HONORING DAN MELTZER

*Bradford R. Clark**

Dan Meltzer was a giant in the field of Federal Courts, and it is hard to overstate his influence on its development. He taught Federal Courts at Harvard Law School and was a long-time co-author of *Hart & Wechsler's The Federal Courts and the Federal System* ("*Hart & Wechsler*"), the casebook that created the field and shaped how generations of judges, lawyers, and scholars think about complex questions of federal jurisdiction. In addition, Dan enriched the field immeasurably by writing seminal articles on a wide range of Federal Courts topics. His work was characterized by deep knowledge of the law, the relevant history, and the surrounding literature. After reading one of Dan's articles, one always came away with a deeper understanding of the problems he examined and the potential solutions to them. Because of his efforts to link doctrine with theory, Dan's influence has extended well beyond the academy. His work has been cited dozens of times by the Supreme Court and hundreds of times by lower federal courts. Dan also taught thousands of Federal Courts students at Harvard Law School for nearly three decades—students who went on to become, among other things, law clerks, legal scholars, and judges. As I learned early in my career, Dan was very generous in giving comments and advice to young scholars who sent him drafts or reprints of their work. In all of these ways and more, Dan profoundly impacted every aspect of the field of Federal Courts. He will be greatly missed by all who knew him or were familiar with his work.

When I became Chair-Elect of the Federal Courts Section of the Association of American Law Schools (AALS), my primary responsibility was to organize a panel discussion to be held at the next annual meeting. Like so many scholars in the field, I was a great admirer of Dan's work, and I knew that he had been dealing with serious health issues for some time. Few people have made a larger contribution to the field of Federal Courts than Dan

* William Cranch Research Professor of Law, George Washington University Law School. I thank Dick Fallon, Vicki Jackson, John Manning, Henry Monaghan, Judith Resnik, David Shapiro, and Amanda Tyler for participating in the AALS panel and this special issue honoring Dan Meltzer. I also owe a debt of gratitude to Henry Monaghan, Herbert Wechsler, and Alfred Hill for first sparking my interest in Federal Courts when I was a law student.

Meltzer, so I reached out to him to see if he would mind if I organized a panel honoring his work. After giving it some thought, he told me that he had no objection so long as the panel focused on his scholarship and not on his illness. As the panel took shape, he was pleased that the panelists would engage in a substantive discussion of his work, and that the papers would be published in the annual Federal Courts issue of the *Notre Dame Law Review*, in which he had published on more than one occasion.[1] He also told me that he hoped to attend the panel, but that he might not be able to do so. Tragically, he passed away several months before the panel.

This special issue includes contributions by six of the nation's leading Federal Courts scholars.[2] Each participant examines an area of Federal Courts law influenced by Dan's scholarship. The variety of topics covered in this issue is a testament to the importance and lasting impact of his work in the field of Federal Courts.

Dick Fallon was Dan's long-time *Hart & Wechsler* co-author and colleague at Harvard Law School. He also coauthored several important articles with Meltzer. Building upon their prior work together, Professor Fallon examines the proper role of federal courts in interpreting federal statutes.[3] As Fallon shows, Meltzer believed that federal courts had a role to play in interpreting statutes that went beyond simply decoding the semantic meaning of enacted texts. He thought that courts should engage in purposive interpretation to produce just and workable statutory schemes. Fallon builds on these themes and suggests that federal courts should view themselves as Congress's junior partners in the lawmaking process, tasked with promoting justice and human welfare.

Vicki Jackson was also one of Dan's colleagues at Harvard Law School. Building on insights from Dan's work on the role of courts and constitutional remedies, Professor Jackson examines the timely issue of whether the Supreme Court should recognize expanded legislative standing in separation of powers disputes, and notes potential similarities to the Court's earlier expansion of public interest standing.[4] Drawing on Meltzer's work, Jackson sketches the outlines of an analytic framework for evaluating legislative standing and the broader issue of government standing. She also considers the suggestion that comparative constitutional law counsels in favor of recognizing broader congressional standing in certain kinds of inter-branch disputes.

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1 *See* Daniel J. Meltzer, *Jurisdiction and Discretion Revisited*, 79 NOTRE DAME L. REV. 1891 (2004); Daniel J. Meltzer, *State Sovereign Immunity: Five Authors in Search of a Theory*, 75 NOTRE DAME L. REV. 1011 (2000).

2 The panel also included a presentation by Professor John Manning, who was Professor Meltzer's colleague at Harvard Law School and one of his coauthors on *Hart & Wechsler*.

3 *See* Richard H. Fallon, Jr., *On Viewing the Courts as Junior Partners of Congress in Federal Statutory Interpretation Cases: An Essay Celebrating the Scholarship of Daniel J. Meltzer*, 91 NOTRE DAME L. REV. 1743 (2016).

4 *See* Vicki C. Jackson, *Honoring Dan Meltzer—Congressional Standing and the Institutional Framework of Article III: A Comparative Perspective*, 91 NOTRE DAME L. REV. 1783 (2016).

Henry Monaghan is a professor at Columbia Law School who has inspired innumerable Federal Courts students (including me). He knew Dan professionally and has long admired his careful and thoughtful work. Professor Monaghan examines the question of federal court authority, sitting in equity, to enjoin the enforcement of state law on federal preemption grounds[5]—a question that both he and Meltzer had examined in prior articles. Monaghan focuses on the interaction of two recent Supreme Court opinions and their impact on how we think about standing in statutory cases and the source of the cause of action in equitable suits to enjoin state action.

Judith Resnik is a professor at Yale Law School, and has written in many of the areas addressed by Dan's work. Starting from his insight that the federal courts have provided modern lawyers with a common intellectual heritage, Professor Resnik considers the impact of Supreme Court doctrines restricting the availability of federal courts and the resulting increase in state court litigation.[6] Given this shift, she suggests that there is a need to develop a new intellectual heritage based on the interdependencies of state and federal courts.

David Shapiro was Dan's long-time collaborator on *Hart & Wechsler*, and colleague at Harvard Law School. His work has also been honored in the pages of this *Review*.[7] Professor Shapiro returns to a question that he and Meltzer grappled with individually and as coauthors on *Hart & Wechsler*. Specifically, Shapiro examines the nature of federal judicial authority—especially the appellate jurisdiction of the Supreme Court—when a federal issue is embedded in, or affects the resolution of, a question of state law.[8] In addition to elaborating his own views on the question, Shapiro provides a fascinating glimpse into the evolving treatment of this issue in succeeding editions of the casebook.

Amanda Tyler was one of Dan's Federal Courts students at Harvard, and is now a professor at Berkeley.[9] Meltzer was known for welcoming discussion of, and even disagreement with, his work—both in and out of the classroom. In this spirit, Professor Tyler examines one of Meltzer's leading articles (coauthored with Dick Fallon) in which he advocated a common law approach to habeas corpus law. Tyler makes the case that habeas jurisprudence has paid too little attention to the important role of the English Habeas Corpus Act in the development of the law of habeas corpus, both in England and America. She notes that the statute was directed at remedying shortcomings in common law habeas practice and served as a check not only

5 *See* Henry P. Monaghan, *A Cause of Action, Anyone?: Federal Equity and the Preemption of State Law*, 91 NOTRE DAME L. REV. 1807 (2016).

6 *See* Judith Resnik, *Revising Our "Common Intellectual Heritage": Federal and State Courts in Our Federal System*, 91 NOTRE DAME L. REV. 1831 (2016).

7 *See* Symposium, *Federal Courts, Practice & Procedure: Honoring David Shapiro*, 79 NOTRE DAME L. REV. 1677 (2004).

8 *See* David L. Shapiro, *An Incomplete Discussion of "Arising Under" Jurisdiction*, 91 NOTRE DAME L. REV. 1931 (2016).

9 In addition, she will join the next edition of *Hart & Wechsler* as one of its co-authors.

on the executive but also the judiciary.[10] This history has potential implications for how U.S. courts should treat the writ of habeas corpus today.

These impressive contributions by six leading Federal Courts scholars reflect the breadth and depth of Dan Meltzer's scholarship. They also show the immense impact of his work. As is evident from their submissions to this issue, all of the participants have been profoundly influenced by Dan's contributions to the field. The same can be said of countless other Federal Courts scholars around the country, and even the world. Dan Meltzer's scholarship has been—and will continue to be—a source of remarkable insight and knowledge for lawyers, judges, and scholars grappling with the intricacies of Federal Courts law.

10 *See* Amanda L. Tyler, *A "Second* Magna Carta *": The English Habeas Corpus Act and the Statutory Origins of the Habeas Privilege*, 91 NOTRE DAME L. REV. 1949 (2016).