

# books in print

## Election Reform by the Numbers

Professor Heather K. Gerken lays out her plan for data-driven election reform

**Heather K. Gerken**

**The Democracy Index**

*Princeton University Press, 2009*

On November 4, 2008, Professor Heather Gerken started her day at 4:30 a.m. in a dusty industrial warehouse. As one of the ninety-six members of then-candidate Barack Obama's election day "boiler room," Gerken had an unmatched window on what was happening at polling places across the country.

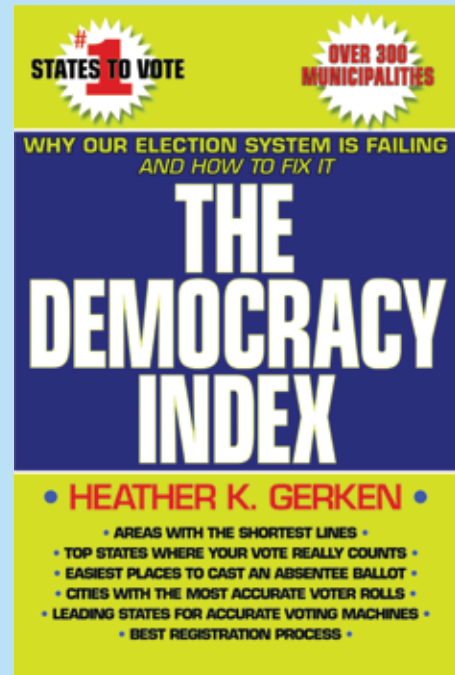
"We immediately saw huge problems," Gerken says. "Six-hour lines in places in Virginia. Places just ran out of ink for pens to fill out the ballots. Plenty of machines, but just one poll worker—so the lines are 500 people long because there is only one poll worker to check people in...The reporters got none of it."

The fact that reports of widespread problems at the polls were largely invisible, Gerken argues, is part of the challenge that election reformers face today. Problems only become obvious to the public when elections are close. Until we fix our election system's underlying problems, debacles like Florida in 2000 and Ohio in 2004, she says, will continue to happen.

Election reform is a subject that Gerken has written extensively about—her proposal for a "Democracy Index" to rank states and localities based on how well their election systems perform won national attention when first proposed in *Legal Times* in 2007. Then-Senators Hillary Clinton '73 and Barack Obama both took up the idea in proposed legislation. Within a year, Congress had set aside \$10 million to fund model data-collection programs.

Now Gerken has published *The Democracy Index: Why Our Election System is Failing and How to Fix It* (Princeton University Press, 2009), a 192-page book that lays out her vision of what a Democracy Index could achieve and how to implement it.

"[The Democracy Index] is a data-driven, information-forcing device designed to generate pressure for reform while helping us make more sensible choices about which reforms to pursue,"



Gerken writes in the book's introduction. "It is time to think less about the end game and more about the interim strategies and institutional tweaks that will help us get from here to there. The Democracy Index is just such a solution."

Gerken begins her book with a look at problems in today's election system, and the root causes of those problems. From there she explains why her Democracy Index would alter political incentives and argues that election reform is hungry for real data and quantitative analysis. *The Democracy Index* also explores potential problems (and strategies for mitigating them) and outlines a plan for how to make the index a reality.

The book concludes with an afterword that describes Gerken's day in the boiler room, and exonerates partisanship for the majority of our polling problems.

"What I saw in the boiler room was, in some ways, comforting," she writes. "It seemed clear that most of the problems were caused not by partisan mischief, but by neglect—too little funding, too few resources devoted to planning, even something as simple as not enough poll workers showing up. It confirmed my view that we should never attribute to partisanship that which can be adequately explained by inadequate resources. It also became clear to me that it is possible to collect the data we need to build a Democracy Index."



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Here's just a sampling of the many other 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.

### Robert Begam

#### Long Life?: A Journey into the Unknown World of Cryonics

Durban House Press, 2008



In this courtroom thriller Begam '52 takes the reader into a world where the jury must decide if a beautiful young doctor deliberately murdered her close friend or tried to save him with cryonics. Famous New York trial lawyer Joe Purcell decides to defend the seemingly doomed

doctor, intrigued by the fact that this will be the first murder case in which there is only one issue: Is the victim dead?

### Steve Charnovitz, Jisun Kim and Gary Clyde Hufbauer

#### Global Warming and the World Trading System

Peterson Institute for International Economics, 2009



Charnovitz '98 and his co-authors seek a policy method to reduce greenhouse gas emissions without adversely affecting global trade. They begin with a survey of relevant data and evaluate current U.S. climate policy options, focusing on the intricacies of

specific Congressional bills. The book also considers what can be done by environmental organizations to avoid conflict with the World Trade Organization.

### Carl Q. Christol

#### The American Challenge: Terrorists, Detainees, Treaties, and Torture-Reponses to the Rule of Law, 2001-2008

University Press of America, 2009

Christol '47 emphasizes the significance of the constitutional concept of separation of powers, pointing to the efforts of the Executive branch to call upon the Commander-in-Chief and war powers during what has been referred to as "the war on terrorism." He draws attention to the growing authority of "military law" and, in the contest between the three branches of government, Christol emphasizes the roles of Congress and the Courts in the protection of civil and political rights and liberties.

### Joel William Friedman

#### Champion of Civil Rights: Judge John Minor Wisdom

Louisiana State University Press, 2009



This book explores one of the least publicly recognized heroes of the civil rights movement in the United States, John Minor Wisdom. Judge Wisdom served as a member of the U.S. Court of Appeals for the Fifth Circuit in his

hometown of New Orleans from 1957 until his death in 1999, and wrote many of the landmark decisions instrumental in desegregating the American South. Friedman '75 explores Judge Wisdom's substantial legal contributions and political work at a critical time in the history of the South.

### Ronald Goldfarb

#### In Confidence: When to Protect Secrecy and When to Require Disclosure

Yale University Press, 2009



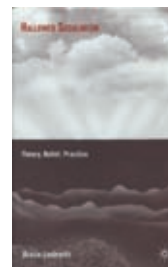
Goldfarb '60 LL.M., '62 J.S.D. organizes his new book around professionals for whom confidentiality is an issue of weighty importance: government officials, attorneys, medical personnel, psychotherapists, clergy, business people, and

journalists. In a chapter devoted to each, Goldfarb explores conflicting ideas about secrecy, privacy, and truth. He goes on to analyze the criteria that should be used when determining whether secrets must be revealed in complicated court cases.

### Bruce Ledewitz

#### Hallowed Secularism: Theory, Belief, Practice

Palgrave Macmillan, 2009



Former Yeshiva student turned secularist Bruce Ledewitz '77 proposes a reformation in secular thinking. He shows that in opposition to today's aggressive atheism, religious sources are necessary if secularism is to promote fulfilling human

relationships and peaceful international relations. Amid signs that secularism is growing in unhealthy ways, Ledewitz proposes a new secular way to live, in which elements of religion, humanism, and materialism are combined to create something at once quite old and startlingly new.

**Scott M. Matheson, Jr.**

**Presidential Constitutionalism in Perilous Times**

*Harvard University Press, 2009*



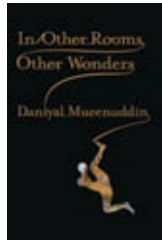
Matheson '80 examines the appropriate scope of presidential power during a crisis, including Abraham Lincoln's suspension of the writ of habeas corpus during the Civil War, Woodrow Wilson's enforcement of the Espionage Act of 1917 during

World War I, Franklin D. Roosevelt's evacuation and internment of West Coast Japanese during World War II, Harry S. Truman's seizure of the steel mills during the Korean War and George W. Bush's torture, surveillance, and detention programs following the September 11, 2001, terrorist attacks.

**Daniyal Mueenuddin**

**In Other Rooms, Other Wonders**

*W. W. Norton & Co., 2009*



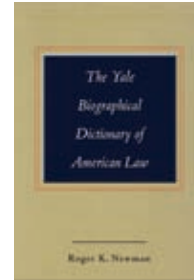
Mueenuddin's '98 collection of linked stories illuminates a place and a people through an examination of the entwined lives of landowners and their retainers on the Gurmani family farm in the countryside outside of

Lahore, Pakistan. An aging feudal landlord's household staff, the villagers who depend on his favor, and a network of relations near and far who have sought their fortune in the cities confront the advantages and constraints of station, the dissolution of old ways, and the shock of change.

**Roger K. Newman, Ed.**

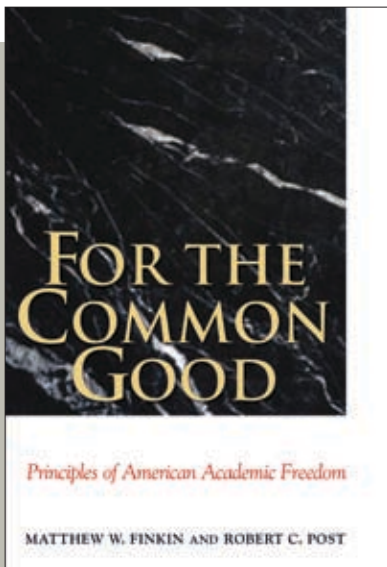
**The Yale Biographical Dictionary of American Law**

*Yale University Press, 2009*



Part of the Yale Law Library Series in Legal History and Reference, this book gathers in a single volume concise biographies of the most eminent men and women in the history of American law. Entries written by close

to 600 expert contributors outline basic biographical facts on their subjects, offer well-chosen anecdotes and incidents to reveal accomplishments, and include brief bibliographies.



**Robert C. Post and Matthew W. Finkin**

**For the Common Good: Principles of American Academic Freedom**

*Yale University Press, 2009*

MOTIVATED BY A DESIRE TO ground current controversies about the meaning of academic freedom in an understanding of its history and structure, Dean and Sol and Lillian Goldman Professor of Law Robert Post '77 and co-author Matthew W. Finkin have authored *For the Common Good: Principles of American Academic Freedom*.

"In our view," Post and Finkin write in the book's introduction, "American principles of academic freedom have become a victim of their own success. At the end of the nineteenth century, academic freedom was a fighting cause for the American professoriat." Today, they argue, the idea of academic freedom has "slipped from consciousness and...For too many members of the American scholarly community, academic freedom has become a hortatory ideal without conceptual clarity or precision."

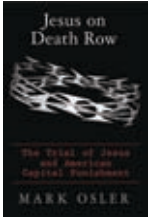
*For the Common Good* tracks the origins of American academic freedom in the 1915 Declaration of Principles on Academic Freedom and Academic Tenure drafted

"For too many members of the American scholarly community, academic freedom has become a hortatory ideal without conceptual clarity or precision."

by the American Association of University Professors. Post and Finkin explore the four primary dimensions of academic freedom—research and publication, teaching, intramural speech, and extramural speech. They distinguish academic freedom from individual rights of freedom of expression that are protected by the First Amendment.

**Mark Osler**

**Jesus on Death Row:  
The Trial of Jesus and  
American Capital Punishment**  
*Abingdon Press, 2009*



Osler '90 draws similarities between the arrest, trial and execution of Jesus and the American criminal justice system, focusing on capital cases. He asks if the experience of Jesus's trial, conviction, and execution should give us pause as we take similar steps to place individuals on death row today.

**Richard W. Painter**

**Getting the Government  
America Deserves: How Ethics Reform  
Can Make a Difference**  
*Oxford University Press, 2009*



A former chief White House ethics lawyer, Painter '87 argues that the existing ethics regime is in need of substantial reform. Federal ethics laws fail to curtail conduct that undermines the integrity of government, such as political activity by federal employees and their interaction with lobbyists and interest groups, he argues. He also contends that in some other areas, such as personal financial conflicts of interest, there is too much complexity in regulatory and reporting requirements, and rules need to be simplified.

**Frank Partnoy**

**The Match King:  
The Financial Genius Behind a  
Century of Wall Street Scandals**  
*Public Affairs, 2009*



Partnoy '92 recasts the life story of Ivar Kreuger, a remarkable yet forgotten genius who made a fortune raising money in America and loaning it to Europe in exchange for matchstick monopolies. The true nature of his empire, however, was based on ever-more perilous practices. This book is an all-too prescient parable of how unregulated markets, greed, and unchecked ambition can wreak havoc on our economic system.

**Migrations and Mobilities**  
Citizenship, Borders, and Gender  
Edited by Seyla Benhabib and Judith Resnik



**Judith Resnik and Seyla Benhabib, Editors**  
**Migrations and Mobilities:  
Citizenship, Borders, and Gender**  
*New York University Press, 2009*

IN THIS COLLECTION of fourteen essays, Arthur Liman Professor of Law Judith Resnik and co-editor Seyla Benhabib bring together a scholarly body of work situating gender in the context of globalization, citizenship, and migration.

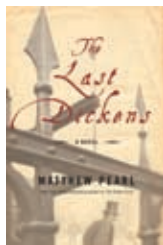
“When one inflects citizenship, sovereignty, and migration theories with gender analysis, new questions emerge both about feminist conceptions of women and men and about political theories of the state,” the editors write in an introductory essay addressing the parameters and implications of gendered migration.

The collection's introduction is itself a synthesis and analysis of the political and legal issues entailed by migrations of people, engendered and situated in families and communities. The contributing essayists of *Migrations and Mobilities* cover a wide range of issues—from workers' rights to children's rights, from theories of the nation-state and federalism to obligations under transnational human rights conventions. Together, the essays urge the reader to consider the pivotal role that gender should play in reconceiving the nature of citizenship in the contemporary, transnational world.

Contributors include Jacqueline Bhabha, Linda Bosniak, Catherine Dauvergne, Talia Inlender '07, Vicki C. Jackson '75, David Jacobson, Linda K. Kerber, Audrey Macklin '91 LL.M., Angela Means, Valentine M. Moghadam, Patrizia Nanz, Aihwa Ong, Cynthia Patterson, and Sarah K. van Walsum.

**Matthew Pearl**

**The Last Dickens**  
*Random House Inc., 2009*

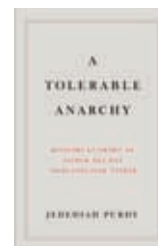


The author of *The Dante Club* and *The Poe Shadow*, Pearl '00 reopens one of literary history's greatest mysteries. When news of Charles Dickens's untimely death reaches the office of his struggling American publisher,

the trusted clerk, Daniel Sand, is sent by partner James Osgood to await the arrival of Dickens's unfinished manuscript. But when Daniel is found dead, and the manuscript is nowhere to be found, Osgood must embark on a transatlantic quest to unearth the novel, save his business, and reveal Daniel's killer.

**Jedediah Purdy**

**A Tolerable Anarchy:  
Rebels, Reactionaries,  
and the Making of American Freedom**  
*Knopf, 2009*



Purdy '01 works from the stories of individuals such as Frederick Douglass and Ralph Waldo Emerson, urging us to explore our understanding of our country and ourselves, and to make real our own ideals of freedom. He asks crucial

questions: Does capitalism perfect or destroy freedom? Does freedom mean following tradition, God's word, or one's own heart? Can a nation of individualists also be a community of citizens?

**Ayelet Shachar**

**The Birthright Lottery:  
Citizenship and Global Inequality**  
*Harvard University Press, 2009*



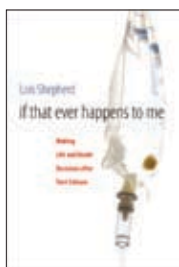
Shachar '95 LL.M., '98 JSD argues that birthright citizenship in an affluent society can be thought of as a form of property inheritance: that is, a valuable entitlement transmitted by law to a restricted group of recipients under conditions that

perpetuate the transfer of this prerogative to their heirs. She deploys this perspective to argue that nations need to expand their membership boundaries beyond outdated notions of blood-and-soil in sculpting the body politic.

**Lois Shepherd**

**If That Ever Happens To Me:  
Making Life and Death Decisions  
after Terri Schiavo**

*The University of North Carolina Press, 2009*



Shepherd '87 looks behind labels like "starvation," "care," and "medical treatment" to consider what care and feeding really mean, when feeding tubes might be removed, and why disability groups, the faithful, and even the dying themselves often suggest

end-of-life solutions that they might later regret. For example, she cautions against living wills as a pat answer, and provides evidence that demanding letter-perfect documents can actually weaken, rather than bolster, patient choice.

**website**

Details about upcoming alumni and faculty book tours are now available at [www.law.yale.edu/alumni](http://www.law.yale.edu/alumni). If you'd like your book tour listed on the site, please email Director of Alumni Affairs Abigail Roth '94 at [abigail.roth@yale.edu](mailto:abigail.roth@yale.edu).

**ALSO OF NOTE**

**Daniel C. Esty '86 and Andrew Winston**

**Green to Gold: How Smart Companies  
Use Environmental Strategy  
to Innovate, Create Value,  
and Build Competitive Advantage,**  
revised and updated edition  
*Wiley, 2009*

**Michael J. Graetz and  
Deborah H. Schenk**

**Federal Income Taxation, 6th ed.**  
*Foundation Press, 2009*

**Richard R. W. Brooks, Douglas Kysar  
& Nathaniel O. Keohane**

**Economics of Environmental Law**  
*Edward Elgar Publishing, 2009*

**Jonathan Macey '82, Richard Scott  
Carnell & Geoffrey P. Miller**

**The Law of Banking and Financial  
Institutions, 4th ed.**  
*Aspen Publishers, 2008*

**Jonathan Macey '82**

**Classics in Corporate Law and  
Economics**  
*Edward Elgar Publishing, 2008*

**Jonathan Macey '82**

**The Iconic Cases in Corporate Law**  
*Thomson West, 2008*

**Macarena Sáez '98 LL.M and  
Cristina Motta**

**La Mirada de los jueces**  
*Siglo del Hombre Editores, 2008*



Podcast interviews with faculty authors are available at [www.law.yale.edu/podcasts](http://www.law.yale.edu/podcasts)

**Jack Balkin and Reva Siegel, Editors**

**The Constitution in 2020**  
*Oxford University Press, 2009*

IN APRIL 2005, a group of Yale professors organized a conference at Yale



Law School designed to produce a new progressive agenda for constitutional law. That event inspired *The Constitution in 2020*, a compilation of articles edited by Jack Balkin, Knight Professor of Constitutional Law and the First Amendment, and Reva

B. Siegel '86, Nicholas deB. Katzenbach Professor of Law.

In their introduction to the volume, Balkin and Siegel argue that because the Constitution is always a work in progress, the people of each generation have an obligation to build on the best of the past and redeem the document's great promises in their own time. The public and social movements play an important role through processes of democratic constitutionalism: "In a democratic society," Balkin and Siegel write, "courts best perform their institutional role as partners in a larger dialogue: they respond to popular visions of the Constitution's values and help to translate these values into law."

Articles by contributors span a wide range of issues, from presidential power and social welfare rights to religious liberty, voting, reproductive rights, and the challenge of new technologies.

Contributors include Yale Law School Dean Harold Hongju Koh as well as YLS alumni and professors Bruce Ackerman '67, David Cole '84, William N. Eskridge, Jr. '78, Noah Feldman '97, William E. Forbath '83, Vicki C. Jackson '75, Dawn E. Johnson '86, Pamela S. Karlan '84, Goodwin Liu '98, Tracey L. Meares, Rachel F. Moran '81, Robert C. Post '77, Judith Resnik, and Mark Tushnet '71; along with a group of distinguished scholars including Yochai Benkler, William E. Forbath, Richard T. Ford, Larry Kramer, William P. Marshall, Frank Michelman, Cass R. Sunstein, and Robin West.