

may find many of his nonlegal examples hard to follow. The legal examples, including detailed dissections of appellate briefs and closing arguments, are also older than might be preferable. Of course law is more backward-looking than many disciplines, but the use of some examples from within the past decade would have made the text more accessible and appealing to younger readers.

One particular legal example, which Meyer draws on repeatedly throughout the text, is particularly puzzling. This is the criminal trial of Louie Failla, who was convicted and sentenced to 10 years in prison for racketeering and who only avoided dying in prison because he obtained a compassionate release due to medical issues. While this case is quite compelling as an example of how the defense and the prosecution can make two different tales out of the same raw material, the defense's storytelling was clearly less successful than Failla would have desired. What Meyer does not address in relation to this example is that the most compelling legal storytelling in the world is useless if it cannot secure the desired outcome for the client. As I read and contemplated these examples, my thoughts kept returning to Janet Malcolm's (2011) incisive treatment of courtroom storytelling. Meyer mentions an earlier version of Malcolm's text in passing, but his work would have been profitably improved by the application of his narrative framework to her reporting.

## References

Malcolm, Janet (2011) *Ipigenia in Forest Hills: Anatomy of a Murder Trial*. New Haven: Yale University Press.

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*The Constitution and the Future of Criminal Justice in America*. Edited by John T. Parry and L. Song Richardson. Cambridge: Cambridge University Press, 2013. 348 pp. \$36.99 paper.

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*The Constitution and the Future of Criminal Justice in America* asks the question, "what is the future of constitutional criminal law in the United States?" (p. 2). In seventeen chapters, the volume provides

an array of responses by an outstanding collection of scholars to issues at the intersection of constitutional doctrine and criminal justice. In so doing, the volume's title invites an understanding of a single, unified object of study—"the Constitution"—directed towards something yet to be realized—"the future"—in which a governing system—"criminal justice"—might function in a specific place. But, what we discover in the pages that unfold is not one "Constitution" but a multiplicity of constitutional doctrines, often in significant internal tension, that are highly dependent on past political and interpretive decisions creating a fragmented, at times inconsistent, system. More than being trapped between past and future, in Hannah Arendt's phrase, we are trapped in a doctrinal present, on which the volume focuses "unapologetically" (p. 9) in its attempt to shed light on the current state of constitutional law so that we can better understand how we might intervene to shape the future. This is an ambitious volume that rewards careful study.

Across a range of constitutional criminal procedure doctrines, the volume addresses familiar stories of constitutional failures with new insights and recommendations. A few examples will be illustrative. Though fundamental to the effective functioning of an adversarial system, as Stephen Bright explains, the right to counsel is in a crisis created by neglect, indifference, underfunding, and excessive workloads. Doctrines related to consent searches belie the underlying social reality, as Janice Nadler makes clear. Racial bias is deeply imbedded in doctrinal implementation of "stop and frisk" and other policing practices, as L. Song Richardson demonstrates. Fourth Amendment doctrine is focused on physical searches, but Christopher Slobogin argues that this doctrinal paradigm fails to protect against the growing use of technologically-enabled "virtual searches." Richard Leo shows how Miranda warnings, and the doctrine on which they are based, fail to protect against use of false confessions. And in light of subsequent Supreme Court opinions undermining its efficacy, Emily Hughes argues that police have conflicting incentives to engage in interrogation practices outside of the Miranda framework. Acquiring additional, and exceptional, powers to combat the threat of terrorism leads to "mission amnesia" that alters ordinary criminal procedure, as Susan Herman explores, and according to Stephen Vladeck, leads to increased "civilianization" of military court jurisdiction over nonservice members and with expanded categories of offenses. In each of these varied cases, existing constitutional doctrines fall short, requiring either their reconsideration or new institutional development.

At every turn, this volume illustrates how past political and interpretive decisions constitute a present that is described in these essays in roughly one of three overlapping ways: a state of

crisis relative to particular consequences; a failure of fit between doctrine and social fact; or a change in institutional practice ungoverned by existing values. If we are to avoid giving too much power to a “national security sovereign” (p. 310) over criminal law enforcement authority increased by the domestic effects of transnational processes, we must take action through judicial and congressional checks on executive power. The developing technologies neuroscience provides for criminal investigators fail to fit within existing doctrinal frameworks, making tools available to police that could in the future invade domains of private thought, belief, or disposition unconstrained by constitutional principle. Social control through registration and community notification laws is a legal practice with increasing effects on the lives of those convicted of particular crimes, marking them with “a perpetual badge of dishonor” (p. 142), in ways that conflict with deeper principles of free government that past Supreme Court decisions have championed. In these tensions—between crisis and consequence, doctrine and fact, practice and value—this volume argues for new doctrinal solutions relevant to policy makers, judges, and lawyers in the project of alleviating the on-going conflicts between constitutional understandings and particular practices within the system of criminal justice.

But doctrinal particularism has its drawbacks, especially when the object to be regulated is as large and complicated as the present and future of criminal justice in America. Because of the limited focus of doctrinal inquiry, we do not see how a Fourth Amendment doctrine adequate to meet the technological challenges of “virtual searches” might operate in the same system with the development of constitutional limits on the collateral consequences of criminal convictions. Nor do we see commonalities between what motivates concern over increased risks of false confessions and what motivates consideration of proportionality problems in state criminalization of immigration violations. Because these are all separate doctrines, it remains unclear what conception of criminal justice unifies a response to both. To be sure, this is not a criticism of the present volume for failing to do something it does not purport to do, but a reminder of the limitations of doctrinal inquiry. Indeed, Markus Dubber’s contribution contains just this kind of holistic reflection of the volume’s approach: “[u]ntil the constitutional challenge of criminal law is seen as a problem of legitimation, rather than of application, as a problem of foundations, rather than of implementation, it matters little whether the Court focuses on questions of substance, procedure, or infliction.” (p. 37). The particularism inherent in doctrinal inquiry does not readily invite holistic consideration of foundational normative questions. Without the guidance such inquiry might provide, we are left to consider the merits of each doctrinal puzzle as isolated

from the others, producing neither a “spontaneous order” as Friedrich Hayek might advocate nor a comprehensive moral reading as Ronald Dworkin would seek. Instead, we see many constitutions operating through overlapping doctrines working to provide principled guidance to discrete criminal justice practices. In this way, the volume’s laudable and instructive attempt at more comprehensive doctrinal coverage matches the underlying fragmentation it studies.

Given the complexity of criminal justice, the plurality of applicable constitutional provisions and meanings, and the uncertainty inherent in future social and political developments that will shape and be shaped by law, this volume makes an important scholarly contribution that opens dialogue on multiple doctrinal questions found in the relations between the Constitution’s present and future.

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*Reconceptualizing Children’s Rights in International Development: Living Rights, Social Justice, Translations.* By Karl Hanson and Olga Nieuwenhuys. Cambridge: Cambridge University Press, 2013. 302 pp. \$99.00 cloth.

Reviewed by Maya Sabatello, Department of Psychiatry, Columbia University

Although the Convention on the Rights of the Child (CRC) was adopted 25 years ago, questions about the meaning and scope of the rights enshrined in it (and beyond) remain relevant in contemporary discourse on children’s rights. Numerous reports suggest that violations of children’s rights are still rampant in much of the world, with developing countries commonly being a major target of criticism by children’s rights advocates. However, perhaps the most challenging aspect of the CRC’s new legal order is the concept of children’s agency. Notwithstanding the CRC’s clear intention to shift the conceptualization of children from objects of enculturation to subjects in their own right, and from passive to active participants in their social, political, and familial milieu, answering what to make of the “child’s voice” and how to incorporate it in the human rights discourse remains controversial.

The book’s editors, Karl Hanson and Olga Nieuwenhuys, compiled a collection of essays to address this question from a child-centered approach. Contrary to the view of the CRC as a neutral legal reform, as often portrayed by children’s rights