
RECENT PUBLICATIONS

HUMANITY'S LAW. By Ruti G. Teitel. New York, N.Y.: Oxford University Press. 2011. Pp. xii, 304. \$35.00. The post–Cold War era is marked in part by a profound shift in the international legal order from prioritizing state security to protecting human interests. Professor Ruti G. Teitel explains this normative shift in her book, which discusses how courts and tribunals are moving toward a legal regime based on “humanity law” — the law of persons and peoples. Professor Teitel explains how various international, regional, and domestic entities apply this humanity-based framework in their assessments of right, wrong, and legal accountability, particularly when dealing with issues of internal and international conflict and security. Professor Teitel then discusses how this framework not only connects the rulings of diverse institutions across the laws of war, international human rights, and international criminal justice, but also shapes international politics dealing with the management of violent conflict. This engaging book draws on a variety of interdisciplinary perspectives as it considers legal and political developments related to violent conflict globally. Professor Teitel’s book provides a nuanced and comprehensive look at how global affairs have evolved as individual interests increasingly drive conflict management.

WHEN INTERNATIONAL LAW WORKS: REALISTIC IDEALISM AFTER 9/11 AND THE GLOBAL RECESSION. By Tai-Heng Cheng. New York, N.Y.: Oxford University Press. 2012. Pp. ix, 341. \$65.00. Decades of debate have done little to resolve the question of whether international law is actually “law.” Hanging in the balance are international law’s moral status and vitality. In *When International Law Works*, Professor Tai-Heng Cheng acknowledges the stakes of this debate — and transcends it. The question animating his pragmatic approach is not whether international law is law, but instead how decisionmakers should decide whether to comply with its established rules. Professor Cheng urges decisionmakers to balance short-term self-interest against long-term stability by employing “legalist reasoning” (p. 83) and by remaining attentive to the international community’s shared expectations. When such inquiries weigh in favor of violating international law, states should reject the vocabulary of ad hoc exceptionalism and provide reasoned justifications aimed at reshaping obsolete rules through revised international consensus. Advancing his argument using case studies of high-profile contemporary events — including the United States’s response to 9/11 — Professor Cheng makes a compelling case that international law’s instrumental benefits depend not on contestable conceptual distinctions, but instead on how its norms guide decisionmakers today.

BARGAINING WITH BASEBALL: LABOR RELATIONS IN AN AGE OF PROSPEROUS TURMOIL. By William B. Gould IV. Jefferson, N.C.: McFarland & Co. 2011. Pp. vii, 318. \$39.95. In some ways, the sport of baseball has remained remarkably static over its lifetime — ninety feet from home plate to first base remains the golden metric of the sporting world. In his new book, *Bargaining with Baseball*, Professor William B. Gould IV explores the labor issues that have shaped baseball from the perspective of a former chairman of the National Labor Relations Board (NLRB) and an “eternally passionate support[er]” (p. 1) of the Boston Red Sox. Through this lens, Professor Gould weaves together theory and reality to show labor law’s impact on the sport. Professor Gould draws on his experience with the NLRB during the infamous 1994–1995 Major League Baseball (MLB) strike and the collective bargaining agreement that followed. The book traces the history of a range of baseball-related issues that have found their way into collective bargaining negotiations, including race relations and testing for performance-enhancing drugs. Professor Gould’s thorough exploration of the topic provides a fascinating background to the MLB collective bargaining agreement of 2011. While the “beauty and grace” (p. 24) of the game may remain unchanging, the business of baseball is always in flux. Professor Gould’s exploration of these transformations offers a perspective appealing to both scholars and sports fans.

DEMOCRACY, EXPERTISE, AND ACADEMIC FREEDOM: A FIRST AMENDMENT JURISPRUDENCE FOR THE MODERN STATE. By Robert C. Post. New Haven, Conn.: Yale University Press. 2012. Pp. xiii, 177. \$30.00. Most people regard the dissemination of knowledge as essential to the success of a democracy. In *Democracy, Expertise, and Academic Freedom*, Professor Robert Post explores how courts can use the First Amendment to protect such knowledge from legislative interference. Professor Post argues that courts cannot simply rely on the familiar “marketplace of ideas” vision of the First Amendment, in which the government accords equal stature to all opinions and the truth emerges from the battle of ideas. Such an emphasis on speaker autonomy and speech equality, Professor Post notes, does not fit well with expert knowledge disciplined by methodological constraints. Thus, extending First Amendment coverage to expert knowledge will lead to a constitutional doctrine that is nonegalitarian with respect to ideas — a doctrine that distinguishes, for example, astrology from astronomy. Professor Post discusses not only the Supreme Court’s cases interpreting the First Amendment, but also issues of epistemology, political theory, and sociology. His critique of conventional approaches to the First Amendment and his defense of the alternative he proposes are engaging, provocative, and convincing.

THE CONSTRAINED COURT: LAW, POLITICS, AND THE DECISIONS JUSTICES MAKE. By Michael A. Bailey & Forrest Maltzman. Princeton, N.J.: Princeton University Press. 2011. Pp. xi, 217. \$26.95. Does the law matter? This question strikes at the very foundation of legal study and practice, and it is the question that Professors Michael A. Bailey and Forrest Maltzman address in *The Constrained Court*. The authors confront a generation of political science and legal literature suggesting that Justices are merely unelected political leaders, guided by their policy preferences and nothing more. In *The Supreme Court and the Attitudinal Model* (1993), for example, Professors Jeffrey Segal and Harold Spaeth argued that judicial rulings reflect the unconstrained policy preferences of the Justices. *The Constrained Court*, arguing that Justices are moved by much more than their policy preferences, is a rebuttal that will no doubt be welcomed by many lawyers and law students across the nation. First, the authors argue that legal doctrines play an important role in the decisions that Justices reach. Second, they contend that the Supreme Court is politically constrained by legislative and executive actions. *The Constrained Court* offers a refreshing account of Supreme Court decisionmaking, supported by a thorough statistical analysis of the Court's decisions and the votes of Justices. Ultimately, Professors Bailey and Maltzman conclude that law does matter. Law, politics, and policy all play integral roles in shaping a constrained Supreme Court.

THE SYSTEM OF THE CONSTITUTION. By Adrian Vermeule. New York, N.Y.: Oxford University Press. 2011. Pp. 3, 220. \$35.00. Over the past few decades, systems theory has begun to change the way intellectuals think of biology, business structures, and almost everything in between. In *The System of the Constitution*, Professor Adrian Vermeule uses systems theory to conduct an insightful analysis of the American constitutional order. Systems theory, in brief, represents the notion that a whole may be greater than the sum of its parts. *The System of the Constitution* argues that this near platitude, when properly understood, should reshape the way we think about the Constitution. Professor Vermeule develops, for instance, a theory of "second-best constitutionalism" (p. 10) in which the net effect of a large collection of deviations from individual ideals may end up closer to the collective ideal than would a handful of individual ideal structures mixed with other less ideal ones. *The System of the Constitution* displays both significant depth, explaining each of its claims cogently and persuasively, and nearly encyclopedic breadth, describing constitutional questions from the largest separation of powers concerns to the smallest issues of gerrymandering. This new understanding of the complexities of the constitutional order and the interrelations among its various features might lead open-minded readers to reconsider their core beliefs about the U.S. Constitution.