

EMORY

insights

SUMMER 2012

How baseball's draft system
unintentionally excludes
African-American players





HOUSING

- 2 Forging Opportunity Through the Housing Crisis
Frank S. Alexander

VULNERABILITY

- 6 Constructing Legal Structures to Protect the Vulnerable
Ani B. Satz
- 9 Recent Scholarship
Martha Fineman, Kirsten Widner, Barbara Woodhouse

ECONOMIC ANALYSIS OF LAW

- 10 Evaluating Changes in the Basis of Civil Justice
Frank J. Vandall
- 13 Probing the Reversal in Baseball's Racial Trends
George B. Shepherd
- 16 Recent Scholarship
Robert Abdieh, Joanna Shepherd Bailey, Jonathan Nash, Rafael Pardo, Liza Vertinsky, Alexander Volokh

About Emory Insights

Emory Insights is published twice a year by Emory University School of Law to highlight faculty scholarly research. It is produced by the Office of Marketing and Communications. For questions, email communications@law.emory.edu.

Cover illustration by Chris Silas Neal

Forging Opportunity Through the Housing Crisis



Frank S. Alexander

Sam Nunn Chair in Ethics and Professionalism
Founding Director, Center for the Study of
Law and Religion
Director, Project on Affordable Housing and
Community Development
Co-founder, Center for Community Progress

BA, University of North Carolina, 1973
JD, Harvard Law School, 1978
MTS, Harvard Divinity School, 1978

Scholarly interests: affordable housing, homelessness, community development, federal housing policies and the mortgage crisis, and law and theology

“So much can be done for our families, our neighborhoods, and our communities in the fields of affordable housing and mortgage law. Now is the time to set the basic parameters for the future.”

“Housing and mortgage markets lie at the convergence of how and where we live as individuals and families, of the stability of our neighborhoods, and of the viability of our local government communities,” says Frank S. Alexander, renowned expert on affordable housing and community development. “The Great Recession exacerbated the proliferation of homelessness and of vacant, substandard housing.

“We are in the midst of the greatest upheaval in these markets in our lifetimes. This presents not just challenges but opportunities to envision the future anew,” Alexander says. “So much can be done for our families, our neighborhoods, and our communities in the fields of affordable housing and mortgage law. There is so much room for creativity and clarity, and now is the time to set the basic parameters for the future.”

To this end, Alexander’s research focuses on determining how the housing and mortgage markets reached their current status, and his practice focuses on assisting local and national governments with the development of laws and practices that will lead to new perspectives on home ownership, create stability in the market, and perhaps prevent a repeat of today’s housing situation.

“What this country is seeing is the downside of unconstrained experimentation and creativity with mortgages over the last 10 to 15 years,” he says. “The parameters that we’re beginning to embrace are an acknowledgment of our own ignorance and the fact that just because we can do something doesn’t mean we should. This is manifest already in that we are seeing a return to much tighter mortgage underwriting.”

Excerpt: “Neighborhood Stabilization Strategies for Vacant and Abandoned Properties”

Introduction

The housing and economic crises of the past five years have had deep and far-reaching consequences for America's communities. Consequently, municipalities across the country face a growing incidence of vacant and abandoned properties. There is extensive debate on what drives a community's “life-cycle,” from periods of decline and deterioration to their renaissance and rejuvenation. However, a much greater consensus exists as to the harms vacant and abandoned properties inflict. As potential fire hazards and sites for drug trafficking, vacant and abandoned properties signal to society that a neighborhood is on the decline, undermining the sense of community and discouraging any further investments. These disinvestments often spread across neighborhoods and affect the overall health of a municipality.

Throughout most of the United States, residential mortgage foreclosures have risen to levels not experienced in 75 years, while some communities simultaneously experienced declines in property values of 25 percent or more. With an overwhelming concentration of foreclosures in particular neighborhoods, the number of vacant and abandoned properties has reached record levels as well. But perhaps nothing better underscores the real estate market's inability to function efficiently than the governmental restructuring of the two largest guarantors of residential mortgages, Fannie Mae and Freddie Mac, and the largest insurance company, AIG.

Together, the ongoing national mortgage crisis and the steady economic decline of older, industrial areas have created increasing numbers of vacant and abandoned properties that are placing ever greater stress on communities across the country. The sudden collapse of the mortgage markets and the drastic increase in foreclosure rates may be most intense in Southern and Southwestern regions, while the gradual economic decline and property abandonment may be more characteristic of the “Legacy” cities in the Northeastern and Midwestern parts of the country. Despite their differences, the neighborhoods, schools, and local governments of all metropolitan areas bear the costs induced by these large inventories of foreclosed, vacant, and abandoned properties.

Further complicating recovery, most local governments lack efficient and effective tools for halting and reversing such a serious consequence. First, this article describes the problems associated with vacant, abandoned, and foreclosed properties facing many communities across the country. Second, this article outlines various legal strategies and tools that communities can utilize to help return these inventories to productive use. Ultimately,

the concepts discussed in this article can help communities turn vacant spaces into vibrant places.

Understanding the Problem

Our country's communities face a growing inventory of vacant, abandoned, tax-delinquent, and foreclosed properties. These properties create problems and impose costs on both the municipality and its residents, such as higher annual maintenance costs, reduced property values, and increased property tax delinquencies resulting in declining revenue for local governments.

While both pose significant problems, vacancy and abandonment are not synonymous. Vacancy can be defined as property that is unoccupied. It is more common in commercial areas, and oftentimes a property is vacant simply because a property owner is holding on to it as a long-term investment. Abandonment, on the other hand, is a far stronger concept. An abandoned property suggests that the owner has ceased to invest any resources in the property, is foregoing all routine maintenance, and is making no further payments on related financial obligations such as mortgages or property taxes. Though abandoned by the owner, tenants may still occupy the property, or squatters may live there without permission.

Those properties that are vacant and abandoned are often tax-delinquent as well. In fact, property tax delinquency is the most significant common denominator among vacant and abandoned properties. In addition to negatively affecting the health of a neighborhood, an increase in tax-delinquent properties typically leads to a reduction in a local government's revenue. While some property owners may fail to pay property taxes due to a lack of financial resources, others choose to “milk” the equity from the property and then abandon it. The lengthy periods of time required by antiquated property tax foreclosure systems only encourage a property owner's decision to neglect further investments. In the vast majority of cases, a continuous failure to pay property taxes signals the intent of the owner to abandon the property.

Properties in mortgage foreclosure present yet another challenge to communities, providing an additional reason to leave a property vacant or abandoned. When a property is in foreclosure, the party responsible for maintaining it is often unknown, unaware, or unwilling to expend the time or effort to do so. Frequently, the culprit is not the homeowner, but the lender who becomes the owner through a foreclosure. Consequently, with the drastic rise of foreclosures, the correlation between a community's

(continued on following page)

rate of foreclosure and its inventory of vacant or abandoned properties has increased as well. Mortgage foreclosures alone, independent of subsequent abandonment, have been found to reduce property values within one-eighth of a mile of the foreclosure by 0.9 percent in value. Multiple foreclosures had even greater cumulative adverse effects.

Municipalities often struggle with how to respond to the rise of vacant and abandoned properties, dwindling property tax revenues, and foreclosures forcing families out of their homes. In general, the legal and political cultures in America are not well equipped to deal with vacant, abandoned, and substandard properties. Even with the advent of zoning and building codes during the past 80 years, it is not a singular solution. The regulatory framework has two dominant characteristics. First, it is overwhelmingly prospective and anticipatory in nature. Second, it is largely locally driven with wide divergence among and within the states in both form and in substance. Consequently, communities are left without a mechanism for addressing these problems.

Thus far, legal and political cultures have been strikingly unwilling to acknowledge, much less address, the impact of vacant, abandoned, and substandard properties. In most jurisdictions, practitioners and politicians alike accept the proposition that advance planning and minimum standards benefit both individuals and the community. However, they have been incredibly reluctant to acknowledge the damages and dangers caused by the functional abandonment of real property.

While some argue that this is consistent with a general aversion to collective control over property usage, a more pernicious premise of the human condition seems to drive much of this attitude. American culture, at least thus far, views real property as a disposable asset—a consumable item. It is only valued as long as it is “useful,” and then it is disposed of. The catch, of course, is that land is not a disposable item. It is not something to be consumed and then discarded. Land, by definition, is a fixed commodity, permanently existing in a community and possessing an inherent relationship with its surroundings. Vacant, abandoned, and substandard properties impose costs on neighbors, on communities, on local governments, and on society.

A reformation of the cultural false premise that land is a disposable item cannot be accomplished by the legal system alone. However, reforms in the legal

and regulatory systems can add legal significance to the meaning of being a responsible property owner by eliminating the incentives that encourage abandonment and creating disincentives for abandoning property. The next section describes the legal tools that a municipality can utilize in its strategy addressing vacant, abandoned, tax-delinquent, and foreclosed properties.

Legal Strategies and Tools

In any community where there is a significant amount of vacant and abandoned inventory, the initial task is to evaluate the properties and identify the dominant characteristics of that inventory. In some jurisdictions, the dominant characteristic of abandoned property is the prevalence of multiple years of tax delinquency. In others, it is the absence of housing and building codes or general nuisance abatement ordinances, and in those communities with adequate ordinances, it may be the lack of a strong enforcement mechanism. In yet other communities, the dominant characteristic may be the nature of the mortgage foreclosure process with incentives for inaction rather than property preservation.

General economic decline within a community—with accompanying joblessness, population loss, and disinvestment—may well explain a rise in vacant and abandoned property inventories. It rarely, however, serves as an adequate justification for legal systems that encourage abandonment, and it never justifies having high rates of abandonment in concentrated neighborhoods in an otherwise stable community.

Regardless of differences between inventories, all legal strategies dealing with vacant, abandoned and substandard properties have three key features. The first is the ability to identify at all times the legal owner(s) of the property. The second is to impose legal liability for the financial costs of abandonment. The third is to be able to force a transfer of ownership and control if the problems are not resolved. With these common features in mind, the following subsections highlight multiple areas for legal reform. These areas include: property tax foreclosure; code enforcement; receivership actions; vacant property registration; and land banks and land banking.

—from *Neighborhood Stabilization Strategies for Vacant and Abandoned Properties, Zoning & Planning Law Report* (September 2011) (with Leslie A. Powell)

Alexander is a national expert in land banks and land banking, a concept implemented in the '80s and '90s to address abandoned property, primarily in industrial cities experiencing population declines or in the unusual situation presented

by post-Katrina New Orleans. Land banks also were developed to address the specific problem created when taxes on a property exceed the market value.

“The properties were locked into a legal limbo,”

Alexander says. “The government couldn’t sell because the minimum bid is taxes, and if taxes exceed the market value, no one buys. We created land banks and started working with them across the country, but the recession and the foreclosure volumes dramatically increased the inventories of vacant and substandard properties. The role of land banks has increased exponentially in light of the mortgage crisis.”

There is an immense range of community development tools that can strengthen families and neighborhoods, Alexander says. However, the first step in repairing our communities is to realize the importance, not just to the family, but to the neighborhood, of keeping property occupied.

He says that mortgage banks are beginning to acknowledge they will lose when the mortgage exceeds the value and everyone might be better off if the homeowner is kept in the property.

“The new approach is to realize that all participants bear responsibility for what happens in a neighborhood. It is not enough for a bank to make a loan and think that it can then foreclose and that is the end of the story. Foreclosures will devastate a neighborhood as quickly as a vacancy.”

There have been exciting developments in land banking and in Vacant Property Registration ordinances, he says. VPRs are local ordinances requiring a homeowner or mortgage company to notify the city or county when a property becomes vacant, identify the party with control, and allow the property to be inspected. Any code violations discovered must be repaired immediately.

“A VPR is an early warning system about deterioration,” Alexander says. “We are learning from the current crisis that we failed to have an early warning system in place so a lot of folks engaged in a lot of crazy things and then blamed the other person, whether it is the bank blaming the borrower or the borrower blaming the bank.”

VPRs also form part of the new approach to neighborhood stabilization recommended by Alexander. He says other new approaches include rational mortgage underwriting, the existence of a land bank or land banking program to receive unwanted properties and the enforcement of strong housing and building codes.

“It is necessary that we turn our heads away from thinking of land as litter that we can walk away from,” Alexander says. “Instead, we must view land as not just the space but a place for people with the concept of stewardship.”

Alexander testified before congressional subcommittees on the Housing and Economic

Recovery Act of 2008 and in 2009 on strategies to address the foreclosure crisis. He frequently speaks before city and state legislatures and assists them with drafting legislation and with analyzing problems concerning land banks or mortgage issues.

His article in *Land Use Planning by Design and by Disaster* highlights New Orleans, where, prior to Katrina, he had been consulting on ways to deal with the growing inventory of vacant, substandard structures. “Then Katrina hit in August 2005, and the problem grew exponentially,” Alexander says. “In this article, I said Louisiana was hit really by two storms: the string of 2005 hurricanes named Katrina, Rita, and Wilma; and then the state’s reaction to the U.S. Supreme Court’s decision in *Kelo v. City of New London* concerning eminent domain.”

Because of *Kelo*, Alexander says, Louisiana adopted constitutional amendments that made it virtually impossible for New Orleans to address the historic blight and the Katrina blight.

“In the past two years New Orleans has undertaken tough political decisions and dramatic systems reform and moved forward in stabilizing neighborhoods—more progress than in all of the last 20 years combined,” he says. “That’s one of the many things that makes this so exciting and fun—to see a community that is faced with overwhelming devastation and yet finds a way to pick up the pieces and say ‘We can do it better; we can do it right.’”

SELECTED PUBLICATIONS

Books

Georgia Real Estate Finance & Foreclosure Law 2011–2012 ed. (Thomson-West, 2011)

Land Banks and Land Banking (Center for Community Progress, 2011)

Property and Christian Theology in Christianity and Law: An Introduction (Cambridge University Press, 2008) (Frank S. Alexander and John Witte Jr. eds.)

Articles

Legislative Responses to the Foreclosure Crisis in Nonjudicial States, *Boston University Review of Banking & Financial Law* (2011) (with Dan Immergluck, Katie Balthrop, Philip Schaeffing, and Jesse Clark)

Neighborhood Stabilization Strategies for Vacant and Abandoned Properties, *Zoning & Planning Law Report* (September 2011) (with Leslie A. Powell)

Neighborhood Stabilization & Land Banking, 20 *Communities & Banking* 3, Federal Reserve Bank of Boston (Summer 2009)

Constructing Legal Structures to Protect the Vulnerable



Ani B. Satz

Associate Professor, School of Law
Associate Professor, Rollins School of Public Health
Associate Professor, Center for Ethics
Associate Professor, Goizueta Business School

BA, University of Tulsa, 1994
PhD, Monash University (completed at
Princeton University), 2001
JD, University of Michigan School of Law, 2001

Scholarly interests: disability discrimination, access to health care and the well-being of nonhuman animals

One of the few scholars exploring how courts and legislatures respond to both human and nonhuman vulnerability, Ani B. Satz asserts that these legal structures fail to respond adequately because policymakers and lawmakers do not recognize such vulnerability as universal and extending across the relevant public and private realms.

Legal protections are fragmented and sporadic, she says, and such protections, with material supports designed to respond to vulnerability, may be misdirected, insufficient, or both.

“The law is limited in how it responds to vulnerability—be it human or nonhuman—because it takes this fragmented approach,” Satz says. “Legislatures and courts treat individuals’ lives as occurring in segments—certain environments or situations—rather than on a continuum. Legal coverage starts and stops, even though the need for it continues. As a result, the lived experience of the vulnerable subject is different from the legally recognized one. This is not a comprehensive or coherent approach.”

She says legal structures respond to vulnerability in two ways. First, the law affords protections to some groups. This may take the form of laws that prevent or require certain behaviors toward members of particular populations such as endangered species, abused children, or indigent patients. The strongest such legal protections are antidiscrimination mandates for individuals within a protected class such as those based on race, disability, or gender. Alternatively, the law may respond to vulnerability by providing material resources to individuals, but may also include the provision of shelter and other basic goods.

“My scholarship addresses the merits and

“Legal coverage starts and stops, even though the need for it continues. As a result, the lived experience of the vulnerable subject is different from the legally recognized one.”

Excerpt: "Overcoming Fragmentation in Disability and Health Law"

I. A Theory of Fragmentation

Most succinctly stated, fragmentation occurs when law separates or breaks apart the experience of the legal subject. This happens because the actual experience of living with a disability or illness differs from the legally recognized one. The disjunction between the actual and legal experience manifests itself in two ways. First, an individual may identify as ill or disabled but not be legally recognized as such. As a result, she may not be entitled to protections or material resources. Second, an individual who is recognized as ill or disabled may experience inappropriate limitations to the protections or resources she receives.

Fragmentation occurs on both macro- and micro-levels. At a macro-level, fragmentation results from statutes and regulations that address impairment as exceptional rather than as part of the human condition. Impairment is treated as legally relevant only in certain contexts, in the sense that protections and benefits attach to particular individuals within specific situations. On a micro-level, fragmentation occurs (and is exacerbated) due to judicial construction of legal rules or policies about impairment. In other words, individuals with disability and illness are disadvantaged by the plain language of laws as well as the manner in which those laws are construed and applied.

At both the macro- and micro-levels, fragmentation may be linked to the state's response to two inquiries, namely, whether an individual is disabled or ill, and, if so, whether she is entitled to protections or benefits ... In the context of eligibility, an individual may subjectively experience disability or illness but not be legally recognized as having such ... Fragmentation may also be experienced by individuals who are legally recognized as disabled or ill, when the law fails to appreciate that their needs extend throughout the life course or to unprotected environments ...

Fragmentation in disability and health law occurs most notably in four contexts: eligibility for disability antidiscrimination protections, eligibility for disability and health care benefits, determination of the scope of accommodation or other modification under antidiscrimination mandates for individuals legally recognized as disabled, and determination of the scope of material resources available to individuals with disabilities and illnesses under social benefits regimes ...

II. Fragmentation in Disability Law

Fragmentation in disability law occurs when the human experience of disability differs from the one recognized in the law: Laws deny protections or benefits to individuals with impairments who do not qualify as "disabled" or limit such protections or benefits to certain contexts ... At the macro-level, disability civil rights statutes fail to recognize that

disability may extend to all areas of the public sphere and into the private realm. Disability benefits statutes restrict eligibility based on income and ability to work. ...

A. Civil Rights Protections

Antidiscrimination laws protect individuals with certain characteristics who qualify for protected class status ... Individuals with impairments that do not qualify them for the protected class are without legal entitlement to accommodation or other modification to promote access and, consequently, may be unable to participate in the civic and social realms. These individuals subjectively experience lives with disabilities but are not protected by law as individuals with disabilities. The law fragments their experience of living with disabilities because it denies them protections based on disability altogether. Individuals recognized as disabled also may experience fragmentation, when accommodation or other modification is limited to certain contexts. ...

1. Macro-Level Fragmentation

a. Eligibility for Protected Class Status

At the federal level, the Americans with Disabilities Act (ADA) of 1990 protects individuals who qualify as part of the disability class. The ADA is, in fact, the only federal civil rights statute with an eligibility test that has excluded most individuals seeking protection. For almost twenty years, class membership functioned as one of the most significant hurdles to ADA protection. This difficulty in qualifying for protection led to the enactment of the ADA Amendments Act (ADAAA) of 2008.

Under both the original and amended Act, to be part of the protected class an individual must: (1) have "a physical or mental impairment" that "substantially limits" her in "one or more major life activities," (2) have "a record of such an impairment," or (3) "be regarded as having such an impairment." ... The ADAAA significantly broadens the definition of "disability" ... [but] it does not address fully the disjunction between the lived experience of impairment and the legal one. Expanding the definition of disability may protect more individuals with disabilities, but it fails to respond to the vulnerability of individuals to discrimination outside the protected class ...

b. Disability Accommodation and Other Modification

Even for individuals covered under an antidiscrimination mandate, protections are commonly limited. Impairment is recognized as legally relevant only in statutorily designated environments. Under the ADA, accommodation or other modification is available to promote access to the workplace, public services, and places of public accommodation ...

(continued on following page)

This approach to accommodation and other modification under civil rights mandates results in fragmentation—again, a disjunction between the lived experience of disability and the legally recognized view of it—in two ways. First, disability access extends only to particular environments, not the activities the environments support. This is a significant limitation to promoting inclusion. For instance, an individual may be able to enter a workspace, board a public bus, or enter a shopping mall, but that does not mean that she will be able to work, travel to a desired destination, or shop effectively. In terms of accessing the workplace, if one does not have reliable, accessible transportation to work and the ability to perform vital tasks at home ... one may face barriers to working ...

Second, current antidiscrimination law does not recognize the need to move effectively between protected environments and other places in the public sphere, much less the need to move from the private to the public sphere. ... Most importantly, the mandate does not cover any aspects of the private sphere, which means that individuals receiving accommodation at work are not eligible for accommodation that may serve a dual purpose—namely, benefitting them at home and at work. ...

Conclusion

... The role of the state in overcoming fragmentation

may take different forms. I posit that more universal approaches to disability and illness would mitigate, if not overcome, the effects of fragmentation. This would entail broadening eligibility for disability protections and extending those protections to more environments. A range of disability and health benefits would also be made available to all individuals with functional impairments and illness.

... The state also must concentrate on defining and developing tools that enable individuals to be resilient in the event of disability or illness. Some of these tools may be directly related to disability and health—such as medical care, personal assistance, or accessible transportation—but others may be indirectly related, such as job training or wage supports.

... What must be avoided under any political regime is a state that is unresponsive to vulnerability to disability and illness ... State acknowledgement of the experience of disability and illness as part of the human condition—even without any provision of material support—would help combat the stigma, segregation, and isolation of individuals that impede their social activity ... Only with an understanding of disability and illness as part of the human experience may society begin to overcome the effects of fragmentation in disability and health law.

—from *Overcoming Fragmentation in Disability and Health Law*, 60 *Emory Law Journal* 277 (2010)

limitations of these two types of legal responses to vulnerability with respect to: individuals with disabilities (disability discrimination), individuals with illness (access to health care), and nonhuman animals (human use of domestic animals) within homes, farms, and laboratories.” Satz is the first to examine the role of “normal functioning” in disability civil rights analysis and to propose a theory of “fragmentation” about the disjunction between the legally recognized and the lived experience of individuals with disability and serious illness. Legal protections and material resources attach only to certain environments, situations, or periods in the lifecycle, while the need for them may remain constant.

“In health law, insurance structures continue to limit access to basic health care services and public support remains inadequate,” Satz says. “I examine the effects of these limitations on access to high-technology health care to diagnose, treat, and prevent illness.”

Her work represents one of the first attempts in the legal literature to both interpret Nobel Prize winner Amartya Sen’s formal basic capability model of resource distribution and to apply

it outside the development context to Western medicine. “My proposal—to maximize the basic capabilities of human and nonhuman animals within the same populations—addresses the hierarchy problem,” Satz says. “My approach considers animal capacities without regard to category; lawmakers do not need to categorize animals as persons or a special form of property to offer them greater protections.”

SELECTED PUBLICATIONS

Books

Disability and Discrimination: Cases and Materials (Aspen, forthcoming 2013)

Book Chapters

Disability, Vulnerability, and Legal Fragmentation: Toward Accessing Education, Work, and Health Care, in *Righting Educational Wrongs: Disability Studies in Law and Education* (forthcoming 2012) (Arlene S. Kanter and Beth A. Ferri eds.)

Articles

Fragmented Lives: Disability Discrimination and the Role of “Environment-Framing,” 68 *Washington & Lee Law Review* 187 (2011)

Overcoming Fragmentation in Health and Disability Law, 60 *Emory Law Journal* 277 (2010)

Recent Scholarship



Fineman



Widner



Woodhouse

Martha Albertson Fineman

Robert W. Woodruff Professor of Law

Books

Masculinities and Feminisms: Critical Perspectives (Ashgate Press, forthcoming 2013) (with Thomson)

The Vulnerability Thesis (Ashgate Press, forthcoming 2013) (with Grear)

Book Chapters

Responsibility, Family, and the Limits of Equality: An American Perspective, in *Taking Responsibility, Law and the Changing Family* (Ashgate Press 2011) (C. Lind, H. Keating, and I. Bridgeman eds.)

Gender, Equality, and the Human Condition, in *Gender, Sexualities, and Law* (Routledge/Glasshouse 2011) (J. Jones, A. Grear, and R. Fenton eds.)

Articles

Beyond Identities: The Limits of an Anti-discrimination Approach to Equality, *Boston University Law Review* (forthcoming 2013)

Feminism, Masculinities and Multiple Identities, *University of Nevada—Las Vegas Law Review* (symposium on masculinities) (forthcoming 2013)

“Elderly” as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility, *20 Elder Law Journal* 2 (2012)

Motherhood and Entitlement, *Singapore Journal of Legal Studies* (2011)

The Vulnerable Subject and the Responsive State, *60 Emory Law Journal* 2—Symposium on The New New Deal (2011)

Kirsten Widner

Director of Policy and Advocacy, Barton Child Law and Policy Center

Books

Practitioners' Guide, Improving Offender Accountability in CSEC Cases: Tools for Investigating and Prosecuting Adult Exploiters (2011) (with Darlene Lynch and Kosha Tucker)

Articles

In Defense of the Black/White Binary: Reclaiming a Tradition of Civil Rights Scholarship, with Roy L. Brooks, *12 Berkeley Journal African-American Law & Policy* 107

(2010). This article also has been selected for inclusion in *Critical Race Theory: The Cutting Edge* (Temple University Press, publication pending) (Richard Delgado and Jean Stefancic eds., 3rd ed.)

Barbara Woodhouse

L.Q.C. Lamar Professor of Law

Books

The Ecology of Childhood: Building a World Fit for Children (N.Y.U. Press, forthcoming 2013)

Hidden in Plain Sight: The Tragedy of Children's Rights from Ben Franklin to Lionel Tate (Princeton University Press) (hardcover 2008, trade paperback 2010)

Book Chapters

State Orphans in the United States: A Failure of Intergenerational Solidarity, in *Solidarity Between Generations* (Larcier-Bruylant Press, Belgium, forthcoming 2012) (Hugues Fulchiron ed.)

Alcune Riflessioni circa l'Attuazione dei Diritti dei Bambini (Reflections on the Implementation of Children's Rights), in *I Minori e il Nuovo Diritto – Garanzie, diritti, responsabilita'* (*New Rights for Children: Entitlements, Rights and Responsibilities*) (Dr. Elena Urso, ed., in the series *Giurisprudenza Critica*) (Wolters Kluwer Press, forthcoming 2012)

I Want to Talk to My Mom: the Role of Parents in Police Interrogations of Juveniles, in *Justice for Kids: Keeping Kids Out of the Juvenile Justice System* (N.Y.U. Press 2011) (with Randee Waldman and Stephen Reba) (Nancy Dowd ed.)

The Constitutional Rights of Parents and Children in U.S. Child Protective and Juvenile Delinquency Investigations, in *International Survey of Family Law* (Jordan Publishing 2011) (Bill Atkin ed.)

Articles

The Courage of Innocence: Children as Heroes in the Struggle for Justice, *University of Illinois Law Review* 101 (2009)

A World Fit for Children is a World Fit for Everyone: Ecogenerism, Feminism and Vulnerability, *46 Houston Law Review* 817 (2009)

Evaluating Changes in the Basis of Civil Justice



Frank J. Vandall

Professor of Law

BA, Washington and Jefferson College, 1964

JD, Vanderbilt University, 1967

LLM, University of Wisconsin, 1968

SJD, University of Wisconsin, 1979

Scholarly interests: torts and product liability

Justice *Rewritten*, the working title of Frank J. Vandall's book, *A History of Civil Litigation: Political and Economic Perspectives*, in itself provides insight into the book's focus, which argues that civil justice no longer rests on historic foundations, such as precedent, fairness, and impartiality, but has shifted to power and influence.

"The theme of Occupy Wall Street is that 99 percent of the country has been left out and cannot obtain justice," Vandall says. "If my argument that financial power controls the legislatures, courts, and agencies is correct, Occupiers may have valid reasons for their complaints."

As he considered these complaints—no one listens to us, we want justice, we want jobs—Vandall says those were often the things he was talking about. "If you have money, people listen to you and respond to you. But if you are an individual, you're not as strong as if you are a large American corporation."

With the tort reforms of the last 30 years, reducing the number of lawsuits that reach the courtroom, people who suffer injuries have no place to go. "That is part of what you see in Occupy Wall Street," Vandall says. "People who have now suffered injury have no place to turn, no elected official will listen to them. So they do the simplest, most basic thing you can do and that is to sit out in the snow and rain. This movement does have legitimacy, and we should be concerned about it. The burning of Watts in 1967 was a warning."

Vandall says that today, those with economic power shape the character of products liability law at every turn and his book's thesis calls for transparency in all facets of government and an examination of who benefits from the specific law in question. He points out that never has it been less true that we live under the rule of law.

"Congress, agencies, and the courts make the law, but they are driven by those who have a large

"I want to push the courthouse doors open and show that the Occupy Wall Street movement does have legitimacy."

Excerpt: “A History of Civil Litigation: Political and Economic Perspectives”

Chapter V argued that regulations often fall short of what is needed for public safety because the agency favors the powerful industry over the safety interests of the public. In addition to car safety, three examples are regulation of pharmaceuticals, aircraft, and securities.

Numerous articles have been written about the “revolving door” and the fact regulatory failure is often produced because the agencies lack sufficient personnel and funds. However, even if this argument is accepted, the point being made is different: agencies fail to represent the public because they represent the interests of the powerful—the regulated industry. Rather than present express statements to that effect, the argument will be made *via res ipsa loquitur* (the thing speaks for itself).

Agency failure begins with the head of the agency and with its initial design. First, the head of a major agency is often a former high-ranking employee in the regulated industry. For example, the head of the department of agriculture is often the former head of a large agro-business. The chief counsel of the FDA under President George W. Bush was the former attorney for large tobacco and pharmaceutical companies. Second, the power of the agency is often cut off at the roots by Congress. For example, the FDA was for years forbidden to regulate tobacco. The Consumer Product Safety Commission (CPSC) has also never had the power to regulate tobacco—even though it is the most dangerous product. Finally, Congress has prohibited the Centers for Disease Control and Prevention from keeping statistics on gun violence.

The story of the prescription drug Vioxx (Rofecoxib) shows how the FDA was designed to fail. After going through an accelerated approval process, Vioxx quickly became the leading seller for Merck & Co. Merck’s worldwide sales of Vioxx in 2003 totalled \$2.5 billion. However, complaints arose early based on an alleged connection between Vioxx and serious heart problems. Following its usual approach, the FDA negotiated (because they lacked the power to demand) a stronger warning for the drug. This delay consumed more than a year and allowed Merck to reap several additional billion dollars in sales. Finally, after numerous lawsuits were filed, Merck voluntarily pulled Vioxx off the market in 2004 and eventually settled with the victims for \$4.85 billion. The FDA was not the prime mover in getting Vioxx off the market; instead it was the thousands of plaintiffs threatening individual and class action lawsuits. The FDA failed to protect the consumers from the Vioxx scandal because the agency was designed to fail from the start. For example, the FDA’s chief counsel, Daniel Troy, had earlier represented tobacco and

pharmaceutical companies against the FDA.

Courts and the legislatures reflect the interests of the powerful. This holds true for regulatory agencies as well. The fact agencies represent the interests of the regulated industry rather than the public is so common that it has earned a name—“agency capture.” The most recent and outrageous example of an agency failing to protect the public involves Bernie Madoff. In a Ponzi scheme: “Madoff accepted funds from his investors and stole instead of investing it. He used fresh funds to make payments to other investors.” Madoff’s fraudulent financial empire was huge: “Madoff’s crime cost thousands of victims at least \$21 billion in cash losses, part of the \$64.8 billion in paper wealth that vanished when his scheme collapsed.”

Madoff stole from his friends, nonprofit organizations, and the rich and the famous. It became an honor to have Madoff handle your investments. The SEC should have detected the scheme decades earlier because of Madoff’s continuous high return rates and lack of investments. Indeed, beginning in 1992, complaints were made to the SEC. But with regard to a Madoff investigation, the SEC was mired in cement:

[T]he SEC had received six substantive complaints since 1992—and botched the investigation of every one of them. The SEC’s inspector general found no evidence of any bribery, collusion or deliberate sabotage of those investigations. How did the SEC miss telltale signs for almost thirty years? The answer is power. Bernie Madoff was the former chair of NASDAQ—a powerful person and “one of the boys.” Harry Markopolos, a former securities fraud investigator, warned the SEC that Madoff was running a Ponzi scheme as early as 2000. Markopolos stated: “The SEC is ... captive to the industry it regulates and is afraid to bring big cases against prominent individuals ... The agency ‘roars like a lion and bites like a flea’ ...”

In fact, Madoff was surprised he was not caught earlier. He later pinpointed the reason:

The first time, in 2004, he assumed the investigators would check his clearinghouse account. [He was not buying much stock.] He said he was [astonished] that they did not, and theorized that they might have decided against doing so because of his stature in the industry. “I am very proud of the role I played in the industry,” he said.

Bernie Madoff was eventually arrested and prosecuted. He is now serving a 150-year prison sentence.

Citizens United v. Federal Election Committee (2010) is an excellent recent example of the Supreme (continued on following page)

Court dramatically favoring corporations. Historically, the goal of Congress has been to insure that each citizen gets one vote and no more. The purpose of the McCain-Feingold Act was to severely limit the power of corporations so as to ensure citizens, not corporations, elect the government.

This legislative history was ignored in January 2010, when the Supreme Court held that corporations and unions were entitled to free speech protection. This means that from this point forward, corporations and unions will be able to spend unlimited amounts for advertising during elections to further gain control of government. They will be able to use their financial fortunes to support their candidates and punish those candidates who did not

accede to them in present and previous elections.

Will *Citizens United* shift control of government further into the hands of the corporations? The composition of the Supreme Court majority in *Citizens United*—five to four—provides some insight into this question. All five of the justices who voted in the majority were appointed by Republican presidents. The vote was arguably their way of saying thanks. The answer is yes, *Citizens United* will likely toss substantial elective power into the outstretched hands of corporations and further shift the control of government to corporations.

—from *A History of Civil Litigation: Political and Economic Perspectives* (Oxford University Press 2011)

financial stake in the outcome,” Vandall says.

The research culminating in *A History of Civil Litigation* is critical in today’s run-up to the 2012 presidential elections because the emphasis on the role of power in the law carries over to the primaries. “Bachman, Huntsman, and Perry dropped out because they lack sufficient financing,” Vandall says. “Both Romney and Gingrich complain of the attacks by the other candidate’s well-funded PACs. The raw power of the Super PACs is a result of the U.S. Supreme Court’s erroneous decision in *Citizens United v. Federal Election Commission*, which has been an absolute disaster in regard to American politics.

“Nothing in the Constitution says anything about corporations running the country, but that’s where we are now,” Vandall says. “We had a particular statute that forbade corporations giving money to politicians, and now they are able to do it under the Court’s decision in 2010.”

Vandall’s research leading to his book was ignited by the present attack on U.S. courts system, the misnamed tort reform. He wanted to see if history held any lessons and found that torts rest on two major theoretical bases.

“For torts between individuals, for example fights and car crashes, the old shibboleths or precedent, fairness, morality, and justice provided insight,” Vandall says. “However, for products liability suits by victims against sellers, the true key was power. Those with power essentially determine the statute, the regulation, and the results in litigation. There is no rule of law here.”

Changes began about 1980 when corporations realized they could improve their bottom line if products liability laws were changed to reduce the amount of litigation.

“Everyone has a right to a day in court,” Vandall says. “Moneyed interests have been successful in what they call tort reform, thereby reducing the number of lawsuits that can go into the courtroom. I want to push the courthouse doors open and show that the Occupy Wall Street movement does have legitimacy.”

Vandall hopes his research will shift the dialog in regard to government away from such things as religious freedom, abortion rights, and Social Security to debating which major corporations are supporting presidential candidates and government leaders and the question of what interests those corporations have down the road.

He calls for transparency in politics, saying that our politicians have to remove the veneer. “They have to take off their white shirt and tie and sport jacket and let us see what their T-shirt says about who is paying money into their campaigns.”

SELECTED PUBLICATIONS

Books

A History of Civil Litigation: Political and Economic Perspectives (Oxford University Press 2011)

Torts: Cases and Problems, with Wertheimer and Rahdert (LexisNexis 3rd ed. 2012)

The Policy Debate Surrounding Gun Litigation in the United States: Handguns: the Law and Economics of the Hamilton v. Beretta Suit Against Handgun Manufacturers (Lambert 2010) (with George Benston)

Articles

Why We Are Outraged: An Economic Analysis of Internet Gambling, *Richmond Journal of Global Law and Business* (Summer 2008)

The Criminalization of Products Liability: An Invitation to Political Abuse, Preemption and Non-Enforcement, 57 *Catholic Law Review* 341 (2008)

Probing the Reversal in Baseball's Racial Trends



George B. Shepherd

Professor of Law

BA, Yale University, 1982

JD, Harvard Law School, 1986

PhD, Stanford University, 2009

Scholarly interests: corporate law, civil procedure, education law, and law and economics

America's favorite pastime and the economics of one of its practices have received the scrutiny of George Shepherd's research. As a result, he would like to see Major League Baseball change its draft system.

"I had read somewhere that there are far fewer African Americans in baseball than there were 30 years ago," says Shepherd. "At the same time, the number of foreign players has increased. So, I was eager to solve the puzzle of why this happened. It turns out that when baseball established the free-agent draft in 1965, it set in place forces that have led inevitably to the replacement of African-American players by foreign players."

Shepherd was surprised to find that the draft was the cause of the reduction of African American players, but says the harsh effect on the number of African-American players was completely an accident.

"The league is mystified about why the number of African-Americans has fallen, and it has instituted all sorts of programs to try to reverse the trend," Shepherd says. "It turns out that the league unintentionally did it to itself."

His research, conducted with Joanna Shepherd Bailey, shows that the draft and stricter age limits created economic forces that inevitably led to the league replacing African-American players with foreign players. They observed that the draft and stricter age minimums reduced the benefits of signing and developing players from the United States, while increasing the relative benefits of signing foreign players.

Before the draft, a team could be relatively certain of being able to reap the rewards of an investment that it made in developing a U.S. player. Before 1965, a team could invest in finding a talented teenage U.S. player, help him develop, sign him at a young age, and thus be certain of enjoying the fruits of his successful career.

Shepherd and Bailey found that the draft and age minimums prevented teams from contracting

"When baseball established the free-agent draft in 1965, it set in place forces that have led inevitably to the replacement of African-American players by foreign players."

Excerpt: “Baseball’s Accidental Racism: The Draft, African-American Players, and the Law”

As explained in Part II of this paper, in 1965, at the height of the civil rights movement—and the same year that the Civil Rights Act became effective—MLB itself imposed seemingly innocent rules that had the unintended consequence of causing teams to replace African-Americans and other U.S. players with foreign players. The rules were the player draft and stricter age minimums.

The league imposed the requirements to reduce rich teams’ competitive advantage and to reduce the size of players’ salaries. However, because both regulations applied only to U.S. players, they created incentives that have caused teams to abandon African-Americans and other U.S. players, and to hire foreigners instead.

As the economic analysis ... shows, the draft and stricter age minimums reduced the benefits of signing and developing players from the United States, while increasing the relative benefits of hiring foreign players. Before the draft, a team could be relatively certain of being able to reap the rewards of an investment that it made in developing a U.S. player. A team could invest in finding a talented teenage U.S. player, help him to become excellent, sign him at a young age, and thus be certain of enjoying the fruits of his successful career.

This all changed in 1965 with the draft and age minimums. A team that invested in finding and developing a U.S. player might no longer be able to reap the fruits of its investment. The age minimums prevented teams from contracting with U.S. players when they were still young enough to be trained and developed. Instead, a team would now have to invest in developing a teenage U.S. player without any guarantee that the player would eventually play for the team. The draft made it probable that some other team would hire the U.S. player. That is, regardless of how intensely the player desired to play for the team that helped him develop, the draft entitled some other team to hire him.

In contrast, the draft and age minimums did not apply to foreign players. A team could both contract with a foreign player at a younger age, and because the draft did not apply, be confident that no other team would steal him away.

Our empirical analysis ... uses an extensive new data set that includes every MLB player from 1947 to 2001 to show that, in response, teams have shifted a huge amount of resources to training and hiring players from countries where the regulations do not apply, especially Latin American countries. Since 1965, Major League teams have opened approximately sixty baseball academies for young players in Venezuela and the Dominican Republic. A large part of the teams’ rosters now comes from

these academies. That is, the regulations have caused teams to replace U.S. players with foreign players. This mechanism is especially apparent in Puerto Rico, which saw a swift decline in MLB recruiting after the draft began to apply to it in 1989. Accounts from baseball insiders confirm these lessons, as do comparisons with other professional sports leagues.

Part V provides evidence that the draft caused not only a decline in the hiring of U.S. players, but, specifically, a decline in the hiring of African-Americans. Although the reduction in U.S. players after the draft includes both African-American and white players, a disproportionate share has been suffered by African-Americans. Because the draft and age minimums caused teams to lose their incentive to develop teenage U.S. players—because the draft allowed other teams to hire the players once they reached draft age—the only U.S. players whom teams would now hire were players who, by draft age, had somehow managed to develop themselves.

This change especially harmed African-Americans because they disproportionately lack the resources to develop their own baseball skills. Unlike in other sports such as basketball, development of baseball skills requires expensive training and resources. African-American families suffer from a host of socio-economic disadvantages, from lower average incomes to fewer intact families and fewer involved fathers. African-American children disproportionately lack the baseball moms and dads who drive their children to, and pay for, expensive clinics and practices. Because the draft caused the teams to devote their resources to developing children from Venezuela and the Dominican Republic, African-American children’s baseball talent withers, undeveloped. Generally, only affluent white U.S. children have the resources to develop the necessary skills on their own.

Part VI, suggests that the draft is illegal under Title VII of the Civil Rights Act of 1964. Professional baseball would certainly have violated the Civil Rights Act if it had explicitly required its teams to replace thousands of African-Americans and other U.S.-born players with foreign ones. The analysis shows that its indirect accomplishment of the same outcome is also illegal for two reasons. First, the draft and the age minimums constitute unlawful discrimination based on national origin. Both regulations make an explicit distinction based on national origin, applying to U.S. players, but not to foreign players.

Second, MLB has also engaged in unlawful racial discrimination. In contrast to its discrimination based on national origin, the league’s racial discrimination has not been intentional; we found no evidence that the league imposed either the draft or age minimums to harm African-Americans. However, the Supreme

Court has interpreted Title VII to prohibit not only intentional discrimination, but also practices that have a disparate impact on racial minorities, which MLB's draft and age minimums certainly do.

Nor would the league be able to defend itself by arguing that the regulations are a business necessity, a possible defense to Title VII claims. The draft and age minimums have not succeeded in their goals of achieving greater competitive parity and reducing

player salaries. The rich teams continue to have a great advantage. The regulations have simply caused the rich teams to spend their larger development budgets in Venezuela and the Dominican Republic, rather than in the United States.

—from *Baseball's Accidental Racism: The Draft, African-American Players, and the Law*, 44 *Connecticut Law Review* 197 (2011) (with Joanna Shepherd Bailey)

with U.S. players young enough to be trained and developed. Instead, a team now has to invest in developing a teenage U.S. player without any guarantee that he will eventually play for it. Regardless of how intensely the player desired to play for the team that helped him develop, the draft entitles some other team to sign him. However, the draft and age minimums do not apply to foreign players.

Shepherd says that the draft is causing teams to export the jobs to foreign countries, hiring players from Venezuela and the Dominican Republic rather than from the United States; not unlike Apple manufacturing its iPads in China. The harm is in having promising U.S. players ignored—the same as any other kind of job discrimination.

"I hope that Major League Baseball will alter its draft system," Shepherd says, "so that foreign players are not artificially advantaged and African American players harmed."

Shepherd often finds something that strikes his research interest by reading newspapers or through discussions with colleagues. These most frequently center on projects that have an injustice component.

In that light, Shepherd's previous research includes understanding why there aren't more African-American law schools. "I traced how the law school accreditation system applies to minority law schools. It turns out that the standards for the LSAT and GPA used by the American Bar Association essentially prohibit the establishment of any new law schools that would serve primarily African Americans."

One of his latest research projects, conducted with Morgan Cloud, Charles Howard Candler Professor of Law, is titled, "Law Deans in Jail," and deals with law schools' reporting of data to *U.S. News & World Report* for its rankings. "The rankings have distorted the entire U.S. system for legal education," Shepherd says. "The *U.S. News* rankings cause law schools to reorient so much of their effort on trying to please *U.S. News*, rather than pursuing sound education goals. It also causes some law schools to issue misleading

information—and some to even lie."

Given the realities of the marketplace, Shepherd says schools have no choice but to participate in the rankings. "But, it changes the way students are chosen and the way resources are used." This research has been chided because Emory University School of Law is not mentioned. "Our research doesn't criticize our home law school because there hasn't been criticism in the press about Emory," Shepherd says. "We examined existing reports in the press and tried to determine if what was indicated there would constitute a crime."

Shepherd carefully critiqued the statistical flaws in the *U.S. News* rankings. "It is stunning how defective the rankings methodology is, even though *U.S. News* knows that thousands of people make life-altering decisions based on the rankings."

SELECTED PUBLICATIONS

Books

Business Structures (3rd ed., Minnesota: West Group 2010) (with David G. Epstein, Richard D. Freer, and Michael J. Roberts)

Articles

Law Deans in Jail, *Missouri Law Review* (forthcoming 2012) (with Morgan Cloud)

Lawyers, Ignorance, and the Dominance of Delaware Corporate Law, 2 *Harvard Business Law Review* (forthcoming 2012) (with William J. Carney and Joanna Shepherd Bailey)

Baseball's Accidental Racism: The Draft, African-American Players, and the Law, 44 *Connecticut Law Review* 197 (2011) (with Joanna Shepherd Bailey)

The Mystery of Delaware Law's Continuing Success, *University of Illinois Law Review* 1 (2009) (with William J. Carney)

Recent Scholarship



Ahdieh

Robert Ahdieh

Vice Dean and Professor of Law

Articles

Varieties of Corporate Law-Making: Competition, Preemption, and Federalism, in *Research Handbook On The Economics Of Corporate Law* 373 (2012) (Claire A. Hill and Brett H. McDonnell eds.)

Beyond Individualism in Law and Economics, 91 *Boston University Law Review* 43 (2011)

The Visible Hand: Coordination Functions of the Regulatory State, 95 *Minnesota Law Review* 578 (2010)



Bailey

Joanna Shepherd Bailey

Associate Professor of Law

Articles

Ideal versus Reality in Third-Party Litigation Financing, *Journal of Law, Economics & Policy* (forthcoming 2012)

Products Liability and Economic Activity: An Empirical Analysis of Tort Reform's Impact on Businesses, Employment, and Production, *Vanderbilt Law Review* (forthcoming 2012)

The Partisan Price of Justice: An Empirical Analysis of Campaign Contributions and Judicial Decisions, 86 *New York University Law Review* 69 (2011) (with Michael Kang)



Nash

Jonathan Nash

Professor of Law

Articles

Standing's Expected Value, *Michigan Law Review* (forthcoming 2013)

On the Efficient Deployment of Rules and Standards to Define Federal Jurisdiction, 65 *Vanderbilt Law Review* 509 (2012)

The Supreme Court and the Regulation of Risk in Criminal Law, 92 *Boston University Law Review* 171 (2012)

Does Ideology Matter in Bankruptcy? Voting Behavior on the Courts of Appeals, 53 *William & Mary Law Review* 919 (2012) (with Rafael Pardo)

The Institutional Dynamics of Transition Relief, 85 *N.Y.U. Law Review* 391 (2010) (with Jonathan S. Masur)



Pardo

Rafael Pardo

Robert Thompson Professor of Law

Articles

Reconceptualizing Present-Value Analysis in Consumer Bankruptcy, 68 *Washington & Lee Law Review* (2011)

An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors, 26 *Emory Bankruptcy Developments Journal* 5 (2009)

Failing to Answer Whether Bankruptcy Reform Failed: A Critique of the First Report from the 2007 Consumer Bankruptcy Project, 83 *American Bankruptcy Law Journal* 27 (2009)

Liza Vertinsky

Associate Professor of Law

Articles

Moving Drug Development In-House? An Experiment with University Innovation Capacity, *Emory Law Journal*, Symposium on Innovation for the Modern Era (forthcoming 2012)

Universities as Innovation Managers, *Utah Law Review* (forthcoming 2012)

An Organizational Approach to the Design of Patent Law, 13 *Minnesota Journal of Law, Science and Technology* 1, 211–281 (2012)

Comparing Alternative Institutional Paths to Reform, 61 *Alabama Law Review* 3, 501–552 (2010)



Vertinsky

Alexander "Sasha" Volokh

Associate Professor of Law

Articles

Privatization and the Elusive Employee-Contractor Distinction, forthcoming *University of California-Davis Law Review* (2012–13)

Prison Vouchers, 160 *University of Pennsylvania Law Review* 779 (2012)

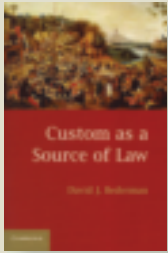
The Constitutional Possibilities of Prison Vouchers, 72 *Ohio State University Law Journal* 983 (2011)

Privatization, Free-Riding, and Industry-Expanding Lobbying, 30 *International Review of Law & Economics* 62 (2010)



Volokh

David J. Bederman



David J. Bederman, K. H. Gyr Professor of Private International Law, died Dec. 4. He was 50.

Bederman graduated from Paideia School in Atlanta. He earned his AB from Princeton University, his MSc from the London School of Economics, his JD from the University of Virginia and a diploma from the Hague Academy of International Law. He completed his PhD at the University of London.

In 2011, Emory Law established the David J. Bederman Distinguished Lecture, along with a summer fellowship at The Hague Academy of International Law, in honor of Bederman's career and accomplishments.

Bederman is survived by his wife, Lorre Cuzze, and their daughter, Annelise Bederman, as well as by his parents, Sanford and Jolayne Bederman.



"In life, as in oral arguments before the Supreme Court, David knew that there is a time to speak and a time to sit down. When David chose to speak, everyone knew it was time to listen." —Robert Schapiro, Dean and Asa Griggs Candler Professor of Law

"David loved to teach, and more than 4,000 students over the years flocked to his courses and seminars. He had exquisite gifts at the lectern and as a mentor and faculty advisor to the *Emory International Law Review*." —John Witte Jr., Jonas Robitscher Professor of Law, Alonzo L. McDonald Distinguished Professor

Book Chapters

Customary International Law in the Supreme Court, 1861–1900, in *The Supreme Court and International Law* (Cambridge Univ. Press 2010) (William Dodge, Michael Ramsay, and David Sloss eds.)

Privateering, in *Max Planck Encyclopedia of Public International Law* (September 2008)

The Story of the Reparation for Injuries Case: The Law of Nations is Transformed into International Law, in *International Law Stories* 307 (2007) (Mark Janis, John Noyes, and Laura Dickinson eds.)

The Glorious Past and Uncertain Future of International Claims Tribunals, in *International Courts for the 21st Century* 161 (1992) (M. Janis ed.)

Articles

Law of the Land, Law of the Sea: The Lost Link Between Customary International Law and the General Maritime Law, 51 *Virginia Journal of International Law* 299 (2011)

Diversity and Permeability in Transnational Governance, 56 *Emory Law Journal* 201 (2007)

Collective Security, Demilitarization and Pariah States, 13 *European Journal of International Law* 121 (2002)

The Curious Resurrection of Custom: Beach Access and Judicial Takings, 96 *Columbia Law Review* 1375 (1996)

Revivalist Canons and Treaty Interpretation, 41 *UCLA Law Review* 953 (1994)



EMORY

LAW

Office of Marketing and
Communications
1301 Clifton Road
Atlanta, GA 30322-2770



INSIDE THIS ISSUE

- **Frank S. Alexander** on the Housing Crisis
- **Ani B. Satz** on Vulnerability
- **Frank J. Vandall** on Civil Justice
- **George B. Shepherd** on Baseball's Draft