

RECENT PUBLICATIONS

THE GREAT AMERICAN CRIME DECLINE. By Franklin E. Zimring. New York, N.Y.: Oxford University Press. 2007. Pp. xiv, 258. \$29.95. In this study of the American crime decline of the 1990s, Professor Franklin Zimring critically examines traditional explanations for shifting crime rates, such as imprisonment, demography, and the economy. He also considers more novel theories developed specifically in response to the decline witnessed in the 1990s, focusing on factors such as policing patterns, the rise and fall of crack cocaine, and increased access to abortion following its legalization in the early 1970s. Concluding that none of these explanations accounts for the whole of the decline, Professor Zimring presents two statistical analyses: a study that examines the parallel downturn in Canadian crime and a close look at crime in New York City. Professor Zimring attempts to extrapolate predictive value from the experience of the 1990s, and he concludes that the primary lesson to be learned is that crime in the United States is highly variable and subject to reductions even absent a fundamental shift in the nature of the urban landscape. Professor Zimring further suggests that violent crime need not be part of “our urban destiny” (p. 170).

OUT OF RANGE: WHY THE CONSTITUTION CAN'T END THE BATTLE OVER GUNS. By Mark V. Tushnet. New York, N.Y.: Oxford University Press. 2007. Pp. xix, 156. \$19.95. In this latest look at the Second Amendment, Professor Mark Tushnet considers the significance of gun rights becoming “one of the focal points of the culture war over defining America” (p. 75). While holding himself above the fray, Professor Tushnet manages to engage deeply with the many arguments on both sides, from originalism to crime control. He analogizes from interpretations of other amendments in the Bill of Rights, deconstructs social scientific research, and analyzes statistical gun preference data, all the while walking the knife’s edge of partisanship. In the end, says Professor Tushnet, views of the Second Amendment are intimately tied to beliefs about the political process — yet they also transcend political positions to encompass fundamental social divides. If disputes over the Second Amendment are understood as symptoms of a larger cultural war, it becomes clear that these can never be resolved until America’s internal divisions are healed. By acknowledging and legitimizing the perspectives of both sides of the Second Amendment debate, Professor Tushnet bridges the gap between advocates of gun control and proponents of gun availability, giving hope that some day the culture war might reach a resolution that satisfies all those involved.

ANDREW JACKSON AND THE CONSTITUTION: THE RISE AND FALL OF GENERATIONAL REGIMES. By Gerard N. Magliocca. Lawrence, Kan.: University Press of Kansas. 2007. Pp. xi, 186. \$29.95. As the debate over “judicial activism” rages in Washington today, Professor Gerard Magliocca takes us back to the early 1800s, where a battle between the “Upstairs” generation of Chief Justice John Marshall and the Federalist ruling class and the “Downstairs” generation of Andrew Jackson and angry western upstarts led to changes in constitutional law that endure to this day. Professor Magliocca argues convincingly that such generational power shifts, from Jackson to the New Deal to Reagan, are the flashpoints of constitutional reform. Conservative judges issue “preemptive opinions” (p. 43) in anticipation of threats to their rule. Reformers, meanwhile, expand on footholds of power with innovative strategies that often evolve far beyond their original purposes: Jackson’s strategy of expanding the federal judiciary and filling the new posts with his supporters made “change through the courts rather than through textual amendments” (p. 68) the standard path for constitutional reformers. Professor Magliocca cautions, however, that new challengers are always on the horizon: Chief Justice Taney’s preemptive opinion in *Dred Scott* marked the height of the conflict between the Jackson generation and a new generation, and the start of a conflict that would eventually lead to greater federal power and the enactment of the Fourteenth Amendment.

A CRITICAL INTRODUCTION TO LAW AND LITERATURE. By Kieran Dolin. New York, N.Y.: Cambridge University Press. 2007. Pp. viii, 263. \$85.00. Both law and literature depend on language; the choice of words makes a dramatic difference in the way an opinion or a story unfolds. Indeed, a legal opinion is a story that is rooted in and informed by its surrounding culture, which itself finds crucial expression in literature. In his new book, Professor Kieran Dolin leads the reader through a series of historical legal developments to illustrate how literature illuminates the context and the boundaries of the law. The seminal cases of Renaissance contract law are juxtaposed with *The Merchant of Venice*; both display the language of the emerging capitalist culture. The writings of Victorian novelists, such as Charles Dickens, inform a study of nineteenth-century demands for legal reform in England. As Professor Dolin states, “the absolute separateness or autonomy of the two domains [of law and literature] cannot be sustained” (p. 15). *A Critical Introduction to Law and Literature* is a valuable primer on the field and is of interest to anyone who enjoys the study of both literature and the law.

MECHANISMS OF DEMOCRACY: INSTITUTIONAL DESIGN WRIT SMALL. By Adrian Vermeule. New York, N.Y.: Oxford University Press. 2007. Pp. 262. \$49.50. “Securing the minimal conditions of democratic governance is as pressing a task in advanced constitutional democracies as in new or transitional democracies,” writes Professor Adrian Vermeule (p. 13). Recognizing that the large-scale institutional arrangements in long-established democracies are largely impervious to dramatic change, Professor Vermeule seeks to shift the debate on democratic institutional design by focusing on smaller-scale institutional features that might feasibly be changed in ways that enhance democracy. He assesses the advantages and drawbacks of a variety of existing and proposed devices, such as “veil rules,” which prevent self-interested behavior by depriving officials of information; voting rules for legislatures and courts, including submajority, simple majority, absolute majority, and supermajority rules; legislative arrangements structuring secrecy and transparency in budget deliberations; and ways of enhancing constitutional deliberation in legislatures. Seeking to bracket rather than resolve high-level debates among theorists of democracy, Professor Vermeule offers four core democratic values as a basis for measuring the effects of proposed small-scale changes: impartiality, accountability, transparency, and deliberation. He analyzes the sometimes complex tradeoffs among these values that arise from existing rules and from proposed changes. Whether or not one concurs with Professor Vermeule’s specific proposals and predictions, *Mechanisms of Democracy* provides food for thought about feasible changes that could make government more fully democratic.

IS DEMOCRACY POSSIBLE HERE? PRINCIPLES FOR A NEW POLITICAL DEBATE. By Ronald Dworkin. Princeton, N.J.: Princeton University Press. 2006. Pp. xii, 177. \$19.95. America is divided between red states and blue states, and the political-cultural impasse cannot be bridged — so the experts say. In this new book, Professor Ronald Dworkin attempts to articulate “shared principles of sufficient substance” (p. 6) that could form the foundations for a meaningful and national debate over current policy issues. Starting from twin premises about human dignity — that life has intrinsic value and that each individual “has a personal responsibility for the governance of his own life” (p. 17) — Professor Dworkin derives particular policy prescriptions on hot-button issues ranging from the war on terrorism to taxes to campaign finance. Writing in a style “more accessible to a general audience” (p. xii) than his other work, Professor Dworkin seeks not only to set forth an account of what “liberalism means and requires now,” (p. 7) but also to spark “genuine political argument” (p. 8) over his premises and conclusions. Agree or disagree, this book is a step toward making American political discourse better.