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CONTRACTS AS ORGANIZATIONS
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Empirical studies of contracts have become more common over the past decade, but the range of questions addressed by these studies is narrow, inspired primarily by economic theories that focus on the role of contracts in mitigating ex post opportunism. We contend that these economic theories do not adequately explain many commonly observed features of contracts, and we offer four organizational theories to supplement—and in some instances, perhaps, challenge—the dominant economic accounts. The purpose of this Article is threefold: first, to describe how theoretical perspectives on contracting have motivated empirical work on contracts; second, to highlight the dominant role of economic theories in framing empirical work on contracts; and third, to enrich the empirical study of contracts through application of four organizational theories: resource theory, learning theory, identity theory, and institutional theory. Outside economics literature, empirical studies of contracts are rare. Even management scholars and sociologists who generate organizational theories largely ignore contracts. Nevertheless, we assert that these organizational theories provide new lenses through which to view contracts and help us understand their multiple purposes.

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ASK NOT WHAT YOUR CHARITY CAN DO FOR YOU: *ROBERTSON V. PRINCETON* PROVIDES LIBERAL-DEMOCRATIC INSIGHTS INTO THE DILEMMA OF *CY PRES* REFORM *Iris J. Goodwin* 75

This Article centers on a long-standing problem in the law of public charity: how to ameliorate the force of restrictions imposed by donors on large gifts in the face of societal change. Donors of these gifts often seek to advance personal beliefs or social agenda by limiting funds to particular programs. Under current law, such restrictions obtain in perpetuity, potentially functioning as a "dead hand" upon the charity with the passage of time. This Article explores the challenge of defining a substantive standard that acknowledges changes in social efficacy and

draws upon John Rawls's distinction between the "right" and the "good" to provide a framework to locate charitable mission, what the Author claims are private views of the public good, within liberal democracy. By way of illustration, this Article also examines the legal dispute between the Robertson family and Princeton University regarding a restricted gift given by the Robertsons in 1961. After the moment of national idealism that inspired the gift had passed, Princeton struggled to spend the gift in ways consistent with what the Robertsons claimed the language of the grant required.

THE RETURN OF THE ROGUE *Kimberly D. Krawiec* 127

The "rogue trader"—a famed figure of the 1990s—recently has returned to prominence due largely to two phenomena. First, recent U.S. mortgage market volatility spilled over into stock, commodity, and derivative markets worldwide, causing large financial institution losses and revealing previously hidden unauthorized positions. Second, the rogue trader has gained importance as banks around the world have focused more attention on operational risk in response to regulatory changes prompted by the Basel II Capital Accord. This Article contends that of the many regulatory options available to the Basel Committee for addressing operational risk it arguably chose the worst: an enforced self-regulatory regime unlikely to substantially alter financial institutions' ability to successfully manage operational risk. That regime also poses the danger of high costs, a false sense of security, and perverse incentives. Particularly with respect to the low-frequency, high-impact events—including rogue trading—that may be the greatest threat to bank stability and soundness, attempts at enforced self-regulation are unlikely to significantly reduce operational risk, because those financial institutions with the highest operational risk are the least likely to credibly assess that risk and set aside adequate capital under a regime of enforced self-regulation.

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THE BATTLE TO SAVE THE VERDE: HOW ARIZONA'S WATER LAW COULD DESTROY ONE OF ITS LAST FREE-FLOWING RIVERS *Meredith K. Marder* 175

This Note explores a battle for water in the Southwest that may ultimately destroy one of Arizona's most precious rivers. This struggle pits the doctrine of reasonable use against the doctrine of prior appropriation and exposes the need to reconcile the uniquely Arizonan concept of "subflow," which purports to synthesize the laws of ground and surface water, with scientific reality. The characters in this complicated battle include rural municipalities that plan to pump from the river's headwaters, a major metropolitan utility company with century-old rights to the river, and an environmental advocacy organization seeking to protect endangered species. The plight of the Verde River exemplifies what has become a common tale in the United States—multiple parties with valid rights to the same water under different laws. Its resolution will likely require some difficult decisions about resource allocation, rural and urban growth, and the courts' willingness to side with science in the face of impossibly high stakes and a river in peril.

LAND USE REGULATION IN ARIZONA AFTER THE PRIVATE PROPERTY RIGHTS PROTECTION ACT
Jeffrey L. Sparks 211

In November 2006, Arizona voters passed Proposition 207, the Private Property Rights Protection Act, a law that requires the state or any county, city, or town to pay compensation when a land use regulation results in any decrease in a landowner's property value. Since the law's enactment, local governments in Arizona have proved reluctant to effect new land use regulations or make changes to those already existing. But while Proposition 207 is restrictive, it also contains several exceptions for situations where value-reducing regulations do not require compensation. This Note argues that local governments should make full use of these exceptions in order to continue to regulate land use when important and necessary.

LAW & POLICY NOTE

ON THE BOUNDARIES OF CULTURE AS AN AFFIRMATIVE DEFENSE
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A "cultural defense" to criminal culpability cannot achieve true pluralism without collapsing into a totally subjective, personal standard. Applying an objective cultural standard does not rescue a defendant from the external imposition of values—the purported aim of the cultural defense—because a cultural standard is, at its core, an external standard imposed onto an individual. The pluralist argument for a cultural defense also fails on its own terms—after all, justice systems are themselves cultural institutions. Furthermore, a defendant's background is already accounted for at sentencing. The closest thing to a cultural defense that a court could adopt without damaging the culpability regime is a narrow de minimis rule.