
RECENT PUBLICATIONS

INVISIBLE HANDS, INVISIBLE OBJECTIVES: BRINGING WORKPLACE LAW & PUBLIC POLICY INTO FOCUS. By Stephen F. Befort & John W. Budd. Stanford, Calif.: Stanford University Press. 2009. Pp. xviii, 308. \$32.95. Contemporary American workplace law is a patchwork of rules and standards with conflicting premises and objectives, many of which are based on unspoken assumptions. In *Invisible Hands, Invisible Objectives*, Professors Stephen F. Befort and John W. Budd argue that making these assumptions explicit will facilitate efforts to understand, analyze, study, and reform workplace law. The authors propose frameworks for discussing the objectives and models of workplace law and public policy, using these frameworks to create a scorecard for evaluating the current state of American workplace law. They also make the normative argument that “employment systems in practice must move beyond today’s focus on productivity, competitiveness, and the effective use of scarce resources” and “must promote employment *with a human face*” (p. 118). Along these lines, Professors Befort and Budd offer specific policy recommendations that would balance workplace law and public policy’s three objectives — efficiency, equity, and voice. Even if the reader does not finally agree with the book’s recommendations for reform, he or she will no doubt find use in the author’s clear and open discussion of what is often left unsaid about the goals and models of workplace law.

BAD ADICE: BUSH’S LAWYERS IN THE WAR ON TERROR. By Harold H. Bruff. Lawrence, Kan.: University Press of Kansas. 2009. Pp. vii, 403. \$34.95. The Bush Administration’s “War on Terror” raised cloudy questions about the legal parameters of executive power. In his assertive new book, Professor Harold Bruff explores the duty of legal advisers to “bind[] presidents to the dictates of right and conscience” (p. 60) and the failure of the Bush Administration’s lawyers to fulfill this vital role. After opening with an overview of the historical successes and failures of executive advisers, Professor Bruff turns to a critical analysis of the legal opinions underlying the war on terrorism. He argues that a “reliable flow of supportive advice” (p. 120) to a perilously aggressive executive branch neglected “to ensure that the laws be not silent but heard” (p. 129). Developing case studies of National Security Agency surveillance, the detention and trial of enemy combatants, and the interrogation of terrorist suspects, he concludes that the Administration’s strained legal justifications for evading checks on executive power led not only to poor decisions, but also to counterproductive ones. This thoughtful book formulates an honest set of recommendations for future executive advisers and for the institutions that might oversee them.

JUSTICE KENNEDY'S JURISPRUDENCE: THE FULL AND NECESSARY MEANING OF LIBERTY. By Frank J. Colucci. Lawrence, Kan.: University Press of Kansas. 2009. Pp. xi, 243. \$34.95. Justice Anthony M. Kennedy is often viewed as a legal pragmatist or centrist. In *Justice Kennedy's Jurisprudence*, Professor Frank Colucci examines the Justice's collected writings and speeches and finds a coherent judicial philosophy centered on a deep moral commitment to an "individualistic conception of human dignity" (p. 170). This philosophy, Professor Colucci notes, differs from the views of other liberty-minded jurists such as Justice William J. Brennan, Jr., insofar as it does not rest on broad notions of egalitarianism. Professor Colucci explores how this conception of liberty is manifest in a wide range of opinions, touching upon issues such as abortion, separation of powers, and free speech. In discussing Justice Kennedy's abortion jurisprudence, for example, Professor Colucci finds the Justice struggling with "his moral opposition to abortion within the larger moral conception of liberty that characterizes his jurisprudence" (pp. 71–72). By focusing on Justice Kennedy's language and reasoning, as opposed to merely analyzing his voting patterns, Professor Colucci provides valuable insight into the philosophy of one of the most influential jurists of our time.

CONSTITUTIONAL COURTS AND DEMOCRATIC VALUES: A EUROPEAN PERSPECTIVE. By Víctor Ferreres Comella. New Haven, Conn.: Yale University Press. 2009. Pp. xi, 238. \$55.00. Unlike the American model of judicial review, in which most courts can set aside statutes as unconstitutional, the European model utilizes special constitutional courts to evaluate the constitutionality of legislation. This centralized model of judicial review varies across the many nations that have adopted it, but consistently provides the constitutional courts with a monopoly over evaluating the constitutionality of statutes. Professor Víctor Ferreres Comella's new book, *Constitutional Courts and Democratic Values*, argues that constitutional courts are "better equipped than ordinary courts in civil-law countries to interpret the abstract principles of political morality that the constitution expresses" (p. 55). Professor Comella starts by describing the mechanics of centralized constitutional review and later explores how it interacts with supranational institutions such as the European Court of Justice and the European Court of Human Rights. He also addresses the arguments for and against such a system, in the process illuminating the most important reasons for judicial review and emphasizing its role in protecting democratic values. This engaging book serves as an important reminder of the alternatives to the U.S. model of judicial review and the potential benefits of the European system.

FORCE AND FREEDOM: KANT'S LEGAL AND POLITICAL PHILOSOPHY. By Arthur Ripstein. Cambridge, Mass.: Harvard University Press. 2009. Pp. xiii, 399. \$49.95. Kant is best known for moral, not political, philosophy. As Professor Arthur Ripstein demonstrates in his insightful and lucidly written new book, however, Kant developed a coherent and compelling political philosophy — a theory of right — that is independent of his theory of ethics. Kant begins with the principle of equal freedom, which rests on the notion of independence: the right of each person “to use his or her means to set and pursue his or her own purposes, consistent with the entitlement of others to do the same” (p. 50). Professor Ripstein first explores these ideas’ application to private law domains such as property and contract. He then transitions to public law by demonstrating that freedom can be fully achieved only within the state, which authorizes the acquisition of rights against others through an “omnilateral will” (p. 183), enforces rights, and allows for “the application of private rights to particulars” through objective adjudication (p. 146). As Professor Ripstein shows, Kant’s theory has far-reaching implications, including support for the redistribution of income to avoid “a system of dependence” (p. 283) and a theory of punishment that arguably reconciles deterrence and retributivism. Professor Ripstein’s ambitious book will undoubtedly interest not only scholars, but also anyone seeking a deeper understanding of our law and polity.

GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR. By Jonathan Simon. New York, N.Y.: Oxford University Press. 2009. Pp. viii, 330. \$21.95. In the 1960s, the United States responded to rising crime rates by launching a “war on crime.” Professor Jonathan Simon’s thought-provoking new book analyzes how the war on crime has led to “governing through crime,” wherein the specter of crime and victimization significantly affect both democratic government and social relations. He argues that modern executives exercise authority in a prosecutorial style, focused on punishment, while legislators pass laws aimed at the “idealized political subject” of the crime victim (p. 108). Concomitantly, Professor Simon claims, the judiciary has declined in importance and prestige relative to the other branches because the public perceives the neutral values of adjudication as too weak on crime. He concludes that the nation’s fixation on crime has also altered other realms of American life, which can be seen in the increasing efforts to detect, deter, and punish crime in the family, workplace, prisons, and schools. The questions that Professor Simon raises are a welcome contribution to the normative discussion about the pervasive presence and influence of crime on nearly all aspects of governance.