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BOOKS RECEIVED

The Tempting of America: The Political Seduction of the Law. By Robert H. Bork. New York, NY: The Free Press. 1990. Pp. xiv + 432. Hard Cover. \$22.50.

The Tempting of America is devoted primarily to Robert Bork's argument that original understanding is the only proper method of constitutional interpretation. Original understanding is based on the idea that judges deciding constitutional cases should look solely to the text of the Constitution and to the intent of the framers.

The book begins by tracing the history of the Supreme Court's interpretation of the Constitution, focusing specifically on the decisions which have shaped modern constitutional analysis. The book also discusses the theory of constitutional government as well as the various theories of constitutional interpretation. Bork presents his arguments in favor of original understanding and addresses the many objections to this theory. Bork also discusses the views of prominent liberal and conservative constitutional revisionists.

The book concludes that all methods of constitutional interpretation which deviate from original understanding are illegitimate and only serve to undermine democratic constitutional government. This conclusion is based on what Bork calls the "Madisonian dilemma". The dilemma is the need to balance the rights of the majority to govern against the rights of the individual to be free from majority rule. The book explains that this balance is delicate and should be preserved using the text of the Constitution and the intent of the framers as the guide. Bork argues that new constitutional rights shifting the balance should only be created by constitutional amendment.

The final section of the book describes Bork's nomination to the Supreme Court and the campaign waged against him. The book also discusses the nature of the campaign and what it symbolizes in a wider context. Finally, the book predicts the possible effects of the Bork rejection on the future of the Supreme Court nomination process.

The Tempting of America is an enlightening book which presents a concise history of constitutional interpretation as well as the theories which underlie various views. This book should be good reading for anyone unfamiliar with Bork's views or the forces behind his rejection.

Drug Testing in the Workplace. By Robert P. DeCresce, Mark S. Lifshitz, Adrienne C. Mazura, and Joseph E. Tilson. Chicago: American Society of Clinical Pathologists Press. 1989. Washington D.C.: The Bureau of National Affairs. 1989. Pp. xii + 278. Hard Cover. \$45.00.

Drug Testing in the Workplace provides a comprehensive overview of the legal, scientific and practical considerations involved in an employer's decision to institute a drug testing program. The book begins by outlining the need for drug testing programs and the attendant concerns which are involved when these programs are implemented.

The next section of the book addresses the legal considerations of drug testing. Constitutional law as well as common law tort principles may be involved depending upon whether the employer is in the public or private sector and whether the employees are unionized or nonunionized.

The book also addresses the scientific procedures involved in drug testing, while assessing their accuracy, expense, and effect on the privacy of employees. Statistical measures are also considered.

The next section of the book describes the effects of the most commonly abused drugs. The ability of current testing programs to discover these drugs in urine samples and the accuracy of the results are also discussed.

The next two sections of the book discuss the criteria an employer should consider before implementing a testing program and the possible challenges to a program by labor unions. Chapter Five highlights the employer's most important considerations: the status of the employer as a public or private entity, the status of the employees as unionized or nonunionized, public safety, impact on employees, evidence

of an existing problem, and state or local legislation restricting drug testing.

Chapter Six covers possible challenges by unions to drug testing programs. Particularly important is the National Labor Relations Act which mandates that employers negotiate in good faith with unions regarding the conditions of employment. Union employees may have remedies under the Act or pursuant to constitutional or state law if an employer fails to negotiate in good faith or adopts an unreasonable testing plan.

The final chapter is a reprint of the National Institute on Drug Abuse Guidelines. The Guidelines were adopted in accordance with President Reagan's 1986 Executive Order which called for testing of federal employees.

Drug testing is a relatively new issue and it is uncertain how pervasive testing programs might become. *Drug Testing in the Workplace* provides a thorough treatment of the issue and sheds light on the possibilities that are likely to occur in the future.

Antitrust: An Economic Approach. By Richard A. Givens. New York, NY: Law Journal Seminars-Press. 1983 plus current supplement. Pp. xviii + approx. 590. Looseleaf. \$80.00.

Antitrust: An Economic Approach is a comprehensive guide to the many issues which involve antitrust law. The book focuses to a large extent on the economic reasoning behind enforcement of the antitrust laws. Market conditions which often trigger enforcement action by the government are also examined.

The book also addresses strategy. As enforcement of the antitrust laws is often uncertain, much of the book is devoted to the factors which business people need to consider in order to avoid or defeat government action.

The book begins in Part I with an introduction to the principle federal antitrust laws. The next section examines the marketplace and suggests that the goal of antitrust law is the preservation of a competitive free market.

Part II of the book delves into the concept of market power and discusses the importance of this concept to prosecution under the antitrust laws.

Part III focuses on issues primarily related to price fixing and other combinations which attempt to fix price or allocate territory. Among the issues addressed are horizontal and

vertical combinations, franchising and dealer relationships, and group boycotts.

Part IV discusses the boundaries of antitrust enforcement. State and federal jurisdictional questions are addressed as well as extraterritorial jurisdiction and international responses to enforcement.

Part V focuses on enforcement and defense. Topics addressed include investigation, public and private enforcement, and the current antitrust enforcement climate. In addition, a chapter is devoted to strategy which encourages business people facing possible antitrust problems to consider a wide range of issues necessary to avoid a devastating enforcement action.

The book also contains several appendices which summarize the factors which should be considered in specific enforcement actions.

Antitrust: An Economic Approach covers a wide range of antitrust issues and does so within the context of the economic reasoning underlying the law. The book should serve as an important resource for practitioners and should also give interested students a comprehensive guide to the many facets of antitrust.

Economic Liberties and the Constitution. By Bernard H. Siegan. Chicago, IL: University of Chicago Press. 1980. Pp. 383. Soft Cover. \$14.50.

Economic Liberties and the Constitution presents the argument that the Supreme Court should protect economic liberties from unwarranted intrusion by the government. The book focuses on economic liberties because the Supreme Court has virtually abandoned overturning legislation which restricts economic freedom. The author believes that economic liberties are as important as the liberty interests protected by the modern Court.

The author argues that the Court's judicial review function should strive for two goals: 1) the preservation of the government structure as set forth in the Constitution, and 2) the protection and preservation of individual liberty. The author argues that the first goal of preserving government structure should be pursued according to the text of the Constitution. However, the author believes that looking solely to the text of the Constitution is inadequate in pursuit of the protection and preservation of individual liberty, the second

goal. The author asserts that individual liberties are too numerous to be enumerated, and that looking simply to the text of the Constitution would not further the goal of a free society which the framers envisioned.

The book is premised on the idea that the liberty of the individual is paramount. The government, in the author's view, has the burden of justifying restrictive legislation. Thus, in a case involving legislation infringing freedom of contract or freedom to engage in a trade or business, the government would have the burden of persuading a court that its legislation serves an important government objective, that the restraint imposed is substantially related to the achievement of the objective, and that a similar result could not be achieved by less drastic means.

The book also addresses the problems inherent in allowing a court to apply this kind of judicial review with no explicit constitutional text, but concludes that the judiciary is not only equipped to handle this task, but that it is their proper function.

Economic Liberties and the Constitution is a clear and straightforward look at the Constitution. The book presents an interesting perspective not only on constitutional interpretation, but also on the role of the judicial branch.

