

Book Notes*

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

CIVIL LIBERTIES

Ng, Michael. *Political Censorship in British Hong Kong: Freedom of Expression and the Law (1842–1997)*. New York: Cambridge University Press, 2022. Pp. xvi + 211. \$39.99 cloth.

Drawing on archival materials, Ng challenges the widely accepted narrative that freedom of expression in Hong Kong is a legacy of British rule of law. He finds that media and schools were pervasively censored for much of the colonial period and only liberated at a very late stage of British rule; he concludes that, from the nineteenth century to the twentieth century, Hong Kong's legal history was deeply affected by China's relations with world powers and that Hong Kong's freedoms drifted along waves of change in global politics.

CONSTITUTIONAL THEORY AND HISTORY

Chemerinsky, Erwin. *Worse Than Nothing: The Dangerous Fallacy of Originalism*. New Haven, CT: Yale University Press, 2022. Pp. xiii + 248. \$28.00 cloth.

Chemerinsky argues that the framers did not intend interpretation of the US Constitution to be inflexible; that it is often impossible to know what the “original intent” of any particular provision was; and that, though its supporters tout it as a politically neutral and objective method, originalist interpretation tends to disappear when its results fail to conform to modern conservative ideology.

Fleming, James E. *Constructing Basic Liberties: A Defense of Substantive Due Process*. Chicago: University of Chicago Press, 2022. Pp. viii + 274. \$30.00 paper.

From reproductive rights to marriage for same-sex couples, many basic liberties in the United States owe their protection to landmark US Supreme Court decisions that have hinged on the doctrine of substantive due process. Against recurring charges that the practice of substantive due process is dangerously indeterminate and irredeemably undemocratic, Fleming argues that there is an underlying coherence and structure of substantive due process and defends it as integral to constitutional democracy.

Tushnet, Mark, and Bojan Bugarcic. *Power to the People: Constitutionalism in the Age of Populism*. New York: Oxford University Press, 2021. Pp. v + 285. \$39.95 cloth.

Tushnet and Bugarcic provide a series of case studies to identify when and how populist programs worldwide are inconsistent with constitutionalism and, importantly, when and how they are not. Concluding with a discussion of the possibilities for a deeper, populist democracy, they examine recent challenges to the idea that democracy is a good form of government by exploring possibilities for new, albeit revisable, institutions that can determine and implement a majority's views without always threatening constitutionalism.

CRIMINAL JUSTICE AND SOCIAL CONTROL

Bach, Wendy A. *Prosecuting Poverty, Criminalizing Care*. New York: Cambridge University Press, 2022. Pp. xi + 224. \$34.99 paper.

At the height of the opiate epidemic, the US state of Tennessee made it a crime for a pregnant woman to transmit narcotics to a fetus. Drawing on quantitative and qualitative data from the cases of 120 women who were prosecuted for this crime, Bach finds that the combination of prosecuting “fetal assault” and institutionalizing the idea that criminalization is a road to care lead, at best, to clinically dangerous and corrupt treatment and, at worst and far more often, to an insidious smoke-screen obscuring harsh punishment.

Boittin, Jennifer Anne. *Undesirable: Passionate Mobility and Women's Defiance of French Colonial Policing, 1919–1952*. Chicago: University of Chicago Press, 2022. Pp. ix + 272. \$35.00 paper.

Examining policing archives in France, Senegal, and Cambodia, Boittin unearths the stories of hundreds of women labeled “undesirable” by the French colonial police and society in the early twentieth century. These “undesirables” were often women traveling alone, women who were poor or ill, women of color, or women whose intimate lives were deemed unruly. To be able to move freely, they spoke out or wrote impassioned letters: some emphasized their “undesirable” qualities to suggest that they needed the care and protection of the state, while others used the empire’s own laws to challenge state or societal interference.

Lave, Tamara Rice. *Sexual Assault on Campus: Defending Due Process*. New York: Cambridge University Press, 2022. Pp. ix + 230. \$29.99 paper.

Lave takes a critical look at the US Department of Education’s (DOE) attempts to require schools to take campus assault seriously and assesses the fairness of adjudication under the DOE’s “Dear Colleague” letter of instructions. The book includes excerpts from interviews with complainants, accused students, and administrators and provides a detailed look at the Title IX regulations put in place by the Trump administration.

Levy, Karen. *Data Driven: Truckers, Technology, and the New Workplace Surveillance*. Princeton, NJ: Princeton University Press, 2022. Pp. v + 231. \$33.00 cloth.

Levy argues that US federal regulations that require truckers to install digital monitors that capture data about their locations and behaviors upend their life and work. Intended to address the pervasive problem of trucker fatigue by regulating the number of hours driven each day, the devices support additional surveillance by firms. She finds not only that these technologies are reconfiguring industry relationships and providing new tools for managerial and legal control but also that truckers are challenging and resisting them.

McKay, Tasseli. *Stolen Wealth, Hidden Power: The Case for Reparations for Mass Incarceration*. Oakland: University of California Press, 2022. Pp. xi + 297. \$29.95 paper.

This book finds that the economic value of the damage caused by US mass incarceration to Black individuals, families, and communities totals \$7.16 trillion—roughly, 86 percent of the current Black-White wealth gap—and pairs this analysis with a call for reparations grounded in principles of transitional justice. Much of the damage of mass incarceration, McKay finds, has been silently absorbed by families and communities of the incarcerated, where it is often compensated for by women’s invisible labor.

Perlin, Michael L., and Kelly Frailing, eds. *Justice Outsourced: The Therapeutic Jurisprudence Implications of Judicial Decision-Making by Nonjudicial Officers*. Philadelphia, PA: Temple University Press, 2022. Pp. xi + 309. \$37.95 paper.

In various US jurisdictions, numerous cases are outsourced to nonjudicial officers (NJOs) to decide issues ranging from custody disputes and foster care to alcohol, substance abuse, and mental health treatment and institutionalization. Contributors to Perlin and Frailing’s volume critically examine the role of these officers, including the ethical and practical considerations. A major concern is that the use of NJOs weakens a defendant’s rights and dignity and corrupts the administration of justice; however, the contributors also see the potential for therapeutic principles and procedures to enhance decision making.

Phillips, Scott, and Mark Cooney. *Geometrical Justice: The Death Penalty in America*. New York: Routledge Taylor & Francis, 2022. Pp. xv + 156. \$44.95 paper.

Drawing on Donald Black’s theoretical ideas, Phillips and Cooney address discrepancies in the US criminal justice system, focusing on who is sentenced to death and executed. Drawing on an extensive data set, they seek to explain why some murders are seen as more serious than others and how the social characteristics of defendants, victims, and jurors affect case outcomes.

Quicker, John C., and Akil S. Batani-Khalfani. *Before Crips: Fussin', Cussin', and Discussin' among South Los Angeles Juvenile Gangs*. Philadelphia, PA: Temple University Press, 2022. Pp. xv + 445. \$29.95 paper.

This book results from the friendship of Quicker and Batani-Khalfani, aka “Bird,” who use an insider/outsider approach to argue that structural marginality transformed hang-out street groups of non-White juveniles into Los Angeles gangs, paving the way for the rise of the infamous Crips and Bloods. They draw on interviews with original gang members as well as theory and literature reviews to contextualize gang life and gang formation.

Shelby, Tommie. *The Idea of Prison Abolition*. Princeton, NJ: Princeton University Press, 2022. Pp. ix + 231. \$29.95 cloth.

Shelby draws on insights from Black radicals and leading prison abolitionists, especially Angela Davis, to argue that the United States should dramatically decrease imprisonment and think beyond bars when responding to the problem of crime. While a world without prisons might be utopian, he concludes that US jurisdictions can make meaningful progress toward this ideal by abolishing the structural injustices that too often lead to crime and its harmful consequences.

HUMAN RIGHTS

Chen, Cher Weixia, and Alison Dundes Renteln. *International Human Rights: A Survey*. New York: Cambridge University Press, 2022. Pp. xv + 590. \$41.99 paper.

Considering the philosophical foundations of human rights, Chen and Renteln explore the interpretive difficulties associated with identifying what constitute human rights abuses and evaluate various perspectives on human rights. They analyze institutions that strive to promote and enforce human rights standards, discuss a wide variety of substantive human rights including genocide, torture, and capital punishment, and consider the rights of marginalized groups.

JUDICIAL POWER AND DECISION MAKING

Botero, Sandra, Daniel M. Brinks, and Ezequiel A. Gonzalez-Ocantos, eds. *The Limits of Judicialization: From Progress to Backlash in Latin America*. New York: Cambridge University Press, 2022. Pp. xiii + 347. \$120.00 cloth.

Latin America was one of the earliest and most enthusiastic adopters of what has come to be known as the judicialization of politics—the use of law and legal institutions as tools of social contestation to curb the abuse of power in government, resolve policy disputes, and enforce and expand civil, political, and socio-economic rights. Almost forty years into this experiment, the contributors to Botero, Brinks, and Gonzalez-Ocantos’s volume find that the “judicialization superstructure” often falls short of the promise of greater accountability and rights protection.

Kureshi, Yasser. *Seeking Supremacy: The Pursuit of Judicial Power in Pakistan*. New York: Cambridge University Press, 2022. Pp. xii + 286. \$110.00 cloth.

Kureshi argues that the emergence of the judiciary as an assertive and confrontational center of power has been a very consequential new feature of Pakistan’s political system. He maps out the evolution of the relationship between the judiciary and military in Pakistan, examining how Pakistan’s high courts shifted from loyal deference to the military to open competition and confrontation with military and civilian institutions. He concludes that a shift in the audiences shaping judicial preferences explains the emergence of the judiciary as an assertive power center.

JURIES

Marder, Nancy S. *The Power of the Jury: Transforming Citizens into Jurors*. New York: Cambridge University Press, 2022. Pp. ix + 266. \$32.99 paper.

Jurors, Marder argues, are not found but, rather, made and shaped by the jury process. This book takes the perspective of jurors and analyzes how each stage of this process—from initial summons to post-verdict interview—equips jurors with experiences and knowledge that allow them to perform their new role ably. It adopts a holistic approach to jury reform and proposes reforms that will aid the transformation of citizens into jurors.

Offit, Anna. *The Imagined Juror: How Hypothetical Juries Influence Federal Prosecutors*. New York: New York University Press, 2022. Pp. xi + 176. \$28.00 paper.

Drawing on extensive field research among US federal prosecutors, Offit describes a world in which even the question of moving forward with a prosecution often hinges on how federal prosecutors assume a jury will react—an exercise where the perspectives of the public are imagined and incorporated into every stage of trial preparation. She concludes that the decreasing number of jury trials at the federal level has not eliminated the influence of the jury but altered it and that prosecutors at times caricature the public by leaning on preconceived and simplistic ideas about how laypeople think.

LAW AND ANTHROPOLOGY

Foblets, Marie-Claire, Mark Goodale, Maria Sapignoli, and Olaf Zenker, eds. *The Oxford Handbook of Law and Anthropology*. New York: Oxford University Press, 2022. Pp. xxviii + 950. \$165.00 cloth.

This handbook, edited by Foblets, Goodale, Sapignoli, and Zenker, is animated by an overarching narrative about how law and anthropology have and should relate to each other as intersecting domains of inquiry that address such questions as dispute resolution, normative ordering, social organization, and legal, political, and social identity. Contributors seek to identify and conceptualize the most promising areas of innovation and socio-legal relevance as well as to acknowledge the points of tension, open questions, and areas for future development.

LAW AND CULTURE

Rosenberg, Anat. *The Rise of Mass Advertising: Law, Enchantment, and the Cultural Boundaries of British Modernity*. Oxford: Oxford University Press, 2022. Pp. xiii + 432. £70.00 cloth.

This book is a cultural legal history of advertising in Britain. It traces the role of law in negotiating the challenges that advertising created for the ideals of modernity and in shaping the new system of capitalism. Examining multiple legal domains and crossing several disciplinary divides, Rosenberg finds that law was deployed to perform the boundary work that differentiated advertising from adjacent fields (news, art science, and common morality) and that law upheld a view of modernity as a process of disenchantment in the face of a system that circulated new kinds of market magic.

LAW AND DIVERSITY

Dobbin, Frank, and Alexandra Kalev. *Getting to Diversity: What Works and What Doesn't*. Cambridge, MA: Harvard University Press, 2022. Pp. xi + 272. \$29.95 cloth.

Dobbin and Kalev draw on more than thirty years of data from eight hundred US companies as well as in-depth interviews with managers to challenge dominant approaches to increasing workplace

diversity and to develop an account of what really works. They find that companies gain little from sending managers to diversity training and then following up with rules and sanctions to shape their behavior. Instead, they argue, the focus should be on changing the management systems that make it hard for women and people of color to succeed.

LAW AND THE ENVIRONMENT

Selmi, Daniel P. *Dawn at Mineral King Valley: The Sierra Club, the Disney Company, and the Rise of Environmental Law*. Chicago: University of Chicago Press, 2022. Pp. xv + 347. \$30.00 cloth.

Selmi tells the story of the Walt Disney Company's plan to develop the pristine Mineral King Valley in California's Sierra Nevada mountains. At first, the plan met with unanimous approval from elected officials, government administrators, and the press, but then the Sierra Club forcefully pushed back with a lawsuit that ultimately propelled the modern environmental era by allowing interest groups to bring litigation against projects that they judged would bring environmental destruction.

LAW AND ILLIBERALISM

Sarat, Austin, Lawrence Douglas, and Martha Merrill Umphrey, eds. *Law and Illiberalism*. Amherst: University of Massachusetts Press. Pp. xi + 142. \$28.95 paper.

Essays in Sarat, Douglas, and Umphrey's volume explore the dynamics of the law and illiberal quests for power, examining the anti-liberalism of neoliberalism, the weaponization of "free speech," the role of the administrative state in current crises of liberal democracy, the broad assault on facts, truth, and reality, and the rise of conspiracism leading up to the insurrection in the US capitol.

LAW AND IMMIGRATION

Abrams, Kathryn. *Open Hand, Closed Fist: Practices of Undocumented Organizing in a Hostile State*. Oakland: University of California Press, 2022. Pp. xvi + 286. \$29.95 paper.

Drawing on five years of observation and interviews with activists in Phoenix, Arizona, Abrams explains how the practices of storytelling, emotion cultures, and performative citizenship fueled a grassroots movement against Arizona's campaign of "attrition through enforcement" against undocumented immigrants in the early 2000s. The book concludes that together these practices produced both the "open hand" (the affective bonds among participants) and the "closed fist" (the pragmatic strategies of resistance) that have allowed the movement to mobilize and sustain itself over time.

LAW AND LABOR

White, Ahmed. *Under the Iron Heel: The Wobblies and the Capitalist War on Radical Workers*. Oakland: University of California Press, 2022. Pp. vi + 349. \$34.95 cloth.

In 1917, the Industrial Workers of the World (known as the Wobblies) were rapidly gaining strength and members in the United States. Within a decade, White reports, this radical union was effectively destroyed, the victim of the "most remarkable campaign of legal repression and vigilantism in American history," through legal persecution and extralegal, sometimes lethal, violence.

LAW AND LITERATURE

Dees, Russell L. *Great Trials and the Law in the Historical Imagination: A Law and Humanities Approach*. New York: Routledge Taylor & Francis, 2022. Pp. ix + 176. \$128.00 cloth.

Examining the trials of Socrates, Cicero, Jesus, Thomas More, the Salem “witches,” and John Scopes as they have been portrayed in works of art, Dees examines how issues of legal, historical, and artistic interpretation can become intertwined: the different ways we embed law in narrative, how we bring conscious and subconscious conceptions of history to our interpretation of law, and how aesthetic predilections and moral commitments to the law may influence our views of history. An epilogue examines various readings of Atticus Finch.

LAW AND MEDICINE

Cage, E. Claire. *The Science of Proof: Forensic Medicine in Modern France*. New York: Cambridge University Press, 2022. Pp. x + 265. \$110.00 cloth.

Drawing on archival and printed sources, Cage traces the rise of forensic medicine in late eighteenth- and nineteenth-century France and examines its implications for our understanding of expert authority. Tying individual cases to broader debates, the book analyzes how new forms of medical and scientific knowledge, many of which were pioneered in France, were contested but ultimately accepted and applied to legal problems and the administration of justice. A primary focus is on the tensions between uncertainty about the reliability of forensic evidence and a new confidence in the power of scientific inquiry to establish guilt, innocence, and legal responsibility.

Turner, Felicity M. *Proving Pregnancy: Gender, Law, and Medical Knowledge in Nineteenth-Century America*. Chapel Hill: University of North Carolina Press, 2022. Pp. xvi + 228. \$29.95 paper.

Examining infanticide cases in the United States from the late eighteenth century to the late nineteenth century, Turner argues that, at the very moment when the US government expanded formal civil and political rights to formerly enslaved people, access to knowledge of the female body became restricted to white men. In the first half of the nineteenth century, community-based female knowledge played a crucial role in prosecutions for infanticide, but women became increasingly subject to the scrutiny of legal and medical experts steeped in prevailing ideas about the inferior mental and physical capacities of women and Black people.

LAW AND RACE

Landsberg, Brian K. *Revolution by Law: The Federal Government and the Desegregation of Alabama Schools*. Lawrence: University of Kansas Press, 2022. Pp. ix + 246. \$38.95 cloth.

The landmark US case of *Brown v. Board of Education* was the start of a long period of desegregation, but Brown did not give a roadmap for how to achieve this goal. In the years that followed, the path toward the fulfillment of this vision was worked out in the courts through the efforts of the National Association for the Advancement of Colored People’s Legal Defense organization and the Civil Rights Division of the US Department of Justice. Landsberg gives an in-depth account of how this played out in a major case on this path, *Lee v. Macon County Board of Education*.

LAW AND TORTURE

Hajjar, Lisa. *The War in Court: Inside the Long Fight against Torture*. Oakland: University of California Press, 2022. Pp. xix + 352. \$29.95 cloth.

Hajjar traces the fight against US torture policy by lawyers who brought the “war on terror” into the courts. Told as a suspenseful, high-stakes story, the book outlines why challenges to the torture policy had to be waged on the legal terrain and why hundreds of lawyers joined the fight. She concludes that the ongoing fight against torture has had transformative effects on the legal landscape in the United States and on a global scale.

LEGAL EDUCATION

Coleman, Brooke, Suzette Malveaux, Portia Pedro, and Elizabeth Porter. *A Guide to Civil Procedure: Integrating Critical Legal Perspectives*. New York: Cambridge University Press, 2022. Pp. xix + 380. \$99.00 cloth.

Contributors to Coleman, Malveaux, Pedro, and Porter’s volume argue that civil procedure can and should be an effective tool to address embedded inequality in the US legal system and that social justice should be a central component of civil procedure courses in law schools.

LEGAL PROFESSION

Falciola, Luca. *Up Against the Law: Radical Lawyers and Social Movements, 1960s–1970s*. Chapel Hill: University of North Carolina Press, 2022. Pp. v + 402. \$32.95 paper.

Drawing on archival research and interviews, Falciola reconstructs the role of the National Lawyers Guild in radical social movements in the United States in the 1960s and 1970s. In pursuit of radical change themselves, Guild lawyers identified with their clients, defied the habits of a conservative profession, and formulated a far-ranging critique of the legal system, questioning the neutrality and transformative power of law. Using the courtroom as a political forum, they developed aggressive litigation strategies and became involved with the organization of protest.

US SUPREME COURT

Hazelton, Morgan L. W., and Rachael K. Hinkle. *Persuading the Supreme Court: The Significance of Briefs in Judicial Decision-Making*. Lawrence: University of Kansas Press, 2022. Pp. xvi + 275. \$32.95 paper.

Hazelton and Hinkle investigate the factors that influence what information litigants and their attorneys provide to the US Supreme Court and what the justices and their clerks do with that information. Their analysis draws on more than twenty-five thousand party and *amicus* (“friend of the court”) briefs filed between 1984 and 2015, the text of the related court opinions, and interviews with former Supreme Court clerks and attorneys who have prepared and filed briefs before the US Supreme Court. One focus is on the roughly one thousand *amicus* briefs that seek to impact the court’s rulings.