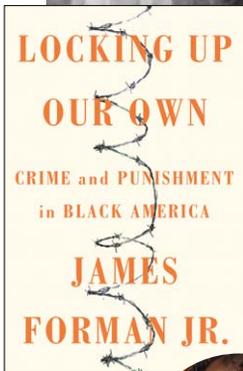


Police Captain Tilmon O'Bryant hangs a recruiting poster announcing police examinations to be given in predominantly black neighborhoods.



James Forman Jr.
**Locking Up Our Own:
 Crime and Punishment
 in Black America**
Farrar, Straus and Giroux, 2017

Locking Up Our Own: Crime and Punishment in Black America

In his new book, Professor James Forman Jr. '92 explores the complex relationship between race, class, and the American criminal justice in a new and original light.

The current debates surrounding the American criminal justice system—particularly in regard to issues of race—are numerous, inspired, and often impassioned. In a world where the United States has a higher prison population than any other nation, and when communities of color are disproportionately affected by this rate of incarceration and its associated police violence, the question often emerges—what can be done?

In *Locking Up Our Own* (Farrar, Straus and Giroux, 2017), Forman brings to the forefront a new, far-less-discussed perspective. Forman wonders—how is it that the number of black elected officials has increased dramatically since the Civil Rights Era, alongside an almost

equal increase in black incarceration? By exploring the decisions that many black mayors, judges, and police chiefs made — ostensibly in the hopes of stabilizing what they saw as struggling African American communities — Forman shows that these leaders had a significant, albeit unintended, role to play in the creation of the current state of the criminal justice system.

Interweaving issues of socio-economics and class into his discussion of race, Forman argues that members of the African American political elite, as well as many black police officers and administrators, were decidedly in favor of the policing tactics that contributed to the imposition of mass incarceration upon communities of color. With a particular focus on Washington DC, Forman empathetically describes the quagmire in which African Americans found, and continue to find themselves, when dealing with an imposing criminal justice system. Whether in regard to the impossible choices once made by African American political elites, or in reference to the very victims of mass incarceration themselves, Forman employs his experience both as a public defender and a legal scholar in order to present a new portrait of the law, race, and crime in the contemporary United States.

A graduate of Atlanta's Roosevelt High School, Brown University, and Yale Law School, Forman was a law clerk for Judge William Norris of the U.S. Court of Appeals for the Ninth Circuit and Justice Sandra Day

O'Connor of the U.S. Supreme Court. After clerking, he joined the Public Defender Service in Washington, DC, where for six years he represented both juveniles and adults charged with crimes. In 1997, along with David Domenici, Forman started the Maya Angelou Public Charter School, an alternative school for school dropouts and youth who had previously been arrested. A decade later, in 2007, Maya Angelou School expanded and agreed to run the school inside DC's juvenile prison.

At Yale, Forman teaches Constitutional Law, a seminar on Race and the Criminal Justice System, and a clinic called the Educational Opportunity and Juvenile Justice Clinic. In the clinic, Professor Forman and his students represent young people facing expulsion from school for discipline violations, and they work to keep their clients in school and on track toward graduation. Last year he took his teaching behind prison walls, offering a seminar on criminal justice which brought together, in the same classroom, ten Yale Law students and ten men incarcerated in a Connecticut prison.

Praised as “superb and shattering” by the *New York Times* and “a gritty, often revelatory work” by the *London Review of Books*, *Locking Up Our Own* enriches our understanding of why our society became so punitive and offers important lessons to anyone concerned about the future of race and the criminal justice system in this country.



Forman appeared on *PBS NewsHour* with Jeffrey Brown on April 20, 2017, to discuss *Locking Up Our Own*.

Professor Forman Cited in U.S. Supreme Court Decision on Racial Bias Among Jurors

In a Supreme Court decision on March 6, 2017, ruling that racial bias among jurors may require a new trial, Justices cited the work of Professor James Forman Jr. '92 in coming to their conclusion.

In the 5-3 decision, the Court ruled for the first time that reports of racist comments by jurors may require setting aside a verdict and ordering a new trial. In coming to this conclusion, the order cited passages from Professor Forman's paper, “Juries and Race in the Nineteenth Century,” 113 *Yale L. J.* 895 (2004).

The decision quotes one passage that states, “Almost immediately after the Civil War, the South began a practice that would continue for many decades: All-white juries punished black defendants particularly harshly, while simultaneously refusing to punish violence by whites, including Ku Klux Klan members, against blacks and Republicans.”

It further references a statistic from Professor Forman's work that in the years 1865 and 1866, all-white juries in Texas decided a total of five hundred prosecutions of white defendants charged with killing African-Americans, and all five hundred were acquitted.

The opinion outlines how these outcomes challenged the American belief that “jury was a bulwark of liberty,” another idea referenced from Forman's article, and noted how it led to Congress passing legislation to integrate the jury system and to bar a person from eligibility if they had conspired to deny the rights of African Americans.

Forman said that the article had grown out of a paper he wrote while he was a student at Yale Law School under the supervision of Professor Akhil Reed Amar '84.

The Washington Post

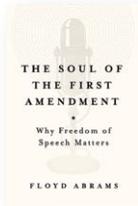
“Forman's beautifully written narrative, enriched by firsthand knowledge of the cops and courts, neither condemns black leaders in hindsight nor exonerates the white-dominated institutions that laid the basis for what dramatic block letters on the cover of an August 1979 ‘special issue’ of *Ebony* labeled ‘black on black crime.’” — Charles Lane, *Washington Post*, April 19, 2017

The New York Times

“...a masterly account of how a generation of black elected officials wrestled with recurring crises of violence and drug use in the nation's capital.” — Khalil Gibran Muhammad, *New York Times*, April 14, 2017

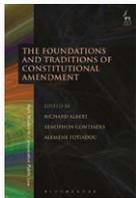
SURVEY OF BOOKS

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.



Floyd Abrams
The Soul of the First Amendment: Why Freedom of Speech Matters
 Yale University Press, 2017

Abrams's '59 analysis looks at cases through history and examines conflicts between claims of free speech and those of national security. The core of the book is the author's belief that the First Amendment is meant to be a protection against government over-control and censorship.



Richard Albert, Xenophon Contiades, and Alkmene Fotiadou, eds.
The Foundations and Traditions of Constitutional Amendment
 Hart Publishing, 2017

Albert '03 and co-editors present chapters exploring constitutional change from the comparative, doctrinal, historical, and theoretical perspectives of a number of international legal scholars.



Mark Bartholomew
Adcreep: The Case Against Modern Marketing
 Stanford University Press, 2017

Bartholomew '00 delves into the merging of advertising and technology, arguing that the legal system has failed to stop invasive advertising practices. The author discusses how ads have become ubiquitous in spaces public and private and explores the balance of power between advertiser and audience.



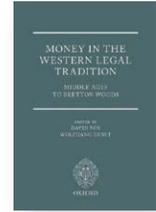
Roy L. Brooks
The Racial Glass Ceiling: Subordination in American Law and Culture
 Yale University Press, 2017

Brooks '75 explores the concept of racial subordination in the contemporary United States, grounded in socioeconomic, judicial, and cultural conditions, with a legal focus.



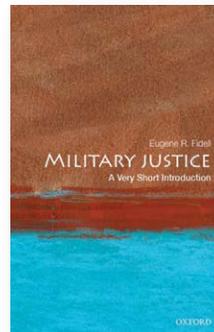
Josh Chafetz
Congress's Constitution: Legislative Authority and the Separation of Powers
 Yale University Press, 2017

Chafetz '07 examines Congress's formidable yet under-reported tools that allow it, in theory, to effectively check the other branches of federal government. These tools, Chafetz concludes, are the means by which Congress battles for public support and, when used to successfully engage with the public, optimize Congress's power and effectiveness.



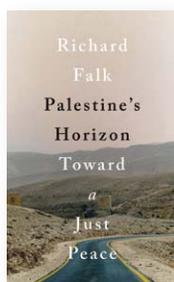
David Fox and Wolfgang Ernst, eds.
Money in the Western Legal Tradition: Middle Ages to Bretton Woods
 Oxford University Press, 2016

Ernst '82 LLM and Fox compile thirty-four chapters describing the development of monetary law from the coin currency of the Middle Ages to the advent of fiat money in the modern era. Taking an interdisciplinary approach, the volume contains work from historians, legal scholars, numismatists, and economists to present a significant and comprehensive analysis of Western monetary law.



Eugene R. Fidell
Military Justice: A Very Short Introduction
 Oxford University Press, 2016

In his latest book, Eugene R. Fidell, Florence Rogatz Visiting Lecturer in Law, draws upon his extensive background in military law to present an account of the strengths and weaknesses of military justice, in both common law and other legal traditions. *Military Justice: A Very Short Introduction* integrates a description of the U.S. military justice system with a comparative view of civilian and foreign models for the administration of justice, including the increasingly important focus on human rights. Fidell also outlines the differences between military and civilian law, as well as the global context of the U.S. military justice system.



Richard Falk
**Palestine's Horizon:
Toward a Just Peace**

The University of Chicago Press, 2017

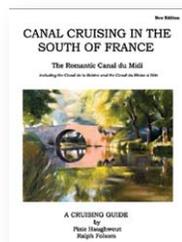
Falk '55 explores the complicated history and politics of Israel and Palestine, on both the local and global levels. He notes the differing ways in which the Palestinian community seeks peace in the face of occupation, such as the pursuit of legal proceedings in international courts and the non-violent Boycott Divestment Sanctions movement.



Mark Fenster
**The Transparency Fix: Secrets,
Leaks, and Uncontrollable
Government Inflation**

Stanford University Press, 2017

Why does an extraordinarily secret government face an unending stream of government leaks? Fenster '98 argues in his new book that citizens hold the false assumption that government information can be controlled, or in other words, that it can be either released or kept entirely secure. Our assumptions about secrecy and transparency, he notes, ought to be reformed in the face of a state that consists of so much more than mere information.



Pixie Haughwout
and Ralph Folsom
**Canal Cruising
in the South of France:
The Romantic Canal du Midi,
18th Edition**

Sea Fever Gear Publications, 2017

Haughwout and Folsom '72 present the latest version of their popular cruising guide, now in its 18th edition.



Ethan Katsh and
Orna Rabinovich-Einy
**Digital Justice: Technology
and the Internet of Disputes**

Oxford University Press, 2017

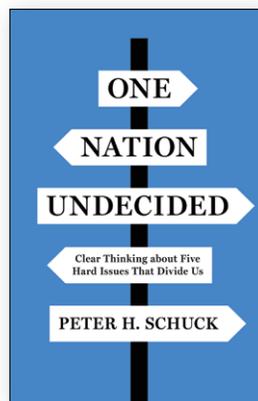
Katsh '70 and Rabinovich-Einy explore the ease with which individuals participate in the sharing economy online, and how they are exposed to a number of disputes arising from this ease. The authors propose a framework for dispute resolution and prevention, known as "Digital Justice," that expands beyond the inadequacies of traditional legal institutions with regard to the expansion of justice.



Clear Eyes, Hard Issues

In his latest book, Simeon E. Baldwin Professor Emeritus of Law Peter H. Schuck analyzes five hot-button socio-legal-political issues from an objective, gimlet-eyed perspective.

Each chapter of Peter Schuck's new book takes on a different "hard issue" that America faces: poverty, immigration, affirmative action, campaign finance, and religious exemptions from secular policies. A comprehensive and balanced



Peter H. Schuck
**One Nation Undecided:
Clear Thinking about Five
Hard Issues That Divide Us**

Princeton University Press, 2017

analysis of the issues, *One Nation Undecided: Clear Thinking about Five Hard Issues That Divide Us* (Princeton University Press, 2017) explains the historical, empirical, normative, policy, and remedial aspects of the issues—and the difficult tradeoffs that solutions require.

In his introduction, Schuck emphasizes that "clear thinking about such issues is not the same as support for specific outcomes. In truth, I do not much care where readers come out on these issues so long as they approach them with what I have called clear thinking."

On immigration, for example, Schuck carefully takes readers through the intricate history and complex policy dimensions of the topic, concluding with proposed reforms to improve enforcement effectiveness and create a legalization process that is workable, fair, and generous. In the chapter on campaign finance, the author analyzes eight reform proposals—from overturning *Citizens United* to allowing free TV time to candidates to greater disclosure. His discussion of religious exemptions from secular public policies dissects the concepts of separation, accommodation, and neutrality while working through a number of specific, socially-fraught disputes arising in the wake of the *Hobby Lobby* and *Obergefell* decisions.

"At a time of deep social and political division, along comes a much-needed book to steer us toward solutions to five very difficult national problems. There could be no better guide for this endeavor than Peter Schuck, one of the clearest and most thoughtful legal and policy scholars of this or any generation," says Robert E. Litan, author of *Trillion Dollar Economists*. "Every policymaker at every level of government, and ideally every citizen, should read this book."

Hitler's American Model: The U.S. in the Making of Nazi Race Law

Professor James Q. Whitman '88 examines the relationship between early twentieth-century American race law and the racial policy of Nazi Germany.

In his new book, James Q. Whitman, Ford Foundation Professor of Comparative and Foreign Law, explains how, in the early 1930s, Nazi lawyers took a sustained interest in American immigration law, the American law of second class-citizenship, American anti-miscegenation law, and the American approach to racial classifications. According to *Hitler's American Model* (Princeton University Press, 2017), during the early period of their

rule, the Nazis were not yet contemplating genocide. The Nuremberg Laws of 1935 had a different aim: They reduced Jews to second-class citizens and criminalized interracial marriage and sex. In both respects, and especially with regard to anti-miscegenation, the United States offered the leading model in the world.

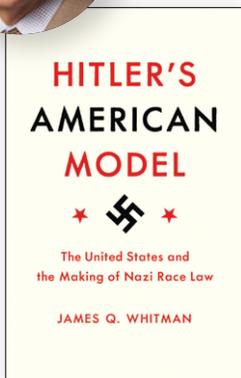
Hitler himself had already praised American law in *Mein Kampf*, and Nazi lawyers did the same after the Party came to power in 1933. In fact, as Whitman shows, it was the most radical Nazis who were the most eager advocates of the American model. And it is an ironic truth that when Nazis rejected American practices, it was sometimes because they found them not too enlightened, but too harsh.

James Q. Whitman
**Hitler's American Model:
The U.S. in the Making of
Nazi Race Law**

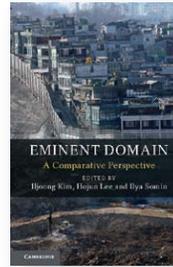
Princeton University Press, 2017

Of course the Nazis also saw plenty to despise in America's liberal traditions. The history that Whitman recounts is by no means one of unmixed Nazi admiration for the United States. Nevertheless there is much evidence of deep Nazi engagement with American race law in the early 1930s—too much to ignore.

Reviewing the book for the *New York Journal of Books*, Thomas McClung called the book "interesting and eye opening" and wrote: "In spite of the Nazis' disdain, to put it mildly, for our stated and evident liberal and democratic principles, they eagerly looked to the United States as the prime example for their own goals of protecting the blood, restricting citizenship, and banning mixed marriages. Reading this book could make many Americans doubt the possibility of ever forming a more perfect union with such a legacy."



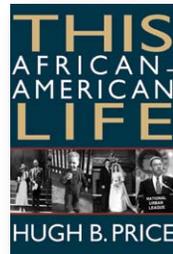
SURVEY OF BOOKS



Iljoong Kim,
Hojun Lee,
and Ilya Somin, eds.

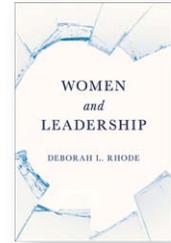
**Eminent Domain:
A Comparative Perspective**
Cambridge University Press, 2017

Somin '01 and co-editors use a common framework to analyze the law and economics of eminent domain around the world. The book offers a wide range of possible solutions to the challenges in regulating the condemnation of private property by the state.



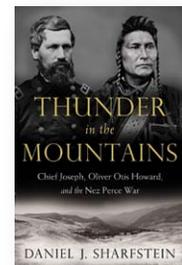
Hugh B. Price
**This African-American Life:
A Memoir**
John F. Blair, 2017

Price '66 details his family background, childhood, and career in this memoir. The author, who was the president and CEO of the National Urban League for nearly a decade, is a champion for education and creating opportunities for others.



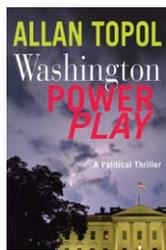
Deborah L. Rhode
Women and Leadership
Oxford University Press, 2017

Rhode '77 explores the underlying causes of, and potential solutions to, the underrepresentation of women in leadership roles in the United States. Women account for a majority of the American electorate, but only eighteen percent of Congress and ten percent of state governors. Examining a multitude of professional fields, Rhode argues that major systemic changes are required in order to overcome the biased conditions facing women in leadership today.



Daniel J. Sharfstein
**Thunder in the Mountains:
Chief Joseph,
Oliver Otis Howard, and
the Nez Perce War**
W. W. Norton, 2017

Oliver Otis Howard, a Union Army General who was tasked with helping former slaves claim the rights of citizens after the Civil War, was sent west in the 1870s and attempted to force Native Americans to become Christian farmers. Chief Joseph, a Nez Perce leader in Oregon, fought against Howard's efforts. Through the voices of the survivors of the Nez Perce War, Sharfstein '00 brings this conflict alive while debating the limits of government and the meaning of freedom and equality.



Allan Topol
Washington Power Play

SelectBooks, Inc., 2017

Topol's '65 latest novel follows an FBI agent tasked with finding a mole in the U.S. government, a job complicated by her former romance with a Chinese diplomat.

Also of Note

Stephen M. Graham '76

**Invisible Ink:
Navigating Racism
in Corporate America**

CreateSpace, 2017

Renée McDonald Hutchins '93
Developing Professional Skills:

Criminal Procedure

West Academic, 2017

George Kaufman '62
Accidental Spirituality

CreateSpace, 2017

Harry Carl Schaub '55
**Call Your First Witness:
The Untold Story of Abwehr
General Erwin Lahousen,
First U.S. Witness
at the Nuremberg Trial**

CreateSpace, 2016

Debra M. Strauss '86
**Behind the Bench:
The Guide to Judicial
Clerkships, 2nd Edition**

West Academic, 2017

Sonia Taitz '81
Great With Child
McWitty Press, 2017

SPOTLIGHT

Thirteen Lawyers Who Shaped the Legal World



In his latest book, *Pillars of Justice: Lawyers and the Liberal Tradition* (Harvard University Press, 2017), Sterling Professor Emeritus Owen Fiss explores the purpose and possibilities of life in the law

through moving accounts of thirteen lawyers who shaped the legal world during the past half century.

Two of the figures portrayed, Thurgood Marshall and William Brennan, were U.S. Supreme Court Justices. Others, like John Doar and Burke Marshall '51, set the civil rights policies of the federal government during the 1960s. Burke Marshall also served on the Yale faculty from 1970 until his death in 2003.

In addition to Burke Marshall, some of the lawyers of *Pillars of Justice* were legal educators, nourishing and extending the liberalism rooted in the civil rights era. A number of

these—Eugene Rostow '37, Arthur Leff, Joseph Goldstein '52, and Robert Cover—were on the Yale faculty. One, Catharine MacKinnon '77, was a student at the Law School and is now a professor at the University of Michigan and Harvard.

Two, Aharon Barak of Israel and Carlos Nino of Argentina, were practitioners as well as scholars. They were responsible for the rise of the human rights movement that today carries the burden of advancing liberal values and also taught at the Law School from time to time.

All the lawyers who are subjects of *Pillars of Justice* came from diverse backgrounds and held various political views. What unites them is a deep, abiding commitment to *Brown v. Board of Education* as an exceptional moment in the life of the law—a willingness to move mountains, if need be, to ensure that we are living up to our best selves.

For Owen Fiss, one of the country's leading constitutional theorists, the people described were mentors, colleagues, friends. In his portraits, Fiss tries to identify the unique qualities of mind and character that made these individuals so important to the institutions and legal principles they served. Hailed by Princeton University's Stanley N. Katz as "a testimonial for all of those who can still believe in the nobility of law," *Pillars of Justice* is a stirring collection of diverse biographical portraits.

Owen Fiss is Sterling Professor Emeritus of Law at Yale Law School. In 2015 he published *A War Like No Other: The Constitution in a Time of Terror*.



PILLARS OF JUSTICE

Lawyers and the Liberal Tradition

OWEN FISS

Owen Fiss
**Pillars of Justice:
Lawyers and the Liberal Tradition**

Harvard University Press, 2017

“

This book is a testimonial for all of those who can still believe in the nobility of law—the capacity, as Fiss says, of ‘law working itself pure.’ This is an enormously important message, and it surely deserves to be heard at a time when idealism and faith in law are in very short supply in this country.”

STANLEY N. KATZ, PRINCETON UNIVERSITY