change. A good example is the item veto. The flexible amendment procedures in the states, however, provided avenues for evolution in the states where "repeated questioning" (273) concerning these issues lead to "reconsideration of the federal model" (271).

Dinan is not arguing for an original intent form of judicial review. In other words, it is not a lawyer's argument. Rather, he seeks to reveal the nature of political and governmental debates in the state, rather than federal, constitutional context. He notes that it is not only Americans, but also constitution makers in other countries who should be aware of the two related, but distinct, American constitutional traditions (277).

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Roy Kreitner, *Calculating Promises: The Emergence of Modern American Contract Doctrine,* Palo Alto: Stanford University Press, 2006. Pp. xii + 242. $55.00 (ISBN 0-804-75398-9).

This is a book for those who like high legal theory. It does not simply theorize about American contract doctrine, but about contract theory; it develops a meta-theory. The thesis presented is very clearly explained in the Introduction. The author:

> . . . argues, against conventional wisdom, that our current conceptions of contract is not the outgrowth of gradual, piecemeal refinements of a centuries-old idea of contract. Rather, contract as we know it was shaped by a revolution in private law undertaken by classical legal scholars towards the end of the nineteenth century.

Who were these classical legal scholars? The writers he has in mind are J. B. Ames, W. R. Anson, J. H. Beale, A. L. Corbin, O. W. Holmes, C. C. Langdell, J. F. Pollock, and S. Williston; two of them, Anson and Pollock, were of course English. The argument gets more complicated:

> Further, the revolution in contract thinking is best understood in a frame of reference wider than the rules governing the formation and enforcement of contracts. That frame of reference is a cultural negotiation over the nature of the individual subject and his role in a society undergoing transformation.

There follow four chapters on "Gifts and Promises Revisited," four dealing with "Speculations of Contract," concerned with attitudes towards insurance contracts and gambling, four chapters about "The Narratives of Incomplete Contracts," and a final chapter: "Conclusion: Undermining the Metaphysics of Contract." The conclusion, which can only be reproduced with simplification, is that the revolutionary theory developed about the turn of the nineteenth century assumed that contracting parties were rational calculating individuals, which happens to be the credo of the law economics faith. Thus:

> The assumption of calculation is encapsulated in the theory of consideration, which at once strips the past of meaning (past consideration is no consideration) and at the same time assumes equivalence while denying the law's capacity for examining consideration's adequacy (233).

This passage illustrates a feature of the book: its unhistorical character. These two doctrines were both in the case law of the sixteenth century, and the doctrine of past consideration is set out in St. Germain's *Doctor and Student* in 1530, being derived from medieval works derivative of canon and civil law. Again we are told that expectation damages, measured in terms of the difference between the contract price and the market price in a contract for the future delivery of goods, was intimately connected with the evolution of futures trading (105). In reality the precise formulation of this idea is to be found clearly expressed in the count in *Pyckeryng v. Thurgoode* back in 1532, long before the Chicago exchange, or any other futures market, had yet been invented. So although the thesis of the book is presented as an historical thesis about a revolution, in thought, this book is not about the history of the practice of contract enforcement, which has been going on happily enough in the common law world for some nine hundred years or more. Nor is it about the relationship, if any, between the theorizings of academics and this practice of adjudication and enforcement, for all but one of the persons I have listed (the exception is Holmes, a sort of retired professor) were primarily academics. Instead it seems to me to represent an attempt to tease out the underlying presuppositions of these writers. And, if you like that sort of thing, you will like this book, since given the genre to which it belongs, the attempt is presented with great ingenuity and an underlying and infectious enthusiasm. Some of what seems at first reading, the wilder comments, such as that Gilmore's *Death of Contract* is best understood as a work of literary criticism, are indeed on further consideration quite thought provoking. So that was what the great man was engaged in, rather than simply the writing of historical twaddle, uninhibited by more or less total ignorance of his subject! Where one goes from there I am not sure, but it is an interesting idea. Is that perhaps how to categorize the weirder offerings to be found in the law reviews?

I personally am deeply skeptical as to the possibility of there ever occurring, within a legal system, Kuhn type paradigm shifts in legal thinking so dramatic that they can usefully be viewed as revolutionary. What seems to me to have happened in the late nineteenth century is the development of doctrine to curb the previous system of free jury discretion, rather than a replacement of old doctrine by new. But Professor Kreitner may well convince readers that I am wrong. And he should certainly be given the chance. So this is a book that needs to be read.

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Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear,* New York: Oxford University Press, 2007. Pp. viii + 330. $29.95 (ISBN 0-19-518108-5).

Americans have always balanced their dread of crime against their fear of overly powerful government. Americans first protected themselves against government by increasing the burden on law-enforcing authorities to find and prove guilt. Seeing crime as a secular mystery satisfied one need but guaranteed dissatisfaction with