

students who have a familiarity with restorative justice practice, theory, and vocabulary. The clearly written articles anticipate a prior understanding of restorative justice.

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Legal Ethics and Human Dignity. By David Luban. Cambridge, United Kingdom: Cambridge University Press, 2007. Pp. xii+337. \$90.00 cloth.

Reviewed by Thomas Ehrlich Reifer, University of San Diego

Luban is arguably one of the most brilliant and prolific legal ethicists writing today. Having earlier written pioneering works, drawing from sources as varied as Walter Benjamin, Talmudic texts, and Martin Luther King Jr., Luban returns to his central themes in this collection. Here Luban demonstrates many of his classic strengths: close textual reading and brilliant criticism from the vantage point of ethics and morality. The richness can only be touched upon.

In Chapter 1, “The Adversary System Excuse,” Luban returns to the critique of the role of lawyers as “hired guns” first taken up at length in his book *Lawyers & Justice* (1988). He cites Macaulay’s question: “whether it be right that a man should, with a wig on his head . . . do for a guinea what . . . he would think it wicked . . . to do for an empire” (p. 9). Answering no and writing at a time when questions of the law are at the forefront of contemporary moral questions, Luban’s self-conscious antinomies are perhaps best summed up in the title of his second chapter, “Lawyers as Upholders of Human Dignity (When They Aren’t Busy Assaulting It).”

Luban is acutely aware that the universe of moral decision-making today involves primarily questions of “organizational evil,” in which moral responsibility is “subdivided” and therefore often eluded in its entirety (p. 7). The paradigmatic example of this in the twentieth century is the Holocaust. In fact, the example of the machinations of Nazi “legality” is taken up briefly in the chapter “The Torture Lawyers of Washington.” Luban argues that “we would have to go back to the darkest days of World War II, when Hitler’s lawyers laid the legal groundwork for the murder of Soviet POWs and the forced disappearance of political suspects, to find comparably heartless use of legal technicalities . . . ” (p. 163). Responding to claims by the “torture lawyers” of the Bush Administration—first made in secret—that the President, in his

role as Commander of Chief, is effectively outside the law, Luban follows up on his widely read scholarly tour de force, “Liberalism, Torture, and the Ticking Bomb” (Luban 2006). He has a devastating analysis of the central role that former President George W. Bush’s lawyers, notably John Yoo, played in paving the way for the Abu Ghraib torture scandal—in violation of the Geneva Conventions and the UN Convention Against Torture, both of them signed and ratified by the United States—and the subsequent passage of the Military Commissions Act (2006; sometimes referred to as the Torture Act).

In “The Ethics of Wrongful Obedience,” he examines the Milgram experiments. While rightly pointing toward the importance of the slippery-slope route toward destructive behavior—what Jonathan Glover in *Humanity* (1999) refers to as the “moral slide”—Luban lays great stress on the participants’ need to justify previous shocks in inducing continued obedience. Luban ends here on a hopeful note, however, noting how individual acts of disobedience to unjust authority can have a galvanizing effect, encouraging others toward morally righteous action. He moves on to discuss the Stanford Prison Experiment and the questions of situational ethics it deals with, noting that it “seems to portray a world in which the idea of personal integrity seems absent—a Goffmanesque world where there are no selves, only selves-in-roles” (p. 281). Luban again lays stress on the degree to which actions are rationalized by actors, thereby ensuring continued amoral actions in a seemingly endless cycle. To deal with such dilemmas, he calls for greater conscientiousness and awareness of the dilemmas of organizational evil and the taking of great care in these situations, along with wariness about delegating moral responsibility to superiors.

Finally, Luban ponders the work of Tom Shaffer and that of Anthony Trollope’s *Orley Farm* [1862] (1981), replete with discussions of the many ironies of the law revealed here and in the Old Testament, most notably the fact that “every people’s title to its land, traced back far enough, originates in conquest and bloodshed. This is the paradox of property: the law of property protects titles that invariably originated in crimes against the law of property” (p. 316).

These essays are surely not bedtime reading. Their degree of scholarly acuity, complexity, and intensity make them formidable works even for gifted scholars. And yet in their interrogation of the moral universe of the law and lawyers, at the cusp of the twenty-first century, they should be read by every sentient lawyer, scholar, student of the law, and citizen, for there is arguably no better guide to the reefs and shoals of law in the real world than Luban.

References

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Statute Cited

- Military Commissions Act of 2006, Public Law 109-366, Oct. 17, 2006 [S.3930], 109th Cong. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ366.109.pdf.

The Cultivation of Resentment: Treaty Rights and the New Right. By Jeffrey R. Dudas. Palo Alto, CA: Stanford University Press, 2008. Pp. 224. \$50.00 cloth.

Reviewed by Jonathan Goldberg-Hiller, University of Hawai'i

Too many years after the tide turned on civil rights in the United States, conservative countermobilization is gaining deserved attention in sociolegal studies. Dudas's new book adds theoretical and historical heft to this project by analyzing in detail legal mobilization against Indian treaty rights, refining emergent theoretical apparatuses designed to explain the rhetorical and cultural mechanisms distinguishing and diverting rights claims, and self-consciously organizing the growing scholarly interest in countermobilization (Teles 2008; Herman 1997; Goldberg-Hiller & Milner 2003). If the struggles of the New Right to oppose abortion, same-sex marriage, affirmative action, and Indian sovereignty—among other issues—have moved the common sense about rights away from the dominant trope of the civil rights movement that has captivated law and society from its inception, Dudas steers readers toward an alternative set of theories and sociolegal practices revealing an ambivalence that may have always underscored the postwar American cultural obsession with rights (see Greenhouse et al. 1994). This book shows that rights not only mobilize liberal and progressive ideals, but simultaneously help organize reactionary identities, articulate and broadcast these commitments to