

Book Notes*

CONTENTS

CONSTITUTIONAL THEORY AND HISTORY	550
CONTRACTS AND CAPITALISM	550
CRIMINAL JUSTICE AND SOCIAL CONTROL	550
ISSUES IN RESEARCH ON LAW AND BEHAVIOR	551
JURISPRUDENCE AND SOCIOLEGAL THEORY	551
LAW AND INDIGENOUS PEOPLES	552
LAW AND LABOR	552
LAW AND MEDICINE	552
LAW AND RACE	552
LAW AND SEXUALITY	553
LAW ON THE GROUND	553
LEGAL AGENCY OF SUBJECT PEOPLES	553
REGULATION	554
REGULATION	554
POLITICAL TRIALS	554
RULE OF LAW	554

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

CONSTITUTIONAL THEORY AND HISTORY

Segall, Eric J. *Originalism as Faith*. New York: Cambridge University Press, 2018. Pp. xvi + 241. \$24.99 paper.

Segall argues that the US constitutional doctrine of originalism—often identified with Justice Scalia—is employed to maintain the mistaken faith that the US Supreme Court decides cases under the law instead of by the Justices' personal values. He sees the doctrine as a pretext for reaching politically desirable results and argues that Justice Scalia himself failed to practice the originalism that he preached.

CONTRACTS AND CAPITALISM

Rosenberg, Anat. *Liberalizing Contracts: Nineteenth Century Promises Through Literature, Law and History*. New York: Routledge, 2018. Pp. x + 263. \$130.00 cloth.

Placing canonical realist novels in conversation with legal-historical knowledge about Victorian contracts, Rosenberg examines nineteenth-century liberal thought in England through the relationship between contract and the relations and human practices at which it gestured, most broadly the capitalist market order. She concludes that Henry Maine's aphorism, "from status to contract" misses the possibility that liberalism functioned as a historical reinterpretation of statuses—particularly gender and class—rather than an effort at their elimination or preservation.

CRIMINAL JUSTICE AND SOCIAL CONTROL

Bauer, Shane. *American Prison: A Reporter's Undercover Journey into the Business of Punishment*. New York: Penguin Press, 2018. Pp. 351. \$28.00 cloth.

Drawing on his experiences as an entry-level prison guard at a private prison and on research on the history of for-profit prisons in the United States, journalist Bauer examines the contemporary system of private prisons. He finds that private prisons became entrenched in the South as part of a systemic effort to keep the African-American labor force in place post-Civil War, and that the prisons are deliberately unaccountable to public scrutiny and not incentivized to tend to the health of their inmates. To his horror, he found himself becoming crueler and more aggressive the longer he worked in the prison.

Felker-Kantor, Max. *Policing Los Angeles: Race, Resistance, and the Rise of the LAPD*. Chapel Hill, NC: University of North Carolina Press, 2018. Pp. 382. \$34.95 paper.

Felker-Kantor narrates the history of policing, anti-police abuse movements, race, and politics in Los Angeles from the 1965 Watts uprising to the 1992 Los Angeles rebellion. Drawing on archival sources, he gives an account of the transformation in police power, the convergence of interests in support of law and order policies, and African American and Mexican American resistance to police violence after the Watts uprising.

Haldipur, Jan. *No Place on the Corner: The Costs of Aggressive Policing*. New York: New York University Press, 2019. Pp. xv + 198. \$25.00 paper.

Haldipur draws on fieldwork in the South Bronx before and after the 2013 *Floyd v. City of New York* decision that ruled that the New York Police Department's controversial "stop and frisk" policing methods were a violation of rights. He focuses on how everyone in the neighborhood—even the district attorney's office—was affected by the stop and frisk policing regime and argues that the community as a whole experienced this collective form of punishment. Patrols effectively made public spaces feel inaccessible to the people who lived there, causing community members to lose the "street corner" culture that has been a hallmark of cohesive urban spaces.

Obert, Jonathan, Andrew Poe, and Austin Sarat, eds. *The Lives of Guns*. New York: Oxford University Press, 2019. Pp. xiv + 215. \$34.95 cloth.

Contributors to Obert, Poe, and Sarat's volume draw from law, science studies, sociology, and politics to investigate the gun as an object with agency. Issues they consider include: How does the presence of these objects shape civic ideology? What does it mean to develop and care for gun and gun accessories technology? What do guns mean to those who build them versus those who fight for—and against—them? What could happen when drone technology meets gun technology?

Parsons, Anne E. *From Asylum to Prison: Deinstitutionalization and the Rise of Mass Incarceration after 1945*. Chapel Hill, NC: University of North Carolina Press, 2018. Pp. 240. \$29.95 cloth.

Parsons argues that the asylum did not die during the deinstitutionalization movement in the United States between 1950 and 1990. Instead, it returned as the government shifted to a more punitive, institutional approach to social deviance. Focusing on Pennsylvania, the state that ran one of the largest mental health systems in the country, she concludes that the lack of community-based services, a fear-based politics around mental illness, and the economics of institutions meant that closing mental hospitals fed a cycle of incarceration that became an epidemic.

ISSUES IN RESEARCH ON LAW AND BEHAVIOR

Kostakopoulou, Dora. *Institutional Constructivism in Social Sciences and Law: Frames of Mind, Patterns of Change*. New York: Cambridge University Press, 2018. Pp. xiii + 215. \$110.00 cloth.

This book proposes an institutional constructivist model for social scientific and legal inquiries, based on the interrelations within the social and political world and the application of change in EU laws and politics. Although there exist many vantage points from which one can understand how agents act, interact, shape, and bear the world, socio-legal epistemology has focused on monist and dualist models. Kostakopoulou argues that these models do not capture the complexity of micro-, macro-, and meso-worlds, nor can they account for the forms and patterns of socio-legal change.

Martin, John Levi. *Thinking Through Statistics*. Chicago: University of Chicago Press, 2018. Pp. xiv + 362. \$35.00 paper.

Martin presents an accessible primer on how to maintain rigorous data standards in social science work, and an argument for revising the way that statistics are used to support theories. He argues that the task of social statistics is not to estimate parameters, but to reject false theory. He illustrates common pitfalls that can keep researchers from doing just that, using a combination of visualizations, re-analyses, and simulations.

JURISPRUDENCE AND SOCIOLEGAL THEORY

Derrida, Jacques (translated by Sandra Van Reenen and Jacques De Ville). *Before the Law: The Complete Text of Préjugés*. Minneapolis: University of Minnesota Press, 2018. Pp. ix + 78. \$22.50 paper.

"How to judge—Jean-François Lyotard?" It is from this initial question that Derrida, in this first English translation, begins his essay on the origin of the law, of judgment, and the work of his colleague Jean-François Lyotard. Striving to contain that which comes before the law, that is in front of the law, and also prior to it, how to judge Jean-François Lyotard becomes an attempt for Derrida to explore humanity's rapport with judgment, origins, and naming.

LAW AND INDIGENOUS PEOPLES

McMillan, L. Jane. *Truth and Conviction: Donald Marshall Jr. and the Mi'kmaq Quest for Justice*. Vancouver: University of British Columbia Press, 2018. Pp. 220. \$34.95 cloth.

The author—Donald Marshall Jr.'s former spouse, an anthropologist, and an original defendant in the Canadian Supreme Court's *Marshall* decision—tells the story of Marshall's lifelong battle for Indigenous rights and against wrongful conviction.

LAW AND LABOR

Cummings, Scott L. *Blue and Green: The Drive for Justice at America's Port*. Cambridge, MA: Massachusetts Institute of Technology Press, 2018. Pp. xiv + 524. \$32.00 paper.

Cummings examines a campaign by labor (blue) and environmental (green) activists at the Port of Los Angeles, the largest US port, to improve working conditions for low-income drivers and air quality in nearby communities. He analyzes the tradeoffs of using alternative legal frameworks to promote labor organizing, and explores lessons for building movements to regulate low-wage work in the "gig economy." He finds that law can bind coalitions together and split them apart, and concludes that "the fight for legal reform never ends, but rather takes different turns on the long road to justice."

LAW AND MEDICINE

Keown, John. *Euthanasia, Ethics and Public Policy: An Argument Against Legislation*. New York: Cambridge University Press, 2018. Pp. xxiii + 531. \$44.99 paper.

Keown argues that the experience of legalization in the Netherlands, Belgium, and the US state of Oregon lends support to both empirical and logical "slippery slope" arguments against legalization of voluntary euthanasia or physician-assisted suicide. The empirical argument challenges the feasibility of drafting and enforcing adequate safeguards against abuse and mistake; the logical argument holds that acceptance of euthanasia in the case of suffering patients who request it logically involves acceptance of euthanasia for those unable to request it, such as infants and those with advanced dementia.

Macintosh, Kerry Lynn. *Enhanced Beings: Human Germline Modification and the Law*. New York: Cambridge University Press, 2018. Pp. viii + 185. \$34.99 paper.

Scientists use molecular editing tools to alter human gametes and embryos, a practice known as human germline modification. These efforts may lead to the birth of children with better health, improved memories, and extended lifespans. However, critics argue that human germline modification exceeds divine and natural boundaries, transforms reproduction into manufacture, and could result in the collapse of democracy. Macintosh critiques these objections on both biological and political grounds, arguing that bans on human germline modification pose a threat to scientists and science, parents, children, foreigners, and society.

LAW AND RACE

Bridges, Khiara M. *Critical Race Theory: A Primer*. St. Paul, MN: Foundation Press, 2019. Pp. xviii + 486. \$47.00 paper.

This primer on Critical Race Theory (CRT) examines the theory's basic commitments, strengths, and weaknesses. The text includes a history of CRT; explores core concepts in the theory, including institutional/structural racism, implicit bias, microaggressions, racial privilege, and the relationship between race and class; examines the intersection of race with sexuality and gender identity,

religion, and ability; and analyzes several contemporary issues to which CRT speaks, including racial disparities in health, affirmative action, the criminal justice system, the welfare state, and education.

LAW AND SEXUALITY

Chua, Lynette J. *The Politics of Love in Myanmar: LGBT Mobilization and Human Rights as a Way of Life*. Stanford, CA: Stanford University Press, 2019. Pp. xvii + 207. \$25.95 paper.

Chua offers an intimate ethnographic account of a group of LGBT activists before, during, and after Myanmar's post-2011 political transition. Focusing on the intersection of emotions and interpersonal relationships with law, rights, and social movements, she explores how these activists devoted themselves to—and fell in love with—the practice of human rights and how they were able to empower queer Burmese to accept themselves, gain social belonging, and reform discriminatory legislation and law enforcement.

LAW ON THE GROUND

De, Rohit. *A People's Constitution: The Everyday Life of Law in the Indian Republic*. Princeton, NJ: Princeton University Press, 2018. Pp. ix + 296. \$45.00 cloth.

Arguing against the view that the Indian Constitution of 1950—a document in English created by elites—has had little influence on India's greater population, De finds that the Constitution came alive in the popular imagination so much that ordinary people attributed meaning to its existence, took recourse to it, and argued with it. Focusing on the use of constitutional remedies by citizens against new state regulations, he illustrates how laws and policies were frequently undone or renegotiated from below. He examines precedent-setting cases as examples.

LEGAL AGENCY OF SUBJECT PEOPLES

Jones, Martha S. *Birthright Citizens: A History of Race and Rights in Antebellum America*. New York: Cambridge University Press, 2018. Pp. xix + 248. \$27.99 paper.

Drawing on archival sources and a reframing of constitutional lawmaking before the US Civil War, Jones argues that when the Fourteenth Amendment constitutionalized the birthright principle, the aspirations of black Americans were realized. Before the War, colonization schemes and black laws had threatened to deport former slaves born in the country. African American activists remade national belonging through battles in legislatures, conventions, and courthouses. Former slaves studied law, secured allies, and conducted themselves like citizens, establishing their status through local, everyday claims, arguing that birth guaranteed their rights.

Kennington, Kelly M. *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America*. Athens, GA: University of Georgia Press, 2017. Pp. xviii + 288. \$54.95 cloth.

Drawing on the case files of more than three hundred enslaved blacks, Kennington offers an in-depth look at how daily interactions, webs of relationships, and arguments presented in court shaped and reshaped legal debates and public attitudes over slavery and freedom in St. Louis. She concludes that although enslavers dominated the antebellum legal system in St. Louis and throughout the slaveholding states, that did not mean that the system ignored the concerns of the subordinated groups who made up the bulk of the population.

Premo, Bianca. *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire*. New York: Oxford University Press, 2017. Pp. xiii + 361. \$36.95 paper.

Ordinary litigants—most notably slaves, native peasants, and women—in the Spanish colonies sued superiors at an accelerating pace in the second half of the eighteenth century. These litigants advanced a new law-centered culture distinct from the justice-oriented legal culture of the early modern period, at precisely the time that Enlightenment ideas were being promulgated. In developing this story, Premo considers why, if this is so, the Spanish empire has remained marginal to the story of the advent of the modern West.

REGULATION

Lee, Karen. *The Legitimacy and Responsiveness of Industry Rule-making*. Oxford, UK: Hart Publishing, 2018. Pp. xxiii + 282. \$94.00 cloth.

Drawing on three in-depth case studies of the experience of the Australian telecommunications industry with self-regulatory rulemaking—a form of rulemaking that bears the hallmarks of “responsive regulation,” “democratic experimentalism,” “new governance,” and other strategies of proceduralization—Lee argues that industry rulemaking can be responsive and legitimate at the same time. She formulates and applies criteria against which industry rulemaking should be evaluated.

REGULATION

Melnick, R. Shep. *The Transformation of Title IX: Regulating Gender Equality in Education: Regulating Gender Equality in Education*. Washington, DC: Brookings Institution Press, 2018. Pp. x + 325. \$35.99 paper.

Melnick finds that, although intended to give girls and women greater access to sports programs and other courses of study, Title IX of the Education Amendments of 1972 has since been used to expand a wide range of antidiscrimination policies—most recently the Obama administration’s mandates on sexual harassment and transgender rights. He argues that Title IX has become a central part of legal and political campaigns to correct gender stereotypes, not only in academic settings but in society at large and has thus become a significant feature of “America’s culture wars.”

POLITICAL TRIALS

Rubin, Avi. *Ottoman Rule of Law and the Modern Political Trial: The Yildiz Case*. Syracuse, NY: Syracuse University Press. Pp. xviii + 243. \$29.95 paper.

In 1881, a group of Ottoman senior officials were found guilty for complicity in the murder of a recently dethroned sultan in a trial and dispute that continues to be relevant in Turkey today. Drawing on narrative and archival sources, Rubin explores the trial and its representations in contemporary public discourse and subsequent historiography. Through the reconstruction and analysis of various aspects of the trial, he identifies the emergence of a new culture of legalism that sustained the first modern political trial in the history of the Middle East.

RULE OF LAW

David, Roman, and Ian Holliday. *Liberalism and Democracy in Myanmar*. New York: Oxford University Press, 2018. Pp. xvi + 234. \$80.00 cloth.

David and Holliday address prospects for liberal democracy in Myanmar, drawing on in-depth interviews and three waves of surveys and survey experiments, triangulated with constitutional and legal texts and reports. The analysis culminates in the concept of limited liberalism, which reflects an at times puzzling blend of liberal and illiberal attitudes. The authors conclude that a weakening of liberal commitments among politicians and citizens, allied with spreading limited liberal attitudes, casts doubt on the prospects for liberal democracy in Myanmar.