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## RECENT PUBLICATIONS

THE BATTLE OVER SCHOOL PRAYER: HOW *ENGEL V. VITALE* CHANGED AMERICA. By Bruce J. Dierenfield. Lawrence, Kan.: University Press of Kansas. 2007. Pp. xv, 263. \$15.95. Forty-five years ago, religious conservatives decried the Supreme Court's decision in *Engel v. Vitale*, which struck down as unconstitutional the use of a Board of Regents-adopted, nondenominational prayer in New York's public schools. *The Battle over School Prayer* offers a detailed account of the factual circumstances surrounding the *Engel* case, and provides historical context for the importance of the decision in our nation's ongoing attempts to balance religious and public life. Vivid anecdotes give emotional effect to a concise yet comprehensive history of the complicated relationship between public education and religion since the colonial period. Professor Bruce Dierenfield explains the conflict as not merely religion versus irreligion, but as majority Protestant Christianity versus minority religions or sects such as Catholicism, Judaism, and Jehovah's Witnesses. To accompany this social history, Professor Dierenfield discusses important legal milestones, both pre- and post-*Engel*, in the courts' church-state jurisprudence. This readable book provides an engaging overview of a complex legal issue, and makes a convincing case that, rather than harming religious exercise as critics feared, *Engel v. Vitale* has served to protect religious freedom.

DEMOCRACY AND THE POLICE. By David Alan Sklansky. Stanford, Cal.: Stanford University Press. 2008. Pp. x, 269. \$24.95. The proper balance between freedom and security is an enduring struggle for any democracy. In this timely new book, Professor David Sklansky adds an original and insightful dimension to this continuing conversation. Drawing upon the diverse literature of political theory and criminal justice, Professor Sklansky explores the contours of American "democratic policing," which he describes as an attempt to "reconcill[e] law enforcement with the principles of a democratic society" (p. 189). Professor Sklansky first examines the complex relationship between two seemingly unrelated intellectual transformations in the second half of the twentieth century — the integration of police forces and the rise of community policing, and the triumph of participatory and deliberative democracy over interest group pluralism. He then discusses some of the many suggested avenues for reform by studying these movements in tandem, from racial profiling to the "war on terror" to the proliferation of private security firms. By embracing the nuanced questions his subject raises, Professor Sklansky aids politicians and scholars alike in their ongoing endeavor to make the police truly democratic.

FREEDOM'S ORPHANS: CONTEMPORARY LIBERALISM AND THE FATE OF AMERICAN CHILDREN. By David L. Tubbs. Princeton, N.J.: Princeton University Press. 2007. Pp. x, 233. \$27.95. In the post-World War II era, evolving concepts of liberalism have sparked controversy about the rights of adult citizens to sexual privacy, to marriage with whom they want, and to freedom of expression. Professor David Tubbs's thought-provoking new book argues that concern about the welfare of American children has been largely missing from these debates, and more generally from the project of leading theorists of liberalism such as Isaiah Berlin, Susan Okin, and Ronald Dworkin. The Supreme Court, too, is guilty of this omission: Professor Tubbs argues that the Court's concentration on adult liberty has led it to strike down restrictions on the use of contraceptives while ignoring the role such restrictions can play in promoting goals such as traditional marriage and two-parent families. Likewise, the Court's First Amendment jurisprudence has been insufficiently attuned to the impact of obscene speech on children. The trenchant questions that *Freedom's Orphans* raises about contemporary liberalism's potentially misplaced priorities are ones that readers of any political orientation would do well to consider.

HUMAN RIGHTS AND THE PRIVATE SPHERE: A COMPARATIVE STUDY. Edited by Dawn Oliver and Jörg Fedtke. New York: Routledge-Cavendish. 2007. Pp. x, 594. \$65.00. Globalization and the increasing power of private corporations over the past few decades pose challenging questions for the protection of human rights. As private entities grow in power, questions of horizontal rights protection — between non-state actors — become as important as traditional vertical protections — between citizens and the state. In *Human Rights and the Private Sphere*, Professors Dawn Oliver and Jörg Fedtke join a number of other scholars in presenting a detailed analysis of the legal mechanisms available in fourteen countries for protecting individual citizens' civil and political rights against encroachment by private entities. Professors Oliver and Fedtke also provide a comparative analysis of the jurisdictions, and conclude that ordinary legislation protecting individual rights in the private sphere may be more effective than constitutions outlining broad schemes of rights protection. The book concludes with country-by-country charts outlining the effects in the private sphere of rights-protection mechanisms illustrated with a few examples from case law. With its rigorous analysis and interesting comparative framework, this book should be useful to scholars and practitioners alike as they engage with what is becoming an increasingly important area of human rights law.

OBJECTIVITY AND THE RULE OF LAW. By Matthew H. Kramer. New York, N.Y.: Cambridge University Press. 2007. Pp. xiii, 247. \$27.99. To what extent are judges merely conduits for required outcomes, mechanically applying the law to yield the correct conclusion? In this focused and fluid new book, Professor Matthew Kramer explores the full terrain of that important question. Professor Kramer disentangles the complicated notion of objectivity into six distinct conceptions, and differentiates the rule of law — the set of conditions necessary for any functioning legal system — from the Rule of Law — a moral judgment entrenched in the liberal-democratic tradition. He concludes that “every dimension of legal objectivity is indispensable for the rule of law and the Rule of Law” (p. 231). The strength of this compelling account is Professor Kramer’s effortless interweaving of positive and normative analysis, which ultimately determines that objectivity and the rule of law are underdeveloped values, but nevertheless ones “for which [all] legal-governmental officials should strive” (p. 100). Though the principal audience of this book will be students of philosophy, law, and political science, Professor Kramer’s clear prose welcomes lawyers and scholars who seek a fuller understanding of the relationship between the rule of law and objectivity.

ORIGINALISM, FEDERALISM, AND THE AMERICAN CONSTITUTIONAL ENTERPRISE: A HISTORICAL INQUIRY. By Edward A. Purcell, Jr. New Haven, Conn.: Yale University Press. 2007. Pp. x, 301. \$45.00. In the latest response to originalism, Professor Edward A. Purcell, Jr., argues that there was no common agreement among the Founders about the nature of federalism. As a result, the Constitution is best read as a set of “animating ideals” (p. 200) rather than specific directions — in fact, Professor Purcell suggests that the characteristics of American federalism inherently prevented the Constitution from providing a “‘correct’ federal system” (p. 191). Although the book’s aim is to attack originalism, it shines most as a brisk reading of American history. Professor Purcell’s constitutional story is less about formalistic interpretation than the madcap interplay of “strategic constitutional interpretation[s]” (p. 34), and the partisans who offer them. His America is populated by states that vie for immigrants, towns that bicker over bridges, representatives who brawl on the House floor, presidents who grope blindly for power, academics who meddle in national politics, and even judges who lobby unseen for legislative goals. Yet Professor Purcell eludes the easy trap of cynicism: his subjects are self-interested, conniving, transparent, and bold, but also very human and very familiar. As he shows, it was these subjects and the generations that followed them whose fundamental principles, rather than particular words, shape constitutional interpretation today.