
RECENT PUBLICATIONS

LONG WARS AND THE CONSTITUTION. By Stephen M. Griffin. Cambridge, Mass.: Harvard University Press. 2013. Pp. vii, 362. \$39.95. The Bush Administration's response to the September 11, 2001 terrorist attacks generated controversy over the extent of the President's war powers — controversy that also confronts the Obama Administration. Professor Stephen Griffin traces these constitutional disputes back to the Cold War, which dramatically shifted the constitutional order surrounding war powers. In this constitutional history of presidential decisionmaking since 1945, Griffin contends that neither the congressionalist stance — which insists that only Congress can declare war — nor the contrary presidentialist position adequately respond to the foreign policy demands facing modern Presidents. The congressionalist position narrowly focuses on the authorization of individual conflicts instead of the “real problem” (p. 8): the lack of interbranch deliberation on foreign policy issues. Presidentialists, by contrast, have supported extending the President's foreign policy leadership to permit unilateral decisions to go to war, without recognizing that war demands more congressional oversight than other foreign policy choices. This timely book advocates reinstating a “‘cycle of accountability’ that turns between the executive and legislative branches” (p. 5) in evaluating war decisions, arguing that a return to the eighteenth-century Constitution's congressionalist stance would not meet today's diplomatic challenges.

AMERICAN FOUNDING SON: JOHN BINGHAM AND THE INVENTION OF THE FOURTEENTH AMENDMENT. By Gerard N. Magliocca. New York, N.Y.: New York University Press. 2013. Pp. vii, 295. \$39.00. Professor Gerard Magliocca provides the first biography of John Bingham, the Republican congressman from Ohio who authored the Fourteenth Amendment's due process and equal protection guarantees. Bingham played an indispensable role in shaping the Civil War's legacy. He came to Congress among the first group of Republicans elected to the House of Representatives, and he departed after a remarkable career. Bingham was an architect of both the Fourteenth Amendment and the Union's wartime and Reconstruction policies, and served as a prosecutor in both the military trial of John Wilkes Booth's co-conspirators and the impeachment trial of President Andrew Johnson. The biography traces Bingham's life from his formative years in Ohio, where he came under the mentorship of slavery opponent and future Chief Justice Salmon Chase, to the twilight of his career as U.S. Ambassador to Japan. Magliocca celebrates Bingham as a founding figure for civil liberties and racial equality in America, while cautioning about the law's limits as a vehicle for racial progress.

American Founding Son makes a valuable contribution to both Civil War biography and Fourteenth Amendment scholarship.

SUING ALMA MATER: HIGHER EDUCATION AND THE COURTS. By Michael A. Olivas. Baltimore, Md.: The Johns Hopkins University Press. 2013. Pp. v, 221. \$32.95. The courts have become a battleground for shaping the policies and practices of higher education institutions, with wide-ranging constitutional ramifications both on campus and off. *Suing Alma Mater* explores the impact of higher-education law on students, faculty, and colleges, while highlighting the instrumental value of higher-education litigation for “purposive organizations” like the American Civil Liberties Union and the Alliance Defending Freedom. Professor Michael Olivas reviews more than 120 Supreme Court cases from the past fifty years to paint a comprehensive picture of the legal issues in this field. His focus then shifts to six in-depth case studies, mostly from the lower courts, creating an ethnographic account of how contentious disputes — involving free speech, religious liberty, academic freedom, and race-based affirmative action — are channeled through the courts using higher-education law as a vehicle. A long-time education law scholar and higher-education administrator, Olivas shares anecdotes and experiences that add real-world granularity to the legal narrative in *Suing Alma Mater*.

REFLECTIONS ON JUDGING. By Richard A. Posner. Cambridge, Mass.: Harvard University Press. 2013. Pp. vii, 380. \$29.95. Mixing an informed critique of legal formalism with personal anecdotes and an impassioned plea for judicial reform, Judge Richard Posner’s book argues for the revitalization and reinvention of judicial realism to make the law better serve an increasingly complex society. Judge Posner argues that judges have responded to the rise of technologies and systems they do not understand by retreating into a legal formalism that increases the internal complexity of the law. The better option, he suggests, is a realist judge who “wants judicial decisions to ‘make sense’ in a way that could be explained convincingly to a layperson” (p. 120), and whose discretion is limited not by intuition, but by careful consideration of the relevant data and the potential impact of a decision. Judge Posner offers several concrete methods to move toward this goal, including a model for continuing judicial education. *Reflections on Judging* distills Judge Posner’s extensive experience on the bench into a forceful critique of American judicial methods and a compelling vision for how they should work.