same-sex relationships: an equal protection analysis. 102 *Harv. L. Rev.* 617-36 (Jan.).

Public hysteria, private conflict: child custody and visitation disputes involving an HIV infected parent. 63 *N.Y.U. L. Rev.* 1092-141 (Nov.).

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The enterprise requirement: getting to the heart of civil RICO. 1988 *Wis. L. Rev.* 663-98 (No. 4).

### CIVIL PROCEDURE

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Some comparative reflections on first instance civil procedure: recent reforms in German civil procedure and in the Federal Rules. Arthur Taylor von Mehren. 63 Notre Dame L. Rev. 609-27 (No. 5).

### CIVIL RIGHTS

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The enforcement provisions of the Civil Rights Act of 1866: a legislative history in light of *Runyon v. McCrary*. Robert J. Kaczorowski. 98 Yale L.J. 565-95 (Jan.).

Rethinking *Weber*: the business response to affirmative action. 102 Harv. L. Rev. 658-71 (Jan.).

### COLLECTIVE BARGAINING

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"New and improved": procedural safeguards for distinguishing commercial from noncommercial speech. 88 Colum. L. Rev. 1821-48 (Dec.).

Uniform Commercial Code: article 2A — leases: structuring priorities of competing claimants to leased property. 73 Minn. L. Rev. 208-45 (Oct.).

UCC section 2-714(1) and the lost-volume theory: a new remedy for middlemen? 77 Ky. L.J. 189-226 (No. 1).

What's so good about good faith? The good faith performance obligation in commercial lending. 55 U. Chi. L. Rev. 1335-70 (Fall).

### COMMODITY TRADING

Swap transactions under the Commodity Exchange Act: is congressional action needed? Mark D. Young & William L. Stein. 76 Geo. L.J. 1917-47 (Aug.).

### CONFLICT OF LAWS

Equality and the conflict of laws. Mark P. Gergen. 73 Iowa L. Rev. 893-934 (May).

### CONSPIRACY

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### CONSTITUTIONAL HISTORY

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Reason and will in the origins of American constitutionalism. Paul W. Kahn. 98 Yale L.J. 449-517 (Jan.).

### CONSTITUTIONAL LAW

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Accommodation and neutrality under the establishment clause: the foster care challenge. 98 Yale L.J. 617-37 (Jan.).

*Branzburg* revisited: confidential sources and first amendment values. Monica Langley & Lee Levine. 57 Geo. Wash. L. Rev. 13-50 (Nov.).

Constitutional interpretation and judicial selection: a view from *The Federalist Papers*. Mark Tushnet. Comment by Anita L. Allen. 61 S. Cal. L. Rev. 1669-715 (Sept.).

Constitutional limits on the regulation of laboratory animal research. 98 Yale L.J. 369-88 (Dec.).

The establishment clause and nativity scenes: a reassessment of *Lynch v. Donnelly*. Richard S. Myers. 77 Ky. L.J. 61-115 (No. 1).

Federal constitutional confession law: the 1986 and 1987 Supreme Court Terms. George E. Dix. 67 Texas L. Rev. 231-349 (Dec.).

In defense of the political question doctrine. J. Peter Mulhern. 137 U. Pa. L. Rev. 97-176 (Nov.).

Low-level equal protection: the scope and logic of deferential review. R. George Wright. 77 Ky. L.J. 117-47 (No. 1).

The ninth amendment's role in the evolution of fundamental rights jurisprudence. 64 Ind. L.J. 97-110 (Winter).

Overinclusion and underinclusion: a new model. Kenneth W. Simons. 36 UCLA L. Rev. 447-528 (Feb.).

Passing the confrontation clause stop sign: is all hearsay constitutionally admissible? JoAnne A. Epps. 77 Ky. L.J. 7-59 (No. 1).

Philadelphia revisited: amending the Constitution outside article V. Akhil Reed Amar. 55 U. Chi. L. Rev. 1043-104 (Fall).

Reflections on context and the Constitution. Louis Michael Seidman. 73 Minn. L. Rev. 73-84 (Oct.).

The title X family planning gag rule: can the government buy up constitutional rights? 41 Stan. L. Rev. 401-34 (Jan.).

### CONTRACTS

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The accommodation of regret in contract remedies. Louis E. Wolcher. 73 Iowa L. Rev. 797-892 (May).

Reinterpretations of 18th-century English contract theory: the view from Lord Mansfield's trial notes. James Oldham. 76 Geo. L.J. 1949-91 (Aug.).

State anti-takeover statutes and the contract clause. Henry N. Butler & Larry E. Ribstein. 57 U. Cin. L. Rev. 611-56 (No. 2).

#### COPYRIGHT

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Copyright ownership by the marital community: evaluating *Worth*. David Nimmer. 36 UCLA L. Rev. 383-415 (Dec.).

Digital audio tape machines: new technology or further erosion of copyright protection? 77 Ky. L.J. 441-62 (No. 2).

#### CORPORATIONS

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All things being unequal: use of the doctrine of relative culpability in apportioning contribution. 57 U. Cin. L. Rev. 769-87 (No. 2).

Bidder overpayment in takeovers. Bernard S. Black. 41 Stan. L. Rev. 597-660 (Feb.).

The case for reasonable state regulation of corporate takeovers: some observations concerning the Ohio experience. Morgan Shipman. 57 U. Cin. L. Rev. 507-38 (No. 2).

*CTS Corp. v. Dynamics Corp. of America*: of state regulation, tender offers, and necromancy. 77 Ky. L.J. 149-87 (No. 1).

Evaluating the new director exculpation statutes. 73 Cornell L. Rev. 786-816 (May).

The future of hostile takeovers: legislation and public opinion. Roberta Romano. 57 U. Cin. L. Rev. 457-505 (No. 2).

Golden parachutes: safe landings in Ohio and elsewhere. 57 U. Cin. L. Rev. 699-716 (No. 2).

Interest analysis applied to corporations: the unprincipled use of a choice of law method. 98 Yale L.J. 597-616 (Jan.).

*Meredith Corp. v. FCC*: the demise of the fairness doctrine. 77 Ky. L.J. 227-41 (No. 1).

The reasonableness of defensive takeover maneuvers when the corporate raider is Mr. T. Boone Pickens. 57 U. Cin. L. Rev. 739-67 (No. 2).

When it comes to hostile tender offers, just say no: commerce clause and corporation law in *CTS Corp. v. Dynamics Corp. of America*. Allen Boyder. 57 U. Cin. L. Rev. 539-609 (No. 2).

#### CORPORATIONS: STOCKHOLDERS

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#### CORPORATIONS: VOTING

The constitutionality of state regulations allowing withdrawal of voting rights of control shares in a tender offer. 57 Yale L.J. 789-817 (No. 2).

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The mens rea of accomplice liability. 61 S. Cal. L. Rev. 2169-91 (Sept.).

RICO and "pattern:" the search for "continuity plus relationship". Michael Goldsmith. 73 Cornell L. Rev. 971-1003 (July).

#### CRIMINAL PROCEDURE

Limiting a criminal defendant's use of peremptory challenges: on symmetry and the jury in a criminal trial. Katherine Goldwasser. 102 Harv. L. Rev. 808-40 (Feb.).

#### DAMAGES

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#### DEATH

Autonomous decisionmaking and social choice: examining the "right to die". Donald L. Beschle. 77 Ky. L.J. 319-67 (No. 2).

Litigating life and death. Nancy K. Rhoden. 102 Harv. L. Rev. 375-446 (Dec.).

#### DECLARATORY RELIEF

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Protecting persons with AIDS from employment discrimination. 77 Ky. L.J. 403-20 (No. 2).

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#### DIVORCE AND SEPARATION

Remedy refocus: in search of equity in "enhanced spouse/other spouse" divorces. Deborah A. Batts. 63 N.Y.U. L. Rev. 751-808 (Oct.).

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A feminist justification for the adoption of an individual filing system. 62 S. Cal. L. Rev. 197-252 (Nov.).

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Toward an economic understanding of touch and concern. Jeffrey E. Stake. 1988 Duke L.J. 925-74 (Nov.).

#### EDUCATION

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Compromising immigration reform: the creation of a vulnerable subclass. 98 Yale L.J. 409-26 (Dec.).

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#### EMPLOYMENT

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The case against reinstatement in wrongful discharge. Martha S. West. 1988 U. Ill. L. Rev. 1-65 (No. 1).

#### ENVIRONMENTAL CONTROL

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#### ENVIRONMENTAL LAW

Piloting the preservation/development balance on the wild and scenic rivers. 1988 Duke L.J. 1044-79 (Nov.).

Proof of cancer causation in toxic waste litigation: the case of determinacy versus indeterminacy. 61 S. Cal. L. Rev. 2075-116 (Sept.).

Toward sensible regulation of hazardous air pollutants under section 112 of the Clean Air Act. 63 N.Y.U. L. Rev. 612-61 (June).

#### EQUAL PROTECTION

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Sexual orientation and the Constitution: a note on the relationship between due process and equal protection. Cass R. Sunstein. 55 U. Chi. L. Rev. 1161-79 (Fall).

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#### FAIR EMPLOYMENT PRACTICES

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Government secrets, fair trials, and the Classified Information Procedures Act. 98 Yale L.J. 427-46 (Dec.).



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Judicial parity, litigant choice, and democratic theory: a comment on federal jurisdiction and constitutional rights. Martin H. Redish. Rejoinder by Erwin Chemerinsky. 36 UCLA L. Rev. 369-82 (Dec.).

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Continuing work on the Civil Rules: the summons. Paul D. Carrington. 63 Notre Dame L. Rev. 733-57 (No. 5).

A duty-oriented procedure in a rights-oriented society. John B. Attanasio. 63 Notre Dame L. Rev. 597-608 (No. 5).

Forms of action under the Federal Rules of Civil Procedure. Geoffrey C. Hazard, Jr. 63 Notre Dame L. Rev. 628-44 (No. 5).

The golden wedding year: *Erie Railroad Company v. Tompkins* and the Federal Rules. Mary Kay Kane. 63 Notre Dame L. Rev. 671-92 (No. 5).

Mapping the boundaries of a dispute: conceptions of ideal lawsuit structure from the Field Code to the Federal Rules. Robert G. Bone. 89 Colum. L. Rev. 1-118 (Jan.).

Of rules and discretion: the Supreme Court, Federal Rules and common law. Stephen B. Burbank. 63 Notre Dame L. Rev. 693-719 (No. 5).

Rule 11 in the constitutional case. Kenneth F. Ripple & Gary J. Saalman. 63 Notre Dame L. Rev. 788-817 (No. 56).

Rule 16 and alternative dispute resolution. Robert B. McKay. 63 Notre Dame L. Rev. 818-29 (No. 5).

*Schiavone*: an un-*Fortune*-ate illustration of the Supreme Court's role as interpreter of the Federal Rules of Civil Procedure. Joseph P. Bauer. 63 Notre Dame L. Rev. 720-320 (No. 5).

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Federalism and federal consent decrees against state governmental entities. 88 Colum. L. Rev. 1796-820 (Dec.).

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