# books in print

## Jonathan R. Macey '82, Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law

The Death of Corporate Reputation: How Integrity Has Been Destroyed on Wall Street

Financial Times Press, 2013

## For more than a century, companies

seeking access to the U.S. markets made huge investments in their reputations. In order to cultivate and maintain reputations as faithful brokers and intermediaries they treated customers well – sometimes enduring losses in the process when necessary to do right by their customers. Today, the reputations of many of the major players on Wall Street are in shambles. Customers appear to have become one-off "counter-parties" to whom no duties are owed and no loyalty is required. Even regulators are viewed as captured and ineffective in protecting investors.

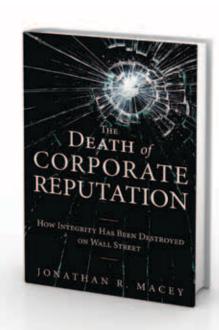
In his new book, The Death of Corporate Reputation: How Integrity Has Been Destroyed on Wall Street, Yale Law School Professor Jonathan Macey '82 explains the demise of reputation in capital markets and corporate finance. Why, Macey asks, have so many firms lost interest in reputational capital?

The change from the old reputational model to the new laissez-faire one, Macey argues, is largely the result of three factors: (1) the growth of reliance on regulation rather than reputation as the primary mechanism for protecting customers; (2) the increasing complexity of regulation, which made technical expertise rather than reputation the primary criterion on which customers choose who to do business with in today's markets; and (3) the rise of the "cult of personality" on Wall Street, which has led to a secular demise in the relevance of companies' reputations and the concomitant rise of individual rainmakers' reputation as the basis for premium pricing of financial services.

Macey demonstrates how and why poorly considered regulation has undermined traditional trust mechanisms throughout financial institutions, accounting and law firms, credit rating agencies, and stock exchanges, and he offers a path back to corporate trust and integrity.

"For years I have discussed the economic theory of reputation in my classes. It finally dawned on me that the traditional economic theory, which posits that financial firms and regulators must have strong reputations for integrity in order to survive, has lost its explanatory power," Professor Macey said. "The SEC, certain banks and investment banks,

credit rating agencies and law firms, among other Wall Street mainstays, continue to thrive despite reputations for incompetence or shady dealings or simply for putting their own interests ahead of their customers. This book explains this unfortunate phenomenon and suggests what the future holds for Wall Street after the crisis."





"The SEC, certain banks and investment banks, credit rating agencies and law firms, among other Wall Street mainstays, continue to thrive despite reputations for

incompetence or shady dealings or simply for putting their own interests ahead of their customers."

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.

Please contact us: lawreport@yale.edu.

#### **Logan Beirne**

**Blood of Tyrants:** George Washington & the Forging of the Presidency

Encounter Books, 2013



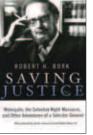
Delving into the forgotten—and often lurid—facts of the Revolutionary War, Beirne '11 focuses on George Washington as he shaped the very meaning of the **United States Constitution** in the heat of battle. Beirne uses previously

unexplored documents such as General Washington's letters debating torture, an eyewitness account of the military tribunal that executed a British prisoner, Founders' letters warning against government debt, and communications pointing to a power struggle between Washington and the Continental Congress.

### **Robert H. Bork**

Saving Justice

Encounter Books, 2013



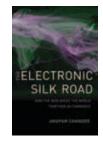
From the ousting of Vice President Spiro Agnew, to the discharge of the Watergate special prosecutor, an event known as the Saturday Night Massacre, this posthumously published autobiography offers a firsthand, insider account of the whirlwind

of events that engulfed the administration during the last half of 1973 and the first few months of 1974. (See page 34 for a tribute to Robert Bork.)

## **Anupam Chander**

The Electronic Silk Road: How the Web Binds the World Together in Commerce

Yale University Press, 2013



Chander '92 provides a discussion of the law that relates to global Internet commerce. Addressing up-to-the-minute examples, such as Google's struggles with China, the Pirate Bay's skirmishes with Hollywood, and the outsourcing of services to

India, the author analyzes the difficulties of regulating Internet trade. Chander then lays out a framework for future policies, showing how countries can dismantle barriers while still protecting consumer interests.

### Susan P. Crawford

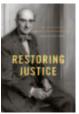
Captive Audience: The Telecom Industry and Monopoly Power in the New Gilded Age Yale University Press, 2012



Crawford '89 explores why Americans are now paying much more but getting much less when it comes to highspeed Internet access. Using the 2011 merger between Comcast and NBC Universal as a lens, she examines how we

have created the biggest monopoly since the breakup of Standard Oil a century ago. This book explores how telecommunications monopolies have affected the daily lives of consumers and also America's global economic standing.

## **Jack Fuller, Editor Restoring Justice:** The Speeches of Attorney General Edward H. Levi University of Chicago Press, 2013



Fuller '73 has selected speeches by Levi '38 JSD that set out the attorney general's view of the considerable challenges he faced: restoring public confidence through discussion and acts of justice, combating the corrosive skepticism of the

time, and ensuring that the executive branch would behave judicially. Also included are addresses and Congressional testimonies that speak to issues that were hotly debated at the time, including electronic surveillance, executive privilege, separation of powers, antitrust enforcement, and the guidelines governing the FBI—many of which remain relevant

#### W. Michael Reisman

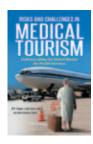
The Quest for World Order and Human Dignity in the Twenty-first Century Martinus Nijhoff, 2013

INTERNATIONAL LAW'S archipelago is composed of legal "islands," which are highly organized, and "offshore" zones manifesting a much lower degree of legal organization. Each requires a different mode of decisionmaking, each further complicated by the stress of radical change. This book is concerned, first, with understanding and assessing the aggregate performance of the world constitutive process, in present and projected constructs; second, with providing the intellectual tools that can enable those involved in making decisions to be more effective, whether they are operating in islands or offshore; and, third, with inquiring into ways the international legal system might be improved. Reisman '64 LLM, '65 JSD identifies the individual as the ultimate actor in international law and explores the dilemmas of meaningful individual commitment to a world order of human dignity amid interlocking communities and overlapping loyalties.

## Jill R. Hodges, Anne Marie Kimball, and Leigh Turner, Editors

Risks and Challenges in **Medical Tourism** 

Praeger, 2012



A multidisciplinary, international team (including Hodges '78 MSL) examines the growing global phenomenon of cross-border travel for procedures ranging from tummy tucks to heart surgery—and the challenges that arise when health care becomes a global commodity in a largely

unregulated market. Topics explored include the paucity of legal remedies available when procedures go awry; potential consequences when patients cross borders for medical procedures that are illegal in their home countries; and the relationship of medical tourism to the international spread of infectious disease.

#### Saru Jayaraman

Behind the Kitchen Door Cornell University Press, 2013



How do restaurant workers live on some of the lowest wages in America? And how do poor working conditions—discriminatory labor practices, exploitation, and unsanitary kitchens—affect the meals that arrive at our

restaurant tables? Jayaraman 'oo, who launched the national restaurant workers' organization Restaurant Opportunities Centers United, sets out to answer these questions by following the lives of restaurant workers in New York City, Washington, D.C., Philadelphia, Los Angeles, Chicago, Houston, Miami, Detroit, and New Orleans.

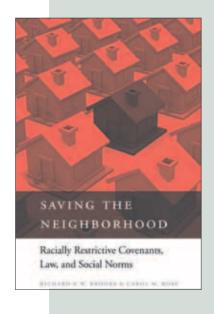
#### **Timothy D. Lytton**

**Kosher: Private Regulation** in the Age of Industrial Food Harvard University Press, 2013



Generating more than \$12 billion in annual sales, kosher food is big business. It's also an unheralded story of successful privatesector regulation in an era of growing concern over the government's ability to ensure food

safety. Lytton '91 uncovers how independent certification agencies rescued American kosher supervision from fraud and corruption and turned it into a model of nongovernmental administration.



## Richard R.W. Brooks Carol M. Rose

Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms Harvard University Press, 2013

AS AN UNPRECEDENTED NUMBER of African Americans migrated from the rural South in the early 20th century in search of better jobs and better lives, many white communities created covenants designed to restrict property ownership and residency by race.

"As legal instruments, existing in official records, racial covenants took on the mantle of civic acceptability," write Professors Richard R.W. Brooks and Carol M. Rose in their new book Saving the Neighborhood: Racially Restrictive Covenants, Law, and Social Norms. "In this respectable legal form, racial covenants could be deployed by a variety of professional institutions, becoming tools for real estate developers, brokers, financial agents, and insurance institutions—including those of the U.S. government."

Brooks and Rose examine how restrictive covenants and social norms reinforced each other to become powerful guarantors of segregation until 1948, when the Supreme Court decision in Shelly v. Kraemer declared the covenants legally unenforceable. Saving the Neighborhood goes on to examine why the covenants continued to exert influence even after the Court's ruling.

Because racial covenants lived on in real estate records they were still able to influence the beliefs and decisions of real estate professionals, home buyers and sellers. Even after Shelley, racial covenants remained effective as signals, creating common knowl-

"In this respectable legal form, racial covenants could be deployed by a variety of professional institutions, becoming tools for real estate developers, brokers, financial agents, and insurance institutions—including those of the U.S. government."

edge of local attitudes and likely actions, which in turn swayed the behaviors of banks, brokers, developers, insurers, excluded minorities, and the white neighbors. Those signals remained oddly durable even as housing discrimination

became increasingly unacceptable. Over time the impact of racial covenants would fade, but their legal and social significance lingered well beyond 1948.

## Richard L. Revesz and Michael A. Livermore, Editors The Globalization of Cost-Benefit Analysis in Environmental Policy

Oxford University Press, 2013



Gerard M. Magliocca

American Founding Son:

John Bingham and the Invention of

the Fourteenth Amendment

NYU Press, 2013

AMERICAN

FOUNDING

Ceremonies

of Bravery

John Bingham was the

architect of the rebirth of

the United States following

the Civil War. Drawing on his

the book traces Bingham's

life from his humble roots

his career as a leader of the

Republican Party. Magliocca

in Pennsylvania through

'98 argues that Bingham and his con-

gressional colleagues transformed the

Constitution, and did so with the same

a more perfect union in the 1780s.

ingenuity that their forbears used to create

**Robert Maguire** 

Ceremonies of Bravery:

Oscar Wilde, Carlos Blacker,

and the Dreyfus Affair

Oxford University Press, 2013

This study of the friendship

between the prolific writer

Blacker draws on Blacker's

diaries to paint a rich portrait

of Wilde's dear friend in their

shared social milieu, provid-

ing an account that adds

to the already vivid picture

of Wilde's life. Using these

diaries, alongside other archival sources,

Maguire '53 provides new insight into a

special relationship while also offering a

unique perspective on the Dreyfus Affair.

Oscar Wilde and Carlos

personal letters and speeches,

In a book that includes both theoretical and practical discussion, Revesz '83 and Livermore examine how costbenefit analysis can help developing and emerging countries confront the next generation of environmental and public-

health challenges. This book examines the growing reach of cost-benefit analysis; presents relevant case studies where it has been incorporated around the world; and includes a discussion on the essential institutional issues when adopting cost-benefit analysis in developing countries.

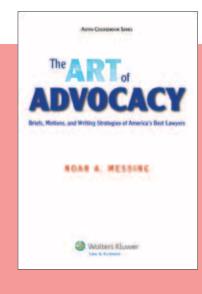
#### **Barbara Paul Robinson**

Rosemary Verey: The Life and Lessons of a Legendary Gardener David R. Godine, 2012



Robinson '65 tells the story of Rosemary Verey, the last of the great English garden legends. She was the acknowledged apostle of the "English style" at her home at Barnsley House, and the "must have"

adviser to the rich and famous, including Prince Charles and Elton John.



## **Noah Messing**

The Art of Advocacy: Briefs, Motions, and Writing Strategies of America's Best Lawyers Aspen Publishers, 2013

MESSING 'oo, LECTURER in the Practice of Law and Legal Writing at YLS, presents more than 150 examples of masterful advocacy to show lawyers how to write winning motions and briefs. The book focuses on the strategic and substantive choices that top litigators make, drawing examples from important, timely, and controversial cases. Detailed annotations give readers insight into what makes each document so effective. The book presents a host of storytelling, stylistic, and organizational strategies, and it spends seven chapters showing how to build different types of arguments, making it the most extensive exploration offered by any book in the field about how to write the "Argument" section of a motion or brief. The Appendices provide a wealth of additional resources, including Karl Llwellyn's previously unpublished advice from 1957 about the art of advocacy, which Dean Robert Post '77 called the "best advice on legal writing I've ever seen."

(See page 46 for more about legal writing and Messing's new book.)

#### Teemu Ruskola

Legal Orientalism: China, the United States, and Modern Law

Harvard University Press, 2013

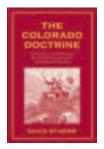


How did lawlessness become an axiom about Chineseness rather than a fact needing to be verified empirically, and how did the United States assume the mantle of law's universal appeal? In a series of wideranging inquiries, Ruskola '95 investigates the history

of "legal Orientalism": a set of globally circulating narratives about what law is and who has it.

#### **David Schorr**

The Colorado Doctrine: Water Rights, Corporations, and Distributive Justice on the American Frontier Yale University Press, 2012



Making extensive use of archival and other primary sources, Schorr '03 LLM, '05 JSD demonstrates that the development of the "appropriation doctrine," a system of private rights in water, was part of a radical attack on monopoly and corporate power in the arid West. It

describes how Colorado miners, irrigators, lawmakers, and judges forged a system of private property in water based on a desire to spread property and its benefits as widely as possible among independent citizens.

#### CORRECTION

The Winter 2013 issue of the Yale Law Report included a synopsis of Taming Globalization: International Law, the U.S. Constitution, and the New World Order (Oxford University Press, 2012) co-authored by Julian Ku '98 and John Yoo '92. The Law Report apologizes for omitting Mr. Ku's graduation year in that earlier synopsis.

#### Laura S. Underkuffler

Captured By Evil: The Idea of Corruption in Law Yale University Press, 2013



**Sonia Sotomayor** 

My Beloved World

The first Hispanic

and third woman

appointed to the

Court, Sotomayor '79

American icon. Now,

intimacy never under-

with a candor and

Knopf, 2013

Sonia.

mayor

power of believing in oneself.

The Health

Care Case

The Supreme Court's

Decision and he Implications

According to Underkuffler '87 LLM, "corruption" is a concept based on religiously revealed ideas of good and evil. But the notion of corruption defies the ordinary categories by which law defines crimes—categories that punish acts, not

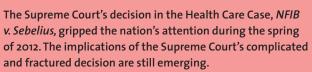
character, and that eschew punishment on the basis of religion and emotion. Drawing on contemporary examples, Underkuffler explores the implications and dangers of maintaining such an archaic concept at the heart of criminal law.

## taken by a sitting Justice, she recounts her life from a Bronx housing project to the federal bench, a journey that offers an inspiring testament to her own extraordinary determination and the

## The Health Care Case: The Supreme Court's Decision and Its Implications

Edited by Nathaniel Persily, Gillian E. Metzger and Trevor W. Morrison

Oxford University Press, 2013



The recently published The Health Care Case is the first book of collected academic law essays on NFIB v. Sebelius. Members of the Yale Law School faculty authored five of the book's twenty essays, with diverse contributions that highlight the decision's significance for numerous areas of the law. Professor Jack M. Balkin writes on the constitutional aspects of the case; Professor John Fabian Witt '99 writes on the case's historical antecedents; Professors Jerry L. Mashaw and Michael J. Graetz cover the case's implications

for social insurance; Associate Professor Abbe R. Gluck 'oo discusses its significance for federalism; and Knight Distinguished Journalistin-Residence Linda Greenhouse '78 MSL writes on the dynamics of the Supreme Court.



Lincoln's Code: The Laws of War in American History (Free Press, 2012) by Professor John Fabian Witt '99 has received numerous awards since its publication last year. Among those honors: the Bancroft Prize for distinguished work in American history; the Willard Hurst **Book Prize of the Law and Society** Association; and the American Bar Association's 2013 Silver Gavel Award. Lincoln's Code was also a finalist for the Pulitzer Prize in History. The book was named a New **York Times Notable Book for 2012:** a Kirkus Books Best of 2012; and was a New York Times Book Review

#### **ALSO OF NOTE**

Editor's Choice.

## Renata Adler '79

Pitch Dark

New York Review of Books Classics, 2013

#### Renata Adler '79

**Speedboat** 

New York Review of Books Classics, 2013

## lan Ayres '86

La discriminación en el mercado. Ian Ayres y los estudios empíricos sobre desigualdad

University of Palermo Press, 2013



members talk about their writing? Videos of book talks with faculty are available at www.law.yale. edu/videos.

## lan Ayres '86 and Gregory M. Klass '02

Studies in Contract Law, 8th edition

Foundation Press, 2012

Jasper L. Cummings, Jr. '71 The Supreme Court, Federal Taxation, and the Constitution

American Bar Association Section of Taxation, 2013

## William N. Eskridge, Jr. '78, Phillip P. Frickey, Elizabeth Garrett

Cases and Materials on Statutory Interpretation

West, 2012

## William N. Jr. Eskridge Jr. '78, **Elizabeth Garrett** and James J. Brudney '79

Cases and Materials on Legislation: Statutes and the Creation of Public Policy, 2012 Supplement West, 2012

Douglas A. Kysar, James A. Henderson, Richard N. Pearson '64 LLM, John A. Siciliano

The Torts Process, 8th Edition Wolters Kluwer, 2012

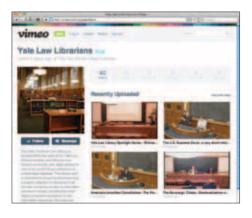
## **Raphael Lemkin**

**Totally Unofficial:** The Autobiography of Raphael Lemkin Yale University Press, 2013

#### **Daniel S. Markovits**

**Contract Law and Legal Methods** Foundation Press. 2012

## **Digital Resources for Alumni Bibliophiles**



#### **BOOK TALKS**

www.vimeo.com/yalelawlibrary The Lillian Goldman Law Library sponsored nine book talks during the past academic year, including those on new books authored by Professors Akhil Reed Amar '84, Jonathan R. Macey '82, Jerry L. Mashaw, James Q. Whitman '88, and John Fabian Witt '99.



### **ACCESS TO JSTOR**

www.aya.yale.edu/content/jstor-access Alumni can freely use all JSTOR collections licensed by Yale. JSTOR (short for "journal storage") is a digital archive of more than 1,000 academic journals and one million primary sources.



**INTERESTED IN HEARING faculty**