

# books in print

# FROM FOOL'S BLINDFOLD TO THE VEIL OF IGNORANCE

BY JUDITH RESNIK AND DENNIS CURTIS

*Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms*  
By Judith Resnik and Dennis Curtis  
Yale University Press, 2010

## What makes this array of images comprehensible?

Why, in 2002, did designers of a County Court in Melbourne, Australia, choose a female figure in flowing garb with sword, scales, and blindfold (FIG. 1) and have the confidence that viewers would look at this six-meter aluminum statue and think Justice—rather than warrior princess or some Roman deity? How did the blindfold morph from its derisive import in the woodcut *Fool Blindfolding Justice* from Sebastian Brant's 1494 book *The Ship of Fools* (FIG. 2) to be valorized in Melbourne? What is an ostrich doing in Giulio Romano's 1520 *Justice* (FIG. 3) in the Vatican's Sala di Costantino? And, why care today about this history and deployment?

Justice once joined Prudence, Fortitude, and Temperance to form a quartet called the Cardinal Virtues. Personifications took the female form, reflecting roots in Egyptian, Greek, and Roman goddesses. Virtues were identified through attributes—such as scales for Justice or armor for Fortitude. Imagery varied by period, place, and artistic impulse. Justice can be found holding cornucopias, lictor rods, orbs, books, and close to various creatures including ostriches—described, like justice, as digesting anything.

The ostrich is no longer a marker of Justice but a blindfold is. Yet, covered eyes once had negative connotations. A blindfolded and bent figure, *Synagoga*, representing the Old Testament, denoted that Judaism was blind to the light of Christianity. *Ecclesia*, the New Testament, was ramrod straight and clear-eyed. Yet the 1996 *Lady Justice* in a New Hampshire federal court (FIG. 4) deliberately ties her own blindfold, akin to a Rawlsian "veil of ignorance" imposed to achieve impartiality.

The scales, traced from the Babylonian god Shamash to the Egyptian Maat and the Christian St. Michael (FIG. 1), serve as a reminder of judgment's ancient roots. By the Renaissance, courts had proto-democratic elements, for they were an early site of constraint on government. Even when judges were obliged to be loyal servants of the state, they were instructed to "hear the other side" of a dispute and enjoined not to favor the rich or the poor. Public rituals of adjudication acknowledged that something other than pure power legitimated authority.

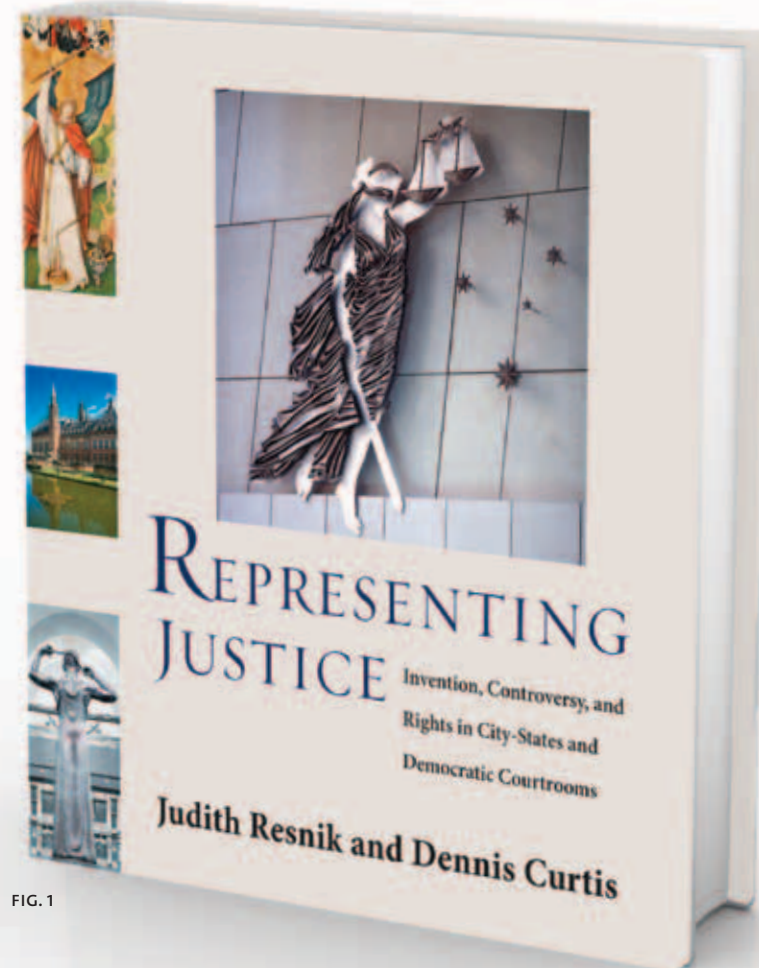


FIG. 1



FIG. 2



FIG. 3



FIG. 4

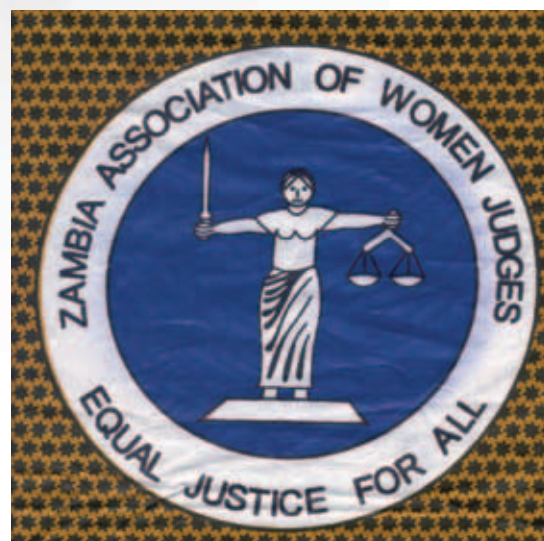


FIG. 5

FIGURE 1  
Cover of *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms*; images include Lady of Justice, William Eicholtz, 2002, Victoria County Court, Melbourne, Australia. Photographer: Ken Irwin. Reproduced with the permission of the sculptor and of the Liberty Group, owner and manager of the Victoria County Court Facility.

*Saint Michael Weighing the Souls at the Last Judgment*, Master of the Zurich Carnation, circa 1500, Kunsthhaus, Zurich, Switzerland. Copyright: Bridgeman-Giraudon Art Resource, New York, NY.

*The Peace Palace*, International Court of Justice, The Hague, the Netherlands. Architect: Louis M. Cordonnier, 1913. Photograph reproduced courtesy of the Carnegie Foundation.

*Lady Justice*, Diana K. Moore, 1996, Warren B. Rudman Federal Courthouse, Concord, New Hampshire. Photographer: Nick Wheeler. Reproduced courtesy of the artist and with the permission of the architectural firm.

FIGURE 2  
*The Fool Blindfolding Justice*, attributed to Albrecht Dürer, 1494. Image courtesy of Beinecke Rare Book and Manuscript Library, Yale University.

FIGURE 3  
*Justice*, Giulio Romano, 1520, ceiling detail, Sala di Costantino, Vatican. Image reproduced courtesy of the Library of Congress, Washington, D.C.

FIGURE 4  
*Lady Justice*, Diana K. Moore, 1996, Warren B. Rudman Federal Courthouse. Reproduced courtesy of the artist.

FIGURE 5  
Cloth provided by Elizabeth Brundige and reproduced courtesy of the Zambia Association of Women Judges. Facsimile by Yale University Press.

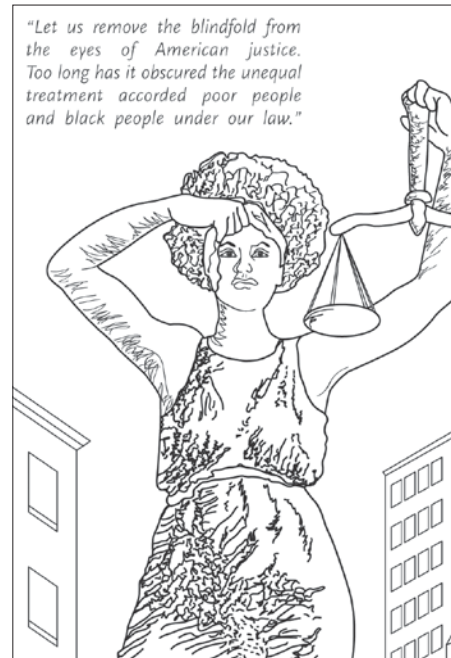


FIG. 6



FIG. 7

FIGURE 6  
Logo of the Judicial Council of the National Bar Association, 1971.  
Image reproduced courtesy of the Judicial Council of the National Bar Association. Facsimile by Yale University Press.

FIGURE 7  
*The History of Justice in Mexico: Torture, Homicide*, Rafael Cauduro, 2009, Supreme Court of Justice of Mexico. Image reproduced with the permission of Minister Guillermo I. Ortiz Mayagoitia, President of the Supreme Court, and in conformity with Article 83 of the Federal Law of Author Rights and in virtue of the patrimonial rights of the court.

But democracy has radically changed adjudication. “Rites” turned into “rights,” imposing requirements that governments provide “open and public” hearings, and respect the independence of judges. Courts developed alongside the press and the post as mechanisms for disseminating knowledge about government. Adjudication makes a special contribution, as ordinary persons momentarily gain the ability to call even the government to account. Courtrooms in turn moved out of multifunctional town halls into their own special spaces: courthouses, that rescaled into local, national, regional, and transnational institutions.

Not only did all persons gain rights to equal treatment and dignity, they were also recognized as entitled to occupy all the roles: litigant, witness, juror, judge. The Justice on the brightly-colored cloth from Zambia Association of Women Judges (FIG. 5) embraces the earlier symbolism while capturing that shift.

Democracy has changed and now challenges courts profoundly. Most governments do not provide funds adequate to make good on promises of equal justice before the law. Contemporary systems rely increasingly on modes of privatization—reconfiguring to manage and settle disputes outside the public purview, devolving fact-finding to agencies with less visible processes, and outsourcing to private arbitration and mediation.

Many new courthouses are clad in glass to mark justice’s transparency. While celebrating the majesty of the state, few offer reflections on problems of access, injustice, opacity, and the complexity of rendering judgments. In contrast, the logo (FIG. 6) of the Judicial Council of the National Bar shows a woman pulling off her blindfold. The text, “Let us remove the blindfold from the eyes of American justice,” echoes Langston Hughes’ poem “Justice”: the “bandage hides two festering sores that once perhaps were eyes.” And the Mexico Supreme Court recently installed a rare image acknowledging justice’s challenges. *Torture, Homicide* (FIG. 7), featuring a woman’s broken body at the bottom of a shaft, is part of Rafael Cauduro’s *The History of Justice in Mexico*.

Courts as we know them today are recent inventions, with important contributions to make to democracy. Adjudication can itself be a democratic practice as it reconfigures power, obliges disputants and judges to treat each other as equals, and requires public justifications for decisions based on the interaction of fact and norm. Courts and their iconography are venerable but they are also vulnerable. Like the post and the press, they ought not be taken for granted in the twenty-first century.

EDITOR’S NOTE Dennis Curtis’ and Judith Resnik’s book *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* was published by Yale Press ([yalepress.yale.edu](http://yalepress.yale.edu)) in December 2010. In spring 2011, Resnik and Curtis will teach a class, *Representing Justice: Courts, Democracy, and Contestation*. Related materials will be on display at the Yale Art Gallery, which will be visited by attendees at a February symposium, “Courts: Representing and Contesting Ideologies of the Public Sphere(s),” co-sponsored by the *Yale Journal of Law and Humanities* and the Whitney Humanities Center.

For more, including images and excerpts from the book, a multimedia project featuring highlights from the Yale Art Gallery exhibit, and photos of Justice from the Lillian Goldman Law Library’s Rare Books Collection, visit <http://y1r.law.yale.edu>.

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.

#### HISTORY AND CURRENT AFFAIRS

**Christopher A. Ford**

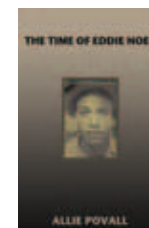
*The Mind of Empire: China’s History and Modern Foreign Relations*  
The University Press of Kentucky, 2010



As Western nations begin to deal with China as an equal, foreign policy needs to take into account that nation’s legacy of imperialism and Confucianism, says Ford ’95. Despite its exposure to modern Western ideas, China retains a hierarchical view of political order, and a tendency to develop foreign relationships that reinforce its idea of political and moral supremacy. How this clashes with Western ideas of separate and coequal state sovereignty will continue to define our relationship with this emerging superpower.

**Al Povall**

*The Time of Eddie Noel*  
Comfort Publishing, 2010



Povall ’79 tells the story of Eddie Noel, a young African American man who, in 1954, shot and killed a white man in Mississippi. The shooting led to the formation of a 600-man posse. Against staggering odds, Noel took on members of the posse in a series of wild gunfights, killing two more people and wounding three others. Then he disappeared into the woods. Noel turned himself in eighteen days later and was never tried or convicted.

**Aziz Rana**

*The Two Faces of American Freedom*  
Harvard University Press, 2010

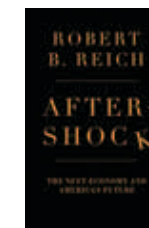


America began as a settler society where direct political participation was tied to economic independence, says Rana ’06. However, this vision was tied to the marginalization of groups such as slaves, Native Americans, and women.

As these sections of society pushed for freedom the result was the rise of hierarchical state and corporate institutions. Rana proposes a return to settler ideals but with inclusion for all Americans as he places issues of race, immigration, and presidentialism in the context of shifting notions of empire and citizenship.

**Robert B. Reich**

*Aftershock: The Next Economy and America’s Future*  
Knopf, 2010



Don’t blame Wall Street for the 2008 economic meltdown. The real problem with our economy is that the top 1 percent of the population was paid 23 percent of the nation’s income, says Reich ’73. This leaves the middle class without the purchasing power to buy what the economy can produce, leading them deeply into debt. The last time wealth was so concentrated at the top was right before the Great Depression, says Reich. *Aftershock* lays out a blueprint to restore the nation’s economy and rebuild society.

**Deborah L. Rhode**

*The Beauty Bias: The Injustice of Appearance in Life and Law*  
Oxford University Press, 2010

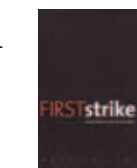


Rhode ’77 examines the price of beauty and the even higher price of not being perceived as beautiful. She explores the ways in which appearance bias affects hiring practices and promotions, reinforces negative stereotypes,

and infringes on fundamental rights overall. *The Beauty Bias* delves into how appearance laws work in practice, and argues for extending their reach through an examination of discrimination case histories. In the end, Rhode presents a legal and political strategy for addressing these biases.

**Mark Totten**

*First Strike: America, Terrorism, and Moral Tradition*  
Yale University Press, 2010



There is a principled way in which to reconcile American values and the needs of security in relation to use of preemptive force, writes Totten ’06, a former attorney with the U.S. Department of Justice,

Civil Appellate Staff. His book takes the notion that a state should only strike first against an imminent threat, and places it in the context of global terrorism and the American military action in Iraq. Totten traces the evolving rule of preventive force and concludes that imminence has always been tempered by necessity.

**William Wang and Marc Steinberg**  
*Insider Trading, third edition*

Oxford University Press, 2010



This treatise by Wang ’71 and Steinberg ’77 LL.M. analyzes the application of various laws to stock market insider trading and tipping. Among the federal laws are Exchange Act section 10(b), SEC Rule 10b-5, mail/wire fraud, SEC Rule 14e-3, Exchange Act section 16, and Securities Act section 17(a). The state law discussed is both state common law and a state law claim by the issuer.

## ACADEMIA

## Steven Farr

Teaching as Leadership:  
The Highly Effective Teacher's Guide  
to Closing the Achievement Gap

Jossey-Boss, 2010



Farr '98 identifies six strategies employed by some of the nation's most highly effective teachers who are also working in schools with high rates of poverty. This book encourages educators to

be leaders in both their classrooms and schools, while offering practical solutions to daily problems faced by teachers in the classroom. In writing the book, Farr draws on his experience researching and observing the Teach for America program's most effective educators.

## Roger H. Hull

Lead or Leave: A Primer for College  
Presidents and Board Members

Hamilton Books, 2010

This book aimed at college and university presidents and trustees offers a checklist of what works and what doesn't in the 21st century. Hull '67, who served for fifteen

years as president of Union College and chancellor of Union University, not only advises, but seeks to keep educators on a morally straight course. Under Hull's leadership, Union College launched a major initiative to better integrate the liberal arts and technology, increased international education, and invested more than \$26 million in projects.

## Brian D. Lepard

Customary International Law:  
A New Theory with Practical  
Applications

Cambridge University Press, 2010



In his new book, Lepard '89 challenges traditional ideas of customary international law. Though it has long been acknowledged as a primary source of international law, enigmas of customary international law remain, including

how to determine the existence of *opinio juris*, the function of the state practice requirement, and its relationship with ethics. Mixing legal theory with fields as diverse as philosophy, political science, and game theory, Lepard attempts to resolve these enigmas and put forth a comprehensive theory of customary international law.

## Sarah Ricks

Current Issues in  
Constitutional Litigation:  
A Context and Practice Casebook  
Carolina Academic Press, 2010

Ricks '90 offers an innovative textbook that integrates teaching doctrine and skills. Partly in a response to the Carnegie Foundation for the Advancement of Teaching's critique of legal education, this book helps students apply constitutional law to their future professional roles. Focusing on practical materials, the book includes law practice simulations to teach the constitutional and statutory doctrines necessary to litigate the most common current constitutional cases.

## Henry E. Smith and Thomas W. Merrill

The Oxford Introductions  
to U.S. Law: Property

Oxford University Press, 2010



Smith '96 and Merrill offer students an introduction to how property law works, highlighting the central issues and policy debates. The book is designed to teach law students how property law affects larger concerns such as

individual autonomy, personhood, and economic organization. *Property* also provides an overview of the topic, useful for lawyers interested in the conceptual foundations of the law of property.

FICTION, LITERARY CRITICISM,  
POETRY, MEMOIR

## Gary Hart

The Thunder and the Sunshine:  
Four Seasons in a Burnished Life

Fulcrum, 2010



Hart '64 chronicles his almost four decades as a public servant, beginning with his role in the 1972 George McGovern campaign. He looks at his time spent as a senator, his role in security issues before and after the events of September 11, 2001, and his place in environmental advocacy. He discusses his dedication to the ideals of Thomas Jefferson and the other founding fathers, while advocating public service as a factor in the shaping of America's future and its continued global role.

Scott J. Shapiro  
Legality

Harvard University Press, 2011

WHAT IS LAW? This question has preoccupied philosophers from Plato to Thomas Hobbes to H. L. A. Hart. Yet many find it perplexing. How could we possibly know how to answer such an abstract question? And what would be the point of doing so? In *Legality*, Shapiro '90 argues that this perennial philosophical question is not only meaningful but vitally important. In fact, many of the most pressing questions that lawyers confront—including questions about who has legal authority over us and how we should interpret constitutions, statutes, and cases—will remain elusive until these grand philosophical questions are first resolved.



At the same time, Shapiro draws on recent work in the philosophy of action to develop an original and compelling answer to this age-old question. Breaking with a long tradition in jurisprudence, he argues that the law cannot be understood simply in terms of rules. Legal systems are best understood as highly complex and sophisticated tools for creating and applying plans. Shifting the focus of jurisprudence in this way—from rules to plans—not only resolves many of the most vexing puzzles about the nature of law but has profound implications for legal practice as well.

Written in clear, jargon-free language, and presupposing no legal or philosophical background, *Legality* is both a groundbreaking new theory of law and an excellent introduction to and defense of classical jurisprudence.

## Kurt Melchior

## Off the Record:

## Sidebars from a Trial Lawyer's Life

Courthouse Steps Publishing, 2010



In sixty years as a trial lawyer, Melchior '51 has compiled a lifetime's worth of stories about practicing law. In this book, he has put down a hundred of his wide-ranging experiences, from the client who lied to get a lawyer to take his case, to the star witness who was so nervous she was shaking. Each anecdote offers wisdom on real-world lawyering with plenty of humorous twists along the way.

## Herbert Morris

## Artists in Evil:

An Essay on Evil and Redemption in  
Marcel Proust's *In Search of Lost Time*

Self-published, 2010



In this examination of Proust's work, Morris '54 focuses on the scene in which two lesbian lovers cavort in front of a photograph of one woman's recently deceased father. The book's protagonist recalls the scene on several occasions throughout the novel and it reveals his conceptions of sadism, cruelty, evil, and morality. This scene, argues Morris, is central to one of the novel's core themes: redeeming lost time.

## Eric Naiman

## Nabokov, Perversely

Cornell University Press, 2010



Naiman '82 brings a new approach to Nabokov's work, specifically *Lolita*, *Invitation to a Beheading*, and *Invitation to a Wedding*. He argues that the sexual and the interpretive are so intertwined in Nabokov's stories and novels that

reading his works requires the exhilaration and performance anxiety more frequently associated with questions of sexuality than of literature.

## Justin Peacock

## Blind Man's Alley

DoubleDay, 2010



Peacock's '02 new novel sets cynical and seasoned associate Duncan Riley in the middle of the cutthroat world of New York City real estate. After a fatal accident at a SoHo condo development, Riley is thrown into the defense of Roth Properties

with its tangle of legal problems and alleged mob connections. Meanwhile, a seemingly unrelated pro bono eviction case eventually places Riley on the opposite side of Roth Properties. Add Leah Roth—daughter to Riley's client—into the mix and you have a story of a man walking the knife edge of legal ethics and personal morality.

## Paul Rice

## From Shallow Waters

Finishing Line Press, 2010



In this third book of a trilogy about coming of age in West Virginia and Kentucky, Rice '72 LLM offers poems that capture a time when life was simple, as were the people. In an era when most goods were made by hand and gardening was for survival rather than by choice—

families were close-knit and dependent on one another to fulfill their needs. Rice once again captures a time and, perhaps a culture, that has all but disappeared.

## ALSO OF NOTE

## Peter V. Baugher '73

A Trial Lawyer's Guide to Discovery in  
Federal and State Courts in Illinois

Schopf &amp; Weiss, 2010

## Vincent R. Johnson '79 LLM

## Advanced Tort Law: A Problem Approach

LexisNexis, 2010

Pacita "Ching" de las Alas Montinola  
and Carmencita "Menchu" de las Alas  
Concepcion, EditorsThe Small Man with a Tall Shadow: Don  
Antonio de las Alas [1909 LLM]

Self-published, 2010

## Charles W. T. Stephenson '59

Transparency Cantos: Values for Human  
Dignity: Lasswell and McDougal

Torquilstone Press, 2010

## Ian Ayres

## Carrots and Sticks:

## Unlock the Power of Incentives to Get Things Done

Bantam, 2010

IAN AYRES '86 USES behavioral economics to help people design better incentives in this book written for both business people and the general consumer.

The William K. Townsend Professor of Law introduces readers to the idea of a "commitment contract." The high-powered strategy for setting goals and actually achieving them can

be used beyond the business model and applied to such everyday goals as losing weight, quitting smoking, or finally cleaning off your desk.

The key to achieving a goal—whether it's meeting work deadlines or simply eating better—goes beyond ability and self-discipline. Proper incentives can be the key, says Ayres, who asks the reader: Could you lose weight if you put \$20,000 at risk? Would you finally set up your billing software if it meant that your favorite charity would earn a new contribution? The author illustrates the carrot-and-stick principle through real-life stories.

Applying the behavioral economics study of rewards and punishments, Ayres reveals strategies that can give readers the impetus to meet their personal and professional goals.

