RECENT PUBLICATIONS

SENTENCING FRAGMENTS: PENAL REFORM IN AMERICA, 1975–2025. By Michael Tonry. New York, N.Y.: Oxford University Press. 2016. Pp. xii, 300. $35.00. American exceptionalism is alive and well in our criminal sentencing system. Since 1990, the United States has locked up a higher percentage of its citizens than any other country. When crime rates rose throughout the Western world during the latter half of the twentieth century, only the United States responded by implementing sentencing schemes that both sent more people to prison and sent them away for much longer periods of time. The result, Professor Michael Tonry argues, is a system of sentencing that is "unjust, unprincipled, arbitrary, overly severe, and absurdly expensive" (p. 1). Accordingly, Tonry proposes a number of reforms designed to send fewer individuals to prison, shorten the sentences of those already in prison, and "allow individualized consideration not only of offenses but also of offenders' personal characteristics and circumstances" (p. 202). To be sure, "[u]nwinding mass incarceration will be much harder than creating it was" (p. 253). But, Tonry observes, history will likely judge our languor in this regard harshly: "American mass incarceration, absolutely and especially in its effects on black people, will be seen by our descendants as an extraordinary moral failure, a classic instance of man's inhumanity to man" (p. 253).

ENFORCING THE EQUAL PROTECTION CLAUSE: CONGRESSIONAL POWER, JUDICIAL DOCTRINE, AND CONSTITUTIONAL LAW. By William D. Araiza. New York, N.Y.: New York University Press. 2015. Pp. xiii, 305. $60.00. Sophisticated, clear, and committed to the importance and long-term development of equality rights, Professor William Araiza's *Enforcing the Equal Protection Clause* analyzes Congress's enforcement power under the Fourteenth Amendment and proposes a unique understanding of that power and its relationship to the Supreme Court's claim of supremacy in constitutional interpretation. Relying on the basic insight that Congress is in a better institutional position than the Court to translate the "vague and heavily value-laden" (p. 147) equality principles of the Fourteenth Amendment into concrete reality, the book calls upon the Court to "refocus its congruence and proportionality analysis" (p. 142). In particular, Araiza argues for greater emphasis on congressional power to enforce the core constitutional rules of the Equal Protection Clause while preserving the role of the Court in exercising a meaningful-yet-deferential form of judicial review over enforcement legislation — one that acknowledges Congress's and the Court's respective institutional competencies. Bold and fascinating, *Enforcing the Equal Protection Clause* is essential reading for any student interested in the future of equality rights and the role of the respective branches of government in securing them.

THE PSYCHOLOGICAL FOUNDATIONS OF EVIDENCE LAW. By Michael J. Saks & Barbara A. Spellman. New York, N.Y.: New York University Press. 2016. Pp. xiv, 325. $89.00. Both lawyers and nonlawyers are familiar with the television trope of the objection-yelling lawyer. What gives lawyers the right to object, and what are the justifications for these objections? Professors Michael Saks and Barbara Spellman analyze the rules of evidence and why they exist, likening evidence rulemakers to "applied psychologists" (p. 27). In constructing and applying the rules of evidence, legal actors predict how certain types of evidence might "inform or mislead or otherwise influence the jury" (p. 2). In so doing, legislators and judges often rely on common sense or intuition, which may or may not align with the results from empirical studies. In *The Psychological Foundations of Evidence Law*, the authors examine evidence rules in the context of psychological research, covering topics including the cognitive biases of judges and juries, the effectiveness of jury instructions, and the comprehensibility of expert evidence. While some rules of evidence are supported by empirical data, others could be revised to better comport with the ever-growing body of psychological knowledge. This highly readable book combines empirical research, legal analysis, and entertaining anecdotes into an engaging read for lawyers, psychologists, and anyone interested in courtroom dramas.

DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY. By Richard A. Posner. Cambridge, Mass.: Harvard University Press. 2016. Pp. xiv, 414. $29.95. Legal academia has a lot to offer the judiciary — or so it would like to think. In his new book, *Divergent Paths*, Judge Richard Posner, who served on the University of Chicago law faculty prior to his appointment to the Seventh Circuit, points out the ever-widening gap between academia and the bench. As the cases that judges hear involve increasingly complex and technical issues, legal academia has somehow become progressively more theoretical. In this state of affairs, there is no winner — scholars' research does not speak to the quandaries with which judges actually struggle, judges do not receive any practical guidance, and law students are left unprepared for the realities of contemporary legal practice. Judge Posner asks how legal education can be restructured to alleviate this problem. Not to be accused of theoretical ramblings himself, Judge Posner lists out fifty-five problems and forty-eight solutions. Judge Posner's incisive insights into the problems plaguing the judiciary make his case even more compelling. Time will tell if law school hiring, curricula, and teaching methods change in response to Judge Posner's critique, but the academy would do well to heed it.