

## Publications

### Books, Book Chapters, and Reprinted Materials:

**America's Prophets: The Virtues of Judicial Activism in Biblical Times and Now** (forthcoming).

**Executed on a Technicality: Lethal Injustice on America's Death Row** (Beacon 2005).

**Contract Law, Texas Practice** (vol. 49 of Texas Practice series) (with C. Smyser) (Thomson-West 2005) (and annual supplements: 2006, 2007).

**Machinery of Death: The Reality of America's Death Penalty Regime** (Routledge 2002) (with M. Dow).

"*Bell v. Cone*," in **Capital Punishment Stories** (Jordan Steiker and John Blume, eds.) (forthcoming Foundation Press 2008).

"The Effect of AEDPA on Capital Post-Conviction Litigation in the Federal Courts" in **Capital Punishment Issues in the Next Generation** (forthcoming Carolina Academic Press 2007) (with E. Freedman).

"*Debs v. United States*"; "Abortion Laws and the Establishment Clause"; in **Encyclopedia of American Civil Liberties** (4 vols.) (Routledge 2006).

"Custom" (addressing the role of local custom in forming ethical outlooks); "Erroneous Convictions" (addressing methods for setting aside convictions on the basis of actual innocence); in **Ethics, Revised Edition** (3 vols.) (Salem Press 2005).

"The Music of Chance"; "Before & After"; "Body & Soul"; "A Lesson Before Dying"; "Jernigan"; "The Second Coming"; "A Thousand Acres"; "The Death of Ivan Ilych"; "The Oresteia"; "Antigone"; in **Law in Literature: An Annotated Bibliography of Law-Related Works** (E. Gemmette, ed. 1998).

The Plain Meaning of Article V, in **Responding to Imperfection**, edited by Sanford Levinson (Princeton Univ. Press 1995). <http://pup.princeton.edu/titles/5663.html>

Fictional Documentaries and Truthful Fictions: The Death Penalty in Recent American Film, reprinted in part in **Law and Popular Culture**, edited by David R. Papke, et al. (LexisNexis 2007).

When Law Bows to Politics, reprinted in part in **Philosophy of Law**, edited by Joel Feinberg and Hyman Gross, at 713-22 (5th ed. 1995).

### Journal Publications:

Is the “Arising Under” Jurisdictional Grant in Article III Self-Executing? (work in progress).

Judicial Activism on the Rehnquist Court: An Empirical Analysis, \_\_\_ St. John's J. Leg. Comm \_\_\_ (forthcoming 2008) (with C. Jeu and A. Coveny).

Is it Constitutional to Execute Someone Who is Innocent (and if it isn't, how can it be stopped following *House v. Bell*)?, in Symposium: The Death Penalty in America, 42 Tulsa L. Rev. 277 (2007).

The Extraordinary Execution of Billy Vickers, the Banality of Death, and the Demise of Post-Conviction Review, 13 Wm & Mary Bill of Rts. J. 521 (2005) (with Marcus, Moon, Tyler, and Wiercioch).

How Many Spouses Does the Constitution Allow One to Have?, 20 Const. Comm. 571 (2003-04) (essay-review of Sarah Barringer Gordon, **The Mormon Question**) (with J. Maldonado).

Invisible Executions: A Preliminary Analysis of Publication Rates in Death Penalty Cases in Selected Jurisdictions, 8 Tex. Forum on Civ. Libs. & Civ. Rts. 149 (2003) (with B. McNeese).

Our Prophet (In Memoriam: Yale Rosenberg), 39 Hous. L. Rev. 878 (2002).

The End of Religion (essay-review of Ronald Thiemann's **Religion in Public Life**), 16 J. Law & Relig. 877 (2001).

Can Constitutional Error be Harmless?, 2000 Utah L. Rev. 483 (with J. Rytting).

Fictional Documentaries and Truthful Fictions: The Death Penalty in Recent American Film, 17 Const. Comm. 511 (2000).

The Relevance of Legal Scholarship, 37 Hous. L. Rev. 329 (2000).

America's Death Machine, 10 Criminal Law Forum 387 (1999) (essay-review of John C. Tucker, **May God Have Mercy**).

The Moral Failure of the Clear and Present Danger Test, 6 Wm & Mary Bill of Rts. J. 733 (1998).

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When Law Bows to Politics: Explaining Payne v. Tennessee, 26 U.C. Davis L. Rev. 157 (1992).

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