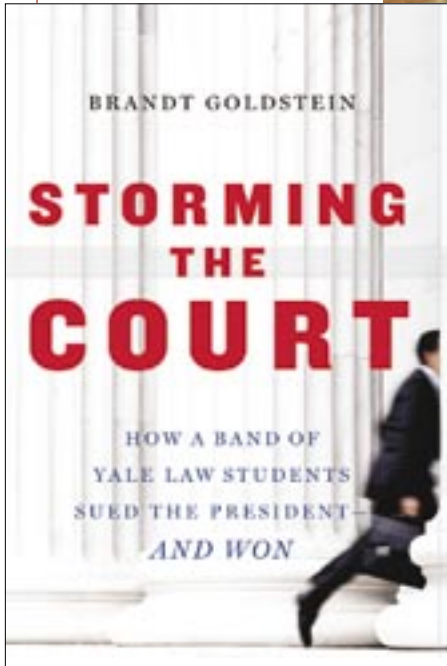


Books in Print

by Yale Law School Alumni, Faculty, Staff, and Students



Real-Life Lessons in Litigation

Storming the Court: How a Band of Yale Law Students Sued the President—and Won

Scribner, 2005

Telling a story is seldom simple.

In *Storming the Court*, Brandt Goldstein '92 recounts how a group of Yale law students and then-professor Harold Hongju Koh sued the U.S. government on behalf of Haitian refugees being held at Guantánamo in the early 1990s. Goldstein was at the Law School during that period, and even witnessed some of the events that his book describes (though he didn't work on the case). Nevertheless, as he worked on the book over a five-year period, he found himself confronting dozens of questions about how to tell the story.

Goldstein decided to write a “nonfiction novel”—on the model of *In Cold Blood* and *A Civil Action*—meaning that he sought to draw the reader in “through character, through incident, and through scenes.” *Storming the Court* recreates specific conversations and describes the

feelings and responses of numerous participants as this complicated litigation moved through the courts. It also follows Yvonne Pascal, a Haitian democracy activist who was tortured in her home country and eventually, because of the lawsuit, made it to the United States.

To gather all the details he needed to craft his scenes, Goldstein conducted hundreds of hours of interviews. He met Dean Harold Koh whenever Koh had free time—interviewing him on a highway in New Hampshire, on an Amtrak train, and in an airport terminal. He had about a hundred conversations with Lisa Dugaard '95, one of the students who first wanted to bring the case. “Sometimes I was asking her questions as asinine as ‘What was the weather like? What did you eat that day?’” says Goldstein, “all in the hope of finding that magic detail that would make the scene.” The notes from his interviews piled up beside sheaves of documents relating to the court proceedings. “My apartment became like a document storage warehouse,” he says.

Goldstein could also draw on his understanding of his characters from years of acquaintance with them

before he even started writing. “I knew Ray Brescia pretty darn well from our Friday-afternoon football games,” says Goldstein, referring to another student active in the case. “He knocked me flat on my back.” So when he introduces Brescia ’92 as a character in *Storming the Court*, Goldstein writes, “He could be touchy, showing an aggressive streak in the Law School’s Friday-afternoon football games.”

But writing about people he knew also came with a liability. “I found myself wanting to protect them,” says Goldstein. “I found myself not wanting to write about flaws, about everything that makes us human. The result is that in the first couple of drafts of this book, my readers told me that everyone was a superman, and I needed to write them as full, rounded characters.”

Another challenge was to convey all the legal background of a complex piece of litigation—one involving “foreign policy and the White House and the Constitution and the Administrative Procedure Act,” without producing a “dry policy study.” Goldstein’s tool for this was the ax of revision. “There are huge, huge sections of this book that never made it to print, because I decided that the reader didn’t need to know about this or that area of law. There was the issue of self-executing treaties. I wrote twenty pages on this. It then became ten, then five, then one, then a paragraph, then one

line, then I cut it.” He also sought to put his legal lessons into the mouths of his characters; for instance, in the first chapter he describes Koh lecturing his students on forum shopping, which turns out to be pivotal in the case.

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What motivated Goldstein to tell this story? First, there was the quality of the story itself. Goldstein calls it “a great story of idealism and passion, and a David-Goliath fight for justice.” But he also wrote from a lingering regret that he hadn’t taken part in the story as it happened. “It nagged at me that I was not involved,” he says. Goldstein considered Koh a role model, but at the time of the Haitian case, Goldstein was deeply involved in a study of panhandlers in New Haven and felt he couldn’t take on any more work. One passage in the book describes how Koh was disappointed that some of his students hadn’t participated in the case. Though Goldstein didn’t name any of these students, “One of the people I wasn’t naming was myself.” ∞

SURVEYING THE CONSTITUTION



Bruce Ackerman **The Failure of the Founding Fathers**

Harvard University Press, 2005
Ackerman ’67, Sterling Professor of Law and Political Science, presents a revised understanding of the early

days of two great institutions that continue to have a major impact on American history: the plebiscitarian presidency and a Supreme Court that struggles to put the presidency’s claims of popular mandate into constitutional perspective.

Akhil Amar **America’s Constitution: A Biography**

Random House, 2005
Amar ’84, Southmayd Professor of Law, gives the first comprehensive account of one of the world’s greatest political texts. This “biography” of America’s framing document explains not only what the Constitution says but also why the Constitution says it. Amar gives unconventional wisdom about the Constitution and its significance throughout the nation’s history.



► **Books in Print**

Here's just a sampling of the many books recently written or edited by our alumni, faculty, staff, and students. We welcome your submissions. If possible, please send us two review copies of your book: one for the Lillian Goldman Law Library and one for the Alumni Reading Room.

Mohamed A. Almulhim

Middle East Oil: A Redistribution of Values Arising from the Oil Industry

University Press of America, 1991

Almulhim '65 LL.M., '70 JSD makes an important contribution to the clarification of the policies of the larger community of humankind about an extraordinarily important set of problems; and explores, recommends, and foretells imminent changes in both national and international law.

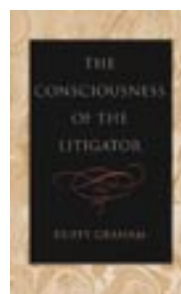


Noah Feldman

Divided by God: America's Church-State Problem and What We Should Do About It

Farrar, Straus and Giroux, 2005

Feldman '97 shows that church-state matters in the United States have reached a crisis, and he looks to our nation's past to show how it might be resolved.



Duffy Graham

The Consciousness of the Litigator

University of Michigan Press, 2005

Graham '89 investigates the role of the lawyer in modern American political and social life and in the judicial process, and plumbs lawyers' perceptions of themselves, their work, and, especially, their sense of right and wrong. He sheds light on the unique and little-examined subject of the moral mind of the litigator.

Kevin Keenan

Invasion of Privacy: A Reference Handbook

ABC-CLIO, 2005

As part of the Contemporary World Issues series, Keenan '02 provides an overview of



the development of privacy rights and the abuses that spurred their growth; explains the legal right to privacy; examines an array of privacy issues affecting many parts of the world; and focuses on issues of particular concern in the United States.

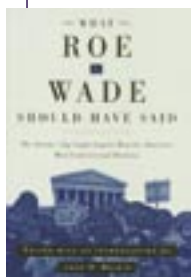
Jack Balkin, Editor

What Roe v. Wade Should Have Said

New York University Press, 2005

Balkin, Knight Professor of Constitutional Law and the First Amendment, provides the introduction to

this book about what the *Roe v. Wade* opinion means three decades after it was first announced. In addition to Balkin, contributors include Akhil Amar '84, Southmayd Professor of Law; Jeffrey Rosen '85; Jed Rubenfeld, Robert R. Slaughter Professor of Law; Reva Siegel '85, Nicholas deB. Katzenbach Professor of Law; and Mark Tushnet '71.



Owen Fiss

The Irony of Free Speech

Harvard University Press/Big Apple Tuttle-Mori Agency, Malaysia, 2004

In this Chinese language edition, Fiss, Sterling Professor of Law, reframes



the debate over free speech to reflect the First Amendment's role in ensuring open debate.

Chris Goodrich

Faith Is a Verb: On the Home Front with Habitat for Humanity

Gimlet Eye Books, 2005

Goodrich '87 MSL argues that Habitat's Christian-based message to "build dreams together" transcends religious, economic, cultural, and national boundaries. Goodrich found that Habitat erases the distinction between "giving" and "getting" and represents a path out of modern materialism and self-centeredness.



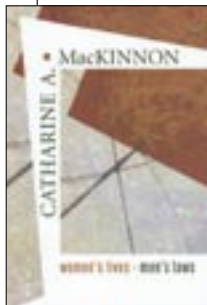
Timothy D. Lytton, Editor

Suing the Gun Industry: A Battle at the Crossroads of Gun Control & Mass Torts

University of Michigan Press, 2005

Lytton '91 examines litigation against the gun industry from the perspectives of law, political science, public health, and criminology. He analyzes the complexities of gun litigation and its implications for gun control and tort reform in a way that is accessible to a general audience and helpful to policymakers.





Catharine A. MacKinnon
**Women's Lives,
 Men's Laws**

*The Belknap Press/
 Harvard University Press,
 2005*

MacKinnon '77 produces the first of a two-volume set containing her previously uncollected and

unpublished work in the national arena from 1980 to present. The book conveys the breadth of her concerns with feminism: from sexual harassment to the reformulation of equality theory, from pornography and violence to concerns about international human rights.

Edward McWhinney

The September 11 Terrorist Attacks and the Invasion of Iraq in Contemporary International Law: Opinions on the Emerging New World Order System

Martinus Nijhoff Publishers, 2005

This collection of legal opinions by McWhinney '51 LL.M. canvasses the problems for contemporary international law and the UN Charter-based World Order System posed by the conflicts within the Security Council.

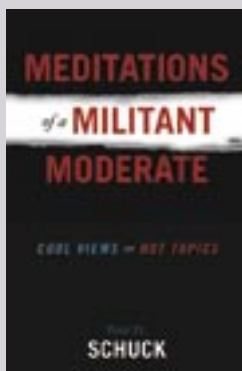


Julie A. Mertus
**The United Nations and
 Human Rights:
 A Guide for a New Era**

Routledge, 2005

Part of a series on global institutions designed to be an essential resource for practitioner and student alike, this book by Mertus '88 provides a timely guide to the UN human rights system.

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Peter H. Schuck

Meditations of a Militant Moderate: Cool Views on Hot Topics

Rowman & Littlefield Publishers, Inc., 2005

Peter Schuck's new book is a collection of essays on topics at the forefront of political discussion, ranging from affirmative action to the war in Iraq. But the book is unified by his consistent, if seemingly oxymoronic, approach: He calls himself a "militant moderate."

Schuck, Simeon E. Baldwin Professor of Law, points out that the term "moderate" is often used "for people who seem to have milquetoast views or people who are trying to split the difference. I don't think that's what a moderate like myself is doing at all. I conceive of moderation as a quality of mind and temperament. It has a very pragmatic streak, one that is suspicious of grand theory and understands that multiple, conflicting values are at stake, one that is empirically grounded, one that hesitates to dismiss fellow citizens' opinions, and one that is prepared to reassess views on the basis of new information."

Schuck is concerned that the ideologies of the left and the right have left a "chasm" in civil debate. He identifies the predominance of liberal ideology on law school campuses as an example. "It is harmful," he says, "because we're not forced to hone our views as carefully as we should against contrary positions."

Schuck admits that his own militant moderate approach could be called an ideology, even if it's an ideology that relentlessly questions its own assumptions. "I think being self-conscious about one's ideological style is of some value at this point in time," says Schuck.

One of the essays in his book argues for major changes in affirmative action by banning it in the public sector, but allowing it in the private sector—an approach that defies both conventional liberal and conservative ideologies. Schuck explains that he supported affirmative action when it was first enacted, but that over time he has applied the methods of a militant moderate to evaluate the program. "I now have come to a very different view of the matter, but one that I think is based on experience, on understanding how these programs actually work, and on a better understanding of American society." 🍷

► **Books in Print**

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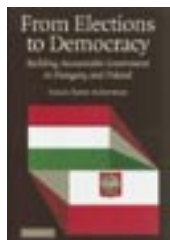


Kermit Roosevelt
In the Shadow of the Law

Farrar, Straus and Giroux, 2005

In his first novel, Roosevelt '97 illustrates the subtle and stark effects of the law not only on the lives

of a group of lawyers but also on communities and private citizens. His book is both a deftly plotted page-turner and a meditation on the life of the law, the organism that is a law firm, and the consequences for those who come within its powerful orbit.



Susan Rose-Ackerman
From Elections to Democracy: Building Accountable Government in Hungary and Poland

Cambridge University Press, 2005

Rose-Ackerman, Henry R. Luce Professor of Jurisprudence, provides a study that documents the weaknesses of public oversight and participation in policymaking in Hungary and Poland.

Gretchen Rubin
Forty Ways to Look at JFK

Ballantine Books, 2005

Rubin '94 highlights JFK's high ideals, trenchant wit, glamorous family, and unforgettable charisma; she also examines his relationship with the public, his manipulation of the press, and his use of imagery.



Roberto P. Saba, Editor
Los límites de la democracia

Seminario en Latinoamérica de Teoría Constitucional y Política, 2005

This book gathers 18 papers from different law professors from the Americas who explore some of the most serious challenges facing democracy in the region. Edited by Saba '95 LL.M., '00 JSD, it reflects the discussions maintained at SELA 2005 by a group of legal scholars from the U.S., Mexico, Puerto Rico, Colombia, Peru, Brazil, Paraguay, Chile, and Argentina that has been meeting for the past ten years.



Austin Sarat
Mercy on Trial: What It Means to Stop an Execution

Princeton University Press, 2005

In this compelling and timely work, Sarat '88 provides the first book-length work on executive clemency. He turns our focus from questions of guilt and innocence to the very meaning of mercy, arguing that mercy itself is on trial.



Susan Scafidi
Who Owns Culture? Appropriation and Authenticity in American Law


Rutgers University Press, 2005

Scafidi '93 offers the first comprehensive analysis of cultural authorship and appropriation within American Law. From indigenous art to Linux, she takes the reader on a tour of the no-man's-land between law and culture, pausing to ask: What prompts us to offer legal protection to works of literature, but not folklore?

Jim Wooten

The Employee Retirement Income Security Act of 1974: A Political History

University of California Press, the Milbank Memorial Fund, and the Employee Benefit Research Institute, 2005

This study of the Employment Retirement Income Security Act of 1974, produced by Wooten '89, explains in detail how public officials in the executive branch and Congress overcame strong opposition from business and organized labor to pass landmark legislation regulating employer-sponsored retirement and health plans. 

ALSO OF NOTE

Vicki L. Been and Robert Ellickson '66, Walter E. Meyer Professor of Property and Urban Law, Editors

Land Use Controls: Cases and Materials, Third Edition
Aspen Publishers, 2005

Vincent Johnson '79 LL.M.
Mastering Torts, Third Edition
Carolina Academic Press, 2005

Vincent Johnson
Teaching Torts, Third Edition
Carolina Academic Press, 2005

Vincent Johnson, Alan Gunn
Studies in American Tort Law, Third Edition
Carolina Academic Press, 2005