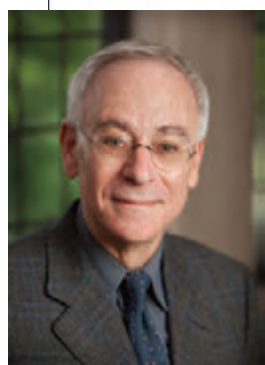
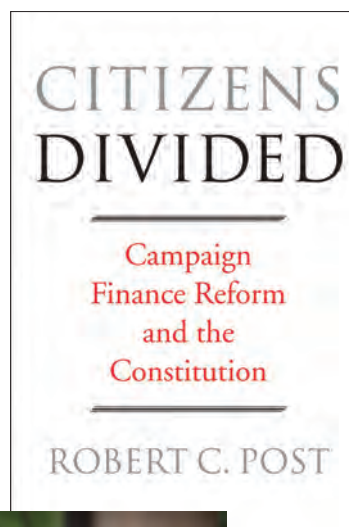


# books in print

## The Nature of Public Opinion

In 2010, a sharply divided U.S. Supreme Court overturned a federal prohibition on independent corporate campaign expenditures—and ushered in a controversial new electoral era in which money has flooded political elections.



**Robert C. Post '77, Dean and Sol & Lillian Goldman Professor of Law**  
*Citizens Divided: Campaign Finance Reform and the Constitution*  
 Harvard University Press, 2014

The landmark Supreme Court case *Citizens United v. Federal Election Commission* divided the country just as sharply as it did the court, which ruled 5-4 in favor of striking down a federal prohibition on independent corporate campaign spending. Reactions from both sides of the issue were equally vehement. Advocates of electoral reform railed against the idea of equating corporate spending with individual speech. Those who favored a broader interpretation of the First Amendment celebrated the ruling as a victory against government censorship.

In *Citizens Divided: Campaign Finance Reform and the Constitution*, Robert Post provides an insightful and innovative constitutional theory designed constructively to engage these two opposing perspectives.

Based on his Tanner Lectures on Human Values delivered at Harvard University in 2013, Post's analysis postulates that the fundamental argument is between two camps: those who believe self-government requires democratic participation in the formation of public opinion, and those who believe that self-government requires a functioning system of representation.

For those who insist on democratic participation in the formation of public opinion, free speech is paramount. And for those who focus on a functioning system of representation, the integrity of the electoral process is essential.

While acknowledging that each position has deep roots in American constitutional history, Post argues that both share a common aim: self-government. In contemporary life, all believe that self-government requires that elections be structured to sustain public confidence that elected officials are responsive to public opinion. Government therefore has a compelling constitutional interest in maintaining this kind of "electoral integrity." In *Citizens Divided*, Post spells out the many constitutional implications of this simple but profound insight. Critiquing the First Amendment reasoning of the court in *Citizens United*, he also shows that the court did not understand the constitutional nature of corporate speech.

Post's work is already becoming influential. In constructing his dissent in the recent case of *McCutcheon v. FCC*, U.S. Supreme Court Justice Stephen Breyer invoked and applied Post's theory of "electoral integrity."

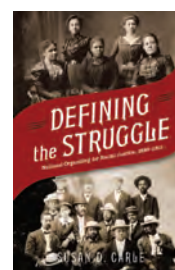
*Citizens Divided* offers a unique blend of history, theory, and constitutional doctrine. It demonstrates how one of the most divisive and influential cases in the recent history of the Supreme Court might have come to a different conclusion had it understood the dependence of First Amendment rights on the value of electoral integrity.

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](mailto:lawreport@yale.edu).

**Susan D. Carle**  
*Defining the Struggle: National Racial Justice Organizing, 1880-1915*  
 Oxford University Press, 2013



In this award-winning volume, Carle '88 reveals the forgotten history of early civil rights activism in the United States. *Defining the Struggle* examines the organizations that predated the NAACP and the National Urban League, overturning popular

thought that these latter groups were the progenitor of the modern movement. Carle examines their motivations, initiatives, and legal ideas to uncover their substantive influence on the activism for legal rights in the twentieth century.

**Gerhard Casper**  
*The Winds of Freedom: Addressing Challenges to the University*  
 Yale University Press, 2014



As president of Stanford University from 1992 to 2000, Casper '62 LL.M. established a reputation as a tireless, forward-thinking advocate for higher education. From affirmative action and multiculturalism to free speech, politics, public service, and government regulation,

Casper addresses the controversial issues currently debated on college campuses and in our highest courts. In addressing these vital concerns, Casper outlines the freedoms that a university must encourage and defend in the ongoing pursuit of knowledge.

**John E. Ecklund (with Constance Cryer Ecklund, Editor)**  
*The Origins of Western Law from Athens to the Code Napoleon*  
 The Lawbook Exchange, 2014

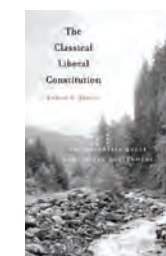


The late John Ecklund '41—who served as treasurer and general counsel of Yale University—produced a work that charts the horizon of Western legal origins: eternal Platonic truths versus the Sophists of individual preferences; medi-

eval Realists against Nominalists; natural lawyers of the seventeenth and later centuries; and Montesquieu and other Enlightenment thinkers fighting through principles and personhood. Such figures and ideas come alive in this comprehensive survey of the antecedents of our modern legal system, edited by Ecklund's widow, Constance Cryer Ecklund.

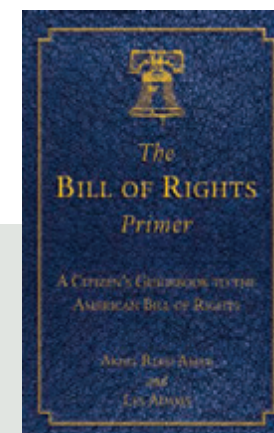
**Sterling Professor of Law Akhil Reed Amar '84 and Les Adams**  
*The Bill of Rights Primer: A Citizen's Guidebook to the American Bill of Rights*  
 Skyhorse Publishing, 2013

**Richard Epstein**  
*The Classical Liberal Constitution: The Uncertain Quest for Limited Government*  
 Harvard University Press, 2013



American liberals and conservatives alike take for granted a progressive view of the Constitution that took root in the early twentieth century. Epstein '68 laments this complacency. Steering clear of well-worn debates between defenders

of originalism and proponents of a living Constitution, Epstein employs close textual reading, historical analysis, and political and economic theory to urge a return to the classical liberal theory of governance that animated the framers' original text, and to the limited government this theory supports.



INTENDED FOR A BROAD AUDIENCE, and delivered in clear and uncluttered prose, *The Bill of Rights Primer* is an authoritative guide to all American freedoms.

Many Americans reference the Bill of Rights, a document that represents many of the freedoms that define the United States. And yet concrete knowledge about the document is often in short supply. This pocket-sized volume offers a wealth of knowledge about the Bill of Rights that goes beyond a basic understanding.

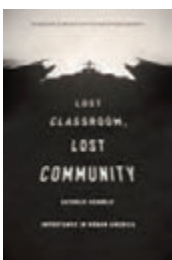
This guidebook gives a brief historical survey of the people, events, and ideas in England and the American colonies that influenced the drafting of the U.S. Constitution and Bill of Rights. *The Bill of Rights Primer* shows that this foundational American document is not a stagnant text but one with an evolving meaning shaped by historical events, such as the American Civil War and Reconstruction.



**Joseph Fishkin****Bottlenecks: A New Theory of Equal Opportunity***Oxford University Press, 2014*

Equal opportunity is a powerful idea and one with extremely broad appeal in contemporary politics, political theory, and law. But on closer examination, the most attractive existing conceptions of equal opportunity turn out to be impossible to achieve in

practice. This book proposes an entirely new way of thinking about the project of equal opportunity. Instead of focusing on the chimera of literal equalization, the work of Fishkin '07 suggests trying to broaden the range of opportunities open to people at every stage of life.

**Nicole Stelle Garnett and Margaret F. Brinig****Lost Classroom, Lost Community: Catholic Schools' Importance in Urban America***University of Chicago Press, 2014*

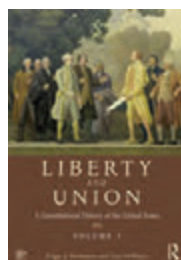
In the past two decades in the United States, more than 1,600 Catholic elementary and secondary schools have closed, and more than 4,500 charter schools—public schools that are often privately operated and freed from

certain regulations—have opened, many in urban areas. With a particular emphasis on Catholic school closures, Garnett '95 and Brinig examine the implications of these dramatic shifts in the urban educational landscape.

**Lea Brilmayer, Priscilla Claeys, Nadia Lambek, and Adrienna Wong, Editors****Rethinking Food Systems: Structural Challenges, New Strategies, and the Law***Springer, 2014*

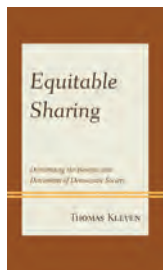
The editors (including Howard M. Holtzmann Professor of International Law Lea Brilmayer, Lambek '10 and Wong '10) have assembled an examination of how law shapes global food systems and their

ongoing transformations, taking as a starting point the idea that hunger results from social exclusion and distributional inequities, and that lasting, sustainable, and just solutions are to be found in changing the structures that underlie our food systems. Using detailed case studies, historical mapping, and legal analysis, the contributors show how various actors could use different legal tools (legislative, jurisprudential, norm-setting) on various scales to achieve structural change in food systems.

**Tara Helfman and Edgar J. McManus**  
**Liberty and Union: A Constitutional History of the United States***Routledge, 2014*

A comprehensive constitutional history of the United States, *Liberty and Union* examines the Anglo-American origins of the Constitution through the colonial and antebellum periods up to the Civil War and the consequent restructuring of the nation.

Blending chronological coverage with a thematic approach, Helfman '06 and McManus offer a critical analysis of core constitutional history topics set in the political, social, and economic context that made them constitutional issues in the first place.

**Thomas Kleven****Equitable Sharing: Distributing the Benefits and Detriments of Democratic Society***Lexington Press, 2014*

Kleven '67 argues that a principle of equitable sharing—one that requires the benefits and detriments of social life to be fairly distributed among all members of society—is fundamental to the concept of democracy and is implicit in the founding documents of the democratic society the United State purports to be.

To illustrate the centrality of equitable sharing to democracy, Kleven examines the political philosophies of John Locke, John Stuart Mill, and John Rawls.

**Yehudah Mirsky****Rav Kook:****Mystic in a Time of Revolution***Yale University Press, 2014*

Rav Abraham Isaac Kook (1865–1935) was one of the most influential—and controversial—rabbis of the twentieth century. As the first chief rabbi of Jewish Palestine and the founding theologian of religious Zionism, his life and teachings are essential

to understanding current Israeli politics, contemporary Jewish spirituality, and modern Jewish thought. In the first English-language biography of Kook in more than half a century, Mirsky '86 offers an insightful portrait of the man and his complex legacy.

**Stephen Joel Trachtenberg, Gerald B. Kauvar, and E. Grady Bogue****Presidencies Derailed: Why University Leaders Fail and How to Prevent It***Johns Hopkins University Press, 2013*

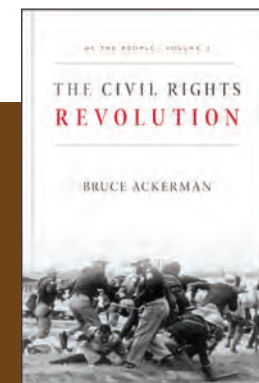
University presidents have become as expendable as football coaches: one bad season, scandal, or political or financial misstep and they are sent packing. A derailed presidency can undermine an institution's image, damage

its alumni relations, and destroy campus morale; it can also cost millions of dollars. The authors (including Trachtenberg '62) explore in depth, from every sector of higher education, the reasons why university presidencies fail, and how university and college leadership can prevent these situations.

**Robert Tsai****America's Forgotten Constitutions: Defiant Visions of Power and Community***Harvard University Press, 2014*

The U.S. Constitution opens by proclaiming the sovereignty of all citizens: "We the People." Tsai's '97 gripping history of alternative constitutions invites readers into the circle of those who have rejected this ringing assertion—the

defiant groups that refused to accept the Constitution's definition of who "the people" are and how their authority should be exercised.

**Bruce Ackerman '67, Sterling Professor of Law and Political Science****We the People:****The Civil Rights Revolution***Belknap Press, 2014*

IN 1993, Professor Bruce Ackerman offered a sweeping reinterpretation of our nation's constitutional experience with his book *We the People: Foundations*. In 2000, with *We the People: Transformations*, Ackerman revealed how America's "dualist democracy" provides for populist upheavals that amend the Constitution. Now with the newly released *We the People: The Civil Rights Revolution*, Ackerman continues his examination of the U.S. Constitution with an eye toward the Civil Rights Act, the Voting Rights Act, the Second Reconstruction, and *Brown v. Board of Education*.

"The sun is setting on the civil rights revolution. The struggle was an unforgettable experience for the generation that lived through it," Ackerman writes. "All this is ancient history for the rising generation. What the rising generation chooses to remember—and what it chooses to forget—will shape the way it understands America's constitutional choices for the twenty-first century."

Ackerman challenges conventional legal analysis of the civil rights movement; it was not through judicial activism or Article V amendments that this revolution transformed the Constitution. The breakthrough, he argues, was the passage of laws that ended the institutionalized humiliations of Jim Crow and ensured equal rights at work, in schools, and in the voting booth. This legislation gained congressional approval only because of the mobilized support of the American people.

**Amy Chua, John M. Duff, Jr. Professor of Law; Jed Rubenfeld, Robert R. Slaughter Professor of Law****The Triple Package: How Three Unlikely Traits Explain the Rise and Fall of Cultural Groups in America***Penguin Press HC, 2014*

A NEW BOOK WRITTEN by Professors Amy Chua and Jed Rubenfeld takes a close look at an enduring mystery—how some individuals from unpromising origins find success and why some cultural groups in the U.S. seem to consistently outperform others.

Drawing on original research and a trove of statistics, *The Triple Package: How Three Unlikely Traits Explain the Rise and Fall of Cultural Groups in America* seeks to challenge the conventional wisdom of success and achievement.

Described as "provocative," and "thought-provoking," *The Triple Package* identifies three unique traits that are prevalent in certain groups who are currently outperforming the national average. The

authors contend that these traits—insecurity, a superiority complex, and impulse control—generate drive, grit, and disproportionate success.

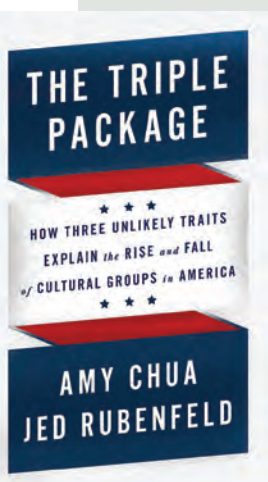
Some of the cultural groups studied in this book include Nigerian Americans, Asian Americans, Jews, Mormons, and

Cuban Americans, among others. The groups the authors identify as successful are mainly immigrant groups, which Chua says is explained in part by the fact that America tends to attract immigrants with Triple Package qualities.

While the book has generated some controversy by singling out specific groups of people, Rubenfeld and Chua believe their findings actually debunk racist stereotypes by demonstrating the cyclical, generational factors that affect success.

"Triple Package success disappears in most groups after a few generations, which punctures the whole idea of 'model minorities' or of groups succeeding because of innate, biological differences," explains Rubenfeld. "Third-generation Asian American kids, for example, do no better academically than any other kids."

And though the book zeroes in on a narrow scope of cultural groups exhibiting these three unique qualities, Chua and Rubenfeld believe that anyone, from any background, can have the Triple Package and achieve great success.



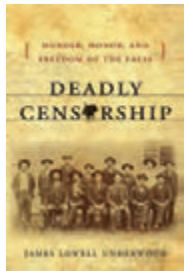


**James Lowell Underwood**

**Deadly Censorship:** Murder, Honor, and Freedom of the Press

*University of South Carolina Press, 2013*

On January 15, 1903, South Carolina Lieutenant Governor James H. Tillman shot and killed Narciso G. Gonzales, editor of an influential local newspaper, blaming Gonzales’s stinging editorials for his loss of the 1902 gubernatorial race. Underwood ’66 LL.M. investigates the epic murder trial of Tillman to test whether biting editorials were a legitimate exercise of freedom of the press or an abuse that justified killing when camouflaged as self-defense. In this examination of homicide as a deterrent to public censure, Underwood asks the question, “Can a man get away with murdering a political opponent?”



**Mark Weiner**

**The Rule of the Clan: What an Ancient Form of Social Organization Reveals About the Future of Individual Freedom**

*Macmillan, 2013*

A wide-ranging meditation on human development that offers surprising lessons for the future of modern individualism, *The Rule of the Clan* examines the constitutional principles and cultural institutions of kin-based societies,



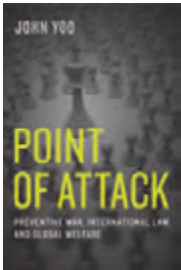
from medieval Iceland to modern Pakistan. Carefully argued and filled with rich historical detail, this investigation by Weiner ’00 speaks both to modern liberal societies and to developing nations riven by “clannism,” including Muslim societies in the wake of the Arab Spring.

**John Yoo**

**Point of Attack: Preventive War, International Law, and Global Welfare**

*Oxford University Press, 2014*

In the twenty-first century, the greatest threat to international security no longer comes from war between the great powers. In this new treatise, Yoo ’92, former adviser to the Bush administration, establishes a new framework



for the grounds for war. *Point of Attack* argues against the framework built on the UN Charter and instead proposes a new system consisting of defensive, preemptive, or preventive measures to encourage wars that advance global welfare. Yoo examines recent wars in Iraq and Afghanistan and looks at the challenges posed by Libya, Syria, North Korea, and Iran.

**ALSO OF NOTE**

**Lucas Bergkamp ’89 LL.M.**

**The European Union REACH Regulation for Chemicals Law and Practice**

*Oxford University Press, 2013*

**Philip Bobbitt ’75**

**The Garments of Court and Palace: Machiavelli and the World**

**That He Made**

*Atlantic Monthly Press, 2013*

**Hillary Rodham Clinton ’73**

**Hard Choices**

*Simon & Schuster, 2014*

**Robert Ellickson ’66, Vicki Been, Roderick M. Hills ’91, Christopher Serkin**

**Land Use Controls: Cases and Materials, Fourth Edition**

*Wolters Kluwer Law & Business, 2013*

**Jeff Greenfield ’67**

**If Kennedy Lived: The First and Second Terms of President John F. Kennedy: An Alternate History**

*Putnam, 2013*

**Reed Hundt ’74**

**Zero Hour: Time to Build the Clean Power Platform**

*Odyssey Editions, 2013*

**Daniel J. Kornstein ’73**

**Loose Sallies Essays**

*Author House, 2014*

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

**The Law of Banking and Financial Institutions, Fifth Edition**

*Aspen Publisher, 2013*

**Daniel Park ’98**

**The Legal Mind: How the Law Thinks**

*CreateSpace Independent Publishing*

*Platform, 2013*

**Robert Pozen ’72 JD, ’73 JSD**

**Extreme Productivity: Boost Your Results, Reduce Your Hours**

*HarperBusiness, 2012*

**Richard Ravitch ’58**

**So Much to Do: A Full Life of Business, Politics, and Confronting Fiscal Crises**

*PublicAffairs, 2014*

**Mary Hutchings Reed ’76 (with David Creasey)**

**Book Law for Authors**

*CreateSpace Independent Publishing*

*Platform, 2013*

**Glenn Harlan Reynolds ’85**

**The New School: How the Information Age Will Save American Education from Itself**

*Encounter Books, 2014*

**Margaret Thornton ’80 LL.M.**

**Privatising the Public University: The Case of Law**

*Routledge, 2012*

**Deborah Tuerkheimer ’96**

**Flawed Convictions: “Shaken Baby Syndrome” and the Inertia of Injustice**

*Oxford University Press, 2014*

**Junius Williams ’68**

**Unfinished Agenda: Urban Politics in the Era of Black Power**

*North Atlantic Books, 2014*

**Yael Ben-Zion ’01 LL.M., ’04 JSD, with Maurice Berger and Amy Chua (foreword)**

**Intermarried**

*Kehrer Verlag, 2014*



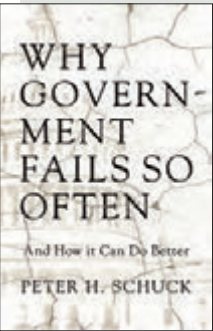
**INTERESTED IN HEARING** faculty members talk about their writing? Videos of book talks with faculty are available at [www.law.yale.edu/videos](http://www.law.yale.edu/videos).

**Peter H. Schuck, Simeon E. Baldwin Professor Emeritus of Law**

**Why Government Fails So Often: And How It Can Do Better**

*Princeton University Press, 2014*

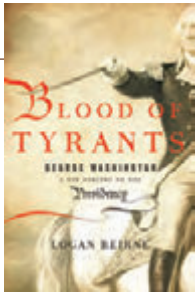
AMERICA ENJOYS ONE of the world’s highest standards of living, and its representative democracy functions as a widely admired symbol of western ideas about political process and government. At the same time, however, most Americans have lost confidence in the federal government and believe it has become ineffective. The origins and implications of this dissonance—and proposals to correct the problem—are the subject of a new book by Peter Schuck, Simeon E. Baldwin Professor Emeritus of Law.



In identifying the roots of what he calls “a deep and dangerous dilemma,” Schuck argues that ineffective policies create public discontent and, while failing to achieve social goals, threaten to undermine democratic legitimacy. Schuck posits that

the perceived failures in federal government are both measurable and structural—and eclipse episodic problems or partisan bickering. These longstanding problems undermine Democratic and Republican administrations alike, and include unrealistic goals, perverse incentives, poor and distorted information, systemic irrationality, rigidity and lack of credibility, a mediocre bureaucracy, powerful and inescapable markets, and the inherent limits of law.

To correct some of these weaknesses, Schuck looks for answers by analyzing the factors that made certain policies successful: the G.I. Bill, the Voting Rights Act, the Earned Income Tax Credit, and airline deregulation. From that vantage, Schuck proposes a series of possible reforms, including avoiding moral hazard in student loan, mortgage, and other subsidy programs; empowering consumers of public services; simplifying programs and testing them for cost-effectiveness; and increasing the use of “big data.”



**Logan Beirne ’08 Named Winner of 2014 William E. Colby Award**

Norwich University officials have named Logan Beirne ’08 the 2014 William E. Colby Award winner for his book, *Blood of Tyrants: George Washington & the Forging of the Presidency* (Encounter Books, 2013).

Named for the late ambassador and former CIA director William E. Colby, the Colby Award recognizes a first work of fiction or non-fiction that has made a significant contribution to the public’s understanding of intelligence operations, military history, or international affairs.