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## RECENT PUBLICATIONS

**TROUBLING TRANSPARENCY: THE HISTORY AND FUTURE OF FREEDOM OF INFORMATION.** Edited by David E. Pozen & Michael Schudson. New York, N.Y.: Columbia University Press. 2018. Pp. viii, 341. \$30.00. 2016 marked the fiftieth anniversary of the enactment of the Freedom of Information Act (FOIA). After attending a conference that summer at Columbia University to honor the occasion, Professors David E. Pozen and Michael Schudson resolved to compile essays from dozens of FOIA experts from different disciplines to commemorate FOIA, celebrate FOIA's accomplishments, mark FOIA as an important milestone in U.S. legal and cultural history, and, most importantly, generate critical reflection. *Troubling Transparency* is the result of their effort: a compilation of fourteen essays by sixteen different authors reflecting on the past, present, and possible future of government transparency. Focusing primarily on U.S. law, the volume begins in Part I by reporting on FOIA's conceptual foundations and original expected applications. Part II turns toward how FOIA has applied in reality, with a focus on its unexpected results. Part III provides various scholars' ideas on how FOIA may be amended, improved, or replaced through future legislative action (or constitutional amendment). Finally, the volume concludes in Part IV with a comparative analysis of how the U.S. experience with FOIA has influenced international transparency and how the United States might learn from other countries' experiences.

**CLICK HERE TO KILL EVERYBODY: SECURITY AND SURVIVAL IN A HYPER-CONNECTED WORLD.** By Bruce Schneier. New York, N.Y.: W.W. Norton & Company. 2018. Pp. 319. \$27.95. The items we use in daily life have become computers connected to the internet: cars, ovens, washing machines, and more. This is the world of the Internet of Things, and it is expanding. Bruce Schneier points to an "Internet that senses, thinks and acts," with humans serving as "just another component" in the system (p. 7). He terms this "system of systems" the "Internet + Things + us," or simply the "Internet+" (pp. 7–8). In *Click Here to Kill Everybody*, Schneier describes the Internet+ and warns of its insecurities and vulnerabilities. The rise of computers and their interaction with the physical world increases the risk of catastrophe. As the title suggests, Schneier posits a scenario in which a hack of bio-printers in hospitals could release a virus and start a pandemic. In the face of these potential consequences, Schneier offers suggestions for securing the Internet+ and argues "[g]overnment is the missing piece in Internet+ security today" (p. 101). Schneier is "not optimistic in the near term" (p. 183), but he challenges the reader to take action because "[t]he Internet+ is coming" (p. 225).

THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA. By John Henry Merryman & Rogelio Pérez-Perdomo. Stanford, Cal.: Stanford University Press. 2019. Pp. xii, 177. \$24.95. The late Professor John Henry Merryman and his co-author, Professor Rogelio Pérez-Perdomo, provide the fourth iteration of their succinct introduction to the civil law tradition. Purposely eschewing references to a single, multinational civil law “system,” Merryman and Pérez-Perdomo contend that polities normally referred to as “civil law nations” are more properly characterized as nations with legal systems emanating from an ancient, distinctive tradition. And tradition, in this sense, is not a system of rules but “a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization of the legal system, and about the way law is or should be made, applied, studied, perfected, and taught” (p. 2). Aimed at the amateur not versed in comparative law, *The Civil Law Tradition* spells out in introductory fashion the enduring characteristics of a legal tradition spanning multiple millennia, cultures, and continents. This edition also identifies and explains areas of change within that tradition, including decodification, constitutionalization, and federalization.

WHAT JUSTICES WANT: GOALS AND PERSONALITY ON THE U.S. SUPREME COURT. By Matthew E.K. Hall. New York, N.Y.: Cambridge University Press. 2017. Pp. xiii, 214. \$24.99. While traditional theories of judicial interpretation often depict Justices as rational actors who operate evenly within the realms of legal formalism, Professor Matthew Hall takes a more personal approach in *What Justices Want*. Drawing on theories from the social sciences, this book offers a new psychoeconomic approach to understanding judicial behavior. Breakthroughs in psychology enable personality trait studies based on textual analysis. Hall runs computerized programs against written opinions to estimate where a Justice ranks in five personality traits: extraversion, conscientiousness, agreeableness, neuroticism, and openness. These personality traits are then interpreted using economic models of behavior. Professor Hall proposes that “personality traits reflect the justices’ different goal preferences,” and that Justices “strategically pursue” these preferences based on that goal’s perceived value (p. 12). These personality traits and individualized goals are, he argues, reflected in the Court’s grants of certiorari, opinion-writing assignments, intracourt bargaining, and case outcomes, as well as the choice to write separate opinions. Taken together, the book weaves narratives from Supreme Court cases with personality-trait examinations and statistical analysis to an intriguing and insightful end.

THE POSITIVE SECOND AMENDMENT: RIGHTS, REGULATION, AND THE FUTURE OF *HELLER*. By Joseph Blocher & Darrell A.H. Miller. New York, N.Y.: Cambridge University Press. 2018. Pp. xi, 203. \$29.99. Few issues are as hotly contested, and yet as misunderstood, as the law and policies related to guns in America. Professors Joseph Blocher and Darrell Miller endeavor to split the conglomerate of policy preferences, emotions, and law surrounding America's gun debates by impartially illuminating the constitutional meaning of the Second Amendment. Framed largely as the story of *Heller*'s past, present, and future, *The Positive Second Amendment* seeks to inform the majority of citizens who support both an individual right to bear arms and reasonable regulations of that right. After documenting the early American history of gun regulations, Blocher and Miller address the road to *Heller* and its ultimate outcome. As they explain, *Heller* opened the door to an essentially new constitutional right, which federal courts are now in the process of constructing into constitutional doctrine. *The Positive Second Amendment* descriptively explores these constitutional innovations by defining the fundamental rules of constitutional argument. Ultimately, Blocher and Miller propose that a clearer understanding of the Second Amendment will minimize at least some of the gun debate's pathologies.

THE MOST DANGEROUS BRANCH: INSIDE THE SUPREME COURT'S ASSAULT ON THE CONSTITUTION. By David A. Kaplan. New York, N.Y.: Crown. 2018. Pp. xiv, 446. \$30.00. Published in the midst of the rancorous confirmation battles following Justice Kennedy's retirement from the U.S. Supreme Court, *The Most Dangerous Branch* offers a critical reflection on the Court's outsized role in American government and public life. Award-winning editor and author David Kaplan argues that the federal judiciary, once thought to be "the least dangerous branch," now wields unmatched power as the ultimate arbiter of the nation's most pressing social questions (p. 21). The "modern triumphalism" of the Court, he explains, is the product of the Justices' increasing willingness to assert their decisionmaking authority in the national political arena, often intervening to resolve unsettled hot-button issues rather than allowing democratic processes to run their course (p. 187). Kaplan first provides an inside look at the procedures and personalities that shape the Court's dynamics, then examines a selection of landmark decisions that illustrate the Justices' assertion of power over polarizing policy disputes. Skillfully written and carefully researched, Kaplan's work is a compelling account of the Court's transformation into the nation's preeminent political and cultural battleground — a transformation that, in the author's view, threatens to undermine the nation's democratic institutions and the legitimacy of the Court itself.

IMPEACHMENT: A HANDBOOK. By Charles L. Black, Jr. & Philip Bobbitt. New Haven, Conn.: Yale University Press. 2018. Pp. xiii, 165. \$9.95. The impeachment of a President is a matter of the “high[est] political importance” (p. 3). And yet impeachment raises an abundance of constitutional questions on which the Supreme Court has said little. In 1974, in the midst of the Watergate scandal, Professor Charles L. Black, Jr., published *Impeachment: A Handbook* as a citizen’s guide to impeachment. Black provided his perspective, in language digestible to an interested citizen, on the process of impeachment, possible grounds for impeachment, and the role the courts should play. In addition to becoming the “standard work” on presidential impeachment (p. xi), Black’s book provides a model for constitutional interpretation in the absence of authoritative judicial precedent. Now, as murmurs of impeachment once again circulate, Professor Philip Bobbitt provides a fresh perspective on the matter. Leaving Black’s distinguished treatise untouched as the first part of a two-part edition, Bobbitt then modernizes the discussion. By drawing lessons from recent efforts to impeach various presidents, identifying and dispelling seven commonly held fallacies regarding impeachment, and discussing possible grounds for impeachment that are particularly relevant today, Bobbitt expands an archetypal work into the twenty-first century.

THE CLAMOR OF LAWYERS: THE AMERICAN REVOLUTION AND CRISIS IN THE LEGAL PROFESSION. By Peter Charles Hoffer & Williamjames Hull Hoffer. Ithaca, N.Y.: Cornell University Press. 2018. Pp. ix, 186. \$39.95. Picking up the challenge set out by Professor John Phillip Reid — who noticed that modern accounts of the American Revolution have obscured the role of the legal profession — Professors Peter Charles Hoffer and Williamjames Hull Hoffer focus their story on the influence of British North American colonial lawyers in the founding of the American Republic. *The Clamor of Lawyers* brings the Revolution to life through the chronicles of a series of public pronouncements made between 1761 and 1782. Beginning with the trial of John Peter Zenger, Hoffer and Hoffer describe how his counsel — Alexander and Andrew Hamilton — transformed courtroom arguments into calls for colonial rights. The story the authors weave demonstrates how the use of legal argument and the canon of advocacy were tools used by revolutionary lawyers to bring a semblance of order to mobs of revolutionary radicals. With lawyers on their side, participants in the Revolution avoided Crown prosecution by adhering to the rule of law. This influence also stymied drastic social change. Efficient and entertaining, the authors’ telling of the American Revolution breathes life into the interaction between loyalist and revolutionary lawyers whose public discourse has served as the foundation of American governance.

WRITTEN IN STONE: PUBLIC MONUMENTS IN CHANGING SOCIETIES. By Sanford Levinson. Durham, N.C.: Duke University Press. 2018. Pp. xv, 206. \$22.95. Professor Sanford Levinson's 1998 book, *Written in Stone*, grapples with how a pluralistic society can and should go about memorializing the controversial figures of its past. In 2019, this project may be more topical than ever before, and Levinson takes it up again in the new preface and afterword for the book's twentieth-anniversary edition. Levinson points to events such as the 2017 white supremacist rally in Charlottesville, Virginia, in response to the city's attempt to remove a monument to Robert E. Lee as evidence that the United States is increasingly fractionated and that sites of public memorialization have been battlegrounds in the resulting conflict. In a world where it seems impossible to find figures that would unanimously be considered worthy of public memorialization, is there a way to honor controversial figures for what may be real achievements (or at least avoid omitting them from the historical narrative), without valorizing their correspondingly harmful actions? How does a society whose views are both polarized in the present and certain to change over time decide which monuments deserve to remain? Levinson examines university leaders' and government officials' answers to these questions, as they decide how and when to memorialize the (at best) checkered elements of our collective past.

NONCOMPLIANT: A LONE WHISTLEBLOWER EXPOSES THE GIANTS OF WALL STREET. By Carmen Segarra. New York, N.Y.: Nation Books. 2018. Pp. viii, 341. \$28.00. But who will guard the guards? In *Noncompliant*, Carmen Segarra recounts her time as a financial regulator at the Federal Reserve Bank of New York, where she was tasked with supervising Goldman Sachs in the wake of the financial crisis. To her surprise, the culture at the New York Fed encouraged employees to keep the peace with the big banks rather than zealously demand their compliance. The book takes readers through a series of detailed, personal accounts of many discussions among colleagues within the New York Fed and at Goldman Sachs. As the story unfolds, the vast scope of the incompetence and misconduct becomes clear, and Segarra collects evidence of the corruption and blows the whistle. Throughout, the narrative is from Segarra's refreshing point of view as a "[f]our-feet-seven and three-quarters inches tall" (p. 50) minority woman in the financial services world; the David and Goliath parallels are manifest. After lamenting that, now more than ten years after Lehman Brothers collapsed, little has changed at the New York Fed, the epilogue offers a challenge to consumers to demand transparency from their financial institutions — and, in the spirit of all great whistleblowers, to "[s]peak up" (p. 307).

APPEALING FOR LIBERTY: FREEDOM SUITS IN THE SOUTH. By Loren Schwenger. New York, N.Y.: Oxford University Press. 2018. Pp. x, 428. \$39.95. In this new book, Professor Loren Schwenger broadens our knowledge of the “freedom suit” beyond Dred Scott and his ignominious treatment in the Supreme Court, shining a light upon the numerous other enslaved people who — all avenues exhausted — turned to the country’s courtrooms for their liberty. Schwenger examines more than two thousand lawsuits from the century before the Civil War and draws upon archival documents to present a vivid account of life in the antebellum South. Admitting that these cases have little precedential value and did not climb the rungs of appellate courts, Schwenger instead turns to them for the stories and characters they contain. From men who were slave owners themselves testifying in court for enslaved plaintiffs, to the role such lawsuits played in the drafting of the Constitution, *Appealing for Liberty* unearths strands of history and experience that might seem counterintuitive at first, but that make clear this book’s novel contribution to the literature. Most importantly, this title details the ingenuity and courage enslaved plaintiffs brought to their suits in the face of daunting obstacles.

HOW TO SAVE A CONSTITUTIONAL DEMOCRACY. By Tom Ginsburg and Aziz Z. Huq. Chicago, Ill.: University of Chicago Press. 2018. Pp. x, 295. \$35.00. In recent years, scholarly commentary on the future of constitutional democracy has been ubiquitous. Professors Aziz Z. Huq and Tom Ginsburg join this growing chorus by offering a historical and comparative perspective on the institutional design principles that are critical to the health of a democracy. After examining the definitional contours of liberal constitutional democracy, the authors construct a bipartite typology of democratic decline that is oriented around the variable of speed. First, the authors analyze examples of authoritarian collapse, focusing on the social factors and institutional design features that render certain polities more vulnerable to military coups and abuses of emergency power. Second, the authors analyze the slower-paced, longer-term tectonic movements that lead to democratic erosion. Applying this typology to the United States, the authors argue that while we are not likely to be at risk of authoritarian collapse, we are increasingly susceptible to democratic erosion. The authors conclude by offering practical prescriptions for insulating polities against democratic erosion and fixing existing structural flaws in constitutional systems. The depth of the authors’ historical research and the breadth of their comparative perspectives yield important insights into enduring challenges of constitutional design while challenging us all to refrain from complacency.

THE STORY OF SILVER: HOW THE WHITE METAL SHAPED AMERICA AND THE MODERN WORLD. By William L. Silber. Princeton, N.J.: Princeton University Press. 2019. Pp. xx, 325. \$29.95. Gold may get much of the attention, but according to Professor William L. Silber, we should be focusing on its less expensive but equally important cousin: silver. In his book *The Story of Silver*, Professor Silber traces the role of silver from the early days of the Founding to its role today “as a rock-hard asset in a world of fiat currency” (p. 247). The book tells the stories of those people who have believed in, fought for, and collected the white metal, including Alexander Hamilton, William Jennings Bryan, Nevada Senator Key Pittman, and investors Bunker and Herbert Hunt and Warren Buffett. Silber describes how the Silver Purchase Act of 1934 had ramifications beyond the United States, leading China to abandon the silver standard and further weakening it in the face of Japanese aggression. He chronicles how Presidents Kennedy and Johnson’s “war against silver” led to “the Great Inflation of the 1970s” (p. 120). And he discusses how investors have seen value in silver, experiencing riches, bankruptcy, and lawsuits in the process. Silver, unlike other metals, “is a cross between precious and industrial, a store of wealth for millions, and productive in photography and electronics” (pp. 238–39). As is evident from Silber’s book, its power should not be underestimated.

UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA. By Meera E. Deo. Stanford, Cal.: Stanford University Press. 2019. Pp. xiv, 235. \$25.00. The road to a stable career in legal academia is replete with obstacles for any would-be scholar. It is especially so for young women of color seeking to break into a vocation traditionally dominated by white men. In *Unequal Profession*, Deo pushes beyond anecdotal evidence and received wisdom to provide a systematic account of the challenges that women of color face at each stage of their journey into and through the legal academy. Starting with the hiring process and its initial barriers to entry, Deo’s chronology of a legal career turns to difficulties that female scholars of color can encounter in interactions with faculty and students, and then to hurdles they face in securing promotions and tenure. Rounding out the chronological account are chapters focusing on the struggles women of color deal with as they seek to take on positions of leadership in the academy and on work-life balance. At each step along the way, Deo combines quantitative data from the Diversity in Legal Academia survey — featuring a core survey sample of women of color in the field — with qualitative information about the lived experiences of her subjects. This book will be of interest both to those embarking on the journey Deo describes and those seeking to implement structural changes that will make that road less treacherous.