

---

---

## RECENT PUBLICATIONS

**EQUITY AND LAW: FUSION AND FISSION.** Edited by John C.P. Goldberg, Henry E. Smith & P.G. Turner. New York, N.Y.: Cambridge University Press. 2019. Pp. xlviii, 433. \$140.00. By 1940, most common law jurisdictions had vested equitable and legal powers in a single court system (p. 1). But the significance of this “fusion” — and the proper term for it — remains elusive. In this insightful collection of essays, seventeen scholars and practitioners analyze the historical, theoretical, and practical relationships between law and equity. In Part I, eight authors reflect on the unique paths that common law systems from Nova Scotia to New South Wales took toward “fusion.” In particular, they question whether the merger of legal and equitable jurisdictions actually “constituted a [substantive] fusion of law and equity” (p. 70). The four essays in Part II reveal that the common law incorporated equitable doctrine and practice in a variety of ways, sometimes through synthesis of equitable reasoning and common law practice (p. 280) and sometimes by the “convergence” of independent equitable and legal doctrines (p. 254). Finally, in Part III, five authors consider equity’s role in the law. Did legal realism’s expansive application of equitable principles come at the expense of equity’s capacity to function as a “second-order” (p. 330) source of law and of “acoustic separation” (p. 369) that could adapt to address the shortcomings inherent in any system of legal rules? Alternatively, is equity, with all its historical baggage, a useful name for the “ameliorating function” (p. 417) of discretion in contemporary law?

**USUAL CRUELTY: THE COMPLICITY OF LAWYERS IN THE CRIMINAL INJUSTICE SYSTEM.** By Alec Karakatsanis. New York, N.Y.: New Press. 2019. Pp. 231. \$24.99. Alec Karakatsanis, the founder and executive director of Civil Rights Corps, writes a pointed attack on the criminal legal system and the role that lawyers play in perpetuating injustice. Three themes tie the narrative together: (1) “the chasm between how the law is written and how the law is lived” (p. 3), (2) how “all . . . who work in the system have become desensitized to the pain . . . [they] inflict” (p. 6), and (3) what people can do to end “the senseless suffering caused by the punishment system” (p. 9). In the first chapter, “The Punishment Bureaucracy,” Karakatsanis writes about the politics behind what becomes a criminal violation and how those criminal violations are enforced. This, he argues, reflects and reinforces current power structures. In the second chapter, “The Human Lawyer,” Karakatsanis reflects on the human interactions at the heart of working with clients and how the law school experience impacts students’ career choices. In the third chapter, “Policing, Mass Imprisonment, and the Failure of American Lawyers,” Karakatsanis discusses the role that lawyers have played in legitimizing and perpetuating the current system.