
RECENT PUBLICATIONS

THE FUTURE OF REPUTATION: GOSSIP, RUMOR, AND PRIVACY ON THE INTERNET. By Daniel J. Solove. New Haven, Conn.: Yale University Press. 2007. Pp. viii, 247. \$24.00. Although human beings have always gossiped, the Internet brings gossip to an audience of strangers and creates a permanent gossip archive, accessible via Google in a matter of seconds. Through an engagingly written series of anecdotes, Professor Daniel Solove describes a world where anonymous bloggers enforce social norms through public shaming, where fresh starts are increasingly impossible, and where traditional expectations of privacy are no longer guaranteed. Rather than embrace extreme libertarianism or an authoritarian crack-down on Internet speech, Professor Solove attempts to chart a middle course of “delicate compromises” between privacy and free speech (p. 190). He argues that privacy law should both expand to cover a wider range of situations and adopt a more nuanced view of privacy, recognizing in particular that individuals may expose information to the public without intending to broadcast that information across the globe. At the same time, however, the law should recognize the value of free speech by favoring nonmonetary forms of relief and providing for liability only after plaintiffs attempt to reach an informal accommodation. Timely and provocative, *The Future of Reputation* explores a principal dilemma of our age and provides a workable solution that may appeal to readers on both sides of the debate.

MORAL IMAGES OF FREEDOM: A FUTURE FOR CRITICAL THEORY. By Drucilla Cornell. Lanham, Md.: Rowman & Littlefield Publishing Group. 2008. Pp. x, 175. \$24.95. In this important contribution to contemporary critical theory, Professor Drucilla Cornell confronts and rejects the nihilistic contention that affirmative practical philosophy has no real purpose in today’s violent, dystopian society. Instead, she argues for the importance of “a worldview that could give place to the ideal of freedom and the ideal of perpetual peace” (p. 35), and the indispensable role of active philosophical reflection in imagining those ideals. Professor Cornell insightfully analyzes Immanuel Kant’s philosophy and then traces and interprets symbolic manifestations of freedom in the work of thinkers such as Martin Heidegger, Frantz Fanon, and Jacques Derrida. She concludes by turning her “struggle for redemptive imagination” (p. 1) to a postcolonial, post-9/11 world of racialized and gendered “otherness,” challenging the reader to “aspire to a[] dream . . . of a reconciled humanity” (p. 155). Although *Moral Images of Freedom* may prove a bit daunting to the uninitiated, it presents both an illuminating slice of critical theory’s past and an inspiring, defiantly hopeful vision of its future.

REGULATION AND PUBLIC INTERESTS: THE POSSIBILITY OF GOOD REGULATORY GOVERNMENT. By Steven P. Croley. Princeton, N.J.: Princeton University Press. 2008. Pp. viii, 379. \$27.95. In an era of fierce partisan tensions, Republicans and Democrats appear to have achieved consensus on their shared distaste for extensive government regulation. Against this backdrop, Professor Steven Croley offers a trenchant reevaluation of large government's potential. His systematic analysis provides an engaging critique of public choice theorists' assertion that "regulatory outcomes advance the interests of the organized few at the greater expense of the diffuse many" (p. 249). Professor Croley offers administrative process theory as an apt alternative, homing in on "the legal-formal opportunities for participation and influence that [agency] decisionmaking processes afford" (p. 81). He includes a series of carefully developed case studies that illustrate these processes' capacity "to foster considerable decisionmaking autonomy and regulatory evenhandedness" (p. 155). As he explains, "autonomous agencies," free from the political exigencies that risk bringing elected officials under special interests' thrall, "can undertake socially desirable regulation" (p. 258). Despite the arresting significance of his assessment's challenge to the conventional wisdom, Professor Croley prudently cautions that "regulation is too complex and too variant for quick measurement or pithy generalization" (p. 306). Regardless, he concludes with qualified optimism: "Good regulatory government is no more impossible than it is inevitable" (p. 306).

REGULATORY RIGHTS: SUPREME COURT ACTIVISM, THE PUBLIC INTEREST, AND THE MAKING OF CONSTITUTIONAL LAW. By Larry Yackle. Chicago, Ill.: University of Chicago Press. 2007. Pp. ix, 260. \$35.00. In this stirring challenge to the conventional wisdom that Supreme Court Justices enforce rights enshrined in the written Constitution, Professor Larry Yackle declares that the "real Constitution" (p. 51) resides elsewhere. He contends that the content of substantive individual constitutional rights results *entirely* from judicial instrumentalism — indeed, "[n]othing else matters" (p. 2). Charting the history of substantive rights jurisprudence, Professor Yackle sets out to show that, far from having their discretion cabined by objective rules, the Justices regularly base their decisions on judgments about the public interest and the needs of the day. With "rational instrumentalism" as a doctrinal guide, he gives a provocative account of the individual rights associated with the Due Process Clauses of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth. *Regulatory Rights* is a bold exhortation to liberate the study of constitutional law from debates over text and original meaning and to focus instead on the actors whose collective judgment yields our rule of law.

COURTS OF ADMIRALTY AND THE COMMON LAW: ORIGINS OF THE AMERICAN EXPERIMENT IN CONCURRENT JURISDICTION. By Steven L. Snell. Durham, N.C.: Carolina Academic Press. 2007. Pp. x, 481. \$60.00. In *Courts of Admiralty and the Common Law*, Professor Steven Snell focuses on an often ignored area of our history: the early American shipping industry and the development of admiralty law. Through his thorough account of the shipping industry's rise and fall and of the challenges admiralty jurisdiction posed to ideas about federalism, Professor Snell shows how commerce influenced the development of our unique governmental structure. In particular, he explains how debates over admiralty law affected the drafting of Article III of the Constitution by forcing a compromise between Federalists and Anti-Federalists at the Constitutional Convention: instead of delineating a detailed structure for the federal court system, the Constitution deferred the decision to Congress. He further describes how the First Congress reached a similarly motivated compromise when it conferred admiralty jurisdiction on the federal courts but simultaneously preserved concurrent jurisdiction for the state courts. As a result of the dynamic interplay between commerce and law, Professor Snell argues, nineteenth-century judges were left to grapple with the challenges of overlapping jurisdiction in an age of rapid and complex industrial and technological development.

PERSPECTIVES ON THE UNIFORM COMMERCIAL CODE (2d ed.). By Douglas E. Litowitz. Durham, N.C.: Carolina Academic Press. 2007. Pp. xv, 172. \$26.00. Professor Karl Llewellyn, the principal author of the Uniform Commercial Code (UCC), once described the document as "very largely non-political in character" (p. x). Professor Douglas Litowitz's book attempts to disabuse law students of this notion. Professor Litowitz argues that the UCC reflects "a commitment to bring a particular commercial world into existence" (p. x). He elaborates his argument through an anthology of readings that elucidate the history, jurisprudence, debates, and personalities surrounding the development, enactment, and implementation of the UCC. These materials, edited to hold the attention of student readers, include discussions relating the UCC's drafting and enactment history; debates over the methodology, interpretation, and wisdom of the UCC's nationalization of commercial law; insightful commentary about the contested nature of commercial property and the politics and adequacy of the UCC's amendment procedure; and excerpts from cutting-edge UCC scholarship. These readings offer student readers a variety of lenses through which to understand the UCC, not as a dogmatic recitation of the dictates of commercial law, but rather as a contestable, socially constructed set of rules about which arguments can be made and from which alternative commercial worlds might be created.

COMPARATIVE CONSUMER BANKRUPTCY. By Jason J. Kilborn. Durham, N.C.: Carolina Academic Press. 2007. Pp. xiii, 114. \$20.00. In this slim volume, Professor Jason Kilborn compares consumer bankruptcy law in the United States and the handful of other countries with similar regimes. Although consumer debt has a relatively long and lively history in America, the problem of *surendettement* (French for “overindebtedness”), and the need for legal means to address it, is only now emerging in Western Europe. Professor Kilborn mines continental codes for provisions comparable to both pre- and post-2005 U.S. bankruptcy law, including in his analysis both guidelines for informal renegotiation between consumer debtors and their creditors, and formal coercive relief provisions. He begins with a brief history of consumer bankruptcy law in America, starting with the Bankruptcy Act of 1898 and culminating in recent reforms. Next, he discusses systems in France, Luxembourg, Belgium, Germany, Austria, the Netherlands, and Sweden, pointing out the differences between those countries that subscribe to a “Romantic” method and those that adopt a “Germanic” approach. Each chapter is punctuated with thoughtful discussion questions that will spark debate about the merits of various countries’ solutions to the problem of consumer debt.

PRIVACY AT RISK: THE NEW GOVERNMENT SURVEILLANCE AND THE FOURTH AMENDMENT. By Christopher Slobogin. Chicago, Ill.: University of Chicago Press. 2007. Pp. xi, 306. \$37.50. Recent developments in technology have allowed the federal government to restrict severely the parts of their lives that Americans can consider truly private. In this provocative new book, Professor Christopher Slobogin offers a compelling criticism of the current culture of surveillance, arguing that the Fourth Amendment’s prohibition against unreasonable searches and seizures provides a meaningful and necessary limitation on government investigations. With particular attention to physical surveillance (observation of everyday activities) and transaction surveillance (observation of recorded information about those activities), two categories not historically recognized as searches for Fourth Amendment purposes, Professor Slobogin proposes a new regulatory scheme based not only on philosophical and constitutional imperatives, but also on the realities of current surveillance tactics. The traditional model of Fourth Amendment jurisprudence (probable cause, individualized suspicion, and the exclusionary rule) simply does not comport, he argues, with the kinds of evidence that physical and transaction surveillance typically uncover. Instead, courts should require justification for surveillance proportionate to its level of invasiveness, and they should insist on third party authorization in all non-exigent circumstances.