

RECENT PUBLICATIONS

TERRORISM, THE LAWS OF WAR, AND THE CONSTITUTION: DEBATING THE ENEMY COMBATANT CASES. Edited by Peter Berkowitz. Stanford, Cal.: Hoover Institution Press. 2005. Pp. xix, 196. \$15.00. In this engaging collection of essays, six high-profile collaborators evaluate the Supreme Court's application of the laws of war to modern non-state adversaries. Professors Seth Waxman, Patricia Wald, John Yoo, Benjamin Wittes, Mark Tushnet, and Ruth Wedgwood examine the trilogy of Supreme Court cases dealing with enemy combatants — *Padilla*, *Hamdi*, and *Rasul*. They address the competence of the judiciary to make sweeping policy decisions concerning national security, the suitability of the Constitution to deal with terrorist threats, and the Court's "desire to split the baby between the claims of liberty and the claims of military necessity" (Wittes, p. 127). Although the authors, who approach the debate through academic, pragmatic and historical lenses, often disagree on the Court's role in questions of national security, all agree that "each of the three branches of the government must rise to the occasion and . . . perform its constitutional share of the labors" (p. xix). This timely debate, written in prose accessible to readers from various disciplines, adds several unique voices to the fray.

DIVIDED BY GOD: AMERICA'S CHURCH-STATE PROBLEM — AND WHAT WE SHOULD DO ABOUT IT. By Noah Feldman. New York: Farrar, Straus, and Giroux. 2005. Pp. 306. \$25.00. From its Founding, America has been a nation bedeviled by the struggle between church and state. Professor Noah Feldman traces the evolution of the national debate about the proper relationship between religion and government, including the furors over Mormon bigamy (marriage between *one* man and *one* woman, please) and gay marriage (marriage between *one man* and *one woman*, please). Professor Feldman coins the terms "values evangelicals" and "legal secularists" to describe the two most prominent camps on either side of the present debate (p. 7). "Values evangelicals" insist on the direct relevance of religious values to political life, convinced that commonly shared beliefs will bind the nation together. "Legal secularists" see religion as a personal matter and potentially divisive force that should be separated from politics. Professor Feldman proposes reconciling these polar extremes by permitting symbolic and inclusive invocations of religion while keeping governmental and religious institutions financially and organizationally apart. This book is an interesting and provocative meditation on a topic of critical contemporary importance.

LAW IN EVERYDAY JAPAN: SEX, SUMO, SUICIDE, AND STATUTES. By Mark D. West. Chicago: University of Chicago Press. 2005. Pp. xiii, 279. \$19.00. In the everyday lives of Japanese people, law matters. Rules and institutions shape conduct in complex interplay with social norms and cultural traditions. Sometimes laws work; sometimes they fail. But, Professor Mark West argues, divining their impact demands moving beyond both purely economic analysis and the often stereotypical view that, in Japan, culture trumps all. His conclusions emerge from a captivating series of case studies, the subjects of which Professor West chose because they are both quotidian and “Japanese” (a term he uses gingerly). Marshalling data from rational choice analysis as well as from numerous qualitative interviews, Professor West explores sumo administration, love hotel regulation, karaoke bar noise disputes, condo association rules, legal efforts to curb debt-suicide, the effect of labor laws on working hours, and Japan’s famously efficient lost-and-found system (as much a result of incentives as of honesty). His colorful and methodologically unique study instructs about Japan while helping us all understand our daily interactions with the law.

CONGRESS AND THE CONSTITUTION. Edited by Neal Devins and Keith E. Whittington. Durham, N.C.: Duke University Press. 2005. Pp. vii, 320. \$23.95. All government employees take an oath to defend the Constitution, but most constitutional scholarship implies that only the Supreme Court is in the business of interpreting it. Professors Neal Devins and Keith Whittington — with a compilation of articles they term a “wake-up call” (p. 15) to the legal academy — aim to change that assumption and draw more critical attention to the role of Congress as a constitutional agent. The editors cull together an impressive cadre of legal experts and political scientists who consider the subject from a variety of angles. Some of the articles — notably Professor David Currie’s look at judicial deference to Congress and Professor Whittington’s empirical analysis of congressional hearings on constitutional issues — examine Congress’s historical approach to its interpretive duties. Other pieces examine the mechanisms Congress employs to control interpretation, such as congressional legal staffs and the confirmation power for judicial appointments. The book concludes with a number of articles evaluating the performance of Congress in the constitutional arena, discussing its institutional strengths and weaknesses vis-à-vis the Supreme Court, and suggesting possible reforms. The editors note that although recent Supreme Court decisions have called on Congress to more actively ensure the constitutionality of new laws, “[s]cholars have only begun to explore the nature, extent, and consequence of constitutional discourse beyond the courtroom” (p. 5). This book is a part of that auspicious beginning, offering a clear look at where scholarship on this emerging topic is headed next.