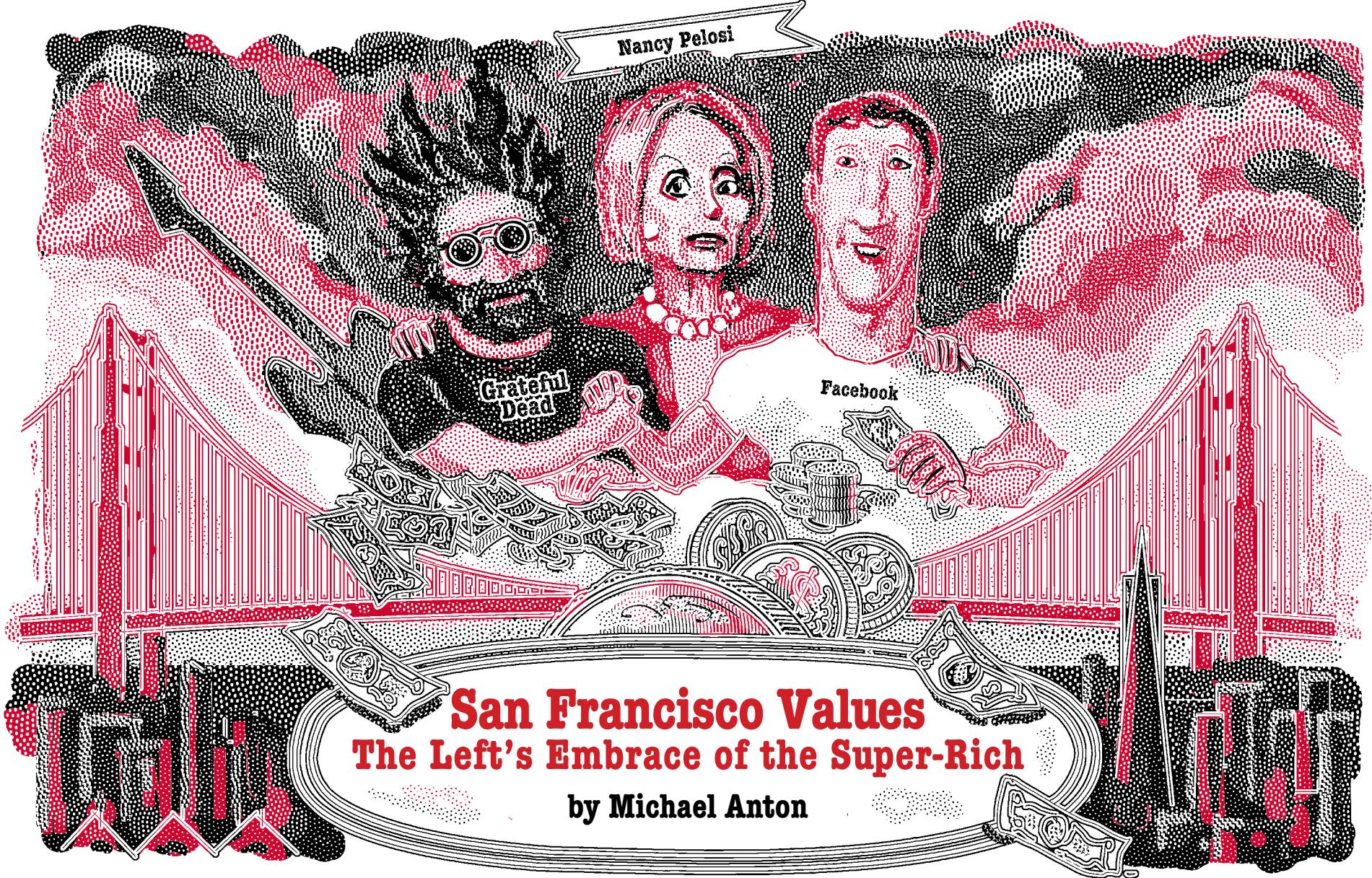


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THE HEAD AND THE HEART

The Conservative Heart: How to Build a Fairer, Happier, and More Prosperous America, by Arthur C. Brooks.
Broadside Books, 256 pages, \$27.99



THIS BOOK IS WRITTEN BY A CONSERVATIVE, for conservatives, relegating non-conservative readers to the sidelines. Spectatorship has its advantages, though. It permits a more impartial comparison between Arthur Brooks's effort to change conservatism and previous attempts to reform parties and movements.

As it happens, I was deeply involved in one of these efforts. In the wake of Michael Dukakis's seven-point defeat at the hands of George H.W. Bush in the 1988 presidential race, a heated debate broke out among Democrats. For eight years, most Democratic strategists had believed that Ronald Reagan's charm and skills as a communicator—not his beliefs and policies—were the key to his success. With Reagan's departure from the scene, and with the memory of the Carter Administration fading, Democrats expected to regain their status as the natural governing majority.

Bush's victory should have sent that theory packing. But just as Ptolemaic astronomers added epicycles to save their hypothesis, so did the strategists. It was the Willie Horton

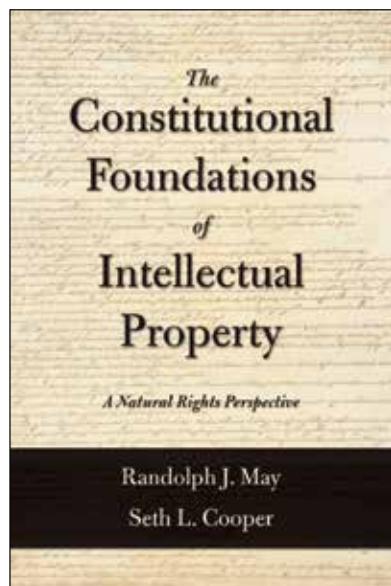
ad, they said; or the tactical mistakes of the Dukakis campaign; or the candidate's infamous tank ride; or his cold-blooded response to a debate question about the death penalty—anything but the obvious: that the American people's doubts about aspects of Lyndon Johnson's Great Society had reached critical mass, as had their skepticism about liberals' ability to steer the economy and defend the country.

IN SHORT, DEMOCRATS' PROBLEMS WERE substantive, not just cosmetic. They couldn't be solved by nominating better candidates, reframing an unchanged agenda, or adopting a new tone. Without abandoning their deepest convictions, they needed to rethink longstanding policies. Enter the Democratic Leadership Council (and its offshoot, the Progressive Policy Institute), which in four years reformed the Democrats' approach to crime, welfare, fiscal policy, and trade; developed a comprehensive plan to reform a sclerotic government; and propounded a new conception of citizenship based on responsibility as well as rights—the theoretical basis of the

national service movement. In the hands of Bill Clinton, a politician whose skills rivaled Reagan's, this new agenda proved irresistible. It is no accident that so many Americans would gladly return to the peace, prosperity, and budget surpluses of the Clinton years.

I don't mean to suggest that Clinton's effect on liberalism was as sweeping or as enduring as Reagan's transformation of conservatism. (Franklin Roosevelt is the truer counterpoint.) In fact, after his two terms, and in reaction to the widely unpopular Iraq war, Democrats moved left on foreign policy. Rising inequality and stagnating incomes for working and middle-class families moved the party left on economic policy. And as the country shifted on issues such as same-sex marriage and the legalization of marijuana, most Democrats did so as well. No longer setting the direction for the party, the Democratic Leadership Council shuttered its office in 2011.

My point is this: liberalism faced substantive challenges in the late 1980s, and Bill Clinton responded to them with substantive proposals that shifted the terms of debate for more than



The Constitutional Foundations of Intellectual Property *A Natural Rights Perspective*

Randolph J. May, The Free State Foundation
Seth L. Cooper, The Free State Foundation
2015, 248 pp, ISBN 978-1-61163-709-0, paper, \$30.00

Claims that copyrights and patents are not property at all are in fashion in some quarters. This book's essays challenge those dubious claims. Unlike other works that offer a strictly pragmatic or utilitarian defense of intellectual property rights, this book seeks to recover the Constitution's understanding of intellectual property rights as ultimately grounded in the natural rights of authors and inventors.

"A fascinating, illuminating and insightful exploration of the roots of intellectual property law in America. Essential for students, teachers and practitioners in the field. Intellectually sound and highly readable." —*Theodore Olson, Solicitor General of the United States, 2001–2004*

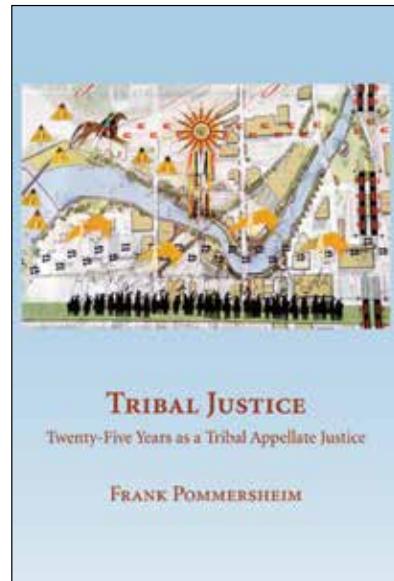
Tribal Justice *Twenty-Five Years as a Tribal Appellate Justice*

Frank Pommersheim, University of South Dakota School of Law
2015, 280 pp, ISBN 978-1-61163-665-9, paper, \$35.00

This in-depth review and survey of tribal appellate court jurisprudence focuses on the procedure and substance of tribal court appellate decision-making as revealed in the text of actual court opinions. The decisions and accompanying notes are amplified by the development of a model of tribal court jurisprudence and a discussion of various theories of tribal court judging.

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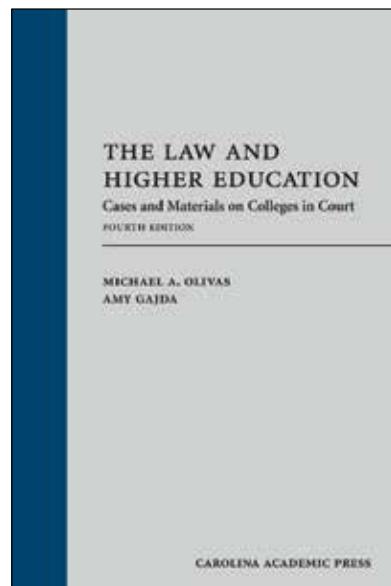


The Law and Higher Education *Cases and Materials on Colleges in Court* Fourth Edition

Michael A. Olivas, University of Houston Law Center
Amy Gajda, Tulane University Law School
2015, 1,048 pp, ISBN 978-1-59460-982-4, \$125.00

Now in its fourth edition, this book reflects the extraordinary growth in the law of higher education and the accompanying rise in scholarship and commentary on higher education law and governance.

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a decade. He never believed that he could wrap the policies of the past in better rhetoric and sell them to the American people. The problem was the message, not the messenger.

COMPARE THIS WITH THE PRESIDENT of the American Enterprise Institute's very different approach to the reform of conservatism. Stripped to its essentials, Brooks's message to Tea Party conservatives is challenging but reassuring: You don't have to discard your policies or shed your antipathies. To become a national majority, you must think and act as a nascent majority, not as a dissident opposition. You must move from a protest movement to a social movement.

And you must talk differently—hence, Brooks's concluding chapter, "The Seven Habits of Highly Effective Conservatives," all of which concern modes of self-presentation. Much of his advice is sensible: spend more time saying what you are for and less dwelling on what you are against; be happy, not angry; ascribe error, not evil motives, to your adversaries.

Above all, Brooks urges, convey that you care. Conservatism's Achilles' heel is the public conception that conservatives are indifferent to the suffering of the less fortunate. Just the opposite is the case, Brooks insists: conservatives care at least as much about the poor as do liberals. (His first book, *Who Really Cares* [2006], showed that political conservatives give to charity at a higher rate than liberals despite having slightly lower incomes on average.) Conservatives just have a different view of how best to fight poverty—through charitable contributions and grassroots social entrepreneurs rather than top-down public programs. So when you talk about poverty, lead with the affirmative—not with cuts to food stamps.

In fairness, he does suggest a new focus for conservative thinking. With the Declaration of Independence as our template, we can put his point this way: There are "life" conservatives, who focus on abortion and—more broadly—natural or God-given limits to social change and guides to good policy. There are "liberty" conservatives, who emphasize how the growth of government breaches individual freedom in principle and in practice. For Brooks, these forms of conservatism are important but insufficient: we need a "pursuit of happiness" conservatism that understands the nature and sources of human satisfaction, and organizes public policy so as to facilitate its pursuit.

To that end, he offers a chapter of reflections on true happiness, capped by his visit to Swami Gnanmuni, the chief administrator of the Swaminarayan Akshardham Hindu temple in New Delhi. The swami's formula for happiness: enjoy abundance but do not become attached to it. Over lunch, Brooks told



the swami that he would appear in Brooks's forthcoming book and that many Americans would be hearing his name. "Modelling nonattachment," Brooks relates, the swami contemplated this prospect and responded, "Dude, do you like the soup? It's spicy."

FOR THE MANY HARD-PRESSED AMERICANS who wonder whether the American Dream is still attainable, excessive attachment to material goods is not their most pressing problem. Brooks discusses at length the vicissitudes of the war on poverty, emphasizing the traditional complaint that the social safety net encourages dependence even as it offers assistance. Effective public policy is more like building a winning football team than it is like designing a jet engine, says Brooks: values and culture matter. Honest work, he declares, ennobles and elevates us.

As an unindicted co-conspirator in Bill Clinton's welfare reform law, I am in no position to disagree. (I note for the record that absent a panoply of publicly funded work supports—for transportation, child care, and health care, among others—the law would not have succeeded.) But poverty is no longer the only pervasive economic challenge we face, and it is not the principal ground on which the liberal/conservative battle will be waged in the 2016 election and beyond.

On this crucial point, Brooks is less clear. On the one hand, he says, conservatives have failed to acknowledge that there is a crisis of "insufficient opportunity" as well as of poverty. He notes that rags-to-riches stories have lost much of their resonance and that the ladder of socioeconomic mobility seems to be losing its lowest rungs. Not only is opportunity disappearing for those at the bottom, but also income is declining for the working class. Meanwhile the top 10%—especially the top 1%—have reaped nearly all the gains of the recovery from the Great Recession.

All this is true, but it misses the key point: the American Dream is at risk, not just for the poor and working class, but for the middle class as well. Median household income peaked at the end of the Clinton Administration, failed to regain that peak during the first seven years of George W. Bush's administration, and then fell sharply during the Great Recession and for two years thereafter. In August of this year, it stood 1.5% below where it was at the onset of the recession in December 2007, and nearly 3% below its 2000 high.

The imperfections of anti-poverty programs have little to do with the stagnation of middle-class incomes. Our economic challenges reflect changes in the structure of the American economy brought on by technology,

globalization, slowing workforce growth, declining productivity gains, the hyper-expansion of the financial sector—and by inadequate responses to these challenges on the part of the private as well as public sector, conservatives as well as liberals. A relevant conservatism—and for that matter, a relevant liberalism—must address these challenges head-on. Endlessly relitigating the War on Poverty isn't the point. Neither is the conservative "heart." The real issue is the conservative *head*—what conservatism stands for and how that stance matches up against today's realities.

Brooks appears to assume that if the Tea Party could just allow its inner compassion for the poor to shine forth, all would be well. As he admits, "Ordinary Americans believe conservatives don't care about them, let alone about people who are even poorer or more vulnerable." Why? Brooks's answer: "Conservatives are perceived as aligning moral worth with wealth."

THIS IS TRUE, BUT NOT THE WHOLE truth. A burdened middle class thinks it needs help handling the big financial challenges—especially with college and medical costs and secure retirements. They see liberal responses to these challenges as flawed and inadequate—but conservatives as missing in action. After five years of promising to "repeal and replace" Obamacare, conservatives have yet to coalesce around a replacement that the public regards as credible. That's just one example of why a real reform of conservatism requires better policies, not just better talk. (To their credit, self-styled "reform conservatives" like Ross Douthat, Yuval Levin, and Ramesh Ponnuru understand this, as did their liberal counterparts a quarter-century ago.)

Man does not live by bread alone, and neither do voters—another reason why Brooks's focus on poverty is unlikely to achieve the political result he desires. Economic well-being is not the only issue that drives a wedge between conservatives and the Americans Brooks is eager to attract. After fighting and dying for the right to vote, African Americans care at least as much about unimpeded access to the polls as they do about safety-net programs, and they will not support a movement that advocates impediments to the ballot box in the name of preventing "voter fraud."

"Everyone knows what the Tea Party is against," Brooks declares, but somehow his lengthy enumeration leaves out immigration reform. Mitt Romney's stance on immigration policy hurt him at least as much among Hispanics as did his infamous dismissal of "the 47%." As long as the Tea Party inveighs against "amnesty" and forces Republican presidential candidates to dance to its tune,

the party the conservative movement dominates is doomed to minority status.

FIIFTY YEARS AGO THE REPRESENTATIVES of the American people made two momentous decisions—to ensure voting rights for all Americans, regardless of race; and to reopen the gates of immigration that had been slammed shut for four decades. The first hit the country like a grenade; the latter, like a time-release capsule. Both grew out of American principles and traditions. Together, they have irreversibly transformed our society and our politics.

The Voting Rights Act honored our commitment to equal political and civil rights for all citizens, and redeemed the explicit promise of the 15th Amendment. The Immigration and Nationality Act built on our rich history as a nation of immigrants, and it reflected our confidence that strivers and risk-takers willing to leave their native lands in search of freedom and opportunity would enrich our economy and strengthen the American Dream. A majority of Americans continue to believe that immigrants strengthen our country through their talent and hard work—a view overwhelmingly supported by the evidence.

Of the 59 million immigrants who have come to the United States in the past half-century, three quarters have done so legally. If not a single illegal immigrant had crossed our borders during those decades, the Act would still have been transformative. If not a single illegal immigrant enters during the next half-century, racial and ethnic minorities still will account for a majority of the U.S. population by 2065. These momentous changes help explain why African Americans and immigrants don't share the Tea Party's concern for government overreach.

No one who reads *The Conservative Heart*, or who knows Arthur Brooks, can doubt his generosity. Perhaps it is why he sees the Tea Party as he wants it to be, not as it is—a movement that invokes the past to avert the future. I can see no basis for his hope that the Tea Party could move from opposition to affirmation. It seems more interested in shutting the government down than in using it to promote a conservative agenda. It exemplifies William F. Buckley, Jr.'s definition of conservatism as "standing athwart history yelling 'Stop!'" As long as Tea Party views prevail in the heart of the conservative coalition, it may win a national election from time to time, but it will not represent the country, and if my argument is correct, it cannot create a governing majority in 21st-century America.

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