Unsurprisingly, access to contraception and abortion are significant themes. In rewriting *Griswold v. Connecticut*, 381 U.S. 479 (1965), Laura Rosenbury tests the limits of imagination by using a sex positive feminist analysis to find a right for women to control their reproduction. Such a decision would have heralded a different outcome in *Roe v. Wade*, 410 U.S. 113 (1973), where the court again held a constitutional right to privacy in relation to abortion. In rewriting this decision, Kimberley Mutcherson concurs with the decision, however, provides an argument based on the principle of equal protection and the right to bodily integrity. She rejects the trimester framework that established the foundation for abortion law that continues to exist, presenting a powerful case for a woman's fundamental right to terminate a pregnancy at any stage.

The last, and most recent, decision is *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the landmark case deciding that the Constitution provides a fundamental right to marriage for same-sex couples. In rewriting this decision, Carlos Ball uses a variety of feminist methodologies to remove the traditional and privileged vision of marriage articulated in the court's decision. It draws on the principle of equal protection as articulated in *Loving v. Virginia*, 388 U.S. 1 (1967), another case included in in the collection, that overturned the ban on interracial marriage.

The collection has been published under the Cambridge University Press Feminist Judgment Series, indicating that we can look forward to further feminist judgments publications, including the forthcoming (2018) *Feminist Judgments: Rewritten Tax Opinions*, edited by Bridget Crawford and Anthony Infanti.

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The Myth of the Litigious Society: Why We Don't Sue. By David Engel. Chicago: University of Chicago Press, 2016.

Reviewed by Renée Ann Cramer, Law, Politics and Society, Drake University

This is a book to be grateful for. It is a joy to teach, and a well-argued corrective to previous ways of thinking about responses to injury. It is a humane and compassionate text, bringing attention to the embodied and emotional experiences of injury, and the role that these experiences play in channeling the reactions of those in

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pain, those who have been harmed. The best books help us understand our own substantive and theoretical areas; they help us extend our analysis. Engel's book is indeed one of the best I have read lately. As I read, I find myself wanting to take insights from *The Myth of the Litigious Society* and travel with them—beyond the study of litigation and settlement and into the study of legal mobilization and social movement activism.

It is a particular strength of this work that to do so is possible; the book opens a set of questions that invite us to think more deeply about individuals' reactions—litigious and not—to trauma. And, Engel's analysis shows us that so much of what we think we know is based on the assumption that people are rational actors—economic self-determining individuals. He is persuasive, and clear: "the decision-tree model [of legal claims making] is deeply flawed. . . . [It constructs] an unrealistic image of injury and response that bears little relationship to injuries as they actually occur, or to victims as they actually live, breathe, and cope with the dire circumstances in which they find themselves" (36). So-called rational choice explanations miss—as Engel points out—cultural explanations. They also, and perhaps most importantly, miss the emotional, cognitive, and physical explanations for activism.

In some very evocative passages, and quoting others' powerful meditations on pain, Engel notes that when people have experienced trauma, and are in pain, the very "structure of their lives collapses" (39–40). They live through hour-by-hour and even minute-by-minute attempts to endure (39–40). They do not have the emotional margin to ponder the future, or plan for better days; they exist in struggle, and their pain and struggle constitute their very identities, which limits their ability to make legal claims. In his book, Engel is clear: we cannot expect injured people—those individuals whose injuries have "transformed their identity in ways that defy their powers of explanation" (46)—to make coherent demands upon corporate and state actors.

Here, Engel is writing about personal injury and the potential to claim tort harm. But we can, I believe, extend this understanding beyond individual harm caused by a workplace accident, or a trip-and-fall incident. Reading about life as struggle to survive, I think about the pain of Philando Castile's partner, Sandra Bland's family; I imagine the trauma of the 60 women who have accused Bill Cosby of sexual predation, and the pain of genocide felt through the generations of lived experience of Water Keepers who held the line against the Dakota Access Pipeline. Indeed, the *pain* and *trauma* at the heart of the #BlackLivesMatter and #NoDAPL movements, are both motivating forces and constitutive elements of the movements.

To notice this pain is not to call the movements or their founders irrational, or to argue that their decisions are impulsive or ill-

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considered. It is not to argue that their demands are incoherent—though the state often perceives them as such: reparations for slavery and the return of stolen land are simply not part of the public policy conversation. To insist on a rational choice framework for the motivations, actions, and demands of founders and participants in these movements is to miss an essential part of their organizing logics. To force these activists into a decision-tree would be to ignore, to be blunt, the collective legacy of the hanging tree.

David Engel makes clear—much of what harms us is naturalized, and "the naturalizing of injury can explain why a great many claims are never brought" (106). Stairs and chairs are exceptionally dangerous; they are also ubiquitous. In the same way, injuries like water injustice in Flint, police injustice in Baltimore, environmental injustice globally, and high rates of sexual assault on college campuses are the fruits of naturalized racism, capitalist logics of profit accumulation coupled with neoliberal deregulation, and rape culture.

When a rights claim is based in a traumatized collective identity, and the trauma is naturalized, we end up asking activists to translate these harms into rights discourse, and individualized harms into coherent collective demands. We are, then, perhaps asking too much—both as policy makers and as scholars.

We need a transformational law and politics that makes these claims legible. We also need a responsive state that will channel them into justice. David Engel wants us to find these policies by deconstructing the myth of litigiousness, as a first step to cultural change. Certainly, we must do so. The myth of the litigious self is a tenacious myth: even after reading "Oven Bird's Song" (Engel 1984), after reading *Distorting the Law* (Haltom and McCann 2004), after seeing *Hot Coffee* (Saladoff et al. 2011), after reading this book, my students still insist that we sue too much, and win too big. Engel calls the pervasive and persuasive stories generated by so-called tort reformers a form of "truthiness"—a quaint term in a suddenly alt-right/post-fact world (6). But *truth* remains exceptionally important. The truth of an injury, the truth that harm has occurred, coupled with the survivors' perception of that truth, lead to options for claims making (103).

People don't want to believe that we are changed by our unchosen and negative experiences (73–75). Yet negative experiences not of our choosing are impacting Americans at every turn. They cause injuries and harms and traumas that we must find ways to work through—ways variously scholarly, activist, and interpersonal. The book stresses the human, in that Engel reminds us over and over again that humans create the structures that naturalize harm, and humans create the structures that enable us to react, and not, to harm. Elizabeth Mensch wrote, in the first line of her seminal article

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on the development of American law, "The most corrosive message of legal history is the message of contingency" (23). Engel reminds us that contingency is not only corrosive— it is generative—it is the space within which we can write new myths. We need them. It is the role of humane law, the role of a humane state, to work to the benefit of those people when they are rendered incapable by pain both physical and existential. Even as he argues for primarily cultural change around our understanding of pain and law, Engel's work makes the necessity of such policies of protection abundantly clear.

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In 1996, *The Los Angeles Times* revealed that guards in California's maximum-security prisons had been staging gladiatorial contests between inmates. What's more, the contests often occurred in the state's "secure housing units," solitary confinement facilities designed to keep the most dangerous inmates in continuous isolation. The guards would remotely unlock the cells of rival gang members at the same time, intentionally releasing them into the same space. Five men died when the fights got out of control and guards shot them.

Scandals like this one erupted with startling regularity in the state's secure housing units. But while inmates' lawsuits led to some modest reforms, the units themselves were not declared unconstitutional by the courts or deemed inhumane by the state legislature. Indeed, at Pelican Bay Prison, the state's first "supermax" facility, prison administrators spent the better part of the 1990s transforming what was once an extraordinary practice—round-the-clock isolation in an 80 square foot space—into a common one that some

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