
RECENT PUBLICATIONS

THE WOMEN'S SUFFRAGE MOVEMENT. Edited by Sally Roesch Wagner. New York, N.Y.: Penguin Books. 2019. Pp. xxxiii, 519. \$18.00. The Nineteenth Amendment won women the right to vote in 1920, but the push for that accomplishment started decades — even centuries — before with everyday people fighting everyday oppression. In *The Women's Suffrage Movement*, Professor Sally Roesch Wagner brings together decade after decade of primary source writings to allow those who participated to tell their own tales. An analytical summary from Wagner accompanies each decade of writing, reaching back before Seneca Falls, before even the birth of the United States. The result is a comprehensive anthology of intersectional voices known and unknown speaking through letters, diaries, speeches, and autobiographies — all synthesized into a singular story of oppression, unrest, and triumph. And that story is one that needs telling; amid today's social and political upheaval, as Gloria Steinem notes in the introduction, “[w]e walk into rooms of our past, and listen to the conversations” (p. xix). *The Women's Suffrage Movement* comprehensively depicts that past. In this centennial celebration of the Nineteenth Amendment, the anthology reminds us of those who came before in the long struggle for equal suffrage.

THE CULT OF THE CONSTITUTION. By Mary Anne Franks. Stanford, Cal.: Stanford University Press. 2019. Pp. xiv, 256. \$26.00. Lost amid the clamor of academic and judicial battles over how to interpret the Constitution is its effect on the most vulnerable. In *The Cult of the Constitution*, Professor Mary Anne Franks finds that effect by exploring the constitutional fundamentalism underlying much of constitutional law. Characteristic of that fundamentalism is selective interpretation of some provisions, aimed at entrenching and preserving power. That fundamentalism has no political valence; Professor Franks is as critical of the American Civil Liberties Union's violent First Amendment absolutism as she is of the National Rifle Association's gun worship. Across the political divide, a cult built around speech, guns, and the Internet has institutionalized a proud fidelity to constitutionalized violence that disproportionately impacts women and minorities. But hope remains. For Franks, erasing constitutional fundamentalism means erasing the selective enforcement of constitutional protections; the Equal Protection Clause guarantees not only equal protection of the laws, but also equal protection of the Constitution. In the end, *The Cult of the Constitution* advances an impassioned argument that underlying the Fourteenth Amendment is the principle of reciprocity: “[T]hat the only rights any of us should have are the rights that all of us should have” (p. xiii).

THE TWENTY-SIX WORDS THAT CREATED THE INTERNET. By Jeff Koseff. Ithaca, N.Y.: Cornell University Press. 2019. Pp. x, 313. \$26.95. Today, we laugh at Al Gore's claim that he spearheaded the creation of the Internet while in Congress. In *The Twenty-Six Words that Created the Internet*, Professor Jeff Koseff shows how one federal statute has, in fact, been the foundation on which the Internet was built. Section 230 of the Communications Decency Act was passed in 1996 and immunizes websites and Internet service providers from liability for content posted by their users. An attempt to encourage self-policing of Internet domains for child pornography, it "has allowed third-party content-based services to flourish in the United States" (p. 4): Google, YouTube, Facebook, Reddit, Wikipedia, Twitter, and Amazon can operate as marketplaces — for goods, for ideas, for information — without risk of liability for how people use these websites. Under section 230, no tweet is so hateful that Twitter becomes liable, no news so fallacious that Facebook must answer in court. But, Koseff shows, that is the price of the Internet's benefits, and we owe those benefits to section 230. Neither a paean nor an elegy, Koseff's book is a biography of section 230 that identifies the statute's origins, traces its interpretive developments in the courts, and defends its imperfections as necessary for the Internet to foster free speech and innovation.

THE ANTITRUST PARADIGM: RESTORING A COMPETITIVE ECONOMY. By Jonathan B. Baker. Cambridge, Mass.: Harvard University Press. 2019. Pp. 349. \$45.00. The Chicago School's 1970s critique of anticompetitive rules gained ascendancy first in the academy, then in the political branches, and finally in the Supreme Court, where it lingers today. In *The Antitrust Paradigm: Restoring a Competitive Economy*, Professor Jonathan Baker argues that the experiment of the Chicago School has failed. At its core, the Chicago theory was a wager that relaxed antitrust rules would promote efficiency, producing consumer welfare gains without creating market power. The intervening decades do not support this prediction. Moreover, Baker argues, the economy has changed, with Internet giants dominating the market's valuation charts. Against the Chicago School, a new paradigm of antitrust law is needed, one that "[restores] a competitive economy by strengthening antitrust rules and enforcement" (p. 197), one that is tailored to the unique demands of an economy centered on information technology giants. Such reform is possible, Baker maintains, a conservative Supreme Court notwithstanding, because resolving antitrust disputes is a matter of economic analysis rather than political priorities or ideologies. It is a matter not simply of protecting consumer welfare, but also of improving economic outcomes. Baker's book is a powerful argument for antitrust reform to bring about the benefits long and emptily promised by the Chicago School.

THE DEATH PENALTY ON THE BALLOT: AMERICAN DEMOCRACY AND THE FATE OF CAPITAL PUNISHMENT. By Austin Sarat. New York, N.Y.: Cambridge University Press. 2019. Pp. x, 194. \$84.99. The death penalty has been on the ballot eighteen times in the United States since 1968. Every time, abolitionists have lost. Over the last fifty years, death penalty retentionists have used ballot initiatives primarily to counteract the abolitionist impulses of politicians and judges. Their campaigns have focused on the symbolic importance of the death penalty, using rhetoric of vengefulness, victimization, and sensationalized violence. Although democratic theorists argue that direct democracy does not necessarily reflect the true preferences of the people, retentionists' success on the ballot generally aligns with public opinion about the death penalty. But the triumph of the popular will does not always comport with core democratic values — for example, in the case of the death penalty, respect for human dignity and recognition of government's fallibility. As Professor Austin Sarat's survey of the last century of death penalty initiatives demonstrates, the sustained enthusiasm for the harshest possible punishment represents a rejection of the inherent worth of each individual citizen, while the popular endorsement of the state's right to kill imputes to the state "an entirely undemocratic air of infallibility and omniscience" (p. 186).

BIRTH RIGHTS AND WRONGS: HOW MEDICINE AND TECHNOLOGY ARE REMAKING REPRODUCTION AND THE LAW. By Dov Fox. New York, N.Y.: Oxford University Press. 2019. Pp. xiii, 237. \$39.95. Advances in reproductive medicine and technology have had a far-reaching impact on the lives of Americans. Millions of people rely on these advances every day to make personal family planning decisions. Many of us are familiar with the benefits of reproductive advances like birth control, fetal genetic testing, and in vitro fertilization. But what happens when these medical advances lead to disastrous and unintended consequences? And what legal remedies exist for those who suffer these consequences? *Birth Rights and Wrongs* answers these questions. With a foreword written by Israeli Supreme Court Justice Stein, this thought-provoking book questions why the American legal system provides remedies for various forms of professional negligence but leaves victims of failed abortions, deceptive sperm donors, and careless fertility clinics without a remedy. The book includes multiple anecdotes illuminating these wrongs, ranging from fertility clinics contaminating frozen samples to faulty and mislabeled birth control packaging. Ultimately, Professor Dov Fox develops an innovative framework to analyze these rapidly emerging forms of reproductive wrongdoing, which often fall into one of three types of interferences with reproductive interests: procreation deprived, procreation imposed, and procreation confounded. This book charts a path forward for litigating these types of reproductive controversies today and in the future.