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THINGS FALL APART: THE ILLEGITIMACY OF PROPERTY RIGHTS IN THE CONTEXT OF PAST PROPERTY THEFT	<i>Bernadette Atuahene</i> 829

Past property theft is often a volatile political issue that has threatened to destabilize many nascent democracies. How does a transitional state avoid present-day property-related disobedience when a significant number of people believe that the current property distribution is illegitimate because of past property theft? To explore this question, I first define legitimacy and past property theft by relying on empirical understandings of the concepts. Second, I establish the relationship between property-related disobedience and a highly unequal property distribution that the general population views as illegitimate. Third, I describe the three ways a state can achieve stability when faced with an illegitimate property distribution: by using its coercive powers, by attempting to change people's beliefs about the legitimacy of the property distribution, or by enacting a Legitimacy Enhancing Compensation Program (LECP), which strengthens citizens' belief that they ought to comply with the law. Fourth, I develop a legitimacy deficit model, which is a rational-choice model that suggests when a state should enact an LECP to avoid property-related disobedience. To best promote long-term stability, I argue that states should, at the very least, enact an LECP as the cost of illegitimacy begins to outweigh the cost of compensation. Lastly, since many of the model's relevant costs are subjective, I suggest a process that states should use to determine and weigh the costs. In sum, the Article is intended to spark a debate about how compensation for past property theft can keep things from falling apart.

THE RACIAL DISPROPORTIONALITY MOVEMENT IN CHILD WELFARE: FALSE FACTS AND DANGEROUS DIRECTIONS	<i>Elizabeth Bartholet</i> 871
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A powerful coalition has made "Racial Disproportionality" the central issue in child welfare today. It notes that black children represent a larger percentage of the foster care population than they do of the general population. It claims this is caused by racial discrimination and calls for reducing the number of black children removed to foster care. But the central question is whether black children are disproportionately victimized by maltreatment. If so, black children should be removed at rates proportionate to their maltreatment rates, which will necessarily be disproportionate to their population percentage. Racial equity for black children means providing them with protection against maltreatment equivalent to what white children get. The evidence indicates that black children are in fact disproportionately victimized by maltreatment. This is to be expected because

black families are disproportionately characterized by risk factors associated with maltreatment, including severe poverty, serious substance abuse, and single parenting. These are reasons for concern and reform. But the problems—and consequently the solutions—are entirely different from those identified by the Movement. Society should act to prevent the disproportionate maltreatment of black children, and provide greater support to families at risk of falling into the dysfunction that results in maltreatment. This should result in a reduction in the number of black children in foster care, without putting them at undue risk.

FACTBOUND AND SPLITLESS: THE CERTIORARI
PROCESS AS BARRIER TO JUSTICE FOR
INDIAN TRIBES

Matthew L.M. Fletcher 933

The Supreme Court's certiorari process does more than help the Court parse through thousands of "uncertworthy" claims—the Court's process creates an affirmative barrier to justice for parties like Indian tribes and individual Indians. The Court has long maintained that the certiorari process is a neutral and objective means of eliminating patently frivolous petitions from consideration. But this empirical study of 163 preliminary memoranda, recently made available when Justice Blackmun's papers were opened, demonstrates that the Court's certiorari process is neither objective nor neutral. The research, reflecting certiorari petitions filed during October Term 1986 through 1993, demonstrates that statistically, there is a near zero chance the Supreme Court will grant a certiorari petition filed by tribal interests. At the same time, the Court grants certiorari to far more petitions filed by opponents of tribal sovereignty.

SLAVERY AS PUNISHMENT: ORIGINAL PUBLIC
MEANING, CRUEL AND UNUSUAL
PUNISHMENT, AND THE NEGLECTED CLAUSE
IN THE THIRTEENTH AMENDMENT

Scott W. Howe 983

In relatively specific constitutional language that courts and scholars have long neglected, the Thirteenth Amendment authorizes slavery as a punishment for crime. This Article shows that the original public meaning of the slavery-as-punishment clause leads to abhorrent outcomes, including the emasculation of many modern protections grounded on the Eighth Amendment. This conclusion challenges those who assert that steadfast originalism will not produce grossly objectionable results. It also challenges the view that steadfast originalism finds justification as an effort to preserve a core of legitimacy-enhancing features in the Constitution. The Article thus reminds us why the original meaning, even when clear, is not conclusive in constructing the modern meaning of the Constitution.

NOTES

FROM MUDDLED TO *MEDELLÍN*: A LEGAL HISTORY OF SOLE EXECUTIVE AGREEMENTS

Anne E. Nelson 1035

The legal history of sole executive agreements is muddled at best. Over the years the Supreme Court has created a confused doctrine concerning sole executive agreements through its *Belmont*, *Pink*, *Dames & Moore*, and *Garamendi* decisions by making overly broad generalizations about the preemptive weight of these agreements. This Note takes a comprehensive look at sole executive agreements by reviewing the historical use of these agreements and by analyzing the Supreme Court's jurisprudence. It then argues that the analysis in the recent *Medellin v. Texas* decision helps to clarify the confusion over sole executive agreements by establishing limits on their preemptive weight.

BORN OSAMA: MUSLIM-AMERICAN EMPLOYMENT DISCRIMINATION

Ishra Solieman 1069

Muslim-Americans have faced many challenges to their basic civil liberties since the September 11th attacks on the World Trade Centers. One of the areas in which they have felt the most discrimination is in the workplace. The Equal Employment Opportunities Act, otherwise known as Title VII, prohibits employers from discriminating against employees or potential employees. Today, Title VII forms the basis for claims brought against employers who discriminate against their employees. The unique situation of Muslim-Americans has highlighted the inadequacies of Title VII in protecting against the subtle nature of modern forms of discrimination. Without modifications to the rules governing Title VII claims, discrimination against minority groups will continue to prevail in the workplace.

ARIZONA CASE NOTES

STATE V. GUILLEN: HOME PRIVACY PROTECTION DISAPPEARING IN THE DESERT

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