
RECENT PUBLICATIONS

THE FAILED PROMISE OF ORIGINALISM. By Frank B. Cross. Stanford, Cal.: Stanford University Press. 2013. Pp. 228. \$45.00. In public debates about constitutional interpretation, Justice Scalia is fond of quipping to nonoriginalists that he does not need to “outrun the bear; I just have to outrun you” — meaning that while originalism may not be perfect, it is better at constraining judicial discretion and maintaining the legitimacy of the Court than other interpretive methods. In this bold new book, Professor Frank Cross suggests that Justice Scalia should not be so confident in his running abilities. Cross marshals an impressive array of empirical evidence to argue that in practice originalism does little to constrain judicial discretion and is often wielded as a tool for political ends by both conservative and liberal Justices. The book begins with a discussion of the most basic difficulties with originalist theory and practice, then covers the history of originalist interpretation. The heart of the book, though, is its thorough quantitative analysis of the use of originalist sources in Supreme Court opinions. This examination yields some surprising findings, such as that Justices Scalia and Thomas are “not clearly more originalist than Justice Stevens or even Justice Brennan, who also made heavy use of originalist sources in their opinions” (p. 151). Cross’s book will be of interest to legal scholars and political scientists alike.

LAWS AND SOCIETIES IN GLOBAL CONTEXTS. By Eve Darian-Smith. New York, N.Y.: Cambridge University Press. 2013. Pp. x, 422. \$36.99. The past decades have seen a rapid increase in contextualized approaches to law that build on legal realism by attempting to explain the gap between law in action and law on the books as partly manifested by the social and cultural contexts in which legal actors operate. In this volume, Professor Eve Darian-Smith seeks to expand the scope of sociolegal inquiry beyond parochial, state-centric interpretations of law and to integrate a global perspective. Darian-Smith brings a wealth of knowledge about globalism studies and sociolegal thought, embracing an expansive vision of legal pluralism in a world of interconnected and interdependent global governance. Each chapter in the volume advances a strategy for integrating a globalized perspective into developments in sociolegal thought, then features a well-curated set of essays that demonstrates such developments. Darian-Smith unites the excerpts into a coherent framework, deftly weaving the thread of her nuanced and counter-hegemonizing understanding of globalization into the weft of contemporary sociolegal thought. Highlights include a chapter on the critical deconstruction of legal knowledge (pp. 97–166) and a chapter bringing her approach to the academic and policy dialogues of international human rights (pp. 243–313).

PRIESTS OF OUR DEMOCRACY: THE SUPREME COURT, ACADEMIC FREEDOM, AND THE ANTI-COMMUNIST PURGE. By Marjorie Heins. New York, N.Y.: New York University Press. 2013. Pp. ix, 363. \$35.00. During the height of the 1950s anticommunist hysteria, teachers and professors found academic freedom under siege. Some academics fought back against attempted purges of suspected communists, while others cooperated. These battles eventually led to the courts, culminating in Supreme Court decisions that defined First Amendment academic freedom. In an engaging and extensively researched new book, civil liberties attorney and academic Marjorie Heins tells the story of the anticommunist investigations of teachers and professors in New York City institutions of higher learning and the landmark Supreme Court decisions they provoked. Heins surrounds her story with rich historical, cultural, and legal context regarding academic freedom as a foundational American principle. The book paints a vivid picture of the American academic left in the twentieth century and looks to both the academy's virtues and shortcomings in explaining the wave of anticommunist action and the reaction in the academy it engendered. Heins's book is a valuable work of history in its own right, but is particularly relevant in this age of terrorism, when national security officials consider citizens' ideologies and group associations in the course of conducting antiterrorism investigations.

FREEDOM TO HARM: THE LASTING LEGACY OF THE LAISSEZ FAIRE REVIVAL. By Thomas O. McGarity. New Haven, Conn.: Yale University Press. 2013. Pp. ix, 394. \$45.00. By his own description, Professor Thomas McGarity has spent much of his career fascinated by the politics and consequences of what he sees as a conservative war on regulatory government. Now comes this rousing book: as much an explanation as an indictment of the movements that have "disturbed the necessary balance among economic freedom, corporate responsibility, and corporate accountability to such an extent that companies have acquired more freedom to harm consumers, workers, and the environment than at any time since the New Deal and perhaps since the late nineteenth century" (p. viii). McGarity's book explores the "Laissez Faire Revival" of the last thirty years, describing it as the latest episode in a cycle of crisis, response, and reaction that has characterized the periodic growth and weakening of the American regulatory system. But while the author's historical and political analyses paint a clear portrait of the history of interventionist government in this country, it is the book's stories, details, and vignettes that make it an engaging treatment of a topic at the heart of the last century's central debate on the role and scope of government.