

RECENT PUBLICATIONS

THE POWERS OF WAR AND PEACE: THE CONSTITUTION AND FOREIGN AFFAIRS AFTER 9/11. By John Yoo. Chicago, Ill.: University of Chicago Press. 2005. Pp. xii, 366. \$29.00. As a lawyer at the Department of Justice, Professor John Yoo penned a series of memoranda defending contentious aspects of the Bush Administration's war on terrorism. *The Powers of War and Peace* steps back from that issue to present a broad constitutional defense of the contemporary allocation of foreign affairs powers among the branches. Rejecting the conventional notion that the Constitution dictates fixed processes for making war and peace, the book argues instead for a dynamic system of bargaining between the President and Congress. Professor Yoo backs his self-described "revisionist" interpretation of the Constitution with a wide array of contemporary political precedents, legal theories, and constitutional debates. His theory established, Professor Yoo next canvasses several controversies in modern foreign policy, including unilateral presidential warmaking and treaty termination, finding in each instance that the practice comports with the flexible executive/legislative balance established by the Constitution. Finally, the book offers this flexible approach to foreign policy as a foundation for adapting the Constitution to the myriad challenges of globalization. Professor Yoo's *The Powers of War and Peace* mounts a formidable challenge to conventional assumptions about the constitutional architecture of foreign affairs.

MERCY ON TRIAL: WHAT IT MEANS TO STOP AN EXECUTION. By Austin Sarat. Princeton, N.J.: Princeton University Press. 2005. Pp. xii, 325. \$29.95. Three days before his term ended, Illinois Governor George Ryan pardoned four deathrow inmates and commuted the sentences of 167 others. His move sparked a firestorm: some claimed he betrayed both victims and democracy, while others claimed he struck a tremendous blow against a barbaric institution. With Governor Ryan as his point of departure, Professor Austin Sarat provides an in-depth examination of the role of clemency and mercy in modern politics and law. He convincingly argues that, despite the fact that the law entrusts government with the unchecked power of clemency, intense political pressures have led to a decline in the use of mercy. Indeed, even Governor Ryan's act of clemency was framed in terms of a failure of process, not of conscience. The book is painless and quick, but never deadly. Professor Sarat is a merciless researcher (as evidenced by nearly 100 pages of appendices) and provides an arresting account of mercy in the modern age that will engage readers on all sides of the debate.