
RECENT PUBLICATIONS

THE CORRUPTION CURE: HOW CITIZENS & LEADERS CAN COMBAT GRAFT. By Robert I. Rotberg. Princeton, N.J.: Princeton University Press, 2017. Pp. vii, 384. \$35.00. We live in a time when calls to “drain the swamp” are particularly in vogue. Capitalizing on this rhetoric has certainly allowed some to find political success. Through all this sound and fury, Professor Robert Rotberg has produced a treatise that takes the problem of corruption seriously and that puts forward a comprehensive remedy. Embarking on a survey of diverse jurisdictions, from Southeast Asia to Scandinavia, Rotberg identifies various strains of corruption and studies the ways governments have successfully treated this malady. Rising to the ambition of his project, Rotberg’s analysis is comprehensive: from domestic laws to international organizations to civil society, Rotberg isolates the various components that make up the potential cure. Yet, without falling victim to the breadth of this research, Rotberg also manages to distill the most powerful ingredient for his corruption cure — political leadership. Arguing that political will is essential to fashioning a national culture intolerant of corruption, Rotberg ends by offering a fourteen-step program for curbing this plague. Ultimately, Rotberg’s analysis is thoughtful, his proposals invaluable, and his passion infectious. *The Corruption Cure* is a critical read for anyone serious about joining this crusade.

RELIGIOUS FREEDOM IN AN EGALITARIAN AGE. By Nelson Tebbe. Cambridge, Mass.: Harvard University Press. 2017. Pp. x, 266. \$39.95. From Rowan County Clerk Kim Davis’s refusal to issue marriage licenses to same-sex couples to the Supreme Court’s grant of an exemption from the Affordable Care Act’s contraception mandate in *Burwell v. Hobby Lobby Stores, Inc.*, the values of religious freedom and egalitarianism seem increasingly at odds. In *Religious Freedom in an Egalitarian Age*, Professor Nelson Tebbe deftly wades into this simmering conflict, offering a pragmatic and optimistic framework for striking reasoned balances between these competing ideals in a variety of adversarial situations. He calls this framework “social coherence.” Social coherence weighs four principles embraced by both religious freedom and egalitarianism — avoiding harm to others, fairness to others, freedom of association, and government nonendorsement — to produce outcomes where these principles not only coincide but also reinforce each other. Tebbe illustrates this framework by thoughtfully applying it to a number of contemporary settings with which the reader will be familiar, tellingly producing results that favor each side of the religious-egalitarian divide. Altogether, *Religious Freedom in an Egalitarian Age* provides insightful guidance on achieving compromises between these two foundational values at a time where such compromises are sorely needed.

THE INDIAN LEGAL PROFESSION IN THE AGE OF GLOBALIZATION: THE RISE OF THE CORPORATE LEGAL SECTOR AND ITS IMPACT ON LAWYERS AND SOCIETY. Edited by David B. Wilkins, Vikramaditya S. Khanna & David M. Trubek. New York, N.Y.: Cambridge University Press. 2017. Pp. xv, 756. \$170.00. Since the early 1990s, scholars have directed their attention to the rapid rise of emerging economies like China, Brazil, and India. With this first entry in a forthcoming series of essay collections, Professors David Wilkins, Vikramaditya Khanna, and David Trubek fill a gap in legal scholarship by addressing the impact of the modern era of globalization on the Indian legal market. By collaborating with scholars around the globe and conducting their own empirical studies, the editors provide an illustrative snapshot of the Indian legal landscape and the global forces that constantly interact with Indian norms to form India's burgeoning "corporate legal sector." This compilation documents the role of the Anglo-American model of law firms in India's emerging legal sector as well as the effect of this sector's growth on development, pro bono service, the promotion of women, and legal education, among other topics. The editors provide a thought-provoking look into globalization's impact on the Indian legal profession as well as into the legal profession's increasing influence at both the regional and global levels.

COPYRIGHT AND INTERNATIONAL NEGOTIATIONS: AN ENGINE OF FREE EXPRESSION IN CHINA? By Ge Chen. New York, N.Y.: Cambridge University Press. 2017. Pp. xxvi, 261. \$110.00. Legal scholars and human rights activists have produced much scholarship on the evolving state of censorship in communist China over the years. Ge Chen traces that history and the future trajectory of freedom of expression through the lens of copyright law. Copyright can be used to protect freedom of expression by incentivizing the creation and dissemination of new ideas. The Chinese government, however, continues to maintain a censorship regime, even as it has developed a system of copyright laws that conform with modern international demands. Chen details the development of copyright from the Qing dynasty to the modern day, noting the improvements in freedom of expression brought about by expansions in copyright law. Following such historical trends, Chen argues that, as international bodies continue to push for reform in Chinese copyright laws, China will move toward a more open society. China is currently revising its Copyright Act, and, according to *Copyright and International Negotiations*, there is reason to hope that the new Act will lead to more protections for those who speak their minds.

THE JUDGE: 26 MACHIAVELLIAN LESSONS. By Ronald K.L. Collins & David M. Skover. New York, N.Y.: Oxford University Press. 2017. Pp. xxiii, 265. \$27.95. Bias blights judicial decisionmaking. So goes the common reproach. Eschewing convention, Professors Ronald K.L. Collins and David M. Skover seek to reframe judicial partisanship: embracing its inevitability, they say, is preferable to trusting “myths of justice impartially applied” (p. 15). In a tribute to Machiavelli, “*The Judge* frees the lessons of *The Prince* from the confines of other spheres” (p. xxi), refashioning those lessons as an instruction manual for the power-hungry judge. The curriculum is comprehensive — detailing how a perfectly strategic judge would decide which cases to take and how to write them, which clerks to hire, when to retire, how to secure an enduring legacy, and more. While maintaining that judges reason more from politics than from precedent, the authors themselves rely on ample precedent — each lesson cites the triumphs and failures of judges past. Varied are these stories, in time and in nature — from Justice Brandeis’s well-timed retirement, to Chief Justice Warren’s approach to *Loving*, to Justice Kagan’s about-face on cameras in the courtroom. More uniform, however, is the philosophy animating each page: “be tactical, not principled” (p. 117).

LAW AND THE UNCONSCIOUS: A PSYCHOANALYTIC PERSPECTIVE. By Anne C. Dailey. New Haven, Conn.: Yale University Press. 2017. Pp. viii, 283. \$40.00. *Law and the Unconscious* ambitiously challenges a basic assumption of our legal system: that human beings are rational and reasonable actors. As Professor Anne C. Dailey astutely articulates, this basic assumption contradicts what we know of human behavior today: that individuals have “unconscious anxieties, fears, and motivations” (p. 2) that are not wholly rational. In the first part of the book, Dailey masterfully elaborates on this understanding of human behavior, reviving the psychoanalytic academic tradition of the early twentieth century to provide readers with thorough foundational knowledge about how individuals are not the purely rational actors that the law presumes. In the second part of the book, Dailey then applies this psychoanalytic perspective to varied areas of our legal system — including false confessions, sexual consent, and threats of violence. By reviving the psychoanalytic tradition within the context of current legal debates, Dailey urges a paradigm shift in legal philosophy, one that exposes the real-world dangers of the “rational actor” fiction.

THE UNEXPECTED SCALIA: A CONSERVATIVE JUSTICE'S LIBERAL OPINIONS. By David M. Dorsen. New York, N.Y.: Cambridge University Press. 2017. Pp. xvi, 377. \$29.99. Since his appointment to the Supreme Court, Justice Scalia was lionized by the Right and demonized by the Left as a staunch conservative known for provocative opinions on the most controversial topics of our day. Yet any student of Justice Scalia's jurisprudence would readily acknowledge his vociferous support for positions on legal issues like the Confrontation Clause that cannot be described as conventionally conservative. In *The Unexpected Scalia*, David Dorsen examines the "liberal opinions" of Justice Scalia, which, by Dorsen's count, number 135 out of Justice Scalia's 867 opinions on the merits (p. xi). Dorsen first summarizes Justice Scalia's jurisprudential views, then thematically and insightfully reviews his opinions in light of those views, with particular emphasis on opinions advocating liberal outcomes. Reflecting Dorsen's longtime friendship with Justice Scalia and his self-described liberal beliefs, Dorsen's survey is at times affectionate and at others critical. Ultimately, Dorsen attributes Justice Scalia's liberal stances to a principled adherence to the two judicial philosophies he championed: originalism and textualism. In Dorsen's words, "more than most Justices, Scalia followed his understanding of originalism and textualism, warts and all, where it took him" (p. 239).

END OF ITS ROPE: HOW KILLING THE DEATH PENALTY CAN REVIVE CRIMINAL JUSTICE. By Brandon L. Garrett. Cambridge, Mass.: Harvard University Press. 2017. Pp. 331. \$29.95. Capital punishment in America is facing its own slow but assured death. Jurors nationwide are increasingly reluctant to impose the death penalty, even in states where capital punishment is still on the books. In *End of Its Rope*, Professor Brandon L. Garrett embarks on an epic game of "whodunit?," using hand-collected data and case studies to identify the factors contributing to the death penalty's demise. For Henry McCollum, an increased awareness that wrongful convictions for capital offenses commonly occur led to exoneration (pp. 18-48). For James Holmes (p. 55) and Samuel Cooper (pp. 59-60), appeals to mercy and evidence of the past abuse they suffered helped them avoid capital punishment. Garrett explores how protection for the mentally ill and disabled (p. 65), improved defense lawyering (p. 130), and the availability of life without parole (LWOP) (p. 167) also shift preferences away from the death penalty. *End of Its Rope* is an exercise in hopeful realism: although systemic failures such as mandatory sentencing, racial bias, and overuse of LWOP still persist (pp. 167-86), Garrett derives from the death penalty's swan song lessons of justice and mercy needed to fix our criminal justice system.