

## Book Notes\*

### CONTENTS

ADMINISTRATION AND LEGITIMACY.....	852
CAPITAL PUNISHMENT .....	852
COMMON LAW IN COLONIAL AMERICA.....	852
CONSTITUTIONAL THEORY AND HISTORY .....	853
CRIMINAL JUSTICE AND SOCIAL CONTROL .....	853
HUMAN RIGHTS.....	854
JUDICIAL SELECTION .....	855
JUDICIAL CAPACITY.....	855
LAW AND ASYLUM .....	855
LAW AND ELECTIONS .....	856
LAW AND FAMILY RELATIONSHIPS.....	856
LAW AND MARKETS .....	856
LAW AND MENTAL HEALTH.....	857
LAW AND POLITICS.....	857
LAW AND PROPERTY.....	857
LAW AND RACE.....	857
LAW AND SEXUALITY .....	858
LEGAL CONSCIOUSNESS .....	858
LEGAL PROFESSION .....	858
POPULARIZATION OF LEGAL KNOWLEDGE.....	859
ROMAN LAW AND THE IDEA OF EUROPE .....	859
RULE OF LAW.....	859
US SUPREME COURT .....	859

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\*Book Notes are adapted from promotional material provided by the publishers.

## ADMINISTRATION AND LEGITIMACY

Mashaw, Jerry L. *Reasoned Administration and Democratic Legitimacy: How Administrative Law Supports Democratic Government*. New York: Cambridge University Press, 2018. Pp. ix + 201. \$29.99 paper.

Drawing on history, sociology, political theory, and law, Mashaw responds to the argument that modern administrative states are a threat to liberty and at war with democratic governance. Focusing on the law's demand for reason-giving and reasonableness as the crucial criterion for the legality of administrative action, he argues that reasoned administration is more respectful of rights and equal citizenship and truer to democratic values than lawmaking by either courts or legislatures.

## CAPITAL PUNISHMENT

Kotch, Seth. *Lethal State: A History of the Death Penalty in North Carolina*. Chapel Hill, NC: University of North Carolina Press, 2019. Pp. 307. \$27.95 paper.

Kotch recounts the history of the death penalty in North Carolina from its colonial origins. He tracks the attempts to reform the administration of death, as it sought to remake its image as modern and business-progressive in the early twentieth century but argues that Jim Crow justice continued to reign in the guise of a modernizing, orderly state. He considers the relationship between race, violence, and power in the state and concludes that the history of capital punishment in North Carolina emerges as one of state-building through lethal punishment.

Maratea, R.J. *Killing with Prejudice: Institutionalized Racism in American Capital Punishment*. New York: New York University Press, 2019. Pp. ix + 233. \$26.00 cloth.

Maratea chronicles the litigation process that culminated in the US Supreme Court's *McCleskey* decision, which rejected the relevance of empirical evidence of grossly disproportionate application of the death penalty to Georgia blacks who killed whites. His book connects the lynchings of the Jim Crow era to the contemporary acceptance of the death penalty and the problem of mass incarceration today.

Sarat, Austin. *The Death Penalty on the Ballot: American Democracy and the Fate of Capital Punishment*. New York: Cambridge University Press, 2019. Pp. xi + 194. \$29.99 paper.

Sarat reports on his study of initiative and referendum processes on the death penalty in the United States, explaining how these processes have played an important, but generally neglected, role in the recent history of America's death penalty. He addresses the argument that the death penalty is incompatible with democracy's underlying commitment to respect the equal dignity of all, by documenting what happens when the public has the opportunity to decide on the fate of capital punishment.

## COMMON LAW IN COLONIAL AMERICA

Nelson, William E. *The Common Law in Colonial America, Volume IV: Law and the Constitution on the Eve of Independence, 1735–1776*. New York: Oxford University Press, 2018. Pp. xiii + 206. \$55.00 cloth.

This fourth volume of Nelson's work on the common law in colonial America details how the many legal orders of Britain's North American colonies gradually evolved into one system. Initially established on divergent political, economic, and religious grounds, the diverse colonial systems slowly converged until it became possible by the 1770s to imagine that all thirteen participated in a common American legal order, which diverged in its details but differed far more substantially from English common law.

## CONSTITUTIONAL THEORY AND HISTORY

Clark, Tom S. *The Supreme Court: An Analytic History of Constitutional Decision Making*. New York: Cambridge University Press, 2019. Pp. xxii + 428. \$29.99 paper.

Spanning the history of US constitutional law since Reconstruction, Clark uses statistical methods and historical analysis of court decisions to illustrate the way in which the law evolves with American life. He argues that a social-scientific approach to the history of law illuminates connections across disparate areas of the law, connected by the social context in which the Constitution has been interpreted.

Dixon, Rosalind, and Adrienne Stone, eds. *The Invisible Constitution in Comparative Perspective*. New York: Cambridge University Press, 2018. Pp. x + 583. \$110.00 cloth.

Contributors to Dixon and Stone's volume examine the idea of "invisibility" in relation to more traditional understandings of written versus unwritten constitutionalism. Case studies include discussions of constitutional practice in Australia, Canada, China, Germany, Hong Kong, Israel, Italy, Indonesia, Ireland, and Malaysia.

Edelstein, Dan. *On the Spirit of Rights*. Chicago: University of Chicago Press, 2019. Pp. 325. \$40.00 cloth.

Edelstein examines the genealogy of the rights regimes enshrined in the American and French Revolutions, surveying a sprawling series of debates among rulers, jurists, philosophers, reformers, writers, and others, who were engaged in laying the groundwork for contemporary systems of constitutional governance. Every seemingly new claim about rights turns out to be a variation on a theme, as late medieval notions were subtly repeated and refined to yield the talk of "rights" we recognize today.

Lomazoff, Eric. *Reconstructing the National Bank Controversy: Politics & Law in the Early American Republic*. Chicago: University of Chicago Press, 2018. Pp. x + 253. \$30.00 paper.

Lomazoff argues that the controversy over the creation of the Bank of the United States was much more dynamic than a debate over the "necessary and proper" clause of the US Constitution and was shaped as much by politics as by law. He finds that three forces—changes within the Bank itself, growing tension over federal power within the Republican coalition, and the endurance of monetary turmoil beyond the War of 1812—drove the development of the key early dispute over the scope of federal power.

Sutton, Jeffrey S. *51 Imperfect Solutions: States and the Making of American Constitutional Law*. New York: Oxford University Press, 2018. Pp. xi + 278. \$29.95 cloth.

Sutton, a judge on the US Court of Appeals, argues that underappreciation of state constitutional law has undermined the appropriate balance between state and federal courts in protecting individual liberty. Looking at equal protection, criminal procedure, privacy, free speech, and free exercise of religion, he considers the contribution of state courts and finds "a remarkably complex, nuanced, ever-changing federalist system, one that ought to make lawyers and litigants pause before reflexively assuming that the United States Supreme Court alone has all of the answers."

## CRIMINAL JUSTICE AND SOCIAL CONTROL

Alden, Andrea L. *Disorder in the Court: Morality, Myth, and the Insanity Defense*. Tuscaloosa, AL: University of Alabama Press, 2018. Pp. x + 197. \$54.95 cloth.

Combining archival, textual, and rhetorical analysis, Alden offers a close reading of trial transcripts, appellate court opinions, and relevant medical literature on the insanity defense. She contextualizes these analyses through popular texts—for example, newspaper articles and editorials—showing that

while all societies have maintained some version of mental illness as a mitigating factor in their penal systems, the insanity defense has always been fraught with controversy because the legal concept of insanity does not map neatly onto the mental health professions' understandings of mental illness.

Alyagon Darr, Orna. *Plausible Crime Stories: The Legal History of Sexual Offences in Mandate Palestine*. New York: Cambridge University Press, 2019. Pp. xiii + 201. \$110.00 cloth.

Drawing on archival materials from Mandate Palestine, including documents relating to 147 cases of sex offenses, Alyagon Darr approaches the historical study of criminal law and proof through a focus on plausibility. She argues that since plausibility is predicated on commonly held systems of belief, it not only provides a key to the meanings individuals ascribe to the law but also yields insight into communal perceptions of the legal system, self-identity, the essence of normality and deviance, and notions of gender, morality, nationality, ethnicity, age, religion, and other cultural institutions.

Goode, Erich. *The Taming of New York's Washington Square: A Wild Civility*. New York: New York University Press, 2018. Pp. xiii + 299. \$30.00 paper.

Goode offers an ethnographic and interview-based look at the power of informal social control in Washington Square Park in New York City's Greenwich Village. He finds that while there are many violations of park rules and ordinances (e.g. cigarette and marijuana smoking, alcohol consumption, public urination, skateboarding, and bike riding), onlookers, bystanders, and witnesses—both denizens and casual park visitors—provide an effective system of social control, keeping more serious wrongdoing in check. These findings are contrary to those underlying the “broken windows” theory of disorder.

Sarat, Austin, Lawrence Douglas, and Martha Merrill Umphrey, eds. *Criminals and Enemies*. Amherst, MA: University of Massachusetts Press, 2019. Pp. ix + 164. \$27.95 paper.

Drawing on political philosophy, legal analysis, and historical research, contributors to Sarat, Douglas, and Umphrey's volume argue that the criminal/enemy distinction is central to the structure and practice of contemporary law. The editors' introduction situates criminals and enemies in a theoretical context, focusing on the work of Thomas Hobbes and Carl Schmitt, while other essays consider topics ranging from Germany's denazification project to South Africa's pre- and post-apartheid legal regime to the complicating factors introduced by the war on terror.

Seo, Sarah A. *Policing the Open Road: How Cars Transformed American Freedom*. Cambridge, MA: Harvard University Press, 2019. Pp. 339. \$28.95 cloth.

Seo argues that the rise of the automobile led people to accept—and expect—pervasive police power in the United States. Before the twentieth century, most Americans rarely came into contact with police officers. But with more and more drivers behind the wheel, police expanded their forces and officers' authority to stop citizens who violated traffic laws was increased. In a society dependent on cars, everyone—the law-breaking and law-abiding alike—would be subject to discretionary policing. In this environment, she concludes, the Warren Court's efforts to protect Americans did more to accommodate than to limit police intervention.

## HUMAN RIGHTS

Destrooper, Tine, and Sally Engle Merry, eds. *Human Rights Transformation in Practice*. Philadelphia, PA: University of Pennsylvania Press, 2018. Pp. xii + 278. \$69.95 cloth.

Contributors to Destrooper and Merry's volume empirically examine factors that impact how human rights ideals become formalized in local legal systems, sometimes becoming customary norms, and at other times failing to take hold. They also explore the ways in which local struggles may inspire the development of human rights norms at the transnational level, and how

vernacularization and localization processes may be shaped by different causes of human rights violations, the perceived nature of violations, and the existence of networks and formal avenues for information-sharing.

Suami, Takao, Anne Peters, and Dimitri Vanoverbeke, eds. *Global Constitutionalism from European and East Asian Perspectives*. New York: Cambridge University Press, 2018. Pp. xv + 607. \$145.00 cloth.

Global Constitutionalism, which has been discussed primarily by European scholars, argues that parts of international law can be understood as being grounded in the rule of law and human rights, and insists that international law should be progressively developed in the direction of greater respect for and realization of those principles. Contributors to Suami, Peters, and Vanoverbeke's volume argue that these universalist claims need greater engagement of scholars from outside Europe, and they add the perspective of East Asian scholars to the discussion.

## JUDICIAL SELECTION

Goelzhauser, Greg. *Judicial Merit Selection: Institutional Design and Performance for State Courts*. Philadelphia, PA: Temple University Press, 2019. Pp. x + 201. \$32.95 paper.

Goelzhauser examines the unique aspect of merit selection of judges in the United States—its use of nominating commissions to winnow applicants prior to gubernatorial appointment. His analysis includes data from several states, including a case study from inside an Arizona nominating commission's proceedings; use of public records to examine which applicants are nominated and which are chosen; evaluation of which attorneys apply for consideration and which judges apply for promotion; and examination of whether design differences across systems impact performance in the seating of judges.

Hernandez, Samantha L., and Sharon A. Navarro, eds. *Race, Gender, Sexuality, and the Politics of the American Judiciary*. New York: Cambridge University Press, 2019. Pp. xvii + 184. \$110.00 cloth.

Contributors to Hernandez and Navarro's volume examine the representation of different identities in the judiciary in the United States. They consider such issues as the recruitment, institutional inclusion, and retention of groups previously excluded from federal, state, and local judiciaries, and conclude that diversity on the bench improves the quality of justice, bolsters confidence in the legitimacy of the courts, and provides a vital voice in decision-making power for formerly disenfranchised populations.

## JUDICIAL CAPACITY

Coan, Andrew. *Rationing the Constitution: How Judicial Capacity Shapes Supreme Court Decision-Making*. Cambridge, MA: Harvard University Press, 2019. Pp. viii + 265. \$39.95 cloth.

Due to the structural organization of the judiciary and certain widely shared professional norms, the capacity of the US Supreme Court to review lower-court decisions is severely limited. As a result, Coan argues, in deciding cases the Court must not invite more litigation than it can handle. On many of the most important constitutional questions—federalism, the separation of powers, and individual rights—this constraint creates a strong pressure to adopt hard-edged categorical rules, to defer to the political process, or both. The limits of judicial capacity also substantially constrain the Court's much touted power to overrule democratic majorities.

## LAW AND ASYLUM

Kahn, Jeffrey S. *Islands of Sovereignty: Haitian Migration and the Borders of Empire*. Chicago: University of Chicago Press, 2019. Pp. xi + 355. \$35.00 paper.

Combining ethnography—in Haiti, at Guantánamo, and alongside US migration patrols in the Caribbean—with in-depth archival research, Kahn examines how litigation concerning the fate of Haitian asylum seekers gave birth to a novel paradigm of offshore oceanic migration policing. Drawing on his findings, he develops a theory of liberal empire's dynamic tensions and its racialized geographies of securitization.

## LAW AND ELECTIONS

Bateman, David A. *Disenfranchising Democracy: Constructing the Electorate in the United States, the United Kingdom, and France*. New York: Cambridge University Press, 2018. Pp. xix + 348. \$29.99 paper.

Through case studies of the United States, the United Kingdom, and France, Bateman offers a cross-national account of the relationship between democratization and disenfranchisement—the expansion of the right to vote for some, accompanied by the disenfranchisement of others. He develops a political institutional perspective to explain their co-occurrence, focusing on the politics of coalition building and the visions of political community those coalitions advance in support of their goals.

## LAW AND FAMILY RELATIONSHIPS

Engelcke, Dörthe. *Reforming Family Law: Social and Political Change in Jordan and Morocco*. New York: Cambridge University Press, 2019. Pp. xv + 266. \$99.99 cloth.

Drawing on extensive fieldwork, Engelcke examines why Morocco and Jordan—two ostensibly similar semi-authoritarian regimes in Muslim-majority countries, which both issued new family codes in the 2000s—differed so significantly in their engagement with family law. She finds that the structure of the legal systems, shaped by colonial policies, affected how reform processes were carried out as well as the content and the application of family law.

Stephens, Julia. *Governing Islam: Law, Empire, and Secularism in South Asia*. New Delhi: Cambridge University Press, 2019. Pp. xiii + 220. \$28.99 paper.

Stephens traces the colonial roots of contemporary struggles between Islam and secularism in India, Pakistan, and Bangladesh. She highlights the paradoxical workings of colonial laws that promised to separate secular and religious spheres, but instead fostered their vexed entanglement, finding that religious laws governing families became embroiled with secular laws governing markets, and that calls to protect religious liberties clashed with freedom of the press. Her narrative weaves between state courts, Islamic fatwas on ritual performance, and intimate marital disputes to reveal how deeply law penetrates everyday life.

## LAW AND MARKETS

Listokin, Yair. *Law and Macroeconomics: Legal Remedies to Recessions*. Cambridge, MA: Harvard University Press, 2019. Pp. 269. \$45.00 cloth.

After the economic crisis of 2008, private-sector spending took nearly a decade to recover. Harking back to New Deal regulatory agencies, Listokin argues that we can respond more quickly to the next meltdown by taking seriously law's ability to function as a macroeconomic tool, stimulating demand when needed and relieving demand when it threatens to overheat economies. He recognizes that law is an unwieldy instrument of macroeconomic policy, but concludes that it can offer a vital alternative to the monetary and fiscal policy tools that stretch the legitimacy of technocratic central banks.

## LAW AND MENTAL HEALTH

Ash, Peter, ed. *From Courtroom to Clinic: Legal Cases that Changed Mental Health Treatment*. New York: Cambridge University Press, 2019. Pp. xiii + 170. \$29.99 paper.

Over the past fifty years, a number of landmark court holdings in the United States have changed such basic principles as what material is confidential in mental health proceedings, how civil commitment and involuntary treatment are conducted, and when a therapist has a duty to protect the public from a dangerous patient. Contributors to Ash's volume explore these principles through the stories of the litigants involved in those cases.

## LAW AND POLITICS

Clark, Philip. *Distant Justice: The Impact of the International Criminal Court on African Politics*. New York: Cambridge University Press, 2018. Pp. xiii + 379. \$34.99 paper.

Drawing on 650 interviews conducted over eleven years, Clark critically assesses the politics of the International Criminal Court (ICC) in Uganda and the Democratic Republic of Congo, focusing particularly on the Court's impact on national politics and the lives of everyday citizens. He explores the ICC's effects on peace negotiations, national elections, domestic judicial reform, amnesty processes, combatant demobilization, and community-level accountability and reconciliation. His conclusion is that, in attempting to distance itself from African conflict zones geographically, philosophically and procedurally, the ICC became more politicized and damaging to African polities.

## LAW AND PROPERTY

Zavattaro, Staci M., Gregory R. Peterson, and Ann E. Davis, eds. *Property Rights in Contemporary Governance*. Albany, NY: State University of New York Press, 2019. Pp. xxi + 205. \$85.00 cloth.

Contributors to Zavattaro, Peterson, and Davis's volume examine how diverse understandings of property impact real-world governing strategies. Essays focus on such topics as the origin of the corporation, the role of the takings law, the development of legal protections for financial instruments in nineteenth-century France, the impact of climate change, the shifts in philosophical conceptions of property required by advances in intellectual property rights, and the influence of new technologies, including drones.

## LAW AND RACE

Carr, M. Kelly. *The Rhetorical Invention of Diversity: Supreme Court Opinions, Public Arguments, and Affirmative Action*. East Lansing, MI: Michigan State University Press, 2018. Pp. viii + 310. \$49.95 paper.

Using public address texts, legal briefs, memoranda, and draft opinions, Carr looks at how public arguments informed the amicus briefs, chambers memos, and legal principles in the 1978 US Supreme Court *Bakke* case, which held that universities can use race as an admissions factor to achieve the goal of a diverse student body. She argues that *Bakke* is a legal and rhetorical milestone that helped to shift the justificatory grounds of race-conscious policy away from a recognition of historical discrimination and its call for reparative equality, and toward an appreciation of racial diversity.

Gibson, James. *Black and Blue: How and Why African Americans Judge the American Legal System*. New York: Oxford University Press, 2018. Pp. xxii + 196. \$29.00 paper.

Drawing on two nationally representative samples of African Americans, Gibson brings data to bear on the Legitimacy and Social Identity theories of public opinion, theories of adulthood political

socialization and learning through experience, and theories of information processing. He finds a gaping chasm in views of legal legitimacy between black and white Americans, and as well as substantial variation within the African American population, with group identities and experiences with legal authorities playing a crucial role.

Hunter, Tera W. *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century*. Cambridge, MA: Harvard University Press, 2019. Pp. 404. \$19.95 paper.

Drawing from plantation records, legal documents, and personal family papers, Hunter develops a history of African American marriage in the nineteenth century, focusing on the many creative ways enslaved couples upended white Christian ideas of marriage as exclusively a “sacred union.”

## LAW AND SEXUALITY

Eskridge, Jr., William N., and Robin Fretwell Wilson, eds. *Religious Freedom, LGBT Rights, and the Prospects for Common Ground*. New York: Cambridge University Press, 2019. Pp. xxiv + 542. \$145.00 cloth.

Eskridge and Wilson’s volume includes voices from the faith, LGBT advocacy, legal, and academic communities—from the Human Rights Campaign and American Civil Liberties Union to the National Association of Evangelicals and Catholic and LDS churches—who offer a “360-degree view” of culture-war conflicts around faith and sexuality and explore whether communities with such profound differences in belief are able to reach mutually acceptable solutions in order to both live with integrity.

## LEGAL CONSCIOUSNESS

Hertogh, Marc. *Nobody’s Law: Legal Consciousness and Legal Alienation in Everyday Life*. London: Palgrave Macmillan, 2018. Pp. xv + 215. \$69.99 cloth.

Drawing on detailed case studies, Hertogh analyzes the legal consciousness of ordinary people, businessmen, and street-level bureaucrats in the Netherlands. Challenging studies that emphasize the law’s hegemony in everyday life, he finds that legal proliferation makes it harder for people to know, and subsequently identify with, the law. He concludes that this development signals a process of “legal alienation,” a gradual and mundane process with potentially serious consequences for the legitimacy of law.

## LEGAL PROFESSION

Hoffer, Peter Charles. *The Search for Justice: Lawyers in the Civil Rights Revolution, 1950–1975*. Chicago: University of Chicago Press, 2019. Pp. viii + 200. \$27.50 paper.

Hoffer takes readers through the interactions of the lawyers on both sides of the fight for school desegregation in the United States, setting their activities in the context of the civil rights movement and also the context of their full political and legal legacies, including the growth of corporate legal practice after World War II and the expansion of the role of law professors in public discourse, particularly with the New Deal.

Maru, Vivek, and Varun Gauri, eds. *Community Paralegals and the Pursuit of Justice*. New York: Cambridge University Press, 2018. Pp. xv + 269. \$110.00 cloth.

Focusing on paralegal movements in six countries, contributors to Maru and Gauri’s volume recount detailed stories of community paralegals, “barefoot lawyers” who assist people who have no other



access to legal assistance. The editors note that these paralegals, who seek to demystify law and empower people to advocate for themselves, date back to 1950s South Africa and are active today in many countries.

## POPULARIZATION OF LEGAL KNOWLEDGE

Altehenger, Jennifer E. *Legal Lessons: Popularizing Law in the People's Republic of China, 1949–1989*. Cambridge, MA: Harvard University Press, 2018. Pp. xviii + 388. \$49.95 cloth.

Altehenger argues that the popularization of basic legal knowledge is an important and contested technique of state governance in China, with roots reaching back to the early years of Chinese Communist Party. Archival records, internal publications, advice manuals, memoirs, and propaganda materials reveal how official attempts to determine and promote “correct” understanding of law intersected with people’s interpretations and practical experiences. They also show how diverse groups—including party-state leadership, legal experts, publishers, writers, artists, and local officials, along with ordinary people—helped to define the meaning of laws in China’s socialist society.

## ROMAN LAW AND THE IDEA OF EUROPE

Tuori, Kaius, and Heta Björklund, eds. *Roman Law and the Idea of Europe: Europe's Legacy in the Modern World*. New York: Bloomsbury Academic Publishing, 2019. Pp. x + 288. \$114.00 cloth.

Contributors to Tuori and Björklund’s volume explore the emergence of the idea of Roman law as an idealized shared heritage, tracing its origins among exiled German scholars during the Nazi regime. They argue that the attention to Roman law was a reaction against the crisis of jurisprudence in the face of Nazi ideas of racial and ultranationalistic law, and led to the idea of a Europe founded on shared legal principles.

## RULE OF LAW

Coan, Andrew. *Prosecuting the President: How Special Prosecutors Hold Presidents Accountable and Protect the Rule of Law*. New York: Oxford University Press, 2019. Pp. vii + 234. \$27.95 cloth.

Coan engages the long, mostly forgotten history of special prosecutors in American politics. At least since 1875, presidents of both parties have appointed special prosecutors and empowered them to operate with unusual independence. He finds that many appointees have been thwarted by the formidable challenges and a few have even abused the powers entrusted to them. But he concludes that at their best, special prosecutors have functioned as catalysts of democracy, channeling an unfocused popular will to safeguard the rule of law.

## US SUPREME COURT

Ruger, Todd. *American Justice 2018: The Shifting Supreme Court*. Philadelphia, PA: University of Pennsylvania Press, 2018. Pp. 138. \$24.95 cloth.

Ruger examines key decisions in the US Supreme Court’s 2018 term, including those involving religious freedom and minority rights, partisan gerrymandering, President Trump’s travel ban, privacy in the digital era, sales tax for online retailers, and apparent tensions between the First Amendment and the collection of union dues. He suggests the ways each of these decisions fits into the history of the court, and what the opinions and dissents reveal about the shifting ideological configuration of the institution.