

EXEMPLARY LAW BOOKS OF 2015

FIVE RECOMMENDATIONS

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Susan Phillips Read[†]

Akhil Reed Amar,
The Law of the Land: A Grand Tour of Our Constitutional Republic
(Yale University Press 2015)

The Law of the Land looks at the Constitution from a geographic perspective. This (very) loose organizing principle merely sets the stage for 12 essentially self-contained chapters in each of which Professor Akhil Reed Amar explores some aspect of the Constitution or the Supreme Court through a person, case, idea, or event associated with a particular state. In the chapter dedicated to New York, for example, he focuses on the revered jurist Robert Jackson, a native New Yorker who ascended to the Supreme Court relatively late in life after a distinguished career in the federal executive branch. Professor Amar contrasts Jackson's non-judicial route to our highest Court with the present-day "judicialization of the judiciary," and considers the causes and effects of the absence of any former politicians on the Supreme Court. How much any of this has to do with Justice Jackson's New York origins is not entirely clear, but Professor Amar's constitutional musings, here and throughout the book, are uniformly intriguing and insightful.

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John C. Coffee, Jr.,
Entrepreneurial Litigation: Its Rise, Fall, and Future
(Harvard University Press 2015)

Professor John C. Coffee, Jr. traces the evolution of the class action from origins influenced by 19th-century American legal phenomena (specifically, contingency fees, the American rule, and the assessment of legal fees from a common fund) through its transformation in the 1960s into an efficient vehicle to remedy racial discrimination to its current incarnations in securities, merger and acquisition, antitrust, employment discrimination, and mass tort litigation. Along the way, he assesses the merits and shortcomings of this peculiarly American mode of “entrepreneurial litigation,” and proposes measures to enhance its deterrence of bad corporate behavior and reduce incentives for attorney abuse. Whether or not the reader agrees with Professor Coffee’s appraisals or prescriptions for reform, he presents a thorough and evenhanded account of an important topic too often clouded by ideology and anecdote.

Dan Jones,
Magna Carta: The Birth of Liberty
(Viking 2015)

While numerous celebrations of Magna Carta were published in 2015, the Great Charter’s 800th anniversary, this was my favorite. Dan Jones, a British historian with a rare talent for turning remote facts into lively contemporary narrative, portrays Magna Carta at its inception as an attempt by rebellious English barons — the 1% of their day — to be rid of King John’s extortionate taxes, highhanded treatment, and costly military campaigns to regain the Plantagenet Crown’s lost territories in France. King John repudiated Magna Carta within months of signing it and civil war continued. Does it matter that the modern view of Magna Carta as a charter of freedom and democracy is unmoored from its origins and all but a few scattered phrases in its lengthy text? Not in the least, answers the author, although Magna Carta’s legendary afterlife “would have come as a surprise to the men who stood at Runnymede in June 1215 and thrashed out an unsatisfactory peace treaty.”

Burt Neuborne,
Madison’s Music: On Reading the First Amendment
(New Press 2015)

Alexander Hamilton may have been the toast of Broadway and the hip-hop world in 2015, but fellow-Publius James Madison starred in at least five new books, including *Madison’s Music*. There, Professor Burt Neuborne urges American judges to recapture what he calls the “music” or “poetry” of the First Amendment

by giving due regard to the order, placement, meaning, and structure of its scant 45 words. He argues that, instead of reading Madison's constitutional handiwork as a coherent whole, the judiciary has reduced the First Amendment (and, indeed, the entire Bill of Rights) to "a set of isolated, self-contained commands" to the detriment of its inherently democracy-friendly text. Original in concept and elegantly written from start to finish, I was captivated the minute I read the book's dedication, Professor Neuborne's affecting tribute to "Odysseus the Tailor," his World War II-veteran father.

Cass R. Sunstein,
Constitutional Personae
(Oxford University Press 2015)

Professor Cass R. Sunstein theorizes that individual Supreme Court Justices, past and present, typically exhibit one of four distinct judicial personae that transcend politics and ideology: Heroes, who favor big and bold steps and take an expansive view of the judiciary's role; Soldiers, who generally defer to the choices of the elected branches and venerate judicial restraint; Minimalists (Professor Sunstein's preferred persona), who either demand reasons and require the government to justify its practices or, alternatively, emphasize traditions and see traditions as justifications; and Mutes, who seek to avoid making constitutional decisions if narrower grounds exist for resolving a dispute or the dispute is arguably non-justiciable. This book is probably irresistible to an alumna of a state's highest court who has necessarily thought a lot about the wellsprings of judicial behavior. And revelatory, too: It turns out I was a fairly reliable Soldier during my 12-year appellate tenure. Who would have thought?