
RECENT PUBLICATIONS

BREAKING ROBERT'S RULES: THE NEW WAY TO RUN YOUR MEETING, BUILD CONSENSUS, AND GET RESULTS. By Lawrence E. Susskind and Jeffrey L. Cruikshank. New York, N.Y.: Oxford University Press. 2006. Pp. xvi, 222. \$15.95. The widely used, 130-year-old system of parliamentary debate called Robert's Rules is intended to give strict structure to a meeting and lead it to a final majority vote. Those who know the Rules are likely familiar with their attendant evils, including numerous barriers to fruitful discussion, motions to amend an amendment to an amendment, and, in the end, a dissatisfied minority with little investment in the majority's decision. As the title indicates, Professors Lawrence Susskind and Jeffrey Cruikshank offer an alternative: the "consensus building approach" (CBA) — a structured system that fosters innovation in reaching agreements that leave all parties better off. The authors describe every step of the CBA process in detailed but refreshingly readable chapters, following a semi-fictional meeting from the convening of the right participants to the adaptation of the final agreement to accommodate unforeseen circumstances. Numerous illustrations and appendices, as well as a step-by-step summary at the end, help make this book a user-friendly guide to a valuable new system for resolving disputes and reaching long-lasting accord.

THE JUDGE IN A DEMOCRACY. By Aharon Barak. Princeton, N.J.: Princeton University Press. 2006. Pp. xxi, 332. \$29.95. In this work, former President of the Supreme Court of Israel Aharon Barak discusses the role a judge should play in a democracy. President Barak argues that, in addition to dispute resolution, the role of a judge is both to "bridge the gap between social reality and law" and to protect "the constitution and its values" (pp. 306–07). According to President Barak, bridging the gap between law and society entails adapting law to society's changing needs while maintaining a sense of legal stability. Protecting the constitution requires that a judge be held accountable to the "internal morality" of democracy rather than to public opinion or the legislature. But if a judge's role is to "adapt the law to life's changing needs" (p. 306), what is the proper judicial balance between activism and self-restraint? Pulling examples from his own decisions, as well as the decisions of courts of other common law democracies, President Barak provides concrete examples of how judges can employ his model of judicial function to today's most challenging issues. Presenting a remarkably balanced view of the power and limitations of judges, President Barak offers a comprehensive yet humble account of the role of the judiciary within a democratic society.

WHEN COURTS AND CONGRESS COLLIDE: THE STRUGGLE FOR CONTROL OF AMERICA'S JUDICIAL SYSTEM. By Charles Gardner Geyh. Ann Arbor, Mich.: University of Michigan Press. 2006. Pp. xii, 332. \$29.95. Throughout U.S. history, Congress has often disagreed vehemently with the judicial branch but has rarely used tools such as impeachment, budget manipulation, or stripping of jurisdiction to influence the courts. In this carefully researched book, Professor Charles Gardner Geyh argues that the judiciary has enjoyed independence not because of structural constraints in the Constitution, but because Congress has developed conventions, norms, and customs that dictate a more hands-off approach. Professor Geyh traces the development of this "customary independence" from Jefferson's struggle against the Federalist-controlled courts to President Roosevelt's court-packing scheme to the threats to impeach Justices of the Warren Court. These customs have resulted in a "dynamic equilibrium" between "a sometimes exasperating judiciary and a sometimes angry Congress" (p. 254). This interbranch comity has also channeled congressional desire to influence judicial decisions almost solely into the appointment stage. Professor Geyh's book is as gripping for its historical insight as for its relevance in our world of contentious confirmation hearings and threats — real or perceived — against judicial independence.

SECURING CONSTITUTIONAL DEMOCRACY: THE CASE OF AUTONOMY. By James E. Fleming. Chicago, Ill.: University of Chicago Press. 2006. Pp. xiii, 335. \$45.00. In 1965, Justice Brennan dropped a "constitutional time bomb" and announced that the Constitution conferred the "right to be let alone." No right, according to Professor James Fleming, has engendered more criticism from scholars across the ideological spectrum. Professor Fleming rejects the theories of judicial minimalism currently in vogue and offers a bold justification for the right of autonomy, grounding it in a theory of securing constitutional democracy. His framework seeks to secure basic liberties that are preconditions for "deliberative democracy" and "deliberative autonomy"; the former enables citizens to deliberate and judge the institutions and social policies that make up their government, while the latter enables them to deliberate about and decide how to live their own lives. After criticizing John Hart Ely's and Professor Cass Sunstein's "process-perfecting" theories, Professor Fleming turns to a comprehensive defense of his own theory, first explaining the theoretical underpinning of his framework and then considering issues such as conflicts between basic liberties and the preservation of the constitutional order in times of war and crisis. This book provides a thought-provoking alternative to current mainstream constitutional theories and justifications for judicial review.

MINDING JUSTICE: LAWS THAT DEPRIVE PEOPLE WITH MENTAL DISABILITY OF LIFE AND LIBERTY. By Christopher Slobogin. Cambridge, Mass.: Harvard University Press. 2006. Pp xi, 375. In this provocative and detailed work, Professor Christopher Slobogin examines the law's impact on people with mental disabilities. Professor Slobogin acknowledges the law's traditional difficulty with defining, understanding, and dealing humanely with the wide variety of abnormal mental phenomena that culture and law classify as disorders and disabilities. He offers three models of justification for government deprivation of liberty, based on punishment, prevention, and protection. Applying this framework, Professor Slobogin suggests fundamental and innovative changes to the insanity defense, a prohibition on executing the mentally ill, a new understanding of competency in the criminal process, guidance for defense attorneys with mentally disabled clients, and important new considerations regarding civil commitment. The result is a book of considerable value for the makers of disability law, practitioners who represent mentally disabled defendants, theorists studying the justification of government deprivation of life and liberty, academics interested in criminal law and issues of responsibility, deterrence, and mental state, and those interested in mental disability more generally.

NO LITMUS TEST: LAW VERSUS POLITICS IN THE TWENTY-FIRST CENTURY. By Michael C. Dorf. Lanham, Md.: Rowman & Littlefield Publishers. 2006. Pp. xxii, 295. \$65.00. Taking its title from President George W. Bush's declaration that he would apply "no litmus test" in appointing a successor to Justice Sandra Day O'Connor, this work presents an impassioned attempt to reclaim the good name of the law from partisans on both sides. Columbia Law School constitutional law scholar Michael Dorf argues for a principled middle ground between legal realism and formalism. Termed "partial autonomy of the law," this standard calls for evaluating judicial decisions based on criteria such as "fidelity to authoritative text and precedent, substantive justice, and sensible policy" (p. xix). Professor Dorf's book is organized by theme into several parts: Part IV, "Liberty, Security, and War," offers an illuminating glimpse into the author's own evolution from initial acquiescence to the legal maneuvering of the current administration to greater skepticism; Part VI, "The Rule of Law(yers)," presents an examination of the profession's role in society. While acknowledging his liberal roots, Professor Dorf strives for fairness throughout, arguing against fetishizing the law at the cost of losing valuable nonlegal perspectives.