

Book Notes*

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

CONSTITUTIONAL THEORY AND HISTORY

Balkin, Jack M. *Memory and Authority: The Uses of History in Constitutional Interpretation*. New Haven, CT: Yale University Press, 2024. Pp. viii + 370. \$35.00 paper.

Balkin argues that fights over constitutional interpretation in the US are often fights over collective memory. Lawyers and judges construct—and erase—memory to lend authority to their present-day views; they make the past speak their values so they can then claim to follow it. The result is that the seemingly opposed camps of originalism and living constitutionalism are actually mirror images of a single phenomenon: how lawyers use history to adapt an ancient constitution to a constantly changing world.

CRIMINAL JUSTICE AND SOCIAL CONTROL - GENERAL

Emsley, Clive, and Sara McDougall eds. *A Global History of Crime and Punishment*. Volume 1-6. New York, NY: Bloomsbury Publishing, 2023. Pp. + 1728. \$610 cloth.

Drawing on perspectives from history, cultural studies, philosophy, and classics, this globally-focused work traces developments in crime and justice against a variety of social, legal and cultural contexts from 500 BCE to the present. Key issues addressed include how the concept of what constitutes a crime has changed over the millennia; how the definition of justice has evolved over time; and changing representations of crime and justice. Chapter titles are identical across the six volumes, allowing the reader to focus on a specific period in one of the volumes or to follow a theme across the volumes.

Ernst, Bonnie L. *Challenging Confinement: Mass Incarceration and the Fight for Equality in Women's Prisons*. New York: New York University Press. 2023. Pp. iii + 190. \$35.00 cloth.

Drawing on prison grievance reports, oral histories, state archives, and private collections, Ernst tells the story of how incarcerated women in Michigan incorporated strategies from feminist movements to protest, organize, and file successful lawsuits to advocate for gender and racial equality in prison.

Larson, Doran. *Inside Knowledge: Incarcerated People on the Failures of the American Prison*. New York: NYU Press, 2024. Pp. ix + 311. \$30.00 cloth.

Drawing from the writings collected in the American Prison Writing Archive, Larson argues that mass incarceration does less to contain any harm perpetrated by convicted people than to spread and perpetuate harm among their families and communities. He concludes that US prisons degrade and debilitate their wards and also defeat the prison's cardinal missions of rehabilitation, containment, deterrence, and even meaningful retribution.

Pelot-Hobbes, Lydia. *Prison Capital: Mass Incarceration and Struggles for Abolition Democracy in Louisiana*. Chapel Hill, NC: University of North Carolina Press. 2023. Pp. xv + 374. \$29.95 paper.

Pelot-Hobbs illuminates how, over the period 1970-2020, policy makers enlarged Louisiana's carceral infrastructures with new prisons and jail expansions alongside the bulking up of police and prosecutorial power. She argues that these infrastructures were the products of multiscalar crises: the swings of global oil capitalism, liberal federal court and policy interventions, the rise of neoliberal governance and law-and-order austerity, and racist and patriarchal moral panics surrounding "crime" – crises that created fertile space for anticarceral social movements stretching toward new geographies of freedom in the lineage of abolition democracy.

Rickard, Diana. *The New True Crime: How the Rise of Serialized Storytelling Is Transforming Innocence*. New York: NYU Press, 2023. Pp. ii + 289. \$30.00 cloth.

This book argues that new true crime TV shows and podcasts deserve attention for what they reveal about societal understanding of crime and punishment, and for the new light they shine on the inequalities of the US criminal justice system. Even as old tropes of innocent victims and deviant perpetrators dominate these docuseries, Rickard finds that the new true crime has been influenced by the innocence movement, which now has a place in mainstream consciousness.

Soyer, Michaela. *The Price of Freedom: Criminalization and the Management of Outsiders in Germany and the United States*. Oakland, CA: University of California Press, 2023. Pp. xi + 198. \$34.95 paper.

Drawing on in-depth interviews with incarcerated young men in the United States and Germany, Soyer argues that the apparent relative leniency of the German criminal justice system is actually founded on the violent enforcement of cultural homogeneity at the hands of the German welfare state. Arguing that both societies have constructed a racialized underclass of outsiders over time, she concludes that criminal justice reformers in the US need to move beyond European models in order to build a truly just, diverse society.

CRIMINAL JUSTICE AND SOCIAL CONTROL - POLICING

Cheng, Tony. *The Policing Machine: Enforcement, Endorsement, and the Illusion of Public Input*. Chicago: University of Chicago, 2024. Pp. iii + 227. \$20.00 paper.

In this study of police-community relationships in New York City, Cheng finds that NYPD strategically distributes power and privilege within the community to increase its own legitimacy without sacrificing organizational independence. By setting up community councils that are run by police allies, handing out favors to local churches, and offering additional support to institutions friendly to the police, NYPD cultivates political capital through a strategic politics that involves distributing public resources, offering regulatory leniency, and deploying coercive force. The fundamental challenge with police-community relationships, he concludes, is that they already exist and are motivated by a machinery designed to stymie reform.

Schwartz, Joanna. *Shielded: How the Police Became Untouchable*. Broadway, NY: Penguin Random House 2023. Pp. xxi + 308. \$30.00 cloth.

Schwartz identifies myriad ways in which the US legal system makes it nearly impossible to hold police accountable for abuses of power, arguing that decisions of the Supreme Court, state and local governments, and policy makers have, over decades, made the police all but untouchable.

Sierra-Arévalo, Michael. *The Danger Imperative: Violence, Death, and the Soul of Policing*. New York: Columbia University Press, 2024. Pp. xviii + 348. \$30.00 paper.

Drawing on more than 100 interviews and 1,000 hours on patrol in three US cities, Sierra-Arévalo examines how police culture shapes officers' perception and practice of violence. He finds that the institution of policing reinforces a cultural preoccupation with violence, from academy training through departmental routines, powerful symbols, and officers' street-level behavior. This violence-centric culture relies on the colorblind language of "threat" and "officer safety;" nonetheless, existing patterns of systemic disadvantage funnel police hyperfocused on survival into poor minority neighborhoods. He concludes that without requiring individual bigotry, this combination of social structure, culture, and behavior perpetuates enduring inequalities in police violence.

Skogan, Wesley G. *Stop & Frisk and the Politics of Crime in Chicago*. New York, NY: Oxford University Press, 2022. Pp. x + 264. \$27.95 paper.

Skogan examines the practice of “stop and frisk” in Chicago, focusing on its origins as Chicago’s predominant strategy for responding to violent crime, its relationship to the political agendas of two mayors and four chiefs of police, how it played out on the streets, its impact on public opinion, the views of police officers, and an analysis of its impact on murders and shootings.

HUMAN RIGHTS

Coleman, Lara Montesinos. *Struggles for the Human: Violent Legality and the Politics of Rights*. Durham, NC: Duke University, 2024. Pp. xiv + 250. \$27.95 paper.

Drawing on her involvement with grassroots social movements in Colombia, Coleman observes that mainstream expressions of human rights have become counterparts to capitalist violence, even as this discourse disavows capitalism’s implications. But she rejects claims that human rights are inherently tied to capitalism, liberalism, or colonialism, instead arguing that human rights can be used to combat these forces. She concludes that social justice struggles that are rooted in marginalized communities’ lived experiences can reframe human rights in order to challenge oppressive power structures and offer a blueprint for constructing alternative political economies.

LAW AND CAMPAIGN FINANCE

Southworth, Ann. *Big Money Unleashed: The Campaign to Deregulate Election Spending*. Chicago: University of Chicago, 2023. Pp. iii + 301. \$32.50 paper.

This book focuses on how “big money” came to play such a large role in US elections. Southworth argues that Supreme Court decisions holding that campaign finance regulations violate the First Amendment result from a long-term process involving many players. Drawing from interviews, public records, and archival materials, she finds that the attorneys and legal advocacy groups that advanced the theory, the wealthy patrons who financed the efforts, and the networks through which they coordinated strategy essentially borrowed a litigation strategy used to dismantle racial segregation to advance a very different type of cause.

LAW AND ECONOMICS

Sunstein, Cass R. *Advanced Introduction to Behavioral Law and Economics*. Northampton, MA: Edward Elgar Publishing, Inc, 2024. Pp. ix + 133. \$25.00 paper.

Sunstein assesses and analyses law as a critical domain for the use of behavioral economics, and investigates how techniques including nudging, mandates, and taxes can be used to enhance the implementation of the law. He adopts an interdisciplinary approach to topics including air pollution and climate change; public health and safety; pandemic response; occupational safety; road safety; and contract, property, and tort law.

LAW AND IMMIGRATION

Chacón, Jennifer M., Coutin, Susan Bibler, and Stephen Lee. *Legal Phantoms: Executive Action and the Haunting Failures of Immigration Law*. Stanford, CA: Stanford University Press, 2023. Pp. xii + 311. \$32.00 cloth.

Drawing on interviews with would-be applicants, immigrant-rights advocates, and government officials, Chacón, Coutin, and Lee examine how failed US immigration-reform efforts continue to

affect not only those who had hoped to benefit, but their families, communities, and the country at large. They also find that out of the ashes of lost dreams, many applicants find their own paths forward through uncharted legal territory with creativity and resistance.

LAW AND IMPERIALISM

Benton, Lauren. *They Call It Peace: Worlds of Imperial Violence*. Princeton, NJ: Princeton University Press, 2024. Pp. xv + 285. \$39.95 cloth.

In an account spanning from Asia to the Americas from the fifteenth to the twentieth centuries, Benton finds that imperial violence redefined the very nature of war and peace. Instead of preparing a lasting peace, fragile truces ensured an easy return to war, and created a world in which war-mongers portrayed themselves as peacemakers and Europeans imagined “small” violence as essential to imperial rule and global order. She concludes that this imperial violence of the past has made perpetual war and the threat of atrocity endemic features of the international order.

LAW AND INDIGENOUS PEOPLES

Cheyfitz, Eric. *The Colonial Construction of Indian Country: Native American Literatures and Federal Indian Law*. Minneapolis: University of Minnesota Press, 2023. Pp. xii + 236. \$27.00 paper.

Cheyfitz mounts a historical critique of colonialism through analysis of the dialogue between Native American literatures and federal Indian law. He examines how American Indian writers and critics have responded to the impact of law on Native life, identifying recent trends in Native writing that build upon traditional modes of storytelling and governance.

Lightfoot, Sheryl, and Elsa Stamatopoulou, eds. *Indigenous People and Borders*. Durham, NC: Duke University, 2023. Pp. x + 371. \$30.95 paper.

Contributors to Lightfoot and Stamatopoulou’s volume explore the profound and varying impacts of borders on Indigenous Peoples around the world and the ways those borders are challenged. From Bangladesh’s colonially imposed militarized borders to resource extraction in the Russian Arctic and along the Colombia-Ecuador border to the transportation of toxic pesticides from the United States to Mexico, chapters examine sovereignty, power, and obstructions to Indigenous rights and self-determination as well as globalization and the economic impacts of borders.

LAW ON THE GROUND

Baczko, Adam. *The Taliban Courts in Afghanistan: Waging War by Law*. New York, NY: Oxford University Press, 2024. Pp. xx + 291. \$115.00 cloth.

Between 2001 and 2021, the judicial system was an essential part of the Taliban’s claim that they *were* the state in Afghanistan. Baczko finds that Taliban judgments were considered more effective than those of the Kabul government. They were felt to be a source of predictability in daily life, helping to establish the legal nature of the Taliban verdicts and thus the legal nature of their hold over the population. However, the international recognition enjoyed by the Kabul regime gave its courts an official—and therefore more lasting—character, which the Taliban judicial system never achieved.

LEGAL IDENTITY

Cercel, Cosmin, Alexandra Mercescu, and Mirosław Michał Sadowski, eds. *Law, Culture and Identity in Central and Eastern Europe*. New York: Routledge/Taylor and Francis, 2023. Pp. xii + 362. \$135.00 cloth.

Contributors to Cercel, Mercescu, and Sadowski's volume examine the legal identities of sixteen Central and Eastern European nations, illuminating their distinct legal identities while also arguing for a shared Central and Eastern European legal identity based on common threads in their histories.

LEGAL PLURALISM

Swenson, Geoffrey. *Contending Orders: Legal Pluralism and the Rule of Law*. New York, NY: Oxford University Press, 2022. Pp. xiv + 273. \$74.00 cloth.

Drawing on case studies of two countries with extensive legal pluralism, Afghanistan and Timor-Leste, Swenson proposes four archetypes—combative, competitive, cooperative, and benign—and identifies five strategies used by domestic and international actors to influence the relationship between state and non-state justice systems: bridging, harmonization, incorporation, subsidization, and repression. He finds divergent outcomes influenced by how the state engaged with non-justice actors: efforts in Afghanistan failed, but Timor-Leste has made impressive progress.

LEGAL SERVICES

Jefferson, Renee Knake. *Law Democratized: A Blueprint for Solving the Justice Crisis*. New York: NYU Press, 2023. Pp. xviii + 295. \$35.00 cloth.

Jefferson outlines different paths pursued by bar associations, courts, entrepreneurs, law schools, nonprofits, and others in the US and elsewhere, to increase access to legal knowledge and legal assistance without regard to ability to pay. She concludes with a series of recommendations inspired by success stories from around the globe.

REFLECTIONS ON THE LEGAL SYSTEM

Goldberg-Hiller, Jonathan. *Law by Night*. Durham, NC: Duke University, 2023. Pp. x + 332. \$29.95 paper.

Goldberg-Hiller asks what we can learn about modern law and its authority by understanding how it operates in the dark of night, arguing that the social experience and cultural meanings of night promote racialized and gender violence, but also make possible freedom of movement for marginalized groups. Examining nighttime racial violence, curfews, gun ownership, the right to sleep, and “take back the night” rallies, he finds that liberal legal doctrine lacks a theory of the night that accounts for a nocturnal politics that has historically allowed violence to persist and that identifies the night's potential to enliven a more egalitarian social life.

Parker, Kunal M. *The Turn to Process: American Legal, Political, and Economic Thought, 1870–1970*. New York: Cambridge University Press, 2023. Pp. xii + 325. \$34.99 paper.

Parker explores the massive reorientation of American legal, political, and economic thinking between 1870 and 1970. Over this period, he finds that democracy became a technique of governance consisting of an endless process of interacting groups, law became centered around legal procedure, and markets and market actors became intellectual and political techniques without

necessary grounding in the reality of human behavior. He situates this transformation in the philosophical crisis of modernism and the rise of the administrative state.

RIGHTS

Roeber, A.G. *Orthodox Christians and the Rights Revolution in America*. New York: Fordham University Press, 2024. Pp. vi + 371. \$40.00 paper.

Roeber argues that Orthodox Christians see rights claims through the lens of an inherited focus on the dignity of the human person. In US pluralistic society and culture, Orthodox Christians share with non-Orthodox fellow citizens the challenge of reconciling conflicting rights claims that pit “religious liberty” claims against perceived dangers from outside the Church. But he concludes that internal disagreements about the rights of clergy and people within the Church accompany the Orthodox Christian engagement with debates over gender, sex, and marriage as well as expanding political, legal, and human rights claims.