
RECENT PUBLICATIONS

THE RISE OF CORPORATE RELIGIOUS LIBERTY. Edited by Micah Schwartzman, Chad Flanders & Zoë Robinson. New York, N.Y.: Oxford University Press. 2016. Pp. xxv, 491. \$99.00. In the recent cases of *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* and *Burwell v. Hobby Lobby Stores*, the Supreme Court has gone further than ever before in protecting the religious liberty of institutions. *The Rise of Corporate Religious Liberty*, comprising twenty-two essays by an assortment of law and religion scholars, explores how the Court has reached its current posture, and what to expect moving forward. It begins by focusing on the jurisprudential and cultural move from emphasizing *individual* religious liberty rights toward emphasizing the religious liberty rights of religious *institutions*. It then turns to controversies surrounding the religious liberty rights of *corporations*, with a focus on the doctrinal and political issues presented by *Hobby Lobby* and the status of religious exemptions post-*Hobby Lobby*. The book closes by questioning the theoretical underpinnings of corporate religious liberty and assessing the consequences of expanding corporate religious liberty in the future. *The Rise of Corporate Religious Liberty* thus provides a valuable service in exploring all the various angles of the corporate religious liberty debate and ensuring that all arguments are out on the table.

ON WAR AND DEMOCRACY. By Christopher Kutz. Princeton, N.J.: Princeton University Press. 2016. Pp. xii, 332. \$39.95. War and democracy share an uneasy philosophical relationship, one front and center in Professor Christopher Kutz's new book, *On War and Democracy*. In this timely work, Kutz explores the moral concerns and implications that necessarily arise when democracies wage war; he argues that democratic principles can be used as tools either to limit or to increase war's violence, and encourages democracies to learn to limit democratic "holy wars" (p. 159), remote killings, and secret torture rather than spur them on. Kutz expertly helps the reader understand the dangers of a colonialism that results from a view of democracy as an "argument for legitimacy" (p. 15), but also the dangers of viewing soldiers and national security as wholly separate from the democratic will. In short, Kutz's in-depth explanation of theories of democracy and corporate violence suggest a modest approach toward war. He then pivots toward the recent wars waged by the United States, calling for more transparency in the laws of war and more respect for the "external sovereignty" of other nations, chiding "extensive post-victory reconstruction efforts" (p. 16). Kutz addresses the many moral, legal, and philosophical questions arising when democracy meets war from many angles, producing a systematic study of these difficult issues.

THE IMPACT OF INCOMPLETE CONTRACTS ON ECONOMICS. Edited by Philippe Aghion et al. New York, N.Y.: Oxford University Press. 2016. Pp. xiv, 419. \$99.00. This volume celebrates the twenty-fifth anniversary of Professors Sanford Grossman and Oliver Hart's highly influential economics paper, *The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration*, the first work to rigorously tackle two fundamental questions: If firms grow because of economies of scale, what (aside from antitrust law) determines where firm boundaries are placed; and what exactly are the efficiency gains from distributing control of assets among multiple owners? Grossman and Hart's key insight was that the answers to these questions can be found in the incompleteness of contracts. Because of incompleteness, some discretion over asset control has to remain with one of the parties; this discretion allows that party to capture more of the trading surplus, and *that*, in turn, leads the other party to underinvest. In this way, the correct distribution of control helps to ensure the optimal level of investment. *The Impact of Incomplete Contracts*, gathering essays from influential economists from across the globe, surveys the breadth and depth of understandings unlocked by Grossman and Hart's epiphany. Essays include topics on the internal organization of firms and how that organization affects market performance, on international trade, on government intervention in the economy, and even on the design of political institutions. It would be difficult to find a better illustration of the notion that a single, seemingly simple idea, sitting at the intersection of economics and law — that contracts are never complete — can revolutionize an entire field.

GENDER NONCONFORMITY & THE LAW. By Kimberly A. Yuracko. New Haven, Conn.: Yale University Press. 2016. Pp. viii, 248. \$85.00. When the Civil Rights Act was passed in 1964, Title VII's aim was clear — to eliminate outright discrimination that excluded women and minorities from the workplace. But workplace discrimination can be far more subtle and complex than Congress had anticipated. Since the Supreme Court's landmark decision in *Price Waterhouse v. Cooper*, Title VII has been interpreted to offer stronger protections for a wide range of gender-nonconforming conduct. At the same time, the case law is rife with inconsistencies: Title VII protects individuals who defy traditional stereotypes of masculinity and femininity — “the aggressive woman” (p. 13) and “the effeminate man” (p. 18) — and, more recently, transsexuals, but excludes other forms of “gender bend[ing]” conduct (p. 23). In *Gender Nonconformity & the Law*, Professor Kimberly Yuracko untangles these inconsistencies in gender discrimination law, while also raising important questions about its trajectory. Her analysis invites readers to reflect on how much closer the inclusive workplace has come — and how much further there is to go.

SEXUAL EXPLOITATION OF TEENAGERS: ADOLESCENT DEVELOPMENT, DISCRIMINATION, AND CONSENT LAW. By Jennifer Ann Drobac. Chicago, Ill.: University of Chicago Press. 2016. P. 361. \$50.00. While concepts of sexual abuse and harassment between adults are part of the mainstream discourse, many adolescents also face such abuse and harassment. In *Sexual Exploitation of Teenagers*, Professor Jennifer Ann Drobac explores the surprisingly common phenomenon of adolescents being sexually abused by the adults in their lives. Through six specific cases, Drobac examines why adolescents are especially susceptible to adult harassers, as well as how the particular developmental stage of teenagers affects their response to this sexual abuse. Drobac goes on to discuss the deficiencies in the laws designed to protect adolescents from this kind of abuse. In the process, she reviews “cutting-edge science of adolescent development” (p. 4) to explore “adolescent neurobiological, psychosocial, and sexual maturation,” showing that teenagers are not simply “mini-adults” (p. 5) — an insight key to understanding the shortcomings that manifest when laws that protect against sexual abuse generally are applied to teenagers. Lastly, Drobac proposes a new model to protect teenagers: “legal assent,” which would allow adolescents to engage in sexual conduct with adults, but also protect them anytime they revoke their consent (p. 6). For those who are interested in the current laws protecting teenagers from sexual abuse, *Sexual Exploitation of Teenagers* is an essential read.

FEDERAL TRADE COMMISSION PRIVACY LAW AND POLICY. By Chris Jay Hoofnagle. New York, N.Y.: Cambridge University Press. 2016. Pp. xxii, 402. \$39.99. Did you know that the Federal Trade Commission (FTC) is the only thing standing between the private information on your Facebook profile and every other Facebook user? Or that online ads that seem to know exactly who you are exist by the grace of the FTC, a grace that could be taken away any minute? Originally established to wage war against the potential evils of trusts and monopolies, the FTC’s mission to protect the average consumer from “bigness” has since evolved to include addressing increasingly complex issues of information collection, sharing, and use by businesses. Professor Chris Jay Hoofnagle traces this 100-year evolution, bringing his reader up to speed on what exactly the FTC does and how the agency does it. Hoofnagle then goes on to describe the FTC’s privacy-monitoring role and to demonstrate how both its history and the political context have come together to make this role quite large. Hoofnagle concludes with several informed suggestions to help the agency to adopt a successful, stronger pro-privacy game plan. If you care about the future security of your Google search history, this is not a book to miss.

THE MANDATE OF DIGNITY: RONALD DWORKIN, REVOLUTIONARY CONSTITUTIONALISM, AND THE CLAIMS OF JUSTICE. By Drucilla Cornell & Nick Friedman. New York, N.Y.: Fordham University Press. 2016. Pp. xii, 132. \$85.00. In their new book, Professor Drucilla Cornell and Mr. Nick Friedman set out to defend the South African Constitution by way of a careful review of the jurisprudential thought of the late Ronald Dworkin. The challenge of the post-apartheid South African Constitution, Cornell and Friedman explain, is that it seeks to effect “a complete ethical transformation” (p. 3) while still operating “through the law” (p. 7). Offering a refreshing overview of Dworkin’s crucial jurisprudential contributions, the authors demonstrate how Dworkin’s jurisprudence, particularly as articulated in his later works, provides a theory in support of South Africa’s constitutional project. The authors begin their project by critically reading Dworkin’s *Law’s Empire* through the lens of Hegel. Yet it is in Dworkin’s later writings, from *Justice in Robes* to *Justice for Hedgehogs*, that the authors see Dworkin developing “a Kantian-inspired defense of dignity as the best possible philosophical framework for law” (p. 62). Dworkin’s insight in this regard, according to Cornell and Friedman, is that legality is inseparable from respect for human dignity, equality, and freedom. *The Mandate of Dignity* thus presents a clear and important defense of the South African Constitution’s effort to forge a radically new political morality that still operates within the prior constraints of the law.

DISCREDITING THE RED SCARE: THE COLD WAR TRIALS OF JAMES KUTCHER, “THE LEGLESS VETERAN.” By Robert Justin Goldstein. Lawrence, Kan.: University Press of Kansas. 2016. Pp. xiii, 222. \$39.95. A news sensation at the height of the Red Scare in the mid-twentieth century, James Kutcher has been all but forgotten in the subsequent decades. In *Discrediting the Red Scare*, Professor Robert Justin Goldstein resurrects the remarkable story of the man who persevered through one of the nation’s darkest hours, emerging from the ordeal as a poignant symbol of liberty. A member of the small left-wing Socialist Workers Party (SWP), Kutcher lost both of his legs to a German mortar shell while serving in the U.S. Army during World War II. Just a few years later, the government, pandering to the nation’s fears over the global rise of communism, attempted to strip Kutcher of not only his position in the Veterans Administration, but also his World War II disability pension and federally subsidized public housing unit — all as a result of his membership in the SWP. Kutcher fought back, however, and won his suits by successfully proving violations of his First Amendment rights. Goldstein’s depiction of “the case of the legless veteran” (p. x) is a compelling story, both about the man himself and about the constitutional abuses that ultimately discredited the Red Scare in the eyes of the nation.

FROM MAIMONIDES TO MICROSOFT: THE JEWISH LAW OF COPYRIGHT SINCE THE BIRTH OF PRINT. By Neil Weinstock Netanel. New York, N.Y.: Oxford University Press. 2016. Pp. xii, 321. \$99.95. Why did Microsoft petition an Israeli rabbinic court in 1998? In *From Maimonides to Microsoft*, Professor Neil Netanel examines this case and many others, exploring the contemporary applicability of Jewish copyright law through an examination of its development and its complex relationship with secular copyright law. Netanel first surveys the historical context in which Jewish copyright law arose. He recounts the first rabbinic reprinting ban in 1518 and delves into the specific rulings and disputes that together make up Jewish copyright jurisprudence. Throughout, he aptly demonstrates how rabbis have both borrowed from secular copyright law and grounded their rulings in traditional Jewish halakhic doctrine. *From Maimonides to Microsoft* culminates with an investigation of Microsoft's attempt to stem widespread piracy of its software in Israel through a 1998 petition to a rabbinic court, requesting that the court proclaim that anyone who pirates software violates Jewish law. Through these historical accounts, Netanel explores the parallels between Jewish copyright law and its secular counterpart, illuminating their shared origins, sharp divergences, and common doctrinal questions. Netanel's thought-provoking work, which richly contextualizes Jewish and secular copyright law within their historical and philosophical bases, is a compelling read for students and scholars of copyright law, Jewish law, and Jewish history.

MAKING THE CASE: THE ART OF THE JUDICIAL OPINION. By Paul W. Kahn. New Haven, Conn.: Yale University Press. 2016. Pp. xvii, 238. \$45.00. In an age when casebooks distill judicial opinions into brief excerpts that make discrete doctrinal propositions, Professor Paul Kahn urges law students to read the opinions themselves. In *Making the Case*, Kahn argues that while both social scientists and humanists should be welcome in the law, understanding the rhetorical performance of the judicial opinion in fact necessitates the tools of the humanities — narrative, voice, and argument. Even the most efficient rule requires application and therefore requires persuasion. *Making the Case* helps students and scholars alike understand where and how opinions blend norms and facts to practice persuasion within a democratic society. Kahn draws on thirty years of experience to teach his readers “how to hear the music of the courts” (p. xiii) by explaining and analyzing several opinions in the field of constitutional law, ranging from *Marbury v. Madison* to *Bush v. Gore*. In the process, Kahn underscores that the project of law is not one “of theory but of practical self-governance” (p. 134). By focusing on understanding law through the art of interpretation, this accessible and enlightening book opens a revitalizing space between doctrinal memorization and political dispute.