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Book Notes*

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CONSTITUTIONAL THEORY AND HISTORY

Barnett, Randy E., and Evan D. Bernick. *The Original Meaning of the Fourteenth Amendment: Its Letter and Spirit*. Cambridge, MA: Harvard University Press, 2021. Pp. xviii + 465. $35.00 cloth.

Barnett and Bernick argue that the US Supreme Court has long misunderstood or ignored the original meaning of the key clauses of the Fourteenth Amendment, which gave the federal judiciary and Congress new powers to protect the fundamental rights of individuals from being violated by the states.

Fishkin, Joseph, and William E. Forbath. *The Anti-Oligarchy Constitution: Reconstructing the Economic Foundations of American Democracy*. Cambridge, MA: Harvard University Press, 2022. Pp. ii + 632. $39.95 cloth.

Fishkin and Forbath argue that a commitment to prevent oligarchy once stood at the center of a robust tradition in US political and constitutional thought and that reformers, legislators, and even judges working in a "democracy-of-opportunity" tradition understood that the Constitution imposes a duty on legislatures to thwart oligarchy and promote a broad distribution of wealth and political power. They present evidence of this in the actions of the Jacksonians, Populists, and Progressives and during the Reconstruction and the New Deal.

Steinfeld, Robert J. *"To Save the People from Themselves": The Emergence of American Judicial Review and the Transformation of Constitutions*. New York: Cambridge University Press, 2021. Pp. xii + 438. $59.99 cloth.

Steinfeld offers a reinterpretation of the origins of judicial review in the United States, arguing that, in the colonial period, constitutions treated legislatures as the primary interpreters. He then considers the central role that lawyers and judges played in transforming this assumption, creating the practice and doctrine of judicial review in a six state cases during the 1780s. He concludes by showing that the ideas formulated during those years shaped critical decisions taken by the Constitutional Convention of 1787, which turned the novel practice into a permanent feature of the US constitutional system.

Tushnet, Mark. *The New Fourth Branch: Institutions for Protecting Constitutional Democracy*. New York: Cambridge University Press, 2021. Pp. ix + 186. $29.99 paper.

Many twenty-first-century constitutions now include a new "fourth branch" of government, a group of institutions charged with protecting constitutional democracy, which include electoral management bodies, anti-corruption agencies, and ombuds offices. Tushnet offers a general theory of the fourth branch, which can, by concentrating within themselves distinctive forms of expertise, deploy that expertise more effectively than the traditional branches are capable of doing. He acknowledges, however, that several case studies of fourth branch institutions have found that they do not always succeed in protecting constitutional democracy and, indeed, sometimes undermine it.

COURTS AND JUDGES

Auerbach, Sascha. *Armed with Sword and Scales: Law, Culture, and Local Courtrooms in London, 1860–1913*. New York: Cambridge University Press, 2021. Pp. xxii + 403. $99.99 cloth.

In the mid-eighteenth century, author and magistrate Henry Fielding adjudicated cases of theft, assault, and public disorder from his London home. By the middle of the nineteenth century, Fielding's modest "police office" had expanded to become the most prolific court system in Britain and the cornerstone of criminal and civil justice in the metropolis. Auerbach examines the history of this institution through the lens of "courtroom culture," focusing in part on how

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the local courtroom became a crucial part of everyday life and thoroughly entangled with popular representations of justice and morality.

Crouch, Melissa, ed. *Women and the Judiciary in the Asia-Pacific*. New York: Cambridge University Press, 2021. Pp. xx + 319. $110.00 cloth.

Contributors to Crouch's volume focus on the feminization of the judiciary—both its thin meaning of women's entrance into the profession as well as its thicker forms of realizing gender justice—in the Asia-Pacific region. Drawing on empirical studies, they detail past and present challenges that women face in entering the judiciary and progressing in their career as well as when and why they advocate for women's issues while on the bench.

CRIMINAL JUSTICE AND SOCIAL CONTROL

Baldwin, Peter. *Command and Persuade: Crime, Law, and the State across History*. Cambridge, MA: MIT Press, 2021. Pp. viii + 466. $34.95 cloth, also available in an Open Access edition.

Baldwin argues that levels of violent crime have been in a steady decline for centuries and that we currently live in a time that is more orderly and peaceful than ever before in human history. In this study of the evolution of the state's role in crime and punishment, he asks why, then, does a fear of crime dominate modern politics and why, when we have been largely socialized into good behavior, are there more laws that govern our behavior than ever before.

Kumar, Radha. *Police Matters: The Everyday State and Caste Politics in South India, 1900–1975*. Ithaca, NY: Cornell University Press, 2021. Pp. xix + 241. $19.99 paper.

Kumar argues that the colonial police deployed rigid notions of caste in their everyday tasks, refashioning rural identities in the Tamil countryside of India, and finds that this process has cast long postcolonial shadows. She draws on previously unexplored police archives to present a textured view of ordinary interactions between police and society and finds that state coercion was not only exceptional and spectacular, but it was also subtle and continuous, woven into everyday life, causing caste to become a particularly salient form of identity in the politics of public spaces.

Martin, Liam. *Halfway House: Prisoner Reentry and the Shadow of Carceral Care*. New York: New York University Press, 2021. Pp. iii + 246. $28.00 paper.

Every year, roughly 650,000 people reenter society after being released from state and federal prisons in the United States; this book goes behind the scenes at Bridge House, a residential reentry program near Boston, Massachusetts, to understand the experience through the eyes of former prisoners. Martin focuses on the role of the halfway house in a dense and often confusing web of organizations governing prisoner reentry and calls for a rethinking of the possibilities and pitfalls of using halfway houses to manage the worst excesses of mass incarceration.

Martin, Richard. *Policing Human Rights: Law, Narratives, and Practice*. New York: Oxford University Press, 2021. Pp. xxv + 417. $99.00 cloth.

This book examines the function of human rights law in modern policing, presenting the visions and values that police officers express in their daily narratives, sense making, and practices. Drawing on fieldwork with the Police Service of Northern Ireland—including interviews and focus groups with over one hundred officers from over twenty stations and five departments—Martin takes the reader "on a tour of four sites of policing to learn how and why human rights law comes to be socially constituted, organizationally conditioned and routinely interpreted and applied by police officers."

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Simes, Jessica T. *Punishing Places: The Geography of Mass Imprisonment*. Oakland, CA: University of California Press, 2021. Pp. xvii + 232. $29.95 paper.

Simes argues that mass incarceration should be conceptualized as one of the legacies of US racial residential segregation but that a focus on large cities has diverted scholarly and policy attention away from communities affected most by mass incarceration today. Using a spatial analysis, she finds that, contrary to common perceptions, the highest imprisonment rates in the United States are now in small cities, suburbs, and rural areas.

Stewart, Jules. *Policing the Big Apple: The Story of the NYPD*. London: Reaktion Books, 2021. Pp. 256. $25.00 cloth.

This book covers the history of policing in New York City from 1625—in then New Amsterdam—to the formation of the New York Police Department (NYPD) in 1845, through the 1930s battles with the Mafia, to 1990s zero tolerance. Along the way, Stewart examines episodes of political influence, corruption, and reform, including Tammany Hall, the Mafia, New York City mayors and the police, and the enrollment in the force of women and people of color. The story is told both through the eyes of the NYPD's commissioners and the visions they had for the force and the city and at the level of cops on the beat.

Thusi, India. *Policing Bodies: Law, Sex Work, and Desire in Johannesburg*. Stanford, CA: Stanford University Press, 2021. Pp. ix + 235. $28.00 paper.

In this study of policing in Johannesburg, South Africa, Thusi finds that police attitudes toward sex work are inconsistent and largely unregulated, leaving room not only for negotiation that can benefit sex workers but also for extreme precarity in which the security that police officers provide can be offered and taken away at a moment's notice. In this liminal space, this book considers how sex work is policed and how it should be policed. The analysis challenges discourses about sexuality and gender that inform its regulation, highlighting limitations of prevailing feminist arguments regarding the legal treatment of sex work.

Vannier, Marion. *Normalizing Extreme Imprisonment: The Case of Life without Parole in California*. New York: Oxford University Press, 2021. Pp. xvii + 212. $99.00 cloth.

This book explores the ties between the normalization of life imprisonment without the possibility of parole (LWOP) and death penalty abolitionism, using California as a case study. Vannier investigates the extent to which members of civil society who challenge capital punishment (lawyers, non-profit organizations, and lobbyists) have helped normalize LWOP by fostering the belief that it is humane and merciful. He focuses on three domains where anti-death penalty activists have lobbied, campaigned, pled for, and agreed to LWOP: Congress, the political sphere, and courtrooms. He pays particular attention to the actors' understandings of the concepts of "life" and "death" in punishment.

HUMAN RIGHTS

Viterbo, Hedi. *Problematizing Law, Rights, and Childhood in Israel/Palestine*. New York: Cambridge University Press, 2021. Pp. xi + 356. $110.00 cloth.

Viterbo argues that Israel has used international law and children's rights to hone and legitimize its treatment of Palestinians. He finds that the human rights community has been complicit in this situation due to its problematic assumptions about childhood, its uncritical embrace of international law, and its emulation of Israel's security discourse. He examines how, and to what effect, both the state and its critics manufacture, shape, and weaponize the categories "child" and "adult."

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LAW AND DEMOCRACY

Ginsburg, Tom. *Democracies and International Law*. New York: Cambridge University Press, 2021. Pp. xvii + 329. $39.99 cloth.

Ranging across several continents, Ginsburg surveys the state of democracy-enhancing international law and provides ideas for a way forward in the face of rising authoritarianism. He argues that, as the balance of power between democracies and non-democracies shifts, it will have consequences for international legal order; human rights may face severe challenges in the years ahead, but citizens of democratic countries may still benefit from international legal cooperation in other areas.

LAW AND THE DIGITAL WORLD

Sarat, Austin, Lawrence Douglas, and Martha Merrill Umphrey, eds. *Law and the Visible*. Amherst, MA: University of Massachusetts Press, 2021. Pp. ix + 194. $28.95 paper.

Contributors to Sarat, Douglas, and Umphrey's volume discuss the culpability of those who record violence, the history of racialized violence as it streams through police bodycams, the idea of digital images as objective or neutral, the logics of surveillance and transparency, and a defense of anonymity in the digital age.

LAW AND THE ENVIRONMENT

Lazarus, Richard J. *The Rule of Five: Making Climate History at the Supreme Court*. Cambridge, MA: Harvard University Press, 2021. Pp. viii + 358. $21.95 paper.

Lazarus recounts the behind-the-scenes story of the 2007 US Supreme Court decision in *Massachusetts v. EPA*, a five-to-four decision that declared carbon dioxide to be a harmful pollutant under the Clean Air Act. He concludes that chance, infighting, luck, superb lawyering, and the arcane practices of the US Supreme Court collided to produce a "legal miracle."

Rinfret, Sara R., ed. *Who Really Makes Environmental Policy?: Creating and Implementing Environmental Rules and Regulations*. Philadellphia, PA: Temple University Press, 2021. Pp. x + 205. $29.95 paper.

Focusing on the creation of environmental policy by experts in US federal environmental agencies and the implementation of that policy at the state level, contributors to Rinfret's volume examine rule-making processes and regulatory policy, both conceptually and in case studies. The case studies deal with oil and gas regulations in Colorado and the regulation of coal ash disposal in southeastern states.

LAW AND FAMILY RELATIONSHIPS

Acosta, Katie L. *Queer Stepfamilies: The Path to Social and Legal Recognition*. New York: New York University Press, 2021. Pp. x + 257. $30.00 paper.

Drawing on in-depth interviews with more than forty US families, Acosta contextualizes the legal realities of lesbian, gay, bisexual, transgender, and queer stepparent families and considers the actions that these parents take to protect their families in the absence of comprehensive policies or laws geared to meet their needs. She highlights the obstacles that the families face in family courts during divorce proceedings and custody cases and highlights their distrust of courts when it comes to acting in their children's best interests, especially in the event of an origin parent's death.

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López, Jane Lilly. *Unauthorized Love: Mixed-Citizenship Couples Negotiating Intimacy, Immigration, and the State*. Stanford, CA: Stanford University Press, 2021. Pp. xv + 260. $26.00 paper.

López offers a comprehensive, critical look at US family reunification law and its consequences as experienced by fifty-six mixed-citizenship married couples. These couples' stories—of integration and alienation, of opportunity and inequality, of hope and despair—make tangible the consequences of current immigration laws that tend to favor Whiteness, wealth, and heteronormativity as well as the individual, rather than the family unit, in awarding membership and official belonging.

LAW AND INDIGENOUS PEOPLES

Richland, Justin B. *Cooperation without Submission: Indigenous Jurisdictions in Native Nation-US Engagements*. Chicago: Chicago University Press, 2021. Pp. xiii + 230. $25.00 paper.

Richland closely examines the language employed by both Native American Tribes and US government agencies in over eighty hours of meetings between the two. He finds that the tribes conduct these meetings using language that demonstrates their commitment to nation-to-nation interdependency, while federal agents appear to approach these consultations with the assumption that federal law is supreme and ultimately authoritative. A key focus is on the ways in which the tribes use their language to engage in "cooperation without submission."

Rück, Daniel. *The Laws and the Land: The Settler Colonial Invasion of Kahnawà:ke in Nineteenth-Century Canada*. Vancouver: UBC Press, 2021. Pp. xv + 312. $44.95 cloth.

Tracing settler efforts to dispossess the Kahnawà:ke nation in Canada, Rück emphasizes the violent ways in which settler law clashed with Indigenous law during a series of asymmetrical bouts over land use. He concludes that the contested path from land sharing to the colonial imposition of private property was nothing less than an invasion, spearheaded by bureaucrats, politicians, and entrepreneurs.

LAW AND INEQUALITY

Gibson, James L., and Michael J. Nelson. *Judging Inequality: State Supreme Courts and the Inequality Crisis in the United States*. New York: Russell Sage Foundation, 2021. Pp. xxii + 356. $35.00 paper.

Drawing on an original database of nearly six thousand decisions made by over nine hundred judges on fifty US state supreme courts over a quarter century, Gibson and Nelson find that the effect of court sanctions on inequality depends on the ideologies of the justices, the policy preferences of the people of the state, and the institutional structures that determine who becomes, and who remains, a judge. They reject the conventional theory that state supreme courts tend to protect underdog litigants and conclude that the ideological compositions of state supreme courts most often mirror the dominant political coalition in their state.

LAW AND INTIMACY

Canaday, Margot, Nancy F. Cott, and Robert O. Self, eds. *Intimate States: Gender, Sexuality, and Governance in Modern US History*. Chicago: University of Chicago Press, 2021. Pp. iv + 356. $27.50 paper.

Contributors to Canaday, Cott, and Self's volume offer analyses of the relationship between state power and intimate experience in the United States from the Civil War to the present. They argue that "intimate governance"—the binding of private daily experience to the apparatus of the state—should be central to our understanding of modern US history. They conclude that our personal

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experiences have been controlled and arranged by the state in ways that we often do not even see and that the state is always with us, even in our most seemingly private moments.

LAW AND LABOR

Posner, Eric A. *How Antitrust Failed Workers*. New York: Oxford University Press, 2021. Pp. xi + 206. $29.95 cloth.

This book argues that the failure of antitrust law to prevent the consolidation of employers is an unacknowledged driver of inequality and wage stagnation in the United States. While antitrust law is well known for its role in combating anticompetitive actions in product markets, Posner argues that it also applies to anticompetitive conduct by employers in labor markets, which suppresses wages. Yet he finds that there have been few labor market cases or enforcement actions and almost no scholarly commentary on the role of antitrust law in labor markets.

LAW AND LANGUAGE

Sarat, Austin, Lawrence Douglas, and Martha M. Umphrey, eds. *Law's Infamy: Understanding the Canon of Bad Law*. New York: New York University Press, 2021. Pp. ii + 277. $30.00 paper.

Contributors to Sarat, Douglas, and Umphrey's volume ask when and why the word "infamy" should be used to characterize legal decisions or actions. They consider how legal institutions themselves engage in infamous actions, and they urge that scholars and activists identify infamous decisions that are worthy of repudiation and label them as such, highlighting the damage done when law itself acts infamously.

LAW AND MEDICINE

Dumsday, Travis. *Assisted Suicide in Canada: Moral, Legal, and Policy Considerations*. Vancouver: UBC Press, 2021. Pp. x + 197. $75.00 cloth.

Dunsday examines the ethical, legal, and political contours of the *Carter v. Canada* decision, in which the Supreme Court of Canada decriminalized assisted suicide and voluntary euthanasia.

Grossman, Lewis A. *Choose Your Medicine: Freedom of Therapeutic Choice in America*. New York: Oxford University Press, 2021. Pp. x + 400. $34.95 cloth.

Grossman examines how persistent but evolving notions of a right to therapeutic choice have affected US health policy, law, and regulation from the Revolution through the present. He grounds his analysis in historical examples ranging from unschooled supporters of botanical medicine in the early nineteenth century to sophisticated cancer patient advocacy groups in the twenty-first century.

LEGAL PROFESSION

Feeley, Malcolm, and Malcolm Langford, eds. *The Limits of Legal Complex: Nordic Lawyers and Political Liberalism*. New York: Oxford University Press, 2021. Pp. ix + 304. £80.00 cloth.

Contributors to Feeley and Langford's volume seek to understand why and when lawyers mobilize collectively for political liberalism. Focusing on the history and politics of lawyers of the last two hundred years in Norway, Sweden, Denmark, Finland, and Iceland, they find that, contrary to the situation in most liberal societies, political lawyers were not essential for the development of a

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liberal political regime. Together, they challenge the explanatory theory of the legal complex, arguing instead that lawyers' political activism is a strategic choice, not just the product of socialization.

Garth, Bryant G., and Yves Dezalay. *Law as Reproduction and Revolution: An Interconnected History*. Oakland: University of California Press, 2021. Pp. x + 236. $34.95 paper.

Drawing on the combined histories of the legal profession, imperial transformations, and the enduring and conservative role of cosmopolitan elites at the top of legal hierarchies, Garth and Dezalay use case studies in India, Hong Kong, South Korea, Japan, and China to explain how interconnected legal histories are stories of both revolution and reproduction. They analyze the conjoined global histories of law and social change from the Middle Ages to today; detail the extent to which the legal revolution emanating from the United States has transformed legal hierarchies of power across the globe; and examine the global proliferation of large corporate law firms and US-style legal education.

PRIVATE GOVERNMENT

Grisel, Florian. *The Limits of Private Governance: Norms and Rules in a Mediterranean Fishery*. Oxford: Hart Publishing, 2021. Pp. xi + 178. $103.50 cloth.

For the last eight centuries, the fishers of Marseille have regulated their community without apparent means of legal support from the French state; since the early fifteenth century, this has been accomplished through the Prud'homie de Pêche, an organization they created to regulate their fishery. Drawing on archival evidence, interviews, and ethnographic data, Grisel examines the evolution of the Prud'homie de Pêche and argues that the strong social norms in which it is embedded are not only powerful tools of governance but also forces of inertia that have constrained its regulatory action.

LAW AND RACE

Gelbman, Shamira. *The Civil Rights Lobby: The Leadership Conference on Civil Rights and the Second Reconstruction*. Philadelphia, PA: Temple University Press, 2021. Pp. xiii + 203. $29.95 paper.

As the lobbying arm of the US civil rights movement, the Leadership Conference on Civil Rights—which has operated since the early 1950s—was instrumental in the historic legislative breakthroughs of the Second Reconstruction, especially in the 1950s and 1960s. Gelbman finds that, in spite of the vast diversity of its constituent members, the coalition identified common ground among member organizations, developed coordinated positions on substantive and strategic questions, exhorted organizations to mobilize professional and grassroots lobbying resources accordingly, and ultimately achieved the goal of "speaking with one booming voice."

LAW AND SEXUALITY

Upchurch, Charles. *"Beyond the Law": The Politics of Ending the Death Penalty for Sodomy in Britain*. Philadelphia, PA: Temple University Press, 2021. Pp. x + 289. $39.95 paper.

Upchurch uses a queer history methodology to recount the story of the political process through which the English law that allowed for the death penalty for sodomy was almost ended in 1841. The last executions for sodomy in England were in 1835, but the formal law was not repealed until 1861. He recounts the legal and political efforts of reformers like Jeremy Bentham, and he concludes that recovery of the ethical, religious, and humanitarian arguments against punishing sodomy overturns long-standing assumptions of nineteenth-century British history.

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