

## RECENT PUBLICATIONS

**THE FALL AND RISE OF THE ISLAMIC STATE.** By Noah Feldman. Princeton, N.J.: Princeton University Press. 2008. Pp. 189. \$22.95. In recent years, the American media has nervously chronicled the popularity of Islamist movements in the Arab world. Professor Noah Feldman's latest book traces centuries of political and constitutional history to present a compelling explanation for the ascent of these movements. Professor Feldman suggests that the key to the success of the pre-World War I Islamic states was the presence of powerful bodies of independent scholars, the *'ulama*, charged with interpreting the *shari'a*, or divine law. These scholars facilitated governments based on both the rule of law and checks and balances by constraining the reigning caliphs through the interpretation of the *shari'a*. The "executive tyranny" of many modern Arab states can be explained by the absence of the kind of counterbalancing force that the scholars, and their interpretations of the *shari'a*, once provided (p. 91). It is this type of restraining force on the ruler that the proponents of new Islamic governments seek. Professor Feldman acknowledges that Islamists do not wish to establish a new era of scholarly rule, but rather believe they can establish the rule of Islamic law by replacing scholars with democratic legislatures and judicial bodies charged with governing in accordance with the *shari'a*. Ultimately, the book does not predict whether the modern Islamist movement will endure; but it does provide an eminently readable explanation for its success so far.

**THE FATE OF YOUNG DEMOCRACIES.** By Ethan B. Kapstein and Nathan Converse. New York, N.Y.: Cambridge University Press. 2008. Pp. xxiii, 188. \$29.99. Recent setbacks to democracy in Russia, Thailand, and Venezuela, and efforts to erect democratic institutions in Iraq, Afghanistan, and Pakistan, provide a compelling backdrop for this insightful study. Drawing on a combination of new empirical work, case studies, and a survey of prior scholarship, Professor Ethan Kapstein and Nathan Converse argue persuasively that the key to successful democratization is found neither in coarse measurements of overall economic growth nor in any particular one-size-fits-all structural incarnation of democracy. Rather, the authors posit that the key factors determining whether young democracies survive include the equitable distribution of economic opportunity and the presence of effective structural checks on the exercise of executive power. For academics, the study presents a wealth of opportunities for new research. For current or prospective policymakers, the book provides powerful food for thought on how best to administer foreign aid or direct the influence of an international organization. *The Fate of Young Democracies* lays the groundwork for a more nuanced understanding of the challenges facing democratization efforts around the globe.

LAW AND JUDICIAL DUTY. By Philip Hamburger. Cambridge, Mass.: Harvard University Press. 2008. Pp. xviii, 686. \$49.95. According to conventional American legal history, late-eighteenth-century judges invented for themselves the power of judicial review. In *Law and Judicial Duty*, Professor Philip Hamburger argues that this widely accepted picture is mistaken: whereas there is little evidence of judicial review immediately after the ratification of the Constitution, “there is much evidence . . . of a duty of judges to decide in accord with the law of the land” (p. 2). Professor Hamburger examines both the development of the ideal of duty among the common law judges of England and the judges’ obligation pursuant to this duty to “hold some of the king’s acts contrary to the king’s own law” (p. 113). He then follows the continuation of this ideal in the American colonies through a wealth of historical materials. This power was “both more authoritative and less dangerous than that which prevails today,” Professor Hamburger argues, since duty “anchored an otherwise extraordinary power within the quotidian exercise of their office” (p. 617). With debates over judicial roles continuing to roil policymakers and judges alike, Professor Hamburger’s carefully researched rejection of the conventional account offers a new wrinkle to a still salient debate.

LINCOLN AND THE COURT. By Brian McGinty. Cambridge, Mass.: Harvard University Press. 2008. Pp. 375. \$27.95. Countless historians and biographers have charted Abraham Lincoln’s journey to the White House and his pivotal role in the Civil War. But little has been written about President Lincoln’s relationship with the United States Supreme Court, despite the fact that Lincoln’s wartime presidency confronted exceptional legal challenges during America’s greatest internal crisis. *Lincoln and the Court* represents an important effort to remedy this deficiency. In a carefully researched historical narrative, Brian McGinty traces how this country’s most “lawyerly” President (p. 2) appointed five Justices to the Court, shaped the contours of executive power during a time of internal strife, and navigated the delicate tensions between national security and civil liberties. As McGinty admits, this is not a book that attempts to “analyze the great legal issues of the Civil War to the point of exhaustion” (p. 11). This is instead a book about how a President and an often hostile — but human — Court faced some of the nation’s most pressing legal and political questions. It offers significant lessons that inform modern appreciation for the legal legacy of the President and the Court.

MAKING LAW MATTER: ENVIRONMENTAL PROTECTION & LEGAL INSTITUTIONS IN BRAZIL. By Lesley K. McAllister. Stanford, Cal.: Stanford University Press. 2008. Pp. xix, 264. \$55.00. Protecting the environment in developing countries anxious to spur economic growth and lacking in regulatory capacity has long been a conundrum for policymakers. Offering one solution, Professor Lesley McAllister examines successful environmental law enforcement by Brazilian prosecutors. Brazil, which has long had strong environmental laws, faced the decline and corruption of its environmental agencies. In response, the Brazilian legislature provided the public prosecutor (Ministério Público) with the power to file civil and criminal lawsuits for environmental harms. Building on existing scholarship with fieldwork at offices of the Ministério Público and environmental agencies, Professor McAllister shows how prosecutorial enforcement has required accountability from both private actors and government agencies and has increased access to justice by creating a “public resource for the consideration and resolution of environmental problems and disputes” (p. 154). Although problems remain with prosecutorial enforcement, including a lack of accountability and difficulties in cooperating with other institutional actors, Professor McAllister argues convincingly that the success of the Brazilian model means that other developing countries should consider its use.

PUBLIC OPINION AND CONSTITUTIONAL CONTROVERSY. Edited by Nathaniel Persily, Jack Citrin, and Patrick J. Egan. New York, N.Y.: Oxford University Press. 2008. Pp. xii, 364. \$29.95. In this far-reaching examination of some of the most politically salient issues of our time, *Public Opinion and Constitutional Controversy* utilizes public opinion data in an effort to discern the effect of Supreme Court decisions on public attitudes. The book attempts to fill a void in current scholarship by focusing on the general public as opposed to elite behavior. In doing so, the book also seeks to add to the growing literature on popular constitutionalism and studies that have examined the connection between Court decisions and public opinion. The contributing authors explore a diverse selection of politically charged issues — from abortion to the war on terror — and discover a variety of effects, ranging from none at all to public backlash against the Court’s decisions. The book concludes with a compelling look at public attitudes toward the Court itself, viewed through the lens of the controversial *Bush v. Gore* ruling. *Public Opinion and Constitutional Controversy* offers an intriguing and accessible account of an important dynamic in American politics and should be of great interest to anyone fascinated by the proper role of a countermajoritarian institution in a democracy.