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## *Essays*

law "legal checkup" in particular—can provide the context for applying the law therapeutically in everyday law practice.

## *Articles*



The United States Supreme Court has decided two cases concerning the ability of contracting parties to bypass the preemptive provisions of the Federal Arbitration Act. The two cases, *Volt v. Board of Trustees* and *Mastrobuono v. Shearson Lehman Hutton, Inc.*, appear to be in conflict and the Court's token effort to harmonize them is unpersuasive. This Article analyzes these cases and proposes that, by limiting the holding of each case to a distinct and defined ambit, they can be rationally reconciled.



In the last decade, a majority of courts have accepted the use of expert testimony concerning the battered woman syndrome for a wide variety of purposes, ranging from defense use in homicide cases to government use in domestic abuse prosecutions. Although syndrome proponents view this acceptance as a triumph for female defendants, the authors argue that this widespread acceptance of expert testimony regarding battered woman syndrome is severely flawed and fails to meet the United States Supreme Court's test for the admissibility of scientific evidence described in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* In addition, the use of syndrome evidence, especially in domestic homicide cases, has devastating consequences for women. Too often, courts in these cases focus more time debating the mental deficiency and relative helplessness of the female defendant than the reasonableness of her actions. The use of syndrome evidence has served only to solidify some of the most archaic and destructive stereotypes about women who kill their batterers. The authors conclude that battered woman syndrome expert testimony will fall into disuse as courts come to appreciate that it lacks virtually any basis in valid science, and proponents come to realize that it is inimical to their political cause.



In this Article, Professor Hughes critiques statutory rights of redemption and anti-deficiency laws as mortgagor protection devices that often allow borrowers to avoid taking personal responsibility for their mortgage obligations. He begins by exploring traditional arguments for and against maintaining these devices, then proceeds to discuss their

moral implications. Professor Hughes concludes by suggesting that mortgagors could receive adequate protection through appropriate pre-qualification by lenders, and by comprehensive and easily understandable disclosures to potential mortgagors.



In the past fifty years, the figure of the Supreme Court Justice has emerged as a frequent character in novels, plays, and films. Following each of three major events—the landmark decision in *Brown v. Board of Education*, the success of *The Brethren* with a large lay audience, and the controversial rejection of Robert Bork's nomination—the Court became increasingly familiar to the public as a powerful institution. This heightened popular awareness of the Court's role in American life is reflected in a series of fictional works presenting Supreme Court Justices engaged in judicial conduct. Although the Court itself remains a respected institution in these works, its Justices undergo a decline from the reverential treatment of Oliver Wendell Holmes in *The Magnificent Yankee* through mildly critical portraits of stuffy or political judges to the most recent and most severely critical representations of deeply flawed individuals in the popular literary genre of the legal thriller.



This Article addresses whether the Constitution prohibits Congress from delegating power to states and when Congress should be understood to delegate legislative rather than administrative power. For many reasons, Congress routinely relies upon states (and is beginning to rely more heavily upon Indian tribes) to effectuate federal policies. But when Congress authorizes states to create and to implement federal laws, Congress may impermissibly alter the allocation of federal powers vested by the Consitution in Congress and the President. As a result, federal officials may not be held to account for policies that can be enforced by federal courts. When states receive such power, out-of-state citizens are excluded from political processes that effectively specify federal policies. "Cooperative federalism" thus poses serious normative and structural concerns.



Determination of fair market value is one of the central issues of the federal transfer tax. The current adjudication process prompts taxpayers and the government to adopt valuation extremes in anticipation that a court will compromise their differences. The game theory suggests that final offer arbitration offers a better method to resolve valuation disputes, causing parties to narrow their differences and, in so doing, encouraging out-of-court settlements.

# *Notes*



The Ninth Circuit, in *Beam v. Paskett*, found that a state supreme court's mandatory review of a death sentence creates a presumption that the state addressed unraised sentencing issues. This Note applies *Beam*'s reasoning to Arizona's automatic review of death sentences under Arizona Criminal Rule of Procedure 31.2(b). The author concludes that, based on Arizona case law and public policy, those on Arizona's death row should be allowed to raise federal constitutional claims on federal habeas corpus appeal when their lawyers inadvertently fail to raise those claims before the Arizona state courts.



In *Central Bank v. First Interstate Bank*, the Supreme Court held that no private cause of action for aiding and abetting securities fraud exists under section 10(b) of the Securities Exchange Act of 1934. This decision signals an end to secondary liability for fraudulent conduct under federal securities laws. This Note analyzes the elements of aiding and abetting liability prior to *Central Bank*, the Court's decision and its ramifications on the liability of securities professionals.