

## Book Notes\*

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

## CIVIL JUSTICE SYSTEM

Porwancher, Andrew. 2016. *John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law*. Columbia, MO: University of Missouri Press. Pp. xii + 221. \$40.00 cloth.

At the dawn of the twentieth century, the United States was reeling from the effects of rapid urbanization and industrialization, and the legal system in particular began to buckle under the weight of its anachronism. Porwancher argues that in the midst of this crisis, John Henry Wigmore single-handedly modernized the jury trial with his treatise on evidence, an encyclopedic work that dominated the conduct of trials and inspired generations of jurists—among them Holmes, Cardozo, and Frankfurter—to reshape American law.

## CONSTITUTIONAL THEORY AND HISTORY

Frohnen, Bruce P., and George W. Carey. 2016. *Constitutional Morality and the Rise of Quasi-Law*. Cambridge, MA: Harvard University Press. Pp. 293. \$45.00 cloth.

Frohnen and Carey argue that the principle of separation of powers among co-equal branches of government formed the cornerstone of America's original constitutional morality. But toward the end of the nineteenth century, Progressives began to attack this bedrock principle, believing that it impeded government from "doing the people's business." They conclude that the resulting regime of mixed powers, delegation, and expansive legal interpretation rejected the ideals of limited government and promoted a governmental model rooted in French Revolutionary claims.

Maltz, Earl M. 2016. *The Coming of the Nixon Court: The 1972 Term and the Transformation of Constitutional Law*. Lawrence: University Press of Kansas. Pp. ix + 250. \$34.95 cloth.

This book is an account of the actions of the US Supreme Court during the 1972 term, the first with President Nixon's four appointees. By looking at the term's cases—most notably *Roe v. Wade*, but also those addressing school desegregation, criminal procedure, obscenity, the rights of the poor, gender discrimination, and aid to parochial schools—Maltz seeks to offer a detailed picture of the unique interactions behind each decision on this court, which was one of the era's most politically diverse benches.

## CRIMINAL JUSTICE AND SOCIAL CONTROL

Banakar, Reza. 2016. *Driving Culture in Iran: Law and Society on the Roads of the Islamic Republic*. London/New York: I. B. Tauris. Pp. xi + 286. \$110.00 cloth.

Drawing on extensive interviews with Iranians from a range of backgrounds, Banakar explores their driving habits—the rate of road accidents in Iran is 20 times that of the world average—and the explanations for their disregard for traffic laws. He argues that Iranians' driving behavior is an indicator of how they have historically related to each other and to their society at large, and how they have maintained a form of social order through law, culture, and religion.

de Graaf, Beatrice, and Alex P. Schmid. 2016. *Terrorists on Trial: A Performative Perspective*. Leiden, The Netherlands: Leiden University Press. Pp. 602. \$79.00 paper.

de Graaf and Schmid view terrorism trials as a form of theater, in which the "show" that a trial offers can develop its own unexpected dynamics, aspects that occasionally inconvenience the prosecuting government and interfere with its aims. As a political construct, the crime of

terrorism is an essentially contested act, and they argue that interpreting trials through this lens enables us to see their performative aspects more clearly. They include analysis of trials in the United States, Spain, Russia, Germany, and the Netherlands.

Gonzalez Van Cleve, Nicole. 2016. *Crook County: Racism and Injustice in America's Largest Criminal Court*. Stanford, CA: Stanford University Press. Pp. xiv + 252. \$24.00 cloth.

Drawing on over 1,000 hours of observation in the Chicago–Cook County courthouse—the largest criminal courthouse in the United States—Gonzales Van Cleve details everyday racial abuses that fester within the courts, often in plain sight: racial abuse and due process violations are encouraged and even seen as justified; judges fall asleep on the bench; prosecutors joke around in the judge's chambers; public defenders make choices about which defendants they will try to “save” and which they will sacrifice; and sheriff's officers cruelly mock and abuse defendants' family members.

Provine, Doris Marie, Monica W. Varsanyi, Paul G. Lewis, and Scott H. Decker. 2016. *Policing Immigrants: Local Law Enforcement on the Front Lines*. Chicago: University of Chicago Press. Pp. ix + 206. \$25.00 paper.

Provine et al. trace the transition of immigration enforcement from a traditionally federal power exercised primarily near the US borders to a patchwork system of local policing that extends throughout the country's interior. While some localities have resisted the work, others have aggressively sought out unauthorized immigrants. They find that how a community responds can best be predicted not by conditions like crime rates or the state of the local economy but rather by the level of conservatism among local voters.

Stuart, Forrest. 2016. *Down, Out, and under Arrest: Policing and Everyday Life in Skid Row*. Chicago: University of Chicago Press. Pp. xii + 333. \$27.50 cloth.

Stuart's ethnographic study examines the policing of poverty in the contemporary United States. Drawing on his fieldwork with skid row residents and with the police charged with managing them, he finds a tragedy built on mistakes and misplaced priorities more than on heroes and villains. He sees a situation where many people on both sides are genuinely trying to do the right thing, yet often come up short, sometimes in ways that do serious harm.

## HUMAN RIGHTS

Engle Merry, Sally. 2016. *The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking*. Chicago: University of Chicago Press. Pp. viii + 249. \$25.00 paper.

Engle Merry investigates the techniques by which information is gathered and analyzed in the production of global indicators on human rights, gender violence, and sex trafficking. Although these numbers convey an aura of scientific validity, she argues that they incorporate unacknowledged theories about social change in their design. For instance, the US State Department's Trafficking in Persons Report overlooks cultures where women and children are sold by their own families. She concludes that indicators are implemented most successfully when paired with context-rich qualitative accounts grounded in local knowledge.

Morreira, Shannon. 2016. *Rights after Wrongs: Local Knowledge and Human Rights in Zimbabwe*. Stanford, CA: Stanford University Press. Pp. xii + 196. \$27.95 paper.

Through a comprehensive survey of human rights scholarship, Morreira explores the ways in which the global framework of human rights is locally interpreted, constituted, and contested

in Harare, Zimbabwe, and Musina and Cape Town, South Africa. Presenting the stories of those who lived through the violent struggles of the past decades, she finds a significant disconnection between the way human rights appear on paper and the ways in which it is possible for people to use and understand them in everyday life.

## ISSUES IN RESEARCH ON LAW AND BEHAVIOR

Ghodsee, Kristen. 2016. *From Notes to Narrative: Writing Ethnographies that Everyone Can Read*. Chicago: University of Chicago Press. Pp. 150. \$16.00 paper.

Ghodsee addresses common issues that arise in ethnographic writing, tackling such issues as how to incorporate theory and ethnographic details, how to effectively deploy dialogue, and how to avoid distracting elements such as long block quotations and in-text citations. She includes examples from model ethnographies as well as a bibliography of other useful writing guides and a list of dozens of ethnographic accounts that she finds “eminently readable.”

## JUDICIAL SELECTION

Goelzhauser, Greg. 2016. *Choosing State Supreme Court Justices: Merit Selection and the Consequences of Institutional Reform*. Philadelphia: Temple University Press. Pp. xii + 177. \$29.95 paper.

Goelzhauser utilizes new data on more than 1,500 US state supreme court justices seated from 1960 through 2014 to examine whether merit selection—as opposed to popular election or elite appointment—produces better judges. He traces the rise of merit selection and explores whether certain judicial selection institutions favor candidates who have better qualifications, are more diverse, and have different types of professional experience.

## JURIES

Thomas, Suja A. 2016. *The Missing American Jury: Restoring the Fundamental Constitutional Role of the Criminal, Civil, and Grand Juries*. New York: Cambridge University Press. Pp. ix + 251. \$34.99 paper.

Examining the Constitution’s text and historical sources, Thomas explores how the authority of the US jury has been eviscerated and how it can be restored to its co-equal position as a “branch” of government. Looking beyond the Constitution’s requirements, she also discusses the significance of juries worldwide and argues that jury decision making should be preferred over determinations by other governmental bodies.

## LAW AND DEBT

Smail, Daniel Lord. 2016. *Legal Plunder: Households and Debt Collection in Late Medieval Europe*. Cambridge, MA: Harvard University Press. Pp. xv + 326. \$39.95 cloth.

Focusing on the Mediterranean cities of Marseille and Lucca, this book explores how the new-found wealth embodied in household goods shaped the beginnings of a modern consumer economy. The vigorous trade in goods that grew up in the fourteenth and fifteenth centuries entangled households in complex relationships, and one of the most common activities of law courts became debt recovery; sergeants of the law were empowered to march into debtors’ homes and seize belongings equal in value to the debt owed. Smail concludes that these officials were agents of a predatory economy, cogs in a political machinery of state-sponsored plunder.

## LAW AND ECONOMICS

Calabresi, Guido. 2016. *The Future of Law and Economics: Essays in Reform and Recollection*. New Haven, CT: Yale University Press. Pp. xi + 228. \$35.00 cloth.

Calabresi, one of the founders of the law and economics movement, sees two strains of the field: “economic analysis of law,” which examines the legal system in the light of economic theory and shows how economics might render law more effective; and “law and economics,” his preference, which gives equal status to law, and explores how the more realistic, less theoretical discipline of law can lead to improvements in economic theory.

## LAW AND LABOR

Steinberg, Marc W. 2016. *England's Great Transformation: Law, Labor, and the Industrial Revolution*. Chicago: University of Chicago Press. Pp. xiii + 233. \$35.00 paper.

Steinberg argues that—contrary to Karl Polanyi’s well known thesis that nineteenth century England quickly moved toward a modern labor market where workers were free to shift from employer to employer—in fact labor contracts centered on insidious master-servant laws which allowed employers and legal institutions to keep employees in line. Building his argument on three case studies—the Hanley pottery industry, Hull fisheries, and Redditch needlemakers—he uses local and national analyses to detail the ways in which master-servant laws allowed employers to use criminal prosecution of workers to maintain control of their labor force.

## LAW AND LITERATURE

Steinberg, Justin. 2016. *Dante and the Limits of the Law*. Chicago: University of Chicago Press. Pp. viii + 231. \$24.00 paper.

Examining how the poet Dante probes the limits of the law in the juridical otherworld of *The Divine Comedy*, Steinberg argues that exceptions were vital to the medieval legal order and that Dante’s otherworld represents an ideal “system of exception.” In the real world, Dante saw this system as increasingly threatened by a dual crisis of church and empire, and concludes that Dante’s imagination of the afterlife seeks to address the gap between the universal validity of Roman law and the lack of a sovereign power to enforce it.

## LAW AND MISTAKE

Sarat, Austin, Lawrence Douglas, and Martha Umphrey, eds. 2016. *Law's Mistakes*. Amherst, MA: University of Massachusetts Press. Pp. vii + 178. \$27.95 paper.

Contributors to Sarat, Douglas, and Umphrey’s volume explore the things that law recognizes as errors and the way it responds to them. They identify the jurisprudential and political perspectives that underlie different understandings of what is or is not a legal mistake, and examine the fraught, contested, and evolving relationship between law and error. They offer templates for thinking about what mistakes can tell us about the aspirations and limits of law, and for understanding how our imagining of law is enabled and shaped by its juxtaposition to a condition labeled mistake.

## LAW AND OTHER NORMATIVE SYSTEMS

Deal, Robert. 2016. *The Law of the Whale Hunt: Dispute Resolution, Property Law, and American Whalers, 1780–1880*. New York: Cambridge University Press. Pp. xiii + 177. \$99.99 cloth.

Far from courts and law enforcement, competing crews of eighteenth- and nineteenth-century American whalers tended to resolve disputes at sea over ownership of whales, creating norms and customs to decide ownership of whales pursued by multiple crews. Drawing on depositions, court testimony, logbooks, and other previously untapped primary sources, Deal examines the creation of property law in this context.

## LAW AND RELIGION

McGarvie, Mark Douglas. 2016. *Law and Religion in American History: Public Values and Private Conscience*. New York: Cambridge University Press. Pp. xxix + 273. \$29.99 paper.

McGarvie argues that the US founders considered the right of conscience to be an individual right, to be protected against governmental interference. While the religion clauses enunciated this right, its true protection occurred in the creation of separate public and private spheres, with religion in the private sector. Yet, politically active Christians have intermittently mounted challenges to this bifurcation, calling for a greater public role for Christian faith and morality in American society.

## LAW AND SURVEILLANCE

Marx, Gary T. 2016. *Windows into the Soul: Surveillance and Society in an Age of High Technology*. Chicago: University of Chicago Press. Pp. xxii + 404. \$35.00 paper.

Marx draws on decades of studies of covert policing, computer profiling, location and work monitoring, drug testing, and caller identification to examine the paradoxes, trade-offs, and confusion enveloping the field of surveillance studies. Ultimately, Marx argues, recognizing complexity and asking the right questions is essential to bringing light and accountability to the darker, more iniquitous corners of our emerging surveillance society; surveillance itself is neither good nor bad, but context and comportment make it so.

## NEW LEGAL REALISM

Klug, Heinz, and Sally Engle Merry, eds. 2016. *Studying Law Globally: New Legal Realist Perspectives (Volume II)*. New York: Cambridge University Press. Pp. xxiii + 282. \$125.00 cloth.

Contributors to Klug and Engle Merry's volume seek to chart a new course for interdisciplinary research by synthesizing law on the ground, empirical research, and theory. They argue that, increasingly, local experiences of law are informed by broader interactions of national, international, and global law. Lawyers, judges, and other legal actors often have to respond to these broader contexts, while those pursuing justice in various global contexts must wrestle with the specific problems of translation that emerge when different concepts of law and local circumstances interact.

Mertz, Elizabeth, Stewart Macaulay, and Thomas W. Mitchell, eds. 2016. *The New Legal Realism: Translating Law-and-Society for Today's Legal Practice (Volume I)*. New York: Cambridge University Press. Pp. xxi + 303. \$125.00 cloth.

Contributors to Mertz, Macaulay, and Mitchell's volume seek to chart a new course for interdisciplinary research by synthesizing law on the ground, empirical research, and theory into a new legal realism. The volume lays the groundwork for this approach with a mix of theoretical, historical, pedagogical, and empirical essays. The empirical work covers a wide range of topics such as the 2007–2008 financial crisis, intellectual property battles, the legal

disenfranchisement of African American landowners, and gender and racial prejudice on law school faculties.

## ORIGINS OF THE ADMINISTRATIVE STATE

Rao, Gautham. 2016. *National Duties: Custom Houses and the Making of the American State*. Chicago: University of Chicago Press. Pp. xii + 273. \$45.00 cloth.

After the American Revolution the nascent federal government created a system of tariffs and installed custom houses at the nation's ports. The tariffs amassed enough revenue to stabilize the new government, but the importing merchants gained outsized influence over the daily affairs of the custom houses. Rao argues that the contours of the federal government and the modern American state emerged from the conflict between the merchants and the government, with commercial interests gradually losing power to what became the modern administrative state.

## TRANSFORMATION OF LEGAL SYSTEMS

Kendhammer, Brandon. 2016. *Muslims Talking Politics: Framing Islam, Democracy, and Law in Northern Nigeria*. Chicago: University of Chicago Press. Pp. xiv + 302. \$32.50 paper.

Kendhammer argues that, despite Nigeria's struggles with jihadist insurgency, its recent history is one of fragile reconciliation between democratic aspirations and popular efforts to preserve Islamic values in government and law. Combining an analysis of Nigeria's Islamic and political history with observations from visits with working families, he sketches how this reconciliation has been constructed in the conversations, debates, and everyday experiences of Nigerian Muslims, and concludes that democracy can work alongside the legal recognition of Islamic values.