
RECENT PUBLICATIONS

THE ONCE AND FUTURE KING: THE RISE OF CROWN GOVERNMENT IN AMERICA. By F.H. Buckley. New York, N.Y.: Encounter Books. 2014. Pp. xii, 398. \$27.99. Maintaining the balance of powers between coordinate branches of government is a constant struggle for any country. *The Once and Future King* traces the historical evolution of the constitutions of Britain, Canada, and the United States to demonstrate how all three nations — while starting from different points and vacillating between different structures — have emerged with power centralized in their respective executive branches. Professor F.H. Buckley suggests that this convergence poses a number of dangers for any nation, but that parliamentary systems are far better equipped to handle these pitfalls and to preserve ordered, democratic government. With respect to the example of the United States, *The Once and Future King* highlights ways in which the presidential system might foster further increases in executive power and the risks inherent in any such increased centralization. Professor Buckley concludes by highlighting a number of ways that the current balance in the United States might be shifted back in the direction of congressional government. This thoroughly researched work provides an interesting comparative look at the rise of the administrative state in a number of countries and may prove useful for scholars and legislators alike.

FIGHTING WESTWAY: ENVIRONMENTAL LAW, CITIZEN ACTIVISM, AND THE REGULATORY WAR THAT TRANSFORMED NEW YORK CITY. By William W. Buzbee. Ithaca, N.Y.: Cornell University Press. 2014. Pp. xviii, 292. \$24.95. *Fighting Westway* chronicles the fourteen-year battle over a multi-billion-dollar highway project on Manhattan's Hudson riverfront, exploring how a poorly funded group of citizens and environmental activists won an upset victory over a powerful alliance of wealthy developers, unions, and politicians. Professor William Buzbee challenges the conventional narrative that Westway's defeat was the product of judicial activism by presenting the Westway debate as a "regulatory war" in which the intersecting constraints of law and politics helped to level a grossly slanted battlefield. Just as a military history combines the chronology of each side's moves and blunders, the capabilities of each army's weapons, and the personalities of the generals to explain the outcome of a war, Professor Buzbee weaves the stories of the Westway camps' political tactics, shifts in the doctrines of environmental regulation and citizen access to courts, and the biographies and decisions of individual stakeholders into a comprehensive and definitive history. Part tactical postmortem, part courtroom drama, and part "seamy tale" of political intrigue (p. 6),

Fighting Westway will be of interest to lawyers, environmentalists, and historians alike.

GETTING INCENTIVES RIGHT: IMPROVING TORTS, CONTRACTS, AND RESTITUTION. By Robert D. Cooter & Ariel Porat. Princeton, N.J.: Princeton University Press. 2014. Pp. 232. \$39.50. Inspired by the simple premise that law should promote the wellbeing of people, Professors Robert Cooter and Ariel Porat have undertaken an honest analysis of whether private law achieves this worthwhile goal. Following an accessible overview of the economics of tort, contract, and restitution, Professors Cooter and Porat present ways in which each area of law could be improved to encourage more efficiency and to promote better social welfare outcomes. In tort law, the authors argue that more accidents could be avoided by accounting for all foreseeable risks when setting standards of care and awarding damages. In contract law, the authors posit new innovations that redirect contract law to respond more to the promisee's incentives, particularly addressing the problems of undercooperation and overreliance. And in restitution law, the authors suggest that compensating a person who provides an unrequested benefit to another would encourage people to engage in more of these positive acts. With compelling and tangible illustrations, Professors Cooter and Porat offer refreshing improvements to private law that will be of interest to lawyers, economists, and legal academics.

INFERNO: AN ANATOMY OF AMERICAN PUNISHMENT. By Robert A. Ferguson. Cambridge, Mass.: Harvard University Press. 2014. Pp. xi, 337. \$29.95. The deplorable state of the American prison system has been widely identified. And yet this "inferno" on earth remains for 1 out of every 143 Americans. Why is this sorry state of affairs allowed to persist? In *Inferno*, Professor Robert Ferguson moves beyond tactical prescriptions directed to the legal and penal systems, and instead addresses the general population more broadly about this blight on our claim to being a just society. Professor Ferguson uses an interdisciplinary approach, drawing on insights from literature, history, and philosophy to probe the nature of punishment itself and the American impulse to pursue it with such vigor. To move beyond the status quo, then, Professor Ferguson suggests we must rethink the very role of punishment in order to better reflect contemporary realities and goals.

BOTTLENECKS: A NEW THEORY OF EQUAL OPPORTUNITY. By Joseph Fishkin. New York, N.Y.: Oxford University Press. 2014. Pp. vii, 269. \$35.00. While rites of passage for some Americans, credentials such as SAT scores and English language skills have become "bottlenecks" for others, constraining access to opportunities. In an insightful new book, Professor Joseph Fishkin proposes a shift in focus

from “equal opportunity” (a literal equalization of individuals’ chances to succeed) to “opportunity pluralism” (a broadening of the range of opportunities available). *Bottlenecks* draws upon diverse theories of egalitarianism and social science research and posits that a broad range of opportunities offers not only equality of social class and financial well-being but also freedom to pursue different roles and to develop new skills and talents, a true egalitarian aim. Professor Fishkin develops his theory of bottlenecks with clear examples of three forms: qualification bottlenecks like the college admissions process, developmental bottlenecks like literacy requirements for employment, and instrumental-goods bottlenecks like money’s impact on safety and health. To help individuals *through* and *around* these bottlenecks, Professor Fishkin proposes institutional design changes that can be implemented by the state, private actors, and individuals. The book makes a compelling case for the expansion and pluralization, rather than the equalization, of opportunities.

CONSTITUTIONS IN AUTHORITARIAN REGIMES. Edited by Tom Ginsburg & Alberto Simpser. New York, N.Y.: Cambridge University Press. 2014. Pp. ix, 271. \$34.99. Constitutions are often touted as central to democratic governance, but what role do constitutions play in authoritarian regimes? Professors Tom Ginsburg and Alberto Simpser have compiled a methodologically diverse collection of essays that explore the surprising roles constitutions play in authoritarian regimes, while drawing distinctions from how constitutions function in democratic regimes. For example, one contribution describes constitutions as “operating manuals” (p. 32) that might turn out in authoritarian regimes to be “not for the car they were to drive” (p. 34) and consequently unreliable when such regimes face instability. Other essays address *why* autocrats adopt constitutions at all, suggesting they use such documents as political tools to “consolidate power, increase investment, and boost economic development — all while generating a steady flow of rents for themselves and their cronies without empowering challengers that might undermine their authority” (p. 53). Moving beyond literature addressing the roles of legislatures and judicial branches in authoritarian regimes, the essays in Professors Ginsburg and Simpser’s collection fruitfully examine constitutions operating at the limits of the rule of law.

THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES. Edited by Jeremy Travis et. al. Washington, D.C.: The National Academies Press. 2014. Pp. xx, 444. \$74.95. The United States has the highest documented rate of imprisonment in the world, a rate that has quadrupled since 1970. To review research on the causes and effects of this phenomenon, the National Research Council assembled scholars and practition-

ers and collected their findings in *The Growth of Incarceration*. Imbri-
cating history with philosophy and empirics with policy, the work de-
scribes the current incarceration climate, explores its historical devel-
opment, and considers its effects on individuals, families, and
communities. Ultimately, the text concludes that current incarceration
costs outweigh benefits. Highly relevant and accessible, the work sur-
veys and analyzes a broad swath of research to reach its conclusions,
summarizing data with crisp visuals and brisk prose. Despite the meth-
odical nature of its inquiry, the work never loses sight of its norma-
tive implications — as it notes: “In the domain of justice, empirical ev-
idence by itself cannot point the way to policy” (p. 8). Rather, the text
seeks to serve as a call to action for policymakers and scholars alike in
responding to America’s “historically and comparatively unprecedent-
ed” rate of incarceration (p. 68).

AMERICA’S FORGOTTEN CONSTITUTIONS: DEFIANT VISIONS OF
POWER AND COMMUNITY. By Robert L. Tsai. Cambridge, Mass.:
Harvard University Press. 2014. Pp. viii, 352. \$35.00. When Ameri-
cans speak of “the Constitution,” they rarely need to specify the
revered 1787 charter that served as a foundation for the Republic.
Professor Robert Tsai takes issue with this myopic view of our consti-
tutional tradition, instead contending that a true student of American
law must “investigate the struggles of dissidents who wrote and de-
fended their own constitutions” (p. 3). In *America’s Forgotten Consti-
tutions*, Professor Tsai presents an octet of fascinating tales revolving
around these alternative constitutions, drawn up by individuals (like
radical abolitionist John Brown), factions (recent Aryan separatists in
the Pacific Northwest), and even entire peoples (the early twentieth-
century Cherokee Sequoyah movement). Rather than serving as dis-
crete vignettes, the eight stories are interconnected, and, to an even
greater degree, tied to the 1787 Constitution. Southern secessionists,
for instance, borrowed almost everything but their categorical protec-
tion of slavery from the 1787 charter. All in all, Professor Tsai offers
an enlightening, refreshing take on constitutional history that is acces-
sible to legal veterans and newcomers alike.