
RECENT PUBLICATIONS

CTRL + Z: THE RIGHT TO BE FORGOTTEN. By Meg Leta Jones. New York, N.Y.: New York University Press. 2016. Pp. xiii, 269. \$29.95. An extraordinary amount of our personal information is available online and accessible via a few clicks or keystrokes to our friends, families, and employers. This information ranges from the banal — hundreds of holiday photos or favored cat memes — to the potentially life-ruining — arrest records or sex tapes. The easy availability of compromising information has famously generated starkly divergent responses on different sides of the Atlantic, with the European Court of Justice recognizing a “right to be forgotten” and U.S. courts routinely dismissing similar claims. In this groundbreaking comparative work, Professor Meg Leta Jones convincingly argues that the prominence of these two polar extremes has distorted discussion over the right to be forgotten: put simply, it does not have to be — and should not be — an all-or-nothing proposition. By pointing out that conceptions of privacy differ, by suggesting that we should think of the problem through a lens of “information stewardship” rather than “digital permanence” (p. 23), and by highlighting the international dimension of the problem, Jones points a way toward a more productive means of responding to the unique problems raised by the connected world.

PRACTICE EXTENDED: BEYOND LAW AND LITERATURE. By Robert A. Ferguson. New York, N.Y.: Columbia University Press. 2016. Pp. x, 337. \$60.00. Law is a profession that trades in certainties. Judges sit as final arbiters of rights; the Constitution sets forth sacred rules of government; courtroom procedures give shape to justice. Yet these certainties rest atop a teeming mass of humanity: the passions, miseries, and dramas that bring people to court. Great literature, as Professor Robert Ferguson reveals in *Practice Extended*, can acknowledge this paradox of the law in a way that law itself cannot. Ferguson examines the interdisciplinary nexus of law and literature from several angles. Literary content provides new frames of reference for legal problems, as with the immigrant novel genre and its potential to help remedy America’s ongoing failure to deal with illegal immigration. Law itself integrates literary techniques: the “rhetoric of inevitability” (p. 91) in which most judicial opinions are written bolsters the view of legal outcomes as certain. Ferguson concludes *Practice Extended* with a commentary on the courtroom novel, which at its best lays bare the inherent tension between the straight-line formalities of the courtroom and the curves of human psychology ever present within it. With the erudition of an Atticus Finch — perhaps the world’s best-known lawyer of literature — Ferguson advances a novel understanding of law, not as a cabined discipline, but as one interwoven with diverse modes of inquiry.

TAMING THE PRESUMPTION OF INNOCENCE. By Richard L. Lippke. New York, N.Y.: Oxford University Press. 2016. Pp. viii, 276. \$99.00. Outside of the courthouse, there is considerable disagreement on the function and value of the presumption that a defendant is innocent until proven guilty, as well as on its proper scope. In *Taming the Presumption of Innocence*, Professor Richard L. Lippke tackles these issues head on, arguing that recent calls for expanding the presumption's influence are not the "panacea" for the complex issues plaguing our criminal justice system, and that the presumption should be confined to the trial setting (p. 1). Lippke critiques an array of proposals to enlarge the function of the presumption of innocence, most particularly the notion that the presumption constitutes a substantive human right. Following a discussion of the proposals' implications and defects, Lippke defends his thesis for limiting the presumption to trial proceedings while also maintaining that the presumption is "a vital aspect of the 'proof structure' of criminal trials" (p. 6). Lippke differentiates between the presumption of innocence and "a nonpresumption of guilt," arguing that the latter would allow for a more sensible application on the ground (p. 18). Lippke provides a careful analysis of the presumption as it stands and offers a range of remedies both to correct deficiencies in the U.S. criminal system and to minimize stigmatization of the accused. It is a valuable endeavor, one with which academics and practitioners alike would do well to engage.

PROPHECY WITHOUT CONTEMPT: RELIGIOUS DISCOURSE IN THE PUBLIC SQUARE. By Cathleen Kaveny. Cambridge, Mass.: Harvard University Press. 2016. Pp. x, 451. \$49.95. The 2016 presidential election has provided no shortage of passionate religiously and morally charged rhetoric. While some may consider this to be a recent phenomenon, Professor Cathleen Kaveny argues that "the language of prophetic indictment — the 'jeremiad' — has been a crucially important form of social critique in the United States throughout its history" (p. 82). Kaveny charts the evolution of this rhetorical form from pre-Revolutionary Puritan preachers, through abolitionist and pro-slavery voices during the Civil War, and into the contemporary political environment. After carefully studying the debate around abortion and torture in the 2004 presidential election, Kaveny concludes that "the American tradition of prophetic indictment cannot survive into our future, which will be more pluralistic and globalized and less conventionally religious, without practitioners who possess both humility and a lively sense of irony" (p. 375). Kaveny's book is a carefully researched examination of public, religious discourse that delivers a timely message that religious and nonreligious communities alike would be wise to consider with care. Kaveny shows that our nation has been able to condemn without contempt in the past and provides us with a roadmap to return to such civil discourse in the present.

A NEW DEAL FOR OLD AGE: TOWARD A PROGRESSIVE RETIREMENT. By Anne L. Alstott. Cambridge, Mass.: Harvard University Press. 2016. Pp. 195. \$29.95. As the gap between the rich and the poor continues to widen, *A New Deal for Old Age* exposes how the stark income inequality that has become the American reality is undermining an experiment in equality central to the nation's fabric: the Social Security retirement system. Despite seismic changes in American life — the proliferation of women in the workforce, longevity for high-earning individuals, and stagnating wages for low-income earners — social security has remained static since its introduction in the 1930s. While the policy debates in Washington focus on whether to raise the retirement age, Professor Anne Alstott details the complexity of America's diverse workforce, recentering the conversation on the deeper objectives of the retirement system. Attempting to bridge the divide between the philosophical and the pragmatic, Alstott proposes a number of reforms, including a progressive program permitting retirement between sixty-two and seventy-six, preservation of early retirement benefits for workers with low wages or physically demanding jobs, a more equitable version of spousal benefits, and a phased retirement option allowing for a gradual transition out of the workforce. An ambitious, yet carefully considered, approach to reforming Social Security, *A New Deal for Old Age* adds a palatable slate of progressive recommendations to the scholarly discourse over how to reform America's aging retirement system.

POLITICAL POLITICAL THEORY: ESSAYS ON INSTITUTIONS. By Jeremy Waldron. Cambridge, Mass.: Harvard University Press. 2016. Pp. xi, 403. \$35.00. Liberty; justice; equality — political theory has long devoted itself to analysis of these abstract concepts, particularly in the wake of John Rawls's *A Theory of Justice*, published in 1971. In *Political Political Theory*, Professor Jeremy Waldron argues for a fundamental reorientation of political theory away from those ideals of government and toward political institutions and structures. Waldron demonstrates the feasibility of institutionally focused political theory in a series of essays, touching on a wide range of topics including constitutionalism, separation of powers, bicameralism, and the problem of judicial majoritarianism. Waldron animates this broad scope of topics with a refreshing, personal prose style. Particularly impactful is Waldron's elaboration upon his well-known critique of judicial review. There, he deploys both vivid imagery — he admits to “boiling the flesh off the bones” of the topic (p. 198) — and rigorous analysis to make the case that judicial review disenfranchises citizens and “distracts them with side issues about precedent, texts, and interpretation” (p. 199). With this lively collection of essays, Waldron demonstrates that institutional questions, often considered to be the unique domain of political scientists, retain relevance in the realm of political theory.

ADULTERY: INFIDELITY AND THE LAW. By Deborah L. Rhode. Cambridge, Mass.: Harvard University Press. 2016. Pp. 260. \$28.95. Americans are deeply conflicted about adultery. Despite its pervasiveness in literature and the media, adultery remains illegal in twenty-one states. However, extramarital affairs have received little scholarly treatment, especially from a legal perspective. Professor Deborah Rhode rectifies this lack of serious inquiry with her examination of adultery across a number of contexts, including contemporary American legal standards, the military, alternative lifestyles, and politics. Tracing the legal and social development of attitudes toward fidelity both domestically and internationally, *Adultery* analyzes the biases that have marked laws governing adultery. It illuminates the commingling of moral acceptability and personal fitness in public opinion that has proven to be the downfall of prominent political figures and that has affected courts' determinations in legal disputes. Rhode's exploration of adultery ultimately concludes that the state has no role in policing fidelity, arguing that infidelity laws are anachronistic, serve no legitimate state interest, and should be repealed. Nevertheless, unwilling to let political obstacles stagnate reform, Rhode urges courts to invalidate adultery statutes if legislatures refuse to act. *Adultery* thus serves as a forcefully written justification for revising the legal treatment of adultery to better align with the moral development of society.

NATURE UNBOUND: BUREAUCRACY VS. THE ENVIRONMENT. By Randy Simmons, Ryan M. Yonk & Kenneth J. Sim. Oakland, Cal.: Independent Institute. 2016. Pp. xiii, 287. \$36.95. Laws such as the Clean Water Act and the Endangered Species Act have been lauded as important milestones for environmental protection. In their thought-provoking work, *Nature Unbound*, Professors Randy Simmons and Ryan Yonk, along with environmental specialist Kenneth Sim, boldly challenge this conventional wisdom and argue that environmental policy has not achieved its intended goals. They contend that aggressive centralized regulation is premised on the myth that humanity should be kept separate from the rest of nature. *Nature Unbound* explores how this myth has woven its way into major environmental legislation and policies as a result of popular and unscientific notions of ecology, politicization of agencies, and opportunistic special interests. Because of their false premises, these laws and policies have not only failed to protect the environment, but also had adverse social and economic effects on human communities. To reverse this tide of harm, the authors offer several policy prescriptions, including more localized environmental management, reduction of bureaucratic hurdles, and economic incentives for habitat protection. In the process, Simmons, Yonk, and Sim draw on expertise in public choice theory, economics, and ecology to unleash a fresh way of thinking about growing environmental challenges for citizens and policymakers alike.