
Book Reviews

Jinee Lokaneeta, Editor

The Law & Society Reader II. Edited by Erik Larson and Patrick Schmidt. New York: New York University Press, 2014. 440 pp. \$29 paper.

Reviewed by John Brigham, Department of Political Science,
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This is the second reader collecting work that has been published in the *Law and Society Review*. The first reader, edited by Richard Abel, a founder of the law and society enterprise, covered scholarship from the inception of the *Review* in 1966 until 1995 when the reader was published. Abel's collection, like the *Review* itself, the first meeting in Buffalo in 1975, and the first international meeting in Amsterdam in 1991, marked a milestone. By the mid-1990s, scholars associated with the enterprise declared their work ready to anthologize.

The articles in the second volume date from the late 1990s and run up to a few years ago. Thus, they cover a somewhat shorter period of time. The volume is edited by professors Erik Larson and Patrick Schmidt, both from Macalester College, where they are co-directors of the legal studies program. Their collection contains 43 reprinted and edited articles. This volume is perhaps less a stage in the development of the law and society enterprise than its predecessor and more of a sequel.

In the Larson and Schmidt volume, there are familiar ideas about how to do social research, like counting and interviewing. They receive contemporary expressions in which they are developed and tweaked. There are also newer methods, like ethnography and the focus on constitutive law, which are tested and elaborated but also introduced and justified against the standards of the movement's relatively recent past.

Although the volume does not reprint material from the first reader, it contains updated classics, like Joel Grossman, Herbert Kritzer and Stewart Macaulay's "Do the 'Haves' Still Come Out Ahead?" and what are certain to become classics such as Osagie K. Obasogie's "Do Blind People See Race? Social, Legal, and Theoretical Considerations."

There is concern about crime and police always present in law and society scholarship. But not as much as there would be in a

volume published now and not as much as there was in the early years. There is important work in this area by Lisa Frohman and Kitty Calavita but some major figures, like Tracey Meares of Yale Law School, who publishes in law reviews and works on policy questions, are missing because the source of these papers is “the *Review*.”

There is attention to the environment, as one would expect, and lesbian, gay, bisexual, and transgender (LGBT) issues. There are some creative sections, like one on “emergent institutions” (neonatal care, truth and reconciliation, genital cutting laws). There is a section about the use of ideas in legal disputes. And there are some interesting groupings, like American Indians and fat people or blind people and women in denim, that cause one to pause in looking over the collection. But the collection maintains some of the traditional affinities like violence against women and genital cutting.

The collection adds ethnography to the positivist framework that first engaged Law & Society scholars and also legal consciousness. Constitutive law is a concern mentioned by Calavita, and Elizabeth Mertz explains social construction for socio-legal studies.

Reader II contains a far more diverse group of scholars than there were in the first volume. Of the 43 articles and 66 authors, 25 are women, but quite a bit fewer are scholars of color. Palestine is mentioned, but Israel goes unmentioned, as does ISIS and Al Qaeda. Straight concerns do not fit except as a new “other.” The Chinese are included because they were excluded by law and Civil Rights gets a lot of attention, but Martin Luther King is not there and neither is Sojourner Truth. Midwifery is included as part of the politics of childbirth and Weber and Marx are there but not Firestone and Brownmiller. *Brown* is there, of course, as a case, and so we find Chief Justice Warren but he is not indexed, nor are Hand, Cardozo, or Sotomayor.

Brown becomes a standard for useful social science because the Justices cited our work and it is a case that we cherish because progress has been made but it is not likely that the protestors against police violence in St. Louis, MO, and Baltimore, MD, care much for the social science in *Brown* or take much solace in the promise of appellate review. At least, not as much as Harper Lee told us the Robinson family could have hoped for. This is the social science of progressives not radicals and as such it confirms more than it challenges. In that, the bloodlessness of this collection is disappointing and one can hope that *Reader III* might both go back to the beginning and bring the story up to date.

Because they did not publish in the *Review*, we do not have Laura Nader and Sally Falk Moore, but to the extent the volume represents our work we should, even if we need to go back to the beginning each time we anthologize. And, we need to include what is happening on the street as we did with the divorce lawyer’s

offices. The street matters both because it tells us what law is in ways that cannot be grasped by looking at high courts alone. And, it also holds out the promise of progressive social change that was the hallmark of the scholarship of Joseph Gusfield, Murray Edelman, and Jacobus tenBroek. I would like to see more on visual sociology of law; but in this framework, the visual would have to become a concern of editors of “the *Review*.”

The editing is quite severe. Something like constitutional law teachers feel the need to do for their undergraduates. This makes the collection accessible to student readers in the sense that the works are not too long. But it also deprives them of the challenge of slogging through the scholarship that grounds their enterprise. In the final analysis, the collection is very tight and will be a big help in situating the field for scholars newly interested in law.

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Judging Judges: Values and the Rule of Law. By Jason E. Whitehead. Waco: Baylor University Press, 2014. 253 pp. \$49.95 cloth.

Reviewed by Cornell W. Clayton, Department of Politics, Philosophy and Public Affairs, Washington State University

The rule of law has fallen on hard times. Today political scientists and legal scholars often deride the notion that law can constrain judges as a naïve mythology. Supreme Court justices are characterized as voting in “liberal” or “conservative” blocs, as if political ideology alone determines how they decide cases. In *Judging Judges*, Jason Whitehead seeks to rescue the idea of the rule of law from academic critics and to revitalize it for a post-Realist era.

The faith in the rule of law began unraveling as a result of two academic movements in the twentieth century. First, the Legal Realists banded formal, mechanistic conceptions of judging and demonstrated instead how law and politics were deeply interwoven in the judicial mind. Then came along positivist social scientists who endeavored to use judicial voting data to show judges decided cases on the basis of ideological preferences rather than objective legal principles.

Coming to terms with these twin movements is not easy. Judges, even those who accept that law requires political choices, reject the idea that they decide cases on the basis of personal preferences and they insist that law matters. Academic critics insist the evidence is to the contrary, that such thinking is either self-delusion or deceitful.