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Book Notes*

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CONSTITUTIONAL THEORY AND HISTORY

Gilhooley, Simon J. *The Antebellum Origins of the Modern Constitution: Slavery and the Spirit of the American Founding*. New York, NY: Cambridge University Press, 2020. Pp. ix + 273. $110.00 cloth.

Drawing on historical newspapers, pamphlets, and congressional debates, this book considers how conflicts over slavery and abolition in the early American Republic generated a mode of constitutional interpretation that remains powerful today: the belief that the historical spirit of founding holds authority over the current moment. Gilhooley finds that in navigating the existence of slavery and the fundamental constitutional issue of the enslaved's personhood, Antebellum opponents of abolition came to promote an enduring but constraining constitutional imaginary.

Negretto, Gabriel L., ed. *Redrafting Constitutions in Democratic Regimes: Theoretical and Comparative Perspectives*. New York, NY: Cambridge University Press, 2020. Pp. xv + 247. $110.00 cloth.

Contributors to Negretto's volume address issues related to popular pressures to profoundly transform or replace constitutions in Kenya, Poland, Venezuela, Hungary, and other countries. They focus on the possibility that constitutions might be replaced within a democratic regime, while exploring the conditions that affect the compatibility of these processes with democratic principles.

CRIMINAL JUSTICE AND SOCIAL CONTROL

Henry, Jessica S. *Smoke but No Fire: Convicting the Innocent of Crimes that Never Happened*. Oakland, CA: University of California Press, 2020. Pp. xii + 249. $24.95 cloth.

Henry notes that one-third of all known exonerations in the US stem from no-crime wrongful convictions: an accidental fire is mislabeled an arson; a corrupt police officer plants drugs on an innocent suspect; an allegation of assault is invented to resolve a custody dispute. Her book tells the stories of innocent people who were convicted of such crimes, with a focus on the flaws in the criminal justice system that allow these miscarriages of justice to occur.

Madeira, Edward W., Jr., and Michael D. Schaffer. *The Defender: The Battle to Protect the Rights of the Accused in Philadelphia*. Philadelphia, PA: Temple University Press, 2020. Pp. x + 241. $35.00 cloth.

Madeira and Schaffer chart the history of the Philadelphia Voluntary Defender Association as it grew from two lawyers in 1934—long before a national right to counsel existed in the US—to a staff of nearly 500 in 2015.

Sherry, Michael S. *The Punitive Turn in American Life: How the United States Learned to Fight Crime Like a War*. Chapel Hill, NC: University of North Carolina Press, 2020. Pp. v + 312. $32.95 cloth.

In 1965, US President Lyndon Johnson insisted that "the policeman is the frontline soldier in our war against crime." Sherry argues that police forces, arms makers, policymakers, and crime experts heeded this call to arms, bringing weapons and practices from the arena of war back home. He offers a political and cultural history of the ways in which punishment and surveillance have moved to the center of American life over the past six decades and have become imbued with militarized language and policies, making the US "a meaner, punishment-obsessed nation."

Zimring, Franklin E. *The Insidious Momentum of American Mass Incarceration*. New York, NY: Oxford University Press, 2020. Pp. xiv + 216. $34.95 cloth.

The last quarter of the twentieth century was marked by a phenomenal growth of penal confinement in the United States. Zimbrick seeks to identify the cause of the expansion, the likely course of levels of penal confinement in the next generation of American life, and changes in government or policy that might avoid the prospect of mass incarceration as a chronic element of governance in the US.

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FINANCIAL REGULATION

Marchiel, Rebecca K. *After Redlining: The Urban Reinvestment Movement in the Era of Financial Deregulation*. Chicago, IL: The University of Chicago Press, 2020. Pp. ii + 312. $50.00 cloth.

Marchiel describes the efforts of a Saul Alinsky–inspired multiracial coalition of US low- and moderate-income city residents to combat the effects of redlining—the refusal to grant mortgages to nonwhite borrowers in low-income areas. She finds that these efforts inspired national action, culminating in the federal Home Mortgage Disclosure Act and the Community Reinvestment Act.

SoRelle, Mallory E. *Democracy Declined: The Failed Politics of Consumer Financial Protection*. Chicago, IL: University of Chicago Press, 2020. Pp. x + 291. $32.50 paper.

SoRelle argues that the failure of US federal policymakers to curb risky practices can be explained by the evolution of consumer finance policies aimed at encouraging easy credit in part by foregoing more stringent regulation. However, she finds that borrowers misplace their objections by focusing on banks and lenders instead of on the need for legal change. She concludes that as a result, advocacy groups have been mostly unsuccessful in mobilizing borrowers in support of stronger consumer financial protections, to their own detriment and that of the economy.

HUMAN RIGHTS

Kurban, Dilek. *Limits of Supranational Justice: The European Court of Human Rights and Turkey's Kurdish Conflict*. New York, NY: Cambridge University Press, 2020. Pp. xv + 383. $110.00 cloth.

Based on a sociolegal account of the efforts of Kurdish lawyers in mobilizing the European Court of Human Rights (ECtHR) on behalf of abducted, executed, tortured, and displaced civilians under emergency rule, and a doctrinal legal analysis of the ECtHR's jurisprudence in these cases, Kurban argues that the Strasbourg court's efforts to end gross violations in the Kurdish region have been a failure. She* brings together legal, political, sociological, and historical narratives to identify factors enabling the perpetuation of state violence and political repression against the Kurds.

Mantilla, Giovanni. *Lawmaking Under Pressure: International Humanitarian Law and Internal Armed Conflict*. Ithaca, NY: Cornell University Press, 2020. Pp. x + 247. $42.95 cloth.

By the 1949 Diplomatic Conference that revised the Geneva Conventions, most countries supported legislation committing states and rebels to humane principles of wartime behavior and to the avoidance of abhorrent atrocities, including torture and the murder of noncombatants. However, for decades, states had refused to codify similar regulations concerning violence within their own borders. Mantilla examines the process by which constraints on national sovereignty eventually came about in the context of the "fascinating international politics of shame, status, and hypocrisy that helped to produce the humanitarian rules now governing internal conflict."

JURISPRUDENCE AND SOCIOLEGAL THEORY

Giudice, Michael. *Social Construction of Law: Potential and Limits*. Northampton, MA: Edward Elgar Publishing, Inc., 2020. Pp. vii + 152. $99.00 cloth.

This book seeks to challenge the idea that law is a social construction, and to demonstrate the methodological value of pluralism in legal theory, by showing the continuity of conceptual,

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empirical, and morally evaluative theoretical approaches to law. Giudice uses accounts of European Union law and state-Indigenous relations in Canada to argue for the contingency and political costs of particular concepts of law, and draws from social and natural sciences to argue that law might nonetheless still have a naturally necessary core which is "not up to us to change by altering our beliefs, intentions, and practices."

LAW AND COLONIAL LEGALITIES

Yahaya, Nurfadzilah. *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia*. Ithaca, NY: Cornell University Press, 2020. Pp. xi + 251. $49.95 cloth.

This book tells the story of the Arab diaspora within the context of British and Dutch colonialism, unpacking the community's ambiguous embrace of European colonial authority in Southeast Asia. Yahaya explains why Arab minorities helped to fuel the entrenchment of European colonial legalities and how colonial subjects played one jurisdiction against another. She draws on material from multiple international archives to examine the interplay between colonial projections of order and their realities, Arab navigation of legally plural systems in Southeast Asia and beyond, and the fraught and deeply human struggles that played out between family, religious, contract, and commercial legal orders.

LAW AND CULTURE

Fraser, Julie, and Brianne McGonigle Leyh, eds. *Intersections of Law and Culture at the International Criminal Court*. Northampton, MA: Edward Elgar Publishing, Inc., 2020. Pp. xxiv + 429. $180.00 cloth.

Contributors to Fraser and McGonigle Leyh's volume explore the intersection of law and culture at the International Criminal Court, focusing on how notions of culture affect the Court's legal foundations, functioning, and legitimacy both in theory and in practice. They take a multidisciplinary approach to challenge the view that international law is not limited or bound by a particular culture, arguing instead that law and culture are intertwined.

LAW AND ECONOMICS

Friedman, Howard Steven. *Ultimate Price: The Value We Place on Life*. Oakland, CA: University of California Press, 2021. Pp. i + 221. $24.95 paper.

Friedman examines how economists and data scientists at US corporations, regulatory agencies, and insurance companies develop and use valuations of human lives. He finds that these valuations are infused with gender, racial, national, and cultural biases that often result in valuing the lives of the young more than the old, the rich more than the poor, whites more than blacks, Americans more than foreigners, and relatives more than strangers.

LAW AND EMANCIPATION

de Sousa Santos, Boaventura. *Toward a New Legal Common Sense: Law, Globalization, and Emancipation, 3rd Edition*. New York, NY: Cambridge University Press, 2020. Pp. xxxii + 665. $39.99 paper.

In this third edition of de Sousa Santos's classic work, he focuses on the question of whether law can be emancipatory. He argues that the paradigm of modernity, based on a dynamic tension between social regulation and social emancipation, has by the twenty-first century tilted in favor of regulation, to the determent of emancipation in both law and science; he considers emergent signs of new paradigms that would rectify this imbalance.

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LAW AND LITERATURE

Chapman, Alison A. *Courts, Jurisdictions, and Law in John Milton and His Contemporaries*. Chicago, IL: The University of Chicago Press, 2020. Pp. xvi + 214. $95.00 cloth.

Chapman considers the multiple, jostling, real-world legal systems in conflict in seventeenth-century England and brings to light the poet John Milton's use of the various legal systems and vocabularies of the time. Surveying Milton's early pamphlets, divorce tracts, late political tracts, and major prose works in comparison with the writings of some of Milton's contemporaries—including George Herbert, John Donne, Ben Jonson, and John Bunyan—Chapman highlights the variety and nuance in Milton's juridical toolkit and his subtle use of competing legal traditions in pursuit of justice.

LAW AND PROPERTY

Thorpe, Amelia. *Owning the Street: The Everyday Life of Property*. Cambridge, MA: MIT Press, 2020. Pp. xviii + 323. $35.00 paper.

Thorpe examines ways in which local, personal, and materially grounded understandings about belonging, ownership, and agency intersect with law to shape the city. She grounds her account in an empirical study of PARK(ing) Day, an annual event that reclaims street space from cars in a number of cities throughout the world, through a creative interpretation of the property producible by paying a parking meter. Paying a meter, the event's organizers argue, amounts to taking out a lease on the space; while most "lessees" use that property to store a car, an alternative is to pay the meter and use the space for other purposes.

LAW AND RACE

Paschal, Richard A. *Jim Crow in North Carolina: The Legislative Program from 1865 to 1920*. Durham, NC: Carolina Academic Press, 2020. Pp. xx + 297. $29.00 paper.

Paschal catalogs all of the US Jim Crow (anti-Black) laws enacted by the North Carolina legislature from 1865–1920 years, and argues that their discriminatory effect was created primarily through the means by which they were implemented, in interaction with societal values.

Thomas, William G., III. *A Question of Freedom: The Families Who Challenged Slavery from the Nation's Founding to the Civil War*. New Haven, CT: Yale University Press, 2020. Pp. ii + 418. $35.00 cloth.

From the founding of the US to the Civil war, hundreds of slaves in Prince George's County, Maryland filed suits for their freedom. Piecing together evidence from court archives, Thomas tells an "intricate and intensely human story" of the enslaved families, their lawyers (among them a young Francis Scott Key, author of the Star Spangled Banner), and the slaveholders who fought to defend slavery, beginning with the Jesuit priests who held some of the largest plantations in the nation and founded a college at Georgetown.

Vats, Anjali. *The Color of Creatorship: Intellectual Property, Race, and the Making of Americans*. Redwood City, CA: Stanford University Press, 2020. Pp. xx + 273. $28.00 paper.

Vats examines how copyright, trademark, and patent discourses work together to form ideals around race, citizenship, and property in the US. She examines archival, legal, political, and popular culture texts to see how intellectual properties developed alongside definitions of the "good citizen," "bad citizen," and intellectual labor in racialized ways. Offering a theory of critical race intellectual property, she historicizes the figure of the citizen-creator, the white male maker who was incorporated into the national ideology as a key contributor to the nation's moral and economic development.

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LAW AND RELIGION

Flatto, David C. *The Crown and the Courts: Separation of Powers in the Early Jewish Imagination*. Cambridge, MA: Harvard University Press, 2020. Pp. ii + 367. $39.95 cloth.

Flatto argues that a foundation of democratic rule was contemplated and justified by Jewish scholars and rabbis of antiquity long before liberal democracy was born: Jews struggled against the idea that a legal authority stemming from God could reside in the hands of an imperious ruler, and they argued that such authority lay with independent courts and the law itself. He concludes that by proclaiming the supremacy of law in the absence of power, postbiblical thinkers emphasized the centrality of law in the people's covenant with God, helping to revitalize Jewish life and establish allegiance to legal order.

Srikantan, Geetanjali. *Identifying and Regulating Religion in India: Law, History and the Place of Worship*. New York, NY: Cambridge University Press, 2020. Pp. viii + 251. $110.00 cloth.

This book investigates the identification and regulation of religion in postcolonial India through an intellectual history of law's creation of religion from colonial to postcolonial times in India. Srikantan argues that the impasse in the legal regulation of religion lies in the methodologies and frameworks used by British colonial administrators in identifying and governing religion. Drawing on insights from postcolonial theory and religious studies, she explores the role of secular legal reasoning in the background of Western intellectual history and Christian theology.

LAW AND REPUTATION

Shapira, Roy. *Law and Reputation: How the Legal System Shapes Behavior by Producing Information*. New York, NY: Cambridge University Press, 2020. Pp. xiii + 256. $39.99 paper.

Drawing on economics, communications, and a nascent multidisciplinary literature on reputation, Shapira highlights how reputation works, and specifically how information from litigation affects the court of public opinion, with a particular emphasis on the role of the media. By fleshing out interactions between law and reputation, the analysis seeks to correct common misperceptions about the ability of market forces to discipline corporate behavior and to address ongoing debates such as the desirability of heightened pleading standards or mandatory arbitration clauses.

LAW AND SOCIAL CHANGE

Lobban, Michael, and Ian Williams, eds. *Networks and Connections in Legal History*. New York, NY: Cambridge University Press, 2020. Pp. vii + 343. $120.00 cloth.

Contributors to Lobban and Williams's volume explore how networks of lawyers—from Scotland to East Florida and India—shaped the culture of the forums in which they operated, and how personal connections could be crucial in pressuring for reform. They focus on how new connections gave new life to ideas, while not necessarily determining where those ideas would lead: in some cases, new thinkers made intellectual connections not previously conceived, in others ideas and practices were applied to new purposes.

PRESIDENTIAL POWER

McConnell, Michael W. *The President Who Would Not Be King: Executive Power under the Constitution*. Princeton, NJ: Princeton University Press, 2020. Pp. xii + 421. $35.00 cloth.

Because the framers of the US Constitution left no records of their deliberations, McConnell analyzes successive drafts of the provisions regarding presidential powers to identify the framers' intent. He examines each of the powers considered, with a focus on how they were understood at the time of the founding. He provides a framework for evaluating separation of powers claims and concludes that the Constitution restrains the excesses of an imperial presidency while empowering the executive to govern effectively.

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