
RECENT PUBLICATIONS

TERROR IN THE BALANCE: SECURITY, LIBERTY, AND THE COURTS. By Eric A. Posner and Adrian Vermeule. New York: Oxford University Press. 2007. Pp. 319. \$29.95. In this fresh look at executive power, Professors Eric Posner and Adrian Vermeule offer an alternative to the widely held perspective that the history of emergency powers is “one of political and constitutional failure” (pp. 3–4). Instead, they propose that the executive branch has the resources, power, flexibility, and information to respond to national security threats most effectively. Therefore, the current high level of deference given to the executive branch by judges and Congress is appropriate. To justify this controversial position, the authors answer fundamental questions about our government during emergencies. What is the appropriate tradeoff between liberty and security? What is an emergency, and who decides? Are any alternatives to the current balance of power superior? In the course of this examination, the authors rebut several popular criticisms of increased executive power, arguing that “there is no reason to think that the fear-inspired decisions are likely to be worse [than those made in times of calm]” (p. 64); that “democratic failure theory has no intrinsic connection to security” (p. 99); and that “the ratchet theory lacks a mechanism that permits governmental powers to expand and prevents them from contracting” (p. 131). The authors then apply their theory, looking specifically at coercive interrogation, speech, due process, political trials, and military force. Reading this thought-provoking book will make readers reconsider the conventional criticisms of executive power in times of emergency.

DRED SCOTT AND THE POLITICS OF SLAVERY. By Earl M. Maltz. Lawrence, Kan.: University Press of Kansas. 2007. Pp. ix, 182. \$29.95. Very few judicial decisions enjoy such universal condemnation today as the Supreme Court’s 1857 decision in *Dred Scott v. Sandford*. Professor Earl Maltz provides a thorough study of *Dred Scott*, from the political culture of slavery preceding the case to the numerous ramifications that followed. Particularly fascinating are Professor Maltz’s descriptive narratives of the relevant players — the Justices comprising the Court, the attorneys arguing the case, and of course Dred Scott himself — as well as his detailed account of the arguments before the Court and the opinions of the Justices. Although ultimately concluding that *Dred Scott* was a judicial failure, Professor Maltz breathes new life into the story by eschewing oversimplification, painting a nuanced picture of the motivations driving pro-slavery states and influencing pro-South Justices. This engaging anatomy of one of the most reviled decisions in Supreme Court history should appeal to legal scholars and history buffs alike.