Book Notes*

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

This book argues for an engagement between international trade law and human rights law, two areas that have been considered to be in tension with each other. Using examples from many nations in the Western Hemisphere, Hernández-Truyol and Powell combine their expertise to examine human rights policies involving conscripted child labor, sustainable development, promotion of health, equality of women, human trafficking, indigenous peoples, poverty, citizenship, and economic sanctions.


The contributors to Langford's volume provide a critical analysis of almost two thousand judgments and decisions from twenty-nine national and international jurisdictions, regarding social rights. They conclude that these cases not only implicate our understanding of economic, social, and cultural rights, but also challenge those who question whether these rights can and should be justiciable.


Drawing on extensive interviews with administrators and constituencies, Mertus examines the day-to-day workings of national human rights institutions in Bosnia, the Czech Republic, Denmark, Germany, and Northern Ireland to illustrate how local culture matters in promoting human rights. She concludes that in spite of their successes, national human rights institutions are difficult to design and operate, and they are only as good as the domestic political and economic factors will allow.


Contributors to Ramraj's volume argue that there is an ever-present danger, borne out by historical and contemporary events, that even the most well-meaning executive, armed with extraordinary powers, will abuse those powers. Working at the intersection of legal, political, and social theory and practice, the essays in the volume consider whether a counterpush for constraint can be successful, and how such a struggle comports with aspirations of legality.


Somers advances a view of rights as public goods rooted in an alliance of public power, political membership, and social practices of equal moral recognition. Through epistemologies of history and naturalism, contested narratives of social capital, and Hurricane Katrina's racial apartheid, she argues that the growing authority of the market is distorting the noncontractualism of citizenship and that rights, inclusion, and moral worth are increasingly dependent on contractual market value.
CRIMINAL JUSTICE AND SOCIAL CONTROL


Flavin argues that by restricting abortion and obstetric and gynecologic care, and failing to support the efforts of incarcerated women and battered women to rear their children, the law and the criminal justice system establish what a good woman or a fit mother should look like and how conception, pregnancy, birth, child care, and socialization should take place.


Based on a survey of over five hundred New York Police Department patrol officers, Linn’s study assesses how overtime need, postwork commitments, aversion to arrest processing, and other personal concerns affect officers’ decisions whether to make an arrest.


Contributors to Ogletree and Sarat’s collection view wrongful convictions not as random mistakes but as organic outcomes of a misshaped larger system that is rife with faulty eyewitness identifications, false confessions, biased juries, and racial discrimination. The contributors conclude that while exonerations seem to demonstrate the vitality of the US criminal justice system, in reality they reflect breakdowns in law’s ability to deliver justice swiftly and fairly.


Scott and Steinberg present a developmental model of juvenile justice that recognizes adolescents’ immaturity but also holds them accountable. They argue that juvenile justice should be grounded in the best available psychological science, which would make it possible for young people who have committed crimes to grow into responsible adults.

PUBLIC REGULATION


Contributors to Dilling, Herberg, and Winter’s collection consider the potential of self-regulation by transnational industry. They study self-regulatory settings such as multinational corporations, transnational production networks, and industry-NGO partnerships, and link their empirical findings to formal law by examining how legal concepts are reflected in self-regulation, how the law builds on self-regulatory solutions, and how law helps to establish favorable conditions for private governance.

McGarity argues that there has been a quiet war raging for the last decade in US courts, federal regulatory agencies, and Congress over federal agency preemption of state common law claims. He concludes that the net effect has been a loss of power for consumers, because of a reduction in the accountability of companies.

**DISPUTE RESOLUTION**


Drawing on interviews, questionnaires, and observations of plaintiffs, defendants, lawyers, and mediators involved in sixty-four fatality and medical injury cases in Canada, this book examines how professional, lay, and gendered actors understand and experience case processing in litigation and mediation. In juxtaposing actors' discourse on all sides of ongoing cases, Relis seeks to shed light on debates about formal and informal justice, the inextricability of disputants' legal and extralegal needs, and current paradigms relating to professional, lay, and gendered identities.

**US SUPREME COURT**


This analysis of statutory interpretation by the US Supreme Court reviews the various approaches to interpretation and considers the use of these approaches by the justices of the Rehnquist Court. Cross focuses on the question of whether the application of the approaches is based on an analytic perspective or on a process of results-based decision making.

**LEGAL PROFESSION**


In this sequel to his 1996 book, *The Future of Law*, Susskind argues that we are now in a world in which clients and lawyers are collaborators under one virtual roof, disputes are dominated by technology, and online systems and services compete with lawyers in providing access to the law and to justice. He concludes that these developments have positive implications for progressive lawyering.

**CONSTITUTIONAL THEORY AND HISTORY**


In this historical examination of federalism, Purcell argues that there was no clear agreement among the Founders regarding the nature of American federalism, nor was
there a consensus on correct lines dividing state and national authority. Furthermore, even had there been some original understanding, the elastic and dynamic nature of the constitutional structure would have made it impossible for subsequent generations to maintain any original or permanent balance.

TRANSFORMATION OF LEGAL SYSTEMS


This book offers an account of law and liberalism in contemporary Bolivia, moving between social, political, legal, and discursive analyses, and drawing from a range of disciplinary traditions. Goodale provides a case study of the appropriation and reconstruction of transnational law at the local level, arguing that the contemporary Bolivian experience is best understood by examining historical patterns of intention as they emerge from everyday practices.


In van der Merwe, Baxter, and Chapman’s collection, fourteen researchers empirically examine seventy countries that have suffered from autocratic rule, genocide, and protracted internal conflict, gauging the effectiveness of various transitional justice mechanisms in wide-ranging sociocultural contexts.

LAW AND FAMILY RELATIONSHIPS


Holden’s study investigates the place of Hindu divorce in the Indian legal system, with a focus on the relationship between traditional jurisdictions located in rural areas and the larger legal culture of towns and cities in India. For comparative purposes, it also considers data from the United Kingdom and United States.


Drawing on every recorded judicial decision in gay and lesbian adoption and custody cases in the United States over the last fifty years, and on interviews with parents, lawyers, and judges, Richman analyzes how parental and sexual identities are formed and interpreted in law. She challenges prevailing notions that gay and lesbian parents and families are hurt by laws’ indeterminacy, arguing that family law allows for the flexibility needed to respond to—and even facilitate—changes in how we conceive of family, parenting, and the role of sexual orientation in family law.
LAW AND RACE/ETHNICITY


Basson argues that in the late nineteenth-century United States, racial mixture posed a distinct threat to European American perceptions of the nation and state. Drawing on government documents, press coverage, and firsthand accounts, she presents four case studies concerning indigenous people of mixed descent. She explores how the ambiguous status of racially mixed people led to a new definition of what it meant to be American—one that relied on institutions of private property and white supremacy.


Dorr argues that proponents of eugenics melded evolutionary biology and incipient genetics with long-standing cultural racism, and that the resulting theories were embodied in Virginia marriage and sterilization statutes. However, he concludes that by the 1910s African American Virginians advanced their own hereditarian ideas, creating an effective counternarrative to white scientific racism, and, ultimately, segregation’s science contained the seeds of biological determinism’s undoing.


Tehranian combines his personal experience as an Iranian American with an analysis of current events, legal trends, and critical theory to analyze how American constructions of Middle Eastern racial identity have changed over the last two centuries, paying particular attention to the shift in perceptions of the Middle Easterner from friendly foreigner to enemy alien.

WOMEN AND THE LAW


Contributors to Hunter’s collection challenge the usefulness of equality as a basis for strategizing for women’s rights. Their papers—which focus primarily on English-speaking, common law culture—analyze a range of equality projects across a number of areas of public and private law, considering both competing conceptions of equality and alternatives to it.

LAW AND INDIGENOUS PEOPLES


This book focuses on the legal deployment of indigenous difference in United States and Canadian courts in recent decades. Through ethnographic and historical research,
Hamilton traces dimensions of indigeneity through close readings of four legal cases, each of which raises important questions about law, culture, and the production of difference.

**LAW AND LAND REFORM**


Contributors to Claassens and Cousins’ collection explore the implications of South Africa’s 2004 Communal Land Rights Act (CLRA), which was criticized for reinforcing the apartheid power structure and ignoring the interests of the common people. The essays and case studies navigate through competing viewpoints to discuss the tensions between the new democratic government and traditional tribal leaders, the land rights of affected yet isolated or marginalized groups, and concerns about the constitutionality of the CLRA itself.


Drawing on her experience as Rural Land Claims Commissioner in KwaZulu–Natal from 1995 to 2000, Walker examines the process of land reform in South Africa. She explores the master narrative of loss and restoration, which has been fundamental in shaping the restitution program; offers a critical overview of the achievements of the program as a whole; and discusses “non-programmatic limits to land reform,” including urbanization, environmental constraints, and the impact of HIV/AIDS.

**LAW AND INTELLECTUAL PROPERTY**


Boyle argues that intellectual property rights mark the ground rules of the information society, and that contemporary policies are unbalanced, unsupported by evidence, and often detrimental to cultural access, free speech, digital creativity, and scientific innovation. He argues that the public domain is vital to innovation and culture, and equally as important as material protected by intellectual property rights.


Lange and Powell argue that the First Amendment to the US Constitution imposes absolute limits upon claims of exclusivity in intellectual property and expression, and that it strips Congress of the power to restrict personal thought and free expression in the name of intellectual property rights. They conclude that while the exclusive rights currently reflected in intellectual property are not needed to encourage intellectual productivity, there is a way for Congress, even within the limits imposed by an absolute First Amendment, to regulate incentives for intellectual creations.