
RECENT PUBLICATIONS

JOHN MCKINLEY AND THE ANTEBELLUM SUPREME COURT: CIRCUIT RIDING IN THE OLD SOUTHWEST. By Steven P. Brown. Tuscaloosa, Ala.: The University of Alabama Press. 2012. Pp. xi, 313. \$39.95. The life of John McKinley, former Alabama state legislator, U.S. representative, U.S. senator, and Supreme Court Justice, has been little recognized by modern legal historians. Professor Steven Brown sets out to rehabilitate McKinley's reputation and historical legacy in this engaging and accessible biography. The portrait that emerges is one of a dedicated public servant and thoughtful jurist, a far cry from the surly and unimpressive caricature that has defined McKinley's modern-day perception. In describing McKinley's life and circumstances, Brown exposes the biases that plague modern assessments of nineteenth-century Justices, including the undue attention given to the number of opinions authored. He also provides a rare look into the workings of the antebellum Supreme Court, particularly the travails of circuit riding prior to the development of a robust interstate transportation infrastructure. McKinley was the only Justice assigned to the vast original Ninth Circuit — spanning Alabama, Arkansas, Louisiana, and Mississippi — which called for over 6000 miles of treacherous travel to address a circuit docket of more than 4000 cases. This burden contributed to McKinley's failing health, but the Justice's advocacy helped spur Congress to redraw the circuit lines. Brown persuasively argues that McKinley's career and legacy deserve another look.

GLOBALIZATION AND SOVEREIGNTY: RETHINKING LEGALITY, LEGITIMACY, AND CONSTITUTIONALISM. By Jean L. Cohen. New York, N.Y.: Cambridge University Press. 2012. Pp. xii, 442. \$36.99. In the sixty-eight years since the end of World War II, the world has seen an explosion of globalization and international legal institutions, which according to common wisdom have undermined state sovereignty. While some scholars have described these developments as creating a new international and cosmopolitan constitutionalized order that replaces the old statist model, others have argued that great powers have simply used international institutions to facilitate self-interested action. In a thoughtful new book, Professor Jean Cohen offers a theory of the current world order that lies between these two poles. Cohen argues that a "dualistic world order" has emerged, with one element consisting of the society of sovereign states and the other consisting of a group of semiautonomous international legal institutions. Arguing that state sovereignty remains an important element of this world order, Cohen urges a reconceptualization of the sovereignty concept in the modern world. Acknowledging that global legal institutions are often used by major powers for self-serving purposes, Cohen

urges a project of constitutionalization within these institutions. Employing international legal and political theory to shed new light on contemporary problems in the United Nations and elsewhere, Cohen's book is a useful contribution to the field.

FIRST AMENDMENT INSTITUTIONS. By Paul Horwitz. Cambridge, Mass.: Harvard University Press. 2013. Pp. xiii, 367. \$49.95. Institutions — from the schools and churches we attend to the newspapers, books, and blogs we read — are central loci of public discourse. These institutions thus serve a vital role in the basic functioning of free speech in modern culture. *First Amendment Institutions* provides a thoughtful and persuasive approach to aligning First Amendment doctrine with the realities of modern life and the particularities of institutions. Professor Paul Horwitz takes a critical look at aspects of First Amendment law that lack institutional context, while arguing for greater judicial deference to the rules and practices adopted by First Amendment institutions. To demonstrate the problems with an acontextual approach, Horwitz uses specific cases to highlight the difficulty of applying doctrinal rules to these institutions. In order to stimulate doctrinal reform, Horwitz then examines the self-regulating capacity of First Amendment institutions and raises timely issues regarding the difficulties of defining these institutions and adjusting legal norms in a changing world. The book closes by providing an important framework for further conversations regarding the value of an institutional approach and the relationship of such an approach to other contemporary legal movements.

DEFENDING AMERICAN RELIGIOUS NEUTRALITY. By Andrew Koppelman. Cambridge, Mass.: Harvard University Press. 2013. Pp. 243. \$55.00. First Amendment jurisprudence has been criticized as being simultaneously too hostile and too sympathetic to religion. Many critics decry the demise of the amendment's ideal of neutrality with respect to and among religions. Seeking to reinvigorate First Amendment scholarship, Professor Andrew Koppelman champions the "audacious" claim (p. 1) that American religious neutrality remains both achievable and desirable in the modern age. Koppelman's engaging and sophisticated new work melds legal scholarship with political theory to illustrate the logic and appeal of American religious neutrality. He explains that First Amendment jurisprudence has considered religion a distinctive human good but one that must be understood at a precise level of abstraction. In so doing, Koppelman responds eloquently to both religious traditionalists and secularists, conceding that American society must afford religion special treatment while ensuring that all laws have a valid secular purpose. Illuminating specific controversies under the Religion Clauses — such as the permissibility of Bible reading in public schools and of faith-based social services — as

well as high-level political and legal theory, *Defending American Religious Neutrality* provides an able and eloquent defense of the law's ability to coherently navigate religious and constitutional challenges using religious neutrality.

SEARCHING FOR THE STATE IN BRITISH LEGAL THOUGHT: COMPETING CONCEPTIONS OF THE PUBLIC SPHERE. By Janet McLean. New York, N.Y.: Cambridge University Press. 2012. Pp. ix, 334. \$99.00. In this comprehensive and multidisciplinary work, Professor Janet McLean seeks to challenge the notion that British legal thought has never had a robust conception of the state. McLean draws on political theory, legal doctrine, and intellectual history to trace the evolution of British personifications of the state over the course of the last two centuries, focusing in particular on the Crown and common law judges as the dominant personifications of the state. The book examines a wide range of ideologies and philosophies — including Austinian positivism, the British Idealism associated with T.H. Green, Fabian socialism, Pluralism, and Thatcherism — and probes how these ideologies have influenced British legal doctrine and how the resulting legal doctrine has in turn influenced ideology. Of special note is McLean's accounts of the rise of the British administrative state and the interaction between U.K. law and international human rights law. McLean's book will be of particular interest to legal historians, legal theorists, and administrative law professors.

ECONOMIC FOUNDATIONS OF INTERNATIONAL LAW. By Eric A. Posner & Alan O. Sykes. Cambridge, Mass.: Harvard University Press. 2013. Pp. x, 372. \$65.00. Over the past two decades, rapid globalization of commerce and ideas has led legal scholars to analyze, from an economic perspective, the systems and incentives of the international law framework. In *Economic Foundations of International Law*, Professors Eric Posner and Alan Sykes have produced a comprehensive introduction to that project, focusing on international law (as distinct from international trade and international relations). The book aims to provide a framework for analyzing legal rules and legal institutions in a way that accounts for the incentives of states in the international system — that explains, for example, why international law may be necessary to “orchestrate cooperation in the face of international externalities” (p. 20). As part of that goal, *Economic Foundations of International Law* devotes substantial space to such disparate topics as international environmental law, the legal rights of aliens, the use of force and the law of war, and the legal structures governing international trade. Yet despite the breadth of this overview, Posner and Sykes still manage to diagnose and treat with specificity the ills that plague the international community. Students, practitioners, and pro-

fessors will benefit from their concise and well-organized account of this emerging field.

IN THE NAME OF JUSTICE: STRIVING FOR THE RULE OF LAW IN CHINA. By He Weifang. Washington, D.C.: Brookings Institution Press. 2012. Pp. xlix, 269. \$34.95. The world has for some time watched China's development with a keen eye — both externally in its interactions with the rest of the world and internally in its changing legal and constitutional order. Professor He Weifang, a professor of law at Peking University, has been closely involved in the movement to reform China's legal system. *In the Name of Justice* collects twelve of He's academic writings, public speeches, and open letters, many of them translated into English for the first time. He's writings and speeches — which touch upon legal topics ranging from the importance of constitutions and judicial review to the role of the legal profession itself — argue confidently “that constitutionalism and the rule of law are the best safeguards of liberty and the foundation of good governance in China” (p. 40). He's approach is incrementalist and realist: he acknowledges that, “in China, with its huge population and long historical tradition, it is much more difficult to carry out [legal] reform” (p. 123). The volume deftly illustrates He's unique ability to address these critically important topics with perspective on where China has been and optimism about where it might go.

HENRY FORD'S WAR ON JEWS AND THE LEGAL BATTLE AGAINST HATE SPEECH. By Victoria Saker Woeste. Stanford, Cal.: Stanford University Press. 2012. Pp. xv, 408. \$55.00. In 1927, the nation was captivated by the prospect of Henry Ford taking the stand to defend his newspaper, the *Dearborn Independent*, in a libel suit brought by California lawyer and farm organizer Aaron Sapiro. Mr. Sapiro brought suit against the *Independent* after the newspaper followed its publication of the anti-Semitic serial *The International Jew* with a series of articles accusing Sapiro of participating in a Jewish conspiracy to exploit farmers. In *Henry Ford's War on Jews and the Legal Battle Against Hate Speech*, Professor Victoria Saker Woeste reexamines the case and its aftermath through the lenses of the differing national visions embodied by Ford, Sapiro, and Louis Marshall, the president of the American Jewish Committee who ghostwrote the apology from Ford that effectively ended the controversy. In Part I, Woeste introduces the characters and their motivations; in Part II, she provides a gripping account of the suit itself, ultimately concluding that Ford's apology — and Marshall's enabling thereof — represented a missed opportunity to identify and clarify the contours of group libel. Woeste engages with issues of free speech, individual responsibility, legal tactics, and the struggle for civil rights in this captivating account of *Sapiro v. Ford*.