

# Book Notes\*

## CONTENTS

CIVIL JUSTICE SYSTEM.....	280
CONSTITUTIONAL THEORY AND HISTORY.....	280
CRIMINAL JUSTICE AND SOCIAL CONTROL.....	281
IMPACT OF LAW.....	283
JUDGES AND JUDGING.....	283
LAW AND EXECUTIVE POWER.....	283
LAW AND FAMILY RELATIONSHIPS.....	283
LAW AND GENDER.....	284
LAW AND LABOR.....	284
LAW AND LITERATURE.....	284
LAW AND MARKETS.....	285
LAW AND MEDICINE.....	285
LAW AND RACE.....	285
LAW AND RHETORIC.....	285
LAW AND THE TRANSMISSION OF WEALTH.....	286
LEGAL PROFESSION.....	286
PUBLIC INTEREST LAW.....	286
RULE OF LAW.....	287
TRANSFORMATION OF LEGAL SYSTEMS.....	287
TRANSITIONAL JUSTICE.....	288
TRANSNATIONAL LAW.....	288

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

## CIVIL JUSTICE SYSTEM

Ball, Kevin. 2016. *Adversity & Justice: A History of the United States Bankruptcy Court for the Eastern District of Michigan*. Detroit, MI: Wayne State University. Pp. xiii + 247. \$39.99 cloth.

Using a variety of sources—from newspaper accounts and interviews to personal documentation from key people throughout the court’s history—Ball explores the history of the US Bankruptcy Court for the Eastern District of Michigan, which processed over 27,000 cases in 2014, from the late nineteenth century to the present. He considers the effects of two major courthouse scandals during the period and includes a comprehensive account of the City of Detroit’s bankruptcy case filed in 2013.

Engel, David M. 2016. *The Myth of the Litigious Society: Why We Don’t Sue*. Chicago, IL: University of Chicago. Pp. 232. \$24.00 cloth.

Engel challenges the notion that the United States is a litigious society, arguing that the sobering reality is that the vast majority of injury victims—more than nine out of ten—rely on their own resources, family and friends, and government programs to cover their losses. He finds that cultural norms make preventable injuries appear inevitable—or the victim’s fault—and that those norms call for accepting setbacks stoically and not blaming someone else. He concludes that because injuries disproportionately fall on people with fewer resources, the existing framework creates a social underclass that shields those who cause the harm.

## CONSTITUTIONAL THEORY AND HISTORY

Ginsburg, Tom, and Aziz Huq, eds. 2016. *Assessing Constitutional Performance*. New York: Cambridge University Press. Pp. xiii + 431. \$39.99 paper.

Contributors to Ginsburg and Huq’s volume consider the myriad ways that “constitutional success” can be understood. Essays from a variety of perspectives and case studies from Africa, Europe, Latin America, the Middle East, and Asia explore a varied array of constitutional histories, and indicate that complex ideas of constitutional success play out differently in different contexts.

Schertzer, Robert. 2016. *The Judicial Role in a Diverse Federation: Lessons from the Supreme Court of Canada*. Toronto, Canada: University of Toronto Press. Pp. 338. \$70.00 cloth.

Schertzer argues that in a diverse federation where the nature of the federal system is contested, the courts should facilitate negotiation between conflicting parties, rather than impose their own vision of the system. Drawing on a comprehensive review of the Supreme Court of Canada’s federalism jurisprudence between 1980 and 2010, he finds that the Court has increasingly adopted this approach by acknowledging the legitimacy of different understandings of the Canadian federation.

Thornhill, Chris. 2016. *A Sociology of Transnational Constitutions: Social Foundations of the Post-National Legal Structure*. New York: Cambridge University Press. Pp. x + 520. \$110.00 cloth.

Using a historical-sociological approach, Thornhill examines the social processes that have locked national states into an increasingly transnational constitutional order. He finds that the growth of global constitutional norms has provided a stabilizing framework for the functions of state institutions.

## CRIMINAL JUSTICE AND SOCIAL CONTROL

DeGrazia, David, and Lester H. Hunt. 2016. *Debating Gun Control: How Much Regulation Do We Need?* New York: Oxford University Press. Pp. xvi + 269. \$24.95 paper.

DeGrazia and Hunt debate US gun control primarily from the standpoint of ethics. Hunt argues that the Constitution is right to frame the right to possess a firearm as the fundamental human right of citizens to protect themselves. DeGrazia critiques this position and makes a consequentialist and rights-based case for moderately extensive gun control.

Donovan, Brian. 2016. *Respectability on Trial: Sex Crimes in New York City, 1900–1918*. New York: State University of New York Press. Pp. x + 233. \$90.00 cloth.

Donovan uses trial transcripts to understand New York City's history during the “first sexual revolution,” finding stories of sexual violence and legal injustice that contradict the image of early twentieth-century America as a time of sexual revolution and progress. He concludes that police and courts often served the interests of the upper classes, men, and racial and ethnic majorities, but that the trial transcripts also reveal the considerable extent to which members of working-class and immigrant communities used the machinery of law enforcement for their own ends.

Harris, Alexes. 2016. *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor*. New York: Russell Sage Foundation. Pp. xxvii + 236. \$29.95 paper.

Drawing on sentencing data, observations of hearings, and interviews with defendants and court officials in five counties in Washington State, Harris analyzes the situation of low-income defendants who are assessed with monetary sanctions—for example, fees for public defenders and a variety of processing charges—which often become insurmountable debts. She finds that judges and court clerks have considerable discretion in the sentencing and monitoring of monetary sanctions and rely on individual values—such as personal responsibility, meritocracy, and paternalism—to determine how much and when offenders should pay.

Musto, Jennifer. 2016. *Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States*. Oakland, CA: University of California Press. Pp. xx + 229. \$34.95 paper.

In this case study of the ways in which law enforcement agents, social service providers, and nongovernmental advocates have joined forces to combat sex trafficking, Musto argues that these collaborations consolidate state power and carceral control. She concludes that partnerships forged in the name of fighting domestic sex trafficking have blurred the boundaries between punishment and protection, victim and offender, and state and nonstate authority.

Pruitt, Lesley J. 2016. *The Women in Blue Helmets: Gender, Policing, and the UN's First All-Female Peacekeeping Unit*. Oakland, CA: University of California Press. Pp. ix + 163. \$34.95 paper.

This book tells the story of the first all-female police unit deployed by India to the UN peacekeeping mission in Liberia in 2007. Pruitt discusses how the unit was originated, developed, and implemented, and explores the potential benefits of and challenges to women's participation in peacekeeping.

Shuster, Arthur. 2016. *Punishment and the History of Political Philosophy: From Classical Republicanism to the Crisis of Modern Criminal Justice*. Toronto, Canada: University of Toronto Press. Pp. 180. \$50.00 cloth.

Drawing on interpretations of the works of Plato, Hobbes, Montesquieu, Beccaria, Kant, and Foucault, Shuster argues that continuing tensions over retribution's role in punishment reflect the shift in political philosophy from classical republicanism to modern notions of individual natural rights and the social contract.

Soyer, Michaela. 2016. *A Dream Denied: Incarceration, Recidivism, and Young Minority Men in America*. Oakland, CA: University of California Press. Pp. xi + 172. \$34.95 paper.

Soyer considers the social and cultural implications of the "American dream" narrative for young minority men in the juvenile justice systems of Boston and Chicago. She connects young male offenders' cycles of desistance and recidivism with normative assumptions about success and failure in US society, and concludes that there is a tragic disconnect between structural reality and juvenile justice policy.

Spector, Scott. 2016. *Sex, Crime, and Utopia in Vienna and Berlin, 1860–1914*. Chicago, IL: University of Chicago Press. Pp. 285. \$25.00 paper.

At turn of the twentieth century, Vienna and Berlin were centers of scientific knowledge, accompanied by a sense of confidence in progress. Yet they were also sites of fascination with urban decay and sexual and criminal deviants. Sensational media reports fed the public's hunger for stories from the criminal underworld—sadism, sexual murder, serial killings, accusations of Jewish ritual child murder—as well as male and female homosexuality. Spector examines how the protagonists of these stories were given new identities defined by the groundbreaking sciences of psychiatry, sexology, and criminology, and how this expert knowledge was transmitted to the public by journalists covering court cases and police investigations.

Steiker, Carol S., and Jordan M. Steiker. 2016. *Courting Death: The Supreme Court and Capital Punishment*. Cambridge, MA: Harvard University Press. Pp. 390. \$29.95 cloth.

In the 1960s and 1970s, in the face of widespread abolition of the death penalty around the world, provisions for capital punishment that had long fallen under the purview of the states were challenged in federal courts. The US Supreme Court intervened in two landmark decisions, first by invalidating the death penalty, then by restoring it. Since the 1970s, by neither retaining capital punishment in unfettered form nor abolishing it outright, the Court has created a complex regulatory apparatus that has brought executions in many states to a halt, while also failing to address the problems that led the Court to intervene in the first place.

Turnbull, Sarah. 2016. *Parole in Canada: Gender and Diversity in the Federal System*. Vancouver: University of British Columbia. Pp. 235. \$35.95 paper.

Turnbull examines how concerns about aboriginality, gender, and the multicultural ideal of "diversity" have been interpreted and used to alter Canadian parole policy and practice. Using the Parole Board of Canada as a case study, she finds that some offender differences are selectively included in conditional release decision making, while the structures, practices, and power arrangements that would enable fundamental change remain unaltered.

Weinberg, Jill D. 2016. *Consensual Violence: Sex, Sports, and the Politics of Injury*. Oakland, CA: University of California Press. Pp. viii + 147. \$29.95 paper.

Weinberg presents two case studies of activities in which participants engage in violent acts: competitive mixed martial arts (MMA) and sexual sadism and masochism (BDSM). These activities are treated differently under criminal battery law: sports are generally absolved from the charge of battery, whereas BDSM often represents a violation. Drawing on interviews and ethnographic observation, Weinberg argues that where law authorizes consent to an activity, as in MMA, consent is not meaningfully regulated by the participants themselves. In contrast,

where law prohibits a person's consent to an activity, as in BDSM, participants actively construct and regulate consent.

## IMPACT OF LAW

Friedman, Lawrence M. 2016. *Impact: How Law Affects Behavior*. Cambridge, MA: Harvard University Press. Pp. x + 315. \$35.00 cloth.

Friedman examines a wealth of recent studies in a variety of disciplines to distill the factors that affect the impact of law on behavior. He finds that the public's fund of legal knowledge, the clarity of the law, and the presence of information brokers all influence the flow of information from lawmakers to citizens. After a law is communicated, three clusters of motives help shape compliance: rewards and punishments; peer group influences; and issues of conscience, legitimacy, and morality.

## JUDGES AND JUDGING

Domnarski, William. 2016. *Richard Posner*. New York, NY: Oxford University Press. Pp. x + 293. \$29.95 cloth.

Richard Posner, a judge on the US Court of Appeals for the Seventh Circuit and a principal exponent of the law and economics movement, is a prolific and provocative judge and public intellectual who has been at the center of high-profile disputes. Domnarski's biography examines Posner's life experience, personality, academic career, jurisprudence, and professional relationships. The analysis is based on interviews with Posner himself, examination of his extensive archive at the University of Chicago, and interviews and correspondence with more than 200 people, including current and former colleagues and clerks.

## LAW AND EXECUTIVE POWER

Blackman, Josh. 2016. *Unraveled: Obamacare, Religious Liberty, and Executive Power*. New York, NY: Cambridge University Press. Pp. xxiv + 581. \$29.99 cloth.

Blackman argues that to implement "Obamacare," President Obama has broken promises about cancelled insurance policies, exceeded the traditional bounds of executive power, and infringed on religious liberty. At the same time, conservative opponents have stopped at nothing to unravel Obamacare, including a three-week government shutdown, four Supreme Court cases, and fifty repeal votes.

Rudenstine, David. 2016. *The Age of Deference: The Supreme Court, National Security, and the Constitutional Order*. New York: Oxford University Press. Pp. xvi + 326. \$29.95 cloth.

Rudenstine traces the role of the US Supreme Court in the rise of judicial deference to executive power since the end of World War II. He argues that in cases going back to the Truman and Eisenhower presidencies, the Court has ceded too much authority in national security matters, and that this trend has accentuated since 9/11. He concludes that this has had a negative impact on individual rights and on the ability of the political process to check executive authority when necessary.

## LAW AND FAMILY RELATIONSHIPS

Bunting, Annie, Richard Roberts, and Benjamin Lawrence, eds. 2016. *Marriage by Force? Contestation Over Coercion and Consent in Africa*. Athens, OH: Ohio University Press. Pp. xiv + 343. \$34.95 paper.

Bunting, Roberts, and Lawrence argue that the relationship between coercion and consent in marriage in Sub-Saharan Africa is a complex one that has changed over time and place, rendering impossible any single interpretation or explanation. Contributors to their volume focus on the role that marriage plays in the mobilization of labor, the accumulation of wealth, and domination versus dependency and consider the relationship between forced marriage and other forms of gendered violence, bondage, slavery, and servile status.

Mello, Joseph. 2016. *The Courts, the Ballot Box, and Gay Rights: How Our Governing Institutions Shape the Same-Sex Marriage Debate*. Lawrence, KS: University Press of Kansas. Pp. viii + 240. \$34.95 cloth.

Mello asks why conservative opponents of same-sex marriage in the United States were successful in the popular arena of ballot measure campaigns but not in the courts. He finds that by using the language of rights to frame their cause, conservative opponents of same-sex marriage were able to construe themselves as victims of oppression, with their religious and moral beliefs under threat, but that the same language proved less useful—or even counterproductive—in courtrooms because the court's norms and constraints force arguments to undergo more searching scrutiny.

## LAW AND GENDER

Bisom-Rapp, Susan, and Malcolm Sargeant. 2016. *Lifetime Disadvantage, Discrimination and the Gendered Workforce*. New York: Cambridge University Press. Pp. xii + 242. \$99.00 cloth.

Bisom-Rapp and Sargeant use a model of lifetime disadvantage to argue that antidiscrimination law adopts an incremental and disjointed approach to resolving the challenges of gender discrimination, and conclude that a more holistic orientation toward eliminating women's discrimination and disadvantage is required before true gender equality can be achieved.

## LAW AND LABOR

Fisk, Catherine L. 2016. *Writing for Hire: Unions, Hollywood, and Madison Avenue*. Cambridge, MA: Harvard University Press. Pp. x + 308. \$35.00 cloth.

In the 1930s, the practice of employing teams of writers to create copyrighted works became widespread in film studios, radio networks, and ad agencies in the United States. Yet Fisk finds that these industries diverged in a crucial way when screenwriters formed the Writers Guild to represent them. Guild members believed they were equivalent to literary authors and fought to have their names attached to their work. In the process, they gained binding legal norms relating to ownership and public recognition norms that carried over into the professional culture of TV production. In advertising, by contrast, there was no union and no formal norms of public attribution developed.

## LAW AND LITERATURE

Picart, Caroline Joan, Michael Hviid Jacobsen, and Cecil Greek, eds. 2016. *Framing Law and Crime: An Interdisciplinary Anthology*. Lanham, MD: Fairleigh Dickinson University Press. Pp. x + 527. \$105.00 cloth.

Contributors to Picart, Jacobsen, and Greek's volume offer a critical survey of media portrayals of law and crime. Topics include the history of the law and cinema movement; assessment of the strengths, frailties, and functions of law in international films; law and crime in fictional and documentary US film and television; the potential of "gothic criminology" as an

interpretative framework; and issues of pedagogy, epistemology, and ethics in relation to images of law and crime.

## LAW AND MARKETS

Ezrachi, Ariel, and Maurice E. Stucke. 2016. *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy*. Cambridge, MA: Harvard University Press. Pp. viii + 356. \$29.95 cloth.

Ezrachi and Stucke argue that while consumers reap many benefits from online purchasing, the sophisticated algorithms and data crunching that make browsing convenient change the nature of market competition: although antitrust law prohibits collusion to fix prices, data-driven algorithms can quickly monitor competitors' prices and adjust prices accordingly; companies can track and profile consumers to get them to buy goods at the highest price they are willing to pay; and, by controlling key platforms, data-driven monopolies can dictate the flow of personal data and determine who gets to exploit potential buyers.

## LAW AND MEDICINE

Maehle, Andreas-Holger. 2016. *Contesting Medical Confidentiality: Origins of the Debate in the United States, Britain, and Germany*. Chicago, IL: University of Chicago Press. Pp. 165. \$40.00 cloth.

Maehle analyzes professional and public debates on medical confidentiality in the United States, Britain, and Germany during the late nineteenth and early twentieth centuries, when traditional medical secrecy first came under pressure from demands of disclosure in the name of public health. He focuses on three questions that remain salient today: Do physicians have a privilege to refuse court orders to reveal confidential patient details? Is there a medical duty to report illegal procedures? Should physicians breach confidentiality in order to prevent the spread of disease?

## LAW AND RACE

Brophy, Alfred L. 2016. *University, Court, & Slave: Pro-Slavery Thought in Southern Colleges & Courts & the Coming of Civil War*. New York: Oxford University Press. Pp. xxvi + 373. \$39.95 cloth.

Brophy highlights long-forgotten connections between pre-Civil War southern universities and slavery. Universities and their faculty owned slaves, and the profits of enslaved labor helped fund universities. Faculty actively promoted the institution, arguing for its central role in the southern economy and developing a political theory justifying the practice. They spoke a common language of economic utility, history, and philosophy with those who made the laws for the southern states, and joined politicians, judges, lawyers, and other leaders in arguing that their economy and society was threatened by the election of Lincoln.

## LAW AND RHETORIC

Sarat, Austin, ed. 2016. *Rhetorical Processes and Legal Judgments: How Language and Arguments Shape Struggles for Rights and Power*. New York: Cambridge University Press. Pp. xi + 145. \$110.00 cloth.

Contributors to Sarat's volume seek to go beyond traditional analysis of law and rhetoric to explore historical approaches and an "embedded" analysis of rhetoric in law. Historical and embedded approaches locate analysis in particular contexts, seeking to draw attention to how

the rhetorical dimensions of legal life work in those contexts, including consideration of the rhetorical structure of judicial arguments and opinions.

## LAW AND THE TRANSMISSION OF WEALTH

Braun, Alexandra, and Anne Rothel, eds. 2016. *Passing Wealth on Death: Will-Substitutes in Comparative Perspective*. Portland, OR: Hart Publishing. Pp. xix + 381. \$136.00 cloth.

Traditionally, the most common method to transfer property at death was by will, but today there are a variety of “will-substitutes,” including joint tenancies, trusts, life insurance contracts, and nominations in pension and retirement plans. Although much has been written about the effect of the use of will-substitutes in the United States, contributors to Braun and Rothel’s volume look at them in comparative perspective, examining mechanisms that pass wealth on death across a number of common law, civil law, and mixed legal jurisdictions, and exploring the rationale behind their use.

## LEGAL PROFESSION

Headworth, Spencer, Robert L. Nelson, Ronit Dinovitzer, and David B. Wilkins, eds. 2016. *Diversity in Practice: Race, Gender, and Class in Legal and Professional Careers*. Cambridge: Cambridge University Press. Pp. xiii + \$140.00 cloth.

Headworth et al. find that while many professional labor markets manifest patterns of demographic inequality, these patterns are particularly pronounced in the law and elite segments of other professions. Contributors to their volume analyze the disconnect between expressed commitments to diversity and practical achievements, identifying the often obscure systemic causes that drive persistent professional inequalities.

Pue, W. Wesley. 2016. *Lawyers’ Empire: Legal Professionals and Cultural Authority, 1780–1950*. Vancouver, BC: University of British Columbia. Pp. xiv + 499. \$83.00 cloth.

Approaching the legal profession through the lens of cultural history, this book explores the social roles that lawyers imagined for themselves in England and its empire from the late eighteenth to the early twentieth century. Each chapter focuses on a moment when lawyers sought to reshape their profession while imagining they were simultaneously shaping nation and empire. Exploring the relationship between legal professionals and liberalism, Pue draws attention to recurrent tensions between lawyers’ quest to secure their own economic well-being while also advancing societal goals.

## PUBLIC INTEREST LAW

Decker, Jefferson. 2016. *The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government*. New York: Oxford University Press. Pp. xi + 284. \$29.95 paper.

This book analyzes the work of the Pacific Legal Foundation, a conservative public interest law firm founded in 1973 that challenged the US regulatory state. Believing that the size and complexity of government regulations threatened the US economy and infringed on property rights, the foundation filed a series of lawsuits challenging the government’s power to plan the use of private land or protect environmental quality. By the end of the decade, it had been joined in this effort by spin-off legal foundations across the country. Decker concludes that this work was important in shaping the ideas and policy agendas of modern conservatism in the United States.



## RULE OF LAW

Prabhat, Devyani. 2016. *Unleashing the Force of Law: Legal Mobilization, National Security, and Basic Freedoms*. London: Palgrave Macmillan. Pp. xii + 225. \$115.00 cloth.

In this comparative study of the work of lawyers for civil liberties and basic freedoms, Prabhat integrates sociolegal theoretical frameworks with insights from the political lawyering and social movement literature to trace the professionalization of human rights work and analyze the possibilities and limitations of the rule of law.

Seppänen, Samuli. 2016. *Ideological Conflict and the Rule of Law in Contemporary China*. New York: Cambridge University Press. Pp. xv + 215. \$44.99 paper.

This book describes argumentative strategies used by Chinese legal scholars to legitimize and subvert China's state-sanctioned ideology and examines Chinese efforts to create alternative rule-of-law conceptions. Seppänen also makes a more general argument about the rule-of-law phenomenon, holding that many arguments about the rule of law are better understood in terms of their intended and actual effects rather than as logical propositions or other good-faith arguments.

## TRANSFORMATION OF LEGAL SYSTEMS

Erie, Matthew S. 2016. *China and Islam: The Prophet, the Party, and Law*. New York: Cambridge University Press. Pp. xvii + 447. \$140.00 cloth.

Erie examines the intersection of Islamic revival and an assertive China, seeking to unsettle unidimensional perceptions of extremist Islam and authoritarian China and to question the assumption that Islamic law is incompatible with state law. Based on fieldwork in Linxia, "China's Little Mecca," he follows Hui clerics, youthful translators on the "New Silk Road," female educators who reform traditional madrasas, and party cadres as they reconcile Islamic and socialist laws in the course of the everyday.

Jones, Carwyn. 2016. *New Treaty, New Tradition: Reconciling New Zealand and Maori Law*. Vancouver, Canada: University of British Columbia. Pp. xix + 211. \$37.95 paper.

Jones examines how the resolution of land claims in New Zealand has affected Maori law and the challenges faced by indigenous peoples as they attempt to exercise self-determination in a postcolonial world. Combining Maori storytelling with analysis of Canadian and international examples, he argues that genuine reconciliation can occur only when the importance of indigenous traditions is recognized in the claims-settlement process.

Roy, Tirthankar, and Anand V. Swamy. 2016. *Law and the Economy in Colonial India*. Chicago, IL: University of Chicago. Pp. xii + 240. \$45.00 cloth.

Roy and Swamy argue that current issues in the Indian legal system derive from the British colonial administration, which incorporated elements from British common law and indigenous institutions. In the case of property law, especially as it applied to agricultural land, indigenous laws and local political expediency were more influential than concepts borrowed from European legal theory. Conversely, with commercial law, there was considerable borrowing from Europe. In all cases, the British struggled with limited capacity to enforce their laws and an insufficient knowledge of the enormous diversity and differentiation within Indian society. The authors conclude that the result was a disorderly body of laws, not conducive to production and trade.

## TRANSITIONAL JUSTICE

Kesselring, Rita. 2017. *Bodies of Truth: Law, Memory, and Emancipation in Post-Apartheid South Africa*. Stanford, CA: Stanford University Press. Pp. xii + 256. \$27.95 paper.

Kesselring's ethnography draws on research with members of the victim support group Khulumani and critical analysis of legal proceedings related to apartheid-era injury in South Africa. Using juridical intervention as an entry point into the question of subjectivity, she asks how victimhood is experienced in the everyday for the women and men living on the periphery of Cape Town and elsewhere in the country, and argues that the everyday practices of the survivors must be taken up by the state and broader society to allow for inclusive social change in a postconflict setting.

## TRANSNATIONAL LAW

Putnam, Tonya L. 2016. *Courts Without Borders: Law, Politics, and U.S. Extraterritoriality*. New York: Cambridge University Press. Pp. xiii + 315. \$99.00 cloth.

For much of the post-World War II era, the United States has been a frequent yet selective regulator of activities outside its territory, and US federal courts are often on the front line in deciding the extraterritorial reach of US law. At stake in these jurisdiction battles is the ability to bring the regulatory power of the United States to bear on transnational disputes in ways that other states frequently dislike in both principle and practice. Putnam proposes a general theory of domestic court behavior to explain variation in extraterritorial enforcement of US law, emphasizing how the strategic behavior of private actors is important to mobilizing courts and in directing their activities.