
RECENT PUBLICATIONS

THE LOST PROMISE OF CIVIL RIGHTS. By Risa L. Goluboff. Cambridge, Mass.: Harvard University Press. 2007. Pp. viii, 376. \$35.00. After the NAACP's victory in *Brown v. Board of Education*, litigation strategy in the field of civil rights solidified into an attack on the stigma caused by race-based governmental classifications. Professor Risa Goluboff reaches back to the time before *Brown*, when civil rights litigation sought to advance a different set of rights — those based on economic and material equality. This focused work of legal history reconstructs the struggle of black workers in the 1940s to overcome exploitative labor practices and the legal strategies adopted by lawyers at the Department of Justice and the NAACP to assist them. The cases filed in that era utilized a wide variety of legal tools, including the Thirteenth Amendment, Reconstruction statutes like the Peonage Act, and the *Lochner*-era “right to work,” to alleviate some of the worst economic injustices perpetrated against blacks. Professor Goluboff uses this lesser-known strain of advocacy to remind readers of the inextricable link in American history between racial and economic justice. The redress of material inequalities is a path away from which American jurisprudence has turned; *The Lost Promise of Civil Rights* looks down the road not taken and seeks, by historical example, to make it well-trodden once more.

ARCHITECT OF JUSTICE: FELIX S. COHEN AND THE FOUNDING OF AMERICAN LEGAL PLURALISM. By Dalia Tsuk Mitchell. Ithaca, N.Y.: Cornell University Press. 2007. Pp. xi, 368. \$59.95. In this engaging intellectual biography, Professor Dalia Tsuk Mitchell paints a complex portrait of Felix Cohen and the philosophy of legal pluralism that he championed in the first half of the twentieth century. The narrative begins with Cohen's roots as the son of Jewish immigrants on Manhattan's Upper West Side and traces his development into a noted legal scholar and staunch defender of the rights of Native Americans and other minority communities. Along the way, Professor Mitchell pauses to explore the various influences on Cohen's legal philosophy — the desire to find acceptance in an often anti-Semitic legal world; his father, prominent legal philosopher Morris Cohen, and the legal realist milieu to which he belonged; and the progressive ideas of the New Deal. Professor Mitchell devotes much of the book to Felix Cohen's fourteen years at the Department of the Interior, where he sought to implement his vision of a pluralist modern state by granting greater autonomy to Native American communities and other groups. Though Cohen left government disappointed by his failure to accomplish many of his goals, his contributions to federal Indian law and legal philosophy remain important today.

THE FAITHLESS FIDUCIARY AND THE QUEST FOR CHARITABLE ACCOUNTABILITY, 1200–2005. By James J. Fishman. Durham, N.C.: Carolina Academic Press. 2007. Pp. xiv, 367. \$60.00. In this history of regulating charities, Professor James Fishman documents charitable scandals and the legal responses to them over the last eight centuries. Focusing on England's Hospital of St. Cross, an almshouse that has served the poor since the thirteenth century, Professor Fishman argues that our society has embraced and encouraged philanthropy at least since the Hospital's founding, but that fiduciaries have regularly breached their trust for just as long. From the use of Hospital funds for non-charitable purposes to the self-dealing in the 1992 United Way scandal, fiduciaries have lied, stolen, and at times simply neglected their duties. While the British and American governments have attempted to regulate charities and their fiduciaries, Professor Fishman asserts that such efforts have proved fruitless. He ultimately sets forth his own proposal for charitable monitoring and regulation in the United States: a set of local, unpaid, expert charitable committees, organized by federal judicial district, that would hear complaints and attempt to reach settlements through confidential proceedings. Public officials may or may not listen to his suggestions, but Professor Fishman's thoroughly researched, well-documented history demonstrates that something must be done to protect the intended recipients of charity — and the public in general — from “the faithless fiduciary.”

THE CONSTITUTION'S TEXT IN FOREIGN AFFAIRS. By Michael D. Ramsey. Cambridge, Mass.: Harvard University Press. 2007. Pp. ix, 492. \$65.00. Taking aim at the modern conventional wisdom that the Constitution offers little guidance on key foreign affairs matters, Professor Michael D. Ramsey offers a deceptively simple contention: through close examination of the Constitution's language, “we can uncover the text's basic foreign affairs structure as it was designed and understood in the founding era” (p. 2). Professor Ramsey's comprehensive analysis begins with the President's authority to act in the field of international relations, part of the power that is vested in that office, and then traces out the important roles played by Congress, the states, and the courts. His conclusion, that the Constitution distributes foreign affairs powers among the branches of government, is comfortably similar to the familiar checks and balances model of domestic government. Readers frustrated with the ongoing debates in this arena may well be left thinking that the author is too modest when he insists that his work “is only an inquiry into historical meaning and not necessarily a blueprint for modern implementation” (p. 381).

RUNNING FOR JUDGE: THE RISING POLITICAL, FINANCIAL, AND LEGAL STAKES OF JUDICIAL ELECTIONS. Edited by Matthew J. Streb. New York, N.Y.: New York University Press. 2007. Pp. xiii, 253. \$45.00. With the popular election of judges fueling ever more heated contests in polling places and legal journals alike, Professor Matthew Streb offers a salient collection of eleven essays from an array of distinguished contributors. The essays assess the state of judicial elections from a variety of angles, including the consequences of the Court's landmark ruling in *Republican Party of Minnesota v. White*, the shifting dynamics of campaign spending, the role of interest groups, the impact of campaigns on voter behavior, and efforts at judicial election reform. Whether the trends presented in this largely accessible work merit an unreserved vote of confidence is left for the reader to decide, as the pieces deliberately side-step ideological evaluations in favor of clear-headed attempts to "describe and explain the current state of judicial elections in a nonnormative way" (p. 3). *Running for Judge* is an ambitious undertaking, which offers provocative empirical fuel to those on all sides of the debate.

FULL DISCLOSURE: THE PERILS AND PROMISES OF TRANSPARENCY. By Archon Fung, Mary Graham and David Weil. New York, N.Y.: Cambridge University Press. 2007. Pp. xvii, 282. In this important new book, Archon Fung, Mary Graham, and David Weil analyze transparency-based approaches to regulation. Instead of regulating conduct directly or relying on incentive schemes to regulate its consequences, policymakers are increasingly using regulation of information to achieve policy goals. A common method of regulating information is mandating public disclosure of pertinent information. Some of these initiatives attain their ends cheaply and without heavy-handed governmental interference; others prove ineffective or counterproductive. The authors set out to explain what distinguishes those that work from those that fail. Grounding their work in a qualitative examination of eighteen mature transparency regulation schemes, they develop an economic-psychological model of what makes such schemes effective, and a political model of what makes them sustainable. They argue that consumers will not incorporate the disclosed information into their decisionmaking algorithms unless that information seems more valuable to use than it is expensive — which is to say, difficult — to process. They draw upon behavioral psychology to propose ways to increase that perceived value and to lower that perceived cost. They also analyze the political dynamics of maintaining transparency-based regulatory schemes and discuss factors that make for their continued effectiveness. Finally, they explore the special problems of international transparency-based regulation and look ahead to the challenges such regulation will face in our increasingly networked future.

LAW AND CATASTROPHE. Edited by Austin Sarat, Lawrence Douglas and Martha Merrill Umphrey. Palo Alto, Cal.: Stanford University Press. 2007. Pp. 165. \$45.00. A “catastrophe” — “overturning” in the original Greek — is characterized not only by mass death, infrastructural damage, and disruption to ordinary life, but also by the overturning of “*the very concept of order itself*” (p. 2). In this unusual and diverse collection, Professors Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey gather essays that analyze the question of how (and whether) the law can respond to catastrophe, a situation defined by the very absence of law and order. Some pieces address catastrophe from a prospective angle, examining what law can do to anticipate and prevent catastrophe (for instance, change the legal rules governing humanitarian intervention by corporate actors). Other essays focus on the (perhaps limited) potential of the law to ameliorate catastrophe through memory, with authors examining case studies such as the Nuremberg Trials and the creation of national monuments commemorating the Holocaust in Israel and the United States. This book is an innovative and important step in developing a theory of the “jurisprudence of catastrophe” (p. 3), and will be of interest to scholars and general readers alike.

THE MICROSOFT CASE: ANTITRUST, HIGH TECHNOLOGY, AND CONSUMER WELFARE. By William H. Page and John E. Lopatka. Chicago, Ill.: University of Chicago Press. 2007. Pp. xiv, 347. \$45.00. Beginning with Microsoft’s invention of an operating system that would transform the personal computer and ending with its latest legal settlements, Professors William Page and John Lopatka defend Microsoft against a federal judge’s “opaque” (p. 100) rationale, a Department of Justice that “failed to articulate a clear, coherent anticompetitive theory” (p. 245), states with parochial motivations, class action plaintiffs who provide little benefit to the consumer, the European Commission, and even the Republic of Korea. Professors Page and Lopatka focus on the federal district court ruling in 2000 that would have split Microsoft in two and on the appellate court’s decision to reverse the most punitive parts of that decision. Skeptical of antitrust actions in general, Professors Page and Lopatka are at their most provocative when defending the integration of Windows and Internet Explorer, including Microsoft’s decision to prevent users from deleting the browser from the operating system. They conclude that integration did not reduce competition, primarily because the government’s theory — that competing browsers could eventually become platforms for competing operating systems — was speculative and unsupported. The authors are generally uncompromising in their defense of Microsoft, and they conclude that although its actions may have harmed competitors, they did not harm consumers.

THE CHIEF JUSTICESHIP OF CHARLES EVANS HUGHES, 1930–1941. By William G. Ross. Columbia, S.C.: University of South Carolina Press. 2007. Pp. xix, 275. \$49.95. President Franklin Roosevelt's showdown with the Supreme Court over New Deal legislation is a key moment in American history. In this biography cum court chronicle, Professor William Ross examines the familiar story of how the Court under Chief Justice Charles Evans Hughes first impeded, then accepted New Deal measures. He also describes the significant advances in personal liberties made under Chief Justice Hughes. Tracing the evolution of the Court's stance on economic regulation from the early 1930s, Professor Ross paints a more nuanced picture of the Court's development than either fear of Roosevelt's court-packing threats or natural evolution in the jurisprudence of the Justices. The Hughes Court oversaw a consolidation of the Court's role as a guardian of personal liberties, incorporating the First Amendment freedoms of speech, the press, assembly, and religion; enhancing due process, including the right to counsel; and providing foundational equal protection rulings. Professor Ross links these changes to the Justices' attempt to provide a safety valve against radicalism, their reaction to repressive state legislation, and Chief Justice Hughes's own liberalism. This careful study provides detail not easily gleaned from the cases yet crucial to a full account of this important period.

ISLANDS OF AGREEMENT: MANAGING ENDURING ARMED RIVALRIES. By Gabriella Blum. Cambridge, Mass.: Harvard University Press. 2007. Pp. xiii, 355. \$49.95. Most works on armed conflict attempt to suggest ways either to prevent fighting from breaking out in the first place or stop violence once it has begun. In this thought-provoking book, Professor Gabriella Blum focuses instead on managing conflicts, noting that even parties in the middle of enduring hostilities find ways "in which the scope of the conflict may be narrowed or forms of cooperation outside its confines may be established" (p. 243). Arguing that managing conflicts can itself be a worthy goal, Professor Blum draws up models for the establishment and maintenance of these "islands of agreement" (p. 19). She then looks at three specific enduring conflicts — those between India and Pakistan, Greece and Turkey, and Israel and Lebanon — to see how parties have limited their fighting and, in some cases, collaborated in other areas. In the end, the book calls for recognition that conflict is only "part of a rich and continuing relationship" (p. 273) between nations, an important reminder in a complicated world.