
RECENT PUBLICATIONS

AMERICAN BLACKLIST: THE ATTORNEY GENERAL'S LIST OF SUBVERSIVE ORGANIZATIONS. By Robert Justin Goldstein. Lawrence, Kan.: University Press of Kansas. 2008. Pp. xix, 361. \$34.95. Among the more controversial aspects of the War on Terror has been the government's use and publication of a terrorist watch list. In *American Blacklist*, Professor Robert Goldstein takes the reader back to the days of an earlier government watch list — the Attorney General's List of Subversive Organizations (AGLOSO). Drawing on previously classified documents, Professor Goldstein chronicles the birth, rise, and ultimate death of AGLOSO, "a list of groups in which membership was officially designated as grounds for possible exclusion from federal employment" (p. 1). With roots in the government's response to President William McKinley's assassination in 1901, AGLOSO reached its zenith during the Red Scare following World War II before suffering death at the hands of the courts and Congress in the 1970s. Professor Goldstein also details the investigations, frustrations, and suffering of those organizations — and their members — unfortunate enough to find themselves on the government's blacklist. Professor Goldstein thus offers a cautionary tale to those who might champion efforts to collect and distribute the names of suspected dissidents. His work may be historical, but it speaks directly to challenges America still faces today.

A CONSTITUTION OF MANY MINDS: WHY THE FOUNDING DOCUMENT DOESN'T MEAN WHAT IT MEANT BEFORE. By Cass R. Sunstein. Princeton, N.J.: Princeton University Press. 2009. Pp. xi, 225. \$27.95. In *A Constitution of Many Minds*, Professor Cass Sunstein, perhaps the twenty-first century's foremost legal polymath, develops a compelling account of the evolution of our constitutional understandings by fusing conventional methods of constitutional interpretation with a "wisdom of the crowd" (p. 173) approach. Professor Sunstein, who has previously discussed the power of the aggregation of "many minds," now harnesses that theory to explain constitutional change and justify a constitutionalism that grows with public understanding and sentiment. *A Constitution of Many Minds* argues that our Constitution was not formed solely by the Founders, nor is it elaborated only at isolated moments; rather, "every generation produces a degree of constitutional reform" (p. 6). Professor Sunstein demonstrates how "many minds" arguments underlie well-established trends of constitutional interpretation such as traditionalism, populism, and cosmopolitanism. In the process, *A Constitution of Many Minds* offers provocative insights on currently divisive topics from same-sex marriage to gun rights.

FROM WORDS TO WORLDS: EXPLORING CONSTITUTIONAL FUNCTIONALITY. By Beau Breslin. Baltimore, Md.: The Johns Hopkins University Press. 2009. Pp. xii, 213. \$50.00. In *From Words to Worlds*, Professor Beau Breslin seeks to elucidate the importance of constitutional text by analyzing the functions of authoritative constitutions from around the world. He identifies seven common constitutional features: transforming political regimes, aspiring to greatness, designing governmental institutions, managing political conflict, recognizing different constituencies, and empowering and limiting political institutions. Professor Breslin emphasizes the constitutional texts themselves, rather than how they have been interpreted, in order to demonstrate why the texts should matter in practice. For example, a chapter on constitutional aspiration surveys preambles from around the world, noting that they “often perform the task of isolating the polity’s highest values” and thus provide a justification for using constitutional text “to order political societies” (p. 68). As “new constitutions are being written and old constitutions are being radically amended” around the globe (p. 178), *From Words to Worlds* provides a refreshing break from the common focus on the U.S. Constitution in favor of a global perspective that explores the functions of constitutions in many different societies.

NO LAW: INTELLECTUAL PROPERTY IN THE IMAGE OF AN ABSOLUTE FIRST AMENDMENT. By David L. Lange & H. Jefferson Powell. Stanford, Cal.: Stanford University Press. 2009. Pp. xv, 435. \$27.95. Scholars — and to a lesser extent courts — have long recognized a tension between the First Amendment’s free speech protections and Congress’s constitutional power to give authors and inventors exclusive rights to their works. In *No Law*, Professors David Lange and H. Jefferson Powell explore the justification for and consequences of reading the First Amendment “absolutely” — that is, prohibiting all laws that abridge free expression by conferring monopolies in the public domain. After surveying the history and purposes of the First Amendment, the authors conclude that granting exclusive rights to speech for the purpose of protecting intellectual property rights is unconstitutional. The authors outline and defend two basic changes necessitated by their regime: first, noncommercial uses of appropriated works will require neither license nor payment; and second, revenues stemming from commercial uses of appropriated works will be subject to equitable apportionment at Congress’s discretion. The authors explain that various private law doctrines, including contract, will enable creators to continue to protect their legitimate interests. In this nuanced discussion, Professors Lange and Powell candidly acknowledge the consequences of their proposal, but conclude that “nothing in [their] understanding of an absolute First Amendment” requires society to forego “continuing incentives to intellectual productivity” (p. 323).