

with the issue of whether sex ought to be assessed at the time of birth (based on one's birth certificate) or at the time of marriage. Although Greenberg provides an incisive analysis of the legal doctrine and social debates surrounding LGBT marriages, she consistently reminds the reader of the unique issues faced by intersex individuals. The same is true in the context of official documentation and housing and bathroom use, where she draws on the numerous cases involving transsexuals to illuminate the reader's understanding of the more rare cases involving intersex individuals.

Part III considers the intersex movement, its internal debates, and its interaction with other movements. Greenberg traces the history of the intersex movement from its inception in the early 1990s to the present. In recounting its internal debates, she focuses on such issues as whether resources should be directed toward improving existing medical practices or eliminating sex stereotypes, and whether the preferred term should be "intersex" or "DSD." She provides a highly sophisticated analysis of the intersex movement's interaction with disability, feminist, lesbian, gay, bisexual, and transsexual rights organizations and the potential benefits and detriments of inter-group alliances. She concludes by surveying the legal frameworks that the intersex movement might deploy in the future, focusing primarily on disability and sex discrimination. Ultimately, Greenberg argues in favor of a "multi-pronged attack" (p. 135), which would include education, litigation, legislative reform, and the formation of alliances with other groups that seek to empower those who defy social norms.

Intersexuality and the Law provides a definitive account of the history and present of intersex issues, artfully interweaving stories from the lives of intersex individuals with explanations of complex legal doctrine and suggestions for future litigation and legislation. Few authors have illustrated such sustained commitment to understanding how intersexuality interacts with existing legal regimes, and Greenberg provides invaluable description, analysis, and critique.

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Sex Fiends, Perverts, and Pedophiles: Understanding Sex Crime Policy in America. By Chrysanthi Leon. New York: New York University Press, 2011. 444 pp. \$70.00 cloth, \$23.00 paper.

Reviewed by Hadar Aviram, University of California,
Hastings College of the Law

At the crux of the current crisis of mass incarceration, increasing punitiveness, and alarmist politics, is the heated controversy about

sex offender policy. Current policies create the impression that sex offender policy has always consisted of lengthy, incapacitating sentences and pervasive post-sentence supervision; moreover, many previous studies have focused on the punitive discourse surrounding sex offenders, thus blurring the line between perceptions and representations of the problem and the methods adopted to address it.

Chrysanthi Leon's new book is a welcome and knowledgeable addition to this debate. The book thoroughly analyzes sex offender policy, challenging the existing academic and practical discourse in two important ways. First, it offers a much-needed historical perspective, breaking the timeline into roughly three periods: the sexual psychopath era, featuring a plethora of approaches toward sexual offenses; the rehabilitative era, during which the belief that propensity to commit sex offenses was curable led to a focus on clinical approaches; and the modern containment era, in which mass incarceration and numerous restrictions are related to a belief in incurability. In doing so, the book reveals nuance and layers that existing scholarship tends to mask and compress.

Second, the book analyzes both discourse and policy, drawing on an astounding variety of sources, including interviews with practitioners, field observations, quantitative databases of arrest, conviction and civil commitment rates, academic sources, newspapers, and popular culture. In doing so, it provides a more complete perspective on the relationship between academic opinions, political initiatives, professional practices, and public discourse and perceptions.

The conclusions Leon draws from this extensive inquiry are nuanced and sophisticated. The most noticeable trend is a unification of the sex offender category. While the sexual psychopath era and the rehabilitation era (to a lesser extent) feature efforts to distinguish sex offenders from each other, in the containment era sex offenders are perceived as a monolithic category of "monsters." This trend has disturbing, and sometimes surprising, implications: Our ability to properly assess risk is hindered by our perception of propensity to offend as static and unchanging, therefore leading to an overbroad category of monitored and controlled sex offenders, but simultaneously diverting our attention away from sexual offenses committed within the family.

Leon also problematizes the usual explanations for sex offender incarceration, which focus on moral panics and regard sex offenders as a unique category of subjects, separate from general criminal justice trend. Instead, she offers an integrated explanation that sees sex offender incarceration as part of the general trend toward more frequent and more severe incarceration. Moreover,

she questions “panic” based explanations, as those usually require an assessment of the extent to which media and political responses to the problem are exaggerated or ungrounded in truth.

Another recurring and important theme in the book is the increasing prevalence of the victim/offender dichotomy in sex offender discourse, permeating not only the realm of political advocacy, but also academic conversations. These two seemingly incompatible views on sex offender policy polarize and compartmentalize public discourse, leading to a stagnant “punish the offender, treat the victim” paradigm.

A particularly interesting thread followed by the book examines the evolution in clinical perspectives on etiology and risk. Leon shows the diversity in academic and clinical opinions during the sexual psychopath era, when a popular psychologist without serious academic clout, Paul de River, shaped public opinion through his publications on sex offenders. In the containment era, by contrast, there is little to no diversity of opinion, and the clinicians she interviews and describes invariably believe in the incorrigibility of the offenders. Leon does not demonize these clinicians, but she points out the faulty assumptions underlying their work.

The book is wonderfully written and rich in data without being cumbersome. The macro-level analysis is nicely contrasted by content analysis of films of all eras and of specific influential cases, such as the McMartin school scandal. The data is analyzed with care and expertise, and Leon’s transitions from fieldwork to theoretical discussion are a masterpiece of facility and expertise.

The main problem is not so much a flaw in the book, but rather a result of its nature. The abundance of informational “trees” makes it difficult to discern a “forest.” Because of the varying different trends and policies in each of the periods Leon analyzes, the book does not tell a clear progressive story and when it does so, it wears its authority very gently, perhaps even too gently. There are a few additional minor problems. Leon’s analogy between the victim/offender dichotomy and the crime control/due process debate is inaccurate and unhelpful. The book also bemoans the focus on over-enforcement and the much lesser emphasis on problems of under-enforcement, but leaves the latter largely unexamined. Finally, while Leon states that “public education” is not a worthy goal for academics, she does seem to think that public opinion on the topic needs to be changed, and therefore the role she envisions for academic professionals and clinicians remains unclear.

These minor concerns notwithstanding, the book is a true treasure for anyone seeking more comprehensive education with regard to sex offender policy, and will hopefully inspire academics

and policymakers to ground their suggestions in rich and sophisticated evidence in the years to come.

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The Judicial Power of the Purse: How Courts Fund National Defense in Times of Crisis. By Nancy Staudt. Chicago: University of Chicago Press, 2011. 199 pp. \$25.00 paper.

Reviewed by Mark Tushnet, Harvard Law School

I find this a peculiar book. Its core finding is well-supported, clearly presented, and consistent with a related literature, and yet many of the details seem off-key. In part that seems the result of an overly elaborate theoretical account, whose own details require qualification to accommodate findings in tension with the theory. Readers can take away the central finding, rely on a simpler, less theorized explanation, and leave the specifics behind.

The core finding is this: The federal courts, and especially the Supreme Court, respond to their perception that the nation is facing a foreign policy crisis, particularly a crisis of national defense, by becoming more receptive to claims for revenue asserted by the national government in tax, public contract, and similar cases implicating the government's fiscal resources. The cases are not *about* foreign policy, or about revenue measures directly related to the crisis, but the courts appear to be concerned about ensuring that the government has the resources it needs to deal with the crisis. This finding parallels findings about judicial responses to rights-claims during war time (Epstein et al. 2005).

The theory behind the finding is that the courts receive signals from Congress and the executive—sometimes consistent with each other, sometimes less so—about the existence of a crisis, and infer from those signals the need for fiscal resources. The signals trigger judicial responses because the judges prefer safety over risk, and believe (or act as though they believe) that spending money will enhance safety. The book's first chapter establishes, to the extent that it needs to be established, that justices are aware of and sometimes refer to national fiscal needs in their deliberations and decisions. The book then offers statistical tests linking signals the courts receive to the voting behavior of individual justices and of the Court as a whole, with some analysis of the behavior of courts of appeals.

I think it unclear what the theoretical account adds to common sense, that judges live in the world and participate in the general